



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

## A REPORT ON MEDICA AFGHANISTAN'S CASES



Federal Ministry  
for Economic Cooperation  
and Development

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## PREFACE

Since the first 10 ERAW cases back in 2009/2010 when the law was initially passed, Medica Afghanistan has now expanded its caseload to over 1,080 prosecution, defence, civil and mediation cases in 2016 and 2017.

That statistic is all the more important in the midst of the evolving legal and political landscape, and, in particular, the recent consolidation of all penal laws into a single Penal Code. MA's advocacy to preserve ERAW as a standalone has been a centerpiece of MA's advocacy work in 2016 and 2017 and a landmark success for several reasons.

MA's holistic approach to eliminating violence against women - seen through its multi-pronged approach in social integration, counselling, social work and mediation is a lens from which we can start to understand the reasons for MA's insistent call to preserve ERAW as a standalone law. It was not merely for the sake of keeping ERAW separate from the Penal Code. Instead, it was a call to recognize that in order to eliminate violence, we have to address violence beyond punishment. We have to legislate for prevention, punishment and positive action, and create a culture of legal accountability within the State.<sup>1</sup> No doubt, 9 years on, ERAW should be further amended to address new challenges and adopt the many lessons learned over the years. But this has to be done through a law that sees violence outside of just the punitive lens. A law that provides accessible measures to compensate victims, to protect and rehabilitate them, to relocate them if need be, to expel offenders or restrain them; to ensure that victims can return to their place of work or school without fear of reprisal – essentially, to put in place all the conditions reasonably necessary for a survivor to move on. This is MA's vision of what ERAW should evolve into; a law that is both punitive and survivor-centered, focusing on very real needs and lived realities of the common person.

With all the attendant challenges and lessons learned during MA's 2-year advocacy, we are honoured to have represented women in over 1080-odd cases reported here. It is through these cases that we are bringing ERAW Law to life.

We would like to thank Natasha Latiff, Legal Counsel to Strategic Advocacy for Human Rights (SAHR) and Senior Legal Advisor to Medica Afghanistan, for authoring this study with us. We sincerely acknowledge her valuable contributions.

**Humaira Rasouli**  
Executive Director  
Medica Afghanistan

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<sup>1</sup> General Recommendation 19 of CEDAW states that the government must act with due diligence.

## ABOUT MEDICA AFGHANISTAN

Medica Afghanistan started operating in Afghanistan in 2002 as a programme of Medica Mondiale, a non-governmental women's rights organisation based in Germany that is specialised in providing holistic support to women survivors of sexual violence in war-torn countries and crisis zones around the world. In 2010, they became an independent legal aid organisation and was officially registered as a self-sustaining Afghan NGO.<sup>2</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.

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

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

Apart from legal aid and representation, Medica Afghanistan works directly with judicial actors and trains the police, judiciary and medical staff to adopt a trauma sensitive approach towards women affected by violence. They are also at the forefront of lobbying and advocacy efforts to ensure that laws and policies are gender-sensitive and are properly implemented and enforced.<sup>3</sup>

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

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<sup>2</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>3</sup> For further information, please visit their website at [www.medicaafghanistan.org](http://www.medicaafghanistan.org)

## SECTION 1: INTRODUCTION

This report is the 4<sup>th</sup> EVAW report from a series of EVAW reports dating back to 2011, shortly after the enactment of EVAW, as follows:

- ['The EVAW Law in Medica Afghanistan Legal Aid Practice Report \(June 2013\)' which covered the period between January 2011 and July 2012 \("first report"\)](#)
- ['An analysis on the use of the Elimination of Violence against Women Law in Medica Afghanistan's Legal Aid Cases \(November 2014\)' which covered the period between August 2012 and December 2013 \("second report"\)](#).
- ['Making The Law On Elimination Of Violence Against Women A Reality: A Report On Medica Afghanistan's 2014 & 2015 Cases' which covered the period between January 2014 and December 2015 \("third report"\)](#).

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

In the third EVAW report, we presented statistics of MA's prosecution, defence and civil cases, as well as, examined MA's procedural practice, i.e. How lawyers evaluate their clients' case, conduct investigations, examine evidence and safeguard the rights of their clients throughout the legal process. The report was an in-depth study into the following issues:

- Client's withdrawal from the criminal action
- Medica Afghanistan's 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, and
- 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, and
- Forced statements and confessions.

In 2016 and 2017, MA saw through changes in the penal law landscape as the government and international community embarked on a laudable project to simplify penal law in Afghanistan by consolidating all penal laws, including the punitive provisions of the EVAW Decree, into a single legislation. This had implications on the independence and holistic function of the EVAW Decree. Most

of MA's advocacy efforts in 2016 and 2017 was dedicated to preserving EVAW Decree as a standalone law. A section of this report is dedicated to setting out a brief history of the life of the EVAW Decree and the course it has taken through the recent political and legal changes. This report presents statistics from cases across Balkh and Kabul, between 1 December 2015 to 30 November 2017, the 2016 and 2017 respectively ("the reporting period"). The report will put forward general recommendations, as well as, map the progress and status of the previous report's recommendations.<sup>4</sup>

## MAP OF THIS REPORT

- **Section 1** of the report introduces the report and sets out its methodology.
- **Section 2** provides a brief history into the course and life of EVAW since its enactment. In particular, it provides an update into MA's advocacy around the recently enacted Penal Code and MA's position to preserve EVAW as a standalone law.
- **Section 3** presents statistics of Medica Afghanistan's prosecution practice.
- **Section 4** presents statistics of Medica Afghanistan's defence practice.
- **Section 5** presents statistics of Medica Afghanistan's civil practice.
- **Section 6** narrates some notable cases MA lawyers took up in 2016 and 2017.
- **Section 7** concludes the report and summarizes the key findings
- **Section 8** revisits the previous report's recommendations, MA's progress and further recommendations moving forward.
- In the Annex, read our Position papers on EVAW Law in 2014 and 2016 and Petitions to the 2<sup>nd</sup> Vice President and President in 2018.

## METHODOLOGY

The statistics gathered in this report is primarily based on Medica Afghanistan's database of prosecution, defence, civil cases in Balkh and Kabul in 2016 and 2017.

The case studies narrated in this report are based on interviews and focus group discussions with 12 lawyers from Medica Afghanistan's Kabul and Balkh offices, 2 staff from the Kabul legal aid management team. The interviews and mining of statistics took place in Kabul in September 2017 and February 2018. Admittedly, the result of this report is more reflective of practice in Kabul. Most of the interviews were done with Kabul-based staff, as the lawyers from Balkh could not be present for all the sessions.

We thank the legal aid department staff for translating court documents and sharing each step of the

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<sup>4</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.

case process. We also thank SAHR's Legal Fellow, Ramisa Raya for assisting to compile and review the statistics.

## SECTION 2: UPDATES ON EVAW DECREE

### TIMELINE OF KEY EVENTS

“The 2013 backlash against EVAW is a reminder that we cannot afford to be complacent. In the last 2 years, we had to find a way to further legitimize EVAW in Afghan law. After 2 years of advocacy, we can see light at the end of the tunnel.”

Humaira Rasouli, Executive Director, Medica Afghanistan

#### 2009

The EVAW Decree was passed by Presidential Decree - a historical success making it possible for MA to push for the prosecution of crimes against women, the first time in a long time.

#### 2010

MA's lawyers were amongst the first lawyers to represent women in “EVAW cases”. In the first year, it was tough to convince prosecutors and judges to prosecute cases pursuant to EVAW. There was push-back from those who did not accept EVAW as law. Some judges and prosecutors were also opposed to prosecuting family members of victims, especially when some acts such as beating were deemed to be culturally acceptable (to a degree) or otherwise something which families ought to resolve internally and not through a public forum such as the courts.

MA started out with only a handful of cases.

#### 2011

MA represented their first cases involving 10 victims of violence, of which 5 cases were prosecuted pursuant to EVAW.

#### 2012 & 2013

MA represented 8 victims of violence, of which 6 cases were prosecuted pursuant to the EVAW.

Lawyers also cited EVAW to support clients' civil petitions for separation due to harm and other matrimonial rights.

#### 2013

The EVAW Decree was entered into Parliament's agenda for debate. This caused a wave of public protests and damning comments by conservative



political leaders who rejected EVAW as being unislamic. To assuage conservative leaders and clerics, MA submitted Shariah analyses of each article of EVAW Law. MA's position was that EVAW was not only Shariah-compliant but also promoted fundamental principles in Shariah which demands respect and equality between genders.

## 2014

To simplify penal law in Afghanistan, our government and the international community agreed to commence a multi-year project to review penal law and consolidate all penal laws into a single Penal Code.

Whilst this was a laudable goal, this also meant that the Elimination of Violence Against Women Decree 2009 (EVAW Decree) would have to be bifurcated. Its punitive provisions would have to be incorporated into the new Penal Code. Its preventive provisions, on the other hand, would have to be integrated into civil law.

## June 2016

### Objections to the bifurcation of EVAW

Together with civil society, MA objected to the bifurcation of EVAW.

MA proposed that EVAW should be preserved as a standalone law separate from, but to be read together with, the new Penal Code.

## July 2016 – September 2016

### MA's Position Paper on Bifurcation of EVAW

MA addressed the reasons for their position in a Position Paper on the Bifurcation of EVAW. The Position Paper was shared widely.

MA urged stakeholders to look into the experiences of other countries which have shown that violence against women can only be addressed with purposive legislation which provides for *punitive*, *preventive* and *positive* measures; and which addresses the *particular* needs of women. Such a law would deal with all aspects of a survivor's needs including but not limited to prosecution and punishment (which is the sole objective of penal law).

MA urged stakeholders to appreciate and recognize that as a result of the historically deep-seated violence and discrimination against women, it was imperative that Afghanistan's obligations to *respect*, *prevent*, *protect* and *punish* is legislated comprehensively in a single law.

MA shared that indeed, many countries including Pakistan, India, Indonesia, Malaysia have enacted specific laws targeted to address women's specific and multi-faceted needs – such as the recognition of the criminal courts' competence to order civil remedies which are “survivor-centered” and which prioritize women's immediate and long-term needs.

A standalone law would also encourage continuity to the recently established ERAW specialist court in Kabul and an expansion of its mandate to other crimes, measures and provinces in the future.

## July 2016 – September 2016

### *ERAW Decree and Parliamentary Debate*

ERAW was at risk of being tabled at the Lower House for debate.

MA worked closely with civil society and parliamentarians to oppose block ERAW's entry into the Parliament's agenda.

MA firmly warned stakeholders that if the ERAW decree is re-opened for debate in the Lower House, that it is likely to result in the decriminalization of child marriage, forced marriage, polygamy et al, reignite unproductive debate and draw unwanted attention to the ERAW decree.

## September 2016

Our government and the international community informed MA on several occasions that a consolidated Penal Code incorporating ERAW crimes was an agreed deliverable, and, that it was too late to backtrack on this agreement. The vast majority in the government and international community were also insistent that this was best for our justice system. The new Penal Code was admittedly more gender-progressive and it greatly simplified penal law. MA did not disagree with this position. MA disagreed with the position that the Penal Code was the correct legal vehicle for the prevention and elimination of violence against women.

Nonetheless, to prepare for the eventuality of a consolidated law, MA prepared amendments to the Chapter on "ERAW Crimes" whilst forging ahead with advocacy to preserve ERAW as a standalone law. It was challenging to straddle between two polarizing positions. However, it was too risky to completely disengage with the process, a position that some civil society members took. By disengaging with the process, MA would lose an opportunity to engage with the key decision makers. Thus, MA became a member of the Criminal Law Reform Technical Working Group, and, used the opportunity to speak to many stakeholders as possible and propose workarounds.

## July - September 2016

### *Amendments to Penal Code*

MA researched best practice laws and obtained feedback from lawyers, on the ground realities which clients confront daily.

In view the findings, MA amended the draft Penal Code and justified each of the amendment with detailed narrative. The amendments included the following:

- A provision in the Penal Code to state that all offences in relation to violence against women and girls in the Penal Code be read with the EVAW decree;
- Improvement in definition of most of the crimes;
- Language to limit judicial discretion and prevent gender-discriminatory interpretations;
- Survivor-centred remedies such as (1) restraining orders (2) expulsion orders and (3) compensation orders, in order to, prioritise women's real immediate and long-term needs;
- Provisions to hold the State accountable when they fail to take reasonable action to prevent violence, in order to, address systemic failures by the State;

### September 2016

MA submitted the Table of Amendments to the Ministry of Justice, Legal Consultant to Second Vice President and key stakeholders on 30 September 2016. The amendments were also sent to Legal Advisor to the Presidential Palace on 11 January 2017.

MA received praise from UN Mission to Afghanistan, UN Women, European Union, Dutch Embassy, Swiss Agency for Development, Afghanistan Ministry of Women's Affairs, Afghanistan Independent Bar Association, EVAW Prosecution Unit and UN Development Program, for thoughtful analyses.

### October 2016

#### Brussels Conference

MA's Executive Director, Ms Humaira Rasouli, assisted in the preparations of the Brussels Conference in Belgium specifically in relation to safeguarding of EVAW Law. The Brussels Conference was a one-day meeting co-hosted by the Government of Afghanistan and the European Union on Afghanistan's developments. At the Conference, MA used every opportunity to obtain the support of government and international community to preserve EVAW as a standalone law.

This event sent a strong signal about the high priority attached by the government to the protection of and empowerment of Afghan women. The

Government outlined their progress and plans to strengthen the protection of and empowerment of women.

By the end of October 2016, MA realized that the Ministry of Justice was tight on time and were themselves pushed to finalize the Penal Code.

### **November - December 2016**

MA held several meetings with government officials, parliamentarians and international community to explain the reasons for preserving EVAW as a standalone law.

MA recognized that, 9 years on, EVAW required further amendments to keep up with best practices, lessons learned and new challenges. However, MA argued that this could be achieved outside the penal law reform process. EVAW would have to be amended.

Ideally, an amended EVAW would encompass preventive and punitive provisions to effectively address women's multifaceted needs. Punishment alone is not sufficient to eliminate violence against women as it deals with violence *after the fact* and its focus is on the perpetrator and not on, the needs of the survivor.

An amended EVAW Decree would be purposeful and deliberate. It would contain language and provisions to prevent and correct existing gender discrimination, and, promote gender-equal outcomes.

MA's goal is to amend EVAW Decree to achieve this.

### **January 2017**

MA received a copy of the draft Penal Code and it was clear that the Ministry of Justice did not adopt most of MA's proposed amendments. This was unfortunate as the amendments were essential to the object of the law and to safeguard and uphold the rights of women.

Further, MA was informed by the government and international community that the preventive provisions of the EVAW Decree would remain in force under civil law. However, the government and international community did not clarify how an amended EVAW decree would be incorporated into civil law or if it were to remain a Decree, how it would remain legitimized under the law once the Penal Code was enacted.

MA decided to step up its lobbying efforts and appeal to the President.

### **February 2017**

#### **Official Petition to the President's Office**

MA submitted an official appeal to the President requesting an opportunity to be heard on this issue:

- To preserve the ERAW Decree as a standalone law. Any amendments to improve upon it can be done outside the penal law reform process, and, be passed as an amendment to the existing Decree.
- To introduce a provision in the Penal Code to explicitly refer to the ERAW Decree.

Shortly after receiving the Official Petition, the President called for a closed-session meeting with a handful of civil society representatives. Executive Director, Ms Humaira Rasouli, presented MA's proposal and technical analyses. His Excellency praised MA for bringing clarity to civil society's request and submitting technical analyses. He gave civil society 2 days over the weekend to finalise their collective position for his consideration.

That weekend MA worked together with civil society comprising UN Women and AWW to prepare their submission to the President.

It was a team effort and it was a success. The President issued an Order to the Ministry of Justice ordering the removal of "ERAW Crimes" from the Penal Code altogether.

Over the course of 2017, MA followed up with this Order.

### **August 2017**

The Ministry of Justice issued a public announcement to confirm that the Chapter on "ERAW Crimes" had been removed from the Penal Code, and, that the ERAW would remain a standalone law. This was a resounding success.

### **September – December 2017**

MA continued to work hard to convince the Ministry of Justice that the Penal Code should expressly refer to ERAW Decree as the governing law on crimes against women. This, however, was not followed through.

This was an extremely critical issue. If a newly enacted Penal Code made express reference to the ERAW Decree, it would further legitimate ERAW as a valid source of criminal law in Afghanistan.

MA held several meetings over the next few months to push for an express reference.

### **January - February 2018**

### **Petition to President on Penal Code and ERAW**

MA was not making sufficient progress on the request for an express reference to EVAW in the Penal Code.

Therefore, MA appealed to the President in an Official Petition.

In the Petition, MA highlighted internal inconsistencies in the Penal Code which will unintentionally lead to a repeal EVAW's *punitive* mandate. MA expressed concern that opponents of EVAW Law will use this inconsistency to deny EVAW's punitive mandate.

MA urged the President to attend to the request to amend the Penal Code to correct the above.

