University of Alberta

An Exploration of
the Culture of Prosecution of Violence Against Women
in South African Courts

by

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A thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for the degree of

Doctor of Philosophy

Faculty of Nursing

Fall 2013
Edmonton, Alberta

Dedication

I dedicate my dissertation to those women who are the survivors of violence worldwide; especially those who died while their cases were still under the jurisdiction of State institutions. I wish I could have embarked on this study earlier, to gain a better understanding of what is happening in the criminal justice system, and possibly to have affected a prosecution culture that could have altered how your cases were handled. However, wherever you are, I salute your afflictions and deaths with pride as they have situated the status of African women on a pedestal of hope.

Abstract

Violence against women (VAW) is a global concern that cuts across national, cultural, social and economic borders. The trends of VAW differ between developed and developing countries. In developed countries, such as Canada, governmental laws and legislations on VAW are strictly geared towards prosecuting violent crimes perpetrated against women, while in developing countries, such as South Africa (SA), much is needed regarding policies that effectively address VAW as a crime. The purpose of the study in broad terms was to explore the culture of prosecution of VAW in SA in order to enhance transdisciplinary knowledge for nursing. Qualitative modes of inquiry guided the research approach, employing sensory ethnography, an innovative methodology pioneered by Pink (2009). Various forms of data were generated, using courtscapes, observation of the prosecutors and other court personnel when prosecuting VAW cases, conversations with the prosecutors in order to explore the culture of prosecuting VAW, and review of relevant site documents which were used in the prosecution of VAW cases. The generation of sensory perceptions and receptions occurred simultaneously with data analysis. Spardley's (1980) analytic processes of identification of domain, taxonomic, and componential analyses were used as the framework for making meaning of the culture of prosecuting VAW in South African courts. The findings are presented in four separate papers. The study findings revealed that the cultural scene wherein prosecution of VAW occurs epitomizes power whilst inducing fear in the

victims. Linguistic patterns that are employed in this culture are value laden with an arbitrary prosecution approach that de-centers women. The cultural processes involved in the prosecution were found to be insensitive, yet the legislations that guide prosecution have endorsed sources of evidence such as J88 (medico-legal form) and the use of intermediary facilities intended to make prosecution of VAW victim-friendly. Regardless of the definitions of VAW in documents from the United Nations and VAW Acts in South Africa, it was noted in the findings that male and female prosecutors as cultural actors tended to define VAW according to their gender orientation. Additionally, a difference in the definition was also noted around the historical-political era in which the prosecutors completed their education. Findings from this study can inform efforts to contribute to the best practices in VAW prosecution, in relation to future evaluation research, policy development and amendments in health and justice departments.

Acknowledgements

Decades of moons ago I made a promise to my aunt, Pebetse Raisibe Malema that one day I would have a bachelor's degree; little did I know that she and my dad Ngwatšhipa Sebea Molaba would live to see the day that I obtain a doctoral degree from an international university, the University of Alberta. I left 'myself' and the comfortable life that I was living in my country and I put my marriage, my children, and my family at stake for this 'elephant' they call a PhD. I want to put this on record: *obtaining a PhD is a lonely, emotional and painstaking journey that puts your resilience to a test of time*. In my case all these years that I was ravelling and unravelling with my doctoral studies nothing mattered more than to quench my thirst for knowledge.

The Faculty of Nursing at the University of Alberta offered me a unique opportunity to quench that thirst by being a fulltime student in residence. This was the idea that I yearned for most, as I obtained all my other degrees through part time studies. All my professors in this journey were committed to the advancement of nursing.

It will be totally wrong and unacceptable if I do not pay tribute to my professor, the daughter of Afrika, Dr. Magdalena S. Richter née Muller (Solina). It will be completely out of order if I don't mention your constant support for setting the pace of this journey by bringing me to this *Ice Desert* to quench my thirst with snow. Through your efforts today I stand firm and affirm myself as an emerging Afrikan scholar who has a duty to rewrite Afrika anew. *Baie Dankie.*

My greatest gratitude goes to Dr. Kaysi Kushner and Dr. George Pavlich, the chief whips of this work. To both of you I lift up my hat and bow. I am particularly grateful to have had the opportunity to have taken an Individual Guided Study on Public Policy Analysis with Dr. Kathy Kovacs Burns. I would be remiss if I did not thank Dr. Gina Higginbottom who nurtured me as a doctoral student to the level of an emerging researcher. Words cannot express the warmth that I received from most professors like Drs. Judy Mill, Linda Ogilvie, Katherine Moore, and Florence Myrick who are committed to global advancement of nursing, learning, and research. I am overly grateful to our own Jessica Twidale in the Public Relations and Development office, who always knew when I needed 'a hand up but not a hand out'. All of your bountiful sources of support took me through the entire program. Not forgetting to mention the financial support that I received in 2008 from Canadian Federation of University Women in Edmonton.

Sincere appreciation goes to the Thabo Mbeki African Leadership Institute in South Africa, especially the head, Dr. Maureen Tong for introducing me to the essential African scholars and researchers' network system that I wanted most as I am starting my career.

I salute my previous and present comrades in struggle in the Faculty of Nursing, Dr. Khairunnisa Dhamani, Dr. Nicole Pitre, Dr. Vinitha Paul Ravindran, Dr. Jaeyoung Choi, Shireen Bell, Esther Nderitu, Mary Asirifi, Mehri Karimi-Dehkordi, Najla Barnawi, and Vivian Darkwah. All of you did not give up on me

when the road was too long, inclines too steep,and loneliness impossible for me to bear.

Many thanks go to those families who opened their homes and crossed the color and race lines for me and my daughter here in Edmonton. Most importantly, the Bodnarek family in Riverbend for making it possible for me to have my daughter while facing this PhD 'monster'; the Caine family (Drs. Vera & Ken), and Dr. Dip Kapoor's family for 'daughter-sitting' while I was away in Africa. Your generosity and support efforts are permanently imprinted in the Mogale family's book of life.

I could have never lifted my wings and flew away from Afrika if it was not for my husband, the father of my kids, Kutume Molefe who always says *'I do'* to my unusual endeavors. Words cannot thank you much Phogole 'a Mahlako. It could not have been possible for me to embark on this journey if my children, Thabang, Thuto, and Mpoe did not concur with my 'old dream' and abandon their youthful dreams by accepting my new status of unemployed student mom. *Ke a leboga Ditau*.

I will like to put in print my biggest thanks to my sister, my friend, and my guarantor, Ramakgahlele Minah Maredi, Pheladi 'a Laatsa. Your support was enormous from the conception of this dream until its realization. *O somile Mokgaditsi*.

Above all I will like to thank God Almighty for He heard my cry and raised me up to more than I could say.

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List of Abbreviations

AIDS: Acquired Immune Deficiency Syndrome

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

DEVW: Declaration on the Elimination of Violence against Women (DEVW)

DNA: Deoxyribonucleic Acid

DVA: Domestic Violence Act No 116 of 1998 of South Africa

D.O.H: Department of Health in South Africa

EQUIPP: Enhancing Qualitative Understanding of Illness Process and Prevention

HIV: Human Immunodeficiency Virus

MRC: Medical Research Council of South Africa

NGO: Non-governmental organization

PEP: Post Exposure Prophylaxis

PP: Public Prosecutor

SA: South Africa

SAPS: South African Police Services

SOA: Sexual Offences Act of South Africa [Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007]

UN: United Nations

VAW: Violence Against Women

WHO: World Health Organization

Chapter 1:

Introduction

The topic of this dissertation research concerns the culture of prosecuting Violence against Women (VAW) in South Africa. The research findings are presented in a mixed manuscript format (as delineated by the Faculty of Graduate Studies and Research of the University of Alberta). This format consists of a series of discrete papers on a topic, developed in manuscript format for journal submission and publication, with variation in progression from pre-submission to published manuscripts. The manuscripts are preceded by this introductory chapter presenting an overview of the study and are followed by a concluding chapter providing a synthesis of dissertation findings, implications, and recommendations.

Background to This Study

In recent decades there has been vast production of context based knowledge on VAW[1]. Not only is this knowledge context based but it is also nursing discipline-specific (Fawcett, 2012). One area of knowledge production on VAW focuses on an exploration of the meaning of VAW wherein the United Nations (UN, 1993) together with the World Health Organisation (WHO) in 1996 fore-fronted this area by providing a global definition and description of VAW. Scholars in this area frame their understanding of the meaning of VAW using the

[1] VAW is defined as *all forms* of violence perpetuated on women embraced under the definition of 'domestic violence' by Domestic Violence Act No 116 of 1998 of South Africa. However, for the purpose of this study the focus is on both physical and sexual violence as the most reported and evident forms of violence wherein the health record is created on reporting the incident.

definitions from the UN and WHO. They frame VAW from a meta-perspective stance, viewing VAW as a victimizing crime and experience (Goldner, Penn, Sheinberg & Walker, 1990). Their intentions are to understand the forms and complexity of VAW, in order to design strategies that can facilitate adjustments in the victims' lives (Dunkle, Jewkes, Brown, Gray, McIntyre, & Harlow, 2004; Goldner et al., 1990; Hergarty, Sheehan, & Schnofeld, 1999; Scott-Storey, Wuest, & Ford-Gilboe, 2009; Silver, Boon, & Stones, 1983; Wyatt, Notgrass, & Newcomb, 1990). Adding to this area are epidemiological studies that expand on patterns, incidence rates and the pathways of VAW in individual relationships and within specific communities and societies (Browne, 1993; Campbell, 2002; Garcia-Moreno, Jansen, Ellsberg, Heike, & Watts, 2006; Heise, Ellsberg, & Gottemoeller, 1999; Jewkes, 2002; Khawaja, & Barazi, 2005; Smith, 1994). Another area of focus is theories and types of models on VAW (Anderson, 2005; Bograd, 2007; Heise et al., 1999; Russo & Pirlott, 2006; Vivian & Malone, 1996); these contribute to the development of screening, identification, management, and reporting protocols of VAW within the health sectors (Duma & Ogunbanjo, 2004; Geary & Wingate, 1999; Glass, Dearwater, & Campbell, 2001; Morrison, 1988). Nursing scholars are venturing into collaborative global, regional and national evaluation strategies (Bennett, Riger, Schewe, Howard, & Wasco, 2004; Decker et. al., 2012; DeGue et al., 2012; Usdin, Scheepers, Goldstein, & Japhet, 2005) to determine the progress made in the above mentioned areas of knowledge development. A common recommendation in the area of nursing is

multidisciplinary knowledge development rather than transdisciplinary. Accordingly multidisciplinary knowledge ensures that different disciplines maintain their identities and paradigms (Kerfoot, 1996); whilst transdiciplinary knowledge goes across, beyond and through the disciplines (Aldeman, Haldena, & Weis, 2012; Kerfoot, 1996). In this case transdisciplinary knowledge offers strategies that will address the complexities and dynamics of VAW. The stand is further endorsed by global organisations like the UN and WHO. Globally the development of nursing knowledge on VAW necessitates a priority and extensive transdisciplinary approach.

My doctoral study is an example of a transdisciplinary approach that requires nursing and criminal justice sectors to work together to advance women's health. This approach is consistent with a question that was directed to Her Royal Highness, the Princess of Thailand, during her address at the International Council on Women's Health Issues Conference (ICOWHI, 2012). The question was asked by one of the leading nurse scholars on VAW, Dr. Jacqueline Campbell: "How can nurses confer their work to and across criminal justice systems?" As a practising prosecutor who integrates legal practice and women's health within the Thai criminal justice system, Her Highness' answer was fair and frank: "Nurses will remain nurses, and lawyers will remain lawyers but the two disciplines need to work together for a common understanding, common good, and common goal". My study addresses a transdisciplinary knowledge gap that exists between and across nursing and criminal justice sectors. Knowledge from my study will

provide a bridge between nursing and legal systems. Furthermore, it brings to the forefront knowledge that will inform practicing nurses on what to do when encountering victims of VAW, especially in a South African context. For the purpose of this thesis it is appropriate to define key concepts in this work in order to avoid ambiguous research constructs.

Conceptualization of Key Concepts

Violence against Women (VAW). The definition of VAW used in my study is provided in Article 1 of the UN Declaration on the Elimination of Violence against Women (DEVW), proclaimed by the UN General Assembly in its resolution 48/104 of 20 December 1993: "VAW, is the violence that women endured physically, sexually, psychologically through acts of threats, coercion and deprivation of liberty; it might occur publicly or privately as a way of discriminating against women" (UN, 1993, p. 3). Another important definition of VAW associated with this work is from the WHO: "VAW is the physical force or power, threatened or actual against oneself, another person, or against a group or community that either results in or has high likehood of resulting in injury, death, psychological harm, mal-development or deprivation" (WHO, 2002, p. 5). Current literature on the definition of VAW also uses the terms gender-based violence (GBV) (Heise, Ellesberg, & Gottmoeller, 2002; Kim & Motsei, 2002) and intimate partner violence (IPV) (Campbell, 2002; Jewkes, 2002; Jewkes, Levin, Loveday, & Penn-Kekana, 2003; Scott-Storey et al., 2009) for VAW. Alternatively, VAW is classified as domestic violence (Ellsberg, Caldera, Andrés,

Winkvist, & Kullgren, 1999; Sokoloff & Dupont, 2005) or family violence (Bland & Orn, 1986; Tolan, Gorman-Smith, & Henry, 2006). However, each of these definitions conveys that VAW is violence inflicted upon women across social contexts, including in the workplace and in relationships.

The two definitions of VAW from the UN and WHO are transdisciplinary definitions intended for global up-take. In practice, however, and regardless of the fact that VAW is a global nursing concern, each country has its own legally endorsed definition of VAW. Hence, in my study I was mindful of the need to contextualize the definition of VAW to South Africa given the context of my study. As defined in the South African legislation, VAW is all forms of violence perpetrated on women, embraced under the definition of "domestic violence" in the Domestic Violence Act No 116 of 1998 of South Africa. My study focuses on both physical and sexual violence as the most reported and evident forms of violence wherein the medico-legal form (J88) is created by health professionals on report of the incident.

Culture. Culture is a broad and complex concept to define and to understand, due to its implicit and explicit characters. The explicit character of culture is noticeable through people's ways of life and how they live their lives. These ways of life are encoded as the patterns of inherited meanings and sensibilities which are noticeable in people's rituals, laws, language, practices, and stories that order, inspire, and guide their behaviors, actions, and even thoughts (Agar, 2006). The implicit character of culture is evident through

people's values system, beliefs system, and suppositions about life (Agar, 2006). The complexity and the breadth of meaning of the concept of culture have led anthropologists, sociologists, and historians to be cautious when using the term (Agar, 2006).

Moreover, scholars have expounded on what culture is not. In their elucidations they emphasise that:

1) Culture is not singular but it will always be plural as society cannot be generalized with one cultural label due to the different mix available for them to draw on and plurality in culture is "obligatory" (Agar, 2006, p. 6).
2) Culture is not static, as societies have never been frozen; hence culture is always dynamic (Callincos, 1996; Mugo, 1999) and evolves with time.
3) Culture is not overt to the insiders as it becomes evident to those who are not part of the culture (Richards & Morse, 2007).
4) Culture is not random; it occurs repeatedly through engagement and understanding which become routines and patterns that turn into background knowledge that is noticeable by the outsider (Agar, 2006).

The discerning feature of my study is the culture of prosecution of VAW in South African courts. I use the term culture for two operational descriptions in this study: Firstly, culture refers to the ways certain people carry out their daily assigned duties in ways that are understandable only to them as members of the

group (Agar, 2006). Secondly, as the cultural actors were Africans, culture in this case relates to how Africans were expressing their African culture and values in their daily activities as conveyed from generation to generation (Asante, 2003).

A contextual definition of culture from the judicial scholarship concurs with both anthropological and sociological literatures about the complexity in definition of culture because the word is used commonly as a broad and 'catch-all term' (DeJoy, 2005). This is due to the fact that culture includes a plurality of complex beliefs, symbols, and patterns of behaviors (Agar, 2006; Bierbrauer, 1994) which are difficult to measure (Agar, 2006). Bierbrauer (1994) notes that it is important to focus the definition of culture into a more manageable, definable and observable component. In trying to do so, judicial scholarship describes legal culture (wherein prosecution is rooted) as a network of values, practices and attitudes that are historically adversarial and deeply rooted in the character of performance and efficiency of the legal system (Sarat, 1977; Sarat & Umphrey 2010). Drawing from this description, culture herein connotes the cultural activities, processes and objects that are employed in the prosecution of VAW (Sarat & Schuster, 1995). Additionally, culture in this context means the cultural variables that are conceptualized as norms in both prescriptive and descriptive terms of the criminal justice personnel (Grossman & Sarat, 1971). Collectively these terms shape the historical attitudes and individual behaviors (Sarat & Schuster, 1995) of cultural actors in relation to their daily activities in this regard, prosecution of VAW.

For my study, I contextualize culture as the procedures practices, processes, linguistic patterns and objects that are employed in prosecution of VAW (e.g., J88) in a given space (courtroom or intermediary facility). I also consider the operational definition of culture by examining how Africans who were prosecutors and other court personnel[2] view and live their lives at a given time and space (Wa Thiong'o, 1993). In this regard, culture is viewed as the embodied expression of social actions, traditions, and customs that are conveyed from generation to generation (Asante, 2003). It can be portrayed by the African values and ways of lives irrespective of being in the western territory.

Contextualization of My Study

VAW remains rampant in South Africa despite government enactment of laws that are focused on human rights and domestic violence (Jewkes, 2002; Mogale, Kovacs Burns, & Richter, 2012). The two main Acts—the Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 are both framed to protect women against all forms of violence. Official reported cases of VAW in South Africa, however, are believed to only indicate the tip of an iceberg. The South African Police Services (2010-2011) and Human Rights Watch Press Report (2010) indicated a persistent high incidence of reported cases and prosecution rates of VAW cases when compared with the low conviction rate of 3% (Human Rights Watch Press Report, 2010). These reported figures set precedents for arguing that the human rights focused

[2] Regional Court intermediary, Regional Magistrate and Regional Court President

legislation, enacted by the State, is failing women as victims of violence. In fact, based on these reports, it is evident that the laws in place have not been able to deter, prevent or reduce violence acts against women.

All reported cases of VAW in South Africa should have health records as endorsed by the Criminal Procedure Act of 1977 as amended, Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007. The health record, which is called J88 in South Africa, is an official State document used exclusively for criminal proceedings in South Africa, for the purpose of recording injuries sustained by victims of a crime, VAW included. The documentation of findings on the J88 is a specialized and obligatory task which is done by health professionals. On presentation of a victim to the health sector, the victim's history is taken, followed by appropriate physical examination and detailed health interventions which are to be documented on both the J88 and the patient's medical file. The health professional is bound to comprehensively and objectively document in the two records what she/he sees, smells, hears and touches (Duma & Ogunbanjo, 2004). The J88 form provides information on what is to be examined (physical and genito-anal); how to record photographs or drawings of sustained wounds or the crime scene; seizure of weapons/clothing; narratives, excited utterances (quotes) from the victim; and odor from the victim (Campbell, 2004; Duma & Ogunbanjo, 2004). The J88 is then submitted to the justice system as evidentiary proof that substantiates the alleged crime during prosecution and sentencing of the perpetrator.

My study was aimed to explore the *entire* culture of prosecution of VAW cases with such a record as one of the artifacts which the prosecutors used in trial of VAW. Furthermore, my study was designed to look at entire proceedings and legal practices that are employed during prosecution of VAW in South African courts.

Significance of This Study to Nursing Knowledge

Against this background, I contend that my study is relevant and will make a strong contribution to nursing knowledge, particularly to our knowledge of women's health. In particular, its significance lies in highlighting for nurses how a legal culture around VAW contributes to a gender-based, chronic and negative effect on women's health. The understanding of this culture can inform nurses to design appropriate aftercare nursing plans for victims of VAW as a health promotion strategy. Such an approach dovetails with women's health advocacy and promotes transdisciplinary nursing knowledge.

Gendered etiology of chronic illnesses. Scientific evidence confirms that encounters with the legal system cause emotional and psycho-social harm (Burris et al., 2002) [in this case to the victims]. The short and long term effects of stress related to VAW do not necessarily subside upon leaving an abusive relationship (Scott-Storey et al., 2009) or passing of the verdict. Nurses need to have an intensive understanding of the contributions of persistent stress on the body systems and pathological conditions such as allostasis and allostatic load (McEwen & Stellar, 1993; Scott-Storey et al., 2009). Allostasis and allostatic

load are the response of the physiological body to frequent activation from stressors and acute threats, which ultimately damage the normal physiological processes of the body (Burris et al., 2002; Logan & Barksdale, 2008; McEwen & Stellar, 1993). This form of burden causes disruption of homeostasis of body organs and predisposes victims to pathology of chronic illnesses (Burris et al., 2002; Logan & Barksdale, 2008). Nurses, as front-line workers in healthcare provision, are confronted with victims of all forms of crime and VAW on a daily basis.

Therefore, it is important for nurses to have knowledge that helps them distinguish the etiology of chronic illnesses in women as gendered. Such knowledge enables nurses to establish relevant prevention and disease management programs that will advance women's health practices.

Aftercare nursing plans for victims of VAW. Nurses need to have knowledge on prosecution of VAW from a nursing perspective to inform efforts to refine and optimize health-promoting strategies for the victims of VAW. Additionally, awareness of the effects of the typically lengthy prosecution will enable nurses to design aftercare plans in relation to the verdicts of VAW cases. In practice, the contact between the nurse and victim of VAW ends in the examination room. Further contact with the victim outside the examination room is seen as a "Pandora's box" for nurses (Heise et al., 1999); nurses are not necessarily trained in the legal issues around particular cases. Nurses usually do not, for instance, have knowledge of how the health record documentation that

they have completed is used as evidence by the criminal justice system. It is essential for the health of victims that nurses are involved in the design of aftercare plans. The aftercare plan will enable them to follow the victim from the onset of reporting the case in the health sector through the progression of the case within the criminal justice system to enhance the continuity of nursing care to the victims of VAW. The current programs related to victims of VAW focus on the preparation of the victims for trial from the criminal justice system, and Nursing does not have any role in the design for implementation of those programs. Simultaneously, this knowledge will enable nurses to draw connections between VAW and other health issues (Kramer, 2002) like emotional and psychological wellbeing.

As the usual first contact for women who have experienced violence, nurses must understand the circumstances and conditions that shape the prosecution of VAW. Yet most nurses, like most people, have limited understanding of what legal proceedings entail; prosecution like other legal practices are often incomprehensible and tedious (Burris, Kawachi, & Sarat, 2002). Nonetheless, legal practices are recognized as pathways to social determinants of disease through inequality and socioeconomic positioning (Burris et al., 2002).

Advocacy in women's health. My work is embedded in women' health advocacy which is an essential component of the Ottawa Charter endorsed in 1986, and which was followed by the WHO Resolution on Health Promotion in

1998 and the Bangkok Charter for Health Promotion in a Globalized World of 2005 (WHO, 2002). At all levels of care (primary, secondary and tertiary) nurses are responsible to advocate for their clients and patients, including VAW victims. Knowledge from my study is expected to help nurses to lobby for healthy public policies as mandated by the Ottawa Charter by submitting relevant policy positions to the government in relation to the prosecution of VAW and the link with women's health for victims of VAW. For example, from my work situated in the South African context, I have proposed healthy public policies that will be women-specific mandating nurses to be present in order to interpret medico-legal information, as misinterpretation is common in these VAW trials.

In the South African context, the two Acts—Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007—endorse the relevant contextual interventions on VAW related to health care practices. There is a need for nurses to have information on these two Acts as it guides their practices when they encounter victims in the health sector. A key challenge is that nurses are not trained in legal issues. They are, however, responsible to report and document essential evidence on a medico-legal form (J88). Accordingly, the responsibility of collecting evidence is seen as a specialized task requiring advanced training (Walker & Louw, 2003). Although my study was not about collecting such evidence, findings can inform nurses' understanding of what is required when collecting and reporting evidence in the

J88 in order to be considered as standalone and reliable evidence in the prosecution of VAW.

Transdisciplinary nursing knowledge. Nursing scholars are collaborating globally in order to address VAW, but their collaboration has not taken up transdisciplinary approaches to any great extent. Knowledge from most collaborative teams remains 'focused segments' to the nursing discipline (Sommerfeldt, 2013). For nursing knowledge to be transdisciplinary it must cut within, beyond and across disciplines in addressing a particular issue, blending together commonly accepted strategies to address a phenomenon in this case prosecution of VAW (Kengeya-Kayondo, 1994; Kerfoot, 1996). This approach demands that nurses engage and be prepared to articulate to other disciplines and sectors, such as the criminal justice system, what nursing is and what it is not (Sommerfeldt, 2013). The intention of this approach is to bring all stakeholders involved in prosecution of VAW together to clarify and establish common ground in management of VAW cases transdisciplinary.

Available Knowledge on Prosecuting VAW

The focus of this study was on prosecution of VAW within the legal culture as pointed above in the conceptualization of the word culture. The literature search, however, focused specifically on evidence, principles of evidence, and the use health /medical record as evidence in court. More than 160 countries have signed the United Nations Declaration on the Elimination of All Forms of Violence against Women (Crowe, 1997). In the ratification, member

states committed themselves to adopting reformative legislations and criminal codes (Crowe, 1997) that address VAW according to international standards (Amnesty International, 2005). The international standards are outline by United Nations Model Strategies and Practical Measures on Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. These standards and norms advocate for a gender sensitive evidence-based prosecution approach (Busching, 2005; Campbell, 2004) by the courts within the member states of United Nations. Furthermore, the standards urge the member states to consider ways to implement an evidence-based prosecution approach including the use of court intermediaries and testifying from intermediary rooms as means to avoid secondary trauma to victims of VAW. Even though the intermediaries facilities are available, the literature indicates that the treatment the victims of VAW received in courts has been found to traumatize them further without giving them any hope about the criminal, judicial, and legal systems (Bowen, 2008). Victims are often disappointed with the courts outcomes as they do not correspond with the severity and the repercussions of the partner's abusive behaviors (Gillis et al., 2006). From the literature, victims have identified some of the reasons for their discontent as VAW is minimized as a crime by the trial process (Stephens & Sinden, 2000), the evidentiary rules which are employed by the justice system are demeaning and disturbing (Gillis et al., 2006), the trials of VAW inflict secondary trauma (Dylan, Regehr, & Alaggia, 2008), and there is

insufficient or lack of understanding of the criminal, legal, and judicial processes that leads to misinformed victims (Dylan et al., 2008).

The study by Stephens and Sinden (2000) cited that the victims assume that there is "spirit of brotherhood" (p. 540) within and among the criminal, judicial, legal systems and the perpetrators when VAW cases are handled. This is because victims are often not believed and they perceive insensitive and uncaring attitudes from some of the personnel from the criminal, judicial, and legal departments (Felson & Pare, 2008; Stephen & Sinden, 2000). The issue is aggravated by the fact that the victims are managed, controlled, and silenced by the criminal laws (Combrinck & Skepu, 2003; Guzik, 2008; Hunter, 2006). Furthermore, consideration of the victims' characteristics in the case produces a prosecution and sentencing compromise for women (Henning & Feder, 2005; Kern, Libkuman, & Temple, 2007).

This review also revealed that specialized courts on prosecution of VAW are necessary as they offer and create a cultural setting that allows victims to participate in the prosecution without fear as in the existing legal culture. The literature supported restraining orders as the legal way to deter VAW in relationships (Postmus, 2007; Roberts, Wolfer, & Mele, 2008). There is extensive literature pertaining to perceptions and views on the evidentiary process in VAW cases by victims, perpetrators, and criminal justice officials (Bennet, Goodman, & Dutton, 1999; Bowen, 2008; Cattaneo, 2007; Erwin & Coutin, 2006; Guzik, 2008; Stephens & Sinden, 2000). In order to make sense I organized the current review

into four areas: reformed international standards on prosecution and evidentiary processes in VAW cases, specialized courts on VAW, issuance of restraining orders, and the views and perceptions on criminal justice system by VAW victims. Given the nature of the legal culture the first area of this review focuses on how the United Nation attempts to universalize the prosecution of VAW through various norms and standards. The second area affirms the endorsed norms and standards of UN by discussing the specialized courts as the way to try VAW cases in order to waiver the threatening physical layout of traditional courtroom within the existing legal culture. In the third area the discussion is on how the restraining orders are issued and how they are used in attempt to deter the occurrence of VAW. The last area of this review provides an input on how the victims of VAW view the criminal justice system as the system responsible for the existing legal International standards on prosecution of VAW.

The criminal justice system requires evidence to prosecute and to sentence VAW cases. Due to the unique and complex dynamics of VAW, advocates contend that the burden of prosecution should be placed on the prosecutor rather than on the victim and this is possible in an evidence-based prosecution approach (Busching, 2005; Campbell, 2004). The call for an evidence-based prosecution approach is made internationally by interest groups on VAW, such as non-governmental organizations, consultancy agencies, and women's groups (Amnesty International, 2005). These groups urge the adoption of international standards on prosecution of VAW. The approach is reiterated in the reformative

legislations on VAW of United Nations member states. The reformative legislations provide significant and exhaustive definitions of VAW and outline effective procedures which are women-friendly in serving justice for the victims (Nevada Advisory Council for Prosecuting, 2004). This is appreciated in South African legislations on VAW as the two Acts on VAW, Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007, provide exhaustive definitions on different forms of VAW.

An evidence-based prosecution approach seeks to protect the victims from the perpetrators, hold perpetrators accountable and raise the penalty for their actions (Busching, 2005; Nevada Advisory Council for Prosecuting, 2004). This type of prosecution approach obligates the perpetrator to be accountable for his actions, rather than the victim and it tries to know and understand the abuser, victim and risks involved in VAW cases (Campbell, 2004). Campbell (2004) and Busching (2005) argue that evidence-based prosecution relies on out-of-court statements of victims and witnesses, as a victim-sensitive alternative to prosecutor reliance on victims testifying in-court. Positive identification, DNA, and photographs of crime scenes/injuries are used as evidence to prove the guilt of perpetrators, rather than requiring the victim to defend herself and need to prove she was raped or abused. Additionally, women's testimonies are respected and supported in trials as this type of prosecution and sentencing recognizes the difference between isolated violence and abusive violence. Furthermore, evidence-based prosecution examines the context of relationships rather than a

single occurrence (Nevada Advisory Council for Prosecuting, 2004), as VAW represents a pattern of behavior rather than a single isolated episode. In evidence-based prosecution the focus is on examining the system under which prosecution occurs rather than victim-blaming.

Enhancing prosecution of VAW as an evidence-based prosecution approach in the justice system is possible and desired (Romkens, 2006). The shift is implementable provided human rights laws and standards of the legal system are women-friendly and women-centered. The endorsement of these norms and standards was to counter-penetrate the persisting and existing adversarial legal culture within UN member states (South Africa included). The current legal landscape of South Africa shows that efforts are made to observe some of the international standards such as the introduction of intermediary facilities where trials of VAW can be heard within the Regional courts. Though these facilities were found to be not well equipped especially for women victims, slow progress in meeting the international standards was observable. Most importantly, the two legislations, Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007, were enacted as ground breaking efforts of the South African government to meet the UN standards. It is possible and it can be applicable for South Africa to meet these standards especially if consideration can be given again to specialized, courts which were revoked in a few years after their introduction.

Specialized Courts on VAW

Specialized courts focus either on a similar or a narrow class of offenses (Powers, 1997). These courts focus on offenses that are common to and regularly occur in a particular society (Walker & Louw, 2003). The aim in the establishment of these courts was to address VAW cases effectively as these cases are legally and/or factually complex (Walker & Louw, 2003). The benefits of these courts in VAW include development of judicial and legal expertise in substantive and procedural issues by the personnel who are working in such courts (Florida Senate Criminal Justice Committee, 1999; Powers, 1997). The personnel working in these courts become more familiar with the procedures and statutes related to the specific jurisprudence and develop wide extralegal knowledge on issues and challenges related to the litigant population (Powers, 1997). The specialized courts give special attention to the class of offenses which are not possible in mainstream courts. These courts provide for the transfer of a problematic class of offenses with a possibility of further specialization through innovation and research, which is rarely available in mainstream courts (Florida Senate Criminal Justice Committee, 1999). The narrow focus of the specialized courts promotes coordination, coherence, and consistency as vertical prosecution applies. In vertical prosecution, the same specialized prosecutor is assigned to the VAW case until the end of the case. This helps reduce the number of times which the victim must recount the traumatic incident when a new prosecutor adjourns the case. Combined with the expertise of the personnel, the specialized courts

enhance the efficiency of judicial resources (Walker & Louw, 2003). Gover, Brank, and MacDonald (2007) provided documented evidence that both victims and perpetrators are more satisfied with the way their VAW cases were handled in the specialized courts than in the mainstream courts. The specialized courts incorporated the victims and perpetrators into the decision-making process and considered their individual needs on the VAW cases.

Furthermore, in specialized courts, competitive courtroom processes are discouraged as the courts serve as a legal one stop shop (Erwin & Coutin, 2006). Victims of VAW have little or no role to play in their cases in the mainstream court, but in specialized courts, for example the traditional Canadian Aboriginal's sentencing circles, victims are provided with a voice which is fundamental in restorative justice practices. Cunliffe and Cameron (2008) and Pavlich (2005) note that restorative justice promises the victims greater voice, pride and self-worth. Restorative justice options often give victims the choice to write to the court, attend, or speak at sentencing of their cases (Konradi, 2000).

Though specialized courts have been revoked in South Africa, their impact and contribution to the legal system was much appreciated especially as they were having a higher conviction rate of VAW cases than Mainstream courts. Also, the intention, as stipulated by UN, of creating specialized courts was to speed up the often protracted route of VAW cases. Simultaneously, due to their speciality focus, they were intended to counteract the inconsistent approach that takes place in prosecution of VAW.

Issuance and Conditions of Restraining Orders

Restraining orders used in cases of violence in relationships are orders from the court that oblige perpetrators to stop and avoid certain behaviors (Holt, Kernie, Lumley, Wolf, & Rivara, 2002). The restraining orders are issued not only to prevent physical abuse, but also to prevent any other form of violent and threatening behaviors to the victim. In countries such as Canada and the United States of America, restraining orders on VAW are obtained from specialized domestic violence and mainstream courts (Gover et al., 2007).

The initial step that the victims of VAW often use in trying to correct abusive relationships is to get a restraining order against their perpetrator. The process of obtaining a restraining order is usually outlined in the Act of the particular country; in South Africa it is described in the Domestic Violence Act No. 116 of 1998. The applications and issuance evolve from the emergency protection order to civil restraining order. Emergency restraining orders are sometimes called temporary protection orders as they are given on ex-parte basis (in the absence of the perpetrator) (Jordan, Pritchard, Wilcox, & Duckett-Pritchard, 2008) and they are valid within a stipulated time frame outlined by the Act of that specific country. A formal court hearing is conducted with the perpetrator in defense; and depending on the case, a civil order can be given (Jordan et al., 2008).

