



# **EVAW Law: Placing Economic And Physical Security At The Heart of the Justice Process**

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## **A Report On Medica Afghanistan's 2018 Cases**

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## ABBREVIATIONS

AIHRC	Afghanistan Independent Human Rights Commission
AGO	Attorney General's Office
CPC	Criminal Procedure Code
CEDAW	Committee for the Elimination of All Forms of Discrimination against Women
EVAW	Elimination of Violence Against Women
MA	Medica Afghanistan
MOWA	Ministry of Women's Affairs
MOI	Ministry of Interior
NGO	Non-governmental organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
PC	Penal Code
RIWPS	Research Institute for Women, Peace and Security
SC	Supreme Court of Afghanistan
SGBV	Sexualised and gender-based violence
UNAMA	United Nations Assistance Mission in Afghanistan
VIS	Victim Impact Statement

## PREFACE

Above all forms of violence against women and girls in Afghanistan, family violence is the biggest threat to women's security, accounting for more than 80% of all violence.<sup>1</sup>

In a 2018 report on peace and security, the UN Secretary General said: "I remain deeply concerned about the prevalence of violence against women and girls in Afghanistan. Such violence causes profound human suffering, inflicts grave harm on families and inhibits the full participation of women in public life."<sup>2</sup>

Thus, it remains of utmost importance that the EVAW Law is both implemented and further strengthened to incentivize and ease the justice process.

In 2018, the Ministry of Women's Affairs Legislative Drafting Committee as part of its membership of the EVAW Commission, a statutory body established pursuant to the EVAW Law, commenced its work to further strengthen EVAW Law, pursuant to Article 16(5) of EVAW Law. The work commenced shortly after the enactment of the Penal Code 2018.<sup>3</sup> The UN Secretary General welcomed this development stating: "(...) the establishment by the Government of a technical committee to review the Elimination of Violence against Women Law of 2009 is an encouraging step. I am optimistic that the review will result in stronger and rights-based legal protection from violence for all Afghan women and girls."<sup>4</sup>

The government's decision to revise the EVAW law is a window of opportunity for us to take a stock of the barriers to prosecution of EVAW crimes and incorporate new provisions to remedy those barriers. We present this report as part of MA's advocacy to adopt recommendations to address the key challenges.

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Globally, it was only in the 1960s and 1970s that new discourse characterizing domestic violence as a public and not private matter, emerged. If domestic violence was once considered an isolated problem, that changed as scholars from different disciplines tied the discourse on interpersonal violence to public health, economic development, democracy, and even more recently, peace and security. Economic indexes were developed to correlate gender equality to national development. Economists tied gender equality to national economic growth – a strategic move to bring gender equality to the attention of the State and make it a more palatable subject to discuss. Islamic scholars revisited Qura'nic exegesis and uncovered gender-equal interpretations in Shariah Law, which struck a rippling wave of reform across the Muslim world. Domestic violence was no longer an isolated issue. It was a social-political issue with dire health and economic consequences which the State would eventually have to absorb.

Two decades later, domestic violence took center stage in the international liberal human rights discourse. In 1992, the Committee for the Elimination of All Forms of Discrimination against Women (CEDAW Committee) adopted General Recommendation 19 to recognize that domestic violence was one of the most insidious forms of violence against women and society. The 1996 report of Radhika Coomaraswamy, the United Nations Special Rapporteur on Violence against Women, took States to task to stop the impunity with a bold call:

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<sup>1</sup> "Married women are more vulnerable to face violence. 83% of the total of VAW cases registered are married women." Per Ministry of Women's Affairs, Islamic Republic of Afghanistan, "Fifth Report on Implementation of EVAW Law for March 2016 – March 2017," (January 2018), p. 5

<sup>2</sup> United Nations General Assembly Security Council, "The situation in Afghanistan and its implications for international peace and security" (7 December 2018) A/73/624-S/2018/1092, para. 65, p. 15

<sup>3</sup> The Commission is also charged with the duty to adopt regulations, relevant rules and procedures to ensure that the law is properly implemented, pursuant to Article 16(6) of EVAW Law.

<sup>4</sup> Ibid (UNGA, 2018), para. 65, p. 15

In the case of intimate violence, male supremacy, ideology and conditions, rather than a distinct, consciously coordinated military establishment, confer upon men the sense of entitlement, if not the duty, to chastise their wives. Wife-beating is, therefore, not an individual, isolated, or aberrant act, but a social license, a duty or sign of masculinity, deeply ingrained in culture, widely practised, denied and completely or largely immune from legal sanction'. It is, therefore, argued that the role of State inaction in the perpetuation of the violence that domestic violence be classified and treated as a human rights concern.<sup>5</sup>

Coomaraswamy's report was instrumental in the lead up of what was to come. Till then, women's groups were making little headway with traditional criminal and civil law. These laws were not simply not designed to respond to violence in the home. Lawyers raised the bar. They argued that beyond responding to violence, the State would have to enact law to uproot unequal power relations within the home. A new discipline in law "domestic violence laws" emerged.

Model legislation on the subject was developed and States were lobbied to undertake wholesale changes in their laws in accordance with the model proposed. After Coomaraswamy's report was published, several countries such as Turkey (1998), Antigua and Barbados (1999), Philippines (2004), India (2005), and Fiji (2006) enacted new legislation on women's rights. Afghanistan's own Elimination of Violence Against Women Law (EVAW Law) came to force in 2010, 14 years after Coomaraswamy's report, but not long after other States had enacted similar legislation. In the time period that Afghanistan's EVAW Law has been in force (2013-2017), 7 additional countries passed domestic violence laws.<sup>6</sup> Like Afghanistan, the process was controversial and women's groups grappled with questions over the relationship of State to family. 2018 statistics by the World Bank indicates that 24% of 181 countries still do not have domestic violence laws.<sup>7</sup>

Globally, it has only been two decades of trial and error, in Afghanistan, almost a decade, - still a negligible lifespan when compared to the lifespan of other laws. We are still in the midst of understanding how to leverage domestic violence laws as a core part of the State's business. As lawyers, we are the end-users of the law. So we must shoulder the added responsibility to feed our experience into the amendment process and take charge of its evolution based on our experience and the lessons we have learned.

In that spirit, this report analyses MA's caseload in comparison with reported national statistics, stock-takes the main challenges impeding EVAW prosecutions, and, recommends best practice amendments to the EVAW Law.

## ACKNOWLEDGMENTS

Our sincerest appreciation to Natasha Latiff, our independent legal consultant, for authoring this report. Special thanks to SAHR's Fellows, Ramisa Raya for tirelessly assisting in the compilation of the statistics; Mehvish Ally for contributing to the research and; Devina Buckshee for contributing to the analysis of this report.

**Saifora Ibrahim Paktiss**  
**Acting Director, Medica Afghanistan**

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<sup>5</sup> See report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85: A Framework for Model Legislation on Domestic Violence, E/ CN.4/1996/53/Add.2, 2 February 1996.

<sup>6</sup> World Bank Press Release, <https://www.worldbank.org/en/news/press-release/2018/02/01/more-than-1-billion-women-lack-legal-protection-against-domestic-sexual-violence-finds-world-bank-study> (1 February 2018)

"Based on an analysis of 141 countries, the share of countries with laws to protect women against **domestic violence** increased from 71 percent to 76 percent between 2013 and 2017."

<sup>7</sup> World Bank Group, "Women, Business and the Law 2018: Protecting Women from Violence" Accessed at <http://pubdocs.worldbank.org/en/289441522241133897/WBL-fact-sheet-protecting-women-from-violence-FINAL-PDF.pdf> (15 December 2018)

## ABOUT MEDICA AFGHANISTAN

Medica mondiale e.V. **medica mondiale e.V.** is a non-governmental organisation based in Cologne, Germany. As a **feminist women's rights and aid organisation**, medica mondiale supports **women and girls in war and crisis zones throughout the world**. Through own programmes and in cooperation with local women's organisations medica mondiale e.V. offers holistic support to **women and girl survivors of sexualised and gender-based violence (SGBV)**. On the political level, medica mondiale e.V. pro-actively promotes women's rights, calls for a rigorous punishment of crimes as well as effective protection, justice and political participation for survivors of violence. Currently, medica mondiale e.V. is working in Northern Iraq/Kurdistan, in Afghanistan, in Liberia, in Kosovo, in Bosnia and Herzegovina as well as the African Great Lakes Region.<sup>8</sup>

Medica Afghanistan<sup>9</sup> started operating in Afghanistan in 2002 as a programme of medica mondiale. In 2010, Medica Afghanistan became an independent women's rights organisation and was officially registered as a self-sustaining Afghan NGO.<sup>10</sup> The team is composed of female lawyers, social workers, psychosocial workers and psychologists, based in the cities of Kabul, Herat and Mazar-e-Sharif.

We are one of only a handful of national organisations in Afghanistan which mission is to protect and promote women's rights and end violence against women. Since 2002, we have provided assistance and advice to approximately 10,000 survivors<sup>11</sup> of sexualised and gender-based violence (SGBV) through our legal aid, psychosocial counselling, social work, mediation, and awareness raising work.

We 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, we provide women access to psychosocial support and other support services to mitigate the difficulties that they encounter during their pursuit of justice. We also support clients after they are released from prison by restoring their ties with their families and reintegrating them back into society. At the request of clients, we 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, we work directly with judicial actors and train the police, prosecutors and medical staff to adopt a stress and trauma sensitive approach towards women affected by violence. We 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.

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<sup>8</sup> For further information, please visit their website at [www.medicamondiale.org](http://www.medicamondiale.org)

<sup>9</sup> For further information, please visit their website at [www.medicaafghanistan.org](http://www.medicaafghanistan.org)

<sup>10</sup> Medica Afghanistan operates under the framework of Article 31 of the Afghan Constitution (2004), the Legal Aid Regulation (2008) and Advocates Law (2007).

<sup>11</sup> 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.

## SECTION 1: INTRODUCTION

This report is the 5<sup>th</sup> instalment of our ERAW report series to take stock of our cases and document the implementation of ERAW Law in Afghanistan since its enactment in 2010.

### 1<sup>st</sup> and 2<sup>nd</sup> Reports<sup>12</sup> 2011 – 2013

Our first and second ERAW reports surveyed the initial years of our 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 our lawyers used the ERAW law in their submissions and the influence our work had on the prosecution and judiciary.

### 3<sup>rd</sup> Report<sup>13</sup> 2014 – 2015

In the third ERAW report, we presented statistics of our prosecution, defence and civil cases, as well as, examined our 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. The report was an in-depth study into the following issues:

- Client's withdrawal from criminal action
- Our relationship with the prosecution
- Safety of clients and protection orders
- Access to information and the full case judgment
- Issues of evidence
- Mistreatment of clients
- Protective measures for vulnerable clients
- Compensation claims
- Mediation on the threat of prosecution.
- Arbitrary arrest and detention
- Insults and contempt by the police, prosecution and judiciary against clients
- Examining and questioning prosecution witnesses
- Objection to medical reports, forced statements and confessions.

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<sup>12</sup> Medica Afghanistan, "1<sup>st</sup> Report: The ERAW Law in Medica Afghanistan Legal Aid Practice Report" (June 2013)

Medica Afghanistan, "2<sup>nd</sup> Report: An analysis on the use of the Elimination of Violence against Women Law in Medica Afghanistan's Legal Aid Cases" (November 2014)

<sup>13</sup> Medica Afghanistan, "3<sup>rd</sup> Report: Making The Law On Elimination Of Violence Against Women A Reality: A Report On Medica Afghanistan's 2014 & 2015 Cases" (2016)

## 4<sup>th</sup> Report<sup>14</sup> 2016 – 2017

In 2016 and 2017, we witnessed significant changes in the penal law landscape as the government and international community embarked on a laudable project to simplify penal law in Afghanistan. The project involved the consolidation of all penal laws, including the punitive provisions of the ERAW Decree, into a single legislation. The integration of ERAW's punitive provisions would have had implications on the holistic function of the ERAW Decree.

Most of our advocacy efforts in 2016 and 2017 were dedicated to preserving ERAW Decree as a standalone law. The report set out a brief history into the life of the ERAW Decree and the course it has taken through the recent political and legal changes. It is also a story of our history as we were part of the struggle to ground ERAW Law's legitimacy within Afghanistan's legal landscape, building ERAW Law's credibility amongst prosecutors and judges simply through its use over time. The report presented statistics from cases across Balkh and Kabul, between 1 December 2015 to 30 November 2017 and mapped the progress and status of the previous report's recommendations.

## 5<sup>th</sup> Report 2018

Whilst the 4<sup>th</sup> report set out a brief history of the ERAW Decree and the ever-pressing challenges to preserve it in 2017, this 5<sup>th</sup> report looks at the future of the ERAW Decree. This report comes at a timely junction of law reform in Afghanistan including further strengthening of the ERAW Law. As a member of the MOWA Legislative Drafting Committee, we were requested to draft some of the amendments relating to protection. We envision that the recommendations on best practices in this report will be informative to stakeholders participating in the process.

The best practices in this report are drawn from the author's analyses, the United Nations model framework for legislation on violence against women<sup>15</sup> and recommendations of the United Nations Special Rapporteur on Violence Against Women in her 1996 report.<sup>16</sup> The framework covers the fundamental pillars of best practice legislation and recommends specific content to bring legislation in line with international human rights standards.

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<sup>14</sup> Medica Afghanistan, "4<sup>th</sup> Report: Making The Law On Elimination Of Violence Against Women A Reality: A Report On Medica Afghanistan's 2016 & 2017 Cases" (April 2017)

<sup>15</sup> United Nations Women, "Handbook for Legislation on Violence Against Women" (May 2012).

<sup>16</sup> See United Nations Secretary-General's database on violence against women available online at: <http://www.un.org/esa/vawdatabase> (last accessed 8 April 2009).

See United Nations (2006) *Ending Violence against Women: from words to action, Study of the Secretary-General* (A/61/122/Add.1 and Corr.1).

See Report of the Special Rapporteur on violence against women, its causes and consequences (1996) "A framework on model legislation" E/CN.4/1996/53/ Add.2. See also Fifteen Years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009) – A Critical Review, United Nations Special Rapporteur on violence against women, its causes and consequences (2009), available online at: <http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>



This report will not cover all the pillars in the framework. Instead, it will cover a selection of them namely, prosecution, protection and economic restitution, and go in-depth into those pillars by laying out legislation and policies from several countries. These pillars were specifically chosen as it relates to some of the work which we had pioneered in 2017 (petitions for protection and compensation)<sup>17</sup> and which we have accumulated significant expertise in. In this regard, this report is also an extension of that work and our overall mission to deliver holistic legal aid services in Afghanistan.

Specifically, this report will extract and lay out provisions of law and policy from several countries, designed to strengthen the state's response to prosecute and protect by ensuring, for example, that the response-infrastructure strike at the driving factors behind why victims' withdraw their cases (e.g. fear of retaliation, separation from children and impoverishment). It also adds to UNAMA's 2018 recommendations on prosecuting violence against women.<sup>18</sup>

The best practices in law and policy covered in the report are as follows:

### **Issue 1: In relation to arrest and prosecution:**

- Limitations on the use of cautionary warnings (as an alternative to arresting)
- Role of prosecutors to prepare victim impact statements detailing physical and non-physical harms
- Role of prosecutors to prevent secondary trauma
- Limitations on releasing offenders on bail
- Limitations on discontinuing case
- Limitations on mediation
- Power to make warrantless arrests.

### **Issue 2: In relation to protection:**

- Content of protection orders
- Requirement that protection orders are independent of initiation and continuation of criminal and civil proceedings
- Expansion of entities which are authorized to receive complaints for protection
- Removal of requirements for evidence in order to receive protection
- Orders on temporary or permanent relocation of children to non-offending parent.

### **Issue 3: In relation to economic security:**

- Screening cases for economic abuse or economic dependency
- Economic safety planning
- Investigations into economic abuse

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<sup>17</sup> Medica Afghanistan, "Legal Memo on the Law on Compensation" (November 2018). Accessed at <http://www.medicaafghanistan.org/medica/wp-content/uploads/Legal-Memo-on-Compensation-by-Medica-Afghanistan-25-Nov-2018-Copy.pdf> (20 November 2018)

Medica Afghanistan, "Legal Memo on Protection Orders and Protective Measures" (September 2017). Accessed at <http://www.medicaafghanistan.org/medica/wp-content/uploads/Legal-Memo-on-Protection-Orders-and-Protective-Measures-.pdf> (20 November 2018)

<sup>18</sup> United Nations Mission in Afghanistan (UNAMA) and Office of the High Commissioner for Human Rights (OHCHR), "Injustice and Impunity: Mediation of Criminal Offences of Violence against Women" May 2018, pp. 11 – p. 13

- Charging economic crimes
- Promoting economic independence
  - Employment
  - State provision of aid through a state established fund
  - Access to housing
  - Enrolment in school
  - Social security (re-organisation of working hours)
  - Right to residence in shared home
  - Eviction of offending persons from the shared home.

#### **Issue 4: In relation to penalties**

- Penalties for dereliction of state duties.

It should be emphasized that these recommendations must be situated within a broader effort to strengthen inter-agency coordination backed up by a sound infrastructure (supported by policies, guidelines and standardized implementation documents) to pull together different agencies to meet the full range of victims' needs before, during and after the justice process.

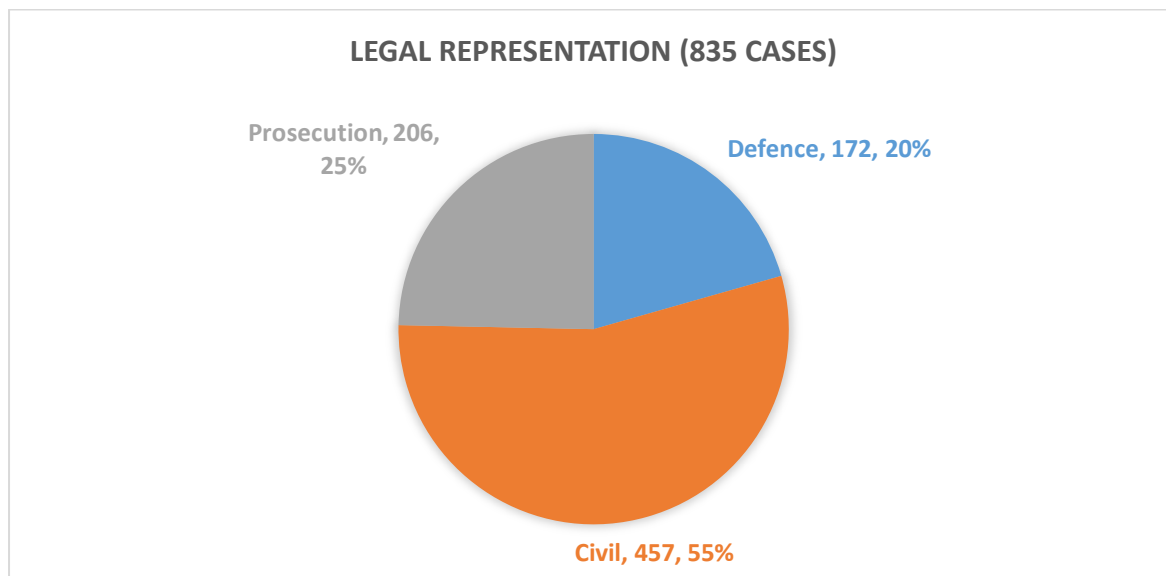
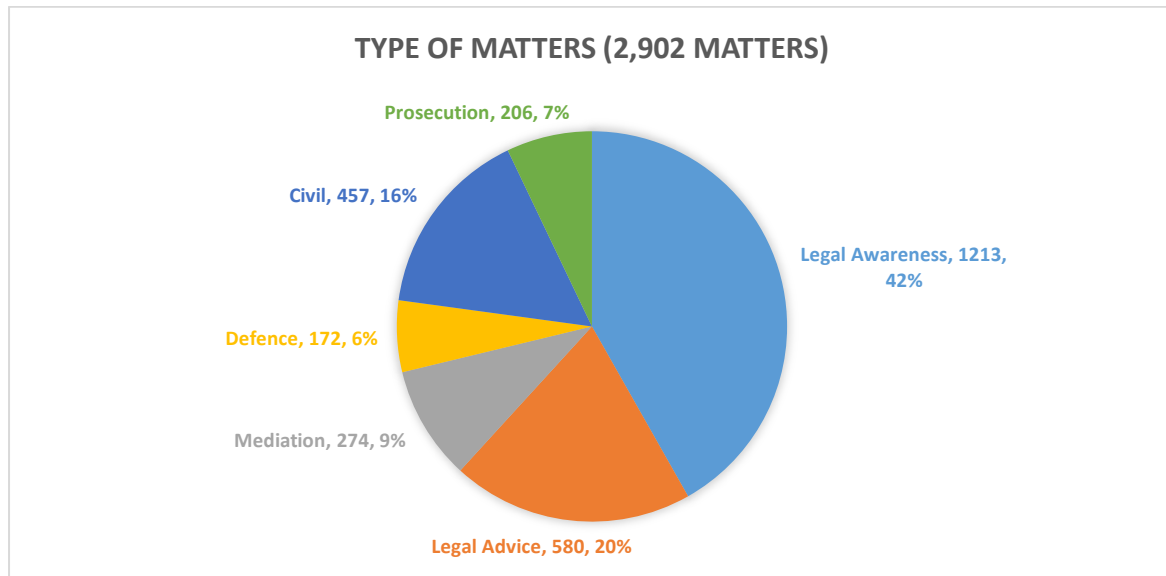
Finally, this report also presents statistics from our cases across Kabul, Balkh and Herat between 1 December 2017 to 30 December 2018 ("the reporting period"). Our statistics, in particular our prosecution statistics, broadly affirm the *reported* national statistics issued by UNAMA and MOWA in 2018. We echo the concern that prosecution rates remain overwhelmingly low. Notwithstanding this, we tabulated our statistics, as well as, the 6 years of reported national statistics - in order to show that the prosecution rate is moving at a steady incline. **Afghanistan is progressing, not regressing.** When read together with our analysis of the prosecution rates in Section 6, we hope that readers will take on a more holistic view of *why* half of all cases are withdrawn and not prosecuted – and how, the law and the justice system, can, within the parameters of its reach, mitigate the driving factors behind withdrawal and encourage prosecution.

#### **MAP OF REPORT**

- **Section 1** of the report introduces the report in context of MA's EVAW Report series.
- **Section 2** presents summary statistics of our practice comprising legal representation, legal advice, legal awareness and mediation.
- **Section 3** presents statistics of our prosecution practice.
- **Section 4** presents statistics of our defence practice.
- **Section 5** presents statistics of our civil practice.
- **Section 6** sets out some of the challenges we have faced in prosecuting EVAW crimes.
- **Section 7** addresses how some of those challenges can be dealt with by recommending best practices in law and policy, as we move forward to strengthen EVAW Law.
- **Section 8** summarizes the statistics and findings of the report.

