



**Title of Session: Plenary Session: Eliminating Gender Bias in Adjudicating**

**Session Chairperson: Ms. Anika Gray**

**Session Panellists:**

**The Hon Mme Justice Jacqueline Cornelius** – High Court Judge, Barbados

**The Hon Mme Justice Vivene Harris** – Supreme Court Judge, Jamaica

**The Hon Mme Justice Lisa Ramsumair-Hinds** – High Court Judge, Trinidad

**Master Carl Quamina** – Trinidad and Tobago Judiciary

**Magistrate Sunil Scarce** – Magistrate, Guyana

**Objectives of Session:**

At the end of this session, participants will be able to

- Explain the impact of gender bias, especially when it intersects with other biases, on the adjudication process;
- Outline the process involved in developing the Gender Equality Protocols and the roll out of the subsequent gender training, and
- Illustrate how both the Protocols and the gender training have impacted the way judicial officers adjudicate.

**Key points from presentations (state who presented and their key points):**

The session chairperson, Ms. Anika Gray opened the session saying that the Forward written by Justice Judith Jones from Trinidad and Tobago states that the world is changing and in this vortex of changing norms etc. we are tasked with the responsibility of enforcing justice. The concept of enforcing justice is much more than applying the laws and computers can do that. It is about to applying to cases before us to protect vulnerable and ensure equality of results for all before us.

JURIST has worked with UN Women to develop Gender Protocols to help judicial officers recognise and identify the judicial bias and also to raise sensitisation. At present, Barbados has received draft protocols to create their gender protocols. Belize and Trinidad have created and launched their own gender sensitivity protocols.

There has been training in Belize, Barbados, Trinidad and Guyana to help High Court justices understand how to properly administer justice without gender biases or how to minimise the gender issues. There is much more work to be done to have comprehensive development in the justice system but with the support of JURIST, the Caribbean remains committed to providing a much more favourable system for all.

### 1. Magistrate Sunil Scarce

- Access to justice is a conceptual notion that has evolved over time. In older days the focus was on the means through which persons have accessed the court to protect their legal rights. Now, the system is concerned with ensuring that the legal outcomes themselves are equitable and encompass processes to ensure that the system is sensitive and responds to need of both men and women.
- CEDAW General Recommendation 33 identifies 6 distinct factors which should be applied when dealing with access to justice. Women should have unhindered access to justice systems which is affordable for them.
- The justice system should adhere to international standards of competence, efficiency, impartiality etc. There is a requirement that remedies are capable of protecting women and evaluating others.
- In Guyana, they are making strides to achieve these 6 components. Much like Belize, the geography of Guyana is vast and in relation to building courts, new magistrates courts are set up on an almost annual basis to ensure there is compliance with one of those essential components. However, efforts are being made to ensure accessibility. There was a Magistrates Courts training session that focused on gender issues and as a result the 2018 conviction rate for GBV in Guyana was 60 % which was an increase from previous years. This progress has been assisted by the Protocols and the support of JURIST etc.

### 2. Justice Vivene Harris

**Facilitator prompt - Ms. Anika Gray:** Geography was mentioned by Magistrate Scarce as a barrier to access to justice but disability is also one. Comment.

**Justice Harris:** On Monday 28<sup>th</sup> October 2019, there was an article in The Gleaner entitled 'Disabled Woman Fumes Over Treatment at Family Court'. This woman could not gain access to the court building because the door was not wide enough for her wheelchair. Every time she attends the court, the staff has to find ways and means of getting her into the building. On this occasion they could not open the usual door and the lady sat in the sun for an hour. Then, on this occasion she could not get into the actual court room and the judge had to leave the court room and go into a special court to accommodate her. The challenge is that many of the existing courthouse buildings were built in the days when persons with physical difficulties perhaps were not even thinking of access to court. However, there is not all doom and gloom of courts in Jamaica as the Supreme Court has amenities and ramps for disabled persons.

### 3. Justice Lisa Ramsumair-Hinds

**Facilitator prompt – Ms. Anika Gray:** The courthouse is heavily used by women including female judges therefore gender equality in that sense is not an issue. Comment.

**Justice Ramsumair- Hinds:** Gender equality is both material and ideological. On the face of it, the numbers are favourable. A 2017 document published by the CCJ spoke about parity in the Caribbean and how it is often achieved and exceeded. In some countries the percentage of women on the bench may be between 30-60 %. Using Guyana as an example, the Chancellor is female, the Chief Magistrates, 3 principle magistrates and the majority of magistrates and judges are women.

However, the question remains, is it enough to just have numbers? Is it more than a question of just pushing numbers; should we say that we haven't achieved equality unless we have an all-female Heads of Judiciary meeting or an all-female Court of Appeal body? Is that equality or will we stop caring if it is an all-female appellate bench? It is ideologies that we use when measuring so that we still name an office by gender? Are we still going to say then when assessing a judge's capacity "she writes well but her skirts are too short"?

