



GENDER-SENSITIVE COMMUNITY-BASED



Leadership and
Self-Deception

JULY 2023


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ACKNOWLEDGEMENT


The Avocats Sans Frontières (ASF) in Uganda developed this manual through a consultative process with local communities, local leaders, community-based mediators and civil society organisations. The following consultants facilitated the process: Ismael Ochen Ochen, Jimmy Ochom and Salume Ofwono. Developing this manual was an activity of the project “From Access to Equality (FATE): Empowering Women to Access Justice in Uganda”, funded by the Kingdom of Netherlands. ASF acknowledges the FATE project and financial assistance from the Kingdom of Netherlands. ASF also recognises Karamoja, Bunyoro and Acholi communities for participating in the consultation process for developing this manual.

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ADR	Alternative Dispute Resolution
ASF	Avocats Sans Frontières
CADER	Centre for Arbitration and Dispute Resolution
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CDO	Community Development Officer
DVA	Domestic Violence Act
EOC	Equal Opportunities Commission
FATE	From Access to Equality GBV Gender-Based Violence
HRBA	Human Rights Based Approach
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
LC	Local Council
MDA	Ministry, Department and Agency
NAP	National Action Plan
NGOS	Non-Governmental Organizations
PWDS	Persons With Disabilities
SDGS	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNATU	Uganda National Teachers' Union
UNCITRAL	United Nations Commission on International Trade Law
UNSCR	United Nations Security Council Resolution
UNSCR	UN Security Council Resolution
UPEU	Uganda Public Employees' Union
UWONET	Uganda Women's Network

1. INTRODUCTION

1.1 About the Manual

The Gender-sensitive Community Based Mediators' manual was developed by Avocats Sans Frontières (ASF) as a simple and easy-to-use booklet to guide community-based mediators in dispute resolution. ASF is an independent international non-governmental organisation founded in Belgium in 1992, with the mission to contribute to the establishment of institutions and mechanisms that allow for access to independent and impartial justice which can guarantee the protection of fundamental rights (civil and political, economic and social), including the right to a fair trial. For more than 20 years, ASF has implemented programs to facilitate access to justice for the most vulnerable population in fragile states or transition contexts.

This manual describes how community-based mediators can provide mediation services following a gender-sensitive approach. This manual was developed based on the mediators' training handbook developed in 2018 and a gender-sensitive mediation training addendum of 2021. The review of the training manual is intended to update and reflect the learnings collected during the project and to develop further aspects of the mediators' practice.

This manual aims to empower community-based mediators in the project areas in which ASF and its partners support community-based mediation in Uganda to conduct effective alternative dispute resolution through mediation. This manual can be used in several contexts of community-based mediation by local people as mediators.

This manual explains the concept of gender-sensitive community-based mediation, negotiation and conciliation as forms of Alternative Dispute Resolution (ADR). It also discusses gender-sensitive conflict analysis, defines conflict, components of conflict, conflict resolution, causes of conflict, and recognising and dealing with power in conflict resolution. The manual also outlines international and national legal frameworks for ADR and gender-based actions that provide the legal basis for community-based mediation. Furthermore, this manual expounds on a step-by-step process of conducting a gender-sensitive mediation and presents how gender can be mainstreamed. In addition, this manual outlines mediators' qualities and code of conduct and critical skills and techniques they should apply. Finally, the referral process and pathways are also outlined in this manual.

1.2 How the manual was developed

Avocats Sans Frontières in Uganda developed this manual through a consultative process with various stakeholders, including local communities, local leaders, community-based mediators and civil society organisations. The manual was developed as part of the initiative of the project "From Access to Equality (FATE): Empowering Women to Access Justice in Uganda", funded by the Kingdom of Netherlands.

The users of the previous manuals and other stakeholders were consulted and provided their views on what worked well and what did not work well and conclusively provided sufficient areas of improvement. A review of related documents backed this process to collect secondary information for incorporation in the manual. The documents reviewed included the community-based mediators' handbook, the addendum, project reports and the latest updated literature related to ADR in practice.

1.3 Target Users

This manual has been developed to effectively empower community-based mediators to resolve conflicts in the communities. The primary users of this manual will be community-based mediators and other stakeholders who engage in conflict resolutions in the communities. This may include but is not limited to Traditional/Cultural Leaders, paralegals, Local Council leaders, opinion leaders and other agencies.

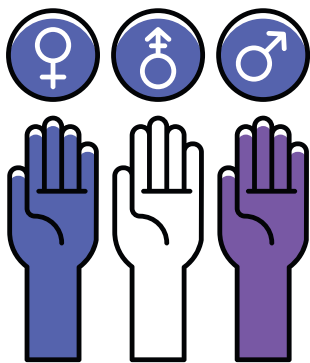
2. UNDERSTANDING GENDER-SENSITIVE COMMUNITY-BASED MEDIATION, NEGOTIATION AND CONCILIATION

Mediation and other forms of ADR, if diligently utilised, can successfully resolve conflicts in communities. It provides the poor and marginalised groups, especially women, children, persons with disabilities and older persons, with alternatives to address their grievances. However, if not done in a gender-sensitive way, ADR may perpetuate or even worsen structural violence, such as gender inequalities. If not done in a gender-sensitive manner, ADR processes conflict with national, regional and international human rights instruments. And if not gendered, ADR processes produce outcomes that don't bring sustainable harmony. Thus, mainstreaming gender in ADR processes should be seen to respect gender in both theory and practice ultimately.¹



2.1 Meaning of gender

The definition of gender and sex is essential in distinguishing between the biological differences between males and females and the social construct of assigning different roles and responsibilities to men and women. In the circumstances, this manual unpacks the following concepts:



Gender: refers to socially constructed roles, responsibilities, opportunities, behaviours, activities, and attributes that a given society considers appropriate for men and women. Gender is, therefore, not natural but constructed through cultures in society. As such, gender varies from one culture to another.

Sex: on the other hand, refers to the biological and physical differences between men and women. Sex is, therefore, natural, the same in societies, and cannot change (except with surgery, unlike gender).

The differences between Gender and Sex can be summarized in the table below:

Gender	Sex
Socially constructed/given.	Biological/natural/born with
It is specific to a particular society and varies between and within communities.	It does not vary between and within different societies.
Changes over time	It does not change, except with surgery
Distinguishes roles, responsibilities, and obligations of men and women	Universal and is the same for all women and same for all men
Many factors, such as education, income levels, religion, and age, influence it.	Social or economic factors do not influence it.

¹What is Alternative dispute resolution (ADR)? ." 04 Mar. 2021, <https://www.which.co.uk/consumer-rights/advice/what-is-alternative-dispute-resolution-adr-a10PI0X2lbs0>.

2.2 Mediation, Negotiation, and Conciliation as Forms of ADR at Community-based Level

There are different forms of ADR, but for this manual, we shall discuss only three: mediation, negotiation, and conciliation. As this is a manual for mediators' use, only the mediation process is discussed in detail.

2.2.1 Understanding mediation

Mediation is a process of assisted negotiation that relies on a neutral third party (mediator) to help parties reach a mutually agreeable resolution. It is like negotiation, except a neutral third party facilitates mediation while only the conflicting parties are involved. Mediation is usually adopted when negotiations have failed and the parties need to be assisted by a neutral person. Mediation as a form of ADR can be adapted to many distinct types of conflicts. Mediation is voluntary because a party cannot be forced to mediate but should submit to a mediation out of their free will. Being voluntary, parties can walk away at any time if they feel the process is unfair. There are other conflict resolution mechanisms, and therefore parties and mediators should adopt mediation when it is the most appropriate method of conflict resolution. The agreement reached between the parties is voluntary, and the parties are responsible for implementing it out of their free will but not out of external force. Therefore, mediation as a form of ADR should always result in a win-win outcome for it to be successful.

Advantages of mediation:

When parties to a dispute use mediation to settle their differences, they enjoy the following advantages:

- (i) Informality: Mediation processes are not bound by legal rules, for instance, when preparing documents, presenting evidence, and praying for remedies.
- (ii) Flexibility: In mediation, parties are free to vary the time, facilitator(s), venue, etc., of the mediation as they deem fit or following their interests and needs.
- (iii) Less costly: Costs of paying for experts such as lawyers and expert witnesses and doing extensive paperwork are reduced or eliminated.
- (iv) Efficiency: It typically resolves disputes faster than litigation and other formal methods like arbitration.
- (v) Win-win outcomes: Unlike adversarial methods such as arbitration and litigation, mediation produces win-win results without the parties being losers.
- (vi) Freedom: Any party can walk away from the mediation if they feel it is unfair.
- (vii) Confidentiality: Whereas other methods of conflict resolution, such as litigation, are open to the public, and therefore without a guarantee for confidentiality, mediation is usually private, seeing confidentiality for the parties.

Disadvantages of Mediation:

When parties to a dispute use mediation to settle their differences, they need to take note of the following limitations;

- (i) No guarantee for due process: Because of its informality and the absence of procedural and evidentiary rules, mediators risk being biased and not delivering justice for both parties.
- (ii) Absence of appeal process: There is nowhere to appeal once there is a mediation agreement. However, the parties can explore other remedies like the courts of law.

Because parties are free to walk away from the mediation, it is very easy for a mediation process to collapse

When should mediation be adopted as a form of ADR?

Mediation should be considered by the conflict parties and a third party in the following circumstances:

- When the substance of the conflict between the parties requires confidentiality.
- When the substance of the conflict between the parties is not very contentious.
- When parties want to limit the costs of resolving their disputes.
- When parties want to speed up resolving a dispute between themselves.
- When an un-facilitated negotiation process has failed to resolve the conflict; there by, parties require assistance from a third party to resolve a conflict between them.
- When there is consensus between the conflicting parties on the appropriateness of mediation in resolving their conflict.
- When all the parties have equal bargaining power, with no disparity of power between the conflict parties.
- When a competent and trusted third party can facilitate the parties' effort to resolve the conflict.
- When the parties need to preserve their future relationship since mediation produces win-win outcomes.
- When the parties are competent to come out with mutual solutions to their dispute.

2.2.2 Understanding Negotiation

Negotiation refers to a more structured (systematic) dialogue process between conflicting parties about issues on which their opinions differ. Negotiation can be conducted in the early stages of the conflict (when communication lines are not yet totally broken) or at later stages of the conflict when parties want to reach an agreement on the terms of a settlement. Parties negotiate to clarify the issues, problems, or differences between them and find a way to resolve them and reach an agreement.



Why People Negotiate

People enter into negotiations because they have unmet needs or interests they want satisfied. These include substantive, procedural, or psychological (or relationship) interests.

- Substantive Interests – These are tangible items an individual or group wants, such as money, goods, performance, behaviours, etc.
- Procedural Interests – These are processes or steps an individual or group wants to follow to solve a problem and implement an agreement.
- Psychological Interests – These are feelings about themselves, individuals, or groups that they want to have in the process of resolving and after the differences have been resolved. This is more about how an individual or group wants to be treated.
- People also choose to negotiate because they believe the process is more likely to achieve their goals than others available, such as doing nothing, remaining in a stalemate, going to court, escalating the conflict, or resorting to violence. People choose to negotiate because they:

- Do not have the power or authority to get what they want by a unilateral decision or action;
 - Require the cooperation of another party to get what they want.
 - Want more significant control over the dispute resolution process and whatever outcome is reached.
 - Desire or see a need for customized solutions to issues in question.
 - Believe that the process is the most predictable, especially when contrasted to others that may have unintended or undesirable negative consequences.
- The following are the factors that influence the outcome of negotiations:



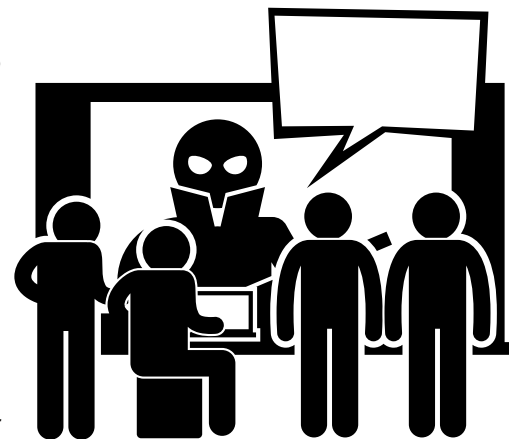
- *The level of importance of the subject matter of the negotiation to the parties: When the subject matter of the negotiation is of high importance to each party, it becomes difficult for the negotiation to be successful and vice versa.*
- *The extent to which the parties are willing to balance power and compromise: It is difficult for negotiation to succeed when parties are unwilling to change their positions, compromise and vice versa.*
- *The level of mutual trust and confidence between or among the parties: When parties believe that all the sides are sincere and reliable, negotiations proceed effectively.*
- *The time available for negotiation: If adequate, parties can clarify their differences and reach an agreement.*
- *Communication skills of the negotiating parties: When parties have good communication skills, they can state, articulate, and explain their needs and reason out, persuade, or concede, depending on the situation, for the success of the negotiation.*
- *Relationship between the parties: If the parties have a subsisting relationship, like relatives, friends, and partners, the success of a negotiation is highly likely and vice versa.*

Negotiation is not an event but a process. Being a process, negotiation proceeds in phases as articulated herein below:

Phases of Negotiation²

Phase 1: Preparation

- *This phase is critical since the success of a negotiation process largely depends on good preparation*
- *Analyze the conflict situation, perhaps by:*
 - (i) *Identifying the conflicting parties.*
 - (ii) *Identifying the causes of the conflicts.*
 - (iii) *Identifying the context within which the conflict is taking place.*
 - (iv) *Understanding the dynamics of the conflict.*
- *Based on the analysis at this stage, a negotiator(s) selects the negotiation strategy or methods to be adopted. The method selected could be positional bargaining, integrative bargaining, value-based negotiation, etc., depending on the situation.*
- *Negotiators make the first contact with either side(s) and agree on the following:*
 - (i) *The venue. All the parties to a negotiation must participate in selecting the venue and agree to the venue.*
 - (ii) *The agenda(issues for discussion)*
 - (iii) *The ground rules.*
 - (iv) *The number of people to attend from each side of the negotiating parties etc.*
- *At this phase, the parties also constitute their negotiating teams, depending on the number on each side that the parties have agreed.*
- *While each side prepares separately for the negotiation, parties need to list the issues it is ready to make concessions on, the kinds of concessions, and the areas it will not make concessions on before the actual negotiation.*



²Brinkmann (2006): Steps for Peace, Working Manual for Peace building and Conflict Management, p.63.