## SECTION 2: SUMMARY OF MA's WORKLOAD

In 2018, we represented clients in a total of 2,902 matters in Kabul, Herat and Mazar-e-Sharif comprising civil, prosecution and defence representation, as well as, provision of legal advice, legal awareness sessions and mediation. Of the 2,902 matters, 835 of them comprised legal representation in prosecution, defence and civil cases.



In the next section of this report, we will present statistics of our caseload in its prosecution, defence and civil practice and a breakdown of each by province.

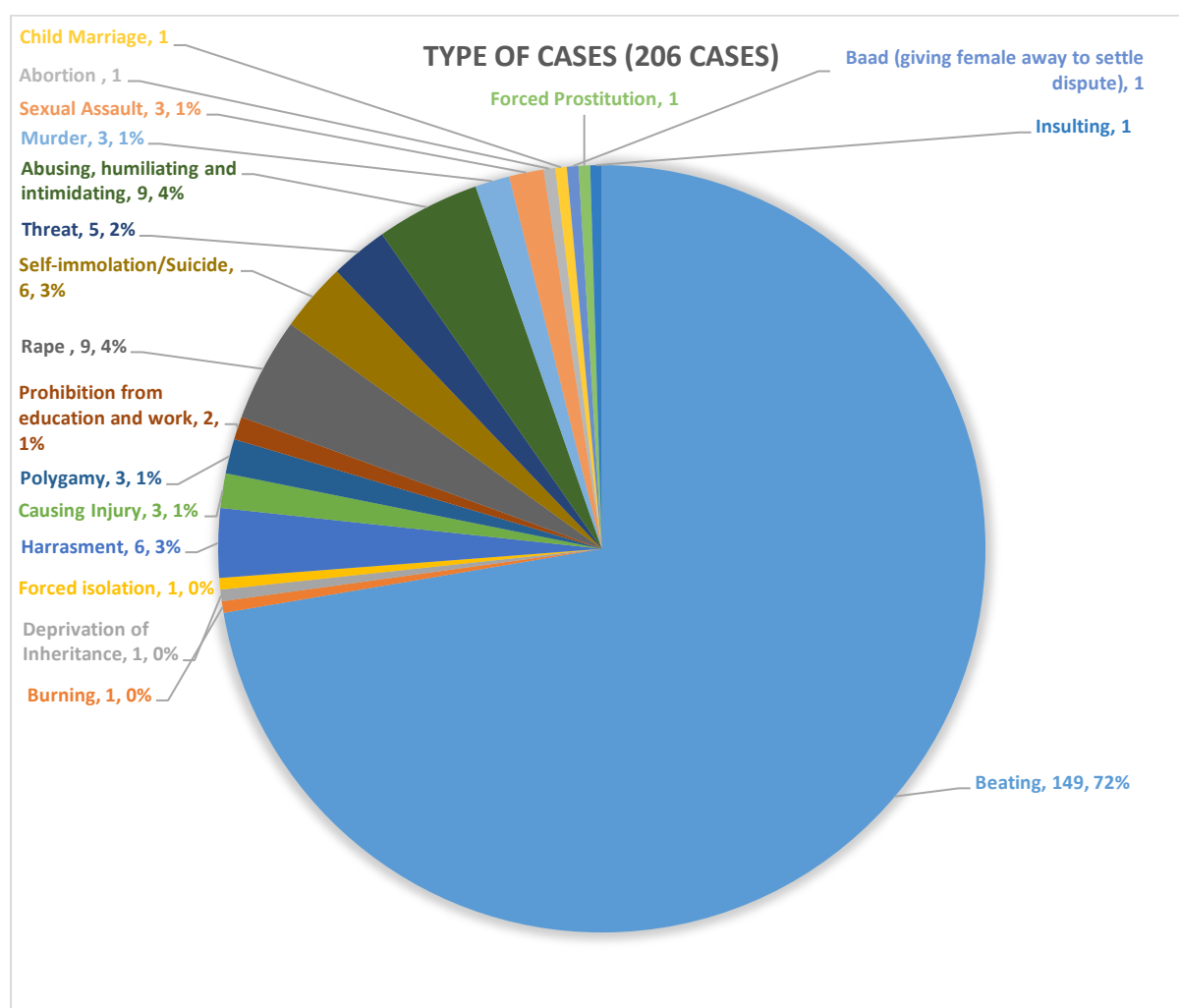
## SECTION 3: PROSECUTION CASE STATISTICS

### MA'S 2018 CASELOAD

In 2018, our lawyers represented 206 victims<sup>19</sup> in Kabul, Mazar and Herat:

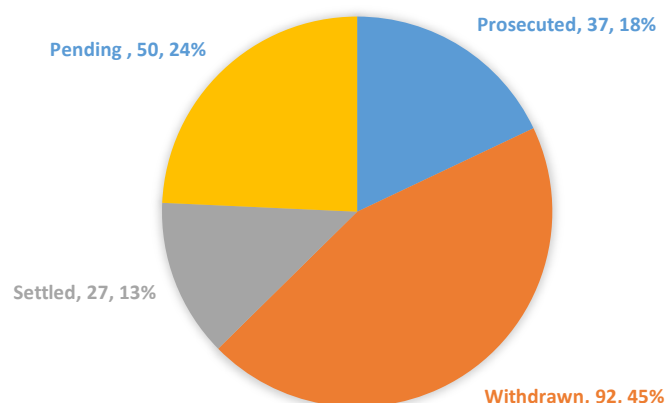
On average:

- 42% of the cases were prosecuted (87 cases).
- 45% of the cases were withdrawn at some stage of the proceedings (92 cases).
- 13% of the cases reached a settlement (27 cases).
- Our lawyers assisted prosecutors to secure 34 convictions:
  - 53% conviction rate for cases which proceeded to trial
  - 17 % conviction rate overall.
- Lawyers secured 18 protection orders for clients at risk.
- Lawyers secured 17 compensation awards for clients suffering from injuries amounting to a total sum of 774,940AFS (approx. USD \$10,334).

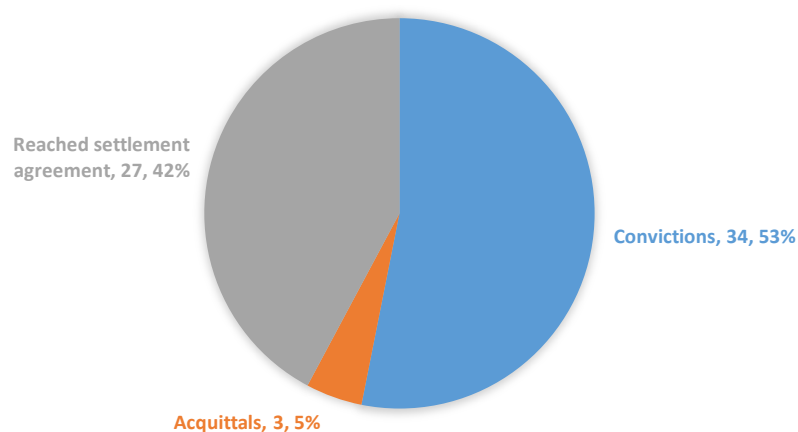


<sup>19</sup> At Medica Afghanistan, clients are referred to as “survivors” and not “victims” of violence. The term “survivors” connote agency, choice and empowerment which the clients make in their day-to-day choice when dealing with and protecting themselves from violence. In this report, we have used the legal term “victim” to refer to a person who initiates legal action in response to a crime committed against her.

### PROSECUTED/WITHDRAWN (206 CASES)



### CONVICTIONS/ACQUITTALS (64 CASES)



#### ***Comparison with MA'S 2016 and 2017 CASELOAD***

In 2016 and 2017, our lawyers represented 181 victims in Kabul and Mazar. On average:

- 60% of the cases were prosecuted.
- 40% of the cases were withdrawn at some stage of the proceedings.
- Our lawyers assisted prosecutors to secure 32 convictions:
  - 29% conviction rate for cases which proceeded to trial
  - 18% conviction rate overall.

#### ***Comparison with MA'S 2014 and 2015 CASELOAD***

In 2014 and 2015, our lawyers represented 93 victims in Kabul, Herat and Mazar. On average:

- 54% of the cases were prosecuted
- 42% of the cases were withdrawn.
- Our lawyers assisted prosecutors to secure 48 convictions:
  - 96% conviction rate for cases which proceeded to trial

- 52% conviction rate overall.

The table below summarizes the above comparison as follows:

Year	# of cases represented	% prosecuted	% withdrawn	% conviction rate for cases which proceeded to trial	% overall conviction rate
Annual average from 2014 and 2015 (all provinces)	47 <sup>20</sup>	54%	42%	96%	52%
Annual average from 2016 and 2017 (two provinces)	91 <sup>21</sup>	60%	40%	29%	18%
2018 (all provinces)	206	42%	45% 13% settled	53%	17%

Comparing the statistics between the annual average in 2014/2015 and 2018, we took up 159 more victim cases in 2018 compared to 2014/2015 (more than thrice-fold in about 4 years). Prosecution rates have slightly decreased from a 54% prosecution rate in 2014/2015 to 42% in 2018. Convictions have also decreased from a 96% conviction rate in 2014/2015 to 53% conviction rate in 2018.<sup>22</sup>

### ***Comparison with MOWA's national statistics in a similar period***

In January 2018, Ministry of Women's Affairs (MOWA) published a national report on ERAW cases registered between March 2016 – March 2017 (Afghan solar year 1395).<sup>23</sup> Together with the Ministry of Interior (MOI) and the Attorney General's Office (AGO), the government registered a total of 1,307 cases in Herat, Mazar and Kabul, and, 4,290 cases throughout Afghanistan.

To get a sense of the volume of our case load against the national caseload (of registered cases), we can compare our 2018 caseload count with MOWA's most recent caseload count over a similar period (of March 2016 - March 2017). Our caseload is 16% of the total number of ERAW cases registered by the government in the three provinces (1,307 cases) and 5% of the total number of such cases in Afghanistan (4,290) in a similar period.

<sup>20</sup> 93 cases divide 2 years for annual average. Figure rounded up.

<sup>21</sup> 181 cases divide 2 years for annual average. Figure rounded up.

<sup>22</sup> The steep drop in prosecution/conviction rate may be accounted by the fact that in 2018, lawyers represented almost thrice as many victims as compared to 2014 and 2015.

<sup>23</sup> Ministry of Women's Affairs, Islamic Republic of Afghanistan, "Fifth Report on Implementation of ERAW Law for March 2016 – March 2017," (January 2018), p. 26.

### ***Type of violence***

Battery and laceration remains (beating) the most prevalent type of violence in both national and MA statistics, followed by abuse, humiliation, and intimidation.<sup>24</sup> Further in both MOWA and MA statistics, most of these cases, 83% and 85% respectively, involved violence by the family.<sup>25</sup>

<b>MOWA (2017)</b>	<b>MA (2017/2018)</b>
Battery and laceration (beating) (2,382 cases)  56% of the total cases registered.	Battery and laceration (beating) (149 cases)  72% of the total cases registered.
Abusing, humiliating, and intimidating (708 cases)  17% of the total cases registered.	Abusing, humiliating, and intimidating (9 cases) [There were also 9 cases of rape]  4% of the total cases registered.

### ***Withdrawal of cases***

Almost half of all cases in both national and MA statistics are withdrawn.

<b>MOWA (2017)</b>	<b>MA (2017/2018)</b>
49% of cases proceeded to judgment.  51% of cases are either under process or not followed up by the client. These cases were settled through mediation with and without legal advice.	42% of cases proceeded to judgment.  45% of cases were withdrawn.  13% of cases were settled.

### ***Comparison with the Supreme Court's national statistics in a similar period (2017)***

The performance report of the Supreme Court of Afghanistan ("SC") over a recent and similar period in 2017, indicates that the courts investigated 873 EAW cases in Kabul and the provinces (resulting in the arrest of 1,059 offenders). The Supreme Court registered an 85% conviction rate and 15% acquittal rate.<sup>26</sup>

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<sup>24</sup> Ministry of Women's Affairs, Islamic Republic of Afghanistan, "Fifth Report on Implementation of EAW Law for March 2016 – March 2017," (January 2018), p. 32.

<sup>25</sup> "Married women are more vulnerable to face violence. 83% of the total of VAW cases registered are married women." Per Ministry of Women's Affairs, Islamic Republic of Afghanistan, "Fifth Report on Implementation of EAW Law for March 2016 – March 2017," (January 2018), p. 5

<sup>26</sup> The Supreme Court Performance Report was reported per Ministry of Women's Affairs, Islamic Republic of Afghanistan, "Fifth Report on Implementation of EAW Law for March 2016 – March 2017," (January 2018), p. 26.

For the EVAW cases which proceeded to trial, we represented 87 cases [about 10%] of the total cases (873 cases) registered by the Supreme Court. A comparison of conviction and acquittal rates between our caseload and the Supreme Court's registry are as follows:

<b>National statistic from Supreme Court (2017)</b> <i>All provinces</i>	<b>MA (2017/2018)</b> <i>3 provinces</i>
85% conviction rate.  15% acquittal rate	30% conviction rate  2% acquittal rate  The remaining cases were either pending (44%), or settled (24%).

### ***Comparison with other reported statistics***

For context, we have listed other relevant statistics on people's perceptions of access to justice reported by the Asia Foundation, as well as, the total number of registered cases and prosecution rates reported between 2013 – 2018, by the United Nations Assistance Mission in Afghanistan, Ministry of Women's Affairs and the Research Institute of Women and Peace Security. At the end of the narrative, the statistics are summarized in a table for ease of comparison.

### ***Asia Foundation, 2018***

In 2018, Asia Foundation released its latest "Survey of the Afghan People 2018".<sup>27</sup> The Survey involved 15,012 face-to-face interviews of which about 49.7% of the respondents were women. The survey was both gender balanced (50:50) and nationally representative (75.1% rural, 24.9% urban). In the Survey, the second most frequently cited problem was the limits on women's rights impacting on women's public participation and access to justice. The fourth most cited problem was violence against women—predominantly domestic violence.<sup>28</sup>

Many people cited corruption, high cost and length of process as barriers to the formal judicial system. Informal justice mechanisms are expeditious and often less expensive. However, many women do not have a choice – they are forced to use informal systems when they attempt to report violent crimes to formal authorities, which too often leave perpetrators unpunished and women still in danger.<sup>29</sup> Among respondents who had used a dispute-resolution service, the most common service is *shura*<sup>30</sup> and *jirga*<sup>31</sup>. The next most

<sup>27</sup> Asia Foundation, "Afghanistan In 2018 A Survey Of The Afghan People" (2018). Accessed at <https://asiafoundation.org/publication/afghanistan-in-2018-a-survey-of-the-afghan-people/> (20 November 2018)

<sup>28</sup> Ibid (Asia Foundation)., p. 3

<sup>29</sup> Ibid (Asia Foundation)., p.120

<sup>30</sup> *Jirga* is a council of community village elders who gather to resolve disputes in the family and community.

<sup>31</sup> As above. Shura can also be a political assembly that involves representatives from different levels of government and security forces.



common service was the state court, followed by the *huquq*<sup>32</sup> department.<sup>33</sup> Reports on family disputes were most often brought by women than men.<sup>34</sup>

#### ***United Nations Assistance Mission in Afghanistan, 2018***

In 2018, the United Nations Assistance Mission in Afghanistan (“UNAMA”) reported that of the 237 cases they monitored over an approximate 2-year period between August 2015 and December 2017, 61% of the cases were resolved by mediation (145 cases). It was not mentioned whether the remaining 39% of the cases were prosecuted. Of the 237 cases, 82% of them involved violence by the family resulting in battery and laceration, causing injury and sometimes death (194 cases). In the 237 cases observed by UNAMA, 71% involved complaints lodged because the violence was recurrent.<sup>35</sup>

#### ***Research Institute of Women and Peace Security, 2016***

In 2016, the Research Institute of Women Peace and Security (“RIWPS”) reported that of 2,958 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. More than 85% of cases registered in Kabul were closed prior to trial, often because the prosecutors were reluctant to pursue them.<sup>36</sup>

#### ***Ministry of Women’s Affairs, 2014***

In 2014, the Ministry of Women’s Affairs (“MOWA”) reported that of 1,638 cases registered with the prosecution in 26 provinces between March 2012 - 2013, only 18% of the cases were referred to the court. Of the cases which were eventually prosecuted, 13% of them led to a conviction, i.e. an approx. 2.34 % overall conviction rate from the total caseload.<sup>37</sup>

#### ***United Nations Assistance Mission, 2013***

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. 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.<sup>38</sup>

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<sup>32</sup> The *Huqooq* is a General Department which settles disputes arising out of debts, properties and family of real and legal persons pursuant to the Civil Procedure Code and the Law on the Acquisition of Rights.

<sup>33</sup> Ibid (Asia Foundation)., p. 121

<sup>34</sup> Ibid (Asia Foundation)., p. 122

<sup>35</sup> United Nations Mission in Afghanistan (UNAMA) and Office of the High Commissioner for Human Right (OHCHR), “Injustice and Impunity: Mediation of Criminal Offences of Violence against Women” May 2018, p. 26

<sup>36</sup> Shahabi, M. J .and Wimpelmann, T. ( 2015) Prosecution of Acts of Violence against Women in Afghanistan: A closer look at the data ( Research Institute for Women Peace and Security/ Chr Michelsen Institute, Kabul, December 2015)

<sup>37</sup> This report is no longer on MOWA’s website. The statistic was reported in MA’s 2014 – 2015 EVAW Report, p. 18 (with amendment).

<sup>38</sup> United Nations Mission in Afghanistan (UNAMA), ‘A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan’ (December 2013). Accessed at [https://unama.unmissions.org/sites/default/files/unama\\_evaw\\_law\\_report\\_2013\\_revised\\_on\\_16\\_dec\\_2013.pdf](https://unama.unmissions.org/sites/default/files/unama_evaw_law_report_2013_revised_on_16_dec_2013.pdf) (December 2017)

The table below summarizes the rate of indictment/prosecution and withdrawal from the abovementioned reports, and compares it with MA's rates, as follows:<sup>39</sup>

<b>Body</b>	<b>Year of assessment</b>	<b># of cases monitored/registered/resented</b>	<b>% indicted/prosecuted</b>	<b>% withdrawn/under process and others</b>
MA	2018	206 cases	42%	45% (13% settled)
MOWA	2017	4,290 cases	49%	51%
MA	2016 – 2017 (2 year period)	181 cases	60%	40%
UNAMA	2015 – 2017 (2 year period)	237 cases	39% <sup>40</sup>	61%
RIWPS	2015	2,958 cases	27%	73%
MA	2014 – 2015 (2 year period)	93 cases	54%	42%
MOWA	2012 - 2013	4,505 cases <sup>41</sup>	11.5%	88.5%
UNAMA	2013	1,669 cases	7%	93%

During 2012 – 2013 (the early adoption years), both MOWA and UNAMA reported grossly low prosecution rates (11.5% and 7% respectively) and high withdrawal rates (88.5% and 93% respectively).

Between 2014 – 2015, we reported that slightly more than half of our cases were prosecuted (54% prosecution rate, 42% withdrawal rate). RIWPS statistics from a similar period indicated that the prosecution rate in a larger sample of cases (2,958 cases) had improved more than twice-fold from the national rate in 2012 – 2013, but that the rates nonetheless were still grossly imbalanced (27% prosecution rate, 73% withdrawal rate).

Between 2016 – 2017, we reported a steady progress in the prosecution rate in our own caseload (60% prosecution rate, 40% withdrawal rate). UNAMA statistics from a similar period (2015 – 2017), confirmed the progress but still reported a gross imbalance (39% prosecution rate, 61% withdrawal rate).

In 2017, MOWA for the first time reported an improved prosecution to withdrawal ratio (49% prosecuted, 51% withdrawn), a significant improvement from its previous report in 2012 - 2013 (11.5% prosecuted, 88.5% withdrawn).<sup>42</sup> For the first time, MOWA was also reporting national average rates similar to our rates.

In 2018, we reported a slight but unremarkable decline in the prosecution rate (42% prosecuted, 45% withdrawn [of which 13% settled]).

In the earlier years, the difference between the prosecution/withdrawal rates from our caseload compared to those of UNAMA, MOWA and RIWPS can be attributed to the fact that the latter reports covered

<sup>39</sup> Note that the method of computing the rates differed from report to report so the following numbers are only an estimated gauge.

<sup>40</sup> It was not clear from the report if the remaining 39% of the cases were tried.

<sup>41</sup> 4,505 cases were reported, of which 3,396 were EVAW Cases.

<sup>42</sup> The table above shows a steady incline in prosecution rates between 2012 to 2017 from 11.5% to 39% to 49%. To be noted: these rates are taken from different sample sizes and methodology across the years. Thus the incline should be taken as representation of a general trend, rather than an accurate depiction of prosecution rates over the said years.

