



Medica Afghanistan

Women can make a change for Women and Society!

MAKING THE LAW ON ELIMINATION OF VIOLENCE AGAINST WOMEN A REALITY:

A REPORT ON MEDICA AFGHANISTAN'S 2014 and 2015 CASES

Natasha Latiff (LL.M)
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AUTHOR'S NOTE

It was in 1993 when the UN declared a legal definition of violence against women to capture a wide range of acts of physical, sexual and psychological violence occurring in both the private and public space. Violence within the family and by the state became something the state could be held responsible for.

Afghanistan's historic Elimination of Violence Against Women Law in 2009 (more correctly, a Presidential Decree) ("EVAW") was the country's attempt to capture this language and ring in all forms of violence occurring in the Afghan context. For the first time, the law recognized invisible and intangible forms of violence like psychological harm and for the first time, private and state actors alike could be prosecuted for committing violence against women, regardless of where it happened.

It has only been 6 years since the enactment of the EVAW law by former President Karzai. Over the last 6 years, the politics around EVAW law has ebbed and flowed with political events, high-level cases, government pressure and donor positions. From a big picture perspective, the reach and impact of the EVAW law is impeded by the country's ongoing war, lack of central governance and corruption. However, from the viewpoint of the lawyers at the trenches, the EVAW law has been their sole means of holding their government responsible to investigate, prosecute and punish those who commit violence against women. It is Medica Afghanistan's lawyers who give life to the law which otherwise would only remain words on paper. It is the lawyers who, at the doors of the EVAW departments and along the corridors of courts, plead with, encourage, challenge and inspire individual policemen, prosecutors and judges to do by what is right and what is just.

Since the first ten EVAW law cases back in 2009/2010 when the law was initially passed, the lawyers have expanded their caseload to over 361 prosecution, defence and civil cases in 2014/2015. In this report, I intend to take a more critical look into Medica Afghanistan's practise of dealing with EVAW-law cases through the lens of the Criminal Procedure Code passed into law and gazetted in 2014 ("CPC").

My appreciation is due to the lawyers and the management staff who spent many afternoons with me, sharing their experiences between Dari and English, for the purposes of this report. Though this report takes a critical look at Medica Afghanistan's practice, it is done with the best intentions to further Medica Afghanistan's important cause and by no way reduces the unprecedented pioneering efforts of the lawyers who take on some of the toughest crimes in Afghanistan.

Natasha Latiff (LL.M)

Advocate & Solicitor

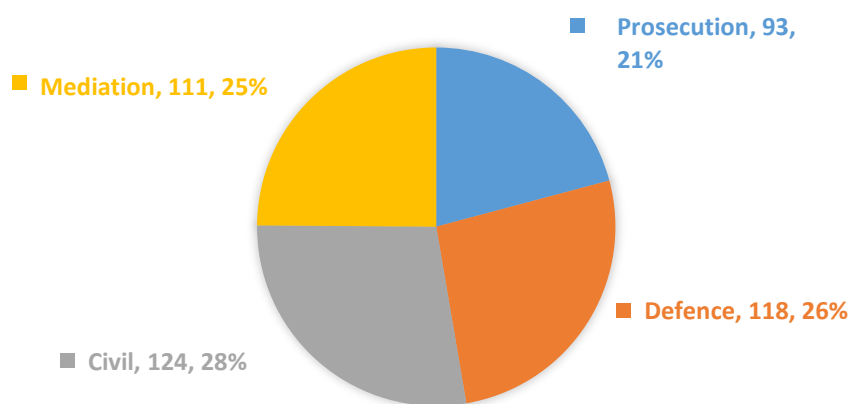
Strategic Advocacy for Human Rights (SAHR)

SECTION 1: INTRODUCTION

In 2014 and 2015, Medica Afghanistan represented clients in a total of 1970 cases, some of whom were survivors of violence and others, who had a history of being victims of violence as a result of forced/child marriage, rape and domestic abuse.

This report analyses approximately 446 prosecution, defence and civil cases across 3 provinces, namely Balkh, Herat and Kabul, in 2014 and 2015 (“the reporting period”). These cases were chosen on the basis that it was recorded by lawyers as being EAW-related, i.e. the lawyers had cited and/or used one or more of the EAW law provisions at some stage of the proceeding.

MA'S 2014 AND 2015 CASELOAD (446 CASES)



Of the 446 cases:

- (a) The lawyers acted on behalf of 93 victims of acts constituting crimes under the EAW law and penal law (“prosecution cases”)
- (b) The lawyers acted on behalf of 118 women and girls in conflict with the penal law (“defence cases”)
- (c) The lawyers acted in 124 cases involving petitions for divorce and/or other matrimonial rights under the civil law (“civil cases”), and
- (d) The lawyers acted in 111 mediation cases (in Kabul and Balkh only) involving family disputes and minor cases of violence (“mediation cases”).

Medica Afghanistan’s first and second EAW reports surveyed the initial years of their growing practice. The law had just been passed and the police, prosecution and judiciary were very much unaware of its enactment. The primary objective then was to advocate for its recognition and use in the legal process. The reports focused on how Medica Afghanistan’s lawyers used the EAW law in their submissions and the influence that had on the recognition of the law by the prosecution and judiciary.

In this report, we will examine Medica Afghanistan's procedural practice, i.e. how lawyers evaluate their clients' case, conduct investigations, examine evidence and safeguard the rights of their clients throughout the legal process. This is an important area of study as it is the practice of procedure which eventually determines whether a case is made. For instance, whether an Article 17 case on rape is made under the EVAW law depends on compliance with the criminal procedure code in relation to arrest, investigations, examination of witnesses, preparation of indictments and good trial advocacy etc.

Further, we must bear in mind that the prosecution process is not a forum in which victims traditionally have a voice. Indeed, the client is not a party to the prosecution. It is the state which prosecutes the crime. The client is only a witness to a crime commission, with some procedural rights in the process. However, clients initiate criminal action hoping to be heard, to be informed of case updates and to participate in decisions which relate to the charge, bail and sentencing et al. This is what makes Medica Afghanistan's procedural practice so important to the client's pursuit for justice.

Thus in this report, we will examine key issues which impact the client's pursuit for justice, as follows:

- (a) Client's withdrawal from the criminal action
- (b) Medica Afghanistan's relationship with the prosecution
- (c) Safety of clients and protection orders
- (d) Access to information and the full case judgment
- (e) Issues of evidence
- (f) Mistreatment of clients
- (g) Protective measures for vulnerable clients
- (h) Compensation claims, and
- (i) Mediation on the threat of prosecution.

With respect to Medica Afghanistan's procedural practice in defence cases, it goes without saying how important having good counsel is to safeguarding the rights of clients in conflict with the law. Law enforcement authorities exercise considerable power over clients. The danger here is that law enforcement authorities may take advantage of the client's weak position when attempting to build their case. It is especially in defence cases where there is so much at stake. A breach of procedure has an impact on the liberty, reputation and life of the client. As such, criminal procedure is the living breath of every defence lawyer as it is the tool to hold law enforcement authorities accountable for breaches of client's fair trial rights. In principle, it is in everyone's interest to convict the guilty only and acquit the innocent. There is, however, considerable divergence of opinion on "guilt" and "innocence" especially where the conduct and behavior of women offenders leading up to the crime is concerned.

In this report, we will examine key issues which impact the rights of women offenders during the legal process, as follows:

- (a) Arbitrary arrest and detention
- (b) Insults and contempt by the police, prosecution and judiciary against clients
- (c) Examining and questioning prosecution witnesses
- (d) Objection to medical reports, and
- (e) Forced statements and confessions.

The report will also provide statistics on Medica Afghanistan's mediation and civil cases. However, the report will not go in depth into the issues arising therefrom, which ideally should be covered in a separate report.

MAP OF THIS REPORT

- [Section 1](#) of the report introduces the report and sets out its methodology.
- [Section 2](#) of the report is an overview of Medica Afghanistan's instrumental work in Afghanistan, being one of the first and few organizations which provides women survivors of violence and women offenders with holistic legal, social and psychosocial support.
- [Section 3](#) of the report summarizes the key findings of Medica Afghanistan's previous reports on cases and events which took place between 2011 and 2013.
- [Section 4](#) of the report presents statistics of Medica Afghanistan's prosecution cases, analyses their prosecution practice and offer recommendations moving forward.
- [Section 5](#) of the report presents statistics of Medica Afghanistan's defence cases, analyses their defence practice and offer recommendations moving forward.
- [Section 6](#) presents statistics of Medica Afghanistan's civil practice with a brief analysis.
- [Section 7](#) concludes the report and summarizes the key findings and recommendations moving forward.

METHODOLOGY

The statistics gathered in this report is primarily based on Medica Afghanistan's matrix of prosecution, defence, civil cases in the provinces of Balkh, Herat and Kabul in 2014 and 2015.

Desk research was conducted for contextual purposes only. As the objective of this report is to evaluate Medica Afghanistan's procedural practice, other EAW reports by external organizations are not substantively referred to in this report, except for statistical comparison. However, due acknowledgement must be given to the Research Institute of Women Peace and Security (RIWPS) of their impressive legal-ethnographic study of the prosecution units and interactions between the prosecution and survivors of violence as it provided useful background to what happens behind the scenes.

The case studies narrated in this report is based on interviews with 6 lawyers from Medica Afghanistan's Kabul, Herat and Balkh offices, 2 staff from the Kabul legal aid management team and 1 mediator. The interviews took place in Kabul in August 2016 over seven afternoons, 3 to 4 hours each, where the lawyers engaged in workshop exercises and focus group discussions. I also interviewed the lawyers, staff of the legal aid program and mediator individually to account for differences amongst the team in their practice and perspective of the law. Admittedly, the results of this report is more reflective of practice in Kabul. Most of the interviews were done with Kabul-based staff as the lawyers from Herat and Balkh could not be present for all the sessions.

The issues reported herein emerged from lengthy discussions with the lawyers as we surveyed over 40 articles of the Criminal Procedure Code. The recommendations made in this report are specifically targeted to address issues in criminal procedural practice. The recommendations are meant to be as practical as possible so that the lawyers can adopt them in their casework immediately or in the near future. To ensure that the recommendations were sound and would be of practical use in Afghanistan, I have checked their feasibility with the lawyers and obtained feedback from lawyers at Strategic Advocacy for Human Rights (“SAHR”) and SAHR’s independent legal advisors from O’ Melveny and Myers LLP (“OMM”).

I thank the legal aid department staff namely Horia Obaidy and Zuhel Sahek for patiently managing the interview sessions and translating court documents and settlement agreements. I thank Amanda Beattie and Kieran Humphrey from OMM and SAHR’s lawyers for their advice and input on settlement agreements, compensation claims and protection orders.

SECTION 2: ABOUT MEDICA AFGHANISTAN

Medica Afghanistan started operating in Afghanistan in 2002 as a programme of Medica Mondiale, a non-governmental women's rights organisation based in Germany that is specialised in providing holistic support to women survivors of sexual violence in war-torn countries and crisis zones around the world. In 2010, they became an independent legal aid organisation and was officially registered as a self-sustaining Afghan NGO.¹ The team is composed of female lawyers, social workers, psychosocial workers and psychologists, based in the cities of Kabul, Herat and Mazar-e-Sharif.

Medica Afghanistan is one of only a handful of legal aid organisations in Afghanistan which mission is to protect and promote women's rights and end violence against women. Since 2002, they have provided assistance and advice to approximately 10,000 survivors of violence through their legal aid, mediation, and awareness raising work.

They provide legal representation and legal aid to women in general, women in conflict with the law and women survivors of violence. Throughout the justice process, they provide women access to psychosocial support and other support services to mitigate the difficulties that women encounter during their pursuit of justice. They also support their clients after being released from prison by restoring their ties with their families and reintegrating them back into society. At the request of their clients, they mediate in disputes between spouses and families to solve domestic issues and prevent and mitigate the risk of violence occurring within families.

Apart from legal aid and representation, Medica Afghanistan works directly with judicial actors and trains the police, judiciary and medical staff to adopt a trauma sensitive approach towards women affected by violence. They are also at the forefront of lobbying and advocacy efforts to ensure that laws and policies are gender-sensitive and are properly implemented and enforced.²

Since the EVAW law was passed in 2009, Medica Afghanistan has been reporting on how they have used the law in courts, legal awareness and training activities, mediation and advocacy. They have openly reported on their successes, failures and ongoing challenges with the aim of improving their practise of EVAW law in courts, as well as, in their broader advocacy efforts.

¹ Medica Afghanistan operates under the framework of Article 31 of the Afghan Constitution (2004), the Legal Aid Regulation (2008) and Advocates Law (2007).

² For further information, please visit their website at www.medicaafghanistan.org

SECTION 3: CONTEXT AND PREVIOUS FINDINGS

In 2013 and 2014, Medica Afghanistan published its first two EVAW law reports, titled:

- (a) ‘The EVAW Law in Medica Afghanistan Legal Aid Practice Report (June 2013)’ which covered the period between January 2011 and July 2012 (“first report”), and
- (b) ‘An analysis on the use of the Elimination of Violence against Women Law in Medica Afghanistan’s Legal Aid Cases (November 2014)’ which covered the period between August 2012 and December 2013 (“second report”).

First report (2011 – 2012)

After the law was passed by decree in 2009, Medica Afghanistan’s lawyers took up their first 10 EVAW cases. Of note were their novel attempts to further use the EVAW law to support women defendants who were being prosecuted for moral crimes and in petitions for divorce due to harm.

At the time, a vast majority of police officers were not aware that an EVAW decree had been passed. Prosecutors and judges likewise rejected the law because it was not passed by Parliamentary vote and they were therefore of the view that the decree was not legally enforceable. Some of them were also against the EVAW law as they were of the opinion that some of its provisions served to protect women from their own wrongdoing and encourage disobedience, immorality and promiscuity.

By the end of 2011, of the 10 cases Medica Afghanistan took up pursuant to the EVAW Law, perpetrators were prosecuted in 5 cases.

Second report (2012 – 2013)

In 2012 and 2013, Medica Afghanistan represented 8 clients who were victims of violence, of which 6 cases were prosecuted pursuant to the EVAW law. They also expanded its civil caseload and used the EVAW law to support civil petitions for separation due to harm and other matrimonial rights.

There was a slight improvement in the prosecution's willingness to indict perpetrators of violence pursuant to the EVAW law. However, prosecutions remained low partly due to the fact that clients did not want to initiate criminal action against their abusers (family members) or withdrew from the action before judgment. There was little improvement in the attitude of judges towards crimes committed against women and clients were routinely advised to undergo mediation to avoid trial.

More women and girls were prosecuted for adultery and attempt to commit adultery. A brief debate emerged amongst conservative leaders to introduce stoning as a punishment for adultery which later died down.

Most of Medica Afghanistan’s cases were mediation cases.

Of note, the EVAW law was intensely debated in the National Assembly in the spring of 2013 with immense backlash by conservative members of the Parliament and the media. This created further

negative impressions of the EVAW law, including sarcastic remarks made to the lawyers during court sessions.

Recent context (2014 – 2015)

The new Government under President Ghani was elected in Afghanistan in September 2014. At the London Conference on Afghanistan, the government reiterated its commitment to EVAW, stating:

“The government will continue to strengthen measures for protecting women against violence and other violations of their human rights. The government is committed to implementing the EVAW law.”

The government also renewed its commitment to the Tokyo Mutual Accountability Framework set out at the Tokyo Conference in 2012 to “maintain the integrity of and strengthen implementation of the EVAW law”.

There were two high profile trials in 2014 and 2015, the Paghman rape case and the mob killing of Farkhunda, which drew severe condemnation globally. Though several individuals were convicted, reports found that the judicial process did not guarantee the most basic procedural safeguards and prosecutors ignored evidence, reinforcing the public perception that the criminal justice system lacked the ability to deliver justice.

Further, a OHCHR-UNAMA report in April 2015 found that 65% of the 80 cases studied in the report involving battery and laceration and abuse, humiliation and intimidation, were settled through mediation. UNAMA’s findings indicated that the majority of women survivors of violence resorted to mediation due to deficiencies in the criminal justice system including allegations of corruption, abuse of power, and lack of professionalism.

