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ERADICATING NEGATIVE PREJUDICES AGAINST WOMEN – THE ROLE OF JUDGES.

Synopsis

The presentation focuses on the critical role of judges in eradicating negative prejudices against women, as mandated by international human rights laws and Uganda's legal framework. It outlines various types of prejudices prevalent in society, such as sex stereotypes, sexual stereotypes, sex role stereotypes, and compounded stereotypes. The discussion highlights the impact of prejudices on judicial decision-making and access to justice for women.

Furthermore, it elaborates on the legal obligations of the judiciary to refrain from using prejudices, protect human rights, and ensure individuals can exercise their rights without discrimination. Examples of Ugandan and East African jurisprudence combatting prejudices against women are also provided, showcasing the evolution of legal interpretations in addressing discriminatory practices.

The presentation underscores the need for judicial mindset change, advocacy for legal reforms, monitoring of judicial reasoning, and the promotion of good practices to combat judicial stereotyping. It also emphasizes the importance of capacity-building through education and training to enable judges to make impartial decisions based on law and facts, rather than stereotypes.

Challenges in eradicating negative prejudices against women are acknowledged, particularly regarding the balance between eliminating harmful stereotypes and respecting cultural rights. The presentation overall highlights the vital role of the judiciary in promoting gender equality, challenging biases, and ensuring fair and just legal outcomes for all individuals, irrespective of gender.

Definitions

A prejudice is a preconceived opinion not grounded in reason or experience. Synonyms for prejudice include bias, stereotypes, and preconception, among others, all of which contribute to societal divisions and inequalities.

A gender stereotype/prejudice is a generalized view or preconception about attributes or characteristics, or the roles that are or ought to be possessed by, or performed by, women and men.¹ Gender stereotypes can be both negative or positive.

A Stereotype means reducing a person to a mere instance of a characteristic. (Oxford English Dictionary)

Gender stereotypes are socially constructed beliefs about men and women. They are constructed through sayings, songs, proverbs, the media, religion, culture, custom, education, drama, etc.

This occurs when men or women are persistently attributed certain characteristics or roles, thereby creating the belief that these are invariably linked to gender. For instance, the perceptions that all women are weak and caring and that all men are strong and able to make important decisions

Gender stereotyping reinforces gender inequality

The kinds of toys that little girls receive give messages about feminine traits, e.g. dolls, dress ups and fairies and the kinds of toys that little boys receive give messages about masculinity for e.g. cars, trucks and building blocks.

Gender stereotyping refers to the *practice* of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men'

Judicial stereotyping is the practice of judges: ascribing to an individual specific attributes, characteristics or roles by reason only of her or his membership in a particular social group or, and perpetuating harmful stereotypes through their failure to challenge stereotyping.²

Beyond negative prejudices based on sex, other stereotypes may be based on gender, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion, or disability, among other things. While

¹ <https://www.ohchr.org/en/women/gender-stereotyping>.

² Simon Cusack, "Eliminating Judicial Stereotyping: Equal access to justice for women in gender-based violence cases," 2014. << <https://rm.coe.int/1680597b20>>>

there are other negative prejudices, this paper will focus on those prejudices against women.

The Law on Prejudices against Women

International Human Rights Law

The international human rights law framework is concerned with stereotypes and stereotyping that affect recognised human rights and fundamental freedoms, rather than all stereotypes and all forms of stereotyping as is illustrated below:

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** provides-

Article 5 (a);

States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The **Convention on the Rights of Persons with Disabilities** provides-

Article 8(1)(b):

States Parties undertake to adopt immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.

Article 2(2) of **International Covenant on Economic, Social and Cultural Rights (ICCPR)**, the **Convention on the Rights of the Child** under **Article 2(1)** and **Article 2** of the **African Charter on Human and People's Rights**, in a nutshell all provide that-

All persons in the state parties to the covenants are entitled to the rights and freedoms enunciated in those covenants and shall exercise such rights and freedoms without discrimination of any kind as to sex.

The **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)** provides-

Article 2(2):

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Uganda's Law against Prejudices against Women

The **Constitution of the Republic of Uganda**, 1995 provides-

Article 21(1):

All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

Article 21(2):

... a person shall not be discriminated against on the ground of sex

Article 21(4)(a)

Nothing in this article shall prevent parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society.

