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# 1. Introduction

The focus of this case study is a programme implemented by Plan and FIDA to protect the rights of people affected by HIV and AIDS in Kampala and Kamuli districts. The programme has been part of two wider undertakings. The first is a multi-country initiative addressing vulnerability to HIV and AIDS supported by the Australian Government through the Australian Partnerships with African Communities. The second is the wider long-term child-centred community development initiative implemented by Plan International in Uganda. This includes community capacity building, assisting people to improve their livelihoods, working with communities and government to improve health and education services, and protection and development of children, particularly children in difficult situations

The Kampala and Kamuli programme focuses on the protection and enforcement of the rights of people living with, or affected by HIV and AIDS, an aspect that has not received as much attention as other dimensions of Uganda's wide-ranging national effort to address the HIV epidemic, such as prevention of HIV transmission and care of people already living with HIV.

People who are poor are vulnerable to having their rights abused, and this is compounded when they are, in one way or another, directly affected by HIV. They are often unaware of these rights and unable to seek redress. Violations are often worsened by the inaccessibility of legal services

and the bureaucratic and lengthy processes of the court system.

To make justice more easily accessible for people affected by HIV and AIDS, the programme adopted the use of alternative dispute resolution (ADR) methods - resolving disputes without going to the courts of law - rather than resorting to litigation. This case study was carried out to demonstrate the effectiveness of these methods in resolving the social, economic and legal conflicts that confront women, men and children affected by HIV and AIDS. These pages also show how the use of ADR in turn makes justice more accessible; how it promotes the observance of rights, and fosters reconciliation and relationship building.

This document describes the context of ADR in Uganda, the nature of ADR processes and their relevance to the programme context. The study, written for NGO personnel and for the legal fraternity, also highlights the merits and challenges of using ADR, as well as the lessons learnt.

The research process for preparing this study involved 360 respondents, including FIDA and Plan staff, community volunteers, opinion leaders, local government officials, magistrates, police officers, probation officers and community members. Information was obtained through focus group discussions, individual interviews, and from programme records and case notes.

## 2. Alternative Dispute Resolution: the context

Alternative Dispute Resolution (ADR) refers to methods where conflicts and disputes are resolved without resorting to the courts of law. While ADR technically includes the use of force (as one may decide to settle an issue outside court by imposing force on the other party), arbitration, mediation, negotiation and conciliation are normally promoted. These constitute a spectrum of conflict-handling mechanisms, which range from conflict management and resolution to prevention and transformation (see Box 1).

ADR is best handled by trained mediators and counsellors – these may include community leaders and other respected resource persons, volunteers, the police and legal personnel.

### Cultural and religious practices

In Uganda, traditional mechanisms to redress disputes and injustices included ADR. In the past – and to varying degrees these days – communities relied on the advice and involvement of religious and cultural leaders, who had much influence on the local people. In the event of a conflict, the leader would summon the parties to a ‘round table’ where both sides would explain their grievances and judgment would be concluded in accordance with the prevailing cultural and religious norms. A leader’s decisions were respected, irrespective of whether they violated what we now consider human rights or the provisions of national law.

Today some cultural practices can still lead to the violation of rights, especially those of women and children. Although national law prevails if customary practices conflict with it, leaders can take advantage of vulnerable members of the community, a situation compounded by the existence of abject poverty, and ignorance of the law and of human rights, particularly with regard to gender equity.

Under the marriage laws, especially with regard to customary marriage, parental consent is required if the bride is aged 16 to 18 years. A traditional element of pre-marriage negotiation, a form of ADR between the families of the bride and groom, would be used when conflicts arose, as when a man had

impregnated and later wanted to abandon the girl. The constitutional court has however ruled that this practice violates human rights, so the assumption is now that, as long as the girl is 18 years and above, no such consent is required. Most churches nevertheless still demand a letter from the bride’s parents before a couple can marry. Whether the required consent is to establish the absence of kinship between the two families or for any other reason, a form of social agreement is therefore used to secure a recognised union.

### The law and ADR

Court-based ADR began to take root in the Ugandan judicial system in the mid 1990s. Its increased use alongside litigation was first recommended in 1994 and, shortly thereafter, the 1995 Constitution provided that *“justice shall not be delayed, reconciliation between parties shall be promoted and substantive justice shall be administered without undue regard of technicalities”*. This clause provided a pathway for ADR into the legal framework; it promoted a shift towards a more consistent use of this approach and countered legal perceptions which favoured adversarial dispute resolution methods, exemplified in litigation.