Restraining orders are often considered civil remedies as they are a first line of protection and deterrence of VAW against the abuser (Jordan et al., 2008;

Postmus, 2007; Roberts et al., 2008). In some abusive relationships, restraining orders might act as an enforcement to separate the victims from the perpetrators. In other cases, they are the first step in the separation process which might ultimately lead to divorce or ending the relationship (Logan, Walker, Shannon & Cole, 2008).

Conditions for applications and issuances depend on the individual case and the law of the country; hence sometimes applications are turned down. The work of Jordan et al. (2008) categorizes the reasons for denial as individual, structural, perceptual and procedural factors. Individual factors imply that the particular relationship in which the victim is in does not meet the statutory definition of relationship from that country's perspective. In some cases, restraining orders are denied because of the ongoing court case between the victim and the perpetrator and frequent denials occur in physical abuse, stalking and other threats as reasons for application. And most importantly, the denial of restraining order might be that, the victim and perpetrator face a structural barrier of legal language regarding their relationship which is not legally formalized. In the case of perceptual factors, the perceptions and practices of the court personnel especially of the judges underscore the reasons for denial; they usually prefer to refer the case to the criminal court. In case of procedural factors, the denial is based on elapse of stipulated time to get an immediate civil order, or incomplete, incorrect or illegible applications.

In some cases, the restraining orders are withdrawn by the victims on their issuance, though many are violated by the perpetrators (Etter & Birzer, 2007; Logan, Cole, Shannon, & Walker, 2007). The main reason for withdrawal is "concrete change" that is either from the victim or the perpetrator (Roberts et al., 2008, p. 373). In this case, the withdrawal is based upon a change in behavior in either the victim or the perpetrator and a change in the situation (violent relationship). In Roberts et al. (2008), the emotional attachment which the victim has with the offender was also cited as a reason for withdrawal. Both the concrete change and emotional attachment create a pull/push relationship (Roberts et al., 2008). This relationship creates an ambivalent stance to the victim as she begins to develop hope in relationship as the partner is exposed to the programs (Roberts et al., 2008).

Issuing restraining orders does not guarantee the cessation of VAW (Klein & Tobin, 2008); victims rarely pursue court action for their violation (Logan et al., 2007). Also, the orders do not provide the warrant for safety for victims especially when coupled with other long-term court proceedings such as divorce or child custody (Hunter, 2006; Logan et al., 2007).

In South Africa restraining orders are issued by districts courts, which are regarded as inferior courts to the regional courts where VAW cases are heard. Their applicability in the regional court features in case the perpetrator has defied the stipulated condition and further perpetrated other forms of VAW such as rape of the victim or femicide.

According to this review the victims' perceptions and views on the restraining orders are just like other legal resources (Klein & Tobin, 2008) used by the criminal justice system to combat VAW.

The Perceptions and Views of Stakeholders on Evidentiary Processes in VAW Cases.

Evidence giving in cases of VAW is directed by the principles of evidence, like in any other crime (Schwikkard, Skeen, & Van der Merwe, 1997). Schwikkard et al. (1997) cite that the four major forms of evidence under the South African law and principles of evidence are: 1) oral evidence, 2) real evidence, 3) documented evidence, and 4) machine generated evidence. Oral evidence supersedes other forms of evidence in VAW cases and is the common evidence cited in this review (Combrinck & Skepu, 2003; Schwikkard et al., 1997; Waterhouse, Combrinck, & Dey, 2002). The aim of oral evidence is to give the parties involved in the case a chance to confront, challenge, and question the witness (Schwikkard et al., 1997). Waterhouse et al. (2002) and Combrinck and Skepu (2003) mentioned that the processes involved in oral evidence are the examination in chief, cross examination, and re-examination. All three processes are conducted through a confrontational question-answer approach. The confrontational question-answer approach negatively influences victims of VAW as it leaves them to draw their own conclusions on evidentiary processes and prosecution (Stephens & Sinden, 2000).

The victims think that the evidentiary processes are a form of secondary victimization (Bowen, 2008) as they are required to re-live the violent acts through re-telling their stories about the violent incidents. The process of re-telling the violent incident is seen as a fundamental requirement in prosecution of VAW cases (Waterhouse et al., 2002). In essence, evidentiary processes add further trauma to victims (Bowen, 2008; Curtis-Fawley & Daly, 2005), hence they experience paralyzing fear while they are under examination and cross-examination (Bennet et al., 1999; Cattaneo, 2007; Erwin, & Coutin, 2006). The victims highlight that examination and cross-examination expose them to retaliation from the perpetrators (Gillis et al., 2006). The possibility of retaliation is usually anticipated by VAW victims regardless of the assured safety by VAW legislations.

The victims' perspectives are that the severity of their cases are minimized and normalized (Stephens & Sinden, 2000) by the court officials who grant lenient treatment and less-sentencing to perpetrators. Concurrently, the court officials are seen to portray unresponsive attitudes towards the victims (Stephens & Sinden, 2000). These attitudes are depicted through demeaning, degrading, and discrediting the victims' accounts, and ignoring victims' wishes on the case (Bennet et al., 1999; Dylan et al., 2008; Gillis et al., 2006; Stephens & Sinden, 2000). Such unresponsive attitudes engender feelings of futility and shame in the victims (Bennet et al., 1999; Stephens & Sinden, 2000), and emphasize how

courtrooms are difficult to navigate and are experienced as opposing VAW victims.

This notion is also emphasized in a report by The Voices of Women Organizing Project, Battered Women's Resource Center (2008). The report elaborates that victims who are pressing charges for the first time against their perpetrators have bad experiences of courtrooms. Erwin and Coutin (2006) advance the discussion by pointing out that confusion and apprehension are caused by the courtroom practices which have contradictory mandates for VAW prosecution. The contradictory mandates create double binds to the victim, as alluded to in the report of Combrinck and Skepu (2003) in which the victim becomes a state witness while being a complainant.

Dylan et al.'s (2008) study further expands on the confusion that is a result of lack of and missed information for the victims on the criminal justice systems. Misinformation and misunderstanding usually occur due to the bulk of information which the victims receive when laying charges against the perpetrators (Bennet et al., 1999). According to Dylan et al. (2008), the misinformation and bulk of information are viewed as purposive ways of discriminating against the victims as women that positions the interests of the patriarchy, not women, in courts.

The research of Henning and Feder (2005) elucidated other factors which make the evidentiary processes of VAW cases even more frightening for victims, as these are seen as an inquiry into a) the victim's characteristics, b) her behaviour

and reaction during the violent incident, and c) the circumstances she was in when the violence occurred. These impressions create a victim-blaming platform by court officials (Waterhouse et al., 2002).

Similarly, the work of Guzik (2008) indicates that the perpetrators also have negative perceptions about how their charges in cases VAW are handled by courts. Guzik (2008) cites shame and the bad effects of VAW charges on the entire lives of the perpetrators. The perpetrators state that the VAW charges expose them to sanctions such as being considered unemployable (Guzik, 2008). Moreover, Guzik's (2008) study reported that the perpetrators are challenged by use of the popular phrase "to remain silent" in court. The phrase compels them to sit quietly and listen to the interpretation of the facts in their cases (Guzik, 2008). In addition, the perpetrators indicate that the plea bargaining agreements in VAW cases put them at a disadvantage. The perpetrators believe that the agreements pressure and lure them to incriminate themselves by pleading guilty to acts they did not commit (Guzik, 2008).

The work of Kern, Libkuman, and Temple (2007) indicates that there is an existing erroneous belief that victims of VAW provoke their perpetrators. These researchers wanted to verify if provocation of perpetrators by victims result in VAW. The results of their research showed that the hypothetical statement of this research was true. Additionally, the mock jurors in courtrooms held erroneous beliefs about victims of VAW. The mock jurors considered a provocative victim to have no fear about her life, to suffer less in a violent encounter and to be less

believed by the jurors that her life is in danger due to the relationship. As such, they considered that her actions towards the perpetrator were less justifiable, and that there should be less consequence to the perpetrator (Kern et al., 2007) irrespective of the type and extent of abuse.

A Canadian study on reasonable doubt (Cory, Ruebsaat, Hankivsky, & Dechief, 2003) provided a ground-breaking analysis of health records in VAW cases in courts. The findings of this work revealed that health records are most often used against women in their VAW cases by courts. The stakeholders involved in VAW court cases agreed that the health record is reliable legal evidence, but the health professionals believed that the health records do not provide objective evidence even though the lawyers articulate its objectivity. According to the study findings, the controversy on the use of the health records relates to the reason behind the creation of such a health record, and the filtration processes which the information on the health record goes through before its use in legal proceedings (Cory et al., 2003).

Amnesty International (2008) reported some of the important constraints that enhance the non-use of health records by prosecutors in South African courts. The report stipulated that the prosecutors were not trained on the use of medical evidence in court but they were trained on legal issues attendant upon VAW cases. There are optional courses on forensic medicine which offer in-depth knowledge on medical evidence but these courses are not compulsory for prosecutors. In addition, health professionals are not trained in legal language.

This state of affairs creates a discourse whereby the health professional as expert witness may appear weak during cross-examination regardless of the good standing of the case. In most cases, experienced prosecutors who know how to advance cases of VAW which use health records as evidence usually leave the public sector due to low salaries to open their own private practices (Human Rights Watch, 1997). Lack of training and experience on the use of medical evidence results in prosecutors not knowing the relevant way to inquire about the health record to enhance prosecution of VAW cases. The report cites that all that the prosecutors do is ask the health professionals to confirm their signatures and the contents on the health records.

The perceptions and the views of victims of VAW with the criminal justice system are relevant information as they are first-hand encounters with the entire legal culture (prosecution included). It becomes imperative to pay much attention to this area of review especially around how the victim with her language is decentred by the entire criminal justice system.

Conclusion

The literature review revealed that the management of VAW in courts has been the focus of research and deliberations among academics, researchers, policymakers, and human rights activists. This review firstly, provided a synoptic account on how the United Nations appeals for measures and strategies within criminal and justice system that are respectful, non-judgmental, and women-friendly when cases of VAW are tried. Secondly, the review indicated how the

required approach to prosecution of VAW cases can occur with the introduction of specialized courts on VAW as a strategy to accelerate the lifespan of VAW cases while at the same time advocating for evidence based prosecution of VAW.

Evidence-based prosecution and court specialization respect and incorporate the victims' voices in their cases, at the same time holding the perpetrators accountable for their actions. Through evidence-based prosecution and specialized courts, the principles of restorative justice are optimized as the healing process is not only experienced by offenders, but also the community and victims of the violence (Cunliffe & Cameron, 2008; Pavlich, 2005).

Thirdly the review pointed out those victims of VAW can obtain restraining orders against their perpetrators from these specialized courts. Not only are the restraining orders a legal deterrence (Jordan et al., 2008) to VAW crimes, but also the victims can use them as the process of separation from the perpetrators (Logan et al., 2008). The application and issuance of restraining orders does not provide a safety net for the victim as they are denied by courts on certain grounds, defied by perpetrators, and withdrawn by the victims.

The common denominator of this review is that victims are re-traumatized and dissatisfied with the prosecution processes employed in VAW (Bennet et al., 1999; Dylan et al., 2008; Gillis et al., 2006; Stephens & Siden, 2000). Not only are the victims dissatisfied with the way the cases are handled by the system and the officials, but the perpetrators also feel the same way about their charges (Guzik, 2008). Officials handling VAW cases consider multiple factors in

prosecution and sentencing VAW cases, many are at odds with the intent of the reformative legislations.

The current knowledge presented shows that, in essence, there are no studies exploring the culture of prosecuting VAW. Most studies focus on how victims, perpetrators and the court officials view prosecution of VAW. However, what influences their rituals, language, and practices, and even the thoughts of prosecutors has not been researched. Additionally, procedures and processes related to prosecution of VAW are highlighted in the reviewed literature, but the culture of such procedures and processes has not been explored. Furthermore, the review demonstrates that there is minimal empirical evidence about the use of the health record in VAW cases. Also, only one form of evidence provision (oral evidence) is deliberated upon in this review. On the basis of the findings of this literature review there were no empirical studies that examine other forms of evidence in VAW cases nor are there studies that explore how prosecution unfolds in courts as a culture when VAW cases are heard.

The Study

The current study was a PhD research project conducted in South African Regional courts. The purpose of this study was to explore the culture of prosecution of VAW in South African courts. The intention was to elucidate what was happening when cases of VAW are prosecuted in courts.

Theoretical framework: Critical feminism of African origin.

This study was informed by critical feminist theory of African origin or Afrocentric feminism which provided a basis for exploration of the culture of prosecution of VAW. Afrocentric feminism analyzes oppression of women from the eyes of continentally-based African women who live and work their entire lives with "cultural structures that are liberating and ennobling, yet deploring those that are limiting and debilitating" (Nnaemeka, 1998, p. 5). As a movement, Afrocentric feminism was launched in the continent in 2006 even though there were African feminists for a long time. Afrocentric feminism respects pluralism in feminism like other schools of feminist thought, especially multicultural and Black feminisms, while it is concerned with real lives, struggles and experiences of women (Hesse-Biber & Leavy, 2007; Kushner, 2005). However, the significant feature of Afrocentric feminism is its focus on the role of positive aspects of African culture in the lives of African women. Afrocentric feminism negotiates with or negotiates around different cultural practices in different African localities (Nnaemeka, 1998, 2003). Afrocentric feminism looks at the means and ways of living with kyriarchy - a 'ruling and oppressive system' in which many people may interact and act as oppressors or oppressed (Masenya, 2004; Schüssler-Fiorenza, 1994).

Kyriarchy is a socio-political system of perpetual hierarchical social relations, marking all women inferior through the interaction with many other distinctions based on race/ethnicity, class, ability, and locality (Sprague, 2005).

When used as a theoretical lens, African feminist theory examines kyriarchal practices as a collage of hierarchies (Hunter, 2006; Masenya, 2004; Schüssler-Fiorenza, 1994) that perpetuate oppression of African women.

Through Afrocentric feminism, I interrogated kyriarchy as a collective construct of all the 'isms' such as sexism, racism, classism, regionalism, colonialism, tribalism and culturalism during the trials of VAW cases. As a critical theory lens, Afrocentric feminism assisted me to maintain a strategically diverse discourse with prosecutors and other court personnel in exploring their ways and means of prosecuting VAW (Sprague, 2005). When linked with sensory ethnography, Afrocentric feminist theoretical perspective enabled me to draw closer to the realm of understanding and knowing the culture of prosecution of VAW in South African courts.

Research Methodology: Sensory Ethnography

A qualitative mode of inquiry guided my research approach, employing sensory ethnography (Pink, 2009) to explore the contours of the culture that attends to the prosecution of VAW cases. I used sensory ethnography to observe, understand and know the culture of prosecution of VAW in South African courts. As a critical and innovative qualitative research method sensory ethnography uses sensory perceptions in order to understand, know, and produce academic knowledge (Pink, 2009).

Ontological assumptions of sensory ethnography. One of the best descriptions of ontology in nursing scholarship is from Flaming (2004) who refers to ontology as the description of "something fundamental about the phenomenon of inquiry" (Flaming, 2004, p. 225). Flaming's description implies that ontology is relevant to the essence of an inquiry, the 'beingness' of that inquiry and the differences of that specific inquiry from other scientific inquiries. In this case, the preferred scientific inquiry is sensory ethnography. Like other ethnographic approaches, the signature in sensory ethnography is observations (Brink & Edgecombe, 2003) but this research methodology also uses additional senses, such as vision and hearing, concurrently with other ways of knowing to construct academic knowledge. Sensory ethnography is an innovative critical research methodology which can be used with digital visual technologies to enhance and optimize more commonly used data generation techniques such as observations and interviews (Pink, 2009). Sensory ethnography is not simply a data generating strategy (Pink, 2009); but it involves reflexive and experiential processes in the construction of knowledge; as it involve the researcher's conscious experiences throughout the research process (Pink, 2009). Lastly, sensory ethnography encompasses the researchers' and participants' experiences in the development of knowledge (Pink, 2009); it falls within the focused ethnographic approaches which are located within the interpretive paradigm (Monti & Tingen, 1999; Ntarangwi, 2010).

Epistemological assumptions of sensory ethnography. Epistemological assumptions of a research methodology provide answers to questions about the origin, nature, scope, methods, trustworthiness and limitations of knowledge (Meleis, 2007). The epistemic assumptions that underpin sensory ethnography as research methodology are summarized here. First, knowing is contextually-based on specific practices; what is considered as knowledge in another context might not be considered as such. Second, senses are interconnected and interrelated in order to construct knowledge. Senses do not work as individual entities to produce a comprehensible message. Third, knowing is connected to historical situations (Pink, 2009). Fourth, knowing is seen as a social, participatory and embodied process (Ingold, 2000; Pink, 2009), hence sensory ethnography is both inter-subjective and subjective as it is constructed from both the participants' and researcher's experiences (Pink, 2009).

Axiological assumptions of sensory ethnography. Axiological assumptions of research methodology are linked to ontology and epistemology (Mertens, 2007; Wang & Fesenmaier, 2006). The axiological assumptions guide the conceptualization of the value and benefit of a methodology in relation to the researcher, participants and research field (Mertens, 2007; Wang & Fesenmaier, 2006). Therefore from the conception of the research question and throughout the research process the researcher asks questions on how the methodology can be of value and benefit to the participants and research field.

Self-consciousness and reflexivity of the researcher, together with the method, provide the position and analytic strategies that enable knowledge production (Pink, 2009) in sensory ethnography. Second, research using sensory perceptions and receptions (sensory ethnography) enables the grasping of the unspoken knowledge that is usually omitted in other ways of generating data (Pink, 2009).

Unlike the positivist paradigm which is oriented to objective and value free knowledge generation with a typically distant and disinterested researcher stance (Brannick & Coghlan, 2007; Ntarangwi, 2010), sensory ethnography and Afrocentric research approaches are positioned within a subjective epistemology, that endeavours to make the invisible visible, and centres on human experiences (researcher and participants) with knowledge and knowing that are based on cultural, socio-political and historical factors (Lengel, 1998; Mazama, 2001; Ntarangwi, 2010; Pink, 2009).

Study Sample and Setting

Participants were recruited from four regional courts in three South African provinces jointly with the help of two key gatekeepers: the Regional Courts President and Control Regional Court Prosecutor. The gatekeepers notified prosecutors and other court personnel within their jurisdiction of the study and its objectives. The personnel were informed that a researcher would visit, sit and observe them while they prosecute cases, especially VAW cases. Because the courts are public places, observations of the prosecutors while

prosecuting do not require informed consent; however, permission was requested from the prosecutor to be observed as an indication of the respectful stance of the researcher. Allocation of cases to be observed was done daily by the key informants –Regional Control Court Prosecutors. Following observations, prosecutors were purposively selected to participate in conversations. During the conversations with the purposive sampled participants, fundamental constructs on prosecution of VAW emerged. The emerged constructs requested for conversations with relevant cultural actors from the cultural scene. Both theoretical and contextual sampling techniques were then initiated in order to expand the emerging constructs and contextual aspects of prosecuting VAW. Hence the final sample of the participants was not only recruited purposively but also theoretically and contextually.

Data Generation

The study used multiple strategies with multiple senses to construct data through four phases that occurred concurrently and iteratively with data and analyses. The four phases were courtscapes, observation of prosecutors during VAW court cases, conversations with prosecutors and other court personnel about prosecution of VAW, and site documents review.

Courtscapes. During the first phase the physical settings of the courtrooms were captured using video to produce the courtscapes. While touring the court with the video and describing various courtroom landmarks and objects,

the researcher also was exploring the surfaces of such landmarks through touch, smelling different odors and recognizing different attractions. Seven courtscapes were recorded from the three Regional courts. The endeavor in the recordings of these courtscapes was to explicate the cultural complexities and temporalities under which prosecution of VAW occurs in South Africa, from an Afrocentric feminist perspective.

Observations of prosecutors. In the second phase prosecutors were observed during their prosecution of VAW cases. Vision was the most dominant sense but hearing different sounds in the courtrooms, and smelling different odors were used during observations. In addition, a researcher sense of being awed, which is a personal experience of the researcher, was incorporated throughout this phase. This was because senses are interconnected and interrelated (Pink, 2009) and one sense cannot be separated from the others. I sat in different Regional courts and observed more than 50 criminal cases with 24 cases of VAW from the different sites.

Conversations with prosecutors and other court personnel. In phase three the prosecutors and court personnel who agreed to participate were engaged in conversations about what I had observed and the meanings attached to such observations. I listened actively during the conversations on how and what were the prosecutors saying about prosecution of VAW cases. At the same time I was watching any gestures and cues which the participants were making when giving the detailed accounts of what was happening when prosecuting. Seven face-to-

face intensive conversations and one virtual (e-mail) conversation were conducted with prosecutors and other court personnel. The face-to-face conversations were recorded on a digital recorder except for the one which the participant decline to be recorded. Even though the conversations were guided and generated by what I had discerned during the observations; there was a main question that guided all of the conversations. The guiding question was: "Tell me about the process of prosecuting VAW." Probing questions included: a) "Can you define, explain or classify VAW legally?" (b) "Can you describe the factors which you consider influencing the prosecution of VAW and who are the stakeholders in prosecution of VAW cases?" (c) "What are your feelings about prosecution of VAW cases?" (d) "What can women do as victims of VAW in order to contribute to a fair prosecution and what is the role of J88 in prosecution of VAW cases?" The main question and its probes offered me a stance of learning from the prosecutors about the culture of prosecuting VAW.

The conversation assisted me to comprehend the meaning of words, gestures, and expressions of the prosecutors and other court personnel through listening, watching, reflecting, questioning, and even responding (Feldman, 1998). Most importantly, the conversations revealed the participants' beliefs, meanings, perceptions, or accounts (De Vos, Strydom, Fouche, & Delport, 2004) attached to prosecution of VAW as a culture.

Site documents review. In the fourth phase relevant site documents used in prosecution were reviewed in order to provide additional information and

insights in this study. Furthermore, the documents were reviewed in order to examine, enhance, and supplant prior theoretical, observational, and conversational claims about the culture of prosecuting VAW in South African courts. The review focus was on the importance of these site documents to an ordinary African woman who is continentally based. The site documents were from Health and Welfare, Justice and Constitutional Development, Social and Development Departments, National Prosecuting Agency (NPA), and South African Police Services. Documents from Department of Health and Welfare included J88 which is a medico legal record, Health Policy on Management of Sexual Offences and Social Worker's pre-sentence reports. In addition, from Department of Justice and Constitutional Development Sexual and Criminal Offence Act, The Criminal and Court Procedure Act were analyzed, and from Social Development Department, the Domestic Violence Act of 1998 were reviewed. Texts from the National Prosecuting Agency included: brochures on understanding the Criminal Justice System and the Aspirant Prosecutor Program. The South African Police Services (SAPS) dockets also were included.

The four phases involved an iterative process which allowed me to move in between and across the phases time and again if there was a need for clarity in relation to another phase. The continuous analysis commenced from the time of making courtscapes and participant observations. This analysis had an influence on the synchronization of the entire research project (Pink, 2009). The aim was to optimize what to observe, notice, and listen to, and to assist in the refinement of

ideas (University of Pennsylvania School of Arts, 2010) on prosecution of VAW where it occurs. The recorded courtscapes and conversations were transcribed verbatim; while the extensive written field notes on observations and reflections kept throughout the research project also were used as data. In addition, field notes of the site documents were used as data. The aim was to explore all of the types of generated data in order to establish the relationship among the courtscapes, observations, conversations, artifacts and analyzed documents. The senses which were employed throughout this research process did not work as separate activities for the registration of sensation (Ingold, 2000, p. 261); they worked together in different facets throughout the entire research process in order to make sense and meaning of the culture of prosecution.

Data Analysis

Data generation and analyses occurred concurrently, inductively, and iteratively. The continuous data analysis commenced from the first phases of data generation, the time of producing the courtscapes and the participant observation. This approach optimized what I observed, noticed, and listened to, and assisted in the refinement of interpretations (University of Pennsylvania School of Arts, 2010) of the culture of prosecution of VAW in its naturalistic occurrence. The extensive written field notes documenting my observations and reflections, kept throughout the research project, along with notes about the site documents, also were analyzed. These strategies supported the analytic aim to explore all types of

generated data in order to examine relationships among the courtscapes, observations, conversations, artifacts, and relevant documents.

The transcripts and field notes were systematically analyzed using the analytic processes recommended by Spradley (1980). This analytic process included: identification of the domains of the culture, establishment of taxonomies related to the characteristics of the identified domains, componential analysis to establish relationships between the domains and the taxonomies, and identification of the emerging themes from the developed codes. All of these processes were made possible with the aid of the qualitative software package of Atlas.ti6©. Atlas.ti 6© offers various functions such as data storage, retrieval, visual mapping and inventory/output functions of codes, code families and primary documents (Bell, 2010). In this study Atlas .ti6© supported the organization of the data and of the reflections and analysis. In this study, codes took the form of quotations, phrases, sentences from conversations, excerpts from official documents, and descriptions from the field notes. In order for the codes to create meaning, I defined them in relation to the line of inquiry for this study. Through continuous reflection on the codes with the line of the inquiry, the codes were merged into themes. This process was assisted by the code family function and relationship mapping within the software Atlas.ti6©. Examples of code families in this study included positionality of the woman in South Africa and the court, authority over the case, communication in courtrooms and the ripple effects of VAW on woman. Throughout these meaning-making processes, the following

questions were asked: Who were the actors in prosecution of VAW?, What qualifies them to be actors?, What are the activities which they implored in prosecution?, How are these activities interrelated and play out in relation to an ordinary woman who is a victim?, and How is a woman holistically situated as far as her VAW case is concerned?

Insider-outsider Stance

In this study I hold both insider and outsider stances. Kanuha (2000) described the insider–outsider stance in research as researching identity groups with whom the researcher has a "historical, social, and ideological affiliation" (Kanuha, 2000, p. 441). The focus of the gaze in this study was from the margins, even though I saw myself as situated in the space between pertinent information (Dwyer & Buckle, 2009). In essence, I was trying to make sense of the realities of my native country (Kanuha, 2000). Holding a dual insider-outsider stance in this study offered me an opportunity to see the realities in the South Africa from another perspective.

Although I was geographically distanced from my country for the past 5 years due to my doctoral program, I remain a native African and my research study was based in South Africa where I was born, educated, lived, and worked all my life. This insider stance enhanced and afforded me a depth and breadth of understanding (Kanuha, 2000) how African women were previously (pre-colonial times) and currently perceived by men, professionals and society. Mostly, my insider stance provided me with the advantage of gaining easy access in two

Regional courts. I received unspoken support from the personnel in the two Regional courts (Pitman, 2002). However, as an African woman identifying myself with the victims who were mostly Africans, I was always emotionally intense when observing how the prosecutorial practices were re-traumatizing the victims. During conversations, most male prosecutors continuously used the phrase "you women" in a generalized woman-blaming mode. Even though I understood that they were not specifically referring to me, I was always caught off guard by such utterances as I interpreted them to convey generalized and sexist connotations. When I was writing field-notes, reflections, and even during analysis, I wrote myself into my research (Dwyer & Buckle, 2009). I found myself on many occasions writing "we women as victims."

Alternatively, I was an outsider to the criminal justice system, as I am not a member of the court personnel. This outsider stance enhanced my "unknowing stance"[3] as I accepted any way of knowing that was open to me. I did not know how the criminal justice operates, although I have some background knowledge gained through reading and my advocacy involvement with a Non-Governmental Organisation, LEAGO. Prosecutors whom I observed were allocated by the Control Regional Court Prosecutor and Regional Magistrates due to the strict protocols and structure of the criminal justice system. I was studying powerful people (court personnel) and mainly men who, in most cases, wanted to dominate

[3] Unknowing stance is the intersubjective space of two people or people of two cultures allows others to be. This art of unknowing may enable a nurse to understand, with empathy, the actual essence of the meaning an experience has for a patient. Munhall, P. (1993). 'Unknowing': toward another pattern of knowing in nursing. *Nursing Outlook, 41*, 125–128.

the research encounters and interactions (Sprague, 2005) especially in conversations with me. Lawyers are trained in constructing comprehensible and chronological narratives (Sarat & Schuster, 1995).

My professional background also contributed to my outsider stance. On realizing that the researcher was a nurse, potential participants seemed to assume that it was appropriate to tell me about how the J88 form was used during prosecution of VAW. They indicated that it was not necessary to be observed while prosecuting as they could tell me what the nurses should provide for the court in cases of VAW. Nevertheless, as Sprague (2005) advises, I worked to retain control of the research process. Ultimately I was the one who decided which prosecutors and court personnel to approach for the conversations based on my inclusion and exclusion criteria.

Research Rigor

Rigor in this study was achieved by using the verification strategies advocated by Morse, Barret, Mayan, Olson, and Spiers (2002) which are complementary to feminist strategies to ensure rigor (Kushner, 2005). These strategies were used continuously throughout the course of research in order to establish methodological quality and not simply post-hoc evaluation (Morse et al. 2002). Verification strategies included: responsiveness of the researcher, methodological coherence, purposive sampling and sampling adequacy, active analytic stance and redundancy of the data which facilitates the production of thick description of the study.

Responsiveness of the researcher. I approached data generation in this study with an unknowing stance and a broad angle view. I accepted all ways of knowing and working that were open to me. For example, from the onset of the study I was prepared to alter my initial recruitment strategy and establish the new strategy involving key informants. I also retained an open approach to interviews and observations, adapting my interactions in response to each situation.

Methodological coherence. Throughout the research process the interview participants wanted to tell me about prosecution. However, I adhered to the sequential phases of research method by first observing them while prosecuting VAW cases before I invited them for conversations.

Purposive sampling and sample adequacy. Eight participants for this study were purposively, theoretically and contextually selected as the study evolved. The sample was considered adequate because they provided rich, in-depth descriptions in their interviews. Moreover, the sample size considered the fact that there is a shortage of prosecutors in South Africa so the total population is very small. For example in one Regional Court there was only one Regional prosecutor who was part of this study. The participants were the cultural reservoirs in prosecution of VAW. They had substantial experience and firsthand knowledge on prosecution of VAW cases. Their insights enhanced the understanding of the culture of prosecution of VAW cases in South African courts.

Active analytic stance. Data generation and analysis in this study occurred concurrently, inductively and iteratively. The continuous analysis started from the time of producing the courtscapes and the participant observations. The active analytic stance augmented what I observed, noticed, and listened to, in order to refine my interpretations.

Redundancy of the data. I developed a case register for each of the observed cases wherein I systematically documented the cases, case synopsis, phase of the case, case descriptor, and the decision about the case. Additionally, I kept a field journal wherein field notes and reflections about the encounters and observations were written on a daily basis. Every morning I had a meeting with the Control Prosecutor to share what I have observed the previous day, as a means to provide for verification and clarification. Monthly meetings were scheduled with the Regional Court President, as the expert in the justice system, and additionally with my supervisors in Canada. These meetings allowed continuous critical reflections on what was observed and learned regarding prosecution of VAW.

Overview of the Manuscripts

The following is an overview of this mixed paper format dissertation. The four manuscripts along with the introductory (Chapter one) and concluding chapters (Chapter six) comprise my doctoral dissertation. The four manuscripts demonstrate the evolution and progression of my thought processes from the conceptualization of my doctoral studies. The manuscripts are presented as

articles, one article is published and the other three are intended for submission to peer reviewed journals. I wrote all four papers on my own and sent them for several in-depth critical reviews by my supervisory committee: Dr Solina Richter, Dr. Kaysi Kushner, and Dr. George Pavlich. Their in-depth understanding and knowledge of women's health, policy analysis and qualitative research methods assisted in the crafting of the manuscripts; hence this contribution is recognized as co-authorship where appropriate. Since this research has practice and policy as well as methodological implications for various sectors such as health and justice, the manuscript styles vary in order to conform to the styles appropriate to these diverse audiences.

Manuscript 1: The tale of my PhD journey. I found that it was necessary to provide an account of my journey through this dissertation, particularly in relation to my experience of feeling *othered* ever since I enrolled into the PhD program. The intent of this article is threefold: Firstly, it provides an account on how Eurocentrism persistently de-centers any other way of knowing in academia. Secondly, the paper touches on how my personal and professional life served as the beginning point of my area of research and research methodology. Thirdly, I provide an account of my doctoral research project and share the first impressions that I identified from the findings of this work.

The findings in this paper include my personal reflections and initial conceptualizations of what the culture of prosecution in South African courts entails. I noticed and sensed that individual prosecutors attached reciprocal

meaning in relation to their definition of VAW and their prosecutorial practices. Hence, those prosecutors who normalized and had a victim-blaming stance on VAW in their definitions tried VAW cases in open courts or demanded dock identification despite the fear that was observable from the victims. Such prosecutorial practices were perpetuating the demeaning culture of prosecution and its de-centering features. However, prosecutors who attached the meaning of hope to their definitions of VAW acted in ways that mitigated the de-meaning culture of prosecution by protecting the victims and holding the perpetrators accountable for what happened.

Manuscript 2: Violence against women in South Africa: Policy position and recommendations[4]. This manuscript has been published: Mogale, R., S., Kovacs Burns, K., & Richter, S. (2012). Violence against women in South Africa: Policy position and recommendations. *Violence Against Women, 18*(5), 580-594. This policy position paper provides a literature review aimed at mapping out current understandings or knowledge about the two main Acts on VAW, enacted in the Republic of South Africa after the first democratic elections (1994). In this paper, I explore the impacts of the Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 on women as well as the outcomes related to curbing and preventing VAW. From this analysis, I share my insights as recommendations regarding the Acts

[4] Published article: Mogale, R., S., Kovacs Burns, K., & Richter, S. (2012). Violence Against Women in South Africa: policy position and recommendations. *Violence Against Women, 18*(5), 580–589.

and their implementation. One other insight provided by the literature review for this manuscript was that the existing knowledge on VAW is from an insider's perspective that reflects the criminal and justice system.

In relation to my main interest in the culture of prosecution of VAW, the two Acts endorse the definitions and some duties of some State departments when there is a reported VAW case. Similarly, the Domestic Violence Act of 1998, in Section 2 on "Duty to assist and inform complainants of rights" mentions the duties of the police, health and justice departments. However, a difference is noted in Chapter 5 of the Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 where the section is dedicated to the specific duties related to the health department in cases of sexual offence under "Services for victims of sexual offences."

The question becomes what about the duties of other departments which are involves in the management of VAW? The Criminal Procedure Act of 1977 as amended outlines all procedures within the criminal and justice system. It would have been valuable if essential elements of VAW cases were ratified in the two statutes, Domestic Violence Act of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 as they are framed to prevent VAW. These essential elements which will be beneficial include: lifespan of VAW case within the criminal justice system and an endorsed approach to try VAW cases. These two elements would address the typically protracted and varied, often

confusing route of prosecution which I identified within the culture of prosecution of VAW in South African courts.