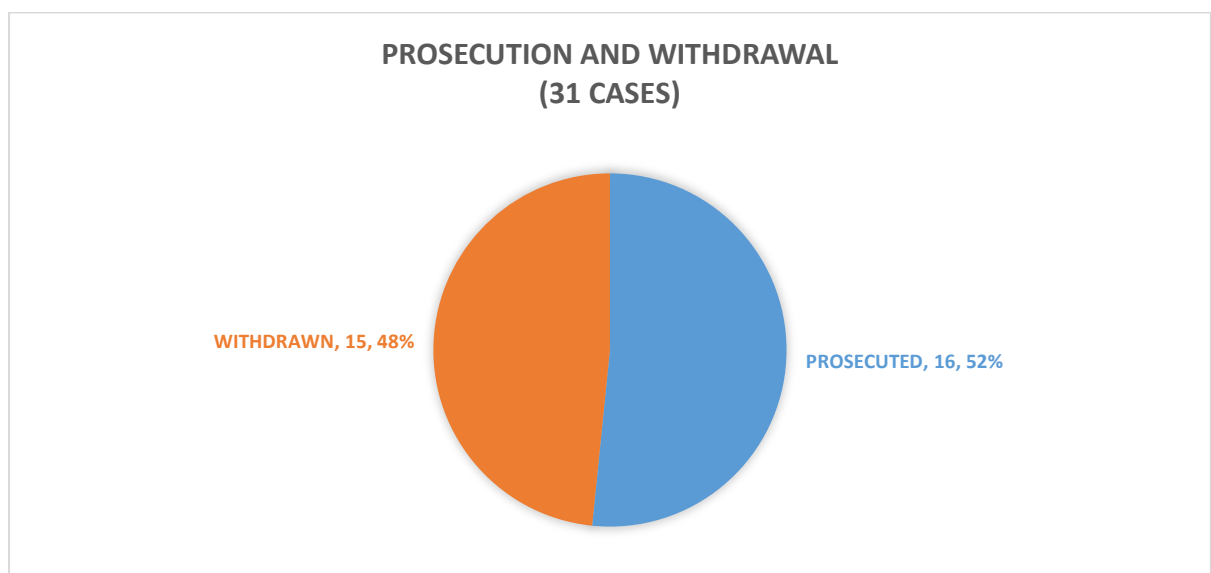
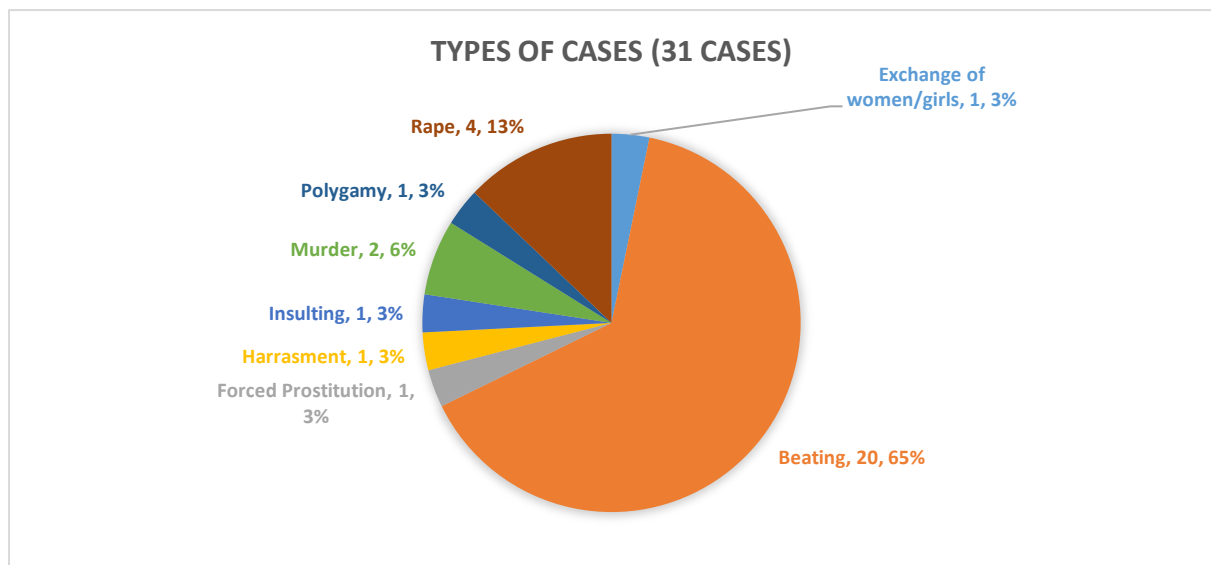
significantly more provinces including provinces where violence against women, particularly domestic violence, was still not being accepted by prosecutors and judges as being crimes.

In summary, though the prosecution rates are still alarmingly low, it is still promising that for a context such as Afghanistan, **both national reports and our reports indicate a slow but generalised incline in the prosecution rates.**

## A. KABUL PROSECUTION CASELOAD

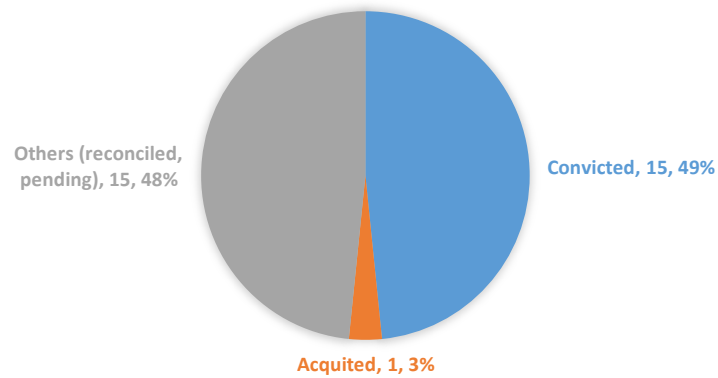
Over the reporting period, our lawyers in Kabul represented 31 victims, 3% of all EVAW cases registered by the government in Kabul (1,027 cases) in a *similar* period<sup>43</sup>.

- 52% of the cases were prosecuted (16 cases).
- 48% of the cases were withdrawn at some stage of the proceedings (15 cases).
- Our lawyers assisted the prosecution to secure 15 convictions (i.e. a 94% conviction rate for cases which proceeded to trial and a 48% conviction rate overall).
- Lawyers secured 1 protection order for a client at risk.
- Lawyers secured 6 compensation awards for clients who were injured, a total of AFS 82,940 (approx. USD\$ 1,106).

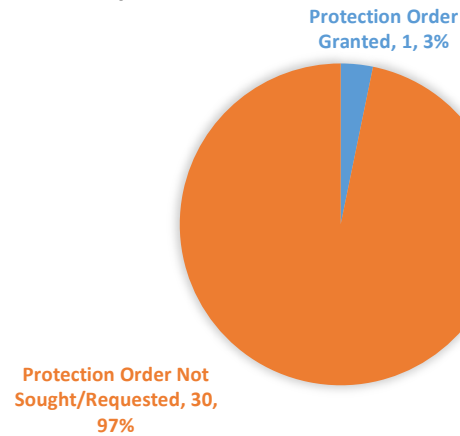


<sup>43</sup> Ibid (MOWA, 2018), p. 31

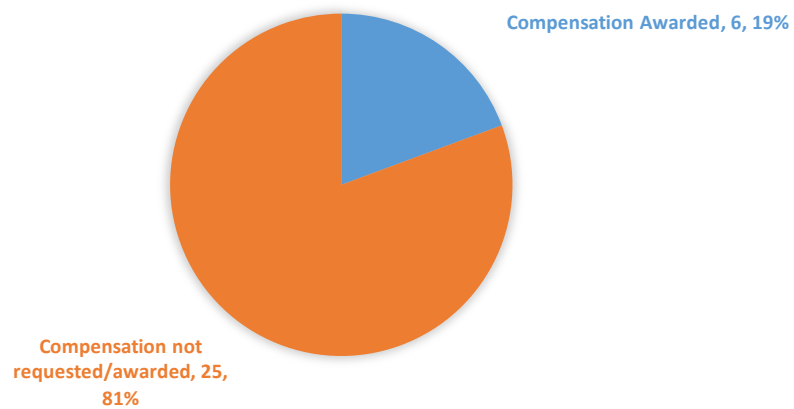
### CONVICTIONS AND ACQUITTALS (15 CONVICTIONS)



### PROTECTION ORDERS (1 PROTECTION ORDER GRANTED)



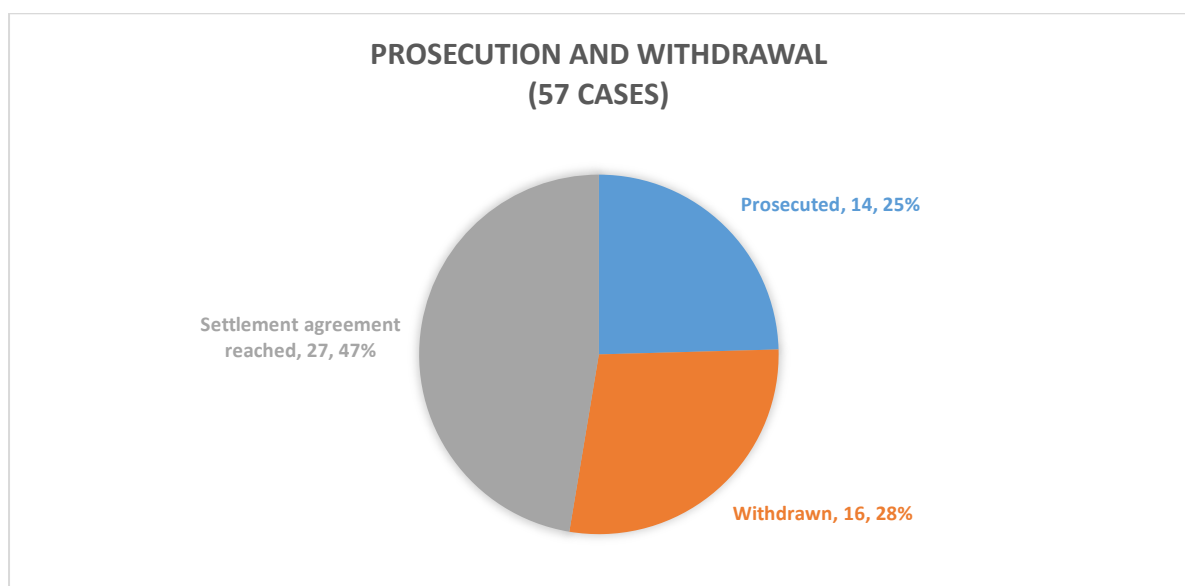
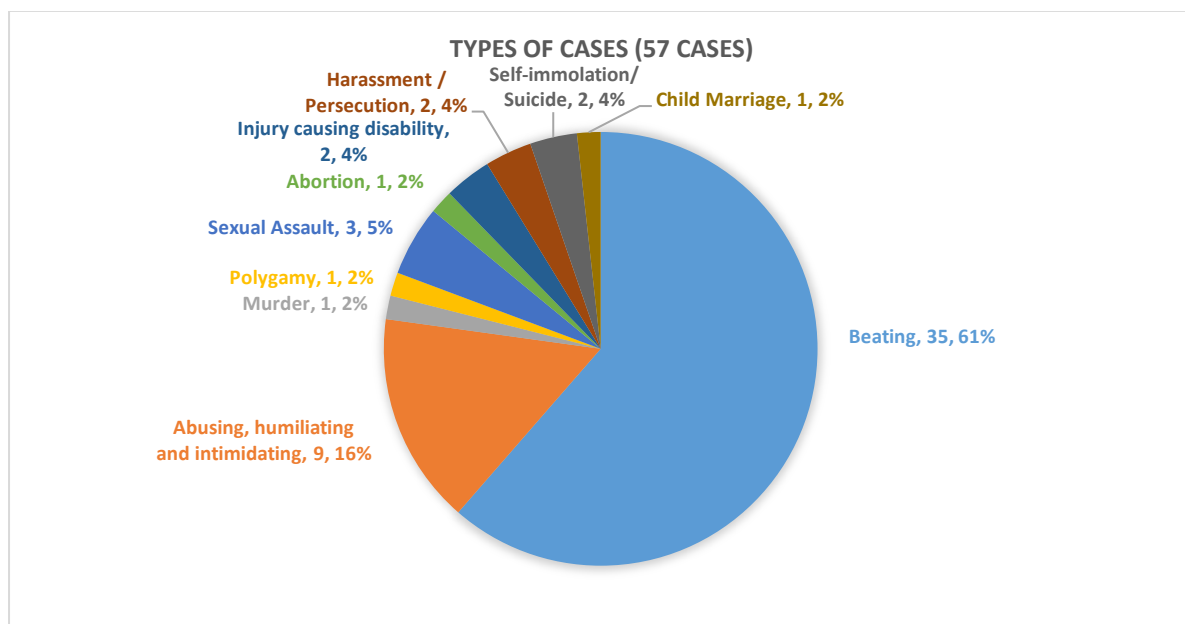
### COMPENSATION AWARDS (6 AWARDS)



## B. MAZAR PROSECUTION CASELOAD

Over the reporting period, lawyers in Mazar provided counsel to 57 victims, 33% of all EVAW cases registered by the government in Balkh (172 cases) in a *similar period*<sup>44</sup>.

- 25% of the cases were prosecuted (14 cases)
- 28% of the cases were withdrawn at some stage of the proceedings (16 cases).
- The remaining 47% of cases reached a settlement agreement (27 cases).
- Our lawyers assisted the prosecution to secure 13 convictions (i.e. 93% conviction rate for cases which proceeded to trial and 23% conviction rate overall).
- Lawyers secured 10 protection orders for clients at risk.
- Lawyers secured 4 compensation awards for clients who were injured, a total of AFS 277,000 (approx. USD\$ 3,694.00).

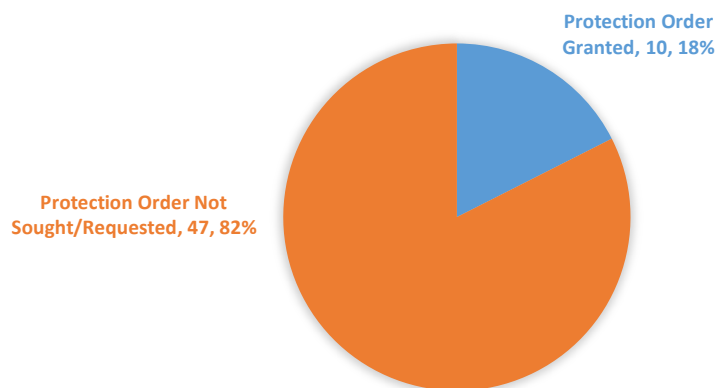


<sup>44</sup> Ibid (MOWA, 2018), p. 31

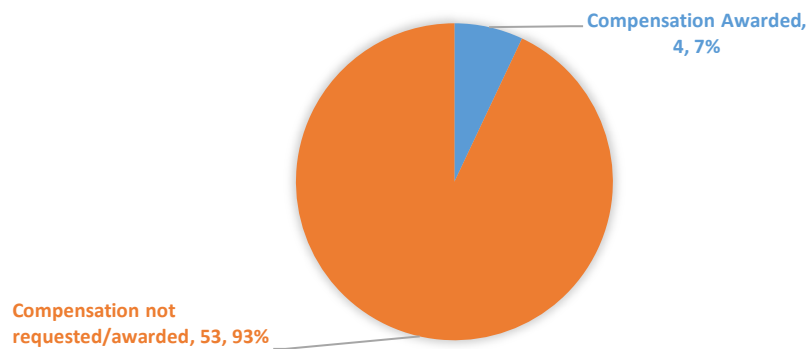
### CONVICTIONS AND ACQUITTALS (13 CONVICTIONS)



### PROTECTION ORDERS GRANTED (10 ORDERS GRANTED)



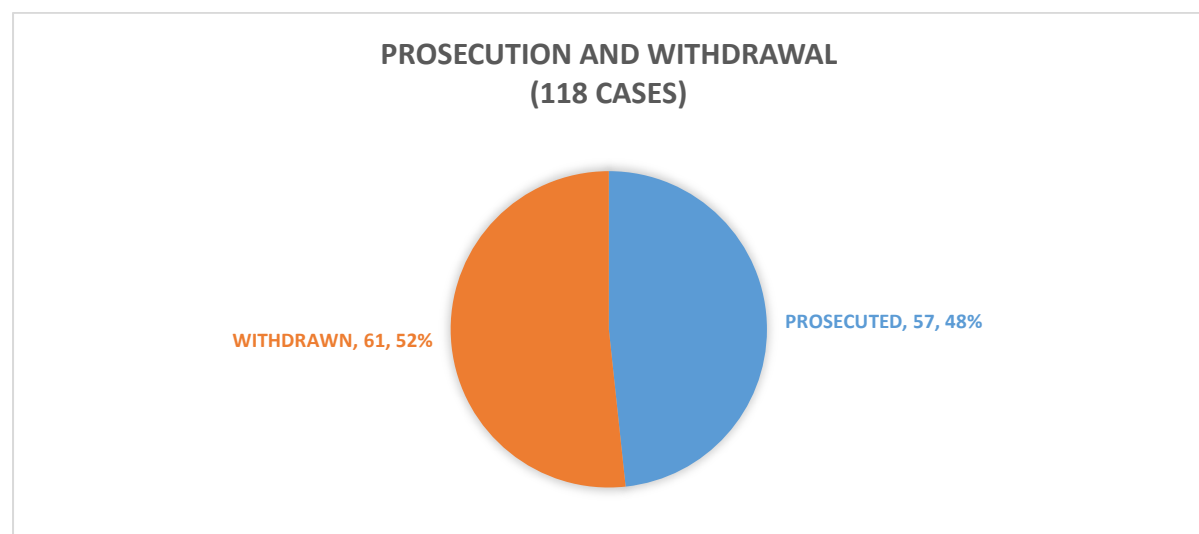
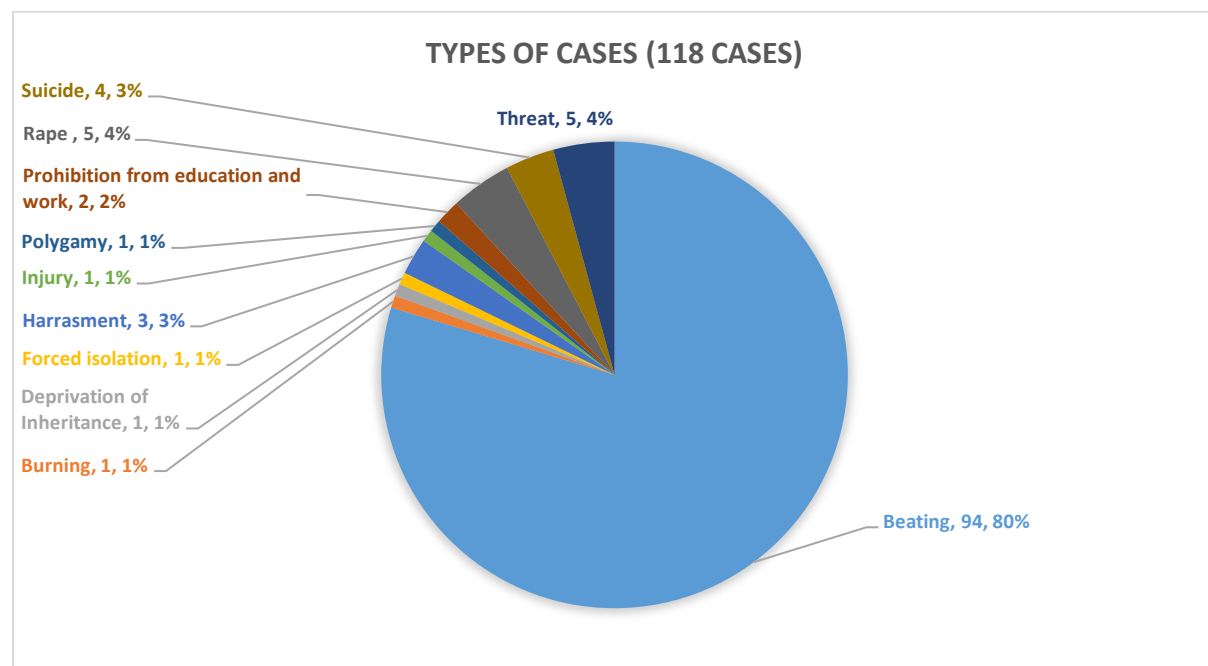
### COMPENSATION AWARDS (4 AWARDS)



### C. HERAT PROSECUTION CASELOAD

Over the reporting period, our lawyers in Herat represented 118 victims, 9% more cases than all the EVAW cases registered by the government in Herat (108 cases) in a *similar* period<sup>45</sup>.

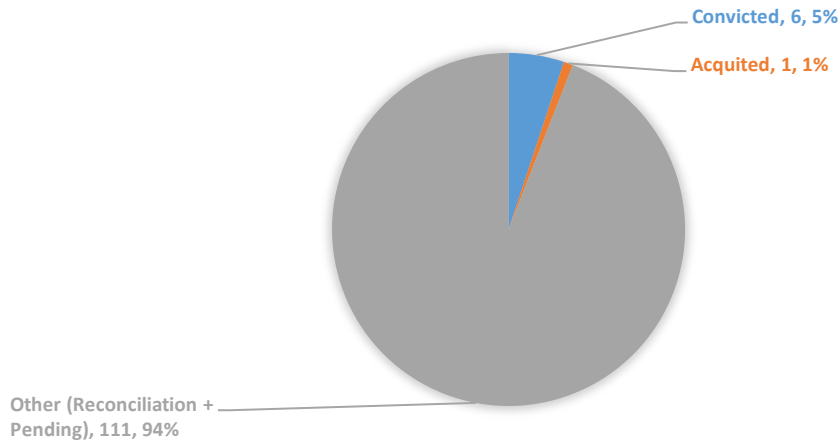
- 48% of the cases were prosecuted (57 cases).
- 52% of the cases were withdrawn at some stage of the proceedings (61 cases).
- 88% of the 57 cases prosecuted (i.e. 50 cases) were still pending, at the time of report.
- Of the 7 concluded cases, our lawyers assisted the prosecution to secure 6 convictions (i.e. a 86% conviction rate proceeded to judgment and a 5% conviction rate overall).
- Lawyers secured 7 protection orders for clients at risk.
- Lawyers secured 7 compensation awards for clients who were injured, a total of 415,000 AFS (approx. USD \$5,534.00).