Article 33 (1) and (6) respectively:

Women shall be accorded full and equal dignity of the person with men.

Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

Types of Prejudices in Society

Stereotypes can be categorised into four categories, namely; sex stereotypes, sexual stereotypes, sex role stereotypes and compounded stereotypes.

Sex Stereotypes: A generalized view or preconception about the physical, including biological, emotional and cognitive, attributes or characteristics that are or should be possessed by women and men. These include:

- Women are weak, docile, passive, empathetic, etc..

- Women are overly emotional, illogical, and cannot take decisions.
- Women are inherently untruthful.
- Women who are sexually assaulted or raped by men cry incessantly and are depressed or suicidal. If a woman's behaviour does not conform to this mould, she is lying about having been raped.
- Women who consume alcohol or smoke cigarettes want to engage in sexual relations with men.
- Women do not speak to the man who has sexually assaulted or raped them after the incident of sexual assault or rape. If a woman speaks or interacts 'normally' with the accused, her complaint of sexual assault or rape is false. (Ignores that the assaulter may be an employer, family member.)
- Women are very likely to make false allegations of sexual assault or rape.
- Women who are sexually assaulted or raped by men complain about the injustice immediately.
- Men are aggressive.
- If a woman does not scream for help, attack the rapist or if she does not have any injuries on her body such as cuts and scrapes, she has not been raped.

Sexual stereotype: A generalized view or preconception about the sexual characteristics or behaviors that women and men are believed or expected to possess. These include but are not limited to:

- Women are/should be sexually passive.
- Men have stronger libidos.
- Women should be chaste and a symbol of honour and modesty in society. Therefore, prostitutes, unmarried women who are not virgins, and women who are always in bars or questionable places do not deserve protection from sexual violence.
- Men are promiscuous.
- Able-bodied men do not want to engage in sexual relations with women with disabilities.
- It is not possible for a man to rape a sex worker.
- Women who say "no" to sexual advances are shy and they actually mean to say "yes" and welcome the sexual advances.
- A woman who has previously had sexual relations cannot be raped because she has "loose morals" or a "loose character."
- Men are unable to control their sexual desires.

Sex Role Stereotype: A generalized view or preconception about the roles that women and men do or are expected to perform, and the types of behaviors that they possess or to which they are expected to conform. These include:

- Women are caregivers.
- Men are decision-makers.
- Women are homemakers hence do not belong in public life.
- Men are breadwinners and heads of households.
- All women are physically weaker than all men.
- All women want to have children.
- Women who work outside of the home do not care about their children.
- Women should do all the household chores.
- Women who are also mothers are less competent in the office because they are distracted by childcare.
- Women who do not work outside the home do not contribute to the household or contribute very little in comparison to their husbands.

Compounded stereotype: A generalized view or preconception about groups that result from the ascription of attributes, characteristics or roles based on one or more other traits, for example sex/gender and disability. These include:

- Old women are warm
- Rural women are uneducated.
- Women with a disability are asexual.
- Women of oppressed or marginalised communities have diminished cognitive capabilities or a limited understanding of the world.
- Old men lack sexual prowess.

NOTE:

While some women may conform to a particular stereotype or assumption in certain situations, this is not a reason to extend this assumption to all women. Examining the merits of every case on its own is at the heart of impartial decision-making. It is also important to recognise that the very existence of a pervasive stereotype in society can itself socially condition women to conform to the stereotype.³

[Language as a Tool of Prejudice](#)

³ Handbook on Combatting Gender Stereotypes, Supreme Court Of India.

Language is a reflection of the attitudes, behaviours and norms within a society. It also shapes people’s attitudes as to what is ‘normal’ and acceptable. Women play an active role in society, yet – all too often – we use language that ignores or minimises their contribution. Words matter in shaping our worldview. For example the dominance of masculine words for general references can reflect assumptions about gender roles and influence readers.⁴ The use of gender-discriminatory language at its most extreme fails to treat the genders as equal in value, dignity, integrity and respect. For example: “Police officers and their wives are invited to attend an after-dinner reception.