Within a few days of the Official Petition, the President's Office called for a closed-session meeting. MA was also invited by the Vice President's Office to present MA's proposal to resolve the issue at a high-level meeting which was publicized on the Vice President's Office official website.

It was a resounding success. The Office conceded to MA's request for amendment.

MA will be following closely to ensure that the request is properly followed through. If this is successful, MA can close one chapter of the 2-year effort to preserve EVAW as a standalone law, more importantly one that would be further legitimated by the new Penal Code as a valid source of penal law.

## SECTION 3: PROSECUTION PRACTICE

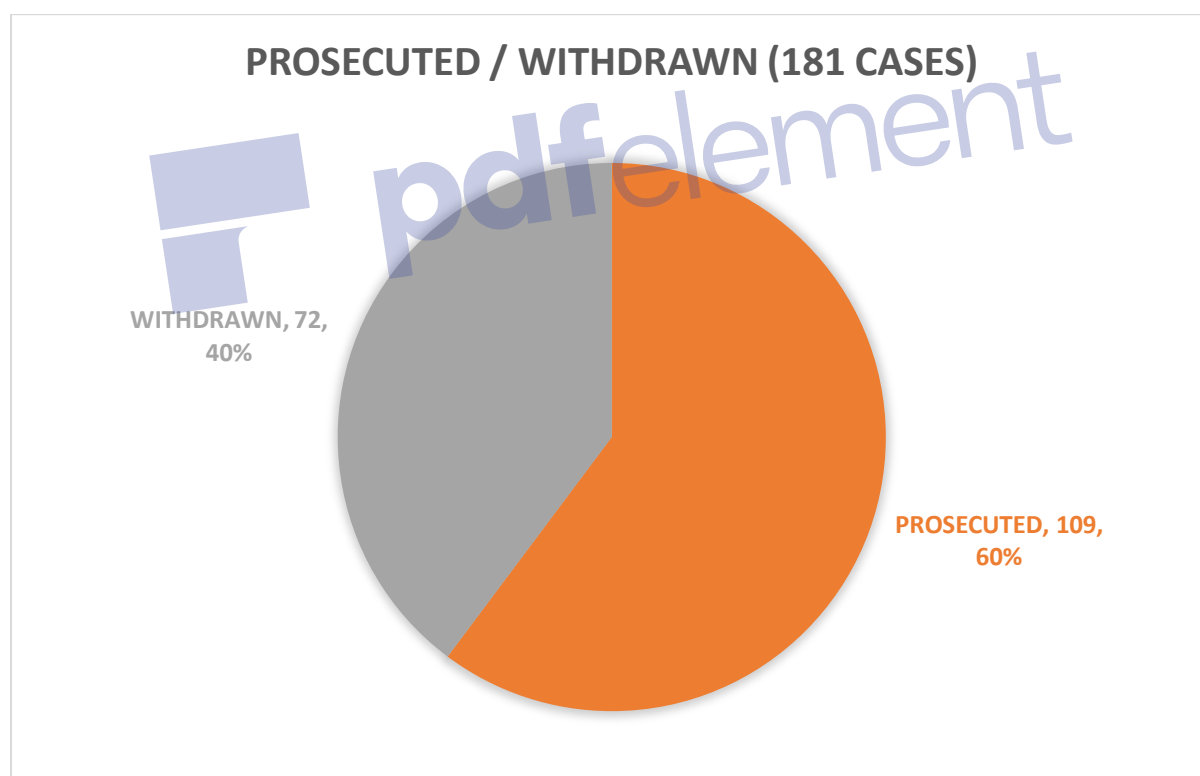
### A. SUMMARY OF CASES AND OUTCOMES

In 2016 and 2017, the lawyers represented approximately 181 victims<sup>5</sup> in Kabul and Mazar. On average, 60% of the cases were prosecuted whilst 40% of the cases were withdrawn at some stage of the proceedings, pursuant to Article 39 of the EVAW law. The lawyers assisted prosecutors to secure 32 convictions (i.e. A 29% conviction rate for cases which proceeded to trial and a 18% conviction rate overall).

#### *Compared to 2014 and 2015*

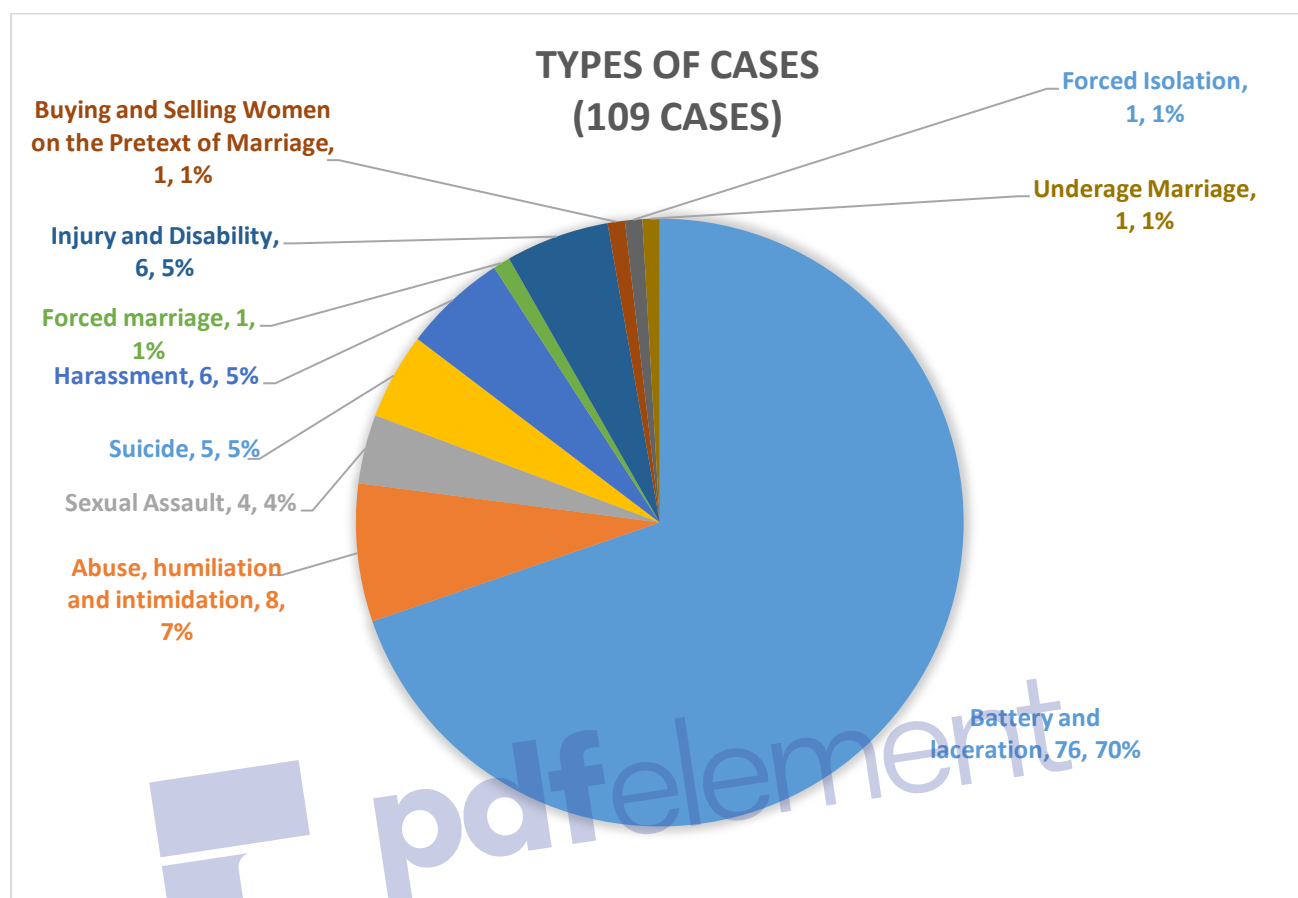
In 2014 and 2015, the lawyers represented approximately 93 victims and their families in Kabul, Herat and Balkh. On average, 54% of the cases were prosecuted whilst 42% of the cases were withdrawn at some stage of the proceedings. The lawyers assisted prosecutors to secure 48 convictions (i.e. A 96% conviction rate for cases which proceeded to trial and a 52% conviction rate overall). The steep drop in conviction rate in 2016 and 2017 can be accounted for by the fact that in 2016 and 2017, lawyers represented almost twice as many victims as compared to 2014 and 2015.

#### 1. PROSECUTED / WITHDRAWN (181 CASES)

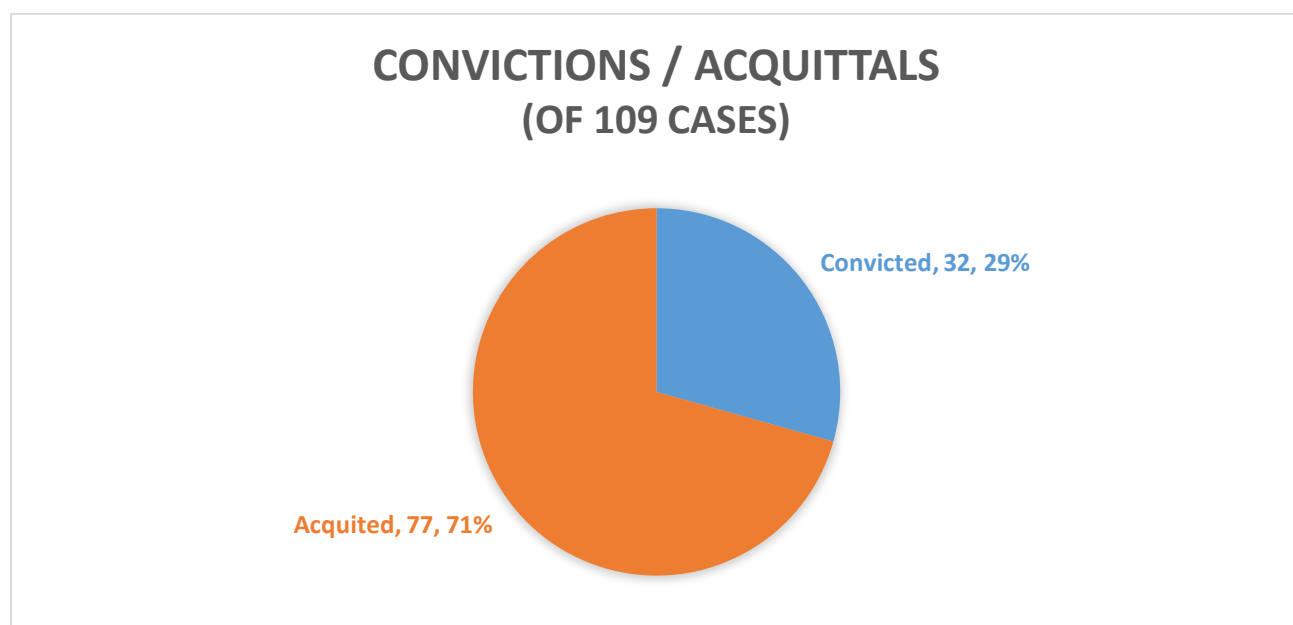


<sup>5</sup> At Medica Afghanistan, clients are referred to as “survivors” and not “victims” of violence. The term “survivors” connote agency, choice and empowerment which the clients make in their day-to-day choice when dealing with and protecting themselves from violence. In this report, we have used the legal term “victim” to refer to a person who initiates legal action in response to a crime committed against her.

## 2. TYPE OF CASES PROSECUTED (109 CASES)



## 3. CONVICTIONS & ACQUITTALS



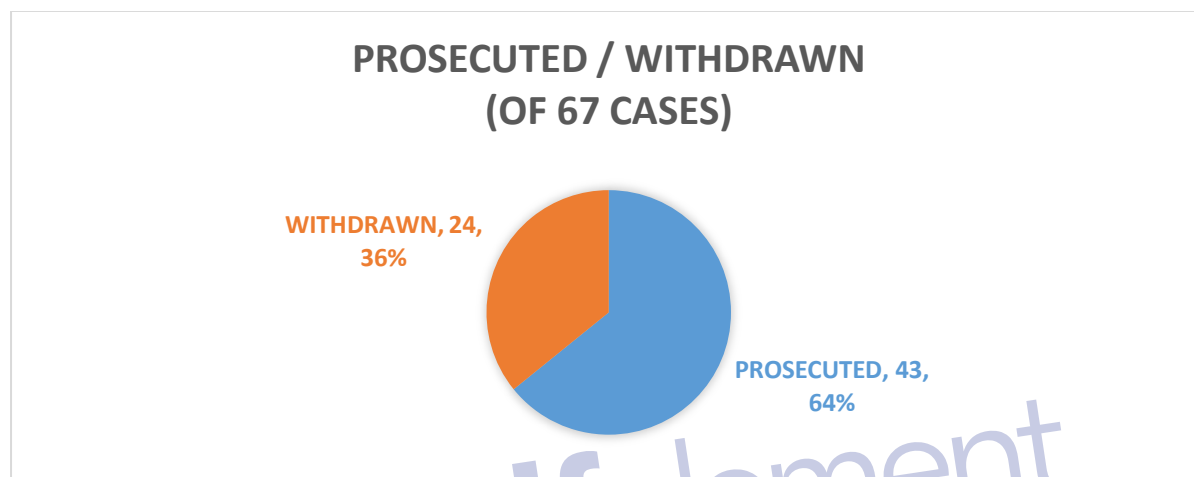


## BREAKDOWN BY PROVINCE

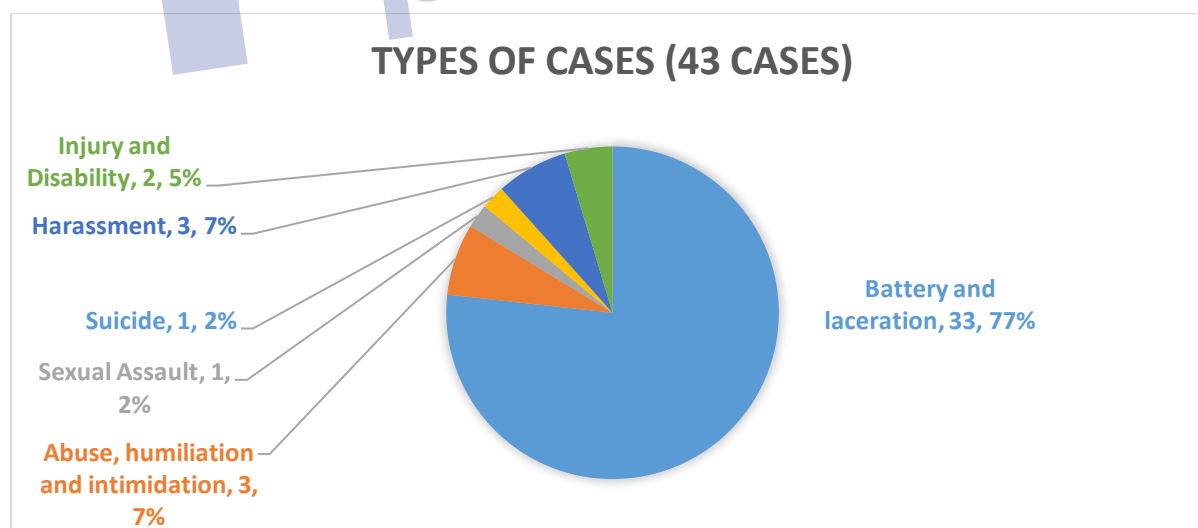
### B. KABUL PROSECUTION CASELOAD

Over the reporting period, the lawyers in Kabul represented 67 victims. 64% of the cases were prosecuted (43 cases) whilst 36% of the cases were withdrawn at some stage of the proceedings (24 cases). The lawyers assisted the prosecution to secure 15 convictions (i.e. A 35% conviction rate for cases which proceeded to trial and a 22% conviction rate overall).

