

A GENDER PERSPECTIVE IN THE ADMINISTRATION OF JUSTICE

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INTRODUCTION

*“Central to the realization of gender justice is equitable access to justice that may be facilitated through enactment of gender-responsive laws, and the ability of Judicial Officers to dispense justice in cognizance of the particular needs of women, girls, boys and men in the enforcement of such laws. In a nutshell, concentrated power in form of: ‘**power over**’ authority and control of court processes; ‘**power to**’ capacity to act, adjudicate, bolstered by judicial discretion and a comprehensive legal framework; ‘**power within**’ based on self-worth, confidence; and ‘**power with**’ derived from being part of the Judiciary, provides Judicial Officers with a unique opportunity that can be effectively utilized to catalyze social transformation in the administration of justice, and establish a culture of gender justice. It is therefore incumbent on Judicial Officers to exercise their power in a manner that recognizes the inherent dignity and human rights of everyone regardless of status.” (NAWJU Meeting, December, 2021.)*

- Access to justice an essential component of sustainable development, recognized in Sustainable Development Goal (SDG) 16.
- Where the law or the justice system discriminates against women, men, girls or boys, access to justice is compromised.
- Where the law or justice system does not take into account gendered economic, structural and cultural barriers, access to justice is compromised.
- This can be compounded when the justice system is not representative of the people it serves and results in impunity for perpetrators of crimes, and certain groups within society become vulnerable to violence, poverty and discrimination, which are fed by gender inequality, undermining prospects for security, development and peace for the broader society.
- Access to justice is a basic principle of the rule of law and a key human rights safeguard, enabling the enjoyment of a range of human rights.

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- Uganda's Constitution, together with the country's ratification of most international treaties and conventions on human rights, places a duty on all organs of the State to promote and protect the rights of all citizens to equality before the law and freedom from discrimination on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability. The right of women and men to equal enjoyment of opportunities and resources is a key component of the right to equality and freedom from discrimination.
- Uganda's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol) signals its strong commitment to the promotion of gender equality in all spheres of government, including the justice sector.

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- The Maputo Protocol is a demonstration of the goodwill and total commitment of the African Union Member States to invest in the development and empowerment of women, who represent the majority population in most African countries. It guarantees women equal protection and benefit of the law.
- Both the CEDAW and Maputo Protocol require state parties not just to make legislative changes aimed at promoting gender equality but also to ensure that Judicial Officers and courts apply the law in a manner that creates equality of opportunity for both women and men, and administer substantive justice without undue regard to technicalities.



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- This is illustrated in Article 2(c) of CEDAW which obliges States Parties to ensure justice sector institutions give effect to laws aimed at eradicating unequal treatment.
- General Recommendation 33 of CEDAW, on Access to Justice, lists the six interrelated components of an equitable and accessible justice system, namely: **justiciability, accountability, good quality, effective remedies, and availability.**
- These components need to be taken into consideration in tandem with the four principles of Gender Responsive Adjudication, which are: **Equality, Non-discrimination, State Obligation, and Judicial Impartiality.**



INTRODUCTION



JUSTICIABILITY

Women and Men have equal rights under the law and are able to claim them.



GOOD QUALITY

The justice system is timely, efficient and impartial, avoiding bias and stereotypes.



AVAILABILITY

Police, courts and affordable legal aid are available in both urban and rural areas and are properly maintained.



EFFECTIVE REMEDIES

Appropriate accountability for offenders, meaningful redress and protection (as needed) for complainants.



ACCESSIBILITY

The justice system is affordable and physically accessible, taking into account the needs of women including intersectional forms of discrimination (e.g. class, ethnicity, ability/disability, age, language).



ACCOUNTABILITY

The justice system, including justice service providers, are monitored and held to account in upholding rights based on these six principles.

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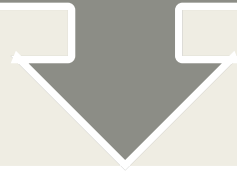
- Article 126 (2) of the Constitution of Uganda specifically states: *"In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles- (a) justice shall be done to all irrespective of their social or economic status; (b) justice shall not be delayed; (c) adequate compensation shall be awarded to victims of wrongs; (d) reconciliation between parties shall be promoted; and (e) substantive justice shall be administered without undue regard to technicalities."*

- Notwithstanding these positive legislative developments, there remain significant barriers in the administration of justice that hinder both women's and men's ability to receive equitable outcomes from the justice system.
- The adversarial nature of the court process can sometimes militate against the satisfactory resolution of conflicts between parties. When dealing with Sexual and Gender Based Violence cases such as defilement, court officials are most times not sensitive about the need to treat victims with special care, and court administrators often fail to design courtrooms to accommodate the special needs of victims. This act of sensitivity, coupled with inordinate delays in the court process, very often result in victims being revictimized by the very process providing justice.

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Gender inequalities in the court system are apparent in several areas including the handling of victims/survivors of Gender Based Violence and the system's attitude towards other vulnerable individuals.



Many court users, particularly those from rural communities, in lower socio-economic brackets, persons living with disabilities and other vulnerable persons, have described their experiences with the court in negative terms. A common complaint from such court users is that the court (officials and the entire system) is either blind to or inconsiderate of the trauma they have endured.

WHAT IS AND WHY GENDER?

- Gender means different things to different people
- Not everyone views, defines and uses the term 'gender' in the same way.
- Like *class* and *ethnicity* or *race*, gender is an analytical social category, one that interacts with other social factors in influencing life experiences of groups and individuals






WHAT IS AND WHY GENDER?

“People are born female or male but learn to be girls and boys who grow up into men and women; They are taught what the appropriate behaviour and attitudes, roles and activities are for them and how they should relate to other people; This learned behaviour is what makes up gender identity and determines gender roles (Oxfam, 1994)”

WHAT IS AND WHY GENDER?


Gender determines to a great extent how we think, how we feel and what we believe we can or we cannot do as women and men.



The fact that gender attributes are socially constructed means that they are also subject to change.



Gender is a dynamic concept, it changes from one culture to the other and varies from one group to the other within the same culture.



Gender helps us to understand differences in relation to distribution of work, human rights, culture and religion, control over resources etc.



WHAT IS AND WHY GENDER?

- Gender is an important determinant of violence with implications for women and men.
- Gender inequality puts millions of women and girls at risk of violence globally.
- Gender norms, roles and relations can influence life conditions and opportunities for men and women and girls and boys that, ultimately, affect their behavior, capacity and outcomes.

GENDER DETERMINES.....

“MASCULINITY” AND “FEMININITY”
(GENDER ROLES)

Roles, status,
norms, values

Responsibilities, needs,
expectations

Sexuality and Sexual
behaviour

GENDER

THE DIVISION OF LABOUR, POWER AND
RESPONSIBILITIES

THE DISTRIBUTION OF RESOURCES
AND REWARDS

WHAT IS SEX?

- Sex refers to the biological differences between males and females. Sex differences are concerned with male and female physiology.

DIFFERENCES BETWEEN GENDER AND SEX

GENDER	SEX
<ul style="list-style-type: none">•Socially created ideas and practices of what it is considered to be female or male.•The social roles and relationships between men and women, they are context-specific and can change according to circumstances, and from generation to generation.•Gender is influenced by other factors as wealth, class, age, education, race, ethnicity, religion and ideology•Gender is imposed by human society, which generates some deep and far-reaching sense of inequality between the sexes	<ul style="list-style-type: none">•Universal, biological differences between men and women•Characteristics that categorize someone as either female or male• Biological sex differences are very few and are unimportant in terms of determining gender inequality.•sex is a basic fact of nature and does not unfairly assign its biological roles

COMMON CONSTRUCTS OF FEMININITY

Good women are shy, do not talk about sex

Assigned reproductive/domestic roles

Virgins, virtuous

Dependent on men


Submissive

Quiet


Weak and vulnerable to violence

CONSEQUENCES OF FEMININITY

Feminization of poverty - women's unpaid care work, type of education, etc



Economic dependence on men (sex trade, cross-generational sex/sugar daddy phenomenon)



Low self-esteem, timidity



Require permission to seek healthcare



Women cannot negotiate or discuss safer sex with spouses

CONSEQUENCES OF FEMININITY


Shut out of decision making in micro and macro spheres




Her entire life is controlled by a man from the cradle to the grave



Often valued as a means to an end and not an end in herself
(baby factory)



More exposed to stigma and discrimination (STIs are called
woman disease)



Prone to violence, rape, battery.