Today, ADR is embraced in the Ugandan legal system to solve civil disputes in several ways. ADR was first introduced into legal practice to settle commercial cases after outcries from the business world about court delays. Under the 1997 Children’s Act, alternative methods of dispute resolution are also provided for in cases when a child has committed an offence. These include allowing local council courts to handle matters where punishments take the form of compensation, caution or ensuring that the pre-conflict situation is restored.

All civil cases in Uganda must follow the rules of civil procedure, which provide for the use of ADR at any stage of conflict resolution. Judges and magistrates have the discretionary powers to instruct the conflicting parties to resolve their differences outside court and to return to litigation only if they have failed to resolve their differences

through ADR. ADR is now largely used by family and commercial courts, as well as by NGOs providing legal aid services.

### Box 1: From conflict management to conflict resolution and prevention: a spectrum of techniques

- **Negotiation** allows the parties to a conflict to identify and discuss the issues at hand and arrive at a mutually acceptable solution. Parties make an effort to resolve the dispute. The focus of negotiations is on the parties' common interests, rather than their relative power or position. The idea is to create options that satisfy both mutual and individual interests. This informal process offers parties maximum control over the process.
- **Arbitration** involves a neutral third party, empowered to decide on a solution to a dispute after hearing evidence and arguments from all parties, in accordance with set procedures specified by either the arbitrator or the disputing parties. Depending on the arguments and the potential legal constraints, the arbitrator's decision may or may not be binding.
- **Mediation** also involves a neutral third party, the mediator, who conducts discussions to help the parties reach an agreement on all or any part of the issues under dispute. The mediator has no power to decide, but assists the parties to reach a settlement. The mediator serves as a facilitator to schedule, structure and guide the negotiations, s/he focuses the discussions, facilitates the exchange of information, and serves as the assessor – but not judge – of the positions taken by the parties. S/he can assist in recording the settlement as an agreement, which is then reviewed and signed by the parties.
- **Conciliation** is a process in which a third party, a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying viewpoints, and pointing out misperceptions. The conciliator may or may not be neutral to the interests of the parties. Successful conciliation reduces tension, opens channels of communication and facilitates continued negotiations. Conciliation is frequently used to restore the parties to a pre-dispute status, after which other ADR techniques may be applied. Conciliation is also used when parties are unwilling, unable or unprepared to come to the bargaining table. *Counselling* is one technique used to reconcile the parties and legal counselling has been extensively used in this programme. With legal counselling, the moderator helps a party according to the provisions of the law as well as the facts at hand. Usually the affected party tells his or her story and the counsellor provides emotional support, shows empathy, and gives legal advice to enable the party cope with the situation and make an informed decision.

One issue that currently arises is whether ADR should be extended to criminal cases, as it may undermine the notion of deterrent measures for committing crimes. While criminal cases must follow the criminal procedure rules (which do not make use of ADR), they do allow the judge or magistrate to take various decisions on cases of misdemeanour (cases that are straightforward with a specified sentence of a jail term of two years or less). This can include urging the disputing parties to resolve their conflict outside the formal court process – which is ADR. Cases that are aggravated and carry a lifetime imprisonment sentence or the death penalty however are non-negotiable and therefore ADR does not apply.

### The court system

When rights are violated, cases can be taken to the Probation and Social Welfare office, the Administrator General's office, the police, or the land offices. There is also the court system: in Uganda, this includes magistrates' and higher courts, as well as a hierarchy of decentralised Local Council Courts, which are established at the administrative levels known as villages, parishes and sub-counties. These courts consist of appointed members (with a quorum of five persons), who must be approved by their respective councils. Local Council Courts at village and parish levels are key players in the dispensation of justice at neighbourhood level. Their jurisdiction extends to civil cases and petty offences, including domestic disputes, land and inheritance matters, as well as parentage of children and other matters specified under the Children's Act. The Local Council Courts have powers to grant remedies, such as reconciliation, as well as compensation, restitution, community services and other such penalties.

Recourse to the courts however presents severe limitations, especially for the poor and the vulnerable. Court processes tend to be slow and bureaucratic and, when lawyers are involved, their fees are too high for the common person, especially for those families affected by HIV and AIDS. Indeed, lawyers do not often use ADR, largely because they can earn more by taking a case to court. Legal services, including magistrates' courts, are also generally distant, particularly in rural areas. Finally, court decisions leave in their wake winners and losers, sometimes resulting in family breakdowns, grudges and even death, when the losing party decides to take the law in his or her hands.