#### 1. KABUL - PROSECUTED / WITHDRAWN

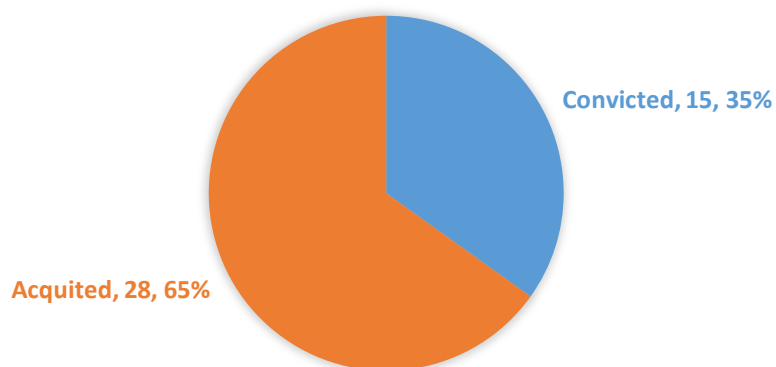


#### 2. KABUL - TYPE OF CASES PROSECUTED



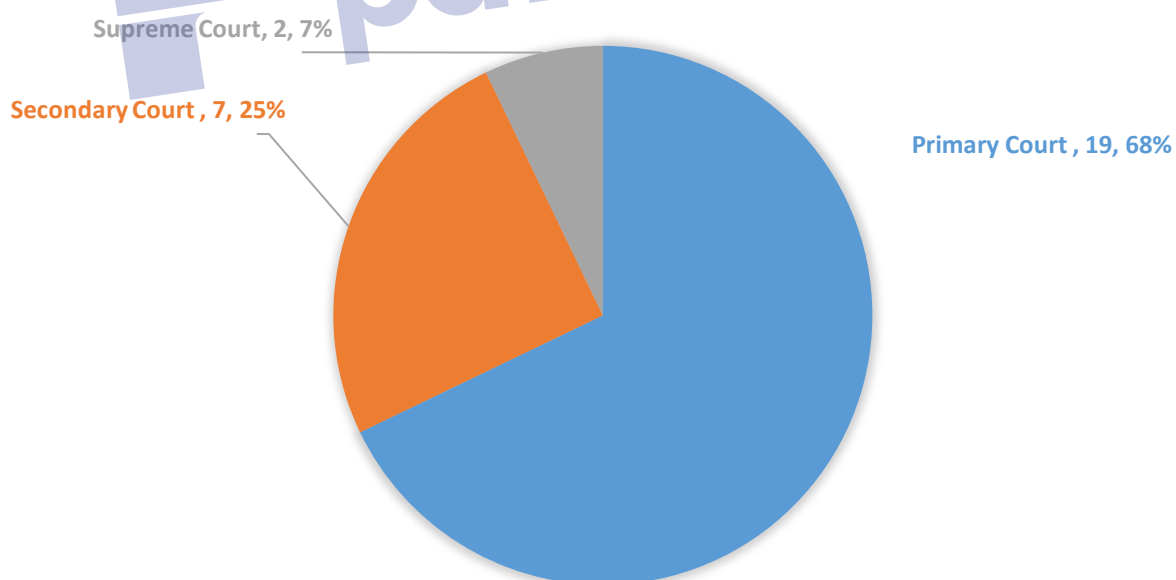
### 3. KABUL - CONVICTIONS / ACQUITTALS

#### CONVICTIONS / ACQUITTALS (OF 43 CASES)



### 4. KABUL – PERPETRATORS ACQUITTED / LEVEL OF COURT

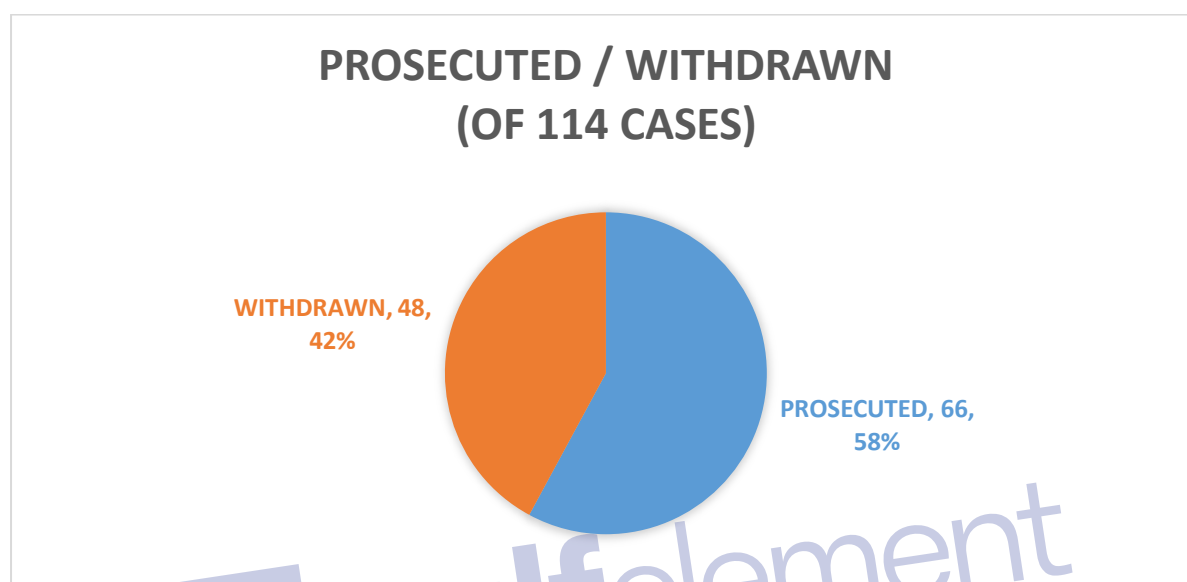
#### ACQUITTALS GRANTED / LEVEL OF COURT (OF 28 PERPETRATORS)



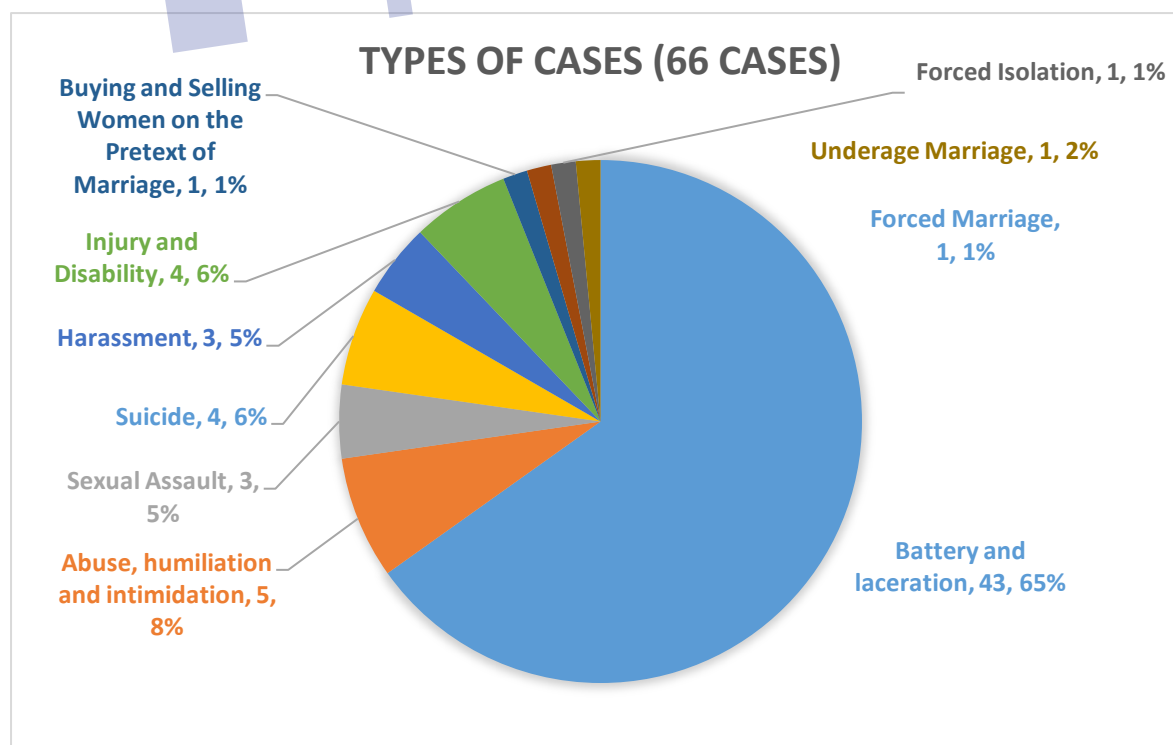
### C. MAZAR PROSECUTION CASELOAD

Over the reporting period, lawyers in Mazar provided counsel to 114 victims. 58% of the cases were prosecuted (66 cases) whilst 42% of the cases were withdrawn at some stage of the proceedings (48 cases). The lawyers assisted the prosecution to secure 17 convictions (i.e. 26% conviction rate for cases which proceeded to trial and 15% conviction rate overall).

#### 1. MAZAR - PROSECUTED/ WITHDRAWN

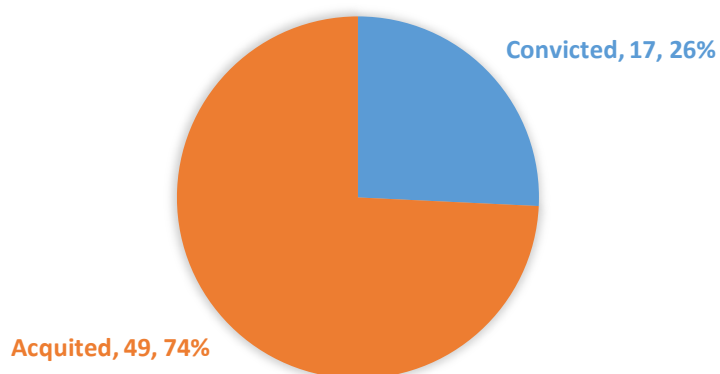


#### 2. MAZAR - TYPE OF CASES PROSECUTED



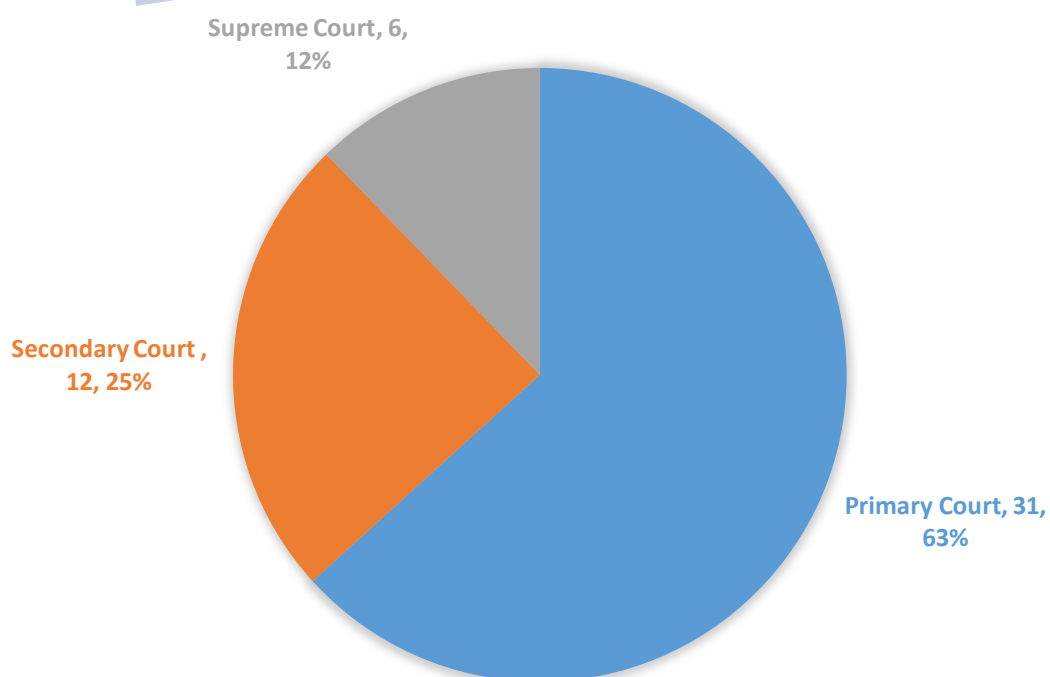
### 3. MAZAR - CONVICTIONS / ACQUITTALS

#### CONVICTIONS / ACQUITTALS (OF 66 CASES)



### 4. MAZAR - PERPETRATORS ACQUITTED / LEVEL OF COURT

#### ACQUITTAL GRANTED TO PERPETRATORS/ LEVEL OF COURT (OF 49 CASES)



## SECTION 4: DEFENCE PRACTICE

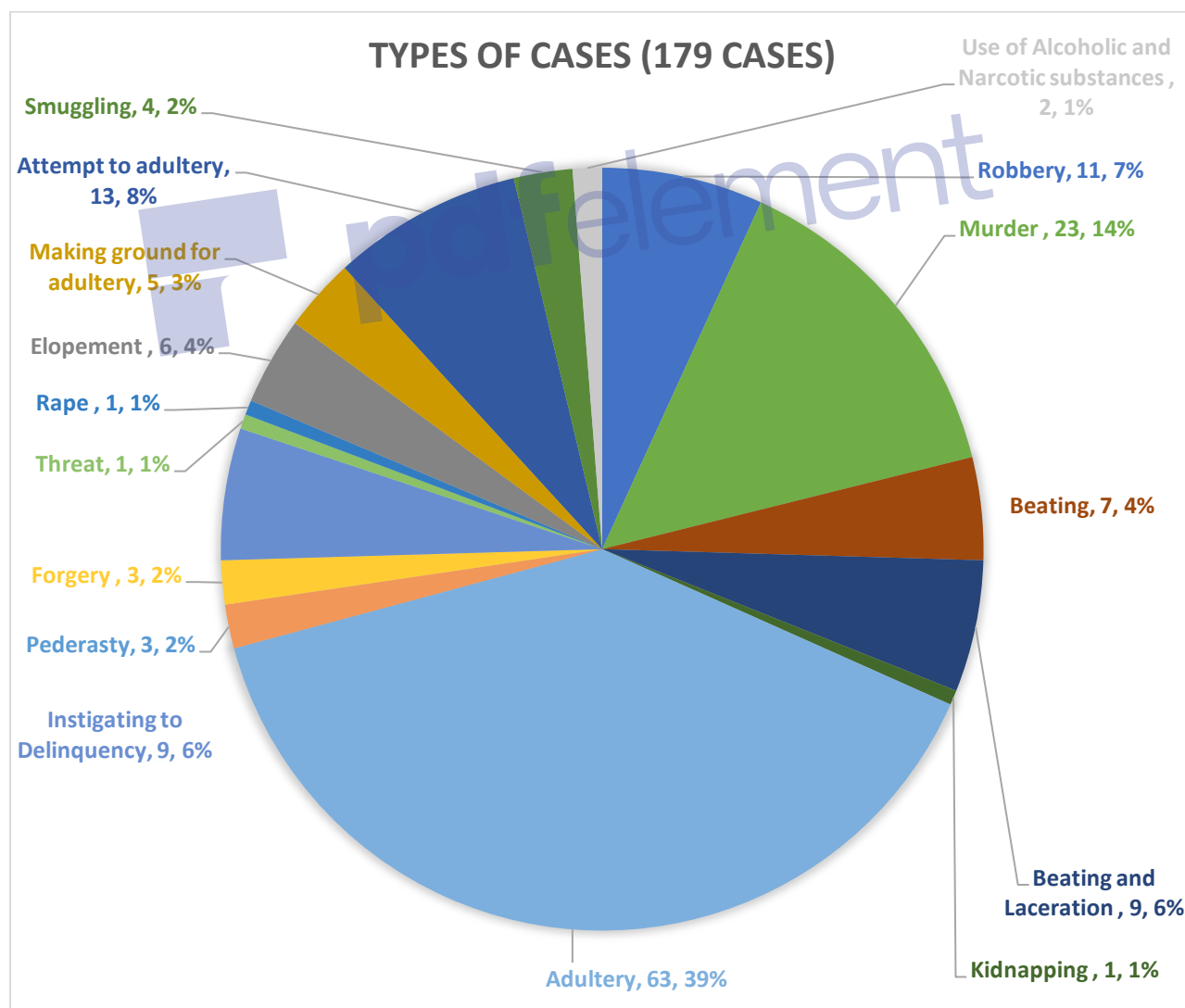
### A. SUMMARY OF CASES AND OUTCOMES

In 2016 and 2017, Medica Afghanistan's lawyers represented approximately 179 women and girls accused of crimes in Kabul and Mazar. Of the said cases, 65% of the clients were convicted (116 cases) and 35% of the clients were acquitted /released (63 cases). Of those acquitted, 11 clients were released pre-trial. 27 clients who were convicted at first instance were acquitted by the secondary/ Supreme court, as a result of MA's appeal.