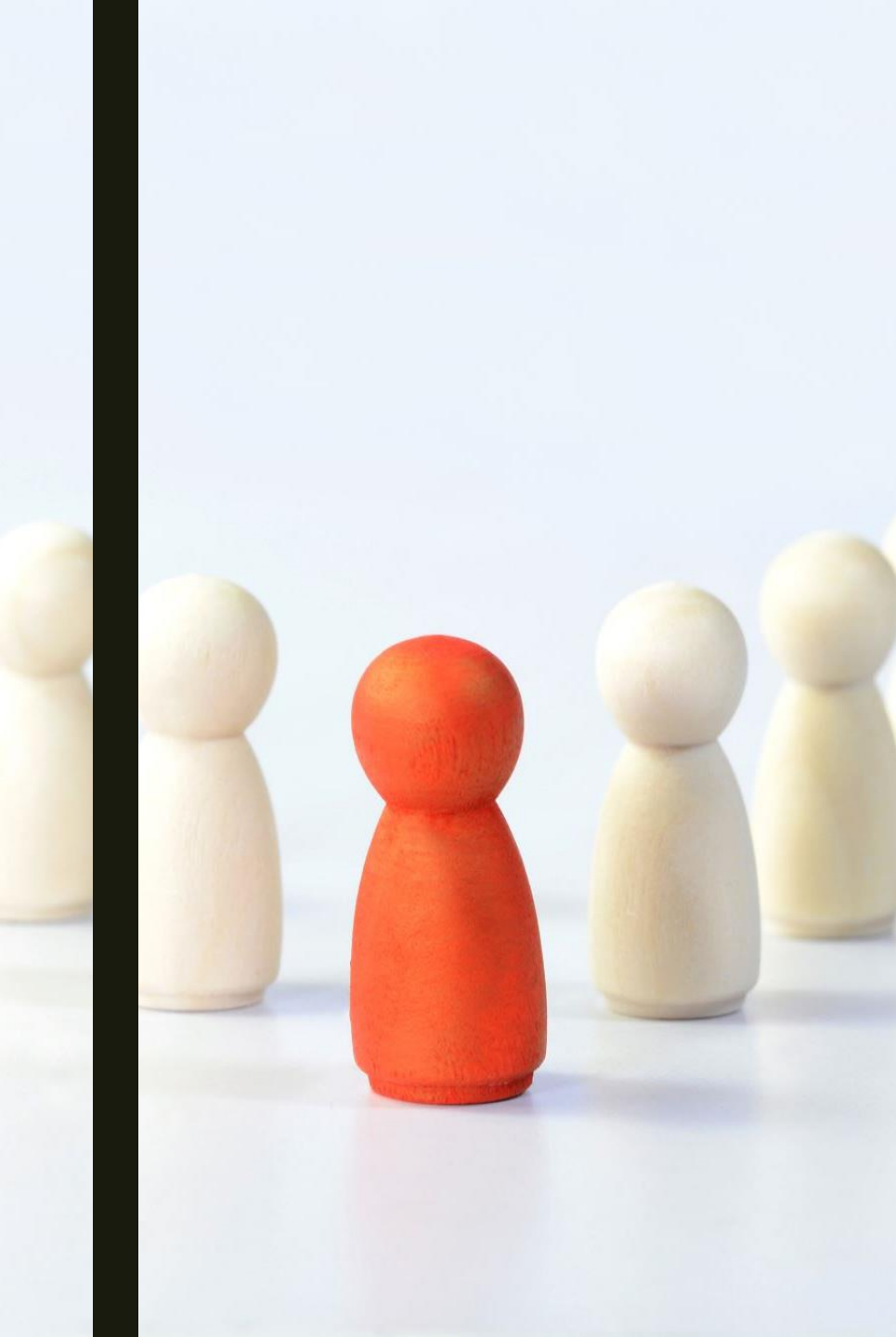
Key Gender Concepts

Women and Domestic chores



GENDER ROLES

- Are socially-defined roles for women and men. For example, most cultures define child-rearing as a female role, although there is no biological reason why men cannot do it.
- Definitions of gender roles change over time and differ between cultures
- Gender-specific roles and responsibilities are often conditioned by household structure, access to resources, specific impacts of the global economy, and other locally relevant factors such as ecological conditions (FAO, 1997).



IS THIS POSSIBLE IN YOUR COMMUNITY? IF NOT,
WHY?



GENDER DIVISION OF LABOUR

- Describes a pattern in which society assigns women one set of roles and men another set, based on gender.
- This is generally associated with a grossly unequal distribution of reward. For instance, many societies expect women to perform most of the unpaid domestic work and subsistence food production, whereas men are dominant in cash crop production and wage employment

GENDER DIVISION OF LABOUR (CONT.)

- There are increasing concerns that the vital contribution of women to the management of biological resources, and to economic production generally, has been misunderstood, ignored, or underestimated.



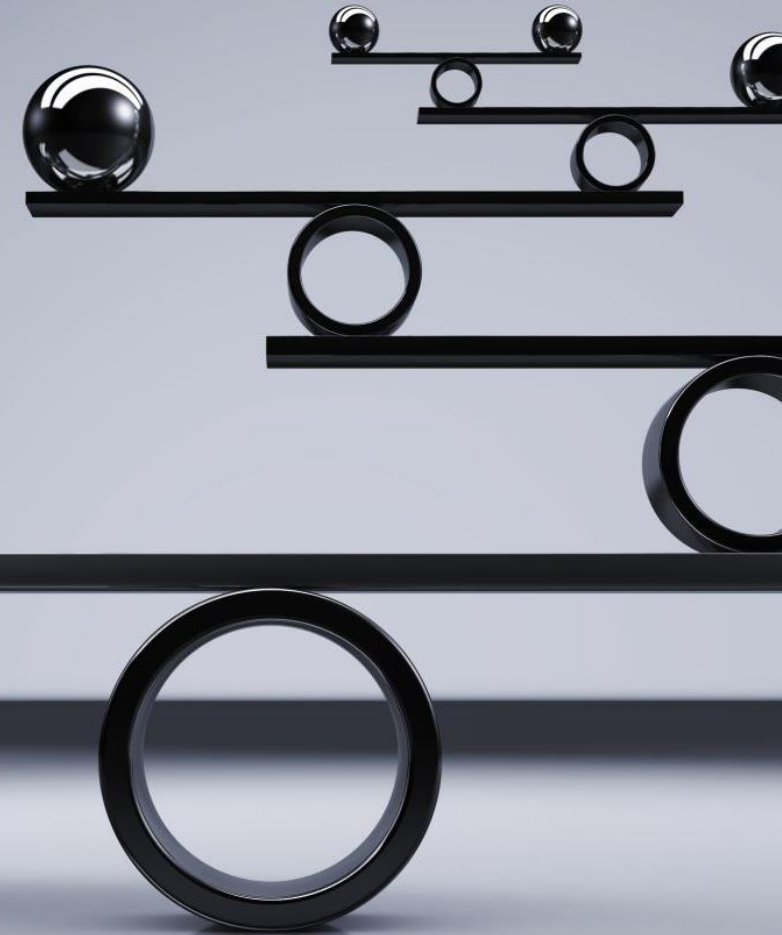
GENDER STEREOTYPES

What is Stereotype?

- 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.

GENDER STEREOTYPE (CONT.)

- 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.

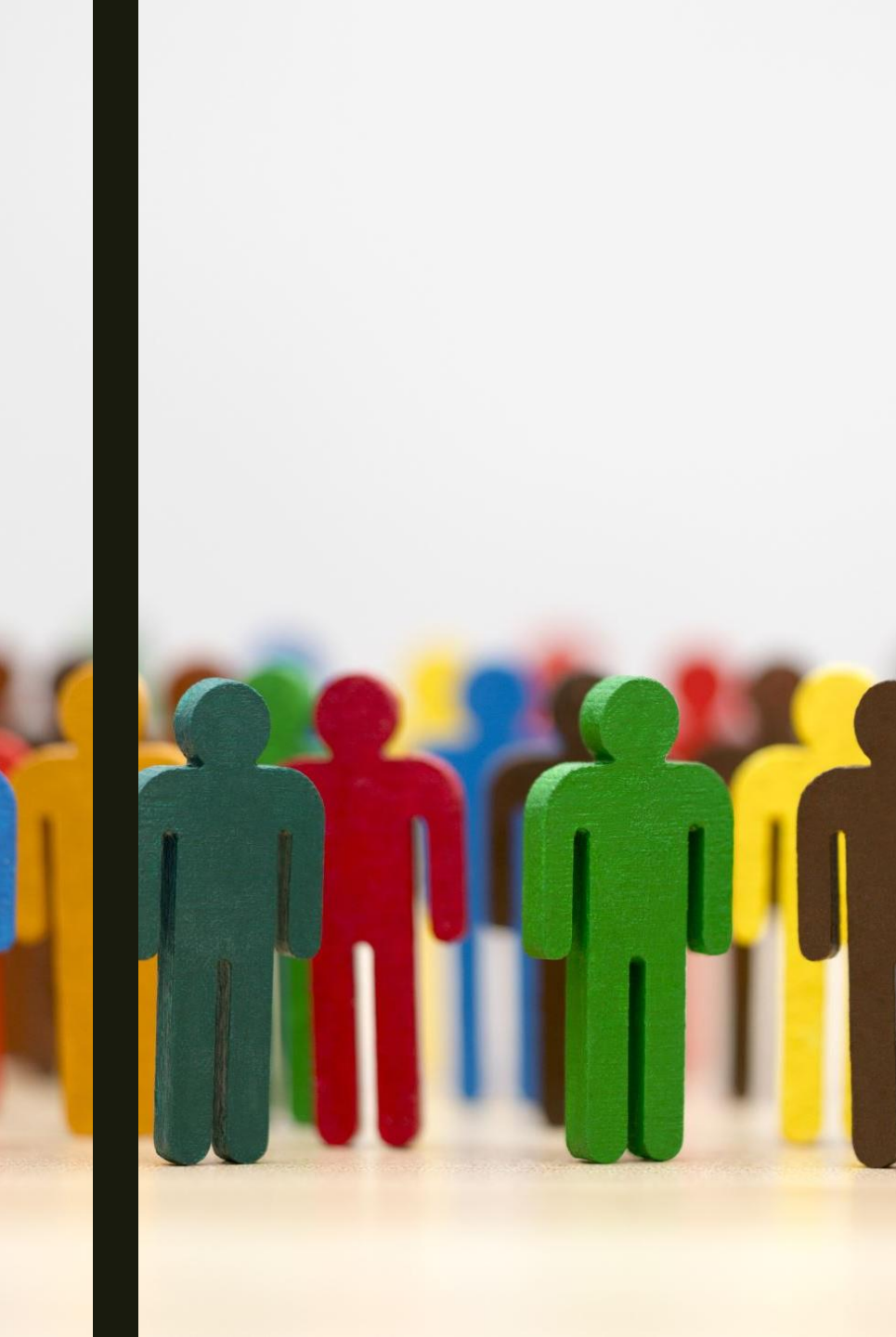


GENDER DISCRIMINATION

- Means that individuals are treated differently on the basis of their sex. In many societies, this is maintained by structural discrimination against women in the distribution of income, access to resources and participation in decision-making
- Systematic, unfavourable treatment of individuals on the basis of their gender, which denies them opportunities, rights, and/or resources

