

RELUCTANCE, RETALIATION AND REPUDIATION:

THE ATTRITION OF DOMESTIC VIOLENCE CASES IN EIGHT MAGISTERIAL DISTRICTS



Lillian Artz and Diane Jeffthas

**Gender, Health and Justice Research Unit
University of Cape Town**

RELUCTANCE, RETALIATION AND REPUDIATION:

THE ATTRITION OF DOMESTIC VIOLENCE CASES IN EIGHT MAGISTERIAL DISTRICTS

Lillian Artz & Diane Jeffthas



with contributions from

Zarina Majiet



Published by:
The Gender, Health & Justice Research Unit
Faculty of Health Sciences
University of Cape Town

© 2011 University of Cape Town
All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, without prior permission.

To be cited as:

Artz, L. & Jeffthas, D. (2011) *Reluctance, Retaliation and Repudiation: The Attrition of Domestic Violence Cases in Eight Magisterial Districts*. GHJRU, University of Cape Town: South Africa.

The authors would like to acknowledge and thank MOSIAC's Court Support Programme staff for their dedication to this partnership and their constructive and insightful contributions to this study.

We would also like to acknowledge the kind support and assistance of Mr. Hishaam Mohamed from the Western Cape Department of Justice, as well as the staff from Bellville, Bishop Lavis, Cape Town, Khayelitsha, Paarl, Phillippi, Wellington and Wynberg courts for accommodating us.

This study was funded by:



TABLE OF CONTENTS

Introduction	1
Why is Attrition Research Important?	1
The Research Partners	2
Background to the Research	5
Introduction	5
Nature and Extent of Domestic Violence	5
The Domestic Violence Act	10
Project Rationale	13
Attrition in Domestic Violence Cases: Exploring The Literature	16
Introduction	16
Comparative Attrition Studies	18
Limitations of International Research on Attrition in Domestic Violence Cases	21
Final Reflections on Attrition Research	23
Research Methodology and Process	25
Introduction	25
Methodology	28
Research Sampling and Sources	29
Research Instruments	32
Research Findings	34
Introduction	34
Demographic Profile of the Applicants	36
Profile of Abuse Experienced by Applicants and Reasons for Applying for a PO	41
Critical Features of the Abuse Suffered by the Applicants	44
Use of the Criminal Justice System	52
Reasons why Applicants did not Return to Court to Finalise their POs	57
Discussion and Conclusion	62
A Closer Look at Attrition	64
Recommendations: The Usual List Revisited	71
Conclusion	72
References	74
Appendices	87
A - Intake Script	87
B - Mosaic Intake Form	89
C - Non-Return Interview Schedule	91
D - Brief Report on Findings from 1300 Additional Affidavits	97
E - Report on Workshop with Court Clerks	100

ABBREVIATIONS/ACRONYMS

DoJ	Department of Justice and Constitutional Development
DVA	Domestic Violence Act (No. 116 of 1998)
EMR	Emergency Monetary Relief
FFAM	Female Family Member
FIP	Female Intimate Partner
GHJRU	Gender, Health and Justice Research Unit
HSRC	Human Sciences Research Council
IPO	Interim Protection Order
MFAM	Male Family Member
MIP	Male Intimate Partner
NGO	Non-Governmental Organisation
OSF	Open Society Foundation
PO	Protection Order
SANGOCO	South African National Non-Governmental Organisation Coalition
SAPS	South African Police Service
UCT	University of Cape Town

INTRODUCTION

In 2008 MOSAIC, a non-profit Non-Governmental Organisation (NGO) located in Cape Town, in partnership with the University of Cape Town's (UCT's) Gender, Health and Justice Research Unit (GHJRU), received funding from the Open Society Foundation (OSF) to conduct extensive empirical research into the nature of attrition in domestic violence cases. The primary objective of this research is to determine, through interviews with domestic violence complainants, why attrition in domestic violence cases occurs, or more specifically, why victims of domestic abuse do not return to court to finalise their interim protection orders (IPOs). Furthermore, through examining the experiences applicants for Protection Orders (POs) have in their interactions with the members of the South African Police Service (SAPS) and the court system, our research aims to assess compliance with the Domestic Violence Act (DVA) as well as possible areas of dereliction of duty by critical justice personnel. This research involved interviewing 503 applicants for POs at eight Magistrate's Courts in the Western Cape Province, with the aim of determining why they withdrew from the legal process and did not finalise the IPOs.

WHY IS ATTRITION RESEARCH IMPORTANT?

Attrition refers to the process by which a case gets reported to the criminal justice system but does not get finalised. At some stage it "falls out" of the system, for whatever reason. For instance, a complainant (victim) may withdraw a case or a prosecutor may decide not to proceed with prosecuting a case.

Attrition research shows us the different points in the system *where* cases fall out, and hopefully, the *reasons for* cases falling out. Without it, we can only speculate about why, for instance, the number of cases decreases from the initial reporting of the cases to the final outcome of cases. The examination of attrition at particular points in the system can go far in strengthening existing interventions (Zoellner *et al*, 2000). For instance, if we know that of all domestic violence cases reported to the police, only 5% result in arrest, researching what happens between the reporting of the case

and the decision to arrest or not arrest, will give us some indication of how to improve arrest rates. We can also use research to establish whether the reasons for cases dropping out relate to the complainant (personal reasons) or relate to performance or decisions of the criminal justice system (systemic reasons).

Whether the fall out or 'attrition' of cases is a result of the failure of criminal justice to implement domestic violence legislation or as a result of the seemingly unrelenting cycle of violence is critical to establish. This research has shown that it is the combination of both. 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 results in limiting the effect of the legislation and discourages protection order applicants from continuing the legal process. On the other hand, victims of domestic violence are often caught in intractable personal situations that make it almost impossible to take effective legal action.

This is the first in a series of reports on attrition in domestic violence cases.

THE RESEARCH PARTNERS

This project is the result of a research partnership between the Gender, Health and Justice Research Unit (UCT) and Mosaic Training, Service and Healing Center for Women. MOSAIC's team of court support workers, coupled with the GHJRU's research capacity provided the necessary combined expertise which allowed for the design and development of high quality research methods, and the implementation of an efficient and effective research process geared towards achieving our research objectives.

MOSAIC – Training, Service and Healing Centre for Women

MOSAIC, a community-based NGO registered as a non-profit organisation and as a Section 21 company, delivers a wide range of social support services and projects to clients, specifically women and female youth, but also men in the Cape Metropole Region, Paarl and Wellington areas. To a

large degree, the social support services offered by MOSAIC focus on issues of abuse and domestic violence and include, among others, gender-sensitive counselling, and public education about human and legal rights. Operating from its Head Office/Community Centre in Wynberg and also from five Outreach Centres in Philippi, Khayelitsha, Mitchell's Plain, Delft and Du Noon, MOSAIC renders services in more than thirty disadvantaged communities and reaches more than 100,000 people annually.

In March 1999, MOSAIC became the first NGO to implement a Court Support Project for abused individuals who were applying for protection orders in the domestic violence sections of the Wynberg, Goodwood and Bellville Magistrate's courts. At the request of magistrates and clerks from the different courts, MOSAIC extended its court services into eleven Magistrate's courts. This Court Support Project has allowed MOSAIC to forge a successful partnership with the Department of Justice in the Western Cape. In recognition of the high calibre of services provided to domestic violence victims, MOSAIC has earned two prestigious awards from Impumelelo and the South African National Non-Governmental Organisation Coalition (SANGOCO) in 2000. Since the project's inception MOSAIC has assisted over 90,000 applicants. In addition, MOSAIC's experience in the domestic violence courts working with the DVA and the protection order led them to write and publish a booklet in 2002. The booklet *'It's an Order! – A simple guide to your rights'* details all aspects of the court procedure in the domestic violence court and the problems that may arise for applicants. MOSAIC translated the booklet into Afrikaans and Xhosa; these editions were printed and distributed in 2003.

For the purposes of this attrition research, MOSAIC's project leader was Marieta de Vos. Ms. de Vos has more than 20 years development experience and twelve years' work experience in the field of gender, abuse and domestic violence. All of MOSAIC's court workers are trained as community workers and have been capacitated to provide support services for survivors of domestic abuse who are applying for protection orders. Nine of these court workers have graduated as Social Auxiliary workers and are registered with the South African Council for Social Service Professionals. Without question, MOSAIC can be regarded as an organisation with a well-developed understanding of, and expertise in, the field of domestic violence.

The Gender, Health and Justice Research Unit

The Gender, Health & Justice Research Unit is an interdisciplinary research Unit within the Faculty of Health Sciences at the University of Cape Town. The unit promotes inter-faculty, multi-disciplinary research, education and advocacy in the areas of criminal justice and public health by providing a supportive intellectual location to integrate the separate debates and advances that have occurred within studies of gender, health, the law and criminal justice. It also encourages the development of interdisciplinary scholarship that crosses the traditional boundaries of health, law and the social sciences, while incorporating questions of advocacy and activism in research methods and programmes.

The GHJRU has aimed to improve the status of women's access to social and legal justice by:

- Researching all aspects of women's experiences with the criminal justice system and the response of the criminal justice sector to violence against women;
- Contributing to the development of policy and legislation that relates to violence against women through monitoring, research and submissions to criminal justice departments and Parliament;
- Advancing South African research on international and regional legislation relating to all substantive and procedural aspects of rape and domestic violence (i.e., providing research support to the SA Law Commission Project Committee on Sexual Offences);
- Undertaking legal and empirical research that identifies the obstacles to access to justice for women in rural and disadvantaged areas in South Africa;
- Conducting training in the criminal justice and public health sectors; and
- Developing research and legal models on violence against women that attend to the specific socio-political and economic circumstances which are characteristic of South Africa.

BACKGROUND TO THE RESEARCH

INTRODUCTION

In early 2008 MOSAIC, in partnership with the University of Cape Town's Gender, Health and Justice Research Unit (GHJRU), embarked on a research process that sought to shed light on the reasons why applicants do not return to court to finalise their protection orders. A total of 503 complainants who had applied for protection orders were interviewed at eight Magistrate's courts around the Western Cape Province. This study is based on the work of Lillian Artz (2008) who, in partnership with MOSAIC, interviewed 365 women on a similar subject. After analysing the interviews, a second tier of this project emerged with an adapted interview schedule and the addition of eight courts to the project. These are the first domestic violence "attrition" studies conducted in South Africa.

Nature and Extent of Domestic Violence in South Africa

One of the most disturbing features of South African society is the exceedingly high levels of domestic violence. Findings from both international and local research have clearly shown that domestic violence threatens the safety of victims, and in some severe instances the abuse may even result in a victim's death (see for example United Nations Children's Fund, 2000; Mathews et al, 2004). Occurring within a familial or domestic setting, domestic violence brings disruption and violence into the home, a space traditionally considered to be a safe haven for families. It has been noted:

The family is often equated with sanctuary – a place where individuals seek love, safety, security, and shelter. But the evidence shows that it is also a place that imperils lives, and breeds some of the most drastic forms of violence perpetrated against women and girls (UN Children's Fund, 2000, p.3).

There is overwhelming evidence from research showing that while men are sometimes victims, the majority of victims are women who are abused at the hands of their male intimate partners and/or their relatives (UN Children's Fund, 2000). While research and literature on domestic violence from the

international community far outnumbers the research which has been conducted locally, there are a few notable studies which provide valuable insight into the nature and extent of domestic violence in the South African context. In 1999, Jewkes *et al* conducted a study on violence against women in the Northern Province, the Eastern Cape Province and Mpumalanga where they surveyed 1306 women aged 18-49. They found that 19.1% of women in the Northern Province (from a sample of 475), 26.8% of women in the Eastern Cape (from a sample of 403), and 28.4% of women in Mpumalanga (from a sample of 428) had experienced physical abuse in their lifetimes at the hands of their current or former intimate partners. In another study with a smaller sample of just 168 women from fifteen rural communities in the Southern Cape, it was estimated that on average 80% of rural women are victims of domestic violence (Artz, 1999). A particularly significant finding about domestic violence is revealed in research conducted by Abrahams, Jewkes and Laubsher (1999), who in their sample of 1394 male workers at three municipalities in Cape Town, found that more than 40% of the men reported having physically and/or sexually abused their female intimate partners within the ten years preceding the study.

International research on domestic violence suggests a clear link exists between a history of domestic violence and intimate femicide - the killing of women by their violent intimate partners (Campbell, Glass, Sharps, Laughton & Bloom, 2007). Findings from studies conducted in Australia, the United States, Canada, Israel and South Africa reveal that 40% to 70% of female murder victims are killed by their male intimate partners (Heise & Garcia-Moreno, 2002). Mathews *et al* (2004) in their examination on domestic violence and intimate femicide in South Africa, revealed some disturbing findings. In their national study based on data collected on 905 female homicide cases from a representative sample of 25 mortuaries, these authors concluded that in 1999 approximately 4 women per day were killed by their intimate partner in South Africa, and that 8.8 per 100 000 of the country's female population aged 14 years and older died as a result of intimate partner violence.

Gupta *et al* (2008), in their study on intimate partner violence, based on a sample of 834 male respondents, found that 27.5% reported having used physical violence against a female partner in their most recent marriage or cohabiting relationship. A noteworthy finding emerging from this research is that younger men (18-29 years of age) were significantly more likely to have

committed acts of physical violence against an intimate partner, than men 60 years of age or older.

Artz (2008), in her recent work in which 365 victims of domestic violence were interviewed about not returning to court, presented the following findings about women's experiences of abuse:

- 85% reported having experienced verbal abuse;
- 83% of respondents reported psychological abuse;
- 65% of respondents reported physical abuse;
- 40% of respondents stated that their abusers had threatened to kill them at some stage during their domestic relationship.
- 38% of respondents reported economic abuse; and
- 15% of respondents had experienced sexual abuse or rape.

In another survey conducted with 1370 male volunteers aged 15-26 years from 70 villages in rural Eastern Cape, participants were questioned about their violent and sexually coercive practices against women (cited in Centre for the Study of Violence and Reconciliation, 2007). Eight percent of these respondents revealed that they had raped a female partner.

A concerning trend emerging from the research and literature in recent years is the high levels of violence experienced by young girls in their intimate relationships with young men. In a study conducted with 24 pregnant Xhosa-speaking adolescents in Khayelitsha in the Western Cape Province (Woods, Maforah & Jewkes, 1996), it was found that:

- The relationships of these young women were dominated by male violence;
- Girls were experiencing their first sexual encounters at a very young age, some as young as twelve engaging in sexual relationships with male partners at least five years older;
- Deception and coercion appeared to be common features of the girls' sexual relationships, with attempts to resist in many cases being met with violence or threats of violence;

- Twenty-two of twenty-four participants reported having been beaten by their partners on multiple occasions, with the remaining two respondents having been threatened with assault;
- Many of these young women believed that the forced sex they were experiencing in their relationships could not be termed rape;
- Male partners tended to respond with anger to any suggestions of using contraception.

The SAPS, in their 2008/2009 Annual Report, highlighted that domestic-related issues were the third most common cause of murders, and although domestic-related murders comprise less than 10% of all cases of murder, they were the single most common cause associated with the murder of women, accounting for almost 30% of all female victims.

While it is widely acknowledged that rates of domestic violence in the country have reached alarming levels, 'domestic violence' does not feature in official reported crime statistics. This is because domestic violence not codified in South African law as a separate criminal offence. Instead domestic violence falls under the crime of assault or assault with the intent to do grievous bodily harm. Other criminal charges such as rape, attempted murder, malicious damage to property, pointing a firearm and *crimen injuria* also may apply to reported incidents of domestic violence.¹ It is also difficult to ascertain the prevalence of domestic violence because (i) domestic violence goes largely unreported to the police, and is also underreported on victimisation surveys²; (ii) there is a tendency on the part of the police to refer domestic violence cases directly to the Magistrate's Court, where victims can apply for a protection order; and (iii) there is generally poor and inconsistent recording of incidences of domestic violence by the police.³

¹ Milton (1996) defines *Crimen injuria* as unlawfully, intentionally and seriously impairing the dignity of another.

² Jewkes *et al* (1999) argue that among the main reasons women under-report abuse in surveys are: that women feel ashamed; they regard the abuse which occurs in a domestic setting as a private matter; they wish to avoid speaking badly about their husbands or partners; they fear having to admit that they have become victims of abuse; and they perceive their experiences of abuse as 'normal'.

³ As a significant portion of the police and court documentation and filing systems are non-computerised, compiling basic information on how many domestic violence cases have been reported and investigated is only possible through archival research (Artz, 2008).

Despite ongoing advocacy by organisations to encourage the state to record cases of domestic violence, as domestic violence, the South African Police Service has been reluctant to differentiate between general crimes of assault and domestic or intimate partner assaults in their collection of statistics (Artz, in Bollen et. al, 1999).⁴ The resultant effect is that domestic violence remains indistinguishable from other types of offences within reported police statistics. The increasing intensity and lethality of domestic violence, as well as the multiple forms that domestic violence takes, are therefore not documented (Artz, in Bollen et. al, 1999). Domestic violence thus remains a series of once-off reported incidents within the criminal justice process.

Albertyn *et al* (2007) are of the opinion that reliable statistics which reveal the true scope of the domestic violence problem in South Africa will do little to alter the reality of women's lives. Arguing that domestic violence is so common and deeply entrenched within the country's social relations, these authors assert that:

Whatever the precise figures, it is clear that many South African women experience domestic violence as a lived reality, and in ways that are both global and uniquely South African ... In South Africa, the intersection between patriarchy and the legacy of racist domination has resulted in particular characteristics to the phenomenon of domestic violence ... Domestic violence in South Africa must thus be understood not merely as an individual problem, but a social one, one that is embedded within, and emerges from, our history and our present unequal social, economic and cultural relations (Albertyn et al, 2007, p. 321).

⁴ An exception to this is the SAPS 508(a) form which forms part of the National Instructions to the South African Police Service as part of the Domestic Violence Act. This form is meant to be filled out every time a case of domestic violence is reported, regardless of whether the incident results in a criminal charge. Although some police stations fill this document out, the contents of these forms are neither compiled, analysed nor disseminated in any form. In a briefing to the Safety and Security Portfolio Committee in Parliament (12 September 2007), the Independent Complaints Directorate (the oversight body of the South African Police Service), reported that only 37% of the domestic violence incidents reported to the police resulted in "victims willing to lay criminal charges" and that "sadly, many of those charges were later withdrawn" (p. 3 of the parliamentary minutes). It was also reported that "87% of the serious violent cases report to the police had their roots in domestic violence" (p. 3 of the parliamentary minutes). The source of these statistics was not mentioned in this parliamentary briefing, nor do they exist as part of the South African Police Service *Annual Crime Report*. Source: Minutes of the Safety and Security Portfolio Committee, 12 September 2007, *Domestic Violence Act: Implementation Reports 2006 by ICD and SAPS*, Parliamentary Monitoring Group (p. 1-5) at www.pmg.org.za/viewminute.php?id=9471. Retrieved: 29 September 2007.

The Domestic Violence Act

The Domestic Violence Act [DVA] (No. 116 of 1998) is one of South Africa's most progressive pieces of legislation. It is a tangible representation of government's commitment to ensuring that our system of justice recognises the serious and potentially deadly nature of domestic abuse. Under the Act, which includes a number of legal remedies aimed at affording victims of domestic violence the maximum protection under South African law, victims of domestic violence may apply for a Protection Order (PO) against their abusers by following a two-step application process: (1) an interim protection order (IPO) is granted in instances where urgency can be shown during the application stage,⁵ and (2) once an IPO has been granted, both the applicant/victim and the respondent, after being given due notice, then return to court for the hearing during which the respondent is afforded the opportunity to present to the court reasons why the protection order should not be finalised.

The ambit of the Act extended what constitutes a 'domestic relationship' and what amounts to 'domestic violence'. It also introduced provisions obligating relevant state role-players to act towards this end. In an attempt to ensure adequate – and to some degree, transparent – implementation, the Act requires both the National Commissioner of Police and the National Director of Public Prosecutions to issue national instructions and policy directives requiring members to fulfil specific functions.⁶ This is reinforced through the imposition of positive legal duties on the police. Failure to comply with the duties set out in the directives, instructions, and Act constitutes misconduct, which must be reported to the Independent Complaints Directorate [ICD] of the South African Police Services [SAPS].⁷ The National Commissioner is obliged to submit reports to Parliament every six months regarding the number of complaints received against the police, disciplinary proceedings

⁵ In instances where urgency cannot be shown an applicant would then be required to wait for the court hearing to see whether the order will be granted.

⁶ S. 18(2) and (3) of the DVA (1998).

⁷ The Independent Complaints Directorate [ICD] is a state structure, responsible for police oversight in South Africa. The South African Police Service Act 68 of 1995, empowered to investigate all cases of misconduct against the SAPS, including where a member refuses to assist a victim of domestic violence.

instituted as a result of those complaints, and the outcomes of such proceedings.⁸

The DVA also introduced provisions that placed positive legal duties on state role-players in implementing the Act. For instance, in an effort to redress the historical disinclination of the police to intervene in what they viewed as domestic private affairs⁹ and reluctance to enforce the law, Section 2 of the *Domestic Violence Act* places a duty on the SAPS to assist and inform complainants of their rights, including (a) assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment; (b) handing a notice containing information to the complainant in the official language of the complainants choice; and (c) explaining to the complainant the content of such notice and the remedies at his or her disposal in terms of the Act and the right to lodge a criminal complaint. Positive duties on the SAPS also includes making an arrest without a warrant if they reasonably suspect a person having committed domestic violence¹⁰ and arresting persons who have breached the conditions of a protection order¹¹. The court may also order the police to seize any arm or dangerous weapon in the possession of a person accused of domestic violence¹², to assist the complainant with arrangements regarding the collection of personal property¹³ and to serve any documents in terms of the Act¹⁴. Failure to

⁸ Section 18(4) of the DVA.

⁹ See Artz (1999); Combrinck (1998); Combrinck & Artz (1999); and Parenzee, Artz, & Moulton (2001).

¹⁰ Section 3 of the DVA specifically states that “a peace officer may without warrant arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant”.

¹¹ In terms of Section 8(b) of the DVA “if it appears to the [police] member concerned that ... there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence...”.

¹² In terms of Section 9 of the DVA “the court must order a member of the South African Police Service to seize any arm or dangerous weapon in the possession or under the control of a respondent, if the court is satisfied on the evidence placed before it that ... (a) the respondent has threatened or expressed intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or (b) possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent’s (i) state of mind or mental condition; (ii) inclination to violence; or (iii) use of or dependence on intoxicating liquor or drugs”.

¹³ Section 7(2)(b) of the DVA.

¹⁴ Section 13(1) of the DVA.

comply with the duties set out in the directives, instructions, and Act constitutes misconduct, which must be reported to the ICD.¹⁵

The protection order granted in terms of the DVA is a civil order.¹⁶ Being a civil remedy (with quasi-judicial proceedings) the protection order aims at preventing *future* acts of violence and therefore includes *ex parte* hearings as part of the process (which requires a lower burden of proof). It also does not rely on (mandatory) arrest (at least not initially). This allows for more access and more immediate intervention in domestic violence cases. In theory, the DVA provides a remedy that is specifically created for the applicant depending on her circumstances. While the protection order prohibits respondents (abusers) from committing certain acts of violence, nowhere does the DVA criminalise domestic violence (Artz, 2001). It only criminalises the breach of the protection order, and not domestic violence itself. However, given that the standard of proof and the rules of evidence are less onerous than those within the criminal law, the civil remedy is more accessible and flexible than the criminal one (Connelly & Cavanagh, 2001).