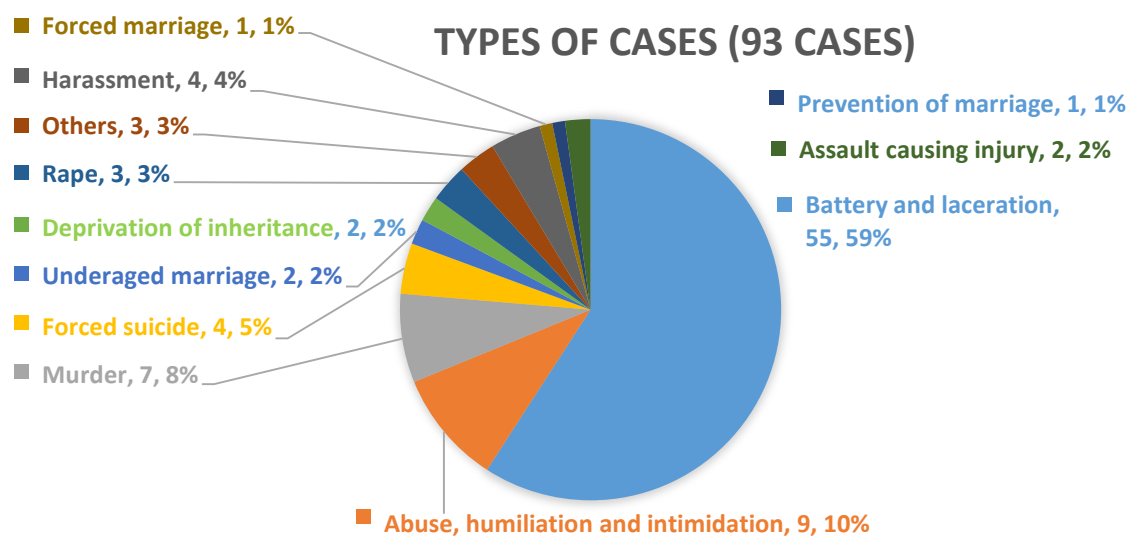
Nonetheless, there have been some positive developments in the advancement of women’s rights. The new government has pledged to ensure adequate representation of women in the government and to promote the full implementation of the EVAW law. Some improvements were observed in the government’s efforts to collect, track and report cases of violence against women across the country. In March 2014, the government published its first report on the elimination of violence against women in Afghanistan. The report registered 4,505 incidents of violence against women in 32 of the 34 provinces, between March 2012 to March 2013, of which 3,396 constituted acts that could be prosecuted under the EVAW law. Further, specialized Violence against Women Units under the Attorney General’s Office were expanded from 8 to 16 provinces.³

³ Medica Afghanistan collaborates closely with these Units in Kabul, Balkh and Herat by assisting prosecutors with the collection of evidence and providing legal advice to clients.

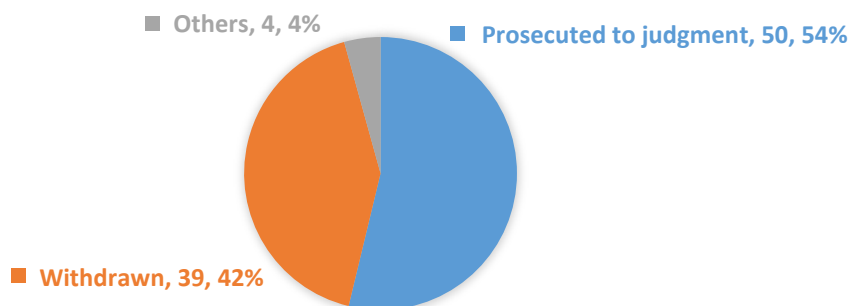
SECTION 4: PROSECUTION PRACTICE

A. SUMMARY OF CASES AND OUTCOMES

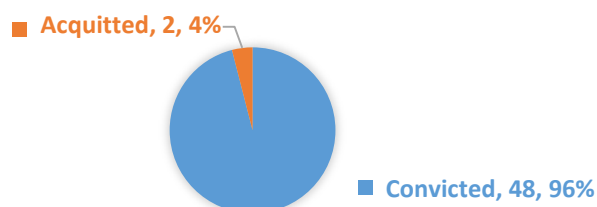
In 2014 and 2015, the lawyers provided counsel to approximately 93 victims⁴ in Kabul, Herat and Balkh. On average, 54% of the cases were prosecuted whilst 42% of the cases were withdrawn at some stage of the proceedings. The lawyers assisted the prosecution to secure 48 convictions (i.e. a 96% conviction rate for cases which proceeded to trial and a 52% conviction rate overall).



PROSECUTED / WITHDRAWN



CASE OUTCOME



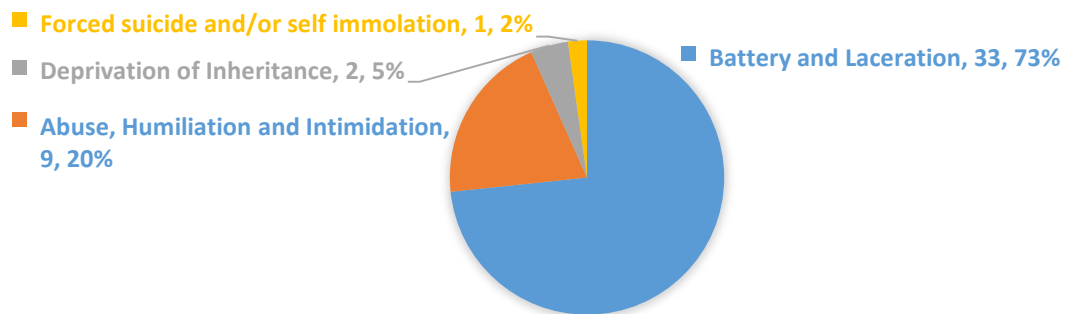
⁴ At Medica Afghanistan, clients are referred to as “survivors” and not “victims” of violence. The term “survivors” connote agency, choice and empowerment which the clients make in their day-to-day choice when dealing with and protecting themselves from violence. In this report, we have used the legal term “victim” to refer to a person who initiates legal action in response to a crime committed against her.

B. BREAKDOWN OF CASES BY PROVINCE

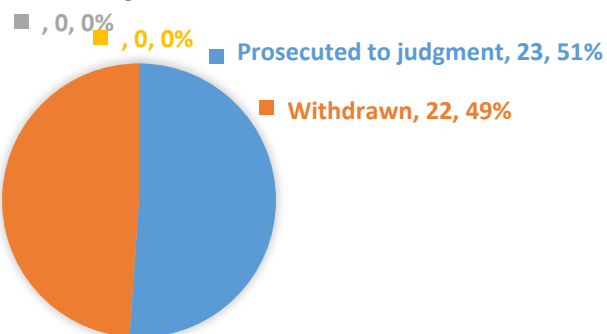
KABUL PROSECUTION CASELOAD

Over the reporting period, the lawyers in Kabul provided counsel to 45 victims. 51% of the cases were prosecuted whilst 48% of the cases were withdrawn at some stage of the proceedings. The lawyers assisted the prosecution to secure 23 convictions (a 100% conviction rate for cases which proceeded to trial and a 51% conviction rate overall).

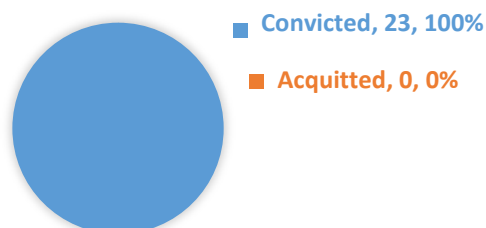
TYPES OF CASES (45 CASES)



PROSECUTED / WITHDRAWN



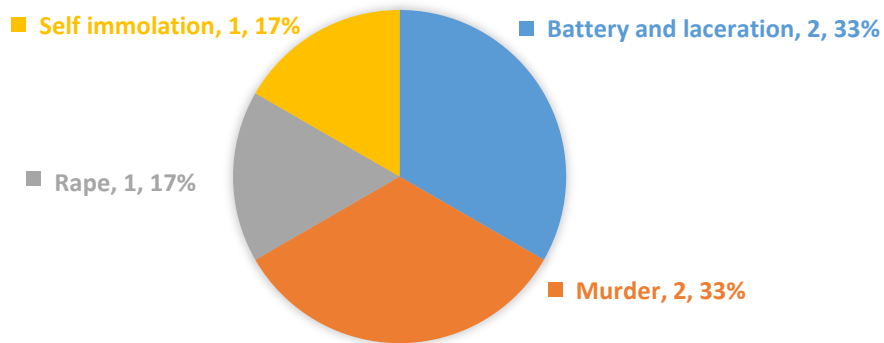
CASE OUTCOME



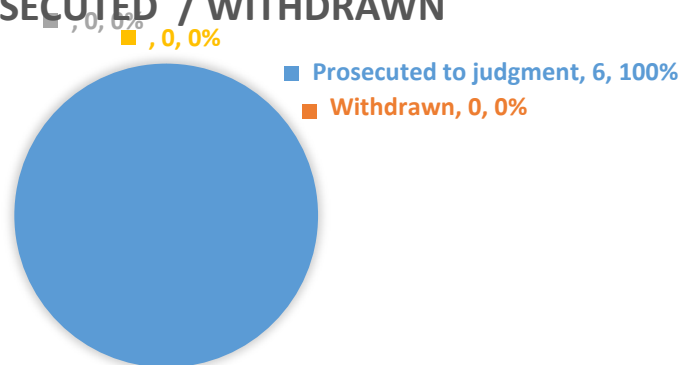
HERAT PROSECUTION CASELOAD

Over the reporting period, the lawyers in Herat provided counsel to 6 victims. All of the cases were prosecuted with 100% of the defendants convicted.

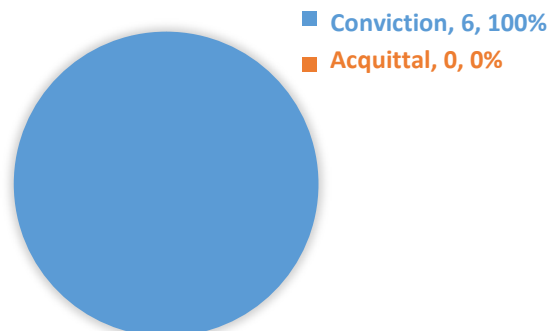
TYPES OF CASES (6 CASES)



PROSECUTED / WITHDRAWN

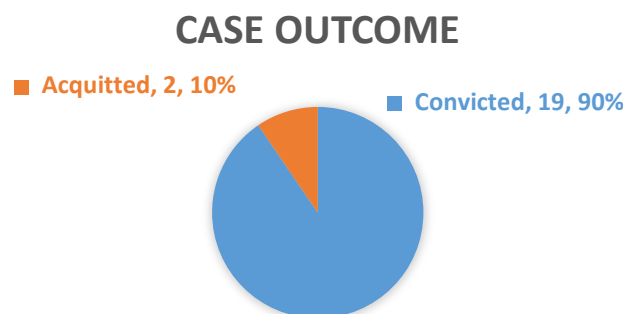
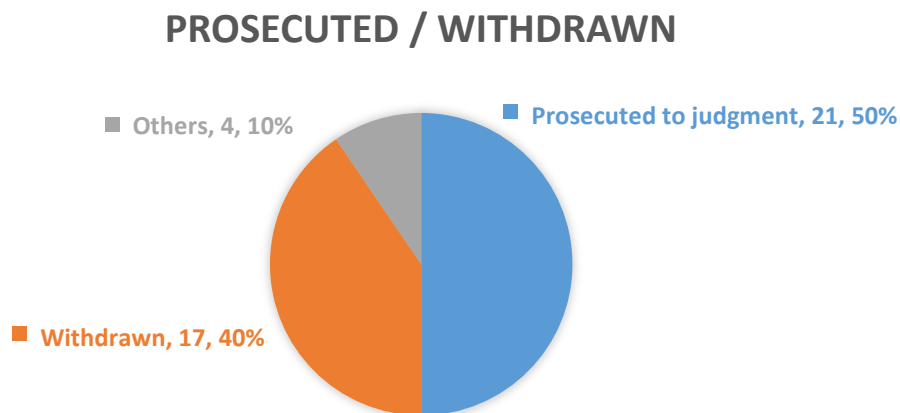
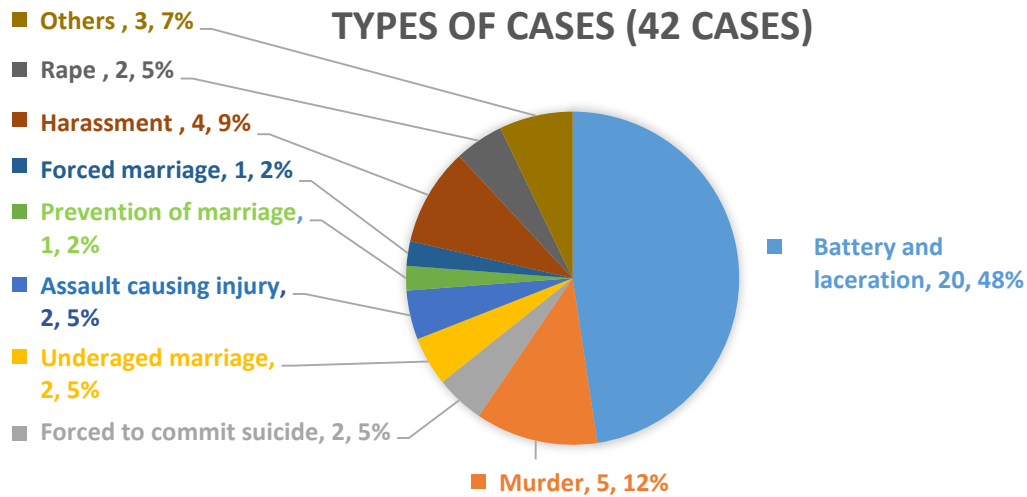


CASE OUTCOME



BALKH PROSECUTION CASELOAD

Over the reporting period, the lawyers in Balkh provided counsel to 42 victims. 50% of the cases were prosecuted whilst 40% of the cases were withdrawn at some stage of the proceedings. The lawyers assisted the prosecution to secure 19 convictions (a 90% conviction rate for cases which proceeded to trial and a 45% conviction rate overall).



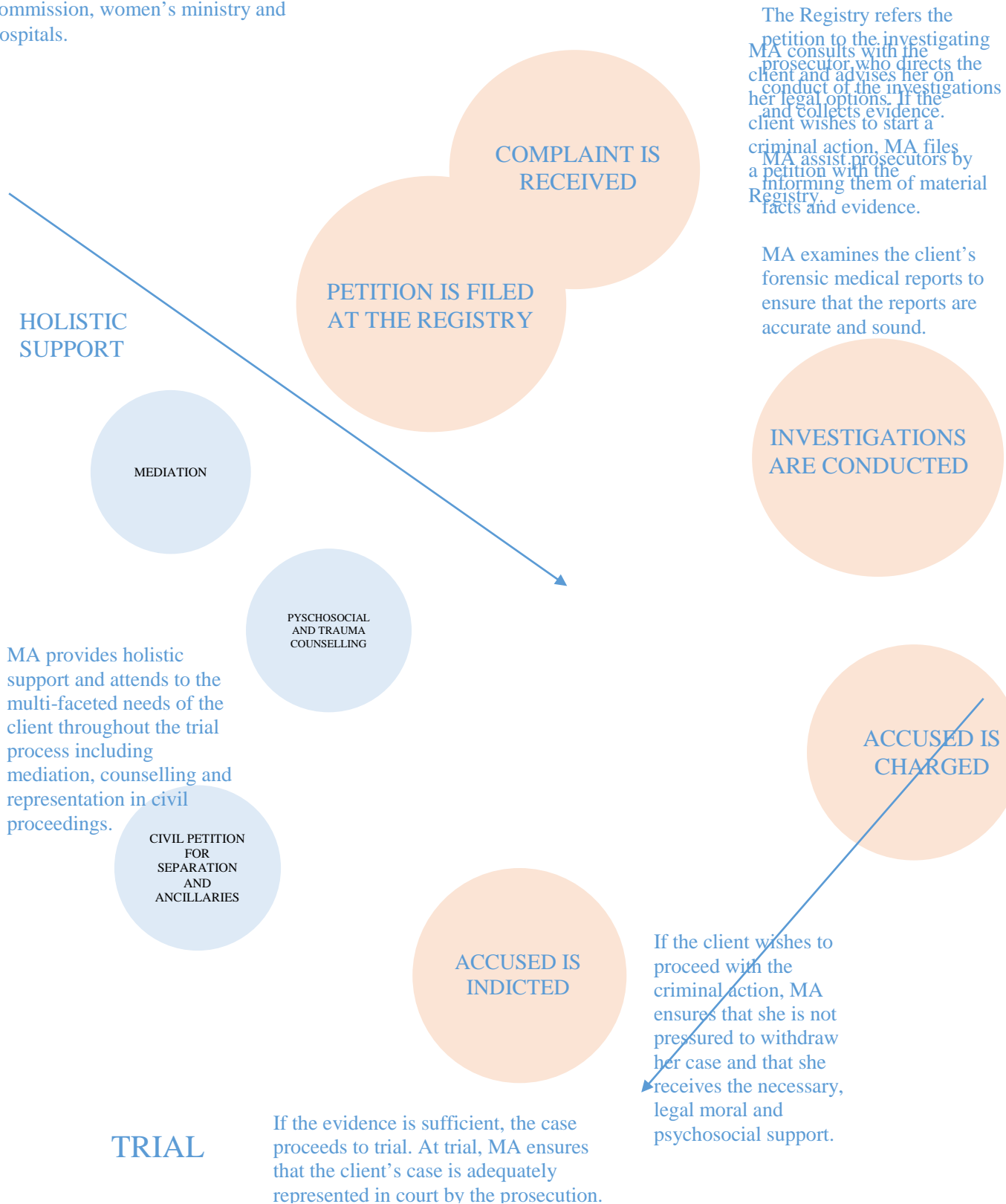
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⁵ Some cases have no outcome as the perpetrator is still at large or the case is still ongoing.

