

MEDIATOR INFORSHEET ON HIV AND THE LAW

A toolkit for Mediators, Legal practitioners, Police Officers, Prison officers, Judicial officers, Court users, People Living with HIV, Local authorities, Cultural institutions and the General Population at Risk of HIV.

Uganda is among three countries in sub-Saharan Africa and 22 countries globally with the highest HIV prevalence. This is attributed to prevalent and significant levels of inequity, with several population groups failing to access and benefit optimally from the national HIV response. As articulated in the National HIV and AIDS Strategic Plan (NSP) 2020/21–2024/25, the factors responsible for the inequity include prevalent stigma, discrimination against people living with HIV (PLHIV). An estimated 1,414,183 individuals are living with HIV with females comprising 6.8% ,3.7 are male while 7% are children below 14 years of age (MOH Estimates). In 2020, there was an estimated 22,000 AIDS-related deaths. However the number of new infections remains high estimated at 38,000 of which over 60% of the new HIV infections adolescent girls and young women.

Uganda has put in a lot of effort to end the HIV epidemic in the country. It has formulated various laws and policies in order to curb the spread of the virus amongst the people, to protect the rights of those already infected with the disease and protect those not yet infected from being infected by the same. Uganda has therefore used a number of national, regional and international policies in order to fight the HIV epidemic and its related effects including but not limited:- Chapter 4 of the 1995 constitution of the Republic of Uganda as amended (Bill of Rights) devoted to civil and political rights including equality before and under the law in all spheres including people living with HIV (PLHIV).

The HIV Prevention and Control Act 2014 as a principle legislation that govern issues relating to HIV /AIDS in Uganda it provides for informed consent under section 9 ,Confidentiality under section 18 it also prohibit discrimination on grounds of HIV Status under part VII , Section 41 and 43 creates an offence Willful and Intentional transmission of HIV to another person. The Penal Code Act CAP 120 is Uganda's principle Legislation that defines crime and prescribes penalties Section 136 to 139 of the Code criminalizes sex work this has a direct impact on HIV response because it create barriers in access to health services due to stigmatization and Section 129(3) (4)(b) creates one the aggravating factor of defilement to be where the offender is infected with HIV .The Public Health Act Cap 281 ,Equal Opportunities Act 2007,Prevention of Trafficking of Persons Act 2009 ,Prohibition of Female Genital Mutilation Act 210 ,Uganda AIDS Commission Act 1992 Cap 208 and Uganda HIV and AIDS Policy 2011.

Uganda is also a signatory to several international and regional human rights instruments intended to advance the rights and wellbeing of people living with HIV/AIDS. These include: the Universal Declaration of Human Rights (UDHR) Article 25; International Convention on Civil and Political Rights (ICCPR) Article 6; the International Convention on Economic, Social and Cultural Rights (ICESCR) Article 12(1); the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) Article 12; and the African Charter on Human and Peoples Rights (ACHPR) Article 16. Human rights violations of persons living with HIV are associated with gender inequalities, violence, stigma, discrimination, and unfair laws criminalizing HIV/AIDS.

The 1995 Constitution of the Republic of Uganda provides for the right equality and freedom from discrimination, the right to life, personal liberty, respect for human dignity and protection from cruel, inhuman and degrading treatment or punishment, protection from deprivation of property, right to privacy of person, home and other property, right to a fair hearing, right to education, and family rights these rights applies to all Ugandans including people living with HIV.

Mediation is a voluntary process in which an independent and impartial third party assists disputing parties to amicably resolve all or parts of their dispute. It is an efficient and cost-effective process that aims to identify mutually acceptable solutions for both parties.

WHAT KIND OF CASES CAN BE MEDIATED (CASES THAT CAN BE REFERRED FOR MEDIATION)

Mediation is available for cases arising from civil dispute for example Land dispute, family discourse, and financial transaction dispute etc.

Why Mediation (merits of Mediation)?

- Cost: the mediation process generally takes much less time than moving a case through court process. While a case in court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours.
- Confidentiality: While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator know what happened.
- Control; Mediation increases the control the parties have over the resolution or

outcome and where they want mediation to take place. Thus, mediation is more likely to produce a result that is mutually agreeable for the parties. •Compliance: because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high.

- Mutuality: Parties to mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to "move" their position.
- Support: The mediator helps the parties think "outside of the box" for possible solutions to the dispute, broadening the range of possible solutions.

Role and Duties of a Mediator (A mediator is a person eligible to conduct mediation)

- The mediator shall assist the parties in reaching a mutually acceptable resolution of all or part of the issues in dispute. The mediator has no authority to impose a resolution of the dispute on the parties.
- The mediator shall conduct the mediation in good faith and in an expeditious and cost-effective manner.
- The mediator shall treat the parties equally and provide each party with a reasonable opportunity to participate in the mediation.
- The mediator may meet and communicate with the parties jointly or separately. Such communication may be in person or in writing and by any appropriate means. Information received by the mediator from one party shall not be disclosed to the other party without authorization from the disclosing party.