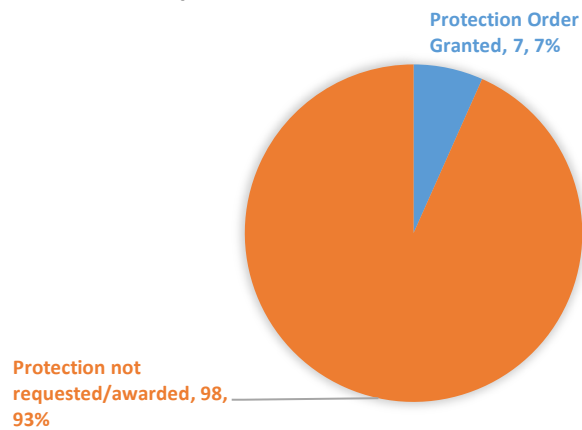
<sup>45</sup> Ibid (MOWA, 2018), p. 31



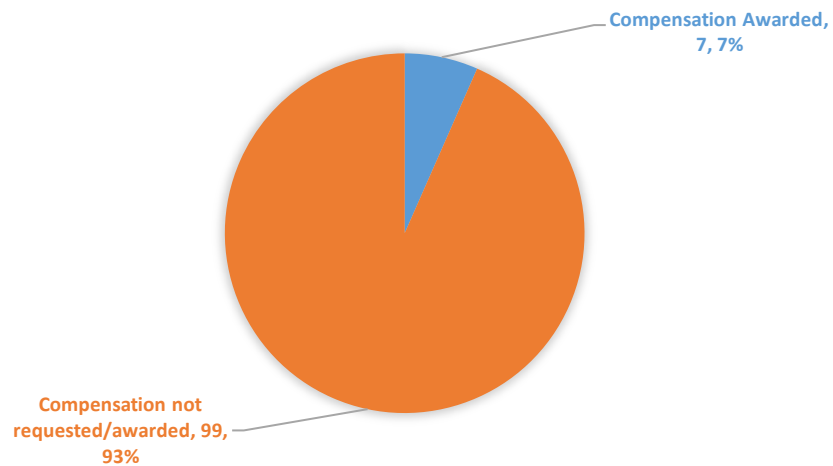
### CONVICTIONS AND ACQUITTALS (6 CONVICTIONS)



### PROTECTION ORDERS (7 PROTECTION ORDERS GRANTED)



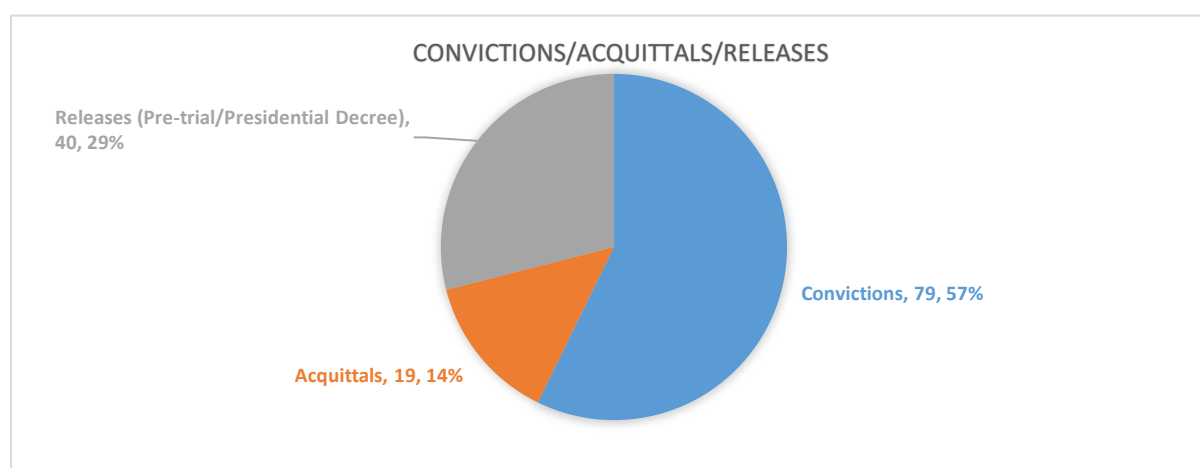
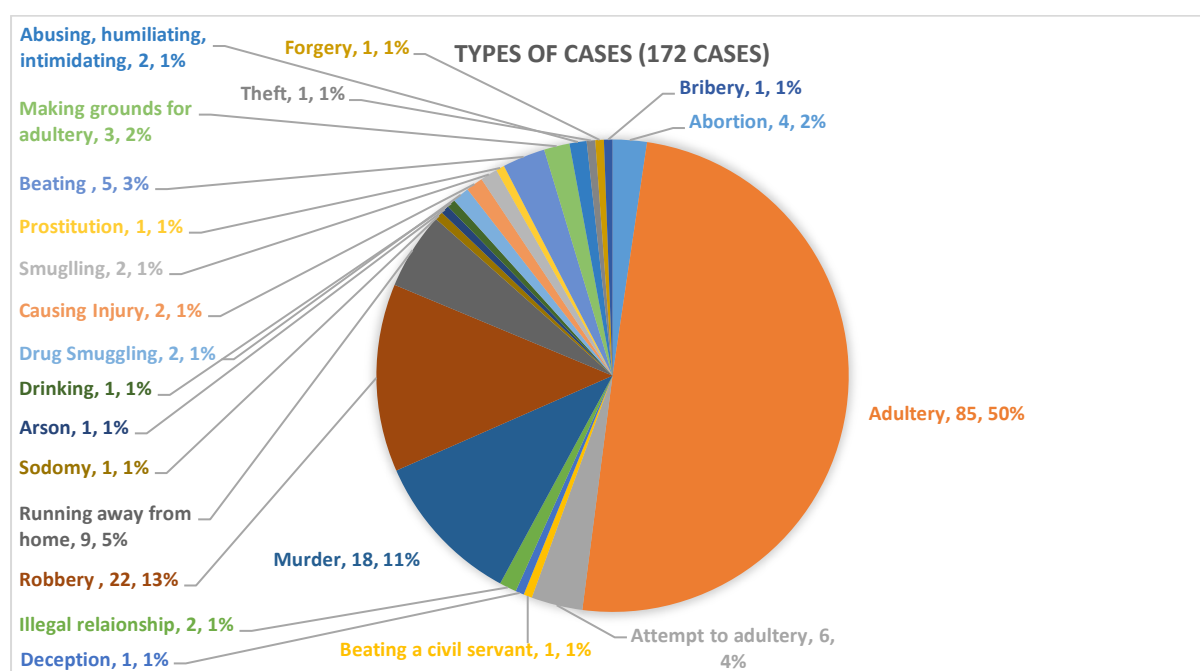
### COMPENSATION ORDERS (7 ORDERS AWARDED)



## SECTION 4: DEFENCE CASE STATISTICS

In 2018, our lawyers represented 172 women and girls accused of crimes in Kabul, Mazar and Herat – 37% more cases than the total number of criminal cases registered by the government in the three provinces (126 cases), *in a similar period*, and, 37% of the total number of such cases in Afghanistan (462 cases)<sup>46</sup>. Of the said cases, 138 cases were completed at the time of report and the statistics are as follows.

- 57% of the clients were prosecuted and convicted (79 cases).
- 14% of the clients were acquitted (19 cases).
- 29% of the clients were released pre-trial and by Presidential Decree.
- Most cases were cases of adultery (62%), followed by robbery (16%) and murder (13%).



<sup>46</sup> Ibid (MOWA, 2018), p. 34

### ***Comparison with 2016 and 2017***

In 2016 and 2017, our lawyers represented 179 women and girls accused of crimes in Kabul and Mazar (Herat was omitted in the statistic), over a 2-year period.

- 65% of the clients were prosecuted and convicted (116 cases).
- 29% of the clients were acquitted (52 cases).
- 6% of the clients were released pre-trial (11 cases).

### ***Comparison with 2014 and 2015***

In 2014 and 2015, our lawyers represented 118 women and girls accused of crimes in Kabul, Herat and Mazar-e-Sharif, over a 2-year period.

- 75% of the clients were prosecuted and convicted (89 cases).
- 18% of the clients were acquitted/released (21 cases).
- The remaining 7% of case outcomes were undetermined at time of report.

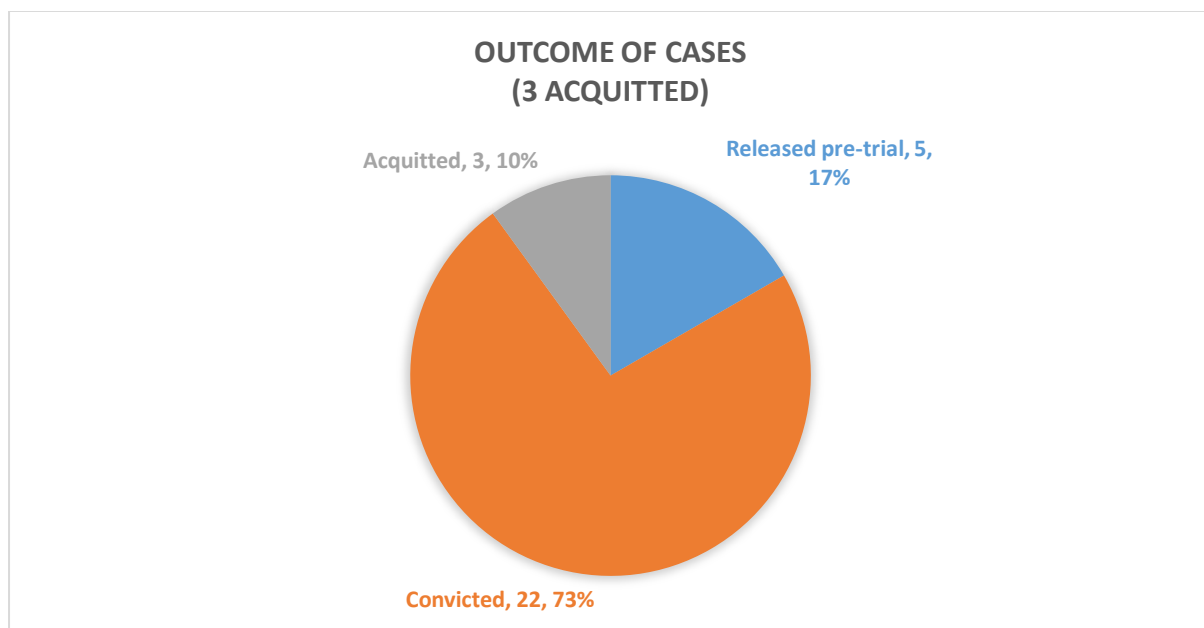
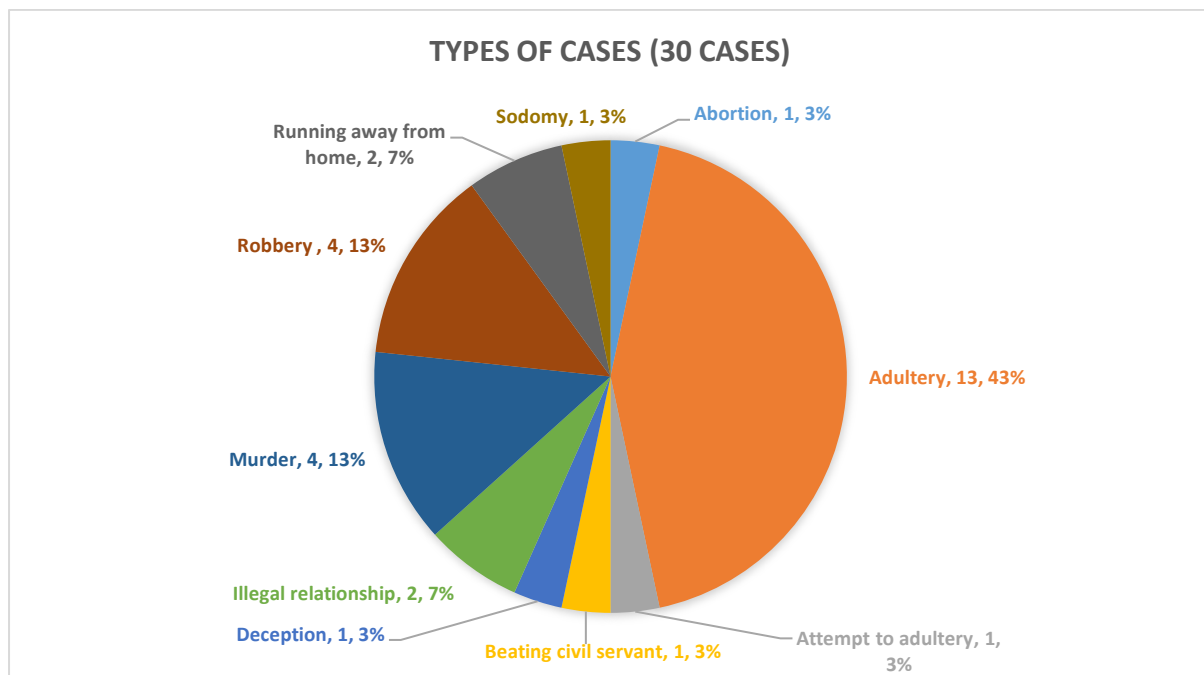
<b>Year</b>	<b># represented</b>	<b># convicted</b>	<b># Released pre-trial # Acquired upon appeal</b>
Annual average from 2014 and 2015 (all provinces)	59 (118 divide 2)	75%	18% (7% undetermined)
Annual average from 2016 and 2017 (two provinces)	90 (179 divide 2, figure rounded up)	65%	35%
2018 (all provinces)	172	57%	43%

Comparing the statistics between the annual average in 2014/2015 and 2018, we took up 113 more cases in 2018 compared to 2014/2015 (more than two-fold in about 4 years). We are proud to report that as a result of our representation, convictions of our clients have decreased from a 75% conviction rate in 2014/2015 to 57% conviction rate in 2018. Similarly, our acquittal/pre-trial release rates have increased more than twice-fold from 18% in 2014/2015 to 43% in 2018.

## A. KABUL DEFENCE CASELOAD

Over the reporting period, our lawyers represented 30 women offenders in Kabul, 38% of all criminal cases registered by the government in Kabul (80 cases) in a *similar period*<sup>47</sup>.

- 73% of them (22 clients) were convicted.
- 10% of them were acquitted (3 clients)
- 17% of them were released pre-trial (5 clients).
- Majority of cases, 43%, were cases of adultery (13 cases) followed by robbery and murder at 13% each.

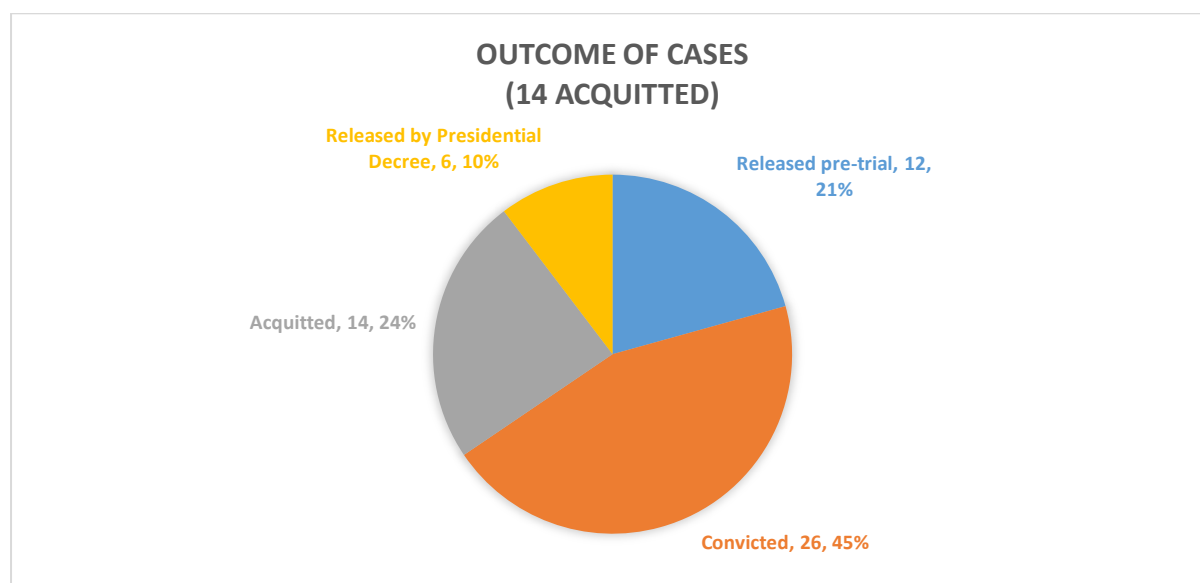
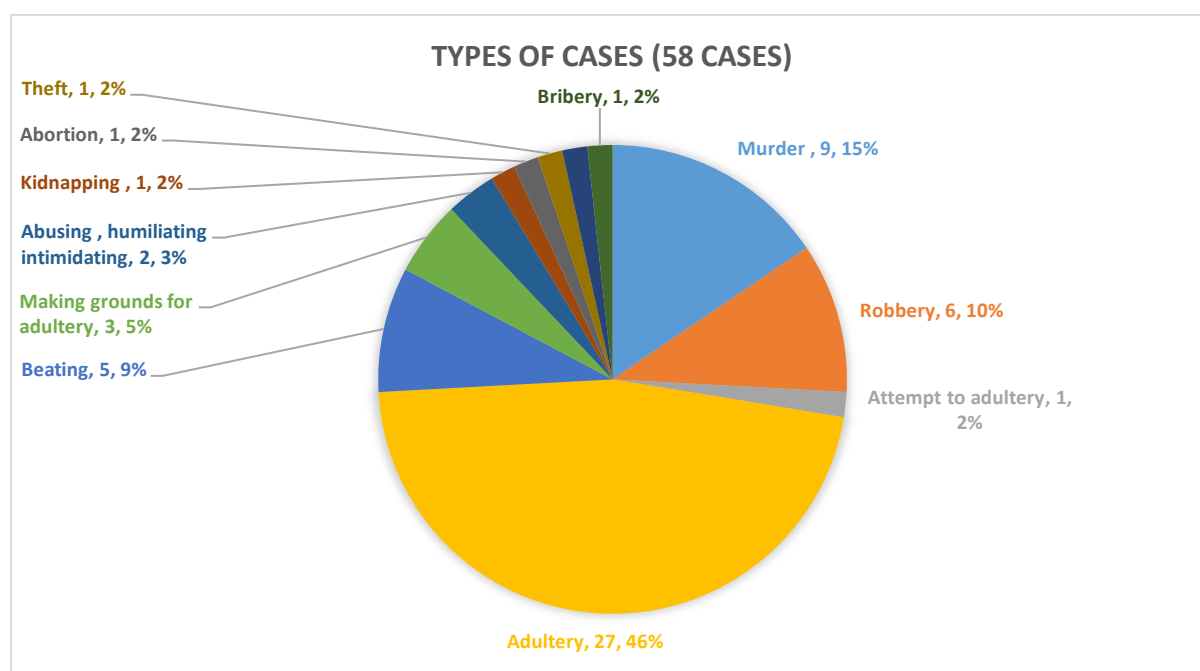


<sup>47</sup> Ibid (MOWA, 2018), p. 31 - 34

## B. MAZAR DEFENCE CASELOAD

Over the reporting period, our lawyers represented 58 women offenders in Mazar, about 100% more cases than the total number of criminal cases registered by the government in Balkh (27 cases) in a *similar* period.<sup>48</sup>

- 45% of them were convicted (26 clients).
- 24% of them were acquitted (14 clients).
- 21% of them were released pre-trial (12 clients) and 10% by Presidential Decree (6 clients).
- Like Kabul, the majority of cases, 46%, were cases of adultery (27 cases) followed by murder and robbery at 15% and 10% respectively.

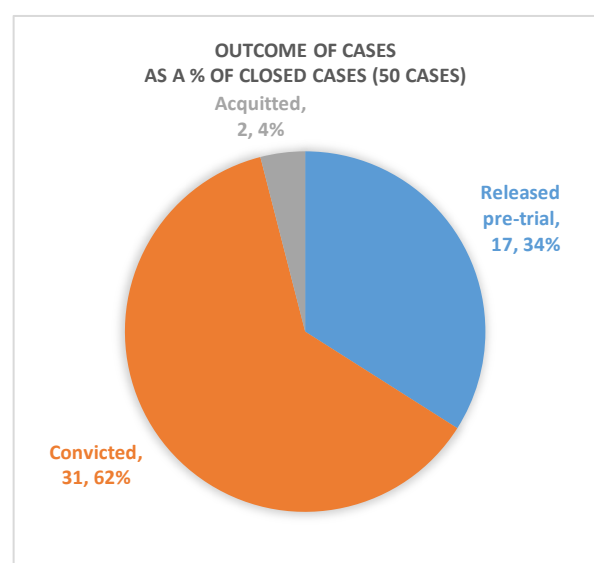
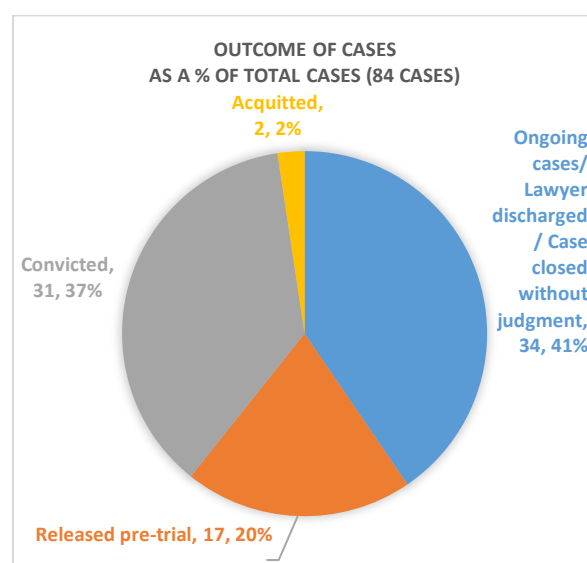
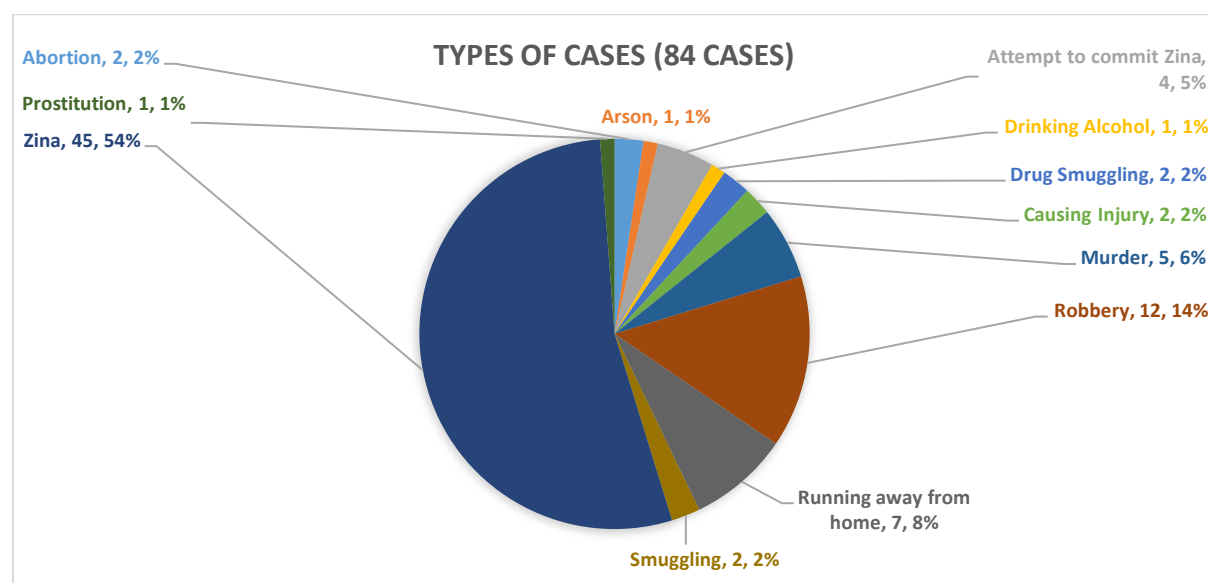


<sup>48</sup> Ibid (MOWA, 2018), p. 31 - 34

### C. HERAT DEFENCE CASELOAD

Over the reporting period, our lawyers represented 84 women offenders in Herat, over 4 times the total number of criminal cases registered by the government in Herat in a *similar* period (19 cases).<sup>49</sup>

- 40% of the 84 cases were either pending at the time of the report, closed without judgment or lawyer was discharged (34 clients).
- 60% of the 84 cases had concluded to judgment (50 clients). Of the concluded cases:
  - 62% of them (31 clients) were convicted.
  - 4% of them were acquitted (2 clients)
  - 34% of them were released pre-trial (17 clients).
- Like Kabul and Mazar, the majority of cases, 54% were cases of adultery (45 cases) followed by robbery, running away from home and murder at 14%, 8% and 6% respectively.