C. MEDICA AFGHANISTAN'S ROLE IN THE PROSECUTION PROCESS (PRETRIAL)

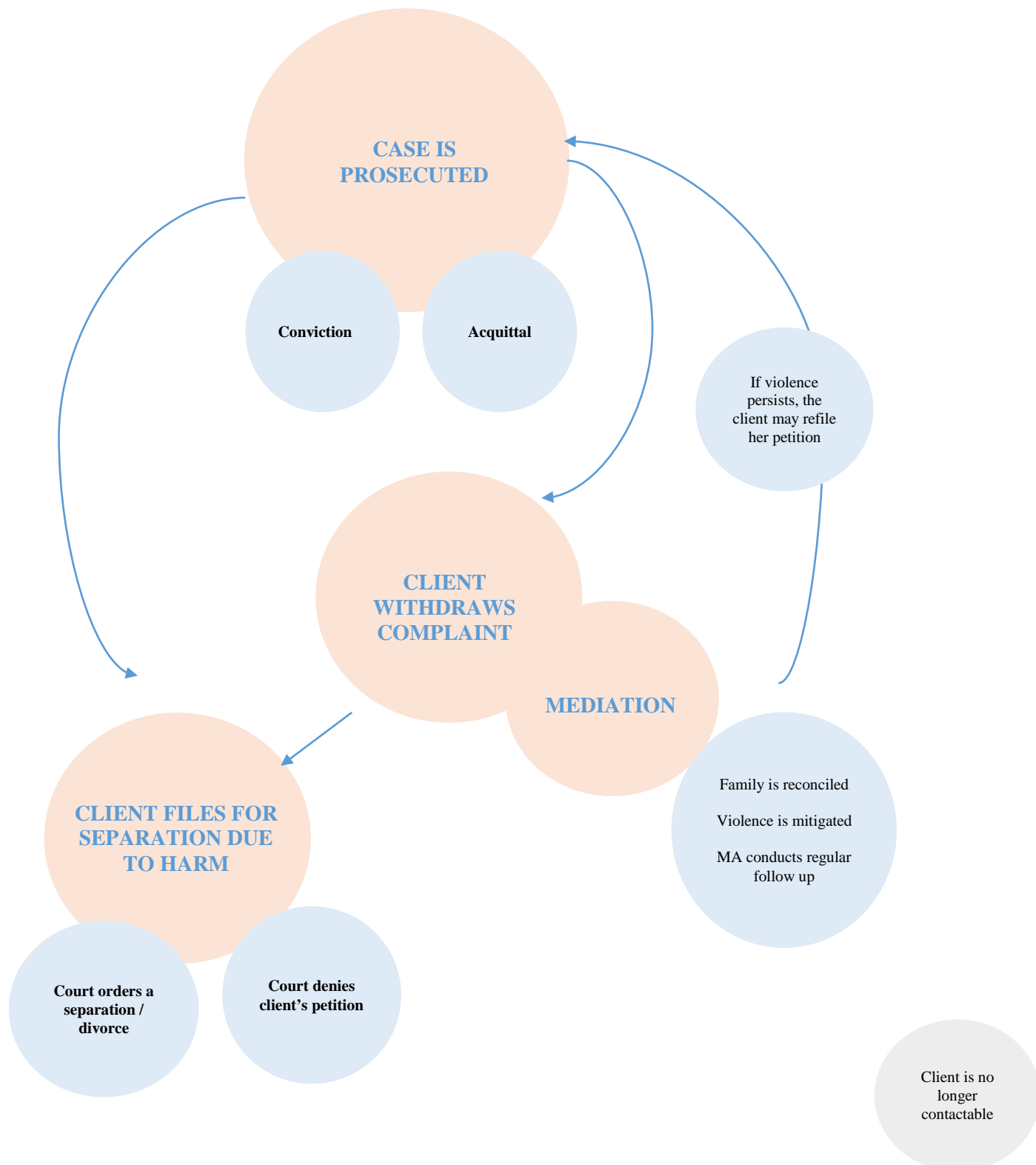
Below is a diagram which illustrates Medica Afghanistan's role at each stage of the pretrial process.

MA receives referrals from the police, EAW department, human rights commission, women's ministry and hospitals.



D. CASE OUTCOMES

The diagram below illustrates the various outcomes to a case. The lawyers do not necessarily push for prosecution in all cases of violence. They take their cue on how to proceed forward with a case based on the client's wishes and instructions (known as the "client-centered approach").



E. ANALYSIS OF THE STATISTICS

The key findings of Medica Afghanistan’s prosecution caseload (93 cases) are as follows:

- (a) About 59% of their prosecution cases were cases of battery and laceration (55 cases), followed by:
 - Abuse, humiliation and intimidation (10%)
 - Murder (8%)
 - Forced suicide / self-immolation (5%)
 - Forced marriage (5%)
 - Harassment and persecution (4%)
 - Rape (3%)
 - Assault causing injury (2%)
 - Deprivation of inheritance (2%)
 - Underage marriage (2%)
 - Prevention of marriage (1%)
 - Others (7%)
- (b) About 42% of the above cases were withdrawn at some stage of the proceedings on the client’s motion pursuant to Article 39 of the EVAW law.
- (c) About 54% of the above cases were prosecuted to judgment, i.e. judgment was handed down by the court. In 96% of the said cases, the clients were found guilty, convicted and sentenced to serve time in prison (48 cases), i.e. a 52% conviction rate from the total caseload.

To compare the above statistics with the national average,

- (a) In 2016, the Research Institute of Women Peace and Security (“RIWPS”) reported that of 2958 cases registered with the prosecution in 8 provinces, only 27% of the cases (792 cases) were indicted and/or prosecuted. In Kabul, only 13% of the cases were indicted and/or prosecuted.
- (b) In 2014, the Ministry of Women’s Affairs (“MOWA”) reported that of 1638 cases registered with the prosecution in 32 provinces, only 18% of the cases were referred to the court. Of the cases which were eventually prosecuted, less than 30% of them led to a conviction, i.e. an approx. 5.4 % overall conviction rate from the total caseload.
- (c) In 2013, the United Nations Mission in Afghanistan (“UNAMA”) reported that although authorities registered increasing reports of violence against women, prosecutions and convictions remained low, with most cases settled by mediation.⁶

⁶ Of concern, the report found that the overall number of criminal indictments filed by prosecutors in violence against women cases under all applicable laws decreased despite the rise in reported and registered incidents. The report highlighted

The national statistics above show that between 70% to 80% of crimes against women in Afghanistan are not indicted or referred to the courts. Indeed, a vast majority of crimes (barring felony crimes), are instead, mediated between parties and their respective families, mediation being the most preferred and commonly used method of resolving acts of violence against women.⁷

Medica Afghanistan’s success rate, i.e. rate of prosecution and conviction is higher than the national average.

| | Medica Afghanistan | MOWA Report |
|---|--------------------|--------------------|
| % of cases prosecuted | 54% | Approximately 18% |
| % of cases of the total caseload where a conviction was handed down | 52% | Approximately 5.4% |

This may be attributed to, *inter alia*, their relatively small caseload when compared to the number of cases reviewed by MOWA in their research throughout Afghanistan including provinces and districts where justice is less accessible. However, it is also quite likely that their success rate is due to the fact that when adequate counsel is provided to victims, there is less room for officials to sweep the case under the carpet, delay the case or encourage victims to withdraw their petition without due cause. There is also less room for corruption.

The question this raises is: what is the lawyer’s role in the prosecution process? At the end of the day, we must remember that the prosecution acts on behalf of and represents the state, not the victim and both may have very different interests. The state’s indicators of justice can be quite different to the victim’s indicators of justice, in particular, if we choose to see justice beyond ‘conviction rates’. To give a brief example, a victim who experiences multiple occasions of insults and humiliation by the police, prosecution and court, may not feel that justice was done even if her perpetrator was found guilty and sentenced to prison.

A recent term which has emerged globally is “victim’s justice”. “Victim’s justice” is a measure of justice by how a victim experiences the trial process, i.e. the availability of emotional, psychosocial and financial support, the victim’s ability to exercise agency, the protections which are afforded to her for her safety, the opportunity to tell her story and to be heard et al. It is a failure of “victim’s justice” if a large majority of cases are withdrawn from the criminal process as a result of threats, fear, pressure or a negative experience with the process.

Medica Afghanistan’s role is to achieve victim’s justice as far as it is reasonably possible. The lawyers serve as a check-and-balance and a watch dog *vis a vis* the State to ensure that justice is really done for the victims. The lawyers serve this role by assisting in investigations, following up

that of an estimated 1,669 incidents of violence against women registered with Departments of Women’s Affairs and police and prosecutors in the 16 provinces, only 109 cases (i.e. 7% per cent) went through a judicial process using the EVAW law.

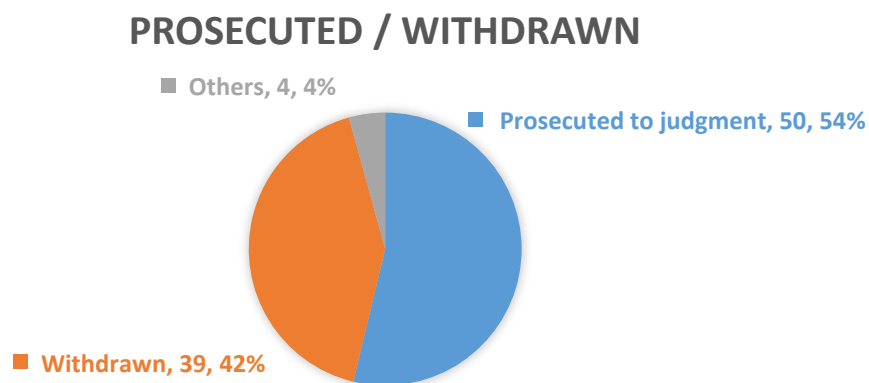
⁷ Note that where felony crimes are involved such as, rape, murder, burning, forced suicide and recording and publishing the identity of the victim, the crime must be investigated and prosecuted. Mediation between parties is not an option.

with the summons for arrest, pushing for indictments to be issued and providing support to clients who wish to see their case through to judgment.

The above statistics demonstrate that once an indictment is issued against a defendant, the chances of conviction is high. In their case, the average conviction rate is 96% of the cases which proceed to trial or 52% of the total caseload. What this tells us is that it is during the pretrial period, namely the investigations stage, where a case is made. Poor investigations, for instance, can prejudice the most deserving of cases. Once a case has entered trial, there is not much more that can be done to influence the court's decision, apart from good trial advocacy.

Hence, in the next section of the report, we will take a closer look at their pre-trial work, best practices, challenges and recommendations moving forward.

ISSUE 1: WITHDRAWAL OF PETITION



In 42% of Medica Afghanistan's prosecution cases, clients withdrew their petition pursuant to Article 39 of the EAW law. Once Article 39 is invoked, the prosecution has no choice but to drop the case (barring felony offences). Article 63 of the Criminal Procedure Code ("CPC") read with Article 71 of the same reinforces Article 39. The article states that in the event the alleged accused is a member of the family the prosecutor cannot initiate a criminal case without the victim's written petition.

Victims may withdraw on their own accord. But oftentimes, victims face pressure to withdraw from all sides. The lawyers recounted instances when clients had been coerced by authorities of the EAW department to return home with their complaint. In such cases, victims who are unaware of their rights and who are not represented by adequate counsel are likely to cave in to such pressure and withdraw their claim. Victims need moral support and reassurance by their lawyers as the justice system is slow, complex and can be a disempowering experience.

The lawyers frequently object to investigating prosecutors when they pressure or encourage their clients to withdraw their criminal action without due cause. On occasion, the lawyers will even take up the issue with the Chief Prosecutor of the EAW Department. In a few rare cases, the lawyers were successful in overcoming corruption when they had combined litigation with high-level

advocacy outside court. However, when people in power are involved in a case, it is almost impossible to overcome corruption and success is few and far in between.

Case study from Kabul

In Kabul, a client sought to initiate criminal action against her husband for committing forced anal intercourse with her. She also filed a separate civil petition for separation on the basis of harm. The prosecutor urged her to drop her criminal action since her civil petition was already underway. The lawyer in charge objected to the prosecutor on the basis that a crime under the EVAW law and penal law had been committed and the accused should be punished accordingly. Sexual crimes committed by husbands against their wives are not treated as real crimes in Afghanistan but “things that happen in marriage”. As such, the prosecutor did not consider the seriousness of the harm suffered by the client as a result of the act. The lawyer argued that the fact that the act was committed against a wife does not diminish the criminal nature of the act and severity of the harm caused. Anal intercourse was a crime regardless of whether the victim is a wife. The lawyer emphasized to the prosecutor that punishment will also deter the accused from committing forced anal intercourse against other women in the future. The case was brought to trial and he was convicted for 3 years. If the client was not represented by MA, it is likely that her ex-husband would not have been brought to justice.

RECOMMENDATIONS

1. Most cases of violence against women in Afghanistan occur within families and most clients do not want their family members to go to prison. In fact, many women use the prosecution process without intending to initiate criminal action or see it through. A good majority of them use the prosecution process as a cry for external help to stop the violence and/or to leverage their bargaining position with their families, which is legitimate and effective in their own right. When some of their objectives have been met and the violence has decreased or stopped, they then withdraw from the process altogether.
2. In the event the client expresses that this is indeed her intention, lawyers can plan the

case around that intention and leverage the client's position when negotiating with the accused. These negotiations can conclude with a mediation/reconciliation agreement (as per their present mediation practice) OR a strict settlement agreement paired with a protection order depending on the severity of the violence and risk of recurrence [see Issue 9, recommendations (2) to (4) on settlement agreements in the section below].

3. In the event the client has suffered severe and recurring violence and mediation-reconciliation would be unfruitful, lawyers can advise clients of an additional legal option pursuant to Articles 204 and 205 of the CPC, i.e. rather than withdraw from the case altogether, allow the case to proceed to trial or judgment and subsequently give timely notice to all parties and the court that the client is agreeable to the suspension of the prosecution or verdict conditionally for 1 or 3 years respectively, depending on the crime. A conditional suspension means that in the event the accused commits a new crime during the suspension period, he shall be prosecuted for both crimes.

With a conditional suspension, the client's wishes not to cause her abuser to be punished would be respected and at the same time, the abuser is released under the threat of future prosecution should he commit further violence against the client. A conditional suspension sends a firm warning to a defendant that the state will take action if he does not amend his ways.

4. At the same time, lawyers can consider applying for a protection order (see Issue 3 in the section below on safety of clients).
5. Note that there is no guarantee of conditional suspension as the discretion to suspend lies with the prosecution and /or court. Lawyers can fish for the prosecutor's intentions beforehand to have a sense of the likelihood that he would support the client's request for suspension.

The above case study is exemplary of the importance of having good counsel. Having good counsel mitigates the insurmountable pressure on clients to withdraw from a criminal action. When lawyers advise their clients of their rights, legal options and risks; when lawyers advocate for those rights, this gives the clients assurance that they can and should sustain their petition, if they wish to see their case through to judgment.

ISSUE 2: RELATIONSHIP WITH THE PROSECUTION OFFICE

The recent Criminal Procedure Code ("CPC") expanded the role of legal advisors in the prosecution process. However, the nature of that role and the extent to which legal advisors could intervene in the prosecution process was not clearly delineated or explained.

The relationship between Medica Afghanistan and the prosecution office is vital to their mission. They rely on the prosecution's goodwill, competence and diligence to prosecute their clients' cases seriously.

The case study shared by a lawyer from Herat below, is exemplary of the same.

Case study from Herat

In Herat, a family sought to bring justice for the rape and murder of their daughter. The perpetrator was an influential man and the case was recorded by the police as ‘death by car accident’. The lawyer in charge advocated around the case and made repeated requests to the prosecution and court to reexamine the case file and pointed at material mistakes in the investigation of the case. She was successful in getting the case sent back for reinvestigation. After the second investigation, it was found that the deceased was indeed raped and murdered. The case proceeded to trial on those charges.