The more complex question is are we forgetting the men? This is where I think our gender argument is evolving. Domestic Violence is no longer in the bedroom, we have the outrage and umbridge that is needed to make progress. While it is no longer said that a man cannot rape his wife we are still suffering from certain ideological problems, ideas and ideologies questions. We have gone from talking about women's issues to speaking about gendered histories as opposed to women's ideologies. We now recognise that it isn't just a situation of the patriarchy oppressing women but now based on the social factors that are present, we recognise that social issues oppress some women more than others.

Patriarchy more acutely oppresses some men than some women. So gender equality is forcing us to confront the fact that the social issues have offended some men more and it is these social issues that leave men behind. Therefore, we need to unlock the gender box and start to understand VIP (Vulnerabilities, Inequalities, Privileges) Assessment based on how we define gender.

#### 4. Justice Jacqueline Cornelius

**Facilitator prompt – Ms. Anika Gray:** The situation on gender equality discussions and their assumptions is that the promotion of gender equality is considered part of the gay agenda. Why is this the case? Is this a bad or good thing?

**Justice Cornelius:** We have to ask ourselves what is a gay agenda. If this means to give to all the full extent of the rights of persons which are due under the constitution then yes, this is a gay agenda. If it is to give these rights to all poor people or all marginalised people then yes.

We first need to interrogate the term 'gay agenda' and look at it on a whole and not just in our tiny societies. The fear that many express about the term 'gender' and 'gender sensitive

adjudication' is a contempt for what society regards as feminine characteristics and the feminist sphere which we tend to denigrate. This is evidenced in the way that women who sew are seamstress but who sew are designers; women who cook are cooks, men who cook are chefs .

To my mind this is saying that there are characteristics that one half of the society holds that allows them to dominate. Not that we are promoting any particular kind of lifestyle but by increasing the universe of rights that every human is entitled to, that is an agenda worth pursuing and under the constitution and the law we must enhance that access.

5. **Justice Harris:** I was reading a paper authored by Tracy Robinson from the 3<sup>rd</sup> Biennial CAJO Conference which said that the notion of gender captured not only judicial expectations about what is male and female but also expectation that we must be male or female. Persons who fall short of this could find themselves demeaned because of sexual identity etc.
6. **Facilitator prompt – Ms. Anika Gray:** How do we provide for marginalised and vulnerable groups?

**Justice Jacqueline Cornelius** –As a woman in a powerful position I might say that I am as capable as a man but I am also all woman, identifying with my clothing, jewellery, heels etc. What this means is that while this woman is saying 'I am exercising leadership in feminist sphere, I also value the traditional identifiers of femininities' The question remains, do I have to use these traditional markers to be considered woman and to be considered effective?

**Magistrate Sunil Scarce:** The Guyanese judiciary wasn't always female dominated. Getting to this stage was a process. Even now, equality isn't only represented by equal access to jobs but it also looks at equal pay and equal access to justice etc.

7. **Facilitator prompt- Ms. Anika Gray:** As we look at marginalisation we see that bias also needs to be considered. Justice Harris, you were among the first persons trained through the CAJO and JURIST/UN Woman collaboration. How is gender bias impact the administration of justice in the court when it intersects with other social biases?

**Justice Vivene Harris:** Training on gender sensitisation brought home strongly to me the harmful effects of gender stereotypes on the administration of justice. For example, with regard to sexual offences. In the past, when I was practicing as prosecutor, I cannot recall whether the learned judges would direct defence counsel to the harmful gender stereotypes which they are using.

Shortly after I received this gender training, I was presiding over a date rape case where the parties had met on social media and had a short online courtship. The female suggested that they meet in person and they met up 'for drinks'. Upon meeting, the gentleman lured the lady to a motel room under false pretences and raped her. As a result of the training, I was able to craft my summation to the jury around gender stereotypes in such a way that it refocused them on the issues at hand to determine consent. The jury subsequently returned a guilty verdict. The training enhanced my ability to address harmful suggestions and biases about what it means to be male/female.

**Justice Jacqueline Cornelius:** Comment that those same directions given in that case by Justice Harris could have gotten a not guilty verdict. The result of guilty or not guilty is not the concern of the judicial officer. What is our concern is that when information is placed before a jury, the judicial officer has a duty to instruct them with regard to harmful stereotypes that can deflect their thinking away from the issues at hand. The Caribbean is late in the day because the countries like Australia where our legislation, particularly the Evidence Act in the case of Barbados has long addressed these issues as a matter of course. Barbados has now started to do this as well.

**Justice Lisa Ramsumair-Hinds** – In cases for example where a sex worker is brought on indictment for rape, judicial officers have to find a way to craft their directions to inform jury against suggestions that the female cannot be raped because this is an 'occupational hazard'. The purpose of training is for us as judicial officers to change our thinking.

An example was given of custody instances where the facts might not be as straight forward as the mother is better for a child's wellbeing. In one instance, the mother of a child had passed away and the grandmother was seeking custody of the child from their biological father. The defence advanced the case on the premise that any feminine person, a grandmother, a grandmother or even an aunt is better to raise a child than a father, even a biological father.

There are also entities such as the Single Fathers Association in Trinidad and Tobago which suggesting to the public that if you bring a family case before a female judicial officer as a male, you have no chance of success. These realities signify that judicial officers have to consider their own internal nuances.

