

UN HUMAN RIGHTS COUNCIL - SESSION 20
STOP STONING GLOBALLY - UN PROCESSES - INTERNATIONAL LAW
26 June 2012
3:00 – 5:00 p.m.
Palais des Nations – Room VIII

United Nations Special Rapporteur on the independence of judges and lawyers – Gabriela Knaul

Ladies and gentlemen,

Dear colleagues,

Please let me first warmly thank the organizers of this side-event and apologize in advance for having to leave before the end of the event. I had prior commitments which I pushed back in order to be able to make a short presentation at this side-event because, as most of you would know, issues related to women and gender-equality are very dear to my heart.

I feel very honoured to take the floor before you and such a distinguished group of panellists today. I am sure that these renowned experts, who all have impressive expertise on women's human rights, will go into more details about the inhuman treatment and torture that constitutes stoning, the particular circumstances and places in which stoning occurs, the strong correlation with gender-based discrimination, as well as the causes and consequences of such a horrendous act. As Special Rapporteur on the independence of judges and lawyers, I would like to focus on the framework of my mandate and in particular on what the actors of the justice system can do – and even have the duty to do – regarding the issue of stoning.

In my last report to the General Assembly¹, which focused on the need to integrate a gender perspective in the criminal justice system, I noted how concerned I was by the imposition of certain sentences, especially on women, which are contrary to international human rights law. Women, like men, have the right not to be punished other than in

¹ This statement is mainly based on General Assembly report A/66/289, available at the following address in the 6 official languages of the United Nations: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>

accordance with international standards, which means that torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited. This means that stoning, like public executions and corporal punishment (including physical punishment involving caning, flogging, whipping, mutilation and amputation) are prohibited under international law. Yet, as all of us here know too well, such sentences are still ordered and applied and disproportionately target women.

The independence and impartiality of judges, prosecutors and lawyers is essential for the protection and enforcement of human rights and for ensuring that there is no discrimination in the administration of justice. In order to achieve proper independence and impartiality, institutionalized training on human rights, gender equality and women's rights, including national, regional and international human rights law and jurisprudence, must be established by States and be made compulsory for judges, prosecutors, lawyers and other actors of the justice system, in particular the criminal justice system, so as to ensure consistent application of a States' international human rights obligations.

As a judge myself, I would like to focus on the crucial role that judges can play in upholding international human rights law at the domestic level. This does not mean that the role of prosecutors and prosecutorial services in respecting human rights law is less important. To the contrary, prosecutors have an essential role to play when it comes to respecting human rights law when requesting punishment of offenders. Prosecutors are State actors and thereby have an obligation and responsibility to respect the State's obligations under international human rights law and refrain from requesting punishment which is contrary to such international obligations, even when it is prescribed by national law.

Like prosecutors, as State actors, judges have an obligation and responsibility under international law to ensure that substantive rights are enjoyed by all under their jurisdiction without discrimination. This entails a proactive duty to ensure that they are upholding international human rights, equality and non-discrimination standards in both case deliberations and the application of court procedures. Judges can recommend the repeal or amendment of a law or rule if inconsistent with international human rights standards.

In the words of Justice Majida Razvi, one of Pakistan's first female High Court judges, who I have recently met in person: "Judges always have the discretionary power to ensure that justice is done by issuing judgements that are fair. They can use this space while remaining within the parameters provided by the laws." Key to this process is the willingness of the judiciary to recognize the opportunities for interpreting laws and principles in ways that make respect for human rights and equality possible. Even if judges do not make the laws, they have a duty and responsibility to uphold human rights, equality and non-discrimination standards, whether national or international, with a view to pointing towards the gaps in legislation.

International human rights treaties and standards, as well as the jurisprudence arising from judicial and quasi-judicial bodies, provide judges with legitimate instruments for adjudication that respects human rights, equality and non-discrimination principles.

Furthermore, an important aspect of the requirement of impartiality is that "judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them". Changing attitudes and eliminating stereotypes and prejudices is therefore essential and requires institutionalized and sustained efforts in the form of training programmes, on-going education and capacity-building on international human rights standards, obligations and jurisprudence, as well as national laws on fundamental rights against discrimination, which too often remain unknown or are not applied.

By upholding discriminatory laws or laws contrary to international human rights law, judges and prosecutors become parties to the violation of the State's international obligations.

Access to legal assistance is also of particular concern in cases where offenders risk to be punished with cruel, inhuman or degrading sentences, like stoning. The Human Rights Committee pointed out that "[t]he availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way". Having access to lawyers who are qualified and know about international human rights standards applicable to the State in question is essential and cannot be overemphasized. As my fellow panellist Ms. Shadi Sadr will certainly explain to you, the

outcome of cases where offenders are at risk of being punished with stoning can dramatically vary if they have access to a qualified lawyer who has knowledge of human rights principles and can hold judges and the prosecution accountable to them.

Another important challenge to combating stoning is the fact that in many instances punishment to stoning is ordered not by the formal justice system, but by informal or parallel legal systems. I do believe that even in such circumstances, judges, magistrates, prosecutors and lawyers of the formal justice system can play an important role in combating such inhuman treatment and punishment.

As is well established under international human rights law, States have an obligation to investigate and prosecute human rights violations, and provide remedy for victims. This also applies in the case where such human rights violations stem from decisions or judgements passed by in the informal legal systems. Judges, prosecutors and lawyers have a particular responsibility for protecting and promoting both human rights and the rule of law in such cases and should, within the respective parameters of their functions, fully participate in the investigation of human rights violations due to decisions of paralegal systems, their prosecution and the punishment of perpetrators. The actors of paralegal systems have to be held accountable for breaching the State's international human rights obligations through the formal legal system.

When crimes and human rights violations go unpunished, the State is to be held accountable for contributing to a culture of impunity and lawlessness. When certain types of crimes, such as stoning, which can disproportionately affect one gender, go unpunished, the State can, in addition, be held accountable for discriminatory treatment under international law.

I would like to conclude by encouraging all who combat stoning and other cruel, inhuman and degrading treatment in their fight. I will continue to support your work in the framework of my mandate. In this context, I call upon all to participate in the development of training and on-going legal education programmes, particularly in international human rights law, since I believe such programmes constitute the cornerstone for developing the capacity

of the judiciary to challenge human rights violations and gender-discrimination through the justice system and provide the basis for more equal application of domestic legislations.

Thank you very much.