Gendered nouns and adjectives should be avoided and replaced with gender-neutral terms

Gender Discriminatory Language	Gender Neutral Language
Policeman/Police Woman	Police Officer
Businessman/Businesswoman	Business Executive
Repairman	Repairer/Technician
Steward or Stewardess	Flight Attendant
Salesman	Salesperson/Sales Clerk
Workman	Worker

As jurists it should therefore be our aim make our language inclusive and transformative by: recognising and challenging stereotypes, being inclusive and avoiding omission or making others invisible and being respectful and avoiding trivialisation and subordination.

Prejudices in Uganda

All of us have prejudices due nurture. In Uganda our prejudices stem from an intersection of patriarchal practices in our communities and discriminative foreign laws adapted through colonialism that were a result of a male-dominated Victorian era.

Judges saturated sexual assault laws with gender stereotypes under the guise of proof beyond reasonable doubt. This is something common law countries like ours inherited from the UK. For example the rule on corroboration in sexual offenses can be traced from the opinion of Sir Mathew Hale (Kings Bench England) in 1671 when he said that rape must be examined with

⁴ Kutateladze Maia (2015), Importance of Gender-Sensitive Language and Some Guidelines for Business Writing, Journal in Humanities, 4(1), 21-24

greater caution than any other crime as it is easy to charge and difficult to defend. A similar opinion was expressed by Lord Justice Salmon in R vs. Henry & Manning (1969) 53 Crim. App Rep 150, 153 that:

“in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these cases girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute . Such stories are fabricated for all sorts of reasons, which I need not enumerate, and sometimes for no reason at all.”

The common law has always viewed victims of sexual assault with suspicion and distrust. As a result, unique evidentiary rules were developed. The complainant in a sexual assault trial was treated unlike any other. In the case of sexual offences, the common law “enshrined” prevailing mythology and stereotype by formulating rules that made it extremely difficult for the complainant to establish her credibility and fend off inquiry and speculation regarding her “morality” or “character”.

Female victims of sexual crimes ended up with a raw deal both from society and from the courts. This has somewhat been addressed in recent decisions.⁵

In other areas of the law, prejudices still abound. Some of these include:-

- A woman cannot own property. Until recently, the Ugandan laws concerning divorce and succession did not provide for women’s property rights.
- A woman is a man’s property⁶ and therefore exists for men’s sexual pleasure. Different violent acts against women by men were excused, such as: - Marriage by abduction, marital rape, and adultery of a woman is used to justify assaults, offences of domestic violence and murder.

⁵ Ntambala Fred v Uganda, Criminal Appeal No. 34 of 2015 [2018] UGSC 1 influenced by Mukungu Vs. R (2003) 2 EA where it was observed that –

“ it is noteworthy that the same caution is not required of the evidence of women and girls in other offences. Besides there is neither scientific proof nor research finding that we know of to show that women and girls will, as a general rule, give false testimony or fabricate cases against men in sexual offenses.

⁶<https://youtube.com/clip/Ugkx_5fpUtV5IHWPblEuoSzQ2kGz_tMnP2Xk?si=PaMqksWQ0QWLStzY.

- Men cannot control their sexual urges. Privileging male sexuality over female sexuality makes us forgive the adultery of men.
 - Until 2007, adultery as an offence would be committed if any man had sexual intercourse with a married woman or if a married woman had sexual intercourse with any man not being her husband ⁷ A man convicted of adultery would be liable to pay compensation to the aggrieved party (the husband) which was not required of a woman convicted of adultery. This represented the notion of women existing for men's pleasure.
 - Until 2004, women alone had to couple the offense of adultery with another ground to prove divorce.⁸
 - Society should forgive a man for raping an indecently dressed woman.
 - A man can legally have several sexual partners under traditional and Islamic marriages but it is not an available option to women.

Effects of Judicial Prejudices against Women

The impact is wide-ranging. For example, it might:

- distort judges' perceptions of what occurred in a particular situation or the issues to be determined at trial
- affect judges' vision of who is a victim of gender-based violence
- influence judges' perceptions of the culpability of persons accused of gender-based violence
- influence judges' views about the credibility of witnesses
- lead judges to permit irrelevant or highly prejudicial evidence to be admitted to court and/or affect the weight judges' attach to certain evidence
- influence the orders that judges give
- cause judges to misinterpret or misapply laws
- shape the ultimate legal result:
 - a) Undermining, the rights to:
 - Non – discrimination and Equality
 - Health, including sexual & reproductive health
 - Education
 - Expression
 - Movement

⁷ Law Advocacy for Women in Uganda v. Attorney General of Uganda, Constitutional Court of Uganda, Constitutional Petitions Nos. 13 /05 /& 05 /06 (2007).