Secondly, the two statutes do not provide legal acknowledgement of women as a vulnerable population like children and the elderly. The non-acknowledgement puts the victims of VAW at risk for revictimizing interactions within the South African male-dominated culture of the legal system and its facets.

Manuscript 3: The culture of prosecuting violence against women (VAW) in South African courts: Sensory ethnography. This manuscript discusses the entire process of my sensory ethnographic study that took place in a powerful cultural scene where detachment and neutrality are the major underpinnings. The paper provides an account of study methods, including how recruitment strategies as well as sampling techniques had to be context and theoretical-dependent in order to fit the research aim, the researcher and the research participants. Most importantly, the paper actualizes how the sensorial perceptions serve as symbolic texts that are packed with cultural meanings.

This paper provides broad thematic study findings related to the culture of prosecution of VAW in South African courts. The manuscript provides insights about how the entire court system (personnel included), court space, and the objects of the court epitomize power that induces fear in the victims during trials of VAW. Secondly, the paper gives an account on how victims are de-centred while their cases are centered. Furthermore, prosecution is seen as a victim-

blaming platform where VAW is normalized. However, it is noted that there are beams of hope, provided by the statutes, evident within the SA legal landscape even though there is still existence of language hierarchy in the criminal justice system. Additionally, the very statutes that offer cause for hope of reform also offer contradictory statements on guiding procedures within the court.

Manuscript 4: The insights of the culture of prosecuting VAW cases in South African courts. This manuscript presents insights about the culture of VAW prosecution through visual-textual implications (Pink, 2009). The aim was to bring the reader close to the culture of prosecution of VAW, in my own terms, by interweaving the written and visual genres together in order to evoke and invoke multisensory effects (Pink, 2009).

In this paper, I consolidated my personal reflections and insights from literature and from the original inquiry. These insights highlight how the cultural scene, practices and processes intentionally induce fear. Secondly, the paper discerns how the court practices which protracted are and not straightforward effectively de-center women as victims and their languages, and simultaneously create an inconsistent and confusing approach to prosecution of VAW.

Figure 1.1 Structuring the manuscripts in this thesis.

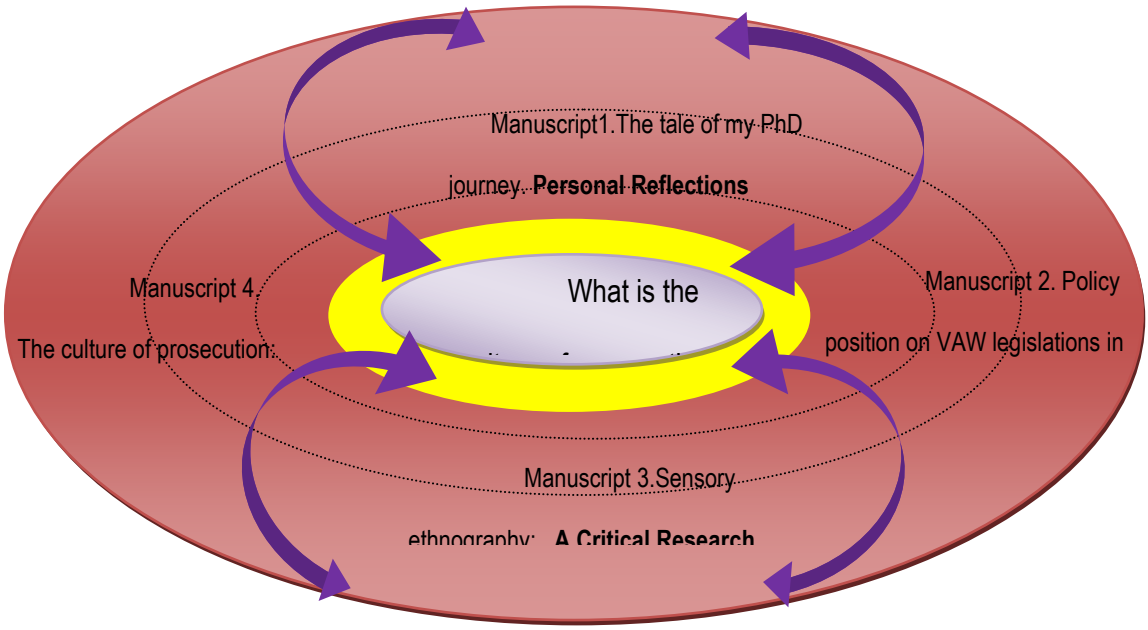

Figure 1.1. Illustration of how the four manuscripts contribute to answering the central research question: What is the culture of prosecution of VAW?

The four manuscripts were written as individual contributions to knowledge development in the field of women's health. In developing Figure 1.1, I acknowledge my use of Chinn and Kramer's (2008) representation of emanicipatory knowing. In my case, the figure demonstrates the individuality of each manuscript and its contribution to answering the central research question. Although each of the four manuscripts takes up a different central focus, all four manuscripts are relevant to the centre of the circle focused on examining the culture of prosecuting VAW cases in South African courts. Each of the four

manuscripts also serves to organize my thinking about my future research program on criminal justice and women's health, outlined in the Conclusion.

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Chapter 2:

The Tale of My Ph.D. Journey

Essentially every society is expected to generate knowledge for its own benefit (Teffo, 2011) and evolution. There are many ways of knowing and the choice of generating knowledge is shaped by the needs of particular sectors of humanity and society (Nzimande, 2009; Teffo, 2011). Furthermore, the responsibility and means to validate knowledge depend on the people who are the knowledge users (Adler, 1965). Since there are multiple ways of knowing, decisions about which strategies to use to disseminate knowledge will depend on the audience for whom the knowledge was generated. Some strategies, however, are privileged in Western scholarly contexts while others, for example African knowledge dissemination strategies, are marginalized, stigmatized (Ocholla, 2007) and obliterated. African knowledge dissemination strategies vary and they follow generational transfer methods such as praise songs and storytelling that can be either verbal or textual. Africa has only accounted for 1.0-1.8% of global knowledge, arguably due to the marginalization and stigmatization by the Eurocentric ideology of African ways of knowing and learning (Britz, 2007).

I am an African scholar in the making, and like other scholars I have opportunity to critical inquiry and discovery (Royster, 1996). Given that, my intention is to challenge and deconstruct the suitability of dominant Western ways of sharing African knowledge. Western approaches to the means of knowledge dissemination often do not fit with, or are not appropriate for, African forms of

knowledge. I will use African ways of knowledge dissemination which are hardly ever mentioned in academic writing, even though known by academia. These are the ways that the academy mutes African voices, rendering them unspeakable, unhearable, and unbelievable (Royster, 1996). My intention is to deconstruct and revisit identities, renegotiate existing relationships, and thereby recast roles and recreate the self (Hutchinson, 2000).

During my doctoral studies, I sought an Africa-based research project that was to produce and disseminate knowledge relevant to, and valuable for, an African context. As a self-funded international student attending a Canadian university, I could have done my research project and data collection in Canada to save costs. I felt compelled, however, to respond to my roots, to the calling voices of my ancestors in rewriting Africa; for this reason I went home to pursue my research project. Additionally, to position myself in African academia, I knew that I needed to be prepared to renegotiate my relationships with my supervisors to understand my yearning to write my work, which is African-based, in an African way in order to benefit Africans. Like Ngunjiri (2007), I struggled to listen to those who have claimed to be experts on African phenomena and have reported research results and construction of knowledge about the meaning of Africa and the Africans.

The decision about how to write and present the texts for this paper was challenging for me because textual engagement is structured and informed by presuppositions about the way the world is and ought to be (Roberts, 1996).

Following Freirean thought, the production of knowledge in this regard is a political and interest-serving process as nothing that is written, taught, read or studied is neutral (Roberts, 1996). I have chosen the "textual storytelling" mode of writing even though I am mindful that it represents an unconventional approach to knowledge dissemination in the mainstream "scientific territory." But this is the framework in which I have lived *all* my life and is an ability I never want to lose (Biko, 1978). Furthermore, as an African, I am intending to pursue my journey to both rework and reaffirm African knowledge in academia.

My aims in writing this chapter are threefold. First, I reflect on how my perspectives and positions have structured my life and my doctoral studies. I expound on how these two aspects of my experience anchored my experiential knowledge on etiology of violence against African women in their new democratic States. Secondly, I elucidate on how the evolution of my positions in time and moment has stirred my imagination in choosing a scholarly inquiry and how my philosophical, epistemological and methodological underpinnings were optimized during my doctoral PhD studies. And thirdly, I give an account of my whole research project and sharing the insights.

My Ontological Beginnings

The journey towards PhD studies and being an international student is often a fear-induced experience (Ngunjiri, 2007). In my case the experience has been not only fear-induced, but also complex owing to the self and ascribed identities which I have and carry. These identities centre my own sense of being

and also describe and prescribe authentic perspectives and positions I have to occupy through all walks of my life. They evolve in many ways hence I have been immersed in the process of acquiring another perspective and occupying a new position as an African woman and international graduate student. I have carried this new perspective for the past 4 years in a land far from my home where nobody knows my perspectives and positions. The new perspective and the position I occupy add to the pull and push factors in my total being.

I consciously occupy this push and pull related to my perspectives and positions. It urges me to explore and expand the boundaries of my being in order to deconstruct unasked questions (Du Bois, 1903) about *African women and wives, African mothers and daughters.* These unasked questions are and will always be very difficult to frame, because according to Zemans (1996) they signify a familiar existential search that has a twist of not asking who an African woman is *but claim to know how an* African woman is?

I define myself as a *Black, African, woman, daughter, sister, aunt, niece, grandchild, great - grandchild,* and above all a *wife* and a *mother* from the continent of Africa. These self-assigned perspectives are my daily catechists (Mbeki, 1999 b) through which I proclaim myself in all ways of life and I claim them as authentic voices through which I expect to be heard. They offer me pride in daughterhood, sisterhood, wifehood, motherhood, womanhood and most importantly they provide me with nationhood as the position of honor in my being. I exist in the existence of these perspectives and positions and they exist in

my existence as they encompass my heritage. I cannot bracket them, as other people around me are able to identify me in relation to these positions because they direct my needs for knowledge (Mogale, 2011).

As a Black, Pedi, traditionalist woman I was brought up by an aunt who is a survivor of many forms of violence in her marriage. In Limpopo province of South Africa during my early life as a girl child and throughout my teenage years I witnessed how Black African women learned to be helpless and unable to leave their violent relationships as the perceived source of sustenance (Payne & Wermeling, 2009). Furthermore, I have seen how these women stayed in their violent relationships through the context of tomorrow the sun will rise (Mbeki, 1999a).

In my womanhood and professional position, I have seen how Black African women have suffered and experienced brutal forms of violence without shedding a tear. As an emergency nurse I have attended to their wounds and injuries and I have seen how they, without any choice, returned to their relationships with the hope that they have seen the sunset and the sunrise will find them (Foster & Foster, 2010).

As part of my civic role in 2001, I co-founded a non-governmental organization (NGO) in the rural community where I grew up, was educated and worked. In the early years of my life as a child and my teen years, womanhood and professional spaces; I encountered the pains of women who were the victims of violence in their relationships. And I have been deeply troubled to know that

they remained content and stayed in their relationships with the notion that tomorrow the dawn will come (Mbeki, 1999a).

Through all my life "hoods" I have lamented and born witness to how Black African women in Limpopo province lived their lives with numerous forms of violence against them. For this reason my interest in violence against women generally, and specifically in Black African women is not an arbitrary, or an abstract, intellectual fascination. It is an authentic and psychological awareness that infiltrates all walks of my life. The perspectives and identities I carry are driven (even unconsciously) by a sense of belonging to this marginalized, gender oppressed, socio-political group.

Towards My Episteme

The president of the Claremont Graduate University, Professor Upham once said that the aim of graduate education, especially at the PhD level, is to intensively extend the breadth and depth of knowledge in a particular subject, field or discipline (Upham, 2001). According to Upham (2001) this can be achieved by developing and refining research skills and methods which will broaden professional competencies. The moment I was accepted as a PhD student at the University of Alberta, I felt initiated to achieve this purpose. A number of professors within and outside the Faculty of Nursing and my immediate supervisors walked me through PhD coursework as part of the initiation rites. It was a journey of tears and joys as I exposed my vulnerability related to my ways of knowing and learning.

In my tears, I lamented that the knowledge I possessed was seldom recognized or never mentioned in the discussions and dialogues which were held as part of my initiation rites. Furthermore, the rites were at odds with my African being. I shared sentiments with Phelan (2011) in her keynote address at a Teaching and Scholarship Day. She expounded on how knowledge is a pathway of doubt and despair, a gift and curse, and also a pathway of loss of truth and identity (Phelan, 2011). Her words spoke to me as I knew that being a PhD student in a Western academic territory; I must face the Western consequences of learning. Similar sentiments are echoed by Biesta (2002) and Roberts (1996), who state that when we engage in learning and knowing relationships we offer our trust and expose ourselves to violence. According to Roberts (1996), citing Paulo Freire, this violence is perpetuated by the fact that knowing is not a neutral act as it involves emotions and feelings while at the same time is risky.

Time and again in my initiation rites, I was expected to write for the Canadian audience which was foreign to me but well-known to my fellow Canadian classmates. I was warned by some of the Faculty members that my contextual approaches would not be successful within the Canadian University setting. I heeded this warning, and recalled Mphahlele's (1988) views that a university must reflect on, and yet be more than, the culture within which it is situated in order to avoid stagnation. The faculty members were doing their job as required by reflecting and feeding into the *North American imprint*. The North American academic view interprets silence in class as a deficit rather than an

active choice made by a student not to participate (Zheng, 2010). Furthermore, there may be little or no consideration of non-verbal cues and other participation processes such as nodding, laughing and using minimal responses like "uh-mhm" as patterns of class participation (Kim, 2010; Zheng, 2010). In my case, I had learned that silence conveyed respect and honor to the person talking, especially when that person is in an authoritative position. The goal for us as Africans is not "you talk and I talk" but we negotiate meaning, create understanding and exchange and contextualize perspectives of the speaker (Royster, 1996). Moreover class participation is a process that involves multiple factors (Zheng, 2010). According to Zheng (2010) and Kim (2010), among others, such factors include cultural knowledge, teacher and peers effect and self-identity. I do not see myself as an individual person in a class or in the world; I exist because of others. My success in class depends on the success of my fellow classmates.

The experiences that I am sharing might seem singular in nature, but they are shared experiences for many African international graduate students in North American universities. I concur with Royster (1996) who discerned that individual and singular stories, when placed one against the other, build a credible litany of evidence (Royster, 1996). By sharing my experiences in my writing here, I hope to provoke a transformative and thoughtful response from academia as the factory of knowledge.

Occasionally in my PhD journey, I longed to be heard and to feel positively received even though I was outside the immediacy of my home culture

(Royster, 1996). One of my African adages says "*Matsatsi ga a hlabe ka go swana"* meaning that days do not come out the same way. In a PhD course on Development of Nursing Knowledge, I was encouraged and supported to be who I am and to proclaim my being to the nations of the world. From that event onward, I have not looked back, but have endeavoured to reaffirm and reclaim my positions as an African, whose being is around mountains and slopes of Africa (Mbeki, 1996). This reawakening wiped all my tears and brought great joy to my heart, as it premised my need to situate African ways of knowing and learning in the global nursing fraternity.

As my journey through graduate studies helped to shape an African inspire epistemology, I realised the pressing need to focus my work on violence against women. I contemplated many topics related to this focus and drew from my personal and professional experiences in Africa and from my exploration of literature in the health and social sciences. I did not anticipate that I would subsequently find myself in South African court rooms, learning and coming to know about the culture of prosecution of violence against women. My interest in prosecution was prompted by the encounters which I had with the criminal justice system when I accompanied victims of VAW from my NGO to the courts. In those encounters, I was mystified by the way the cases were handled in courts irrespective of the new and progressive legislation in South Africa. I came to realize that there was minimal or no knowledge about the culture of prosecuting VAW cases. I decided to conduct original research that would create new

knowledge and scholarship that would refine and improve good practice (Upham, 2001) related to prosecution of violence against women.

I needed a research methodology that would allow me to identify and uncover the patterns of behavior in this legal arena, and also to differentiate between what people usually say and what they actually do. Furthermore, I needed to understand what influenced people's actions in order to comprehend why certain patterns and practices exist in resistance. In addition, I needed a methodology that would encompass my personal experiences throughout the research process (Pink, 2009). I opted for ethnography that employs the *senses* as the mode of inquiry for my study.

Knowing and Learning through the Senses: Sensory Ethnography

Coming from a nursing background, I pondered how to frame my research question that it might be of value to nursing related approaches. I understood that a research question should originate from a clinical healthcare setting (Wuest, 1994), yet I struggled with the fact that I wanted my question to directly relate to a "nursing related problem/issue not a criminal justice issue." In my coursework, I pondered questions about how a health record affected prosecution of VAW cases and what was considered to be evidence related to the health record. Finally, I came to realize that I needed to know about the entire culture of prosecuting VAW cases that have a health record as part of the evidence. My research question became: "What is the culture of prosecuting VAW cases in South African courts?"

Hence I decided to use multiple methods of data generation through ethnographic inquiry that employs senses. Firstly, I captured the physical layout of the courtrooms as the given space for prosecuting of VAW cases. Secondly, I observed prosecution live in order to articulate the prosecutorial practices of VAW cases. Thirdly, I engaged the prosecutors in conversations as the cultural actors about their daily activities. Lastly, I enhanced the theoretical, observational and conversational claims by examining the related site documents. My subsequent decision to take up sensory ethnography as the methodology of choice emerged through a progression of experiences and deliberations. The aim of my study was to explore the culture of prosecuting VAW. Both the aim and the research question led me to qualitative research inquiry (Mayan, 2001). According to Mayan (2001), qualitative inquiry explores the everyday lives of people in their own natural setting without manipulating that setting. In conducting my research, I have sat and observed prosecution in its natural setting (courtrooms) in order to construct an interpretation of the culture of prosecuting VAW. The term *culture* directed me to an ethnographic research design. Ethnographic studies always have the intent on observational questioning (i.e., what is happening in the situation). In my case, I opted for an ethnographic design that embraces both the lived experiences of participants and the researchers' senses. Sensory ethnography considers the senses as means of knowing and learning, merging reflexive and experiential processes as significant underpinnings (Pink, 2009). My intention was to learn and know the culture of

prosecution of VAW cases in its natural setting (Ngunjiri, 2007). Furthermore, I needed to understand and make meaning of the daily work of the prosecutors and other court personnel both microscopically and telescopically (Royster, 1996). This was possible as I was a scholar in the making at the University of Alberta.

I felt that I was privileged to be admitted at University of Alberta; a research intensive university. The University of Alberta has 111 allocated research chairs with five in Faculty of Nursing wherein I am a PhD student. The Faculty of Nursing is the home of the International Institute for Qualitative Research Methodology. In 2008–2009 I was granted a studentship with the institute through their program EQUIPP (Enhancing Qualitative Understanding of Illness Process and Prevention). I was fortunate to be an on-site full time student tapping into the knowledge related to qualitative research approaches from some of the top qualitative researchers in the globe. I was eligible to attend courses on qualitative methods, seminars, conferences, and even one-on-one information sessions with experts about various qualitative methods. It was during this period that I heard about sensory ethnography from its pioneer, Sarah Pink. In 2009, Pink gave a keynote address on Visual Ethnography at the Thinking Qualitatively conference hosted at the University. In her address, she mentioned sensory ethnography as her upcoming project. I requested a one-on-one appointment with her to share my intentions to use this methodology. I was attracted to sensory ethnography as it falls within a focused ethnographic approach specifically to explore contemporary society. Through the sensory ethnographic approaches,

researchers maintain and sustain direct contact with participants through the role of field-observers (Knoblauch, 2005).

I found sensory ethnography to be a suitable method as it was capable of grasping the most profound type of knowledge that is not spoken (Pink, 2009). Sensory ethnography offered me an opportunity to use a series of methods that allowed me to understand the culture of prosecution. Through ethnographic video tours and other sensorial modalities (Pink, 2009), I was able to create scapes of the court which helped me to examine the context of the court. By observing the prosecutors in situ, I was able to optimize insights as part of my ways of learning and knowing. Additionally, the conversations which I held with the court personnel created rich narrative accounts and established a lexicon about the prosecution of VAW cases. Using all of these methods iteratively, inductively and collectively, along with critical analysis of relevant site documents, enabled me to develop a loyal account of the context, negotiations and intersubjectivities (Pink, 2009) related to my research.

Furthermore, sensory ethnography provided me with a chance to broadly learn about the court as a cultural scene with various cultural actors from whom I have accessed knowledge. This opportunity required me to be a supplicant learner, to present myself as one who approaches learning with humbleness and the "unknowing stance" (Munhall, 1993). I established a child-like persona[5], as

[5] A researcher who is willing to put aside, her 'expert' stance for the moment of interaction with the participant, and be humble during the researcher-participant relationship; in order to relate authentically with the participants. Such a relationship is about respect of encounter

described by Ngunjiri (2007), as I entered and encountered each new context that led me to knowing and learning about prosecution of VAW. I humbled myself and respected the court personnel, even though I was not in agreement (Meredith, 2010) with their approaches to prosecution of VAW. I wanted to learn *from* them and not learn *about* them. Learning about them would have been interrogative and invasive. Learning from my participants meant that I had to humble myself, sit down and listen actively to them as reservoirs of knowledge about prosecution of VAW. Utilizing these principles helped me to accomplish my research aim with pride in my pursuit of African heritage and Afrikology.

Evolution of the My Theoretical Frameworks

In the beginning of my PhD studies, I explored various avenues that offered me a chance to engage in scholarship that would be useful to the women of Africa. I wanted to take up a scholarship that would resonate with the context under which VAW occurs and with the prevailing context that addresses this crime. During my coursework, I delved into various critical feminist schools of thought which assisted me to link the 'word to the world' and 'text to the context' (Roberts, 1996) about the oppression of women from the eyes of African women. By reading above and beyond all these texts, I came to realize that my search was for a research approach that might emancipate from and liberate the African women (Horkeimer, 1982; Masenya, 2004).

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and the new context. Ngunjiri, F. W. (2007).Painting a counter-narrative of African womanhood: Reflections on how my research transformed me. *Journal of Research Practice, 3*(1), Article M4.

At the beginning of my research, African women were my major concern. After being exposed to the real world of data generation, my theoretical underpinnings took a turn. I felt compelled by the circumstances to bring to the centre of my work not only African women but also Africa. This evolution of the inquiry was driven by cases that I have observed and was not only those of men versus women; but also included young boys versus older women and older men versus girl children. The complete reversal of circumstances compelled me to not only use feminist thought of African origin, but also to feature Afrikology in my work. The professor of Afrikology, Molefi Asante and African Elder, Drake Kgalushi Koka, define Afrikology as the Afrocentric study of African phenomena based on African ontology, philosophy, epistemology and methodology in order to produce African-based scholarship. Among others, the type of scholarship I am talking about is characterized by aspects of African history with a delineated plan for future development of Africa, the experience of Africans, and the unearthing practices which were labeled as primitive by Eurocentrism (Njaka, 1971). My task in this regard, as an African woman, was not only to produce a scholarship that will wipe the tears of African women, but also to restore the relevant ways and means of prosecuting VAW in African continent. This scholarship was to help Africa to [re]-member the things that she was forced to forget (Dillard, 2010) by interrogating the kyriarchal practices that are embedded in the court as a socio-political system.

Less than 2 decades ago, Black South Africans, *men and women*, were fighting side by side as equal comrades against oppression and the dominant rule of the white minority. The current socio-political system permits what is referred to as *kyriarchy*, wherein people interact and act as oppressors or the oppressed in time and moment (Masenya, 2004; Schüssler-Fiorenza, 1994). According to Schüssler-Fiorenza (1994), kyriarchy is historically structured from the domination/subordination fallacy that inferiorizes people as "others of the other." This dichotomy is based on labels of gender, race, ethnicity, class, ability, nation, geography, colonization, culture, and others. In my research, I have seen how kyriarchy, as an epiphenomenon, comes into play when cases of violence against women are prosecuted. I have seen how the labeling of victims of VAW in accordance with race, ethnicity, age, class, physical ability or geography create counter-images of a victim and the violent incident. These labels are arranged as a collage of hierarchies (Hunter, 2006; Masenya, 2004) which align with the highly structured prosecution practices that offer minimal chance for interrogation.

I have seen how some women prosecutors have normalized prosecution of VAW, while some men prosecutors perpetrated violence on victims during trials. Cases are not prosecuted based on their merit as a crime against humanity as set by the legal framework, but they are prosecuted based upon race of the victim, the place where the incident occurred, the locality of the court, the ability and the age of the victim, the social class of the victim and even the culture and ethnicity of

the victim. Contrary to how VAW was normalized I noted how some prosecutors (males and females) have revolted against the linearity and inevitability (Beaman-Hall, 1996) of the ways of prosecution in order to hold the perpetrators accountable.

The Crossroads, Diversions and Roadblocks: Data Generating Process

Usually feminist studies tend to "study down" by researching the oppressed and focussing on women's issues. I was "studying up" by focusing (Sprague, 2005) on a social institution which has power (court) and with participants who have been given power through social, legal, and cultural contexts. Therefore, I anticipated many crossroads, diversions and roadblocks (Roberts, 2005) during my data generation process. As an outsider to the justice system, I was very fortunate to be connected to the Regional Court President of one of the research sites. As a key informant, she took me through the process of obtaining permission to enter the three research sites which I intended to visit. I was only required to seek permission of entry to the courts from different court stakeholders like Chief Magistrates, Regional Magistrates and Control Court Prosecutors. When I left Canada to conduct my field work in South Africa, I had already received written permission, under the authority of this individual, to observe prosecution in any of the regional courts under the Regional Court President's jurisdiction.

Two weeks after my return to South Africa, the Regional Court President invited me to give a presentation on my research proposal and the steps I proposed to use in recruiting prosecutors and court personnel as participants. The presentation was held in her Chambers and attended the Regional Magistrate, the Control Regional Court Prosecutor, and a Regional Court Intermediary. A joint context-based recruitment strategy was developed. The recruitment strategy was a four step approach that included the following:

- Prosecutors and other court personnel in the two research sites under her jurisdictions were notified about the study and its objectives. This was to be done by both the Regional Courts President and the Control Regional Court Prosecutor. The personnel were told that I would visit, sit and observe the cases they prosecuted including VAW cases.
- As the courts are public places, observation of the prosecutors during prosecuting did not require the signing of an informed consent form, however I needed permission from that prosecutor to allow me to observe him/her. Allocation of cases for observation was done daily by Control Regional Court Prosecutor, who allocated a prosecutor per day or week (depending on the workload).
- After observing, I provided the prosecutor with an information letter and the consent to contact form and waited for the prosecutor to respond if he/she wanted more information about my study or was willing to hold a conversation with me about what I have observed.

The study had four phases (see chapter 4 for the in-depth methodology) and used multiple techniques and senses to generate data at four research sites in three different provinces of South Africa. The entire process to access the courtrooms and the entire data generation process was straightforward at two sites. The atmosphere was conducive for me to learn in all of their Regional Courts. In the third site, I encountered severe barriers from the contact person whose approval was needed for me to access the courtrooms. At the fourth site, I conducted several virtual (e-mail) conversations with the participant due to lack of funds and time to travel to that specific site.

In the first of the four phases involved in data generation, video recording was used as an externalized retina to situate vision (Mondada, 2006) and capture the physical setting of the courtrooms and the court objects. The video tours produced what I have called the courtscapes. As I walked with the camera through the courtrooms, the surfaces of the landmarks and objects were captured in order to ascertain their textures. My commentary about the landmarks reflected my critical examination of how they were positioned in relation to the stance of centering African woman as a victim in court. Furthermore, I examined landmarks for their obscured meanings on prosecution of VAW cases. The recordings ranged from seven to fifteen minutes long. The video tours provided the essential insights of an embodied view of the court as a cultural scene. The endeavor in the recordings of these courtscapes was to explicate the cultural complexities and temporalities under which prosecution of VAW occurs. I

recorded seven courtscapes from the different Regional Courts where cases of VAW were tried. These courts were previously Specialized or Mainstream courts. In South Africa the Specialized courts were trying rape and murder cases related to VAW while the Mainstream courts attend to all the cases including VAW cases.

In the second phase, I observed the prosecutors and other court personnel while cases of VAW were being prosecuted. Vision underscored my use of my other senses: hearing/ auditory (soundscapes), smell/olfactory and awe. Personal experiences also were incorporated throughout this phase as these are interconnected and interrelated (Pink, 2009); one sense cannot be separated from the others. I watched every movement and action of the prosecutors. I kept field notes about all of the activities within my own limitations of observation. Writing and observing are interdependent activities (Emerson, Fretz, & Shaw, 1995). A recognized challenge is that senses do not notice everything, nor report everything to the brain, but instead the senses seek general patterns and classify them as commonplace (Svoboda, 2009). I took the field notes and reflections as the story of my eyes, ears and other senses to situate my experiences related to the observation of the VAW cases. I agree with Pink (2009) that the aim of ethnography is to offer a truthful account of what occurred in relation to the context, negotiations and intersubjectivities. I consider these field notes to represent my emplaced version of the observed experiences; these observations might differ from those made or noted by another ethnographer. In total, I

attended three different Regional courts (one court that used to be Specialized and two Mainstream courts) and observed more than fifty criminal cases which included twenty four cases of VAW in the different sites.

In the third phase, I engaged in conversations with the prosecutors and other court personnel who I had observed while attending cases of VAW. As a native African who lived her whole life in South Africa, I had inside knowledge and understanding about how African women are perceived by men, professionals and society. This insider stance afforded me an in-depth understanding of this aspect of the culture of prosecuting VAW. I was, however, an outsider to the court system. My outsider perspective helped me to approach this phase without knowledge of prosecution. Hence the conversational engagements with court personnel were embraced and received by me with wonderment. Both hearing and vision were the dominant senses in this phase of data generation. Using my auditory sense, I listened actively during the conversations to how and what the prosecutors and other court personnel were saying about prosecution of VAW cases. At the same time, I watched for gestures and cues which the participants were making as they gave detailed accounts of what was happening when prosecuting VAW cases. Prosecutors were observed more than once before they were invited to participate in a conversation about prosecuting VAW cases. All participants signed informed consent before I proceeded with the conversation. The face-to-face conversations were audio recorded except for one which I documented in field notes because the participant declined to be recorded. The

conversations were 30 to 60 minutes long. There were informal talks that took place with other court personnel around the Regional Courts that were documented as field notes.

Even though the in-depth conversations were guided and generated by notes on my observations, there was a main question that guided all of the conversations: Tell me about the process of prosecuting VAW cases. Probing questions included: a) Can you define /explain or classify VAW legally? (b) Can you describe the factors which you consider to influence the prosecution of VAW and who are the stakeholders in prosecution of VAW cases? (c) What are your feelings about prosecution of VAW cases? (d) What can women do as victims of VAW in order to contribute to a fair prosecution and what is the role of J88 in prosecution of VAW cases? The main question and its probes offered me a stance of learning from the prosecutors about the culture of prosecuting VAW. And this was the *unknowing stance* wherein I had to take up a complete childlike persona (Njungiri, 2007). Adopting the childlike persona assisted me in generating understanding through dialectical meaning making processes (Feldman, 1998). Furthermore, the dialectical nature of the conversations assisted me to comprehend the meaning of words, gestures, and expressions of the prosecutors and other court personnel through listening, watching, reflecting, questioning and even responding (Feldman, 1998). In addition, the conversations revealed the participants' beliefs, meanings, perceptions or accounts (De Vos, Strydom, Fouche, & Delport, 2004) attached to prosecution of VAW as a culture. I held

eight conversations with prosecutors in different ranks of employment, a court intermediary, the Regional Court President, and the Regional Court Magistrate.

In the fourth phase, I reviewed relevant site documents. These documents were analyzed in order to examine, enhance and supplant prior theoretical, (Altheide, 1987) observational and conversational claims on the culture of prosecuting VAW in South African Courts. Documents included a medical record (J88) from the Department of Health and Welfare, Social Worker's pre-sentence reports, the Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007, and the Criminal Procedure Act of 1977 from the Department of Justice and Constitutional Development, and the Domestic Violence Act No 116 of 1998 from the from Social Development Department. Texts from National Prosecuting Agency included brochures on understanding the Criminal Justice System, and Aspirant Prosecutor Program, from South African Police Services (SAPS) dockets of VAW case. These data provided me with an in-depth understanding of the culture under which VAW cases are prosecuted despite the crossroads, diversions and roadblocks (Roberts, 2005) which I encountered, primarily in gaining access to the data generation sites needed for this study.

Constructing Meanings on Culture of Prosecuting VAW: Insights and Opportunities

In this study, I chose to use the word culture for two different descriptions. First, I have used culture in the sense of the ways of carrying out duties and activities in an organization. In this regard, I attended to the ways in which the

prosecutors prosecute VAW cases. My intention was to explore prosecution as a culture in process; how the prosecutors executed their day-to-day duties with cases of VAW. Subsequently, I have used culture with specific reference to African culture, as the product of people's history (African people) which is anchored by the ways they view their lives at any given time and space (Wa Thiong'o, 1993). Furthermore, culture in this regard is defined as the embodied expression of social actions, traditions and customs that are conveyed from generation to generation (Asante, 2003).

Making meaning of a complex concept such as culture requires caution especially when one is an outsider to that culture because culture is plural and people cannot be generalized by one cultural label due to the diverse mix available for them to draw on (Agar, 2006). Furthermore, culture is always dynamic (Callinicos, 1996; Mugo, 1999) and evolves with time. Culture is not random; it occurs repeatedly through engagements and understandings which become routines and patterns that turn into background knowledge that is noticeable by the outsider (Agar, 2006; Richards & Morse, 2007). Furthermore, the complexity of making sense of the culture of prosecution is that I was not looking at gendered ideologies within that culture, but was going beyond that view to look at ethnicity, race, age, ability, geographic ideologies, as well as at the type of court within which prosecution took place.

As a nurse and researcher I am positioning myself to critique the culture of prosecution of VAW in South Africa. In *Hidden Dimensions*, Hall (1990)

expounded on how culture hides from those who practice it as it is perceived as normal practice. As such, I acknowledge, with no apology or fault-finding, that it is possible and sometimes best for an impartial person to attempt to make sense of the cultural practices of others (Du Bois, 1903).