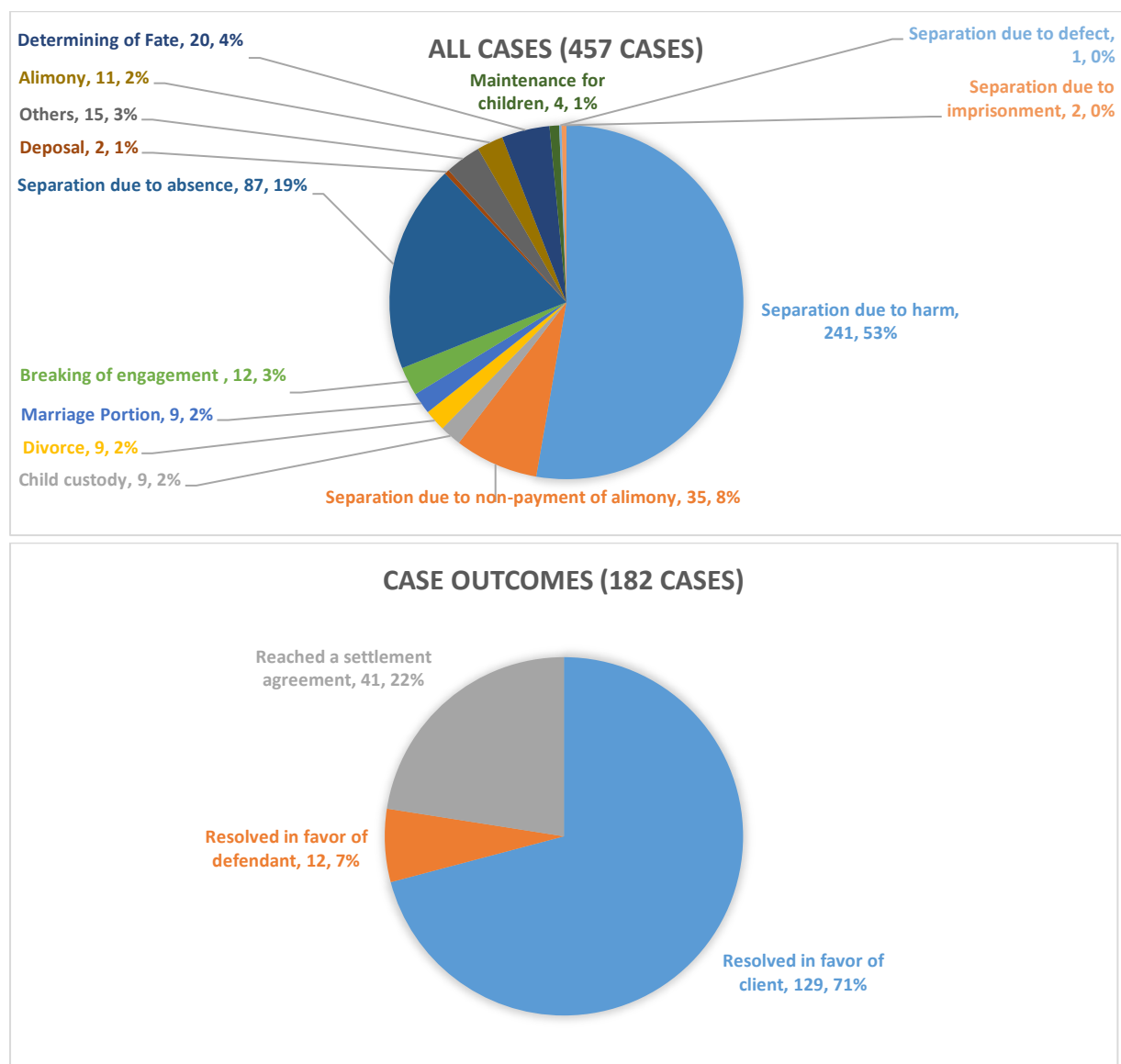
<sup>49</sup> Ibid (MOWA, 2018), p. 31 - 34

## SECTION 5: CIVIL PRACTICE

### A. SUMMARY OF CASES AND OUTCOMES

In 2018, our lawyers provided counsel to 457 clients and their families in Kabul, Herat and Mazar on a wide range of civil matters – 25% more than the total number of civil cases registered by the government in the three provinces (367 cases), in a *similar period*, and, 29% of such cases in Afghanistan (1,581 cases).<sup>50</sup> Majority of cases, 53%, involved petitions for separation due to harm (241 cases). Of the 182 cases which were concluded.

- 71% of cases were resolved in favour of client (129 cases).
- 7% of cases were resolved in favour of defendant (12 cases).
- 22% of cases reached settlement agreement (41 cases).



<sup>50</sup> Ibid (MOWA, 2018), p. 34

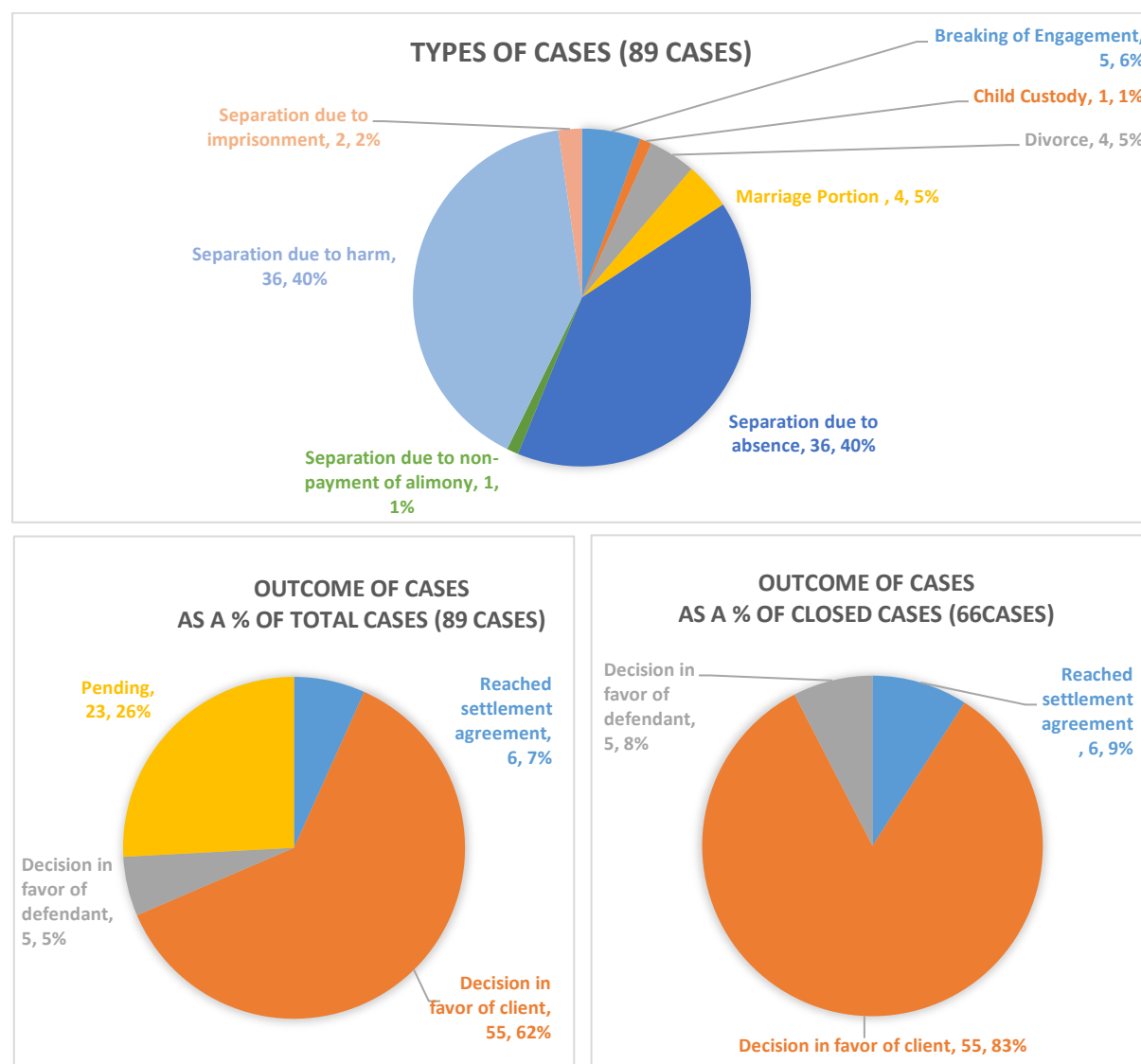
## B. KABUL CIVIL CASE LOAD

Over the reporting period, our lawyers in Kabul provided counsel to 89 clients, i.e. 42% of the total number of civil cases registered by the government in Kabul (213 cases), in a similar period<sup>51</sup>.

- 40% of the cases involved petitions for separation due to harm (36 cases)
- 40% of the cases involved petitions for separation due to absence (36 cases)
- The remaining 20% of the cases (17 cases) involved separation due to non-payment of alimony, divorce, breaking of engagement, deposal, marriage portion, child custody and others.

As regard the outcome of the cases:

- 26% of the 89 cases were pending at the time of report (23 cases). 74% of the cases were closed (66 cases). Of the closed cases:
  - 83% of were resolved in favour of client (55 cases).
  - 8% of cases were resolved in favour of defendant (5 cases).
  - 9% of cases reached settlement agreement (6 cases).



<sup>51</sup> Ibid (MOWA, 2018), p. 34



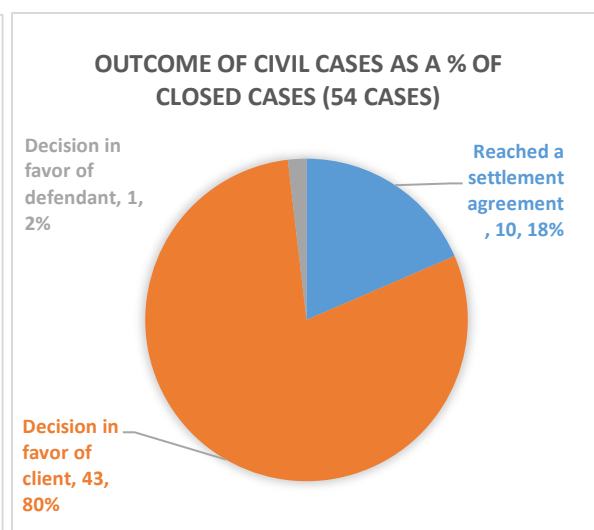
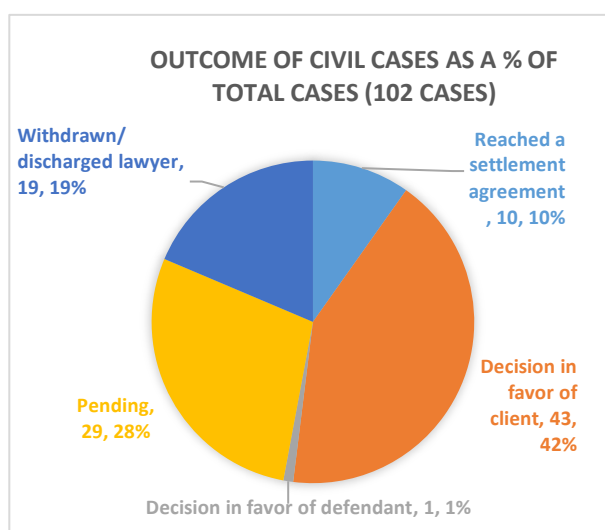
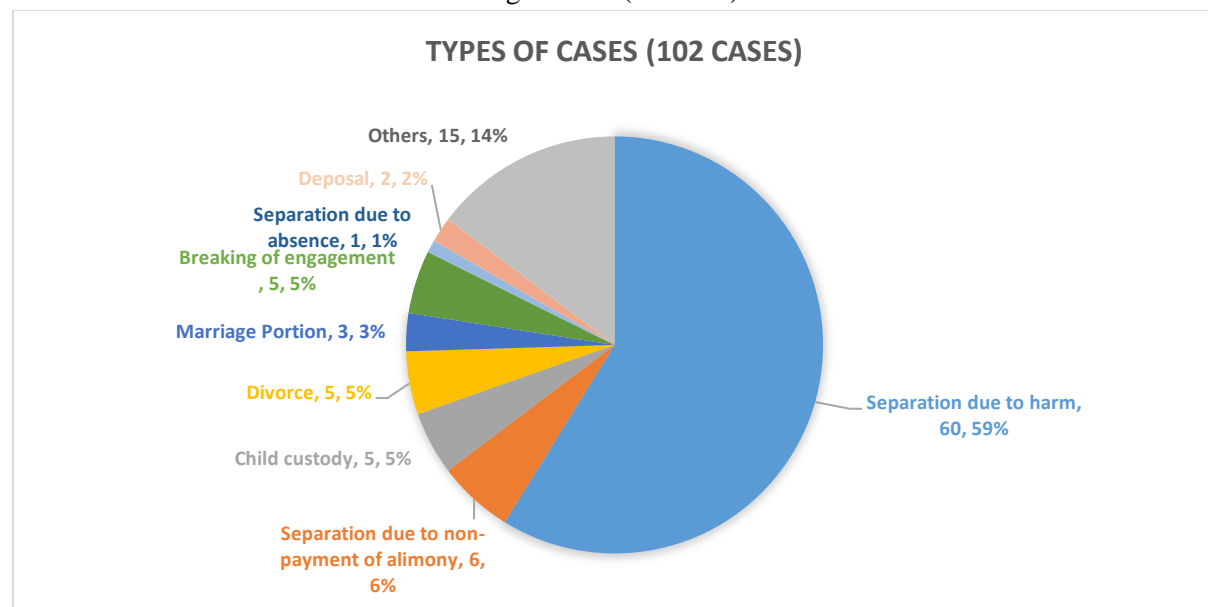
### C. MAZAR CIVIL CASE LOAD

Over the reporting period, our lawyers in Mazar provided counsel to 102 clients, i.e. 67% of the total number of civil cases registered by the government in Balkh (153 cases), in a similar period<sup>52</sup>.

- 59% of the cases involved petitions for separation due to harm (60 cases)
- The remaining 41% of the cases (42 cases) involved other separation cases (separation due to absence or non-payment of alimony), divorce, deposal, alimony, child custody and others.

As regard the outcome of the cases:

- 28% of cases were pending at the time of report (23 cases) and 19% of cases were withdrawn or lawyer discharged. 53% of the cases were concluded (54 cases). Of the concluded cases:
  - 80% were resolved in favour of client (43 cases).
  - 2% were resolved in favour of defendant (1 case).
  - 18% reached settlement agreement (10 cases).



<sup>52</sup> Ibid (MOWA, 2018), p. 34

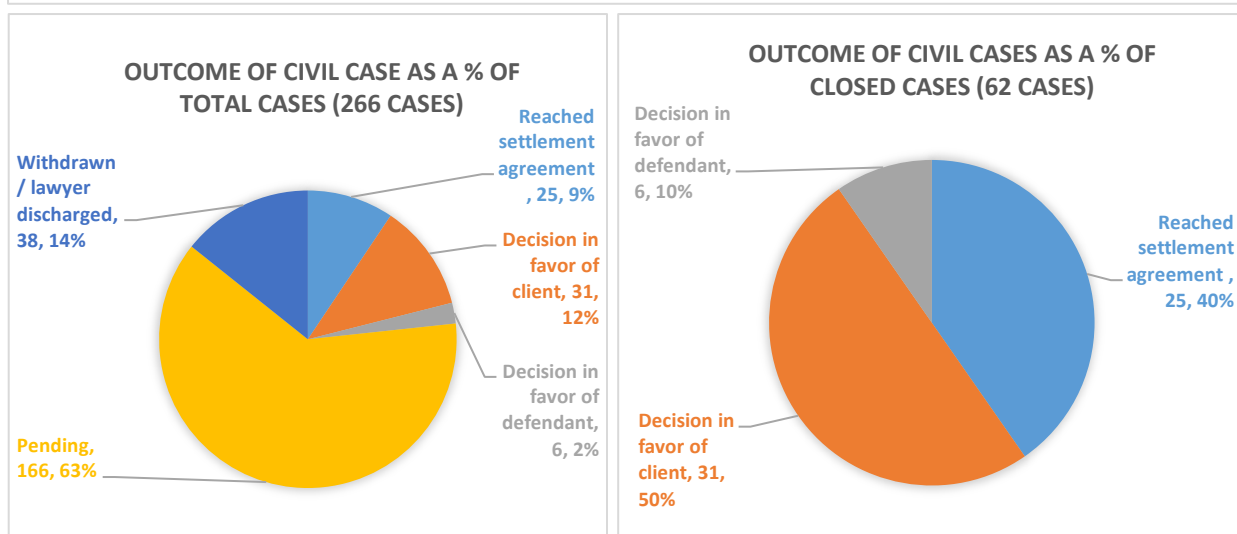
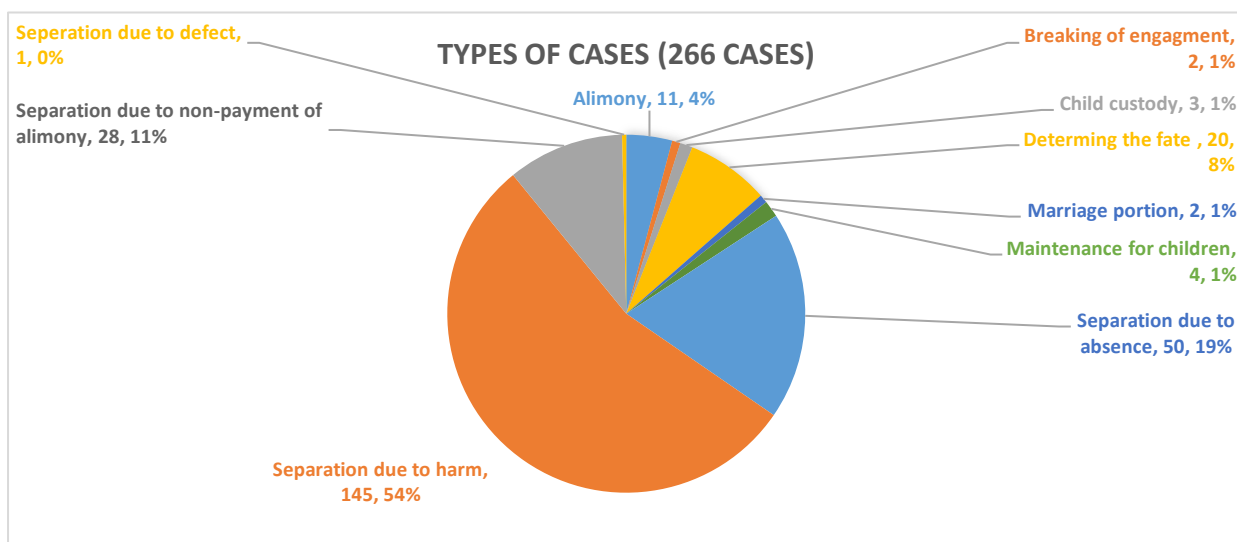
#### D. HERAT CIVIL CASE LOAD

Over the reporting period, our lawyers in Herat provided counsel to 266 clients, over 200% more than the total number of civil cases registered by the government in Herat (1 case), in a *similar* period<sup>53</sup>.

- 54% of the cases involved petitions for separation due to harm (145 cases)
- The next majority of cases, 19% of the cases (50 cases), involved separation due to absence or non-payment of alimony. The remaining cases involved the illegal fixing of the client's fate, breaking of engagement, maintenance, separation due to defect etc...

As regard the outcome of the cases:

- 63% of case outcomes were pending at the time of report (166 cases). 14% of cases were withdrawn/lawyer was discharged (38 cases). 23% of the cases were closed (62 cases). Of the closed cases:
  - 50% were resolved in favour of client were resolved in favour of client (31 cases).
  - 10% of cases were resolved in favour of defendant (6 cases).
  - 40% of cases reached settlement agreement (25 cases).



<sup>53</sup> Ibid (MOWA, 2018), p. 34

## SECTION 6: PROSECUTING EVAW CASES & CHALLENGES

From the prosecution statistics presented above, we can see that across Afghanistan, about half of all crimes against women are withdrawn and not prosecuted.

In 2018, the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a report titled “Injustice and Impunity: Mediation of Criminal Offences of Violence against Women”.<sup>54</sup> It was a serious indictment of the special prosecution units which were established to prosecute violence against women. The units and several named organizations were criticized for “normalizing violence against women”<sup>55</sup> by failing to investigate, prosecute and punish crimes against women – and instead resorting to mediation.

“EVAW institutions and non-governmental organizations facilitated mediation proceedings, referred cases to traditional mediation mechanisms, observed mediation sessions, or knew about mediation taking place, in relation to “honor killings” and other offences stated in the EVAW Law.”<sup>56</sup>

In the report, “mediation” was defined as “practices carried out by community leaders, *Shuras*<sup>57</sup>, *Ulemas*<sup>58</sup>, and *Jirgas*<sup>59</sup>, as well as EVAW institutions (and NGOs) intended to resolve disputes and criminal offences. In most mediation proceedings, mediators bring together both parties to the case (sometimes representatives of parties), decide on a guilty party, often compel the guilty party to pay compensation, and produce commitment letters signed by the guilty party; committing to refrain from the act in the future”.<sup>60</sup>

The report was particularly critical of the excessive and indiscriminate use of mediation in felony cases i.e., crimes of rape, enforced prostitution, publicizing the identity of a victim, burning or the use of chemical substances and forced self-immolation and suicide (Articles 17 to 21 of the EVAW Law). The law requires such cases to be prosecuted, regardless of whether a complaint is filed or subsequently withdrawn. By mediating such cases, prosecutors and the stakeholders involved were committing a serious violation of the law, in plain sight.

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<sup>54</sup> UNAMA/OHCHR, “Injustice and Impunity: Mediation of Criminal Offences of Violence against Women” May 2018

<sup>55</sup> Human Rights Council Twentieth session, “Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo”, 23 May 2012 , A/HRC/20/16, para 19.

<sup>56</sup> Ibid (UNAMA, 2018), p. 6.

Medica Afghanistan’s position with respect to mediation was reported in its EVAW Report 2014 and 2015. Medica Afghanistan will only facilitate mediation in the following cases:

Medica Afghanistan will only facilitate mediation in non-felony cases and if:

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

<sup>57</sup> Shura is an assembly of representatives.

<sup>58</sup> Religious leaders

<sup>59</sup> *Jirga* is a council of community village elders who gather to resolve disputes in the family and community.

<sup>60</sup> Ibid (UNAMA, 2018), p. 5, footnote 4.

The report covering an approximate 2-year period between August 2015 and December 2017 was based on interviews with 1,826 mediators, representatives of EVAW Law institutions, non-governmental organisations, and women's rights activists. 280 cases of murder and "honour killings" across 22 provinces were documented.<sup>61</sup> Only 18% of these 280 cases led to a conviction.<sup>62</sup> An additional 237 cases of other forms of violence were documented. Of the said 237 cases, 71 per cent involved recurring violence.<sup>63</sup> 61% of these cases were mediated.<sup>64</sup> A vast majority of these cases, including cases of extreme acts of violence, honour killings and murder, were mediated across the country. There were "consistent patterns countrywide of women routinely subjected to pressure" to withdraw and mediate.<sup>65</sup>

Authorities justified mediation on the basis of Article 39 of the EVAW Law. They were also of the opinion that unless victims withdrew their complaints, mediation was not possible.<sup>66</sup> In 2018, a new department titled Social Affairs Department was established in the EVAW Unit which is tasked to conduct mediation informally. However, it is conducted in the absence of proper policies, standards, procedures and certifications.<sup>67</sup> The problem with a mediation-by-default policy, is that, the objectives of mediation is ultimately left to the parties - head of the family, victim, perpetrators, and, the prosecutor – and influenced by the power dynamic within that equation.