Phase 2: Interaction

- *This is a phase where parties meet, and actual negotiation occurs.*
- *Both parties come to the venue of the negotiation at this phase.*
- *The venue and time fixed for the actual negotiation must be appropriate.*
- *Such venues should always be a neutral ground where each party feels safe.*
- *Upon arrival at the venue, the parties greet each other to break the ice.*
- *When the negotiation commences, the negotiating teams do the following to achieve their goals:*
 - (i) *Develop rapport with all those involved in the negotiation.*
 - (ii) *Seek and provide information. That is, ask questions, especially open-ended questions.*
 - (iii) *Articulate the needs, interests, and position of your side of the negotiation.*
 - (iv) *Listen more and avoid talking too much. By listening more, you will be able to understand the other party's concerns and interests to deal with them during negotiation.*



- (v) *Watch out for non-verbal signs from your opponent for you to understand them.*
- (vi) *Justify the demands of your side using principles, best practices, and laws to persuade the other party to concede.*
- (vii) *Keep silent by postponing answers to questions to put pressure on the other side.*
- (viii) *Refrain from saying things that fail any side from getting what it wants.*
- (ix) *Be cooperative to gain the trust of the other party.*
- (x) *Stay calm and never negotiate while angry.*
- (xi) *Never issue an ultimatum like 'take it or leave it' as that will throw the negotiation off track and block progress.*
- (xii) *Withdraw from the negotiating table whenever appropriate to put pressure on the other side. Walking away or withdrawing should only be considered when it is a Better Alternative to a Negotiated Agreement (BATNA).*
- (xiii) *Seek and allow recesses for either side, think, consult, and accept proposals.*
- (xiv) *Give and take concessions to and from the other party.*

Phase 3: Close

- *Agree on the best options or combinations.*
- *Reduce the settlement into a written agreement.*
- *Develop an Action Plan for each party.*
- *Set a time frame and deadlines for actions.*
- *Review the negotiation process with your team to identify what went well and what went wrong during the negotiation*
- *Document the lessons learned to enable you to improve your negotiation in the future.*



2.2.3 Understanding Conciliation

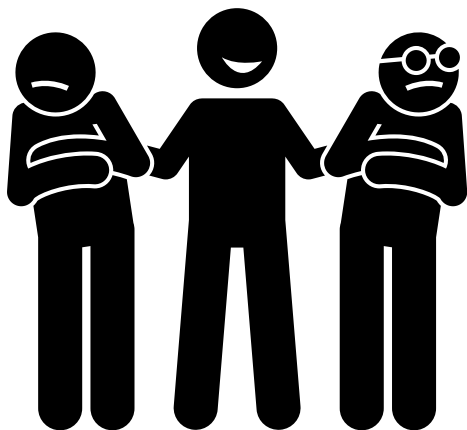
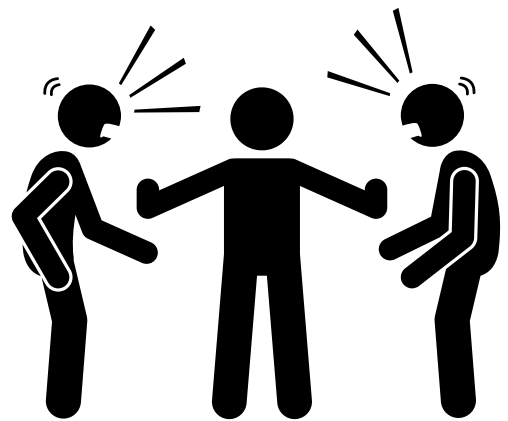
This is a form of ADR process where an independent third party, the conciliator, helps people in a dispute to identify the disputed issues, develop options, consider alternatives and try to reach an agreement. A conciliator may have professional expertise in the subject matter in dispute and will generally provide advice about the issues and options for resolution. However, a conciliator will not judge or decide about the dispute.³ The role of conciliators is similar to that of mediators except that the conciliator may also:

- have specialist knowledge and give some legal information;
- suggest or give parties and other participants expert advice on the possible options for sorting out the issues in dispute and;
- actively encourage parties and other participants to reach an agreement.

A conciliator will not:

- Take sides or make decisions;
- Tell you what decision to make, although they may make suggestions;
- Decide who is right or wrong and; provide counselling

Conciliation is usually held face-to-face so that parties can talk to each other directly. However, you may also have separate sessions with the conciliator. Sometimes the conciliator can act as a 'messenger' by talking to the parties and other participants separately and communicating ideas or proposals between parties. It is also possible to hold conciliation sessions by telephone in some circumstances.



When is conciliation suitable?

Conciliation may be suitable if the parties:

- Want to reach an agreement on some technical and legal issues;
- Want assistance with the process;
- Want to decide with the other participants involved.
- Want advice on the facts in the dispute;

Conciliation may also be suitable if parties have tried mediation and still cannot agree with the other participants; and when a relationship needs to be preserved.⁴

³ What are the four types of Alternative Dispute Resolution (ADR)?." 05 Feb. 2021, <https://brittontime.com/2021/02/05/what-are-the-four-types-of-alternative-dispute-resolution-adr/>.

⁴ ADR: Before, During and after Court; Mediation & Conciliation." 05 Jul. 2022, <http://blog.nicarb.org/index.php/2022/07/05/adr-before-during-and-after-court-mediation-conciliation/>.

3. GENDER-SENSITIVE CONFLICT ANALYSIS

3.1 Description of conflict analysis

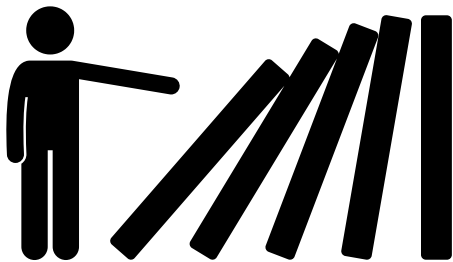
Conflict Analysis is the systematic study of a conflict's profile, causes, actors, and dynamics to understand and identify entry points for preventing, managing, or resolving it. The idea behind a conflict analysis is that a dispute can only be resolved or managed when it is well understood.

In summary, a conflict analysis involves asking and seeking answers to several questions clustered under (i) Conflict Profile, (ii) Conflict Causes, (iii) Conflict Actors, and (iv) Conflict Dynamics; for instance, as hereunder:

1. Conflict Profile:

Conflict analysis questions related to the conflict profile (context):

- (i) What is the physical geographical make up of the area?
- (ii) What is the population makeup of the area?
- (iii) What is the social structure of the society?
- (iv) What is the economic structure of the area?
- (v) What is the geostrategic position of the area?
- (vi) What are the political characteristics of the area?
- (vii) What is the history of the conflict? (notable events of the conflict with dates)
- (viii) What are the emerging political issues in the area?
- (ix) What are the emerging economic issues in the area?



2. Conflict Causes:

Conflict analysis questions related to the causes of the conflict:

- (i) What are the structural or root causes of the conflict?
- (ii) What are the proximate causes of the conflict?
- (iii) What triggers can spark the conflict?

3. Conflict Actors:

Questions analysis questions related to conflict actors:

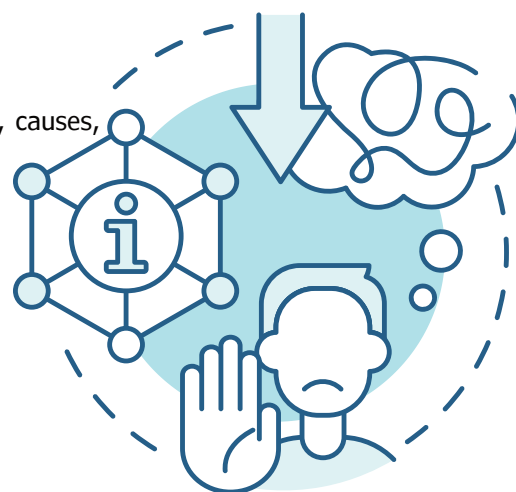
- (i) Who are the primary actors in the conflict?
- (ii) Who are the secondary actors in the conflict (spoilers)?
- (iii) Who are the peace actors in the conflict?
- (iv) Who among the primary actors is the most influential?
- (v) Who among the secondary actors is the most influential?
- (vi) Who among the peace actors is the most influential?
- (vii) Who among the primary actors are most radical and are more open and accessible?
- (viii) What are the interests of the primary conflict actors?
- (ix) What are the interests of the secondary conflict actors (spoilers)?
- (x) What are the interests of the peace actors?
- (xi) What are the positions of the primary conflict actors?
- (xii) What are the positions of the secondary conflict actors (spoilers)?
- (xiii) What are the positions of the peace actors?
- (i) What are the capacities of the primary actors?
- (ii) What are the capacities of the secondary actors (spoilers)?
- (iii) What are the capacities of the peace actors?
- (iv) What do community members know and think about the conflict?



4. Conflict Dynamics:

Questions related to conflict dynamics:

- (i) What are the current trends of the conflict?
 - (a) Is there an escalation?
 - (b) Is there a de-escalation? or
 - (c) Is there a stalemate?
- (ii) What are the windows of opportunity?
 - (a) Are there positive developments like a ceasefire?
 - (b) What factors support the positive development?
 - (c) Can the positive development be sustained and strengthened?
- (iii) What scenarios can be developed from analysing the conflict profile, causes, and actors?
 - (a) How will a worst-case scenario look like?
 - (b) What are the options for peace in a worst-case scenario?
 - (c) What will a best-case scenario look like?
 - (d) What are the options for peace in a best-case scenario?
 - (e) How will a middle-case scenario look like?
 - (f) What are the options for peace in a middle-case scenario?



3.2 Description of gender-sensitive conflict analysis

Gender-sensitive conflict analysis, on the other hand, is the systematic study of the conflict profile, causes, actors and dynamics with a gender lens. It involves addressing common gender blindness or biases in conflict analysis.

Gender-sensitive conflict analysis is based on the understanding that women and men, girls and boys, have different conflict experiences and constraints due to gender norms in their societies.

Gender-sensitive conflict analysis involves doing the following:

- (i) Identifying how discriminatory gender norms are the root causes of conflict. For example, is a woman disadvantaged because the cultural norms say women should not own land?
- (ii) Identifying the different roles men and women play in conflict. Whereas in most conflicts, men are the conflict actors, in some societies like Karamoja, women encourage conflicts by taunting as not man enough husbands who shy away from cattle raids. In some cultures, women are nursing injured combatants, while in others, women are actual combatants.
- (iii) Identifying the roles men and women play in resolving conflicts. In some societies, women mediate among conflicting parties, such as the women's situation room, in mitigating electoral dispute and violence in Uganda's 2016 and 2021 elections.
- (iv) Identifying how the different gender norms create or challenge opportunities for peace-making. For instance, is a male party using its position of superiority to impose something on the female party? Or, on the other hand, is a female party overplaying a position of vulnerability to try and obtain things that are not fair for both parties?
- (v) Identifying how the roles of men and women in conflict and peacebuilding have changed due to the conflict. For instance, in most societies, women didn't actively participate in combat, but now there are female combatants in most conflicts.
- (vi) Assessing how conflicts affect women and men, boys and girls differently. For instance, while women and girls are frequent victims of gender-based war crimes like rape, men and boys are prone to conscription into combat.
- (vii) Identifying blindness or biases against women and girls in post-conflict planning and responses. In post-conflict recovery and development programs, little attention is paid to the different needs of women and girls.

3.3 Understanding conflict and conflict-related concepts

Conflict: A competition, struggle, or disagreement between two or more people or groups initiated to settle perceived or actual significant differences in views or allocation of resources that are perceived to be limited.⁵

In other words, a conflict is said to occur when two or more interdependent parties perceive their interests as incompatible and consequently express hostile attitudes towards each other.



Parties in conflict generally have strong feelings about the people, issues, and desirable outcomes; and often engage in assertive, if not outright aggressive, behaviour to damage the other party or to achieve their desired ends.⁶

A conflict can be:

- (a) an intrapersonal conflict - a conflict within the same individual;
- (b) an interpersonal conflict - a conflict between different individuals;
- (c) intra-group conflict - a conflict within the same group and;
- (d) an intergroup conflict- a conflict between different groups.

Conflict is part of our everyday life, and no human being is in some form of conflict with another person or group of persons. The only difference among individuals is how one manages the conflict so that it is not damaging to them.

A conflict is neither good nor bad, depending on how those involved in it handle it. Conflict can lead to desirable changes in society or relations when handled constructively. However, when it is mishandled, it can lead to lots of damage in the community.

In other words, a conflict can be functional or dysfunctional depending on how it is handled.

Functional Conflict is a conflict that facilitates the achievement of individual or group goals by causing higher performance. On the other hand, a dysfunctional conflict is a kind of conflict that inhibits the achievement of individual or group goals by causing under performance.

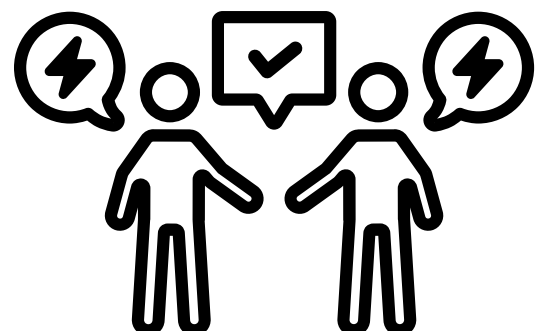
Characteristics of functional conflicts are as follows:

- (i) Makes group members more united to pursue the group's goal.
- (ii) Promotes innovation and creativity among group members to out compete other groups.

While dysfunctional conflicts have the following characteristics

- (i) Makes group members disunited.
- (ii) Makes group members neglect the group goals.
- (iii) Creates a climate of suspicion and distrust.
- (iv) Absenteeism among group members as members attempt to escape the stress of conflict.

Conflict Resolution: This is a communication process where conflicting parties agree and iron out their disagreements or incompatibilities peacefully. In simple terms, it is the process of peacefully ending a conflict. It involves reusing procedures to settle or reconcile seemingly incompatible desires or wishes of opposing parties and to satisfy their interests or needs. Some procedures or strategies used in conflict resolution include negotiation, mediation, conciliation, arbitration, and litigation. It is a collaborative process that requires all parties' cooperation.



⁵CONFLICT | English meaning - Cambridge Dictionary." <https://dictionary.cambridge.org/dictionary/english/conflict>.

⁶1.8: Conflict ." 20 Feb. 2021, [https://socialsci.libretexts.org/Bookshelves/Communication/Intercultural_Communication/Book%3A_Intercultural_Communication_for_the_Community_College_\(Karen_Krumrey-Fulks\)/01%3A_Chapters/1.08%3A_Conflict](https://socialsci.libretexts.org/Bookshelves/Communication/Intercultural_Communication/Book%3A_Intercultural_Communication_for_the_Community_College_(Karen_Krumrey-Fulks)/01%3A_Chapters/1.08%3A_Conflict).

A conflict is said to be resolved when the following conditions are present:

- (i) When the solution is fair and just for all the parties concerned.
- (ii) When the solution does not compromise the values of either party.
- (iii) When all the parties accept the solutions to end the conflict.
- (iv) When parties do not reject the solution even if they can. For instance, a party is not appealing against the solution even if they can do so.

Therefore, conflict resolution is a problem-solving process.



Parties in conflict generally have strong feelings about the people, issues, and desirable outcomes; and often engage in assertive, if not outright aggressive, behaviour to damage the other party or to achieve their desired ends.⁶

A conflict can be:

- (a) an intrapersonal conflict - a conflict within the same individual;
- (b) an interpersonal conflict - a conflict between different individuals;
- (c) intra-group conflict - a conflict within the same group and;
- (d) an intergroup conflict- a conflict between different groups.

Conflict is part of our everyday life, and no human being is in some form of conflict with another person or group of persons. The only difference among individuals is how one manages the conflict so that it is not damaging to them.

A conflict is neither good nor bad, depending on how those involved in it handle it. Conflict can lead to desirable changes in society or relations when handled constructively. However, when it is mishandled, it can lead to lots of damage in the community.

In other words, a conflict can be functional or dysfunctional depending on how it is handled.

Functional Conflict is a conflict that facilitates the achievement of individual or group goals by causing higher performance. On the other hand, a dysfunctional conflict is a kind of conflict that inhibits the achievement of individual or group goals by causing under performance.

Characteristics of functional conflicts are as follows:

- (i) Makes group members more united to pursue the group's goal.
- (ii) Promotes innovation and creativity among group members to out compete other groups.