When asked what are some of the successful ways the lawyers have built rapport with the prosecution office, the lawyers shared some interesting practices.

- (a) The lawyers in Herat have seen considerable progress in their relationship with the prosecution in the last 2 years. They advise all lawyers to do the following:
- Give prosecutors their due respect and refer to them for advice
 - Toe the line and refrain from significant interference into their work
 - Send letters of appreciation to the prosecution and the court when a case has been successfully prosecuted and concluded
 - Strive to be punctual at all meetings, and
 - It was also noted that training sessions, such as those organized by IDLO⁸, which are attended by both prosecutors and the lawyers are opportunities to share perspective, built rapport and understand each other’s roles in the justice system.
- (b) Lawyers in Balkh shared that when new prosecutors are appointed, set up a meeting with them to congratulate them and share with them their work.
- (c) All lawyers stressed the importance of advocating for a clear protocol for the division of duties between prosecutor and legal advisor. Some prosecutors are of the opinion that the role of the legal advisor is only to give advice on civil matters which arise from the criminal action. Other prosecutors are willing to be flexible and open to their contributions.

RECOMMENDATIONS

1. Conduct a stakeholder mapping of the justice system, actors, decision-makers, advisors, trainers and funders. Know who they are, know what their mandate is and conduct litigation-based advocacy based on specific case needs as well as broader systemic changes which Medica Afghanistan seeks to see.
2. Send letters of appreciation to the prosecution office regularly. In the letters, commend the good conduct of the prosecutor in charge to encourage them. If possible, send a

⁸ International Development Law Organisation

copy of the letters to those higher up in rank who are in charge of work appraisal.

3. Request legal institutions and organizations to organize social events, or otherwise, dialogue and exchange to bring lawyers and prosecutors together. Such events are opportunities to build rapport and trust between members of the bar.

ISSUE 3: SAFETY OF CLIENTS

The Law

Article 6 of the CPC: Victim rights

Article 6(1)(2): Ensured safety.

Article 54 of the Guidelines to the CPC contains a list of protective orders the lawyers can apply to the court to ensure the safety of their clients.

Victims have the right to be protected from harm under the CPC. There have been cases when clients have asked the prosecution for protection and the prosecution have responded in the negative, in one case replying rhetorically “so what do you want me to do?” In such cases, the lawyers cite the relevant provisions of the EVAW law and Article 6 of the CPC, emphasizing to the prosecution that it is the right of victims to request for state protection. Unfortunately, those requests have not been adequately followed through. This may be in part due to the lack of state resources, poor follow up and unwillingness to interfere in ‘family disputes’.

The lawyers mitigate the incidence of violence through the organization’s mediation arm, especially in cases of domestic violence. They routinely check with the client whether her family supports her or otherwise, poses a risk to her safety. With the client’s consent and upon an assessment of the prospects of reconciliation, the lawyers may invite the client’s family to participate in a mediation-reconciliation session with a trained mediator. From the results, it is clear that a large majority of the mediation cases have mitigated and ended violence (during the 6 months of follow-up based on Medica Afghanistan’s database). This is extremely encouraging and goes to show the need for and benefits of an impartial and gender/ trauma-sensitive mediation approach which they have adopted.

RECOMMENDATIONS

1. To date, the lawyers have not yet taken out applications for protection orders pursuant to Article 6(1)(2) of the CPC.
2. Protection orders are essentially court-ordered warnings against an abuser to stop committing violence, failing which specific consequences kick in.
3. The present prosecution process does not give victims much of a choice, i.e. either the

victim agrees to prosecute and punish her abusive spouse/ family member or otherwise, withdraw the criminal action and bear with the violence. This is hardly a choice and in most cases victims choose not to put their family members in prison. A protection order is not a perfect solution and enforceability remains an issue. However, it is a practical middle ground remedy. Oftentimes, all that a victim wants is not “criminal justice” but for someone to intervene to stop an abusive situation when it gets out of hand.⁹ A protection order may serve this function.

4. It is advised that lawyers attempt the following steps:

- (a) Assess all clients for ongoing violence and risk of future violence to determine the necessity of a protection order in cases of violence which cannot be mediated.

It should be the responsibility of the lawyers to a risk assessment of all clients. Whilst in severe cases, the risk of further violence may be easily discernible, in less severe cases or in cases where the injuries have healed, the risk of further violence may not be as apparent. It is also unlikely that a client will be able to know and appreciate her right to protection or whether, her case is one necessitating a protection order.

- (b) If a protection order is necessary, discuss the measures with the client. The experience globally is that protection orders can be empowering when victims participate in deciding which measures are necessary for their protection.

- (c) Draft a petition which details, *inter alia*, the following:
- ii. Details of past violence (nature, frequency and injuries caused)
 - iii. Specific measures which are reasonably necessary to protect her from the specific threats and risks posed to her
 - iv. The persons and officials who should be responsible for the said measures (authorities, members of the victim’s community and family)
 - v. Provision for maintenance (to ensure that she remains financially supported during the period of the protection order)

The extent to which protection orders achieve its objective will also depend on how the remedies are drafted by the lawyers. In the context of Afghanistan, some creativity may be necessary.

- (d) Check that the measures are reasonably necessary against the specific threats and risks posed to the client, i.e. do not include ‘everything under the sun’.
- (e) Check that the client approves the application and that she is asked whether the measures may result in further violence against her and/or cause an irreversible damage to her relationship with the accused.
- (f) File the application for protection pursuant to Article 6(1)(2) of the CPC read with Article 2(5), 2(6), 2(7) and 2(8) of the same. By virtue of Article 6(2) of the CPC, the

⁹ Based on author’s knowledge and experience

police, prosecutor and the courts are required to enforce the measures to ensure that the victim is safe.

5. **Lawyers are strongly advised to apply for protection orders sparingly. As a rule of thumb, refrain from applying for protection orders for every single case alleging violence. Apply for protection orders only when it is necessary and if the measures requested are reasonably necessary to protect the client from a specific harm. Measures should be specific and not general or otherwise the courts will not take future applications for protection orders seriously.**
6. Consult an external counsel on how to best assess a client's needs and draft prayers for the said application.
7. Further, it is worth noting the strategic advantage to the client's case if an application for a protection order is made before the substantive trial. During the protection order hearing, the defendant may be called to provide testimony and may inculpate himself. Such testimony may be admissible in a subsequent prosecution of the offence committed. The admissions can even be used to leverage the client's position if she decides to settle the matter out of court and on terms that a judge might otherwise not agree to.
8. Even in the event the client withdraws from the criminal action, the admissions made in the protection order hearings can be brought as evidence of a 'pattern of abuse' or prior bad acts in the event of future violence and prosecution.
9. On the other hand, if the client proceeds with the criminal action, a protection order may give her some degree of security.
10. A word of caution that in certain cases, protection orders may provoke the accused to commit further violence against the client. Globally, enforceability of protection orders also remains an issue.

ISSUE 4: ACCESS TO INFORMATION

The Law

Article 6(1)(5) of the CPC: The right of access to information concerning the proceedings.

Articles 163 of the CPC: Litigants shall be notified when an investigation has been completed and have the right to provide comments and make objections.

The lawyers shared that they usually have no issue accessing documents and information. A typical case file would usually have the following documents, depending on whether the case is withdrawn, concluded at Primary Court or appealed to the Secondary Court and Supreme Court:

- (a) Statement of the accused
- (b) Statement of the complainant
- (c) Letters of inquiry by the prosecutor
- (d) Photograph(s)
- (e) Forensic medical report(s)
- (f) Charge sheet
- (g) Indictment
- (h) Statement of withdrawal from the case (if any)
- (i) Primary Court Decision (on a slip) / full judgment
- (j) Grounds of appeal
- (k) Secondary Court Decision (on a slip) / full judgment
- (l) Grounds of Appeal
- (m) Supreme Court decision (on a slip)

Under Articles 239, 241 and 243 of the CPC, the courts are required to render a judgment with their reasons. However, sometimes the court administrators are reluctant to give the lawyers a copy of the full judgment unless a bribe is given. Some of the lawyers have overcome this by developing a good relationship with the court administrators.

RECOMMENDATIONS

1. Apply to the Court for the full judgment after the conclusion of every case, regardless of whether the client wishes to appeal. If the court administrators refuse to give lawyers a copy of the full judgment, follow up with an official higher up in rank, failing which, the lawyers should draft an official letter of request to the Supreme Court detailing:
 - (a) The number of times the lawyers have made requests for full judgments and the respective dates
 - (b) To whom the lawyers made the requests to
 - (c) What the responses were in verbatim
 - (d) Any further follow up which the lawyers had conducted.
2. Examine the judgment to check if the trial judge had considered extraneous evidence or reasons or had placed undue weight on one factor.
3. Conference once every 2 – 3 months to analyze the judgments for trends, progressive and critical viewpoints. Strategize how those viewpoints can be adopted and/or challenged in future submissions.

ISSUE 5: EVIDENCE

The Law

Article 19 of the CPC lists the forms of incriminating evidence.

A typical case file would have the following types of evidence:

- (a) Confession by the defendant (if any)
- (b) Eyewitness statements
- (c) Photographs of injuries, and
- (d) Forensic medical report.

The forensic medical report is the most critical piece of evidence. Judges accept them and rarely question or doubt the observations and diagnosis of medical experts. Without the forensic medical report, it is hard to make a case, even if the client has photographs of her injuries.

Physical injuries do fade and disappear within days of the crime. The lawyers urgently chase after the forensic medical reports and double check that all the injuries suffered by their clients are accurately reflected in the report. Lawyers have been active and insistent in this area of their work and will go so far as to speak to the Chief of the EVAW department who oversees the department prosecutors, to ensure that the client is sent for forensic examination before the injuries have healed and evidence compromised.

In the event a client has concluded a civil action for separation due to harm by the time of the criminal action, the lawyers will adduce the documents from the civil action in the criminal action to further support their claims.

It appears that the sole testimony of the client and/or eye witness will not be sufficient to make a case. It is not clear if there is an unspoken rule that the sole testimony of a victim or eyewitness, however credible, must be corroborated.

The case studies below show how lawyers chase after evidence to ensure that the prosecution will present the best possible case for their clients at trial.

Case studies from Kabul

A client suffered from multiple physical injuries as a result of violence committed against her, including a broken elbow. The forensic medical report observed that the client had suffered from eye and ear injuries but failed to mention that the client also had a broken elbow. The lawyer in charge informed the prosecutor of this omission and requested the prosecutor to send her for a medical reexamination. An updated report was sent back reflecting all her injuries accurately.

A client suffered injuries as a result of beating. The first forensic medical report indicated that “the beating was not serious”. The lawyer in charge found that the report did not reflect the severity of the client’s injuries and residual condition. As such, she requested the prosecutor to send the client back for a medical reexamination to correct the omissions in the first report.

Case study from Mazar-e-Sharif

A client was referred to MA by the provincial hospital. The client had been hospitalized after serious violence was committed against her. Violence had been committed against her and MA sent their colleague, a psychosocial counsellor, to provide her with on-bed counselling to treat her. The counsellor reported to the lawyer that the client was suffering from some form of post-traumatic stress disorder as a result of the violence. She was constantly in fear even when someone reached out to comfort her. The lawyer in charge sought to bring the client's psychological condition to the court's and prosecutor's attention. The lawyer requested the prosecutor to send a letter of inquiry to the hospital. The hospital referred to the counsellor's case records and sent a forensic medical report on her psychological injuries. The medical report was admitted at trial as evidence of violence by the accused against the client.

Case study from Herat

MA took up a murder case which was reported as death by consumption of alcohol. After reviewing the file and speaking to witnesses, the lawyer in charge became suspicious of the manner of death and requested that the deceased be sent to the forensics to sample the contents of her stomach. The sample was sent to Kabul for testing and the forensics in Kabul affirmed that she had died from consumption of a poisonous substance. The report was adduced as evidence at trial on charges of murder / forced suicide.

RECOMMENDATIONS

1. Examine the weight of the prosecution's evidence in comparison with evidence that may be brought by the defendant. It is advised that the lawyers approach the collection of evidence by asking the following questions:

- (a) What are the weaknesses in this case?
- (b) What further questions will the court have?
- (c) What other evidence can be introduced to address those weaknesses and questions?

On that basis, collect and prepare further evidence. This could be eyewitness statements, photographs and medical reports that may:

- (a) Support the client's case generally
- (b) Corroborate specific details of the client's case which bear on the material and mental elements of the crime
- (c) Explain inconsistencies or weaknesses in the client's case.

2. Pay caution to the overreliance of forensic medical reports as proof of a crime, particularly in rape cases. Consider the following scenarios, which are common responses to rape.

- A victim who surrenders to her rapist in the hope that by doing so, the rape would be done with as soon as possible.
- A victim who surrenders to her rapist without a struggle in order to avoid being

beaten.

- A victim who surrenders to her rapist out of pure shock, unconsciousness or passive dissociation.

The scenarios above show that not all rapes are resisted by force and struggle. Therefore, in all the above scenarios, the forensic medical report is likely to record absence of bruising etc. This may be damaging to the client's case and may insinuate that she may have lied about her rape. As such, caution must be paid to the overreliance on forensic medical reports in certain cases. Forensic medical reports may not always reveal how a crime was actually committed.

3. Lawyers should anticipate when a forensic medical report may end up damaging the client's case and prepare evidence to correct, counter and/or explain the client's case. In the rape scenarios aforementioned for instance, lawyers can obtain an expert psychological report to help the courts understand the client's behavioral response to the crime.

Such reports are also useful as it clarifies to the court why victims of certain offences behave and/or respond "irrationally". In domestic violence cases, such reports are useful in explaining social phenomena common in abusive relationships such as Stockholm syndrome, traumatic bonding, et al.

4. Lawyers are strongly advised to admit and use expert psychological evidence sparingly, i.e. exercise discretion by first examining why an expert psychological report is required for the particular case. **As a rule of thumb, such reports should not be used in all cases of violence and general reports should not be used at all. Psychological damage, unlike physical injuries, is largely invisible and as such, courts may find it hard to accept them on face value. Hence, an uncritical, general and blanket use of expert psychological reports can result in the courts not taking expert psychological evidence seriously in the future.**
5. It is advised that lawyers consult an external counsel on when to request for expert psychological reports, on what basis and what contents would be necessary for each specific case.
6. The admission and use of expert psychological reports as evidence at trial is a public record of the court's cognizance (and potentially appreciation) of the connection between violence against women and public health. Court records can be used as evidence to lobby the Ministry of Public Health and Ministry of Justice on specific and systemic changes sought by Medica Afghanistan in the future. This is an example of advocacy which uses litigation to generate specific outcomes for a broader public interest goal.

ISSUE 6: QUESTIONING OF VICTIMS

The Law

Article 36 of the CPC: Method of Questioning Witnesses

- (1) The witness's status in the community, age, minority, gender and psychological situation will be taken into consideration during questioning.
- (2) The prosecutor, defense attorney and court shall not interfere in the personal matters of the witness during questioning, unless it is necessary for collecting reasons and evidence.
- (3) Questioning the witness must not cause a psychological inconvenience to him/her.

Article 36 directly relates to the re-victimization of victims in the justice system. The lawyers shared that their clients are frequently insulted, humiliated and degraded especially when they are found to be somewhat to blame for the crime. Lawyers have on numerous occasions challenged authorities for their misconduct. They have also mitigated the effects of offensive questioning by helping their clients answer the prosecution's questions.

RECOMMENDATION

1. The above cases show trends of systemic violations being committed by the state.
2. It is strongly advised, moving forward, that the lawyers start collecting and systematically documenting evidence of the same – as a matter of procedure and as a matter of priority. If recorded systematically and in detail, such evidence can be used to one day hold the state accountable through public interest advocacy and litigation pursuant to Article 7(3) of the CPC read with Article 29 of EVAW law and Articles 3, 22, 24, 25, 29 and 30 of the Afghanistan Constitution.

ISSUE 7: PROTECTIVE MEASURES

The Law

Article 53 of the CPC: Protective measures

Article 53(3)(1): Testifying behind a nontransparent curtain.

Article 53(3)(5): Removing the accused person from the court room for a temporary period of time.

Article 54 of CPC: Witnesses That Will Receive Protective Measures

The prosecutor's office and the court shall protect the following witnesses:

- (1) A witness or a relative of a witness whose security is at risk due to threat, menace or any other similar action.
- (2) A witness that has suffered serious physical or psychological trauma as a result of the crime.
- (3) A witness who suffers from serious psychological conditions.
- (4) A child witness.
- (5) The security forces are required to protect the witnesses (...) until the removal of danger.