As a novice to qualitative research, an initiate to refer to my earlier metaphor, I drew from the work of Charmaz (2004) in *Premises, Principles, and Practices in Qualitative Research*. This work assisted me to realize that in order to know about a phenomenon, I had to develop a deep understanding of that particular phenomenon. According to Charmaz (2004) in order to achieve such an understanding the researcher needs to approach the phenomenon directly not indirectly. I wanted to understand the culture of prosecuting VAW; hence I had to enter the premises where prosecution took place. I witnessed what Goffman (1999), cited in Charmaz, (2004) said - that you will know you have entered the phenomenon of the study when "the members [will] disclose strategic secrets as common index of acceptance" (p. 980). During this study, not only did I conduct intensive conversations with the participants, but I spent 4 months interacting, observing, shadowing and holding both formal and informal conversations with them about prosecution of VAW cases. Using these techniques, some prosecutors shared their daily challenges and frustrations of prosecuting VAW cases. As emphasized by Charmaz (2004), the aim was to unearth what was happening when cases of VAW were prosecuted from the viewpoints of prosecutors and other court personnel. My intention was to make meaning of what the prosecutors

and other court personnel were doing on a daily basis as actions provide an understanding and meaning (Charmaz, 2004).

The participants in this study comprised a homogeneous group with the exception of gender, age and ethnicity (born, trained in South Africa, employed by National Prosecuting Authority of South Africa, and based in Regional mainstream or specialized courts that handle VAW cases). I had anticipated that their meanings of prosecution of VAW would fall under the same parameters, but this was not the case. Participants, the reservoirs of knowledge and experience in prosecution, saw prosecution as a dynamic process that depended on the ability of the prosecutor to identify and use corroborating evidence. They clearly stated that their approaches to prosecution of VAW differed among each other as prosecutors and even in different cases, even though the principles of prosecution are laid down by the Criminal and Procedure Act of 1977 of the Republic of South Africa. The inductively generated meanings attached to prosecution included normalization of VAW as a crime, victim-blaming, de-centering the victim and assuring hope to the victim.

The stance of a supplicant learner in this study, with no a priori knowledge of what is the culture of prosecuting VAW, afforded me a non-judgmental position that enabled me to learn the logic (Charmaz, 2004) of prosecution of VAW. Time and again, most of my participants wanted to "*tell*" me how they were prosecuting VAW cases, but I informed them that I wanted to *watch* them while they were prosecuting. As one might note, what people do, does not always

align with what they say (Charmaz, 2004). I did not take for granted the meanings of prosecuting VAW from only the participants' conversations (Charmaz, 2004). The meaning attached to prosecution of VAW by prosecutors and other court personnel was reciprocal and dynamic to their actions (Charmaz, 2004). The reciprocal relationship between meanings and actions were overtly noted in this study. Those participants who normalized VAW as a crime were adamant in calling victims from the intermediary facilities to come for dock identification of the perpetrators. Those prosecutors who blamed the victim for the violent incident took for granted that the victims were not threatened by the presence of the perpetrator, hence they tried their cases in open court. In addition, those prosecutors who showed signs of humanity in their prosecution were observed to protect the victim and to hold the perpetrator accountable for what happened. Through all of the different meaning making processes, I held a broad and open-minded approach that allowed me to open myself to the multiple truths of knowing the prosecution of VAW cases.

I paid much attention to the use of language in this study, as language is considered to be a basic unit of a culture. Charmaz (2004) states that language is telling and it includes views, values and feelings, priorities and involvements. South Africa has eleven official languages as attested by the Constitution of the Republic of South Africa Act No 108 of 1996. According to the Constitution, all official languages in SA are equal and no particular language is dominant, however Afrikaans and English were the only working and communicating

languages used in the court procedures, even after 15 years of the promulgation of the Constitution. Though the court personnel were mostly Black and from the same ethnic background as the victims, they communicated with victims and among themselves in only these two languages. Additionally in my court encounters, I noticed that all court documents and every symbol in the courtrooms except for the Coat of Arms (which was in the indigenous language of South Africa) were written in both Afrikaans and English. In most cases, victims of VAW were ordinary Black women who had neither Afrikaans nor English skills. Alternatively, Afrikaans speaking Court personnel who had cases on VAW with Afrikaans speaking victims only communicated in Afrikaans.

I came to understand the problem created by the use of interpretation during prosecution, and I came to realize what Biko (1978), in *I Write What I like*, meant when he wrote that English has precise words and straightforward ways to convey meaning for a particular situation. In contrast, other South African languages only attach an emotional meaning to the situation as our language shapes our thoughts (Biko, 1978; Boroditsky, 2011). I not only attended carefully to the use of language in the courts but also to the communication style. I observed communication that I have interpreted as degrading and oppressive (Nagel, 2008). The court procedures were communicated in belligerent ways such as hasty command on simple phrases like "stand up" or "sit down." In South Africa, this degrading and oppressive way of talking dates back to the apartheid era when the criminal justice personnel were exclusively White and considered

themselves the master race in South Africa (Meredith, 2010). The internalization of a degrading and oppressive style of communication is perceived as normal even by Black South African court personnel as the way to communicate in their daily paying job.

Finally, I opened myself to the *live* experience of prosecution and I found myself in hurtful situations and had perplexing experiences. In this regard, I agree with Humphrey (2007) who emphasises that, in ethnographic studies, ethnographers become archeologists by digging up the skeletons which will haunt them. From the onset of the field work, I was haunted by what I was observing, hearing and seeing even as I tried to position myself as a researcher who was studying the prosecution of VAW. It was challenging for me as a nurse, a woman and a mother to see young victims who were destroyed by the violence they had endured. Furthermore, the challenge was exacerbated by the sight of the young perpetrators who were losing their lives because of such preventable serious crimes. In essence, my ways of knowing were always loaded with emotions during this fieldwork. The classic work of Blakely (2007) was continuously reassuring for me. I was truthful and loyal in acknowledging my emotions mainly through reflective journal writing about every case that I observed and every conversation that I engaged in. I was mindful that Blakely (2007) considered emotions a natural part of the inquiry, as untapped resources of information that: 1) provide insight into the whole research process and also to the findings, 2) enable the researcher to examine the connection between her emotions and the

research outcome, and 3) provide a deeper understanding of the construction of knowledge as they co-inform and re-conceptualize the study.

Even though I experienced upsetting episodes as I conducted this study, I felt a sense of fulfillment and psychological sublimation on completion of my fieldwork. I came to know and realize that the culture of prosecuting VAW is paradoxical. Looking beyond and above the surface of the culture of prosecuting VAW, I realized that this epiphenomenon holds multiple meanings that are relative and subject to be redefined (Charmaz, 2004) as this culture does not resonate with the African context.

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Chapter 3:

Violence Against Women in South Africa:

Policy Position and Recommendations[6]

> In 2005 Buyisiwe was allegedly gang raped by eight men, first in and around her friend's house and then at a second location near some shacks and a railway station. After reporting the crime to the police the first six of the eight suspects were arrested and the seventh was arrested later. Buyisiwe's cross-examination in court was described as atrocious. The court environment was hostile to her, in fact there was no regard for what she went through, the gang rape . . . having to re-tell her story again and again. She also had to re-live the experience by remembering who of the eight raped her first and who came second, third, fourth, fifth, sixth, seventh, and the last time. These are the details required by the court to prove that she was in fact raped. (Mvimbi, 2007, p. 5)

This experience is one of thousands of cases illustrating violence against women in South Africa, with court outcomes that insult or ridicule the existing laws in place, rather than respect and abide by it. The issue which needs to be analyzed is why violence against women (VAW) remains rampant in South Africa regardless of the efforts of the government enacting laws focused on human rights and domestic violence. This inability to thwart VAW even with laws in place has

[6] This chapter has been published: Mogale, R., S., Kovacs Burns, K., & Richter, S. (2012). *Violence Against Women, 18*(5), 580–589.

been confirmed by two separate reports; the Human Rights Watch report and the South African Police report (2008). The Human Rights Watch report (1997) indicated that a total number of 50,481 cases of sexual violence were reported in 1996. Of these, 21,863 cases were prosecuted, but only 4,100 led to conviction. More recently, the South African Police Services informed Parliament that between July 2006 and June 2007, a total of 88,784 incidents of "domestic violence", as defined by the 1998 Domestic Violence Act No 116, were reported. Between April 2006 and March 2007, 52,617 cases of rape were reported, of which 7% of the cases were successfully prosecuted (Amnesty International, 2008). These reported figures set the precedence for arguing that the human rights-focused legislation enacted by the State, has continuously failed in the rightful recognition of the rights of women to be protected from domestic violence and abuse. In fact, based on these reports, it is evident that the laws in place have not been effective as threats or punishment to prevent or reduce the rape and violence acts against women, and the numbers of these acts. The statistics infer higher incidence and prevalence of cases.

The intent of this paper is to reflect on the position of two specific Acts - the Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007. Both are framed to protect women against any form of violence in South Africa. The discussion in this paper will give an account of the position taken or interpreted within the literature regarding the two acts. A literature review was conducted and analyzed in order to map out

what is currently understood or known about the two Acts and their impacts on women as well as the outcomes related to curbing and preventing domestic violence. From this analysis, recommendations are made regarding the Acts and their implementation.

The 'Prism' of the Two Laws

The main act which directly addresses VAW in South Africa is the Domestic Violence Act No 116 of 1998, implemented under the administration of the Department of Social Development. The Act was initially welcomed with applause by women's movements groups and women activists as its aim was to protect and combat violence against women, and women saw this as their means to have violence against them combated and even prevented. According to Smith (2009), the Act is considered to be one of the most inclusive and progressive pieces of legislation as it (1) recognizes a wide range of VAW, (2) acknowledges that VAW can occur in a variety of familial and domestic relationships, (3) gives magistrate powers to serve abusers with court orders and extend this to even the workplace of the victims, (4) compels the perpetrator to maintain the victim's finances while not staying in the same house or accommodation, (5) disarms the respondent who is the perpetrator and offers protection to the victim by the police, (6) outlines the obligatory duties of the police, and (7) lays down penalties for failure to execute such duties.

Another Act that seeks to eliminate VAW in South Africa is the Criminal Law (Sexual Offences and Related Matters) Act No 32 of 2007, which is

administered under the Justice and Constitutional Development department. The aim of this Act is to handle all legal aspects of or related sexual offences and crimes under one statute. The Act: (1) regulates all the procedures, defenses, and evidentiary rules in prosecution and adjudication of all the sexual offences, (2) criminalizes any form of sexual penetration, sexual violation without consent irrespective of the gender of the victim, (3) criminalizes exposure or display of child pornography as well as situations in which an individual is forced or compelled to watch or witness certain sexual conducts, (4) criminalizes sexual exploitation of children and mentally disabled persons, (5) provides a demarcation between the age of consent for consensual sexual acts between children aged 12 to 16 years, (6) provides special provisions in relation to the prosecution and adjudication of consensual sexual acts involving children up to 16 years, (7) criminalizes any attempt, conspiracy or incitement to commit a sexual offence, (8) provides the court with extra territorial jurisdictions when hearing matters related to sexual offences, (9) abolishes secondary traumatization of the victims, (10) compels the perpetrator to be tested for HIV/AIDS status, (11) gives the victim the right to receive Post Exposure Prophylaxis treatment for HIV/AIDS, and (12) urges for the establishment of one National register for sex offenders.

Accordingly the two Acts exhaustively and comprehensively expound on what VAW is. They further give detailed strategies on how state departments should address VAW. However, the Acts do not provide for strategies which will

take into consideration or counter cultural, social, and economic factors as the forces within which VAW is embedded.

The legacy of colonization and apartheid has offered South African men high status (Jewkes, Penn-Kekana & Rose-Junius, 2005). This has generated "lingering assumption" that VAW is a cultural practice (Wallstrőm, 2010) which entitles men to control and own women (Jewkes, Penn-Kekana, Levine, Ratsaka, & Schrieber, 1999). The "power or authority" which is alluded to as social status is determined by position and income. Most of South African women are unemployed and/or earn lower salaries than men. These latter two factors, along with the traditional/cultural practices of men's rights over women's, has negated the social status of women in South Africa. As a result they lack the social and economic freedom and authority which also puts them at risk of experiencing VAW in its various forms. When women try to practice their rights and freedoms socially and economically, they are also at risk of being violated as culturally it is not acceptable for woman to be in superior positions or have more social status than man.

Search Strategy of the Literature

The intention of the literature review was to map out all available information about the Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 of South Africa. Both peer-reviewed published and grey literature were searched. The databases used to conduct this review included: Academic Search Complete, CINAHL PLUS,

Gender Studies, Humanities International Complete, International Political Science, Sociological Collection, and Violence and Abuse Abstracts. These databases were tactically selected to identify the legislation related to the protection of women or more specifically, protection regarding VAW, as this can be identified with health, societal and cultural, familial, psychological, and gender problems. The search terms used for the literature review included: Legislation and Policy*, violence, women and Africa*. A total number of 110 titles and abstracts were reviewed against specific inclusion criteria including discussion of the two Acts specifically as pertaining to women, scholarly peer-reviewed articles or grey literature (technical legal or other reports, presented or written papers) written in English and spanning between 1990 to 2010. The exclusion criteria included literature from other Sub-Saharan African countries, child or elderly abuse, or media reports. Based on the application of these criteria, 50 abstracts were selected for review as they were dealing specifically with legislation and policies related to VAW within the Sub-Saharan African context. On further analysis, 18 complete articles, reports and papers written between 1990 and 2006 were selected for this study, since they directly related to the two acts and matched all the criteria. These 18 are summarized in Table 3.1.

Table 3.1

Summaries of the Reviewed Articles

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
1. Cooper et al., (2004)	Ten years of democracy in South Africa: Documenting transformation in reproductive health policy	*Reproductive Health Matters, 12*(24), 70–85	To document the changes in health policy and services that occurred on sexual and reproductive health.	Both the civil society and health activities continue to pressure the government to introduce further changes in policy and service delivery.
2. Crowe, (1997)	African women still denied their reproductive rights.	*Lancet, 350*(9079), 722.	This article reports the high incidence of Violence Against Women VAW which is still prevalent.	The Constitution of the RSA is seen as the positive model as it allows women to make their own reproductive decisions.
3. Dunkle et al., (2004).	Transactional sex among women in Soweto, Prevalence, risk factors and association with HIV infection.	*Social Science & Medicine, 59*(8), 1581–1592.	To estimate the prevalence of transactional sex among women attending antenatal clinics in Soweto.	Transactional sex may place women at increased risk for HIV and it is associated with VAW

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
4.Goetz, (1998).	Women in politics and gender equity in policy.	*Review of African Political Economy, 76*, 241–262.	To analyze the affirmative action interventions in political institutions	South Africa has more women in government like Uganda who are articulating women's interest in politics particularly on problems of VAW.
5.Haddad, (2006).	Faith Resources and sites as a critical to participatory learning with rural South African women.	*Journal of Feminist Studies in Religion (Indiana University Press), 22*(1), 135–154.	To argue that faith resources are critical to participatory learning about issues of HIV/AIDS.	Women's hidden discourse regarding sexual assault which is related to HIV/Aids should move to public realm in communities.
6. Hunter, (2006).	The Master's tools revisited: can law contribute to ending violence against women?	*Institute Development Studies Bulletin 37*(6), 57–68.	To explore how legislation can end VAW.	South African laws on VAW are competing with cultural beliefs and other social norms.

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
7. Jewkes et al., (2000).	Ethical and Methodological Issues in conducting research on GBV in Southern Africa.	*Reproductive Health Matters*, 8(15), 93–103.	To report on the safety measures of both the researcher and the researched in GBV studies.	GBV sensitive topic to research, vigilant care is needed to assure safety of both the researcher and researched.
8. Jewkes, (2001).	Reflections on gender Violence in South Africa public agenda.	*Development, 44(*3), 64.	To discuss the activities within the health sector to counter gender violence.	VAW is a major concern in the health sector which needs key influences on policy arena.
9. Jewkes et al., (2003)	Gender inequalities, intimate partner violence and HIV preventive practices.	*Social Science & Medicine,* 56(1), 125.	To investigate association between range markers of gender inequity, including financial, psychological and physical violence and two proximal practices in HIV prevention.	The women who are able to negotiate condom use are positive associated with their level of education, her having multiple partners, domestic violence before the last year and financial abuse.

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
10. Maker et al., (2000)	The value of advocacy in promoting social change: Implementing the new Domestic Violence Act in South Africa.	*Reproductive Health Matters, 8*(16), 55–65.	To describe an advocacy campaign of various Non-government organizations Non-Governmental Organizations (NGOs) in order to ensure effective implementation of the Domestic Violence Act of 1998.	Through the efforts of these NGOs the Act was implemented and various implementation strategies were employed.
11. Mandela, (1990)	A formula to end apartheid.	*Human Rights: Journal of the Section of Individual Rights & Responsibilities,* 17(3), 34–35.	To present the views of human right activist Nelson Mandela on apartheid and the formula to end it.	The formula worked as South Africans were free and having equal rights as prescribe by the Constitution.
12. Mathews et al., (2004)	Every six hours a woman is killed by her intimate partner': A national study of female homicide in South Africa.	*South Africa Medical Research Council Policy Brief* (Grey literature).	To establish the size and the pattern of the intimate femicide in South Africa.	The findings of the legal outcomes show that there is unreasonable bias in conviction and sentencing of female homicide cases in

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
				South Africa.
13. Moore, (2005)	Endangered Species: Examining South Africa's National rape Crisis and its legislative attempt to protect its vulnerable citizens.	*Vanderbilt Journal of Transnational Law,* 38(5), 1469–1498.	To urge South African Government to pass the Sexual Offence Law.	The study highlighted the weakness in the management of GBV in South Africa by both Justice and police departments.
14. Motsei, (1990)	The best kept secret: Violence against domestic workers.	Seminar Papers - Center for the Study of Violence and Reconciliation, South Africa. (Grey literature).	This paper gives an account on the secret of violence against domestic workers in the homes of white South Africans.	Violence against domestic workers in South Africa is rooted in the social inequalities of power and rights. By virtue of being Black and female, with no legal protection and no political rights, domestic workers tend to become immediate targets of aggression in the White household.

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
15. Smythe, (2004)	Norms and architecture: limits on rape law in South Africa.	Conference Papers – Law & Society Association (Grey literature). Retrieved 2009-05—26 from http://www.allacademic.com/meta/p117019_index.htm.	To critically examine the South Africa's new Sexual Offences Bill.	The law was eventually passed in 2007. It is a co-ordinate law which addresses sexual offences from various perspectives. The bill has failed to take account of evidence that points to the rigidity (or lack of plasticity) of prevailing norms within the criminal justice system, as evidenced by police, prosecutorial and judicial practice.
16. Swart et al., (2000)	Rape surveillance through district surgeon offices in Johannesburg, 1996-1998: Findings, evaluation and prevention implications.	*South African Journal of Psychology, 30*(2), 1–10.	To evaluate incidence of rape in three sites in Johannesburg in order to establish a prevention and intervention program.	Surveillance procedures have enormous value in prevention and intervention strategies.

First Author, Year	Title of the Article	Publication	Purpose of the Article	Remarks
17. Usdin et al., (2005)	Achieving social change on gender-based violence: a report on the impact evaluation of Soul City's fourth series.	*Social Science & Medicine, 61*(11), 2434-2445.	To evaluate the design intervention on impact of Soul City series.	The evaluation indicated that an actual reduction in the levels of domestic violence was not possible but there was a strong association between exposure to the intervention components and a range of intermediary factors.
18. Vetten, (2005)	Show me the money': A review of budgets allocated towards the implementation of South Africa's Domestic Violence Act.	*Politikon: South African Journal of Political Studies, 32*(2), 277–295.	To examine what have been allocated towards the Act's implementation.	Through daily expenditure it was noted that the Act was both under-funded and under-prioritized.

Discussion of the Key Findings from the Literature

Evidence from the literature on the two main acts discussed can be categorized into (1) forms of women activism during which they engaged in lobbying for the promulgations of the two acts, (2) characterization of the two acts in defining violence against women, and (3) gaps within and across the two acts.

Forms of women activism. Both international and local agencies came together in the mid 1990s to lobby for promulgations of the two main Acts aimed at combating violence against women. This alliance developed immediately after the first democratic elections when the South African government ratified the United Nations' Convention on the Elimination of All Forms of Violence Against Women. Through this ratification South Africa became one of 160 countries that made a commitment and obligation to end violence against women through the Constitution of the Republic of South Africa No. 108 of 1996 (Crowe, 1997) and other Acts. Hence in 1998 the Domestic Violence Act No 116 of 1998 was enacted and a decade thereafter the Criminal Law (Sexual Offence and Related Matters) Act No. 32 of 2007 was also promulgated.

The struggle for the promulgation of these two acts brought South African women together irrespective of their race, class, and politics. These collective actions occurred through legal women activism which specifically targeted the legal reforms (Hunter, 2006) within the South African legal system. The legal activism urged for a women-friendly legal system. Political women activism urged for representation of women in parliament, and in both private and government departments in order to facilitate advancement of equality in South

Africa (Goetz, 1998; Hassim, 1999; Narismulu, 2003). Furthermore, gender activism (Orner, 2000) had the intention of transforming gender relations in South Africa (Rosenthal, 2001), as gender equity did not occur automatically. However, it was adopted into the policy process (Orner, 2000).

A key event among this activism was the advocacy campaign that was conducted by Soul City Institute for Health and Development Communication in partnership with the National Network on Violence against Women (Maker, Malepe, Christofides, & Usdin, 2000; Usdin, Scheepers, Goldstein, Japhet, 2005), a national network of various forms of South African women's movements and activism (Slater, 2000).

Characterization of the two Acts in defining violence against women. The two SA Acts acknowledge violence against women as a pervasive form of human rights abuse which is an obstacle to development. The object of the two Acts is to offer women the maximum protection against various forms of violence, as their promulgations are based on Chapter 2 of the Constitution of the Republic of South Africa (Crowe, 1997; Mandela, 1990).

The Domestic Violence Act is considered globally to be the most comprehensive and progressive piece of legislation (Cooper et al., 2004; Crowe, 1997). This is due to the comprehensive definition it gives to VAW. According to the Act VAW implies: physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, forceful entry into the complainant's residence without consent, and any other controlling behavior towards the complainant, (DVA No 116 of 1998;

Jewkes, Levin, & Penn-Kekana, 2003; Moore, 2005; Swart, Gilchrist, Butchart, Seedat, & Martin, 2000; Wood, Lambert, & Jewkes, 2008).

The Criminal Law (Sexual Offences and Related Matters) Act is considered crucial to changing South African sexual laws (Moore, 2005). The Act expands on the definition of rape and the available defenses which are usually made during the prosecution of rape cases. Furthermore, the Act constructs certain evidentiary rules as valid evidence for the prosecution of sexual assaults cases. In addition the Act provides for Post Exposure Prophylaxis (PEP) treatment with antiretroviral drugs for sexual assault victims (Moore, 2005; South Africa D.O.H 1995; Swart et al., 2000) as well as the compulsory HIV/ AIDS testing for the perpetrators of sexual offences.

Gaps within and across the two Acts. The literature reiterates the progressiveness of the two acts since they became legislated (Cooper et al., 2004; Goetz, 1998; Maker et al., 2000; Swart et al., 2000) particularly when compared with what existed prior to the two Acts, as seen with the needed changes in human rights efforts and laws following the end of Apartheid (Mandela, 1990) and particularly the need to protect women from abuse as domestic workers in white South African households (Motsei, 1990) and from violation of their rights to make their own reproductive decisions (Crowe, 1997). The good things identified include the increase in women in government and politics, with particular interests in the problems of VAW (Goetz, 1998), the establishment of rape surveillance to help with support of prevention strategies (Swart et al., 2000), and NGOs campaigning for social change and effective implementation of the

Domestic Violence Act (Maker et al., 2000). However, there are still limitations or gaps within the acts and with the implementation of them, as identified in the literature (Table 3. 1).

These limitations and gaps from the literature can be clustered into four primary theme areas for discussion and consideration for recommendations related to the Acts – (1) Governance and legal responsibilities, (2) Public agenda and considerations, (3) Prevailing culture and attitudes, and (4) Ethical issues concerning impact or effectiveness evaluation or research. The limitations and gaps identified under "governance and legal responsibilities" include inadequate guarantees of the government institutions' accountability in implementing these acts due to the rigid norms, prejudicial practices and precedence cases that prevail within the criminal justice system (Mathews, Abrahams, Martin, & Vetten, 2004; Smythe, 2004), weakness in management of legislation by departments responsible (Moore, 2005), lack of appropriate transformation in reproductive health policy and service delivery with resulting denial and ongoing transgressions against women's reproductive rights (Cooper et al., 2004); and the lack of an adequate budget and other resources to appropriately implement and monitor the two Acts (Smythe, 2004; Vetten, 2005).

Under public agenda and considerations' the gaps identified include the need for more public education in the whole area of sex education and preventive practices, gender inequalities, physical violence and mental abuse (Jewkes et al., 2003), as well as the impact of gender violence on the health sector and other areas of society (Jewkes, 2001). This includes the need for the public to

understand the prevalence and increased risk for HIV and other problems associated with transactional sex (Dunkle et al., 2004), as well as the need to disclose sexual assaults and the related risks for HIV (Haddad, 2006).

The limitations or gaps identified as related to "Culture and attitudes" include the unfair bias and prejudices in convicting and sentencing cases of violence against women (Mathews et al., 2004), and the norms within the criminal justice system that has its roots in culture and tradition (Smythe, 2004). Essentially, the Acts, as formal mechanisms of control, are competing with cultural beliefs and other social norms that are not supportive of appropriate and legal actions to deal with violence against women (Hunter, 2006). This links with the last theme of "ethical issues concerning impact or effectiveness evaluation and research" of the Acts, for which there is concern for the safety of both the research participants and researchers involved in sensitive studies that could identify areas of controversy (Jewkes, Watts, Abrahams, Penn-Kekan, Garcia-Moreno, 2000). This is a challenge for research studies particularly since cultural and attitudinal factors of the public, government and legal system must be respected. In the one evaluation study conducted by Usdin et al. (2005), there was indication that reduction of actual levels of domestic violence was not possible because of a number of factors. This seems to indicate the need for more evaluation and research but also a strong indication of the challenges which need to be dealt with at the same time.

Conclusions and Recommendations

The literature indicates that the South African government showed commitment in addressing VAW in its various forms through the passing of the two Acts. The commitment was further attested in 2009 with the establishment of the new Ministry for Women, Children and Persons with Disability. The objective of this ministry is to advance policy focusing on issues of women, children and persons with disabilities. In fact, the government showed courage in enacting and attempting to implement the two Acts which countered the traditions and cultural acceptance of violence against women, particularly within domestic situations where proof of offences and criminal acts could be difficult to sustain unless battery was observable and diagnosable. Despite the government's attempts in enacting the two Acts, VAW is still rampant. Accordingly these laws have been enacted to uproot VAW in South Africa but in reality they are not accomplishing their intended objectives. The example given about Buyisiwe shatters all trust that the law or Acts will rule in favor of protecting women or that prosecution of VAW will make a difference. Furthermore, the one evaluation study of these laws indicates that there are numerous factors involved with domestic violence cases which make it difficult to develop and implement effective interventions, or to even consider the reduction in violence against women in South Africa.

Although challenging to conduct, research and evaluation of the Acts is critical to determining what courses of action or intervention might be most appropriate for the gaps and limitations identified in the literature. A first step

might be for the government and more specifically, the Ministry for Women, Children and Persons with Disability, to coordinate a major stakeholders' forum to explore in more detail the relationship of the identified factors which are barriers to the implementation of the Acts and determine possible options to address them with some priority recommendations or actions. Stakeholders should include members of the public, various government departments (with focus on justice, health, social support, education and community development), police and legal systems, as well as appropriate community health and social service providers. Engagement of various targeted stakeholders in a discussion about the real issues and factors needing to be addressed, and the plan for taking action is needed if changes either to the Acts or their implementation are going to be effectively and timely instituted. The stakeholders need to clearly understand the problems with the current situation regarding the Acts and the outcomes to date, including the identified problems, gaps and limitations with the implementation of the two Acts, and what needs to be done to address them. No one group can do this work alone and in isolation—the government, legal system, police, South African people, and various service providers need to collaborate in designing the plan of action and assist with the implementation. They need to own the Acts and be responsible and accountable for its implementation and outcomes. The Acts should belong to the people and be accepted by the people, which currently does not exist. The intent should be to regard VAW as a social evil and a crime against humanity (Domestic Violence Act of 1998). It is not surprising that one of the consequences of not being able to enforce the VAW

Acts to protect women is retaliation by women against the rapists or perpetrators under "self defense" or other such claims. This is a direct result of not implementing the two Acts as intended.

In specifically addressing the governance gaps, one option which could be presented to the stakeholder forum might be to determine the best way to manage each clause within both Acts. Is forced action needed so that the Act is administered in a humane way for women or in a punitive way for the perpetrator? As part of the clauses within the Acts, a suggestion is for the State departments to consider a strategy to monitor police and enforce the establishment of effective measures to advance the impact of the Domestic Violence Act as a method of eliminating VAW. The significant departments should institute mandatory regulations on administrative processes and procedures for identifying, handling, reporting, prosecuting, and sentencing VAW in South Africa. The use of evidence gathered including women's testimonies must be respected and supported in trials. The introduction of "no-drop charges" regulations with the aim of sanctioning the perpetrators will also advance the impact of the Domestic Violence Act. All of the above mentioned suggestions for governance actions include the discussion of more resources being needed, or at least redirected towards addressing the governance and administrative implementation and monitoring of the Acts. This latter has been identified as a gap or limitation.

Suggestions for addressing the "public agenda and considerations" gaps and limitations include having the stakeholder forum strategize about the needed education of the public about violence against women and the two Acts, the rights

of individuals by law and risks associated with sexual assault and violence. This should have impact across all levels of the community (i.e., schools, churches or religious ceremonies, workplaces, counseling sessions, and health clinics), and across government departments, courts (i.e., lawyers, judges), police forces, and other areas. A needs assessment and exploration of education approaches and opportunities would be necessary for effective education involving the whole community. This should be a community effort and responsibility.

With respect to cultural and traditional values as well as attitudes, discussions need to clearly distinguish between appropriate customs supporting women versus those identified as unacceptable and in violation of the rights, dignity and life of women, which they should not have to endure under any circumstance. The challenge might be that the laws or two Acts currently in place are seen as tools of the government and not necessarily those of the people. The Acts may need to be developed, implemented and enforced by the people so that VAW is seen as an offence or criminal act and not to be undermined by traditions or cultures. Children need to be educated about the appropriate treatment and respect for the rights of everyone including women, and that violence is unacceptable and punishable by the law or under the Acts in place. If the people set the punishment, would there be less situations of VAW, and particularly situations such as the example given and thousands of others which never get filed or get to court or see a punishment?

Through this suggested forum of stakeholders, the Acts as they are, situations and cases of violence including statistics, and the gaps and limitations,

can be identified and discussed openly and in the context of improving family and community through reduced violence against women. It is difficult to assert specific suggestions for changes to the exiting Acts or to existing rules and procedures without the stakeholders coming together to discuss the problems and options for solutions. The solutions need to be South African.

Finally, the suggested regulations need to be continuously monitored by politicians as the ones who are making the policies; the citizens, particularly women, as the policies are established to protect them and address their problems; the police who have the responsibility to control or manage crime and violence within the community; the service providers in the community who provide the supports to women and families when violence happens; the educators of children in schools and even lawyers in universities who can impart awareness and knowledge about the Acts, VAW, and prevention; and the academics who can conduct community-based, policy impact and evaluation research and transfer or apply findings as strategies to inform and reform legislation and regulations to be more effective in protecting women against violence.

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Chapter 4:

The Culture of

Prosecuting Violence Against Women (VAW)

in South African (SA) Courts: Sensory Ethnography[7]

Violence against women (VAW) remains rampant in South Africa (SA) despite the efforts of the government to enact several laws focused on human rights and domestic violence. The Constitution of the Republic of SA No 108 of 1996 on the Bill of Rights enshrines the rights and affirms the democratic values of human dignity, equality and freedom. Two main Acts, the Domestic Violence Act No 116 of 1998 and the Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007, are framed to protect women against all forms of violence. Enactment of these Acts, however, has not been sufficient to thwart VAW based on evidence from two separate reports, the Human Rights Watch Press Report (1997) and the South African Police annual report (2009-2010). A recent report by Amnesty International (2010) indicated that there were 63,500 cases of sexual offences between April 2009 and March 2010. More recently, the South African Police Services 2009–2010 annual report indicated a total number of 55,097 cases of rape and indecent assault. Only 4.1% of these cases have resulted in conviction (Human Rights Watch Press Report, 2010). These reported figures support the conclusion

[7]Mogale, R., S. Richter, M. S. & Kushner, K. E. (2012). *Prosecuting Violence Against Women (VAW) in South African (SA) courts: Sensory Eethnography.* This chapter has been prepared for publication.

that the human rights focused legislations in South Africa, are failing women as victims of VAW. In fact, based on these reports, it is evident that the laws in place have not been effective as intended, that is, to prevent or reduce violence against women.

Many studies in the healthcare and social systems have focused on the dynamics that contribute to VAW and on the implications of VAW on the individual, community and society (Ellesberg, Heise, Peńa, Agurto & Winkvist, 2001; Heise, 1998; Kramer, 2002). In recent years, much research has focused on documenting, screening, identifying and reporting VAW in the healthcare system (Geary & Wingate, 1999; Glass, Dearwater & Campbell, 2001; Morrison, 1988). There are, however, no studies that have focused on how the identified, reported, and documented incidences by the healthcare system are used by the criminal justice system. Furthermore, there is minimal or no information available about the culture of prosecuting this crime by the criminal justice system.

In recent years, the South African criminal justice system documented high reporting and prosecution rates but low conviction rates on cases of VAW. The contradictory pattern of high reporting and prosecution rates, but low conviction rates of VAW, together with concern about the influence of a persistent gender-blind approach (Orner, 2000) to prosecution of these cases, led us to explore the culture of prosecution of VAW in South Africa. We identified a need to explore the cultural norms and practices by listening to what is said by members of the criminal justice system when prosecuting VAW and by observing what they do, the roles of those involved in the prosecution of VAW, and the evidence they use in

prosecution of VAW cases. We sought to learn from prosecutors and other court personnel as individuals who are experts on how VAW cases are put on trial. We conducted a qualitative multi-method sensory ethnographic study to examine the culture of prosecuting VAW in the South African justice system. The purpose of this paper is to describe our experiences of using sensory ethnography and to critically examine and describe the culture of prosecuting VAW in South African courts.

Is Prosecution of VAW Cases an Issue Relevant to Nursing Practice?

