

Excellences, ladies and gentlemen,

I am very pleased and honoured to be part of this gathering today and would like to thank the organizers for inviting me.

In my presentation I will focus on the issue of “stereotyping” as an obstacle to women’s enjoyment of their human rights and discuss the role of the judiciary in this regard.

Let me take a few minutes to clarify concepts and terminology.

A stereotype is:

- ◆ **a preconceived belief** formed before full knowledge or evidence is available
- ◆ about the **attributes, characteristics or roles** (eg nurturing, breadwinner)
- ◆ of a **social group** or **subgroup** (eg lesbians, girl child, men).

The term ‘stereotyping’ refers to the practice of applying a stereotypical belief to an individual member of the subject group by reason only of her or his membership in a particular group.

Not all forms of stereotyping are problematic from a human rights perspective. They only are problematic when they infringe on the enjoyment of human rights. In judicial proceedings often inferences are drawn about individuals based on stereotypes, and these are often prejudicial to women.

<b>Stereotype</b>	<b>Men have/should have strong libidos</b>	<b>Women with mental disabilities are hypersexual</b>	<b>Women are/should be housewives/caregivers</b>
<b>(Group) assumption</b>	Men will/should regularly initiate sexual activities	Women with mental disabilities are sexually voracious and indiscriminate in their choice of sexual partners	Women are heterosexual and their paramount duty is to fulfil the roles of wife and mother/caregiver
<b>Inferences (about an individual)</b>	A man is unable to control his hormonal urges and can’t be held responsible for his own sexual ‘misconduct’, especially if ‘provoked’ (eg by a woman’s clothing or behaviour).	A woman with a mental disability could not have been assaulted because she must have consented to sex or she may require more corroborating evidence than in cases involving a woman	It is ‘permissible’ for a man to use violence to control a woman who is not heterosexual or does not perform these roles (eg lesbians, bisexual women, women who pursues roles other than or in addition to the roles

		without such a disability.	identified).
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A single stereotype can lead to multiple inferences, some or all of which a judge may infer in a particular case.

<b>Stereotype</b>	<b>Women should be chaste</b>	<b>Women should dress and behave modestly</b>	<b>Men are/should be heads of households</b>
<b>(Group) assumption</b>	Women should abstain from extramarital sex	Women should dress and behave to avoid impropriety and indecency, especially to avoid sexual attention	Men hold ultimate power in interpersonal and family relations and women are subordinate in those same relations
<b>Inferences (about an individual)</b>	<p>Possible inferences include:</p> <ul style="list-style-type: none"> <li>◆ an unchaste woman has a propensity to consent to sex and must have consented</li> <li>◆ a woman who has had prior sexual relations is a less credible witness</li> <li>◆ an unchaste woman ‘deserved’ raped and is not ‘worthy’ of criminal justice system intervention</li> <li>◆ violence is justified to curtail sexual promiscuity or regain sexual control.</li> </ul>	<p>Possible inferences include that:</p> <ul style="list-style-type: none"> <li>◆ an immodest woman ‘provoked’ sexual assault and must accept blame</li> <li>◆ an immodest woman is a less credible witness.</li> </ul>	<p>Possible inferences include that:</p> <ul style="list-style-type: none"> <li>◆ a man may use violence to discipline his wife if she does not obey him</li> <li>◆ a man may use violence or the threat of violence to maintain power in marriage and family relations</li> <li>◆ the wishes and desires of a (violent) man should be prioritised over those of his wife and their children, including in legal proceedings (eg child custody proceedings).</li> </ul>

The impact of judicial stereotyping is wide-ranging

**1. Stereotyping can compromise the impartiality of judges' decisions**

*When they decide on myths rather than facts – ex. that women like to be sexually possessed regardless of the circumstances.*

Ex. cases where evidence of violence and trauma is ignored and facts are reconfigured as non-violent, leaving open the possibility that the victim wished them to have occurred (for example the M.Z v. Bolivia case before the Inter-American Court )