## 3. ADR in the programme areas

### The programme areas in Kamuli and Kawempe

Plan and FIDA Uganda have implemented the 'Legal Rights Programme for People Affected by HIV and AIDS' in Kamuli district in Eastern Uganda and in Kawempe, a division of the city of Kampala, since 2005. Both areas are characterised by extreme poverty, strong cultural and religious affiliations, and widespread abuse of human rights.

HIV and AIDS continue to severely affect local communities, leaving thousands as orphans, widows and widowers, and increasing people's vulnerability to stigma and discrimination. Conflicts and rights violations in extended families often emerge with the death of breadwinners, with poverty and ignorance of the law (especially in relation to marriage, wills and inheritance) aggravating the situation. The most common rights violations include forced 'widow inheritance', property and land grabbing, early and forced marriages, widow and orphan disinheritance, child labour, child and family neglect, domestic and sexual violence and discrimination based on one's HIV status. These violations result in health, social, economic and legal hurdles that need immediate redress.

The large number of disputes and the diverse nature of each case have not only over-stretched the community court system, they also pose special challenges to the way conflicts are resolved.

As disputes usually arise among family members, they must be resolved in keeping with the context that informs a particular community or family. As most of the people affected by HIV and AIDS in the programme areas are poor, they have limited access to legal services and are unable to afford the court expenses. Furthermore, as elsewhere in the country, people often lose interest in pursuing their case because of the long and intimidating court processes. Injustice then prevails and psychological and physical stress may ensue, leading to deteriorating health, especially for people living with HIV.

As in much of Uganda, clan and religious leaders are often respected in the programme areas. They act as important authorities in resolving disputes, especially those related to marriage, customary land, inheritance and succession. Before Plan and FIDA's intervention, community leaders used traditional norms and forms of dispute resolution, in effect their own ADR mechanisms.

### The project works through local resource persons



Community volunteers resolving a dispute in Busoga, 2009



A teacher who has been trained in ADR Kitayunjwa Parents' Primary School, 2008

## The FIDA/Plan programme and ADR

Plan collaborated with FIDA Uganda in this programme because, in comparison to the creation of awareness of HIV, prevention of infection, provision of medical care and livelihood support, the legal rights aspect had not received due attention.

Overall, the programme aims at making children, women and their families less vulnerable to the impact of HIV and AIDS through increased respect for and observance of the legal rights of children, women and men affected by HIV. More specifically, the programme works to increase awareness among local communities of their rights and of the possible mechanisms to protect them. The programme also seeks to improve access to legal aid and other services in the community, to strengthen government and community structures relevant to the protection of rights, and to advocate for the necessary policy change, law reform and institutional development.

The programme thus adopted several strategies, the first being community education on legal rights, using village meetings, radio programmes, dance and drama performances. Secondly, the programme has promoted the decentralised

provision of legal services to the lowest levels, working through local structures and enhancing their capacity, including that of the local councils and of the community volunteers attached to the programme. All were given information and skills with regard to relevant laws, legal counselling, human rights and gender equity. While the programme has been based on a rights-in-law approach, reference has also been made to international human rights and to the positive values underpinning cultural practices.

In accordance with Uganda's legal framework, because most of the disputes involve relatives or neighbours, and because the communities are poor, the programme adopted ADR as a first and effective line of approach to resolve disputes as opposed to litigation. This was based on FIDA's previous experience with the approach, which had shown ADR not only to be effective in a context of urgent need, but also faster and cheaper than litigation, and a good vehicle to promote fairness, reconciliation and relationship building within families and communities.

The programme trained a range of different actors in the use of ADR: these included the FIDA legal officers, community volunteers, teachers, cultural and religious leaders, Local Council leaders, and other legal service providers, such as the Administrator General's office, the police and the probation officers (see Box 2).

### Box 2: The ADR process

The procedures used by all actors across the project, including community volunteers and local counsellors, are similar.

- **Assessment** As a first step, when the aggrieved party or 'client' reports the case, his/her particulars are registered to determine whether the person is eligible to benefit from the free service and for purposes of project monitoring and reporting (persons resident outside the programme are not eligible, but can be assisted and referred to another institution to get redress there). The mediator then obtains the facts of the case, as narrated by the client, and records them. Whether the matter needs to be handled through ADR or through litigation can then be established, or whether it needs to be referred. If necessary, legal counselling is provided at this point. Cases of a criminal nature are usually referred to the police. In case the matter is already before the courts of law and the other party is not willing to use ADR, the case is left to continue through the court process.