The healthcare sector is often the first entry point where VAW victims seek health interventions, while the justice system is the exit point where the perpetrators of this crime are tried and sentenced. These two institutions, together with the South African Police Services, are the main custodians of the two Acts addressing VAW. Victims of VAW have to report the violent incidence to the South African Police Services (SAPS). In all reported incidents of VAW, the police are obligated to assist victims to open a case and to access medical care under Section 2 of Domestic Violence Act of South Africa (DVA). "Duty to assist and inform complainants of rights". In the healthcare sector, the health practitioners' responsibility is to document what she/he sees, smells, hears and touches (Duma & Ogunbanjo, 2004) through a history physical examination process from the victim. The history taking is followed by an appropriate physical examination and health interventions, all of which are documented in an official health record, the J88 form. The J88 form is the official State document used exclusively for criminal proceedings, for the purpose of recording injuries

sustained by victims of a crime that includes VAW. This record is likely to be subpoenaed by the criminal justice as evidence (Duma & Ogunbanjo, 2004). The form provides detailed forensic evidence, including written words, photographs or drawings of the sustained wounds/crime scene, seized weapons/clothing, narratives, excited utterances (quotes), and odor from the victim (Campbell, 2004; Duma & Ogunbanjo, 2004).

The justice system uses the official health record endorsed by the health personnel as evidentiary proof to substantiate the alleged crime during prosecution and sentencing of the perpetrator. The availability of the health record in court is believed to be helpful to the victim of VAW in conveying a precise clinical description of the injuries, substantiating the allegation, supporting the case and providing objective evidence (Cory, Ruebsaat, Hankivsky, & Dechief, 2003). Furthermore, the health record acts as a "second voice" as the most reliable evidence in VAW if documented appropriately, impartially, objectively, and with integrity and honesty (Kramer, 2002). An immense problem is that nurses are not taught to file court cases nor are they taught about legal issues; they are however qualified to take histories, conduct examinations, and document findings on the health record for nursing care interventions. Nursing education provides them with generic skills in documentation and recordkeeping (Duma & Ogunbanjo, 2004). In addition, nurses serve as the ears and eyes of the criminal and justice system in cases of VAW. They are the first contacts for women who have experienced abuse. This requires nurses to be accurate when documenting and providing care to abuse women. We anticipate that findings

from our study can contribute to nursing knowledge to a) enhance the forensic evidence collection methods such as written victim statements, photos, and drawings of the sustained wounds in order to give credible evidence in courts; b) improve screening, identification, care, and reporting of VAW because proper reporting improves the quality of care by drawing connections between violence and other health issues (Kramer, 2002); and c) provide information for nurses about the victims' rights and the other available community resources. We conclude, therefore, that studying the culture of prosecution, including use of the J88 form as evidence during prosecution, is a relevant nursing endeavor.

Method

Design. This research used sensory ethnography a method pioneered by Pink (2009) and recommended to be capable of making the invisible visible. As a critical and innovative qualitative research method, sensory ethnography uses sensory perceptions in order to facilitate researcher understanding and to produce academic knowledge (Pink, 2009). Reflexive and experiential processes are the significant underpinnings of this method. The researcher's self-consciousness and reflexivity, supported by the method, provide a set of viewpoints and analytic strategies that are able to produce more nuanced knowledge compared to observations or interviews alone (Pink, 2009). Sensory ethnography can be classified under focused ethnographic approaches that are employed specifically to explore contemporary society, where it is impossible and inappropriate for the researcher to stay and live with participants for long periods (Knoblauch, 2005; Pink, 2009).

Pink (2009) cited the work of Bendix (2000) who indicated that researching sensory perception and reception requires methods that are able to grasp the unspoken knowledge that is usually omitted in other methods of generating data. Earlier researchers in various disciplines including sociology, human geography, and nursing took time to filter the 'sensory dimensions' into their methodological consciousness (Mason & Davies, 2009). Below (see Table 1) are some of these earlier sensory ethnographies in which senses served as a means to construct knowledge in various disciplines.

Table 4.1

Available Knowledge From Sensory Studies

Study	Study purpose	Discipline	Senses employed	Journal	# of Citations
Bull (2004)	To study sound technology in automobiles	Media and film studies	Auditory, vision, and sense of awe	*Theory, Culture and Society*	69
Sheller (2004)	To explore the ways in which the 'dominant culture of automobility' is implicated in a deep context of affective and embodied relations between people, machines and spaces of mobility and dwelling.	Social Sciences	Vision, auditory, movement, and sense of awe.	*Theory, Culture & Society*	97
Edvardson (2007)	To establish how different environments affects ways of provision and understanding of care.	Nursing Sciences	Vision, auditory, smell, touch, movement, and taste.	*International Journal of Nursing Practice*	15
Adams (2007)	To understand people's experiences and perceptions in relation to sound walking in acoustic urban environment	Sociology	Auditory, vision, smell, and movement.	*The Senses and Society*	10

Study	Study purpose	Discipline	Senses employed	Journal	# of Citations
Mason (2009)	To look at how combination of visual and creative interview emphasize the interplay between tangible and intangible sensory experiences	Social Sciences	Vision, auditory, touch, and sense of awe.	*Qualitative Research*	12
Clark (2011)	To investigates how the maps, as participant-led representations can promote 'cultural brokerage' by facilitating the exchange of meanings within learning communities and beyond	Childhood Studies	Vision, auditory, touch, and sense of awe	*Qualitative Research*	2
Hurdley (2011)	To carry forward the insights about the importance of multimodal meaning-making through exploring how unconventional media might be used in the scholarly authoring and dissemination.	Social Sciences	Vision, auditory, touch, and sense of awe.	*Qualitative Research*	2

Ethical Access

Prior to initiating our study, ethical approval was obtained from the University of Alberta Health Research Ethics Board – Panel B in Canada. Because ethical regulations are positioned in the national, international and cultural context (Clark & Sharf, 2007), the key informant on justice system in South Africa indicated that there was no need to obtain ethical approval from any local research ethical review body in South Africa. Appropriate research site approval was sought from the relevant chief magistrate, regional court president and chief prosecutors. This approval was sought and received by the first author for each court in which observations took place.

Sampling and recruitment. Study participants were selected purposively, theoretically and contextually.Intially participants were recruited with the help of key informants. The Regional Courts President and Control Regional Court Prosecutor, notified prosecutors and other court personnel in the Courts within their jurisdiction about the study and its objectives. The personnel were informed that a researcher would attend court and observe while they prosecuted cases, particularly VAW cases. Allocation of cases to be observed was made daily by the Control Regional Court Prosecutor. All observations were conducted by the first author, who made the decision, depending on the quality of the observation, whether or not to provide the prosecutor with the consent to contact form and information letters. Prosecutors who received this information were invited to call the researcher if they wanted more information about the study or were

willing to hold a conversation about what had been observed. Following observations, prosecutors were purposively selected to participate in conversations. During the conversations with the purposive sampled participants, fundamental constructs on prosecution of VAW emerged. The emerging constructs requested for conversations with relevant cultural actors from the cultural scene. Both theoretical and contextual sampling techniques were then initiated in order to capture the emerging constructs and contextual aspects of prosecuting VAW. Hence the final sample of the participants was not only recruited purposively but also theoretically and contextually.

Data generation and analyses. The study used multiple methods involving multiple senses to generate data through four phases. Data generation and analyses were ongoing, occurring concurrently and iteratively. During the first phase of the study, courtscapes were produced using video accompanied by researcher audio-recorded verbal description to capture the physical settings of courtrooms. In this phase, the recorded video served as an externalized retina that situated vision (Mondada, 2006) together with auditory, touch, and olfactory senses and researcher sense of awe. Courtroom physical spaces were explored through touching physical surfaces, smelling different odors and recognizing different attractions. The recording of these courtscapes was intended to provide a sensory presentation of the cultural complexities and temporalities under which prosecution of VAW occurs in South Africa. An Afrocentric feminist perspective, embedded in the first author's selection of court spaces, informed the process of completing the courtscapes.

In the second phase of the study, prosecutors were observed during the prosecution of VAW cases. Vision was the most dominant sense, although other senses were used in relation to hearing different sounds in the courtrooms, smelling different odors, and feeling a sense of being awed by the proceedings and environment. These personal researcher experiences were documented in field notes and incorporated throughout this phase as a means to understand and learn about the culture of prosecuting VAW. More than 50 criminal cases with twenty four cases of VAW were observed in different Regional courts.

In phase three of the study, the first author engaged participating prosecutors or court personnel in conversations about what had been observed and the meanings attached to observed events. In this phase, both etic (outsider) and emic (insider) stances from an Afrocentric feminist perspective were of great benefit. An outsider perspective about the Criminal Justice system enhanced an "unknown stance" approach. As such, conversational engagements were embraced and received with wonderment or awe by the first author. An insider stance was reflected in the first author's position as a native South African who had lived all her life in South Africa. This stance afforded the first author an understanding of the pre-colonial historical impact on African women South African society. Both auditory and visual senses were dominant in this phase. The first author used her auditory sense to listen actively to what the participants were saying about prosecution of VAW cases. At the same time, she observed their gestures and nonverbal cues as they provided detailed accounts of what happened during their prosecution. Seven face-to-face intensive conversations

and one virtual (e-mail) conversation were conducted with prosecutors and other court personnel. The face-to-face conversations were digitally recorded with one exception for a participant who consented to a conversation but declined to be recorded. The conversations were informed by court observations, and guided by an initial question: "Tell me about the process of prosecuting VAW." Probing questions, used as needed to invite participants to expand on their descriptions, included questions such as "Can you define/explain or classify VAW legally?" "Would you describe the factors which you think influence the prosecution of VAW and the stakeholders in prosecution of VAW cases?" "What are your feelings about prosecution of VAW cases?", "What can women do as victims of VAW in order to contribute to a fair prosecution?" and "What is the role of J88 in prosecution of VAW cases?" This questioning provided the first author, as interviewer, a stance of learning from the prosecutors about the culture of prosecuting VAW. This questioning reflects the 'unknowing stance' wherein a researcher adopts a complete childlike persona (Ngunjiri, 2007). This approach enables researchers to generate an understanding through dialectical meaning making processes (Feldman, 1998). Furthermore, the dialectical nature of such conversations assists researchers to comprehend the meaning of words, gestures, and expressions through listening, watching, reflecting, questioning and even responding (Feldman, 1998). Conversations revealed participants' beliefs, meanings, perceptions or accounts (De Vos, Strydom, Fouche, & Delport, 2004) attached to prosecution of VAW as a culture.

In the fourth phase of the study, relevant site documents used in prosecution were retrieved and reviewed to provide additional information and insights about the VAW prosecution process and culture. Documents were analyzed in order to examine, enhance and revise prior observational and conversational claims about the culture of prosecuting VAW in South Africa Courts. An Afrocentric feminist perspective guided the analysis, directing analytic sensitivity beyond and above the texts within the site documents. The focus was on the importance of the site documents to an ordinary continentally based African woman and also to the entire African society. Documents were collected from the Health and Welfare, Justice and Constitutional Development, Social and Development Departments, National Prosecuting Agency (NPA) and South African Police Services. Documents from the Department of Health and Welfare included the J88 medical record and pre-sentence reports compiled by social workers. Documents from the Department of Justice and Constitutional Development included the Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 and the Criminal and Court Procedure Act of 1977 and from Social Development Department, the Domestic Violence Act No 116 of 199. Documents from the National Prosecuting Agency included brochures on understanding the Criminal Justice System and from Aspirant Prosecutor Program from the South African Police Services (SAPS) dockets.

The strategy of continuous analysis that commenced from the time of producing the courtscapes and the participant observations helped to inform the entire research process. Furthermore, continuous analysis influenced the

synchronization of the entire research project (Pink, 2009). This approach optimized what was observed, noticed, and listened to, and assisted in the refinement of interpretations (University of Pennsylvania, School of Arts and Sciences, 2010) of the prosecution of VAW in its naturalistic occurrence. Both the verbal description of the recorded courtscapes and the conversations were transcribed verbatim. The extensive written field notes on observations and reflections, kept throughout the research project, along with notes about the site documents, were also analyzed as data. These strategies supported the analytic aim to explore all types of generated data in order to examine relationships among the courtscapes, observations, conversations, artifacts, and relevant documents.

The transcripts and field notes were systematically analyzed and interpreted with the aid of the qualitative software package of Atlas.ti6© (Bell, 2010). Atlas.ti 6© offers various functions such as storage, retrieval, visual mapping and inventory/output functions of codes, code families and primary documents (Bell, 2010). The analytic processes recommended by Spradley (1980) were used as the framework for the analysis. These analytic processes included: identification of the domains of the culture, establishment of taxonomies related to the characteristics of the identified domains, componential analysis to establish relationships between the domains and the taxonomies, and identification of the emerging themes from the developed codes. Bell (2010), drawing on the work of Miles and Huberman (1994), defines codes as tags or labels that assign meaning to descriptive or inferential segments. In our study, these codes took the form of quotations, phrases, sentences from conversations,

excerpts from official documents, and descriptions from the field notes. In order for the codes to make meaning they were defined in relation to the line of inquiry for this study. Codes were merged into themes using the code family function and relationship mapping within Atlas.ti6©. Examples of code families in our study included positionality of the woman in South Africa and court, authority over the case, communication in courtrooms and the ripple effects of VAW on the woman. Throughout these meaning-making processes, the following questions were asked: Who were the actors in prosecution of VAW? What qualifies them to be actors? What are the activities which they implored in prosecution? How are these activities interrelated and play out in relation to an ordinary woman who is a victim? How the woman is holistically situated as far as *her* VAW case is concerned?

Rigor

We utilized verification strategies advocated by Morse, Barret, Mayan, Olson, and Spiers (2002) to continuously establish rigor as methodological quality. Morse et al. (2002) eloquently discern the importance of establishing and demonstrating rigor throughout the course of the research project, and not as a post-hoc evaluation. Rigor is an essential part of any research project in ascertaining the soundness and credibility of the study. The verification strategies we used were responsiveness of the researcher, methodological coherence, purposive sampling and sampling adequacy, active analytic stance and redundancy of the data which facilitates the production of thick description of the study. In order to be responsive and adhere to methodological coherence, the

recruitment strategy was established while in the field with the key informants as appropriate knowledge reservoirs in the justice system of South Africa. The prosecutors referred the researcher to other court personnel who were actively involved in prosecution. This strategy ensured the inclusion of best informants who were not only selected purposefully but also theoretically and contextually. The first author developed a case register for each of the observed cases wherein she systematically documented the cases, case synopsis, phase of the case, case descriptor, and the decision about the case. Additionally, she kept a field journal wherein field notes and reflections about the encounters and observations were written on a daily basis. She also met with the Control Prosecutor on a daily basis to share what she had observed, as a means to provide for verification and clarification. Monthly meetings were scheduled with the Regional Court President, as the expert in the justice system, and with the other research team members in Canada. These meetings allowed continuous critical reflections on what was observed and learned regarding prosecution of VAW.

Data generation and analyses occurred concurrently, inductively and iteratively from the initial phase of the study until the interpretation and sharing of the insights. The data generated from various sources using different techniques produced a thick description of the culture of prosecuting VAW.

Results

Best participants and other forms of data. The findings presented here are from a total of eight participants who engaged in conversations with the first author, as well as from seven courtscapes, 26 observed court cases of VAW, and

relevant documents. Table 4.2 presents selected demographic characteristics of the participants.

Table 4.2

Participants' Demographics

		Number of Participants
Gender		
	Male	4
	Female	4
Race		
	Black	5
	White	3
Ethnicity		
	Venda	1
	Pedi	2
	Tswana	1
	Tsonga	1
	Afrikaner	3
Prosecutor Experience (in years)		
	<10	4
	11–25	1
	26–40	0
	>40	2
Prosecutor Qualifications		
	B Juris & Honours	7
	Diploma	1
Locality		
	Urban	3
	Rural	1
	Urban & Rural	3
	Metrocity	1
Court Type		
	Mainstream	4
	Specialized	1
	Mainstream & Specialized	3

Emerging themes. The analyses of the various forms of data, reflections and experiences of both the first author and participants were integrated into the following eight themes: epitome of power, de-centering of women as victims, prosecution as a victim-blaming platform, normalization of the crime, beams of hope, language hierarchy, paradoxes and misnomer, and the ripple effects of VAW. These themes shaped the way I understood the powerful legal culture under which prosecution of VAW cases is situated.

Epitome of power. The evident theme that was noted from the findings was how the criminal justice system portrays layers of power, with the court as the apex of such power (Beaman-Hall, 1996). This envisages power at work to silence those who are the visitors to the court, including in this regard the women as victims in VAW cases.

The court not only epitomizes power but also embodies an abstract ideology which becomes a living belief to those who see and use it (Duncan & Wallach, 1978). Some participants spoke of this power in their conversations while the same power was also noted through observations and by the layout of the courtroom. Additionally, the court personnel are impressed by such power and its revered values and beliefs (Duncan & Wallach, 1978) to an extent that they too mimic the archetype of such power, as demonstrated by the following data:

> That is the magistrate stand with the three chairs the main one made of leather while the other two are made of expensive fabric. The stand is constructed in a sequential arrangement of that shows the

> extensive and manual labor put into the stand. The alignment of these panels of expensive wood enlarges the meaning of the activities of the courtroom. When condensed together the whole magistrate stand and its objects (chairs, coat of arms, and files) stand out from the entire courtroom as a signal of order and authority. The decorations of the stand gives the whole courtroom an odd effect of fear and intimidation that might turn the victim either speechless or a sense of whisper when ask to talk. (Transcribed Courtscape of Courtroom Site # 1.)

As indicated before, not only was the courtroom epitomizing power but the court personnel were mimicking the archetype of such power as indicated in the following data:

> The minute he is robed, he enters the courtroom through the door which is only used by him, the Regional Magistrate become My Lord, Your Honour, while a few minutes ago we were drinking tea together and calling each other by our names. (Field-notes from observation # 18)

The participants were adamant that the powerful image the court and its characteristics should strictly remain unchanged.This prosecutor articulate this well when saying:

> Because once you can conduct your court in vernacular the image will be lowered. We know that we're dealing with people and the people will [try] to undermine and jeopardize [the power] of administration of justice. (PP # 5)

Statements like this from the participant indicated how the court personnel were concern with the image of the court but not the image that the court does to the victim of VAW.

De-centering women as victims. Regardless of the presence of the victims during the prosecution, their stories were reshaped, retold, rewritten and sifted through a sieve of legal knowledge and formulations by various stakeholders during prosecution processes (Beaman-Hall, 1996). In all of the observed cases, women were positioned towards the margins while their stories were centered and taken over by the court personnel. The conversations and the utterances of the court personnel indicated how they centered the story while de-centering the victim to the margins of the proceedings. The de-centering process starts from the minute the woman reports her violence story, and is evident through all processes of prosecution, until the presiding officer gives a ruling about the case. One of the prosecutors said: But what we usually do as prosecutors, you vex with the person, to see if what she is saying is on the statement". This attest to what Sarat and Schuster (1995) cited when indicating that legal personnel are specialists in organizing, telling stories comprehensively. One of the participants said:

> Once you see that there is a discrepancy between the statement and what she [the victim] is saying you direct the victim on what to say [okay]. If there are lot of things which were not mentioned in the statement then you will have to advise the victim on how to respond to the attorney's anticipated questions. (PP # 4.)

Another participant who concurred with the notion of legal personnel being comprehensible and chronological clear with organizing narrative lines (Sarat & Schuster, 1995) said:

> So, by mere going through the statement is simple as a prosecutor to see whether there is a case or not. And then if you feel that there is a gap that needs to be filled and be clarified [you are allowed to do that]. Hence, before you can start prosecute you need to consult first to see whether whatever is in the statement is also what she is telling you during the consultation. (PP # 1)

Through the mentioned 'vexing and consultation' it makes clear that the prosecutors are dismembering the victim while at the same time are figuring out if the victims are not responsible for the violent act.

Victim-blaming platform. Time and again in the courtrooms there was this lingering attitude that women were not trusted as far as reporting cases of VAW. This attitude or implicit belief not only persists in the courtrooms but also more broadly in the South African society, as some of the prosecutors stated:

> Fake rape is caused by you, women, because your child arrive late at home, you chastise that child, because she is afraid of being chastise, if she find you at home, then she must say something, then you will not punish her. Even if she told lies you will only discover in court that, this one is a fake rape. Or, as a woman you say I came late home because [Mr.] X held me on the way and raped me, telling your husband lies, while you were at a party drinking because you are afraid of your husband.(PP #2)

One of the participants took the 'victim-blaming stance' further by echoing that not only women were the women lying but Black women in particular were the most liars and distrusted in VAW cases by saying: "So, in some cases, a Black woman is a liar [though generally] a woman is taken as a liar, or considered as a liar, hence the practice of reporting".

There is a large body of knowledge available regarding the victim-blaming theme. The South African work of Waterhouse, Combrinck, and Dey (2002) eloquently elaborates about how the victim-blaming platform is created during prosecution. The court personnel during prosecution inquire into, implicitly or explicitly revealing a stance of doubt and discredit, about the victim's character, her behavior and reactions during the violent incident, and the circumstances she was in when the violence occurred. This was affirmed by participants in their conversations. One of them said:

> This thing of not believing women, it does not start today, it has started long time ago. During the Roman Dutch Law, it is not a thing which comes now. (PP # 2)

Furthermore, one of the participants further commented that: like for example we are having cases where you find that the parents are fighting, then the mother will use the girl to say that the father raped her. (PP #4).

Victims were blamed for the cases which they voluntarily reported with the hope that justice will be served as VAW is evil crime that should not be taken as normal.

Normalization of the crime. Through observations and encounters with the prosecutors, the first author realized how some of their approaches to prosecution either routinized and normalized, or exacerbated this crime that usually leaves the victim physically and emotionally devastated. Some victims were requested to come out of the intermediary facilities for dock identification of the perpetrator. One prosecutor indicated that this practice is the preferred approach to confirm perpetrator identification. The prosecutor did not appear to consider the impact on the victim of having to face her attacker in the courtroom. Rather, this practice is considered as "routine work done" for the prosecutors and other court personnel. Several prosecutors reflected on the practice: One participant said:

> I once had a case of a 10-year old that I took to [open] court, she was a young girl, she was very brave and clever girl . . . the accused was sentenced to life imprisonment. She didn't have any problem, she was standing there, you couldn't even see that there is a person [in the witness stand] {talking with pride and smiling}. (PP #4)

The participants in this study were adamant that the law is violent and built on representations of aggression as oppose to sympathy (Sarat & Schuster, 1995) because it is their daily work. Hence one participant said:

> When I prosecute a woman, who was in trauma, I just, I do not sympathize, I . . . BUT I empathize. I just want her to tell me, what she felt. I need her to call what she felt exactly how she felt during penetration. (PP # 5)

The prosecutors seemed to focus so intently on the impact of having the victim describe the attack in the presence of the perpetrator and the court and on the ability of the girls and women to maintain composure, that there appeared to be no consideration of the deeply emotional impact on the girls and women in having to do so. Girls' and women's descriptions of the violence acts, of the crime, seemed to be normalized by the prosecutors to serve the interests of the prosecution itself. One of such affirmation was said by this prosecutor:

> I'm always doing like that. Today, you saw the child testifying in front of the accused but without problems, I could realize that they were used to one another. [There is] no secondary trauma, which she can [have] by testifying in front of him. Unless she was scared of him and will suffer undue stress then I was forced to take her to the CCTV (Closed Circuit Television) insert explanation and application to use an intermediary since she is young but I did not do it as I realized that she was fine in the open court. (PP #5)

Regardless of how the prosecutors were trying cases of VAW and what the victims were enduring in South African courts there was hope within the South African legal landscape.

Beams of hope. Those prosecutors who worked during the apartheid era in South Africa seriously echoed a sense of hope that is rising within the South African criminal justice system. Much has been achieved in this country whose future was highly uncertain less than two decades ago (Mbeki, 2004). The SA legislation on VAW have given South African women hope that change that has

been slow will yet be achieved through the "inches" of progress (Du Bois, 1903). The patron of the Thabo Mbeki African Leadership Institute, Thabo Mvuyelwa Mbeki (2004), said that it might seem impossible, but significant changes are taking place in South Africa and in its institutions, including the courts. The supreme law of the country and the other legislations are on the victims' side. This was articulated by the prosecutors who indicated the change of the legal landscape of South Africa. One prosecutor said:

> Previously, women of South Africa were not allowed to work, and were not also allowed to practice as legal practitioners, in certain cases. It is only that I forgot a citation of a case of 1952, where one [judge] stated in his judgment that when women wanted apply for right of appearance in court; he said now; if you take women to court; if we allow women to go court now who will be working in the kitchen. A place of a woman is in the kitchen; the woman is not fit to work in court. So that is one of the judgments which has tendered in 1952. (PP #2)

The other prosecutor indicated not only how the legal landscape is changing but also how serious the justice system view VAW cases. The prosecutor said:

> The courts view VAW and children very seriously. To an extent, that is why we, in 2007 we had an Act, a Minimum Sentence Act, which was enacted to increase the sentence. (PP #4)

The seriousness of the justice system is also noted in the Domestic Violence Act No 118 of 1998 as one of the progressive pieces of legislation that

afforded hope to the majority of African women in South Africa. In its Preamble the Domestic Violence Act No 118 of 1998 states that it:

> RECOGNIZING that domestic violence is a serious social evil; . . . that victims of domestic violence are among the most vulnerable members of society;
>
> IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence. (Excerpt from the Domestic Violence Act No 118 of 1998)

The Domestic Violence Act, like the Constitution of South Africa was enacted after 1994 State election. The Constitutions is one of the best in Africa and among the most progressive in the world as its intent was to afford equal standing for the diverse languages and ethnic groups in South Africa.

Language hierarchy. South Africa has 11 official languages, as attested by its Constitution, and according to the Constitution, all official languages are equal and no particular language is dominant over the others. But Afrikaans and English were the only working and communicating languages used in the court procedures, after 15 years of the promulgation of the Constitution. In most cases, victims of VAW were ordinary Black women who have neither Afrikaans nor English language skills. Surprisingly, Afrikaans speaking court personnel who were having cases on VAW with Afrikaans speaking victims were using only

Afrikaans. The participants indicated that "English is used to make things simple, not to get interpreters in almost everything".

Regardless of the mandate and endorsement of other languages in South Africa court personnel were in favor of either English or Afrikaans than their mother tongues. One participant said:

> I think using English and interpreters is better. We are still having cases which must go for transcription and most of the time I realized that people who are transcribing these records are English speaking {clapping hands as a sign of truthfulness} and when it goes to High Court also to the Judges it become easier, so is better to avoid . . . the delay and everything. (PP #4**)**

The issue of language in South Africa is a sensitive (Bunting, 2006) especially for those who were educated and trained in apartheid era. Those who obtained their training during the apartheid era were coerced to learn in either English or Afrikaans. Even though they have communication skills of the two languages; they are challenged when expected to engage in deeper debates in the two languages. The following excerpt clarifies this:

> I [first author] was restless in this case as the Defense lawyer was speaking Pedi- English. And I was wondering why is he stressing? Why doesn't use his own mother tongue to make things easier! There I was, listening to the Black Africans who were imposing discrimination on themselves while even the Constitution as the supreme law of the country has provided them with cultural autonomy by endorsing the use of their

different languages in their daily activities.(Field-notes of Observation # 1)

An important issue which was noted was though the Constitution endorsed the other languages all the court documents were still written in the two languages (English and Afrikaans). Hence when they documents were analyzed they were having contradictory statements.

Paradoxes and misnomer. The analysis of the Acts, policies and official documents through an Afrocentric lens revealed that most of these site documents contained contradictory statements even though they are understood to be comprehensive and progressive, especially when defining VAW. A typical example of misnomer is noted on the preamble of the Domestic Violence Act No 118 of 1998 of South Africa. The preamble normalizes and minimizes VAW as social issue rather than a criminal act. It states that "Domestic violence is a serious social evil" (Excerpt from Domestic Violence Ac No 118 of 1998 of South Africa). A paradox is evident in between the intention of the Act to address violence against women and the silence of the act on this form of violence as a crime against women.

A paradox is also noted in how the J88 is presented as prima–facie evidence in court. Though the J88 is a prerequisite for prosecution, prosecutors do not seem to consider the J88 as a requirement.

> The J88 is handed in terms of Section 212 of the Criminal Procedure Act; which by producing that 212 Affividavit is a prima-facie proof that the complainant or victim was examined by a professional

> person. However, in case where the State feels to call the doctor in the meantime, without using the Affividavit 212, the State can call the doctor just to come and corroborate the issue of penetration. If the penetration was there, just the findings or conclusion what did he found while examining the patient, the victim. (PP #1)

Through this study it was noted that law that underpins the criminal justice system deny experience and silence subjective perspectives (Sarat & Schuster, 1995). Hence the court personnel who were observed in this study were typically interested in the structuring of the given story than the health and well being of the victims.

The ripple effects of VAW. During all of the cases observed and attended by the first author, no mention or inquiry was made about the wellbeing of the victims. The focus was only on the victims' presence in the court. The moment the victim reports the case of VAW, whether a known or unknown perpetrator, there is a minimal opportunity for her to receive support from the family, community and society. Most victims lose their place of residence, suffer humiliation in the community and society, contract illness such as HIV/AIDS and even become pregnant as a result of the rape incident. In some of the cases the enquiry about the whereabouts of victims were never made but in one case that comes into mind is on the victim who was raped by the father and the regional magistrate in the ruling indicated this:

> The victim is now a vagabond; nobody knows where she is because she reported you, the father. (Field notes of Observation # 6)

The silence or unconcern of the court personnel regarding what is happening to the victims beyond prosecution and sentencing of VAW was disturbing. The victims and their families did not have a clear way forward on what to do. One parent witness of a young woman indicated this confusion by saying:

> I just want to know from you as the judge in that stand (pointing at the magistrate stand) that ever since 2007 you are always postponing this case, what is going to happen because now my daughter is HIV positive. Can this court tell me what is going to happen, what should I do? (Field notes of Observation # 8)

The confusion of the victim was also indicated by the participants in the conversations. One participant said:

> That woman, she came here, she reported to me, that is just a drop in the ocean. She knows of many who have children with their fathers as the perpetrator. (PP #2)

Prosecution of VAW in South Africa is guided by amended Criminal Procedure Act of 1977 together with the Constitution of 1996 and the Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 as the guiding laws. Given the fact that these laws were enacted during the existing democracy, one would think that they will have strategies that are victim- friendly in addressing VAW contextually. However, the findings indicated flaws and loopholes in prosecution of VAW in South African courts.

Discussion

Two Regional Courts and a used to be Specialized Court were the research sites for this study. There were similarities in the construction, physical setting and nature of objects in the three courts. The two Regional Courts were similar in every way that epitomized an exaggerated sense of power and authority. This sense was evident from the entrance to the courtrooms and, indeed, conveyed throughout the full courtroom; the effect was one of inhibiting speech, of paralyzing, engulfing, ensnaring, and petrifying the victim (Duncan & Wallach, 1978). This was however, not observed to be the case in the special court. The courtroom walls, roof and floor arrangement signify extended physical labor which tells a story of the dogma of power and domination that obstruct question or comment. Furthermore, the expensive use of wood to furnish all courtrooms, especially dominant at the Magistrate stand as the highest sitting place in the courtroom, increases the victim's sense of bewilderment (Duncan & Wallach, 1978). This sense is further exacerbated by the different points of entry to the courtroom and sitting places of stake holders involved in the prosecution. Such variation and segregation suggests inequality and inequity on the part of the case; the de-centering of the victim in the court proceedings seems to displace, even deny, any sense of ownership or claim on the case by the woman who has taken the necessary legal steps that lead to the assembling of stake holders.

In all of the courtrooms, the victims' stands were located on the periphery of the courtrooms. While other stands (prosecutor, defense and accused) were positioned at the centre and in close proximity to each other. The whole physical

setup of the court was intimidating, seeming to leave the victim with a sense of solitude, servility and inferiority. This physical space seems completely counter to the hopes of the victims, who come to court convinced that they will find people who understand and embrace their situations. Victims do not wish to be inferiorized by a setting that magnifies the meaning of being a 'victim' nor by the people whose showcasing of their daily activities symbolizes bourgeois ideology (Duncan & Wallach, 1978).

The daily activities of most of the court personnel were observed to be directed at positioning the woman as the victim at the margins, while her case was centered. At no time is the victim consulted or asked about her perspective on the case. Surprisingly, everyone needs to know *the story* in order to reshape, retell and reconstruct the case to suite his or her standing. This dynamic is what hooks (1990) eloquently expounded on:

> No need to hear your voice when I can talk about you better than you can speak about yourself. No need to hear your voice. Only tell me about your pain. I want to know your story. And then I will tell it back in a new way. Tell it back to you in such a way that it has become mine, my own. Re-writing you I write myself anew. I am still author, authority [*and I own your story which is now the centre of my talk but not yours anymore*][8].

The findings from our study support previous contentions that the victim in a VAW case is compelled to be in court as a well-mannered "Other" who listens expressionlessly while the court personnel deliberate about her and her

[8] Voice of the first author

meaning (Royster, 1996). In their deliberations, the stakeholders involved in prosecution might think they mean well, but the evident de-centering attitudes risk disrupting the sense of justice and righteousness in the hearts of victims, offering them no hope that their involvement in the case will ever be considered.

In the prosecution of VAW in South African courtrooms observed in our study, not only are women de-centered as victims, but also the African languages are de-centered. Language is a basic unit of culture. In colonial time, language served as a central mechanism of interaction and dependence (Rodney, 1973). Its use was to communicate with the exploiters rather than with the Africans with one another. A disturbing comparison is evident between the colonial exclusionary language practices and the courtroom observations, particularly powerful in some of the cases in which there was no White person in the courtroom but the colonizer voice remained loud and clear, while African voices were completely silenced. More disturbingly, this silencing implicated Africans themselves in their roles as court personnel.

The themes presented in the study findings contribute to a sense that the victim's story is taken over by the prosecution process in ways that may not benefit the victim. The story is retold in such a way that the prosecution can become a victim-blaming platform (Waterhouse et al., 2002). Evident in some of the quotes from court personnel, women are not believed, and may in fact be characterized as liars who invent rape to hide personal transgressions. In court, victims who are called to testify are subjected to insensitive, even hostile, questioning about their own character, behavior, responses to, and possibly

responsibility for their actions that can be construed as contributing to the violent incident; and, the circumstances under which the victim was in when the violence occurred are given much priority and attention during the prosecution. The aim of substantiating and framing the stated issues during prosecution is to blame the victim for the incidents. This is related to myths that societies have about women being unreliable and liars as discerned by some participants in this study.

Findings presented from our study suggest that not only are the victims of VAW blamed for the occurrence of the violence, but also that VAW is normalized as a crime. Observed procedures such as dock identification by a distressed victim would seem to be uncalled for during prosecution. These findings are consistent with the work of Stephens and Siden, (2000) who outline how VAW cases are normalized by court officials and how court officials portray unresponsive attitudes towards the victims. These attitudes are conveyed through interactions that demean, degrade, and discredit the victims' accounts, and through inaction, ignoring or not inquiring about victims' wishes about the case (Bennett, Goodman, & Dutton, 1999; Dylan et al., 2005; Gillis et al., 2006; Mvimbi, 2007; Stephens & Siden, 2000). Unresponsive attitudes engender feelings of futility and shame for the victims in their cases (Stephens & Siden, 2000) even though they are aware that the law is on their side.