While dysfunctional conflicts have the following characteristics

- (i) Makes group members disunited.
- (ii) Makes group members neglect the group goals.
- (iii) Creates a climate of suspicion and distrust.
- (iv) Absenteeism among group members as members attempt to escape the stress of conflict.

Conflict Resolution: This is a communication process where conflicting parties agree and iron out their disagreements or incompatibilities peacefully. In simple terms, it is the process of peacefully ending a conflict. It involves reusing procedures to settle or reconcile seemingly incompatible desires or wishes of opposing parties and to satisfy their interests or needs. Some procedures or strategies used in conflict resolution include negotiation, mediation, conciliation, arbitration, and litigation. It is a collaborative process that requires all parties' cooperation.

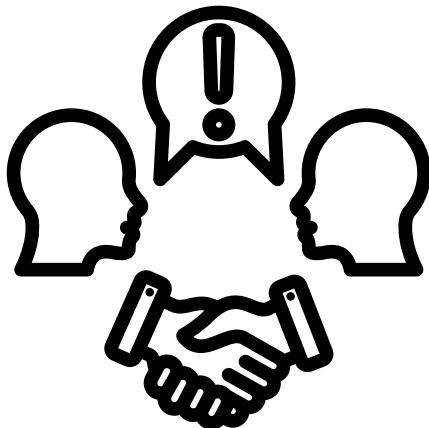
⁵CONFLICT | English meaning - Cambridge Dictionary." <https://dictionary.cambridge.org/dictionary/english/conflict>.

⁶1.8: Conflict ." 20 Feb. 2021, [https://socialsci.libretexts.org/Bookshelves/Communication/Intercultural_Communication/Book%3A_Intercultural_Communication_for_the_Community_College_\(Karen_Krumrey-Fulks\)/01%3A_Chapters/1.08%3A_Conflict](https://socialsci.libretexts.org/Bookshelves/Communication/Intercultural_Communication/Book%3A_Intercultural_Communication_for_the_Community_College_(Karen_Krumrey-Fulks)/01%3A_Chapters/1.08%3A_Conflict).

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- (iv) When parties do not reject the solution even if they can. For instance, a party is not appealing against the solution even if they can do so.

Therefore, conflict resolution is a problem-solving process.



Conflict Management: This is a process where (i) a conflict is stopped from being violent; and where violence has already broken out, (ii) stopping an escalation into more violence, (iii) reducing the level of violence and; (iv) stopping the violence from spreading to other geographical areas, or individuals or groups.

Conflict management, also called conflict mitigation, is essential because some conflicts cannot be resolved, ended or eliminated but can only be managed so that they are not destructive or damaging. Different individuals have different conflict styles. Conflict styles are how other individuals react, deal with or manage conflicts they are involved in. The following are the styles or strategies that can be used to manage a conflict:

(i) Fight or Competition: This conflict management style is characterized by high assertiveness and low cooperation by the party managing the conflict. It applies where the conflict issue is critical to one of the parties and less important to the other. This style is characterized by argumentation, debate, use of power or rank by one of the parties. This style produces a win-lose outcome in that one party gains everything and loses everything. This strategy only works if the other party in the conflict is an accommodator.

(ii) Accommodation: This conflict management style is characterized by low assertiveness and cooperation in the party managing the conflict. This is where one lacks confidence in their abilities to deal with the other party in the competition. It is where an individual(s) sacrifices their interest to appease the other party for peace. This style is applicable where the one seeking to manage the conflict is in an inferior position or where the conflict issue is minor to them, or where one values and wants to preserve the relationship with the other party in the conflict. This style produces a lose-win outcome. Use this style or approach rarely because it can encourage the other party to get more stubborn and risks worsening the conflict over time.

(iii) Compromise: This conflict management style is characteristic of low assertiveness and moderate cooperation among all the parties in the conflict. This style is characterised by each side of the conflict taking something and giving something in return so that, in the end, each party loses something. This style or strategy produces a **lose-lose outcome**.

This style is applicable in the following situations, (i) where all the parties have equal power, (ii) when the parties are unable to come up with creative solutions that fully satisfy the interests of each party, and (iii) the issue in the conflict is equally important to all the parties.


(i) Collaboration: This style is characterised by a high level of assertiveness and cooperation on the sides of all conflicting parties. In this style, the conflicting parties develop creative solutions that produce value that fully satisfy each conflict party's interests, in the end, etc. In the end, they lose nothing but gain everything they want. This, therefore, produces a **win-win outcome**.

This style is applicable in the following situations,

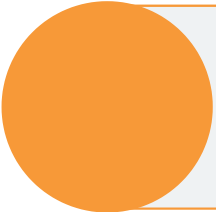
- (i) when all the parties have objectives that cannot be compromised and
- (ii) when there is enough time to come up with creative solutions that can satisfy the interests of all the parties.

(ii) Avoidance: This style is low in assertiveness and cooperation. This is where the person driving the conflict ignores it and avoids dealing with it. The one driving the conflict avoids contact with the opposing party and hides the conflict. It is therefore characterised by withdrawal. The person neither pursues his interests nor attempts to hurt or challenge the other party's interests. It is characteristic of people who allow fate to solve the problem or resolve the conflict instead of taking action. Those with low self-esteem typically use this style, who are in subordinate positions of authority, or where the issue in the competition is minor.

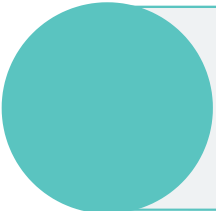
COMPONENTS OF CONFLICT



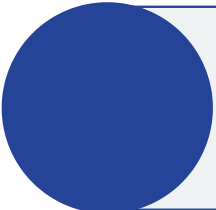
Awareness or beliefs held by one or more parties that they are in serious opposition to or in disagreement with another party or are entangled in a situation or relationship that is unfair or unjust.



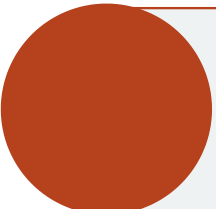
Attitudes and perceptions of one or more parties of (i) the unfairness of other parties towards them and (ii) the lack of merit or legitimacy of others' goals, interests, motivations, or actions and vice versa. Such perceptions may be accurate or inaccurate.




Emotions: Conflicts involve emotions, either negative or positive, felt by one or more parties about a situation and the people, issues, interests, or actions involved. Such feelings amid a conflict may be experienced only internally or actively expressed externally.



Motivations or drivers energise one or more parties to try and change the status quo. Examples include the desire to: express dissatisfaction; revenge; end suffering; assert their rights; get justice or a fair deal by changing the status quo, including cultural norms; establish institutional practices or laws etc.



Behaviours and actions: Conflicts involve specific activities and behaviours, including opposition, competition, aggression or indifference or withdrawal initiated by one or more parties to change their situation and meet their interests and needs.



Outcomes or changes: Conflicts result in changes consciously or unconsciously desired by parties. Such changes could meet and be contrary to the interests of one or both parties.

3.4 Tools for Conflict Analysis

Different tools are used for conflict analysis depending on the element of a conflict one seeks to understand. The tools include, but are not limited to, the following:

The “Onion”

The idea behind this tool is that a conflict is like an onion, with some elements visible from the outside while others are invisible from the outside. The tool consists of three centric circles, each representing one of three elements at play in a conflict. The three circles represent the following: (i) the positions, which represent the outer layer of the onion, which is visible; (ii) interests which is the middle layer that is hidden and cannot be seen unless you peel off the outer layer and; (iii) needs which is the inner-most layer that is invisible unless you peel off the outer and the middle layers. Thus, the tool moves beyond the public positions of each party.

This tool helps uncover the hidden elements at the core of resolving a conflict, namely, people’s deeply felt needs, which, if not addressed, a conflict persists.



The outer layer represents positions about the conflict that we see publicly. Positions are what parties in a conflict say they want. For instance, the opposition political parties say they want freedom of the press, right to assembly, freedom of association etc. That is their position because that is what they publicly say they want. The position of the ruling NRM is that they want law and order.

Interests motivate parties in a conflict to disagree with the other party. For instance, the interests of the opposition political parties are democracy, human rights and the rule of law. At the same time, the interest of the ruling NRM is stability. Interests are usually broader and long-term in nature. Interests are often hidden because they fear they may weaken their ability to negotiate if they are revealed.

Needs are what a conflicting party must have to feel satisfied with an outcome. For instance, the interest of the opposition political party is regime change and the attainment of power. On the other hand, the needs of the ruling party are retaining power and regime longevity.

This analysis helps groups lay the basis for negotiation, revealing what they must have to be satisfied.

Examples of Needs, Interests and Positions

Need – To feed ourselves, our families and our communities.

Interest – To produce our food for local consumption.

Position – We will not accept any food that is not produced in our communities

Options for using the Onion

This tool aims to analyse the parties' needs, interests, and positions in conflict, ranging from what is on the surface and within the public view to the deepest.

It may also be helpful to develop a table that records perceptions (needs, interests and position, and those of the other party) and; identify what tends to divide us in our relationship. The table can also help identify shared needs and interests or points of potential meetings, guiding towards possible agreements.

	GROUP A	GROUP B	MEETING POINTS
Needs			
Interests			
Positions			

The Conflict Tree - a tool for conflict Analysis

A conflict tree is a graphic tool used to examine three elements of a conflict, namely,

- (i) the core problem(s) represented by a tree trunk,
- (ii) conflict causes represented by a tree's roots and;
- (iii) effects of a conflict represented by branches and leaves of a tree⁷.

Problem Tree



<https://www.obessu.org/tools/toolbox/>

This tool is better used in a group than in an individual exercise. Using the tool involves (a) drawing a picture of a tree, (b) giving each participant several index cards, (c) seeking answers to the questions below, (d) writing the answers to those questions on the index cards and (e) attaching the answers to the relevant parts of the tree:

Questions to ask during the use of a conflict tree in conflict analysis:

- (i) What is the core problem in this conflict?
- (ii) What are the root causes of this conflict?
- (iii) What are the effects that have resulted from this conflict?
- (iv) What is the priority issue of the conflict to be addressed?

This tool helps build consensus about these three components of a conflict: causes, effects and core of the problem.

⁷ Fisher et al, 2000:29; Mason& Rychard, 2005

4. THE LEGAL FRAMEWORKS FOR ALTERNATIVE DISPUTE RESOLUTIONS IN UGANDA

4.1 National Frameworks

In early 2000, mediation was piloted in the Commercial Court of Uganda as an alternative to litigation. This coincided with the Centre for Arbitration and Dispute Resolution (CADER) creation in 2000.⁸ Since then, many cases have been successfully mediated and concluded. This gave Judicial Officers time to try cases ordinarily not amenable to mediation. This way, ADR substantially increases the productivity of the court's satisfaction and confidence of court users in the justice system.

Conflict Analysis is the systematic study of a conflict's profile, causes, actors, and dynamics to understand and identify entry points for preventing, managing, or resolving it. The idea behind a conflict analysis is that a dispute can only be resolved or managed when it is well understood.

In summary, a conflict analysis involves asking and seeking answers to several questions clustered under

- (i) Conflict Profile,
- (ii) Conflict Causes,
- (iii) Conflict Actors, and
- (iv) Conflict Dynamics; for instance, as hereunder:

(i) The Constitution of the Republic of Uganda 1995: This is a code of law from which all the other laws derive their authority or legal force. The different laws of Uganda allow ADR to handle disputes of various kinds because the constitution allows that. Article 26(1) & (2) allows the use of ADR in resolving disputes filed in court.

(ii) The Civil Procedure Act: This principal law provides for how courts of law should handle civil cases brought before it by litigants. It allows ADR to resolve some civil cases in appropriate circumstances.

(iii) The Civil Procedure Rules Cap 71 S. I 71-1: This subsidiary law provides in greater detail how courts should handle civil disputes.

(iv) The Judicature Act, Cap 13: This law governs the operation of the High Court of Uganda. The law provides for ADR under the court's direction.

(v) The Judicature (Mediation) Rules 2013. This law made mediation mandatory as a first step in resolving all the cases filed in the courts of law. Under this law, the court will hear no civil case unless the parties have first attempted mediation. Under the law, a court-annexed mediator assists and guides the parties towards resolving their disputes. However, following a High Court decision in 2020, mediation is recommended as a first step in resolving all court cases, but it is no longer mandatory.

(vi) The Employment Act, 2006: This law governs the relationship between an employer and an employee. Sections 12(2) and 13(1) (a) of the Act mandate a Labour Officer to resolve disputes between an employer and an employee through negotiations, conciliation, and arbitration, which are ADR methods.

(vii) The Labour Dispute (Arbitration and Settlement Act), 2006: This law governs the settlement of disputes between employees, employers, and Trade Unions and employers. .

(viii) The Arbitration and Conciliation Act 2000: This law resolves domestic and international commercial disputes through arbitration or conciliation, especially where there is either an arbitration agreement or an agreement with an arbitration clause. It requires courts to refer for arbitration or conciliation any matter which is a subject of an arbitration agreement. The Act does not apply to labour disputes governed by Labour Dispute (Arbitration and Settlement Act), 2006.

(ix) The Local Council Courts Act, 2006: The Act provides for creating Local Council Courts. Sections 13(a) & 49(4) (i) of the Act mandate the Local Council Courts with powers of conducting conciliation, which is an ADR.

(x) The Land Act, 1998: Uganda's principal law for land governance, including resolving land disputes. Sections 88(1) & (2), and 89 of the Act and 89 provide for land dispute resolution through negotiation or mediation. The sections recommend using cultural leaders and other persons of integrity, skill and knowledge in society as mediators.

(i) The Public Service (Negotiating, Consultative and Dispute Settlement Machinery) Act, 2008: This law provides for the creation of a committee that resolves labour disputes in every Ministry, Department and Agency (MDA). It includes using ADR methods like consultation, negotiation, and dialogue to resolve labour disputes between the government as an employer and public service labour unions such as Uganda National Teachers' Union (UNATU), Uganda Public Employees' Union (UPEU) etc.

(ii) National Gender Policy 2007. Under this policy, the Family and Juvenile Courts, constituted in the Chief Magistrates Courts, use Alternative Dispute Resolution (ADR) (Mediation) methods to settle primarily non-criminal cases.

⁸ "Alternative Dispute Resolution Project Launched." 15 Aug. 2011, <https://jlos.go.ug/index.php/2011-08-15-07-20-50/legislation/legislative-process-in-uganda/item/457-alternative-dispute-resolution-project-launched>.