- **Invitations** If the case is to be handled using ADR, the other party is invited to appear to resolve the conflict. If any of the invited parties fails to honour this invitation, a reminder is given. If the parties do not appear a second time, and if the aggrieved party is at fault and has not bothered to inform the mediator, it is then presumed either that the dispute has been resolved (the most common occurrence) or that the client is no longer interested in pursuing the case. The file is then put aside, until and if the same parties reappear. On the other hand, if the person who has not appeared is the respondent, it is presumed that the person does not want to have the matter resolved, and another course of action (referral or litigation) is sought.
- **Conciliation meetings** When both parties appear, they sit with the mediator to resolve the case. The client is first asked to repeat the complaint in the presence of the respondent to ensure that s/he did not earlier give any false information, which s/

## Box 2: Continued

he may fear to repeat in the presence of the other party. The respondent is also given a chance to tell her/his side of the story. Under the guidance of the mediator, a discussion then starts to establish the root cause of the conflict and to allow the parties to propose solutions. Witnesses, such as local council members, community and clan leaders, neighbours and relatives are sometimes required to provide evidence. If necessary, the mediator meets them in their villages or homes. In most cases, the mediator does not give his/her opinion (unlike an arbiter who decides on a course of action to be taken). The mediator guides the discussion and notes the areas where the law is violated and gives advice to the conflicting parties accordingly.

- Agreement Different solutions are then generated by the parties, who agree on the most suitable and beneficial. After agreement has been reached, a memorandum of understanding is drafted and signed by the parties and witnesses (in the village, any piece of paper will do). Gestures of reconciliation are sometimes shared, such as handshakes, embracing and apologies. Finally, after a week or two, a visit is made to gauge progress. There are very few instances where the parties to a dispute entirely fail to agree on a common position: where there is no agreement, the mediator counsels the parties and, if they still fail to agree, the matter is forwarded for referral or to court for litigation.

FIDA also established legal aid clinics, where legal officers have normally resolved conflicts through ADR. Where necessary, the programme has also provided legal advice and representation in court, as well as referral to other institutions, depending on the matter at hand. Most of the cases received at the clinics have been handled quickly, given the community's urgent need. This however does not mean that all the cases have been handled expeditiously, as when respondents have not honoured the invitation to appear or when parties to a dispute asked for a postponement in case of unforeseen events, such as illness.

The method of ADR used has varied with the nature of the dispute. Marital conflicts for instance have usually required conciliation. Different methods could also be used separately or in combination, depending on the complexity of the case. Legal counselling has often been provided

before any attempt at arbitration, mediation or negotiation (see Box 3). Barbra Babweteera, the former FIDA Programme Coordinator in Kamuli advises: *"The legal officer should determine which method to use after assessing the situation at hand. For example, in many cases that were brought to the clinic, men called as respondents in child maintenance cases came with arrogance, even rage. If one comes in this frame of mind and is unwilling to listen, the officer may decide to arbitrate."*

FIDA Uganda promoted the use of ADR by encouraging community institutions to use this approach in all cases of a civil nature. Cases that proved too complicated for a particular service provider would be referred to another with better skills and appropriate jurisdiction, still using the ADR method, thereby contributing to the long term sustainability of the programme outcomes.

### Box 3: Methods of resolving disputes by nature of case

	Nature of case	Whether ADR may be used	Most effective ADR methods
1	Defilement and early marriage	No, as these are capital offences	
2	Child maintenance and neglect	Yes	Mediation and arbitration and reconciliation
3	Land dispute	Yes	Mediation, arbitration, negotiation and reconciliation
4	Widow inheritance	Yes	Arbitration, reconciliation and counselling
5	Marital dispute	Yes	Mediation and counselling
6	Domestic violence	Depends on the severity of the case	If not severe, mediation, arbitration, negotiation and reconciliation
7	Estate and property grabbing	Yes	Mediation, negotiation and reconciliation
8	Sale of matrimonial home	Yes	Arbitration
9	Custody and access to child	Yes	Mediation
10	Debt recovery and fraud	Yes	Arbitration and negotiation
11	Paternity	Yes	Counselling, mediation and reconciliation
12	Stigma and discrimination	Yes	Mediation and counselling
13	Children refusing to go to school	Yes	Counselling
14	Theft	Depends on the severity of the case	Mediation, negotiation and reconciliation

## 4. Experiences in using ADR to resolve conflicts

The programme has produced remarkable outcomes: first, people's knowledge of their legal rights has increased and their access to legal services improved. This has resulted in increased confidence by people affected by HIV and AIDS - and others - to seek legal redress when necessary and to safeguard the inheritance of children and women through will writing. There is more respect for human rights and fewer cases of disinheritance and property grabbing.