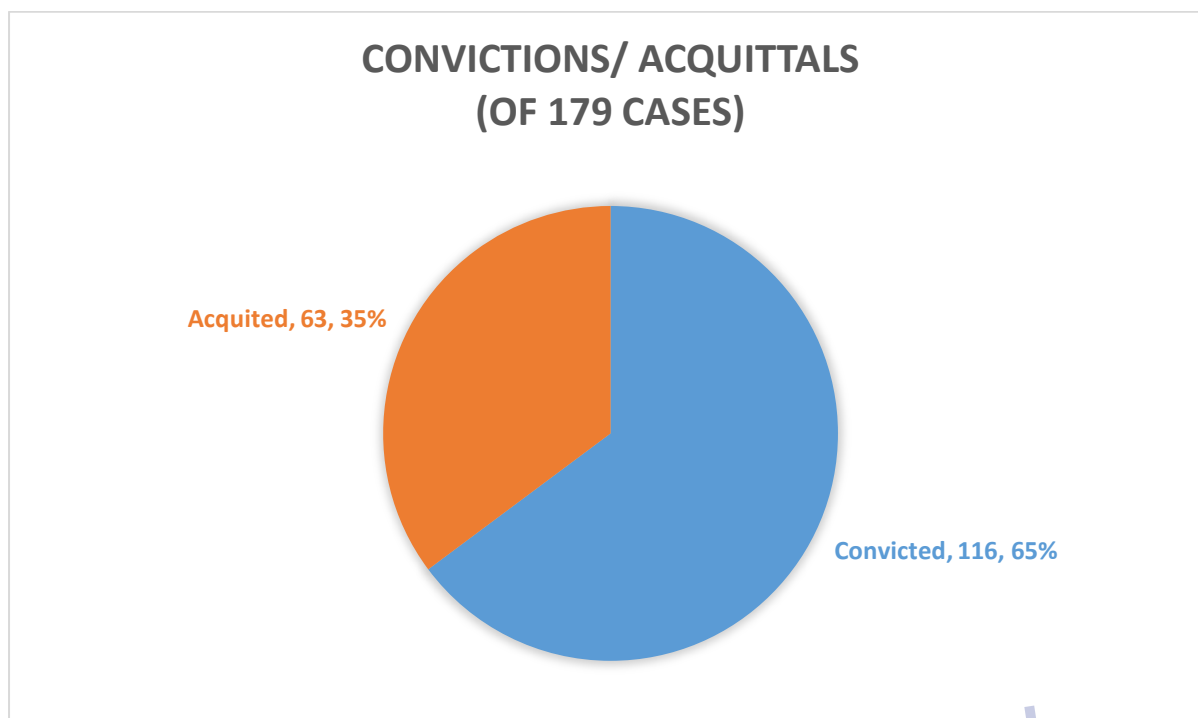
#### *Comparison with 2014 and 2015*

In 2014 and 2015, Medica Afghanistan's lawyers represented approximately 118 women and girls accused of crimes in Kabul, Herat and Balkh. Of the said cases, 75% of the clients were prosecuted and convicted and 18% of the clients were acquitted (the remaining 7% of case outcomes were undetermined at time of report).

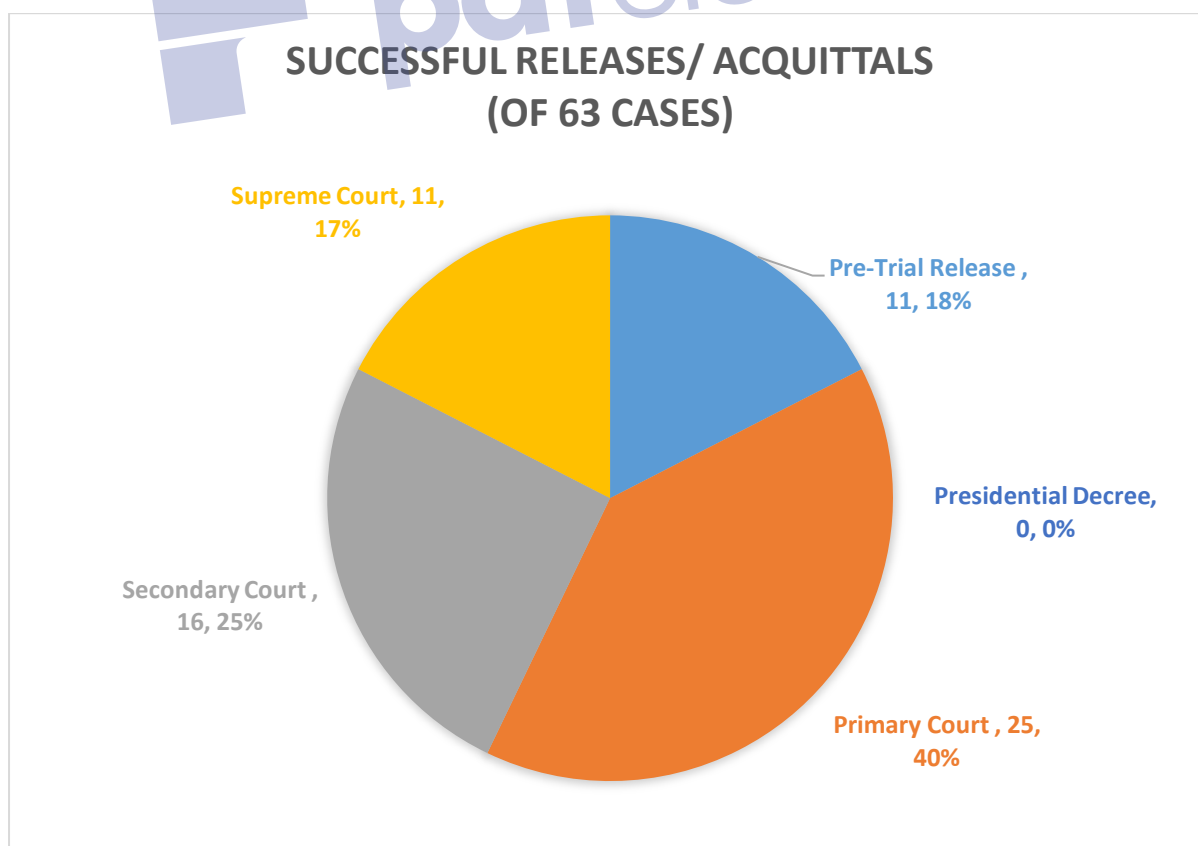
### 1. TYPE OF CASES



## 2. CONVICTIONS & ACQUITTALS



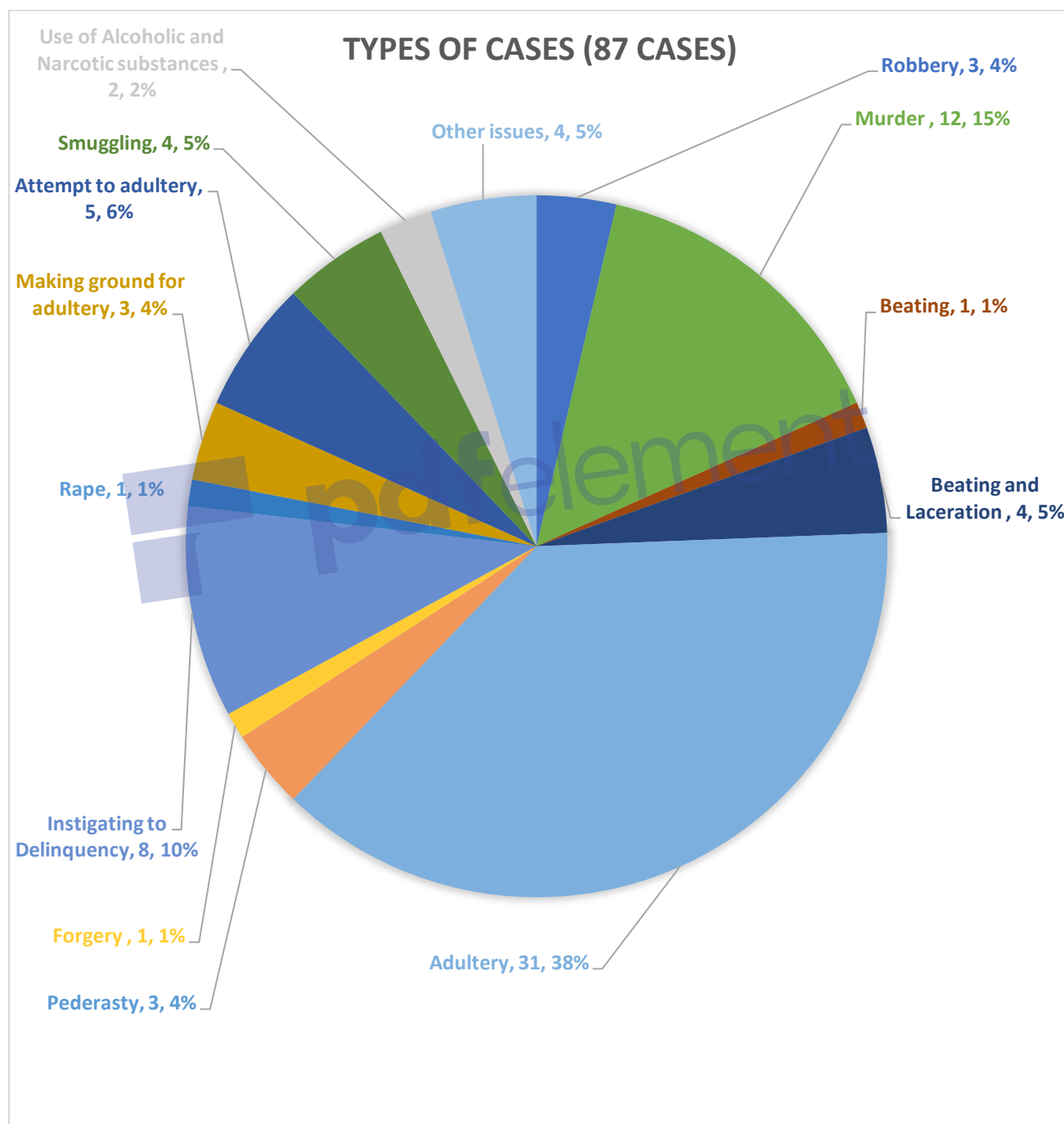
## 3. SUCCESSFUL RELEASES/ ACQUITTALS



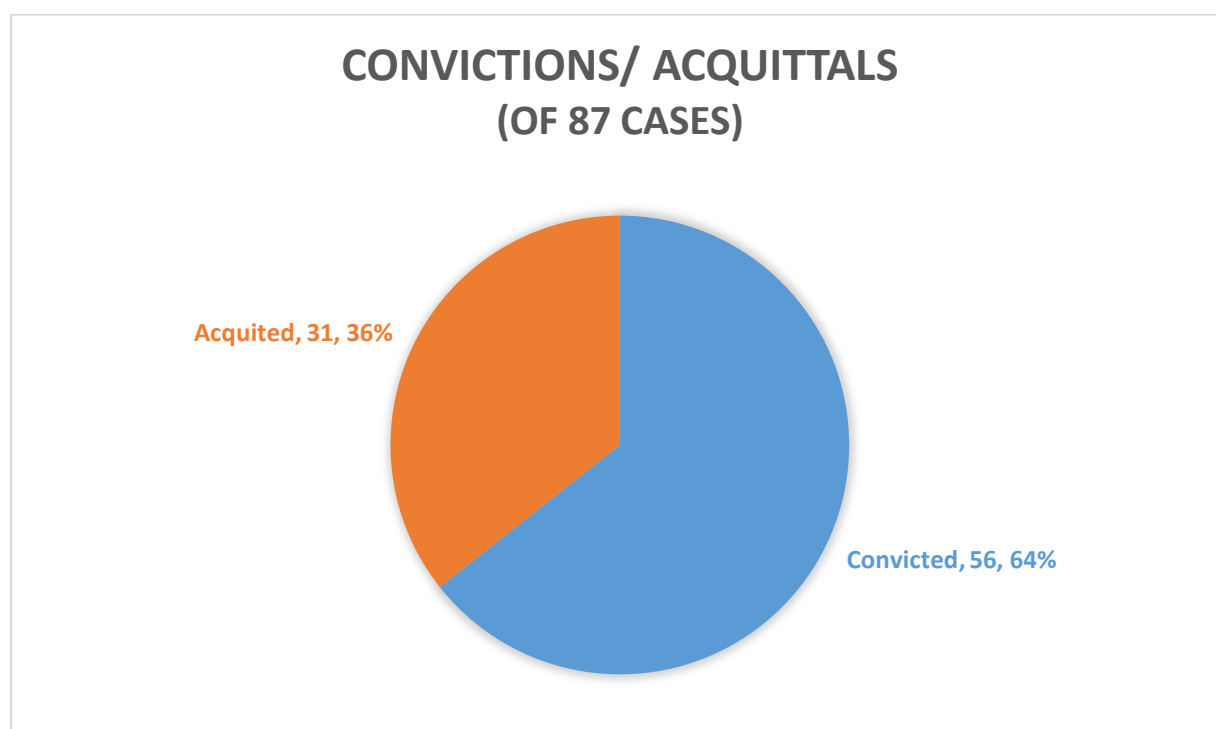
## B. KABUL DEFENCE CASELOAD

Over the reporting period, the lawyers represented 87 women offenders in Kabul. 64% of them (56 clients) were convicted and imprisoned. 36% of them were acquitted /released (31 clients). Of those acquitted, 7 clients were released pre-trial. 15 clients who were convicted at first instance were acquitted by the secondary/ Supreme court, as a result of MA's appeal.