⁸ Uganda Association of Women Lawyers and 5 Others v. The Attorney General, Constitutional Court of Uganda, Constitutional Petitions Nos.2 of 2003 (2004).

- Adequate standard of living
 - Participation in political and public life
 - Equality in marriage and family relations
 - Right to be free from violence, including gender-based violence.
- b) Undermines the impartiality and integrity of the justice system.
- c) Leading to miscarriages of justice and re-victimization

Effect of Prejudices to Uganda’s Judiciary Leadership Structure.

Women’s representation in leadership and decision making positions in judiciary is lacking. The Chief Justice, Deputy Chief Justice and the principal judge (top 3 positions) are male. Women have served only twice in the top 3 positions. Both Leaticia Kikonyongo.J (2001 - 2012) and Elizabeth Mpagi Bahegeine (2012 - 2013) served in position of Deputy Chief Justice.

The Lower bench is being led by a female Judicial Officer (Her Worship Sarah Langa Siu. She is the 3rd woman to hold that position in the history of the Ugandan Judiciary. Currently she is the only woman that sits on the Judiciary top management committee

Currently there is still low representation of women in heading High Court divisions and circuits.

CATEGORY	FEMALE	MALE	TOTAL
Head High Court Division and Circuit	3	10	13
Deputy Head High Court Division and Circuit	3	3	6
TOTAL	6	13	19

Efforts to promote Gender Parity.

Over the years, the Judicial Service Commission has made strides in achieving fair representation of women in the Ugandan Judiciary.

CATEGORY	2016			2024		
	FEMALE	MALE	TOTAL	FEMALE	MALE	TOTAL
JUSTICES & JUDGES	29	43	72	50	53	103
REGISTRARS	20	27	47	47	31	78
MAGISTRATES	127	161	288	230	247	477
TOTAL	176	231	407	327	331	658

Ugandan Jurisprudence Combatting Prejudice against Women

Ugandan Constitutional Court on Female genital mutilation - The Constitution protects the free exercise of cultural or religious custom; such exercise must not infringe on human dignity or the right to be free from cruel, inhuman, or degrading treatment. The custom of female genital mutilation is inconsistent with the provisions of the Constitution and is thus declared void.⁹

Ugandan Constitutional Court on the discriminative nature of the offence of adultery – The Penal Code¹⁰ provision making an offence for a married woman to have sex with any man whether married or not, but does not make similar provisions for a man violated the constitutional rights to equality, dignity and protection from inhuman treatment. The Court rejected the State’s arguments that the law fostered the sanctity of marriage, was in the public interest, and that dropping the law would encourage immorality and promiscuity.¹¹

The Ugandan Constitutional Court's ruling on the old Succession Act provisions¹² was a landmark decision. It highlighted the discriminatory nature of the Act, which favoured male heirs over female heirs, failed to provide for the distribution of property of a female intestate, and preferred a man as a statutory guardian to minor children. The court found these provisions to be inconsistent with and contravening constitutional rights to equality and freedom from discrimination, family, and women¹³. As a result, they were declared null and void. **Note:** - The Succession (Amendment) Act of 2022 ended legislated gender discrimination in succession matters.

Ugandan Constitutional Court on the discriminative nature of the treatment of women during divorce and dissolution of a marriage – The Divorce Act provisions¹⁴ added more grounds for a woman to get a divorce, provided for a man to get damages and costs in case his wife was adulterous and a wife’s property to be settled for the benefit of the husband and children in case the wife was adulterous. The Court held that the sections are void as they discriminate based on gender. It added that the grounds for divorce as

⁹ Law & Advocacy for women in Uganda v. Attorney General (Constitutional Petition No. 8 of 2007), [2010] UGCC 4 (28 July 2010).

¹⁰ Section 154.

¹¹ Law & Advocacy for Women in Uganda v Attorney General Constitutional Petition Nos. 13/05 and 05/06 (5 April 2007).

¹² Section 2 (n) (i) and (ii), 14, 15, 26, 27, 29, 43, 44 of the Succession Act and Rules 1, 7, 8, and 9 of the Second Schedule of the same Act.

