

**ASSESSING THE CHRONIC BARRIERS TO JUSTICE FACED
BY DOMESTIC VIOLENCE SURVIVORS IN THE WESTERN
CAPE.**

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Word count: 17216 from the first word of the first chapter to the last word of the last chapter, excluding references.

Referencing style: APA 7th edition

Research dissertation/ research paper presented for the approval of Senate in fulfilment of part of the requirements for the MPHIL in Criminology, Law, and Society in approved courses and a minor dissertation/ research paper. The other part of the requirement for this qualification was the completion of a programme of courses. I hereby declare that I have read and understood the regulations governing the submission of dissertations/ research papers, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation/ research paper conforms to those regulations.

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Acknowledgments

The highest honor is dedicated to my Lord & Saviour Jesus Christ. He is, was, and always will be with me like a mighty warrior through the course of this degree and my life.

Mom and dad, thank you for the countless opportunities you have afforded me. For your constant “ons is trots op jou, my kind” reassurances, and never letting me quit, thank you.

You are the absolute best part of me, I love you.

My powerhouse professor, Kelley Moulton, thank you for teaching me, being patient with me, and inspiring me to show up as the best version of myself daily. Thank you for always holding space for not only me but our entire cohort. Because of you I can now boldly go forth and be Batman!

I want to extend my gratitude to the MOSAIC staff for assisting me with this research.

Tarisai, Ronel, and Chantal thank you for answering my questions graciously. Your support has been nothing short of incredible.

This has been the most wonderfully challenging experience of my life. I am so thankful.

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Abstract

This dissertation examines the chronic barriers to justice faced by victims of domestic violence survivors in the Western Cape. It delves into the factors causing domestic violence survivors to disengage from the criminal justice system and investigates why many victims do not follow through with finalizing their protection orders. The high attrition rate in domestic violence cases in South Africa is a significant issue because it hinders the delivery of justice for victims and perpetuates cycles of abuse. When victims disengage from the criminal justice system or do not follow through with finalizing protection orders, they may remain in dangerous situations without adequate protection. This lack of closure and resolution can lead to continued incidents of abuse, putting victims' safety and well-being at risk. Additionally, the high attrition rate can erode trust in the justice system among domestic violence survivors, further discouraging them from seeking help in the future. Addressing this issue is crucial for providing effective support and protection to domestic violence survivors and holding perpetrators accountable for their actions.

The study involved a thematic analysis of qualitative case notes recorded in 154 preselected case files, with data entry completed using Survey Monkey. The case files were collected by MOSAIC staff between January 2022 and December 2022. The survey encompassed 16 questions, targeting various aspects such as court location, follow-up reachability by MOSAIC, client engagement with SAPS for case filing, court appearance on designated dates, type of abuse experienced by clients, and reasons behind incomplete protection order processes.

The data indicates that survivors refrained from reporting domestic violence to SAPS due to unfair and arbitrary treatment by SAPS officials. Furthermore, survivors often decide not to finalize protection orders when abuse cases and the respondent's behavior improves. MOSAIC workers report that SAPS officials advised survivors to obtain a restraining order first because they take back their abusers which results in wasted time and resources. Additionally, the data also highlights that some clients are unaware of the processes that need to be followed when dealing with protection order violations. Clients are also unaware of their option to reapply for an interim protection order if they have withdrawn their application or missed the return date, leading to a miscarriage of justice.

The MOSAIC Court Case Monitoring Officer contacts clients seeking assistance to ensure they have received the necessary services. However, clients are at varying stages in the protection

order process, and many do not return after receiving an interim or final protection order. This causes challenges in tracking clients through the justice system and assessing whether they have received the required support.

A reduction in the high attrition rate in domestic violence cases can be achieved through SAPS officials demonstrating more compassion and understanding, as mandated by the Domestic Violence Act 116 of 1998 (DVA) and the Domestic Violence Amendment Act 14 of 2021 (DVAA). Additionally, an improved understanding of the interim and final protection order process by applicants is crucial.

Keywords: domestic violence, interim protection order, final protection order, chronic barriers

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Chapter 1 Introduction

Preview

This chapter serves as an introductory exploration into the multifaceted realm of the barriers to justice faced by survivors of domestic violence in the Western Cape, and attrition in domestic violence cases. Beginning with a contextual overview, it traces the historical trajectory of domestic violence, delineating its evolution within legal and societal frameworks. Subsequently, the chapter offers a brief overview of the information within the case files provided by MOSAIC, thereby laying the groundwork for the analysis. Lastly, this chapter delves into an explanation of each component of the research question, therefore setting the scene for a nuanced exploration of the intricacies surrounding the barriers to justice and attrition in the domestic violence sphere.

Introduction

This research assesses the chronic barriers to justice for survivors of domestic violence and explores their impact on the process of obtaining justice between the interim and final protection order. The aim is to understand why survivors of domestic violence withdraw from seeking justice, leaving the process of obtaining an interim or final protection order unfinished. This research is significant because it delves into the clients' experiences, shedding light on why they might be inclined to avoid seeking assistance from SAPS, the courts. The importance of access to justice for victims of domestic violence cannot be overemphasized. Access to justice is a crucial factor in fostering feelings of empowerment and achieving equal social and economic development (Beqiraj and Stefanelli,2023). Additionally, the concept of access to justice ensures that every South African citizen has the right to present any matter before a court of justice or any appropriate body, in public (South African Human Rights Commission,2018,p.2).

There are several issues domestic violence survivors face during their attempt at justice. The overarching issues include but are not limited to poor knowledge of one's rights and the law, a lack of financial resources, and being a member of a vulnerable group. Furthermore, there are several factors influencing attrition in domestic violence cases. Survivors of abuse often withdraw their application for an interim protection order within five days (Barrow-Grint,2016) after the application, contributing to the attrition in criminal cases and the continued occurrence

of abuse. A retraction of an allegation of abuse may be caused by fear, post-traumatic stress disorder (PTSD), or even coercion (Barrow-Gint,2016, as cited by Gekoski et al.,2023). The combination of societal and legal systems factors increases the likelihood against the fact that the complainant will continue with the protection order.

Historically, violence against women within the sanctity of marriage was a private matter (Hoyle,1998, p.1). The law was viewed as the ultimate solution for addressing this type of violence, because domestic violence issues were expected to be resolved within the confines of the home, without involving the police or the courts (Hoyle,1998, p.1). These attitudes left survivors desolate and at the mercy of their abusers. To the aid of these survivors, the Domestic Violence Act 116 of 1998(DVA) and the Domestic Violence Amendment Act 14 of 2023(DVAA) were passed to provide survivors with the maximum protection from abuse that the law can provide. These laws were created in compliance with South Africa's international and domestic duty to protect survivors of gender-based violence and domestic violence (Ncube,2021, p.6). Additionally, the legislation is extensive in its definition of domestic violence. Domestic violence is broadly defined as a pattern of behavior within any domestic relationship, where one person seeks to gain or maintain power and control over the other (Domestic Violence Act 116 of 1998). Moreover, these acts have several sections detailing the different variations of domestic violence, first responders' duty to assist survivors and inform them of their rights, and the application process for a protection order as well as various rights that apply to survivors. The issue of domestic violence is addressed by the DVA and the DVAA by providing a protection order. The law allows for an ex parte interim protection order (IPO) as a mechanism to protect the applicant immediately. This ex parte IPO must be finalized on the return date when the respondent has an opportunity to present their version of events if the respondent decides to challenge the finalization of the protection order. This process is not as seamless as the above-mentioned explanation makes it out to be. For a protection order to be granted several factors, such as access to the family or shared home, visitation with children, per the instruction of the South African constitution and monetary relief have to be taken into consideration by the presiding magistrate (Artz,2004, p.25) when granting the protection order.

Furthermore, in collaboration with MOSAIC Training, Service and Healing Centre, this research analyses data from case files, that have been opened by MOSAIC court support workers, which details the plight of survivors of domestic violence before, during, and sometimes after applying for a protection order. These case files have aided in understanding

where in the process victims fall out of the system and what causes attrition in domestic violence cases in Cape Town. MOSAIC is a South African non-government organisation (NGO) that exists to empower women and girl survivors of domestic violence by creating an enabling environment for them through their healing process and ensuring that they become positive, and active drivers of change in their own lives (MOSAIC Training, Service and Healing Centre, n.d.)

Unpacking the research question

To fill in the gaps in the research, this research assesses the chronic barriers to justice for survivors of domestic violence and how these barriers affect the processes of attaining justice between the interim and final protection order. Additionally, this research assesses how these barriers affect the process of attaining justice for survivors of domestic violence. In this section, I provide a rundown of the key elements of my research question, as well as the objectives of this research. I explain key definitions and focus on the main issues I explore in this dissertation.

Research objectives

The objectives of this research are to identify the barriers to justice faced by domestic violence survivors in the Western Cape, as well as to understand the impact these barriers have on the survivors' ability to access justice and obtain protection and support for the needed stakeholders.

Chronic barriers

For this dissertation, 'chronic barriers' are defined as the hardships endured by survivors of domestic violence in the justice attainment process. This study focuses on the chronic barriers that prevent survivors of domestic violence from finalizing their protection order and cause them to retreat from seeking justice. Chronic barriers may include issues like poor service provision from SAPS, which includes a negative attitude towards victims who seek to open a case of domestic violence, a lack of understanding about the processes of applying for a protection order, and how to navigate the court system. This dissertation considers the chronic barriers that are created by the structural, social, and personal barriers faced by survivors as they seek response and justice.

Survivors and clients

This study refers to any person who has experienced abuse, applied for a protection order, and sought assistance from SAPS, the court, or NGOs like MOSAIC in an attempt to mitigate their abuse. Many organizations, including MOSAIC, prefer to acknowledge individuals who have experienced domestic violence, as survivors. Additionally, this dissertation refers to people who have specifically sought assistance from MOSAIC as clients.

Domestic Violence

Domestic violence is discussed using the DVA 116 of 1998 and the DVAA 14 of 2021. The DVA replaced the Prevention of Family Violence Act 133 of 1993 (Sibisi, 2016). The DVA 116 of 1998 (section 1) defines sexual, emotional, psychological, and economic abuse as forms of violence that can be perpetrated within a domestic relationship and will be used as such in this dissertation. Additionally, the DVA reiterates that a domestic relationship can be with any individual the survivor resides with currently or resided with in the past, including family members and intimate partners. The DVA also includes intimidation, harassment, stalking, and destruction of property as forms of domestic violence (DVA,1998, section 1). A survivor of domestic violence is eligible for a protection order if they are in a domestic relationship with the offender. Under the DVA, a domestic relationship includes individuals who are cohabiting, familial ties, intimate relationships, and married or previously married persons (Domestic Violence Act 116 of 1998, section 1, Moulton et al,2023, p.7). The DVAA also includes same-sex couples in its definition of a domestic relationship. These laws are progressive in their definitions of domestic violence, domestic relationships, and the different forms of abuse which reflect great strides in International Human Rights Law, by acknowledging domestic violence as a blatant violation of every survivor's human rights (Parnes,2018, as cited by Moulton et al,2023, p.7). The DVAA 14 of 2021 explicitly defines what each form of abuse entails legally and includes clear instructions to SAPS about their duty to assist the complainant and inform the complainant of their rights (Domestic Violence Amendment Act 14 of 2021, section 2) as well as enforce the protection order. Furthermore, the DVAA also instructs any adult person who knows or suspects on reasonable grounds that incidences of domestic violence have been committed to report their information to the SAPS (Domestic Violence Amendment Act 14 of 2023, section 2B). The meticulously set out laws in the DVA and DVAA is to ensure that

survivors are treated fairly, without bias, and are not subjected to secondary victimization and re-traumatization.