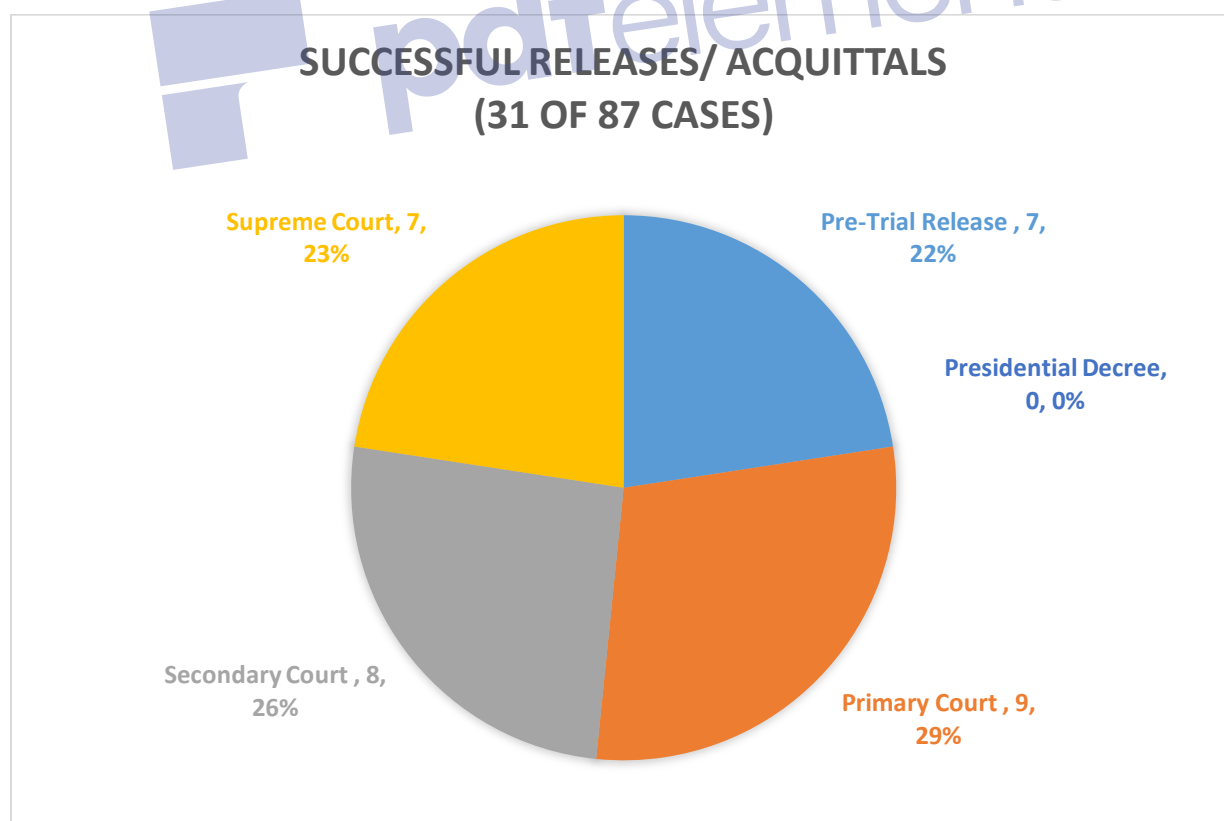
### 1. KABUL - TYPE OF CASES



## 2. KABUL - CONVICTIONS / ACQUITTALS



## 3. KABUL - SUCCESSFUL RELEASES/ ACQUITTALS

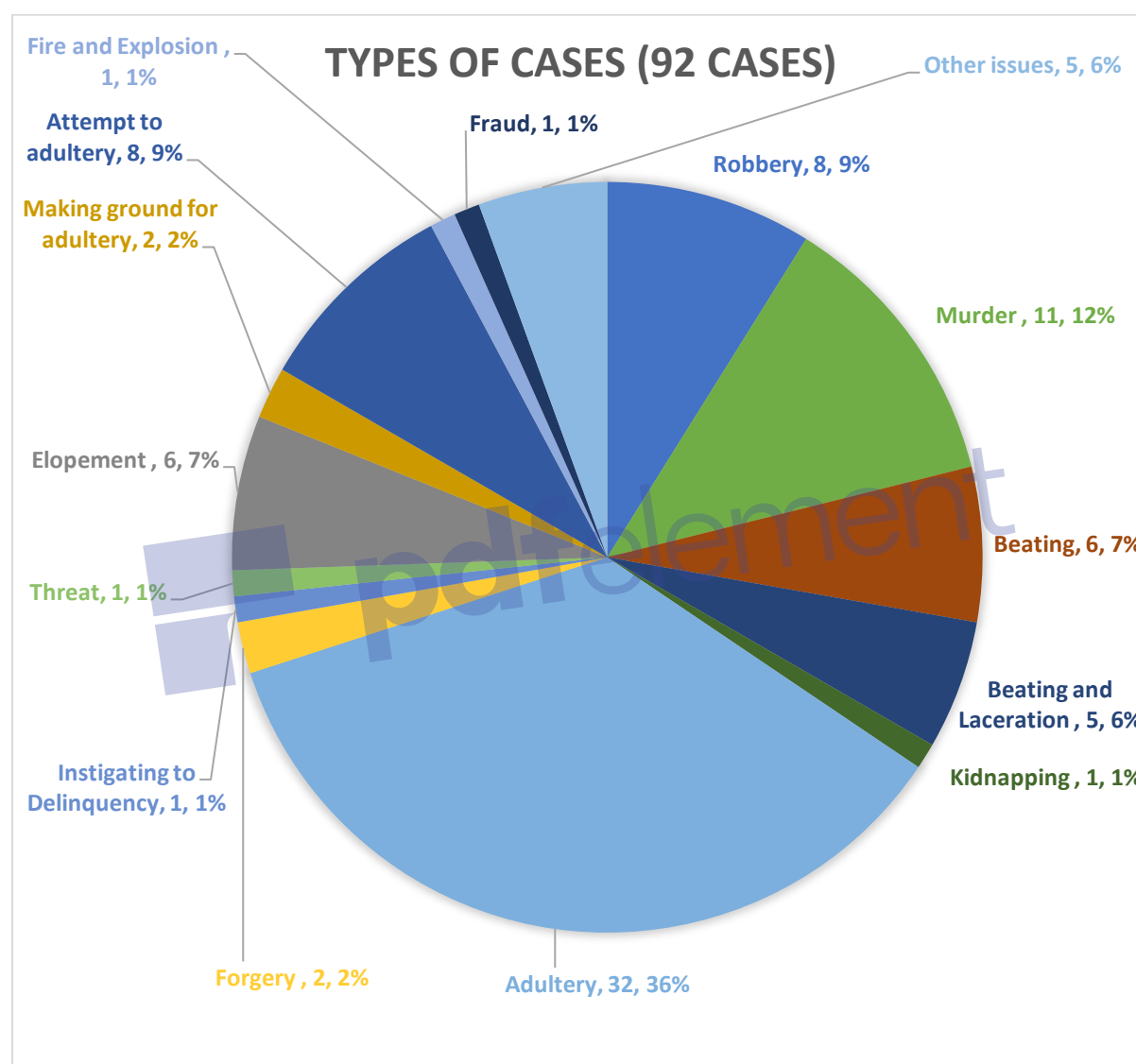




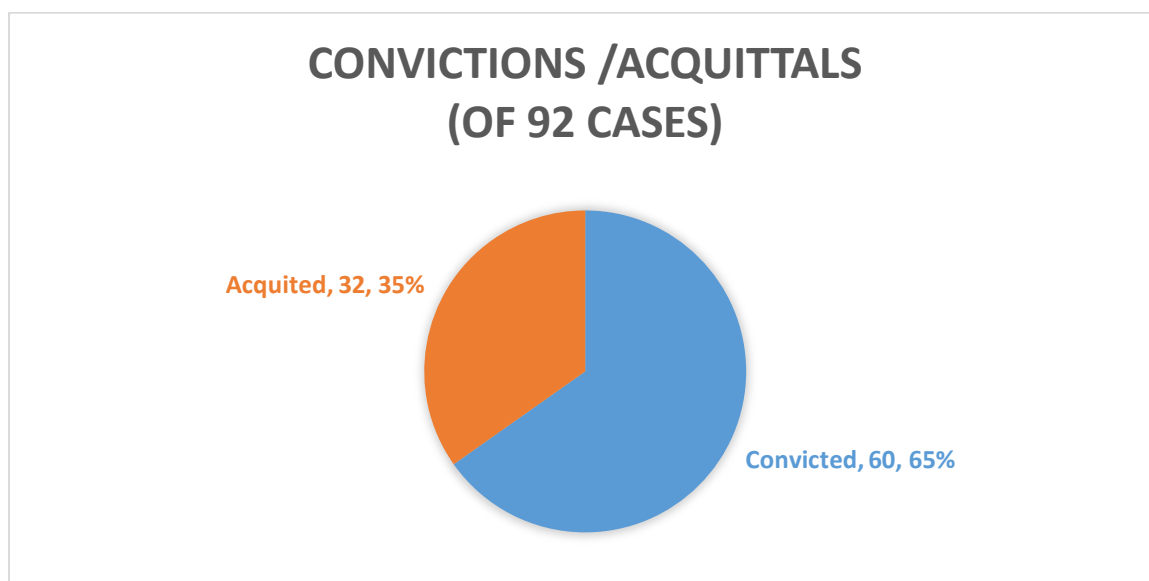
### C. MAZAR DEFENCE CASELOAD

Over the reporting period, the lawyers represented 92 women offenders in Mazar. 65% of them (60 clients) were convicted and imprisoned. 35% of the them were acquitted /released (32 clients). Of those acquitted, 4 clients were released pre-trial. 12 clients who were convicted at first instance were acquitted by the secondary/ Supreme court, as a result of MA's appeal.

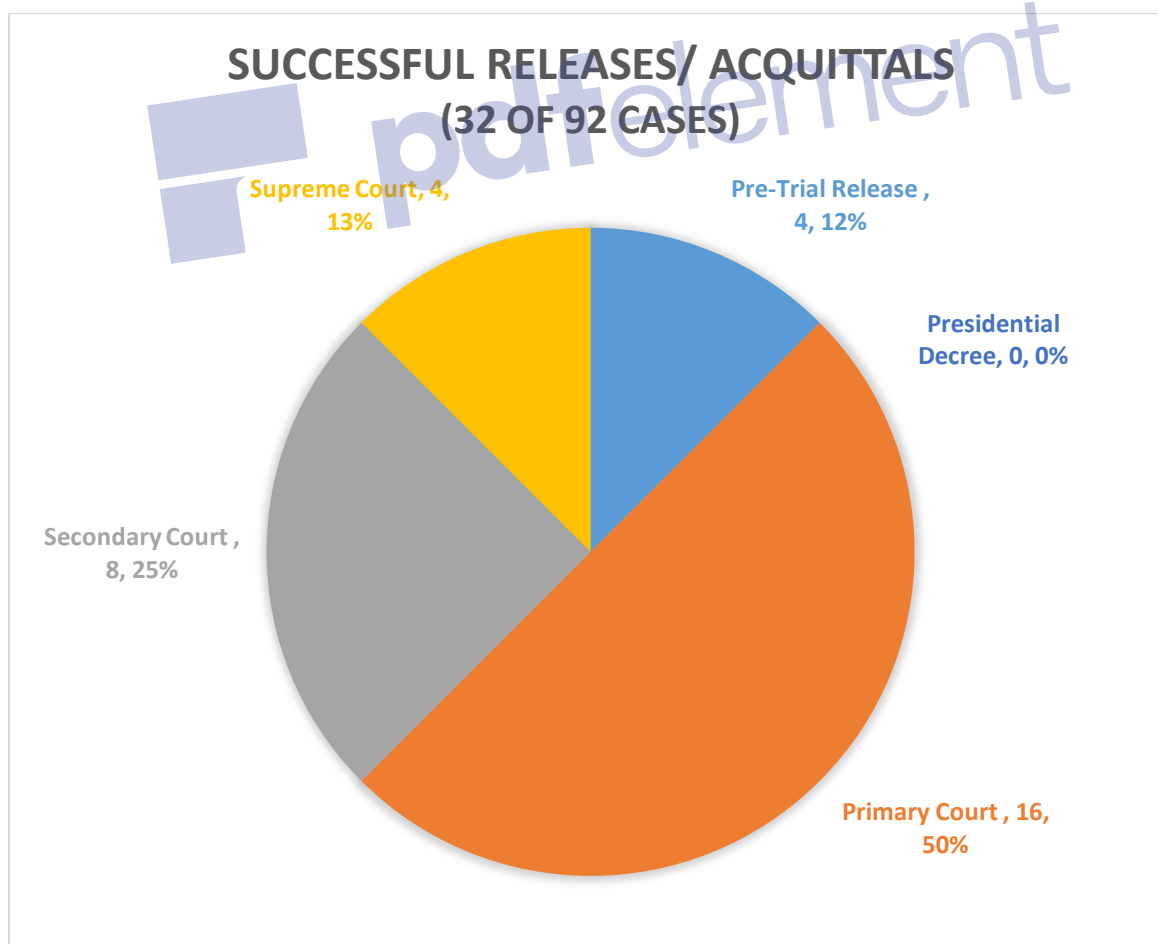
#### 1. MAZAR - TYPE OF CASES (92 CASES)



## 2. MAZAR - CONVICTIONS / ACQUITTALS



## 3. MAZAR - SUCCESSFUL RELEASES/ ACQUITTALS

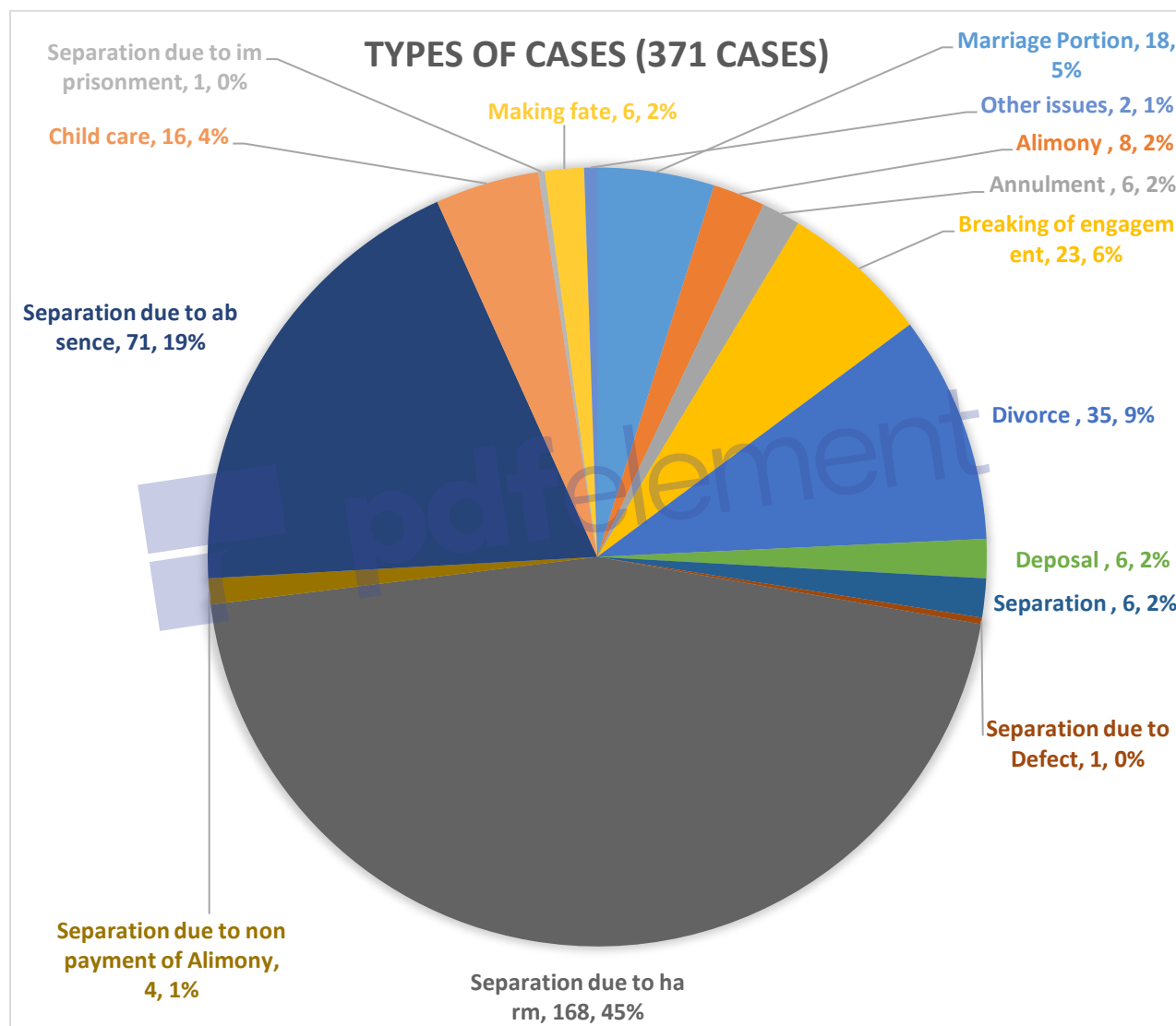


## SECTION 5: CIVIL PRACTICE

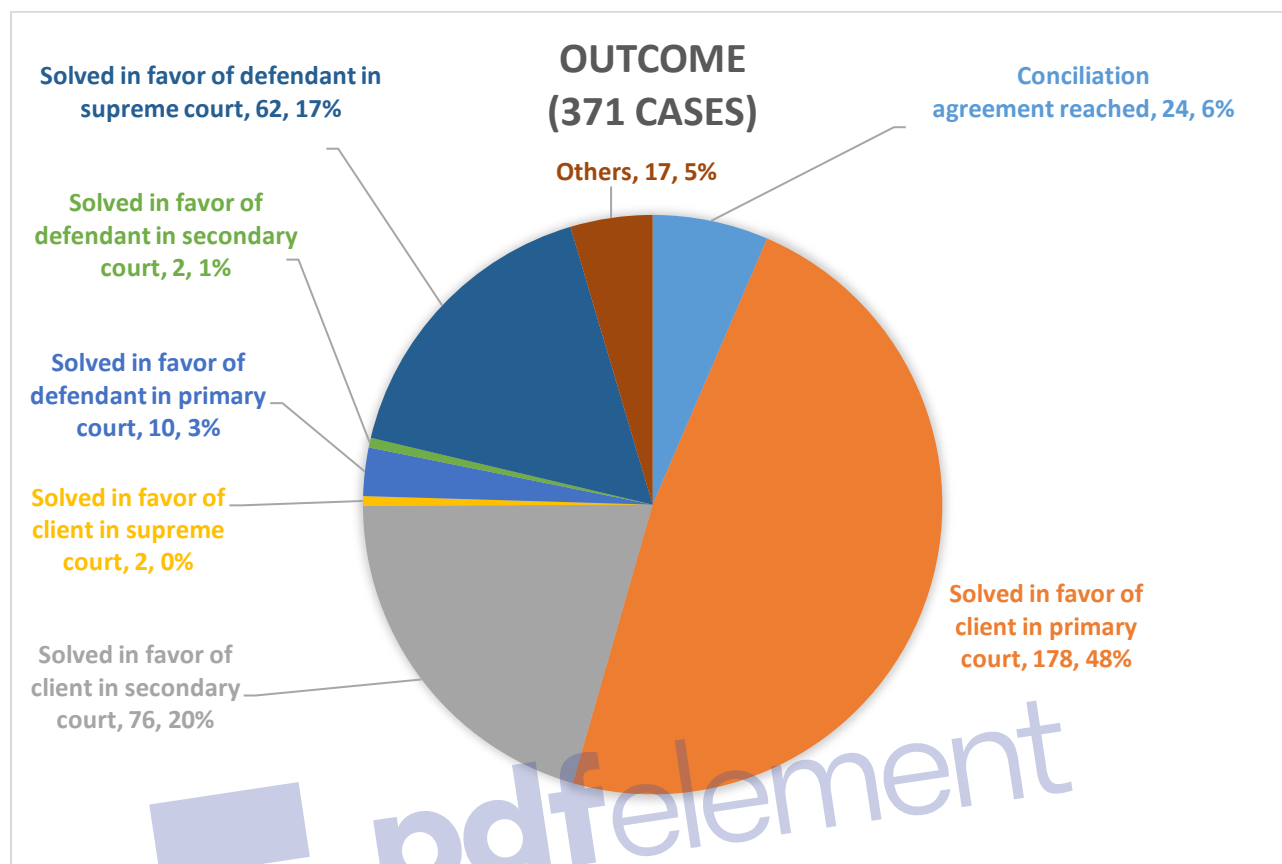
### A. SUMMARY OF CASES AND OUTCOMES

In 2016 and 2017, the lawyers provided counsel to 371 clients and their families in Kabul and Mazar on a wide range of civil matters. On average, 45% of the cases involved petitions for separation due to harm. 68% of cases were resolved in favour of client with a further 6% reaching a settlement agreement.