¹³ Articles 21 (1) (2) (3), 31, 33(6) of the Constitution

¹⁴ Sections 4, 21, 22, and 26 of the Divorce Act.

listed are available to both sexes, damages, costs, and settlement apply to both sexes in case of adultery.¹⁵

Batema J on marriage by abduction and rape - The women and girls here are never treated as full human beings. They are stereotyped as nothing but mere sex commodities or possessions! ...This vice of cultural rape is a resilient, pervasive and persistent culture promoting gender stereotypes.¹⁶

Musoke Kibuuka J on marital rape - rejected the accused's defense of mistaken belief that the complainant was his wife in a rape case. He interpreted that the constitutional provisions on equality in marriage and the recognition of the equal dignity of women and men under Article 31 and effectively amended Sections 9 and 123 of the Penal Code, which initially excluded husbands from being held criminally liable for marital rape.¹⁷

Lugayizi J on the legal requirement for corroboration of a victim's evidence in sexual offenses – this requirement discriminated against women who were “by far, the most frequent victims of sexual offences and is therefore inconsistent with Uganda's international obligations. The court has not come across any empirical data or basis for the belief that women are greater liars than men are or, for that matter, that they are more likely to tell a lie than to say the truth in matters concerning sexual allegations. For that matter, both the belief and resultant rule have no logical basis.¹⁸

Ekirikubinza Tibatemwa J on the legal requirement for corroboration of a victim's evidence in sexual offenses - the practice where courts were required to warn themselves of “the danger” of acting on uncorroborated evidence in cases of sexual assault because women were perceived as ‘peculiarly prone to malice and mendacity, and are particularly adept at concealing it’ had no scientific nor logical basis.¹⁹

What IAWJ Uganda Chapter Has Done

The organisation has focused on judicial mind-set change by collaborating with the Judiciary and Civil Society Organisations to:-

¹⁵ Uganda Association of Women Lawyers and Ors v Attorney General (Constitutional Petition No. 2 of 2003) UGCC 1 (10 March 2004).

¹⁶ Uganda v Lomoe Nakoupuet (Criminal Case No. 109 of 2016) [2019] UGHCCRD 14 (25 January 2019).

¹⁷ Uganda v Yiga Hamidu and Others, High Court Criminal Session Case No. 55 of 2002.

¹⁸ Uganda v Peter Matovu, High Court Criminal Session Case No. 146 of 2001.

¹⁹ Ntambala Fred v Uganda, Criminal Appeal No. 34 of 2015 [2018] UGSC 1.

- a) Develop resource materials and sensitise judicial officers.

The development of the **anti-labour trafficking training manual** for Ugandan judicial trainers under the women judges' efforts to improve the justice sector in combating the labour trafficking project with support from IAWJ. Twelve IAWJ-U members were certified as TOTS and a pilot training of 36 judges and magistrates was carried out.

Produced an **Assessment of Justice delivery for Victims of Defilement in Uganda** with support from IDLO in 2022 that documented institutional challenges, which included: - the constrained capacity of justice actors, evidentiary challenges, and protection of witnesses and victim rights and gave recommendations.²⁰

Developed training and resource manuals on gender-responsive adjudication for judicial officers in Uganda in partnership with the Judicial Training Institute with support from IDLO in 2022²¹. To implement the content in the manual, a TOT was carried out and 17 IAWJ-U members were certified. 5 regional training workshops were conducted to build the capacity of 100 judicial officers on gender justice. IAWJ-U is working on training and sensitising newly recruited judicial officers this year (2024) using the same resource materials on the same.

IAWJ-U has partnered with FIDA Uganda to promote gender equality by conducting joint training programs on gender justice particularly on women in unregistered marriages. The partnership has also seen outreaches, including moot competitions for law students in universities.

Co-opted by the Judiciary to **review the Judiciary gender policy** with support from UN Women in 2023. The policy is a strategy for ensuring that women and men can benefit equally from the Judiciary, that inequality is not perpetuated; and that justice is done irrespective to all irrespective of their social or economic status.

Role of IAWJ Chapters

Each of the chapters represented at the conference can do the following when they return home:-

- Identify and name negative prejudices in their countries.