South Africa has progressive legislations related to VAW which has the potential to produce the finest results of prosecution on VAW cases. However, the first author found that observing VAW cases was both a great learning opportunity and a very hurtful experience given the evident continuity of

colonization in the actions of Africans themselves. A disturbing reflection is that, whether intended or not, the court personnel and the process of prosecution did not appear to be interested in the women as the victims. The different stakeholders were interested in '*the stories'* in order to rewrite them in their own way and to add to the statistics of winning cases. While trying to make meaning of the culture of prosecution in this study, the first author in particular realized many challenges that are faced by her fellow Africans in their daily activities. For example, she listened to the Africans implicitly impose discrimination on themselves by limiting their language, even though the Constitution as the supreme law of the country has provided them with cultural autonomy (Harrison, 1981) by endorsing the use of their different languages in their daily activities. What was observed consistently was the power of the courtrooms not as African culture, but as a cultural legacy of colonial trauma in an overstated façade. These effects were noted mostly in interactions, engagements, conversations and dialogues among the court personnel with victims and even among themselves.

Limitations

The study was conducted in three provinces of South Africa, and we acknowledge that a national study could make a greater contribution. The prosecutor perspective is dominant in our study, however inclusion of other court personnel such as the defense attorneys and interpreters might have provided alternative perspectives that would further deepen understanding of the culture of prosecution of VAW in South African courts. This limitation could be addressed

through a larger, more comprehensive study. Nonetheless, our study contributes new knowledge that merits reflection by those involved in various sectors working toward reduction and elimination of VAW.

Conclusion

Our study findings indicate that the South African government showed commitment in addressing VAW in its various forms through the passing of the two Acts: Domestic Violence Act No 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007. The Domestic Violence Act is considered globally to be a very comprehensive and progressive piece of legislation (Cooper et al., 2004; Crowe, 1997), primarily due to the comprehensive definition of VAW. According to the Act, VAW may include physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, forceful entry into the complainant's residence without consent, and any other controlling behavior towards the complainant (DVA No 116 of 1998; Jewkes, Levin, & Penn-Kekana, 2003; Moore, 2005; Swart, Gilchrist, Butchart, Seedat, & Martin, 2000; Wood, Lambert, & Jewkes 2008). The Criminal Law (Sexual Offences and Related Matters) Act is considered crucial to changing South African sexual laws (Moore, 2005). The Act expands on the definition of rape and the available defenses which are usually made during the prosecution of rape cases. Furthermore, the Act constructs certain evidentiary rules as valid evidence for the prosecution of sexual assault cases. In addition, the Act provides for Post Exposure Prophylaxis (PEP) treatment with antiretroviral drugs for sexual assault

victims (Moore, 2005; South Africa D.O.H., 1995; Swart et al., 2000), as well as for compulsory HIV/ AIDS testing for the perpetrators of sexual offences. The Acts reflect promising legislative authority that has not been fully realized in the cultural practices in court proceedings, notably those represented in our study. In articulating the observed gap between legislative intention and courtroom cultural practices in prosecution, our intention is to shine a spotlight on this gap to provoke reflection, critical dialogue, and action to close the gap and realize much-needed change to enhance women's safety and well-being.

Additionally, by providing the details of the culture that inhabits the courtrooms when VAW cases are prosecuted, we are in a better position to recommend and advocate for woman-friendly procedures that will circumvent normalization of the crime and re-victimization of victims. This will contribute valuable and interactive policy changes (Holmstrom & Burgess, 1983) within the caring professions – nursing and also other social and health care professions.

Declaration of interest*:* The authors report no conflicts of interest. The authors alone are responsible for the content and writing of the paper.

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Chapter 5:

The Insights of Culture of Prosecution of Violence Against Women in South Africa

The purpose of this chapter is to share insights from a research project that explored the culture of prosecuting Violence against Women (VAW) in South African courts. The study originated from awareness of the documented high incidents of reported cases and prosecution rates compared with the low conviction rate of perpetrators of violence against women (VAW) (South African Police Service Report 2009–2010, Human Rights Watch Report, 2010) in South Africa. As a signatory to the United Nations, South Africa is obliged to be the guarantor of safety to women by adopting legislative and other measures which prohibit any form of discrimination against women (United Nations, 1993, Resolution Number 44). The South African government becomes the guarantor, and the institutions and the para-statals (public private partnership) become the custodians of different legislations that protect women against violence. In order to demonstrate commitment to the ratification, South Africa enacted two legislative Acts that are framed to protect women: The Domestic Violence Act 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act 32 of 2007 of the Republic of South Africa. The two Acts have been commended worldwide as the most progressive and comprehensive legislations addressing VAW, but in real terms, concern has been raised that the criminal justice system is failing the victims of VAW in South Africa (Combrinck & Skepu, 2003; Mathews, Abrahams, Martin, & Vetten, 2004; Waterhouse, Combrinck, & Dey,

2002). Evidence includes the underreporting of VAW and low conviction rate of 3% in the reported cases (Human Rights Watch Report, 2010). The research report to the Medical Research Council (MRC) by Jewkes and Abrahams (2002) indicated that underreporting of VAW cases in South Africa was due to structural factors and victim-related reasons. From the victims' perspective the reasons for underreporting include: embarrassment, self-blame, fear of not being believed, trauma, and fear of secondary victimization (Jewkes & Abrahams, 2002) by stakeholders who have a duty to manage VAW as endorsed by legislations. The aim of this research project was to explore prosecution as a "way of life" and part of those endorsed duties. The study followed a critical exploration of those ingrained "day-to-day activities" of prosecutors and other court personnel as primary actors in dealing with VAW cases.

Available Knowledge on Prosecution of VAW in South Africa

Available knowledge on prosecution of VAW in South Africa is contextually structured within international, constitutional and national frameworks. Internationally, South Africa has signed (December 15th 1993) and ratified (December 1995) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, after ratification South Africa did not sign the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Open Society Foundation for South Africa, 2005). This protocol allows victims of VAW to lodge country-specific complaints to the United Nations monitoring committee. Nationally, the South African justice system is steered by the Constitution Act 108 of 1996 while the

administration of justice falls under the Department of Justice and Constitutional Development. It is important to know that this particular Department was established in 1994 after the first democratic elections in South Africa; and it is still under transformation. The Constitution was enacted in 1996 and became operational on February 1997. Chapters 2 and 8 of the Constitution are the two relevant chapters associated with VAW in the criminal justice system. Chapter 2 provides a comprehensive Bill of Rights on civil, political, cultural and socio-economic rights. Chapter 8 includes a section on the provisions for different type of courts and court procedures. The institutional court processes such as prosecution of VAW in Regional Courts are guided by the Criminal Procedure Act of 1977 as amended and Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 of Republic of South Africa. Both Acts were enacted within the Department of Justice and Constitutional Development. However, at lower and district courts the management of VAW falls within the parameters of Domestic Violence Act No 116 of 1998 with Criminal Procedure Act of 1977 as amended still the main legislation.

Both the Mainstream and the Dedicated Sexual Offences courts follow the same principles on prosecution as determined by the Criminal Procedure Act No of 1977 as amended. During the time of this study the Dedicated Sexual Offences Courts were in the process of being revoked, irrespective of strong available evidence that Dedicated Sexual Offences Courts have much to offer and they have 100% guilty verdicts (Walker & Louw, 2007) as compared to Mainstream Courts. Additionally, the results from Walker and Louw (2007) report that the Dedicated

Sexual Offences Courts were moving towards a victim-friendly prosecution process in contrast to a victim-blaming prosecution process.

The work of feminist scholars on VAW cited that there is existence and persistence of gender-blind approaches (Mathews et al., 2004; Ormer, 2000; Waterhouse et al., 2002) which are ingrained in the prosecution process of VAW cases. These scholars have critiqued evidence giving processes as routinely insensitive and degrading activities which are normalized as a standard procedure. These evidence giving processes are also evaluated as dismissive of human dignity and equality as the constitutionally protected rights (People Opposing Women Abuse, Shadow Report on Beijing + 15, 2010) of victims of VAW.

During the first phase of the evidence-giving process, which is called evidence-in-chief, the victim is subjected to questioning by the prosecutor. This phase can be extremely invasive as the victim is compelled to re-live the whole violent incident. The work of Waterhouse et al. (2002) provides knowledge on how the victim in this phase is persuaded to provide an exact description of what happened during the violent incident by detailing physical acts including using the anatomic names of body parts, considered highly personal and private, especially in a case of rape (Waterhouse et al., 2002).

In the second phase of prosecution, the victim is extensively questioned, cross-examined, by the defense lawyer who represents the accused perpetrator. The intention of the type of cross-examination used in VAW cases is interrogation not only to find out what happened, but also to discredit the victim and create a reasonable doubt about the case (Waterhouse et al., 2002). According to the work

of Waterhouse et al. (2002), during this phase the public prosecutors are supposed to protect the victims by balanced interruption of the invasive interrogation. This is not always the case as explained by Kinports (2000) who indicates that due to the structure and the character of the court procedures, the public prosecutors display reluctance to intervene during the invasive cross examination of the victim by the defense lawyer.

The third phase in prosecution entails the re-examination of the victim by the prosecutor. In this regard, the prosecutor has the opportunity to clarify issues raised during cross-examination (Waterhouse et al., 2002).

The three phases form an axis of the trial proceedings which is entirely based on the face to face encounters and principle of oral testimony (Combrinck & Skepu, 2003; Ellison, 2000). According to Ellison (2000) the judicial system is adamant that both oral testimony and face to face cross-examination produce apparent results of evidence from the victims of VAW.

The work of Combrinck and Skepu (2003) and Waterhouse et al. (2002) supports the contention that the justice system in South Africa is adversarial, male dominated, biased against women and embedded in a victim-blaming mode. These two studies offer a stance on the prosecution of VAW in South African courts. Whilst they are important, they reveal minimal information about the underlying culture of prosecution of VAW. Furthermore, the studies do not address influences that shape the evidence giving processes in prosecution of VAW cases in South African courts.

Taking up this knowledge gap, the purpose of this study was to explore the culture of prosecution of VAW cases in South African courts. In order to accomplish this purpose, the following objectives directed the research project:

1) To identify the processes, practices and patterns employed by the prosecutors in prosecuting VAW cases;

2) To describe, from the perspective of the prosecutors, what is considered to be evidence when prosecuting VAW cases; and

3) To identify the implications of evidence giving process of VAW cases from the prosecutors' perspectives.

The research question, purpose and objectives were appropriate for a qualitative approach of inquiry, specifically an approach which has a focal point on culture. We chose sensory ethnography.

Sensory Ethnography

An in-depth examination of our use of sensory ethnography is reported elsewhere (Mogale, Richter & Kushner, 2012, unpublished manuscript) however an overview is provided here as a basis for understanding how we approached data generation and analysis. Sensory ethnography falls within the focused ethnographic approaches which are located within the interpretive paradigm (Monti & Tingen, 1999; Ntarangwi, 2010). The sensory ethnographic approach typically involves the use of multiple media to enhance and optimize more common data generation techniques such as observations and interviews.

In our work, we employed different methods to generate data: court-scapes (recorded video tours of the physical setting of the courtrooms and the court

objects), participant observation, conversations with prosecutors and other court personnel involved in prosecution, and review of relevant site documents. Similar to other qualitative research approaches, the process of data generation and analysis was concurrent, ongoing and iterative. This allowed constant movement among and across the data generation phases and analysis. Seven scapes from the courtrooms and intermediary room/facility were captured; 24 cases of VAW were observed; and seven face-to-face and one virtual (e-mail) conversations were held with prosecutors, a court intermediary, the President of Regional Court, and the Regional Magistrate. To expand the understanding of the culture of prosecuting VAW cases, relevant site documents such as the Criminal Procedure Act of 1977 as amended, the Criminal Law (Sexual Offence and Related Matters) Act No 32 of 2007 of the Republic of South Africa (SOA) and the Domestic Violence Act No 116 of 1998 (DVA) as well as standards, procedure manuals and dockets of VAW cases were analyzed. Despite the fact that culture is a broad and complex epiphenomenon, these sets of data assisted in sense and meaning making of the culture of VAW prosecution.

Findings and Discussions

The findings that we present hereunder are reflections and interpretations (Ntarangwi, 2010) about the culture of prosecution of VAW in South African courts. These reflections and interpretations are considered to be the window through which the prosecution culture of VAW has been explored. The findings encompass personal experiences and orientation (Ntarangwi, 2010) and might

differ from the interpretation of another ethnographer; ethnographic studies illuminate subjective positions of ethnographers (Ntarangwi, 2010).

We approached data generation with the "unknowing stance" (Munhall, 1993) by establishing a child-like persona as described by Ngunjiri (2007). As researchers, this stance offered us the opportunity to be supplicant learners in every phase of the research process, particularly in the first phase when the court-scapes were recorded. To facilitate the discussion hereunder, we provide a picture of the magistrate stand in a regional court, a typical courtroom setting for VAW prosecution see Figure 5.1.

Figure 5.1 Court-scape of the Magistrate Stand

Figure 5.1 Magistrate's stand is the highest landmark in the courtroom even though it is made of the same wood as other stands in the courtroom; however some magistrate stands in other regional courts are made of face bricks. On the working surface of this particular stand there was microphone, court stamp, and diary. The Coat of Arms will always be on the background and at the centre the magistrate stand. In other courtrooms the South African flag will be hanging next to the prosecutor's stand while in others it will be hanging on the magistrate stand. Just below the stand, is a place where the stenographer sits with the stenograph that is used to record all the court proceedings.

An excerpt of field notes from one of the VAW cases that were observed in this setting is also presented. The two forms of data provide a point of departure for the subsequent presentation of main findings and discussion.

This is an excerpt from the field notes of one of the observed cases on VAW.

Case Descriptor: The victim was physically assaulted and raped by a neighbor in 2007.

The narration is based on the first author's observations of the trial which was held in a court that had been specifically designated for VAW cases. However, the trial was conducted in an open courtroom. Like other criminal cases in South Africa, the trial was conducted in Intermittently English Interpretation.

In order to adhere to principles of anonymity and confidentiality the demographic profile of the participants and other identifying characteristics were omitted.

Milestones of the case: Evidence in Chief

8:00 a.m.: On this particular morning, the public gallery was fuller with people than usual and some were even standing as there were not enough sitting places for the number of people there. Throughout the courtroom there was an odor of a strong tile cleaning detergent. People in the public gallery were wondering where the odor arose from as the courtroom was carpeted. The Investigating Officer, who was also in the public gallery, commented that the smell was from the holding cells

downstairs where the newly apprehended accused persons or those who were awaiting trial on that specific day were kept.

8: 20 a.m.: The Court Orderly commanded the people in the public gallery to be silent. He then did a quick court roll call in order to ascertain if the accused and victims were present in the courtroom. Except for the child victims and those accused who were in custody; all those who were on the court list for that day responded from the public gallery (including accused persons, witnesses and victims). After the roll call, the Court Orderly declared the importance of silence when the court was in session and stated the repercussions that would ensue for those who failed to do so. This announcement was followed by a frozen silence across the courtroom.

8:45 a.m.: The Public Prosecutor, holding a bunch of brown folders (Dockets), entered the court room through the door which was marked in red "Personnel Only." She was robed in a black gown with gold stripes on both sleeves and a visible emblem of the National Prosecuting Authority of South Africa just below the collar. She approached the Public Prosecution stand, which was situated obliquely but next to both magistrate and defense counsel stands. This stand was directly opposite but several feet away from the victim stand. It was made of hard and shiny wood with a working surface of black leather touch and one microphone. Before settling down in her office chair which was made of fabric, the Public Prosecutor also ascertained that all of the accused,

witnesses and victims were present by calling their names from her own court roll.

8:55 a.m.: There was a loud knock at the closed door that opened directly into the Magistrate stand. The knock was from the Regional Court Magistrate announcing his entrance in the courtroom. As the door opened, the Court Orderly abruptly and firmly said: "All rise in court; the Highness is entering the court" [Talking in local language]. Everybody in the court stood up (court personnel included) while the Regional Magistrate, attired in a black robe with bell-shaped sleeves and neatly pressed white band as the neck collar, gracefully and slowly approached his stand to sit on a high regal raised leather chair. This particular stand was made of the same wood as other stands in the courtroom, but it was more prominent as it was higher than every landmark in the courtroom. The working surface was absolutely shiny and there were two microphones and a neatly packed set of files. The South African Flag was hanging on right side of the magistrate stand while on court wall facing the stand was the South African Coat of Arms. This side of the courtroom wall was the only one which was made of wood. There was a visible notice on the forefront of this majestic stand, written in English and reading: "Silence in Court."

The frozen silence continued as everyone remained standing until the Regional Magistrate was seated, then the Court Orderly powerfully

repeated his command and said: “Sit down all of you,” again in the local language. Everybody sat down.

While seated, the Regional Magistrate beckoned for the Public Prosecutor to approach the stand, and he said something audible enough for the prosecutor only. The prosecutor while still in front of the grand stand signaled the Court Orderly to come to the grand stand. Something inaudible was also said to the Court Orderly by the Regional Magistrate.

On coming back from the magistrate stand, the Court Orderly spoke in English, rapidly with a frown on his face said: “All rise in court.” Everybody stood up again. Again in English, he said, “All sit down,” and everybody did as he commanded. There was a tension within the courtroom as the frozen silence continued.

9:00 a.m.: The prosecutor broke the silence by calling the victim, who was in the public gallery where the accused was also seated, to come to the witness stand. To go to the witness stand, the victim was directed through a small door on the right side of the panel that separated the court foyer and public gallery. Walking slowing and hesitantly, the victim approached the witness stand which was also made of the similar wood and had one microphone. There was no sitting place in this particular stand. Once the victim stood in the witness stand, the prosecutor called the accused to go to the accused stand.

The accused came from the public gallery but was directed to enter the stand through another small door on the left of the panel. This accused

stand was longer than Public Prosecutor, Defense and Witness stands but shorter than the Magistrate stand which was directly opposite and a few steps behind the defense stand. The accused stand was made of the same wood, had one microphone and a sitting place for the accused.

In opening the court proceedings, the Public Prosecutor procedurally announced the first case of the day by putting the case on record. To do so, she read aloud the case number, the alleged charge, the name of the accused, the name of victim, and the date and district where the incident took place. The Public Prosecutor then called upon the names of all court personnel involved in the trial (except for the Investigating Officer who is considered to be the Witness), starting with the Regional Magistrate as the Presiding Officer, to whom she referred as the 'Honorable and Highness', and including the Defense Counsel, from the State side Herself, the Stenographer, the Interpreter, and finally the Court Orderly. With the exception of the Regional Magistrate, all of these people nodded when their names were called to affirm that these were indeed their names. Approaching the magistrate stand with papers, she said, "I am now presenting before this Honorable Court #Affidavit 212 together with J88 which I present under Section of Criminal Procedure Act as amended as prima facie evidence for the case." She handed the forms to the Magistrate and she returned to her stand but remained standing. [The whole prologue was interpreted into English].

The Regional Magistrate paged through the papers that had been handed to him and looked directly at the accused and asked the accused how he pleaded to the charges. [This was interpreted into the local language] and the accused replied, "not guilty." But the interpreter said, "not guilty my Lord." My Lord was never said by the accused. The Public Prosecutor faced the public gallery and said loudly, "All those who are the witnesses in this case must go outside right now!" [After the interpretation of this statement only two women stood up from the public gallery and left the courtroom through a door that was unmarked but was used by the public to enter the public gallery.

The Regional Magistrate looked at the victim from an oblique angle [due to how the two stands were located] and instructed the victim to take an oath by saying, "God help me to say the truth, and it will be whole truth and nothing else but the truth." The victim said what she was told to say through interpretation.

Commencing evidence-in-chief, the Public Prosecutor from her stand looked directly at the victim and said, "Ms Y, can you tell this Honorable court what happened to you on this particular day?" [Interpreted in English].

Avoiding eye contact with the Public Prosecutor, the victim, who was in her midlife, recounted in a barely inaudibly voice and almost in tears, how her neighbor had sneaked up on her and forcefully slept with her [meaning rape in English] on her kitchen floor in 2007. As the victim

was narrating her story, the Regional Magistrate rapidly interrupted her and told the Public Prosecutor to tell the 'State Witness' to look up and talk loudly so that everybody in the courtroom could hear what she was saying.

The Public Prosecutor responded to the Regional Magistrate by saying "as it pleases the court Your Highness" then to the victim, she said. "You heard what the Honorable Lord had said, look up, face me and tell this Honorable Court step-by-step what happened to you on that day." She emphasized to the victim to talk loudly so that His Lordship and the whole court could hear what happened had to her.

Hesitantly and with visible difficulty, the victim looked up to face the Public Prosecutor who had demanded her to provide a step-by-step account of what exactly happened on the day of her rape incident. The victim re-told the story again, this time in graphic details about how the accused, without any indication, shoved and pinned her down while strangling her throat and forcefully slept with her [meaning rape in English] on her kitchen floor. As the victim was talking, it was physically apparent that she was at the brink of collapse (physically shaking with visible perspiration all over her face and clutching the sides of the witness stand where she stood). The victim's visible distress did not deter the Public Prosecutor from her line of inquiry as she asked the victim to describe in detail the duration of the rape incident, if she was sober, and how she felt while she was being raped. [This questioning was followed

by sighs and laughter from the public gallery]. Agitated and with a heavy sigh, the victim replied that she felt helpless and she was 'on plug' (meaning she took a few drinks so she was neither drunk nor sober). Additionally, Public Prosecutor asked the victim if she could identify the accused in that courtroom. Looking to the direction of the accused stand, the victim, with shaking hand, pointed at the accused who was seated just few steps away from where she stood, and stammered, "Here he is."

In concluding the evidence-in-chief, the Public Prosecutor asked the victim, "So you want to tell this court that you were under the influence of liquor when you were raped?" This time the victim did not answer; she just shook her head while facing down.

At 10:00 a.m. the Regional Magistrate indicated an adjournment and announced that the court could re-commence after 15 minutes.

There was shuffling of feet in the courtroom as people prepared to leave the public gallery and court dock. Then the Court Orderly declared again 'All rise' as the Regional Magistrate left through his door. The victim remained, standing alone in the witness stand, while people left the court. The Public Prosecutor did not even look at victim who was staring at her in anticipation; she just passed the victim without acknowledgement on her way out of the courtroom. [I learned later that the Public Prosecutor is not allowed to come near the victim or talk to her while she is still under oath unless permitted as part of court proceedings.] As the victim was standing there, the Investigating Officer approached her and

> talked with her for a while. Listlessly, clutching her hands, she went to the public gallery where she waited for the trial to resume in order to be cross examined on what she presented during the evidence-in-chief. The whole evidence-in-chief lasted for 1 hour.

The layout of the courtrooms epitomizes power that induces fear in the victims of VAW. The picture of the magistrate stand and the excerpt of prosecution proceedings depict the fixed spots that epitomize relations of parity, opposition and power (Duncan & Wallach, 1978; Lanzara & Patriotta, 2001) in the courtroom. The fixed spots within the courtroom compel the cultural actors (defendants, prosecutors, lawyers, witness, accused perpetrator, court orderly, stenographer, and the audience) to symbolize the embodied meaning and representation of the courtroom (Lanzara & Patriotta, 2001) as place of authority and control.

The courtroom physical setting and formal interactions that were noted in the findings embody the power of the justice system thereby depicting the intention of the courtroom (Lanzara & Patriotta, 2001). Moreover, the power within the courtroom is intensified dramatically at the magistrate stand which is the highest landmark in the courtroom. As the centrepiece of every courtroom, the magistrate stand and the items on it emphasize a sense of authority and overall control of the court proceedings (Duncan & Wallach, 1978; Rosenbloom, 1998), especially as it is impossible to guess what lies behind it when you are in the court dock or public gallery. In all of the research sites, the magistrate stands had the same detailed structures and objects, with the exception of the hand written notice

'Silence in Court' in the court in which the excerpt occurred. The objects around the magistrate stand included the South African flag and a plaque of Coat of Arms, designer high chairs and leather-bound files. When examined individually, the flag and Coat of Arms represent a national agenda, while the high chairs and the leather-bound files contribute to the sense of privilege and convey the meaning of the bourgeois court. Collectively, the objects symbolize the power that has been assigned and prevails in South African courts. The power and wealth evident in the court setting contrast sharply with the victims of VAW who are ordinary women. Very few of these women have ever entered such lavish ceremonial structures that portray authority (Duncan & Wallach, 1978). Accordingly; the physical layouts of such ceremonial structures pose a threat of domination (Duncan & Wallach, 1978).

The structure and symbols in the courtrooms in this study (and their objects) bestowed scenarios that create a sense of bewilderment with spatial disorientation (Duncan & Wallach, 1978) to the person who is an outsider to criminal and justice system. Furthermore, the structure together with the positions and juxtapositions of human and non-human actants as coined by Latour (1987) shape the sensorial experience, communication and meaning of certain actions and events (Lanzara & Patriotta, 2001). On entering the courtrooms, individuals are visually engulfed by the imposing objects, notably including the type of wood and the shining surfaces that evidence the intense labor required to construct and maintain the various stands. Furthermore, the different doors of entry and exit to the courtrooms, including to the stands, add another dimension of spatial

disorientation (Duncan &Wallach, 1978) and incomprehension to the observer (Latour, 2010). Available evidence provides information that victims testified that when they are brought to the open court for dock identification, they experience a sense of helplessness and paralysis in identifying the accused or even being around them (Wasco & Campbell, 2002). The effect of the courtroom on the victims was articulated in one of the conversations in which a study participant described how the victims were threatened by such physical setup.

> For the victims to see the perpetrators is often very traumatic for them. I've seen people choking up and not able to testify by just being in the open court and also in the presence of the perpetrator; because in testifying they are re-living the whole incident again.

The fear-inducing layout of the courtroom was also affirmed by one of the court personnel who indicated that:

> In our training, they do not approve of bringing the victim to the court gallery for dock identification. An open court on its own is perceived as another secondary trauma and this is just the problem of misunderstanding between us and prosecutors.

In the field notes it is stated that the four stands (magistrate, public prosecutor, defense counsel and accused) are located in close proximity to each other, in contrast to the witness stand which is located at the periphery of the court dock. The variations in the distances of the stands were of interest. Anthropologists allude to the understanding that physical relationship in space carries a set of meanings (Hall, 1990). These meanings might either be closeness

or non-closeness. Closeness has opposing meanings as it signifies strong relationship which can either be positive or negative (Hodge & Kress, 1988). Closeness in positive relationship indicates concern and intimacy while negatively it indicates aggression and hostility. Non-closeness signifies alienation in relationship. In the current study interpretation, non-closeness of the victims was evident in the apparent alienation of victims from the public prosecutors, regardless of the procedural rule that the public prosecutor is prohibited to come next to the victim, as long as the victim is under oath. Ordinarily, one might anticipate that the public prosecutor would be next to the victim, who is a State witness, in order to give proximate support as a sign of positive interaction. Walker and Louw (2005) reported such as a positive interaction of public prosecutors and victims of VAW, where it was shown that from the victims' perspective the prosecutors had the "victim's interest at heart" (p. 242). Notably, the positioning to enable positive interaction between prosecutor and state witness was provided by the defense counsel and accused stands that are positioned in close proximity to each other, signifying alliance and facilitating easy consultation between the accused and his lawyer.

The excerpt and findings reveal the visible trembling and distress that the victims experience during the trials. The trials may be made less traumatic for the victims if public prosecutors as 'court managers' deem this essential. Prosecutors may launch an application, with consideration of the vulnerable and traumatized victims' case, for the case to be prosecuted in the intermediary facility; the final

decision about the use of the intermediary facility, however, lies with the court. One prosecutor confirmed this alternative:

> According to Section 258 and 170 [of the Criminal Procedures Act] indicate that as long as she is a vulnerable witness [victim] she can testify in an intermediary room where there is Closed Circuit Television (CCTV). If the witness is afraid to face the accused, what I usually do as a prosecutor, I will do an application in court stating that I am having this [adult] witness of this age but she does not want to face the accused. I will place my reasons before the court and we will argue with Defense Counsel. The court will give a ruling. If the court says the victim must go to court it will be unfortunate, but if the court says she mustn't go to the court then the trial will be through CCTV.

Intermediary facilities in South Africa were introduced between 1995–1997, together with the Specialized Courts on VAW and the specialized police unit "Family Violence and Child Protection and Sexual Offences Unit" (FCS). The intent of the specialized police unit was to fast track the investigations of VAW as the police officers were specialized in these units in investigation of such crimes. On the other hand, the intermediary facilities were introduced in order to permit child witnesses (and the traumatized victims) to testify appropriately in court proceedings.

Theoretically, the intermediary facilities were to be dedicated rape care rooms (Jewkes et al., 2009) with furniture and CCTV that would allow the victims to testify without having to do so in the open court. The dedicated rape care

rooms were intended to provide victims of VAW with comfort, to counter or moderate the adversarial nature of VAW trials (Ellison, 2000; Waterhouse et al., 2002). In the current study, only two of the 24 cases that were observed were tried in such a facility. Furthermore the care rooms only had a CCTV, couch and headphones; and no comforts for women victims. It was evident that these rooms were intended for use in cases with child witnesses as the walls in these rooms were painted with cartoon murals for the children and they were equipped with dolls. This observation is consistent with findings from a study by Walker and Louw (2003) on the first specialized court in South Africa. However, all the participants in this study indicated that the rooms were also intended for use by women victims, despite the evident focus of the setting for children.

The linguistic patterns in prosecution of VAW are value-laden. The excerpt from the field-notes provides a brief contextual description of social interaction and linguistic patterns that exist in the courtrooms during prosecution of VAW. Interest in the linguistic patterns is drawn from the fact that linguistic facts extend beyond the types of languages used to social interaction and vocabulary. The excerpt illustrates how the language and vocabulary that were used, together with the interaction of personnel and victims, during prosecution of VAW were interpreted as value-laden to an outsider of the court system.

The field notes document that every stand in the courtroom has one or two microphone(s) but the volume of the voice demanded when the court was in session was paradoxical. The silence that prevailed throughout the court process was sufficient for the victim to be heard especially when speaking into the

microphone. The demand for victims to speak loudly when they give testimony seemed unnecessary. This procedural demand is interpreted as communication tactics that the court uses when prosecuting VAW. These tactics paint a picture of an uncaring prosecution process that diverts focus from the main reason why victims of VAW report their cases to the criminal justice system. It is well known that the victims of VAW report their cases to the criminal justice system with the hope that they will be heard and believed (Waterhouse, et al, 2002). Their courtroom experiences of apparently insensitive demands for how they give testimony are sharply at odds with their hope that justice will be carried out in their cases. The work of Ellison (2000) indicates that these communication tactics are intended to control the victim so that she gives ramble and distracted responses during prosecution. This is noted especially during cross examination as it is regularly used to discredit the victim's case.

The tactics that were noted the in action, for example when the court personnel repeat the same questions many times in a rapid succession pretending not to have heard the answer from the victims (Ellison, 2000). The repeated questioning was usually followed by defensive interruptions that have an intimidatory effect on the victim. Feminist scholars on evidence, like Ellison (2000), conclude that such patterns are used by court personnel to structure the testimony of the victim to the stage that they want it to be. Raitt (2000) called the whole process of framing the testimony to where the court personnel need it to be as "legalspeak." In this study, not only was this legalspeak ambiguous but it was

imprecise, oblique, and non-reciprocal due to the course of intermittent English interpretation and translation it follows.

Our interpretation is that the use of intermittent English interpretation was intended to promote the agenda of the court personnel who insisted that local languages were inappropriate to be used in court. The Regional Magistrate in the excerpt demanded that his entrance be re-announced in English, and likewise most of the prosecutors were adamant that English was the appropriate language to use to communicate during trials. This perspective is highlighted by the prosecutors in their conversations:

> We cannot afford to use vernacular in our court system as this will lower the standard of our criminal justice system. We are dealing with people; and the people will undermine and jeopardize the administration of justice [if local languages are used].

Another prosecutor endorsed the use of English in the courtroom by saying:

> I think using English and interpreters is better, as cases must go for transcription and most of the time I realized that people who are transcribing these records are English speaking.

Speaking to the use of English, or alternatively Afrikaans, in court proceedings in the cases observed, one study participant commented: "Maybe next time the Regional courts will implement the use of local languages like in some lower courts. The reason is that most of Regional Magistrates are Whites

[say it softly and looking down] thus why we still use English and [Afrikaans alternatively].

However, we became aware that the intermittent English interpretation process did not ensure that the precise meaning of what happened during the violence was conveyed during the victim's testimony. Although interpretation and translation create a belief that testimony is accurately translated therefore well received, observations during the study revealed that this was not the case. According to Biko (1978) all South African languages attach emotional meaning rather than analytic meaning to the situation; English is constructed to attach analytic meaning. Furthermore, there are some words that are not interpretable at all and such words end up being misinterpreted or misunderstood in the court. A typical example of such words is noted in the excerpt where the word rape in this particular victim's local language means "forcefully sleeping with someone."

Most importantly, the work of Boroditsky (2011) clarifies how the use of languages shapes thoughts. This work elaborates that individuals think and expresses themselves more clearly when using their own language. Interpretation in the courts created an evident gap in meaning for aspects of communications that are emotional and complex, as is typical in VAW cases which need an emotional meaning rather than analytic meaning. We believe that those victims would be better enabled to present their testimony, to tell their stories regarding the violence, if trials were held in their local languages and conducted in a women-friendly approach.

One other aspect which is highlighted in the findings and evident in the excerpt was the social hierarchy that was apparent through the court vocabulary when cases of VAW were tried. The public prosecutor, when announcing every case, would start by calling the presiding magistrate and end by calling the court orderly as a sign of the implied social hierarchy. Furthermore, the court personnel's formal communication, most notably their continual use of titles such as "Your Highness" and "My Lord" when referring to the Presiding Magistrate that convey hierarchical structure and connote privilege and superiority. Court personnel were referred to formally as learned colleagues and the criminal trial itself was referred to as the battlefield. To someone who is an outsider to and unfamiliar with the criminal and justice system, such vocabulary sets a stage for apprehension and alienation in relation to the entire system. It was interesting to hear one of the participants who echoed the importance of such social hierarchy and vocabulary in the court when specifying the organizational structure of the court and most importantly the role of the Presiding Magistrate when stating that:

> The court is composed of the structure [organisational]; we have the magistrate, prosecutor and so on and so on. The main aim of the magistrate in court is to act as a referee or umpire [for Public Prosecution and Defense Counsel]. His /Her Highness is there to overlook the entire battle in the battlefield and figure out who wins between the two of us [meaning prosecutor and defense lawyer]. Of course this is based on the presented evidence and how was it corroborated.