Article 55 of the CPC: Application for Protective Measures for Witnesses

The application shall be submitted to the prosecution office and court in a sealed envelope. Both the prosecutor's office and court shall review the application and make a decision in their relevant areas. Disclosure of this information to others is forbidden.

RECOMMENDATIONS

1. With the exception of the lawyers in Balkh, most of the lawyers have not applied for protective measures for their clients to testify behind a screen at trial. For cases such as rape, forced prostitution et al, protective measures should be routinely applied as a matter of procedure to mitigate re-victimization of victims, if they so choose.
2. The application can be made pursuant to Articles 53, 54 and 55 of the CPC.
3. **Lawyers are advised not to make general applications for protective measures without due cause. It will be damaging to the client's case and can result in the courts not taking future requests for protective measures seriously.**

ISSUE 8: CLAIM FOR COMPENSATION

The Law

Article 189 of the CPC: Filing Private Right Claim

(1) A person who sustains a loss due to a crime can file a claim for compensation together with the criminal case before the primary court that is proceeding with the criminal case.

Read with Article 6(1)(4): Request for compensation in accordance with the provisions of the law.

RECOMMENDATIONS

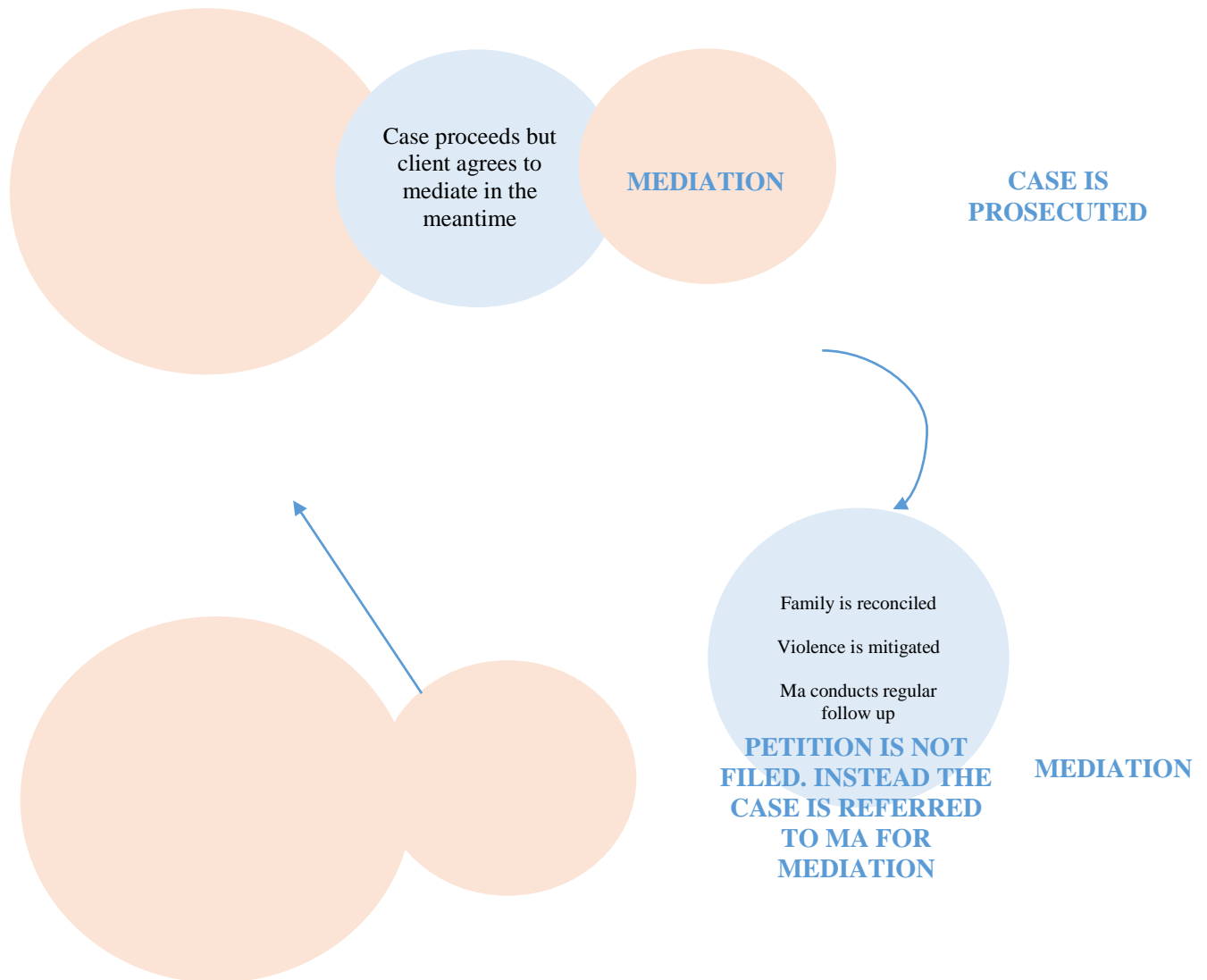
1. All clients who have suffered violence can claim for compensation for pain and suffering, loss and expense.
2. Presently, the lawyers do not file claims for compensation as a matter of procedure.
3. A compensation claim can be filed pursuant to Article 189 of the CPC read with Article 6(1)(4) of the same. A compensation claim is not dependent on a criminal action. As such, withdrawal from a criminal action does not extinguish the client's right to compensation.
4. In compensation cases where the client has suffered personal injury, forensic medical and psychological reports are crucial to prove the following:
 - (a) The injuries and severity of each injury
 - (b) The residual condition of the client after the injuries have healed
 - (c) The impact of the injuries on the client's ability to care for her children
 - (d) The impact of the injuries on the client's ability to work and earn a living
 - (e) The number of days she could not work as a result of her injuries
 - (f) The future treatment she will require
 - (g) The duration and cost of the said treatment etc.
 - (h) The number of days of medical leave she will require to recover from future treatment and be unable to work
5. Quantifying a compensation claim is a specialist subject area. Lawyers have been given a precedent to use and should consult with external counsel when filing the same. **A general and blanket claim for compensation will be damaging to the client's case and can result in the courts not taking future claims for compensation seriously.**
6. Below is an example which shows the different heads of claim for compensation. Since a recent workshop with the lawyers, one of lawyers in Kabul has started collecting evidence to start a claim for compensation. It will be Medica Afghanistan's first claim for compensation under the CPC 2014 and EVAW and it is worth keeping an eye on the lessons learned from this experience.

SPECIAL DAMAGES

| | |
|--|---|
| <p>(a) Medical expenses</p> <ul style="list-style-type: none"> - Treatment - Surgery - Medication - Disposables (plaster, bandage etc) - Equipment (walking stick, wrist guards) | <p>Obtain receipts from the hospital and private clinics</p> |
| <p>(b) Transportation expenses to seek treatment (e.g. 100 Afs per return trip x 10 trips)</p> | <p>If it is possible to obtain receipts, do so. If not, check the medical report for dates of the client's treatment/surgery/visits and claim for reasonable taxi expenses on those dates.</p> |
| <p>(c) Future medical and transportation expenses</p> | <p>Lawyers should draft questions to the hospital in relation to any future medical treatment the client may need, the cost of future medical treatment, and the number of visits for the treatment and follow-up (if any).</p> |
| <p>(d) Transportation expenses to attend at the prosecution's office and trial (e.g. 100 Afs per return trip x 10 trips)</p> | <p>If it is possible to obtain receipts, do so. If not, lawyers should keep a record on the number of visits made by the client.</p> |
| <p>(e) Loss of income</p> <ul style="list-style-type: none"> - From date of injury to date of discharge from hospitalisation / treatment - Recovery period - Follow up treatment - Counselling - To attend at prosecution/ lawyer's office - To attend trial <p>(e.g. 200 Afs per day x 100 days)</p> | <p>Lawyers should draft questions to the hospital in relation to the dates the client sought medical treatment and follow-up and the number of days the client would be on medical leave to recover.</p> <p>Lawyers should then draft questions to the employer to confirm that the client was absent from work for X amount of days and did not receive an income on those days.</p> |
| <p>(f) Future loss of income as a result of future medical treatment</p> <ul style="list-style-type: none"> - From date of treatment/hospitalisation to discharge - Recovery period - Follow up treatment - Counselling <p>(e.g. 200 Afs per day x 100 days)</p> | <p>Lawyers should draft questions to the hospital in relation to the likelihood of future medical treatment for each of her injuries; how many days approximately would the treatment/surgery require; and how many days will the victim need to recover to heal from the treatment (if at all).</p> <p>This should include psychological</p> |

| | |
|--|--|
| | counselling as psychological trauma is recognized as a form of injury under Article 3(2) of EVAW Law. |
| (h) Cost of repair of damaged property | Receipt of repairs Photograph of damaged property |
| (i) Loss of property | Photograph of damaged property |
| (j) Payment of maintenance and child support | |
| (k) Payment of house rent | |
| (l) Caregiver | |
| GENERAL DAMAGES (COMPENSATION FOR PAIN AND SUFFERING) | |
| (a) Stable head injury | <ul style="list-style-type: none"> - Expert medical report - Photographs (pre injury, post injury and at monthly intervals) <p>The calculation of general damages is slightly more complicated and should be reserved for future discussion.</p> |
| (b) Lower back contusion with chronic lower back pain | |
| (a) Superficial abrasions on left upper limb and right knee | |
| (d) Loss of earning capacity | |

ISSUE 9: MEDIATION IN PROSECUTION PROCESS



During the reporting period, Medica Afghanistan’s lawyers represented 73 clients in mediation cases involving beating, forced isolation and harassment and persecution in Kabul, Panjsher, Logar, Parwan, Ghazni and Bamyán. In 43 of the cases, mediation took place before a criminal petition was filed at the Registry and in all 73 cases, the families arrived at an agreement and the client did not initiate or proceed with a criminal action.

As an organization, Medica Afghanistan has taken a firm position against mediation as a sentencing alternative in serious criminal cases. It sets a wrong precedent and encourages impunity. Instead of abating violence, mediation in serious cases of violence is more likely to increase it. Indeed, UNAMA observed that mediation and informal dispute resolution failed to discourage and penalize

violence against women, and that agreements reached through mediation were often not observed through adequate follow-up, leading to further violence.¹⁰

Medica Afghanistan will only facilitate mediation in the following cases:

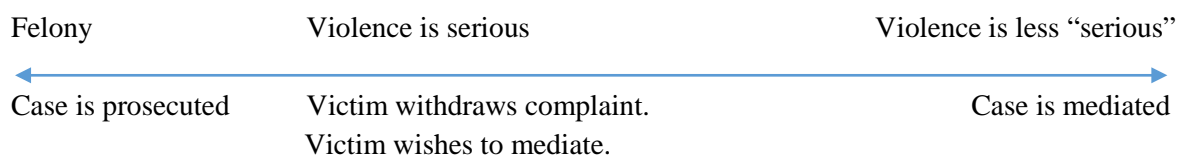
- When the client desires and requests for mediation
- When the violence alleged is verbal violence
- When the offender is a first-time offender
- Where the families of one or both parties demonstrate sincerity and/or interest in reconciliation.

The mediation sessions are attended and facilitated by the mediators, social workers and/or lawyers. During the mediation, the lawyers advise clients and their families women’s legal and Islamic rights under Islamic law, EVAW law and civil law to ensure that those rights are not waived or violated during the mediation process. Follow-up occurs at regular intervals depending on the mediator’s assessment of the case needs. It is usual for a mediator to follow up with a case monthly for up to 6 months.

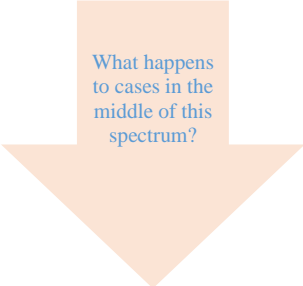
It appears that their mediation work has successfully reunited and reintegrated families. Elders of the village which attended mediation expressed their highest commendation and praise towards their mediator, even addressing her as ‘big respected sister’ and ‘chief’. In those cases, elders were called upon to serve as monitors and report the client’s situation to the mediator. Mediation sessions were opportunities to raise parties’ legal awareness of women’s rights and facilitate conversations about the consequential damage to the family and the extended community if violence were to persist. As a result of many successful mediation efforts, the elders have themselves referred other families to them for mediation, which is somewhat novel for Afghanistan.

RECOMMENDATIONS

1. Though in principle, Medica Afghanistan should not mediate cases of serious domestic violence, in practice it may be necessary if the client insists on remaining with her family. Take for example the situation where a serious case of violence (short of a felony) is referred to them for mediation and the victim decides not to initiate criminal action. In such cases, to adopt a stand as a matter of principle not to mediate the case may result in the case being referred to another less qualified mediator to the victim’s detriment.



¹⁰ OHCHR-UNAMA, ‘Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication’ (April 2015)



What happens
to cases in the
middle of this
spectrum?

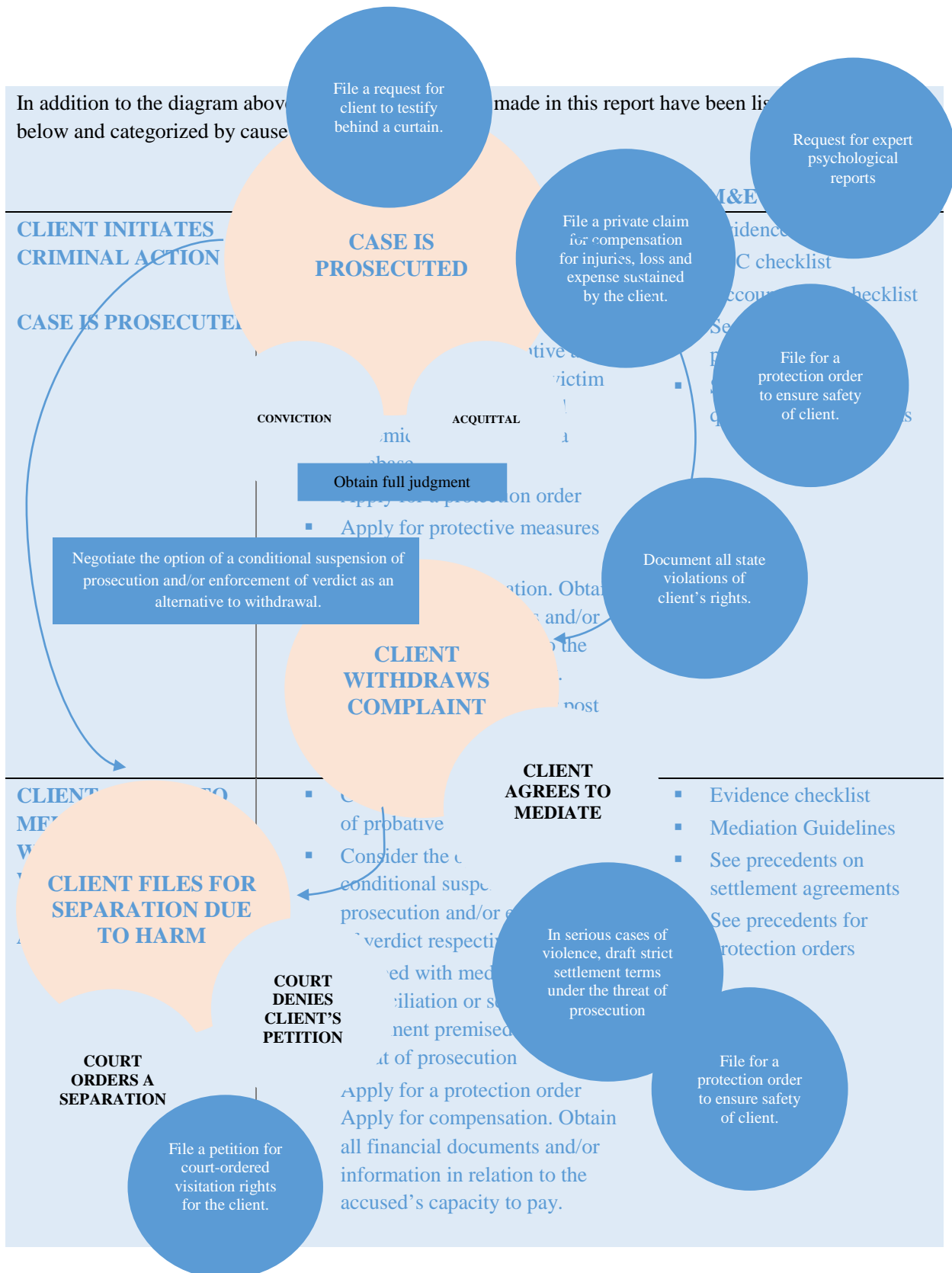
In serious cases of violence, will Medica Afghanistan provide some form of mediation to a client if she wishes to mediate?