Secondly, there has been an increase in the numbers of cases resolved through the programme legal staff and, over time, by the community volunteers, the local councillors and the cultural and religious leaders who were trained through the programme.

With regard to ADR, programme records indicate that, out of the total number of 'clients' at the FIDA clinics (just under 14,000 from November 2005 to April 2009), about 80% have seen their cases settled using ADR methods. This excludes disputes that are resolved in informal settings, away from legal clinics or other offices. For example, a woman having a marital conflict might meet a community volunteer, ask for advice and even settle the issue there and then. Community volunteers have resolved large numbers of cases. In one year (2007/8), they settled more than 500 and ably referred those beyond their capacity or jurisdiction (such as criminal cases) to other offices.

Progress has been achieved in both the rural and urban locations where the programme is active, although ADR is more commonly relied upon in rural Kamuli, primarily because of the prevailing poverty and the limited opportunities of accessing a lawyer or other means of litigation. For example, there are no lawyers' offices in Kamuli, except for the FIDA programme office in the town, which was open from 2005 to 2009, a period during which alternative local capacities were built to ensure access to substitute services. David Kyangwa, a community volunteer in Namisambya I, Kamuli observes: *"Most of the people in this area can't take their cases to court. First, it is very far and then they ask for a lot of money. So our work here*

*(in the villages) as community volunteers helping them resolve their disputes is very helpful to them."*

This contrasts with Kampala, where there are many law firms and advocates and where some residents can afford litigation fees. In Kamuli, other factors may be the strength of social and community bonds and common cultural reference points, compared to Kawempe where people may be temporary residents and have limited connections with neighbours or other residents.

In sum, the use of ADR has been beneficial to both the recipients and the providers of the services in several respects. It has been widely adopted in the programme and manifests several advantages:

### ADR and local solutions

ADR promotes win-win situations, as opposed to court litigation with its winners and losers. During mediation, negotiation and reconciliation, parties are able to develop and agree on their own solution to their disputes. This is significant since, in most cases, the disputing parties are either related, are neighbours or live in the same village or neighbourhood, and keeping harmony is important. Where ADR is not successful, or agreements are not honoured, litigation can still be used.

### ADR is cost effective

ADR promotes win-win situations, as opposed to court litigation with its winners and losers. During mediation, negotiation and reconciliation, parties are able to develop and agree on their own solution to their disputes. This is significant since, in most cases, the disputing parties are either related, are neighbours or live in the same village or neighbourhood, and keeping harmony is important. Where ADR is not successful, or agreements are not honoured, litigation can still be used.

Cost effectiveness can be measured in terms of money, time and human resources. A case handled through ADR takes a much shorter time than going to court, where a minimum of 6 months is common, compared to the 1-3 days for ADR sittings, sometimes in the space of a single week (see Box 4). Secondly, ADR is inexpensive: it may only involve transporting the clients to and from the meeting venue and making a small payment to service providers, such as the Local Councils. In the programme area, the community volunteers provide free services to the community.

### ADR as an awareness-raising tool

ADR has provided an avenue to raise awareness about legal rights and to reduce stigma and discrimination against people affected by HIV and AIDS, especially if the conflict revolves around a person's HIV status. The programme has used ADR to promote the rights of such clients and has taught them about the law through legal counselling during ADR sessions. ADR has shown that there is justice too for those affected by HIV and AIDS.

### Advantages to other service providers

The programme has facilitated the adoption of ADR as a method of dispute resolution by various legal service providers. After training, many government service providers have put into practice knowledge on legal rights, ADR and conflict resolution. The probation office, the

### Box 4: Speedy ADR vs. a lengthy court process

- From the FIDA case notes: Ms. Ssajabi lives in Kabukye village in Kamuli. "Her inheritance case was handled by FIDA and was concluded through ADR in a period of 3 months. She was given access to her land and matrimonial home and she has lived there with her children for some years".
- Ms. Nabirye of Buwanume village in Kamuli had a similar inheritance matter: "This was reported to the Kamuli court in 2006 and it is still pending, because of change of magistrates and several adjournments. Ms. Nabyrie has no land or provision for her children. The Legal Aid project in Kamuli will close before she is granted justice" says a Kamuli FIDA legal officer.

police, the Administrator General's office and the courts have made extensive use of ADR. With FIDA programme staff and other actors settling disputes, fewer cases are being reported to the police and the courts, and this has contributed to a reduced backlog of cases in the judicial system. This approach has also helped the different institutions to gradually perform and operate as one system, providing appropriate referrals of clients to other members of the network, thereby promoting the sustainability of the programme interventions and outcomes. A magistrate in Kamuli for instance comments: "In the past, we very many cases were referred to court, but this has changed. This is mainly because the Community Volunteers handle most disputes that are at the village level, using ADR. This will help reduce the case backlog in court."