**2. Stereotyping can influence judges' understanding of the nature of the criminal offence**

*Ex. when judges have assumptions about violence as a normal part of family relationship based on gender roles. For example OHCHR conducted a review of about 140 Judgements by ordinary and specialized courts in one country and found that in a considerable number of cases the notion that VAW is a private matter was still strong in the mind of judges. This led to considering facts in isolation, and not as a continuum of violence and to condoning violence or attributing it to the “lack of maturity of the spouses” or the “bad temper of the woman”*

**3. Stereotyping can affect judges' views about witness credibility and legal capacity**

*Stereotypes usually act to influence negative views about credibility of women victims and favourable views about the credibility of men*

*The idea of the ideal sexual assault victim functions to disqualify many complainants accounts. Assessments of credibility are highly influenced by myths and stereotypes surrounding “ideal”, “real” or genuine victims of sexual assault. “Bad” victims are those whose lives, backgrounds and characteristics depart from the narrow confine of the ideal victims. This is tied with victims blaming, the idea that women are and should be responsible for navigating their own safety, for managing men’s sexual attention and aggression for assessing and avoiding risks. Marginalized victims, ex. women with disabilities, are by definition less readily identified as “ideal victims”. This is clearly articulated CEDAW Decision on the Vertido case.*

**4. Stereotyping can stop judges holding offenders legally accountable, by permitting irrelevant or highly prejudicial evidence**

*Ex. blaming victims (there is an expectation not on men to ascertain consent but on women to express an unequivocal no and to physically resist and fight their way out of a situation (not taking into account for example fear)*

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## 5. Stereotyping can impede access to legal rights and protections

*Ex. when seeking protection orders or in decisions on custody or supervised visits (ex. famous decision on CEDAW in the Angela Gonzalez Carreno vs Spain case).*

In all these cases we see how judicial stereotyping result in a miscarriage of justice and a violation of women's rights to non-discrimination and equality; equality before the law, fair trial; and effective remedy. This has been recognized by CEDAW in GR 33.

But judges can also play a key role not in challenging harmful stereotypes and wrongful stereotyping. Let me give a few examples.

1. They can **decide not to admit prejudicial evidence** based on stereotypes: ex. in Guatemala in a case of physical and psychological violence, the judge did not admit as evidence a testimony highlighting that the witness showed sexist, stereotypical views about women, describing the victim as a “bad woman” for not washing her husband's clothes.
2. Judges **can challenge stereotypes by lower courts**. Ex. the Kenyan Court of Appeal in *Mukungu v. Republic*, found that the requirements of corroboration in cases concerning sexual offences against women and girls were unconstitutional (discriminatory treatment of witnesses.)
3. They can **challenge laws and practices that embody stereotypes and result into violations of constitutional or human rights guarantees**. Ex. the Supreme Court of Namibia in connection with the involuntary sterilization of three HIV-positive women, recognized the paternalistic beliefs of the health care providers in failing to secure the women's informed consent to sterilization, noting that the patient, “*was, for example, described by one of the doctors as being 'unreliable concerning her life care' and that it was felt that she is 'best helped if she never falls pregnant again'.*” The Court recognized the detrimental consequences of such paternalism. Another ex., referring to legislation, is a 2016 case challenging Zimbabwe's Marriage Act, which authorized girls to marry at the age of 16 with parental/guardian or judicial consent, while boys needed to attain the age of 18. The Court found that this act was *unconstitutional* and indicated that “*It is regrettable that the respondents failed to appreciate that the rationale they advanced in support of the difference in the treatment of girls and boys formalised by the impugned legislation, is the old stereotypical notion that females were destined solely for the home and the rearing of children of the family and that only the males were destined for the market place and the world of ideas ...The contention by the respondents is contrary to the fundamental values of human dignity, gender equality, social justice and freedom*”
4. They can award **gender-sensitive reparations** that address wrongful gender stereotyping. Notably, in Inter-American Court, in the case of *Atala Riffo and Daughters v. Chile*, awarded reparations intended to combat the prevalence of gender

stereotyping by public officials and the judiciary at all levels. It indicated that, “*the Court orders the State to continue implementing continuous educational programs and training courses in, inter alia discrimination, overcoming gender stereotypes of LGBTI persons and homophobia.*”

There are a number of good practices to prevent wrongful judicial gender stereotyping and promote an active role of the judiciary in challenging laws and policies that embody stereotypes and infringe on constitutional and human rights guarantees:

**1. Highlight the harms of judicial stereotyping through evidence-based research**

Doing evidence based research at the national and international level is key. OHCHR has commissioned two studies on stereotyping in cases related to SGBV and stereotyping in cases related to SRHR.