If they refuse to mediate such cases, the client may be referred to a mediator who is not trauma/gender-sensitive.

2. Medica Afghanistan should adopt two mediation approaches: firstly, mediation-reconciliation (which they presently use) and secondly, mediation premised on the threat of prosecution (for serious cases of violence). A mediation premised on the threat of prosecution is one where the lawyer builds evidence against the accused in order to obtain his agreement to settle on terms which are for the client's best interest and safety, in exchange for her agreement not to initiate criminal action.
3. The settlement agreement may also contain a mix of terms and conditions pertaining to the client's safety, home and means of living.
4. Lawyers can also make an offer to the accused that the client will agree not to pursue criminal action against him, in exchange for his minimal admission to the facts of the crime in order to obtain a protection order from the court. It is a good strategy to pair the settlement agreement with a protection order. Whilst the settlement agreement is only binding on the client and her abuser (basic contract law principle) an order of court on the other hand, can be addressed to and bind multiple persons.
5. Consult an external counsel on drafting settlement agreements such as the abovementioned.

F. TURNING RECOMMENDATIONS INTO A REALITY

The dark blue circles in the diagram below represent key recommendations in this report. The diagram below sets out at which stage of the proceedings the said recommendations apply.



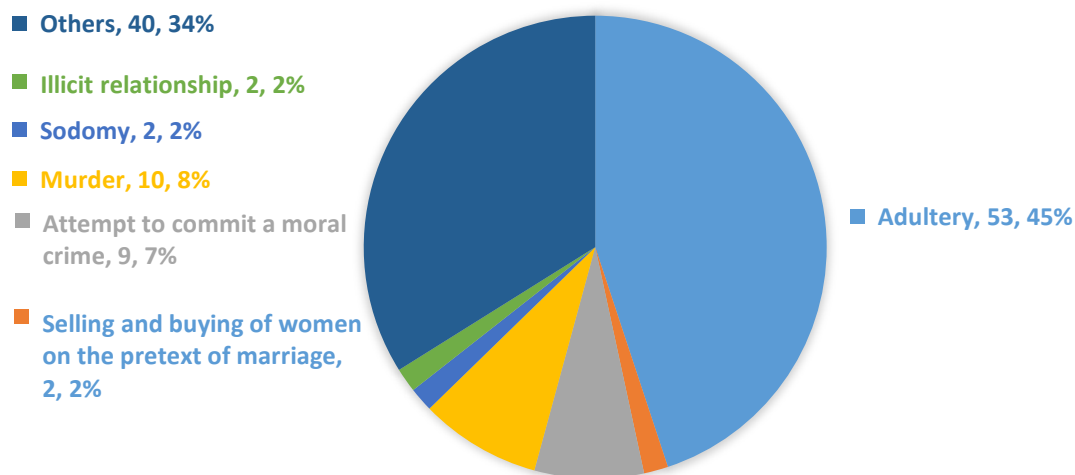
| | | |
|---------------------------------------|--|--|
| CLIENT CANNOT BE CONTACTED | <ul style="list-style-type: none"> No substantive guidelines at this stage. | <ul style="list-style-type: none"> Critical for future research and discussion. |
| CASE IS PRESERVED OR ARCHIVED/ | <ul style="list-style-type: none"> Follow up with victims and prosecution In cases of felony or serious misdemeanors, hold advocacy meetings | |

SECTION 5: DEFENCE PRACTICE

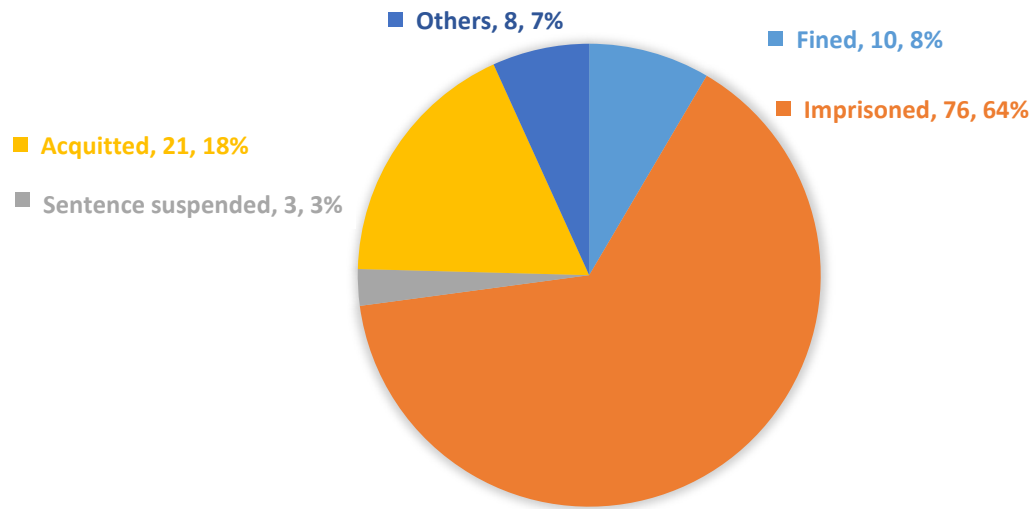
A. SUMMARY OF CASES AND OUTCOMES

In 2014 and 2015, Medica Afghanistan’s lawyers represented approximately 118 women and girls accused of crimes in Kabul, Herat and Balkh. Of the said cases, 75% of the clients were prosecuted and convicted and 18% of the clients were acquitted.

TYPES OF CASES (118 CASES)



CASE OUTCOME

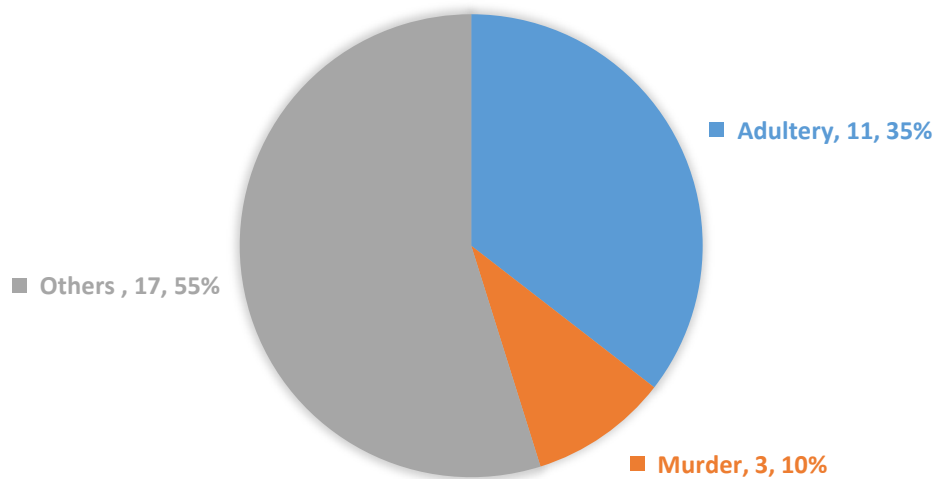


B. BREAKDOWN OF CASES BY PROVINCE

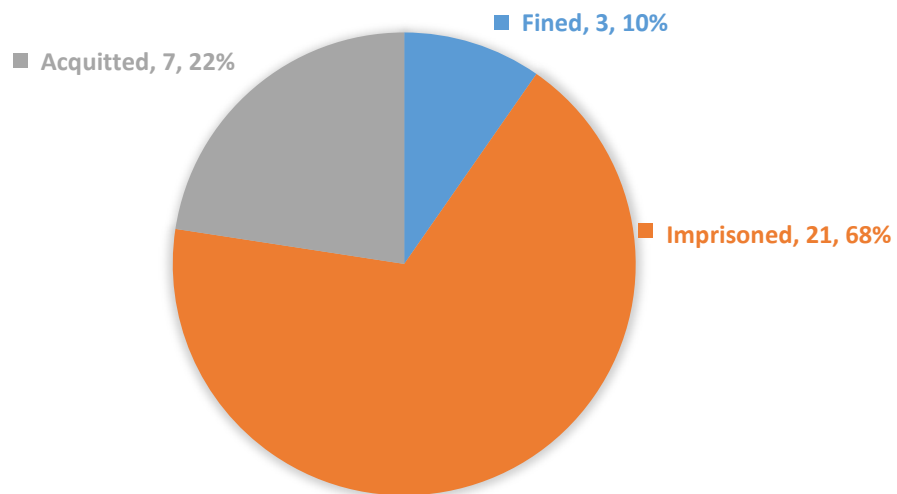
KABUL DEFENCE CASELOAD

Over the reporting period, the lawyers represented 31 women offenders in Kabul. 68% of them (21 women) were convicted and imprisoned.

TYPES OF CASES (31 CASES)



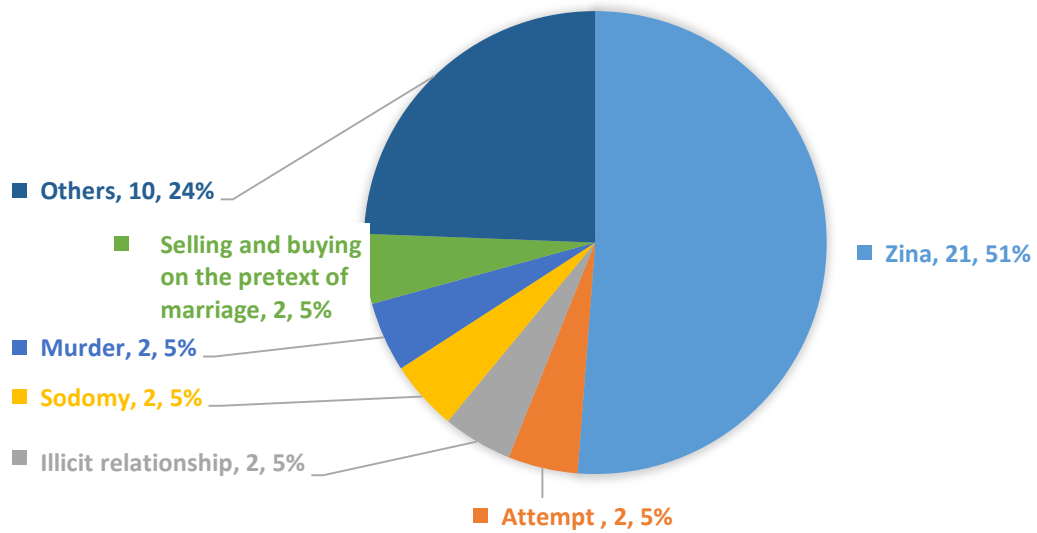
CASE OUTCOME



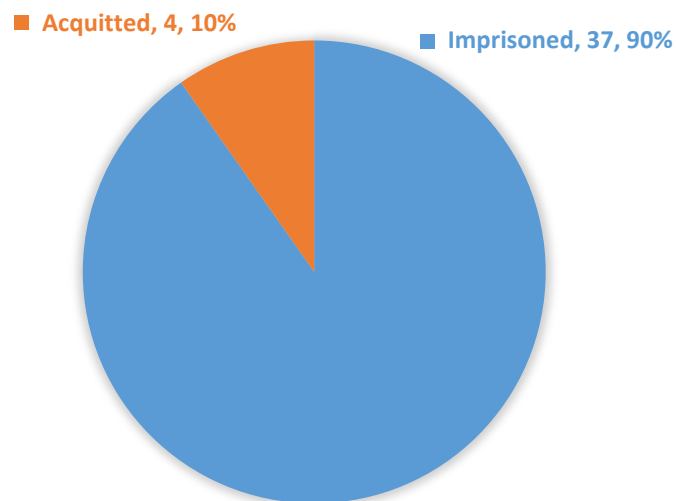
HERAT DEFENCE CASELOAD

Over the reporting period, the lawyers represented 41 women offenders in Herat. 90% of them (37 women) were convicted and imprisoned.

TYPES OF CASES (41 CASES)



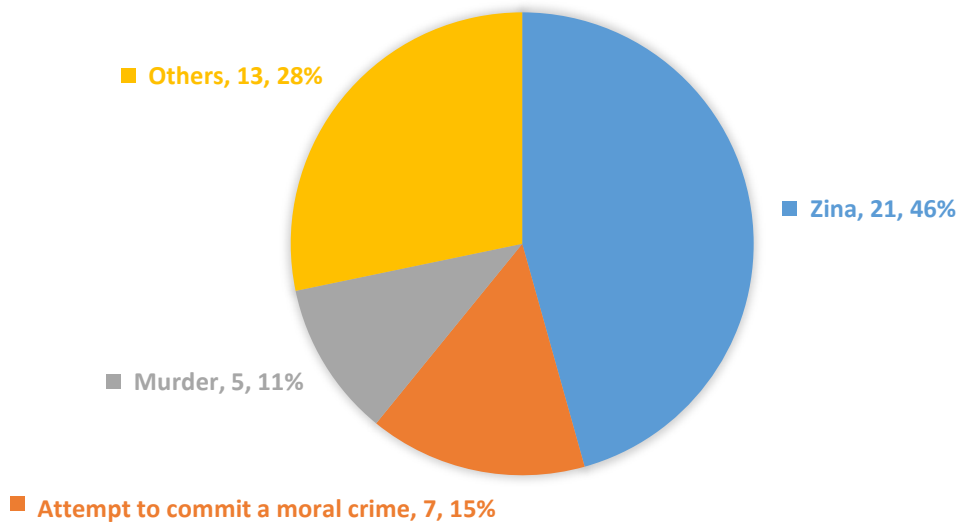
CASE OUTCOME



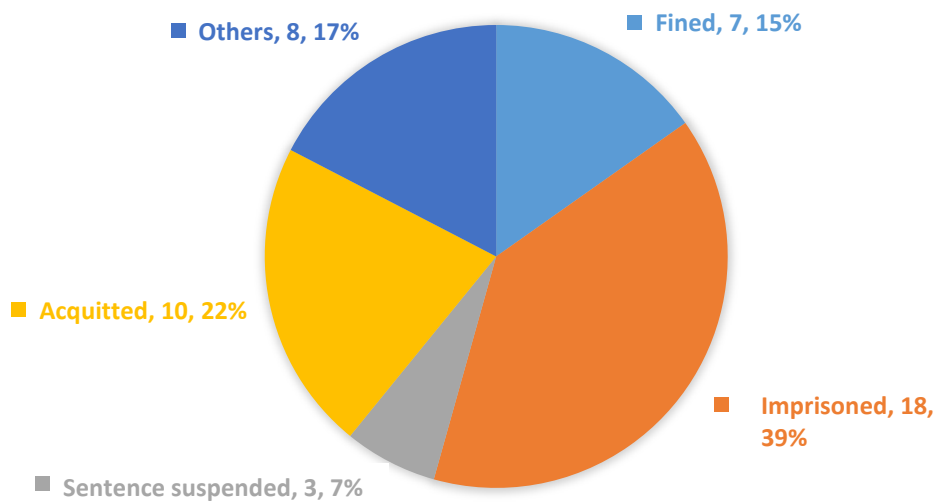
BALKH DEFENCE CASELOAD

Over the reporting period, the lawyers represented 46 women offenders in Balkh. 39% of them (18 women) were convicted and imprisoned.

TYPES OF CASES (46 CASES)



CASE OUTCOME



C. ANALYSIS OF THE STATISTICS

The key findings from Medica Afghanistan's defence caseload (118 cases) are as follows:

- (a) About 56% of their defence clients (66 clients) were charged with adultery, elopement, sodomy and illicit relationship ("moral crimes").
 - i. In 3 of the said cases, the client had eloped to flee from an abusive situation and/or forced marriage but was charged. One client was released. The other two clients were sentenced to 2 years' imprisonment and 5 years and 6 months' imprisonment respectively.
 - ii. In 17 of the said cases (26% of the moral crimes cases), the clients had alleged that they had been raped. They were sentenced to between 1 year and 6 months to 2 years and 6 months' imprisonment and in one case, the client was sentenced to 16 years' imprisonment. In only one case, the judge cited Article 17 of the ERAW law (on rape) and acquitted the client.
 - iii. About 7% of their defence clients were charged with 'attempt to commit' one or more moral crimes.
 - iv. In a majority of the above cases, the lawyers pursued their client's innocence all the way up to the Supreme Court. In court, they argued that the cases were brought on the basis of dubious accusations of immorality by men who wanted to avoid charges of rape or to protect themselves from being prosecuted for forced prostitution.
 - v. In most cases, the key evidence incriminating her was her apparent confession to the crime.
 - vi. There were cases of adultery where the client and the co-defendant professed to be lovers and the courts were inclined to release them if they agreed to get married.
- (b) It was noted that about 44% of their clients were charged with other offences such as murder, robbery, drinking, smuggling of drugs, forced immolation, selling and buying of women on the pretext of marriage and battery and laceration et al. Lawyers noted that most of these clients had themselves suffered from some form of prior or ongoing violence in their lives. Where guilt was established, courts paid little to no regard to the violence they had suffered at sentencing stage (with the exception in some cases where the client was a juvenile offender).
- (c) Overall, 64% of their clients were convicted and imprisoned. 8% were subject to a fine and/or released. Interestingly in 3% of the cases in Balkh, the sentence was suspended and it is worth looking into the court's reasons behind this and upon whose motion was suspension considered.
- (d) Clients were acquitted in only 18% of the cases (other outcomes: 7%).

