



STRATEGIC ADVOCACY FOR BATTERED WOMEN WHO KILL IN AFGHANISTAN

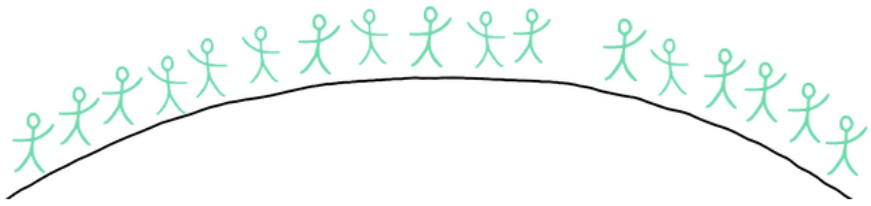
Camille Boileau and Balawyn Jones

Strategic Advocacy for Human Rights &

University of Queensland Pro Bono Centre

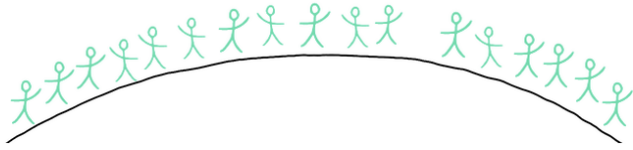
www.sa-hr.org





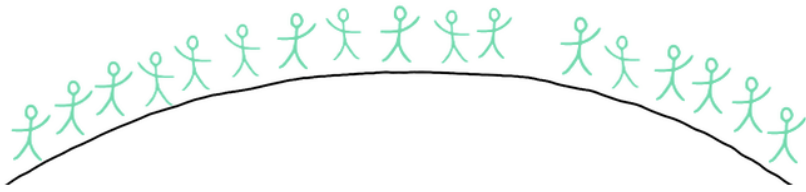
PROJECT BACKGROUND

- Partnership between Strategic Advocacy for Human Rights (**SAHR**) and the University of Queensland Pro Bono Centre.
- A year's worth of international comparative research into the development of defences to murder for battered women who kill their abusive spouses.
- Creating guides for defence counsel on how to argue under the Afghan Penal Code:
 1. Self-defence
 2. Provocation
 3. Insanity
 4. Compassionate sentencing
- Guides are culturally appropriate, practical, draw on international best practice and Islamic law.



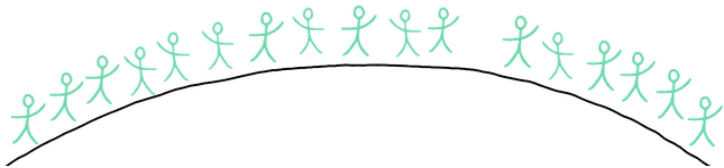
KEY INSIGHTS

1. Gendered laws and patriarchal interpretations of those laws are a primary challenge for defence lawyers.
2. Advocates should move towards a medico-legal litigation approach (i.e. greater reliance on medical and psychological evidence in defence work).
3. Tension between competing considerations of individual justice in each case and constructing legal discourse which promotes systemic justice.



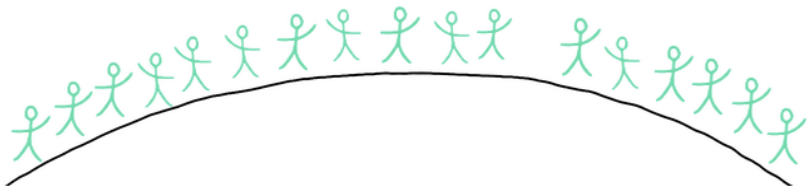
SOCIAL AND LEGAL CONTEXT

- Up to 87% of women in Afghanistan have experienced physical, sexual or psychological violence, or forced marriage
- Weak presence of the rule of law, culture of impunity, weak judicial system and abuse of power by government
- Domestic violence not always perceived as a crime – condoned or tolerated by authorities
- Patriarchal and conservative society
- Penal Code dating back to 1976
- New Penal Code
- Law on the Elimination of Violence against Women – Presidential Decree



MAD, BAD, SAD ... OR RATIONAL?

- Gendered identities and narratives make it difficult for women to rely on existing defences.
- Traditionally women have been conceptualised as:
 1. Mad (insane)
 2. Bad (evil/guilty)
 3. Sad (the victim construct)
- Through adapting existing defences (self defence and provocation) to DV contexts we propose a fourth construct:
 4. Battered women as rational, reasonable agents



VICTIM ARCHETYPE

R v Falls

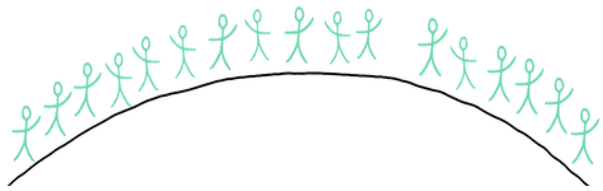
- The accused was smaller than her abusive partner, white, drug-free, monogamous and without a criminal record.
- She suffered fierce physical abuse over many years, actively protected her children from the abuser, and the killing was the first time she physically fought back.

R v Varagnolo

- The accused was an Aboriginal woman who received favourable treatment on the basis of her housekeeping skills, the way she dressed, and her ability as a mother.
- The accused was described as ‘a very good humble mother’, ‘a wonderful mother’, ‘a very caring, gentle and involved mother’, who ‘keeps the home beautifully and...loves the children’, ‘a great mum’.

R v Ney

- The accused was an Indigenous woman who was larger than her abusive partner, had drug and alcohol issues, a criminal record and a history of violent relationships.
- There was evidence that she had previously fought back.



EXAMPLE: SELF-DEFENCE

1. Gendered law

- Formulation under the Afghan Penal Code is suited for circumstances where men of equal size are engaging in a physical confrontation (i.e. bar fight).
- Elements posing difficulties for battered women/DV contexts:
 1. Whether danger was ***imminent***
 2. Whether the use of force was ***proportionate*** to the threat
 3. Whether the use of force was ***necessary***

2. Strategic solutions

- Subjective/objective standards: *what would a reasonable person with the characteristics of the woman believe?*
- Medico-legal approaches – Battered Women Syndrome evidence
- Pre-empting biases

STRATEGY: COHESIVE NARRATIVE

INDIVIDUAL
CIRCUMSTANCES

Case specific
evidence

History and pattern of abuse
Frequency and severity of injuries/abuse
Specific threats
Woman's efforts to protect self and family
Emotional and psychological impact of violence
Character evidence

POWER
RELATIONS

Battered Woman
Syndrome evidence

Expert testimony, medical records, police records,
psychological reports

STRUCTURAL
POSITIONING

Social context evidence

Stigmatization, alienation and isolation	Family pressure
Children and guardianship	Little police support
Weak protection of rights	Economic dependency
Lack of alternatives	Remote communities
	Fear of prosecution for <i>zina</i>