4.2 International Instruments that Provide for Alternative Dispute Resolution

- (i) The United Nations Charter: This is the founding document of the United Nations Organization (UNO). UNO seeks to promote international peace and security. .
- (ii) Convention of the Recognition and Enforcement of Foreign Arbitral Awards. The UNO adopted this international law in June 1958. It is also known as the New York Convention. It requires courts of member states to refer for arbitration disputes arising from private international contracts that provide for arbitration instead of court action. Arbitration which the convention offers is one of the ADR methods.
- (iii) The Singapore Convention on Mediation: This international law was adopted by the UNO in December 2018. It is also known as the United Nations Convention on International Settlement Agreements resulting from Mediation. The Convention makes mediation agreements from settling commercial disputes binding on the parties to the agreement.
- (iv) Convention for the Pacific Settlement of International Dispute. This Convention is also known as Hague Convention. . This international law requires contracting parties to use their best efforts to settle conflicts peacefully other than recourse to force of arms. It requires contracting states to use good offices, mediation, conciliation, or arbitration to resolve international disputes between states. It also gives the Permanent Court of Arbitration powers to resolve international disputes of civil nature.
- (v) UNCITRAL Mediation Rules 2021: United Nations Commission on International Trade Law (UNCITRAL) made this rule and adopted by the UN General Assembly in December 2021. The Rules govern the settlement of disputes arising in international commercial relations. It provides for the use of mediation, conciliation, arbitration,
- (vi) The UN Guidance for Effective Mediation (2012): This guidance was provided as part of a report by the UN Secretary-General on strengthening the role of mediation in the peaceful settlement of disputes. The document serves as a reference for mediators, drawing on the experiences of the UN, NGOs, member-states etc.
- (vii) International Chamber of Commerce (ICC) Mediation Rules. This Rule replaced the 2001 Amicable Dispute Resolution Rules (ADR Rules): The Rules allow neutral third parties to mediate conflicts within the ICC International Centre for ADR framework, a separate administrative body within the ICC.
- (viii) The UN Declaration on Principles of International Law concerning friendly relations and cooperation among states. This instrument was adopted by the United Nations in 1970. It demands that states seek just and early settlement of their international disputes by negotiation, mediation, conciliation and arbitration, among other ADR methods. It recommends the use of regional agencies as neutral third parties in the settlement of disputes.
- (ix) 1995 UN Model Rules for the conciliation of disputes between states. These Model Rules were made in 1995 and adopted by the General Assembly in January 1996. The Model Rules serve as reference material for NGOs, member states, regional bodies, sub-regional bodies etc., seeking to develop conciliation rules for its conciliators.
It implicitly encourages stakeholders at different levels to adopt conciliation as an ADR method for resolving disputes.
- (i) Protocol on the Commission of Mediation, Conciliation and Arbitration to the Charter of the Organisation of African Unity (now the African Union). This protocol was developed for use by the Commission of Mediation, Conciliation and Arbitration for its use in ADR between states. It was adopted in Cairo in 1964 and came into force immediately.
- (ii) Optional Rules for Arbitration of disputes relating to natural resources or the environment, 2001. The Permanent Court of Arbitration made these Rules to resolve disputes concerning natural resources or the domain. It provides several ADR methods, including conciliation, mediation, and arbitration.



4.3 International Instruments that promote Gender-Responsive Alternative Dispute Resolution

The following international human rights instruments shun discrimination based on sex and, therefore, conversely require Gender-Responsive ADR, including mediation:

- (i) Universal Declaration of Human Rights (UDHR): This human rights instrument is the fountain of all the other international human rights instruments. It enshrines the right to equality and, as such, outlaws anything discriminatory, including gender-discriminatory ADR practices.
- (ii) International Covenant on Civil and Political Rights (ICCPR): Made by the United Nations (UN) in 1966, it is part of the International Bill of Rights. It codifies the first generation of human rights, including the right to equality, property, etc. By outlawing discrimination, by extension, it provides for gender-sensitive ADR.
- (iii) International Covenant on Economic, Social and Cultural Rights (ICESCR): Made by the UN in 1966, this Covenant is also part of the International Bill of Rights. It codifies the second generation of human rights, which include the right to economic security, food, housing, equal opportunity to employment, the right of employees to strike etc. Gender-sensitive ADR is one measure that guarantees the right to economic security for all.
- (iv) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): This treaty, made in 1979, is a women's Bill of Rights. It affirms equality between men and women and enjoins state parties to use legal, social, political and administrative measures to protect women from discrimination in all spheres of life. Such measures include gender-sensitive ADR
- (v) The Beijing Declaration and Platform for Action: This instrument was made during the Fourth World Conference on Women in Beijing in 1995. It requires state parties to take all social, legislative, political, or administrative steps to protect women and girls from discrimination in all spheres of life. Such steps include gender-responsive ADR.
- (vi) International Labour Organization (ILO) Indigenous and Tribal People's Convention: This Convention was made in 1989 within the framework of the International Labour Organization (ILO). It enjoins state parties to do their best to guarantee the rights of indigenous and tribal peoples to ownership and possession of the land which they traditionally occupy. Targets for this guarantee include indigenous and tribal women. Such efforts guaranteeing women's rights to customary and non-customary land are gender-sensitive ADR.
- (vii) The Habitat Agenda, 1996: This commitment enjoins state parties to use their best efforts to provide legal security of tenure and equal access to everybody, including women and people experiencing poverty. Gender-sensitive ADR is one of the measures that help provide legal security of tenure and equal access to land for women and everybody.
- (viii) The 2030 Agenda for Sustainable Development: Made in 2015 within the framework of the UN, this Agenda is popularly known as Sustainable Development Goals (SDGs). The agenda recognizes that gender equality is a key pillar of women's empowerment. It also recognizes the roles formal and informal conflict resolution mechanisms like ADR play in promoting peace and access to justice.
- (ix) UN Security Council Resolution (UNSCR) 1325 on Women, Peace and Security: This instrument requires gender-sensitive peacebuilding processes. For instance, it requires women mediators, peacekeepers, etc. It also involves peace-building efforts, including mediation, to pay special attention to the needs and concerns of women.
- (x) Declaration on the Elimination of Violence Against Women (DEVAW): This instrument was made in 1993. It was a pioneer human rights instrument that addressed violence against women. It was long normalized as one of the mechanisms that align well with the declaration responding to violence against women in many forms.
- (xi) UN Security Council Resolution (UNSCR) 1889: Made in 2009, the Resolution seeks to promote women's participation in peace processes. It also calls for enhancing international and national responses to the needs of women in conflict post-conflict situations. ADR is one mechanism through which women participate in peace processes and a mechanism through which national and international duty-bearers respond to the needs of women in conflict and post-conflict situations.
- (xii) UN Security Council Resolution (UNSCR) 2122: This Resolution was made in 2013. It calls for women's full participation in peacebuilding in conflict zones and recognizes the contribution of women's civil society organizations in peacebuilding.
- (xiii) There are also many other instruments of relevance, including, but not limited to, the African Charter on Human and People's Rights (ACHPR) in Africa, the 2003 Maputo Protocol on Women's Rights, the Goma Declaration 2008, the Kampala Declaration of 2011, the Kampala Declaration of 2019 etc.

4.4 National Frameworks that promote Gender Inclusion and Access to Justice

1. **The Constitution of the Republic of Uganda, 1995:** This is the supreme law of Uganda from which all the other laws derive their authority or legal force. The different laws of Uganda allow ADR to handle disputes of various kinds because the constitution allows that. Article 21(2) of that law prohibits gender-based discrimination in all spheres of life and requires ADR to be gender-responsive. Article 33 of the same Constitution prohibits discrimination against women and enjoins the state to promote the status and welfare of women. The state does this, among others, by requiring conflict resolutions, including ADR, to be gender sensitive.
2. **The National Gender Policy 2007:** It mainstreams gender in all spheres of life and activities. It requires acting from a gender perspective. As such, it enjoins ADR practitioners to be gender sensitive in their dispute responses.
3. **The Uganda National Culture Policy 2006** promotes positive traditional culture. However, it calls on the state, community, and private sector to act against practices impeding human dignity. To this end, it, among others, require ADR practitioners to be gender sensitive when they undertake to resolve disputes.
4. **The National Community Development Policy 2015:** One of the guiding principles of this policy is gender sensitivity. To this end, it calls for community-based ADRs to prevent and respond to harmful cultural practices, including Gender-Based Violence (GBV).
5. **Equal Opportunities Commission (EOC) Act** prohibits gender-based discrimination. It requires changes to cultural practices that reduce opportunities for marginalized women and men. To this end, ADR, among other social interventions, must be gender-sensitive to equitably promote opportunities for women and men. It creates the Equal Opportunities Commission to ensure equality of opportunities for all.
6. **The Land Act:** The Act recognises the rights of women to land and puts in place measures to protect the rights of women to land. Section 33 of the Act, read together with sections 88(1) and (2) and 89 of the Act and 89, requires ADR on land to be gender sensitive.
7. **National Action Plan (NAP) III on Women, Peace and Security 2021-2025:** This National Action Plan, which builds on NAPI (2008-2010) and NAPII (2011-2015), undertakes to use a multi-sectoral approach to promote peace through women's participation and leadership in conflict prevention, resolution and peacebuilding.
8. **The Domestic Violence Act (DVA) 2010 prohibits domestic violence,** including violence against women and girls. It mandates domestic violence cases for family and children's courts. It allows the court to resolve domestic disputes using different methods, including ADR, which must, as a requirement, be gender-sensitive.
9. **The National Policy on Elimination of Gender-Based Violence, 2016:** This framework recognizes that GBV is a critical problem in all spheres of life in Uganda. It then calls for community participation and male involvement in preventing and responding to GBV. Gender-sensitive ADR is among the many ways communities and males respond to and prevent GBV.
10. **The National Male Involvement Strategy for the Prevention and Response to Gender- Based Violence in Uganda:** Made in 2017, the Strategy, among others, seeks to promote a change of harmful cultural norms and practices that promote GBV. To this end, the Strategy requires all ADRs to be gender sensitive.
11. **The National Transitional Justice Policy 2019** provides gender-responsive transitional justice, including accountability for gender-based war crimes; gender-sensitive post-conflict peacebuilding measures. Gender-sensitive ADR is one of the tools for promoting post-conflict accountability and peacebuilding.
12. **National Guidelines on Establishment and Management of GBV Shelter in Uganda, 2013:** One of the core principles that the guidelines require operators of GBV shelters and other duty bearers to comply with is gender sensitivity. It, among others, provides, in appropriate cases, for the referral of GBV survivors to community-based mediators, who are equally required to be gender sensitive.
13. **National Referral Pathway for Prevention and Response to Gender-Based Violence Cases in Uganda, 2013:** This pathway provides information on the different duty-bearers of GBV cases. It guides duty bearers, including ADR service providers, on how to respond to GBV cases; and how they should be gender sensitive.
14. **Other legal and policy frameworks include the National Action Plan on Eliminating Gender-Based Violence, the Children's Act,** etc.

5. RECONCILING CULTURAL UNDERSTANDINGS WITH A HUMAN-RIGHTS-BASED APPROACH

5.1 Human Rights-Based Approach(HRBA)

This is a programming approach where programmes' design, implementation, monitoring and evaluation are based on human rights standards. Its defining elements or features include the following:

- (i) Realising human rights to be an overarching and deliberate objective of all development programmes, policies and technical assistance. Thus, programme designs and implementation that accidentally contribute to realising human rights are not rights-based.
- (ii) Human rights standards guide all development programming: While designing programmes or development frameworks such as the National Development Plan, the Parish Development Model, Youth Livelihoods Programme etc., planners are guided by international instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, CEDAW, International Covenant on the Rights of the Child etc.
- (iii) Participation is both a means and a goal: HRBA requires that programmes mainstream community participation in its design, implementation, monitoring and evaluation. It also requires that programmes should lead to significant participation.
- (iv) Assessment and analysis of the context to identify the human rights claims of the rights holders and the related human rights obligations of duty-bearers: The assessment and analysis also investigates the structural, underlying and immediate causes of the non-realization of the rights.
- (v) Assessment of the capacity of the rights-holders to claim their rights: The assessment investigates whether the rights-holders know what they need to do to get their rights, and if they do, whether they have the capacity to do what they need to do to get their rights.
- (vi) Assessment of the capacity of the duty-bearers to claim their rights: The assessment involves investigating whether the duty-bearers can fulfil their human rights obligations to the rights-holders.
- (vii) Focus on marginalised, disadvantaged and excluded groups: HRBA identifies the marginalised, such as the poor, women, youth and persons with disability, as the target groups or beneficiaries, other than the rich and the powerful.
- (viii) Aim of reducing disparity: HRBA seeks to reduce the gap between the rich and the poor and the powerful and the powerless. As such, HRBA aims to achieve equality in society.
- (ix) Planning, implementing and monitoring and evaluating programmes in such a way that it empowers people to be partners in their development rather than being passive recipients.
- (x) Capacity building of rights-holders to claim their rights: HRBA involves making the rights-holders know their rights, whom to claim the rights from and how to claim their rights. Thus, HRBA has a component in human rights education.
- (xi) Building capacity of duty-bearers to meet their obligations: HRBA involves strengthening governments that owe duties to the rights holders.
- (xii) Monitoring and evaluating both outcomes and processes: HRBA involves ascertaining whether the human rights objectives of programmes have been achieved, and if they have been achieved, whether the process leading to that achievement complied with human rights; for instance, was their participation by the beneficiaries in the design, implementation and monitoring and evaluation?
- (xiii) Promotion of Strategic Partnership: HRBA approach acknowledges that achieving human rights requires all stakeholders' cooperation and input. As such, HRBA seeks to crowd in all the stakeholders at different levels to realise human rights entirely.

5.2 Implications of Human Rights Based Approach to the doctrine of cultural relativity

The doctrine of cultural relativity holds that moral codes and culture vary. It then keeps that cultural variation should be insulated from outside criticism. It further holds that different human societies with different social and historical contexts have different concepts of human worth, human dignity or human rights. Such human dignity or rights concepts are correct or appropriate within their context. It further holds that human rights, as understood in the Western world, do not apply to non-Western societies because of the differences in context. For instance, while the Western conception of human rights stresses the primacy of individualism, the non-Western concept stresses communalism.

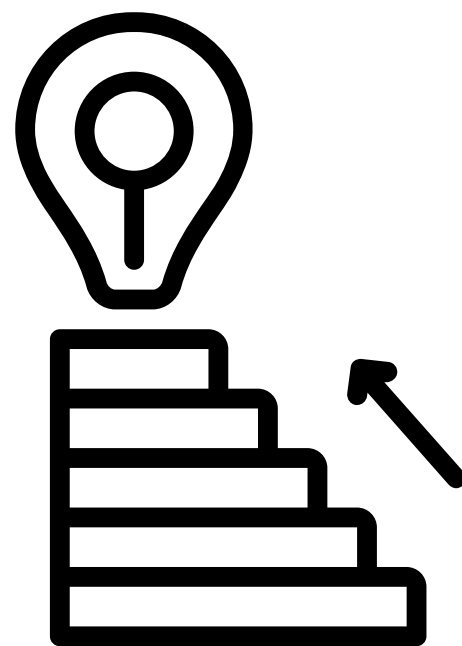
As argued by cultural relativism, in each culture, different gender roles are assigned to men and women. Those roles can widely differ from one culture to the next. In Uganda, the recurring feature of culture across clans and cultural groups includes men in leadership, arbitration and decision-making

roles, while women are at the core of households and families. Women, especially older people, often have advisory roles in important decisions affecting a given community or clan.¹⁰

In virtually all cultural traditions across Uganda, conflict resolution mechanisms are mandated to resolve differences among the belligerents through the intercession of respected elders. Such conflict resolution processes recognise and seek to preserve and affirm the human dignity of everyone involved – victims, perpetrators, and the community. The overarching goal of such methods is the coexistence and reconciliation of the conflicting parties. Those processes lie between arbitration and mediation, as the elders usually decide on the parties. However, the parties are given opportunities to provide their opinion and views. Women are typically called to provide their ideas during those processes, as they are considered to have emotional intelligence in approaching some situations.¹¹

Those cultural practices are rich, valuable and provide vital protection to many people. As such, they should always be considered and understood while promoting gender equality. However, within the Human Rights Based Approach context, mediators should not allow Harmful Cultural Practices to prevail under cover of “tradition” or the doctrine of cultural relativity while clearly discriminating against one gender – women being often the disadvantaged gender.¹² This is because human rights are a grand norm that has gained currency over the doctrine of cultural relativity or relativism.