- 8. Facilitator prompt- Ms. Anika Gray:** We now want to talk about the Gender Equality Protocols which have been created through the collaboration between UN Women and CAJO etc. Trinidad was the first CARICOM Country to launch their protocols. They were closely followed by Belize. In Trinidad, what was purpose of this Protocol, how was developed and what is subject matter?

**Master Carl Quamina:** The Protocol is a guide for judicial officers to assist them in adjudicating matters. It tries to get them to focus on how they treat with and analyse

evidence. It could be compared to a magnifying glass which they would hold over the evidence to see it through a different lens. The process started with a basic template which Trinidad received from CAJO/JURIST. The involved parties in Trinidad then sent a basic draft to judicial officers for their feedback. A working group which was headed by Justice Jones of the Court of Appeal, Trinidad and Tobago dissected the draft and worked on individual portions. The draft was then reassembled and critiqued by young people.

Following the completion of their Protocol, Trinidad made various checklists which are disseminated as a simple way of informing the public about how international principles apply to domestic law in this area. This was not an easy process and required someone at the helm to oversee it. The final protocol encompassed personal experiences of judicial officers, local jurisprudence and the voice of young people who gave their ideas.

9. **Facilitator prompt- Ms. Anika Gray:** Like all public institutions, the judiciary is subject to the demands of higher institutions and accountability. Officers from different countries have now participated in the gender sensitisation training but how does judiciary intend to hold its officers accountable in terms of the Protocol?

**Master Carl Quamina:** Trinidad and Tobago proposes to have questionnaires which will be disseminated to the public as well as judicial officers for their feedback. This feedback will then be mapped and will ask judicial officers to be accountable for themselves and their colleagues. Most colleagues share that when training is done, there are existing stereotypes which individuals might not have previously been aware of. An individual juridical officer might think that they are being fair without being aware of your own biases and the views of the public. The potential questionnaires gives the public a chance to assess the judicial officer and for them to assess themselves.

**Justice Lisa Ramsumair-Hinds :** The Opening Ceremony of this CAJO Conference was tailored to include all persons who rely on the court and to remove existing biases. It also addressed the fact that there are many types of litigants coming before judicial officers. While everyone may have responded to the cuteness of the children, everyone needs equal access to justice.

**Questions and Responses (note who asked the question, their jurisdictions, and key points from the response/discussion):**

**Comment: Justice Singh, Guyana –** We shouldn't be talking about gay rights or women's rights but about human rights therefore creating a gender blind judiciary.

**Comment and Question: Justice Taylor-Alexander, Eastern Caribbean Supreme Court-** I commend Guyana for including provisions within their Constitution. I was reading it and noted that despite the existence of CEDAW, the Constitution has provisions on access to justice, particularly anti-discrimination provisions and goes on to identify persons who could be discriminated against. Unfortunately, the definition given of discrimination is in itself discriminatory. It says you can afford different treatment to individuals but we all understand that equality means different treatment to different persons to achieve the same outcome. Therefore, how are these differences reconciled to achieve access to justice?

**Response: Magistrate Sunil Scarce, Guyana-** I am not sure that I am in a position to speak to what the draftsmen of the Constitution might have been contemplating but ultimately the aim is to achieve substantive equality and if we don't treat people differently who deserve to be treated differently, then we are avoiding this.

**Response: Master Carl Quamina, Trinidad and Tobago-** This is why justice sometimes might not be blind. We have to see and recognise the differences in persons who come to court. We also have to recognise that sometimes the people who we serve are different.

**Comment: Judge Virginia Kendall, Chicago-** Commended the panel for the discussion and acknowledged that the Caribbean is far advanced in terms of its integration wants to commend panel but talking about how far ahead of the US the Caribbean is in terms of its integration. In the US , only 30% of the members of the bench are women and under the present administration 78% of federal court bench is white men.

Expansion beyond gender training but there is also a need to look at the vulnerabilities and give examples of trafficking and what trafficking specifically looks like. The more we recognise that we as the judiciary make up the one place that can be blind to vulnerabilities then we will be far ahead of where we need to be.

**Response: Justice Jacqueline Cornelius, Barbados-** Our ability to solve problems in justice system without barriers and discrimination as well as the individual and institutional characterisation is important and is the basis of access to justice. We have spoken at length in the last few days about accountability. Accountability is an integral part of access to justice. The judiciaries must ensure that courts are accessible and that no legislative or other barriers exist. All of this is access to justice.

If we do not set up standards of accountability, they will be imposed upon us, usually by sources which we do not care to be under their spell. It is important for judicial officers not to be afraid of terms like gender and to understand that the position of judges neither insulates us nor prevents us from holding destructive biases which we display in court and in ordinary conversations in our lives.



We have a duty to engage in introspection and interrogate biases. Most of us on the judiciary have come from positions of powerlessness and are only powerful because we have been elevated/appointed to those positions. Many judicial officers have achieved legitimacy by virtue of education. We must ensure that we don't mirror the levels of discrimination in society when dealing with situations.

We must open our minds to our judicial functions. Do not be blind to what is appearing before you but confront what is appearing before you and deal with it justly.