Domestic Violence is a global crisis that continually destroys the lives of its survivors and is one of the most pervasive forms of violence against women in South Africa. According to Statistics (Stats) SA (2018/19), 50% of violent acts such as physical abuse and rape were committed by someone the victim knows personally. The inconsistent and incoherent application of the law by SAPS and the courts greatly limits the effectiveness of legislation and discourages protection order applicants from continuing the legal process (Artz, 2011). According to the DVA, the course of justice involves going to the magistrates' court to apply for an IPO and opening a criminal case against their abuser at the police station (Moult, Waldman, and Backe, 2023, p.2). The research by Moult et al. (2023) shows that survivors who fail to correctly complete applications or follow the correct processes are often to blame for the lack of justice received. However, it is essential to consider that language barriers, as these forms are mostly in English; and the foreignness of the resolution to the applicants (Moult, 2005/6) can result in the correct completion of the application resulting in a lapse in justice.

Interim protection order (IPO)

An interim protection order is the initial step in the justice attainment process as prescribed in the DVA and DVAA. An IPO is a court order intended to bring immediate relief and protection to the survivor (applicant or complainant) temporarily until a final protection order has been granted (South African Police Service, 2014). Applications for an IPO must be done at a magistrate's court by completing the required application forms. Complete applications are given to the magistrate, who decides whether or not to grant the IPO based on *prima facie* evidence that the complainant is suffering harm as a direct result of domestic violence (Moult et al. 2023, p.8).

After an IPO has been granted, the applicant and the alleged perpetrator (respondent or defendant) will receive a return date on which a final protection order may be granted by the magistrate (South African Police Service, 2014). Once the IPO or PO has been granted, it must be served to the respondent. Once the respondent has been served, the IPO or PO comes into effect (Moult et al. 2023, p.8).

Furthermore, an IPO does not guarantee that the violence will cease. Vogt and Greef (2018) highlighted that an IPO had an insignificant influence on the survivors' personal, communal, and environmental well-being, and also did not reduce the victim's angst. An interim protection

order is essentially a document, valuable only when the survivors are aware of the necessary steps to take if the respondent breaches the order. The effectiveness of an IPO relies on the correct application of the law by both SAPS and the courts.

Barriers affecting the swift receipt of an IPO include the disparities in application forms across different courts. These forms are the survivors' initial and most crucial opportunity to receive an IPO (Moult et al. 2023, p.9). Incorrect or incomplete application forms can hinder the justice attainment process for survivors, potentially leading to prolonged abuse. Disparities in forms often arise due to varying interpretations of data needs and a lack of standardized guidelines for information collection, leading to inconsistencies in content and structure. Additionally, the IPO acquisition process disproportionately disadvantages complainants, primarily due to socio-economic factors, including burdens associated with childcare costs and employment obligations. These factors may result in the complainant not attending court thus the case is struck off the roll, resulting in a lapse of justice.

Final protection order (PO)

A final protection order is a permanent court order that does not lapse after a certain period and does not need to be served to the respondent to be considered valid (Sibisi, 2016, p.22). A final protection order is issued after the interim protection and when the magistrate has heard all the necessary evidence to support the applicant's claims (Naidoo, 2006, as cited by Furusa and Limberg, 2015, p.3). If the respondent does not show up to court on the return date, which is given when the applicant applies for an interim protection order, the interim protection order is extended, and the case is postponed to another date. There is no punishment stipulated in the DVA for a respondent failing to appear in court on the return date. Essentially, this allows the finalization of protection orders to be at the respondents' discretion and can draw out the finalization process unnecessarily.

Moreover, once the PO has been granted and comes into effect, the police are obligated to arrest the respondent if they have reason to believe that the order has been contravened, and the complainant is at risk of domestic violence (Domestic Violence Act, section 8, as amended by the Domestic Violence Amendment Act.) Issues concerning the enforcement of the protection order include that contraventions of the PO are not reported to the police for a myriad of reasons, relating to a lack of knowledge about the law or fear of further retaliation by the respondent.

Lastly, the period between the interim protection order and the final protection order is a crucial yet under-researched phase in the realm of legal intervention against domestic violence. Further investigation and analysis of this space is warranted to comprehensively understand the dynamics, implications, and potential for optimizing protective measures for victims of domestic violence.

Justice attainment process

This dissertation defines the justice attainment process as the course each survivor of domestic violence follows in an attempt to obtain relief from the abuse they have endured. Justice looks different for each victim of domestic violence. Although the Merriam-Webster dictionary (2023) defines justice as the *maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishment*, however, some victims simply want the abuse to end, whereas other victims want their abuser to be punished to the fullest extent of the law. Vetten (2014) (as cited by Furusa and Limberg, 2015, p.3) highlights the fact that survivors have the autonomy to decide whether to file a police report, as there exists no legal obligation mandating their engagement with the police. Thus, the decision to pursue criminal charges against the defendant rests within the survivor's prerogative and discretion.

In South Africa, justice attainment for survivors is influenced by legal frameworks and cultural dynamics. The country has robust legislation in place to address domestic violence, notably the DVA and DVAA. This legislation provides comprehensive frameworks for the protection of victims and the prosecution of offenders. However, despite legislative efforts, challenges persist in achieving justice for domestic violence survivors. These challenges include underreporting due to a lack of trust in the criminal justice system and barriers to accessing legal assistance. Additionally, systemic issues such as backlogs at the courts due to a high number of applications mean that the system struggles to meet the needs of complainants. Inadequate training of law enforcement officials also hinders the effective implementation of legal protections.

Nonetheless, initiatives to improve justice attainment for survivors include specialized domestic violence courts, victim support services, and awareness campaigns aimed at changing societal attitudes toward domestic violence and abuse. Furthermore, civil society organizations

such as MOSAIC play a crucial role in advocating for the rights of survivors and holding authorities accountable for legal protections.

Despite these efforts, significant gaps remain in ensuring justice for all domestic violence and abuse survivors. Continued collaboration between government agencies, civil society, and the community is important to address systemic issues, improve access to justice, and provide comprehensive support for survivors.

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Chapter 2 Literature Review

Preview

The chapter commences with an exploration of extant research focusing on the attrition dynamics within domestic violence cases after the issuance of interim protection orders. Then, it delves into an examination of the efficacy and application of the Domestic Violence Act 116 of 1998 and the Domestic Violence Amendment Act 14 of 2021, elucidating their role in facilitating requisite support mechanisms within the purview of the criminal justice system. Furthermore, attention is directed toward prominent advocacy organizations such as MOSAIC Training, Service, and Healing Centre, alongside an analysis of existing deficiencies in current research. Additionally, the chapter appraises the societal response to domestic violence in South Africa, while addressing the phenomena of secondary victimization often perpetuated by initial responders and community stakeholders. Of paramount significance, this chapter scrutinizes the procedural intricacies entailed in the pursuit of justice after the grant of interim protection orders.

Understanding the Dynamics of Domestic Violence and Legal Challenges in South Africa

The age-old tale of domestic violence is not particular to South Africa and before the 1970's domestic violence in marriage was not brought before the court (Clark,2011) because it was not deemed a criminal or even civil offense. This proves that women's right to safety and security only became important after feminists began recording incidents of husbands physically abusing their wives and coined it "wife beating", and ultimately began referring to victims of abuse as survivors to show their unwillingness to be passive about their abuse (Clarke, 2011). Since the 1970s women have gained more basic human rights and are now viewed as separate from their husbands or domestic partners. That, however, does not mean that women have stopped enduring different forms of abuse under the hands of men, but what has changed is that women no longer take the abuse lying down. In 1998 the Domestic Violence Act No.116 was passed to present survivors of domestic violence the best possible defence from domestic abuse that the state can provide. Additionally, the Domestic Violence Act No. 116 of 1998 intended to allow for the issuing of protection orders to victims of domestic violence as swiftly as possible to stop the abuse the victims endure.

have been conducted by key researchers in the field (Moult and Parenzee 2000-2001; Artz,2006; Smythe,2005, MOSAIC,2021) to understand what barriers victims of domestic violence face in the criminal justice system, how the domestic violence act is implemented, and why the attrition rate in domestic violence cases in South Africa is so high. According to the SAPS Crime Statistics for 2021-2023, approximately 10.6 women are killed daily. The trends noticed by The Outlier (2024) show that 27% of victims were killed by their current partner and 5% were killed by their former partner. These statistics highlight the failure of duty bearers like SAPS, court clerks, and magistrates to give women the best possible assistance and ensure that their right to a speedy trial is upheld, as stated in section 35(3)(d) of 1996 in the South African Bill of Rights (Van der Linde, 2022). The issue of attrition within the criminal justice system warrants careful examination beyond superficial attribution. Artz's (2006) research highlights multifaceted factors contributing to this phenomenon. For instance, empirical evidence reveals that a considerable portion of survivors -36.6%- opt not to pursue the finalization of protection orders because the abuse stops after the IPO is granted (Artz,2006). Furthermore, resource constraints, including challenges such as the inability to secure leave from work for court attendance, and a lack of comprehension regarding legal proceedings, also emerge as pivotal barriers. The inadequate support from law enforcement, exemplified by SAPS, compounds the plight of survivors. Artz's study conducted in collaboration with MOSAIC (2006), illuminates the systemic gaps within the legal apparatus and the indifferent stance of pertinent stakeholders in fulfilling their obligations under the DVA. Reluctance to report domestic violence due to ineffective assistance or support from law enforcement, results in a significant underreporting of cases, which falsely lowers the attrition rate in these cases. A lack of reporting due to poor assistance deters survivors from pursuing further legal action beyond the initial reporting stage. Consequently, the attrition rate increases as cases are lost at various stages of the criminal justice system due to the survivors' reluctance to engage with the legal process. Therefore, addressing the barriers to reporting domestic violence are crucial step in reducing the attrition rates and ensuring effective intervention and justice for survivors.

The Committee on the Elimination of Discrimination against Women (CEDAW) established that out of 143,824 protection order requests between 2018 and 2019, a mere 22,211 protection orders were granted. This often results in insufficient measures such as instructing the abuser to sleep in another room in the same house as the survivor. Such responses directly contribute to ongoing violence and a lack of trust in the legal system by survivors (Office of the High Commissioner for Human Rights, 2021). Overall, although there have been steps to improve

the legal framework, significant challenges remain in effectively addressing and mitigating domestic violence in South Africa.

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It is domestic, and it is violent, what the law says

The Domestic Violence Act is deemed progressive (Mogstad, Dryding, and Fiorotto, 2016, p. 2) and forward-thinking due to its extensive descriptions and remedies, however, although the act complies with international obligations to protect victims of domestic violence, it does not mean that it is adequately applied by the different branches of the criminal justice system.