Within the context of HRBA, mediators should mediate conflicts in compliance with human rights principles of non-discrimination and respect for the dignity of all as enshrined in national, regional and international human rights standards or instruments such as the Universal Declaration of Human Rights, Convention on the Elimination of All forms of Discrimination Against Women, the Constitution of the Republic of Uganda, 1995 etc. To defeat gender-biased arguments, referring to cultural norms promoting women when possible and appropriate can also be helpful.



¹⁰ "Gender and Culture| The Handbook of Cultureand Psychology | Oxford.. " <https://academic.oup.com/book/34980/chapter/298640932>.

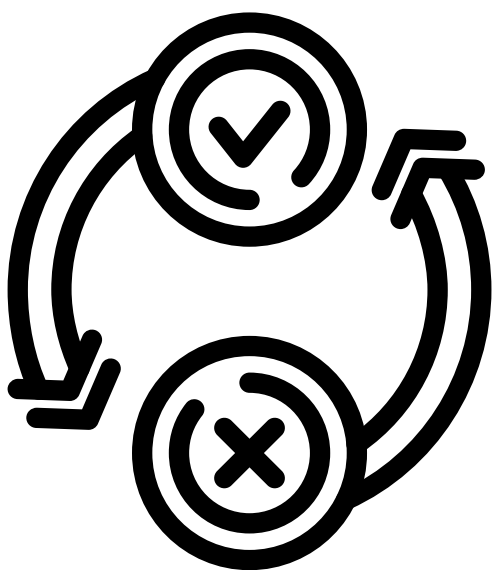
¹¹ "Resolving Conflict in African Traditional Society: An Imperative of..... " https://www.researchgate.net/profile/Ganiyu-Ibikunle-2/publication/342572492_Resolving_Conflict_in_African_Traditional_Society_An_Imperative_of_Indigenous_African_System/links/5efbd08f92851c52d60c822b/Resolving-Conflict-in-African-Traditional-Society-An-Imperative-of-Indigenous-African-System.pdf?origin=publication_detail.

¹² "Culture, Values, and Beliefs – Introduction to Sociology Lumen... - NSCC." <https://pressbooks.nsc.ca/lumensociology2/chapter/values-and-beliefs/>.

5.3 Challenges faced by women and girls in accessing gender-inclusive customary and informal justice through Alternative Dispute Resolution

ADR in many societies is fraught with gender discrimination, making ADR not benefit everybody equally. This situation calls for significant efforts to strengthen the gender-responsiveness of the Alternative Dispute Resolution mechanism to achieve equitable outcomes for all.

- (i) Traditional ADR service providers don't look at violence against women as a human rights issue but merely as a social conflict between a man and a woman or a husband and wife.
- (ii) Traditional ADR fora treat domestic violence as simple offences, if not normalising domestic violence against women and girls. ADR service providers don't look at violence against women and girls using a gender lens.
- (iii) The fact is that men dominate ADR fora. Whereas there could be some women as decision-makers in the ADR fora, men have real and the most authority and power for decision-making in those fora. Women in the mediation team accompany the process other than being real decision-makers.
- (iv) Victim blaming is common among community mediators. This is the tendency to look for the wrong the woman did to cause a conflict or violence against her rather than recognising that it takes two to tango. As a result, mediation is directed to change a woman's behaviour other than the behaviour of both parties.
- (v) Women's low level of agency to claim their rights at the community level because of their vulnerable situation. For instance, the traditional practice of payment of bride price weakens women's propensity to seek ADR services and use the conflict management accommodation strategy instead.
- (vi) Societal practice of putting on women the responsibility for marriage success. As such, in matrimonial conflict, most women choose self-blame and fail to seek ADR services.
- (vii) Traditional ADR service providers don't prioritise the safety issue of GBV victims. Consequently, as mediators take steps to mediate the dispute, victims are sent back to continue living with the perpetrator before the conflict is resolved.
- (viii) Frequent continued threats against victims of GBV as the mediation progresses. This compromises the victims' ability to exercise free will during mediation. As a result, the ADR's outcome does not serve women's best interests.
- (ix) ADR processes are voluntary. However, because women are unaware of their legal rights, other than walking away when ADR processes don't meet established standards of fairness, they continue to submit to those unfair ADR processes.



5.4 Factors influencing women continued use of customary and informal Alternative Dispute Resolution Mechanisms.

Despite the challenges women and girls face in the use of customary and informal Alternative Dispute Resolution Mechanisms, the following factors make women still prefer ADR:

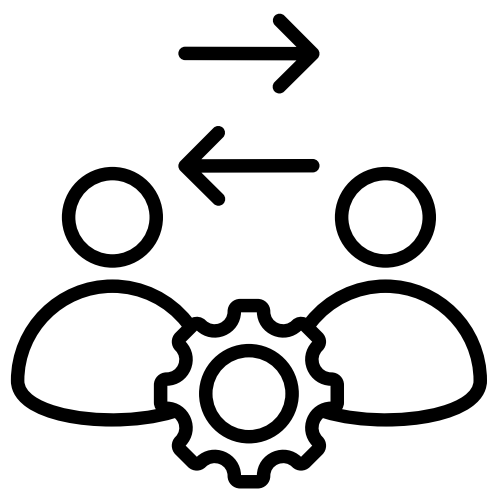
- (i) Legitimacy: Customary and informal ADR mechanisms and processes align with local customs about dispute resolution. For instance, under local customs, they focus on reconciliation other than retribution. This makes ADR more acceptable among women and the wider society.
- (ii) Familiarity: Customary and informal ADR mechanisms use simple and familiar procedures, as opposed to formal justice systems with complicated processes that most women, especially rural women, cannot handle.
- (iii) Use of local language: Customary and informal ADR mechanisms use language(s) that are predominantly spoken in the area, unlike the formal justice systems where English, a foreign language, is the medium of communication. This makes women continue to prefer ADR.
- (iv) Proximity: Customary and informal ADR mechanisms are readily available within the community compared to formal justice mechanisms. Such informal ADR mechanisms include cultural institutions, local councils etc.
- (v) Affordability: Most informal ADR services are free of charge, unlike formal justice systems where there is a requirement to pay filing fees, not to mention other court user costs.
- (vi) Poverty: Because many women are poor, they have limited time, logistical and material resources to travel to access formal justice mechanisms far from rural communities.

The above situations, therefore, require making ADR processes, including mediations, gender-responsive by national, regional and international human rights instruments.

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6. THE HEART, MIND AND HANDS OF A MEDIATOR

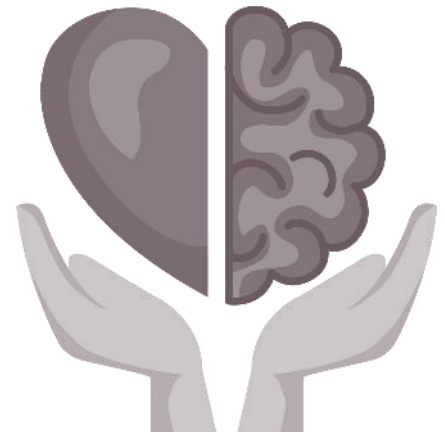
To be an effective mediator, individuals serving on mediation panels must cultivate new ideas about what it means to help people involved in a conflict. A mediator is a voluntary, impartial, independent and acceptable individual or group of individuals who help people in conflict to resolve their differences peacefully. Mediators are neither a party to the conflict nor interested in the subject matter of the dispute nor have powers to pass verdicts about the dispute. Mediators help resolve disputes by improving communications, relationships, and problem-solving among the disputants.

Mediators assist people in conflict by:

- Providing a safe place for discussion of issues in dispute.
- Opening communication where communication had broken down, and parties were no longer talking.
- Building trust and improving communications, where parties are communicating but not communicating effectively due to suspicion and lack of confidence.
- Suggesting ground rules or decorum that help promote productive talks.
- Managing negative emotions or energies such as fear, indifference, and hatred which risk damaging relationships further.
- Encouraging the parties to express their views on the issues in dispute.
- Probing to help parties identify, clarify and understand the interests or needs of either party.
- Framing the problem to be solved in a win-win manner to make the process less adversarial.
- Assisting in the generation and exploration of options that meet interests.
- Helping the parties in problem-solving to come up with solutions that meet the needs of all the parties.
- Formalizing agreements by reducing parties' decisions into written agreements for record purposes and future reference.

To be an effective mediator, individuals performing this role need to develop appropriate:

1. **Heart** – Attitudes about their role as helpers, the disputants and the dispute itself;
2. **Mind** – Concepts for thinking about conflict and the parties' issues, interests and potential solutions and
3. **Hands** – Procedures and skills to assist in dispute resolution. Below are the details of each of these elements:



6.1 Heart – Attitudes

Common Attitudes of Traditional Authority Figures (Politicians, judges, priests, managers, school principals, teachers, police, etc.)	Common Attitudes of Mediators (An acceptable, independent and impartial individual or group who assists people in conflict to amicably resolve their differences)
<i>Attitudes Toward Roles and the Process</i>	<i>Attitudes Toward Roles and the Process</i>
<ul style="list-style-type: none"> ▪ I'm an important person and deserve respect because of my knowledge, experience and position of authority ▪ I am wiser than you are and know what is best ▪ I have the authority to decide what is important to discuss, the process and the outcome of your dispute. ▪ You came to me for help, so let me help you ▪ My role is to give you advice or tell you what to do to solve your problem ▪ Your role is to accept what I recommend ▪ If you do not agree or comply, I will put pressure on you to do so or create adverse consequences until you give in 	<ul style="list-style-type: none"> ▪ Each of us deserves respect as people, not because of our position ▪ Respect for me comes from my ability to provide helpful assistance, not from my position (as a mediator or other role played in the community) ▪ We are all equal participants in the process. Equitable treatment should guide our work together so that all can fully participate. ▪ Each person has a role to play in the process and in finding mutually acceptable solutions. ▪ Each person has valuable insights, information or ideas to contribute; mine as the mediator are not necessarily better or wiser ▪ Self-determination by you, the parties (and not me, the mediator) is essential. ▪ My role is to help you make your own decisions, not to decide for you ▪ All agreements will be voluntary ▪ The problem and its outcome are in your hands, not in mine
<i>Attitudes toward the Problem or Dispute</i>	<i>Attitudes toward the Problem or Dispute</i>
<ul style="list-style-type: none"> ▪ Conflicts are harmful and should be suppressed and settled as rapidly as possible. ▪ It was your problem, to begin with; it is now mine to resolve ▪ One of you is responsible for or to blame for the problem; one will be the winner and found correct. The other will be the loser and wrong. ▪ I will play the role of a strong advisor, decision Maker or "judge" in to arrive at an outcome ▪ There is a good and wise solution to your problem or dispute (mine, which may not necessarily be yours) ▪ I will tell you the solution I think is appropriate, best, wisest or fair (which may or may not meet your interests) ▪ My interests are important too (often implied or unstated – i.e., getting this settled and possibly gratifying my ego) 	<ul style="list-style-type: none"> ▪ Conflicts and their outcomes can be positive, negative or both ▪ My goal is to create positive change as a result of your conflict and its resolution ▪ Everyone has some responsibility for a dispute; rarely is one person responsible, at fault, or to blame. ▪ My interest is to help you develop an effective cooperative process for resolving your differences yourselves and, if appropriate, help improve your relationship ▪ I do not have specific interests, biases or view on what should be the ultimate substantive settlement of issues in dispute

6.2 Mind - Concepts Attitudes

Common concepts of people in authority related to providing help or problem-solving (Politicians, Judges, Priests, Managers etc.)	Common concepts of mediators related to providing help or problem-solving
Concepts Related to Outcomes	Concepts Related to Outcomes
<ul style="list-style-type: none"> ▪ An outcome is more important than promoting cooperation. ▪ Determining the correct <i>position</i>, <i>substantive solution</i>, or <i>legal answer</i> is the goal of our interaction. ▪ In a dispute, there will generally always be a winner and a loser, or a person who gets what they want and is correct, and another who does not and is wrong ▪ If there is a voluntary dispute settlement, it will result from a compromise where some parties' interests and needs are met, and others are not. 	<ul style="list-style-type: none"> ▪ Substantive outcomes, processes and improved relationships are all important ▪ Understanding and respect for all parties' <i>interests</i> is critical to the outcome and success of mediation ▪ Empathy for and satisfaction of parties' relationship interests is often as important as meeting their procedural and substantive needs ▪ An acceptable and satisfactory process for the resolution of differences may be as important as the actual outcome ▪ Understanding and using an interest-based negotiation process helps resolve disputes. ▪ There must necessarily be a winner or loser or someone right or wrong. ▪ Mutually satisfactory agreements are possible and should be the goal of our efforts. ▪ Finding ways to meet as many of the parties' interests as possible is the goal of mediation. Additionally, we should be concerned about finding solutions that you, the parties, believe are just and fair ▪ The goal is to find or develop customized "integrative solutions" that meet specific needs, not just to reach a compromise ▪ Repair or redefinition of relationships to levels mutually acceptable to all parties should also be a goal of mediation

6.3 Hands – Procedures and Skills

Common approaches, procedures and skills used by people in authority to solve problems or resolve conflicts (Politicians, Judges, Priests, Managers, School Principals, Teachers, Police, etc.)	Common approaches, procedures and skills used by mediators to solve problems or resolve conflicts
<ul style="list-style-type: none"> ▪ “Telling” one’s view – either on the part of the parties or the decision maker – may be more important than listening. ▪ Negotiation, if it is used or in the context of mediation, involves an exchange of positions and counter-positions until a compromise is reached ▪ Positional negotiations are the usual way of resolving disputes. ▪ Advice from me as the decision maker is more valid and valuable than most solutions that you, the parties, might work out ▪ Application of my, the decision-makers, standards and criteria as the basis for decision-making are more important than the parties’ criteria. <p>Solutions that I suggest or impose may or may not, you’re your interests (However, they will meet mine)</p>	<ul style="list-style-type: none"> ▪ A safe place and process for talking is important ▪ Cooperation is valued and should be promoted ▪ Empowerment of one or more parties may be necessary to enable them to participate in the process and reach fair agreements fully ▪ A flexible process will be required to address and meet parties’ unique interests and concerns. ▪ Understanding and analysis of the causes and dynamics of conflict is important ▪ Improving communications is a significant goal and foundation of mediation. ▪ Good active listening – both for emotions and content – is essential for parties and mediators to understand each other better and the issues and interests involved. ▪ Identification, articulation and mutual recognition of parties’ substantive, procedural and relationship interests is the foundation for productive problem solving ▪ Engagement in interest-based negotiation is an effective way to help people resolve differences ▪ Good problem-solving involves selling a positive tone, articulating issues to be resolved, identifying parties’ interests, framing the problem to meet joint interests, generating possible options for agreement, evaluating options, reaching a final agreement and implementing it.

7. GENDER-SENSITIVE COMMUNITY MEDIATION PROCESS

This manual provides six steps community-based mediators can apply, including pre-mediation preparation, introducing the mediation process, defining issues and setting the agenda, exploring issues and interests, generating options for agreement and evaluating options, reaching agreements and implementing them.