GENDER ANALYSIS

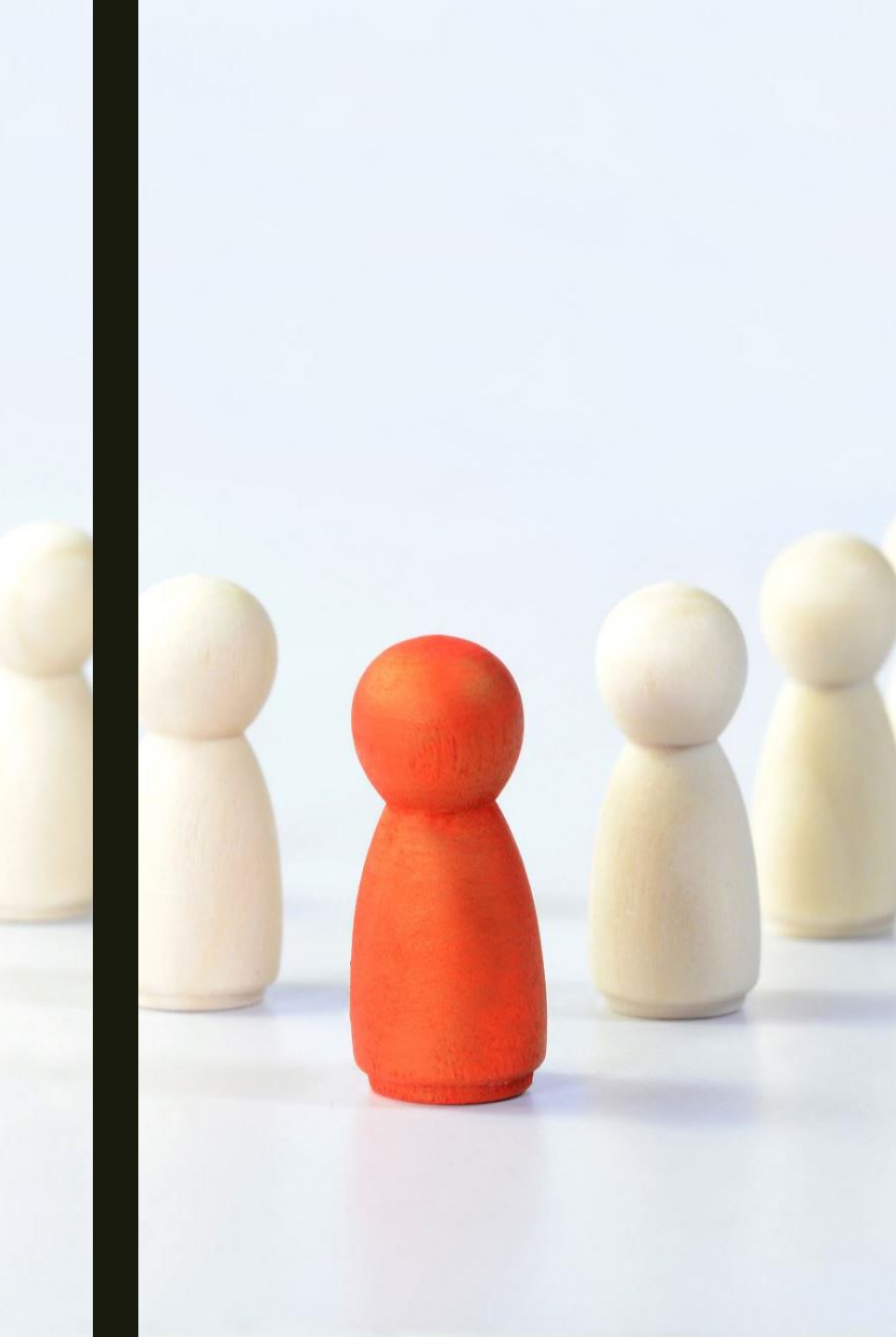
- Gender analysis is a critical examination of how differences in gender roles, activities, needs, opportunities and rights/entitlements affect women, men, girls and boys in certain situation or contexts. Gender analysis examines the relationships between females and males and their access to and control of resources and the constraints they face relative to each other. A gender analysis should be integrated into all sector assessments or situational analyses to ensure interventions do not exacerbate gender-based injustices and inequalities, and that, where possible, greater equality and justice in gender relations are promoted (UNESCO, 2003).





GENDER ANALYSIS CONT'D

- Gender analysis focuses on understanding and documenting the differences in gender roles, activities, needs and opportunities in a given context
- It examines the differential effects of projects and programmes on men and women as a result of their social location, access to and control over resources, and decision making capacity



GENDER GAP

- Is the difference between women and men as reflected in social, cultural or economic attainments or attitudes. For example, we can gender gap between boys and girls in terms of the educational levels

GENDER-SENSITIVE INDICATORS

- Are signals that helps to measure gender-related changes in the e.g., female-male literacy gaps. They are important because they equality.

Practical Gender Needs (PGN)

Needs of immediate interest – safe water, food, health care, cash income – essential to improve living conditions of women, but in itself providing PGN can not change the prevailing disadvantaged (subordinate) positions of women

Strategic Gender Needs (SGN)

SGNs are those that women themselves identify as due to their subordinate position to men in their society. They relate to issues of power and control, and to exploitation under the sexual division of labour.

PRACTICAL AND STRATEGIC GENDER NEEDS

PRACTICAL GENDER NEEDS


These refer to material conditions of life e.g. availability of food, water, shelter, clothing, health care, basic education and gainful employment.




They are not unique to women but affect disadvantaged men as well.



They tend to be short-term and can therefore be met through direct material inputs e.g. supplying water if there is a water shortage.

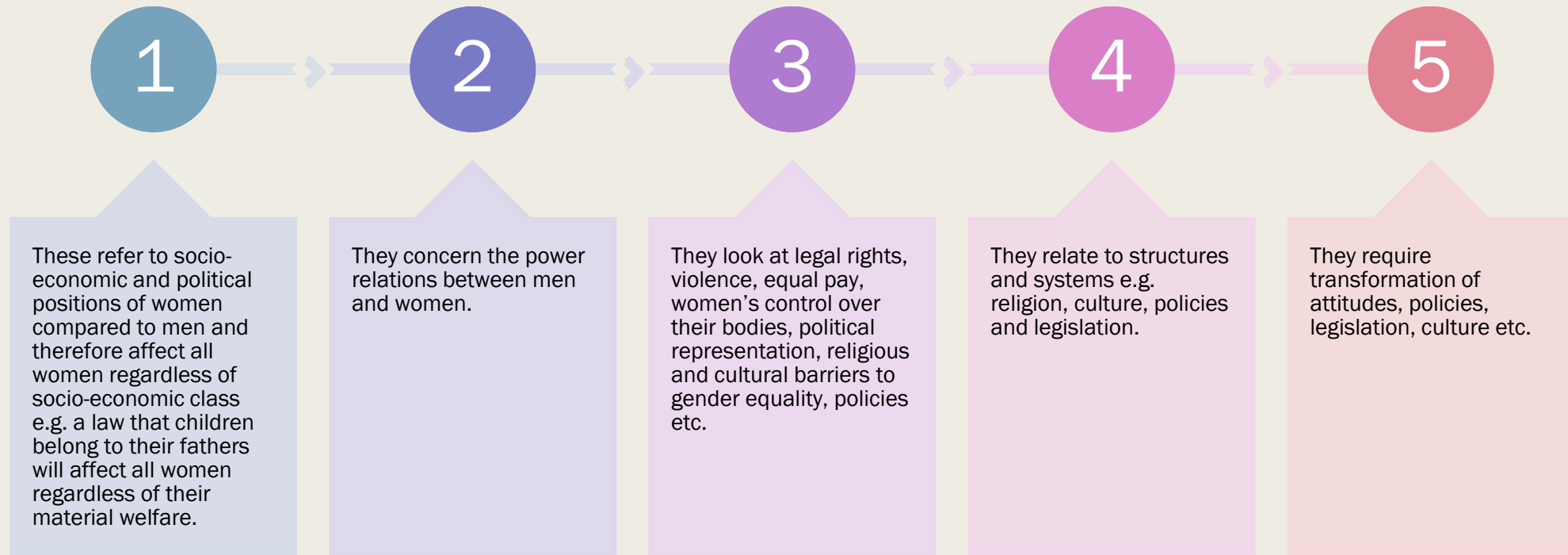


They mainly deal with providing finished goods and services or making them easily available to the needy.



Meeting the practical gender needs does not challenge the power relations between men and women.

STRATEGIC GENDER NEEDS





GENDER EQUALITY (GE)

- Gender Equality is the state or condition that affords women and men equal enjoyment of human rights, socially valued goods, opportunities, and resources.
- Accepting and valuing equally the differences between women and men and the diverse roles they play in society.

GENDER EQUALITY CONT'D

Refers to the equal rights, responsibilities and opportunities of women and men and girls and boys.

Does NOT mean that women and men will become the same BUT that women's & men's rights, responsibilities and opportunities WILL NOT DEPEND on whether they are born male or female.

WHAT GENDER EQUALITY IS ABOUT

- Being valued equally, regardless of sex; and taking steps to ensure that women and men **have the same chances and opportunities in life: this is also known as formal equality** or making sure that formal structures allow for equal access and participation for groups of women and men.

KEY TERMS IN GENDER EQUALITY

Term	Means (e.g. in the Justice system)	Looks like
Parity	Proportional representation of male and female in the justice system, relative to the population per age group	Equal number of male/female judicial officers, prosecutors, police officers etc., (proportionate to the population of Uganda)
Equity	Strategies and processes that provide fair and equal chances for all to pursue and benefit from justice services	Courts, police stations, ODPP offices, legal practitioners etc., available at the grassroots to provide adequate access to justice, providing gender responsive and child friendly services, which include separate spaces for victims of SGBV, breast feeding mothers and child victims, witnesses and suspects, outreaches and other programs to promote zero tolerance to corruption and sensitization of communities on access to justice bottlenecks.
Equality	Females and males have equal rights, freedoms, conditions, and opportunities for realizing their full potential in society	Male and female leaders in society, equitable and positive power dynamics, and empowered female and male citizens

GENDER EQUITY

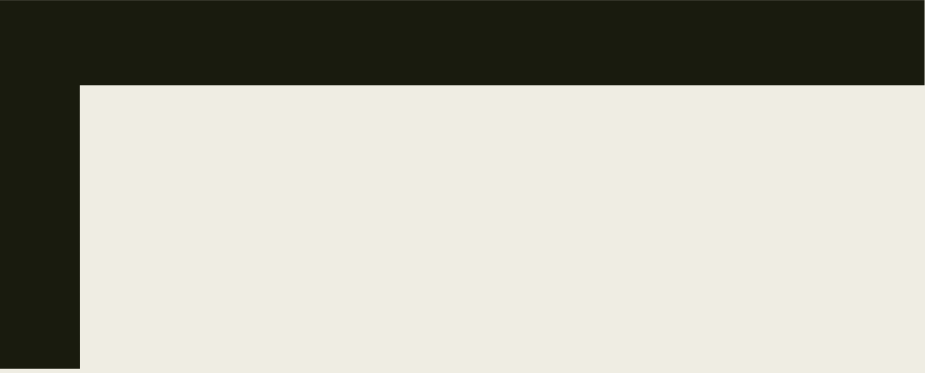

Gender Equity is the process of being fair to women and men.

- A fair sharing of resources, opportunities and benefits according to a given framework.
- Measurable and manifested in parity.
- One of the measures of equality.
- Equivalence in life outcomes for women and men, recognising their different needs and interests, and requiring a redistribution of power and resources



GENDER EQUALITY AND EQUITY

- Gender equality is a fundamental human rights principle enshrined in the constitution of the Republic of Uganda and binding human rights treaties to which the Government of Uganda is a party and is committed to in light of its several laws, policies and institutional frameworks.
- Integrating a gender perspective in the justice sector will do the following:
 - ✓ *improve security and the rule of law, by facilitating equal access to justice;*
 - ✓ *Counter impunity for crimes, in particular crimes of GBV, and improves protection against such crimes;*
 - ✓ *Contributes to laws which protect the rights of everyone; and*
 - ✓ *Make justice institutions representative, effective and fair.*

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- The concept of equity recognizes that women and men have different needs and power, and that these differences should be identified and addressed in a manner that rectifies the imbalance between the sexes referred to as gender responsive adjudication.
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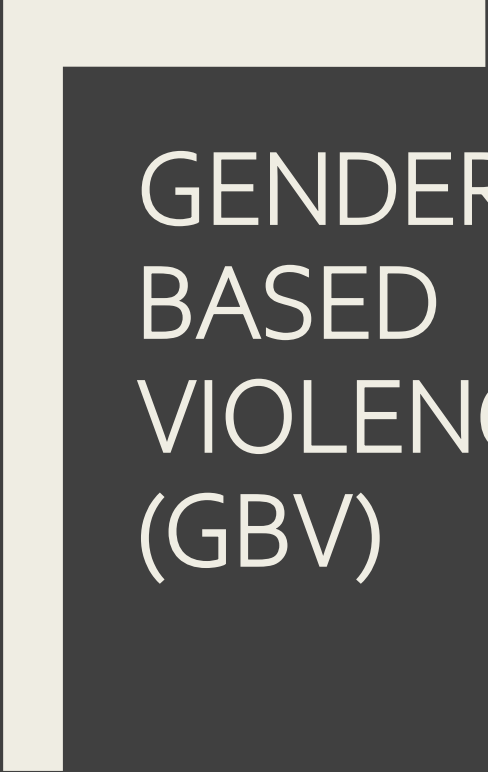
GENDER EQUALITY AND EQUITY CONT'D



GENDER NEUTRALITY

- Generally, it is understood that gender neutrality in a law, policy or conduct means said law, policy or conduct applies to both women and men. There is an assumption that laws, policy or conduct that are gender-neutral do not have a discriminatory effect. This is incorrect. Women and men experience the world differently and, as such, laws, policies or conduct will invariably have different impacts on them. Sometimes, gender-neutral laws, policies or conduct will reinforce women and men's privileges and vulnerabilities.