Our previous research focussing on the implementation of the DVA has highlighted a number of critical issues, including the following:

- There are critical attrition points in the criminal justice system where cases of domestic violence simply “fall out”;
- There appears to be inconsistent and faulty application of the law by the police and other criminal justice agents which results in the legislation having only limited effect;
- The effectiveness of the legislation depends on how the criminal justice system interprets and enforces the Act’s available remedies;

¹⁵ Section 18(4)(a) of the DVA states that “failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Independent Complaints Directorate, established in terms of the that Act, must forthwith be informed of any such failure reported to the South African Police Service”.

¹⁶ A general review of the international legal literature on protection orders shows diverse terms to describe protection orders, such as restraining orders, protective orders, no-contact orders or peace orders. The terminology used is dependent on jurisdictional references to the order.

- The discretionary powers of the criminal justice system limit the full collection of rights available to complainants seeking remedy through the DVA; and
- There are critical substantive and contextual problems as well as numerous minor procedural problems that distress the implementation of the Act.

While the impact of the effectiveness of the DVA is beyond the scope of this monograph, research is beginning to reveal the pervasiveness of domestic violence through illustrations of extremely high court rolls and delays in justice due to overburdened courts struggling to keep up with applications for protection orders.¹⁷ These studies are also beginning to identify problems with the implementation of the Act, highlighting the procedural limitations and systemic challenges in dealing with the diverse range of cases entering (and falling out of) the system. Only a handful of these issues are being addressed through public interest and private litigation. Recognising that these limitations may impact on the future implementation of the Act, it is therefore critical to understand the ‘ebb and flow’ of cases, through systematic attrition research.

Project Rationale

Previous research by the authors involved in this project have highlighted that the most obvious problem in domestic violence attrition cases is the failure of criminal justice officials to comply with the DVA. The Act clearly stipulates that such non-compliance is regarded as a dereliction of duty. Though the DVA requires the Independent Complaints Directorate and the National Commissioner of the South African Police Services (SAPS) to report to Parliament every six months on complaints received against the police for non-compliance, the Act does not make direct provision for complaints mechanisms or reporting procedures for victims or their representatives. It is generally known and acknowledged that in most instances women are not aware of their legal rights, nor do they have the effective means of asserting those rights. This lack of knowledge on what they, as victims of domestic

¹⁷ See Artz (2001; 2004a; 2004b); Moulton (2003; 2005); Parenzee et al (2001); Smythe & Parenzee (2004); Matthews & Abrahams (2001).

abuse, are legally entitled to expect from criminal justice personnel who deal with their cases, makes it extremely difficult to enforce non-compliance with the DVA.

Another area of concern is the extent to which the Act provides discretionary and interpretive powers to the courts. Ideological perspectives of domestic violence, or what are perceived as acts which occur 'naturally' in domestic situations, may shape the way the DVA is enforced. The discretion of court clerks and members of the SAPS, for instance, plays a major role in determining the validity and seriousness of domestic violence, as well as the extent to which the criminal justice system intervenes. Wide discretionary powers in establishing whether an incident is criminal or illegal – or indeed contravenes the DVA – may therefore be based on both their interpretation of the law and individual responses to domestic violence.

Even with positive legal duties on the police to arrest in cases where a breach of the protection order has been committed, police discretion will continue to inform the extent to which they intervene. The failure to respond quickly, to institute criminal charges, to remove the respondent from the common home, to record the incident, to understand the intention and contents of the protection order or to even consider the breach of the order serious enough to warrant arrest will not be remedied by the Act. The substantive law may therefore lose effect because of the occupational culture and operational realities of policing, but more importantly may critically effect the attrition of cases.

Against the backdrop of the above-mentioned challenges, MOSAIC has found additional complications in their attempts to affect a more reliable service to victims of domestic violence. They have also had challenges with tracking the range and nature of incidents of domestic violence and criminal justice responses to them. With over a dozen court support service points, 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 shows that approximately one half of victims never come back to court after applying for protection orders. Previous research by the GHJRU

has also similarly shown that between 50% and 75% of women who report domestic violence to the police, and lay (or attempt to lay) charges, eventually withdraw them (Artz, 2008).

This high level of attrition of domestic violence cases is therefore a cause for concern and raises a number of important questions relating to the extent to which recent domestic violence law reforms are indeed relevant and helpful to the 'consumers' of this legislation. A critical question emerges: *To what extent do we blame the system for not effecting 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 by victims to leave, reconcile, protect and manage relationships marred by domestic violence. Thus the question *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?* becomes relevant. The objective of this research is to find answers to the questions posed above.

The research focuses on a key aspect of victim behaviour that seems to cause considerable frustration to both criminal justice and victim support personnel:

Why do victims of domestic violence not return to court to finalise their interim protection orders?

ATTRITION IN DOMESTIC VIOLENCE CASES: EXPLORING THE LITERATURE

INTRODUCTION

This section of the report will briefly review international literature on the attrition of domestic violence cases within the legal system. While researchers such as Robinson and Cook (2006) and Bennett *et al* (1999) have observed that few studies have specifically examined the issue of victim retraction from cases or their follow-through with the criminal justice process, more generalised research on women's experiences with criminal justice processes does point to possible factors that may contribute to attrition of cases.

However, it is important to make the distinction between research that provides context to women's experiences with the formal criminal justice process (and their participation in the criminal justice system) from research that specifically examines women's decision-making surrounding their engagement and retraction from the criminal justice process. While the work of researchers examining general 'experiences' with the criminal justice process¹⁸ provides attrition research with findings that can guide the identification of particular attrition points, these will not be addressed in much detail here.

A similar, but more focused, range of studies specifically concentrates on 'protection order research'. Research on protection orders addresses a wide range of issues, but on the whole, is relatively fragmented. Complicating the extent to which one can adequately, through comparative analysis, draw broad conclusions on the use of and effectiveness of protection orders, are the disparate legal systems and the protective remedies available in different jurisdictions. The available research that has dedicated its focus on the

¹⁸ See Gillis *et al* (2006); Ruth *et al* (2006); Jordan (2004); Becker (2003); Gist (2001); Lazarus-Black (2001); Minekar (2001); Smith (2001); Belknap & Graham (2000); Moe-Wan (2000); Goodman *et al* (1999); Erez & Belknap (1998); Buzawa & Buzawa (1996); Dwyer (1995); Hart (1993); Hoyle (1988); Horton *et al* (1987); Waits (1985).

implementation of protection orders (Logan, 1996; Keilitz et al., 1997; Gondolf, 1994; Kaci, 1992) can, however, be helpful in the development of research questions in relation to the overall disposition of cases, leading to potential points of attrition. By example, Gondolf *et al* (1994) examined 674 petitions for protection orders where they analysed petitioner (applicant) background, court factors, case disposition and protection provisions. They found that “while protection orders appear to be readily obtainable, provisions that might make orders more practical and more effective are less likely to be granted” and thus access to relief needs to be “matched by legislative and judicial efforts to expand the relief granted to abused women and their children ...” (Gondolf *et al*, 1994, p. 514). For Keilitz *et al* (1997), however, the effectiveness of the protection order depends on the comprehensiveness of relief provided, the specificity of the terms of the order and how well they are enforced by the system. Thus the specific terms applied for in an (interim) order of protection, and the extent to which relief is granted, may contribute to the factors that promote or inhibit victims' continued participation in the criminal justice system.

For instance, Logan *et al* (2006a) have proposed that research relating to the challenges in obtaining and enforcing protective orders largely reveals two types of barriers, namely, ‘accessibility’ and ‘acceptability’. They defined the accessibility barrier as situations where “narrow eligibility requirements, the sometimes time-consuming and costly bureaucratic process involved, and the less-than-adequate response on the part of the criminal justice system in the issuance and enforcement of orders” reflect systemic differences in accessing protective orders (Logan *et al*, 2006a, p. 176). Acceptability barriers, on the other hand, involve “women’s perceptions of the process or potential consequences of protective orders” (Logan *et al*, 2006a, p. 176).¹⁹ Though this construction of barriers is effectively applied to the process of obtaining and enforcing protective orders, it also provides a useful framework and analytical nodes from which to assess the attrition of domestic violence cases in the criminal justice system. However, while

¹⁹ Logan *et al* (2006, p. 147) include the following issues that might influence acceptability barriers: “fear of retaliation by perpetrators; the perceived lack of efficacy of orders; lack of resources such as housing and employment, particularly in rural communities; embarrassment; and negative perceptions of the justice system”.

protection order research has tended to focus on who applies and under what circumstances women do or do not get protection orders, it has not focused specifically on the attrition points. Thus there is a critical need for more research on what happens to domestic violence cases when they do not get finalised. The important question is not about whether victims of domestic violence receive a protection order or not, but about the specific systemic and individual conditions under which they do not. This leads us to the next range of studies that focus – directly or indirectly – on attrition.

COMPARATIVE ATTRITION STUDIES

Attrition (or similarly constructed ‘case disposition’) research also generally falls into two categories: those that examine the criminal justice process (where victims lay a criminal charge) and those that examine the civil process (where victims apply for a protection order). Although they have different procedural rules and processes, they have similar actors and can be compared on different levels. The research on the criminal justice process can therefore provide some insights into the challenges of seeking assistance through the legal process as well as some of the less obvious structural, systemic and attitudinal factors contributing to the legal disposition of domestic violence cases.

Identifying Attrition Points in the Criminal Justice Process

Studies which have reported on the rates of attrition, consistently find that out of ‘the thousands of women’ who initiate the process of obtaining protection orders in the U.S., less than half return to court to obtain final orders (Zoellner *et al*, 2000). Hester’s (2005) research in the U.K. found that attrition in domestic violence cases tends to occur in one of three main areas: when victims do not report or withdraw cases; in relation to police practice; and once cases enter the prosecution process. For victims of domestic violence, the perception of safety that the criminal justice process and the relevant agents within that system could realistically provide is central to attrition (Hester, 2005). Hester maintains that where the greatest number of cases fall out is dependent on whom you are asking:

The police and criminal justice agencies tended to view those who were victimised as being key to attrition. In other words, that it was the women experiencing domestic violence who decided, usually for relationship or other family reasons, to drop out of their engagement with the criminal justice system. However, staff from a range of agencies and the victimised women interviewed also indicated that criminal justice agencies did not always pursue cases to the extent possible and/or did not provide victims with the support they needed to proceed (Hester, 2005, p. 82).

In her examination of temporary restraining orders, Kaci (1992) reported that only 39% of her sample (n=224) completed the court process to make their orders permanent. Lazarus-Black (2001) found that 38% of requests are dismissed or withdrawn from court rolls, largely because women do not return to court to continue the matter. Holt *et al* (2002) found that only 57% of women who receive temporary protection orders finalise them, while Gondolf *et al* (1994) found that 76% of women who applied for protection orders received a final protection order. Interestingly, of the cases in which applicants *did not* receive an order (24%), 44% withdrew their applications and 37% did not appear for the final hearing. When calculated as part of the *total* number of protection order petitioners, withdrawals and non-appearances are actually nominal (8.8% and 7.4%, respectively). In a study by Belknap and Sutherland (2000), which involved a content analysis of the court transcripts from misdemeanour domestic violence cases (n=127), the authors turn the question of 'large numbers of attrition' in domestic violence cases on its head by suggesting that although only 34% of domestic violence victims filed a report, this actually reflects a substantial proportion of victims taking some action against their partners at some point during the criminal justice process.

Why Women Do Not Finalise Protection Orders

There are three notable studies from the United States that were published in the early to late 1990's and two more contemporary studies that have directly investigated why women do not proceed with the process of finalising protection orders (Keilitz *et al*, 1997; Kaci, 1992; McFarlane *et al*, 2004; Zoellner *et al*, 2000). These studies found that poor criminal justice responses (multiple visits to court and the subsequent impact on work and childcare); difficulty with the service of protection orders; the lack of knowledge about the criminal justice system and other individual factors such as the fear of perpetrators were positively associated with the retraction

of protection orders. Logan *et al* (2006a, p. 184) emphasised that “the criminal justice response is most critical at two main points: issuing and serving the protection order” and is supported by other research (Keilitz *et al*, 1997; Harrell *et al*, 1993; Kaci, 1992; and McFarlane *et al*, 2004), all which allude to problems with the service of protection orders. Ironically only one study (Kaci 1992) found lack of resources to be a reason why women did not return to finalise their protection orders.

A collection of studies edited by Belknap and Graham (2000) specifically reviewed domestic violence court dispositions in the U.S. This collection of studies provides some insight into the most critical stages of attrition with respect to systemic reasons for the withdrawal of cases, namely, prosecutors’ decisions to pursue cases and judicial decision making. Variables likely to predict victim/witness reluctance to pursue the criminal justice process were also examined. Most notably, this series of studies found a positive relationship between lethal threats to a victim of domestic violence and her (dis)continuance with the criminal justice process. Lethal threats by defendants featured in one fifth of cases they examined.

Threats to kill victims of domestic abuse by their abusive partners also featured in Kaci’s (1992) research. Using disaggregated categories that were classified in terms of overall levels of violence reported against the frequencies of threats to kill, Kaci (1992) found that in between 35-47% (mean = 41%) of cases, women were threatened with death.²⁰ Threats to kill as a factor related to not continuing with the protection order process is also found in the work of Anderson *et al* (2003). They found that two thirds of domestic violence victims feared for their lives, and in 15% of cases, victims reported that their abusive partners actually *tried* to kill them at some point in their relationship. Other studies (Logan *et al*, 2006a; Keilitz *et al*, 1997; Harrell *et al*, 1993; Kaci, 1992; McFarlane *et al*, 2004; Zoellner *et al*, 2000) have noted fear of the perpetrator and coercion to withdraw – through explicit or implied threats – as notable features in the reasons why women do not

²⁰ Kaci (1992) classified levels of reported violence into the following categories: verbal only, minor injuries, moderate injuries and severe injuries, but on face value there do not seem to be any remarkable differences – let alone the possibility of statistically significant differences – that distinguishes these categories from each other in relation to the percentage of cases in which the victims experienced ‘threats to kill’.

return to court. Prior threats to kill and threats to children were also positively related to whether victims obtained a final order or not in the work by Zoellner *et al* (2000).

In examining the civil protection order process, Keilitz *et al*'s (1997) tri-jurisdiction study reported that between 44-60% of victims – across all three jurisdictions – returned to finalise protection orders. The most cited reason for not returning for permanent orders was that the respondent (abuser) had ceased harassing the victim (35%).²¹ Interestingly, only 2% did not return to finalise their protection orders because the respondents had threatened them and another 2% reported that they did not return because the respondents had persuaded them to drop the action. MacFarlane *et al* (2004) found that 40 out of the 150 women they interviewed did not continue with the protection order process.²² Most cited returning to the relationship with the abuser or the difficulties they experienced with the process of getting a protection order for not returning. Again, the direct question of why women did not proceed with the protection order process was not addressed. However, McFarlane *et al* (2004) did find a significant reduction of threats of assault, physical assault, stalking, and worksite harassment regardless of whether or not the victims received a final protection order, suggesting that simply engaging the system may be as effective as fully enforcing the system in some domestic violence contexts.

LIMITATIONS OF INTERNATIONAL RESEARCH ON ATTRITION IN DOMESTIC VIOLENCE CASES

There are a number of critical limitations in relation to the international research on attrition that go beyond legal and jurisdictional differences and the diverse social contexts in which domestic violence laws are implemented. The difficulty with comparative analysis is compounded by the

²¹ The jurisdictions included Denver, the District of Columbia and Delaware. The study involved examining the extent to which protection orders improved women's lives and the extent to which women experienced problems relating to the orders, such as reoccurrence of abuse. To achieve this end, they conducted 285 telephonic interviews with women petitioners one month after receiving a protection order, then followed up with 177 of the same group six months later.

²² The study focused on Black, Hispanic and White women in the U.S.

range of methodological approaches and sampling techniques employed by these studies; sample sizes are relatively small, research respondents largely consist of women in battered women's shelters and sampling methods vary from study to study.²³ Again, incremental and developmental research that builds on existing work is sadly absent. Apart from the work of MacFarlane (2004), there was little evidence of research that examined attrition across cultural or ethnic lines with more contextual analyses on race, culture and poverty being notably absent.

Research questions have also largely focused on the questions of *who* (these non-returning women are) and *what* (types of abuse are experienced/protection orders they applied for/experiences they have had). While important in answering part of the attrition question – the individual or systemic contexts – there remains an empirical vacuum on the direct question of *why* women do not proceed with the criminal justice process. For instance, the research may start by stating that its objective is to examine why women do not complete the legal process (based on a range of hypotheses and factors), then proceed with an analysis of the nature of applications made (how many, by whom and what for), how many protection orders were granted by the criminal justice system and under what conditions they were granted. These are two separate areas of study and confuse the question of why women are 'seeking a protection order' with why they 'did not proceed' with the legal process.

Zoellner *et al* (2000) examined the relevance and impact of demographic variables, severity of abuse, perception of threat, attachment to abusive partners and restraining order 'status' to analyse why women do not complete the restraining order process. Again, there is no evidence that the question of 'why' women did not return was directly asked of their research sample. Instead they chose discreet variables and cross-tabulated them, anticipating a picture of 'continuance with process'. In examining severity of abuse against women's decisions to proceed with the process, Zoellner *et al* (2000) found that although there were notable features for continuing with

²³ For instance, while Kaci (1992) reviewed 224 court records, Harrell *et al* (1993) interviewed 119 women, MacFarlane *et al* (2004) interviewed 69 women and Zoellner *et al* (2000) interviewed 65 women (only half of which did not proceed with final orders), Keilitz *et al* (1997) employed telephonic interviews with 93 women and examined court data.

the criminal justice process (weapons, physical injury, children witnessing violence), there was no significant relationship between these factors and returning to finalise the process; it does not answer the question of why women *did not* continue.²⁴

Despite the obvious limitations within these studies, and indeed the fragmentation of findings across attrition studies, they do provide a useful basis from which to draw out relevant variables for analysis and highlight the challenges of designing attrition research. Although contemporary research specifically focusing on domestic violence attrition is beginning to emerge (*see* Hester, 2005), the complexity of domestic violence itself makes this area of research difficult to undertake. The obvious challenges of domestic violence research, such as the intimate nature of the violence and the repetitive cycles of violence, are often compounded by other challenges such as women's disclosure, access to justice and the dynamic personal and social factors that affect their engagement with the system. Without critically engaging with previous research methods, findings and analyses of broad-spectrum 'women and criminal justice' research, the theoretical contributions to theories on attrition will remain embryonic. Given the global levels of domestic violence and the high levels of attrition presented in the available research, this is obviously not ideal.

FINAL REFLECTIONS ON ATTRITION RESEARCH

It may seem belated at the conclusion of this review of attrition research to suggest that "not all attrition is bad". However, after examining factors relating to domestic violence attrition in more detail, it is in fact only *in* conclusion of this review that this statement can be made. Within the criminal justice and civil justice systems, more generally, the attrition of cases is often a natural process where, due to individual choices, the limitations of the law and its enforceability and the expectations of and

²⁴ Previous research by Bennett *et al* (1999) specifically found that neither attachment to abusive partners nor psychological factors such as depression predicted follow-through with the criminal justice process – two of the critical factors examined by Zoellner *et al* (2000). Bennett *et al* (1999) did, however, find that greater severity of abuse predicted cooperation with the system, but this finding relates specifically to cooperation with the prosecution.

results of 'justice', cases will naturally fall out of the system. It is when cases are effectively 'forced out' of the system that it becomes problematic. Even in domestic violence cases, it can be assumed that some are dealt with so effectively, that they need no further intervention by the system. In reflecting on protection orders, Gondolf *et al* (1994, p. 515) have argued that "the filing of the petition itself may produce the desired outcome; for example, the abuser departs from the home and terminates contact" and furthermore that "the petition is likely to be part of a larger process of coping and seeking help rather than an end in itself". Indeed, sometimes the law – or simply the symbolic use of the law – is sufficient enough to provide the protective mantle from future violence and conflict.

While some studies have identified specific 'attrition points', others have addressed the wider issue of why women do not proceed with the criminal justice process. Both of these are relevant to this particular study, as it is critical to ascertain both the detailed procedural problems with the criminal justice process as well as the wide range of complex interactions women have with it. In its totality, this literature not only provides a more complete picture of women's use and responses to the criminal justice process, but also creates markers in relation to the more problematic aspects of legal interventions in relation to domestic violence. Moreover, it provides useful proposals for methodological design as well as signals some of the limitations of attrition research more generally.

RESEARCH METHODOLOGY AND PROCESS

INTRODUCTION

The central focus of this study was to establish the factors that contribute to domestic violence complainants withdrawing from the legal process before they finalise their protection orders and to identify the circumstances under which they discontinue this process.

It is important at the outset to define the operational terms used in this research:

Abusive Partner/Abusers – Refers to people accused of committing acts of domestic violence. They are also referred to as ‘respondents’ in the Domestic Violence Act. However the term respondents will be restricted to the phrase *research respondents* (victims/complainants) and terms abusers or abusive partners will be used to describe the *legal* respondents to accusations of domestic violence under the Domestic Violence Act. In terms of section 1(xx) of the Act legal respondents include “any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against [a] complainant”.

Applicant or Complainant – As defined in s.1(iii) in the Domestic Violence Act, applicant or complainant will refer to any person “who is or has been subjected or allegedly subjected to an act of domestic violence”, and who has applied for a protection order under the Act. In domestic violence literature these persons are also generally referred to as victims (or survivors). We have used the term ‘victim’ and will refer to domestic violence victims in the discussion of the literature and *applicants* or *complainants* when discussing their interaction with the criminal justice system.

Domestic Relationship – Although the study largely focuses on domestic violence against women, the term domestic relationship (which is gender neutral) has been adopted from the DVA for this study as it encompasses the unique range of civil and cultural partnerships and domestic arrangements reflected in South African society. In terms of Section 1(vii) of

the Act a domestic relationship means “a relationship between a complainant and a respondent in any of the following ways –

- a. they are or were married to each other, including marriage according to any law, custom or religion;
- b. they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- c. they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- d. they are family members related by consanguinity, affinity or adoption;
- e. they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- f. they share or recently share the same residence”.²⁵

DVA – The Domestic Violence Act (No. 116 of 1998). Also referred to as ‘the Act’.

Domestic Violence – The legal definition of domestic violence as prescribed by the South African Domestic Violence Act (No. 116 of 1998) will be used. In terms of section 1(viii) of the DVA, domestic violence means: physical abuse; sexual abuse²⁶; emotional, verbal and psychological abuse²⁷; economic abuse²⁸; intimidation²⁹; harassment³⁰; stalking³¹; damage

²⁵ Section 1 (vii) of the Domestic Violence Act No. 116 of 1998.

²⁶ Defined in section 1(xxi) of the DVA as “any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant”.

²⁷ Defined in section 1(xi) of the DVA as “a pattern of degrading or humiliating conduct towards a complainant including (a) repeated insults, ridicule or name calling; (b) repeated threats to cause emotional pain; or (c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainants privacy, liberty, integrity or security”.

²⁸ Defined in section 1 (ix) of the DVA as “(a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or

to property³²; entry into the complainants residence without consent, where the parties do not share the same residence³³; or any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant³⁴. The use of this particular definition of domestic violence is critical as the study focuses on domestic violence victims' engagement with the criminal justice system, which procedurally uses the Domestic Violence Act as the legal remedy.