#### 1. TYPE OF CASES



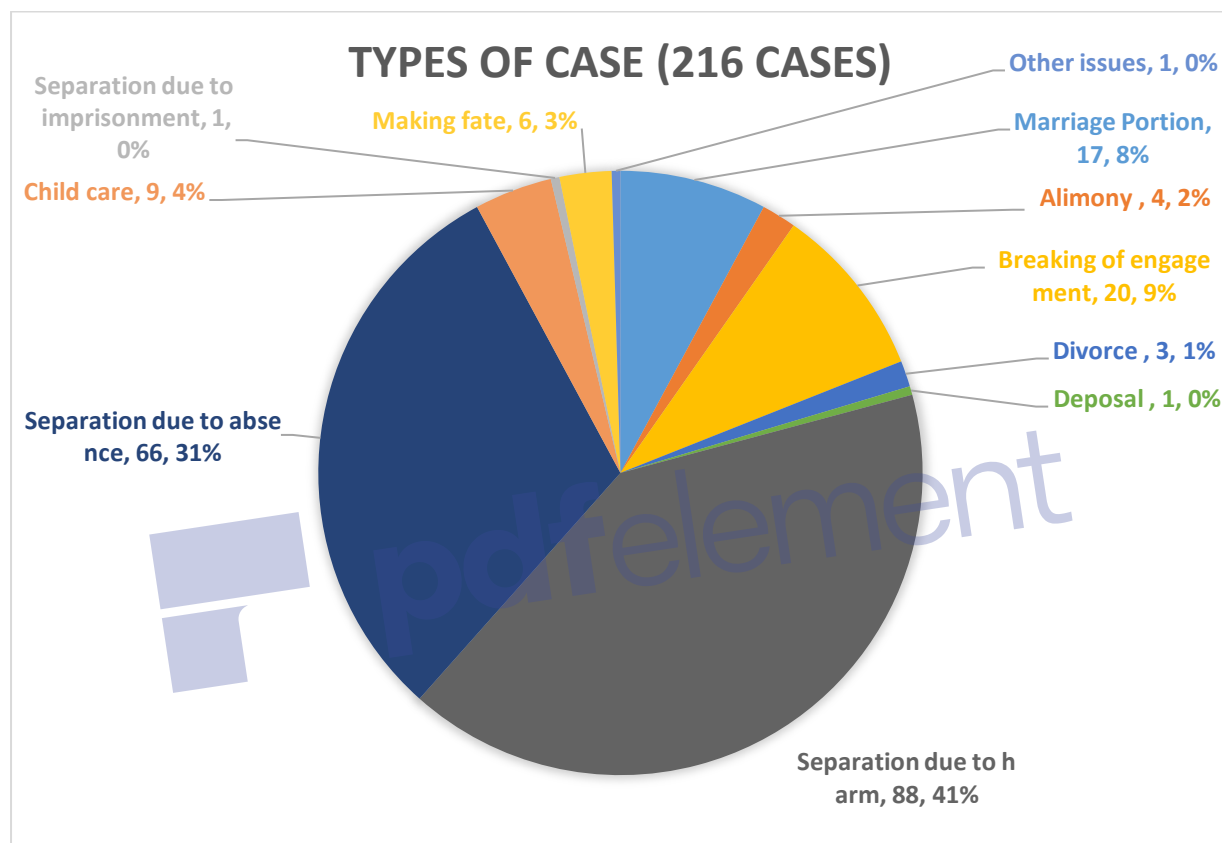
## 2. CASE OUTCOME



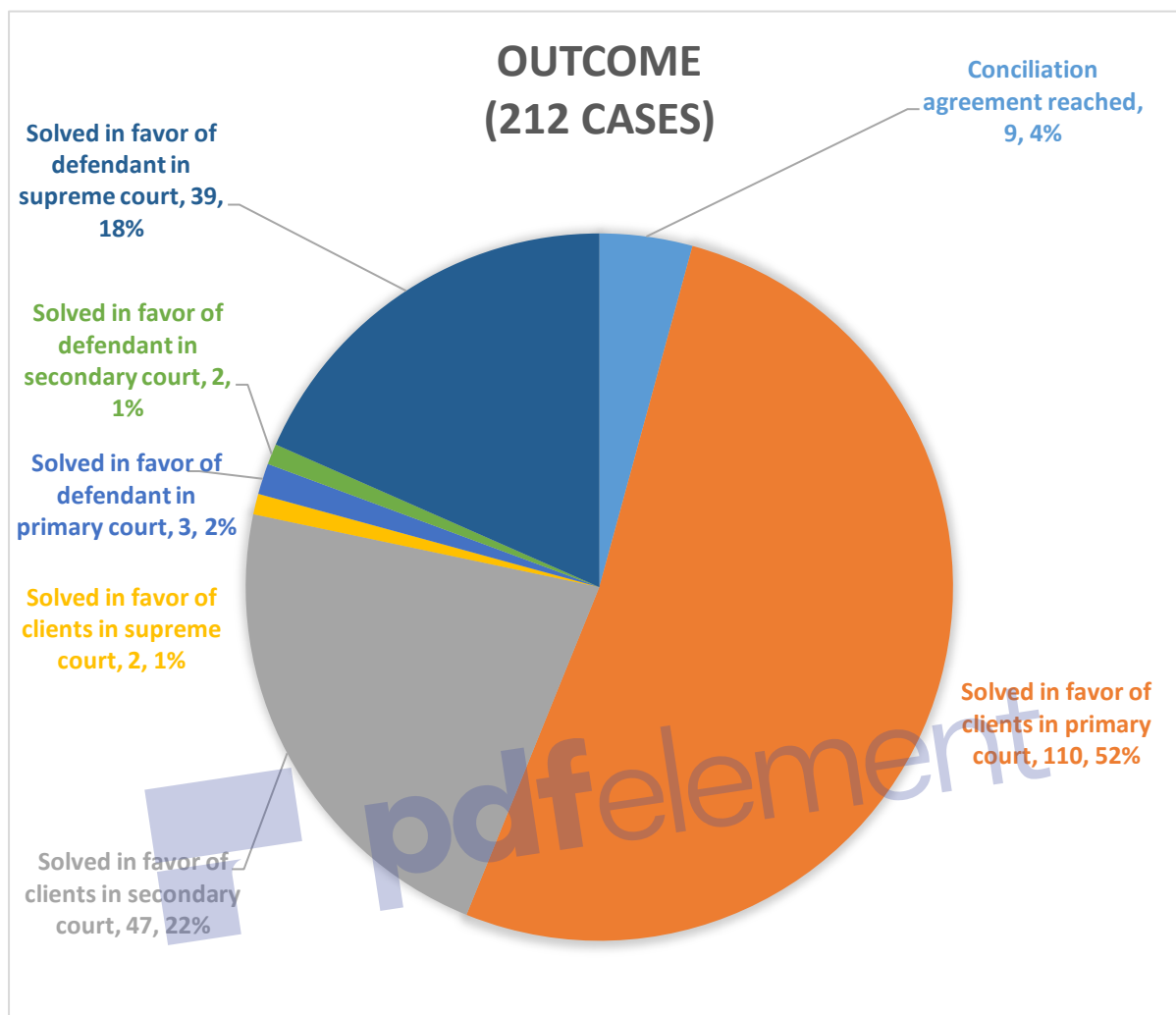
## B. KABUL CIVIL CASE LOAD

Over the reporting period, the lawyers in Kabul provided counsel to 216 clients. 41% of the cases involved petitions for separation due to harm, 31% of the cases involved petitions for separation due to absence and the remaining 28% of the cases involved other civil matters such as alimony, child custody and others. 75% of cases were resolved in favour of client with a further 4% reaching a settlement agreement.

### 1. KABUL - TYPE OF CASES



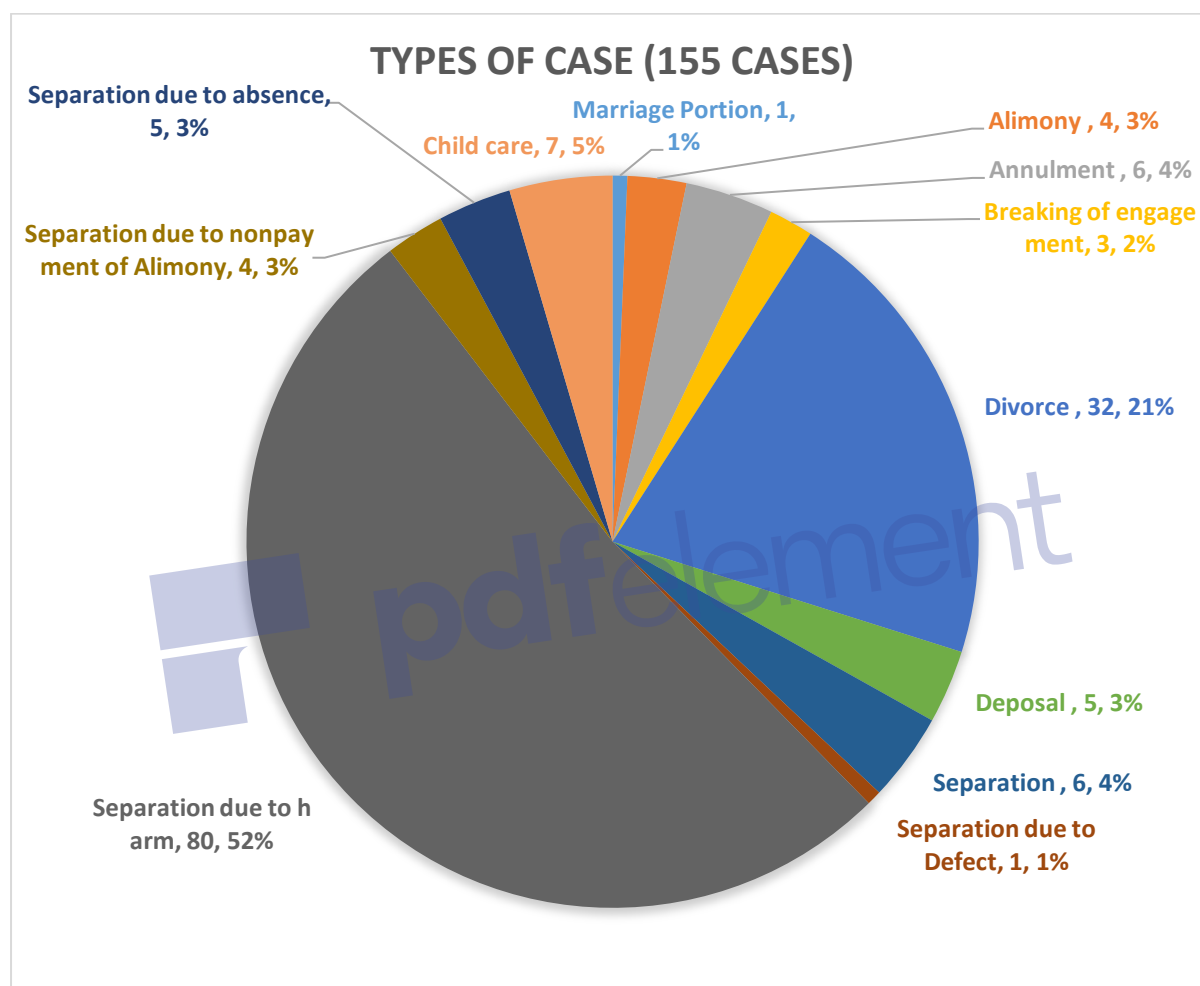
## 2. KABUL - CASE OUTCOME



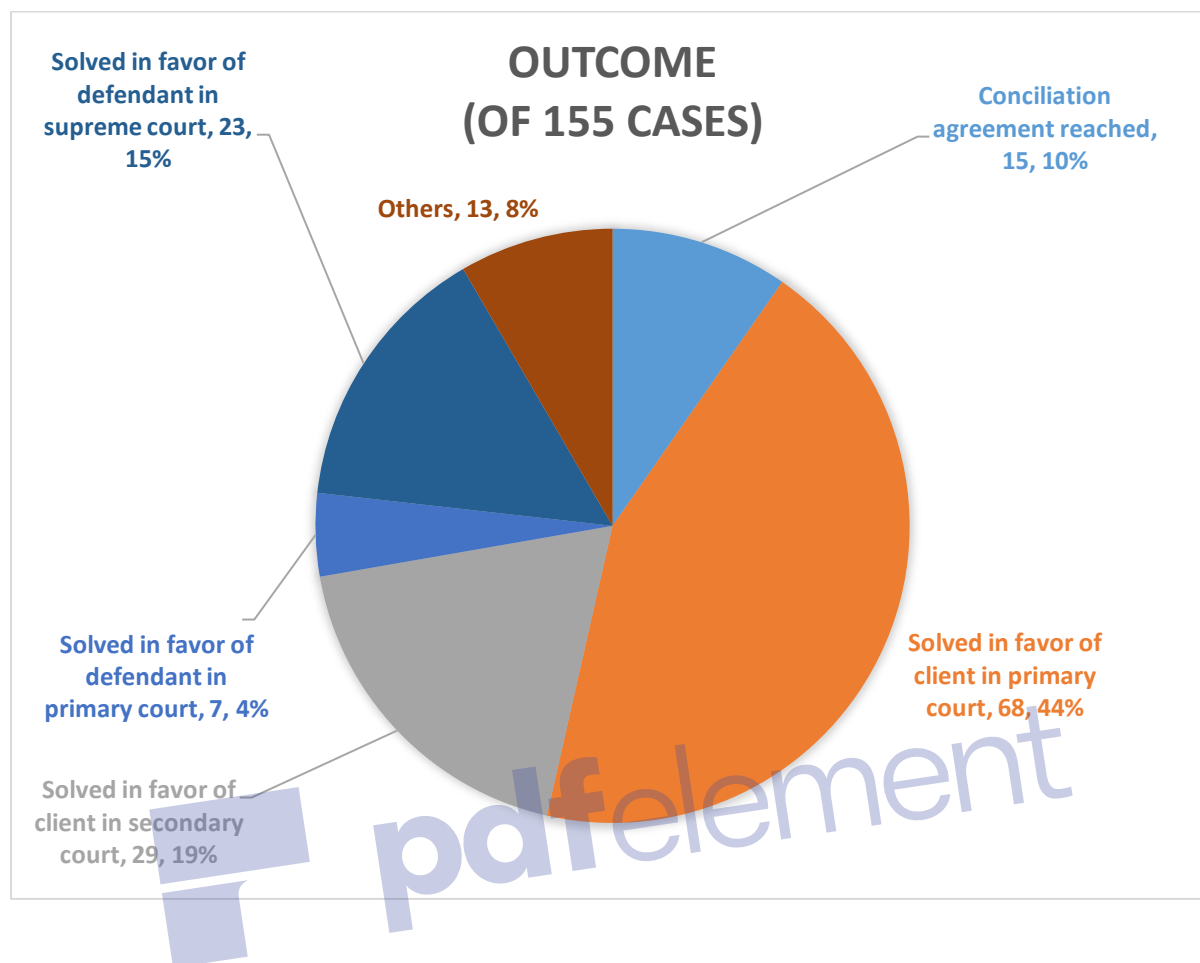
### C. MAZAR CIVIL CASE LOAD

Over the reporting period, the lawyers in Mazar provided counsel to 155 clients. 52% of the cases involved petitions for separation due to harm and the remaining cases involved other forms of separation and civil matters such as alimony, child custody and others. 63% of cases were resolved in favour of client, with a further 10% reaching a settlement agreement.

#### 1. MAZAR - TYPE OF CASES



## 2. MAZAR - CASE OUTCOME





## SECTION 6: NOTABLE CASE STUDIES

### Case Study: Justice for the wrongfully imprisoned

A client was charged with the murder of her brother. At trial, she was acquitted on the basis that the evidence was insufficient to prove her guilt. However, the State for unknown reasons, **wrongfully imprisoned her for a year**. After she was released from prison in 2017, she approached MA for justice.

MA lawyer demanded that she be compensated for wrongful imprisonment and filed a compensation suit in the civil court. The judge was unsure about the law on compensation in a criminal suit. The MA lawyer submitted legal arguments over several sessions, upon which, the judge finally agreed to include the claim for compensation into the file for consideration at trial.

After several sessions, the Court ordered that the Defendant pay the sum of 72,000 Afghanis (about USD \$1,400) as compensation to the client.

This was a significant achievement for MA in several respects.

Firstly, claims for compensation are usually not made as it is a new area of law in Afghanistan. MA lawyers were amongst the first lawyers in Afghanistan to initiate compensation suits pursuant to the Criminal Procedure Code 2014. Claims for compensation is now a part of MA's legal practice post recommendations for MA third EVAW Report.

Secondly, the quantum of compensation awarded to our client for wrongful imprisonment was given a fair and reasonable award in view of the circumstances.

## Case Study: Police protection for a vulnerable minor

A client, a minor, was raped on her way to school. During investigations, her mother informed MA lawyer that, as a result of the trauma her daughter had experienced during the rape, she had dropped out of school. She was too afraid to leave the home. Her mother also shared with an MA counsellor that her daughter was now afraid of men. When the lawyer discovered that the client had dropped out of school, the lawyer visited the EVAW Prosecution Unit to request for an order issued to the police to compel the police to take action to protect the client.