The Domestic Violence Act No. 116 of 1998 was implemented as a replacement for the Family Violence Act and is now the principal regulation that articulates the modus operandi of victim protection (Burger and Huyser, 2022). According to the Domestic Violence Act No. 116 of 1998, any member of SAPS is legally obliged to help the applicant, however it is required by the circumstances. These services include transporting the victim to a shelter, advising them of their rights, taking their victim statements, and arresting the offender if deemed necessary (Van Deventer and Van Deventer, 2021). As the research conducted by Artz (2006, p.6) highlights, victims of abuse were explicitly instructed by SAPS at the Harare police station to “go look for a patrol van to serve the protection order”. Not only is such an instruction a blatant disregard for the legal duty of every SAPS official per the Domestic Violence Act, but also emphasizes the lackluster approach certain SAPS officers take to domestic violence issues. Furthermore, if a protection order is not served to the respondent, it is rendered useless and leaves the victim without any legal protection. As the initial point of protection, the attitudes SAPS displays toward these victims may contribute heavily to South Africa’s high femicide rates because women may be reluctant to return to police stations after a negative experience. Furthermore, such experiences may give a reason as to why women eventually murder their abuser, as seen in the *Ferreira v State* case (Parliamentary Monitoring Group, n.d., p.1). In 2004, Anieta Ferreira (36) was convicted of hiring two workers to assassinate her husband (61), who abused her emotionally and physically regularly (Ludsin, 2004, p.642). Expert testimony regarding the behavior of abused women solidified that such drastic action is in line with the pattern of behavior of abused and battered women (Cornell Law School, n.d.). This case is one of many where victims of abuse feel like there is no alternative to killing their abuser and essentially taking the law into their own hands. Such instances would be much less if victims of domestic violence did not feel like they were a burden or that their case is not important. Women who murder their abusers are often desperate for relief from the abuse and act in a fit of rage. Therefore, the correct and persistent application of the amended Domestic Violence Act by duty-bearers can directly decrease the need for victims of domestic violence to take the law into their own hands.

Moreover, the Domestic Violence Act intends to ensure that victims of abuse receive speedy assistance, however, the way the law has been executed by gatekeepers in some parts of the Western Cape instead marginalizes the domestic violence victims. Before the Domestic Violence Act No.116 of 1998, the South African government implemented The Prevention of Family Violence Act No.133 of 1993 as an attempt to specifically deal with domestic violence in the country (Parenee, Artz, and Moul, 2001, p.2). However, the legislation did not accommodate unmarried couples and same-sex couples (Parenee, Artz, and Moul, 2001, p.2) which alternatively became a barrier to justice for victims of domestic violence because these couples did not fit into the confines of what a domestic relationship is under the law. The Prevention of Family Violence Act No.133 of 1993 only protected victims of domestic violence if the violence occurred in conventional family settings, which was a barrier to justice. This legislation was exclusionary and may have forced these victims of abuse to fend for themselves legally because same-sex partners and unmarried couples had to find other legal remedies (Parenee, Artz, and Moul, 2001, p.2) to assist them in the attainment of an interim protection order or any legal assistance about domestic violence, from the criminal justice system. According to Moul (2001, p.4), in her study on Monitoring the Implementation of the Domestic Violence Act, the South African government has done its due diligence in fulfilling its international responsibility in the fight against violence against women due to the implementation of the Domestic Violence Act 116 of 1998 and the amended Domestic Violence Act 14 of 2021. This implementation shows that the South African government no longer views domestic violence as an “in-house” problem and is now attempting to tackle the issue head-on. Moreover, before the implementation of the Domestic Violence Act No.116 of 1998, there was no distinguishable definition of domestic violence, and it was unclear whether domestic violence included emotional and psychological abuse. The Amended Domestic Violence Act No.14 of 2021 was implemented on the 14th of April 2023 and includes updated definitions of abuse, though there is still not a legal definition of domestic violence, and the available definition simply lists forms of abuse that fall under the umbrella of domestic violence. This may lead one to wonder how applicable a law can be if there is not a specific and clear definition of what the crime is. However, progress in the implementation of legislation indicates that the South African government acknowledges domestic violence as a threat to democracy, the safety of women, and the overall peacefulness of the country. Although the application of the law by duty bearers is not faultless, the amended Domestic Violence Act holds every entity of the justice system liable to ensure the best possible implementation of the law.

The amendments to the Domestic Violence Act make the acquisition and application of a protection order more attainable (Westman, 2023.). This means that court support workers should be available at any time or day to receive applications for interim protection orders and are not allowed to turn any person away (Westman, 2023). This legislation addresses the findings of Waldman (2020, p.47) whereby court clerks refused help to applicants who arrived in the afternoon to apply. Additionally, abusers will be monitored more strictly to ensure that the conditions of the protection order are not breached. The changes to the Domestic Violence Act keep every duty bearer of the criminal justice system accountable and ensure that victims are treated with the necessary respect and receive dignified assistance in pursuing a protection order. This is a great stride in fending for the victim as Waldman's (2020, pp.46-47) research uncovered that many of the court clerks lack pride in their administrative tasks therefore causing unnecessary setbacks to the victim's application.

Empowering Survivors: MOSAIC's Role in Addressing Domestic Violence

MOSAIC was founded in 1993 as a direct response to the alarming rates of domestic violence in South Africa. Their mission is to empower women and girl survivors of abuse and domestic violence by cultivating supportive environments and guiding them through their healing journey with compassion and dedication (K. Rehse, 2021).

Unequal power relations between men and women are one of the core reasons for the existence of domestic violence globally (MOSAIC Training, Service and Healing Centre, 2022, p.4). Domestic violence stems from various factors including socioeconomic inequalities, cultural norms, and a history of violence. Research indicates that factors relating to poverty, substance abuse, patriarchal attitudes, and a lack of access to education and resources contribute to the prevalence of domestic violence. In response to the multifaceted factors contributing to domestic violence, MOSAIC has formulated the Theory of Change predicated on the premise that violence and abuse against women exert a profound and enduring influence across their life course (MOSAIC Annual Report 2020, p. 13). Central to this framework is the commitment to effect transformative shifts in the circumstances and trajectories of affected women. They are leveraging a continuum-of-care approach and drawing upon the principles of the primary healthcare model, MOSAIC endeavors to engender tangible and sustainable change in the lives of survivors. Through strategic interventions aimed at holistic support and empowerment, the organization aims to disrupt the cycle of violence and promote enduring improvements in the well-being and autonomy of women impacted by domestic violence.

MOSAIC's comprehensive Theory of Change, anchored by four pillars- prevention, support, collaboration, and activation (MOSAIC Training, Service, and Healing Centre, 2022, pp.5-6)- provides a structured framework for addressing domestic violence. the prevention of domestic violence presents a complex challenge, often obscured by its entrenched nature. Yet, MOSAIC recognizes that a critical step towards prevention entails confronting deep-seated cultural norms prevalent in South African society (MOSAIC Training, Service, and Healing Centre, 2022, p.5).

In terms of support, MOSAIC is dedicated to meeting the practical gender needs of domestic violence survivors, empowering them with essential skills for autonomy and empowerment (MOSAIC Training, Service, and Healing Centre, 2022, p.6). Embracing feminist principles of inclusivity and participation, MOSAIC adopts a collaborative approach, engaging survivors, and stakeholders alike in programs aimed at combatting domestic violence.

Economic empowerment stands as a cornerstone of MOSAIC's strategy, recognizing the liberating potential of financial education in breaking cycles of abuse exacerbated by financial dependence (Access to Justice, MOSAIC, n.d.). Through integrated support services, including legal assistance, they ensure survivors access vital resources and guidance, including assistance in obtaining protection orders facilitated by dedicated Court Support Workers (CSWs) adept in navigating the complexities of the legal system (Access to Justice, MOSAIC, n.d.). These concerted efforts by MOSAIC are instrumental in providing both immediate relief and enduring solutions for survivors of domestic violence.

However, while MOSAIC and other service providers play a crucial role in addressing the chronic barriers faced by survivors of domestic violence in their pursuit of justice, it is imperative to recognize that they do not represent the sole solution to the systemic issues underlying domestic violence.

The reality of Domestic Violence in South Africa

Prior research (Vetten, 2005; Dissel and Ngubeni,2003; Artz and Smythe, 2005) alludes to the fact that it is difficult to get an accurate understanding of the actual state of domestic violence in South Africa from crime statistics because not all cases of domestic violence are reported to the police, and not all victims of domestic violence apply for a protection order. South Africa is one of the few countries that have concrete legislation that supports and advocates for survivors' rights, however, they have now reached a stage whereby the implementation of the laws needs perfecting. Since the implementation of the Domestic Violence Act, activist

organizations like MOSAIC, Rape Crisis, People Opposing Women Abuse (POWA), and Masimanyane Women's Rights International have used the legislation as their basis for advocating for survivors of domestic violence. A five-year look into the Domestic Violence Act (Smythe and Artz, 2005) highlights that solely relying on legislation to ward off domestic violence is short-sighted and unrealistic. After the implementation of the Domestic Violence Act, there was no real work put into the application of the legislation which includes a lack of repercussions for authorities who do not adhere to the mandate set out in the DVA and DVAA. The mandate requiring survivors to report unhelpful police officers to the station commander or National Commissioner of Police (Smythe and Artz, 2005, p.201) leaves victims struggling to navigate the process, ultimately resulting in many survivors returning home to their abuser without sufficient assistance or protection. Additionally, the lengthy and challenging process of obtaining a protection order (Naidoo,2006) coupled with a lack of human resources, further exacerbates the vulnerability of survivors, putting their lives at risk.

Furthermore, to accurately assess the practical application of the Domestic Violence Act, it is essential to understand the day-to-day practice of applying the law, and to do so a direct lineage needs to be drawn from the requirements of the DVA and the DVAA on the duty bearers and how they fulfill these duties (Smythe and Artz, 2005, p.203). It is also essential to consider the availability of officers who are trained in dealing with domestic violence victims, and whether these officers have the required resources to accomplish the goals of the DVA. Moreover, domestic violence is impartial in age, race, and social circumstances, because approximately one-third of victims applying for protection orders were between thirty-one and forty years old, five percent of victims were under the age of twenty, and most complaints were laid by married women against their husbands (Smythe and Artz, 2005, p.204). Although men are also victims of domestic violence, the issue of domestic violence is a predominantly female one. The 5.74% of complaints made by women against men overshadow the 2.26% of applications made by men against other men (Smythe and Artz, 2005, p.204). Alternatively, 13.67% of men applied for protection orders against women, however, these applications were always counter-protection orders (Smythe and Artz, 2005, p.204). In such scenarios, the case devolves into a situation characterized by conflicting testimonies, posing challenges in discerning the roles of the victim and the perpetrator. Such complexities complicate the legal proceedings and may transform the pursuit of a protection order into a contentious endeavor. Moreover, such cases are more susceptible to premature termination, as one of the parties is inclined to retract their complaint, resulting in the inefficient allocation of state resources and time. Counter-protection orders and their subsequent withdrawal can significantly impact the attitudes and

responsiveness of court clerks, SAPS, and magistrates towards such cases. These incidents often arise amidst heightened emotions, alcohol consumption, or as a response to the survivors' complaints, potentially undermining their credibility. Consequently, there is an increased likelihood of cases being removed from the court roll, thereby elevating the attrition rate in domestic violence cases.