IPO – IPO refers to the interim protection order. The interim protection order is the order granted by the court after an application is submitted for a protection order. In terms of section 5(2) of the Act, if a court is satisfied that there is *prima facie* evidence that an act of domestic violence has been committed and that undue hardship may be suffered by the victim/complainant as a result of the violence, the court must issue an interim protected order. This order may be finalised (or made permanent) at another hearing (referred to as the return date in section 5 subsections 3(a) and 4 of the DVA). The interim order is not a final order from the court but a temporary order which grants immediate relief until the Return Date. At the Return Date the interim order may be set aside, finalised or varied. Only when the protection order is finalised on the Return Date is the IPO referred to as a *protection order*.

payment of rent in respect of the shared residence; or (b) the unreasonable disposal of household effects or other property in which the complainant has an interest”.

²⁹ Defined in terms of section 1(xiii) of the DVA as “uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear”.

³⁰ Defined in terms of section 1(xii) as “engaging in a pattern of conduct that induces the fear of harm to a complainant including (a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be; (b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues; or (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant”.

³¹ Defined in terms of section 1(xxiii) as “repeatedly following, pursuing, or accosting the complainant”.

³² Defined in terms of section 1(v) as “the wilful damaging or destruction of property belonging to a complainant or in which the complainant has a vested interest”.

³³ Section 1(viii)(i) of the DVA.

³⁴ Section 1(viii)(j) of the DVA.

Protection Order – The protection order refers to an order that has been finalised by the court under sections 5 and 6 of the Act.

Research Respondents – The term *research respondents* will refer to victims/complainants who participated in the study. This term will mainly be used in the analysis of the results.

Return Date – The date that the applicant and the legal respondent (abuser) are to appear before the court to have the protection order finalised. On the return date, the court may finalise the order, 'vary' (or change) the order or set it aside (withdraw or terminate it).

METHODOLOGY

Summary

A total of 503 domestic violence protection order applicants [herein referred to as *DVA applicants* or complainants] at eight Magistrate's courts from around the Western Cape Province were interviewed for this study. These courts included: Bellville, Bishop Lavis, Cape Town, Khayelitsha, Paarl, Philippi, Wellington and Wynberg.

These DVA applicants were interviewed about the reasons they applied for protection orders, but did not return to the court to have these orders finalised. Their applications for protection orders were also reviewed (via an intake form developed and used by MOSAIC). The only requirements for participation in the study was that applicants (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.

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 affirmations of confidentiality. Applicants who wished to proceed with the study signed a consent form with their particulars. 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 chose 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. We were also careful to explain to applicants that should they not appear on the Return Date, they would not be penalised in any way by the courts as they are legally entitled not to finalise their protection orders. The majority of the applicants contacted for the "non-return interview", agreed to participate in the study.

RESEARCH SAMPLING AND SOURCES

Pre-Research Interviews

The research methods employed in this study draw on a number of sources in establishing the reasons for specific points of attrition in domestic violence cases. Setting aside available literature and accessible criminal justice statistics, the first source of information – service providers' experiences with attrition – was largely used to develop the research question and research instrumentation. In addition to design workshops conducted with MOSAIC, brief, informal, unstructured interviews with members from the magistracy, prosecution service, police and non-governmental organisations were conducted. These were largely conducted telephonically in order to establish what these stakeholders believed were (a) key attrition points in the criminal justice system (b) reasons for attrition at those points and (c) specifically why they believed women do not return to court to finalise protection orders or why they withdraw charges of assault in domestic violence cases.

Interviewing Victims of Domestic Violence

The second and most important method of obtaining information for this study was by means of interviewing victims of domestic violence who applied for a protection order, but did not return to court.

The sampling was purposive (specifically targeting complainants who did not return) but relatively random in its selection of respondents within this sample. For instance, on any given day there may be between 20-50

applications for protection orders and hearings for domestic violence cases at each court (see Parenzee *et al*, 1999) and up to half of the hearings may involve 'non-returns'.³⁵ Typically, although not exactly procedurally correct, these cases are struck off the roll. The researchers involved in the project noted which cases were struck off the roll and checked these names against the list of names of applicants who consented to participate in the study when they came to court to apply for protection orders. These applicants were then phoned for an interview. Afrikaans and Xhosa interviews were conducted by auxiliary social workers, who were extensively trained on how to conduct the interviews. The auxiliary social workers (researchers) were trained to use the instrumentation and a special session was held on how to manage situations where the alleged perpetrator was in the vicinity when the researchers phoned for the interview.

To ensure the safety of the research respondents, researchers would ask the respondents if it was a good time to speak and if not, would ask if there was another, more convenient time to call. A pre-established 'script' was developed where the researchers would establish whether it was safe to talk and respond accordingly. Being specialists in 'safety planning', if there was any indication that it was unsafe or that the research respondents no longer wanted to participate in the study, specific protocols were put in place to ensure that the phone call would not further endanger the respondent. If participation was safe, confidentiality was (re)assured and the interviews took place. In almost all instances, the research respondents were keen to discuss their issues with the protection order and the legal process. Only 6% were not interested in proceeding with the study due to changes in circumstances, for instance, where the respondents felt that the interim order had achieved their objectives.

It is important to note that this sample included women who did not generally utilise shelters or other domestic violence services, which gives a wider spectrum of perspectives and experiences than the largely 'shelter-based' samples used in studies within Anglo-American and other Northern contexts.

³⁵ Applicants who do not return to court on the Return Date to finalise their protection orders.

MOSAIC Intake Forms

The third source of information involved analysing the 'intake forms' regularly used by MOSAIC every time they assist someone with applying for a protection order. This form is used by MOSAIC to establish statistics about victims/applicants, to identify trends in the nature of services required by applicants and to inform changes in service provision. Found in *Appendix B*, this form records information ranging from demographic information to the specific nature of the abuse. As the form is very detailed, it was not used in its entirety for this research. Instead, certain sections of the form were highlighted for entry into a database.

Follow-Up Interviews

The fourth source of information involved conducting four in-depth interviews with the court workers involved in the project. Although largely open-ended, the interviews did address methodology and limitations of the research, notable cases and recommendations for research and criminal justice practice. Case notes were drawn from these and other discussions with the court workers and other informal discussions with court staff (i.e. court clerks and magistrates). Two workshops were also subsequently conducted with the court workers to discuss the findings of the researchers.

The Research Sites

Eight sites were identified for the research: Bellville, Bishop Lavis, Cape Town, Khayelitsha, Paarl, Philippi, Wellington and Wynberg Magisterial districts. 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) that the courts have specifically designated domestic violence sections (akin to a domestic violence court) or designated magistrates presiding over domestic violence cases.

RESEARCH INSTRUMENTS

The interview schedules and research templates are in *Appendices A-C* of this document. Five research instruments were developed and utilised:

The Consent Form

The consent form was filled out on the day that domestic violence complainants *first* came to court to apply for a protection order. This form was read out to applicants *after* they had been given assistance with applying for the protection order by the social auxiliary workers (herein referred to as ‘court workers’). This was to ensure that the applicants did not feel any duress in consenting to the study and that no inferences could be drawn about the provision and quality of services by the court workers should they choose not to participate in the study. The consent form fully explained the objectives of the study and the voluntary nature of the study.

The Court Roll and Non-Return Log

The ‘Return Dates’ generally take place about 6-8 weeks after the first application for a protection order. A “non-return log” was used to list the cases on the court roll that had been postponed or struck off the roll due to the fact that the applicant did not show up to court on the Return Date. These cases are referred to as *non-returns* and make up the sample of research respondents in this study.

The MOSAIC Intake Form

As discussed earlier, this form is used by MOSAIC when assisting domestic violence complainants with applying for protection orders at court. Only certain sections of this form were used for this research. This included: (i) the nature of the domestic relationship; (ii) the age of the applicant; (iii) the number of children affected by domestic violence; (iv) the applicant's employment status; (v) the length of time the applicant experienced domestic violence; (vi) the types of domestic violence experienced; and (vii) the physical symptoms or injuries of last incident.

The Non-Return Interview Schedule

The non-return interview schedule was a semi-structured interview schedule which was used to interview applicants about their reasons for not returning to court. The content – including the structure, range of questions, the choice of ‘closed-options’ and other decisions pertaining to the structural composition of the questions and the nature of the contents – was developed in accordance with the preliminary research consultations with the criminal justice sector, the professional experiences of the Principal Researcher and the MOSAIC court workers as well as international literature on domestic violence and women’s experiences with the criminal justice system.

It is important to note that the interview schedule was specifically designed to interview research respondents over the phone. The schedule was therefore *predominately* structured, but left ample room for additional comments or statements made by the research respondent, where many of the ‘narrative’ cited in this report were drawn. The complexity of experiences can never be fully articulated using semi-structured measures, but it was a choice between drawing on a large sample or a more discreet, qualitative one. As this research was exploratory (and phenomenological) in nature, it made sense to go with a more structured approach with a larger research sample.

Apart from drawing heavily on experiential and, to some general extent, literary sources for the development of the interview schedule, the range of questions set out in the final interview schedule were thoroughly interrogated with frontline domestic violence workers at MOSAIC. Each question was scrutinised for its overall utility and ‘reliability’ in addressing the research question, cultural relevance and translatability, literacy, suitability and general sensitivity to traumatised populations. ‘Plain language’ and, to a lesser extent, brevity of the interview were also important considerations in the development of the interview schedule. The interview schedule was divided into eight sections: (i) introduction to the project; (ii) re-establishing consent; (iii) nature of application for protection; (iv) reactions by abusers when interim protection order was served; (v) experiences with police and the reporting process; (vi) experiences with the courts; (vii) why applicants did not return to court on the Return Date to finalise protection orders; and (viii) additional narratives on non-returns and conclusion. The schedule is attached in *Appendix C*.

RESEARCH FINDINGS

INTRODUCTION

This chapter provides a descriptive overview of the findings from the court-based research conducted with victims of domestic violence who applied for protection orders, but who failed to return to court to finalise their IPOs. A detailed discussion of these findings can be found in the following chapter of this report.

Table 1 below sets out the number of interviews conducted at each of the selected research sites.

Table 1

Research Sites/Courts	Number of Interviews	% of Total Interviews
Bellville	42	8.3%
Bishop Lavis	20	4.0%
Cape Town	78	15.5%
Khayelitsha	87	17.3%
Paarl	56	11.1%
Philippi	88	17.5%
Wellington	13	2.6%
Wynberg	119	23.7%
TOTAL	503	100%

As described earlier, data for this research were captured in three separate, but related, research instruments: the affidavit summaries; the MOSAIC intake form; and the non-return interview schedule. The non-return interview schedule was specifically designed with the aim of eliciting information on why victims of domestic violence do not follow through with finalising their interim protection orders. After information from these three sources was recorded the data was post-coded and analysed based on the gender of the applicants and the nature of the relationship between the applicants and their abusers - specifically whether the PO was sought for protection from an

intimate partner or a family member.³⁶ Given the number and variety of variables presented in the research instruments, and in light of the results emerging from the preceding discussion on the nature and extent of domestic violence in South Africa, this approach was adopted for the following reasons:

- There is overwhelming empirical evidence from both local and international research showing that women tend to be the victims of domestic violence, while men tend to be the abusers;³⁷
- Applications for protection orders made by men tend to include a noticeable number of reciprocal orders – orders against women who already have orders against them;³⁸ and
- South Africa's intimate femicide rate is among the highest in the world, and has been strongly associated with a history of domestic violence. Applications for protection orders made by women against their intimate partners thus warrant unique consideration.³⁹

However, not all of the research variables were analysed by gender and relationship status. These variables were examined only where such comparisons were relevant to our research objectives. The four key categories or subgroups which will at times be referred to in this chapter are:

- **FEMALE INTIMATE PARTNER [FIP]** – female applicants who applied for a PO against their intimate partners;

³⁶ The definition for what constitutes an 'intimate partner' and what constitutes a 'family member' application is taken directly from the DVA [Section 1 (vii)]. A domestic relationship is one between a complainant and a respondent where: the parties are or were married to each other, including marriage according to any law, custom or religion; they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not married to each other, or are not able to be married to each other; they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time); they are family members related by consanguinity, affinity or adoption; they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or they share or recently shared the same residence. An intimate partner is therefore a male or female partner or ex-partner of the protection order applicant; and any of the following are thus placed in the family member category: father, mother, brother, sister, son, daughter, in-laws, as well as any other relationship as defined by the DVA's definition.

³⁷ See for example United Nation's Children's Fund (2000).

³⁸ See for example Artz (2008).

³⁹ See for example: Campbell *et al* (2003); Campbell *et al* (2007); Mathews *et al* (2004).

- MALE INTIMATE PARTNER **[MIP]** – male applicants who applied for a PO against their intimate partners;
- FEMALE FAMILY MEMBER **[FFAM]** – female applicants who applied for a PO against a family member; and
- MALE FAMILY MEMBER **[MFAM]** – male applicants who applied for a PO against a family member.

Both the quantitative and qualitative data were analysed and interpreted thematically. Interspersed in the findings presented in this report are narratives⁴⁰ taken from the interview schedules and the affidavits. These narratives paint a compelling picture of the nature of the domestic abuse, and the contexts within which the violence tends to occur. The findings illustrate the complexity of attrition in domestic violence cases and the broad range of reasons why victims withdraw from the legal process.

DEMOGRAPHIC PROFILE OF THE APPLICANTS

Demographic information of the applicants was primarily captured in, and extracted from, the intake forms. However, where information on the intake form was absent or unclear, the relevant information was taken from the interview schedules and/or affidavits attached to the consent forms.

Gender

Table 2 below highlights the gender breakdown of the research sample, as well as the relationship between the victim and the abuser. As is shown, an overwhelming majority of applicants in the study are female (84.5%; n=425), with a significantly smaller number of male applicants (15.5%; n=78) completing the sample. Overall, approximately three-quarters (74.7%; n=376) of the applications were brought against intimate partners, with the remaining 127 applications (25.3%) brought against family members. Women applying for POs against an intimate partner made up 64.4% (n=324) of the applications, with the next biggest percentage, 20.1%,

⁴⁰ The narratives have been slightly edited to ensure the content is comprehensible to the reader.

comprising of women wanting protection from family members (n=101). Applications by men against intimate partners totalled 10.3% (n=52) of all research respondents, with men seeking protection from family members in only around five percent of the cases (n=26).

Table 2

Applicants – Sex Category	Number	%
Female intimate partner applicants	324	64.4%
Female family member applicants	101	20.1%
<i>Total female applicants</i>	<i>425</i>	<i>84.5%</i>
Male intimate partner applicants	52	10.3%
Male family member applicants	26	5.2%
<i>Total male applicants</i>	<i>78</i>	<i>15.5%</i>
TOTAL	503	100%

Who applications were taken out against

The findings presented in Table 3 highlight that 70% of the intimate partner applications were made against current partners (n=264), while the remaining 30% were against ex-partners (n=112).

Table 3

“Abused by” category	Female	Male	All applicants
Partner	229	35	264
Ex-partner	95	17	112
<i>Total intimate partner applications</i>	<i>324*</i>	<i>52**</i>	<i>376</i>
Father	6	1	7
Mother	6	0	6
Brother	15	3	18
Sister	3	0	3
Son	27	15	42
Daughter	9	1	10
In-laws	19	2	21
Other	16 [§]	4 [†]	20
<i>Total family member applications</i>	<i>101^{§*}</i>	<i>26</i>	<i>127</i>

* One woman in the FIP category was being abused by both her partner and her partner’s girlfriend.

** One applicant in the MIP category was being abused by both his partner and his in-laws.

[§]These were against: aunt (2 cases); nephew (1 case); niece (2 cases); cousin (1 case); stepson (2 cases); grandmother (1 case); grandson (3 cases); uncle (1 case). The relationship was unclear in one case.

[†]These were against: nephew (2 cases); cousin (1 case). The relationship was unclear in one case.

^{§*} One applicant in the FFAM category was being abused by both her mother and her mother’s boyfriend.

Of the women bringing applications against their family members, 27% were brought against sons (n=27), 19% against in-laws (n=19) and 15% against brothers (n=15). A total of 12% of the female family member applications were against parents, with 6% each for mothers and fathers. Nearly 58% of the male family member applications were against a son (n=15), with the next largest group of applicants (11%) wanting protection from a brother.

Age

Table 4 shows that the majority of applicants (65%, n=327), were between the ages of 20 and 39. Sixty-seven percent of female applicants (n=287) fell into this age group, with a further 26.6% of women (n=113) being between the ages of 40 and 59. Just over half of the male applicants (51%; n=40) were between the ages of 20-39 and 38% (n=30) between the ages of 40-59 years old.

Table 4

Age Category	<i>Intimate partner</i>		<i>Family member</i>		Total
	Female	Male	Female	Male	
7-12	8	0	3	0	11
20-39	243	35	44	5	327
40-59	71	14	42	16	143
60+	2	3	11	5	21
Missing	-	-	1	-	1
TOTAL	324	52	101	26	503

Employment

A majority of both female and male applicants had some form of employment (either part-time, full-time or self-employed). Male applicants were, however, more likely to be employed than female applicants (78% vs 63% respectively). A large majority of both female and male applicants who were employed worked on a full-time basis (86% and 78% respectively). Thirty-seven percent (37%) of the female applicants were unemployed, compared with 22% of the male applicants.

In the intimate partner category, 68% (n=213) of the female applicants had some form of employment, and of this number a majority (89%, n=189) were employed full-time, with 7% (n=16) employed part-time. Among male

intimate partner applicants, a larger percentage (86%, n=45) noted that they had some type of employment, with 78% (n=35) employed full-time, 18% (n=8) self-employed, and 4% (n=2) employed part-time. As with the sample generally, female intimate partner applicants were more likely to be unemployed (32%, n=102) than their male counterparts (13%, n=7).

In looking specifically at the employment status of the applicants compared to their abusers, there are some interesting differences across the four categories. Women seeking protection from their intimate partners were less likely to have some form of employment than their abusers (68% vs 73%). In the family member category the reverse was found to be true. Female applicants were more likely than their abusers to have some form of employment (48% vs 32%). In contrast, male applicants in both the intimate partner category and family member categories were considerably more likely than their abusers to have some form of employment (86% vs 42% for the intimate partner category and 60% vs 32% for the family member category).

The question of victim's economic need or economic independence and the ability to leave an abusive relationship – or to take some other decisive action against an abusive partner – is highly contested in domestic violence literature. While some researchers (Anderson & Saunders, 2003; Johnson, 1992; Herbert et al., 1991; Strube, 1988; Strube & Barbour, 1983, 1984; Gelles, 1976) have found economic need to be a significant factor in women's decisions to stay/leave an abusive situation, Griffing et al. (2002) have not found a positive relationship between economic need and leaving.⁴¹ This also stands in stark contrast to the work of Anderson et al. (2003) who found that 'lack of money' (45.9%) was the most reported reason for returning to abusive relationships, followed by 'lack of place to go' (28.5%) and homelessness (18.2%) – which could also be considered an economic need. Similarly, with regard to the question of actual employment status – distinct from economic need or economic independence factors – the research conducted by Johnson (1992) and Strube & Barbour (1984) found

⁴¹ The authors argue that this may be due to their sample of African American, Latina and Caribbean women who had been affected by severe economic deprivation prior to admission to the helping agency where the sample was drawn from and who reported that their abusive partners did not make significant contributions to the relationship.

that a women's employment status was positively associated with leaving, whereas Herbert et al. (1991) and Koepsell et al. (2006) found that this factor was irrelevant.

Employment rates do not signal the problems victims may have with formal housing or shelter or with overcrowding within domestic spaces, access to transport, electricity, running water and other basic amenities. Perhaps instead of engaging with the question of employment, we should be exploring the structural challenges (the totality of socio-economic environment) to provide the context in which women negotiate personal safety within their domestic spaces and the extent to which these inhibit survival outside of these spaces.

Length and Nature of Relationship

Women seeking protection from their *intimate partners* had, on average, known their abusers for 9 years and experienced abuse for nearly half that time (4.3 years). Male applicants in this category knew their abusers for, on average, 8 years and suffered abuse for approximately 2.6 of those years. In the *family member* category, both women and men had known their abusers for, on average, 20 and 24 years respectively, and they had experienced abuse at the hands of these abusers for, on average, 3.2 and 3.5 years respectively. These findings are similar to those cited in the preceding attrition study (Artz, 2008. p. 198) whose findings revealed that:

... a victim of domestic violence has probably known her abuser, in some intimate form, for the past 13 years of her life and has 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, however, be one of the 1 in 10 women (12%) who have been suffering domestic violence for between 10-20 years of her life. This seems analogous to previous South African research which found that a woman will, on average, suffer 39 incidents of physical abuse before seeking external help (Burman et. al, 1994). It has been suggested that it takes an abused woman about ten years to leave an abusive relationship – here it appears that many women are only going to seek assistance for the first time after this amount of time.

Previous research has also shown that, to a large extent, applications made by men, particularly against their female intimate partners tend to be reciprocal orders, meaning that the applications are a response by the men to women who already have protection orders against them (Artz, 2008; Artz & Smythe, 2005). Our research findings show that of all 78 male applicants

in the research sample, 6% were clearly counter-protection orders. Within the intimate partner categories, 8% of the applications by men and 2.5% of the applications by women were reciprocal orders. The contents of these orders were not analysed in time for the publication of this particular report. However, Artz's attrition study examined reciprocal orders in some more detail where she found that:

... the profile of men who applied for protection orders reflects a continued pattern of male control, entitlement and revenge. In all but a few cases (n=6), where male applicants applied for protection from trespassing and harassment by their ex-girlfriends, the reasons for applying for a protection order appears to be largely to regain control of the relationship or to stop what they consider is harassment for money to maintain their own children. (Artz, 2008, p.192)

PROFILE OF ABUSE EXPERIENCED BY RESEARCH APPLICANTS AND REASONS FOR APPLYING FOR A PO

The following section examines the nature and extent of the abuse experienced by the respondents, and sheds light on the reasons why the applicants were applying for a protection order. The findings discussed in this section were extracted from the MOSAIC intake form, as well as the affidavits and summary affidavits attached to the consent forms.

Physical Abuse

Physical abuse was the most commonly reported form of physical victimisation, with nearly three in four, (72%, n=360) reporting that they had experienced at least one type of physical assault. Eighty-three percent (n=299) of applicants had been '*beaten/kicked/punched/hit*'; 61% (n=219) had experienced '*shaking/pushing/puling*'; and 51% (n=185) had been '*slapped/smacked*'. In 42% of cases (n=151) applicants reported being choked; in 29% of cases (n=105) abusers threw objects at the applicants; and in 10% applicants had been stabbed (n=34).

Of the female applicants wanting protection from their intimate partners, 83% (n=269) reported being physically abused, while the percentage for male applicants in the same category was significantly lower (54%, n=28). Within the family member group, males were more likely to report having experienced physical abuse (61%; n=16) than the females (46%; n=47).

In about two-thirds of cases (67%, n=321) applicants cited physical abuse among the reasons they sought a protection order. Approximately three-quarters (77%) of women seeking protection from an intimate partner (n=241) related a specific incident of physical abuse as their reason for applying for a protection order compared to around half of women (48%; n=45) and men (46%; n=12) seeking protection from family members, or men seeking protection from an intimate partner (45%; n=23).

The findings suggest that the impact of domestic violence is quite severe. A total of 152 applicants (30% of sample applicants) noted that they had experienced physical *symptoms* as a result of the abuse they suffered. Of this number, 94% mentioned having bruising and scarring (n=143); 20% reported needing health care (n=31); and in 3% of these cases (n=5) victims mentioned having stab wounds.