**2. Advocate legal and policy reforms that prohibit judicial stereotyping**

Legislation can include protection against judicial and other stereotyping. This include:

- General protections against all stereotyping- ex. Bangalore principles of judicial conduct, from 2003 endorsed by UN, provides that judges should not engage in stereotyping and the Canadian Judicial Council’s Ethical Principles for Judges states that “Judges should not be influenced by attitudes based on stereotype, myth or prejudice. They should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes”
- Subject matter protections- protect against stereotyping in particular areas, ex. SGBV (VAW Law in Mexico)
- Situational protection- ex. rules of evidence to prevent stereotyping in sexual assault cases, ex. ICTR, ICTY, such as those not allowing evidence related to previous sexual history in cases of sexual assault and those providing that consent is not permitted as defence if the victim was subjected to or threatened with or had reason to fear violence, duress, detention of psychological oppression
- Policies- examples Guidelines for investigation of sexual violence

**3. Monitor and analyse judicial reasoning for evidence of stereotyping**

Ex. OHCHR has done country-level assessments of judicial reasoning in cases of SGBV in some countries. In doing so it is important to highlight how the victims were harmed as a result.

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**4. Challenge judicial stereotyping through petitions and expert evidence**

Ex. amicus submitted before international or regional courts or to treaty bodies.

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**5. Highlight good practice examples of judges challenging stereotyping**

Ex. See examples mentioned above

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**6. Improve judicial capacity to address stereotyping**

*The Committee in its GR 33 recommends that State Parties:*

- (a) Take measures, including awareness-raising and capacity-building for all actors of justice systems and for law students to eliminate gender stereotyping and incorporate a gender perspective in all aspects of the justice system;*
- (b) Include other professionals, in particular health professionals and social workers, who can play an important role in cases of violence against women and in family matters, in these awareness raising and capacity building programmes;*
- (c) Ensure that capacity-building programmes address in particular:*
  - (i) The issue of the credibility and weight given to women's voices, arguments and testimonies, as parties and witnesses;*
  - (ii) The inflexible standards often developed by judges and prosecutors on what they consider as appropriate behaviour for women;*
- (d) Consider promoting a dialogue on the negative impact of stereotyping and gender bias in the justice system and the need for improved justice outcomes for women victims and survivors of violence;*
- (e) Raise awareness on the negative impact of stereotyping and gender bias and encourage advocacy related to stereotyping and gender bias in justice systems, especially in gender-based violence cases; and*
- (f) Provide capacity building to judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments related to human rights, including the CEDAW Convention and the jurisprudence of the CEDAW Committee, and on the application of legislation prohibiting discrimination against women*

*Ex. the Gender Equality Unit of the National Supreme Court of Justice in Mexico conducted a seminar on gender stereotyping for members of the judiciary and in 2013 published a Protocol "Judicial decision Making with a Gender perspective" with a chapter on stereotypes which provides concrete guidance to judges. In 2014, the Supreme Court issued a binding decision that, inter alia, required judges to incorporate a gender perspective in their decision making including by challenging gender stereotypes in laws.*

Judges are not the only actors that can be influenced by stereotypes in the justice chain. But they play a critical role in the protection of constitutional and human rights guarantees.

Judicial stereotyping is not just a violation of women's rights. It is also particularly damaging because judges' opinion can be particularly influential in shaping societal perceptions of what is right and acceptable. Judges must be given the capacity and knowledge not to engage in wrongful stereotyping and to challenge laws and policies that embody discrimination.