The theme of value-laden linguistic patterns was also indicated in other studies of feminist evidence (Ellison, 2000; Kinports, 2000; Raitt, 2000) outlining how women communicate in an ideal world. According to Raitt (2000), in *Feminist Perspective on Evidence*, women's communication patterns are framed around shared dialogue and intimate communication styles and patterns; which contrast to the combative and competitive communication patterns favoured by the court system. Additionally, available knowledge on evidence giving in VAW cases indicates clearly that there is a linguistic difference in how different genders outline the course of events (Ellison, 2000; Kinports, 2000; Raitt, 2000). A relevant approach to prosecute VAW cases needs to comprise of linguistic patterns that are "contextual, co-operative and less formal" (Childs & Ellison, 2000, p. 8).

'Different approaches same principles' delay progression while de-centering the victims in prosecution of VAW. The observations and interviews revealed that differences among prosecutors in their approach to prosecution even though they were adhering to the same legal principles. The prosecutors who participated in conversations indicated that every case was considered unique and required a unique approach in order to be won. Though the idea of uniqueness is appreciated, it may create problems when there is no stipulated timeline on when a VAW case should be tried and finalized. All 24 cases observed had a time lapse of more than a year between the act of violence and the trial. Our findings identify that the course of a case depends on the discretion of the public prosecutor in attendance (Ford, 1983) with his/her experience in corroborating the

evidence. Hence it will be correct to say that taking a VAW case to court does not guarantee a positive verdict irrespective of the available evidence that directs the prosecution approach. The lack of a "cut and dried" approach to prosecution may lead the prosecutor to go astray in prosecution. The findings provided further evidence that the prosecutor might realise very late in the prosecution process that his/her approach was wrong. A participant said:

> While cross examining the witness you will realise that the magistrate does not understand where you [as a prosecutor] are going; until at last when you turned and [look] at the magistrate and [sense that] NO the approach was a mistake. Previously, during those days when we were using only pens to write in courts. . . . the magistrate will put his pen down as an indication of not comprehending your prosecution approach.

The challenge of same principle different approach was echoed continuously by the prosecutors. One participant succinctly articulates this by saying:

> It is not easy, it is just a matter of every person has his own approach for prosecution. We don't approach this the same way. I may call ten witnesses and lose and the other one call two witnesses and win. It depends on how you call your witnesses, how strong your case is, and what, how you choose your witnesses. We cannot say this is the fast rule; the approach differs from prosecutor to prosecutor.

The excerpt gives an example of one case that occurred in 2008 that went to trial in late 2011, even though VAW cases are referred to Regional court after

thorough investigations have been completed at the District Court. This is affirmed by the findings where one prosecutor stated that: "The cases that we have might take 10 years, 10 months or 10 weeks before they come to trial." Furthermore, while evaluating Sexual Offences Court in one of the South African provinces, Walker and Louw (2005) confirmed that victims were waiting over 6 months for their cases to go for trial. Additionally, the aspect of the "protracted" route to trials on VAW was highlighted by VAW activists from People Opposing Women Abuse (POWA) and Campaign Nine in South Africa with one of the most popular VAW case of 2005, "Judge for Yourself." This specific case took a total of 45 months to be sentenced, with 12 postponements and one reinstatement. Most importantly, in this case the victim had to give evidence-in-chief two times in two different courts. The reasons for the delay and postponements were not victim-related but were either related to the court personnel and court system or to the accused perpetrator. The reasons included the perpetrator demanding a new defense lawyer, the court personnel requesting sufficient time to orient him/her on the case, missing documents in the file, and non-availability of the health professional witnesses who examined the victims. The same reasons were also submitted in some of the cases observed for this study. Most importantly, the stated reasons are used as ways in facilitating de-centring the victims of VAW while centering their stories (violent events) throughout the milestones of the prosecution see Figure 5.2.

Figure 5.2 Milestones of Prosecution as observed by 1st Author

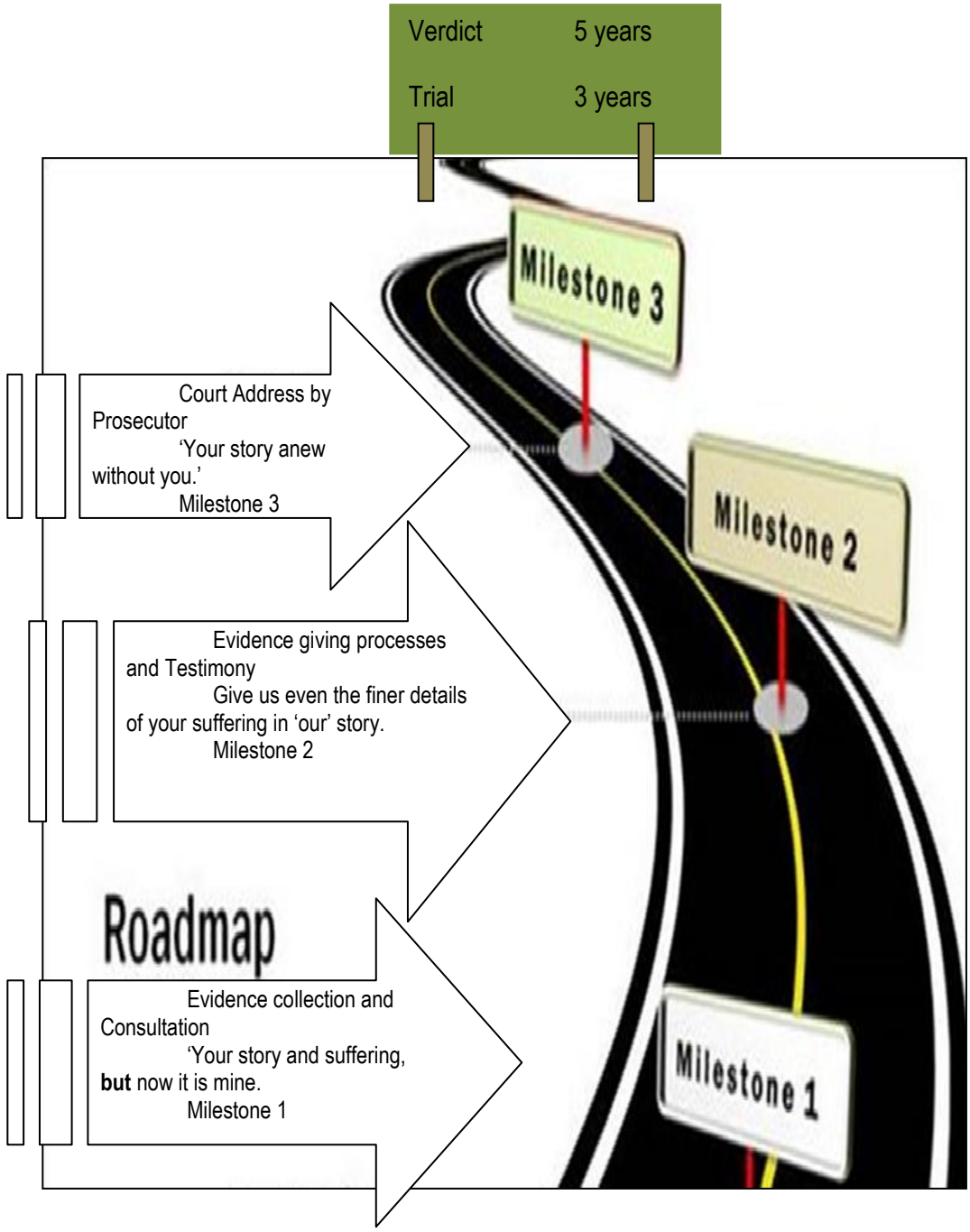

Figure 5.2 Representation of the victim's journey through the milestones of prosecution as followed by VAW cases in South African court system. Each milestone is labelled with a deductive meaning to highlight how through each milestone the victim as a person is taken away from the centre and the violent event centered by the prosecution process.

The prosecutorial process of VAW in South Africa has three major milestones before crossing over to the accused perpetrator's evidence. According to current study findings, it was evident that the court personnel (public prosecutor, defense lawyer and presiding magistrate) need to know *the story* with the aim of reshaping, retelling and reconstructing it to suite their standing. This notion is what bell hooks (1990) referred to as the de-centering of person. The first milestone in every trial is consultation that follows the pervasive ways of collecting evidence especially in rape cases. During consultation the victim re-tells her story to the prosecutor who will summarize the story to suit legal language (Beaman-Hall, 1996). The second milestone entails the various stages of evidence-giving process wherein the victim re-tells the story again to other court personnel, and in this stage she is interrogated about the whole violent incident. In the third milestone the victim's story is completely taken over, reconstructed and reshaped in a different way through an address given by the public prosecutor to the court on the prima facie case. In this milestone the victim is totally forgotten by the court personnel who are now staging an oral competition of the case.

Ultimately, the culture of prosecution requires that the victim's story (her experiences of the events) must be appropriated from her to become the prosecutor's story of events. This is noted in every milestone that requires the victim to retell her story yet progressively strips that story from being hers to serving the purposes of the prosecution. In the end, she as a victim and a person

is decentred from the prosecution as the events that happened to her become the centre of attention.

The court processes are gender insensitive to victims of VAW.

Evidence giving and practices in VAW cases in South African have been challenged by Barkhuizen (2007). He raised an important issue that the only evidence that the court wants in prosecuting VAW case is "walking and talking evidence" which is by the victim. As a survivor of VAW (rape), Debbie Smith offered an important perspective on this notion in a 2007 interview when she stated that VAW is the only crime in the whole world that requires the victim to verbally prove her innocence (Smith, 2007). The notion of walking and talking evidence in trials of VAW cases is aggravated by the prosecutors during the trials. To illustrate this, during one of the conversations, a participant said:

> When I prosecute a woman who was in violence I do not sympathize but I empathize with the woman. I just want her to tell me what she felt. If she felt sweet she will tell the court that it was sweet. But if she felt pain because she was not intending to do that she will tell us that she felt pain. And I need her to call what she felt exactly how she felt it, when penetration was occurring.

When probed further on the reason why the victims are subjected to such an approach during prosecution, the participant replied confidently that this is needed:

> in order to prove elements [of rape as an offence] because once there is pain it means violence. That is the reason you saw me with that

> case [leading the victim to continue regardless of the fact that she was scared and crying]. Hence I did not take her to the intermediary room.

Statements such as this one give credence to the contention that VAW courts in South Africa are indeed the courts of laws rather than courts of justice (Holomisa, 2004). In this regard, the prosecutor indicated that she was proving the elements of rape legislated as unlawfulness, intentional and wrongfulness. However, the point that we get was that the prosecutor wanted a positive verdict which usually comes at the cost of the victim's wellbeing (Walker & Louw, 2005).

The findings indicated that from the 24 observed cases in this study only 9 cases had guilty verdicts, 3 had guilty plea bargains, and 7 were postponed while 5 were dismissed. In all of these cases the trial processes were insensitive, were conducted in different approaches and used different sources of evidence.

J88 as reliable standalone evidence in cases of VAW. Prosecution of VAW cases relies profoundly on oral evidence; hence testimony is the main form of evidence (Dawson & Dinovitzer, 2001; Ellison, 2000) that is required in the process. However, from the health sector, other forms of evidence that are required by the law in prosecution of VAW include testimony by expert witness who might be physician or forensic nurse. (Jewkes et al., 2009). Additionally, forensic evidence from forensic experts includes DNA results from biological samples such as dried body fluids (semen and saliva, vaginal and rectal swabs), blood samples, fingerprints and pubic hair samples (Jewkes et al., 2009). Most

importantly, medical evidence is provided in the form of documented findings on medical records, called the J88 in South Africa.

The J88 form is the official State document used exclusively for criminal proceedings, for the purpose of recording injuries sustained by victims of a crime, VAW included. The structure of the form provides for: observations on physical and emotional state of the victim during her presentation to health facility, observations of bodily injuries and most importantly injuries to the ano-genital region especially in all forms of sexual violence (Duma & Ogunbanjo, 2004; Jewkes et al., 2009). Furthermore, the structure of the form provides for written words, photographs or drawings of the sustained wounds/crime scene, seized weapons/clothing, narratives, excited utterances (quotes), and odor from the victim (Campbell, 2004; Duma & Ogunbanjo, 2004). In addition, the form includes a section for the examiner to present conclusive remarks regarding the medical examination.

In this study, the significance of the J88 in prosecution of VAW was noticeable in the findings as this form was submitted in all 24 cases that were observed. One prosecutor affirmed that: "J88 in case of VAW is handed in court as Exhibit A." While another prosecutor commented:

> J88 is real and conclusive evidence because it is presented under section 212 of Criminal Procedure Act of 1977 as amended. As the State we don't even ask permission from the Defense Counsel to use it [in trials].

Yet another prosecutor indicated how the J88 can corroborate evidence in VAW cases:

> J88 is to corroborate evidence in case of physical assault or forceful sexual penetration. It is of very important because if we have medical record [J88] it gives the State's case strength.

In contrast to the above statements, the findings also highlighted how J88 was compromised and underrated as the source of evidence even though it is required by the Criminal Procedure Act. One of the prosecutors indicated this by saying:

> Whether [a J88] is there or not [pause] . . . in most of the cases it does not make much of an impact in a VAW case. Its availability does not influence the court, sometime back; I had a case of rape where it was only the complainant and the first reports. The victim didn't go to the doctor but the accused perpetrator got 15 years. It really depends on how you as the prosecutor tackle your case.

It appeared as if the J88, in particular, was considered a conditional source of evidence to start off prosecution of VAW but the court could do without its availability. Moreover, the J88 was seen mainly as a reminder for the health professional to recall the condition of the victim in her initial presentation at health facility as one prosecutor reflected:

> J88 is just an [pause] official document which is submitted to the court at least to explain the injuries noticed by the doctor at the earliest possible time after the injury . . . after the commission of the crime . . .

> Usually after an extended time, they [Forensic Laboratory] say that the specimen of the man's semen is invisible hence the victims had to [report] immediately to health sector. Sometimes if they don't get specimen they say there was no rape.

Statements like these leave a definite impression that evidence that is required by the court in prosecution of VAW is provisional. The J88 on its own is prima facie evidence in VAW case if it is handed in terms of Section 212 of the Criminal Procedure Act. This implies it can stand alone as evidence in VAW cases.

Most importantly from the findings it is noticed that the J88 forms which were presented as prima facia evidence in cases observed during this study were termed 'silent' by the court personnel. According to the court personnel the forms might be not correctly completed or incomplete. This same notion is shared by Norfolk and White (2006) who also concur with Walker and White (2006). The two studies indicated that most medico-legal forms which are presented as prima facie evidence in trials of VAW are either underreporting the violence (Norfolk & White, 2006) which the victims endured or were incomplete to serve as admissible evidence in courts (Walker & Louw, 2003). Prosecutors in the current study agreed that health professionals were challenged by the documentation of physical and medical findings as required by the courts. According to the findings, the medico-legal documents give information that serves as stand-alone evidence about physical, medical, and ano-genital examinations. Such evidence is different from forensic evidence which is evidence from biological samples which

are collected by health professionals immediately after the commission of the crime, but the results of such evidence are interpreted by the forensic expert (Jewkes et al., 2009) who runs the tests. Most importantly, the findings highlight that conclusive remarks which were provided on the J88 forms were jeopardizing the stance of the VAW case. The participants showed discontent in the findings hence it was termed "silent J88." The discontent is reflected by one prosecutor in this statement:

> Medical findings must be medical findings. Most doctors will write awaiting forensic results. [The point is] to give their own results, the forensic results are for those who are working in forensic laboratory not for doctors. [Doctors] must just give the findings of what was detected when examining the victim [mentally, physically and ano-genitally].

The findings gave a view that documentation of the J88 is challenging to the health professionals, as shared by one prosecutor who highlighted a crucial insight when stating that:

> There is report from the doctors that the [vaginal] injuries of the woman get healed within 24 hours and after that nothing will be detected. In case of child of 7 years the injuries get healed within 7 hours . . . and thereafter you will never see that there was anything that has happened on that person hence the victim must go immediately to the health sector for examinations.

Sentiments like this one create a controversy especially considering that consensual sexual intercourse can also result in genital injuries (Norfolk & White,

2006). The prosecutors agreed on the importance of training the health professionals on how to document in such challenging situations in order to make a J88 vocal as evidence in VAW cases:

> J88 is reliable and conclusive evidence provided doctors are given proper workshop especially on new Sexual Offences Act of 2007 as it demarcate between sexual assault and sexual penetration. What I have realized is all doctors are making their conclusive remarks pertinent to sexual assault, even if there has been penetration.

The above statements provided information that credibility of the J88 is compromised as evidence if not objectively completed. The courts require the J88 to offer the findings that will draw conclusions about the violence.

The era- and gendered-related definitions of VAW. This work is located within a feminist framework; it was not a surprise to note that the participants' responses were explicitly gendered-linked when asked to define VAW from a legal perspective. Available literature informs us that there is a difference in communication styles and response patterns between males and females (Raitt, 2000; Sprague, 2005). However, the difference does not imply that one gender is superior over the other, but this is only to recognize that linguistic differences exist (Raitt, 2000). The participants' responses indicate that female participants were more expressive and tentative while male participants were assertive and persuasive (Sprague, 2005) in explaining the definition of VAW legally. Though this gender variation was recognized, an in-depth gender

analysis was not under taken as the intention was to explore the ‘the ‘isms” as a collage.

During conversations, the participants were asked to give explanations of VAW from a legal perspective. The question posed for the participants was: Can you define/explain or classify VAW legally? In this study we chose to take up a definition of VAW that was not only based on sexual offences, but also included other forms of physical abuse which are covered by both the Domestic Violence Act No. 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act No. 32 of 2007 of Republic of South Africa. The participants’ responses indicated that the court personnel were more serious about rape cases, possibly not surprising, since the study was in the Regional Courts where rape cases and femicides were prosecuted. The participants’ responses reflected a pattern of gender *as well as* histo-political differences. Regardless of the definitions of VAW in documents from the United Nations and VAW legislations in South Africa, the conversations revealed that there was variation between male and female participants in how they understood VAW as well as in how their understandings were shaped by the democratic political landscape of South Africa. (See Figure 3).

Figure 5.3 Era and Gendered Definitions of VAW.

ERA RELATED DEFINITION	
Apartheid	**Post Apartheid**
"There was this thought that a place of woman is in the kitchen and a woman can be chastise like a child by her husband, father or any male relative." "During apartheid era, it was believed by the court that Black women are not raped but invite rape" [Only White women were believed to be raped].	"To me violence against women is any form of violence perpetrated on women because of their gender; either sexually, physical or emotional." "And cases like rape and sexual assaults against women are also classified as violence against women."
GENDER RELATED DEFINITION	
Male	**Female**
Cultural practices within South Africa differ. For example, in culture X a man can just kidnap a woman from the river and take that woman to be the wife. In certain traditional practices a hymen of a girl is broken by her father. These things are still happening in this new South Africa" [Post 1994].	"Cases of White South Africans that I have prosecuted, they don't rape …but they either use eh… vibrators or they touch the breasts of women and girl children. 80% of their cases are indecent assaults."

Figure 5.3. Excerpts from conversations with prosecutors that illustrate the patterns of era and gender influence on definitions of VAW that were given by the participants.

The statements presented in Figure 5.3 provide insights about how VAW is perceived in South African society and its institutions. Furthermore, the statements present some of the cultural practices and myths that uphold VAW in South Africa. Most importantly, the statements point towards diverse meanings that the prosecutors attached to VAW as a crime in a diverse ethno-cultural society such as South Africa. It is well known that people create their own definitions to suit their *real* life situations. In the case of VAW, the United Nations (UN) provided a broad definition of VAW for its member states. Articles

1 and 2 of the UN Declaration on the Elimination of Violence against Women (DEVW), is dedicated to an in-depth definition of various forms of VAW (including physical, sexual, psychological harm, acts of threats, coercion and deprivation of liberty) which might occur publicly or privately as a way of discriminating women. Our findings noted that this inclusive definition is also expressed and reflected within the VAW legislation of South Africa. For example, the preamble of DVA of South Africa acknowledges various forms that women can endured as VAW "that domestic violence takes many forms; that acts of domestic violence maybe committed in a wide range of relationships" (Preamble of DVA, 1998). Furthermore, the new Sexual Offences Act (SOA) of South Africa extended the definition of rape as clarified by study findings. One participant explained this further:

> In the olden days in South Africa when a man put the penis in the buttocks of a male, it was indecent assault which was called sodomy. But nowadays with the new rape definition when you are a man and you put penis in another's man anus it is called rape even when you insert your finger in somebody's vagina it is rape.

Consequently the two main VAW legislations in SA included other ethno-cultural practices that were also commented by the participants such as "ukuthwala kwentombi customs" where young girls were taken forcibly to the young men's homes to be their wives. Lastly, the participants' responses clarified the types of VAW cases that are prosecuted in Regional Courts in South Africa.

Moreover, the responses from the participants give clarity on the structural and societal forms of VAW faced by South African women in their daily lives.

Summary of Discussion

The findings from this study provide a description of the culture of prosecution of VAW in South African courts. All procedures in the courtrooms were understood to be staged by the law; the cultural players are caught between their personal existence and the attributes that law demands from them. In some instances the court personnel were trying to portray their personal value system but the law dominated every action and decision that was undertaken within the courtrooms. The issue that remains is whether or not this law that fortified the genesis of the court and its activities can be transformed in order to accommodate and acknowledge the victims of VAW.

Limitations

Making sense and meaning of other people's way of life is challenging as it not only includes gazing at the cultural actors but also being gazed at (Ntarangwi, 2010) as an outsider. In this regard, the outsider stance may sway the interpretation and representation of what the culture of prosecution VAW is, especially compared to an insider's perspective. Although it is possible to speak about the sensorial knowledge that sensory ethnography intends to construct, this might poses a challenge to textualize this type of knowledge that demands a convincing intellectual argument to inform scholarly knowledge (Pink, 2009). Personal subjectivity may manifestly obscure what was happening in the courtroom as VAW is an emotional phenomenon to explore especially in

courtrooms where the victims appear to be at the mercy of court personnel, whose interest is centred not on them as women and victims, but on the events; resulting in something of a disembodied construction of events. It is important to know that the above stated meanings may imply something different in other cultures as meanings are culturally constructed (Hodge & Kress, 1988). Additionally, the findings corroborate what nursing scholars such as Wuest (1994) and Monti and Tingen (1999) contend in relation to the plurality and multiple ways of seeing the world. Moreover, this perspective is consistent with Agar's (2006) ethnographic point of view that culture is never singular but it is always plural.

Conclusion

Culture is a total way of life of particular people. In this study culture embraced what the prosecutors and other court personnel were doing on a daily basis with regard to VAW cases. Specifically, this study explored prosecution of VAW focusing on the rituals that are involved in the prosecution of this crime.

The interactions and procedures that occur in prosecution of VAW are enlisted by the *law* that is non-reflexive. The activities within this law procreate a social order that is directed to the people who are at the most vulnerable stage in their lives; women who have been robbed of their self-worth and dignity by perpetrators of VAW and the court proceedings. The effect of this *law* is seen as way to take away the victim's remaining integrity through the interrogation and the protracted route that VAW cases follow.

Secondly, the law creates a culture of competition amongst the court personnel who, although acknowledging that their activities are insensitive to the

victims, are compelled to maintain the status quo as a way to avoid professional sanctions and perception of underperformance. In order to avoid professional sanctions and underperformance reviews, the court personnel are professionally obliged to conduct themselves in ways that create trepidation in victims and that jeopardize their wellbeing. The law, however, also provides for interventions that could make prosecution of VAW women-friendly, including the use of intermediary facilities in prosecution of all VAW cases in order to counter-penetrate the adversarial nature of the court processes. Additionally, and paradoxically, the law gives provision for forms of evidence, such as the J88, which are seldom used in prosecution of VAW, because the culture privileges "walking and talking" evidence from the victim.

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Chapter 6:

Discussion, Implications for Nursing, and Recommendations

The sensory ethnographic study that I conducted for my dissertation research was intended to explore different facets of the culture of prosecution of VAW in South African courts, and to indicate its relevance to the knowledge and practice of nursing victims of such violence. Regional courts were observed in order to obtain a broad perspective on what is occurring in South African courts when cases of VAW are prosecuted.

The research question that guided my work was: What is the culture of prosecution of VAW cases in South African courts? This question led me to reflect, analyse the literature on Domestic Violence Act 116 of 1998 and Criminal Law (Sexual Offence and Related Matters) Act 32 of 2007l as the legal statutes, and systematically observe how prosecutors prosecute VAW cases. I was able to identify the processes, practices and patterns employed by the prosecutors and other court personnel in prosecuting VAW cases, including what they considered as evidence when prosecuting VAW cases. Through my personal reflections, I have alluded to my conclusion that the culture of prosecution of VAW is paradoxical. This paradox is due to the fact that the entire prosecution holds multiple meanings that are relative and subject to redefinition (Charmaz, 2004). From the literature that was available about the two main Acts that were developed to thwart VAW in South Africa, it was found that the South African government is trying, though at a slow pace, to meet the UN international norms and standards on prevention of VAW. The slow pace propagates protracted and

inconsistent approach to prosecution of VAW. By systematically observing and learning from the South African prosecutors and other court personnel, I was afforded an opportunity to make sense and meaning of the culture of prosecution of VAW in South African courts.

The unit of analysis for this study was what is called kyriarchy; a construct applicable to the current situation in South Africa. This study was not intended to examine race, social class, and gender as individual units of analysis. Race, social class, and gender were not seen as individual and lone standing factors that affect the prosecution of VAW. In this study, I chose to examine the sum of all of the "–isms" (sexism, racism, classism, colonialism, ageism, even other forms of feminism which de-womanized African woman).

In my deliberations, I indicated that African feminist thought negotiates with and around kyriarchy: a socio-political system wherein people interact and act as oppressors or the oppressed in time and moment (Masenya, 2004; Schüssler-Fiorenza, 1994). In such a socio-political system, people are labelled based on hierarchies of gender, race, ethnicity, class, physical ability, nationality, geographical location, culture, and many other distinctions (Sprague, 2005). In my research, I saw how kyriarchy, as an epiphenomenon, came into play when cases of violence against women were prosecuted. I saw how the labeling of victims of VAW in accordance with race, ethnicity, age, class, physical ability, or geographical location created counter-images of a victim and the violent incident. These labels are arranged as a collage of hierarchies (Hunter, 2006; Masenya, 2004) which align with the highly structured prosecution practices that offer

minimal chance for interrogation. I saw how some female prosecutors normalized prosecution of VAW, while some male prosecutors perpetrated violence on victims during trials. Cases were not prosecuted based on their merit as a crime against humanity as required by the legal framework, but were prosecuted based upon race of the victim, the place where the incident occurred, the locality of the court, the ability and age of the victim, and even the culture and ethnicity of the victim.

The study findings highlight that the prosecution of VAW is heavily influenced by the legal system that focuses on legal procedural conventions; these conventions de-center the victims and their native languages within the formal court practices. Much was also noted about how the layouts of the courtrooms epitomize power that induces fear in victims during trials. Not only did the physical layouts epitomize the sort of power at hand, but also the court personnel in their activities mimicked that same power. Furthermore, I saw prosecution as the way to blame the victims. However, the two main Acts were offering hope especially on definition of VAW and efforts to meet the UN norms and standards like intermediary facilities. Evidently, the guiding principles of the court were offering paradoxical statements in addressing VAW and the ripple effects that the victims of VAW endured beyond prosecution and sentencing were taken for granted by the court personnel.

In completing this study, I came to view the prosecution practices as appropriately represented and illustrated as a long tedious roadmap with milestones that progressively de-center the victims. Figures 5.1 and 5.2 depict the

landscape within which prosecution of VAW takes place and the long journey that victims of VAW undertake during the trials of VAW. Additionally, I highlight what I observed as deliberate denigration and derision endured by victims during prosecution of VAW, not only from the defense counsel but also by the prosecutorial practices. I concluded that this process and each of the milestones of the prosecution process offer victims little hope, but rather create re-traumatizing ripple effects from the onset of the victim's report of the case through to the verdict. Furthermore, the procedures involved in each of these milestones effectively disregard the guaranteed constitutional rights of African women in that the prosecution procedures and culture are ingrained in an imported Roman-Dutch and British legal system. In this system, the victim is constructed as walking and talking evidence (Barkhuizen, 2007) wherein the victim is obliged to be physically present in trial and bound to talk in trial. No other source of evidence can be used in the case except her oral testimony which must be presented personally and physically in the courtroom. This legal system offers no place for the victim to speak in the trial of VAW except during the evidence giving process that is constructed around the events and not the victim per se. Victim impact statements which are prepared by social workers on behalf of the victims are only used during the pre-sentencing. The existing legal system does not allow for the victims to be represented, to have legal representation, in trials of VAW. Victims are witnesses for the prosecution and have no other standing or legal representation of their interests in the legal proceedings.

This study is about the prosecution of VAW, not VAW per se. It is grounded in recognition that the current literature on prosecution of VAW in South Africa and Africa is mainly proffered from insider perspectives (court personnel). An exception, the work of Waterhouse, Combrinck, and Dey (2002) related to "Bail in Sexual Assault" provides a seminal study which developed pre-trial guidelines for rape cases and are currently used in South Africa. In Ethiopia, Bayih (2010) conducted a study on the "Body of the Perpetrator as the Source of Physical Evidence in Rape." This work reported how the body of the perpetrator can provide physical evidence in court if relevant steps and procedures are followed during the collection of such evidence. The aforementioned scholars are lawyers and are working in various law clinics and sectors around Africa. Their work provides a foundation for my work but does not address the culture of prosecution of VAW as such.

In relation to my main study interest, the most relevant research has been conducted by Walker and Louw (2003; 2005; 2007). The two scholars who are psychologists focused their study on the structure and function of Specialized Courts for sexual offences in South Africa after these were newly established. They explored the perceptions of stakeholders and victims on the Specialized Courts for sexual offences. Their work offered insight into how Specialized Courts functioned and how the stakeholders perceived these courts. However, the Specialized Courts were revoked during the course of my study, making my work timely in the wake of this system change.

There is an extensive knowledge base about VAW from the Medical Research Council of South Africa which has two Gender-Based Violence units. The two units were deliberately established to produce contextual knowledge on VAW within and outside the borders of South Africa. The two units are located at Witwatersrand University and University of Cape Town. The unit that is at University of Witwatersrand is under the stewardship of prominent violence against women scholar Professor Rachel Jewkes. Intermittently, the work from these knowledge base units touches on the background of intermediary facilities and the courts (Jewkes et al., 2009; Jina, Jewkes, Christofides, & Loots, 2008); but not on prosecution. Similarly, Mathews et al. (2004) and Duma and Ogunbanjo (2004) have provided reports of forensic documentation by the forensic nurses together with guidelines to manage VAW in healthcare.

Comparatively, Canadian research that can be tailored towards my study was conducted by Cory, Ruebsaat, Hankivsky, and Dechief (2003) on "Reasonable Doubt." This work provides a landscape of how the Canadian criminal justice system uses health records in courts. The findings indicated that in Canada VAW is managed as a provincial (not federal) matter. Secondly, I noted that the complete hospital record of the victim, and not just the medico-legal document as in SA, is submitted as evidence. The Canadian criminal justice system as advocated by Campbell (2004) does not look at single VAW episodes as a crime. The entire relationship is brought under scrutiny when VAW cases are brought to court, hence the entire hospital record is considered relevant. Cory et al. (2003) indicated that health records are most often used against women in

VAW cases by courts and not for their benefit. Though this work is much appreciated as it provides insight about what Canadian criminal justice offers in prosecution, like other cited studies and literature, there has not been focus on examination of the culture that underpins the prosecution of VAW.

The knowledge generated from my study, from a pragmatic point of view, is expected to be valuable to those who are in attendance of victims of VAW in different institutions, especially the members of health and caring services, whose interest is in caring for and promoting the well-being of victims as women. This contribution, in fact, was the original point of my departure on my journey as a nurse through my doctoral studies and my decisions about the design and conduct of this dissertation study.

Legally and practically, health and welfare services are amongst the first designated points of entry to the management of VAW. The knowledge generated from my study is relevant to work to *refine and optimize* the health care and legal practices, as well as to contribute to education and preparation of stakeholders involved in prosecution of VAW, and in research and evaluation of VAW cases. Most importantly, I hope that the criminal and justice system will benefit from the knowledge generated from my study to *sensitize* their evidentiary giving processes related to the prosecution of VAW. Finally, I hope that study findings will further inform policymakers in South Africa to *delegitimize* VAW in their policy development, implementation and evaluation strategies.

Implications for Nursing

Nurses contribute to the front line reporting of VAW, and it is necessary to have improved standards for reporting and documentation at this front line of care especially in this era of technology. Study findings noted that the documented information on J88 forms were health related (nursing and medical perspectives). In other words, they were for diagnosis and treatment for the victims of VAW as the way nurses and doctors were educated. These documents were not completed for testimonial and legal purposes as expected by the criminal justice system. This is because as health professionals (nurses and medical doctors) we documented from a health and medical perspective rather than a criminal and justice point of view. Therefore, it is important to know that opportunities exist to strengthen the use of the J88, as prima facie evidence in trials of VAW. Such opportunities include: the introduction of new technological forensic evidence collection methods such as video-recording, photos (provided that criminal justice system agree on the technological tools to be used), drawings of the sustained wounds, and written victim statements in order to give credible evidence in courts. Furthermore, the current methods of collecting data can be modified and sensitized to maximize the use of the documented findings on the medical records in courts. This can also be achieved provided reporting and documentation on the J88 form is not discipline focused but is synergistic, transdisciplinary, apparent, objective and systematic. This will be of particular importance for nurses if they can revisit the existing health screening, identification, care, and reporting protocols on VAW, as appropriate reporting improves the quality of care and

establishes connections on health issues that are related to violence (Duma & Ogunbanjo, 2004; Kramer, 2002).

My analysis of a relevant site document (Health Policy on Management of SOA) indicates that health professionals (nurses and doctors) were trained when the SOA was enacted and implemented in South Africa. The given discourse could have been avoided provided that all stakeholders receive appropriate in-service collectively on the aspects of prosecution in VAW. Moreover, my study indicates that it is essential for expert witnesses (nurses or medical doctors) to be present in trials of VAW cases to provide credible testimony (Walker & Louw, 2003) regarding the documented findings on the medical record, especially sexual violence as it is a difficult crime to prove due to perceptions of its intimate nature.