Sexual Abuse

Sexual abuse or rape was reported in 16,5% of cases (n=83), with all of these cases brought by females applicants against their intimate partner. This means that of the female intimate partner applications approximately 1 in 4 women had experienced sexual abuse or had been raped by their intimate partner. The findings showed that:

- Of the 83 respondents who reported being sexually abused, a majority, 82% (n=68), reported being forced to have sex or being raped;
- Of the respondents who identified their rapists (n=53), 90% had been raped by their current partners, and 10% had been raped by an ex-partner;
- Other females reporting sexual abuse reported specific incidences of sexual assault (6%; n=5); forced sex with others (6%; n=5); forced sex in front of children (5%; n=4); and forced oral or anal sex (2%; n=2).

It was notable that while 68 women stated that their intimate partners had raped them or forced them to have sex, only 16% of these women (n=11) requested that the PO include conditions prohibiting their abuser from sexually violating them.

Economic Abuse

Economic abuse was reported in 58% (n=292) of the sample, with 57% of women (n=185) and 67% of men (n=35) in the intimate partner categories; and 55% of women (n=56) and 61% of men (n=16) in the family member categories, reporting to have experienced at least one type of economic abuse. Economic abuse in these cases included the following:

- *'Give little/no money'* – most prevalent among women in the intimate partner category (47% of cases, n=87); and among women in the family member category (20%, n=11);
- *'Don't pay maintenance'* – 22% of cases (n=41) in the FIP category;
- *'Supports mistress'* - 8% of women (n=15) in the FIP category;
- *'Take and sell things'* – applicants in the family member category were more likely to report this type of abuse - 39% (n=22) reported in the FFAM category and 56% (n=9) in the MFAM group; while in the intimate partner categories it was reported by 19% of the women (n=36), and 20% of the men (n=7);
- *'Destroy property'* – 58% (n=169) of all respondents who mentioned economic abuse, reported that their abusers had during previous incidents of abuse destroyed property.

Verbal, Emotional, Psychological Abuse

Verbal abuse was most frequently mentioned form of abuse (94%, n=475), with percentages in the nineties in all four categories of applicants. The affidavits show that verbal abuse is mainly characterised by excessive swearing and the use of derogatory language often with sexual connotations. Female applicants, particularly those in the intimate partner category, often reported that their male abusers had used degrading terminology, referring to the women as 'sluts', 'whores' and 'bitches'. In contrast, male applicants said that their female abusers constantly ridiculed them, and questioned (often publicly) their manhood and their sexual orientation. In 21% of cases (n=72) applicants specifically requested that verbal abuse be listed in their POs.

Emotional and psychological abuse also had a high prevalence rate (87%, n=436), included *threats to kill or harm*; and abusers *abusing alcohol and/or drugs*. These issues are more fully examined in the following section.

CRITICAL FEATURES OF THE ABUSE SUFFERED BY THE APPLICANTS

In addition to highlighting the specific incident of domestic violence that led to the applicants' decision to approach the courts for a PO, the affidavits also provide a compelling picture of the nature of the domestic relationship. The following discussion takes a closer look at some of the key features of the abuse as reported by the applicants.

Abuser refuses to accept the relationship is over

In many cases the abuser refused to accept that the relationship had ended and continued to abuse the applicant – even, in some instances, where both the applicant and the abuser had moved on to new relationships. In 14% of cases (n=44) in the female intimate partner category, women said that their abusers refused to accept that the relationship had ended, or would not allow them to break off the relationship. Eight percent (8%) of men (n=4), in the intimate partner group reported similar behaviour. The affidavits show that in some cases, even official legal separation (such as a divorce) does not end the abuse. The following excerpts highlight the vulnerability of victims, particularly women who continue to suffer abuse despite their many efforts to extricate themselves from these relationships.

...He comes around to my house whenever it suits him, even though I have repeatedly asked him not to. I have also asked him to remove his clothes from my house but he has refused to. And that he is a married man that refuse to accept that our relationship is over. [W10-FIP]

I don't live with him. I told him that I no longer have feelings for him so we must stop the relationship. He doesn't want to accept that it is over. He sends me sms's threatening me that he will never leave me alone. He maintains he will fight for this relationship till the bitter end. He say he won't leave me for someone else...[BL20-FIP]

...I have told him on numerous occasions that it is not working and he doesn't want to let go. He has been threatening my...life and because I know what he's capable of I take his threats serious... [BL22-FIP]

... I told her long time ago that I don't want her anymore. It is not the first time doing this to me, last year she do the same and I move out from that place and find another place. She is so violent[t] to[wards] me. I want her to stay away from me and I don't want her in my place again...[P135-MIP]

International research has found that sometimes battering – and other acts of domestic violence – not only increases in frequency and severity over time, but may continue well after a relationship is over. The literature reinforces the position that leaving abusive relationships is a process and is cognisant of the fact that ending relationships does not mean the end of violence (Stroshine & Robinson, 2003; Mahoney 1991). Zoellner *et al* (2000) have suggested that although many women subjected to domestic violence eventually leave their partners, their first attempts are often unsuccessful, taking up to five attempts before she actually ends the relationship. Obviously this ongoing cycle of violence, even after a relationship has ended, can have significant effects on the extent to which a victim proceeds with legal remedies and other forms of support. The fear of further victimisation and retaliation for engaging in the legal process after a relationship has ended is just as critical in understanding attrition as cases where victims remain in domestic relationships.

Further analysis of international research on the subject shows that rates of returning to abusive relationships – even after criminal justice or shelter-based interventions – are high. In two studies conducted by Griffing *et al* (2002, 2005), the authors found that 66% of abused women returned at some point to their abusive partners. Herbert *et al* (1991) found that 50% of battered women return and Strube and Barbour (1984) found that 38% return. Strube (1988, p. 238) found that the high level of return rates to abusive partners was “staggering” in light of the fact that “women are typically reluctant to seek aid for abuse and often do so only when it becomes life-threatening ... that half of these women then return to such a dangerous environment suggests that powerful forces are operating to keep the women in a cycle of continuous abuse”. Some of the reasons for returning to these relationships or retracting from the criminal justice process are found in the discussion below

Threats to kill/commit more violence

Forty-six percent of the sample (n=222) mentioned in their affidavits that their abusers had threatened to kill them. Threats to kill were present in 49% of cases (n=152) among females and 29% of males (n=15) in the intimate partner categories. In contrast, in the family member categories, 45% of the women (n=42) and 50% of the men (n=13) mentioned that their abusers had threatened to kill them. In some cases, applicants alleged that the abuser had threatened to send a third party to kill or harm the applicant. In seven cases, applicants reported that their abusers were either members of or had links to gangs and had threatened to send other gang members to harm or kill the applicant. The following excerpts from affidavits allow a glimpse into the contexts in which such threats are made.

...My ex boyfriend [name] came to my house and demanded that I must go with him. As I refuse to do so he started banging on the door and then proceeded in punching me with he's fist. I had to phone my mother to come home from work and escort me to work...as we got near to the police office we notice that [he] was waiting opposite the police office with a sharp stone in his hand - he then walked next to us and started swearing at me [and] saying [you are sleeping with the policeman], you are a whore... He then threatened to get somebody to kill me if he don't get bail and if he gets a bail he will come and kill me himself. He use tik and drinks wine and he is a member of the American gang. [W11-FIP]

...He has a serious history of abusing women who needed to be hospitalised. He keeps telling me he is going to kill all three of us if I don't want to be with him. He is very aggressive and doesn't care how he swears and performs in front of [my daughter]. He knows where I work and where [my daughter] goes to school. I fear for my safety and the safety of my daughter. He told me last night he would rather go to jail, then he knows why his alone, and that if I feel I want to go to the police and get an interdict, he doesn't care. Nothing will stop him from being with me or [my daughter], and if he can't be with us he will kill all of us...[BL22-FIP]

...He was drunk. He beat me because I spoke to his cousin that was rude. He swore at me and smacked me...He threatens me with death. He said he will kill me. He has a big long knife which he every time holds on me. Then he says I must shut my mouth. He smacks me every time...He says to me that I am dead before the police arrives. He says he will kill me and bury me in the backyard... [B74-FIP]

Various other kinds of threats were made against the applicants in our sample. Four percent (n=14) of women in the intimate partner category said that their abusers had threatened to take their child/children. Three male applicants were threatened with rape by their male intimate partners. Five

percent (n=24) of abusers threatened to sell or destroy the residence (for example by burning it). A total of 109 applicants (32%) asked that their IPO include that their abuser is prohibited from threatening or intimidating them in any way.

Anderson *et al* (2003) also address how threats to kill result in applicants abandoning the protection order process. They found that two thirds of domestic violence victims feared for their lives, and in 15% of cases, victims reported that their abusive partners actually *tried* to kill them at some point in their relationship. Other studies (Logan *et al*, 2006a; Keilitz *et al*, 1997; Harrell *et al*, 1993; Kaci, 1992; McFarlane *et al*, 2004; Zoellner *et al*, 2000) have noted fear of the perpetrator and coercion to withdraw – through explicit or implied threats – as notable features in the reasons why women do not return to court. Prior threats to kill and threats to children were also positively related to whether victims obtained a final order or not in the work by Zoellner *et al* (2000).

Use of a weapon

The use of weapons is also connected to threats in domestic relationships. Abusers used a weapon against the applicant in 28% of cases (n=134). Knives were the weapon most commonly used (34% of cases, n=46), with guns mentioned in 13% of cases (n=17). Other weapons included *axe/hammer/spade* (10% of reported incidents); bottles (11%); and bricks and stones (10%). Applicants were thrown with objects in 19% of cases (n=26), and harmed with sharp objects in 15% of cases (n=20).

Drugs and/or alcohol

Drugs and/or alcohol is mentioned in 37% of affidavits (n=177) – either where the abuser is under the influence of drugs and/or alcohol, or where the abuser is an addict who steals from the applicant to support their habit. In the intake data, 54% of women (n=154) and 41% of men (n=18) in their respective intimate partner categories, reported that their abuser abused alcohol. Twenty percent these women (n=56) and 11% of the men (n=5) said that their abusers were drug addicts. Among family member applications, 51% of the women (n=43) and 70% of the men (n=16) mentioned alcohol abuse, while 36% of women (n=30) and 57% of men (n=13) cited drug

abuse. These extracts from affidavits illustrate the deleterious effects of drug and alcohol abuse, particularly how unpredictable, volatile and erratic the abuser's behavior becomes, and how this the applicants' sense of safety and ability to continue with social or legal interventions:

Son...is addicted to tik and demands money from the parents when he wants a fix. If they don't meet his demands, he starts threatening to kill them. He destroys the furniture and breaks the crockery. He brings unsavoury friends into the house to tik when his 10 year old sister is alone at home. The mother had to give up her job to stay at home because of this. He stole his mother's cell phone and the DVD to sell. [W141-MFAM]

I have a problem with my two bothers. They are swearing at me, breaking windows if they are outside. Forcing to come in to my house. [He] sold my stuff for buying beers. He is always drunk...The other one [name] who is disabled, he is getting grant that he's using it for beers and dagga...[C214-FFAM]

...[He] came in drunk and I said to him he can go looking for wine but he can't go looking for work. He then began to scold and swear at me...He is a tik user and he has so far sold everything that he has bought for tik. He has beaten me for tik money and he has also stolen all my money from the bank...[W250-FIP]

Accusations of Infidelity

Accusations of infidelity and/or claims that the child/children are 'not his' often featured prominently in abuse by male intimate partners (18% of cases, n=56). These accusations sometimes occurred in contexts where the victim refused to have sex with the complainant (and often resulted in the victim then being raped) or where the abuser was himself involved in another relationship (12.5%, n=39). The following excerpts from affidavits highlight how this plays out in these abusive contexts:

When I don't want to sleep with him then he says that I [sleep with] other men. He also accuses me of sleeping with men at my work. I am not allowed to go out or to go to my family...when I come back then I have slept with men. He swears at me the filthiest that I can't handle any more. He takes my panties then he want to see if there is semen on it when I come from my visiting places. He has locked me up and repeatedly had sex with me against my will. Also threatens to kill me then he knows why he is going to jail. [B81-FIP]

...he abused me-swearing [at] me and accusing me of sleeping with another man...he said I am a bitch, he no longer want me next to him. He received a phone from his girlfriend and he left me...and he said he is going to his girlfriend...When he is drunk he always swearing [at] me and accusing me of having an affair with another man...[W291-FIP]

Accusations of a victim's infidelity seem to be an effective mechanism to ensure that the victim feels responsible for the abuser's violent behaviour. It not only turns the victim into the 'provocateur' of abusive and controlling behaviour, but it effectively ensures that she questions her own complicity in the violence and places her at the centre of the conflict (Artz, 2008). It may also be that accusations of affairs create sufficient shame about the victim's own integrity, or break down the victim's resolve to seek outside help or perhaps to retain the abuser's moral high ground should she try to do so.

Chases victim/children out of the house-locks them out

Applicants were chased from the house, and/or locked out of a shared residence in 13% of cases (n=62): 16% of the women (n=49) and 8% of men (n=4) reported that this had happened to them. Applicants also said that abusers were evicting them so that they could bring their new girlfriends into the home. Other women were chased from their homes if they refused to have sex with their abusers. Often-times (especially for female victims), the abusive partner forced them (and in some cases their children as well) from the house in the middle of the night. Applicants explained:

Client said abuser had an affair with another woman and want her to leave the house because he want to bring his girlfriend home, she said abuser threatened to kill her. Client said abuser used sharp weapons to beat her. She said she is afraid he can kill her. She said he slept with his girlfriend in her house and bed while she visit her sister. [PA87-FIP]

...He always beat me up when he is under the influence of alcohol and always [throws] me out of the house in the middle of the night because I don't pay rent but the house is both in his and my name...[W170-FIP]

...He has been abusing me physically, verbally and emotionally. He has been forcing me to have sex with him even if I don't want to, and if I refuse he'll chase me away and throw my clothes outside...[C227-FIP]

...my husband [physically] and verbally abused me...he was [swearing at me]...he starting beating me with the broom until it broke...he kicked me against my head with his caterpillar boots...he slam the cupboard door in [my] face...he took my phone from me, packed all my things and my child's and threw us out. He said that if all my stuff aren't gone by 21.09.07 he will kill me. [W254-FIP]

...he chased me out of his house where I was staying with him during an argument. It was evening dark time and he left me in the street with my bags. He forced me out of the house very violent by using his force carrying me and pushing me while screaming at me, insulting me while I was screaming and crying...[W269-FIP]

In 8% of cases (n=26) applicants explicitly asked for the PO to prohibit the abuser from (a) removing the applicant and the applicant's children from the residence, and (b) preventing them access to the house.

Children and abuse during pregnancy

Ten women reported being abused by their intimate partners while they were pregnant. It is difficult to determine from the affidavits alone whether there is a direct link between abuse specifically as a result of pregnancy and the reason for applying for a protection order. All of the reported cases of domestic violence during pregnancy show a history of physical abuse, and in two cases the applicants reported sexual abuse (specifically, being raped by their abusers). In four cases these pregnant applicants stated that their abusers used weapons, like a hammer and a knife, with four applicants further mentioning that their abusers threatened to kill them.

While the pregnancy and domestic violence numbers seem 'low', it is important to note that we did not specifically inquire about acts of domestic violence that were committed against women while they were pregnant at *any* given point in their lives. Research by Campbell *et al* (2004), however, has found that while the range of the prevalence of abuse during pregnancy is 3.4% to 11.0% in industrialised countries outside of North America, the figures sharply increase in developing countries (from 3.8% to 31.7%). South African research has found that between 2.8-12.6% of women have been abused during pregnancy, with violence directed at the abdomen featuring in up to 53% of these cases (Jewkes *et al*, 1999). As this study was a self-report, household survey, it is not unlikely that these are under-estimates.

The use of or threat of sexual assault, harming or removal children and violence during pregnancy are some of the most severe forms of personal control that can exerted on a woman. Interestingly, all of these abusive behaviours involve the control of women's sexuality and reproductive health.⁴² The use of these control mechanisms and abusive behaviours can be seen as acts of violence on 'womanhood' itself.

⁴² Abrahams *et al* (1999, interviewed 1394 municipal workers and reported that more than 40% of men reported to have physically and/or sexually abused their female partners. Reasons for what

Often-times, children are either direct or indirect victims of the abuse. In total 13% of respondents (n=64) reported that children were directly victimised (abused verbally, physically and/or sexually), while in 17% of the cases (n=83) children regularly witnessed the abuse. Fourteen percent of women in the FIP category (n=44), and 18% in the FFAM category (n=17) reported that children had experienced verbal, physical and/or sexual abuse. Men made such reports in 4% of cases in each of the two categories. Reports of children witnessing the abuse suffered by the applicant were noted in 22% of cases in the FIP (n=68); 12% in the MIP (n=6); 7% in the FFAM (n=7); and 8% in the MFAM (n=2) categories.

In 50% (n=251) of the cases applicants reported having at least one child *affected* by the abuse. These 251 applicants listed a total of 469 children as being affected by the domestic violence, most often psychologically damaged by their exposure to the abusive environment. Twenty-five percent of victims believed that their children's school problems resulted from living in the abusive household.

In some cases, where a victim had left or threatened to leave an abusive relationship, the abuser threatened to kill the children⁴³. Although the range of abuses against children are not specified in protection order, or within the research instrumentation developed for this study, the qualitative data showed that abusive men engaged in a range of abusive behaviours that were either directly targeted at children or indirectly used children to threaten or instil fear in the victim.⁴⁴

Research on domestic violence attrition, including this study, is limited by the separate focus on women's and children's experiences of violent contexts. This is unfortunate as the desire to protect and care for children is a formative factor with respect to how women 'manage' domestic violence and the decisions that they make with respect to the criminal justice process.

the researchers characterised as 'conflict' with female partners were chiefly associated with attempts to control women, their sexuality and their households.

⁴³ Threats to children have also been positively related to whether victims obtained a final order or not in the work by Zoellner *et al* (2000).

⁴⁴ See Parenzee *et al* (2001) for a more detailed picture of how children of women applying for protection orders are directly affected by abuse.

What applicants requested in their protection orders

The findings presented above paint a vivid picture of the abuse applicants experience within their abusive relationships, and some victims requested that special conditions (as permitted in the DVA) be included in their POs. Table 5 below presents an overview of these requests made by applicants.

Table 5

Category	Number	%
Removal of the abuser from the house/premises	139	41%
Emergency monetary relief (EMR)	47	14%
Removal of firearms	8	2%
Restricted contact with children/dependants	64	19%
Police assistance with collection of belongings	22	6%
Not to enter home/work premises	46	13%

Given the descriptions of abuse presented above, it is unsurprising that 41% of applicants asked that their abuser be removed from their premises. In 14% of cases applicants requested EMR, and 19% of cases requested restricted contact with children. Considering that use of a gun was reported in 13% of cases, it is interesting that only 2% of applicants requested the removal of a firearm. Forty-six applicants asked that their abusers be prohibited from entering their work and/or home premises.

USE OF THE CRIMINAL JUSTICE SYSTEM

The following section discusses the nature of the interaction between applicants and the criminal system during the application process. It focuses specifically on their experiences when reporting an incident of domestic violence to the police, and their experiences at courts. These initial interactions with the system can have a profound effect on whether victims of domestic violence continue with the process or not.

Assistance from the police

Sections 2 and 3 of the Domestic Violence Act (DVA) specifically sets out duties which oblige police to assist and inform complainants of domestic violence about their rights. The Act provides that:

S2. Any member of the South African Police Service, must⁴⁵ at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported –

- a. render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;*
- b. if it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and*
- c. if it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.*

S3. A peace officer may without warrant arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.

Respondents were asked about how the police handled their domestic violence complaints. A total of 344 respondents (76% of the sample) reported that they had, at some point, phoned or gone to the police after an incident of domestic violence – 87% of these (n=279) had sought police assistance after the incident of domestic violence that precipitated the application for a protection order.

Nearly three-quarters of respondents had been referred to the court to obtain a PO by the South African Police Service (73.1%; n=354). Another 17% of respondents (n=82) approached the court on their own initiative (self-referred) and 4.8% (n=23) were referred by family members. Less than 3% of applicants were referred by MOSAIC (n=3), a professional (n=10), an NGO (n=2), a friend (n=8) or another court (n=2) respectively.⁴⁶

Only 31% of respondents (n=106), were told by the police that they could lay a criminal charge against their abusers. Female applicants were more likely to be told that they could lay a criminal charge: 35% in the female intimate partner category versus 22% for the males in this category; and 30% for

⁴⁵ Own emphasis added.

⁴⁶ 4% of respondents (n=19) did not note who had referred them to the court.

females as opposed to 17% for the males applying for POs against family members. Critically, though, the majority (69%) of applicants were not informed that they could lay a criminal charge *in addition to* applying for a protection order. More than half (53%, n=80) those who wanted to lay a criminal charge against their abusers were told by the police that they were not allow to do so. A staggering 96% (n=311) of respondents did not received a notice containing their rights as victims of domestic violence from the police.

Just more than half of applicants (56%, n=185) found the police to be helpful when reporting an incident of domestic violence. Men were more likely to find the unhelpful than women: among intimate partner applicants 42% of women and 69% of men did not find the police helpful. Similarly, 38% of women and 47% of men in the family member category felt this way about the police.

Sixty-seven percent (n=18) of respondents who were in need of medical assistance were not taken to a hospital or clinic by the police. The majority of respondents who needed the police to accompany them to collect their belongings (68%, n=15) reported that the police had, indeed, done so.

Assistance from the courts

The assistance that victims of domestic violence receive at court can have a significant impact on whether the applicants return to court to finalise their orders. Section E of the interview schedule probed whether or not the respondents felt that their interaction with the court system was a positive or negative experience, and how that experience may have impacted on their decision to see the protection order process through.

An overwhelming majority of applicants were positive about the assistance they received at the court: 98% (n=474) reported they found the MOSAIC court workers (who assist with the application of protection orders in certain courts) helpful, and 88% (n=416) found the clerk of the court helpful in navigating the application process. Most respondents (93%, n=438) were given information on how the protection order works by the courts personnel, including what to do when the abuser breaches the order (94% of cases;

n=444). Most (97%, n=431) were informed about how to deal with a breach of an order by a MOSAIC court worker, while 66% (n=293) received this information from the clerk of the court.⁴⁷ Generally, clerks did explain to applicants that they had to return to court in order to finalise the IPO, doing so in 94% of cases (n=395).

A majority of the applicants, 74% (n=336), received their IPOs on the same day they applied for the order. Where applicants did not receive their order on the same day, 62% received their orders one day after the application was made, and 92% had received their interim orders within one week. In 4% of cases applicants waited for up to two weeks before receiving the order, while in another 3% of cases applicants waited as long as one month.

These relatively small percentages should not be regarded as insignificant. All of these cases were women seeking protection from intimate partners, all of whom had a history of physical abuse, and 71% of whom had threatened to kill the applicants. The dangers these women faced were thus very real, and any delay in receiving their orders could have had life or death consequences for these victims.

Only 2% (n=10) of the applicants received a copy of the interim warrant of arrest, which should be provided to victims along with their IPOs.

The immediate relief and protection that the PO is supposed to afford victims is ultimately compromised in instances when applicants do not receive the IPO on the same day on which the application for protection is made, and when a critical document, the interim warrant of arrest is on a large scale not given to applicants.

Information about the protection order

This study found that magistrates tended to grant almost all the conditions that applicants requested in their protection order applications: 97.5% of applicants (n=399) were granted everything they asked for, while the

⁴⁷ Under the DVA clerks of the court have, amongst others, the following duties: informing the complainant of the relief available under the DVA; and the right to lodge a criminal charge; submitting the PO application to the court; and ensuring that the complainant has a copy of all the relevant court documents.

remaining ten applicants (2.4%) were not as successful. Cases where magistrates refused applicants' requests included six cases where applicant asked for the abuser to be removed from the home or premises; one instance of restricted contact with children or dependents; four cases of emergency monetary relief; and one request for the police to assist the applicant with collection of belongings.