The police were forwarding only a minority of cases to prosecutors.<sup>68</sup> Prosecutors were failing to register complaints.<sup>69</sup> In rural areas, the situation was more dire.<sup>70</sup> Prosecutors, mostly male, were strongly against trying domestic violence cases in the formal justice system. To them, domestic violence was a personal matter - to be tried only within the family. To try domestic issues outside the family was unnecessary, immoral and women who went against this were aggressively accused for being 'bad women'.<sup>71</sup>

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<sup>61</sup> Ibid (UNAMA, 2018), p. 6

<sup>62</sup> Ibid (UNAMA, 2018), p. 8 and p. 22

<sup>63</sup> Ibid (UNAMA, 2018), p. 26

<sup>64</sup> It was not clear from the report if the remaining 39% of the cases were tried.

<sup>65</sup> Ibid (UNAMA, 2018), p. 7

<sup>66</sup> Ibid (UNAMA, 2018), p. 8

This is an incorrect view. Article 39 is not phrased as an authorizing provision, i.e. it does not authorize police or prosecutors to enter into mediation upon withdrawal. Instead, Article 39 is phrased as a protective provision to safeguard victims' agency, i.e. it safeguards the right of victims to withdraw their complaints at any stage of the proceedings. Further, mediation is not (yet) established as an alternative dispute resolution mechanism in the formal justice system. There are no policies; no proper standards, procedures or certifications. "The Law on Reconciliation in Civil Affairs by Jirgas" which governs financial aspects of personal disputes was presented to the Cabinet on 26 July 2017 with the Ministry of Justice's General Directorate for Legislation and a draft Mediation Regulation which governs family-related disputes (and not crimes) is with the Ministry of Justice's General Directorate for Legislation (as of March 2018)" as per p. 18 of UNAMA Report.

<sup>67</sup> Ibid (UNAMA), p. 7. Confirmed by our Legal Aid Program Manager in Kabul, Afghanistan.

<sup>68</sup> Ibid (UNAMA), p. 8

<sup>69</sup> Torunn Wimpelmann, "The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan [Chapter Title: Brokers of Justice: The Special Prosecution Unit for Crimes of Violence against Women in Kabul]", University of California Press (2017), p. 90

<sup>70</sup> Ibid (Torunn Wimpelmann), p. 89 and p. 90

<sup>71</sup> Ibid (Torunn Wimpelmann), p. 90 citing Shahabi, Wimpelmann, and Elyassi, "The Specialized Units for the Prosecution of Violence Against Women in Afghanistan: Shortcuts or detours to women's empowerment?", Research Institute for Women Peace and Security & Chr Michelsen Institute (2016).

By mediating cases of violence, prosecutors were shortcutting justice and facilitating outcomes which privileged the restoration of family unit over the physical safety of the victims. Few measures, if any, were put in place to ensure women were not going to be subjected to further violence – apart from offenders’ written agreement to the effect. Prosecutors saw their professional duties as mediating disputes, rather than in implementing the law.<sup>72</sup>

The above would constitute a breach of the Convention on Elimination of Discrimination Against Women which Afghanistan has signed and ratified. Afghanistan would be under obligations to:

“Ensure that gender-based violence against women is not mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation.”<sup>73</sup>

“Ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures.”<sup>74</sup>

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If on the one hand, the special prosecution units were accused of normalizing violence, on the other hand, there were also accounts of prosecutors leveraging their position to strike a better bargain for victims.

Not all victims sought imprisonment. Many sought acknowledgement, apology and hoped that the prosecutors could somehow force their offenders to amend their behaviors. Outside the prosecution unit, victims had all odds stacked against them. Inside the prosecution unit, the power dynamic was slightly altered and victims could bargain for what they wanted. Prosecutors did assist. They threatened offenders with prosecution, even admonishing and shaming them. Offenders were forced to make written guarantees to stop the violence or risk imprisonment. “Often, the main function of evidence was to serve as leverage in the hands of the prosecutor to get the accused to agree to some of the terms of the complainant.”<sup>75</sup> These were not perfect bargains, but they were “better” bargains nonetheless.

Since women’s existence outside of marriage is problematic in a place like Afghanistan, restoration to family life seemed, in some respect, the “better of two evils”. The “kinds of resolutions” available to victims were “colored” by this reality.<sup>76</sup>

A different view of the prosecution unit was that prosecutors were not out there to maliciously impose “ideological prejudices”<sup>77</sup> without measure. Instead, prosecutors were helping victims negotiate a better deal

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<sup>72</sup> Ibid (Torunn Wimpelmann), p. 98

<sup>73</sup> CEDAW, “General Recommendation. No. 35”, CEDAW/C/GC/35, 14 July 2017, para. 45. Accessed at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf) (20 December 2018)

<sup>74</sup> Committee on the Elimination of Discrimination against Women (CEDAW), “General Recommendation No. 33 on Access to Justice”, CEDAW/C/GC/33, 23 July 2015 para. 58 (c). Accessed at <https://undocs.org/CEDAW/C/GC/33> (20 December 2018)

<sup>75</sup> Ibid (Torunn Wimpelmann), p. 93

<sup>76</sup> Sylvia Vatuk, “The “women’s court” in India: An alternative dispute resolution body for women in distress”, *The Journal of Legal Pluralism and Unofficial Law*, Volume 45, 2013 - Issue 1

<sup>77</sup> Ibid (Torunn Wimpelmann), p. 107

than what the prevailing inequalities in marriage and economic entitlements – would have them left with.<sup>78</sup> While this is not in line with the purpose of the prosecution unit, it does serve to restore some power to the (mostly female) complainant,<sup>79</sup> whilst keeping with social traditions of not breaking up the family unit.

The basic unit of Afghan society is premised on a highly unequal gendered relationship both in terms of social standing and economic entitlement.<sup>80</sup> Though we understand violence in terms of certain actions criminalized by law, violence does not begin with a slap, so to speak. Violence was always pre-existing – deep in the gendered economic inequities which inevitably lead to other forms of gendered violence. In this respect, each decision (by prosecutor or victim) is intrinsically connected to this structural issue and the inevitable economic repercussions<sup>81</sup> that women would have to endure for getting out of this structure.<sup>82</sup> Victims will be at risk of further violence. They will lose access to housing, food and other daily necessities. They may lose custody of their children. Further, if victims are divorced, they will only receive maintenance for the duration of the *iddat*<sup>83</sup> period (approximately 3 months). But there are no further rights to matrimonial property or maintenance over a longer reasonable period of time.

This is the price of justice.

“Women strategize within concrete constraints and (...) distinct “rules of the game” in order to “maximize [their] security and optimize life options (...)”.<sup>84</sup> Prosecutors and victims negotiate “in and out of law in ways by which they can best optimize (victims) social, cultural and economic options.”<sup>85</sup>

Nonetheless in suggesting the same, prosecutors were still committing serious violations of women’s human rights and that ought to carry a serious penalty.

In coming up with a response to all of the above, it must be first said: there is no easy answer to this conundrum. We can see this in accounts of prosecutors suggesting to women that “rather than being left **without a home and an income**, they would be better off reaching some kind of agreement with their abusers, backed up by the prosecution itself.”<sup>86</sup> By those considerations “without a home” and “income”, if there is one area of the response-mechanism that we can further strengthen, it would be to center EAW law, its future policies and entire response-infrastructure around women’s security – both economic and physical. If as the reports say, “(...) the VAW unit was unable to overcome the structural relations that situated women as dependents within

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<sup>78</sup> Basu, “Playing Off Courts: The Negotiation of Divorce and Violence in Plural Legal Setting in Kolkata.” The Journal of Legal Pluralism and Unofficial Law, Volume 38, 2006, p. 71

<sup>79</sup> Ibid (Torunn Wimpelmann), p. 102

<sup>80</sup> Ibid (Sylvia Vatuk), summary.

<sup>81</sup> “Survivors also noted that they decided to withdraw their cases and seek mediation because they lacked other alternatives, given their dependent financial and family situation” per Ibid (UNAMA), p. 9.

<sup>82</sup> Ibid., (Sylvia Vatuk) summary

<sup>83</sup> *Iddat* is a waiting period which takes place during pronouncement of divorce, usually 3 months (or 3 menstrual cycles), during which certain rights and obligations between husband and wife applies.

<sup>84</sup> Deniz Kandiyoti, “Bargaining with Patriarchy”, Gender & Society (1988), 2(3), 274–290.

<sup>85</sup> Ibid (Basu), p. 71

<sup>86</sup> Ibid (Torunn Wimpelmann), p. 87

the family unit.”<sup>87</sup> and if “legal officials were similarly maneuvering within parameters of (...) material realities”,<sup>88</sup> i.e. economic realities then, we argue, the entire response infrastructure (law, policy, procedures) must put victims’ physical and economic security considerations and consequences at the heart of its work. The “economics of violence and prosecution” so to speak should be recognized by law. This means that the justice system should be assessing, quantifying and remedying the losses which victims will inevitably suffer from their decision to prosecute (e.g. loss of housing, loss of maintenance). Mitigation of economic costs pre-trial must be at the heart of the justice system’s response. Justice is dispensed when victims can walk away from their abusers and *still* sustain some of its inevitable blowbacks.

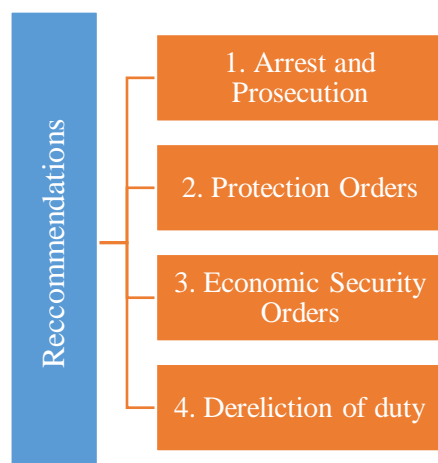
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<sup>87</sup> Ibid (Torunn Wimpelmann),. p. 105

<sup>88</sup> Ibid (Torunn Wimpelmann),. p. 94

## SECTION 7: RECOMMENDATIONS ON BEST PRACTICES IN LAW AND PROCEDURE

In this section, we will survey a selection of best practice provisions which can be adopted and adapted into EVAW Law (and procedure) to ensure that there is a more gender-competent approach to the prosecution of EVAW crimes. The recommendations are divided into the following issues: (1) Arrest and prosecution, (2) Protection Orders, (3) Economic Security Orders, (4) Dereliction of duty.



The best practice provisions selected were handpicked by the author, as well as, recommended by the UN Special Rapporteur Report of 1996<sup>89</sup> and the UN in its Framework for Legislation on Violence Against Women<sup>90</sup>.

Relevant extracts of the best practice provisions have been set out for ease of reference. The extracts have also been set out in verbatim as the language of these provisions, the result of careful crafting over years and trial and error, is useful for direct adoption and adaptation into EVAW Law (and supplemental procedure).

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<sup>89</sup>Report of the Special Rapporteur on violence against women, its causes and consequences (1996) “A framework on model legislation” E/CN.4/1996/53/ Add.2. See also *Fifteen Years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009) – A Critical Review*, United Nations Special Rapporteur on violence against women, its causes and consequences (2009), available online at: <http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>

This report also covers best practices adopted by the United Nations General Assembly in 1997 urging member states to:

- Revise their criminal procedure to ensure that the primary responsibility for initiating prosecution lies with prosecution authorities, that police can enter premises and conduct arrests in cases of violence against women, that measures are available to facilitate the testimony of victims and that courts have the authority to issue protection and restraining orders (para. 7);
- Ensure that acts of violence are responded to and that police procedures take into account the need for safety of the victim (para. 8(c));
- Adopt measures to protect the safety of victims and witnesses before, during and after criminal proceedings (para. 9(h));

<sup>90</sup> United Nations Women, “Handbook for Legislation On Violence Against Women” (2012). Accessed at [http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw\\_legislation-handbook%20pdf.pdf?la=en&vs=1502](http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?la=en&vs=1502) (20 November 2018)



In 2018, the Ministry of Women's Affairs Legislative Drafting Committee began the process of consulting with lawyers, academics and civil society for suggestions of amendments to the EVAW Law pursuant to Article 16(5) of EVAW Law. We are one of the key organizations selected to draft some of these amendments. We are proposing that pursuant to Article 16(5) and 16(6) of the EVAW Law, the EVAW Commission adopts and adapts these recommendations into EVAW Law or supplements the EVAW Law with a procedural law (similar to the Criminal Procedure Code) and/or guidelines, to ensure that the recommendations will be implementable (i.e. that it is clear what is to be done, at which stage, and by whom).

## ISSUE 1: ARREST AND PROSECUTION

### GAPS IN EVAW LAW AND CPC

Currently, EVAW Law criminalizes acts of violence against women. The goals of EVAW Law is set forth in Article 2: to prevent, protect, prosecute and punish. The procedure for how this is to be done is set forth summarily in Article 7. Victims can register their complaints to a number of institutions; the Ministry of Women's Affairs shall then implement steps to address the complaints; the prosecutors and court shall expeditiously investigate and try the case. Apart from Article 7 and Article 13, there are no other procedural provisions on how these crimes are to be prosecuted.

One may argue, even rightly, that EVAW Law is not placed to set out procedural matters. Even so, the EVAW Commission is empowered to adopt procedure to supplement the law but this has not been done. Procedural matters are broadly left to the Criminal Procedure Code 2014 (CPC). The CPC, though progressive in several respects, does not provide exceptional provisions specifically for cases of violence against women. For example:

- There are no provisions prohibiting prosecutors not to participate in mediation.
- There are no discretionary limits on when a warning may be issued in lieu of an arrest in cases of violence against women or when a warrantless arrest may be made (even if the offender is not caught *in flagrante delicto*).
- Though Article 171 of CPC sets out the grounds on which a prosecution may discontinue a case, there are no discretionary limits on when a case of violence against women may be discontinued.
- There are no procedures for victims to object to bail applications, its contents and conditions, specifically in cases of violence against women.

Moreover the CPC is to some extent *gender-blind*.

To take the example on bail, under the CPC the prosecution may release an offender on bail at his/her own discretion upon the request of the offender (Article 105 of CPC). However, the CPC also states that victims are not permitted to object to bail except in cases of *qesas* (equal retribution) and *deyyat* (financial compensation or "blood money" for murder or bodily harm) (Article 109 of CPC). This marginalizes most women. If an offender can be readily released on bail (and especially if the offender can afford to pay the bail), women victims who are already at risk of reporting, are at further risk of retaliation and intimidation (leading to withdrawal). Thus, on the one hand, a lenient bail policy fulfills other public interest and human rights goals such as the eliminating overcrowding in prisons, and, ensuring suspects are not serving

disproportionate detention terms. But on the other hand, because the policy is gender-blind, the repercussions of leniency on victims of domestic violence is not properly accounted for.

To take another example relating to discontinuation of a case, under the CPC, the prosecutor can dismiss a case if the instigation of a criminal action is dependent on a victim's complaint and the victim has withdrawn the complaint (Article 171 of the CPC). This provision is not problematic per se. It is however *gender-blind* as the procedure does not cause the prosecutor to investigate into the reasons of withdrawal and ensure that remediable concerns are properly remedied. It also does not make withdrawal procedurally onerous, i.e. it is easy to withdraw a case, thereby causing a good majority of prosecutors who harbor gender-biased views to cause victims to withdraw through encouragement or pressure.

## RECOMMENDATIONS ON PROVISIONS FOR ARREST AND PROSECUTION

One of the ways other countries have tackled gender-blind practices in arrest and prosecution is to put in place procedures and guidance for police and prosecutors on when they should arrest, commence (or discharge) proceedings, and, how to handle other applications as bail, withdrawal and protection. This is typically termed a “pro-arrest and pro-prosecution policy”. The objective of such a policy is to encourage a gender-competent approach to arrest and prosecution. Such a policy would typically limit police/prosecutorial discretion, require higher-ranking officials to authorize (or enquire into) dropped cases, and, provide further provisions to safeguard victims' rights. Indeed, an explicit and instructive arrest and prosecution policy led by a vision to secure protection of women's rights, would derail Afghanistan's institutional default to mediation.

### QUEENSLAND, AUSTRALIA, OPERATIONAL POLICY MANUAL ISSUE 67 PUBLIC EDITION (3 DECEMBER 2011)<sup>91</sup>

The State of Queensland has an Operational Policy with several examples showing a pro-arrest and prosecution stance in domestic violence cases.

For instance, in the case of first time offenders or minor crimes, the policy encourages cautionary warning instead of arrest. However, to avoid overuse of discretionary caution in domestic violence cases, the policy states:

“3.5.19 An adult caution is not to be administered for an offence involving domestic violence.”

On the issue of harm, the Policy requires the Director of Public Prosecutions (a high-ranking officer) to prepare victim impact statement (VIS) [A victim impact statement (VIS) is a statement which details the impact an offence has had on a victim.] The policy instructs the DPP to provide details on all harms including psychological harm and financial harm. The Policy also specifically instructs investigating officers to inform victims' of domestic violence, of their eligibility to submit VIS.

#### “3.7.10 Victim impact statements

Investigating officers are to advise victims of violence or domestic violence offences they are eligible to provide a VIS, through a Police Referral. It is important to note that all VIS in the district and supreme courts

<sup>91</sup> Queensland, Australia, “Operational Policy Manual Issue 67 Public Edition” (3 December 2011). Accessed at <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter1.pdf> (20 November 2018)

are **prepared by Director of Public Prosecutions**, providing details of the: (i) physical; (ii) psychological; (iii) social; and (iv) financial, harm they have suffered as a result of the offence, for the prosecutor to inform the sentencing court. The victim may elect to read their victim impact statement to the court.”

On the issue of trauma, the policy provides discretion to prosecutors to apply for court orders to decrease victims’ trauma.

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“3.10.6 Special witnesses Special witnesses Section 21A: ‘Evidence of special witnesses’ of the Evidence Act provides that a court in any proceeding may make **certain orders that are intended to decrease the trauma associated with giving evidence** in the proceeding. A special witness is defined in s. 21A of the Evidence Act and includes victims of domestic and family violence and victims of offences of a sexual nature.”

On the issue of bail, the policy empowers prosecutors to stay a lower court’s decision to grant bail in cases of domestic violence. It also requires prosecutors to review applications for release on bail in serious cases of domestic violence.

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“3.11.6 Review of bail decisions

Stay of decision about release There is no power to stay the magistrate’s decision to grant bail unless s. 19CA: ‘Stay of release decision relating to relevant domestic violence offence’ of the BA applies for a person charged with a domestic violence offence.”

“An **application to review should be considered** if a magistrate granted bail where the defendant: (i) is charged with: (a) a domestic violence offence where it is alleged there is **substantial, prolonged, or escalating violence** against an aggrieved or a number of aggrieved persons.

These are examples of provisions found in an operational policy document which instructs on prosecution and protection at each stage of legal proceedings, to counteract gender-blind practices.

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## **UNITED KINGDOM, CROWN PROSECUTION SERVICES GUIDELINES ON PROSECUTING VIOLENCE AGAINST WOMEN (MAY 2014)**

The Crown Prosecution Services of the United Kingdom have guidelines which contain several examples of the pro-arrest, protection and prosecution stance.

On the issue of physical safety and emotional support:

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“42. Practical and emotional support services should be identified to the victim by the police; victims should also be offered the assistance of an Independent Domestic Violence Advisors. Victims receiving speedier attention and respect for their specific needs by the criminal justice system may feel more confident or encouraged to continue support for a prosecution.

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43. To ensure victims are kept as safe as possible, prosecutors should **properly consider all tools at their disposal** (for example - appropriate conditions for bail applications, restraining orders, breaches of bail or civil orders; and, the potential for further offending by the defendant (such as any stalking, harassment or intimidation). Further information can be found later in this document.”

On the issue of withdrawal, the guidelines require prosecutors to consider the reasons for withdrawal. It instructs that prosecutors may only discontinue a case if the victim's statement was the only evidence available. It also instructs prosecutors to consult with a senior specialised prosecutor before discontinuation.

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“Discontinuing the case

143. It is possible that after considering a victim's reasons for retracting their allegation or withdrawal of support, a prosecutor may discontinue the case as the victim's input was the only evidence available, and a summons would not be appropriate. Prosecutors should ensure they have consulted with a senior prosecutor experienced in domestic violence cases before the final decision to discontinue the case is made.”

On the issue of mediation, the guidelines discourage the use of restorative justice techniques/ mediation by police. It specifically states that in certain cases, mediation is permitted under specific conditions. The mediation must focus on a victim's safety (not restoration of family unit or requirements of obedience) and it must be facilitated by a specialised mediator.

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“62. Under the Code of Practice for Victims of Crime (October 2013), victims are entitled to take part in restorative justice techniques. Police policy does not support the use of restorative justice for domestic abuse in intimate partner cases, however, officers are allowed to consider its use where a domestic violence case not involving intimate partners arises, and where they have considered the specific criteria set out by ACPO. Restorative justice should only take place after cautious consideration and advice from supervisors or experts.

63. Consideration of restorative justice or mediation must focus on a victim's safety. Where a victim requests restorative justice, care should be taken to ensure the victim is a willing participant and there are no coercive influences; this is because of the nature of the relationship between the victim and defendant. A properly trained facilitator experienced in dealing with sensitive cases of this nature, should manage arrangements to ensure the victim is not placed under pressure.”

The above policies and laws are drafted with instructive language. For example, instead of stating that “victims’ have a right to be safe and protected from violence”, mentioned officers are instructed to take certain steps, at a certain time, in order to ensure that victims are protected from violence. Those steps are then substantiated with forms and reporting. That makes determination of accountability clearer and simpler.

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## **GHANA, DOMESTIC VIOLENCE ACT (2007) ACT 732, ARTICLE 9<sup>92</sup>**

The law in Ghana makes a special exception for warrantless arrest in domestic violence cases.

“(3)(a) A police officer may arrest a person without a warrant on reasonable suspicion that that person: has committed an offence of domestic violence, or (b) is about to commit an offence of domestic violence and there is no other way to prevent the commission of the offence.

(4) A police officer may arrest a person without warrant if the officer has reasonable cause to believe that the person has contravened or is contravening a protection order issued under section 13 or 14.”