Secondary Victimization and the attrition rate

Domestic violence persists as a deeply rooted social issue, challenging efforts to eradicate it due to complex factors such as power dynamics, cultural norms, and stigma. The decline in reporting domestic violence can be attributed, in part, to secondary victimization from first responders, and the courts which poses a barrier to effectively addressing and reducing such incidents. Secondary victimization is the indirect effect of the experienced crime and occurs when there is a negative response to the victim by the authorities and other individuals (Justice and Constitutional Development, 2004). Persistently high domestic violence rates are compounded by survivors' reluctance to report due to feelings of embarrassment and worthlessness (Hoyle, 1998, p.184). The ill-treatment from SAPS, victim-blaming, and inappropriate comments by professionals contribute to a high attrition rate, causing victims to exit the justice system post interim protection order.

Bukiwe (2017, p.12) suggests that victims often disengage from the criminal justice system due to various factors. One significant reason is the lack of a sense of vindication, where survivors do not feel that justice has been served. Attitudes of disbelief, blame, or judgment from family members, friends, or community members further isolate and silence survivors, making it difficult for them to seek support or take legal action against their abuser. Additionally, studies conducted by the United Nations Office on Drugs and Crime (2011, pp.15-16, Vetten, 2005, p.7) show that in 34% of cases reported to the police, the officers instructed the victims to solve the issue on their own, seek family support or contact another agency for assistance. These dismissive attitudes from police officers, court officials, and prosecutors discourage survivors from pursuing legal remedies.

Insufficient resources, delays in the legal process, and inadequate protection measures for survivors can also contribute to secondary victimization.

To address secondary victimization, legislation such as the Prevention of Family Violence Act, the Domestic Violence Act, the Domestic Violence Amendment Act, and the Victim

Empowerment Service of the South African Police has been set in place to ensure that victims receive the best possible care and support from the criminal justice system and explicitly details the responsibilities of each branch of the criminal justice system to curb the extensive history of victim neglect (Bukiwe, 2017, p. 28). Similarly, SAPS has implemented specialized units such as the Family Violence, Child Protection, and Sexual Offenses Units, to handle cases with sensitivity and expertise, and provide the appropriate support to victims.

However, the implementation of legislation does not ensure the effective application of the law by key role players. SAPS officials are required to explain the process of acquiring an interim protection order and provide any other assistance to the victim, however, victims have reported being hesitant to approach SAPS for help for many reasons (Retief,2023). The Domestic Violence Act expects and requires SAPS officials to make victims aware of their rights to lay a charge, assist the victim in finding suitable shelter, and serve protection orders to the respondents, however, ample research indicates that SAPS officials give poor excuses as to why they cannot take a victim statement or serve protection orders to respondents (Artz,2009, p.8).

Incidents of secondary victimization by first responders negatively impact the reporting rate, and directly influence whether victims will return to court after the interim protection order has been granted, Furthermore, secondary victimization creates distrust in the entire criminal justice system, and therefore victims prefer not to return to court after the interim protection order has been granted.

Furthermore, SAPS is considered one of the crucial role players in implementing the Domestic Violence Act, and most provisions for victim services include SAPS (Moult, 2001, p.11). Therefore, it should be considered unconstitutional for SAPS officials or any first responders to revictimize survivors of domestic violence in any way.

Secondary victimization not only interferes with the course of justice, but it also minimizes the hope that survivors have in the criminal justice system. Survivors have not always been at the core of the criminal justice system as the focus of justice was on ensuring the offender is dealt with to the fullest extent of the law. Victimization during applications and hearings directly contributes to victims not being heard or acknowledged within the system.

The mystery after the interim protection order

Much research has been done as to why victims of domestic violence do not return to court after the interim protection order has been granted, and for the layman the entire process of

acquiring a protection order is daunting. Many victims of domestic violence are unaware of their rights and what the process of obtaining an interim protection order entails. Additionally, these victims do not know what the legal proceedings are after an interim protection order has been granted, which directly influences the high attrition rate in the criminal justice system. According to research done by Vogt and Greef (2010, p.48) on the impact of interim protection orders on the nature and extent of domestic violence and the general well-being of victims of domestic violence revealed that 87% of victims assisted by MOSAIC Training, Service and Healing Centre employees, in the application for interim protection orders found the assistance to be helpful.

MOSAIC only contacts clients once, who have applied for a protection order or who have sought assistance from them during their application to offer additional support or services. There is no current means to know whether the clients have finalized the protection order, chose to withdraw the case, or did not return to court.

The application

After the application for a protection order has been filed, a court clerk, employed by the Department of Justice, will take the application to the magistrate. Thereafter, if the application is deemed urgent, the magistrate will issue an interim protection order (Domestic Violence and Protection Orders,2022). Interim means “in the meantime” and such protection orders are provided when the victim is in imminent danger. The protection order is delivered to the respondent and must appear in court on the return date. The applicant must also be in court on this day.

Furthermore, after the application has been approved, the times by which the protection order is granted may vary. In the study by Vogt and Greef (2010, p. 48), it was found that the majority of participants (69.18%) received their protection order on the same day, while 22.41% received their orders on the following day. The prompt delivery of IPOs plays a direct role in reducing the immediate effect of domestic violence on the victims, which is the main reason for order.

Furthermore, when an interim protection order is granted, the respondent receives an interim warrant of arrest. The warrant of arrest is in place for instances where the respondent may violate the interim protection order, in turn allowing SAPS to immediately arrest the respondent (South African Police Services: Applying for a protection order, n.d.). The warrant of arrest

acts as another layer of protection for the victims because it ensures that the respondent respects the interim protection order or faces jail time.

The return date

On the return date, the respondent and the applicant must appear before the magistrate, where the respondent will have the opportunity to express to the magistrate why the case should not continue and why a final protection order should not be granted (Domestic Violence and Protection Order, 2022). In the instance that the magistrate decides against granting an interim protection order, the respondent and the applicant will reappear in court regarding the application of the protection order. The court then considers all circumstances of the matter, such as the extent of the abuse and the permissibility of evidence to corroborate the abuse allegations before deciding to grant a protection order. Furthermore, return dates are usually set in the distant future, which contributes to the long time it takes to have a protection order finalized (Domestic Violence and Protection Orders, 2022). The date on which the respondent and the applicant are due to return to court is based on the current number of cases on the court roll and the availability of the magistrate. This increases the time it takes to finalize protection orders which places victims in continuous danger.

The final protection order

After a final protection order has been granted, a court clerk will provide a certified copy of the protection order to the relevant station commander, who will then serve the protection order to the respondent. In South Africa, a protection order has a lifetime validity, and it remains the court's decision whether to set aside or cancel a protection order (New changes introduced by law to protect victims of domestic violence, 2023). Furthermore, withdrawal of protection orders is frowned upon because it implies that the court's time was wasted and that the abuse must have not been severe. Such assumptions greatly undermine the severity of any kind of abuse and research by Artz in collaboration with MOSAIC Training Service and Healing Centre (2006, p.5) highlights the fact that victims often withdraw charges because the behavior has improved, although it is only a temporary in some cases. Withdrawal of charges allows the criminal justice to treat the next desperate victim with disdain and unimportance because they think the next victim will also withdraw the charges. However, the decision to withdraw a protection order is at the discretion of the magistrate, who will decide based on the facts of the

case (Department of Justice and Constitutional Development,2023). After the protection order has been granted, one would think that the victim's exposure to psychological, emotional, and physical abuse would ease, however according to Vogt and Greef (2010, p.48) interim protection did not contribute to the decline of the abuse, nor did it decrease the total amount of exposure to abuse of these victims. This is because there is no monitoring of the behaviors of the respondent towards the applicant after the fact, and if the applicant does not report further abuse to the police, the warrant of arrest cannot be instated. Interim and final protection orders are only as useful as the reporting of the violation thereof, if violations are not reported to police there cannot be any remedial action to be taken.

Moreover, reasons uncovered by Artz (2009, p.8) lead one to believe that the criminal justice system is not doing enough to ensure that victims return to court after the interim protection order has been granted. Sadly,17% of victims indicated that they had completely lost faith in the criminal justice system and therefore opted to not return to court (Artz, 2008/9, p.8). To ensure that justice is done, it is the responsibility of the criminal justice system that victims return to court, simply because many victims are unaware of the processes after applying for a protection order. According to Waldman's (2020) findings the magistrates expect court clerks to complete draft protection orders (p.46) which is unjust because court clerks do not have the required legal training to undertake such a task. The lax attitude on the part of the magistrate is extremely dangerous and can have serious repercussions for the victim. This attitude seems to contaminate the entire court staff, as court support workers label the court workers as lazy and lacking attention to detail (p.46).

Furthermore, to decrease the attrition rate after the interim protection order has been granted, the criminal justice system needs a more hands-on approach to applying the Domestic Violence Act and executing their legal responsibility to the victim. Finally, an interim and a final protection order is fundamentally a piece of paper and cannot stop abuse on its own. If victims are unaware of their rights and what processes to follow in the instances where their rights are violated, a protection order is essentially ineffective.

The cost of violence

It is easy to blame duty bearers for the underwhelming application of the domestic violence act and for not actively assisting victims to get the justice they desire; however, one must also consider the financial implications of realizing the goals of the act. A review of the budget that

has been allocated for the implementation of the Domestic Violence Act no 116 of 1998 has uncovered that there has been little financial planning for this act to be carried out (Vetten,2005, p. 277) which suggests that eradicating domestic violence, or allowing victims of such violence to have a legal escape route, is not a priority for lawmakers. Although the domestic violence act is progressive and has good intentions, without the proper financial support it is impossible to provide SAPS, court support workers, and magistrates with the appropriate training and incentives to do their part. Furthermore, the allocations of budgets provide a blueprint of what the South African government deems important. During the 2023 State of the Nation address, President Ramaphosa explained the National Strategic Plan to fight Gender-Based Violence and Femicide (GBVF), one of the points in his plan spoke to the establishment of a Response fund, however, this fund is subsidized entirely by the private sector although it was launched by the presidency (State of the Nation Address, 2023). Apparently, R162 million has been pledged to this fund, and only R69 million has been distributed, from which 110 community organizations that work to curb domestic and gender-based violence have benefitted from these funds, according to the president (State of the Nation Address, 2023). It is important to note that no country has unlimited financial resources and therefore decisions have to be made about where financial support from the government is placed, and these choices are always political (Vetten, 2005, p.278). The cost of domestic violence directly indicates how resources such as lost earnings and revenue are drained from the affected groups (KPMG Human and Social Services, n.d., p.1). The loss of earnings and revenue is contributed to by the fact that victims have to stay home from work after being abused due to shame or the severity of injuries. Therefore, it is essential to ensure that money is well spent on applying the domestic violence act, keeping duty bearers accountable, and ensuring that victims are aware of their rights and which course to follow through the justice process.

Tread carefully, there is a gap!

Domestic violence constitutes a well-documented field of study globally. However, a recent literature review by Mitcheltee and Sunikka-Blank (2023) identifies a notable research gap regarding housing interventions for domestic violence victims seeking refuge, particularly within Australia and South Africa. The phenomenon of victims returning to their abusers due to a lack of alternative accommodations underscores the urgent need to assess the efficacy of existing housing interventions if any are available.

Additionally, there is a lack of literature addressing the interconnection between gender-based violence and domestic violence. Gender-based violence is often characterized by violence committed by men against women, highlighting its discriminatory nature (Elías & Muñoz, 2023). On the other hand, domestic violence encompasses violence occurring within any domestic relationship, regardless of gender (Elías & Muñoz, 2023). It is important to note that while gender-based violence is primarily associated with male perpetrators and female victims, it is also recognized that women can perpetrate violence against men.