Duties of the Parties

The parties shall cooperate with the mediator and with one another and shall conduct the mediation in good faith and in an expeditious and cost-effective manner. Behavior of a mediator in the conduct of mediation a mediator must :

- Act within the law and uphold the law
- Act honestly, professionally and with integrity;
- Not abuse his or her position or connection with the court
- Conduct himself or herself in a manner that promotes diligence, timeliness and mutual respect among the participants
- Respect the parties during mediation
- Present himself or herself in appropriate formal attire;
- Not act outside his or her level of competence;
- Maintain his or her professional competence and skill by continuing to educate themselves on the mediation process; and
- Avoid any appearance of disagreement with or criticism of a fellow mediator to the public.

Mediation is divided into two categories which are commonly practiced:

- Court referred Mediation: Court may refer parties to a civil suit for mediation under the Civil Procedure Act, Civil Procedure Rules S.I 71-1 and Judicature (Mediation) Rule 2013.
- Private Mediation: In Private Mediation parties to civil dispute can appoint mediators to resolve their dispute through mediation.

Mediation Process

Planning: Before the mediation process begins, the mediator helps the parties decide where they should meet and who should be present on arrival the mediator should receive them

Mediator's introduction and Opening statement: With the parties gathered together in the same room, the mediator, introduces the participants, outlines the mediation process, and lays out ground rules.

Parties Opening statements and Presentations: Following the mediator's introduction, each side has the opportunity to present its view of the dispute without interruption. Beginning with the plaintiff and the respondent follow. In addition to describing the issues they believe are at stake, they may also take time to vent their feelings.

Joint discussion and identifying areas of agreement: After each side presents its opening remarks, the mediator and the disputants are free to ask questions with the goal of arriving at a better understanding of each party's needs and concerns.

Private caucuses (Separate meeting): The mediator will conduct private meetings with the parties to obtain a better understanding of each party's side and to assess possible solutions.

Negotiation: At this point, it's time to begin formulating ideas and proposals that meet each party's core interests, The mediator can lead the negotiation with all parties in the same room, or she/he can engage in moving back and forth between the teams, gathering ideas, proposals, and counterproposals including trade-offs and compromise to try and get settlement.

Recording the Final Decision: In most mediation process the settlement is not final until it has been reduced in writing and signed by all parties and each party to the agreement receives a signed copy of the agreement.

Written agreement: If the parties resolve, the mediator may put the agreement in writing and ask the parties to sign it., these agreements can be upheld in court.

Closing statement (Termination of the Mediation):The mediator should terminate the proceedings so that it is clear the procedure is complete, the mediator should terminate the mediation session on a positive note regardless of the outcome.

Fundamentals or Principles of Mediation

For an effective mediation, a mediator needs to take into consideration some key fundamental principles

Preparedness: Responsible and credible mediation efforts require good preparation. Preparedness combines the individual knowledge and skills of a mediator while not predetermining the outcome, preparedness entails the development of strategies and planning.

Consent: Mediation is a voluntary process that requires the consent of the parties to the dispute to be effective. Without consent it is unlikely that parties will negotiate in good faith or be committed to the mediation process.

Impartiality: Impartiality is a cornerstone of mediation if a mediation process is perceived to be biased it can undermine meaningful progress to resolve the dispute. A mediator should be able to run a balanced process that treats all parties to mediation fairly and should not have a material interest in the outcome.

Inclusivity: Inclusivity refers to the extent and manner in which the views and needs of parties to the dispute and other stakeholders are represented and integrated into the process and outcome of a mediation effort. An inclusive process is more likely to identify and address the root causes of dispute and ensure that it is resolved.

Confidentiality: Mediators should not disclose to any person or in any court proceedings any information, knowledge and/or any document that he/she acquired during mediation. Mediators are under duty to maintain confidentiality of both the overall proceeding and the private caucus.

Conflict of interest: Mediators should avoid serving in cases where they have a direct personal, professional or financial interest in the outcome of the dispute. Where there is potential conflict of interest the mediator should heed to the principle of disclosure.

Conclusion

Mediation is in resolving civil dispute out of court therefore the importance of a supportive external environment for the mediation process is underscored, with emphasis placed on the need for cooperation among entities involved in mediation. While all these factors are important, the success or failure of a mediation process ultimately depends on whether the conflict parties accept mediation and are committed to reaching an agreement. Mediators need to protect the space for mediation and their ability to engage with all actors while making sure that the process respects the relevant legal limitations, mediation is a flexible but structured undertaking. It starts from the moment the mediator engages with the conflict parties and other stakeholders to prepare for a process and can include informal, Mediation also offers the parties maximum control over the process of resolving the conflict including opportunity to redefine the area of discussion. An effective mediation process responds to the specificity of the conflict. It takes into account the causes and dynamics of the conflict, the positions, and interest of the parties The HIV epidemic remains one of the leading causes of death globally and it continues to raise new and complex legal and human rights issues and challenges that have confronted all arms of government. The JLOS institutions are in a unique position ultimately, as the wardens of the constitution and constitutional rights of citizens and residents of Uganda. The most vulnerable and the most affected are women, children who are either infected or left orphaned due to the epidemic and it is these people that the JLOS institutions must seek to protect within the con

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REGIONAL COURT MEDIATORS' TECHNICAL WORKING GROUP ON HIV AND THE LAW

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