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<sup>92</sup> Ghana, Domestic Violence Act (2007) ACT 732, Article 9

Accessed at [https://www.africalegalaid.com/download/domestic\\_violence\\_legislations/Ghana\\_Domestic\\_Violence\\_Act\\_2007.pdf](https://www.africalegalaid.com/download/domestic_violence_legislations/Ghana_Domestic_Violence_Act_2007.pdf) (20 November 2018)

## ISSUE 2: PROTECTION ORDERS

### GAPS IN EVAW LAW AND CPC

The EVAW Law does not contain procedural provisions on protection save for Article 13 which states that the police shall adopt and exercise special preventive and protective measures.

Under the CPC, vulnerable and at-risk victims and witnesses may request for protective measures (Article 55 of the CPC). The CPC provides for some of these measures under Article 53 such as concealing the identity of witnesses, forbidding disclosure, testifying behind a curtain or through a technical voice and visual changer device. However these measures are *gender-blind* as they:

- Omit other sites of violence (beyond the walls of the court). The general provisions in Article 54 of the CPC are not comprehensive enough. They do not target protection needs comprehensively.
- Do not address the complexities of protection in cases of violence within the family.
- Do not determine the threshold of evidence that is sufficient for the issue of a protection order.
- Do not set out mandatory timeline for issuing a protection order.
- Do not set out all the other ancillary measures to make the protection meaningful (e.g. a protection order is not meaningful if it is not paired with a maintenance order to make sure victims are not financially cut off or a child placement order to make sure that victims are not forcefully separated from their children).

As the protection measures in the CPC are generally phrased and their contents and conditions not provided, it leaves wide discretion to the prosecutor and police to decide whether protection is warranted, when the protection order will be issued, for how long, and what kind of protection will be offered. In our last EVAW Report 2017, we mentioned that in Kabul, it takes at least 2 weeks to obtain a protection order. Our lawyer was forced to run from one office to another to convince the police to implement the protection. Our experience in Mazar-e-Sharif on the other hand is completely different. A protection order is made through the Head of Police and directed down to the district police within 1 - 2 days. It is quick, effective and the police does not request for any further evidence beyond the victim's testimony.

We recommend the adoption of comprehensive protection procedures which state the grounds for protection, the evidence required, the timeline for obtaining a protection order, the responsible officers, the type of protection available etc... The recommendations below can be made pursuant to Articles 5 and 9 of the Police Law on police duties to secure the safety of individuals, and, take preventative measures.<sup>93</sup> In particular, these recommendations will “bring life” to Articles 5 and 9 by setting out how the police should carry out their powers and obligations under the Police Law in cases of violence against women.

Admittedly, some of the recommendations below may appear ambitious for Afghanistan's context, for example a protection order ordering an offender to vacate a home shared with a victim or restraining the

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<sup>93</sup> See also Medica Afghanistan, “Legal Memo on Protection Orders and Protective Measures” (September 2017). Accessed at <http://www.medicaafghanistan.org/medica/wp-content/uploads/Legal-Memo-on-Protection-Orders-and-Protective-Measures-.pdf> (20 November 2018)

offender from visiting certain locations frequented by the victim. However, they do not depart (and in fact affirm) some of the measures recently enacted by the Penal Code under Section 3 on court's power to limit the freedom of a convicted person. Article 193 of the Penal Code empowers a court to prohibit the movement of convict, as well as, request the convict to vacate his/her residence in a specific location (the latter only in cases of misdemeanor and felony). This measure is a post-trial order (as opposed to a pre-trial order/injunction). The fact that it is a post trial order can be used to advocate for both pre-trial and post-trial protection orders – as post trial orders are final orders which can only be revised by another court.

## RECOMMENDATIONS ON PROVISIONS FOR PROTECTION ORDERS

The following are some best practice examples which can be adopted and adapted as an amendment to EVAW Law, or, as a supplement in the form of a procedure.

The United Nations Handbook on Violence against Women recommend the following measures:<sup>94</sup>

- Order the defendant/perpetrator to stay a **specified distance away** from the complainant/survivor and her children (and other people if appropriate) and the places that they frequent;
- Order the accused to provide **financial assistance** to the complainant/survivor, including payment of medical bills, counselling fees or shelter fees, monetary compensation, and in addition, *in cases of domestic violence*, mortgage, rent, insurance, alimony and child support;
- Prohibit the defendant/perpetrator from **contacting** the complainant/survivor or arranging for a third party to do so;
- Restrain the defendant/perpetrator from **causing further violence** to the complainant/survivor, her dependents, other relatives and relevant persons;
- Prohibit the defendant/perpetrator from purchasing, using or possessing a **firearm** or any such weapon specified by the court;
- Require that the **movements of the defendant/offender be monitored**;
- Instruct the defendant/perpetrator *in cases of domestic violence* to **vacate the family home, (or part of the home)**, without in any way ruling on the ownership of such property and/or other essential personal effects to the complainant/survivor;
- That authorities may **not remove a complainant/survivor from the home against her will**;

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<sup>94</sup> Ibid (Handbook for Legislation On Violence Against Women), p. 44

- That live testimony or a sworn **statement of the complainant/survivor is sufficient evidence** for the issuance of a protection order; and
- **No independent evidence – medical, police or otherwise – should be required** for the issuance of a protection order following live testimony or a sworn statement or affidavit of the complainant/survivor.<sup>95</sup>
- That **protection orders may be issued in both criminal and civil proceedings.**

#### INDIA, THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, (2005)<sup>96</sup>

18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person and prohibit the respondent from-

- (a) **committing** any act of domestic violence;
- (b) **aiding or abetting** in the commission of acts of domestic violence;
- (c) entering the **place of employment** of the aggrieved person or, if the person aggrieved is a child, its **school or any other place frequented** by the aggrieved person;
- (d) attempting to **communicate** in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) **alienating any assets**, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) **causing violence to the dependents**, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing **any other act as specified in the protection order.**

<sup>95</sup> Ibid ( Handbook For Legislation On Violence Against Women),. pp. 43 – 48

<sup>96</sup> Ghana, Domestic Violence Act (2007)

Accessed at [http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20\(2007\).pdf?vs=3618](http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20(2007).pdf?vs=3618) (20 November 2018)



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## GHANA, DOMESTIC VIOLENCE ACT (2007)<sup>97</sup>

Conditions of protection order 17.

(1) Subject to section 14, a protection order may

(a) Bind the respondent to be of good behaviour,

(b) Direct the respondent to seek **counselling or other rehabilitative service**,

(c) Direct the respondent to relocate and **continue to pay any rent**, mortgage payment and maintenance to the applicant,

(d) Require the respondent to **relinquish property to the applicant** and pay the applicant for damage caused to the property of the applicant, and

(e) Require the respondent to pay for **medical expenses** incurred by the victim as a result of the domestic violence.

(2) In addition to the provisions in subsection (I), the Court may make **any other order that it considers necessary for the health, safety and welfare** of the applicant having regard to the recommendation in a social and psychological enquiry report.

(3) **A Court may not refuse to issue a protection order or impose any other condition solely on the grounds that other legal remedies are available to the applicant.**

Occupation order 20. (1) Where the Court in issuing a protection order considers it expedient to issue an occupation order, the Court may issue the order requiring the respondent to **vacate the matrimonial home** or any other specified home.

(2) The Court shall issue the order only after the **consideration of a social and a psychological enquiry** report prepared by a social welfare officer and a clinical psychologist.

(3) The Court **shall consider the effect of the order or omission of the order on the health, education and development of the family** where the applicant and the respondent are in a marital relationship.

(4) **A landlord shall not evict an applicant** solely on the basis that the applicant is not a party to a lease where the court gives exclusive occupation of the residence which is the subject of the lease to the applicant.

(5) In furtherance of subsection (4), the **landlord shall provide the details of the lease** to the applicant on request.

Under the Domestic Violence Act (2007) in Ghana, individuals may apply for protection orders independently of any other proceedings, and the institution of criminal or civil proceedings does not affect the rights of an applicant to seek a protection order under the Act.

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## GHANA, DOMESTIC VIOLENCE ACT (2007)<sup>98</sup>

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<sup>97</sup> India, The Protection Of Women From Domestic Violence Act, 2005.

Accessed at [http://chdsla.gov.in/right\\_menu/act/pdf/domviolence.pdf](http://chdsla.gov.in/right_menu/act/pdf/domviolence.pdf) on 20 November 2018

<sup>98</sup> Ghana, Domestic Violence Act (2007)

Accessed at [http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20\(2007\).pdf?vs=3618](http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20(2007).pdf?vs=3618) on 20 November 2018



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## Criminal charges and protection

26. The institution of a criminal charge arising from acts of domestic violence **shall be in addition to and shall not affect the rights of an applicant to seek a protection order** under this Act.

27. Proceedings under this Act shall be in addition and shall not derogate from the **right of a person to institute a civil action for damages**.

In Fiji, applications for protection orders under section 202 of the *Family Law Act* (2003) may be made independently of other legal proceedings.

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## FIJI ISLANDS, FAMILY LAW ACTION (2003), SECTION 202<sup>99</sup>

S. 202(3) A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of an order), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court considers appropriate.

In Venezuela, the law authorizes several bodies to receive applications for protection and that the measures can be applied immediately.

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## VENEZUELA, ACT ON WOMEN'S RIGHT TO A LIFE FREE FROM VIOLENCE

“The Act on Women's Right to a Life Free from Violence contains a list of protective and security measures. Protective and security measures can be **implemented immediately** by the **bodies authorized to receive complaints** (the Public Prosecution Service, magistrates' courts, prefectures and civil authorities, the protection units working for children, adolescents, women and the family attached to the relevant investigative bodies, police authorities, border command units and municipal courts in areas where the bodies listed above are not represented). [Between 2011 and June 2012, protective measures were extended to female victims of violence on 25,215 occasions].”<sup>100</sup>

The objective of a protection order is to prevent violence. Therefore, law should provide that the statement of the victim alone, in the absence of further evidence, would be sufficient to award a protection order. This is a pro-protection stance, in that, victims are not required to sustain violence first, in order to obtain a protection order, and that, victims without the means to prove violence (smart phone with camera, medical records, supportive family members) are not faulted for not having sufficient evidence to prove their case.

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## BULGARIA, LAW ON PROTECTION AGAINST DOMESTIC VIOLENCE (2005)<sup>101</sup>

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<sup>99</sup> Fiji Islands, Family Law Action (2003), Section 202. Accessed at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/66125/69852/F1469246504/FJI66125.pdf> (20 November 2018)

<sup>100</sup> Ibid (Venezuela CEDAW Report), paragraph 3(85)

<sup>101</sup> Bulgaria, Law on Protection against Domestic Violence (2005), s. 13  
Accessed at <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/europe/protection%20against%20domestic%20violence%20act%20state%20gazette%2027%20of%2029%20march%202005/protection%20against%20domestic%20violence%20act%202005.pdf?vs=1337> (20 November 2018)

**S. 13. (1) The evidentiary means defined in the Code of Civil Procedure shall be admissible in the proceeding for issuing a protection order.**

(2) The following may also serve as evidentiary means in a proceeding under subsection 1:

1. records, reports, and any other acts issued by the Social Assistance Directorates, by medical doctors, as well as by psychologists having provided counselling to the victim;

2. documents issued by legal persons providing welfare services and entered in a register at the Social Assistance Agency;

3. the statement made by virtue of section 9(3).

(3) Where no other evidence exists, the court shall issue a protection order solely based on the statement made by virtue of section 9(3).

The Supreme Court of Venezuela upheld this principle when it decided that the police should not require proof by direct evidence as the object of arrest is preventative.

## **VENEZUELA, CONSTITUTIONAL DIVISION OF THE SUPREME COURT, DECISION ON THE MATTER OF FLAGRANCY**

“If direct evidence was always required to make a preventive arrest of offenders in crimes of violence against women (which are usually carried out in a private setting), such crimes would risk going unpunished.”<sup>102</sup>

## **ISSUE 2(A): CHILD CUSTODY IN PROTECTION ORDER PROCEEDINGS**

### **GAPS IN THE EVAW LAW, CPC IN RELATION TO FAMILY LAW**

In Afghanistan, fathers have guardianship rights over a female child once she reaches the age of 9 years and male child, once he reaches the age of 7 years. Child-biased and gender-biased interpretations of family law in Afghanistan is one of the key impediments to prosecution of crimes within the family. Many mothers decide to stay in an abusive relationship to avoid losing their children. The Family Law Bill was drafted in 2010 and one of its aims was to update Islamic family law in light of gender-progressive and child-centered protection. The Bill is now with the Legislative Department of the Ministry of Justice for review. Child custody for women still remains a contested issue. If unresolved, potential loss of child custody may remain an impediment to justice in cases of violence.

### **RECOMMENDATIONS ON CHILD CUSTODY/ RELOCATION ORDERS**

<sup>102</sup> Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Bolivarian Republic of Venezuela, paragraph 1(18), 21 September 2012 (CEDAW/C/VEN/7-8) Accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/400/47/PDF/G1340047.pdf?OpenElement> (20 December 2018)

The best practice legislation set out below (of Georgia) could be adopted and amended for Afghanistan's context. For example, in cases where there is an allegation of violence and/or a petition for protection has been lodged, the court may (or shall) temporarily "relocate" children to live with a non-offending parent (the victim) for a time period, or upon cessation of violence. And in the event that there is proof of threat of harm or commission of harm to the children, that the children **shall be** "relocated" to live with a non-offending parent (the victim). Legislation may grant EVAW and criminal courts the jurisdiction to make such "relocation" orders, temporary and permanent, in specific cases of violence. It can be argued that custody and relocation is different – and thus – does not offend Islamic law, in that, whilst "custody" relates to parental duties and responsibilities towards a child, "relocation" is governed by the state's duties and responsibilities to protect children.

There is sufficient jurisprudence in Islamic law on the priority of the safety and welfare of a child and that jurisprudence paired with Child Rights Convention which Afghanistan ratified in 1994, may be used to justify such "relocation" orders.

One can further argue that the recently enacted Penal Code 2018 also provides for the termination of guardianship, executorship and trusteeship over a person's life or property under Article 19 if the crime committed disrupts his/her relevant legal obligations or demonstrates his/her incompetence in the performance of the duties of guardianship, executorship or trusteeship.

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## **GEORGIA, ELIMINATION OF DOMESTIC VIOLENCE, PROTECTION AND SUPPORT OF VICTIMS OF DOMESTIC VIOLENCE LAW (2009)<sup>103</sup>**

### Chapter IV - Specific Measures for Protecting Minors from Domestic Violence Article 14 - Separation of a minor from an abusive parent/parents

1. If because of some forms of violence in the family, a person specified in the Article 11 of this Law applies to a court for a protective order, the court shall consider the relationship of the abusive parent/parents with the minor. If traces of violence can be observed in the minor, the court may be requested to separate the minor from abusive parent/parents, as a temporary measure, until the court makes its final decision.
2. When considering the matter related to the right of representation of the minor, account shall be taken of the fact that if the abusive parent retains the right to represent the minor it will be harmful to the interests of the minor. Parents may not retain joint custody of the minor, if there is reasonable belief that one of the parents may commit violence against the minor.
3. In cases determined by the legislation of Georgia, minors from the age of 14 may defend their right and legitimate interests in court. In that case the court shall assign a procedural representative and hear the case. Minor claimants may disagree with their procedural representative and defend themselves. The court shall involve the guardianship and custody authority in such matters.

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<sup>103</sup> Georgia, Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence Law (2009)

Accessed at <https://matsne.gov.ge/en/document/download/26422/2/en/pdf> (20 November 2018)

### GAPS IN EVAW LAW AND CPC

Economic abuse entails controlling a woman's ability to access economic resources (money, education or employment) as a form of intimidation and coercion.<sup>105</sup>

EVAW law does not provide even minimal measures to safeguard victim's economic security.<sup>106</sup> The law criminalizes economic crimes such as forced labour, prohibition of work, prohibition of access to personal property, but when, other forms (or similar forms) of economic violence occur in the context of domestic violence (such as deprivation of maintenance and housing, often leading to impoverishment), these are often treated as collateral damage rather than issues which must be fundamentally remedied as part of the justice process.

It cannot be underestimated how connected economic security is to victims' overall safety and ability to make informed decisions freely. Economic insecurity is intricately connected to root causes of violence. In domestic violence cases, offenders often exercise control of victims' finances and block their use of resources such as mobile phones which is essential for communication (for protection, as well as, to facilitate other areas of their lives). Offenders may also isolate their victims and prohibit them from going to work or school. Actions may amount to direct economic abuse (confiscating victims' salary) or indirect economic abuse (prohibiting them from going to work, threatening to share compromising photographs, behaving badly in front of their colleagues, or, restricting their access to mobile phones). These actions are often intended to cause their victims to be economically insecure and dependent.

Many victims are fearful of how their reporting of violence may impede their ability to go to school, work, care for their children and seek protection when required. This in turn affects their ability to seek justice, maintain legal proceedings to prosecute (without withdrawing half-way) and give testimony in a right state of mind.

Many victims are also fearful of the severe economic consequences of leaving their abusive marriage. In many cases, "justice" may lead to their impoverishment (in addition to stigma and shame in their community). Without an economic safety net, inability to survive independently and sustainably, victims are by-default at a significant risk of further violence.

Indeed, the Achilles heel in the prosecution system is that economic security is not prioritized at the heart of prosecution's response. Women are left to absorb the economic consequences their decisions – whatever those decisions are. EVAW Law and policy must mitigate this and add an economic lens to relevant operating procedures. It cannot be underestimated how much resources are used by offenders to control

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<sup>104</sup> Prosecutor's Guide to Safety and Economic Security for Victims of Violence Against Women, Wider Opportunities for Women, Justice System Sector Series (2013). Accessed at <https://iwpr.org/wp-content/uploads/2017/01/WOW-ESS-Prosecutors-Sector-Guide.pdf> on 15 December 2018

<sup>105</sup> World Bank, "Press Release: More than 1 billion women lack legal protection against domestic sexual violence, finds World Bank study" (1 February 2018). Accessed at <https://www.worldbank.org/en/news/press-release/2018/02/01/more-than-1-billion-women-lack-legal-protection-against-domestic-sexual-violence-finds-world-bank-study> (30 November 2018)

<sup>106</sup> World Bank's 20018 study on "Global and Regional Trends in Women's Legal Protection Against Domestic Violence (...), found that close to 1.4 billion women lack legal protection against domestic economic violence.

victims' decision-making and choices. For the above reasons, EVAW Law and policy should prioritize economic security as a key objective in all response mechanisms, including in prosecution.

## RECOMMENDATIONS ON PROVISIONS ON ECONOMIC SECURITY ORDERS

The UN Handbook on Best Practice Legislation recommends that legislation should:

- Provide for efficient and timely provision of financial assistance to survivors in order to meet their needs.
- Assistance could be made available through a trust fund for survivors of violence to which both the State and other actors may contribute.<sup>107</sup>

The following are some best practice examples which can be adopted and adapted as an amendment to EVAW Law, or, as a supplement in the form of a procedure.

### PROSECUTOR'S GUIDE TO SAFETY AND ECONOMIC SECURITY FOR VICTIMS OF VIOLENCE AGAINST WOMEN, WIDER OPPORTUNITIES FOR WOMEN, JUSTICE SYSTEM SECTOR SERIES, 2013<sup>108</sup>

The Prosecutor's Guide to Safety and Economic Security Report was commissioned by the United States Department of Justice, Office on Violence Against Women to pull together recommendations to address the economic barriers facing victims within the prosecution process. The report details the steps that each member of a prosecution team can take to address those issues whether by addressing economic needs during case intake, charging for economic crimes or requesting restitution for the full range of costs caused by the offender. It adds an economic lens to activities that prosecutors already do.

The Guide addresses the prosecution's role as follows:

“Although addressing the economic needs of victims has historically been seen as the role of social service organizations, the justice system has unique abilities to identify these issues and respond to victims. From charging economic crimes to requesting enforceable restitution for losses related to the offender's actions, each member of a prosecution team has clear steps they can take to hold offenders accountable and advance a systems-wide approach to keeping victims safe and economically secure.”<sup>109</sup>

At pre-trial case screening:

Economic considerations can greatly help intake staff when determining the viability of a case and the likelihood of the prosecution getting a conviction while simultaneously protecting the victim. Economic evidence and the victim's economic security will also influence the extent to which the victim will be

<sup>107</sup> Ibid (Handbook For Legislation On Violence Against Women)., p. 32

<sup>108</sup> Prosecutor's Guide to Safety and Economic Security for Victims of Violence Against Women, Wider Opportunities for Women, Justice System Sector Series (2013).