This distinction is crucial, as domestic violence can manifest and be perpetrated by individuals of any gender. The conflation of these terms indicates a broader societal misunderstanding regarding the varied forms of abuse.

Feminist theories have traditionally played a central role in framing discourse surrounding domestic violence, often highlighting male perpetration within patriarchal structures (McPhail, 2007). Although some evidence supports this conclusion, it does not negate the underrepresentation of men in discussions about domestic violence perpetration.

Moreover, while research on the persistent barriers to justice for domestic violence survivors is multifaceted, there remains a significant gap in examining these issues from the perspective of service providers. While studies such as those by McPhail et al. (2007) and Waldman (2020) shed light on the experiences of frontline individuals in combating domestic violence, there is still substantial room for understanding the specific roles of court clerks, court support staff, and magistrates in mitigating the daily barriers to justice faced by survivors in South Africa.

Furthermore, the potential interference of other court orders, such as custody agreements, with protection orders, as found by Artz and Smyth (2005), remains underexplored in terms of its implications for securing justice for domestic violence survivors. Similarly, limited research exists on police intervention in domestic violence cases, with Artz's (2011) findings indicating that victims endure violence for a significant period before seeking police assistance, yet the reasons for this delay remain insufficiently documented.

Lastly, there is a scarcity of literature examining the experiences of domestic violence survivors following the granting of interim protection orders and the subsequent impact of such orders on these individuals. The research gap concerning the process between interim and final

protection orders contributes to an unclear understanding of the attrition rate in domestic violence cases. Therefore, this study aims to clarify the experiences of survivors' post-interim protection orders and identify the assistance provided by the criminal justice system during the interim-to-final protection order transition.

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Chapter 3 Research Methodology

Preview

This dissertation utilizes data from a sample size of n=154 pre-selected case files procured from MOSAIC. These meticulously curated files furnish comprehensive insights into various facets of domestic abuse, encompassing details regarding the nature of abuse, adjudication of protection orders, engagement with law enforcement agencies such as SAPS, and the status of protection order finalization. This chapter offers an exposition delineating the collaborative research framework established with MOSAIC, underscoring the invaluable contribution of their dataset to the empirical underpinning of this dissertation. Furthermore, an exposition of the methodological framework is provided, accompanied by a comprehensive breakdown of the ethical considerations that form the foundation of this research. The ensuing discussion articulates the envisioned approach to inquiry, elucidating the complexities involved in data acquisition, processing, and analytic examination. Special attention is given to explaining the methodological trajectory, accompanied by an honest assessment of the challenges encountered during data collection and analysis, thus fostering a comprehensive understanding of the research journey.

Research Partnership with MOSAIC Training, Service and Healing Centre

This dissertation forms part of a research partnership between the University of Cape Town, the Centre of Criminology, and MOSAIC. Permission to collect data from the MOSAIC case files was provided by MOSAIC and the Faculty of Law Research Ethics Committee, Department of Public Law reference L0032NS-2023.

Besides the data collection from the case files, the casual conversation with MOSAIC staff at their headquarters in Wynberg provided reasons for why clients do not finalize their protection orders outside of the explanations noted in the case files. These interactions also provided a greater understanding of how MOSAIC staff work with the clients to find the best solution to their plight. The information provided a greater understanding of the ‘behind the scenes action’ that court support workers and case workers deal with daily. MOSAIC is aware that some survivors are slipping through the cracks, therefore, this research intends to clarify where exactly victims of domestic violence are slipping through the cracks in the entire system,

between the initial contact with first responders and the final court appearance for a protection order, and why these survivors are slipping through the cracks.

Fieldwork

I undertook fieldwork at the MOSAIC head office in Wynberg, Cape Town where I had access to 154 court files that were pre-selected for me by the Court Case Monitoring Office. I visited the head officer for seven days between the 18th and 24th of October from nine in the morning until twelve midday. During this time, I utilized the laptop of the Court Case Monitoring Officer to search for each client individually by typing their name into MOSAIC's Salesforce application. This application keeps all the client information ranging from contact details to referrals on it. Thereafter, I searched through each client's information on the application to find the name of the court where their case was heard; whether a case was opened with SAPS, whether the interim protection order was granted, and feedback the client gave the support worker. The information was then captured on a survey consisting of sixteen questions. While some case files did not contain any client feedback about their experience with MOSAIC, SAPS, or the court system, others did not contain information about referrals within MOSAIC's network of services.

In addition to reading and collecting data from the case files, I was able to ask the Court Case Monitoring Officer ample questions regarding the case files, cases that were not on the list of pre-selected names, and their overall experience with clients in the justice attainment process. I was also able to enquire about missing information from the Court Case Monitoring Officer. I received in-depth explanations of the processes that are tied to assisting victims of domestic violence. Furthermore, there were no official interviews conducted with any staff of MOSAIC. During my time at MOSAIC's office, I was able to witness the process of following up with clients, and how the members of the staff willingly assist each other, and clients with queries. Furthermore, the executive director provided me with the most recent MOSAIC annual reports which indicated the work they have done in the 2021/2022 fiscal year. MOSAIC is still in the process of digitizing all its client files therefore it was difficult to gain access to data from prior years. To substitute the missing data, I studied literature from research priorly done at MOSAIC which also looked at the chronic barriers to justice faced by victims of domestic violence.

There were no face-to-face interviews conducted with the victims because it is not deemed necessary for the successful fulfillment of this research, and with interviews comes the possibility of retraumatizing the victims, which is an avoidable risk in this case.

Data analysis

This research thematically analyses the qualitative case notes that were recorded in the 154 case files on the Salesforce application used by MOSAIC. I developed a survey on SurveyMonkey, which is an online survey site that greatly simplified my data collection process. I used the multiple choice setting and developed sixteen questions ranging from the court at which the protection order was applied, whether the client received the interim protection order, whether MOSAIC was able to get in touch with the client via telephone, and what the client experience was in the criminal justice system. I opted for qualitative content analysis of the case files and developed it into quantitative data to make the data more digestible and easily readable. Question six speaks to the types of abuse experienced, listing physical, emotional, mental, sexual, financial, and 'other' which refers to verbal abuse. I added a section for additional notes that do not fall within the confines of the other fifteen questions. The additional notes include information about the treatment of clients by SAPS when attempting to open a case of domestic violence, why the client withdrew their application for a protection order or did not show up to court on the return date, any grievances the clients may have experienced at court, and the general wellbeing of the client. Information in the additional notes section is sourced from the support staff's follow-up calls with the clients after their initial appearance in court. Some of these case files did not indicate whether the client finalized their protection order, and this is because MOSAIC contacts clients sporadically, therefore reaching clients when they are in different phases of the justice attainment process. In other instances, MOSAIC is unable to get hold of the clients to follow up on their protection order process which also leaves a gap in the data. Besides enquiring about the client's experience during the justice attainment process, the follow-up calls also serve to check in on the client's mental and emotional state. The data is presented in clearly marked tables, and direct quotations were used to emphasize certain data points or to better convey information in this dissertation.

Expectations versus reality in data collection

Before I started my research and data collection process, I incorrectly assumed that I would be studying physical client files, however, I viewed cases on Salesforce where the client information is stored. After several meetings with my supervisor, the gracious management, and the staff of MOSAIC, I was able to find my feet and truly understand what question I was attempting to answer. Assessing the chronic barriers to justice faced by domestic violence

survivors in Cape Town, South Africa is no small feat and requires a very focused approach. I was guided by prior research conducted by Moulton, Artz, and Parenzee (2001), and Artz and Smyth (2005) amongst others, to understand the domestic violence conundrum in South Africa. It was difficult not to get caught up in my usual ‘I want to know all the answers’ approach. After sifting through ample data, it was important to discern which data would be beneficial to answering my research question. The data collection was difficult at times because the Court Case Monitoring Officer is exceptionally busy therefore it required scheduling and rescheduling to ensure that all parties were available to collect the data. Eventually, schedules collided, and I was able to collect qualitative, descriptive data about domestic violence survivors and the criminal justice process, in addition to conversing with the Court Case Monitoring Officer who provided a lot of undocumented insights into the potential causes of why victims fall out of the justice system.

Ethical considerations

These case files contain identifying information about the clients who have sought assistance from MOSAIC between March 2022 and March 2023. These files contain personal information as well as private communication between the client and the Court Case Monitoring Officer. Therefore, I did not collect any identifying information about the clients. The names, ages, and genders of the clients were irrelevant to the outcome of the study consequently no such information was recorded on the survey. I decided not to use any markers such as “case file one” as it was not necessary to keep track of the case files after I had completed my data collection because the survey allowed me to revert and see which statement matched which entry.

Additionally, to ensure that the data I have collected from the case files is secure, I stored it on the SurveyMonkey application which requires fingerprint access to view the data. Similarly, the fingerprint-accessible data is stored on a fingerprint-protected laptop. Only I have access to both the laptop and the SurveyMonkey account.

Also, the list of pre-selected names of the clients provided to me by the Court Case Monitoring Officer was shredded and discarded by myself after use, to ensure that the client’s right to privacy is not infringed upon. This data is used responsibly and not misconstrued by any means to achieve a goal. This data also does not harm or stigmatize any victims of domestic or other forms of violence.

The potential benefits of this research to MOSAIC Training, Service, and Healing Centre include the opportunity to reflect on how to better provide services to clients and the crucialness of the work they are doing. This research provides MOSAIC with a readily available overview of why victims of domestic violence fall of the justice system before they have finalized their protection orders, which in turn equips not only MOSAIC but similar non-government organizations with the necessary information to remedy the high attrition rate in domestic violence cases.

Limitations of the study

Qualitative research is a time-consuming and often tedious process, and the scheduling conflicts between myself and the Court Case Monitoring Officer caused much time to lapse, leaving little time for actual data collection before my time in Cape Town ended. Due to the time constraints, the sample size was relatively small compared to the number of clients MOSAIC deals with every week, hence the reproducibility of the study may be tainted. Additionally, the findings of this study are difficult to display scientifically and visually because of the verbatim quotations from the case files. Besides the above-mentioned, there were no other limitations to this study.

Chapter 4 Results

Preview

Survivors often apply for a protection order as a final resort to stop the violence but fail to finalize the order due to several reasons. Consequently, this results section hones in on the various reasons survivors do not finalize their protection orders.

The process of obtaining an interim protection order is not always as seamless as mandated by the DVA and DVAA. The courts do not implement the DVA and DVAA in a victim-centred manner (Waldman, 2020, p.45) which maintains the survivors' right to procedural fairness, and to be treated with dignity and respect, resulting in survivors disengaging from the justice attainment process entirely. I suggest that these problems arise due to a lack of consequences for law enforcement agencies not adhering to the DVA and DVAA. This results section analyses the barriers to justice faced by survivors of domestic violence concerning the client's experience with SAPS and the court processes, the prevalence of various forms of abuse, the IPO status, and the reasons for not finalizing the PO.