Though victims of violence have a right to safety under the law, the law is silent on how a protection order is to be obtained and executed in practice.

The lawyer decided to lay the groundwork by applying for a protection order. It took three weeks of constant follow-up and being transferred from one office to the next, up to the Head of Police, demanding compliance with procedural and police law.

Finally, the Head of Police agreed. The lawyer proposed that the terms of the Protection Order should cover client's protection to and from her school in two districts. She also requested that the police inspect client's home, and that the village representative, client's school Principal and teachers look out for her, so that she can resume her education without fear.

This greatly reassured our client and her mother. She felt safe and comfortable to return to school. This was a huge achievement.

To share the lessons MA had learned from this case, MA circulated a detailed legal memo to inform all lawyers, civil society and the police the purpose of a Protection Order and the procedure for obtaining and issuing one. MA placed special emphasis on the State's legal duties to protect and how they may be held accountable for not doing so. The case is still ongoing.

## Case Study: Exposing corruption

A client, who was abused by her husband, initiated a civil suit for separation due to harm. As a husband was in a remote province and absent in the proceeding, a prosecutor from the Southern Prosecution Zone in Baloch District was authorized to take over the proceedings. However, he requested the client a bribe of 6,000 Afghani. To hold the prosecutor accountable for corruption, MA lawyer cooperated with the family court, Attorney General's Office of Control to coordinate a response. The police cooperated and obtained evidence through a recording device. Eventually, the offending Prosecutor was arrested by the Attorney General's Office of Control and Observation unit.

## Case Study: Compensation and restoration of work

MA had a case involving multiple plaintiffs who were victims of work-place sexual harassment at a well-known recreational sports club. They filed a case against several senior managers of the club. The claims were serious, involving a promise of promotion in exchange for sexual favours and other degrading and demeaning statements. Moreover, several of the clients were under the age of 15 years.

As a result of the incident, clients had resigned from their position at the club and effectively lost their jobs, highlighting the impact of sexual harassment on women's right to work, free from violence and discrimination.

The defendants were unapologetic and threatened clients several times. MA lawyer warned them that their actions not only violated the law, it amounted to damage to the community and to the client, for which they would be liable to pay compensation in addition to imprisonment. It is often that in sexual harassment cases, there is little in evidence apart from eye-witness statements. Moreover, two of the defendants were still at large, one had escaped and left Kabul. In view of this, the lawyer advised clients on their chances of obtaining justice, their legal options and possible sentencing, *if* the defendants were to be convicted.

On that basis, clients collectively decided to file a parallel suit for compensation. The lawyer drew up an exact quantum for compensation and made it easy for the Judge to understand how the claim for compensation was to be quantified. Amongst other claims, the lawyer claimed for loss of earnings over a 12 – 18-month period. The claim was evidenced with clients' employment contracts with the club. At first the Court rejected the claim for loss of earnings, stating that clients had voluntarily resigned from their position. Lawyer argued that clients had no choice but to resign as a result of sexual harassment by the defendants.

After several sessions before the Court, parties agreed on a settlement. The defendants finally showed remorse and agreed that: they will not commit any further violence against clients; that they will compensate clients for loss of earnings; and that they will restore clients to their original job and position at the club. MA lawyer drew up the settlement agreement which parties signed before the Court.

A compensation in total of USD \$5,000.00 was paid by the defendants to all the clients before the Court. This amount included loss of earnings. More importantly, all of the girls have been restored their jobs, which they were exceptionally happy and grateful for as their jobs was their lifeline and passion.

## Case Study: Zahra Khawari - tragic case of suicide at Kabul University

The case of Zahra Khawari was a tragic case of suicide at Kabul University, after her dissertation was rejected repeatedly by her Professor of Veterinary Sciences. The case was widely reported in Kabul and drew on campus protests by students at Kabul University.

In cooperation with the Afghanistan Independent Bar Association (AIBA), MA represented the family in a suit to fulfill her father's calls for justice and change in higher education. Presently, MA is investigating the matter in cooperation with other lawyers and the government.

During the last few months, MA lawyer filed several Criminal Procedure Code petitions including:

1. Petition to the Attorney General to send Zahra's laptop (on which she wrote her dissertation) for forensic digital examination on the basis that the laptop's hard-drive was completely erased and the lawyer had suspected that the evidence had been tampered with.
2. Petition to the Attorney General to issue an order to stop the Defendant (the Professor) from leaving the country upon discovery that he was bound for Italy for a study-visit.

Both orders were passed by the Attorney General. As harassment and instigation to commit suicide is an offence under EVAW Law, the EVAW Department had also sent a questionnaire to the Academic Assembly of Kabul university to obtain information about standard protocols for reviewing and assessing dissertations. Several advocacy meetings were organized by appointed lawyers around other matters of the case.

On Human Rights day on 10 December 2017, MA issued a Press Release to call for reforms in Higher Education.

## Case Study: Rape victim prosecuted for adultery

The case of X was a case of rape by a doctor against a client (his patient). After the rape, the defendant had promised to marry X and on that pretext, coerced her to “consent” to sexual intercourse on several other occasions. Finally, after 2 years had lapsed, X discovered that the doctor was already married with children and that he had not intended to honour his promise. X reported the incident of rape to the police.

As X had apparently “consented” to subsequent sexual intercourse with the defendant (after the initial rape), the case was transferred from ERAW Court (where the action was initially filed) to the Criminal Court (to be prosecuted as a case of zina). MA lawyers tried to get the case transferred back to the ERAW Court and filed petition under the Criminal Procedure Code on jurisdiction.

Eventually, the Appeals Court decided that the case was to be tried at the Criminal Court. The decision was final and not appealable.

This was a tough case as the client herself had admitted that subsequent sexual intercourses with the defendant was committed out of consent and consent was given in anticipation/expectation of marriage. This complicated the issue of consent and whether the initial act of sex was rape. The case proceeded as a case of zina. In MA’s defence submissions, the lawyer argued that client had given consent on the promise of marriage after she had been raped and after the rape she had no choice but to do everything to ensure that the defendant would honour his promise.

It was a tough case. However, the lawyer’s arguments prevailed. The Court acquitted client of zina.

## Case Study: Case of torture leading to murder

The case of Y was a case of torture/murder by Y's husband and his family. Her husband, the defendant, argued that Y had died as a result of rat poison which she had voluntarily taken out of shame, after he had discovered her affair with another man.

MA lawyer argued that she was beaten to death and the reasons of why she was beaten was irrelevant to the matter. Forensic examination confirmed presence of rat poison but there was little evidence as to whether the deceased had voluntarily taken rat poison or whether she was forced to. A key evidence was two witness statements testifying to a dying declaration by the deceased to her sister and the examining doctor that she had been beaten by her husband and had taken rat poison. During discovery, the lawyer chased the Prosecutor to ensure that Forensic Medicine disclosed photographs of the deceased's body. From the photographs, the lawyer identified strangulation marks around her neck, as well as, large contusions all over her face, back and front of her body. It was evident from the photographs that she was seriously tortured.

The lawyer worked with the Prosecutor to review the charge and indictment to ensure that the defendant was being prosecuted for a crime which would receive maximum sentence, even if they could not satisfy the charge of murder.

Of note, the Defence insisted on raising the issue of the alleged affair (zina) to distract the Court from the real issues at trial, i.e. whether the Defendant had killed the deceased. To support their Defence, they called in a wakil-e-guzar to testify that the deceased had come from a disreputable family and had a disreputable background. MA lawyer cross-examined the wakil-e-guzar in Court and discredited him on the basis that he was not the wakil-e-guzar of the village and would not have any knowledge of the deceased's character and reputation. She emphasized to the Court, that in any case, the question at trial was whether the Defendant had killed the deceased, and, not whether the deceased had committed zina. She also argued that even if presuming that the deceased had committed zina, then, the right course of action would have been to report the crime to the police – and not – for the Defendant to take the law into his own hands.

MA won at primary. The defendant appealed. The case has been heard by the secondary court. MA is awaiting the court's decision.

## Case Study: VirginitY Testing

One of the toughest challenges we faced in this quarter is our collective advocacy on VirginitY Testing (VT). Over the course of 2017, our lawyers have represented over 40 women who were forced to endure exceptionally humiliating gynecological examinations in Kabul, Mazar-e-Sharif and Herat. Their cases were documented and preliminary statements recorded.

We have filed 3 of our first striking out petitions to strike out evidence obtained from virginitY testing on the basis of illegality and torture. All three petitions were included in the files. In one case, the client with criminal priors decided not to appeal her matter and pleaded to serve her time in prison. Thus the striking out petition was not further actioned. In another case, the Judge in principle agreed with our petition but said that the striking out petition was only actionable after the enactment of the new Penal Code. In the third case, the prosecutor concurred with our petition on the basis that the Attorney General had already issued an order to all staff to prohibit forced virginitY examination. The matter is still pending and we wait to see if the evidence will indeed be struck out. We also developed oral arguments around key concerns that prosecutors have (alternatives to crime discovery), and, how to deal with situations when clients are said to have consented to the examination, and, when clients have genuinely consented to the examination.

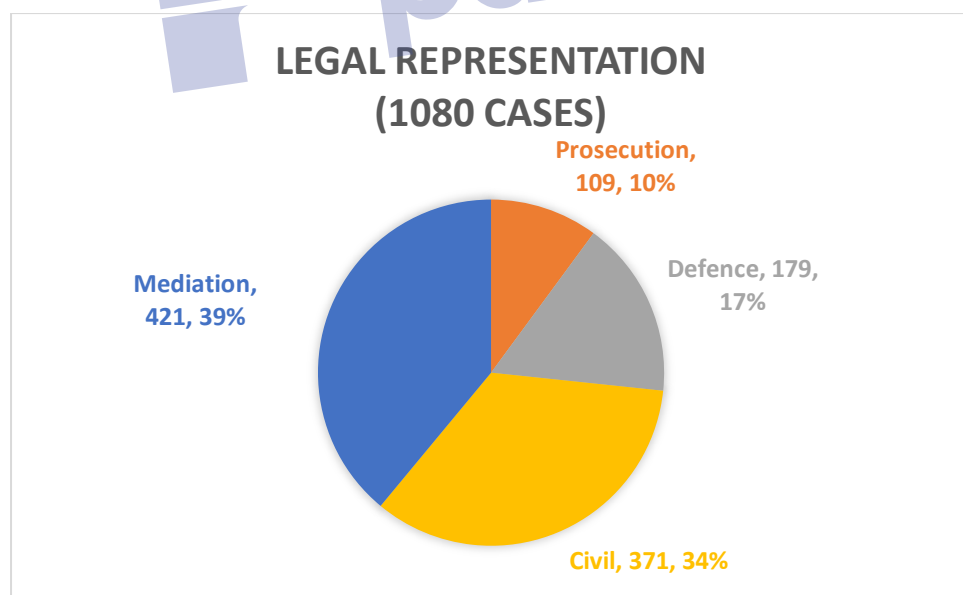
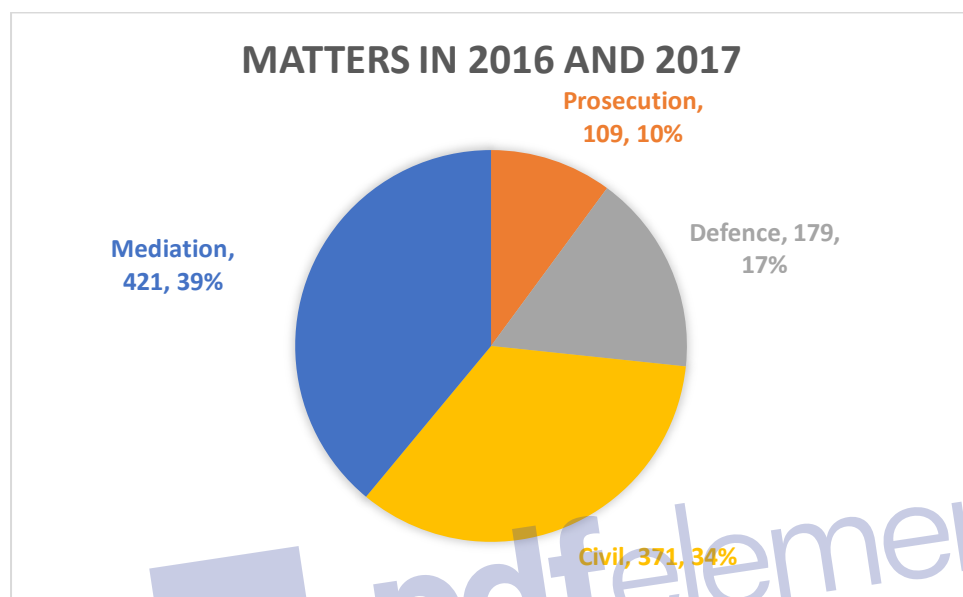
In the interim, we spent countless hours identifying our collective MA position on the matter and the statistics and arguments we were going to use to stand by that position, in view of common perceptions on the necessity of VT (and the fact that VT has helped some of our clients in their case).

- We developed a stakeholder engagement plan and a Question & Answer Bank on common questions which arise on VT. Adopting a common stand which was both scientifically and legally sound was a crucial part of our stakeholder engagement plan.
- We compiled resources on VT globally, as well as, literature published in Dari in Afghanistan to justify our stand and substantiate it with evidence-based research.
- We compiled case law globally on VT to determine how much courts have awarded victims of virginitY testing in compensation. Further, as there is insufficient medical expertise on trauma, we conducted legal research around standard of proof of mental suffering in courts globally and were satisfied to find that there is a presumption of trauma if the acts which are committed on a person would satisfy “torture” or “cruel, inhuman and degrading” treatment or punishment.

Over several meetings with stakeholders and through a Conference on Justice for Victims of VirginitY Testing, we were able to test out our key messages and arguments, bring together doctors, health practitioners and lawyers, build alliances with key decision makers and publish new material to add more literature (in Dari) on VT from a medico-legal perspective. Several doctors also made statements to contribute to a body of professional opinions on medical ethics, and in particular, medical ethics in a non- doctor/patient relationship, i.e. between forensic examiners (ordered by or acting on behalf of State) and suspects.

## SECTION 7: SUMMARY OF STATISTICS

In 2016 and 2017, Medica Afghanistan represented clients in a total of 1,725 matters in Kabul and Balkh comprising civil, prosecution and defence representation, as well as, provision of legal advice, legal awareness sessions and social work. Some of MA's clients were in conflict with the law. The vast majority of clients had a history of violence as a result of forced/child marriage, rape and domestic abuse. Of the 1,725 matters (legal advice, mediation, awareness and representation), 1,080 of them comprised legal representation in prosecution, defence, civil and mediation cases.





Of the 1080 cases:

- (a) The lawyers acted on behalf of 109 victims of acts constituting crimes under the EVAW law and penal law (“prosecution cases”)
- (b) The lawyers acted on behalf of 179 women and girls in conflict with the penal law (“defence cases”)
- (c) The lawyers acted in 371 cases involving petitions for divorce and/or other matrimonial rights under the civil law (“civil cases”), and
- (d) The lawyers acted in 421 mediation cases involving family disputes and violence (“mediation cases”).