Accessed at <https://iwpr.org/wp-content/uploads/2017/01/WOW-ESS-Prosecutors-Sector-Guide.pdf> on 15 December 2018

<sup>109</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 5

needed or willing to testify if the case goes to trial. Though prosecuting an offender can help preserve a victim's economic security by providing access to economic relief and halting economic abuse.<sup>110</sup>

Victim witness specialists may be able to mitigate these concerns by immediately connecting victims with community-based advocates and resources, and engaging in economic-based safety planning. They can also educate victims about their legal rights and options to protect or access safe housing, employment or education. Specialists can inform victims about the ways that prosecution can further their protection, such as by requesting restitution and seeking relief related to housing or childcare.<sup>111</sup>

It is important to inquire about the economic impact of violence from the first intake interview. Victim witness specialists are key to making sure that all information concerning economic crimes, the financial impact of violence and economic barriers to cooperation are documented during case screening and available to prosecutors. When filling out forms such as for restitution, the prosecution may benefit from a facilitated process in which the attorney or victim advocate interviews the victims in person and fills out the forms with them. This step can expand the prosecutor's, and thus the court's, understanding of the case and lead to more complete evidence and additional options for economic relief.<sup>112</sup>

At investigation stage:

Prosecution teams who coordinate and collaborate with law enforcement can ensure that the necessary economic evidence is collected and documented. Having the proper evidence allows prosecutors to charge the offender with every crime perpetrated and request restitution for the costs incurred by the victim.<sup>113</sup>

On the issue of safety planning

Prosecutors should take steps to protect the economic security and safety of victims from the initial arraignment through the conclusion of the case. When setting pre-trial release conditions for the offender, prosecutors can request a high bail or even to hold defendants without bail if there is evidence that the offender will try to endanger the victim's safety by interfering with the victim's economic security or by intimidating the victim, which is a separate crime. To determine this, prosecutors can look at past cases involving economic abuse and coercion. The prosecution can also request that the judge issue a criminal no-contact order.<sup>114</sup>

When economic security is a standard part of pre-trial safety planning by prosecution teams, victims are more secure and more likely to be willing and able to participate in the case. Economic stability can also keep the victim safer from witness intimidation. Both victim witness specialists and community advocates can work to support the victim's legal and non-legal needs, including housing, education, childcare and employment accommodations.<sup>115</sup>

<sup>110</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 10

<sup>111</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 10

<sup>112</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 10

<sup>113</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 12

<sup>114</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 13

<sup>115</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 13



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Lastly, victims may fear repercussions from missing multiple days of work/school or from having a police presence at their home or work; prosecution staff can take simple steps to intervene with victims' school, landlord and/or employer. For example, prosecutors can communicate to an employer that the victim is cooperating with the justice system process and ask that the employer grant the victim time off to assist the state. This can also help explain the victim's previous behavior to reduce the chance that the victim is retaliated against with disciplinary actions or full job loss. Prosecutors can also try to minimize employment issues by scheduling their witness preparation and intake meetings around the victim's schedule as much as possible.<sup>116</sup>

On the issue of charging:

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Charging and presenting evidence for all criminal acts related to the abuse will strengthen the case so that the offender can be held accountable for the full range of crimes perpetrated. This will also help ensure that the victim can access complete economic relief and restitution. In addition, economic-based crimes may be easier to prove and may provide clearer avenues for restitution for the victim. If there is insufficient evidence of battery, sexual assault or stalking, for instance, charging for an economic crime may still help the state get a conviction. Prosecution teams should always be in contact with the victim regarding filing charges, especially decisions not to file and to release the offender. Informing victims before their abuser is released will allow them to protect their safety by planning accordingly for any needed changes to their housing, childcare, work and transportation arrangements.<sup>117</sup>

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#### **SPAIN'S ORGANIC ACT 1/2004 ON INTEGRATED PROTECTION MEASURES AGAINST GENDER VIOLENCE<sup>118</sup>**

“Current civil, criminal, advertising, employment and administrative regulations have serious shortcomings in these respects, primarily because the question of gender violence has not so far met with a global, multidisciplinary response. From the criminal standpoint, the remedy must never result in a new injury to the woman.” (preamble)

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“Special assistance is established for the victims of gender violence lacking economic means, when it is considered that their age, general lack of specialist skills and social circumstances are a handicap to substantially improving their employability. In such cases, victims may join a targeted action programme aimed at their professional insertion. This assistance, which will be scaled to the age and family responsibilities of the victim, is designed basically to provide them with a minimum subsistence income so they can live independently of their aggressor; such assistance will be compatible with the aids envisaged in Act 35/1995 of 11 December on Aids and Assistance to the Victims of Violent Crimes and Crimes against Sexual Liberty.” (preamble)

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<sup>116</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 13

<sup>117</sup> Ibid (Prosecutor's Guide to Safety and Economic Security)., p. 15

<sup>118</sup> Spain's Organic Act 1/2004 on Integrated Protection Measures against Gender Violence. Accessed at : <http://www.boe.es/boe/dias/2004/12/29/pdfs/A42166-42197.pdf> (20 November 2018)

The law's guiding principles are to guarantee the economic rights of victims through provision of aid, linking up to employment opportunities, provision of housing, security of education etc...and to guarantee the employment conditions for victims who are civil servants.

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“Article 2. *Guiding principles.*

This Act deploys a comprehensive battery of measures in pursuit of the following ends: (...)

d) Guarantee employment conditions, in the private and public sectors, which reconcile contractual requirements with the circumstances of workers or civil servants suffering gender violence.

(e) Guarantee economic rights for women suffering gender violence in order to facilitate their social integration.

On the issue of state provision of aid:

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#### CHAPTER IV: Economic rights

1. When the income of a victim of domestic violence, on a monthly basis, is no more than 75 percent of the minimum interprofessional wage (...)

2. The amount of this aid shall be equal to six months of **unemployment subsidies**. When the victim of gender violence is officially categorised as having 33 percent or more disability, the amount will be equal to 12 months of unemployment subsidies.

3. If the victim has family responsibilities, the amount of aids may equate to 18 months of subsidies; or 24 months if she or a family member living with her is officially categorised as having 33 percent or more disability, under terms to be specified in the implementing provisions to this Act.

4. If the victim has family responsibilities, the amount of aids may equate to 18 months of subsidies; or 24 months if she or a family member living with her is officially categorised as having 33 percent or more disability, under terms to be specified in the implementing provisions to this Act.

On the issue of access to housing:

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Article 28. Access to housing and residences for the elderly.

Women suffering gender violence shall be considered priority groups for access to **subsidised housing** and residences for the elderly under the terms laid down in the applicable legislation.

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Fifteenth additional provision. *Agreements on housing matters.*

The Government may, through agreements with the competent authorities, promote special access to subsidised housing for the victims of gender violence.

On the issue of school enrolment:

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Seventeenth additional provision. *School enrolment.*

The education authorities shall take the necessary steps to ensure the **immediate school enrolment** of children when a woman changes residence for reasons of gender violence.



On the issue of social security rights:

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“21. Employment and Social Security rights (1) Women workers suffering gender violence shall be entitled to a **reduction or reorganisation of their working hours, geographical mobility, change of workplace, the suspension of employment** with their post reserved, and the termination of their employment contract, under the terms laid down in the Workers' Statute”

As victims often need aid and provision of support from the State, Spain's law establishes a state fund to ensure that victims will receive basic support (irrespective of defendants financial position).

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Thirteenth additional provision. *Establishment of the Fund.*

In order to contribute to the start-up of the services provided for in article 19 of this Act, a **Fund shall be established (...)**

The law provides that a special delegation in collaboration with other authorities be empowered to intervene in court to ensure that the rights of women are upheld.

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“29. *The Special Government Delegation on Violence against Women.* (2) The head of the Special Government Delegation on Violence against Women shall be **empowered to intervene before the courts in defence of the rights and interests upheld by this Act** in collaboration and coordination with the competent authorities.”

The law also provides that a single court will deal with the criminal and civil matter in a single suit to ensure that victims are given immediate and complete protection.

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“Specific Violence against Women Courts (...) these new Courts will examine and, where appropriate, **rule on criminal cases involving violence against women, as well as any related civil causes**, such that both are dealt with in first instance before the same bench. This assures a mediation that guarantees due legal process with regard to the fundamental rights of the presumed offender, without impairing the legal possibilities under this Act to **give victims the most immediate, complete and effective protection, and the means to avoid any repetition of the abuse, or escalation in the degree of the violence.**”

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“These **Prosecutors will** appear in criminal proceedings with regard to acts constituting crimes or offences within the jurisdiction of the Violence against Women Courts, as well as **intervening in civil processes** of annulment, separation and divorce, or hearings for the guardianship and custody of minors in cases of alleged abuse of wife or children.”

On the establishment of a state fund to provide basic material support for victims:

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**GHANA, DOMESTIC VIOLENCE ACT (2007)<sup>119</sup>**

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<sup>119</sup> Ghana, Domestic Violence Act (2007)

Accessed at [http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20\(2007\).pdf?vs=3618](http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20(2007).pdf?vs=3618) on 20 November 2018

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“29. There is established by this Act a Victims of Domestic Violence Support Fund.

31. The moneys of the Fund shall be applied:

- (a) Towards the **basic material support of victims of domestic violence**,
- (b) For training the families of victims of domestic violence,
- (c) For any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence,
- (d) Towards the construction of reception shelters for victims of domestic violence in regions and districts, and
- (e) For training and capacity building of persons connected with the provision of shelter, rehabilitation and reintegration.”

In many countries, including India, the law ensures that victims are not forced out of their homes (whether or not they have title to the home or beneficial interest) either by their offenders or a third-party landlord. The law may evict the offender from the shared home. Or alternatively, the law may require offenders to pay the victim’s rent in an alternative accommodation.

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#### **INDIA, THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, ARTICLES 17 AND 19 (2005)<sup>120</sup>**

17. Right to reside in a shared household.

- (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the **right to reside in the shared household**, whether or not she has any right, title or beneficial interest in the same.
- (2) The aggrieved person **shall not be evicted or excluded** from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

19. Residence orders.

- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –
  - (a) **restraining the respondent from dispossessing** or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
  - (b) **directing the respondent to remove himself** from the shared household;

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<sup>120</sup> India, The Protection Of Women From Domestic Violence Act, 2005.  
Accessed at [http://chdsla.gov.in/right\\_menu/act/pdf/domviolence.pdf](http://chdsla.gov.in/right_menu/act/pdf/domviolence.pdf) on 20 November 2018

- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

## **GHANA, THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, SECTION 20<sup>121</sup>**

### **Occupation order**

20. (1) Where the Court in issuing a protection order considers it expedient to issue an occupation order, the Court may issue the order requiring the respondent to vacate the matrimonial home or any other specified home.

(2) The Court shall issue the order only after the consideration of a social and a psychological enquiry report prepared by a social welfare officer and a clinical psychologist.

(3) The Court shall consider the effect of the order or omission of the order on the health, education and development of the family where the applicant and the respondent are in a marital relationship.

(4) A landlord shall not evict an applicant solely on the basis that the applicant is not a party to a lease where the court gives exclusive occupation of the residence which is the subject of the lease to the applicant.

(5) In furtherance of subsection (4), the landlord shall provide the details of the lease to the applicant on request.

## **ISSUE 4: PENALTIES DERELICTION OF DUTIES**

### **GAPS IN EVAW LAW AND PENAL CODE**

EVAW Law does not penalize dereliction of duty by the State.

<sup>121</sup> Ghana, Domestic Violence Act (2007)

Accessed at [http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20\(2007\).pdf?vs=3618](http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/ghana%20-%20domestic%20violence%20act%20(2007).pdf?vs=3618) on 20 November 2018

Since the recent enactment of the Penal Code 2018, misuse of duty and authority is a crime and is defined as “making use of official authority, deliberately ignoring the provisions of laws, regulations, decision/ruling of the court, or orders issued by competent authorities of the government”. Under Article 407, misuse of duty and authority is punishable by short imprisonment or cash fine from 30,000 AFN to 60,000 AFN. Under Article 409, if the act constitutes a discrimination on the basis of sex (and other factors), the official shall be sentenced to short imprisonment or cash fine from 30,000 to 60,000 AFN. In the event the public official is a high-ranking officer, he/she shall be sentenced to maximum medium imprisonment or to cash fine of 300,000 AFN.

The Penal Code also penalizes offences by a prosecutor under Article 417. Failing to prosecute (or withdrawing a prosecution) when a crime has occurred or when there is sufficient incriminating evidence, as well as, recklessness in reporting commission of a crime or complaint of a plaintiff or ignoring the plaintiff’s report without logical reasons, is punishable by short-term imprisonment.

These provisions are applicable in ERAW cases as well.

The gaps in the Penal Law are several. With regard to Article 409, the provision penalizes *misuse* of duty and authority rather than say, a simple failure to carry out duties. This article is concerned with a higher intent requirement, i.e. mere omission without specific intent would not be punishable. Therefore, only in cases when it can be proven that the official had misused or *deliberately* ignored the law, regulations and orders, that punishment would be awarded. In the earlier section on the challenges implementing ERAW Law, one does see anecdotes that the failure to prosecute was not as a result of malicious officials intending to flout the law in order to gender-discriminate. In fact, officials were also flouting the law out of ignorance, and sometimes, in good-faith. In order to deter this, simple failure to carry out duties regardless of intention should be punishable. Degree of punishment can vary according to intention, rank of officer, and, harm caused.

With regard to Article 417, the provision penalizes failure to prosecute and failing to register a complaint without reason. Both of these failures are not issues per se where it concerns prosecuting crimes against women. The failure which we are more concerned with is encouraging or pressuring withdrawal of case, mediating violence, referring parties for mediation and failing to investigate and prosecute with due diligence, in accordance with procedure.

## RECOMMENDATIONS ON PUNITIVE PROVISIONS

Our recommendation is to adopt punitive provisions into ERAW Law to penalize a larger range of actions which constitute dereliction of duty during the investigation and prosecution of crimes against women.

In order to successfully do this, responsibilities and duties must first be laid out in procedure. Once responsibilities and procedures are properly laid out, it will also be easier to make determinations of accountability when procedures are breached.

ERAW law’s punitive provisions should also go beyond individual punishment and respond to, as well as, penalize institutional violence (i.e. penalize district, departments or offices). The penalties can be a range of measures including ordering an inquiry into systemic failures, ordering specific measures to be put in place, ordering training and awareness programs to be conducted, imposing a fine, ordering award of compensation, ordering termination or transfer of position etc... These provisions can target not only ERAW related institutions but public and private sector organisations as well.

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## **MEXICO: GENERAL LAW ON WOMEN’S ACCESS TO A LIFE FREE OF VIOLENCE, ARTICLES 18-20**

“18. Institutional violence consists of acts or omissions of public servants at any level of government that discriminate or are intended to delay, obstruct or prevent the enjoyment and exercise of women’s human rights and their access to the enjoyment of public policies aimed at preventing, treating, investigating, punishing and eradicating different types of violence.

19. The three levels of government through which the exercise of public power is expressed have the obligation to organize the government apparatus in a manner which, in exercising their functions, will enable them to guarantee women’s right to a life free of violence.

20. To fulfill their obligation to guarantee women’s right to a life free of violence, the three levels of government should prevent, treat, investigate, punish and redress any harm inflicted on them.”

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## **COSTA RICA, CRIMINALIZATION OF VIOLENCE AGAINST WOMEN LAW (2007), ARTICLE 5**

“Public officials who deal with violence against women “must act swiftly and effectively, while respecting procedures and the human rights of women affected” or risk being charged with the crime of dereliction of duty.”<sup>122</sup>

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## **VENEZUELA, LAW ABOUT VIOLENCE AGAINST WOMEN AND THE FAMILY (1998), ARTICLES 22, 23 24**

“Provide penalties for authorities in centres of employment, education and other activities, health professionals, and justice system officials who do not undertake relevant actions within the required time frame.”<sup>123</sup>

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<sup>122</sup> UN Women, “Handbook For Legislation On Violence Against Women” (2012), P.19

<sup>123</sup> UN Women, “Handbook For Legislation On Violence Against Women” (2012), p. 19

## SECTION 8: CONCLUSION

In 2018, we represented clients in a total of 2,902 matters in Kabul, Herat and Mazar-e-Sharif comprising civil, prosecution and defence representation, as well as, provision of legal advice, legal awareness sessions and mediation. Of the 2,902 matters, 835 of them comprised legal representation in prosecution, defence and civil cases.

Of the 835 cases:

- (a) Our lawyers acted on behalf of 206 victims of acts constituting crimes under the EVAW law and/or penal law (“prosecution cases”). Of these cases, 45% was withdrawn, 13% was settled, and 42% was prosecuted. Of the cases prosecuted, 53% resulted in a conviction of the perpetrator.
- (b) Our lawyers acted on behalf of 172 women and girls in conflict with the penal law. Of these cases, 57% resulted in a conviction of the client. 14% of clients were acquitted. 29% of clients were released pretrial and by Presidential Decree.
- (c) Our lawyers acted in 457 cases involving petitions for divorce and/or other matrimonial rights under the civil law. Of these cases, 71% was decided in favour of client. 7% was decided in favour of the defendant. 22% reached a settlement.

### ***Challenges prosecuting EVAW Crimes***

Our prosecution statistics of 2018 indicate that close to 50% of all cases are withdrawn at some stage of the proceedings. Statistics from Ministry of Women’s Affairs, United Nations Assistance Mission in Afghanistan (UNAMA) and Research Institute for Women, Peace and Security (RIWPS) confirm figures along the same range.

Thus in 2018, UNAMA published a report to highlight the extent of the issue of withdrawal and the default use of mediation as a mechanism for withdrawal to happen. The report concluded that prosecutors and NGOs were involved in excessive and indiscriminate use of mediation, shortcutting justice and facilitating outcomes which privileged the restoration of family unit over the physical safety of the victims.

When read against the empirical accounts of the prosecution unit, we also see an alternative and more nuanced account of the prosecution unit. These are accounts of the prosecutors leveraging their position to strike a better bargain for victims – even if the bargain fell short of prosecution. The vast majority of violence against women cases involved violence within the matrimonial context. That context is steep in structural inequality, making prosecution a very costly affair for victims, physically, socially and economically. The imprisonment of male perpetrators – many of whom are the victim’s spouses – effectively means an abrupt and severe disruption to the economic stability of the household.

Thus, prosecutors were “resolving disputes” for victims with those costs in mind. But by doing so, prosecutors were also committing a serious breach of their professional duties, and, encouraging impunity by converting ‘criminal acts’ to mere ‘family disputes’

### ***Gaps in the laws***

Perhaps to some extent, the justice system is at lost on how to cope with the structural and material inequalities and the heavy cost of justice which the victim ultimately has to bear. The problems stated

above are exacerbated by the fact that the laws and procedures does not prevent or remedy these challenges. They do not provide sufficient guidance and powers to justice actors who may sincerely want to remedy these challenges.

### ***In relation to Issue 1: Arrest and Prosecution***

Firstly, EVAW Law and the CPC does not encourage or mandate gender-competent approaches to arrest and prosecution. There are no provisions in law prohibiting or regulating mediation by prosecutors. There are no discretionary limits on when a warning may be issued in lieu of an arrest. There is no specific power to make warrantless arrest in certain cases (even if the offender is not caught *in flagrante delicto*). There are no discretionary limits on discontinuance, or, procedural and substantive conditions to discontinuing a case. In this regard, the CPC is *gender-blind* as its provisions, though progressive and unproblematic *per se*, fails to account for women's specific experience of violence – which makes arrests and prosecution a fair bit more complex when compared to other crimes. Our recommendations centered around taking a gender-competent approaches to arrest and prosecution, from prohibiting prosecutors from facilitating mediation to limiting discretionary caution in lieu of arrest in certain cases; to making certain processes mandatory such as conducting a trauma assessment and submitting victim impact statements; to toughening conditions for bail and discontinuance of case. If institutions are defaulting to mediation, these recommendations will derail the default to mediation by putting in place procedural steps or blocks.

### ***In relation to Issue 2: Protection***

Secondly, EVAW Law and the CPC does not comprehensively address protection of victims. The CPC provides specific provisions for the protection of victims and witnesses when testifying in court. The CPC does state that vulnerable and at-risk victims and witnesses have a right of safety, but, what remains wholly absent are: the forms of protection a prosecutor/court can order, the grounds for protection, threshold of evidence required, timeline for when protection must be issued, duration of protection, whether the protection may be extended, who can extend the protection, whether the order may be appealed or varied etc...As the CPC stands, it leaves a wide discretion for prosecutors and police to decide whether protection is warranted. Our recommendation is to adopt more comprehensive protection provisions which set out the procedure from A to Z and direct prosecutors and courts on how they are to address common concerns which may arise. As part of these recommendations, we attempted to put forward a solution to address child custody provisions in Afghanistan family law, which privilege the father's guardianship over children. In this piece of the recommendation, we also suggested that the criminal courts be empowered to make permanent or temporary "relocation orders" to a non-offending parent in the best interest and protection of the child.

### ***In relation to Issue 3: Economic Security***

Thirdly, EVAW Law and the CPC does not have measures to safeguard victims' economic security. Instead economic abuse and losses are treated as collateral damage rather than prioritized as something to be remedied at the center of the justice process. Our recommendation is that it must be part of the prosecutions role to screen all cases of violence through an economic lens – not just for the purpose of obtaining compensation after trial, but also, for the purpose of economic-based safety planning so that the economic costs of justice (loss of housing, maintenance, employment, property and loss of access to vital resources such as mobile telephone) can be mitigated pre- and post-trial. From mandatory interim maintenance orders to state provision of aid; access to alternative housing; right to reside in a shared household; to provision of assistance to ensure that victims are not penalized by their employers (for being absent to recover from injuries, seek counselling or attend trial) or that victims who are still in school be offered a chance to re-sit examinations or take their examinations at a later date. The economic lens would require justice actors to take a 360 degree view of all the considerations a victim makes when deciding

whether to prosecute or withdraw. Other related recommendations are to put in place procedures to allow victim advocates to intervene in proceedings to ensure the judge is apprised of all the economic issues and to ask for orders to uphold the rights and interests protected by the law. The recommendations go on to state that prosecutors must include “economic collateral damage” as part of the charges when prosecuting. The vision behind these recommendations is that no victim of violence should be driven to impoverishment just because she exercised her right to live a life free of violence. Indeed, when put this way, to sideline the economics of violence into the far periphery of the justice process, would akin to saying that justice is not for the poor. There is no meaningful recourse to justice when justice comes with hefty price tag.

#### ***In relation to Issue 4: Penalties of dereliction of duties and institutional violence***

Fourthly, a key challenge we are faced with the simple failure by police and prosecutors to arrest and prosecute – and the prevailing impunity in this regard. This has to some extent been corrected with provisions in the new Penal Code 2018 which penalizes officers for misuse of authority, deliberate ignorance of the law and failure to prosecute upon a present complaint. However, the terms “misuse” and “deliberate ignorance” constitutes a higher intent – whereas officers should be penalized for simple failure to carry out their duties. In our recommendations, we suggested that the EVAW Law should introduce substantive provisions to penalize individual officers, as well as, institutions for failing to carry out their duties in accordance with the procedure. We also emphasized that a law can only properly penalize an action if there is a duty to act. Every penalty must be preceded by a duty to act. Those duties (which are duties of arrest, prosecution, assessment of trauma, submission of victim impact statements, screening cases for economic abuse, application for protection and economic security orders etc...) should be properly set out in EVAW Law or supplemental procedure to ensure that the “who”, “what” and “when” of those duties are clear, i.e. the line of accountability can be drawn. With a procedure, it would be clearer (and fairer to officers) when officers have breached their duties. Accountability would be easier to establish.

#### ***Moving forward***

As part of the ongoing process which the Ministry of Women’s Affairs Legislative Drafting Committee has kickstarted to strengthen the EVAW Law, these best practices can be directly adopted verbatim and adapted into EVAW law and supplemental procedure. In summary, the recommendations comprise:

- Procedural provisions to encourage/mandate arrest and prosecution
- Procedural provisions on protection orders to safeguard victim’s physical safety
- Procedural provisions on economic security orders to safeguard victim’s economic security
- Substantive penalties for dereliction of state duties and institutional violence.

The recommendations above ultimately tackles some of the complexities of family violence which require multi-disciplinary interventions – from housing to education, employment and physical protection.

The project to adopt these recommendations would require advocates to consider and set out the minutiae details of procedure; details which cannot be encapsulated in general provisions of law and perhaps are better set out in procedure. It would require more than a ritualistic line-by-line amendment of EVAW Law and perhaps coming up with procedural solutions in the form an “EVAW Procedure”. The purpose of putting together these best practice provisions is to also encourage advocates to see law beyond its traditional limits; and use law and policy to transform the economic dynamics of the matrimonial unit.



Ultimately, the high withdrawal rate and low prosecution rate is happening because victims' real needs are not being met – both in terms of physical security and socio-economic security. The entire response infrastructure (law, policy, procedures) must put that security at the heart of its work.

Of course, physical and socio-economic security would require a wide variety of things to come together, not least cessation of war and hostility in Afghanistan, as well as, economic growth and equitable distribution of resources. But good law and policy which is designed to address real life challenges, however ambitious they may be at the stage of adoption, are the tools that lawyers ultimately need to make the incremental pushes to the justice system. It is true that after all, all great change in history began with the smallest steps.