Service of the IPO

In 58% of cases (n=252) the interim protection orders were served on the respondent by the police, while 12% (n=54) were served by the sheriff of the court. A particularly critical finding is that 30% of applicants (n=129) said that neither the sheriff of the court nor the police performed this task. Of these 129 cases, 87.5% (n=113) of the applicants reported that their orders were never served. This finding will be interrogated in greater detail later in this report. Among the remaining 12.5% of cases, seven women (seeking protection from their intimate partner) served the order on the abuser themselves. This finding is cause for concern as the victim is placed in a potentially dangerous situation and is forced to confront an abuser with legal documents which prohibit that abuser from inflicting more harm on the applicant. In two cases the clerk of the court served the order, and in another two cases, applicants reported that the IPOs were posted to the respondent.

Impact of the order

The primary purpose of the protection order is to provide the victim of domestic violence with the maximum protection from violence possible under the law. While it is difficult to assess exactly what impact the IPO had on domestic relationships, there are some interesting findings which reveal how abusers responded when the order was served. More importantly, these findings also reflect how victims felt about their abusers responses to the service of these orders. This too is significant in establishing the reasons for why women may discontinue with the criminal justice process.

In 26% of applicants (n=105) said that their abusers became angry, while 17% (n=69) mentioned that their abusers begged for their forgiveness and promised not to abuse them again. In 9% of cases (n=36) applicants were threatened by their abusers, 3% were threatened with physical harm; 3%

were threatened with some other form of harm; and in 3% of cases the abusers threatened to kill the applicant. Eight percent of the applicants (n=33) reported being asked by their abusers not to return to court or to withdraw the order. In 2% of cases (n=9) the abuser threatened to evict the applicant from the house. Despite these responses, 94% (n=367), applicants reported that receiving the IPO made them feel safe.

REASONS WHY APPLICANTS DID NOT RETURN TO COURT TO FINALISE THEIR PROTECTION ORDERS

This section discusses the many factors which influence the applicant's decision to discontinue the legal process in domestic violence cases. Tables 6 and 7 provide an overview of the reasons the applicants gave for not returning to court to finalise their IPOs. (Applicants could list multiple reasons for not returning to court).

Table 6

Reasons for not finalising IPO	Number	%
Didn't get a copy of the PO from the court	43	9%
Didn't get any paper saying when I must come back to court	38	8%
The respondent didn't sign the papers/fled	65	13%
Didn't realise I had to come back to court	52	10%
Still with him, but I didn't realise I had to come back to court	25	5%
Applicant returned to court but no return of service at court	25	5%
Struck off the court roll	24	5%
Case postponed by the court on the return date	10	2%
IPO not served	113	23%
Lost confidence in the system	86	17%

These findings reveal a number of critical systemic reasons which explain why applicants do not finalise their IPOs. Forty-three (9%) respondents did not returned to finalise their orders because the court had not provided them with a copy of the PO. These applicants were thus unlikely to know their return dates. In a further 38 cases, applicants said that the court had failed to provide them with information about their return dates. In 10% (n=52) of cases the applicants were simply not aware that they had to come back to court to finalise their orders. Thirteen percent of applicants did not return because the respondent had fled and had not signed the papers.

The difficulties faced in navigating the process is highlighted by the cases where applicants returned to court to finalise the orders, but were unable to do so due to systemic problems. For example, twenty-five applicants discovered that there had been no return of service when they arrived at court. In a further ten cases applicants returned to court to find that their cases had been postponed, but could not attend on the new return dates.

Thirty four percent of applicants whose orders had not been served on their abusers (n=113), cited a *systemic reason* for the lack of service, including: (i) that there was no police van available to serve the order; (ii) that the sheriff failed to serve the order even though the applicant paid for this service; (iii) that the police did not serve the order before the return date; and (iv) that the police gave up trying to find the respondent⁴⁸.

In 5% (n=25) of cases, applicants returned to court to finalise the order, but learned that their cases had been struck from the court roll. One male applicant in the intimate partner category said that his case was struck off the roll because the magistrate had finished for the day and would not hear more cases. After checking with the clerk about what he was to do next, this applicant was told to reapply. Another male applicant said that his case was struck off the roll because he had gone to the wrong court. A total of five applicants (across all categories) stated that they had been late for court, while eight applicants went to court on the wrong dates.

Nine applicants had their cases struck off the roll after being told by the magistrate that they should sort out their problems and get counselling, in some cases because the magistrate believed that they were capable of restoring their marriage. One woman in the female intimate partner category, who had requested that her abuser stop verbally abusing her, was told that what she wanted was 'nonsense' and that she and her abuser should go for counselling instead. In another instance, a female applicant was told that there was no need to finalise the order because the abuse had stopped by the return date. One male applicant reported that his wife had a PO against

⁴⁸ The figure of 34% only reflects findings from cases where applicants provided reasons for the order not being served. An additional twenty-two applicants' orders had not been served but these respondents failed to provide a reason. In these cases the applicant may have chosen not to have the order served, or the non-service could have resulted from a systemic problem.

him and he felt that she was misusing it. The magistrate’s decision to strike this case off the court roll could perhaps have been influenced by the fact that this applicant wanted a counter-protection order.

Eighty-six applicants (17%) stated that they had “lost confidence in the system”. Among these disillusioned applicants, 62% had earlier mentioned that they had found the police unhelpful, while approximately 25% had found the clerks of the court unhelpful.

Table 7 below presents an overview of the many varied reasons that applicants did not return, ranging from personal and economic factors, to the nature of the violence and/or the abusive relationship.

Table 7

Reasons for not finalising IPO	Number	%
<i>Nature of the violence/relationship</i>		
The abused stopped	200	40%
Abuser no longer bothers the applicant	44	9%
The relationship ended	15	3%
Abuser moved away	65	13%
Applicant and abuser reconciled/working on the relationship	43	9%
Relationship became less abusive	88	18%
Abuser promised not to do it again	102	21%
Abuser pleaded with victim not to return	52	10%
Abuser threatened to harm or kill the applicant	9	2%
<i>Family intervention/pressure</i>		
Applicant went to Eastern Cape	23	5%
Applicant went back to family home	9	2%
Family members pressured applicant to resolve the problem	34	7%
Family intervened/spoke to the abuser	79	16%
<i>Economic reasons</i>		
Applicant could not miss a day of work	78	16%
Applicant did not have money to go back to court	11	2%
<i>Personal reasons</i>		
Applicant felt too confused or frightened to continue	29	6%
Applicant forgave the respondent	41	8%
Death in the family	29	6%
Applicant/family member sick	41	8%
Decided to get professional help	43	9%
Got help from a religious leader/church/MJC	86	17%

A total of 40% of the applicants reported that they had not returned to court to finalise their IPO because the abuse in their relationships had stopped. In 21% of cases the applicants said that their abusers had promised that they would not abuse them again. Approximately 18% of the applicants reported that their relationships became less abusive. However, 32% of respondents who said the abused *had* stopped, and 25% who were promised that the abuse *would* stop, mentioned later in the interview that they would like to reapply for a PO. Clearly then, any deterrent impact the IPO may have had on the abuser was short-lived given that the applicants wanted to reapply for protection.

In 9% of cases applicants had reconciled with their abusers, or were "sorting things out" in their relationship. Other reasons for not returning to court included that the abuser no longer bothers the applicant (9%); the abuser moved away (13%); and that the relationship ended (3%). While it is not explicitly mentioned, it would be reasonable to assume that at the time when these factors influenced the applicant's decision, the abuse had stopped. Approximately 10% of the applicants said that their abusers had pleaded with them not to return to court. In a further 2% of cases applicants did not finalise their order because they had returned to their family home.

Nine (2%) applicants failed to return to court because the abuser had directly threatened to kill them if they finalised the order. All of these cases were women, seven seeking protection from an intimate partner and two from family members.

There were a number of cases where extended family members, from either the victim or the abuser's side, impacted on the victim's decision not to finalise the IPO. In 16% of cases family members intervened by advising the abuser to change their behaviour, and also dissuading the victim from proceeding with the case. Applicants in the family member category were more likely to report some type of family intervention than those in the intimate partner category. In 7% of the sample applicants were pressured by family to bypass legal avenues and instead resolved the issue of domestic violence without involving the courts.

Economic reasons also featured in applicants' decisions not to return to court. Sixteen percent of the respondents reported that they could not return to court because they could not miss another day of work. Many of applicants said that they had already missed a day of work to apply for the

interim order, and some applicants were surprised that they were expected to return to court again. While most applicants were concerned about the loss of wages that another visit to court would entail, others did not want to have to explain to their employers why they had to return to court. This could likely be indicative of the applicant feeling shame or embarrassment about the abuse, and/or not wanting what they consider to be their 'personal business', to enter their workplace. Eleven applicants did not return to finalise their IPOs because they simply did not have money to do so - they didn't have taxi or bus fare to get to court.

Twenty-nine respondents (6%) felt too confused or frightened to continue with the court process. In 8% of cases the applicant forgave their abuser and therefore abandoned their application. Forty-one applicants (8%) did not attend court on the return because either they or a family member was sick; and 6% of applicants claimed that there had been a death in the family. Eleven percent of applicants said that they had sought help elsewhere, either from a professional such as rehabilitation, counselling, social worker; or from a church or religious leader.

The aforementioned discussion provides some interesting insight into the potential reasons that applicants may have for withdrawing from the legal process. Clearly, the fear and intimidation created by threats of further physical harm and death play a significant role in the victims' decision-making. However, it is also apparent that despite the abuse (even severe abuse) there are applicants who may choose to remain in their relationships, perhaps in the hope that the abuse will stop. Such choices offer a reminder that these are relationships where the parties likely have a strong emotional attachment to one another, and which are likely characterised by more than just the violence. The violence, while a critical component, is but one aspect of the relationship.

DISCUSSION OF THE FINDINGS

Attrition in domestic violence cases is clearly a complex issue. Our data shows that there are many varied – and often interconnected – reasons why applicants do not return to court and do not finalise their interim protection orders.

The findings from this research have, in some instances, mirrored those of previous studies on domestic violence. Most notably they have highlighted again that victims of domestic violence suffer a wide range of abuses, and that the intensity and brutality of the abuse is likely to increase over time. In addition, it is once again apparent that while men are also victims of domestic violence, in the majority of cases, domestic violence victims are women. This finding neither undermines the abuse suffered by men, nor diminishes their experiences. It simply means that based on empirical evidence from this, and other research, it is clear that women are overwhelmingly the ones who suffer domestic abuse, and thus are the ones more likely to be applying for protection orders (Mathews & Abrahams, 2001; Parenzee *et al*, 2001; Department of Justice, 2009).

Closer scrutiny of applications brought by men against either their intimate partners and/or their family members shows that many of these are counter-applications, meaning these male applicants are attempting to get a PO against someone primarily because that person already has an order against them (Artz, 2008). Our research has shown that there are also cases where male applicants are in fact attempting what could be considered to be a pre-emptive strike by making an application against a female partner in response to the *threat* that she may obtain an order against him. Artz and Smythe (2005, p. 204) argue that “while there are legitimate cases in which men may consider themselves to have been equally victimized by their partners, the extent to which counter protection orders are applied for by men too often demonstrates an attempt to simply reinforce their power and ‘level the playing fields’.”

In examining the types of abuse suffered by the applicants, there are some key findings which require closer consideration. The number of cases where female applicants reported being sexually abused or raped by their abusers

(16.5%) illustrates the extreme vulnerability of these victims. This vulnerability extends beyond the heinous act of rape itself. Women who experience sexual violence within an abusive intimate partner relationship are largely unable to negotiate safe sex practices due to the imbalance of power between themselves and their abuser (Smythe *et al*, 2007). These victims are especially vulnerable to HIV infection as a result. Furthermore, while domestic violence may lead to HIV infection, a woman's HIV positive status may also either cause or exacerbate domestic violence (Smythe *et al*, 2007). Swaminathan *et al* (2008) report that HIV positive women report more intimate partner violence than HIV negative women, while Dunkle *et al* (2004), found that in South Africa 'intimate partner violence and high levels of male control in women's current relationships were associated with HIV seropositivity.'

Alcohol and drug use in the context of domestic violence is also worth a brief mention, given the prevalence of these issues in our study. A study of the links between alcohol and crime conducted in Cape Town, Durban and Johannesburg found an association between alcohol consumption and arrest for domestic violence, with 49.3% of male arrestees reporting having used alcohol at the time of the offence (Parry *et al*, 2002). Abrahams *et al* (2004) found that among men who had perpetrated sexual violence against their intimate partners in the previous 10 years, 38.8% had a problem with alcohol, 20.6% used drugs, and 8.1% had used drugs in the past. Thirty percent (30%) of these men reported that their alcohol and drug use was the cause of conflict between them and their partners.

Although extensive research has been done into the links between the abuse of alcohol and drugs and incidences of domestic violence, no conclusive evidence has been found that substance abuse *causes* violent behaviour. While researchers agree that perpetrators' substance use plays a key role in incidents of domestic abuse, particularly in cases where men abuse their intimate partners, this alone does not account for their violent behaviour and other factors have to be considered (see for example Roberts, 1988; Fossos *et al*, 2007; Leonard, 2002).

Children are often the forgotten victims of violence in the home, and are left to suffer silently with little or no support from the adults who are supposed to be caring for them (Body Shop & UNICEF, 2006). These authors estimate that as many as 275 million children worldwide (and between 500,000 to 1.3

million children in South Africa) are exposed to domestic violence. This is considered to be a conservative figure, meaning that in reality millions more children are likely affected by violence occurring in the home (Body Shop & UNICEF, 2006).

Our data similarly highlights the vulnerability of children in abusive contexts. Thirteen percent the respondents (n=64) reported that their children were being verbally, physically and/or sexually abused. A further 17% (n=83) said that their children witnessed the abuse against the applicant. However, in all these cases these applicants ultimately did not proceed with the application process and the PO was never finalised.

Research has shown that children who grow up in violent homes are more likely to be victims of child abuse (Heise & Garcia-Moreno, 2002). Men who have witnessed parental violence are four times more likely to be violent with their intimate partners, and those who have suffered abuse as a child are similarly more likely to perpetrate physical violence against an intimate partner (Gupta *et al*, 2008). Exposure to domestic violence may cause children to exhibit violent, risky or delinquent behaviour, and may further be detrimental to their learning processes and their social skills development (Body Shop & UNICEF, 2006). Studies have also shown that personality and behavioural problems among children who witness domestic violence can take many forms including bed-wetting; depression; and suicidal tendencies (Fantuzzo & Mohr, 1999; Kernic *et al*, 2003). These children are likely to have a difficult transition to adulthood as they are at greater risk for drug and alcohol abuse, juvenile pregnancy and criminality than children who are raised in homes without violence (Felitti *et al*, 1998; James, 1994; Herrera & McCloskey, 2001; Anda *et al*, 2001).

A CLOSER LOOK AT ATTRITION

When you consider the types and severity of the abuse suffered by domestic violence victims and the vulnerability of their children, it may seem strange that victims remain in these abusive situations, and fail to follow through with the finalization of the order. Our research suggests that fear is a significant and common denominator in a majority of the cases, whether it be fear of more violence within the domestic relationships; fear of harm coming to children or other family members; fear of some other reprisal from their

abusers; fear concerning the socio-economic welfare of the victim and in many instances the children; and/or fear of navigating a less than user-friendly criminal justice system.

Research by Mathews *et al* (2002) has shown that intimate South African women die at the hands of their intimate partners. Given that there is an established link between a history of domestic violence and intimate femicide, the fact that 49% of women in the female intimate partner category in our study reported that their abusers had threatened to kill them is cause for concern. Abusers not only make threats to kill or commit further acts of violence against the victim, but also make these threats against other family members, including children. It is entirely understandable that in such contexts, a fear of reprisal from the abuser plays a critical role in the decision-making process of victims when deciding whether to continue with the legal process.

Furthermore, in cases where abusers intimidate victims or exhibit other controlling behaviours (such as threatening to take the children away), victims' fears of exacerbating an already volatile situation may outweigh even a strong desire to extricate themselves from the abuse. Previous studies on domestic violence have shown that an abused woman will take on average 10.5 years before leaving an abusive relationship (Artz, 2008). Women suffering domestic abuse are caught in a spiral of violence. As the abuse continues, episodes of abuse "become more frequent and more violent and therefore more likely to result in a critical injury or death", and that "over time, the original *perceived* threat of death shifts towards a more imminent reality" (Artz, 2008, p. 26).

Financial dependence on an abuser and fears around economic welfare are also among the reasons why applicants withdraw from the legal process. The findings from our research show that female applicants are less likely to be employed than male applicants, and that women seeking protection from intimate partners are more likely to be unemployed than their abusers. These findings reinforce the argument that economic dependence on an abuser is "far more likely to be a feature of domestic violence perpetrated against women, than domestic violence perpetrated against men" (Department of Justice and Constitutional Development, 2009, p. 36). This means that women are especially vulnerable in scenarios where they and their children are dependent on their abusers for their very survival. Previous studies have

shown that in the South African context issues like high unemployment rates; extreme poverty; and a lack of access to social resources form part of daily life for a majority of the citizenry, a lack of adequate economic resources to maintain the security, education and health of families are major considerations for victims of domestic violence (Artz, 2008; Anderson & Saunders, 2003; Griffing *et al*, 2005). Against this backdrop, it is not difficult to understand the role that economic dependence plays in an applicant's decision on whether or not to finalise the order.

Looking specifically at the interaction between the applicants and criminal justice personnel, the fact that 17% of the applicants (n=86) reported that they had lost confidence in the system is cause for concern. Bearing in mind that these applicants have been victimised by their abusers and have approached the system to secure protection for themselves and perhaps others (for example, their children), it is extremely worrying that they were unable to find relief from a system which is meant to serving the needs of victims. It is clear from the data that police officers are falling short of the mark in a number of crucial areas, despite being legally obligated to provide specific assistance to victims of domestic abuse under the DVA. For example, as the findings reveal, police officers do not inform victims that they may lay a criminal charge in addition to applying for a PO (69% of applicants were not told this). In 96% of cases respondents were not given the notice containing their rights as domestic violence victims. In addition, 44% of the respondents noted that they had not found the police helpful during their PO application process. Taken against other instances where there was no return of service because police failed to trace the respondent, or because there was no police van available to effect service on the respondent, it is possible that inadequate service delivery from police may be a contributing factor in applicants withdrawing from the legal process.

The DVA clearly sets out the consequences for police officials who do not perform their legal duties as set out in the Act. Failure by a member of the SAPS to comply with an obligation imposed in terms of the DVA, the regulations of the Act, or the National Instructions, constitutes misconduct as

contemplated in the South African Police Service Act⁴⁹ (s 18 (4) (a) DVA). In such cases, the Station Commissioner is directed to institute disciplinary proceedings against the member charged with misconduct. The Station Commissioner must also keep a record of complaints received against members, the disciplinary proceedings as well as the decisions made in such proceedings, and forward these recommendations to the Area Commissioner, who in turn reports these to the National Commissioner, must submit a report to Parliament every six months (Parenee *et al*, 2001).

However, despite the clear structures spelled out by the DVA, systems and processes in place to address police performance and misconduct are still relatively new and developing (Maroga, 2005). These systems and processes have, since their inception, been confronted with a number of challenges, including the reluctance of supervisors and commanders to take disciplinary steps against members of the SAPS; disciplinary procedures taking too long to finalise; and the inappropriate application of the disciplinary procedures (Masuku, 2005). As a result, it is extremely uncertain whether the provisions in the DVA that compel police to initiate disciplinary proceedings are followed consistently. It is worth noting that while a number of local publications examine police accountability in general (for example, Maroga, 2005; Berg, 2005; Masuku, 2005) a focus on police accountability in domestic violence cases is extremely scarce.

Looking toward the courts, our research data suggests that clerks of the court do, more often than not, perform their duties under the DVA. A large majority of the applicants found the clerks to be helpful in facilitating the PO application process. However, our research also shows that there are critical points within the court system that create process barriers for applicants which influence whether or not they decide to finalise their PO. Applicants mentioned not receiving the necessary court documents; not understanding that they had to return to court, or not being clear about which court they should return to. This suggests that even though applicants may have found their interaction with the clerks to be helpful, there was still a lack of clarity about the full application process. So, while in the majority of cases clerks may have performed their duties as required under the DVA, and provided

⁴⁹ South African Police Service Act No. 68 of 1995.

the applicants with all the necessary information about the protection order, it is questionable whether the applicants accurately understood the messages the clerks were conveying.

Other noteworthy results emerge from the cases where applicants returned to court, only to learn that their cases had been struck from the roll. It is easy to see why applicants become frustrated with the system and make the decision to withdraw from what to them may seem to be an unsympathetic and unresponsive system, given that some cases are struck off the roll for what seem like ‘minor’ issues, such as the fact that the applicant went to the wrong court; or was late for court. In contexts where loss of wages and concern about travelling costs and potential loss of employment are vital considerations, it is easy to see that postponements, which in effect require the applicants to return to court on another future date, are among the reasons for non-returns.

One of the obvious consequences of high rates of attrition in domestic violence cases is that some criminal justice personnel develop negative perceptions of domestic violence victims. In previous research monitoring the implementation of the DVA (Artz *et al*, 2005; Parenzee *et al*, 2001), police officers expressed frustration at the high number of case withdrawals, saying that they considered it a waste of their time to complete paperwork in cases where they suspect that a complainant might not follow through with the process. Others were of the opinion that victims abused the system and did not take the process seriously. Many clerks of the court have expressed similar sentiments.⁵⁰

The concerns and frustrations of criminal justice personnel are legitimate and should be addressed. However, it is imperative that perceptions about whether or not a complainant might follow through with the legal process should under no circumstances influence whether state officials provide services to domestic violence victims, nor impact on the manner in which such services are rendered. Legal duties imposed on police and court personnel by the DVA cannot be invalidated by negative perceptions, and

⁵⁰ See Appendix E for findings emerging from workshops conducted with clerks of the court in the Western Cape Province. One of the primary objectives of these workshops was to present the results from the attrition research.

should at all times, and for all victims, be discharged in accordance with the law.

Moreover, based on the findings, one should not exclude the possibility that the specific actions of the system may not necessarily be required, but instead the mere 'contact' with the system may be sufficient to deter violence in the applicant's abusive relationship.⁵¹ We see from the affidavits that some applicants may not necessarily want to end the abusive relationship, but may simply want the abuse and violence to end. In 40% of cases applicants said that the abuse in the relationships had stopped after they had gone to court to make the PO application. The decision not to return to court is therefore likely influenced by the deterrent impact of the IPO. Furthermore, in 9% of cases applicants mentioned that their abusers no longer bothered them, in 3% of cases the abusive relationships ended, and in 13% of cases the abusers moved away. In these instances it would appear that interaction with the legal system, if only partial (like applying for a protection order, but not finalising it), assisted the applicants of meeting the goal of further separation from the violence or the relationship itself. Thus a victim who applies for a protection order may choose not to return to court to finalise the order as the IPO may have had the desired effect of ending the violence or of succeeding in forcing the abuser out of the applicant's life.