²⁰<<https://nawju.judiciary.go.ug/wpcontent/uploads/filr/6841/ASSESSMENT%20OF%20JUSTICE%20DELIVERY%20FOR%20VICTIMS%20OF%20DEFILEMENT%20IN%20UGANDA.pdf>>

²¹<https://nawju.judiciary.go.ug/wpcontent/uploads/filr/6838/Training%20Manual%20on%20Gender%20Responsive%20Adjudication_compressed.pdf>

- Help chapter members understand the harm of negative prejudices.
- Support chapter members to comply with their human rights obligations in practice.
- Partner with Judicial Training Institutions to influence mind-set change and to ensure that stereotypical prejudices and values do not affect decision-making.
- Leadership and mentorship, & training for women
- Partner with local human rights organisations for public interest litigation to obtain positive jurisprudence.
- Monitor and analyse judicial reasoning. Chapters should be vigilant in ensuring that stereotypes do not impede access to justice for victims/survivors of gender-based violence. This means scrutinising judicial reasoning to ensure judges are complying with their obligation to reach decisions based on law and fact and not stereotypes. There are a number of key questions that we can consider when monitoring and analysing judicial reasoning for evidence of stereotyping:
 - Did the judge engage in stereotyping or fail to challenge stereotyping by lower courts?
 - What are the operative stereotypes?
 - How was the victim/survivor harmed as a result of judicial stereotyping?
- Highlight the harms of judicial stereotyping through evidence-based research. This will raise awareness of the harms of judicial stereotyping through evidence-based research which might highlight the prevalence, nature and harms of stereotyping in cases, for example, cases decided by a particular court or judge.
- Advocate legal and policy reforms. National laws and policies help to ensure that judges and other state actors comply with their international obligations related to stereotyping. Consider whether reform is needed to strengthen national protections against judicial and other stereotyping. Laws should protect against all stereotyping (eg gender, racial stereotyping or groups such as people with disability), including by judges.
- Improve judicial capacity. Training is key to building capacity to address judicial stereotyping and ensuring decision-making is not adversely affected by harmful stereotypes. Education and training may come in many forms, including seminars and written resources (eg bench books). Whatever the form, they should assist judges to achieve best practice in decisions on gender-based violence. At a minimum, this will require information to help judges:

- reach decisions based on law and fact and not on stereotypes
 - identify stereotyping and operative stereotypes, for example in the reasoning of lower courts or in the arguments advanced by counsel
 - understand the harms caused by stereotypes and stereotyping, including how they undermine the ability of victims/survivors to access justice
 - debunk stereotypes related to gender-based violence.
- Partner with other actors such as FIDA or other relevant CSOs to appeal decisions involving stereotyping to higher courts; and to submit petitions or communications to regional or international human rights bodies alleging human rights violations based on judicial stereotyping.
 - Highlight good practice examples. Whenever possible, IAWJ Chapters should highlight good practice examples of efforts to address judicial stereotyping. Such examples provide important guidance on debunking stereotypes and give judges an important perspective that can help them move beyond stereotypes. Good practice examples of addressing judicial stereotyping might include:
 - laws and policies that prohibit and sanction judicial stereotyping
 - rules of evidence and procedure that limit opportunities for stereotyping
 - judgments that challenge judicial stereotyping by courts
 - resources and training that build judicial capacity to address stereotyping.

Role of IAWJ Delegates present

- As judges, avoid use of gender discriminatory language.
- In judgment writing, address gender stereotypes/ing that impairs or nullify equality in marriage and family relations.
- Challenge stereotyping and discrimination by not detracting from women's testimony or discounting their credibility, which applies whether women are the accused or victims.
- Ensure that gender-based violence trials are conducted in a fashion that does not subordinate the fact-finding process to myth and stereotype. This means that they must base their decisions on law and facts in evidence and not engage in gender stereotyping. It also means that they must debunk stereotypes in gender-based violence cases and challenge the stereotypical reasoning of other judges and other actors in the legal system.

- The *Bangalore Principles of Judicial Conduct* identify a range of values and principles, including impartiality, that judges should adhere to in the performance of their duties. The Principles provide, *inter alia*, that a judge shall:
 - perform his or her judicial duties without favour, bias or prejudice
 - not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue
 - not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds
 - require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.²²
- Challenge judicial stereotyping. Courtrooms are supposed to be places where human rights are upheld, where decisions are fair and impartial and not compromised by judges' stereotypical views and other biases. So when stereotyping closes judges' minds to truth, when it impairs their ability to assess the facts and distorts the truth-finding process, judicial decisions must be challenged. HOW?