The sample offered varying information about the victim's experience in the attainment of a protection order and the finalization of protection orders. Each table may contain a different th value because not all case files contain the same information. Nevertheless, victims of domestic violence go to court to attempt to obtain a protection order during a time they are at their most vulnerable (Waldman, 2020, p.45) and fear for their safety, therefore the law in terms of the (DVA) and DVAA must be correctly and strictly applied. Prior research conducted by Artz (2011, p.8) highlights several reasons why victims did not finalize their protection orders. These reasons include but are not limited to:

1. Did not receive a copy of the protection order from the court.
2. Did not receive communication on when to return to court.
3. Respondent fled/ did not sign the papers.
4. Unaware that they had to return to court.
5. The case was struck off the court roll.
6. Lost confidence in the system.

This research also indicates that the most common reason (23%) why clients did not finalize their protection order is because the interim protection order was never served to the respondent. If the interim protection order is not served to the respondent with the interim warrant of arrest, the respondent may be unaware that they have to appear in court on the return date. Consequently, if the respondent does not appear in court on the return date, the final

protection order cannot be granted (Furusa and Limberg, 2015, p.3) which results in the postponement of the case and the extension of the interim protection order. Additionally, there is no punishment reserved for respondents who do not appear in court on the return date (Furusa and Limberg, 2015, p.4). Due to this, there is no legally binding reason for the respondent to appear in court unless they feel the need to defend themselves against the claims of abuse. By the same token, if respondents are not legally obligated to appear in court on the return date, it further hinders the attainment of justice for the survivors because their safety and peace of mind are essentially in the hands of the respondent. This is a direct barrier to justice faced by victims of domestic violence in South Africa.

The numbers game

In the (n=154) case files in this sample, the abuse documented was as follows: physical abuse (43.79%), mental or psychological abuse (14.38%), emotional abuse (9.15%), sexual abuse (0.65%), financial or economic abuse (27.45%), and lastly verbal abuse (4.58%). Not all the case files in this sample contained the same information, therefore the files that did not include information about the question were skipped resulting in the varying totals.

Physical violence is the most prevalent form of domestic violence in this sample, similar to the research conducted by Artz (2006, p.3) which highlights physical violence as the most probable form of physical victimization, with participants reporting every kind of physical abuse from beating (56%) to choking (30%). The sample size in the preliminary findings of the attrition rate in domestic violence cases was much greater compared to this study, but the results are closely related. On average, approximately twenty people experience physical violence every sixty seconds in the United States (National Coalition Against Domestic Violence, 2020). Per annum, this equates to 10 million domestic violence victims in the United States (National Coalition Against Domestic Violence, 2020), in comparison to South Africa which experienced 62828 cases of physical violence in the 2022/2023 fiscal year (Cowling,2023). The data reiterates that physical abuse is one of the most prevalent forms of domestic violence globally. The conclusion of a study conducted by Jewkes et al (2001, p.422) shows that physical abuse has been a common feature of relationships for a long period and that women often experience physical violence throughout their lives, even during pregnancy.

Breaking the silence: a brief exploration of the dynamics of unreported sexual violence

It is striking to observe that sexual violence appears less prevalent in this sample, despite the grim reality of South Africa where one woman is raped every three hours, and the rate of women murdered by their partners surpasses the global average by 5% (Govender, 2023). However, the low representation of sexual violence in this sample may be due to several reasons. Firstly, besides the fact that the reporting and documentation of gender-based violence is a substantial health challenge (Govender, 2023), depending on the victims' age they may be unaware of inter-relational or inter-marital rape, and that the behavior is considered abusive. Studies (Krug et al. 2015, Holt et al, 2008) have indicated that violence is learned behaviour, irrespective of gender. Therefore, people who were reared in homes where any violence was a regular occurrence, may be unaware that the behavior is irregular and that sexual abuse within a marriage or relationship is a criminal offense (Court Case Monitoring Officer, MOSAIC, 2023) or that it is unacceptable behavior.

Moreover, the data about sexual abuse may be limited because victims do not freely tell the court support workers that they have experienced sexual violence, the Court Case Monitoring Officer has recognized that victims take a “don't ask, don't tell” approach to sexual violence. So, this data is largely dependent on whether the court support worker asked about sexual abuse or not. She further stated that it is essential for court support workers to explain to all abuse victims what inter-marital and inter-relational sexual abuse is and then provide an opportunity for the victim to ask questions about the information they have received. Additionally, the court Case Monitoring officer also revealed that court support workers often have to explain to certain clients what sexual abuse means, especially to older clients in the age range of 50 to 70 years old. Notably, the younger generation more freely communicates instances of sexual violence to the support staff (Court Case Monitoring Officer, personal communication, 2023). She noted that they explicitly have to ask the client “Are you being forced to have sex in your marriage?” or “Does your partner beat you up or threaten you if you refuse sex?” to establish whether the client has experienced sexual abuse. Lastly, shame is also an aspect of why victims withhold sexual violence occurrences within their marriages or relationships from court support workers because many people cannot fathom being sexually abused by their partner and often correlate sexual violence to being between two strangers. Furthermore, clients may believe that a single occurrence is insufficient to report, which is a misconception that can be attributed to a lack of information and knowledge about victims' rights and the law. Overall, the decision to report sexual violence is personal and influenced by a range of individual, systemic, and social

factors. Support services need to address these barriers and provide resources, empathy, and support to survivors.

Invisible Scars: The Impact of Mental and Psychological Abuse

Mental or psychological abuse is not as easily identifiable as sexual or physical violence and often requires psychological intervention to grasp the extent of the abuse. Generally, mental, or psychological abuse is the destruction of an individual's self-esteem and/or feeling of safety and security (Doherty and Berglund, 2008, p.1). Similar to other forms of abuse, mental or psychological abuse often occurs in relationships with unequal power and control distribution (Follignstand and Dehart, 2000, as cited by Doherty and Berglund, 2008, p.1), and this inequality can be found in professional relationships, personal or intimate relationships. In this sample, 14.38% or 22 clients experienced mental or psychological abuse. The case files did not include what the clients perceive mental and psychological abuse to be. This type of abuse is often a side effect of other forms of violence such as sexual or physical violence (Garbino, 1990, p.7, as cited by Doherty and Berglund, 2008, p.1) and verbal abuse. Every form of violence has the potential to harm the survivors' mental and psychological well-being. Furthermore, I do not believe this sample is representative of the actual magnitude of mental and psychological abuse victims of domestic violence endure. Although the clients may not have explicitly expressed that they have experienced mental or psychological abuse, it is safe to assume that survivors of any form of violence are also victims of mental and psychological abuse and turmoil.

To ensure the most accurate understanding and response to mental and psychological abuse, I suggest service providers, communities, and families must immerse themselves in an Effects-based approach (focused on the harm experienced) or Behaviour-based approach (focused on the negative behaviors) to identify possible abuse scenarios (Doherty and Berglund, 2008, p.2). The effects of mental and psychological abuse include but are not limited to low self-esteem, self-harming behaviors, chronic stress, and post-traumatic stress (Stark, 2015, p.6) and may present differently in each victim.

Some might argue that mental/psychological, emotional, and verbal abuse are synonymous and often used interchangeably, however, each of these are different forms of violence, although they may be perpetrated similarly and have comparable effects on the victim. Emotional abuse is non-physical, and these victims are subjected to constant threats, manipulation, and in some cases even isolation which may awaken feelings of anxiety and fear in the victim (Stark, 2015,

pp.1-2). In this sample, 09.15% (14 out of 153) of clients expressed that they were emotionally abused by their partners. According to Stark (2018, p.2), emotional abusers have the same feelings of worthlessness and anxiety, as their victims, and is often indicative that the abuser also experienced emotional violence at some stage in their lives, therefore they have accepted this form of abuse as normal.

The Power of Words: The Dynamics of Verbal Abuse

Lastly, verbal abuse or “other” was experienced by 4.57% (7 out of 153). Verbal abuse is the unequivocal use of derogatory or negative language to incite harm to another person (Stark, 2015, p.1). Verbal abuse is manipulative and unpredictable, and victims do not always know when to expect the abuser to make devaluing comments or criticize them. As time lapses, the abuse becomes more frequent and intense and often results in physical violence (Stark,2015, pp.1-2) if the victim defends themselves or responds to the assault. Verbal abuse is designed to unnerve the victim and cause emotional pain by “hitting where it hurts.” The risk factors of verbal abuse include co-dependency, intense need for affection, and substance abuse.

Emotional, mental, psychological, and verbal abuse all follow the cycle of abuse (figure 6, p.40) and often lead to physical violence which is regularly construed as the victim’s fault by the abuser. One case file did not indicate the type of abuse the client faced and is therefore marked as “not specified.”

Surveying the spectrum: Prevalence of the Various Forms of abuse

Table 1: Type of abuse recorded and prevalence

| Type of abuse | n= | Percentage |
|-------------------------|------------|-------------------|
| Physical | 67 | 43.79 |
| Mental/Psychological | 22 | 14.38 |
| Emotional | 14 | 09.15 |
| Sexual | 1 | 0.65 |
| Financial/economic | 42 | 27.45 |
| Verbal/other | 7 | 04.58 |
| Not specified | 1 | 0.65 |
| Total case files | 153 | 100 |

Note: one case file did not include information on the type of abuse, therefore the total number of case files reviewed is 153.

Domestic violence is one of the most prevalent forms of violence SAPS officials respond to. Research has shown that victims of domestic violence are hesitant to seek assistance from the police for multiple reasons (Retief, 2013, p.3). Because it is not mandatory for victims of domestic violence to open a case with SAPS (Vetten, 2005, as cited by Furusa and Limberg, 2015, p.3) and because SAPS officials have explicitly told victims to first apply for a protection order so “we can know that you are serious because you guys take the people back. You are wasting our time and paper” (Court Case Monitoring Officer, personal communication, 2023) only 17.65% (27 out of 153) of victims opened a case of domestic violence with SAPS and 82.35% (126 out of 153) did not. Artz (2006, p.4) exhibited that less than 10% of 123 domestic violence survivors found SAPS to be of any assistance and rated their assistance a 5 on a scale from one to ten. The high number of victims who opted out of opening a case with SAPS reiterates the fact that the poor service delivery by certain SAPS officials directly influences the accurate recording of domestic violence instances in the Western Cape. In agreement with Retief (2013, p.4) the outdated concept police officials have of domestic violence has greatly influenced the deteriorated implementation of the Domestic Violence Act. A sad reality remains that SAPS does not employ the tactics to fight domestic violence as they do to reduce other violent crimes. The low number of domestic violence cases opened with SAPS and the attitudes victims have towards SAPS will remain unchanged without necessary changes to the attitudes certain officials have towards domestic violence as a crime, victims of this crime, and how to police this crime.

Survivors’ engagement with SAPS: Opening Cases for Abuse Incidents

Table 2: Was a case opened with SAPS?

| Response | n= | Percentage |
|------------------|------------|-------------------|
| Yes | 27 | 17.65 |
| No | 126 | 82.35 |
| Undetermined | 1 | 0.64 |
| Total case files | 154 | 100 |

*Note: n≠ 100 (the percentage total is not 100)

Furthermore, client experiences in the courts and with SAPS are largely subjective and based on each individual’s perception of how each interaction with these entities is supposed to play out and what they believe the responsibilities of these authorities are. Only 5 out of 154 case files contained information about the clients’ experience with SAPS and the domestic violence courts. The overall consensus is that clients were treated well by SAPS officials during the justice attainment process. One case file revealed that the client had to call Ravens Mead SAPS three times and physically go to the police station to get assistance after the respondent contravened the protection order, SAPS officials told the applicant “*It is no use to lock someone up for three days. Wait for the court date.*” This applicant also did not open a case of domestic violence with SAPS, and it is clear that the attitudes of the officers are inherently negative toward victims of this crime. Due to the distrust and lack of confidence survivors have in authorities, they may decide not to open a case with SAPS. Additionally, reporting abuse to SAPS can entail significant time, effort, and financial resources. These barriers hamper their engagement with the legal system.