Community-based mediation steps

Key actions	Tasks
Step 1. Pre-mediation preparation	
Conduct the intake	<ul style="list-style-type: none">• Meet with the party or parties bringing the dispute to mediation• Gather information about the history of the conflict, parties, issues and interests (investigation)• Determine whether mediation is appropriate and whether the mediator has the capacity, knowledge and skills to handle the case• Notify the initiating party if mediation is/is not appropriate• If mediation is appropriate, contact the other party, inform them about the process and gain their commitment to participate• Inform parties about the time and place for the mediation.
Prepare parties to mediate.	<ul style="list-style-type: none">• Explain the goals of mediation: to help them address and resolve their differences and assist them, as appropriate, to change how they relate to each other and their relationship.• Explain their role – do their best to identify and advocate for their needs and interests and look for solutions to meet their needs and the others.• Explain your role as a mediator – to help parties

Key actions	Tasks
	communicate more effectively, identify and present their interests and assist them in finding mutually acceptable solutions.
Prepare for the mediation (where it's a joint mediation session with local leaders or other stakeholders like the police etc.)	<ul style="list-style-type: none"> • Meet briefly before hearing the case to share and discuss what is known about the dispute, its history, the parties and their issues and interests • Clarify roles of the mediation team- who will lead in each stage or on specific tasks or issues. • Clarify how you will work together as a team and what each of you needs to be at your best. • Clarify how you will shift speaking or lead between members of the team • Clarify times and timeframes for the mediation session • Cultivate an optimistic attitude toward the dispute, disputants, the mediation process, and other team members. Take a moment of silence to become focused and then present.
Step 2. Introduce the process	
Open the meeting and set a positive tone/agenda.	<ul style="list-style-type: none"> • Greet participants at the mediation place. Welcome them warmly to the meeting, and thank them for coming. • Introduce parties and members of the mediation team, if they do not already know each other • Specify where participants are to sit and ask them to be seated. Allow enough space between them so they are not crowded, as this can create tension. • Seat yourselves at an equal distance from the parties.
Build confidence and trust in the mediator, mediation process, and clarify roles.	<ul style="list-style-type: none"> • Explain the goals of mediation: 1) to help address and resolve their differences, and 2) to assist, as appropriate, to make changes in the ways they relate to each other • Explain their role – do their best to identify and advocate for their needs and interests and look for solutions that will meet their needs and those involved. • Explain your role as mediators – to help parties communicate more effectively, identify and present their interests and assist them in finding mutually acceptable solutions. • Explain your relationship to the parties and issues to be discussed – neutral and not biased toward or allied with either of them and impartial toward specific issues, interests or solutions.
Set the considerations for the Mediation	<ul style="list-style-type: none"> • Determine if the parties have an interest in reaching an agreement. • If they do, explain that only they will make the final decision and that the mediators will not decide on solutions or agreements for them. • Explain the time-frames for the meeting and what will be done if more than one meeting is needed). • Explain the conditions for confidentiality and note-taking by the mediators and what will be done with notes. • Raise the possibility of private meetings (caucuses) with each party. • Explain that there will be a brief written summary of the outcome of the mediation session, either an Agreement or Non-Settlement report., Finally, explain their options if an agreement cannot be reached.
Gain and confirm commitment.	<ul style="list-style-type: none"> • Ask for and answer questions about the process and roles – theirs and the mediators.'

Key actions	Tasks
	<ul style="list-style-type: none"> Ask for and gain participants' commitment to try their best to and mutually acceptable solutions to their issues or problems Express your belief that mutually acceptable solutions are possible and provide hope and motivation for productive talks.
Step 3. Define issues and set the agenda	
Provide an opportunity for parties to tell their story.	<ul style="list-style-type: none"> Explain that each person/party will have an opportunity to share their views on the issues or problems they want to address and what is important for them in a solution (<u>i.e.</u> their interests, concerns and needs). Decide which person/party should begin, and ask them to Ask an open-ended question: "Can you tell us what brought you to mediation and what you want to discuss and resolve?" Listen, maintain appropriate eye contact and exhibit attentive body language. Encourage the other person/party to the dispute to do the same Observe and assess the impacts of what is said on the others involved in the mediation
Promote parties being heard and mutual understanding.	<ul style="list-style-type: none"> Periodically restate or summaries what has been said for clarification, verify the accuracy of understanding, and help "translate" and make information more acceptable to the other party. Control interruptions or counter-arguments from other participants. Allow the person presenting to complete sharing their view on the situation.
Help parties exchange relevant information	<ul style="list-style-type: none"> Ask additional open-ended questions to encourage sharing of more information and clarify views Ask clarifying questions to gain greater understanding. Ask if the other party has clarifying questions, and encourage them to ask them. Consider asking how the speaker has affected the views or feelings of the other party or parties
Have an agenda and sequence for talking about issues raised by the parties	<ul style="list-style-type: none"> Re-state issues for further discussion as they are stated, or summaries them at the end of each party's statement State, frame or re-frame issues in a neutral and impartial manner Call a short break, if necessary, and continue with the meeting after the break Repeat the steps above and repeat with other parties
Step 4. Explore issues and interests	
Generate "complete" information.	<ul style="list-style-type: none"> Select the appropriate party to begin the discussion of the first issue. Suggest an issue to start with – one that all parties are interested in, where there are some common interests and which will not take too long to settle Discuss the issue in a neutral, unbiased way, which does not imply favoritism or a specific outcome Ask open-ended questions to encourage sharing of additional information and clarify views Restate or summaries <u>your</u> understanding and what you have heard
Promote individual and common understanding	<ul style="list-style-type: none"> Restate to clarify what individuals or groups have said and verify intent and impact on the other party
Assist parties in moving from positions to interests.	<ul style="list-style-type: none"> Ask clarifying questions to gain a greater understanding of interests and needs. Encourage parties to listen to each other Restate interests (substantive, procedural and

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Step 3. Define issues and set the agenda	
Provide an opportunity for parties to tell their story.	<ul style="list-style-type: none"> Explain that each person/party will have an opportunity to share their views on the issues or problems they want to address and what is important for them in a solution (<u>i.e.</u> their interests, concerns and needs). Decide which person/party should begin, and ask them to Ask an open-ended question: "Can you tell us what brought you to mediation and what you want to discuss and resolve?" Listen, maintain appropriate eye contact and exhibit attentive body language. Encourage the other person/party to the dispute to do the same Observe and assess the impacts of what is said on the others involved in the mediation
Promote parties being heard and mutual understanding.	<ul style="list-style-type: none"> Periodically restate or summaries what has been said for clarification, verify the accuracy of understanding, and help "translate" and make information more acceptable to the other party. Control interruptions or counter-arguments from other participants. Allow the person presenting to complete sharing their view on the situation.
Help parties exchange relevant information	<ul style="list-style-type: none"> Ask additional open-ended questions to encourage sharing of more information and clarify views Ask clarifying questions to gain greater understanding. Ask if the other party has clarifying questions, and encourage them to ask them. Consider asking how the speaker has affected the views or feelings of the other party or parties
Have an agenda and sequence for talking about issues raised by the parties	<ul style="list-style-type: none"> Re-state issues for further discussion as they are stated, or summaries them at the end of each party's statement State, frame or re-frame issues in a neutral and impartial manner Call a short break, if necessary, and continue with the meeting after the break Repeat the steps above and repeat with other parties
Step 4. Explore issues and interests	
Generate "complete" information.	<ul style="list-style-type: none"> Select the appropriate party to begin the discussion of the first issue. Suggest an issue to start with – one that all parties are interested in, where there are some common interests and which will not take too long to settle Discuss the issue in a neutral, unbiased way, which does not imply favoritism or a specific outcome Ask open-ended questions to encourage sharing of additional information and clarify views Restate or summaries <u>your</u> understanding and what you have heard
Promote individual and common understanding	<ul style="list-style-type: none"> Restate to clarify what individuals or groups have said and verify intent and impact on the other party
Assist parties in moving from positions to interests.	<ul style="list-style-type: none"> Ask clarifying questions to gain a greater understanding of interests and needs. Encourage parties to listen to each other Restate interests (substantive, procedural and

Key actions	Tasks
	<p>relationship) and solicit affirmation of understanding. If appropriate, ask the other party to restate what they have heard.</p> <ul style="list-style-type: none"> • Reframe positions in terms of interests • Reframe negatives (what they don't want) to positives (what they do want) • Ask the other party if they have clarifying questions and encourage them to ask them. • Repeat the process described above with the second or other parties.
Assist parties to move toward problem-solving	<ul style="list-style-type: none"> • Identify, summaries and affirm common interests • Restate different interests where further discussion will be needed and which may need to be reconciled.
Step 5. Generate options for agreement	
Frame the problem to be addressed in terms of meeting joint interests.	<ul style="list-style-type: none"> • Describe or frame the problem to be solved by meeting the parties' individual and shared interests. • Explain that for an agreement to be reached, each party must have as many of their interests satisfied as possible • Explain the importance of generating multiple solutions to choose from • Explain the value of separating option generation from Evaluation. • Suggest a process for parties to generate options and help them implement it • Encourage the generation of multiple options • Prevent premature selection of an option - grasping an easy but less than satisfactory solution or a "leap to agreement." • Affirm parties' good thinking • Push parties to generate more ideas if they get stuck, or those suggested seem to be less than satisfactory • Summarize potential options for agreement.
Step 6. Evaluate options, reach agreements and implement	
Evaluate options and select the best.	<ul style="list-style-type: none"> • Review each party's interests • Compare how well each option meets each party's interests, either in joint sessions or in private meetings with each of the protected areas • Ask parties to make options more concrete – who will do what, when, where and how? • Check for practicality or feasibility of implementation • Assess options according to fair standards and criteria – Are they wise? Will they pass the "straight-face" or "laugh test"? How members of the wider community or a court might view them? Whether there are any potential negative unintended consequences? • Determine if options to address specific issues and interests must be linked or trade-offs made to reach an agreement. "If you do this for me, I will do this for you." • If necessary, compare options developed in mediation to those available "away from the table" – non-agreement and stalemate, conflict escalation, going to court, etc. If appropriate, conduct this assessment in private meetings.
Test for agreement	<ul style="list-style-type: none"> • Restate where you think there are agreements and ask for confirmation • Try a hypothetical statement or "trial balloon" – "What would happen if (describe solution)? Could you agree to that?"

Key actions	Tasks
Confirm agreements	<ul style="list-style-type: none"> • Restate agreements on individual or linked issues as they are reached, and ask for confirmation that your understanding is accurate. • Verbally summaries all agreements made in the mediation session. • Conduct a reality check - to affirm that all parties agree and are willing to comply with or implement them. • Take a short break to complete the settlement form • Read the written settlement, revise wording or terms as necessary and get confirmation of its accuracy. • Have parties read the agreement. • Put in a contingency and dispute resolution clause, as appropriate, in case of unforeseen circumstances or a future failure to comply with the settlement terms.
Implement the agreement	<ul style="list-style-type: none"> • If promises or tangible items (money, land, and livestock) can be exchanged during the mediation, complete it. • If parties have to perform over time to comply with the terms of the agreement, review who will do what, when, where and how? • Discuss if and how compliance will be monitored, the criteria to use, and by whom?
Encourage commitment to and compliance with the agreement	<ul style="list-style-type: none"> • Ask parties to sign the agreement. • Give each a copy of the agreement. • Affirm and complement the parties on their hard work, willingness to agree, and good-faith commitments to implement it.
Bring closure to the meeting	<ul style="list-style-type: none"> • Ask if the parties want anything else to say that affirms the agreement or their future relationship. • Have parties shake hands or make other affirmative gestures of agreement or closure, as appropriate. • Thank parties for their participation and trust in you, and express your hope for a positive future for them. • Walk them to the door of the mediation room, and say goodbye.

7.2 Conducting private meetings with parties

Private meetings with each party can be conducted during any step to promote positive communication, control the expression of harmful communications or emotions that will further damage relationships, explore, generate or evaluate options, create movement toward settlement and overcome psychological barriers to reaching an agreement. This can be done during opening statements, processing issues and agreement stages. The following techniques can be used to facilitate private meetings:

- Setup expectations in the mediator's opening statement.
- Announce in a matter-of-fact way
- Choose who will go first
- Escort party out/make sure they are comfortable
- Coach(how to share information)
- Give person "homework" to do while they wait
- Determine what specific information, if any, should be kept confidential
- Repeat with the second party
- Bring back together
- Transition/re-join parties



Problems/Pitfalls when conducting private meetings

- Mediator over-controlling
- Deal-making/shuttling/advocacy
- Creation of dependence on a mediator
- Time- other person drops out/toomuch waiting
- Meeting with both parties essential and maintaining impartiality
- Confidentiality - care/attention to keep it
- Premature timing or overuse of private meetings
- Ethical dilemmas – lack of full disclosure by parties in joint session, appearance or concerns about alliances, private information that is compromising, learning about illegal activities.

7.1 Mainstreaming gender sensitivity in the mediation process

This manual suggests gender and social inclusion be mainstreamed during the preparation for mediation, selection of mediation teams, location, timing, duration and medium and style of communication, mediation sessions and mediation agreement, among others.

Pre - mediation and preparation

As a mediator prepares the ground for mediation, the following key issues must be taken into consideration to ensure gender inclusiveness in the process:

Take time to understand the nature of the dispute by using a gender lens to preside over the case with sensitivity. They must identify the gender dimensions in addressing the root causes of the conflict to ensure that the needs of the affected parties, including men, women, children, persons with disabilities and older persons, are considered.

The mediator, negotiator, and conciliator should recognize women's representation during investigations, ensuring that all relevant community members are heard. They should also be aware, when consulting leaders, be conscious that leaders of the masculine sex might provide a gender- biased version of the facts, even when this is not their intention.

The over-representation of men in the leadership hierarchy requires that mediators, negotiators, and conciliators should be creative in finding multiple entry points and diverse mechanisms for gender- balanced consultations, e.g. work with women leaders, clan leaders, and elected LC 1 or 2 leaders, whom all have more profound insights of the day to day matters in the community.

Make all arrangements necessary to accommodate the unique needs of each party at the time of consulting them. This can include encouraging discussion with a female party without the presence of her husband or other men if those could influence what she has to say; working with a mixed investigation team to ensure everyone is comfortable talking.

Selecting mediation team

For a mediation process to be gender-inclusive, there should be a gender-balanced cohesive team. This will enable the team to guide, navigate, and monitor the process gender-sensitively when a gender-inclusive mediation team sends the first significant signal to the conflicting parties about the likelihood of gender fairness.

Consideration should be given to the following options when selecting and preparing the teams:

- Gender parity in the composition of the mediation, negotiation and conciliation team where possible, mainly when the case involves gender issues.
- Ensuring that all team members have a good understanding of the gender dimensions of the conflict. To ensure that it is essential to involve people of that locality who are well grounded in the local context, can interpret gender norms, and defuse harmful practices in a culturally sensitive way.

Mediation sessions

When parties are aware of the process and the set ground rules, they promote understanding among conflicting parties of the value of the broad participation of men, women, persons with disabilities, older persons and children. They must recognize, however, that conflicting parties will largely determine who, how and when different actors are brought into the process and what this process will be like. Mediators, negotiators and conciliators can nonetheless encourage parties to respect the equality of the parties. Some of the things that can be done to ensure equal participation include:

- Encouraging the inclusion of women representatives in their teams.
- Consider design options such as making sure all parties are comfortable when sitting for example women, men, Persons with Disabilities (PWDs) and older persons.
- Emphasizing that the process protects all who participate, e.g. witnesses, leaders, and attending audience who engage in mediation, negotiation and conciliation talks so that women, PWDs, older persons and men don't feel threatened.
- Scheduling meetings at hours that facilitate maximum participation of women and men.
- Soliciting guidance from women and their experiences in the mediation, negotiation and conciliation processes.
- Ensuring convenience (accessibility) for PWDs, women and older persons.
- Incorporating these processes will unveil a more comprehensive understanding of the situation and enhance the ability of the team to explore gender-balanced alternative proposals for resolving the conflict.