The high conviction rate in the defence caseload may be attributed to a number of reasons. The client may have actually committed the crime in question. In moral crimes cases, the lawyers shared that the client was coerced to confess. The case study below is exemplary.

A 24-year-old client who had divorced her abusive husband was compelled to return to her natal home. Her uncle decided to sell her for 50,000 Afghanis to another man who also abused and beat her. As the situation was unbearable, she fled her home and sought refuge at a friend's house. The police subsequently arrested her for having an illegal relationship and attempting to commit zina. Though MA submitted that she had fled home as a result of domestic violence, the primary court sentenced her to one-year imprisonment. The sentence was affirmed by the appellate and Supreme Court. The lawyer was able to obtain her release after serving 8 months in prison.

Case studies

The lawyers also shared some successful case studies.

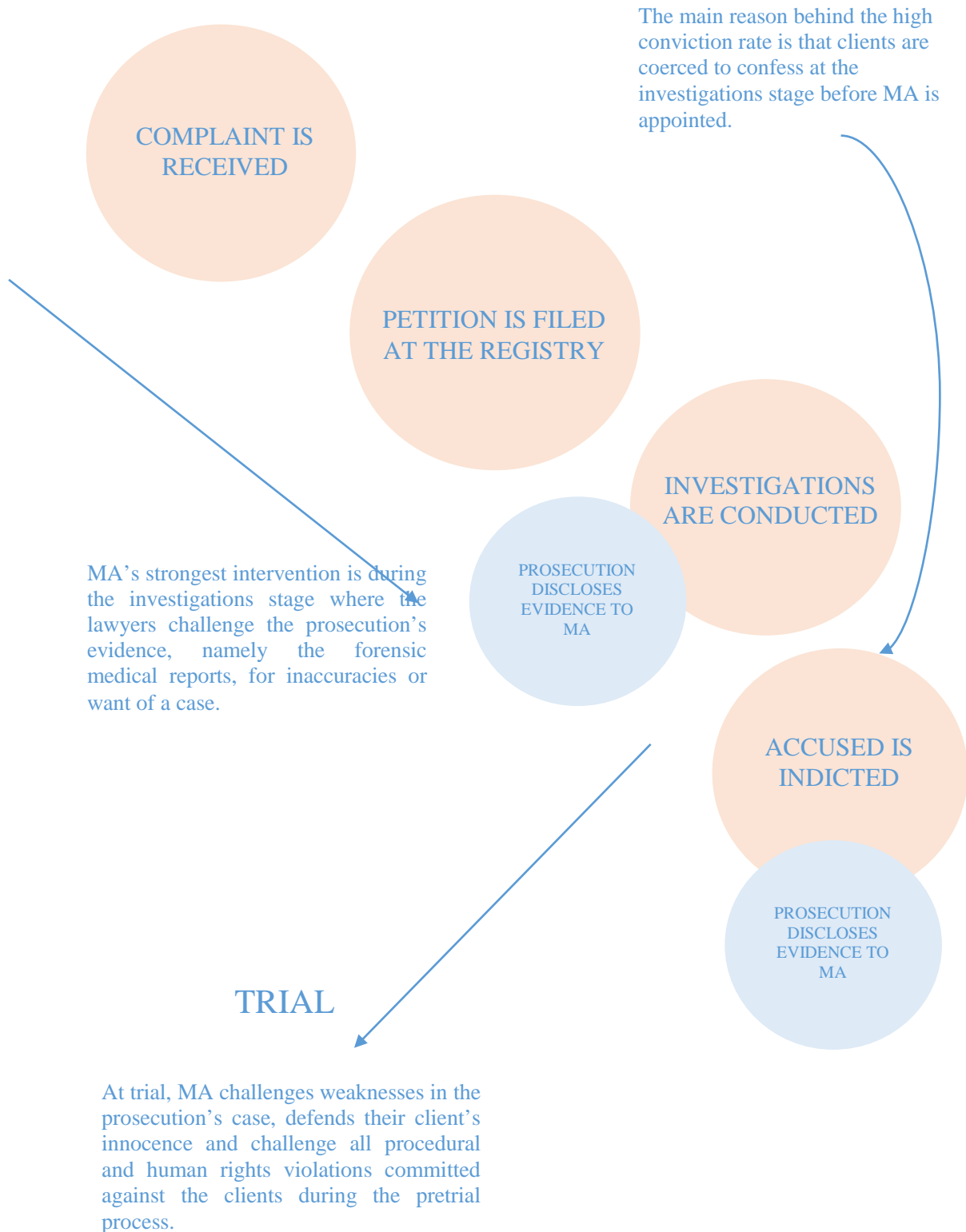
MA represented a 24-year-old woman who had been forced into marriage. She had been raped by her husband repeatedly and under the threat of killing her and her child, her husband prostituted her to others. Subsequently, she was arrested for adultery. MA defended her case at trial and obtained an acquittal by the primary court pursuant to Article 17 of the EVAW law and Article 25 of the Afghan Constitution. Her husband was sentenced to a term of 16 years in prison and the defendant who had engaged in forced prostitution against her will, was sentenced to a term of 8 years. The client is now seeking refuge at a shelter and is about to initiate divorce proceedings.

A juvenile client was arrested for consumption of drugs and for running away from home. At trial, the MA lawyer in charge appealed to the judge's emotion, detailing her client's rough family history and dysfunctional background. In particular, the lawyer pointed out that her client's father and stepmother were both narcotic users upon which the court requested the client's father to attend the hearing. After reprimanding the father, the lawyer appealed to the court's sympathy stating that her client was still a student, an imprisonment would only cause more disruption to her studies and that it would be in her best interest to return home. Finally, the court acquitted her of the charges. Upon appeal, the secondary court affirmed the acquittal.

We will now take a look at Medica Afghanistan's defence practice pretrial: their best practices, challenges and recommendations moving forward.

D. MEDICA AFGHANISTAN'S ROLE IN THE DEFENCE PROCESS

Below is a diagram which illustrates their role at each stage of the defence process.



ISSUE 1: ARBITRARY ARREST AND/OR DETENTION

The Law

Article 99: Legitimacy of Detention

Read with Article 7(2) of CPC: Immunity from arbitrary arrest or detention and the right to receive compensation for any loss in accordance with the provisions of this law.

Article 21 of CPC: Inadmissibility of Evidence and Documents

(1) The obtained evidence which is inadmissible due to violating the provisions of this law or other enforced laws shall be taken out of the file and stamped. The evidence and documents shall be maintained separately from other evidence and documents.

(2) In all stages of the case proceedings, the prosecutor's office and court shall ensure the existence and lack of existence of evidence and documents set forth in paragraph (1) of this article.

The lawyers shared cases where their clients were arbitrarily arrested and/or detained contrary to Article 99 of the CPC, without a reasonable basis for suspicion and without being informed of the charges they were accused of committing. In such cases, lawyers have raised the issue at trial though the courts seldom take their objections seriously.

RECOMMENDATIONS

1. In such cases, rather than raise the issue of illegality of arrest and/or detention only at trial, lawyers should immediately file for a hearing date on the legality of their client's detention, contrary to Article 99 of the CPC, as soon as they receive client's instructions that the arrest and/or detention was arbitrary (provided there is a reasonable basis for believing so).
2. Should a legality ruling be made in favour of their clients, the fruits of the illegal acts, i.e. incriminating statements taken from their clients may be rendered inadmissible at the substantive trial, pursuant to Article 21 of the CPC. In that case, lawyers should apply for an order that statements taken from their clients during the illegal arrest and/or detention be extracted from the file and stamped.
3. Lawyers should also make a claim for compensation for loss suffered by their clients as a result of an arbitrary arrest and/or detention pursuant to Article 7(2) of the CPC.
4. There is helpful jurisprudence globally on illegal arrest and detention which lawyers can research and use in their submissions on the legality of an arrest and detention.

ISSUE 2: INSULTS AND CONTEMPT BY THE POLICE, PROSECUTION AND JUDICIARY

The Law

Article 7(3) of the CPC: Immunity from insults, contempt, psychological and physical torture and any kind of inhumane behavior.

Read with Article 29 of EVAW law and Articles 3, 22, 24, 25, 29 and 30 of the Afghanistan Constitution.

The lawyers shared that their clients were often insulted and degraded by authorities during the investigations and trial process. Some of the insults were serious and raise concerns of sexual assault, harassment and battery being committed by the State against clients. Words and phrases such as “slut” or “only bad women come here” have been used against clients. There was one case where an authority threatened to hit a client with a teapot when she insisted to swear on the Holy Quran that she did not commit the crime. In another case, a client was punched in the ribs. In one case, the client was coerced to give in to sexual favours by an authority in exchange for a promise of release.

The lawyers have brought these incidents to the courts attention through their written and oral submissions at their client’s trial. In most cases, the courts have ignored these reports stating “so what do you want?” and pronouncing in one case that “the police is not the enemy”.

Further to this, the lawyers also reported unfair treatment, discrimination and insults levied against them as they are seen by the State to be defending promiscuity and immorality when they defend women accused of the same.

RECOMMENDATIONS

The above cases show a trend of systemic violations being committed by the state. It is strongly advised, moving forward, that the lawyers start collecting and systematically documenting evidence of the same – as a matter of procedure and as a matter of priority. If recorded systematically and in detail, such evidence can be used to one day hold the state accountable through public interest advocacy and litigation pursuant to Article 7(3) of the CPC read with Article 29 of EVAW law and Articles 3, 22, 24, 25, 29 and 30 of the Afghanistan Constitution.

ISSUE 3: THE RIGHT TO EXAMINE AND QUESTION PROSECUTION WITNESSES

The Law

Article 7 of the CPC: Rights of suspect, accused person and defendant

Article 7(6): To provide evidence and witnesses; to question the witnesses who have testified against him/her and to ensure the presence of and to hear the witnesses who testify in his/her favor.

Article 7(19): The right to examine witnesses.

Article 35: Forbiddance of Leading the Witness

(1) The witness shall be requested to state all the matters concerning the case in their own words.

(2) Once the witness gives the information, the accused persons or their legal representatives, the prosecutor, and the members of judicial team can question the witness.

RECOMMENDATION

1. It was noted that the lawyers occasionally bring evidence to the bar on the day of trial (or refer to new or unproved facts in their written submissions). Moving forward, lawyers should take eyewitness statements in writing at the investigation stage or as soon as is reasonably possible and tender it as evidence before trial. The defence submissions should only cite facts which have been proved by evidence. If defence witnesses are unwilling to give evidence, request the court to subpoena them pursuant to Articles 28 and 29 of the CPC.
2. Lawyers should also request to cross-examine the prosecution witnesses if there are material inconsistencies or untruths in their version of events. It is during cross-examination when the weaknesses or gaps in the witness's statement will really come to fore.
3. Where rebutting or objecting to the prosecution's case in the written submissions, quote the relevant paragraph verbatim and give detailed reasons for the rebuttal or objection.

ISSUE 4: OBJECTION TO EXPERT MEDICAL REPORTS

The Law

Article 46 of the CPC: Supervision on Expert's Views

(1) During the examinations conducted by the experts, officials from the prosecutor's office or the judge may participate in person and ask questions about the details of the relevant matters. The litigants may attend the examination and opine on the expert's views or object it.

(2) If the assigned experts need technical or professional assistance from other experts in part of their examinations, they may ask for the assistance of other experts.

Case studies

A juvenile client was arrested for murder. There was a dispute as to her age. The lawyer argued that she was underage and ought to be tried by the juvenile court. The client was sent for forensic examination to assess her age. After 3 days, the forensic examination reported that she was of age and an adult. To dispute the report, the MA lawyer in charge requested the prosecutor to check with the provincial hospital if they had a record of her birth date. It turned out that they did and that the client was, in fact, 16 years old. The case was then referred to the juvenile court and the client was tried as a juvenile.

A client was arrested for adultery on the basis of her confession to the police. She was sent for a forensic examination. The doctor concluded that she had committed sodomy due to the bruises around her anus. The client confided in MA clarifying that the doctor's observation was incorrect – that the reason for why there were bruises around her anus was because she was suffering from stomach / gall issues. The lawyer spoke to the prosecutor and requested that he send her for a medical reexamination at once to check this. Upon a reexamination, it emerged that she indeed had stomach/ gall issues and the case was dropped.

As aforementioned in the previous section on Medica Afghanistan's prosecution practice, the examination of forensic medical reports is one of their strongest areas of intervention.

ISSUE 5: FORCED STATEMENTS / CONFESSIONS BY COERCION AND/OR ENTICEMENT

The Law

Article 22 of the CPC: Prohibition of Taking Statements by Coercion or Enticement

(1) The judicial police officer, prosecutor and court themselves or through means of another person, in any case, are not allowed to force the suspect or accused to confess using misconduct, narcotics, duress, torture, hypnosis, threat, intimidation, or promising a benefit.

(2) If the statements of the suspect or accused person are taken in violation of the provision set forth in paragraph (1) of this article, they shall not be admissible.

The lawyers shared that their clients are often coerced to confess or are asked incriminating questions unrelated to the subject of the arrest, resulting in additional charges being levied against their clients. Clients are being told by the police and prosecution to make admissions in exchange for certain promises. The lawyers routinely raise this as an issue in their defence statements at trial, even if to no effect.

The lawyers identified that the key reason for why clients make certain admissions is that referrals to Medica Afghanistan are usually made after investigations have completed. On the other hand, when lawyers had made arrangements to be present during questioning, the prosecution gave excuses such as that they had telephoned the lawyers on multiple occasions when in fact the lawyers did not receive any calls.

Medica Afghanistan has attempted many ways to ensure that their clients are represented upon or before arrest or completion of investigations. They meet with authorities from the Family Response Units on a monthly basis to request that referrals are made at the earliest stage. Sometimes the prosecution has cooperated but in many other cases they have not, to the detriment of the client.

RECOMMENDATION

If the police stations are not complying with their request, it may be necessary to take the issue up to a higher ranking official and do more visible advocacy around the issue.

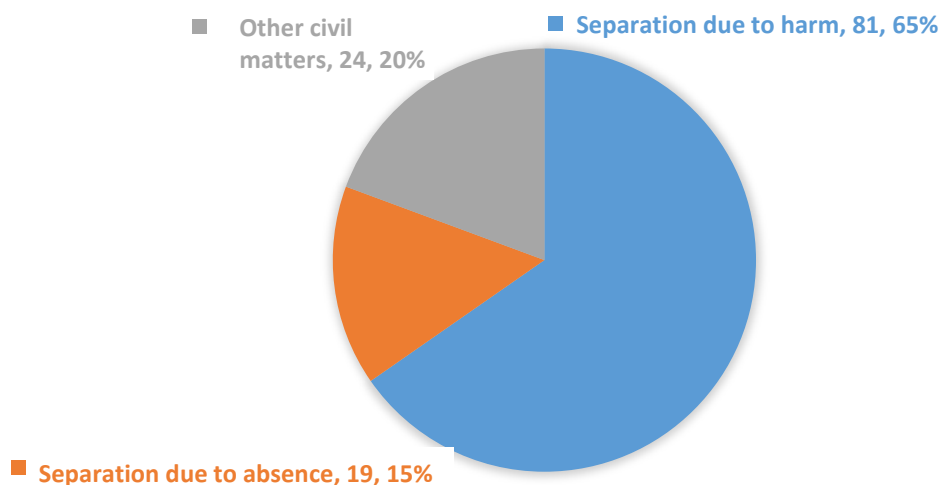
Recommendations made in section 4 on the prosecution process are equally applicable to Medica Afghanistan's defence practice (namely the recommendations in issues 2,4,5 and 6).