Undoubtedly, when victims fear for their safety they are extremely vulnerable. This vulnerability comes with a range of emotions about seeking outside intervention: they may feel confused and anxious about seeking legal help; and they are vulnerable to further violence, family isolation and other factors that may have profound personal, social and economic consequences. However, against the background of the range of barriers to justice and non-violence, the explicit attempt to seek intervention signifies a profound level of resistance and personal agency. The act of requesting formal legal intervention through the court system – despite the risks and barriers presented by the use of that system – indicates that victims of domestic violence generally, and women in particular, who seek protection

⁵¹ For example, McFarlane *et al* (2004) found that there was no appreciable difference in the levels of violence against women in cases where charges of assault were accepted by the police (but not arrest) versus when perpetrators were arrested.

orders are using the system to actively and deliberately interrupt the cycle of violence. Victims use the system to arrange security – and may have negotiated terms with their abusers under which they would not proceed with the legal avenue if they were left alone. It is thus a conscious, protective strategy, where the decision to continue the process to its finalisation is tangential to the decision to utilise external measures in the first place.

Recommendations: The usual list revisited

The findings of this study create specific opportunities to develop recommendations for addressing attrition. The wide range of issues for service provision and attrition intervention raised in this study, however, requires additional analysis and in-depth consideration (ideally, with relevant stakeholders and practitioners). It was beyond the scope of this study to deal with these with any sincere depth. With that said, there are a number of immediate and tangible recommendations that can - and have previously been made - to remedy some of the broader structural problems affecting the implementation of the DVA and which appear to contribute to the retraction of cases from the system. These 'global' recommendations are worth reinforcing here:

1. Consistent monitoring of the implementation of the DVA's provisions, particularly with regard to legal duties of the SAPS and the court personnel. One of the aims of such monitoring should be to identify areas where efficient service delivery to domestic violence victims is being hampered, and to put in place the necessary strategic and policy interventions to address the identified obstacles and challenges.
2. Conducting a systematic audit of all 'domestic violence courts' to determine which human, infrastructural and technical resources are needed to facilitate better service delivery. Clerks of the court have noted that they face a number of difficulties in performing their daily tasks and a lack of basic resources, like photocopiers and insufficient staff consistently topped the lists of grievances. These should be easily remediable in the short term (see appendix E).
3. (As expected) training for all role-players responsible for service delivery to PO applicants is critical. Such training should be

ongoing, to accommodate the needs of new staff as well as new developments in systems and processes, and should be focused on, among others:

- The provisions in the DVA and the specific legal duties of service providers, in particular SAPS members and clerks of the court;
 - The proper procedures to effect service of court documents, with emphasis on the implications of improper service to respondents and how this relates to attrition in domestic violence cases; and
 - The social context of domestic violence, and in particular, sensitising service providers to the many challenges confronting victims as well as the many reasons why they may withdraw their cases.
4. Consideration should also be given to putting in place mechanisms to monitor the performance of individual courts and court personnel working with domestic violence cases. Related to this is a long-overdue complainants mechanism for applicants.
 5. An issue consistently raised by clerks of the court (as well as service providers working with the courts) is the total lack of co-ordination amongst service providers and the obviously limited co-operation between criminal justice departments and personnel. Clerks have specifically highlighted how the actions of other service providers may unintentionally impede the service clerks attempt to deliver to victims. A recommendation in this regard is to bring together all relevant parties, like police, clerks and magistrates, and in so doing facilitating a process which allows for an exchange of ideas, and the identification of the difficulties and challenges faced in service delivery. This means reinforcing, but going beyond what have been dubbed monthly 'justice cluster' or 'inter-departmental' meetings. Through providing participatory and collaborative training and assessment opportunities, these role-players will not only be exposed to their own roles within the system, but will further be made aware of how their contributions, or lack thereof, may be impacting on the work of others.

6. Finally, all domestic violence courts would benefit from having in place a monitoring framework aimed at assessing the courts' effectiveness in dealing with domestic violence cases and specifically addressing the needs of complainants. Key focus areas could include:
 - a. The number of IPOs granted and the number of POs which are finalised within specified periods (with a view to establishing attrition);
 - b. The number of cases struck off the roll and the reasons for this;
 - c. The number of 'non-returns' for the finalisation of orders;
 - d. The number of cases where non-returns are followed up by clerks;
 - e. The number of breaches of protection order and the outcomes of these cases; and
 - f. The number of returns of service submitted during the monitoring period.

CONCLUSION

This study describes the features of domestic violence and the criminal justice system that affect DVA applicants' decisions to continue with the finalisation of a protection order. These "features" emanate from the stories recited by applicants themselves. What they all have in common is the fear of continuing violence should they proceed. It is widely accepted that intensity and brutality of domestic violence increases over time. Psychological and mental abuse escalates to physical violence. The use of weapons, threats to harm or kill children and other family members, and the brutalisation of victims through physical, psychological sexual abuse creates a climate of terror, and often results in a sense of total immobility and defencelessness. These radical dimensions of violent domestic relationships all have a bearing on victims' decisions to stay in relationships and whether or not to continue with the legal process.

Although many of the immediate personal struggles faced by women in abusive relationships are echoed in lives of many South Africans, the combined effects of poverty, highly criminogenic communities, the lack of social resources and intimate partner or family violence creates an intractable environment within which options for reducing violence are extremely limited. Like poverty, domestic violence is pervasive, ongoing and has an enormous impact on personal health and welfare. The existence of domestic violence amplifies the impact of these other social factors. Unlike other crimes, domestic violence affects people who are intimately, financially and emotionally connected – and in most instances dependent – on each other. It is also one of the only crimes in which there is an elevated risk for retaliatory violence. What we need to remember is that victims of domestic violence are the best predictors of their own risk to further violence. Once victimised, victims are cautious, more resilient and aware and make choices about their safety as a result of this. They can be ‘agents’ (proactively calculating future risk) *and* victims (at the mercy of person, system or structure) simultaneously. As Lampert's (1996) research on women's survival strategies has demonstrated, the actual strategies women use may not change the violence, but they may alter the ways in which women experience it.

REFERENCES

- Abrahams, N., Jewkes, R., Hoffman, M., & Laubsher, R. (2004). 'Sexual violence against intimate partners in Cape Town: Prevalence and risk factors reported by men'. *Bulletin of the World Health Organization*, 82(5), pp. 330-337.
- Abrahams, N., Jewkes, R., & Laubsher, R. (1999). 'I do not believe in democracy in the home': Men's relationships with and abuse of women. CERSA (Women's Health), Medical Research Council.
- Albertyn, C., Artz, L., Combrinck, H., Mills, S., & Wolhuter, L. (2007). Women's Freedom and Security of the Person. In Bonthuys, E., & Albertyn, C. (2007). *Gender, Law and Justice*. Cape Town: Juta and Co., Ltd.
- Anda, R.F., Felitti, V.J., Chapman, D.P., Croft, J.B., Williamson, D.F., Santelli, J., Dietz, P.M., & Marks, J.S. (2001). 'Abused boys, battered mothers, and male involvement in teen pregnancy'. *Pediatrics*, 107(2), pp. 19-27.
- Anderson, M.A., Gillig, P.M., Sitaker, M., McCloskey, K., Malloy, K., & Grigsby, N. (2003). "'Why doesn't she just leave?": A descriptive study of victim reported impediments to her safety'. *Journal of Family Violence*, 18(3), pp. 151-155.
- Anderson, D.K., & Saunders, D.G. (2003). 'An empirical review of predictors, the process of leaving, and psychological well-being'. *Trauma, Violence and Abuse*, 4(2), pp. 163-191.
- Artz, L., Combrinck, H., Gallinetti, J., & Smythe, D. (2005). Commissioned report on compliance with the DVA at 29 priority police stations in the Eastern Cape. SAPS/European Union.
- Artz, L., & Smythe, D. (2007). 'Case attrition in rape cases: A comparative analysis'. *South African Journal of Criminal Justice*, 20(2), pp. 158-181.
- Artz, L., & Smythe, D. (2005). 'Bridges and barriers: A five year retrospective on the Domestic Violence Act'. In C. Murray and M. O'Sullivan's (eds), *Advancing Women's Rights*. Cape Town: Juta & Co. Ltd.
- Artz, L. (2003). *Magistrates and the Domestic Violence Act: Issues of Interpretation*. Institute of Criminology, University of Cape Town: Open Society Foundation.
- Artz, L. (2001). 'Policing the Domestic Violence Act: Teething troubles or system failure'? *Agenda*, 47(1), pp. 4-13.
- Artz L. (1999). *Violence against women in rural Southern Cape: Exploring access to justice within a feminist jurisprudence framework*. Institute of Criminology, University of Cape Town.
- Artz, L. (2008). *An examination of the attrition of domestic violence cases within the criminal justice system in post-apartheid South Africa*. Thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy, Institute of Criminology and Criminal Justice, School of Law, Queen's University Belfast.
- Artz, L. (in press). 'The weather watchers: Gender, violence and social control'. In M. Steyn and M. van Zyl (eds), *Shaping Sexualities*. South Africa: HSRC Publishers.

- Åsling-Monemi, K., Peña, R., Ellsberg, M.C., & Persson, L.Å. (2003). 'Violence against women increases the risk of infant and child mortality: A case-referent study in Nicaragua'. *Bulletin of the World Health Organisation*, 81(1), pp. 10-16.
- Baker, P.L. (1997). 'And I went back: Battered women's negotiation of choice'. *Journal of Contemporary Ethnography*, 26(1). Academic OneFile. Thomson Gale. Retrieved: 16 May 2007.
- Ballou, M., Tabol, C., Liriano, D., Vazquez-Nuttal, K., Butler, C., & Boorstein, B.W. (2007). 'Initial development of a psychological model for judicial decision making in continuing restraining orders'. *Family Court Review*, 45(2), pp. 274-286.
- Barata, P.C. (2007). 'Abused women's perspectives on the criminal justice system's response to domestic violence'. *Psychology of Women Quarterly*, 31(2), pp. 202-215.
- Basile, S. (2005). 'A measure of court response to requests for protection'. *Journal of Family Violence*, 20(3), pp.171-179.
- Becker, M. (2003). 'Access to justice for battered women in Washington'. *American University Journal of Law & Policy*, 12(63), pp. 63-98.
- Belknap, J., & Graham, D.L.R. (2000). Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and other Variables: Final Report. Research Report (No. 184232). U.S.: U.S. Department of Justice.
- Belknap, J., Hartman, J.L., & Graham, D.L.R. (2000). 'Introduction: Statement of the problem and review of the literature'. In Belknap, J., & Graham, D.L.R. (eds), Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and other Variables. U.S.: U.S. Department of Justice.
- Belknap, J., & Sutherland, J.L. (2000). 'Content analysis of court transcripts'. In J. Belknap and D.L.R. Graham's (eds), Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and other Variables. U.S.: U.S. Department of Justice.
- Bennett, L., Goodman, L., & Dutton, M.A. (1999). 'Systemic obstacles to the criminal justice prosecution of a battering partner'. *Journal of Interpersonal Violence*, 14(7), pp. 761-772.
- Bergen, R. (1995). 'Surviving wife rape: How women define and cope with the violence'. *Violence Against Women*, 1(2), pp.117-138.
- Bollen, S., Artz, L., Vetten, L., & Louw, A. (1999). Women Abuse in Three Major Cities in South Africa: Women Speak Out. Pretoria: Institute for Security Studies.
- Bonthuys, E., & Albertyn, C. (2007). Gender, Law and Justice. Cape Town: Juta and Co., Ltd.
- Borochowitz, D.Y., & Eisikovits, Z. (2002). 'To love violently: Strategies for reconciling love and violence'. *Violence Against Women*, 8(4), pp. 476-494.
- Bowman, C.G. (2003). 'Domestic violence: Does the African context demand a different approach?'. *International Journal of Law and Psychiatry*, 26(2), pp. 473-491.

- Brecklin, L.R. (2002). 'The role of perpetrator alcohol use in the injury outcomes of intimate assaults'. *Journal of Family Violence*, 17(3), pp. 185-197.
- Brown, J. (1997). 'Working toward freedom from violence: The process of change in battered women'. *Violence Against Women*, 13(1), pp. 5-26.
- Brownmiller, S. (1975). *Against Our Will*. New York: Simon and Schuster.
- Brownmiller, S. (1999). In *Our Time: Memoir of a Revolution*. New York: Random House.
- Brownridge, D.A. (2006). 'Violence against women post-separation'. *Aggression and Violent Behaviour*, 11(5), pp. 514-530.
- Bumiller, K. (1987). 'Victims in the shadow of the law: A critique of the model of legal protection'. *Signs*, 12(3), pp. 421-439.
- Burman, E., & Chantler, K. (2005). 'Domestic violence and minoritisation: Legal and policy barriers facing minoritized women leaving violent relationships'. *International Journal of Law and Psychiatry*, 28(1), pp. 59-74.
- Burman, M.J., Batchelor, S.A., & Brown, J.A. (2001). 'Researching girls and violence'. *British Journal of Criminology*, 41(3), pp. 443-459.
- Burton, M. (2003). 'Third party applications for protection orders in England and Wales: Service provider's views' on implementing Section 60 of the Family Law Act 1996'. *Journal of Social Welfare and Family Law*, 25(2), pp. 137-150.
- Burton, P., Du Plessis, A., Leggett, T., Louw, A., Mistry, D., & Van Vuuren, H. (2004). *National Victims of Crime Survey, South Africa (Monograph 101)*. Pretoria: Institute for Security Studies.
- Buzawa, E.S., & Buzawa, C.G. (1996). *Do Arrests and Restraining Orders Work?* Beverly Hills, CA: Sage Publications.
- Buzawa, E.S., & Buzawa, C.G. (2003). *Domestic Violence: The Criminal Justice Response* (3rd ed). California: Sage Publications.
- Buzawa, E., Hotaling, G.T., Klein, A., & Byrne, J. (2000). *Response to Domestic Violence in a Pro-Active Court Setting*. Document No.: 181427. National Institute of Justice, U.S.: U.S. Department of Justice.
- Campbell, C. (1992). 'Learning to Kill? Masculinity, the Family and Violence in Natal'. *Journal of Southern African Studies*, 18(3), pp. 614-628.
- Campbell, J., Garcia-Moreno, C., & Sharps, P. (2004). 'Abuse during pregnancy in industrialised and developing countries'. *Violence Against Women*, 10(7), pp. 770-789.
- Campbell, J.C., Glass, N., Sharps, P.W., Laughon, K., & Bloom, T. (2007) 'Intimate partner homicide: Review and implications of research and policy'. *Trauma, Violence, & Abuse*, 8(3), pp. 246-269.
- Campbell, J., Rose, L., Kub, J., Nedd, D. (1988). 'Voices of strength and resistance'. *Journal of Interpersonal Violence*, 13(6), pp. 743-762.
- Campbell, J., Webster, D., Koziol-McLain, J., Block, C., Campbell, B., Curry, M.A., Gary, F., Glass, N., McFarlane, J., Sachs, J., Sharps, P., Ulrich, Y., Wilt, S.A., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Laughon, K., (2003). 'Risk

- factors for femicide in abusive relationships: Results from a multisite case control study'. *American Journal of Public Health*, 93(7), pp. 1089-1097.
- Carlson, M.J., Harris, S.D., & Holden, G.W. (1999). 'Protective orders and domestic violence: Risk factors for re-abuse'. *Journal of Family Violence*, 14(2), pp. 205-226.
- Choice, P., & Lamke, L. (1997). 'A conceptual approach to understanding abused women's stay/leave decisions'. *Journal of Family Issues*, 18(3), pp. 290-314.
- Cole, J., Logan, T.K., Shannon, L. (2005). 'Intimate sexual victimisation among women with protective orders: Types and associations of physical and mental health problems'. *Violence and Victims*, 20(6), pp. 695-715.
- Combrinck, H. (1998). 'Positive state duties to protect women from violence: Recent South African developments'. *Human Rights Quarterly*, 20(3), pp. 666-690.
- Combrinck, H. (2001). 'The right to freedom from violence and the reform of sexual assault law in South Africa'. In Sarkin, J. and Bincy, W. (eds), *Human Rights, The Citizen and The State: South African and Irish Approaches*. Cape Town: Community Law Centre, University of the Western Cape.
- Combrinck, H., & Artz, L. (1999). 'Domestic violence and law enforcement agents'. In Fedler, J. and Pantazis, A. (eds), *National Legal Manual for Counsellors of Raped and Battered Women*. South Africa: Tshwaranang Legal Advocacy Centre.
- Connelly, C., & Cavanagh, K. (2001). 'Domestic abuse, civil protection orders and the 'new criminologies': Is there any value in engaging with the law?'. *Feminist Legal Studies*, 15(3), pp. 259-287.
- Corsilles, A. (1994). 'No-drop policies in the prosecution of domestic violence cases: Guarantee to action or dangerous solution'. *Fordham Law Review*, 63(3), pp. 853-881.
- Cretney, A., & Davis, G. (1997). 'Prosecuting domestic assault: Victims failing courts, or courts failing victims'. *The Howard Journal*, 36(2), pp.146-157.
- Cretney, A.G., Davis, C., Clarkson, C., & Shepherd, J. (1994). 'Criminalising assault: The failure of the 'offence against society' model'. *British Journal of Criminology*, 34(1), pp. 15-29.
- CSVR. (2007). 'The violent nature of crime in South Africa: A concept paper for the Justice, Crime Prevention and Security Cluster'.
- Davis, R. (2002). 'Leave-taking experiences in the lives of abused women'. *Clinical Nursing Research*, 11(3), pp. 285-305.
- Dawson, M. (2003). 'The 'cost' of lost intimacy: The effect of relationship state on criminal justice decision making'. *British Journal of Criminology*, 43(4), pp. 689-709.
- Dawson, M., & Dinovitzer, R. (2001). 'Victim cooperation and the prosecution of domestic violence in a specialised court'. *Justice Quarterly*, 18(3), pp. 593-622.
- DeJong, C., & Burgess-Proctor, A. (2006). 'A summary of personal protection order statutes in the United States'. *Violence against Women*, 12(1), pp. 68-88.
- DeMaris, A., & Swinford, S. (1996). 'Female victims of spousal violence: Factors influencing their level of fearfulness'. *Family Relations*, 45(1), pp. 98-106.

- Dixon, B. (2004). 'Introduction: Crime, crime control and criminology in transition'. In B. Dixon and E. van der Spuy's (eds), *Crime and Crime Control in South Africa's Transition*. Cape Town/Ufulme, Devon: UCT Press/Willan Publishing.
- Dixon, B., van der Spuy, E., & van Zyl Smit, D. (2005). 'Justice gained? A reply to Naudé'. *Acta Criminologica*, 18(1), p. 164-168.
- Dobash, R.E., Dobash, R.P., & Cavanaugh, K. (1985). 'The contact between battered women and social and medical agencies'. In J. Pahl's (ed), *Private Violence and Public Policy: The Needs of Battered Women and the Response of Public Services*. Boston: Routledge Kegan Paul.
- Dobash, R.E., Dobash, R.P., Cavanagh, K., & Lewis, R. (2004). 'Not an ordinary killer— Just an ordinary guy: When men murder an intimate woman partner'. *Violence Against Women*, 10(6), pp. 577-605.
- Dobash, R.E., Dobash, R.P., Cavanagh, K., Medina-Ariza, J. (2007). 'Lethal and Nonlethal violence against an intimate female partner: Comparing male murderers to nonlethal abusers'. *Violence Against Women*, 13(4), pp. 329-353.
- Department of Justice & Constitutional Development. 'Micro-study of the DVA: The implementation of the Domestic Violence Act at nine South African courts'. Draft Report, November 2009.
- Dugan, L. (2003). 'Domestic violence legislation: Exploring its impact on the likelihood of domestic violence, police involvement, and arrest'. *Criminology and Public Policy*, 2(2), pp. 283-312.
- Dugan, L., Nagin, D.S., & Rosenfeld, R. (2003). 'Exposure reduction or retaliation? The effects of domestic violence resources on intimate-partner homicide'. *Law & Society Review*, 37(1), pp. 169-198.
- Dutton D.G., & Painter, S. (1993a). 'Emotional attachments in abusive relationships: A test of traumatic bonding theory'. *Violence and Victims*, 8(2), pp. 105-120.
- Dutton D.G., & Painter, S. (1993b). 'The battered woman syndrome: Effects of severity and intermittency of abuse'. *American Journal of Orthopsychiatry*, 63(4), pp. 614-622.
- Dutton, D.G., & Painter, S. (1981). 'Traumatic bonding: The development of emotional attachments in battered women and other relationships of intermittent abuse'. *Victimology*, 6(1), pp. 139-155.
- Dutton, D. & Painter, L. (1980). *Male Domestic Violence and It's Effect on the Victim*. Ottawa: Health & Welfare Canada.
- Dwyer, D.C. (1995). 'Responses to the victims of domestic violence: Analysis and implications of the British experience'. *Crime & Delinquency*, 41(4), pp. 527-540.
- Elizabeth, V. (2003). 'Separating from violent male partners: A resistant act in the midst of power relations'. *Journal of International Women's Studies*, 4(3), pp. 62-80.
- Ellison, L. (2002). 'Prosecuting domestic violence without victim participation'. *Modern Law Review*, 65, pp. 834-858.

- Erez, E., & Belknap, J. (1998a). 'Battered women and the criminal justice system: The service providers' perspective'. *European Journal of Criminal Policy and Research*, 6(1), pp. 37-57.
- Erez, E., & Belknap, J. (1998b). 'In their own words: Battered women's assessment of the criminal processing system's responses'. *Violence and Victims*, 13(3), pp. 251-268.
- Fantuzzo, J.W. & Mohr, W.K. (1999). 'Prevalence and effects of child exposure to domestic violence'. *The Future of Children – Domestic Violence and Children*, 9(3), pp. 21-32.
- Felitti, V.J., Anda, R.F., Nordenberg, D., Williamson, D.F., Spitz, A.M., Edwards, V., Koss, M.P. & Marks, J.S. (1998). 'Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: The adverse childhood experiences (ACE) study'. *American Journal of Preventive Medicine*, 14(3), pp. 245-258.
- Fieggen, A.G., Wiemann, M., Brown, C., van As, A.B., Swingler, G.H., & Peter, J.C. (2004). 'Inhuman shields – children caught in the crossfire of domestic violence'. *South African Medical Journal*, 94(4), pp. 293-296.
- Fischer, K., & Rose, M. (1995). 'When "enough is enough": Battered women's decision making around court orders of protection'. *Crime and Delinquency*, 41(3), pp. 414-429.
- Fleury-Steiner, R.E., Bybee, D., Sullivan, C.M., Belknap, J., and Melton, H.C. (2006). 'Contextual factors impacting battered women's intentions to reuse the criminal justice system'. *Journal of Community Psychology*, 34(3), pp. 327–342.
- Ford, D.A. (1983). 'Wife battery and criminal justice: A study of victim decision-making'. *Family Relations*, 32(4), pp. 463-475.
- Fossos, N., Neighbors, C., Kaysen, D. & Hove, C. (2007). 'Intimate partner violence perpetration and problem drinking among college students: The roles of expectancies and subjective evaluations of alcohol aggression'. *Journal of Studies on Alcohol and Drugs*, September 2007.
- Galvani, S. (2006). 'Alcohol and domestic violence: Women's views'. *Violence Against Women*, 12(7), pp. 641-662.
- Gelles, R.J. (1976). 'Abused wives: Why do they stay'. *Journal of Marriage and the Family*, 38(4), pp. 659-667.
- Gillis, J.R., Diamond, S.L., Jebely, P. Orekhovskiy, V., Ostovich, E.M., MacIsaac, K., Sagrati, S., & Mandell, D. (2006). 'Systemic obstacles to battered women's participation in the judicial system'. *Violence against Women*, 12(12), pp. 1150-1168.
- Gist, J., McFarlane, J., Malecha, A., Fredland, N., Schultz, P., & Wilson, P. (2001). 'Women in danger: Intimate partner violence experienced by women who qualify and do not qualify for a protective order'. *Behavioral Sciences and the Law*, 19(5-6), pp. 637-647.
- Gondolf, E.W., & Fisher, E.R. (1988). *Battered Women as Survivors: An Alternative to Treating Learned Helplessness*. Lexington, MA: Lexington Books.