SAPS and Court Interactions: Client Experiences in Seeking Justice

Table 3: Client experiences in court and with SAPS

| Response | n= | Percentage |
|--|-----------|-------------------|
| Client had no challenges with SAPS or the courts | 1 | 20 |
| Client was treated well at court | 2 | 40 |
| Client had a poor experience with SAPS | 2 | 40 |
| Total case files | 5 | 100 |

In examining the client experiences documented across five files concerning interactions with SAPS and assistance received within the court system, distinct patterns emerge. Firstly, one client reported a seamless and unproblematic experience with both SAPS and throughout the court proceedings. Conversely, two clients highlighted instances of poor treatment from SAPS, although the precise nature of the maltreatment remains unspecified within the available files. Lastly, the remaining two clients recounted positive encounters with SAPS, indicating commendable treatment during their engagements.

The disparity between clients' encounters devoid of challenges and those wherein they were treated well lies in nuanced distinctions. Specifically, the absence of impediments in both the court system and interactions with SAPS may denote fulfillment of basic obligations as mandated within the DVA and DVAA. Conversely, being treated well may indicate an elevated level of engagement and assistance from SAPS personnel, surpassing mere adherence to statutory mandates. Notable, this may encompass proactive efforts by authorities to guide clients through processes such as applying for protection orders and fostering an environment of support, empowerment, and empathy throughout the legal proceedings.

The discrepancy delineated underscores the complex interplay between statutory compliance, and the provision of personalized, client-centric assistance within the realm of law enforcement, and judicial support services for survivors of domestic violence.

Interim Protection Order Status

Table 4: Did the client receive an interim protection order?

| Response | n= | Percentage |
|------------------|------------|------------|
| Received | 133 | 86.93 |
| Denied | 20 | 13.07 |
| Dismissed | 0 | 0.00 |
| Undisclosed | 1 | 0.64 |
| Total case files | 154 | 100 |

*Note: n ≠ 100 (percentage total does not equal 100)

Out of 154 cases, only 71 case files contained information about the finalization of the protection order. Additionally, only 28.17% (20 clients) of the 71 case files returned to court to finalize the protection order, and 51 clients (71.83%) did not return to court to finalize the protection order. One client clearly stated that she “*wilfully did not return to court because it was not necessary anymore.*” Such utterances from clients may encourage the preconceived societal notion that victims of domestic violence use the criminal justice system as a scare tactic for abusers and do not go through with their threats. Furthermore, during the check-in call, 20 clients indicated that they had finalized and received their protection order, whereas 51 clients indicated that the protection order was not finalized, and 28 clients intended to finalize their protection order on the return date. As it stands, it is unknown whether 48 of the clients withdrew their applications, missed their return dates, or if they too intend to finalize

their protection order. One protection order was denied because “*the magistrate said I do not have grounds for a protection order. I agree, I just wanted to scare him.*” The use of protection orders as scare tactics strengthens the negative attitudes SAPS officials and certain communities have toward domestic violence victims.

Finalization of Protection Orders: Did the client proceed with the finalization?

Table 5: Finalisation of protection orders

| Response | n= | Percentage |
|----------------------------|------------|-------------------|
| PO was finalised | 20 | 28.17 |
| PO was not finalised | 51 | 71.83 |
| Client intends to finalise | 28 | 26.41 |
| Unknown | 45 | 42.45 |
| Total case files | 144 | 100 |

**This table contains the responses to questions nine and ten which pertain to the finalization of protection orders.*

** Note: The total number of case files containing information about the finalization of protection orders is 144.45 case files had no information regarding the finalization of protection orders.*

**Note: n≠100*

In this sample only 99 case files in the sample that contained any information about the finalization of the protection order, 45 case files contained no such information and have therefore been marked as *unknown*. During the time of this research, 26.41% of clients indicated their intention to finalize their protection order. 0.94% indicated that they are in the process of divorcing their spouse, and 3.77% indicated that the respondent left, and they are no longer in danger, therefore they decided not to finalize the protection order. The clients who indicated an intention to finalize their protection orders were awaiting the return date. It was unclear how far away the return date was from the date of the follow-up call because that information was not collected.

There is always speculation about why victims of domestic violence proceed with the protection order but remain in a relationship with the respondent. In this study, one case file indicated that the applicant is still in a relationship with the respondent and the respondent is

no longer abusive, however, the client will proceed with the finalization of the protection order. Conversations with the Court Case Monitoring Officer revealed that survivors keep the protection order as a means of keeping the respondent in check and having a safety net if the abuse reoccurs. Additionally, survivors remain in these relationships because of their children and to avoid uprooting their children's lives.

Factors Influencing Non-finalization of Protection Orders by Clients

Table 6: Reason for not finalizing

| Response | n= | Percentage |
|---|-----------|------------|
| respondent is well-behaved | 2 | 10.52 |
| Family intervention | 2 | 10.52 |
| Respondent moved out- no longer in danger/ respondent left | 6 | 31.57 |
| Respondent received counselling | 2 | 10.52 |
| Divorcing respondent | 3 | 15.78 |
| Still in relationship with respondent/ just wanted to scare him | 2 | 10.52 |
| Total case files | 19 | 100 |

*Note: n≠100

In reviewing 19 case files, it becomes evident that various factors contribute to clients' decision not to finalize the protection order. The primary reason, observed in most cases, is the relocation of respondents from the family home, consequently eliminating the threat to the applicant's safety. Following closely, another prevalent factor is the initiation of divorce proceedings by the applicant, leading to the pursuit of alternative legal routes rather than finalizing the protection order.

Additionally, in two instances, applicants opted not to finalize their protection orders despite remaining in a relationship with the respondent, intending solely to intimidate the respondent

or deter further abuse. Such instances raise concerns regarding the judicious allocation of state resources and their potential impact on the efficacy of law enforcement services for future survivors.

Furthermore, according to Waldman (2020, p.61), many applicants withdraw their applications before finalizing their protection order because “they are afraid,” and “when the interim protection order is served, all hell breaks loose, and the applicants realize they were ‘more unsafe’ than before.” Some clients in Waldman’s (2020) study also list financial dependence on the respondent as a reason for withdrawing the application. This speaks to the 27.45% of victims in this sample who experience financial or economic abuse. Financial abuse is not only withholding funds from the victim to exert control but also using money to seduce the victim into staying with the abuser.

At the times when the MOSAIC Court Case Monitoring officer contacts the clients to follow up, each client is at a different stage of the justice attainment process and therefore there is no official record of why victims do not finalize their protection orders. Also, clients who receive assistance from the social workers within MOSAIC’s network of services, are called and checked in on more regularly in comparison to the clients who are not receiving support services in the network. These calls are only conducted once unless the clients contact MOSAIC themselves, after the initial call. Discussions with the Court Case Monitoring officer alluded to the fact that the number of times the clients are contacted may increase, however, at this moment, it is uncertain. These follow-up phone calls have revealed some reasons why victims of domestic violence have fallen out of the justice attainment process. Not all of these calls were successful because not all clients answered the calls (4.73%), or the clients answered the calls and dropped the calls. The Court Case Monitoring Officer highlighted a notable incident where, during a phone call with the client, he verbally assaulted her through explicit language before abruptly ending the call, however, 93.92% of clients were pleased to hear from the Court Case Monitoring Officer and two clients of 107 requested additional information about child maintenance. Instances where clients do not answer, abruptly end calls, or verbally assault support staff create significant obstacles in obtaining valuable information about their experiences. Such challenges hinder the ability to assess whether clients have achieved their desired outcomes.

Trends in the contravention of protection orders

Table 7: Contravention of protection orders

| Response | n= | Percentage |
|--|-----------|-------------------|
| Respondent contravened protection order, applicant did not report it to SAPS | 1 | 14.28 |
| Respondent was arrested for contravening protection order, applicant begged magistrate to release respondent | 1 | 14.28 |
| Applicant had to beg Kleinvlei SAPS to arrest respondent for contravening protection order | 1 | 14.28 |
| Respondent threatened to burn applicants house down. Accused applicant of rape | 1 | 14.28 |
| Applicant was stabbed by the respondent after applying for IPO | 1 | 14.28 |
| Applicant still experienced abuse after receiving IPO. Respondent tried to coerce applicant into withdrawing IPO application | 1 | 14.28 |
| Applicant was harassed by respondent via WhatsApp messages and voice notes | 1 | 14.28 |
| Total case files | 7 | 100 |

*Note: only 7 case files contained information regarding the contravention of protection orders

Within the seven case files examined, several recurring themes emerged regarding respondents' contravention of protection orders. These include instances of coercion aimed at persuading the applicant to withdraw the protection order, acts of physical violence such as assault with intent to do grievous bodily harm, cyber harassment, threats of assault, and false accusations of sexual violence. Remarkably, one particularly striking incident involved an applicant who reported the contravention of the protection order but pleaded with the magistrate not to incarcerate the respondent.

Again, the challenges within SAPS are highlighted, as evidenced by a client's experience of having to implore Kleinvlei SAPS to arrest the respondent for violating the protection order.

Firstly, coercion to withdraw the protection order suggests a disturbing pattern where respondents attempt to manipulate or pressure applicants into retracting the protection order. such coercive tactics include threats, emotional manipulation, or promises of reconciliation, thereby undermining the efficacy of legal protections afforded to the victims. Furthermore, instances of assault indicate the severity of risks faced by survivors even after obtaining a protection order. these acts of violence not only violate the terms of the protection order but also pose a significant threat to the safety and well-being of the applicant. The inclusion of cyber harassment in this data set reveals the evolving nature of domestic violence, wherein perpetrators use applications such as WhatsApp to abuse and harass survivors. Also, false accusations of sexual violence represent a particularly troubling form of retaliation aimed at undermining and discrediting the survivor. These accusations cause serious emotional harm and exacerbate the survivor’s vulnerability within legal proceedings.

Overall, this analysis reveals the complicated nature of the contraventions of protection orders, once again emphasizing the dire need for coordinated responses from law enforcement.

Client referrals within MOSAIC’s Network: Pathways to Support and Services

Table 8: Client referrals within MOSAIC’s referral network

| Response | n= | Percentage |
|---|-----------|-------------------|
| Referred to an attorney to divorce respondent | 13 | 65.00 |
| Referred to a social worker for counselling within MOSAIC’s network | 1 | 05.00 |
| Unknown if client was referred to services within mosaics network | 1 | 05.00 |
| Referred to an NGO for additional services | 2 | 10.00 |
| Referred to an external social worker | 1 | 05.00 |
| Receiving counselling at church | 1 | 05.00 |

| | | |
|---|-----------|------------|
| Client was referred, but it is not stated what the referral was for | 1 | 05.00 |
| Total case files | 20 | 100 |

*Note: n≠100

*Note: only 20 case files contained information regarding the pathways to support services.