“Gender Based Violence” is a generic term used to describe any harmful act perpetrated against an individual against his or her will based on his or her socially defined identity as female or male (UN, 2005). The United Nations General Assembly defined violence against women in the 1993 Declaration on the Elimination of Violence Against Women as *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private”*. There are different kinds of violence, including (but not limited to) physical, verbal, sexual, psychological and socioeconomic violence.



GENDER BASED VIOLENCE (GBV)



GENDER SENSITIVITY

- Gender sensitivity means being aware of how gender can result in different privileges and opportunities for women and men.

GENDER BLIND

- Gender blind refers to not discriminating or distinguishing between different genders. A gender-blind approach is a failure to recognise that the roles and responsibilities of women/girls and men/boys are 'assigned' to them. In a world where disadvantage or privilege is attached to gender, a gender-blind approach will not achieve substantive equality.

GENDER LENS

- Using a gender lens reveals the ways in which content and approaches are gendered – informed by, shaped by, or biased toward men's or women's perspectives or experiences. It is often useful to question the implicit assumptions and observations that may present a gender bias.



GENDER SENSITIVE APPROACH

- A gender sensitive approach is one that attempts to redress gender inequalities by taking into account the specificities of women's and men's experiences and needs. It requires paying attention to the different roles and responsibilities of women/girls and men/boys that are present in specific social, cultural, economic and political contexts. This approach is required if women are to be guaranteed universal human rights and to be free from discrimination.

To ensure a fair selection you all get the same test. You must all climb that tree.



COMPOSITION OF THE JUSTICE SECTOR

- The justice sector includes all the agencies and actors, both state and non-state (or formal and informal), involved in the provision, management and oversight of justice.
- Our legal system can generally be divided into two branches: criminal law and civil law. The latter deals law deals inter alia, with property, contracts, torts, family matters, etc
- Functions of the justice sector include:
 - ✓ Dispute resolution
 - ✓ law enforcement
 - ✓ protection of rights
 - ✓ judicial review and accountability
 - ✓ regulation



WHAT IS GENDER RESPONSIVE ADJUDICATION?

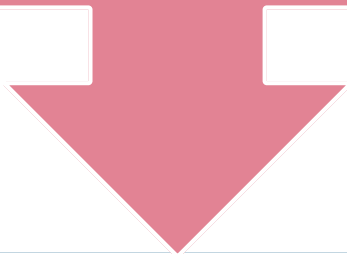
- "*Gender responsive adjudication*' can be defined as the process where a judicial officer recognizes how gender can result in different privileges and opportunities (and disadvantages) for women and men and thereafter uses various courtroom strategies to redress existing gender inequalities in a case.
- Gender Responsive adjudication requires *using a gender lens* in adjudication that reveals how content and approaches are gendered, informed by, shaped by, or biased toward men's or women's perspectives or experiences. It is often helpful to question the implicit assumptions and observations that may present a gender bias.



GENDER PERSPECTIVE IN ADJUDICATION

- A gender perspective in adjudication accounts for the ways that certain norms impose disparate impacts on certain people, and helps the jurist respond to those impacts. Thus, a gender perspective should always be used in any case in which there are asymmetrical power relationships or structural inequalities that have to do with sex or gender.

In life, a person's perspective *or lens* will determine what that person sees, motivate the decisions they make and influence their judgements about the world.



The absence of a gendered perspective or lens in the administration of justice is a notable factor in the justice system's failure to adequately address the barriers to women's and men's access to justice.

GENDER PERSPECTIVE IN ADJUDICATION

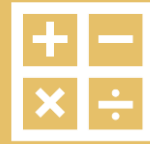


BARRIERS TO ACHIEVING GENDER EQUALITY IN THE COURTS

THE PRINCIPLE OF EQUALITY



THE PRINCIPLE OF EQUALITY



Applying the concept of equality, as both a principle and a right, does not mean seeking some kind of a mathematical formula to calculate and achieve absolute homogeneity.



Instead, the concept of equality must be understood substantively.



It requires equal treatment for equals, different treatment for those who are differently situated, and special treatment for groups whom, though they are considered equal from one perspective, from another perspective merit special treatment from the State.”

THE PRINCIPLE OF EQUALITY

- To give full effect to Uganda's equality provisions, courts are encouraged to use a substantive approach. The substantive approach encourages the courts to consider the impact/effect of the law or conduct on either the individual or a group. Looking at the impact/effect of the law or conduct will entail the court considering, among other things:- the social context within which the law operates; any existing power imbalances and whether there is a need for the court to step in to ameliorate disadvantages that serve to hinder the ability of the individual or group to have equal opportunity to access resources or socially valued goods.
- A **substantive approach** recognizes that women and men experience the world differently and that these differences are usually heightened by other social statuses, such as socio-economic position.



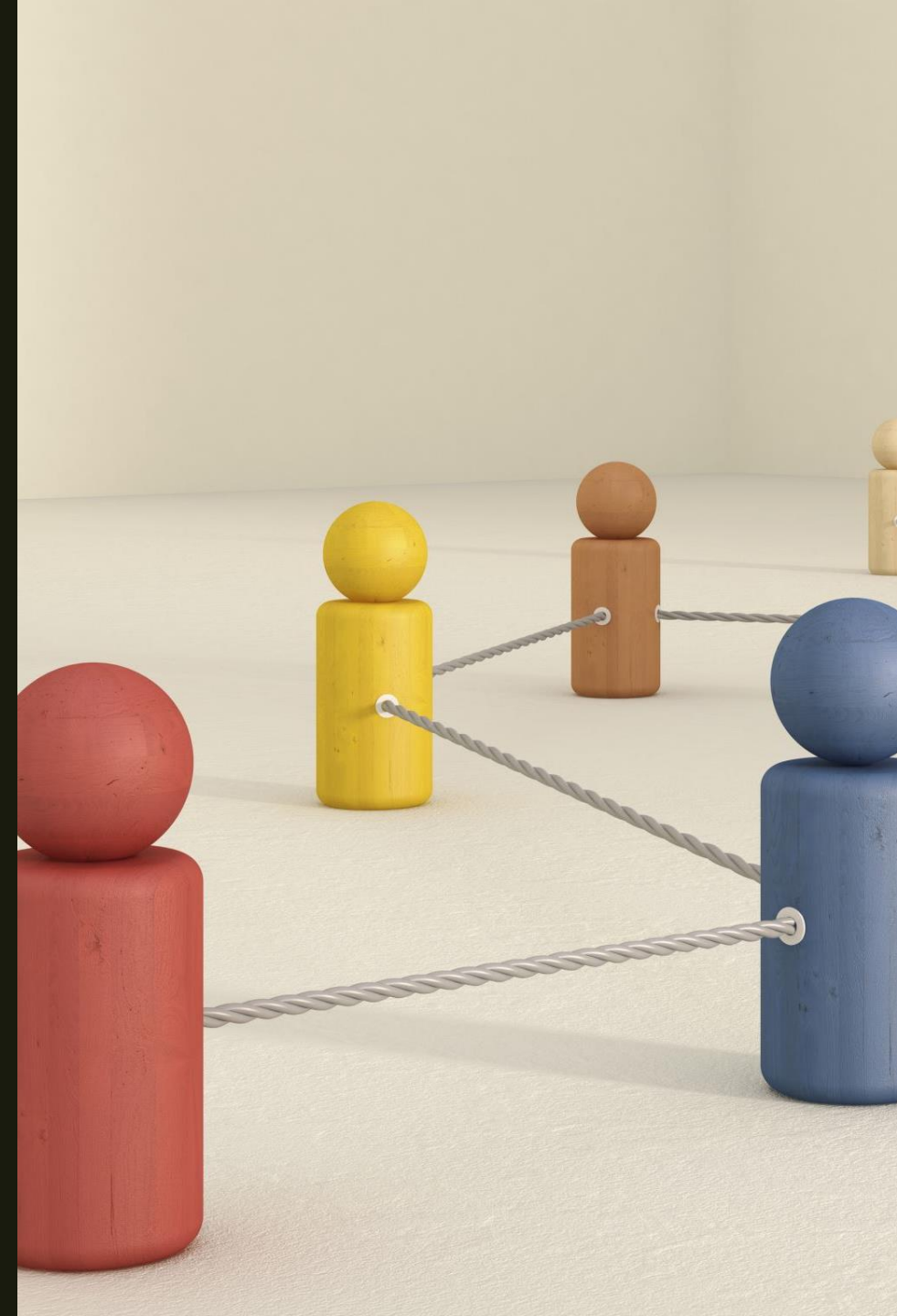
THE PRINCIPLE OF EQUALITY

- In assessing whether a law provides for gender equality, the substantive approach requires the court to look at the effect or impact of the law and not whether the law is applied to all who are similarly situated (formal equality).
- In eschewing formal equality, McIntyre J in **Andrews v Law Society of British Columbia**, [1989] 1 SCR 143 held that formal equality could lead to grave injustices and defeat the spirit of the equality provisions. Equality is not about treating everyone the same, and that gender cannot sometimes be put aside in adjudication of cases.

