

*Victim Retraction or System Reluctance?: An Investigation into the Attrition of Domestic Violence Cases within the Criminal Justice System*

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Medico-legal research has found that 4 women are murdered everyday by their intimate partners in South Africa and that at least a third of these women sought assistance from the criminal justice system. Previous research on the implementation of the Domestic Violence Act [DVA] has found that there are critical attrition points in the criminal justice system where cases of domestic violence simply “fall out”. Despite reporting incidents to the police and applying for protection orders, a significant proportion (over 50%) of victims do not return to court to have their temporary protection orders finalised by the courts. Previous research by this writer has similarly shown that between 50-75% of women who report domestic violence to the police, and lay (or attempt to lay) charges, eventually withdraw them.

Against this background a study was undertaken with MOSAIC – an organisation specialising in services to victims of domestic violence – to establish (a) the factors that contribute to domestic violence complainants withdrawing from the legal process before they finalise their protection orders and (b) to identify the circumstances under which they discontinue this process. The research had both qualitative and quantitative features including in-depth telephonic interviews (n=365) with women in who applied for protection orders at four Magistrate’s Courts in the Western Cape as well as the analysis of intake forms (n=365) routinely used by MOSAIC in assisting these applicants in applying for protection orders.

The study explores the personal, social and structural barriers affecting women’s decision to proceed with the criminal justice process. In its analysis of these barriers, it challenges feminist research and criminal justice practice to reconsider the nomenclature of the ‘non-cooperative victim’. It is argued that this construct both excludes the cumulative impact of victims’ interactions with the criminal justice system and perpetuates the myth that women are intentionally and consciously obstructive; conduct which, in terms of research designed to explore ‘victim non-cooperation’ is enthusiastically scrutinised. It calls for a rigorous examination of ‘system uncooperativeness’ and highlights some of the critical failings of the criminal justice process that directly contribute to victim reluctance to proceed with finalising protection orders.