MOSAIC often refers clients to different services within their referral network to assist victims in their healing process as they overcome their trauma of abuse. These services include counseling for adults and children, trauma counseling and containment, home visits, HIV testing, and Post-Exposure Prophylaxis (PEP) (Access to Justice, MOSAIC, n.d.). The referral to services in MOSAIC's network of support does not mean that clients make appointments to seek assistance from the support services. MOSAIC is at different intersections of the justice attainment process where survivors of domestic violence can be exposed to their services. The organization is in partnership with SAPS, the National Prosecuting Authority (NPA), the Department of Social Development (DoSD), hospitals, and the Thuthuzela Care Centres (TCCs). These partnerships enable MOSAIC to act as first responders and provide psychosocial services to survivors. Furthermore, one client stated that she would like to divorce the respondent, however, she does not have the money to pay for an attorney. This is the dilemma many victims of domestic violence find themselves in, and therefore, by no choice of their own, have to stay with their abuser.

Chapter 5 Discussion and Conclusion

Preview

While immersed in the realm of domestic violence eradication for an extended period, I have observed firsthand the troubling prevalence of injustices stemming from inadequate legal enforcement and the perpetuation of secondary victimization. Despite this familiarity, it remains profoundly disconcerting to witness the multitude of survivors enduring a dearth of justice due to their limited awareness of their rights as victims, insufficient personal and systemic resources, and the failure of SAPS to act upon reports of protection order violations. The attrition in domestic violence cases in South Africa occurs at various stages, including reporting, investigation, prosecution, and conviction.

The findings highlight the pivotal role of serving protection orders to respondents, as failure to do so significantly impedes the progression of justice, prolonging the ordeal for survivors. Additionally, this research emphasizes the challenges faced by survivors in navigating the justice system when perpetrators contravene protection orders. Notably, two prevalent reasons for the non-finalization of protection orders include respondents exhibiting good behavior and perpetrators moving away from the shared home, thereby stopping the abuse. However, it is crucial to recognize the common theme underlying these instances is the ceasing of abuse, aligning with the primary aim of an interim protection order. This underscores the complexity of the issue and the need for a multifaceted approach to tackle the underlying dynamics of domestic violence. By understanding and addressing these challenges comprehensively, policymakers and stakeholders can work towards a more equitable and effective justice system that better serves the needs of domestic violence survivors.

A vicious cycle

Out of the 106 case files that indicated reasons for not finalizing protection orders, two files showed reasoning that the respondent is receiving counseling and is now “*well-behaved.*” One of the case files stated that “*my husband’s family assisted us with our problems. I am not in danger*”, similarly another case file stated, “*I do not want to call the police if he does not obey the protection order because my family says it is a family issue and it needs to be solved by the family.*” This statement perpetuates outdated beliefs that domestic violence is a private matter, reinforcing the barriers to justice outlined by Hoyle (1998). Cultural attitudes have a great

impact on the application and finalization of protection orders. The belief that domestic violence is a private matter robs the survivor of their right to safety and security.

Some clients have alternatively decided to divorce the perpetrator instead of following through with the finalization of the protection order. This sentiment is echoed by the fact that justice looks different for every survivor, and at the core of the applications for protection orders is the desire for the abuse to cease.

Abuse is cyclical therefore it is not shocking to note that clients did not finalize their protection orders because the respondent is well-behaved, and this is referred to as the calm stage of the abuse cycle. After the calm stage, tension building occurs whereby the abuser feels agitated or wronged by the victim (Medway Domestic Abuse Forum,2016). In these instances, the victim attempts to remedy the irritation by doing tasks for the perpetrator and avoiding any potentially upsetting behaviors that can trigger the abuse. Thereafter, the incident of abuse occurs, also known as the explosive phase, and the victim is beaten, verbally assaulted, or psychologically manipulated (Medway Domestic Abuse Forum,2016). When the violence has subsided, the perpetrator will attempt to reconcile with the survivor by promising to get help, or by purchasing gifts and treating the victim well, the victim and abuser then enter the calm period again and the cycle of abuse begins again (Medway Domestic Abuse Forum,2016).

The calm stage of the cycle is particularly deceptive, as it creates a false sense of progress, luring survivors into believing that positive change is occurring. This illusion often leads them to let their guard down, even relinquishing the legal defenses a protection order provides.

Intersecting Paths: MOSAIC's Referral Network and the Purpose of Protection Orders

Protection orders accomplish a vital goal for survivors by providing an immediate resolution to address domestic violence concerns. This resolution typically unfolds in one of two ways, particularly for those survivors utilizing protection orders through organizations like MOSAIC. Beyond serving as a legal safeguard, protection orders also function as a gateway to access MOSAIC's extensive network of referrals, linking survivors to crucial resources such as legal counsel and social workers. Thus, while the protection order stands as a significant intervention in mitigating domestic violence, it also serves as a pivotal conduit to comprehensive support services in MOSAIC's network. The intersection between MOSAIC's services and the protection order provides survivors with essential support to break free from violence permanently. By offering comprehensive assistance, MOSAIC equips survivors with the

necessary tools and resources to navigate the complexities of leaving an abusive relationship and rebuilding their lives. The services provided by MOSAIC complement the protection order by addressing the practical, logistical, and emotional challenges that survivors may face. Together, these resources empower survivors to take decisive steps toward healing, safety, and independence.

The data shows that out of 154 case files, only 20 clients were referred to services within MOSAIC's network of support, the majority of which were referred to a divorce attorney. There is a gap in the data concerning the type of services clients were referred to, which makes it difficult to establish what services clients request to strengthen the support and safety provided by MOSAIC and the protection order.

Navigating the divide: Bridging the Gap between the Interim and Final Protection Order

As the data shows, a notable gap exists in tracking clients between the interim and final protection order. Currently, there is a lack of information regarding the support provided to clients after the interim protection order has been granted while awaiting the finalization of the protection order on the return date. For instance, out of the 20 clients who have expressed intent to finalize their protection order, their status cannot be accurately determined as finalized, withdrawn, or dismissed due to the absence of data beyond the initial expression of intent. Additionally, 45 case files lack documentation regarding the finalization of protection orders, or withdrawal of applications, resulting in untracked cases with an undocumented outcome. Although the sample size is relatively small and may not fully capture the entire process of tracking clients from the application to the finalization, it does offer valuable insights into the reasons behind clients' failure to complete the process. These insights shed light on the factors contributing to the high attrition rate observed in domestic violence cases.

Conclusion

While organizations like MOSAIC play a crucial role in supporting domestic violence survivors, it is clear that a collective effort is required to address the systemic issues surrounding service provision and the enforcement of protection orders. Enhancing communication and data collection processes within MOSAIC can improve the tracking of clients and provide valuable insights into the effectiveness of protection orders. Moreover, there is a pressing need for stronger accountability measures for law enforcement and the judicial system to ensure timely

and effective responses to cases of domestic violence. Educating stakeholders and communities about the importance of protection orders and the risk of non-compliance is crucial in fostering a safer environment for survivors. Ultimately, empowering clients to navigate the legal system and access support services is essential in breaking the cycle of abuse and promoting their safety and well-being.

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Chapter 6 Recommendations

In light of the challenges and gaps identified in tracking clients through the process of obtaining a PO, it is imperative to propose actionable recommendations aimed at improving the effectiveness of the process. The following recommendations are informed by the insights gleaned from analyzing the data and aim to address the identified shortcomings while promoting better outcomes for survivors of domestic violence.

5.1 Interagency Collaboration

It is recommended to foster a more transparent collaboration between law enforcement agencies, courts, social services, and victim support organizations to facilitate information sharing and coordination of efforts in tracking protection order cases. This will ensure timely interventions and support for victims.

5.1 Regular Follow-ups

Establish protocols for regular follow-ups with victims after the issuance of the interim protection order to assess their safety and wellbeing, as well as their progress through the legal process. This can be done through phone calls, emails, or in-person home visits by victims' support volunteers.

5.2 Technological solutions

Explore the use of online portals or mobile applications to provide survivors with easy access to information about their case status, court dates, and available support services. This empowers survivors by being informed and engaged in the legal process.

5.3 Training for stakeholders

Training provision for magistrates, SAPS, and other stakeholders involved in the justice system on the best practices for tracking the process between the interim and final protection order. This training should include sensitivity coaching on issues related to domestic violence.

By implementing these recommendations, stakeholders can improve the tracking of survivors through the justice system after they have received the IPO, ultimately enhancing the safety and well-being of survivors of domestic violence.

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Appendix One: Survey Questionnaire

1. Court location

Mitchells Plain
Bishop Lavis
Bellville
Philipi
Wynberg
Khayelitsha
Paarl
Franschhoek
Blue downs
Cape Town

2. Year of application

2022
2023

3. Month of application

January
February
March
April
May
June
July
August
September
October
November
December

4. Did MOSAIC get through to the client via cell phone?

Yes
No

5. What was the outcome of the call?

Voicemail
No answer
The client was pleased with the call.

6. Type of abuse

Physical
Mental
Emotional
Sexual
Financial
Other

7. Was a case of domestic violence opened with SAPS?

Yes

No

8. Was the interim protection order granted?

Yes

No

Case dismissed

9. Did the client return to court to finalize?

Yes

No

10. Why did the client not finalize the protection order?

11. What was the clients' experience with MOSAIC?

Very positive

Positive

Neutral

Negative

Very negative

12. What was the client's experience in the criminal justice system?

Very positive

Positive

Neutral

Negative

Very negative

13. Did the client understand the process of obtaining an IPO?

Yes

No

14. If not, was the process explained to the client?

Yes

No

15. Was the client referred to services within MOSAIC's network of support?

Yes

No

unknown

16. Additional notes

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Appendix Two: Ethical Clearance



Faculty of Law: Research Ethics Committee

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Certificate of Approval for Ethical Clearance

| | |
|---|--|
| PRINCIPAL INVESTIGATOR/SUPERVISOR: KELLEY MOULT | ETHICS REFERENCE NUMBER: L0032NS-2023 |
| STUDENT: LIOR GRÖTZINGER [GRTLIO001] | ORIGINAL APPROVAL DATE: 27-JULY-2023 |
| FACULTY: LAW | APPROVAL EXPIRY DATE: 26-JULY-2024 |
| DEPARTMENT: PUBLIC LAW | |
| PROJECT TITLE: Assessing the chronic barriers to justice faced by domestic violence survivors in the Western Cape, South Africa | |
| PURPOSE OF RESEARCH: Towards Masters research: The research aims to study the chronic barriers to justice faced by domestic violence victims and how these barriers affect the attainment of justice between the interim and final protection order, in the Western Cape. | |
| CONDITIONS OF APPROVAL | |
| This Certificate of Approval is valid for the above term provided there is no change in the protocol. | |
| <p>Modifications To make any changes to the approved research procedures in your study, please submit a formal "Request for a Modification" to the REC Administrative Office. You must receive ethics approval before proceeding with your modified protocol.</p> <p>Renewals Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You are responsible for submitting this by at least 2 months prior to the expiry date of clearance date issued.</p> <p>Project Closures When you have completed all data collection activities and will have no further contact with participants, please formally notify the REC: Law as well as your supervisor where applicable.</p> | |
| Certification | |
| This certifies that the University of Cape Town Law Faculty's Research Ethics Committee has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Cape Town Research Regulations Involving Human Participants. | |
|  Dr SIMPHIWE PHUNGULA REC: LEAD REVIEWER | |

Certificate Issued On: 10/08/2023