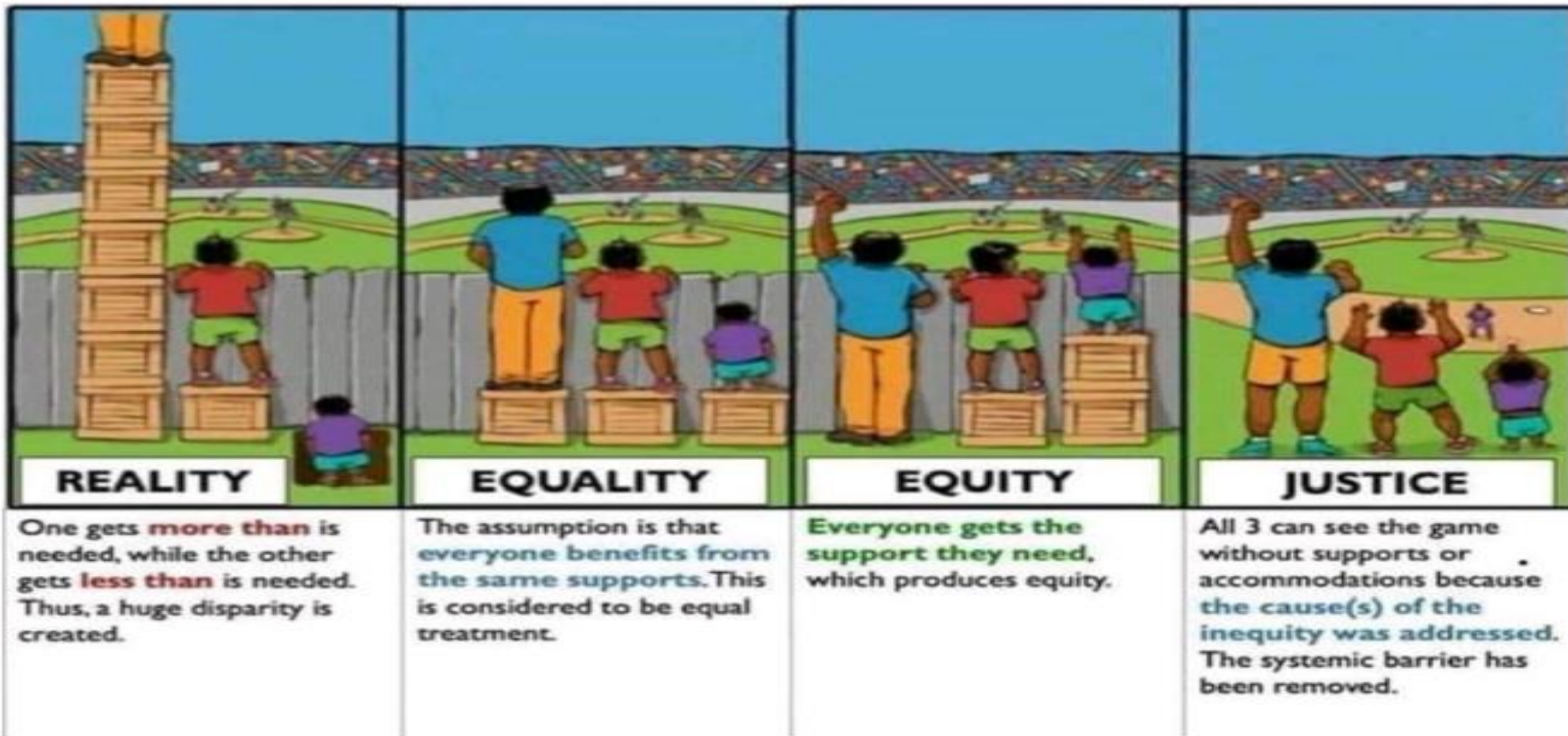


THE PRINCIPLE OF EQUALITY

- In cases where a structural barrier denies individual access to resources or opportunities, treating everyone the same (formal equality) may produce unfair outcomes and fail to achieve the goal of providing equality of opportunity to all.
- This is because the different abilities and social positions of individuals will affect their ability to benefit from the same measure designed to guarantee access for all.

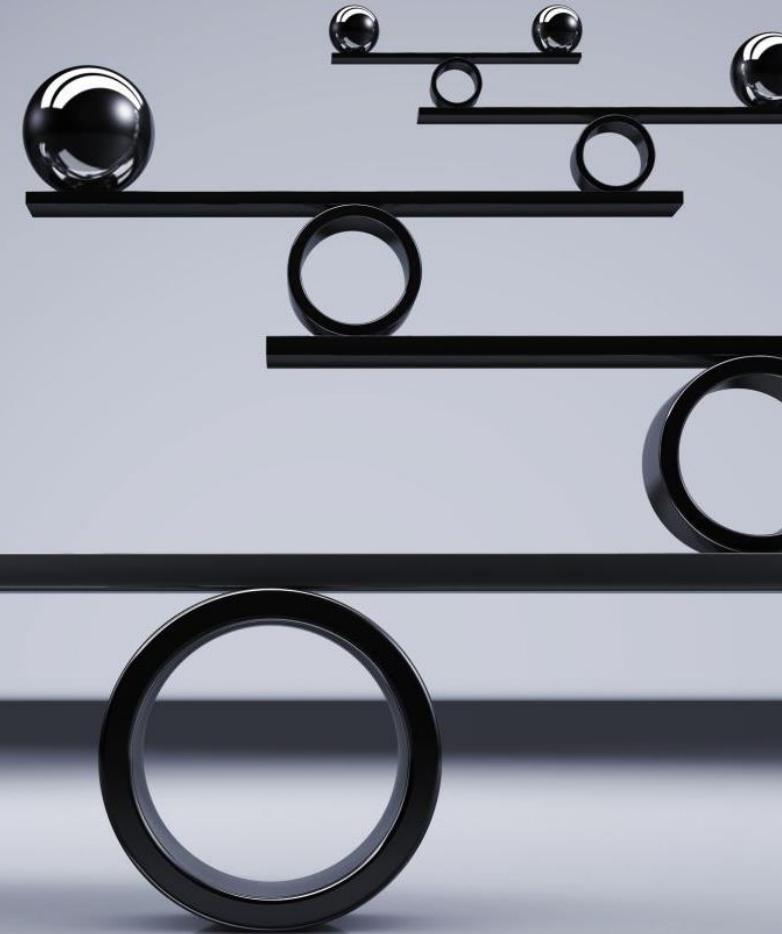


THE PRINCIPLE OF EQUALITY



THE PRINCIPLE OF EQUALITY - POWER

- Power is the ability to influence events, outcomes or the actions of others.
- Power, and how it is distributed, have significant impacts on the ability of parties to a dispute to benefit from legal mechanisms designed to administer justice equitably.
- It is therefore very important for Judicial Officers to be aware of the power relations between the parties in a dispute.





THE PRINCIPLE OF EQUALITY - POWER

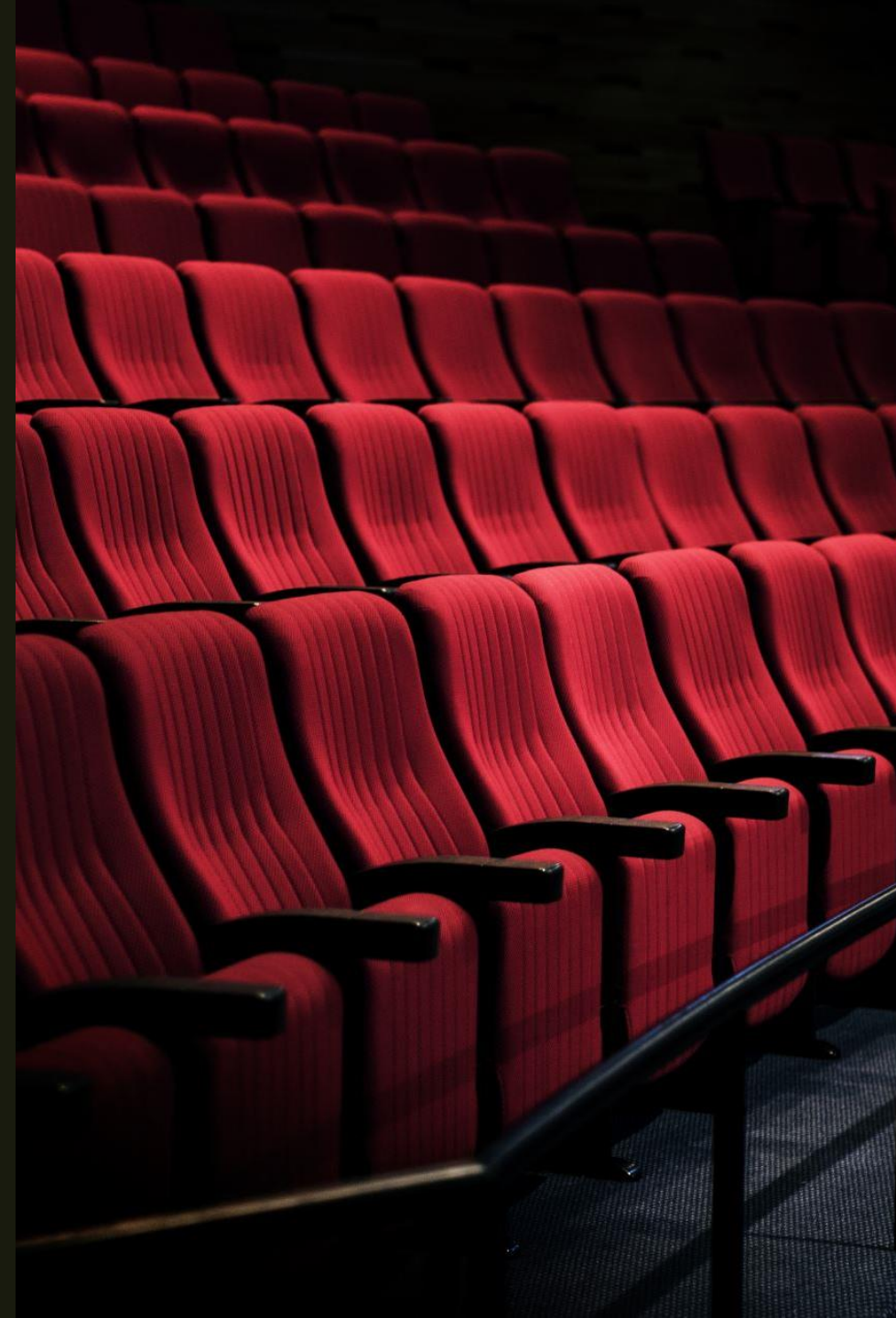
- Power does not exist of itself. It comes from having a resource to use as a lever to help get what you want. In most cases, power involves an ability to utilize wealth, authority, violence or superior knowledge.
- Rarely, if ever, will power be equally balanced between the parties to a dispute.
- Judicial Officers should always endeavour to recognize imbalances of power between parties and, where appropriate, treat that imbalance as an important factor in dispensing justice.

EXAMPLES OF SITUATIONS WHERE POWER IMBALANCES EXIST

- Where one party has personal skills/resources substantially greater than the other
Example: A custody dispute between an eloquent and wealthy father and an unemployed mother from a low-income community.
- Where one party has detailed technical knowledge/information not held by the other.
Example: A child support dispute where one side is represented by an experienced lawyer and the other side is unrepresented.
- Where one party is perceived to have higher status
Example: A dispute between a well-off, middle-aged businessman and an unemployed youth or a poor aged widow.
- Where one party is intimidated/threatened by the other. Example: A 12-year-old as a complainant in a sexual assault case involving her step-father as the alleged perpetrator; or an applicant bringing a protection order application against a partner on whom the applicant is economically and psychologically dependent.