SECTION 6: CIVIL PRACTICE

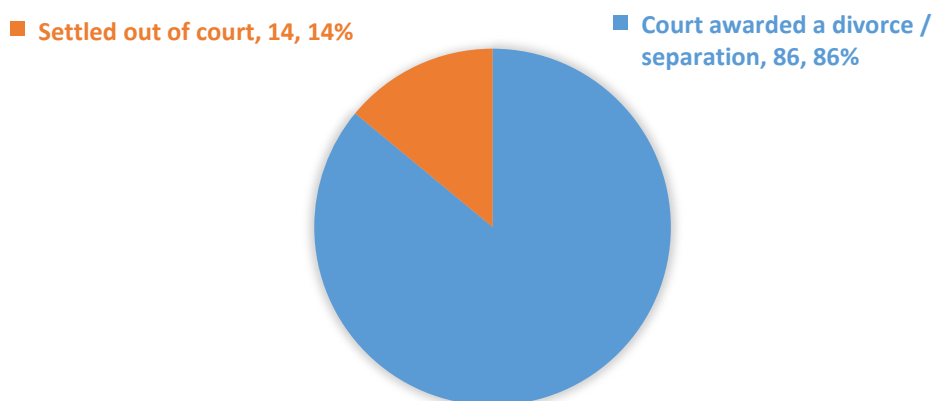
A. SUMMARY OF CASES AND OUTCOMES

In 2014 and 2015, the lawyers provided counsel to more than 124 clients and their families in Kabul, Herat and Balkh on a wide range of civil matters. On average, 65% of the cases involved petitions for separation due to harm, 15% of the cases involved petitions for separation due to absence and the remaining 20% of the cases involved other civil matters such as alimony, child custody and others. On average, the court awarded a divorce / separation in 86% of the cases.

TYPES OF CASES (124 CASES)



CASE OUTCOME

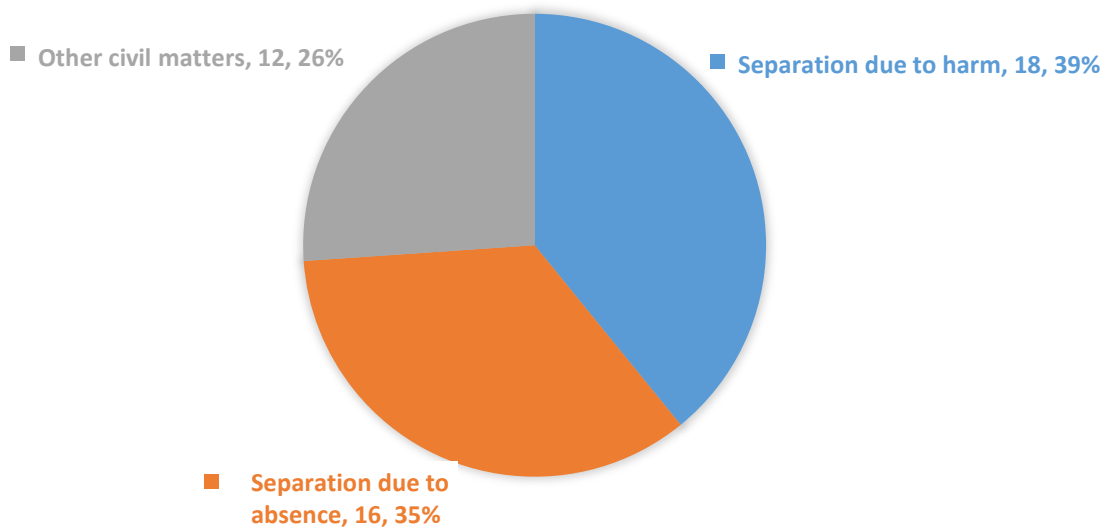


B. BREAKDOWN OF CASES BY PROVINCE

KABUL CIVIL CASE LOAD

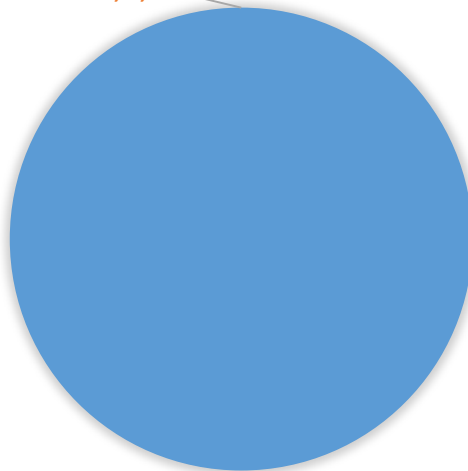
Over the reporting period, the lawyers in Kabul provided counsel to 46 clients. 39% of the cases involved petitions for separation due to harm, 35% of the cases involved petitions for separation due to absence and the remaining 26% of the cases involved other civil matters such as alimony, child custody and others. On average, the court awarded a divorce / separation in 100% of the petitions for divorce.

TYPES OF CASES (46 CASES)



CASE OUTCOME

■ Court awarded a divorce / separation, 34, 100%
■ , 0, 0%

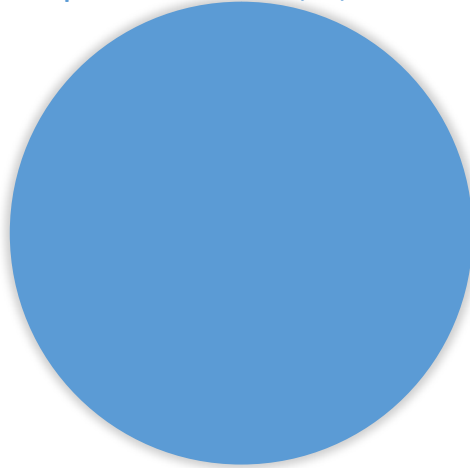


HERAT CIVIL CASE LOAD

Over the reporting period, the lawyers in Herat provided counsel to 11 clients. All the cases involved petitions for separation due to harm and in all cases the court granted a separation/divorce.

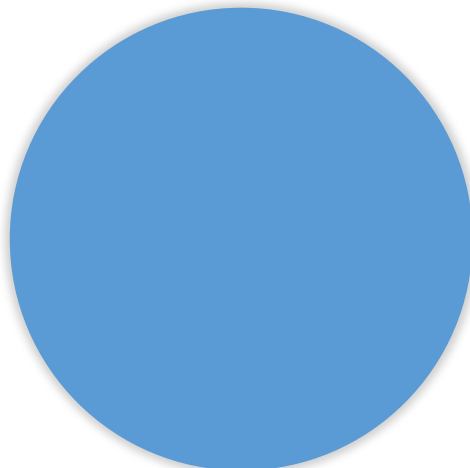
TYPES OF CASES (11 CASES)

- Separation due to harm, 11, 100%



CASE OUTCOME

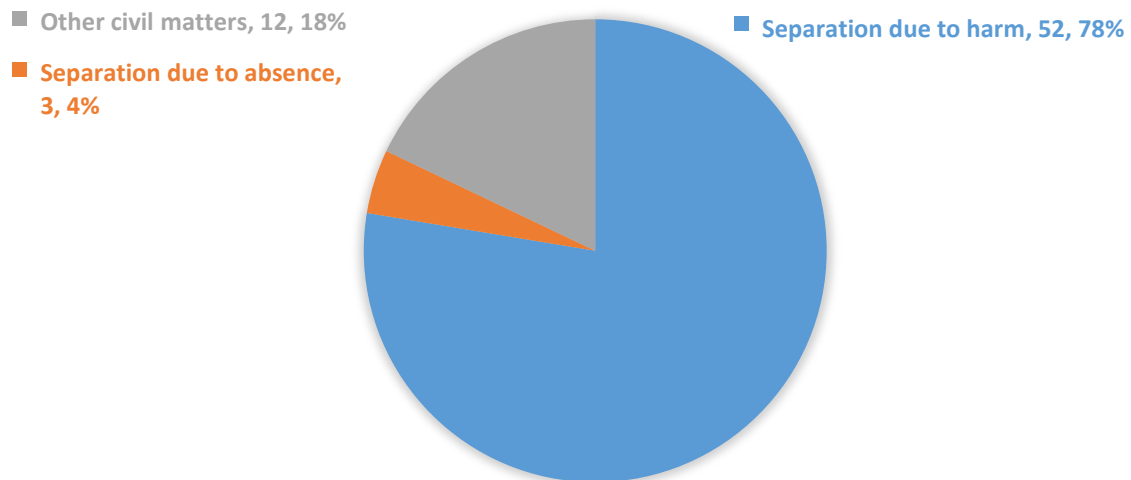
- Court awarded a divorce/ separation due to harm, 11, 100%



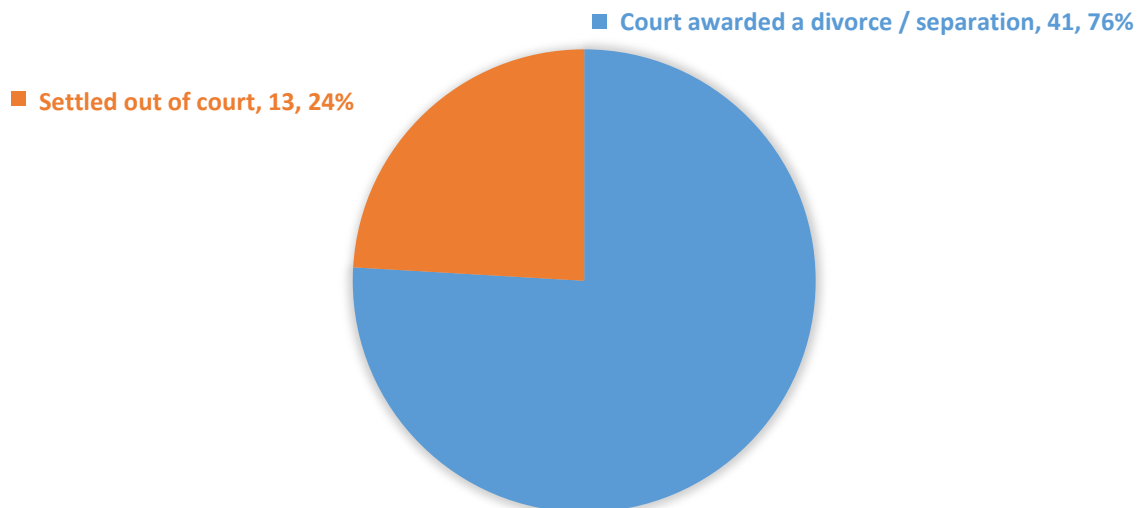
BALKH CIVIL CASE LOAD

Over the reporting period, the lawyers in Balkh provided counsel to 67 clients. 78% of the cases involved petitions for separation due to harm, 4% of the cases involved petitions for separation due to absence and the remaining 18% of the cases involved other civil matters such as alimony, child custody and others. On average, the court awarded a divorce or separation in 76% of the cases.

TYPES OF CASES (67 CASES)



CASE OUTCOME



C. ANALYSIS OF THE STATISTICS

The key findings from Medica Afghanistan's civil caseload are as follows:

- (a) The vast majority, i.e. 65% of their civil clients suffered from violence by their husbands, namely, battery and laceration, abuse, humiliation and intimidation – and petitioned to be separated on the basis of harm.
- (b) About 15% of the cases involved petitions to separate on the basis of absence.
- (c) In all petitions on separation due to harm, the lawyers referred to the relevant provisions of EVAW law and proved harm by adducing medical reports and certificates, eyewitness statements and photographs. It appears from the case outcomes that Medica Afghanistan's civil practice is quite successful, in that in 86% of the cases, the court awarded the client a separation or divorce.

Case study from Kabul

A client, 24 years, petitioned to be separated on the basis of harm after suffering from beating, humiliation and threats by her husband and mother-in-law for not conceiving a child. She was also not allowed to leave her home to receive treatment by the doctors for her injuries. With MA's assistance, she filed a petition in the family court. The court awarded a separation in her favour and her husband's appeal against the court decision was rejected by the Court of Appeal. After undergoing psychosocial support sessions, she started her studies and is currently working.

RECOMMENDATION

In the future, it is worth looking into issues of child custody and return of dowry (mahr) post separation / divorce and brainstorm how we can petition for women's visitation rights when they have lost custody over their children.

SECTION 7: SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. PROSECUTION PRACTICE

In 2014 and 2015, the lawyers provided counsel to approximately 93 victims and their families in Kabul, Herat and Balkh. On average, 54% of the cases were prosecuted whilst 42% of the cases were withdrawn at some stage of the proceedings. The lawyers assisted the prosecution to secure 48 convictions (i.e. a 96% conviction rate for cases which proceeded to trial and a 52% conviction rate overall). Their success rate was found to be higher than the national average as shown in the table below:

| | Medica Afghanistan | MOWA Report |
|---|-----------------------|--------------------|
| % of cases prosecuted | 54% | Approximately 18% |
| % of cases of the total caseload where a conviction was handed down | 52% | Approximately 5.4% |

The report covered several issues in their prosecution practice:

- (a) Client's withdrawal from the criminal action
- (b) Their relationship with the prosecution
- (c) Safety of clients and protection orders
- (d) Access to information and the full case judgment
- (e) Issues of evidence
- (f) Mistreatment of clients
- (g) Protective measures for vulnerable clients
- (h) Compensation claims, and
- (i) Mediation on the threat of prosecution.

SUMMARY OF RECOMMENDATIONS FOR MEDICA AFGHANISTAN'S PROSECUTION PRACTICE

1. Send meaningful letters of appreciation to the prosecution when they conduct the matter with competence and diligence and demonstrate respect to clients.
2. For clients who do not wish to punish their abusers, pursue the option of conditional suspension of prosecution/ trial pursuant to Articles 204 and 205 of the CPC. A conditional suspension sends a firm warning to a defendant that the state will take action if he does not amend his ways.
3. Alternatively, for clients who do not wish to punish their abusers, mediate the case on the threat of prosecution. Obtain the accused's agreement to settle on terms which are for the client's best interest and safety, in exchange for her agreement not to initiate criminal action. Pair the settlement agreement with a protection order.

4. For clients who fear for their safety, file an application for a protection order pursuant to Article 6(1)(2) of the CPC.
5. For vulnerable clients especially those who are victims of sexual crimes, apply for protective measures when testifying in court, pursuant to Articles 53 to 55 of the CPC.
6. File compensation claims for all clients pursuant to Article 189 of the CPC read with Article 6(1)(4) of the same.
7. Anticipate when a forensic medical report may end up damaging the client's case and prepare evidence to correct, counter and/or explain the client's case.
8. At the end of each case, apply to the Court for the full judgment, regardless of whether the client wishes to appeal. If the court administrators fail to issue the judgments, take it up to the Supreme Court.
9. Conference once every 2 – 3 months to analyze the judgments for trends, progressive and critical viewpoints. Strategize how those viewpoints can be adopted and/or challenged in future submissions.
10. Collect and document evidence of state violations of clients' rights for future public interest advocacy and litigation.

B. DEFENCE PRACTICE

In 2014 and 2015, the lawyers represented approximately 118 women and girls accused of crimes in Kabul, Herat and Balkh. Of the said cases, 75% of the clients were prosecuted and convicted and 18% of the clients were acquitted.

The report covered several issues in their defence practice, as follows:

- (b) Arbitrary arrest and detention
- (c) Insults and contempt by the police, prosecution and judiciary against clients
- (d) Examining and questioning prosecution witnesses
- (e) Objection to medical reports, and
- (f) Forced statements and confessions.

SUMMARY OF RECOMMENDATIONS FOR MEDICA AFGHANISTAN'S DEFENCE PRACTICE

1. When the client is arrested and detained without reasonable suspicion that she had committed the crime, file for an urgent hearing on the legality of the client's arrest and detention contrary to Article 99 of the CPC.
2. Take up the issue of late referrals to a higher ranking official at the Ministry of Interior and do more visible advocacy around the issue.

3. At trial, defence submissions should only cite facts which have been proved by evidence. If defence witnesses are unwilling to give evidence, request the court to subpoena them pursuant to Articles 28 and 29 of the CPC.
4. At trial, cross-examine prosecution's factual witnesses if there are material inconsistencies or untruths in their version of events (rather than to solely make written submissions on the same). It is during cross-examination when the weaknesses or gaps in the witness's statement will really come to fore.
5. When rebutting or objecting to the prosecution's case in the written submissions, quote the relevant paragraph verbatim and give detailed reasons for the rebuttal or objection.

C. CIVIL PRACTICE

In 2014 and 2015, the lawyers provided counsel to more than 124 clients and their families in Kabul, Herat and Balkh on a wide range of civil matters. On average, 65% of the cases involved petitions for separation due to harm, 15% of the cases involved petitions for separation due to absence and the remaining 20% of the cases involved other civil matters such as alimony, child custody and others. On average, the court awarded a divorce / separation in 86% of the cases.

RECOMMENDATION FOR MEDICA AFGHANISTAN'S CIVIL PRACTICE

In the future, the lawyers could attempt to file petitions to obtain court-ordered visitation rights for clients who lose custody over their children after divorce / separation.