These studies show that nurses should have information on the processes of the court, especially prosecution of VAW. In North America, such practices were launched through the introduction of Sexual Assault Nurse Examiner (SANE) programs and Sexual Assault Response teams (SART). SANE/SART programs provide coordinated holistic management of VAW especially within health care and criminal justice systems (Burgess, Lewis-O'Connor, Nugent-Borakove, & Fanflik, 2006). The SANE/SART teams are comprised of stakeholders from the criminal justice system, health personnel and victim advocates who work together and support the victims pre-trial, during trial and after the trial of VAW. The nurses in these teams are seen as mandated reporters as required by their scope of practice. At the same time their presence alleviates victim's feeling of fear, guilt, and shame during prosecution. Furthermore, the

nurses' presence during prosecution validates the violent incident from the victim's perspective and articulates victim's strengths on the case. Additionally, these programs contribute to dispelling myths that surround VAW and help the victims to regain their control during prosecution. The physical presence of the nurse during prosecution only benefits the victim, but nurses execute their advocacy role as outlined by the Ottawa Charter (1986), Resolution on Health Promotion (1998) and the Health Promotion in a Globalized World (2005). I advocate such a system be developed within the South African context.

According to the literature, victims of VAW not only experience post traumatic effects of crime but also suffer from various forms of chronic illnesses. Persistent body stress damages normal physiological processes and disrupts homeostasis (Barkhuizen, 2007; Logan & Barksdale, 2008; McEwen & Stellar, 1993; Scott-Storey et al, 2009; Winkel, 2007) as a result of protracted prosecution processes. It is necessary for the nurses in women's health practice and in direct and first contact with victims of VAW to understand the gendered etiology of chronic illnesses and potential treatment of VAW in order to improved quality.

Nurses need to know the characterization of victims of different crimes in order to manage the impact, especially in countries like South Africa. South Africa is rated among the countries with the highest crime rate globally; most South Africans are victims of some sort of crime in their lifespan. The prevalence, therefore, of victimization among the population makes understanding and knowledge to guide practice essential. Understanding the victims comprehensively will add value to South African nursing and health practice.

Recommendations for Nursing Education

On reflection, I concluded that opportunities exist in South Africa to introduce a compulsory course on victimology (science and study of victims of human rights abuses) in nursing. Victimology in nursing is essential as it will offer an in-depth understanding of the characterization of victims and effective management of VAW issues. Besides being important for nursing education curricula, victimology may further advance nursing practice in South Africa by offering graduate education opportunities. It also is important to think beyond the boundaries of nursing and health care; to consider inter- or trans-disciplinary program initiatives in which faculties of health studies collaborate with other faculties that are involved in the production of knowledge on victim care and management.

Recommendations for Nursing Research

An extensive body of knowledge has been developed on VAW in South Africa. This body of knowledge has been developed predominantly from the social and health sciences disciplines. In contrast, studies related to the criminal and justice systems often have been conducted by insiders (court personnel). Knowledge from the insider's perspective is crucial but there is also need for an outsider's perspective. Ensuring generation of knowledge that can integrate each perspective is important as people often are blind to and unaware of their own cultural practices (ways of executing their daily activities) until these are pointed out by an outsider. Furthermore, as insiders to the justice system, the court

personnel have been found to be inclined to perceive certain injustices which they are practising as necessary functions of the context (Walker & Louw, 2007).

The criminal and justice system of South Africa has continuously undergone transformation since 1994; nurses are among the people who are impacted by these changes especially related to VAW cases. Nursing intervention research related to the transformation is necessary to have an impact on evidence based nursing care and practices. Available knowledge shows that extensive scientific nursing studies on documenting, screening, identifying and reporting have been conducted (Duma & Ogunbanjo, 2004; Suffla, Seedat, & Nascimento, 2002; Swart, Gilchrist, Butchart, Seedat, & Martin, 2000), however how these activities in the healthcare sector are utilized and evaluated by relevant departments such as criminal justice needs to be scientifically explored more extensively.

Due to the democratization of South Africa, there are emerging trends in nursing practice that necessitate advanced nursing knowledge. This need for advanced knowledge creates opportunities for nursing researchers to explore research methods and topics that will interrogate the new legislation that guide the activities of state departments in the new South Africa.

Recommendations for Policy Initiatives

This is a transdisciplinary study, hence I see opportunities to examine policy and systems functioning in relation to VAW from the reporting time until the verdict is passed. There is a need to lobby for a policy initiative (from both criminal justice and health sectors) that will allow the use of other means that will

advance reporting, collection and documentation of evidence in VAW. This will avoid the lack of consensus that was reported in the findings on use of different professional terminology and interpretations between the health and criminal justice systems. Currently, photo documentation is the relevant method that can use to report and collect evidence in addressing the problem of underreporting, over reporting and misinterpretation of findings on the J88 form.

This study indicates that there is no universal victim in every crime, VAW *included,* even if these crimes can be prosecuted and tried by the same laws and principles that guide these activities for prosecution of other crimes. Scientific evidence has revealed that VAW diminishes victim self-worth and selfhood (Barkhuizen, 2007). There are opportunities for the criminal justice system to make the prosecution of this crime more humane for women. All forms of VAW need to be tried in well-equipped and appropriately furnished intermediary facilities (Jewkes et al., 2009). Cases of VAW should be expedited as a matter of emergency as suspense kills the victim's soul (Prasad, 1999).

The knowledge generated in my study supports a position of advocating for an evidence-based prosecution in contrast to a victim-blaming or, at best, a victim-insensitive prosecution (Campbell, 2004). Evidence-based prosecution in VAW should be women-friendly and sensitive, victim-centered and victim vindicating. Other means and ways of providing evidence, such as written statements, forensic evidence, victims' diaries, medical records and photographs of the sustained injuries are used in evidenced-based trials of VAW in some jurisdictions internationally (Florida Senate Criminal Justice Committee, 1999;

Nevada Advisory Council for Prosecuting, 2006). This type of prosecution does not require the victims to defend themselves in open courts while there are intermediary facilities. Evidence-based prosecution offers women respect and dignity as their constitutional rights.

In conducting my study, I noted that the perpetrators of VAW are more conversant with their rights as the accused than are the victims about their rights. There is a need for trans-disciplinary awareness programs that will raise consciousness about the existing Victim's Charter in South Africa. The Charter is a very important document which needs to be known by victims as it provides for the standards of service and alternative routes if the service standards are not adhered to during trial. Furthermore, there is a need to establish initiatives like the National Organisation for Victim Assistance (Nova) in the United States of America and in Japan (Barkhuizen, 2007) that will lobby for victims. My study findings draw attention to the need for scientific inquiry into the multi-sessional restorative justice conferences (Winkel, 2007). Scholars on therapeutic jurisprudence, like Pavlich (2005) and Winkel, (2007), believe that restorative conferences open doors for the "hate the sin but love the sinner" (Winkel, 2007, p. 23) approach wherein offenders are morally held accountable for the violent act (Winkel, 2007; Pavlich, 2005). As Dedicated Courts on VAW cases have been revoked, it is worth evaluating if these courts were able to implement the principles of "therapeutic jurisprudence" as they were intended (Elechi, Morris, & Schauer, 2010; Pavlich, 2005; Walker & Louw, 2003).

This study was premised on the low conviction rates of VAW within a progressive legal framework of South Africa. This progressiveness and comprehensiveness merit analytic attention as the laws have been critiqued as failing to prevent VAW. Impact analysis studies need to be undertaken in order to evaluate the legislations on VAW. The knowledge from my study offers opportunities for the policy sector to frame VAW as an intolerable criminal offence and not as a social issue. A comprehensive interpretation of VAW should be the legislated meaning, and this interpretation should not be undermined by personal or cultural appeals because VAW is considered to be a difficult crime to prove or one that is solemnly motivated by power. As of now, the two Acts that are intended to protect women against VAW are all-purpose, gender-friendly and applicable to all genders. I conclude from my study, however, that there is an urgent need for a women-specific Act on VAW. Women need to be acknowledged legislatively as vulnerable like other acknowledged vulnerable groups (children, disabled persons and older persons) especially now that there is a Ministry for Women, Children, and Persons with Disabilities. The current legislations on VAW provide for mandatory reporting of VAW in children, disabled persons and older persons but exclude such reporting in cases of women.

Limitations of the Research Findings

Trap of similarity. Scholars who delve into the insider-outsider continuum are in agreement that there are advantages and disadvantages of being either an insider or an outsider in a research project (Asselin, 2003; Merriam,

Johnson-Bailey, Lee, Kee, Ntseane, & Muhamad, 2001; Kanuha, 2000; Pitman, 2002). Being an African conducting research in Africa, I struggled with a 'trap of similarity' (Pitman, 2002) as I shared racial and ethnic identities similar to some of my participants. That could have contributed to making assumptions of similarity (Dwyer & Buckle, 2009). I took for granted that as Africans we are of one heart on issues of VAW. Some participants and I were ethnically and racially identical but with different perspectives about women's issues.

I indicated before that during observations I was always emotional, especially when the victims were cross-examined on the violence they had endured. I realised that my gender and personal identity were at odds with my presence as a researcher; I experienced role confusion (Asselin, 2003; Dwyer & Buckle, 2009). Blakely (2007), however, alluded to the fact that emotions inform research; I reflected on my emotions in journal writings and the regular meetings with my supervisors. I took these meetings as time and place for me to debrief about all the emotions that I experienced.

'Discriminatory caveats': Age, culture and gender. In this study I was confronted with three discriminatory caveats (Merriam, et al., 2001): age, culture, and gender (being female) in a society that perceives women as perpetual minors (Merriam et al., 2001). I experienced a sense of parental "correction" from older male prosecutors during our interactions. Psychologically this limited my probing techniques (Dwyer & Buckle, 2009) as the situation was a type of father-daughter relationship. Additionally, the younger prosecutors (male and female) were

sometimes hesitant to explain their views as a sign of respect. They kept on saying: "I think you know, I think you understand mama . . . !"

Access to prosecutors. I used a joint recruitment strategy, established with the high ranking personnel and experts in the South African criminal justice system. Prior information from these personnel and experts might have been given to participants on what to say and do to maintain the status quo. Personnel within the system served as gatekeepers who limited who I could observe and with whom I could engage in conversations. The reason given for this gatekeeping was that not all prosecutors were handling VAW cases. In addition, some prosecutors only wanted to share their views on prosecution of VAW without following my data generation strategies.

Sensory ethnography within the Afrocentric theoretical framework. Not only was I the observer, but also the observed as a suspicious character (Ntarangwi, 2010; Lengel, 1998). The suspicion was: "Why is a nurse interested in prosecution of VAW?" Sometimes I was inaccurately positioned by the court personnel. Regardless of the research question, the court personnel were engaged and shared their experiences about the health professionals as expert witnesses in VAW cases. However, as both sensory ethnography and an Afrocentric theoretical approach value human experiences in knowledge construction (Asante, 2003; Mazama, 2001; Pink, 2009) I was to acknowledge these experiences.

Partial capture of culture. Culture is something of a "catch it all" term that includes an array of complex patterns of behaviors, encompassing belief systems, dress codes and many other components which define people's

interactions in their social world. Capturing such a broad concept is always challenging. My focus was specifically on the culture of prosecution as a segment of trials of VAW. Some components of this culture were left during the reporting hence I experienced what Genzuk (1999) referred to as the agony of omitting**.**

Summary

On the strength of the cumulative weight of my findings, I conclude that the culture of prosecution of VAW in South Africa is embedded in a victim-blaming approach that ignores the traumatic effects of VAW on women victims. The same culture disregards the human rights of the victims as afforded by the Constitution and other interventions that are legislated to thwart this crime. The culture of prosecution is one that fosters interventions on VAW that dissect the victim's case and the victim into disembodied pieces removed from her personhood, while overlooking the socio-political and the cultural landscape under which violence on girls and women occurs. Accordingly, there is a need for contextual trans-disciplinary interventions to address VAW and hopefully nurses will be amongst the stakeholders who uphold the human rights of victims of VAW (Bahar, 1996).

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Appendix A: J88 (MEDICO- LEGAL DOCUMENT)

G.P.-S. 01/02 J 88 (81/805259)

REPORT BY AUTHORISED MEDICAL PRACTITIONER ON THE COMPLETION OF A MEDICO-LEGAL EXAMINATION 1

To be completed in legible handwriting and signed on every page

A. DEMOGRAPHIC INFORMATION

1. Police station:	2. CAS No.:	3. Investigating officer: Name and number:	4. Time ☐☐:☐☐ Day ☐☐ Month ☐☐ Year ☐☐☐☐

5. Name of medical practitioner:
6. Registered qualifications:
7. Phone number:
8. Fax number:
9. Place of examination:

10. Physical practice address or stamp:

11. Full names of person examined: 12. Sex: M ☐ F ☐ 13. Date of birth/apparent age:

B. GENERAL HISTORY

1. Revelant medical history and medication:

C. GENERAL EXAMINATION

1. Condition of clothing:

2. Height (cm):	3. Mass:	4. General body build:

5. Clinical findings: In every case the nature, position and extent of the abrasion, wound or other injury must be described and noted together with its probable date and manner of causation. The position of all injuries and wounds must also be noted on the sketches.

6. Mental health and emotional status:

7. Clinical evidence of drugs or alcohol:

8. CONCLUSIONS

J 88 (81/805259)

D. HISTORY IN CASE OF ALLEGED SEXUAL OFFENCE 2

1. Age of menarche ☐☐	2. Number of pregnancies ☐☐	3. Number of deliveries ☐☐	4. Duration of pregnancy (if applicable) ☐☐ weeks

5. Contraception (indicate with X): Yes ☐ No ☐ 7. First date of last menstruation:

6. Method and last date of application/ingestion: 8. Duration of period ☐☐ 9. Duration of cycle ☐☐

10. Date and time of last intercourse with consent:	11. Number of consensual sexual partners during last 7 days:	12. Condoms: Yes ☐ No ☐

13. Since the alleged offence took place, has the person (indicate with X): bathed ☐ washed ☐ douched ☐ showered ☐ urinated ☐ changed clothing ☐

E. GYNAECOLOGICAL EXAMINATION (State clinical findings)

1. Breast development: Tanner stage 1–5 ☐	2. Pubic hair: Tanner stage 1–5 ☐	3. Mons pubis:
4. Clitoris:	5. Frenulum of clitoris:	
6. Urethral orifice:	7. Para-urethral folds:	
8. Labia majora:	9. Labia minora:	

10. Posterior fourchette: scarring: bleeding:
tears: increased friability:

11. Fossa navicularis:

12. Hymen: configuration: 13. Opening diameter (mm): Transverse ☐☐ Vertical ☐☐

14 Swelling: 15. Bumps: 16. Clefts:

17. Fresh tears (position): 18. Synechiae: 19. Bruising:

20. Vagina: Number of fingers admitted: bleeding: tears:
discharge:

21. Cervix: erosion: discharge:
bleeding: other:

22. Perineum:

F. SAMPLES TAKEN FOR INVESTIGATION

1. Forensic specimens taken: Urine sample for pregnancy test: Positive ☐ Negative ☐	Seal number of Evidence Collection Kit:

2. Specimens handed to: Name: Rank and Force number:

Signature:

3. CONCLUSIONS

J 88 (81/805259)

G. ANAL EXAMINATION (State clinical findings) 3

SKIN SURROUNDING THE ORIFICE

1. Hygiene:
2. Pigmentation:
3. Fissures/cracks:
4. Abrasions:
5. Scars:
6. Swelling/thickening:
7. Redness/erythema:
8. Bruising/haematoma:
9. Tags:

ORIFICE

10. Tears/fissures:
11. Swelling/thickening of rim (tyre sign):
12. Funnelling:
13. Reflex dilatation:
14. Shortening/eversion of anal canal:
15. Cupping:
16. Twitchiness/winking:
17. Discharge:

DIGITAL EXAMINATION

18. Presence of hard faeces in rectum:
19. Laxity (pressure on anal orifice):
20. Thickening of anal verge:
21. Tone (sphincter grip):

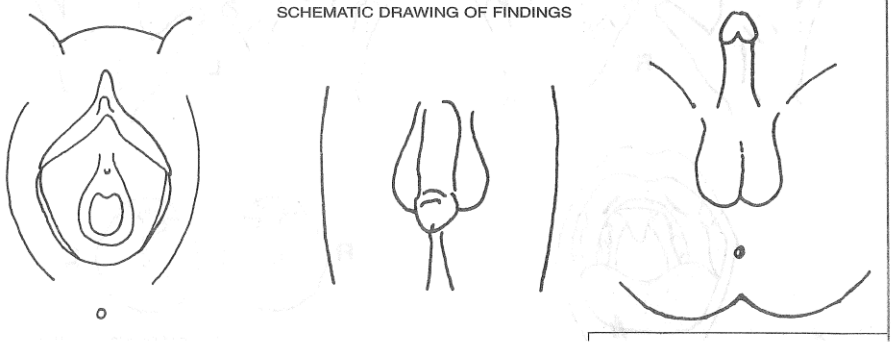
22. CONCLUSIONS

H. MALE GENITALIA

1. Genital development: Tanner stage 1–5 ☐
2. Glans:
3. Testes:
4. Ulceration:
5. Presence of faeces:
6. Pubic hair: Tanner stage 1–5: ☐
7. Shaft:
8. Epididymus:
9. Penile discharge:
10. Circumcision:
11. Prepuce and frenulum:
12. Scrotum:
13. Vas deferens:
14. Smegma:
15. Urethral orifice:

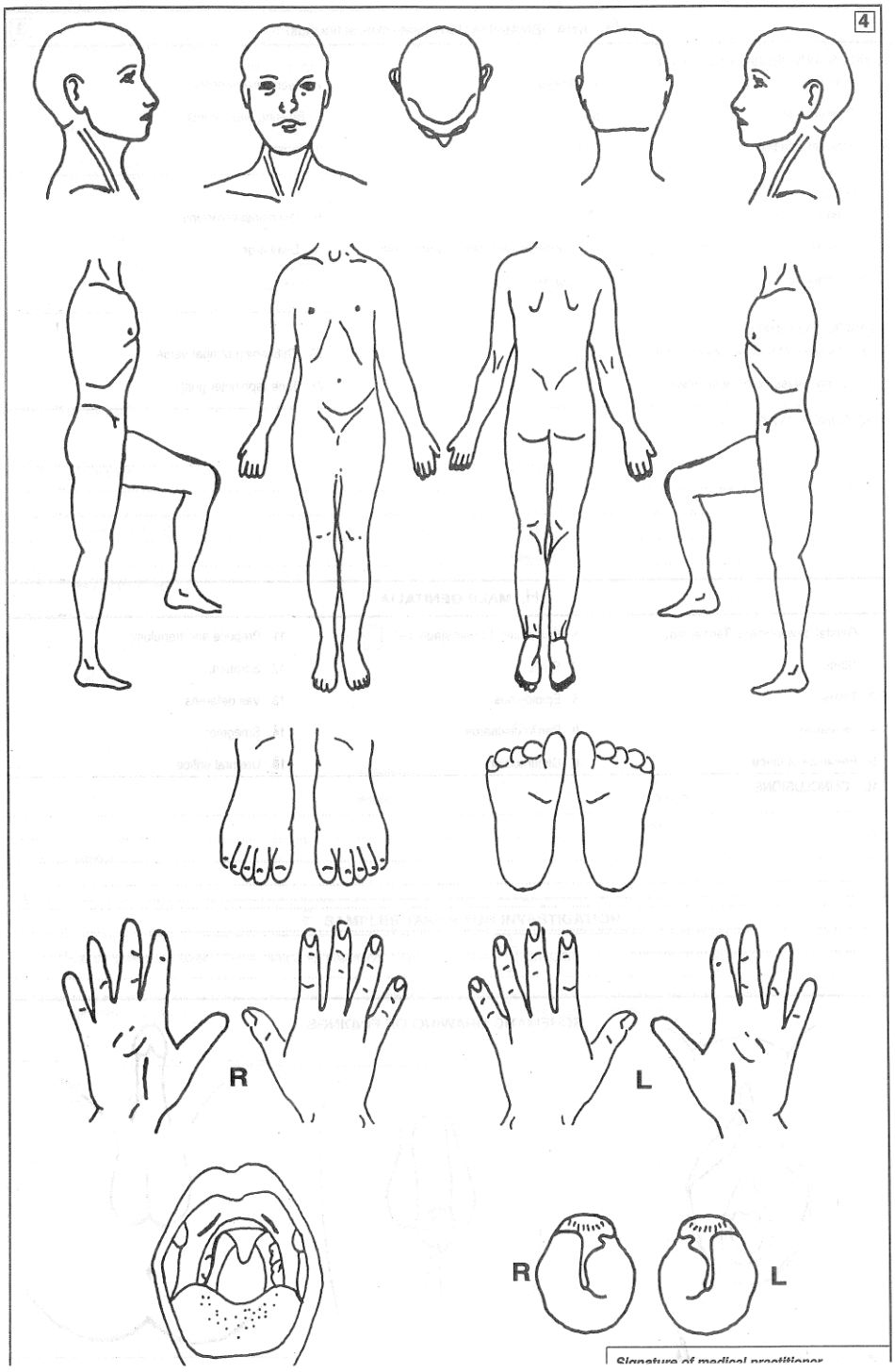
16. CONCLUSIONS

SCHEMATIC DRAWING OF FINDINGS



J 88 (81/805259)

4



Signature of medical practitioner

Appendix B: Consent to Contact Form

Title of the Project: AN EXPLORATION OF THE CULTURE OF PROSECUTING VIOLENCE AGAINST WOMEN IN SOUTH AFRICAN COURTS

Principal Investigators: Drs Kaysi Eastlick Kushner & Solina Richter
Co-Investigator: Ramadimetja Shirley Mogale

I ……(Program coordinator of LEAGO/POWA) here on behalf of Ramadimetja Shirley Mogale, who is a PhD candidate at the University of Alberta in the Faculty of Nursing (Canada). She was given permission by the Department of Justice to do a study on how you prosecute VAW cases. You are cordially invited to be part of this study. She will sit in courts during the prosecution of VAW cases when you will be leading the prosecution to observe manner in which you conduct court proceedings and what is happening. You will be then be invited for a conversation of approximately 60 minutes. The conversation will be on what has happened while you were prosecuting. You are free to choose the time that will be the most convenient for you. If you are interested in the study, can you kindly sign this form and give your contact details. It will be forwarded to the researcher. She will contact you to set up an appropriate time to talk to you.

I give my consent to be contacted by Ramadimetja Shirley Mogale for this study. I would like to know more about this study. However, this is not my consent to participate in the study.

Name _____ Signature

_____

Address

_____

Phone number _____ Email

_____

Appendix C: Information Letter for Participants

Title of Project*:* AN EXPLORATION OF THE CULTURE OF PROSECUTING VIOLENCE AGAINST WOMEN IN SOUTH AFRICAN COURTS.

Research study members

Principal Investigators:

Kaysi Eastlick Kushner, RN, PhD, Associate Professor, Faculty of Nursing, University of Alberta, phone: 492-5667, e-mail address: kaysi.kushner@ualberta.ca

Solina Richter, RN, DCur, Associate Professor, Faculty of Nursing , University of Alberta, phone: 780 492-7953,e-mail address: solina.richter@ualberta.ca

Co-Investigator: Ramadimetja Shirley Mogale , RN, PhD student Faculty of Nursing, University of Alberta , phone: 780-492 6890., e-mail address: mogale@ualberta.ca

My name is Ramadimetja Shirley Mogale. I am interested in learning about prosecution of Violence against Women. I will like to see and talk with the prosecutors who have experience in prosecuting cases of Violence against Women. The purpose of my study is to understand the way Violence against Women is prosecuted. I hope that the results of this study will provide

clarification to victims of Violence against Women on how their cases are prosecuted in court.

This study is my PhD research project in nursing, through the University of Alberta. This study has nothing to do with National Network on Violence against Women in South Africa, LEAGO and POWA. But some of their program managers helped me to recruit prosecutors as participants for my study.

It is completely up to you to decide if you want to take part in this study. I want you to understand all about this study so I have included some information for you. Please phone me or e-mail me if you have questions. Thank you so much for taking the time to think about taking part in this study.

What will happen:

I would like to observe about thirty cases (30) of Violence against Women. Then I will hold conversations with the prosecutors whom I have observe prosecuting Violence against Women cases. The conversations will not exceed 45 minutes and they will be held at the place which is convenient for you. They will be recorded with a tape recorder. I will ask about what I have observed in court when the prosecutor was prosecuting that specific case. If at any time during the interview you wish to have the tape recorder turned off, we can do so.

I might need to talk with my professors and colleagues at the University of Alberta from time to time about the information I am gathering from you and other prosecutors but there will be no names mentioned during our discussions or attached to any of my work.

Benefits and/or risks:

There are no direct benefits or risks. However, participants in similar studies find that they learn a lot by sharing their experiences as prosecutors. All the information from this study could helpful for victims of Violence against Women who wish to know how their cases are prosecuted in court. Sometimes talking about your work could be stressful. I want you to know that if you do feel uncomfortable that I will end the conversation at any time you wish.

Privacy and confidentiality:

All identifying information will be removed from the records. Any tapes, notes and meeting records will be marked with a code number and/or false name, and stored in a locked filing cabinet. Your name will be recorded only on this consent form and on one master list that links your name to your code number and/or false name. The consent form and master list will be stored in a separate locked filing cupboard, easy to get to only to members of the research team. Any computer files relating to this research will be stored on secret word protected computers only members of the research team can access. The Department of Justice and Constitutional Development South Africa will not have access to any data. If I decide to do another study later in the future I might be looking again at the information from this study. The Ethics Board will first go over my plans to make sure that the information will be used appropriately and ethically.

Freedom to not take part in the study:

It is up to you to decide to take part in the study. If you do agree to participate then I will first get your signed consent. When you sign the consent

you are saying that you understand what the study is all about and that you want to be a part of it.

None of the employees of POWA or LEAGO will know whether or not you are participating in this study. There is no risk to you if you do not want to participate. You have the right to stop being in the study at any time without problem. If you want to stop part way through the study, your information will not be used.

***Additional Contact**:*

If you have any questions or concerns about any part of the study and ethical method of this research please contact University of Alberta Research Ethics Office at 780-492-2615 and note that collect calls will be accepted. Furthermore, if you have any questions regarding your rights as the participant you are free to contact a local representative:

Dr. Maureen Tong

University of South Africa (UNISA)

:+ 27 12 337 6164 (office)

+27 82 577 5565 (mobile)

Appendix D: Socio-Demographic Data of the Court and Participants

Code # of participant: _____

Date: _____

1. Mainstream Court ☐ Specialized Court ☐
2. Province: Gauteng ☐ Limpopo ☐ Eastern Cape ☐
3. Use of CCTV during court proceedings: Yes ☐ No ☐
4. Gender of the Participant : Male ☐ Female ☐
5. Race of Participant : Black ☐ White ☐
6. Years of Experience of the Participant :_____
7. Position of the Participant: _____
8. Level of Training of the Prosecutor: Undergraduate Degree ☐ Post Graduate ☐
9. Specialization Course on Forensic Medicine: Yes ☐ No ☐
10. Sexual Assault Workshop Attendance: Yes ☐ No ☐

Appendix E: Observation Guide

Title of the Project: AN EXPLORATION OF THE CULTURE OF PROSECUTING VIOLENCE AGAINST WOMEN IN SOUTH AFRICAN COURTS

Aim of the study: To explore the culture of prosecuting VAW cases in South African courts.

Dimension	**Focal Points**	**What to take note**
Physical Space	The tangibles which made up the physical structure of the court: Floors, Walls, Furniture, lights	Type, made, appearance, texture of all the tangibles and different sittings.
People involved in prosecution of VAW	Dynamics of interactions amongst the people involved in prosecution of VAW: who initiate the interaction, who speaks to whom, for how long, language and dialectics used, the tone of the voice.	Gender, clothing, race, physical appearance, their characteristics
Activities	A set of related acts that occur from the beginning, during, and end of	The sequential flow of the activities during prosecution, who

	the court session of VAW.	are responsible for those activities, who is assigning those activities.
Objects	Artifacts used in prosecution of VAW	Who is using what, and why is that object important
Act	Single action/s carried out by the stake holders.	Who is executing that action, and reasons for that action
Event/s	Special circumstance/s that might be noticed in court when VAW cases are prosecuted.	What called for the event, how is the event related to the case and its prosecution.
Time	The sequencing that takes place over time	The effect time has on all the dimensions and time when activities and observations were made.
Goal	What the people in court are trying to achieve	The purposes of all the activities that occur in prosecution of VAW case.

Feelings	The expressed and observed emotions during prosecution of VAW case from different stake holders.	How people use their bodies, voices to communicate different emotions, individuals' behaviors towards one another , their social rank, or their profession

Adapted from Spradley (1980)

Appendix F: Informed Consent Form

Title of Project: AN EXPLORATION OF THE CULTURE OF PROSECUTING VIOLENCE AGAINST WOMEN IN SOUTH AFRICAN COURTS Part 1: Researchers Information		
Name of Principal Investigators: Kaysi Eastlick Kushner, RN, PhD, Associate Professor, Faculty of Nursing, University of Alberta, phone: 492-5667, e-mail address:kaysi.kushner@ualberta.ca Solina Richter, RN, PhD, Associate Professor, Faculty of Nursing , University of Alberta, phone: 780 492-7953,e-mail address: solina.richter@ualberta.ca		
Name of Co-Investigator: Ramadimetja Shirley Mogale (Doctoral student) Affiliation: PhD student, Faculty of Nursing, University of Alberta Contact Information: tel 1 (780) 492-996890 ; e-mail mogale@ualberta.ca		
Part 2: Consent of Participant		
	Yes	**No**
Do you understand that you have been asked to be in a research study?		
Have you read and received a copy of the attached information sheet?		
Do you understand the benefits and risks involved in taking part in this research study?		
Have you had an opportunity to ask questions and discuss the study?		

Do you understand that you are free to refuse to participate or withdraw from the study at any time? You do not have to give a reason and it will not affect your care.		
Has the issue of confidentiality been explained to you? Do you understand who will have access to your records/information?		
Part 3: Signatures		
This study was explained to me by: _____ Date: _____		
I agree to take part in this study. Signature of Research Participant: _____ Printed Name: _____		

I believe that the person signing this form understands what is involved in the study and voluntarily agrees to participate.

Researcher:

_____

Printed Name:

_____

* A copy of this consent form must be given to the subject.

Consent:
If you wish to receive a summary of the study findings, please complete the "Study Findings" section at the end of this letter.

Study findings:
Yes, I would like to receive a summary of the study findings. Please send the summary to this address (either an email or mailing address):

_____

_____

Appendix G: Document Analysis Worksheet

Title of the Project: AN EXPLORATION OF THE CULTURE OF PROSECUTING VIOLENCE AGAINST WOMEN IN SOUTH AFRICAN COURTS

Document Category ☐ 1= Health Documents on VAW ☐ = 2 Criminal Justice Documents on VAW

☐= 3 Welfare and other Documents on VAW

.	NAME/ TITLE OF THE DOCUMENT :
.	TYPE OF DOCUMENT(Check one) ☐ Policy Document ☐ Information Brochure ☐ Procedure manual ☐ Notice ☐ Memorandum ☐ Report ☐ Client Record ☐ Provider's Record
.	UNIQUE PHYSICAL CHARACTERISTICS OF THE DOCUMENT (Check one or more) ☐ LETTERHEADS ☐ SEALS ☐ NOTATIONS ☐ OTHER ☐ " RECEIVED" STAMP DATE(S) OF THE DOCUMENT IF AVAILABLE : .
.	CREATOR OF THE DOCUMENT: POSITION(TITLE) OF THE CREATOR:

.	PURPOSE OF THE DOCUMENT :
.	FOR WHAT AUDIENCE WAS THE DOCUMENT WRITTEN:
.	DOCUMENT INFORMATION A. The reason(s) for the development of the document B. Three aspects which are important in the document: C. Reason to articulate the importance of the document (Quote from the document). D. Is the document addressing its purpose inclusively ☐Yes ☐ No E. If No, Why not? _____ *And if* Yes, How? _____

Appendix H: Permission Letter to the Research Site

Private Bag X9320 Polokwane 0700 19 Bodenstein Street –

Polokwane - Tel: (015) 294 2710 Fax: (015) 295 7713- www.doj.gov.za

Enq : J.H Wessels

Date : 11/01/2011

To whom it may concern

ETHICS APPROVAL TO VISIT COURTS FOR RESEARCH PURPOSES FOR MS MOGALE

There is no specific institution to which Ms Mogale should apply for approval to visit courts for research purposes. The courts are open to the public and court documents are public documents. Permission to interview magistrates of the district courts can be obtained from the Chief Magistrate of the relevant province, and to interview regional magistrates from the Regional Court President of that Regional Division. The Chief Prosecutor of a specific cluster can be contacted to get permission to interview public prosecutors in the various clusters.

From an ethical point of view, the South African law prohibits the publication of names of victims in certain instances, for example when they are minors, which will have to be observed

by the researcher (see the Criminal Procedure Act, Act 55 of 1977, section 184).

As Regional Court President of the Limpopo Regional Division, I had already granted Ms Mogale permission to visit the regional courts in Limpopo and interview the regional magistrates. As Head of the Lower Courts in Limpopo, I had already discussed it with the Chief Magistrate, so she also has permission to interview the district court magistrates, and when she is here, I will gladly assist her to get the necessary permission from the Chief Prosecutors to interview public prosecutors, as well as put her in contact with the relevant legal aid attorneys (public defenders) to interview them as well.

Kind regards

Jakkie Wessels

Regional Court President, Limpopo Division

Appendix I: Ethics Approval

Health Research Ethics Board

308 Campus Tower
University of Alberta, Edmonton, AB T6G 1K8
p. 780.492.9724 (Biomedical Panel)
p. 780.492.0302 (Health Panel)
p. 780.492.0459
p. 780.492.0839
f. 780.492.9429

Approval Form

Date:	March 7, 2011
Principal Investigator:	Magdalena Richter
Study ID:	Pro00019418
Study Title:	An Exploration of the Culture of Prosecution of Violence Against a Women (VAW) in South Africa.
Approval Expiry Date:	March 5, 2012

Thank you for submitting the above study to the Health Research Ethics Board - Health Panel . Your application, including revisions received February 28, 2011, has been reviewed and approved on behalf of the committee.

A renewal report must be submitted next year prior to the expiry of this approval if your study still requires ethics approval. If you do not renew on or before the renewal expiry date, you will have to re-submit an ethics application.

Approval by the Health Research Ethics Board does not encompass authorization to access the patients, staff or resources of Alberta Health Services or other local health care institutions for the purposes of the research. Enquiries regarding Alberta Health Services administrative approval, and operational approval for areas impacted by the research, should be directed to the Alberta Health Services Regional Research Administration office, #1800 College Plaza, phone (780) 407-6041.

Sincerely,

Colleen Norris, Ph.D.
Associate Chair, Health Research Ethics Board - Health Panel

Note: This correspondence includes an electronic signature (validation and approval via an online system).

UNIVERSITY OF ALBERTA Alberta Health Services Covenant Health