Problem 1

■ In the courts, the judicial officer sits as a monarch – literally on a throne looking down at her or his subjects. This can be – and is in fact orchestrated to be – intimidating for victims seeking redress. Having already lost their power and agency, victims are thrown into an arena where they are again made to feel dominated and inept.

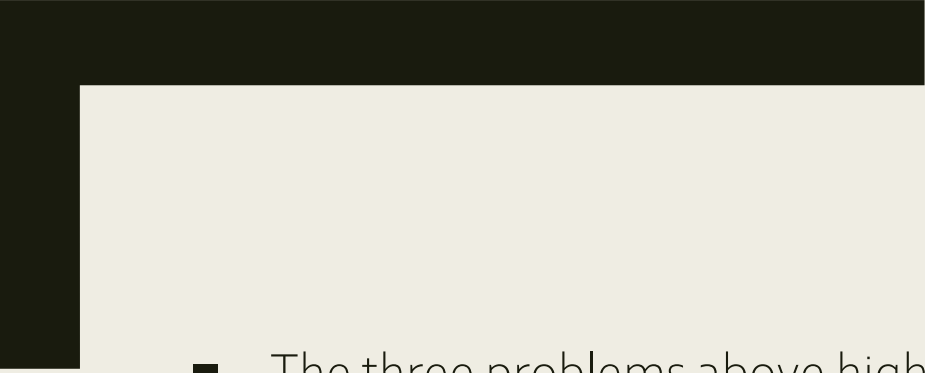


Problem 2

- The practice of HUMILIATION OF LITIGANTS is an ordinary part of people's experiences in the courts, especially where parties are unrepresented.
- The Judicial Officer's power goes largely unchecked in these circumstances. While the law should circumscribe the Judicial Officers' actions, the unrepresented litigant will hardly have the knowledge or wherewithal to challenge the Judicial Officers exercise of her/his authority. The court setting becomes a space within which the Judicial Officer (the power-holder) can humiliate and dictate without repercussion.

Problem 3

- Being unable to tell one's story, or to tell it only partially, is a very common experience for litigants in lower courts. This results in the voices of the victims/parties seeking redress being silenced. Silencing also occurs when the parties/victims are given the opportunity to speak but the content of the message is ignored or trivialized. Silencing reinforces the parties' or victims' powerlessness.

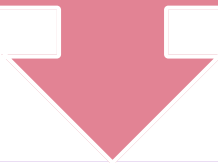
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- The three problems above highlight how a Judicial Officer's power can be used to demean, perpetuate oppression for and severely undermine the dignity of the persons seeking protection under the law. It is therefore incumbent on Judicial Officers to exercise their power in a manner that recognizes the inherent dignity of everyone regardless of status.



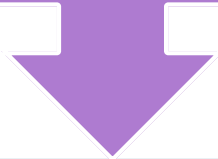
IMPORTANT TO NOTE



Recognising the right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. Recognition of human dignity will mean, for example, that:



In family matters and cases of gender-based violence, Judicial Officers can make the courtroom less intimidating by sitting on the same level as the victims/parties, hearing the case in-camera, removing their robes for child witnesses and using the language of the victims/parties.



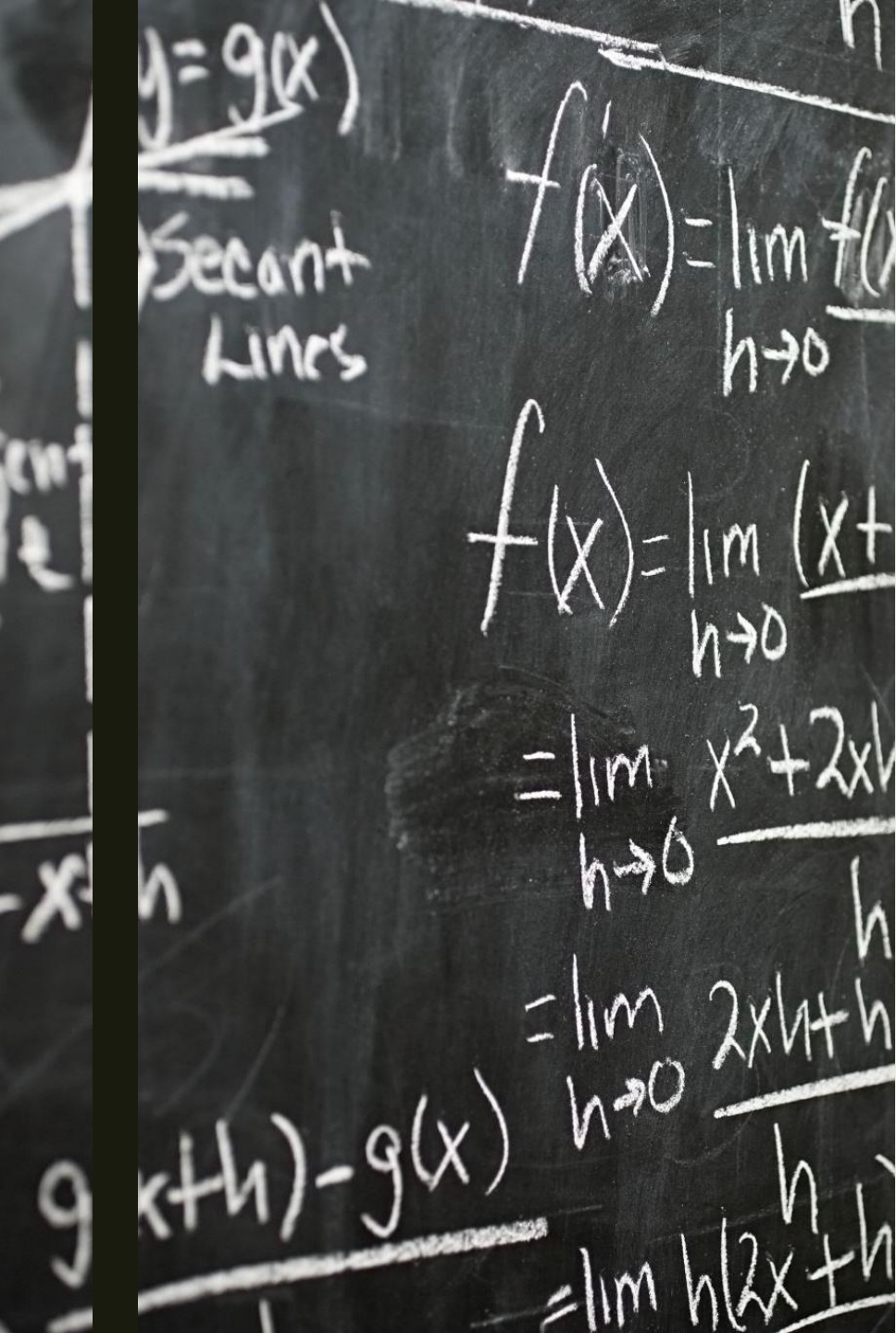
Judicial Officers will foster an environment within which the parties can tell their stories without fear of being mocked or ridiculed.

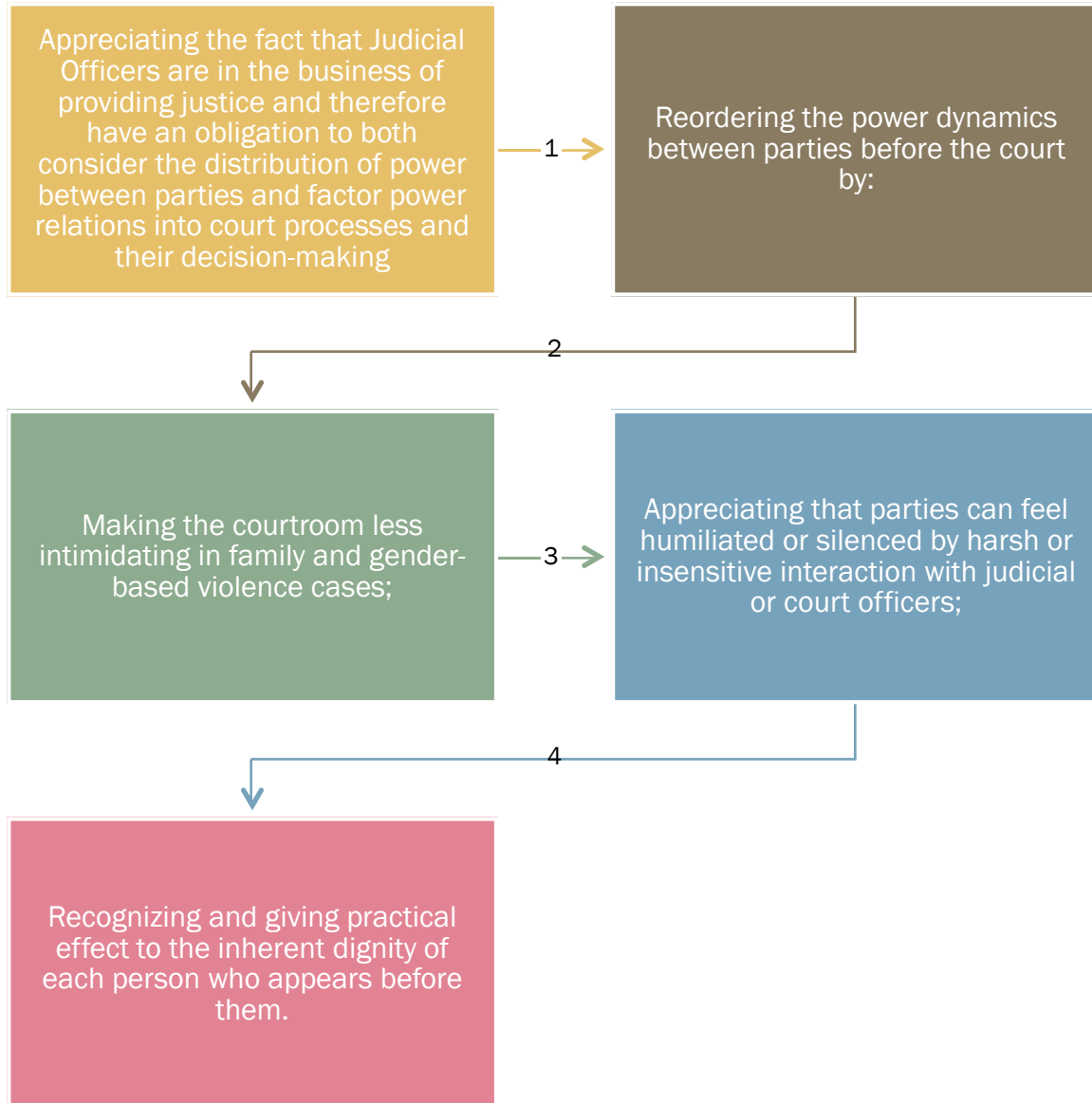
IMPORTANT
TO NOTE

RECOMMENDATIONS ON APPLYING THE PRINCIPLE OF EQUALITY

Judicial Officers should strive in their judicial decision-making to incorporate a substantive approach towards equality, which consists of:

- Understanding that gender equality does not mean we always treat women and men the same or that we use a “mathematical formula to calculate and achieve absolute homogeneity”;
- Embracing the difference between women and men in society, and recognizing that justice lies in appropriate differential treatment to achieve equal opportunities for all;
- Ensuring their decisions result in gender-equitable outcomes by considering the historical disadvantages women have and continue to face in accessing justice;





RECOMMENDATIONS ON APPLYING THE PRINCIPLE OF EQUALITY

NON-DISCRIMINATION

Commitment to the principle of non-discrimination is a necessary step towards achieving gender equality.