- Gondolf, E.W., McWilliams, J., Hart, B., & Stuehling, J. (1994). 'Court response to petitions for civil protection orders'. *Journal of Interpersonal Violence*, 9(4), pp. 503-517.
- Goodman, L., Bennett, L., & Dutton, M.A. (1999). 'Obstacles to victims' cooperation with the criminal prosecution of their abusers: The role of social support'. *Violence and Victims*, 14(4), pp. 427-444.
- Gracia, E., & Herrero, J. (2006). 'Public attitudes toward reporting partner violence against women and reporting behaviour'. *Journal of Marriage and the Family*, 68(3), pp. 759-768.
- Graham, D.L.R., & Allen, G.P. (2000). 'Victim interviews and surveys'. In J. Belknap and D.L.R. Graham's (eds), *Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and other Variables*. U.S.: U.S. Department of Justice.
- Graham, D.L.R., Rawlings, E., & Remini, N. (1988). 'Survivors of terror: Battered women, hostages, and the Stockholm Syndrome'. In K. Yllo and M. Bograd (eds), *Feminist Perspectives on Wife Abuse*. Newbury Park, CA: Sage.
- Griffing, S., Ragin, D.F., Morrison, S.M., Sage, R.E., Madry, L., & Primm, B.J. (2005). 'Reasons for returning to abusive relationships: Effects of prior victimisation'. *Journal of Family Violence*, 20(5), pp. 341-348.
- Griffing, S., Ragin, D.F., Sage, R.E., Madry, L., Bingham, L.E. & Primm, B.J. (2002). 'Domestic violence survivors' self-identified reasons for returning to abusive relationships'. *Journal of Interpersonal Violence*, 17(3), pp. 306-319.
- Gupta, J., Silverman, J.G., Hemenway, D., Acevedo-Garcia, D., Stein, D.J., & Williams, D.R. (2008) 'Physical violence against intimate partners and related exposures to violence among South African men'. *CMAJ*, 179(6), pp. 535-541.
- Harrell, A., Smith, B., & Newmark, L. (1993). *Court Processing and the Effects of Restraining Orders for Domestic Violence Victims*. Washington, D.C.: Urban Institute.
- Hart, B. (1993). 'Battered women and the criminal justice process'. *American Behavioral Scientist*, 36(5), pp. 624-638.
- Heise, L., & Garcia-Moreno, C. (2002). 'Violence by intimate partners'. In Krug, E., Dahlberg, L., Mercy, J., Zwi, A., & Lozano, R. *World Report on Violence and Health*, Geneva, CH: WHO.
- Herbert, T.B., Silver, R.C., & Ellard, J.H. (1991). 'Coping with an abusive relationship: I. How and why do women stay?'. *Journal of Marriage and the Family*, 53(2), pp. 311-325.
- Herrera, V. & McCloskey, L. (2001). 'Gender differentials in the risk for delinquency among youth exposed to family violence'. *Child Abuse and Neglect*, 25(8), pp. 1037-1051.
- Hester, M. (2005). 'Making it through the criminal justice system: Attrition and domestic violence'. *Social Policy & Society*, 5(1), pp. 79-90.
- Hickman, L.J. (2003). 'Fair treatment or preferred outcome? The impact of police behaviour on victim reports of domestic violence incidents'. *Law & Society Review*, 37(3), pp. 607-634.

- Hilbert, J.C., & Hilbert, H.C. (1984). 'Battered women leaving shelter: Which way do they go? A discriminant function analysis'. *Journal of Applied Social Sciences*, 8(2), pp. 291-297.
- Hirschel, D., & Hutchison, I. W. (2003). 'The voice of domestic violence victims: Predictors of victim preference for arrest and the relationship between preference for arrest and revictimisation'. *Crime & Delinquency*, 49(2), pp. 313-336.
- Hitchings, E. (2005). 'A consequence of blurring the boundaries – Less choice for the victims of domestic violence'? *Social Policy & Society*, 5(1), pp. 91-101.
- Holt, V.L., Kernic, M.A., Lumley, T., Wolf, M.E., & Rivara, F.P. (2002). 'Civil protection orders and risk of subsequent police-reported violence'. *Journal of the American Medical Association*, 288(5), pp. 589-594.
- Holt, V.L., Kernic, M.A., Wolf, M.E., Frederick, Rivara, F.P. (2003). 'Do protection orders affect the likelihood of future partner violence and injury? *American Journal of Preventative Medicine*, 24(1), pp. 16-21.
- Horton, A.L., Simonidis, K.M., & Simonidis, L.L. (1987). 'Legal remedies for spousal abuse: Victim characteristics, expectations and satisfaction'. *Journal of Family Violence*, 2(3), pp. 265-279.
- Hoyle, C. (1988). *Negotiating Domestic Violence: Police, Criminal Justice and Victims*. UK: Oxford University Press.
- Hoyle, C., & Sanders, A. (2000). 'Police response to domestic violence: From victim choice to victim empowerment'. *British Journal of Criminology*, 40(1), pp. 14-36.
- Hutchison, I., & Hirschel, J. (2001). 'The effects of children's presence on women abuse'. *Violence and Victims*, 16(1), pp. 3-17.
- Jacobs, T. (2003). *Domestic Violence and HIV/AIDS: An Area for Urgent Intervention*. South Africa: Institute of Criminology, University of Cape Town.
- James, M. (1994). 'Domestic violence as a form of child abuse: Identification and prevention'. *Issues in Child Abuse Prevention*.
- Jewkes, R., Penn-Kekana, L., Levin, J., Ratsaka, M., & Schriber, M. (1999). "He must give me money, he mustn't beat me." Violence against women in three South African Provinces,' CERSA (Women's Health), Medical Research Council, Pretoria, pp. 1-26.
- Johnson, J.K., Haider, F., Ellis, K., Hay, D.M., Lindow, S.W. (2003a). 'The prevalence of domestic violence in pregnant women'. *British Journal of Gynaecology: An International Journal of Obstetrics and Gynaecology*, 110(3), pp. 272-275.
- Jordan, C.E. (2004). 'Intimate partner violence and the justice system: An examination of the interface'. *Journal of Interpersonal Violence*, 19(12), pp. 1412-1434.
- Kaci, J.H. (1992). 'A study of protective orders issued under California's Domestic Violence Prevention Act'. *Criminal Justice Review*, 17(1), pp. 61-76.
- Keilitz, S., Hannaford, P., & Efkean, H. (1997). *Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*. Publication No. R201. Williamsburg, VA: National Centre for State Courts Research Project.

- Kelly, L. (2001). *Routes to (In)justice: A Research Review on the Reporting, Investigation and Prosecution of Rape Cases*. University of North London: Child and Woman Abuse Studies Unit.
- Kelly, L., Lovett, J., & Regan, L. (2005). *A Gap or a Chasm? Attrition on Reported Rape Cases*. Home Office Research Study 293. U.K.: Home Office Research, Development and Statistics Directorate.
- Kernic, M.A., Wolf M.E., Holt, V.L., McKnight, B., Huebner, C.E. & Rivara, F.P. (2003). 'Behavioral problems among children whose mothers are abused by an intimate partner'. *Child Abuse & Neglect*, 27(11), pp. 1231-1246.
- Khaw, L. and Hardesty, J. (2007). 'Theorizing the Process of Leaving: Turning Points and Trajectories in the Stages of Change'. *Family Relations*, 56(4), pp. 413-425.
- Klostermann, K.C. & Fals-Stewart, W. (2006). 'Intimate partner violence and alcohol use: Exploring the role of drinking in partner violence and its implications for intervention'. *Aggression and Violent Behavior*, 11(6), pp. 587-597.
- Koepsell, M.S., Kernic, M.A., & Holt, V.L. (2006). 'Factors that influence battered women to leave their abusive relationships'. *Violence and Victims*, 21(2), pp. 131-147.
- Koziol-McClain, J., Webster, D., McFarlane, J., Block, C.R., Ulrich, R., Glass, N., & Campbell, J.C. (2006). 'Risk factors for femicide-suicide in abusive relationships: Results from a multisite case control study'. *Violence and Victims*, 21(1), pp. 3-21.
- Krishnan, S. (2005). 'Do structural inequalities contribute to marital violence?: Ethnographic evidence from rural South India'. *Violence Against Women*, 1(6), pp. 759-775.
- Lazarus-Black, M. (2001). 'Law and the pragmatics of inclusion: Governing domestic violence in Trinidad and Tobago'. *American Ethnologist* 28(2), pp. 388-416.
- Leonard KE. (2002). 'Alcohol's role in domestic violence: A contributing cause or an excuse'? *Acta Psychiatrica Scandinavia*, 106(412), pp. 9-14.
- Lewis, R. (2004). 'Making justice work: Effective legal interventions for domestic violence'. *British Journal of Criminology*, 44(2), pp. 204-224.
- Lewis, R., Dobash, R.P., Dobash, R.E., & Cavanaugh, K. (2000). 'Protection, prevention, rehabilitation, or justice?: Women's use of the law to challenge domestic violence'. *International Review of Victimology*, 7(1/2/3), pp. 179-205.
- Logan, T.K., Shannon, L., & Walker, R. (2005). 'Protective orders in rural and urban areas: A multiple perspective study'. *Violence Against Women*, 11(7), pp. 876-911.
- Logan, T.K., Shannon, L., Walker, R., & Faragher, T.M. (2006a). 'Protective orders: Questions and conundrums'. *Trauma, Violence, & Abuse*, 7(3), pp.175-205.
- Logan, T.K., Shannon, L., Cole, J. & Walker, R. (2006b). 'The impact of differential patterns of physical violence and stalking on mental health and help-seeking among women with protective orders'. *Violence Against Women*, 12(9), pp. 866-886.
- Mahoney, M.R. (1991). 'Legal images of battered women: Redefining the issue of separation'. *Michigan Law Review*, 90(1), pp. 1-94.

- Maman, S., Mbwapo, J., Hogan, M., Kiolonzo, G., Campbell, J., Sweat, M., & Weiss, E. (2001). *HIV and Partner Violence: Implications for HIV Voluntary Counselling and Testing Programs in Dar es Salaam, Tanzania*. New York: The Population Council.
- Martin, S.L., Macy, R.J., Sullivan, K., Magee, M.L. (2007). 'Pregnancy-associated deaths: The role of intimate partner violence'. *Trauma, Violence, & Abuse*, 8(2), pp. 135-148.
- Matthews, S., & Abrahams, S. (2001). *An Analysis of the Impact of the Domestic Violence Act on Women*. South Africa: Gender Advocacy Project.
- Mathews, S., Abrahams, N., Martin, L.J., Vetten, L., van der Merwe, L., & Jewkes, R. (2004). 'Every six hours a woman is killed by her intimate partner': A national study of female homicide in South Africa. MRC Policy Brief No. 5, pp. 1-4.
- McFarlane, J., Campbell, J.C., Watson, K. (2002). 'Intimate partner stalking and femicide: Urgent implications for women's safety'. *Behavioral Sciences and the Law*, 20(1/2), pp. 51-68.
- McFarlane, J., Campbell, J.C., Watson, K. (2001). 'The use of the justice system prior to intimate partner femicide'. *Criminal Justice Review*, 26(2), pp. 193-208.
- McFarlane, J., Malecha, A., Gist, J., Watson, K., Batten, E., Hall, I., & Smith, S. (2004). 'Protection orders and intimate partner violence: An 18-month study of 150 Black, Hispanic, and White Women'. *American Journal of Public Health*, 94(4), pp. 613-618.
- McFarlane, J., Willson, P., Lemmey, D., Malecha, A. (2000). 'Women filing assault charges on an intimate partner: Criminal justice outcome and future violence experienced'. *Violence Against Women*, 6(4), p. 396-408.
- Mears, D.P., Carlson, M.J., Holden, G.W., & Harris, S.D. (2001). 'Reducing domestic violence revictimisation: The effects of individual and contextual factors and type of legal intervention'. *Journal of Interpersonal Violence*, 16(12), pp. 1260-1283.
- Medical Research Council. (2005). *Substance Abuse Trends in the Western Cape: Summary (2005)* <http://www.mrc.ac.za/adarg/adrg.html>. Retrieved: 10 April 2007.
- Milton, J.R.L. (1996). *South African Criminal Law and Procedure: Common Law Crimes (Vol II, Edition 3)*. South Africa: Juta and Co.
- Minekar, J.C. (2001). 'Evaluating criminal justice responses to intimate abuse through the lens of women's needs'. *Canadian Journal of Women and Law*, 13(1), pp. 74-106.
- Moe-Wan, A. (2000). 'Battered women in the restraining order process: Observations on a court advocacy program'. *Violence Against Women*, 6(6), pp. 606-632.
- Moult, K. (2003). *Justice Served: Exploring Alternative Mechanisms to Address Violence Against Women*. South Africa: University of Cape Town.
- Moult, K. (2005). 'Providing a sense of justice: Informal mechanisms for dealing with domestic violence'. *South African Crime Quarterly*, 12(June), pp. 19-24.
- Pagelow, M.D. (1997). 'Battered women: A historical research review and some common myths'. *Journal of Aggression, Maltreatment, and Trauma*, 1(1), pp. 97-116.

- Pagelow, M.D. (1984). *Family Violence*. New York: Praeger.
- Pagelow, M.D. (1981). *Woman-battering: Victims and Their Experiences*. Beverly Hills, CA: Sage Publications.
- Palarea, R.E., Zona, M.A., Lane, J.C., & Langhinrichsen-Rohling, J. (1999). 'The dangerous nature of intimate relationship stalking: Threats, violence, and associated risk factors'. *Behavioural Sciences and the Law*, 17(3), pp. 269-283.
- Parenzee, P., Artz, L., & Moulit, K. (2001). *Monitoring the Implementation of the Domestic Violence Act: First Report 2000-2001*. South Africa: University of Cape Town.
- Parry, C.D.H., Bhana, A., Myers, B., Pluddemann, A., Flisher, A.J., Peden, M.M. & Morojele, N.K. (2002). 'Alcohol Use in South Africa: Findings from the South African Community Epidemiology Network on Drug Use (SACENDU) Project'. Cape Town, South Africa: Alcohol and Drug Research Group, Medical Research Council.
- Peckover, S. (2003). 'I could have just done with some more help': An analysis of women's help-seeking from health visitors in the context of domestic violence.' *Health and Social Care in the Community*, 11(3), pp. 275-282.
- Resnick, H.S., & Aciero, R. (1997). 'Health impact of interpersonal violence 2: Medical and mental health outcomes'. *Behavioral Medicine*, 23(2). Retrieved from: Academic Search Premier, 16 May 2007.
- Rhodes, N.R., & McKenzie, E.B. (1998). 'Why do battered women stay?: Three decades of research'. *Aggression and Violent Behaviour*, 3(4), pp. 391-406.
- Roberts, H. (1997). *Doing Feminist Research*. London/New York: Routledge.
- Roberts, A.R. (1988). 'Substance abuse among men who batter their mates: The dangerous mix,' *Journal of Substance Abuse Treatment*, Vol. 5, 1988, pp. 83-87.
- Robinson, A., & Cook, D. (2006). 'Understanding victim retraction in cases of domestic violence: Specialist courts, government policy, and victim-centered justice'. *Contemporary Justice Review*, 9(2), pp. 189-213.
- Rosen, K.H. (1996). 'The ties that bind women to violent premarital relationships: Processes of seduction and entrapment'. In S.A. Lloyd and D.D. Cahn's (eds), *Family Violence from a Communication Perspective*. Thousand Oaks, CA, US: Sage Publications.
- Rude, D. (1999). 'Reasonable men and provocative women: An analysis of gendered domestic homicide in Zambia'. *Journal of Southern African Studies*, 25(1), pp. 7-27.
- Schurink, W.J., Snyman, I., & Krugel, W.F. (1992). *Victimisation: Nature and Trends*. Pretoria: Human Sciences Research Council.
- Schutte, N.S., Malouff, J.M., Doyle, J.S. (2001). 'The relationship between characteristics of the victim, persuasive techniques of the batterer, and returning to a battering relationship'. *The Journal of Social Psychology*, 128(5), pp. 605-610.
- Schwartz, A.H., Anderse, S.M., Strasser, T.J., & Boulett, T.R. (2000). 'Psychological maltreatment of partners'. In M. Hersen and R.T. Ammerman's (eds), *Case*

- Studies in Family Violence (2nd ed). Dordrecht, Netherlands: Kluwer Academic Publishers.
- Sharps, P.W., Laughon, K., & Giangrande, S.K. (2007). 'Intimate partner violence and the childbearing year: Maternal and infant health consequences'. *Trauma, Violence, & Abuse*, 8(2), pp. 105-116.
- Smith, A. (2001). 'Domestic violence laws: The voices of battered women'. *Violence & Victims*, 16(1), pp. 91-111.
- Smythe, D., Jeffhas, D., Hoffman-Wanderer, Y., Artz, L. & Chisala, S. (2007). Sexual offences and HIV: Challenges for magistrates. University of Cape Town, South Africa.
- Smythe, D., & Parenzee, P. (2004). 'Acting against domestic violence'. In W. Dixon & E Van der Spuy's (eds), *Justice Gained? Crime and Crime Control in South Africa's Transition*. Cape Town: Juta & Co, Ltd.
- Strebel et al. (2006). 'Social constructions of gender roles, gender-based violence and HIV/AIDS in two communities in the Western Cape, South Africa'. *Journal of Social Aspects of HIV/AIDS*, 3(3), pp. 516-528.
- Stroshine, M.S., & Robinson, A.L. (2003). 'The decision to end abusive relationships: The role of offender characteristics'. *Criminal Justice and Behaviour*, 30(1), p. 97-117.
- Strube, M., & Barbour, L.S. (1983). 'The decision to leave an abusive relationship: Economic dependence and psychological commitment'. *Journal of Marriage and the Family*, 45(4), pp. 785-793.
- Strube, M., & Barbour, L.S. (1984). 'Factors related to the decision to leave an abusive relationship'. *Journal of Marriage and the Family*, 46(4), pp. 837-844.
- Strube, M.J. (1988). 'The decision to leave an abusive relationship: Empirical evidence and theoretical issues'. *Psychological Bulletin*, 104(2), pp. 236-250.
- Swaminathan, H., Kes, A. & Ashburn, K., "Chapter 1: Conceptual framework and literature review," in ICRW, HSRC, AFD, *Women's property rights, HIV and AIDS and domestic violence: Research findings from two districts in South Africa and Uganda*, 2008, HSRC Press, Cape Town.
- The Body Shop International & UNICEF. (2006). *Behind closed doors: The impact of domestic violence on children*. UK.
- Tuerkheimer, D. (2004). 'Recognising and remedying the harm of battering: A call to criminalize domestic violence'. *The Journal of Criminal Law and Criminology*, 94(4), pp. 959-1031.
- Ulrich, Y.C. (1991). 'Women's reasons for leaving abusive spouses'. *Health Care for Women International*, 12(1), pp. 525-534.
- United Nations Children's Fund. (2000). 'Domestic violence against women and girls'. *Innocenti Digest*, No. 6.
- Usdin, S., Christofides, N., Malepe, L., & Maker, A. (2000). 'The value of advocacy in promoting social change: Implementing the new Domestic Violence Act in South Africa'. *Reproductive Health Matters*, 8(16), pp. 55-65.

- Waits, K. (1985). 'The criminal justice system's response to battering: Understanding the problem, forging the solutions'. *Washington Law Review*, 60, pp. 267-329.
- Walker, L. (1983). 'The battered women syndrome study'. In D. Finklehor, R.J. Gelles, G.T. Hotaling and M.A. Straus's (eds), *The Dark Side of Families: Current Family Violence Research*. Beverly Hills, CA: Sage Publications.
- Walker, R., Logan, T.K., Jordan, C.E., & Campbell, J.C. (2004). 'An integrative review of separation in the context of victimisation: Consequences and implications for women'. *Trauma, Violence & Abuse*, 5(2), pp. 143-193.
- Walklate, S. (2007). 'What is to be done about violence against women?' *British Journal of Criminology*, 48(1), pp. 39-54.
- Watts, C., & Garcia-Moreno, C. (2000). Violence against women: It's importance to HIV/AIDS prevention and care. *AIDS*, 14 (Supplement 3), p. S253.
- Weiss, E., & Gupta, G. (1998). *Bridging the Gap: Addressing Gender and Sexuality in HIV Prevention*. Washington, DC: International Centre for Research on Women.
- Weiss, E., Whelan, D., & Gupta, G. (2000). 'Gender, sexuality and HIV: Making a difference in the lives of young women in developing countries'. *Sexual and Relationship Therapy*, 15(3), pp. 233-245.
- Wesely, J.K. (2006). 'Considering the context of women's violence: Gender, lived experiences, and cumulative victimization'. *Feminist Criminology*, 1(4), pp. 303-328.
- Williams, S.L., & Mickelson, K.D. (2004). 'The nexus of domestic violence and poverty: Resilience in women's anxiety'. *Violence Against Women*, 10(3), pp. 283-293.
- Wolf, M.E., Holt, V.L., Kernic, M.A., & Rivara, F.P. (2000). 'Who gets protection orders for intimate partner violence?' *American Journal of Preventative Medicine*, 19(4), pp. 286-291.
- Wolf, M.E., Ly, U., Hobart, M.A., Kernic, M.A. (2003). 'Barriers to seeking police help for intimate partner violence'. *Journal of Family Violence*, 18(2), pp. 121-129.
- Wolf-Smith, J.H., & LaRossa, R. (1992). 'After he hits her'. *Family Relations: Interdisciplinary Journal of Applied Family Studies*, 41(3), pp. 324-329.
- Wood, J.T. (2004). 'Monsters and victims: Male felons' accounts of intimate partner violence'. *Journal of Social and Personal Relationships*, 21(5), pp. 555-576.
- Wood, K., Maforah, F., & Jewkes, R. (1996). 'Sex, violence and the construction of love among Xhosa adolescents: Putting violence on the sexuality education agenda'. CERSA (Women's Health), Medical Research Council.
- Wooldredge, J., & Thistlethwaite, A. (2005). 'Court dispositions and rearrest for intimate assault'. *Crime and Delinquency*, 51(1), pp. 75-102.
- Zoellner, L., Feeny, N., Alvarez, J., Watlington, C., O'Neill, M., Zager, R., & Foa, E.B. (2000). 'Factors associated with completion of the restraining order process in female victims of partner violence'. *Journal of Interpersonal Violence*, 15(10), pp. 1081-1099.

APPENDIX A

INTAKE SCRIPT

Important Notes:

1. You must fill in **ALL** sections of this form, except where not applicable.
2. Please make a carbon copy of the affidavit if possible.

<i>Circle:</i>			Court	_____
Gender:	Female	Male	Client (Full name)	_____
Race:	African	Coloured	File Number	_____
	Black	Indian	Court Worker/Researcher	_____
			Date of Obtaining Consent	_____
			Order Granted	_____
			Return Date	_____

INTRODUCTION:

Sometimes we do research to see how well the services at the courts are working and to see what people who experience domestic violence need from the courts.

(*Optional:* Research means that we ask the same questions to a lot of people and then we try and see if abused people experience the same problems in their lives and with the police and courts. Then we see what needs to be improved.)

Lately we have found that some people are not returning to court to have their protection orders finalised. Although it is very important to return to court, you don't have to. There are all sorts of very good reasons why people do not return. We want to find out why people do not return to court to finalise their protection orders.