In *Mukungu v. Republic*, the Kenyan Court of Appeal determined that the requirement for corroboration in cases concerning sexual offences against women and girls was unconstitutional. In doing so, it noted that [t]he need for corroboration in sexual offences appears to be based on what the Superior Court restV. Rated in *Maina v Republic* [1970] EA 370. There the Court said:

“... as pointed out by the Court of Appeal in Henry and Manning v Republic 53 criminal appeal rep 150, it has been said again and again that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. It is dangerous because human experience has shown that girls and women sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons and sometimes for no reason at all. In every case of an alleged sexual offence the magistrate should warn himself that he has to look at the particular

²² *Bangalore Principles of Judicial Conduct*, UN Doc. E/CN.4/2003/65, annex, values 2(2), 2(4), 5(2), 5(5).

facts of the particular case and if, having given full weight to the warning, he comes to the conclusion that in the particular case the woman or girl without any real doubt is speaking the truth then the fact that there is no corroboration need not stop his convicting. Most unfortunately, this was not done in the present case.

It is noteworthy that the same caution is not required of the evidence of women and girls in other offences. Besides there is neither scientific proof nor research finding that we know of to show that women and girls will, as a general rule, give false testimony or fabricate cases against men in sexual offences. And yet courts have hitherto consistently held that in sexual offences testimony of women and girls should be treated differently. ...

The Constitution has no provision authorising any discriminatory treatment of witnesses particularly with regard to matters of credibility. It is noteworthy that even the Evidence Act (Chapter 80) Laws of Kenya, has no provision on the issue of corroboration of the testimony of adult women and girls. ...

For the foregoing reasons we think that the requirement for corroboration in sexual offences affecting adult women and girls is unconstitutional to the extent that the requirement is against them qua women or girls.²³

The Indian Supreme Court challenged the stereotype that women should be chaste and the implication that an unchaste woman has a propensity to consent, and must have consented, to sex

‘The trial court not only erroneously disbelieved the prosecutrix, but quite uncharitably and unjustifiably even characterised her as a girl “of loose morals” or “such type of a girl”. ... We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a judge. ... The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole – where the victim of crime is

²³ *Mukungu v. Republic*, [2003] 2 EA 482, paras. 11-14 (Kwach, Bosire & O’Kubasu JJA) [citations omitted] (Kenya, Court of Appeal).

discouraged – the criminal encouraged and in turn crime gets rewarded! ... Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone had everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the Court'.²⁴

Challenges That May Be Faced in Eradication of Negative Prejudices against Women

There is an important question of how to balance the right to be free from harmful gender stereotypes and wrongful gender stereotyping against other, potentially competing human rights, such as the freedom from arbitrary interference in private life, the freedom of expression and cultural rights.

“Not all women challenge the dominant cultural norms for a number of reasons:

- they may benefit, at least in part, from the overall arrangements;
- they may fear the consequences of challenging existing norms and practices or lack the support mechanisms necessary to act;
- they may not have access to alternative views and ways of life; or
- they may not adhere to emancipatory values.

Consequently, intentionally or unintentionally, women may reproduce and contribute to sustaining harmful practices that violate the rights of other women....”²⁵ There is therefore a need to strike a balance between these rights.

Conclusion

Prejudices can: compromise the impartiality of judges’ decisions, influence judges’ discovering the facts of the case, affect judges’ views about witness

²⁴ *State of Punjab v. Gurmit Singh & Ors*, 1996 AIR 1393; 1996 SCC (2) 384 (Anand J) (India, Supreme Court).

²⁵ Gabriella Knaul, “*Report of the Special Rapporteur on the independence of judges and lawyers*”, UN Doc. A/66/289 (10 August 2011), para. 23.

credibility and legal capacity, stop judges holding offenders legally accountable, and impede access to legal rights and protections.

Judges can and do play a critical role in articulating the relevant State obligations in addressing negative prejudices by:-

- Explicitly identifying and addressing negative prejudices during hearings and in their decisions;
- Ensuring that legislation, norms and practices conform to human rights and constitutional guarantees.