The principle of non-discrimination, is reflected and guaranteed by Article 21 of the Uganda Constitution. Article 21 (3) specifically provides that: -

“For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.”



NON-DISCRIMINATION

- Prohibition against discrimination thus prohibits laws (and practices) that differentiate between people based on their inherent personal characteristics and attributes.
- Notably, not all differentiation breaches the principle of non-discrimination. Certain social and biological realities may make it justifiable to treat people differently. For example, creating special ramps for the disabled to access buildings amounts to differential treatment. However, this does not breach the non-discrimination principle as it serves a reasonable purpose and promotes equality of physical access to building sites.
- Similarly, providing sanitary bins in female only public bathrooms is a differentiation that is justified based on the special needs of women – needs that men do not have
- On the other hand, failure to install ramps for the differently abled to access public buildings leads to discrimination. This omission creates a disadvantage, as it is significantly harder for someone in a wheelchair to get up two flights of stairs than it is for an able-bodied person and a decision to remove sanitary bins from a public bathroom would amount to discrimination based on sex since it fails to consider women's biological needs.

NON-DISCRIMINATION

No woman or man is ever defined only by her/his gender identity. Discrimination that has its genesis in gender stereotypes can be compounded if discrimination exists on other fronts. It is therefore important for Judicial Officers to be aware of how gender intersects with other statuses or personal characteristics that create both privileges and vulnerabilities for women and men.

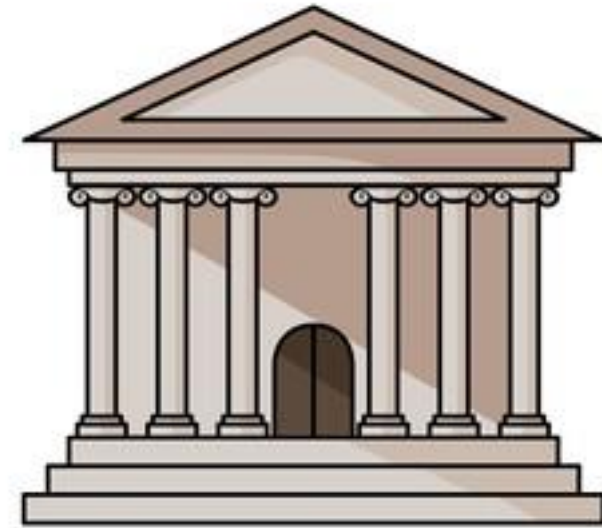
All Judicial Officers to be aware of and to understand diversity in society and differences arising from various sources, including, but not limited to, gender, race, colour, national origin, religious conviction, culture, ethnic background, social and economic status, marital status, age, disability and other like causes.

Keep yourself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of constitutional or other conform to such norms as far as is feasible. This requirement is premised on Article 45 of the Constitution of Uganda which provides that human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned; and Uganda Code of Judicial Conduct principle 6 on Competence and Diligence

STATE OBLIGATION

Judicial Officers are obliged to interpret domestic law in accordance with international standards particularly in area of human rights which include human rights of women.

Uganda is a state party to several conventions and treaties, which promote gender equality, namely:



STATE OBLIGATION

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) The main convention on gender equality is CEDAW, adopted by the United Nations General Assembly in 1979 and regarded as an international bill of rights for women

International Covenant on Economic, Social and Cultural Rights (ICESCR) Adopted by the United Nations General Assembly in 1966 and the main convention on economic, social and cultural rights.

International Covenant on Civil and Political Rights (ICCPR). The ICCPR is Considered the main convention for promoting civil and political rights. This Covenant was adopted in 1966 by the United Nations General Assembly. This is a Convention that Specifically deals with gender equality and the protection of women's human rights.

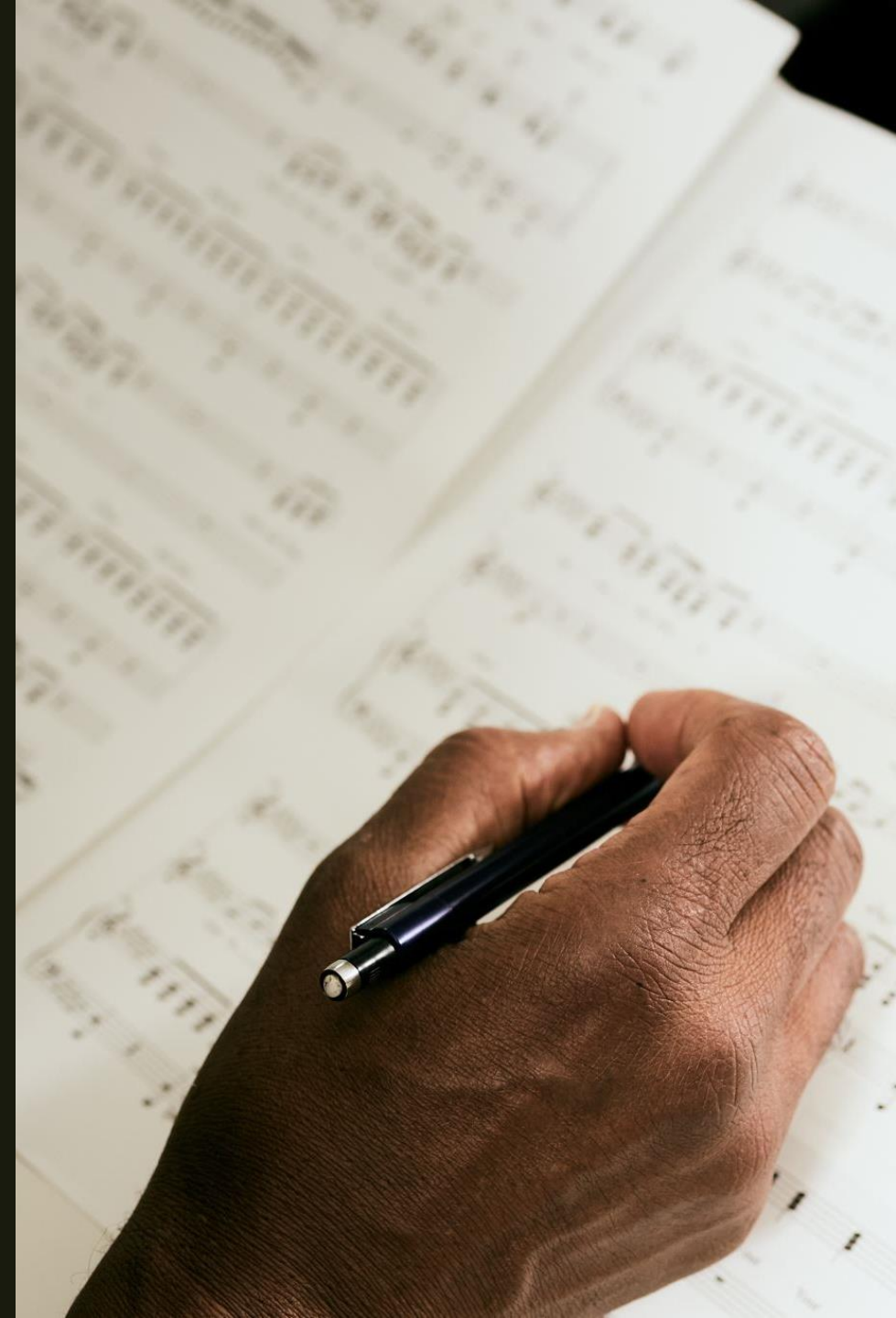
Convention on the Right of the Child (CRC). This Convention was adopted in 1995, and which regulates the prevention, punishment and eradication of violence against women. Human Rights treaty which that sets out the civil, political, economic, social health and cultural rights of children. Adopted in 1989.

United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) The Protocol Commits ratifying states to prevent and combat trafficking in persons, protecting and assisting victims of trafficking and promoting cooperation among states in order to meet those objectives.

STATE OBLIGATION

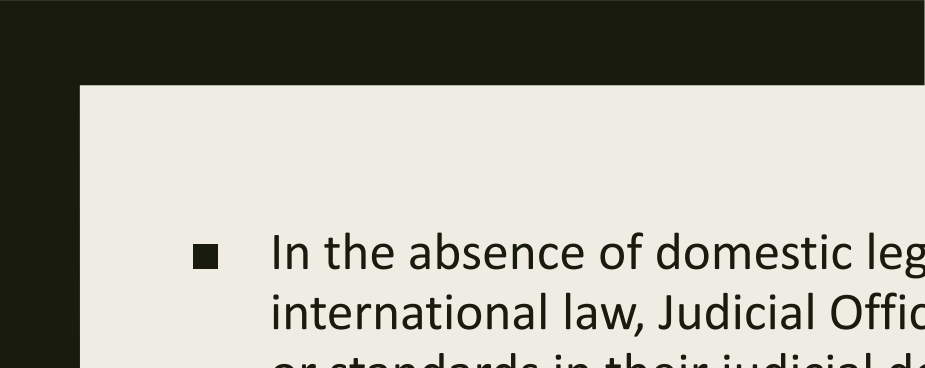

Note: Article 45 of the Constitution of Uganda on Human rights and freedoms additional to other rights which provides that:

- *"The rights, duties, declarations and guarantees relating to the fundamental and Human other human rights and freedoms specifically mentioned in this Chapter (on Chapter 4- Human Rights and Freedoms) shall not be regarded as excluding others not specifically mentioned."*



APPLYING THE PRINCIPAL OF STATE OBLIGATION

- Once Uganda incorporates its international obligations into national law, the judiciary is bound to apply, where applicable, the terms of the international treaty.
- As a source of international law, customary international law is also available to be applied in domestic law, in appropriate circumstances.
- Judicial Officer can cite international treaties and conventions even where the state is yet to incorporate its international obligations into domestic law.
- A judicial officer should follow not only the wordings of the human rights treaties ratified but also their interpretations by the monitoring bodies. **A Judicial Officer should follow the evolution of those interpretations, being in line with the most updated guidelines, recommendations and developments.**