QUESTIONS:

1. Do you have a protection order or maintenance order against you? YES NO
2. If yes, is it from the same person who you are getting a protection order against today? YES NO
3. If for whatever reason you cannot or do not want to come back to court, may we call you from MOSAIC's offices (021-761-7585) to find out why? YES NO

We will make sure that whatever you tell us is confidential and the no one working in the courts or anywhere else know that we have spoken to you about why you have not returned to court to finalise your protection order.

4. Is there a phone number I can call you at that will not put you in any danger if we do call you? YES NO
5. Can you please tell me what that number is? *Tel:* _____
6. Is there an alternative number I can call you at if I cannot reach you at that number? YES NO
7. Can you please tell me what that number is? *Tel:* _____
8. When is the best time to call you? *Time:* _____

9. Comments from Researcher Taking Consent:

Probe: *Did the applicant explain why she did not want to participate?*

ATTACH A CARBON COPY OF THE AFFIDAVIT *or*

Brief description of domestic violence incident(s) as per the affidavit:

APPENDIX B

MOSAIC INTAKE FORM

1 COMM		2 COURT		YOUR NAME & NO				DATE		CODE NAME	SEX	FEMALE	MALE
VENUE COUNSELLED		1 CAPE T	2 PHILIPPI	3 WYNB	4 BELLV	5 BISHOP	6 STRAND	7	8 STELLEN	BLACK	COLOURED		
		9 KULLSRV	10 MP	11 WELLING	12 KHAYEL	13 PAARL	14 BLUED	15 MUIZEN	16 SIMONS				
REFERRED BY		1 MOSAIC		2 SELF	3 SAPS	4 PROFES	5 FAMILY	6 NGO	7 FRIEND	8 COURT	9 OTHER		
CLIENT		1 INDIVID	2 COUPLE	3 ABUSER	4 FAMILY	4 GROUP	NO SESSION	DISTR NO	COMMUNITY CLIENT LIVES IN & NO				
ID NO						1 SINGLE	2 MARRIED	3 LIV TOGE	4 DIVORCE	5 SEPARA	6 WIDOWE		
AGE		1 7-19	2 20-39	3 40-59	4 60+	PROBLEM	1 ABUSE	2 LOSS	3 HW/AIDS	4 FSP	5 OTHER		
ABUSER EMPLOYED		1 PART		2 FULL	3 SELF	4 UNEMPL	6 SISTER	ABUSER'S JOB IF KNOWN					
ABUSED BY		1 PARTN	2 EX-PART	3 FATHER	4 MOTHER	5 BROTHER	6 TAKE & SELL THINGS	7 SON	8 DAUGHT	9 IN-LAWS	10 OTHER		
ECONOMIC ABUSE		1 GIVE LITTLE/NO MONEY		3 TAKE OR DEMAND MONEY	4 DONT PAY MAINTEN- ANCE	5 STARVING	6 SLAPPING SMAKING	7 DESTROY PROPERTY	8 THROW OUT POSSEVICT	9 OTHER			
PHYSICAL ABUSE		1 BEAT/PUNCH/ K/ICK/HIT		3 CHOKING	4 SHOOTING	5 SHAKING PUSH/PULL		7 BITING SPITTING	8 BURNT	9 THROW OBJECT			
PHYSICAL SYMPTOMS		1 STAB WOUNDS		3 BROKEN BONES	4 BRUISES SCARS	5 HEALTH CARE NEEDED							

SEXUAL ABUSE	1 INCEST	2 FORCED SEX RAPE	3 FORCED SEX OTHER	4 FORCED SEX IFO CHILD	5 FORCED ORAL OR ANAL SEX	6 SEXUAL ASSAULT	7 WITH-HOLD SEX	VERBAL ABUSE		
FORCED SEX/RAPE	1 PARTNER	2 EX-PARTNE	3 FRIEND/FAM FRIEND	4 TENANT NEIGHB	5 STRANGER	6 GANG		CRITICISING/INSULTING/CALL NAMES/ACCUSE		
PSYCHOLOGICAL & EMOTIONAL ABUSE	1 THREAT TO HARM	2 THREAT TO KILL	2 THREAT TO KILL	3 OTHER THREATS	4 PARTNER HAS AFFAIR	5 ABUSER ALCOHOL ABUSE	6 ABUSER DRUG ABUSE	7 GENERAL PSYCHO ABUSE	HAVE GUN OR ACCESS TO GUN	
NO OF CHILDREN AFFECTED	CRIM & BEHAVIOR	STREET CHILDREN	SCHOOL PROBLEMS	DRUGS DRINK	GENERAL PSYCHOL	PLAN OF ACTION	PROT/PEAC ORDER OR VARIATION	2 MAINTEN ORDER	3 WARRANT OF ARREST	4 FURTHER COUNSEL
CLEINT REF TO	1 COURT CLC/ATTOR	2 SAPS	3 MOSAIC CLINIC	4 NGO	5 SOCIAL WORKER	6 MEDICAL	5 SUPPORT GROUP	6 DIVORCE	7 REFER	8 OTHER
IPO GRANTED	1 YES	2 NO	RETURN DATE							
COURT APPL NO										

APPENDIX C

NON-RETURN INTERVIEW SCHEDULE

Important Notes:

1. You must fill in **ALL** sections of this form, except where not applicable.

<i>Circle:</i>			Court	_____
Gender:	Female	Male	Client (Full name)	_____
Race:	African	Coloured	File Number	_____
	Black	Indian	Court Worker/Researcher	_____
Age:	_____		Date of Interview	_____
			Original Return Date	_____
			Interim Order Granted	YES NO

INTRODUCTION:

Introduce yourself, then:

- Is this a good time to call?

If no:

- When can I call you back?

If calling a cell phone:

- Is there a landline nearby that I can call you on?
- Do you have enough time on your phone for me to speak to you for a few minutes?

If someone else answers (i.e. the respondent): Avoid answering “who is it?” and just say you will call back later at a more convenient time.

If you can proceed with the interview:

Do you remember when you applied for your protection order someone from MOSAIC talked to you about some research that MOSAIC was doing on why people do not return to court to finalise their protection orders?

We said that there are all sort of good reasons why people do not return to court and that we wanted to research the reasons why.

You said that I could call you if you did not return to court on your Return Date.

CONSENT

- | | | |
|---|-----|----|
| 1. Are you still willing to answer a few questions about why you did not return to court on the Return Date to finalise your protection order? | YES | NO |
| 2. Everything that we discuss is confidential. This means that this interview is private. No one will know you have done this interview and no one will be able to identify you in any way. Do you understand this? | YES | NO |

- | | | |
|---|-----|----|
| 3. You don't have to answer any questions you don't want to and you can stop the interview at any time. Do you understand this? | YES | NO |
| 4. You can ask me anything you want to know about this interview or the research. I will answer you as fully and honestly as I can. Is there anything you want to ask me? | YES | NO |
| 5. May I start the interview? | YES | NO |

A. INFORMATION ON THE INTERIM PROTECTION ORDER			
1. Do you have a copy of the interim protection order?		YES	NO
2. Who served the protection order?		Police	Sherriff Other (specify)
3. If you DO NOT have a copy of the protection order, why don't you have it?			
<i>If she does not have a copy of the order/never received one, move on to section B</i>			
4. Did the magistrate grant you everything that you applied for in the protection order?		YES	NO
5. <u>If not</u> , what did he/she not grant you?			
6. Did you ask for any special protection such as:			
6.1. Removal of the abuser from the house or premises?		YES	NO
6.2. Emergency money (emergency monetary relief)?		YES	NO
6.3. Removal of firearms?		YES	NO
6.4. Restricted contact with your children or dependents?		YES	NO
6.5. Police assistance with the collection of your belongings?		YES	NO
6.6. Other (please specify):			
7. Were these conditions granted in your order?		YES	NO
8. If yes, please tell me which ones?			

B. HOW THE RESPONDENT REACTED TO THE PROTECTION ORDER	
9. How did your partner/the abuser react when the protection order was served on him/her?	
	Tick <input type="checkbox"/> if yes
10. I don't know, I wasn't there	
11. I don't know, I haven't heard from him/her since	
12. I don't know, l/he moved out	
13. I don't know, because he fled/ran away	
<i>If "I don't know", please move on to section C.</i>	
<i>If the applicant <u>can</u> recollect his reaction, continue with this section</i>	

14. Did he/she ...	Tick ✓ if yes
14.1. Get angry?	
14.2. Threaten to hurt you physically?	
14.3. Threaten to hurt you in other ways?	
14.4. Threaten to kill you?	
14.5. Asked for your forgiveness <u>or</u> said he would not hurt you again?	
14.6. Asked you not to go back to court <u>or</u> to withdraw the order?	
14.7. Threaten to divorce you or leave you?	
14.8. Threatened to take legal action against you?	
14.9. Threatened to kick you out of or remove you from the house?	
14.10. Other (please specify)	

C. ASSISTANCE FROM THE POLICE

15. Have you EVER phoned or gone to the police after an incident of domestic violence?	YES	NO	
<i>If NO, move on to section D</i>			
16. Did you go to the police after this LAST incident? The one that made you go to the court?	YES	NO	
17. When you DID go to the police (<i>at any time</i>), did the police tell you to get a protection order?	YES	NO	
18. Did they tell you that you could lay a criminal charge as well as getting a protection order?	YES	NO	
19. If you wanted to lay a criminal charge, did they let you?	YES	NO	N/A
20. Did they give you a notice with information on it about your rights as a victim of domestic violence?	YES	NO	
21. Did you find the police helpful?	YES	NO	
22. IF you needed medical assistance, did they take you to a clinic or hospital?	YES	NO	N/A
23. IF you asked the court for the police to accompany you in collecting your belongings, did the police do so?	YES	NO	N/A

D. FIREARMS

24. Does your abuser <u>own</u> a firearm?	YES	NO
25. Has he ever <u>threatened</u> you with a firearm?	YES	NO
26. Did you ask the court to <u>remove</u> the firearm?	YES	NO
27. If yes, did the court make an order to remove it?	YES	NO
28. If yes, did the police remove it?	YES	NO

E. ASSISTANCE FROM THE COURT

29. Did you find the MOSAIC worker helpful?	YES	NO
30. Did you find the clerk of the court helpful?	YES	NO

31. Did <i>anyone</i> at the court explain to you how the protection order works?	YES	NO
32. Did they explain what to do if the protection order is breached by the person abusing you?	YES	NO
33. If yes, who explained this to you?	MOSAIC	CLERK
34. Did you get your interim protection order on the same day that you applied for it?	YES	NO
35. If no, how long after you applied for your protection order did you get the order?	YES	NO
36. Did you get a copy of an (interim) warrant of arrest?	YES	NO
37. Did the court clerk explain that you had to return to court to 'finalise' your protection order?	YES	NO
38. When you got the protection order did you feel safe?	YES	NO

F. WHY THE APPLICANT DID NOT RETURN TO COURT TO FINALISE THE PO

This entire section MUST be filled out.

39. What was the reason or reasons why you did not return to court to finalise the protection order?

40. Was there any other reason you did not come back? (*Must probe these options*). Tick ✓ if yes

What about ... Problems with the system (Systemic Reasons)

40.1. Didn't get a copy of the protection order from the courts

40.2. Didn't get any papers saying when I must come back to court

40.3. The respondent didn't sign the papers/fled

40.4. Did not realise I had to come back to court

40.5. Still with him, but I didn't realise that I could come back to court.

40.6. Lost confidence in the system

40.7. Other (specify)

What about ... Nature of Violence/Relationship

40.8. The abuse actually stopped?

40.9. The abuse changed? (for instance, now more verbal than physical)

40.10. He/she promised that they would not do it again?

40.11. Has the relationship become less abusive?

40.12. He/she pleaded with you, told you or warned you not to come back to court?

40.13. He/she threaten to harm you or kill you if you went back to court?

40.14. Other (specify)

What about ... Family Intervention/Pressure

40.15. Family members pressured you to resolve the problem without the court

40.16. Went back to my family home

40.17. Family intervened/spoke to abuser	
40.18. Other (specify)	
What about ... Financial Burden	
40.19. The financial burden of losing the 'breadwinner' was too much	
40.20. Could not afford the sheriff's fees	
40.21. I could not miss a day off work	
40.22. Child care was a problem	
40.23. Other (specify)	
What about ... Personal Reasons	
40.24. I wanted to withdraw my order (<i>state reasons why</i>):	
40.25. Felt abandoned/alone	
40.26. Felt too confused or frightened to continue	
40.27. Afraid of what would happen in court/the results of the case	
40.28. I was afraid he would go to jail	
40.29. Other (specify)	
What about ... Personal Crisis	
40.30. Death in the family	
40.31. I was sick/family member was sick	
40.32. Other personal crisis (specify)	
What about ... Decided to get other help	
40.33. Decided to get help from a professional (i.e. a social worker) ?	
40.34. Got help from a religious leader, church or the MJC? (Specify by circling)	
40.35. Went to a community court or street committee?	
40.36. Other (specify)	

41. Do you want to reapply for a protection order?	YES	NO
42. Do you want any help from MOSAIC?	YES	NO

F. CLOSING QUESTIONS

43. Is there anything you want to know or ask me about the protection order or this research?

YES

NO

44. IF YES ...

FINAL STATEMENT:

I cannot thank you enough for taking the time to talk to me about this. What we talked about today will help other people in the same situation. I am really grateful for your time.

If you need help with your situation, please do not hesitate to contact us.

APPENDIX D

BRIEF REPORT:

FINDINGS FROM 1300 ADDITIONAL AFFIDAVITS

In addition to the 503 interviews conducted with victims of domestic violence who applied for protection orders but failed to finalise their IPOs, the MOSAIC court workers also collected approximately 1300 affidavits from applicants who had consented to participating in the research, meaning they had agreed to be interviewed, but who ultimately had not been included in the final number of applicants who were interviewed and thus comprised the final sample. The narratives from these affidavits contain data pertinent to the attrition project and again highlight the nature and extent of the abuse suffered by the applicants at the hands of their abusers. These affidavits were therefore carefully scrutinised and the findings emerging from these narratives are set out below.

From the approximately 1300 affidavits a total of 1201 affidavits were ultimately utilised for inclusion in this section. Affidavits were excluded either because they were, upon closer inspection, illegible, incomplete, the consent forms attached were incomplete, and/or the forms did not match the information appearing on the affidavit. The data emerging from the 1201 affidavits in many instances mirrored the findings from the original sample of 503 applicants, as well as findings from other studies, in that it revealed the following:

- A majority of the applicants were women seeking protection from their intimate partners – 65% (n=776); with the next biggest group being women applying for POs against a family member – 21% (n=250).
- Men seeking protection from an intimate partner amounted to 11% (n=128) of the 1201 applicants, while male family member applications totalled 4% (n=47).
- Verbal, emotional, psychological abuse was noted in 90% of cases (n=1083); while physical abuse was reported in 64% of cases (n=766);

- In 12% of cases (n=150) applicants noted that their abusers had forced them to have sex/raped them. All of these cases were women, with 149 cases being women in the intimate partner category and 1 in the family member category;
- 56% of the applicants (n=670) mentioned that their abusers had threatened to kill them – within each of the categories the following cases reported threats to kill or commit more violence: 57% of the women in the FIP category; 54% of women in the family member category; 48% of men in the MIP category and 66% of men in the family member category;
- In 40% of cases (n=485) applicants noted that the abuse happened while their abusers were under the influence of alcohol and/or drugs – the presence of drugs and/or alcohol was more prevalent in cases in the family member categories – 55% - FFAM; 49% - MFAM, than in the intimate partner categories, 37% - FIP; and 29% - MIP;
- In 23.5% of cases in the female intimate partner category, women mentioned that their abusers accused them of having affairs/sleeping around with other men, or were saying that the child/children were not his; in contrast, accusations of infidelity were noted in 12% of cases in the male intimate partner category;
- 11% of the applicants mentioned in their affidavits that children were being either physically and/or sexually abused; while in 16% of cases applicants stated that children were witnessing the abuse they suffered;
- 4% of the female intimate partner applicants noted that they were experiencing abuse while being pregnant;
- In 14% of cases applicants mentioned that their abusers had chased them from the shared residence, sometimes along with their children;
- In 6% of cases applicant reported their abusers threatened to burn down, sell or destroy the shared residence;
- The use of a weapon during abusive episodes was reported in 29% of cases (n=349). Knives were most commonly used, reported in 38% of cases; bricks and stones used in 13% of cases; firearms in 10% of cases; axe or a hammer in 9%; bottles – bottle-necks of beer bottles in

7% of cases and sharp objects in 3% of cases where a weapon was mentioned.

- In 8% of cases applicants in the intimate partner categories mentioned that their abusers refused to accept that their relationship was over, 11% in the FIP category and 10% in the MIP group.

APPENDIX E

REPORT ON POST-RESEARCH WORKSHOPS WITH DV COURT CLERKS

INTRODUCTION

GHJRU and Mosaic conducted three one-day training workshops for clerks of all the Domestic Violence Courts throughout the Western Cape and rural districts.

The logistical details of the workshops were as follows:

No.	Date	Venue	Participants
1	8/6/2010	Mosaic Center Wynberg	12 DOJ Clerks
2	10/6/2010	Worcester Magistrate's Court	22 DOJ Clerks
3	14/6/2010	Oudtshoorn Magistrate's Court	11 DOJ Clerks 6 VEP Volunteers 1 Social Auxiliary Worker 2 Community Workers

The purpose of the workshops was to share the outcomes of the research with the clerks of court and to garner their input on the findings. The following questions were used to guide focus-group discussions among the clerks:

- *What are the challenges that you face in your day to day work?*
- *What resources do you need to perform your tasks well and are these resources available?*
- *What are challenges that SAPS present to you and what can you do about this?*
- *What recommendations would you make to your department to improve service delivery?*

The workshops were well attended and interactive. From the expectations listed by participants in all 3 groups, it seemed that they were expecting training on Domestic Violence and the Domestic Violence Act. There were many questions raised on the dynamics of domestic violence and how participants perceived the role of the courts and NGO's in addressing this issue. It was clear that clerks wanted to improve their understanding of domestic violence, despite working on these issues on a daily basis. They found the statistics relating to systemic obstacles for applicants particularly alarming and their valuable role as the first link in the application process was debated at length. Applicants' expectations that court clerks were knowledgeable on the subject of domestic violence and had a comprehensive grasp of the DVA was also highlighted as 'concern' for clerks.

While the workshops focussed on the results of the Attrition study, they often turned into debriefing sessions for clerks. While there were many successful stories shared about work at individual courts, this was noticeably in the minority. Clerks felt supported by each other and could easily identify and relate to each other regarding common challenges. The only difference in whether they worked at a rural or metropole court, was in the magnitude of the challenge.

The following sections summarise the key challenges of and recommendations by clerks of the courts.

Challenges that court clerks face in their day to day work with the Domestic Violence Act:

- The lack of co-operation from the police, particularly in terms of service of the order
- The overwhelming workload of clerks, with more than 20 applicants for protection orders per day, per clerk.
- The differential application of the Domestic Violence Act by Magistrates, including procedures and interpretation of the Act.
- Lack of clarity about job descriptions and lack of adequate supervision of clerks. Tensions between magistrates and clerks were also cited here.

- Lack of privacy for applicants (sharing of offices during application procedure).
- No provision for debriefing.
- Return of service orders are not being returned on time.
- Clients misinformed by police, who are themselves misinformed about their duties under the Act the rights and remedies available to victims.
- Clients that don't return and make numerous applications (sometimes to different courts). There is no way of tracing these.
- Variations of the protection order within quick succession of it being granted that hampers the process of issuing warrants of arrest.

Resources required by clerks in order to perform their duties well:

- Competent, skilled staff
- Budget to cover expenses
- Better equipment such as computers and photocopiers
- Training
- List of resources such as shelters, NGOs, hospitals, etc
- Specialised DV magistrates
- Information booklets
- Stationery
- Interpreters
- Volunteers to help fill in forms and for emotional support
- Waiting rooms and proper signage
- Full time clerks for DVA applications
- Information desk
- Support for hearing-impaired clients
- The assistance of sign language specialists

Specific challenges that the South African Police Service present for the clerks:

- SAPS do not want to assist people over weekends.

- No assistance is given to complainants of domestic violence without a warrant of arrest.
- They are not adequately trained on their duties and the remedies available to complainants in relation to the Act. Lack of knowledge about how to fill out, read and execute the forms is of particular concern. SAPS behave as though serving orders is a 'favour' to the courts and if clerks do not have a good relationship with them, SAPS members sometimes refuse to perform this task.
- They do not know the difference between protection order and peace letter.
- Police don't put enough effort into finding addresses of respondents (accused) or complainants.

Recommendations by the Clerks of the Court:

The fact that some clerks had no knowledge of, or had never seen the DVA, is something to take serious note of. It is therefore to be expected that knowledge of and training about the DVA featured strongly in the recommendations offered by the court. For instance, clerks were adamant that the Department of Justice needs to ensure that clerks are trained on the Act *before* rotating to the DV court. Copies of the DVA need to be given to each newly rotated clerk working in the DVA court. However, it was reported that some established clerks do not even have a copy of the DVA. Some clerks reported having received *no* training to work in DV courts at any stage of their clerkships. In rural courts, in particular, there was the general expectancy that a clerk would be “multi-skilled” as she would be required to work in all the courts – domestic violence, children’s, and maintenance courts, sometimes acting – as the interpreter as well.

Sadly, a large number of clerks had no knowledge about the DVA, had no copy of the DVA and/or had never seen the DVA, had no knowledge on what constituted domestic violence, nor did they have clarity on the role of the police as stipulated in the DVA. In fact, some clerks reported that they were not “allowed” to download the DVA as this was a printing cost for the DOJ.

Apart from knowledge and training of the Act, the clerks had some final recommendations to improve services to victims and to reduce the attrition of domestic violence cases in the criminal justice system:

- Employ competent, specialised staff in every area of DVA work, including clerks, magistrates and SAPS officials.
- Create a mechanism to hold clerks accountable for their cases. For instance, when clerks take leave substitutes pile up work that waits for clerk to return to work. This leaves applicants for protection orders at risk. There are also no accessible mechanisms to for applicants to make complaints at the court level.
- The Department of Justice needs to consider establishing, through more partnerships, support services for traumatised victims and their children.
- Inform clerks of all *new* legislation and relevant *cases* relating to matters of the family.
- Sentencing options should be fully exercised. Respondents of protection orders tend to 'get off' on a verbal warning by the court for breaches of the protection order.
- Prosecutors need to inform clerks more *timeously* about the need to draw files.
- Resources must work (for instance, in one court, the photocopier has been out of toner for 5 months).
- Clerks require computers and printers to complete forms electronically, rather than manually. This will also aid with the tracking cases and ensure timely processing of cases.
- Emphasise of joint training for DOJ clerks and SAPS on the DVA. That way each agency is trained on the functions of the other and will be able to better understand their limitations and conditions.
- There needs to be far more regular meetings between clerks and court supervisors/managers. Relationships with some court supervisors/ managers and magistrates were challenging and clerks reported relying on colleagues for training, assistance and guidance to perform their tasks. (Clerks reported that they were simply "instructed" to perform duties and often had to rely on colleagues for assistance. They also reported incompetent managers as the source of their challenges and felt devalued as members of court staff).

- Finally, regular debriefing sessions should be arranged for clerks. The stories they are told and the conditions under which they work are stressful and can affect both the court environment as well as attitudes towards complainants. Many clerks also reported “taking work home” because they lacked the skills to separate themselves from their work.