Mediation agreement

When drafting the final agreements, the mediator, negotiator or conciliator is a monitor to ensure that the rights of parties are fully respected, specifically the rights of female parties, PWDs and older persons as they tend to have lower bargaining power and are in most cases in worse-off position when it comes to negotiation.

More than that, the final arrangement can be an instrument to restore power imbalances between a man and a woman, including PWDs and older persons, if they existed in the original conflict. The mediator, negotiator or conciliator should be careful that the language used does not end up discriminating against any of the parties (how are parties referred to, pronouns used, etc.). It is also essential to ensure that the pre-existing situations will be consistent with the new arrangements, and if so, educate the parties (for instance, a husband does not take advantage of financial compensation given to his wife, etc.).

Drafting - Non-Settlement Certificate

- Use the specified form provided by the Mediation team (Form) attached to the user manual.
- Specify the reason/s for non-settlement.
- Explain the Non-Settlement Agreement to the parties, and ask them to read it carefully.
- If possible, translate it into the local dialect to explain certain issues that may not be clear.
- Explain that, if appropriate or necessary, the parties have a right to obtain advice, explanation and clarification of the non-Settlement agreement and its terms from an independent advisor, expert or lawyer of their choice before signing it.
- Give a copy to the complainant. If the dispute is referred by Courts or Police, a copy of the settlement should be sent to the respective institution.



8. MEDIATION PRINCIPLES AND MEDIATORS' QUALITIES AND CODE OF CONDUCT

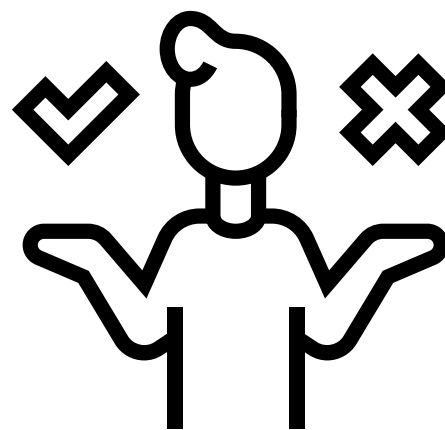
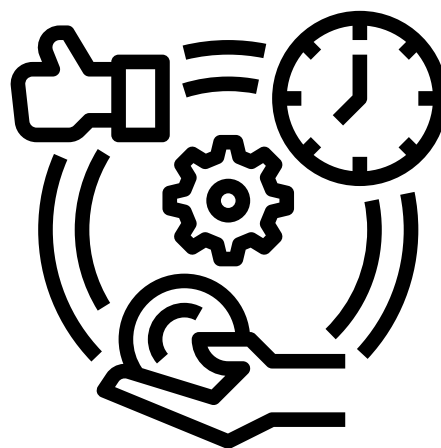
8.1 Principles of mediation

Principle	Meaning	Specific behaviors/attitudes
Free will	<ul style="list-style-type: none"> Making decisions and acting without being forced 	<ul style="list-style-type: none"> Parties make decisions without being forced. Parties speak for themselves freely. A mediator respects and protects a party's right to make decisions without being forced.
Cooperation	<ul style="list-style-type: none"> Working together towards the same goal 	<ul style="list-style-type: none"> Parties listen to each other. Parties help each other to solve problems Aim is to reach a mutually acceptable solution Mediator helps parties move from a competitive style to a cooperative one.
Respect	<ul style="list-style-type: none"> Accept/value individuals for who they are. Honour the integrity of the other party. 	<ul style="list-style-type: none"> Respect others and their ideas. Accepting is not dismissive. Mediators are non-judgmental of the parties.
Fairness	<ul style="list-style-type: none"> Treat all parties without favouring any, during the mediation process and at the outcome Reparation and restoration. 	<ul style="list-style-type: none"> Parties strive for a solution that meets the needs of each party. Mediator does not take sides or become involved in the content of the conflict. Aim is to repair and restore the loss or damage if appropriate.
Recognition	<ul style="list-style-type: none"> Acceptance/ empathy between parties. 	<ul style="list-style-type: none"> Demonstrates willingness to understand the perspective of the other party. Mediator works with parties to create an understanding of what happened and what is essential to each party.
Empowerment	<ul style="list-style-type: none"> Each party feels capable of expressing themselves and solving the conflict. 	<ul style="list-style-type: none"> Direct, full involvement of each party. Mediator explains the roles of the mediator and parties. Mediator uses the parties to encourage and validate tools Mediator leads the parties in brainstorming potential options
Flexibility	<ul style="list-style-type: none"> Informality within the process to change to meet parties' needs 	<ul style="list-style-type: none"> Parties consider different perspectives; different options Mediator adapts the process as necessary

8.2 Qualities of an effective mediator

An effective mediator should:

- Be neutral (should not favor or disfavor any of the parties)
- Be able to give parties an equitable voice.
- Be able to understand the dispute.
- Maintain confidentiality.
- Communicate effectively.
- Inspire confidence in the parties.
- Be sensitive to social diversity (gender, ethnicity, age, caste, religion, physical disabilities) and its implications for people.
- Be able to understand subtle power imbalances in society (gender, class, race, caste etc.).
- Be able to identify, accept and detach themselves from personal and private values which may influence issues under consideration.
- Show patience.
- Have integrity and honesty.
- Be mature.
- Be empathetic.
- Be analytical.
- Self-reflect and work to improve.
- Assist parties to negotiate, including being a “check on reality.”
- Assist parties to resolve a dispute in a reasonable amount of time or,
- Record non-settlement without delay.



8.3 Mediators' code of conduct

Dos	Don'ts
<ul style="list-style-type: none"> • Follow the mediation process and conduct it in line with the principle of self-determination (free will). 	<ul style="list-style-type: none"> • Provide legal advice.
<ul style="list-style-type: none"> • Facilitate parties to arrive at a solution or decision taken by themselves. 	<ul style="list-style-type: none"> • Make decisions for parties.
<ul style="list-style-type: none"> • Be neutral in regards to all parties (do not demonstrate side-taking) 	<ul style="list-style-type: none"> • Place personal interest on or benefit from the settlement terms of the dispute.
<ul style="list-style-type: none"> • Be impartial; be free from conflict of interest about the issues of the dispute and the parties to the dispute. 	<ul style="list-style-type: none"> • Be dictatorial in approach.
<ul style="list-style-type: none"> • Maintain confidentiality as per the expectations of the parties. 	<ul style="list-style-type: none"> • Coerce, threaten, induce, force, intimidate or use any other unlawful measures to push parties into agreement
<ul style="list-style-type: none"> • Avoid concerns with the vested interests of parties. 	<ul style="list-style-type: none"> • Make judgments or discriminate based on social differences (sex, ethnicity, age, class, caste, religion, education, physical disability or any other characteristic of a party).
<ul style="list-style-type: none"> • Withdraw from meditations for which they are ill-suited. 	<ul style="list-style-type: none"> • Take payments or compensation in any form
<ul style="list-style-type: none"> • Avoid mediating in disputes where there is a personal interest or where there could be a perception of personal interest. 	
<ul style="list-style-type: none"> • Be polite. 	
<ul style="list-style-type: none"> • Be patient and give parties enough time to discuss their concerns. 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Be assertive in focusing and refocusing the process when necessary. 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Avoid wasting time by having the discussion stray from agreed upon issues 	

9. ESSENTIAL MEDIATION SKILLS AND TECHNIQUES

1) Investigation technique

This refers to how mediators identify and understand the problem presented by the parties. The mediator must understand the natural causes of the conflict, not just its effects, to solve the conflict durably. To do so, the mediator must go beyond what is being said and look at values, relationships, behaviors and hidden interests.. Therefore, the mediator must understand how the parties approach the conflict. The approaches include;



2) Communication techniques:

Refers to methods mediators use to ensure they understand parties' messages and that parties' notifications are communicated clearly, truthfully and positively. The mediator should maintain open channels of effective communication that include;



- Active listening (do not interrupt) – the listener fully understands, responds, and remembers what is being said.
- Re-framing (state the issues from what the parties have told you) the mediator presents the issue again, but with a different, neutral perspective. It is a technique used to make the parties see their problem differently, making it easier to find common ground. The aim of this technique is that the parties no longer perceive each other as enemies but as partners handling a common problem
- Non-verbal communication techniques (gestures, posture, facial expression, etc.) employed by the mediator to: Make your authority and control of the mediation process, show empathy and support, make people feel heard and understood, and make people feel safe and encourage them to participate.

3)Control and support techniques

For cases particularly gender-sensitive, such as domestic violence or open gender discrimination (e.g. access to land, heritage, etc.), the mediator must pay extra attention to ensure that the weaker party gets enough support to participate in the negotiation meaningfully. Additionally, the mediator must ensure that negative behaviors from the public attending the mediation sessions do not influence the mediation process. Some attention points include:

- Sometimes, women cannot speak in the presence of their husbands or male relatives, thus hindering the process. While it might be impossible to exclude them from attending the mediation, the mediators should always encourage the woman to speak for herself – even if that means first listening to the husband- and use strategies such as caucus when needed.
- Trauma, especially in cases of repeated violence, is likely to occur in gender-sensitive cases. Also, it is not advisable to mediate in cases where the violence is repeated, where the woman's security is at risk – and there is a risk that the mediation worsens the situation. etc. Always refer to the legal framework to avoid mediating cases that should not be mediated.
- The public's expectations and reactions can create a restrictive environment for women based on prevailing norms and customs. Willingly or not, the necessity for the mediator to adapt to and control the audience might lead them to exclude women witnesses or leaders, dismiss their opinions, propose solutions that conform to socio-cultural practices but are discriminatory etc.



4)Dealing with conflict of interest

Three ways a mediator can deal with conflict of interest are as follows.

·Declaration: When a mediator realizes that the matter before him manifests aspects of conflict of interest, it is always proper for them to declare the kind of conflict s/he represents to parties. After announcing the conflict of interest, s/he can excuse themselves. If both parties feel they will

not have a problem with the declared conflict, they can continue mediating it. However, this consent will be highlighted in the mediation notes and agreement at the end of the process.

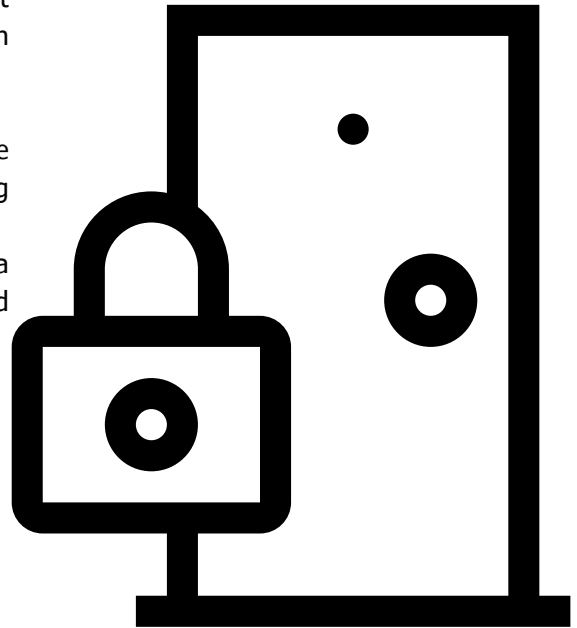
·Incidences where a mediator realizes that the emotions are involved between the parties on the matter at hand, s/he can give both parties a moment to self-reflect on the results if the issue is not resolved in a particular way. This helps the parties calm their emotions and use good choices to come to a solution.

·Constructively stepping aside: In incidences where the mediator realizes that s/he is too attached to the matter at hand or s/he is emotionally getting out of the line of order, it is always advisable to step out of the mediation and introduce someone else. Some actions unknowingly bring about a conflict of interest, and knowing when to step out is good.

5) Managing deadlocks

Deadlocks and impasses are specific situations, attitudes or behaviors of parties, interests, and motivations that inhibit parties from progressing toward settlement or reaching an agreement. They can be prevented or addressed by:

- **Preventions** – Things mediators say or do before deadlocks occur that help prevent them from happening and;
- **Interventions** – Things mediators say or do once a deadlock has occurred that help parties overcome it and move toward agreement.



10. REFERRAL

There are different kinds and levels of disputes that a community mediator cannot handle. These should be referred for appropriate handling and services elsewhere.

10.1 Determining the disputes to handle, refer and where.

Criminal cases are cases which involve committing a crime. A crime is an action which creates an offence and can be punished under the law. For an action to become a 'crime', there must be a law stating that the particular act is indeed a crime. When a crime or offence has been committed, it is taken that the crime is harmful to the person against whom it was committed; and detrimental to the community and the state. As such, crimes are prosecuted by the government. Most of the crimes in Uganda are written in Uganda's Penal Code Act.

Never mediate criminal cases. Instead, refer the matter to a competent authority.



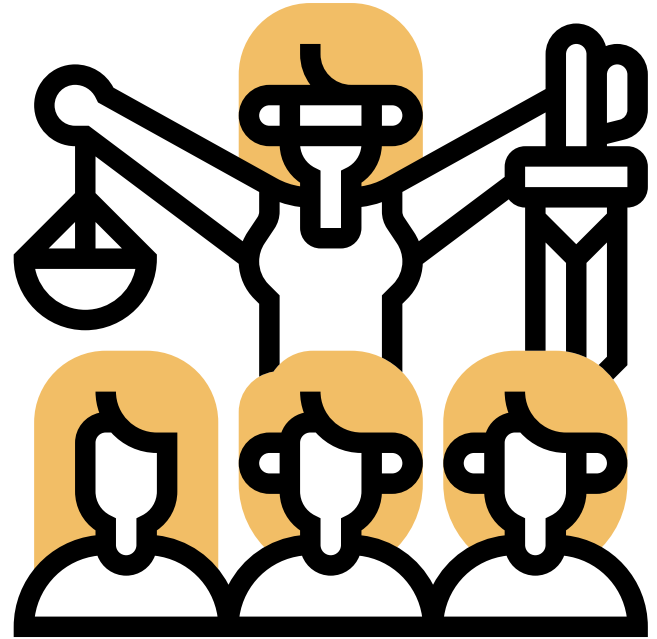
Type of cases	Refer to
Land-grabbing: illegal takeover of possession of land by non-owner	Police
Child abuse or neglect: causing a child physical or mental harm through physical touch or words. Neglect is failure or refusal by those responsible for the child (guardian or parent) to provide for a child's necessities.	<p>When those cases do not involve physical assault, you can consider mediation (<u>i.e.</u> when related to provision).</p> <p>Otherwise, refer to the Police.</p> <p>Children and Family Protection Unit, Community Development Officer (CDO), Probation office...</p>
(Domestic) violence: causing physical, sexual, emotional, verbal, mental, and economic abuse of a victim or anyone related to them. The violence is domestic when inflicted on a member of the household, <u>i.e.</u> wife, husband, children and domestic help.	<p>Police, CDO</p> <p>If the victim needs psychological support or shelter: Action Aid's Women Shelter in Gulu, UWONET Shelter in Kamuli and Namutumba, Caritas, TPO</p>
Rape: sexual intercourse with a female above 18 years without her consent	<p>Police, CDO.</p> <p>If the victim needs psychological support or shelter: Action Aid's Women Shelter in Gulu, UWONET Shelter in Kamuli and Namutumba, Caritas, TPO</p>
Defilement: unlawful sexual intercourse with a girl below 18 years	<p>Police, CDO</p> <p>If the victim needs psychological support or shelter: Action Aid's Women Shelter in Gulu, UWONET Shelter in Kamuli and Namutumba, Caritas, TPO</p>
Other types of assault/violence: includes all attacks on the body or a victim, whether causing actual, severe or physical harm, <u>e.g.</u> throwing a book at someone, beating someone and causing wounds.	Police & LC1
Theft: taking of an item without permission from the owner without the intention of returning it	Police & LC1
Murder: intentional causing of death of someone	Police

Civil Offences

Unlike criminal cases between the government and an individual, a civil case is between one individual and another. A civil case arises when one individual claims that another individual has failed to observe a legal duty which s/he has the responsibility to observe.