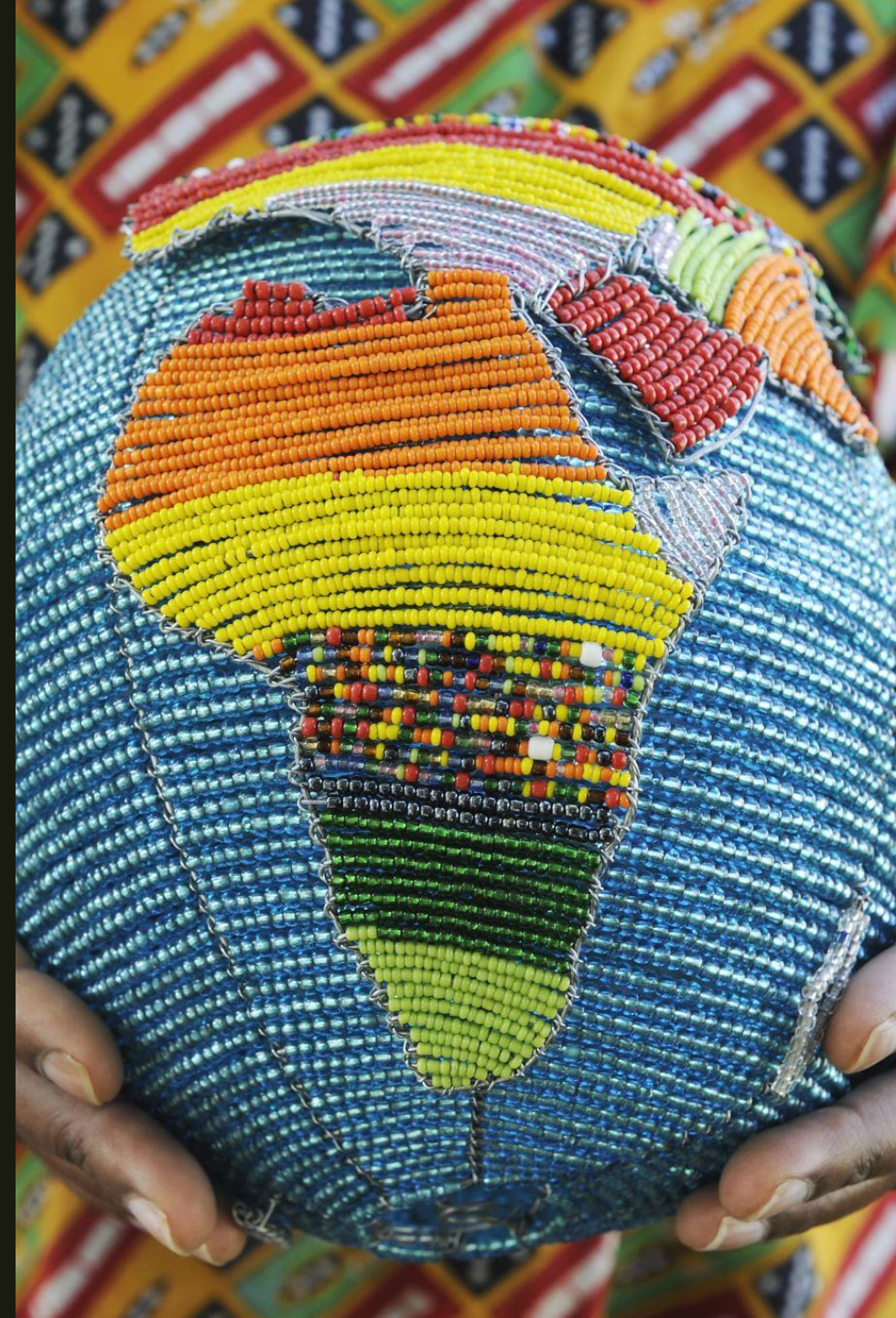
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- In the absence of domestic legislation that is clearly inconsistent with the relevant international law, Judicial Officer can legitimately apply international human rights law or standards in their judicial decision-making in any of the following four ways:
 - To aid in resolving ambiguity in domestic law;
 - As a source of legitimate expectation to rights or benefits created by international law instruments;
 - As an interpretive guide to domestic legislation; and
 - To fill gaps in domestic law.
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APPLYING THE PRINCIPAL OF STATE OBLIGATION



APPLYING THE PRINCIPAL OF STATE OBLIGATION

- SEE Hon. Justice Lydia Mugambe's decision in *CEHURD v. The Executive Director, Mulago National Referral Hospital*, High Court Civil Suit No. 212 of 2013.
- Even though Uganda's Constitution does not explicitly refer to maternal and infant health protections, Justice Mugambe used both the international and regional human rights legal framework to support her decision. She cited instruments such as General Comment 14 of the Committee on Economic, Social and Cultural Rights; General Comment No. 20 of the Committee on Civil and Political Rights; the African Commission on Human and Peoples' Rights Principles and Guidelines on the Implementation of Economic, Social and Cultural rights in the African Charter on Human and Peoples Rights; and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.
- She held that the facts of the case point to a failed health system, implying that the state had failed to fulfill its obligation to ensure the right to health expected of it under the African Charter (with a particular emphasis on the failure to address the needs of rural women).



JUDICIAL IMPATIALITY



Judicial Officers may be affected by hidden or implicit bias in relation to gender and can adopt measures to reduce the negative impact that gender stereotypes and biases can have on outcomes in court cases. **Judicial impartiality does not require Judicial Officers to be devoid of bias. To expect judges to be free of bias is naïve.**

JUDICIAL IMPATIALITY

- It is noted that Judicial Officers are “ensnared by the same prejudices that afflict us all—prejudices attributable to the influences of their gender, ethnicity, and life experiences”.
 - However, all Judicial Officers are expected to practise impartiality in the performance of their judicial function.
 - Cases such as *Uganda v. Apai Stephen* (High Court Criminal Session Case No. 23 of 1994 at Tororo, and in *Uganda v. Peter Matovu, Grim. Sess. Case No. 146 of 2001 (Unreported)* have revealed that Judicial Officers are inclined to **UNCONSCIOUSLY USE MENTAL SHORT CUTS, SUCH AS STEREOTYPING, TO MAKE DECISIONS.**
 - Additionally, research has shown how gender affects Judicial Officers’ decision making in discrimination cases.

JUDICIAL IMPATIALITY

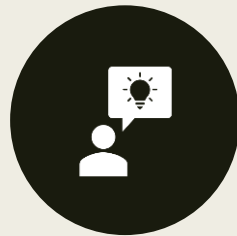
A pair of scales of justice, symbolizing impartiality and fairness. The scales are shown in a light, semi-transparent style against a white background. The central pillar is ornate, and the two pans are suspended by chains. The scales are slightly tilted, with the right pan appearing lower than the left.

- When Judicial Officers make decisions that are affected by stereotypes or biases, which perpetuate inequality, they undermine the integrity of the justice system and its ability to provide just and equitable outcomes.
- The conscious practice of impartiality is necessary to counteract bias and prejudice.

JUDICIAL IMPATIALITY: STEREOTYPES, PREJUDICES, BIASES AND JUDICIAL DECISION-MAKING



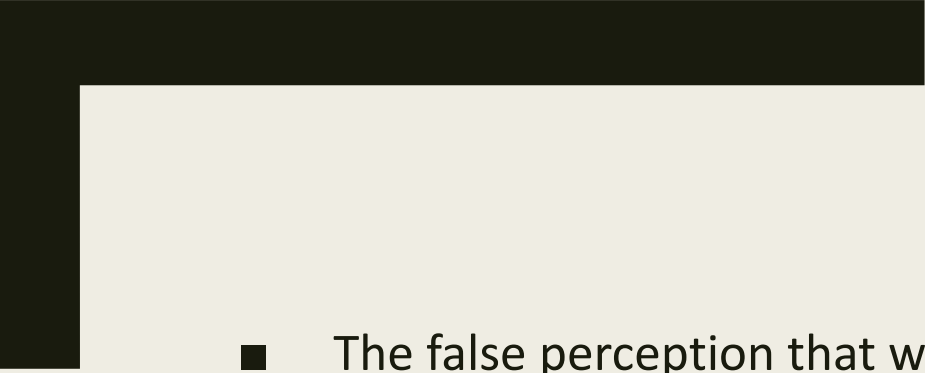

GENDER STEREOTYPES AND IMPLICIT OR EXPLICIT GENDER BIAS IN JUDICIAL DECISION-MAKING CAN SIGNIFICANTLY IMPEDE WOMEN'S AND MEN'S RIGHTS TO ACCESS JUSTICE.



GENDER BIAS, WHETHER CONSCIOUS OR UNCONSCIOUS, IS PROBLEMATIC WHEN IT INTERSECTS WITH PREJUDICES REGARDING OTHER SOCIAL IDENTITIES AND STATUSES SUCH AS SOCIO-ECONOMIC STATUS.



IN SOME CONTEXTS, IT IS BELIEVED THAT WOMEN SHOULD GENERALLY BE GIVEN CUSTODY OF CHILDREN AND THAT A MAN'S PRIMARY ROLE IS TO PROVIDE FINANCIAL SUPPORT FOR HIS FAMILY. NOTWITHSTANDING THIS, JUDICIAL DECISIONS SHOULD REFLECT THE PECULIAR FACTS OF EACH INDIVIDUAL CASE AS WELL AS OTHER FACTORS RELEVANT TO THE WELL-BEING OF THE CHILD.

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- The false perception that women who dress in skimpy clothes were more likely to be sexually assaulted. This is a stereotype that operates to blame the survivors of sexual assault and tends to absolve perpetrators of the responsibility for their actions.
 - Judicial Officers should be vigilant in ensuring such stereotypes are not the basis for their decisions. These false beliefs and perceptions reflect deep seated stereotypes regarding the 'proper role' of men and women.
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**JUDICIAL IMPATIALITY: STEREOTYPES, PREJUDICES, BIASES AND
JUDICIAL DECISION-MAKING**



JUDICIAL IMPATIALITY

What it means to be impartial	Why impartiality is important
<p>Judicial impartiality demands, at a minimum, that a judicial officer:</p> <ol style="list-style-type: none">1) is aware of her/his own prejudices and biases; and2) thereafter puts in place measures to ensure a fair-minded and informed observer could not reasonably deem her/his judgement to be partial.	<ol style="list-style-type: none">1) To preserve public confidence in the courts and administration of justice;2) To ensure procedural fairness for parties in the litigation process;3) To ensure Judicial Officers conduct themselves honourably and ethically.

Non-exhaustive list of stereotypes about men and women

Type of stereotype	Definition	Example of Stereotypes
Sex stereotype	Based on physical and biological differences between women and men	Women, by virtue of having a womb and the ability to give birth to a child, are “naturally” better nurturers and care-givers.
Sexual stereotype	Based on perceived sexual predispositions that women or women are believed to have, as well as on ideas about sexual interactions between the sexes.	There is nothing wrong with men having several sexual partners but a woman must be chaste. Women are seen as sexual objects existing solely for male pleasure.
Gender-role stereotype	Based upon on roles or behaviours attributed to, and expected of women and women, arising out of social and cultural constructions or physiology	Within the family, men should be the primary financial providers, while women should be the primary care-givers for children and should take care of domestic matters.

THANKS FOR LISTENING!