## SECTION 8: RECOMMENDATIONS

### RECOMMENDATIONS FOR MEDICA AFGHANISTAN: PROSECUTION PRACTICE

Recommendations from the previous EVAW Report	MA's Progress	Further Recommendations
<b>1. Send meaningful letters of appreciation to the prosecution when they conduct the matter with competence and diligence and demonstrate respect to clients.</b>	Lawyers often show appreciation to prosecutors who demonstrate sensitivity to clients' trauma and determination to prosecute.	Medica Afghanistan's Communication Strategy of 2018 can include this as part of their communications.
<b>2. For clients who do not wish to punish their abusers, pursue the option of conditional suspension of prosecution/ trial pursuant to Articles 204 and 205 of the CPC. A conditional suspension sends a firm warning to a defendant that the state will take action if he does not amend his ways.</b>	<p>Lawyers have, in principle, added this course of action as an option for clients in their Practice Notes.</p> <p>However, lawyers are not proactively pursuing conditional suspension. Conditional suspension is usually determined by the prosecution.</p>	Lawyers should proactively discuss this option with clients who are unwilling to prosecute their abusers or have instructed not to do so.
<b>3. Alternatively, for clients who do not wish to punish their abusers, mediate the case on the threat of prosecution. Obtain the accused's agreement to settle on terms which are for the client's best interest and safety, in exchange for her agreement not to initiate criminal action. Pair the settlement agreement with a protection order.</b>	<p>The statistics demonstrate that MA's mediation program has been successful and in most cases, parties have agreed to settle, especially in family violence cases.</p> <p>MA's settlement agreements usually contain or imply a commitment by perpetrator not to commit violence against client. Some of these agreements are lodged in court.</p>	<p>MA has published a Legal Memo on Protection Orders and initiated discussion with the Ministry of Interior to expedite the process of applying and issuing protection orders.</p> <p>A recommendation for 2018 is to advocate for a simplified and fast-track PO protocol in MOI, especially when a complaint has already</p>

	<p>However, settlement agreements are not usually paired with a CPC protection order. One of the reasons for this is that MOI and AGO have not established a protocol for issuing protection orders.</p> <p>Whilst lawyers have been successful in obtaining protection orders in some cases; in other cases, it has proven to be mentally and physically exhaustive to seek for one.</p>	<p>been filed with the police/prosecution.</p> <p>MA should also conduct awareness-sessions and training with the police on how to conduct a risk assessment of a person who reports a crime under EVAW, and, the types of protection orders the police should grant under the circumstances.</p>
<p><b>4. For clients who fear for their safety, file an application for a protection order pursuant to Article 6(1)(2) of the CPC.</b></p>	<p>Lawyers have filed a petition to the Supreme Court requesting clarification from the Supreme Court as to whether victims are equally entitled to witness protection measures under the Criminal Procedure Code. The petition was filed due to an unintentional omission in the Criminal Procedure Code. The Supreme Court responded confirming that victims are equally entitled to protection measures for witnesses.</p> <p>Statistics on successful protection orders were not collected for this report.</p> <p>However, MA lawyers have started taking out applications for protection (both informally and formally pursuant to the CPC) and were successful on some of them.</p> <p>In November 2017, MA published a Legal Memo on how civil society and lawyers can apply for police protection</p>	<p>The limiting factor at this stage is the lengthy and tedious process that lawyers/clients have to go through to obtain protection.</p> <p>The above recommendation applies.</p> <p>Protection is an integral and cross-cutting aspect of EVAW law enforcement. If by reporting a crime, victims are put at risk of further violence, then assessment for protection should be a routine procedure for prosecution and police at the time of report.</p>

	<p>for at-risk clients. MA also attended a Strategy Meeting with the Minister of the Ministry of Interior (MOI) to encourage MOI to expedite the process of issuing protection orders to women at risk. The Legal Memo was highly appreciated by the Minister.</p>	
<p><b>5. For vulnerable clients especially those who are victims of sexual crimes, apply for protective measures when testifying in court, pursuant to Articles 53 to 55 of the CPC.</b></p>	<p>Statistics on protective measures were not collected for this report.</p> <p>Not all vulnerable clients necessarily opt for protective measures. There have been cases where client opted to confront and face their abusers in court.</p> <p>Management has put in place Quality Assurance Practice Standards, which entails conducting a risk assessment of clients in order to determine the necessity of protective measures pursuant to the CPC.</p>	<p>Apply recommendation as per MA's QA Practice Standards.</p>
<p><b>6. File compensation claims for all clients pursuant to Article 189 of the CPC read with Article 6(1)(4) of the same.</b></p>	<p>In 2017, MA obtained a total of about <b><u>\$10,100.40</u></b> in compensation for clients.</p> <p>The Kabul team obtained a total of <u>330,020 AFS</u> in compensation for clients (about USD \$6,600.40).</p> <p>The Mazar-e-Sharif team obtained <u>172,000 AFS</u> (\$3,510.00) in compensation for clients.</p> <p>This was a resounding success considering the challenges lawyers faced with prosecutors and judges, namely, in timely</p>	<p>File a petition requesting clarification from Supreme Court on quantification of pain and suffering.</p> <p>The right to compensation is now a pillar of MA's Quality Assurance Practice Standards which will roll out mid-2018.</p> <p>Apply recommendation as per MA's QA Practice Standards.</p>

	<p>inclusion of clients' claim in the indictment, and, ongoing issues on how to quantify compensation for pain and suffering.</p> <p>After several tough negotiations with prosecutors and judges regarding clients' rights to compensation, lawyers wrote an official letter to the EAW Department to request that prosecutors preserve all victims' rights to compensation at the outset and early on in the case (at the time of indictment). This letter was written as prosecutors and courts were excusing themselves from hearing clients' claim for compensation on grounds of "delay". This remains a challenge to date.</p> <p>Generally, lawyers have reported that most clients do not request for or do not seem to want compensation.</p>	
<p><b>7. Anticipate when a forensic medical report may end up damaging the client's case and prepare evidence to correct, counter and/or explain the client's case.</b></p>	<p>Objections to forensic evidence and cross-examination of forensic evidence has been most notably practised by lawyers in zina and rape cases, particularly when virginity examinations were conducted against the client's will.</p> <p>There were also several instances in torture and murder cases where lawyers pushed the prosecution to request for further information about clients' injuries or cause of death and pushed for</p>	<p>Marked and praiseworthy improvements in lawyers' oral objections to forensic evidence.</p> <p>There is room for improvement in defence statements which should critically examine forensic evidence and other evidence.</p> <p>Management has taken steps to rectify this by putting in place Quality Assurance Practice Standards.</p>

	<p>amendments to be made to the forensic report.</p> <p>In one case, lawyer requested that forensic examination doctors be summoned for cross-examination at trial.</p>	<p>The right to file objections to evidence and to cross-examine evidence is now an aspect of MA's Quality Assurance Practice Standards, which will roll out mid-2018.</p>
<p><b>8. At the end of each case, apply to the Court for the full judgment, regardless of whether the client wishes to appeal. If the court administrators fail to issue the judgments, take it up to the Supreme Court.</b></p>	<p>This is not an issue any longer.</p>	<p>No recommendations.</p>
<p><b>9. Conference once every 2 – 3 months to analyze the judgments for trends, progressive and critical viewpoints. Strategize how those viewpoints can be adopted and/or challenged in future submissions.</b></p>	<p>Lawyers do share judges' points of view in judgments as and when they receive and read them.</p>	<p>Highlight paragraphs in judgments which are poignant and gender-progressive. File them in the precedents file.</p> <p>Technical supervisors should ensure that lawyers are using these judgments to improve upon their delivery and representation of clients.</p>
<p><b>10. Collect and document evidence of state violations of clients' rights for future public interest advocacy and litigation.</b></p>	<p>Lawyers have started to document, in writing, their representations with the State – a marked improvement from before.</p> <p>Documentation and processing of information needs to be more systematic.</p>	<p>Once information has been documented, it needs to be processed and actioned.</p> <p>That requires MA to set up a system for file management and work flow where a senior manager has an overview of all ongoing violations of clients' rights (this is what is meant by documentation of information) and where</p>

		<p>senior manager can instruct lawyers to take certain actions to safeguard clients' rights (this is what is meant by processing and "actioning" of information).</p> <p>This system has been put in place, in principle, by MA's recent adoption of Quality Assurance Practice Standards.</p> <p>MA should now revise their database system to allow seamless and smooth documentation and processing of information.</p> <p>This is vital as it relates to clients' fundamental rights.</p> <p>Management must have a bird's eye view of what the violations are and what is being done or has been done to correct them.</p>
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See Annex 1.

## RECOMMENDATIONS FOR MEDICA AFGHANISTAN:

### DEFENCE PRACTICE

<b>Recommendations from previous EAW Report</b>	<b>MA's Progress</b>	<b>Further Recommendations</b>
<b>1. When the client is arrested and detained without reasonable suspicion that the she had committed the crime, file for an urgent hearing on the legality of the client's arrest and detention contrary to Article 99 of the CPC.</b>	Lawyers have not had cause to file an Art 99 case.	None.
<b>2. Take up the issue of late referrals to a higher ranking official at the Ministry of Interior and do more visible advocacy around the issue.</b>	Lawyers have always raised this issue at meetings with police and prosecution and with the ALAAN Network.  No significant follow-up.	This recommendation continues to apply.
<b>3. At trial, defence submissions should only cite facts which have been proved by evidence. If defence witnesses are unwilling to give evidence, request the court to subpoena them pursuant to Articles 28 and 29 of the CPC.</b>	Lawyers have not filed applications pursuant to Articles 28 and 29 of the CPC.  MA has recently adopted Quality Assurance Practice Standards. The recommendation would be addressed through adherence to processes relating to evaluation of evidence.	The recommendation would be as per MA's QA Practice Standards.
<b>4. At trial, cross-examine prosecution's factual witnesses if there are material inconsistencies or untruths in their version of events (rather than to solely make written submissions on the same). It is during cross-examination when the</b>	Lawyers presently challenge issues in prosecution's evidence in oral and written submissions. There is always room to make examination of evidence more systematic and robust. To do so, MA has recently adopted Quality	The recommendation would be as per MA's QA Practice Standards.



<b>weaknesses or gaps in the witness's statement will really come to fore.</b>	Assurance Practice Standards on the same.	
<b>5. When rebutting or objecting to the prosecution's case in the written submissions, quote the relevant paragraph verbatim and give detailed reasons for the rebuttal or objection.</b>	As above.	As above.

## RECOMMENDATIONS FOR MEDICA AFGHANISTAN: CIVIL PRACTICE

<b>Recommendations from previous ERAW Report</b>	<b>MA's Progress</b>	<b>Further Recommendations</b>
<b>1. In the future, the lawyers could attempt to file petitions to obtain court-ordered visitation rights for clients who lose custody over their children after divorce / separation.</b>	Due to workload, practice standards are being adopted on a gradual basis with a priority on prosecution and defence cases.	This recommendation continues to apply.

## FURTHER RECOMMENDATIONS TO MEDICA AFGHANISTAN

1. Train prosecutors and police to conduct a risk assessment of all survivors at point of contact; how to determine the type of protection orders and protective measures to issue, and, evaluate their effectiveness in preventing and mitigating further violence.
2. Train prosecutors to quantify compensation and ensure its timely inclusion in indictments. Compensation is the right of every victim pursuant to the Criminal Procedure Code and must be routinely applied for.
3. Develop a systematic monitoring and evaluation system on the implementation of the Criminal Procedure Code. The Criminal Procedure Code is cross-cutting and integral to successful ERAW law enforcement.

## RECOMMENDATIONS TO THE GOVERNMENT AND DONORS

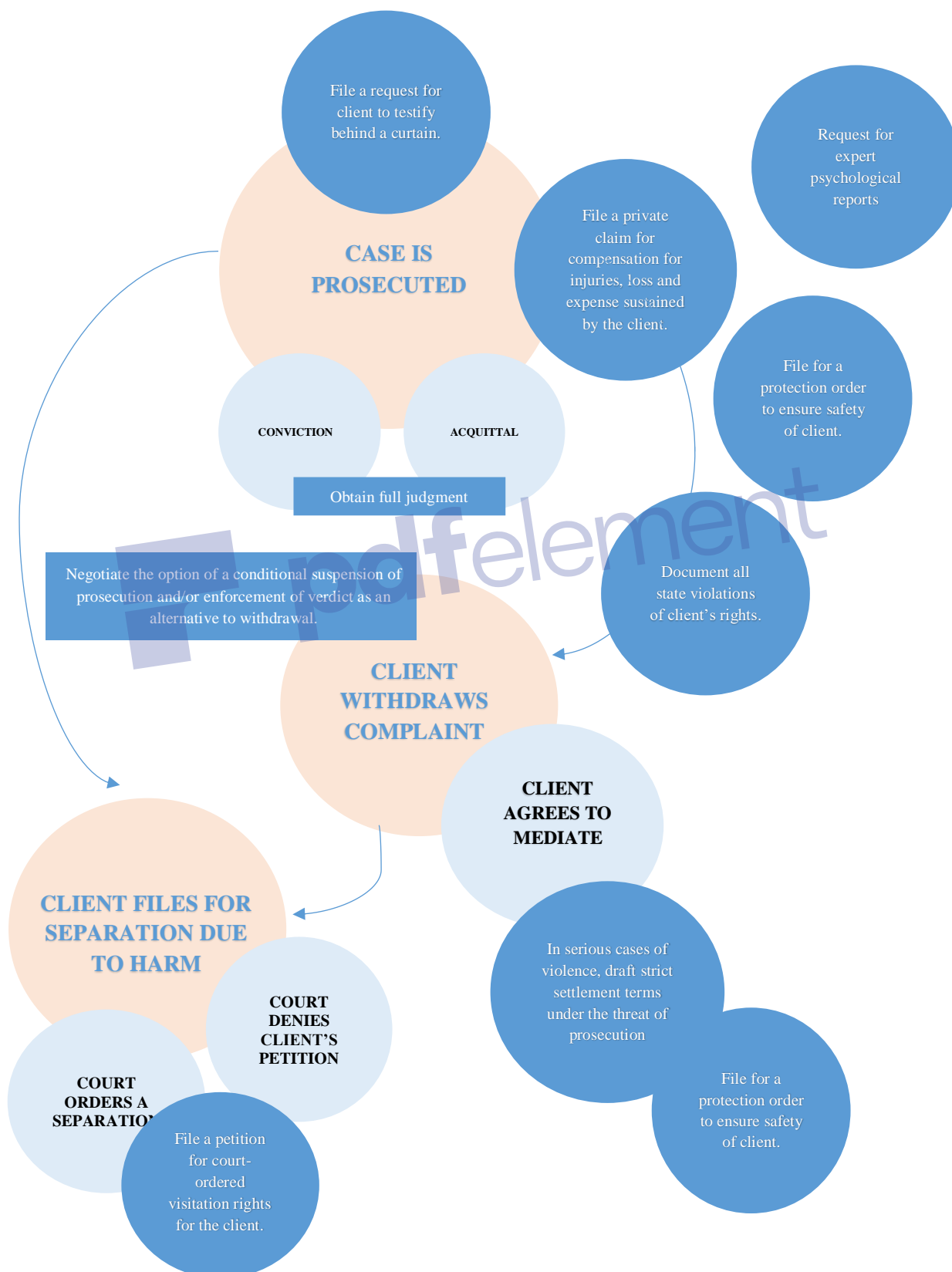
1. Donors should support the Afghanistan government to sign and ratify the CEDAW Optional Protocol. Ratifying the Optional Protocol is in line with the government's commitment to the

full implementation of EVAW. It will **improve and add to existing enforcement mechanisms for women's rights**. If domestic courts fail to provide victims recourse to justice and adequate remedies and assuming all domestic remedies have been exhausted, victims can take up their claims to the CEDAW Committee. It will also **improve the State's and civil society's understanding of CEDAW**. Under the communications procedure, the Committee will interpret CEDAW rights in the context of individual violations. It would be able to state what is required from the State in those circumstances (i.e. The State's legal obligation to exercise due diligence under CEDAW). This would help the State to better understand their obligations in practice. CEDAW Committee's Decisions will contribute to the growing *jurisprudence* on women's rights, which will serve as a guidance on adjudicating violations through a gender-lens. Jurisprudence from communications would help the State, Judiciary and lawyers interpret CEDAW rights and the State's obligations to respect, protect and fulfil those rights in practice.

2. The World Health Organisation (WHO) should support the Ministry of Public Health (MOPH) to train the Forensic Medicine Commission and other medical doctors to examine rape victims in strict accordance with MOPH's Gender-based Violence Treatment Protocol 2014.
3. The WHO should support the MOPH to train more medical doctors and psychologists to conduct psychiatric, psychological (and trauma) examination.
4. Further to items 2 and 3 above, WHO should support the MOPH to establish a robust monitoring system to monitor each stage of the medical and forensic examination process, and, in particular, forensic reporting (i.e. Medico-legal certificate) and psychological and trauma assessment in forensic examination.
5. Further to the above, the WHO, MOPH and Attorney General Office (AGO) should establish a plan to train and include more psychologists, psychiatrists and trauma specialists onto the List of Experts to give expert evidence in court pursuant to Articles 46 and 47 of the Criminal Procedure Code.
6. The AGO / EVAW Department should formalize a procedure to conduct risk assessment of all survivors at point of contact to assess the necessity of protection orders and protective measures.
7. The AGO / EVAW Department should formalize the integration of compensation petitions in current work flow before indictment stage. It should be included as a monitoring indicator for prosecutors to satisfy.
8. The Attorney General's Office, Ministry of Interior, Supreme Court and Ministry of Justice should establish a transparent grievance procedure for lawyers to write in to a higher authority within the Ministries when a State officer is in breach of the law and/or commits a violation of clients' rights. Donors who are working with these organs should support the establishment of such a procedure and assist the government to promptly and properly handle grievances.

## ANNEX 1

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



## ANNEX 2

2018

### **Petition on the Impact of New Penal Provisions on ERAW Law**

- Petition to H.E. 2nd Vice President Office on impact of the new Penal Provisions on ERAW Law (14 January 2018) Dari
- Petition to H.E. President Office on impact of the new Penal Provisions on ERAW Law (14 January 2018) Dari
- Petition to H.E. President Office on impact of the new Penal Provisions on ERAW Law (14 January 2018) English

2016

### **Position Paper on Bifurcation of ERAW Decree**

- Position Paper on Bifurcation of ERAW Decree (13 July 2016) Dari
- Position Paper on Bifurcation of ERAW Decree (13 July 2016) English

2014

### **Position Paper on ERAW Law Implementation**

- Position Paper on ERAW Law Implementation (16 November 2014) Dari
- Position Paper on ERAW Law Implementation (16 November 2014) English



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