For all civil offences, you can consider mediation if the conditions explained above are met. If someone's life or property is at serious risk, refer the case to the police and seek outside help. Here are examples of civil cases you might encounter:

- Land dispute: boundary, trespassing, sale without spousal consent, eviction, disagreement between landlord and tenants, ownership.
- Inheritance/ succession, wills, etc. Issues relating to the taking over and distributing the property of a person who has died, whether they left a will or not.
- Family issues: child custody (with whom, when and where the child lives when parents are divorced, separated or dead), child welfare/ parental responsibility, marital problems, etc.
- Assault or violence: the person at the origin of the violence has been handled by the police, but the aggrieved party is seeking reparations for the damage or loss. The issue of how those reparations will be paid (not the violent act itself) can be handled through mediation.
- Debt: failure to meet agreed re-payment terms for money lent/borrowed.
- Failure to respect a sales or transactions agreement: land, rent, purchase, etc.
- Property damage, including crops, livestock, house or other structure, and house hold property.
- Other property disputes such as ownership, transfer, etc.



10.3 Referral process

Step 1. Believe that referral is an appropriate and professional service which is in the best interest of the client

Step 2. Know the professionals and other resources available in the community. The mediator must know the partners and how they work to be confident that those referred will be in good hands.

Step 3. Be honest with clients and let them know when a more professionally skilled person/office is best to handle their issues to avoid making mistakes. It's essential to have enough self-confidence and integrity, to be honest about the limits of your professional competence.

Step 4. Educate the client about what the professional you are referring them to will be able to do for them that you are not able to do. It is also helpful to assist the client to be comfortable with the person you are referring to by informing them that you know the agency and can be trusted and valuable.

Step 5. Allow clients to express themselves and their feelings about referrals. Some clients may be angry, others may be depressed or betrayed, and others may be afraid. Discussing these feelings will be necessary to reassure and clarify any misunderstanding. Allow clients to know that you care and intend no harm.

Step 6. Get clients to commit to follow through with the referral. It is only enough to suggest a referral if you are specific about the particular agency or organisation you are referring the client.

Step 7. Agree on what information is to be shared with a new professional. Provide a written referral to disclose information about the client.

7.2 Referral pathways

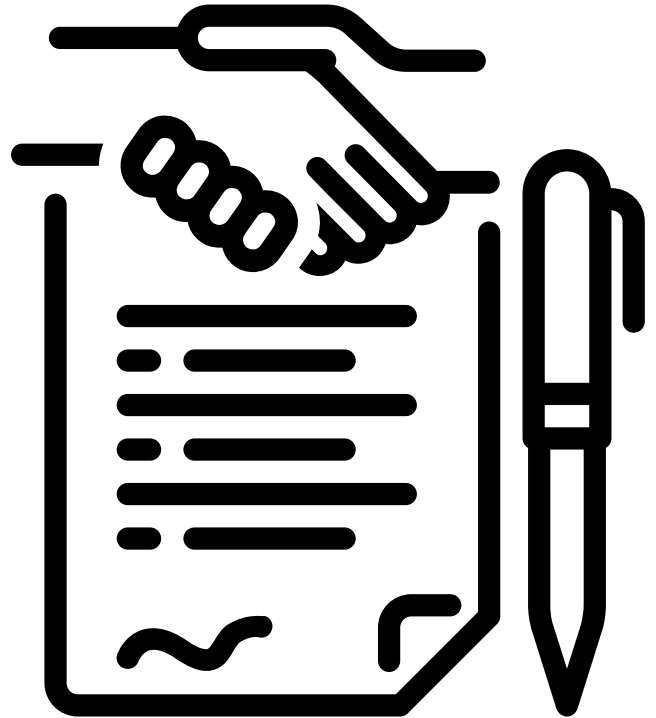
A referral is officially sending someone to a person or authority that is qualified to deal with them or handle their issues better (professionally). Therefore, for mediators, negotiators and conciliators to refer a case to someone else, they need to write a letter introducing the case to that person. Below are points of reference;

1. Local Council 1 – the first line of authority at a community level
2. Police – handle criminal cases
3. Child and Family Protection Unit and CDOs – cases of negligence and custody
4. Agencies like FIDA, Uganda Law Society, ANARDE, IJM, GWED-G etc., for legal redress and court action

11. KEY ELEMENTS OF A MEDIATION SETTLEMENT AGREEMENT

A Mediation Settlement Agreement must contain several essential elements to be considered valid and enforceable. These include:

- **Identifying the Parties Involved:** The agreement must identify the individuals or entities who are parties to the agreement.
- **Terms of the Resolution:** The agreement must outline the specific terms of the resolution, including any actions to be taken, the responsibilities and obligations of the parties, and any compensation or payments that are part of the settlement.
- **Date and Signature:** The agreement must include the date it was signed and the signature of each party, indicating their agreement to the terms outlined in the document.
- **Consideration:** The agreement must state that each party is receiving something of value in exchange for the promises made in the agreement.
- **Governing Law:** The agreement must specify the jurisdiction whose laws will govern the interpretation and enforcement of the agreement.
- **Dispute Resolution:** The agreement may include provisions for resolving disputes that may arise in the future, such as arbitration or the requirement to participate in mediation.
- **Termination Provisions:** The agreement must specify under what circumstances the agreement can be terminated or modified.



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ANNEX 1: MEDIATION SETTLEMENT AGREEMENT

THIS AGREEMENT dated..... IS MADE

BETWEEN

Party A

.....of.....

Party B

.....
of.....

(together referred to as 'the Parties')

The Mediator

.....
of.....

(a term which includes any agreed Mediator Observer)

About a mediation to be held on

at.....

('The Mediation')

IT IS AGREED by those signing this Agreement THAT:

The Mediation

1.The Parties agree to attempt in good faith to settle their dispute at the Mediation. The Mediator agrees to conduct and the parties to participate in the Mediation by this Agreement to mediate and consistent with the acceptable procedure as stated by the Laws of Uganda.

Authority and status

2.The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party's behalf at the Mediation, [or any part thereof], to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

Confidentiality and without prejudice status

3.Every person involved in the Mediation:

3.1Will keep confidential all information arising out of or in connection with the Mediation, including the terms of any settlement, unless otherwise agreed by the Parties in writing but not including the fact that the Mediation is to take place.

4.Where a Party privately discloses any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the Party disclosing it.

5.The Parties understand that the Mediator does not give legal advice and agree that they will not make any claim against the Mediator in connection with this Mediation.

Settlement formalities

1.No settlement terms reached; the Mediation will be legally binding until set out in writing and signed by or on behalf of each party.

Matters Agreed upon

State the matter agreed upon as stated....

1.
2.
3.

Legal status and effect of the Mediation

1.This Agreement is governed by the laws of Uganda, like the Contracts Act of 2010and Registration of Documents Act Cap 81 and any related laws.

Changes to this Agreement

Agreed changes to this Agreement are elaborately written down below.

.....
.....
.....

Signed

Party A:

.....
[Sign and write name] Dates

Party B:

.....
[Sign and Write name] Dates

Mediator 1:

.....
[Sign and Write name] Dates

Mediator 2:

.....
[Sign and Write name] Dates

ANNEX 2: NON-SETTLEMENT AGREEMENT

I,.....the Mediator, do hereby certify that a mediation process was conducted on this.....day of.....in the yearbetween the disputants specified below. The dispute between the disputants specified below was thoroughly deliberated according to the laws of Uganda. However, no settlement by mediation regarding such a dispute was reached.

Below are the points of Contention/Disagreement:

1.....
.....
.....

2.....
.....

3.....
.....
.....

DISPUTANTS
Signed

Party A

.....
[Sign and write name] Dates

Party B

.....
[Sign and Write name] Dates

Mediator 1

.....
[Sign and Write name] Dates

Mediator 2

.....
[Sign and Write name] Dates

4.0 THE OPTIONS IN THE GBV REFERRAL PATHWAY

OPTION 1		
SERVICE PROVIDER	SERVICE PACKAGE	GBV REFERRAL PATHWAY
<p>Report to Local Council 1 (LC1) for cases relating to physical assault without injuries, economic violence, verbal/emotional abuse</p> <p>Note:</p> <ul style="list-style-type: none"> The LC court is not allowed to hear or intervene in any sex related case like rape, attempted rape, defilement, attempted defilement, Sodomy Such cases are reported directly to police. Any case including sexual Abuse like rape, defilement, FGM and aggravated assault The offender is likely to commit further harm to the victim or relative There is a pattern or escalation of abuse or violence The nature of the abuse warrants police or court involvement (REFER TO THE DVA ON ROLES OF LCS). 	<ul style="list-style-type: none"> The community or the victim/survivor reports the case to LC1 The LC can mediate and where mediation fails, it hears the case as a court The LC1 court serves hearing notice to survivor and perpetrator. All GBV cases are sensitive Decision of court is reached by consensus Where consensus fails, judgment is recorded and the person who is not happy with the decision appeals to LC2 within 14 days. Where a child is involved in the case, he/she is referred to Probation office for action on child's welfare. LC court may make a written referral to Police or Magistrate where perpetrator is a repeat offender. 	

OPTION 2		
SERVICE PROVIDER	SERVICE PACKAGE	GBV REFERRAL PATHWAY
<p>Report to Police</p> <p>Note:</p> <ul style="list-style-type: none"> All capital of fences (rape, aggravated defilement, murder). are reported to police and any other cases of GBV. In case of rape and defilement, the victim/survivor should not bath/wash clothes before medical examination. The victim/survivor must be taken for medical examination and provision of PEP and ECP within 72 hours/3days to prevent HIV infection, and to avoid pregnancies. The service provider follows up the case. 	<ul style="list-style-type: none"> Victim/community report the case to the Police officer. Police officer fills in part (a) of PF3, gives victim/survivor a reference number, and refers her to a medical/health practitioner. Victim/survivor is examined and medical practitioner fills in part (b) of PF3. If it is a sexual assault case, the police fill in part (a) of PF24 A. The police refer the accused to a Health/Medical Practitioner. Police may refer a case involving a child to the probation office. Police may refer a victim/survivor to a shelter or for psychosocial counseling. Police continues with investigations and forwards the case to Directorate of Public Prosecutions for prosecution before the Court. The Court hears the case until its concluded. 	<p>Entry Point</p>

OPTION 3		
SERVICE PROVIDER	SERVICE PACKAGE	GBV REFERRAL PATHWAY
Report to Medical/Health Practitioner Note: <ul style="list-style-type: none"> The Victim/survivor in critical condition should be taken for medical care before reporting to police or any other service provider. At the same time, there should be collaboration to have Police Form 3 and 24A filled. In case of rape/defilement, the victim/survivor should not wash before medical examination. The victim/survivor must be medically examined, treated and provided with PEP and ECP within 72 hours/ 3 days to prevent HIV infection and to avoid pregnancies. The service providers should follow up the cases. 	<ul style="list-style-type: none"> Medical/Health Practitioner receives victim Medical/Health Practitioner offers required medical assistance to the victim/survivor including provision of PEP/ECP If Medical/ health practitioner suspects GBV, she/he accurately documents the visit of the victim Inform the victim/survivor of options available within the support system Makes herself/himself available to testify in court regarding the case where necessary 	Entry Point <pre> graph TD A([Medical Care, Health Units I, II, III IV, General Hospital]) --> B([Shelter/ Alternative Networks & Counseling]) A --> C([Police]) A --> D([Magistrates Court]) C --> E([Legal Aid]) </pre>

OPTION 4		
SERVICE PROVIDER	SERVICE PACKAGE	GBV REFERRAL PATHWAY
Report to traditional /religious/ community leaders, CSOs Note: <ul style="list-style-type: none"> In case of economic and/or emotional abuse the traditional/religious/community leaders may handle the case. Traditional/community/religious leaders shall not handle capital and sexual offences. They have to be referred to police. In case of defilement and rape, the victim/survivor must be taken for medical examination, treatment and provided with PEP and ECP within 72 hours/ 3 days to prevent HIV infection and to avoid unwanted pregnancies. The service providers should follow up the cases. 	<ul style="list-style-type: none"> The victim/survivor, the complainant or her/his relatives reports the case to cultural/religious leaders. The leaders invite the perpetrator for a meeting. Leaders discuss the issues, and may give advice to the parties. Advice may include counseling, reconciliation, restitution, apology, or any other advice that the leaders may deem fit. If victim/survivor has been injured, refer to a health Centre for medical care. She may also be referred to other service providers depending on her rehabilitation needs. 	Entry point <pre> graph TD A([Community Leaders, CSOs & FBOs]) --> B([Police]) A --> C([Medical Care]) A --> D([Shelter/ Alternative Networks]) B --> E([Magistrate Court]) C --> D D --> F([Legal Aid]) </pre>

OPTION 5		
SERVICE PROVIDER	SERVICE PACKAGE	GBV REFERRAL PATHWAY
Report to Psychosocial Service Provider (CSOs, CBOs, Probation Officer Legal Aid Clinics) Note <ul style="list-style-type: none"> A victim/survivor can report directly for Psychosocial, Legal Aid, legal services Probation Officer etc. The victim/survivor must be taken for medical examination and treatment, provided with PEP and ECP within 72 hours/ 3 days to prevent HIV infection and to avoid pregnancies. The service providers should follow up the cases. 	<ul style="list-style-type: none"> A victim/survivor's file is opened. Receive counseling, provision of shelter in case it is needed Refer either to the police, if the victim has not reported the case, or to a health Centre or government hospital in case of defilement or rape, for the required medical report. Accompany and support victim/survivor at police and court meetings The service provider follows up the case You may provide skills training 	Entry Point <pre> graph TD A([Probation Officer, PSS]) --> B([Medical Care]) A --> C([Shelter/ Alternative Networks]) A --> D([Police]) B --> D D --> C D --> E([Legal Aid]) D --> F([Magistrates Court]) </pre>

OPTION 6		
SERVICE PROVIDER	SERVICE PACKAGE	GBV REFERRAL PATHWAY
Report to the Magistrate Court Note: <ul style="list-style-type: none"> A victim/survivor can report directly to a magistrate court The victim/survivor can be referred to a shelter or medical care 	<ul style="list-style-type: none"> A victim's complaint is recorded in writing Summons are issued to the perpetrator Court hears the case to its conclusion 	Entry Point <pre> graph TD A([Magistrates Court]) --> B([Medical Care]) A --> C([Shelter/ Alternative Networks]) A --> D([PSS & Counseling]) A --> E([Legal Aid]) A --> F([Police]) </pre>

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Help bring about a fairer world
by supporting justice
and the defence of human rights