## Box 5: ADR at work: testimonies

- *“Justine came to me when her husband refused to look after the family and pay the children’s fees. When I talked to the husband, he refused to take the responsibility. I instead brought the two together and told them about the children’s rights law and their responsibilities as parents. The husband then agreed to look after the children and also pay their fees, though he left the home.”* Paul Kavuma, Community Volunteer, Kawempe II.
- *“I handled a case involving a wife and her polygamous husband who had disagreed to such a point that they could not stand the sight of each other. They were given an opportunity to talk openly about the reason for their conflict. The bone of contention was initially said to be non maintenance of child and family. However, it was later found out that it was all about denial of sexual rights. By the end of the session they were smiling and hugging each other, and even left on the same bicycle!”* - Barbra Babweteera, formerly with FIDA, Kamuli.
- *“In our department, we prefer to settle cases using ADR because we look at the best interest of the children. If a father has failed to cater for his family because of lack of enough resources, pushing him to court worsens the situation. We usually sit down with the family members and agree on how best they can all be catered for”* Police officer, Kawempe Police- family protection unit.
- *“I reported a case to our community volunteer against my uncle who wanted to take over our family house after the death of our father. When our father died of AIDS, he left the 6 of us and our sickly mother with a will. Our uncle was claiming the house because he had bought the land jointly with our father. The volunteer referred us to the FIDA office who invited our uncle and the clan leader. The land was then divided equally between us and our uncle. We now live happily and none of us feels cheated after getting to an agreement.”* - Community Volunteer, Bwaise, Kawempe.

### At the legal aid clinic, Kawempe, 2009



## 5. Challenges

The use of ADR as a dispute resolution mechanism has met a number of challenges, both in the urban and rural programme areas:

### Local ties

Acting as an ADR arbitrator or mediator between relatives, friends and colleagues presents a challenge for community volunteers and local council members. The villages in which they operate are usually their homes and they are friends with or related to many of the local residents, who may expect preferential treatment and even hold grudges if this is not forthcoming. In addition, such friends and relatives may not turn up when asked to attend ADR sessions. Resolving conflicts that involve elders who must be treated with respect is difficult, especially when one has to go against their decisions. Arbitrators and mediators have therefore been advised to withdraw from a case when it involves a relative and to call upon a colleague to mediate as an independent party (see Box 6).

### Culture and religion

In some instances, people agree prematurely to a proposed solution that may not be fair because of their fear of respected members of their communities. Some witnesses may also be afraid to speak against these leaders. In Kamuli, for example, some clan leaders consider it a sign of contempt if one goes against their advice. In Kawempe, a largely Muslim society where sheiks are held in high esteem, women are still discriminated against in many communities, despite efforts to empower them: when a woman is resolving a case, some men may be disrespectful and disregard what she says, since a woman, in their view, is inferior and cannot tell them what to do. A woman will find mediating a case involving a sheik especially difficult. While promoting the use of ADR, FIDA and the other service providers

therefore had to be cautious when dealing with matters that went to the root of the local culture. The community had to be sensitised about their rights and encouraged to embrace the use of ADR, by showing that it is usually effective and to the satisfaction of the parties involved. Changes had to be gradual and acceptable, rather than seem externally imposed. Community volunteers and leaders were therefore encouraged to earn respect and awareness sessions on equal rights were carried out in these communities. Some leaders who have been trained through the programme have in turn also influenced their peers.

### Slow negotiations

During negotiation, mediation or conciliation sessions, parties sometimes wait to reach a compromise, thereby delaying any reconciliation. Both parties may believe that they are in the right and therefore fail to agree. In addition, some people can be offended when brought before an arbitrator or mediator, and also slow down the process. To solve this problem, the mediators were advised to provide several solutions to choose from, including arbitration. The training in communication skills that has been provided to the community volunteers also helped the parties to open up.

### Open conflicts

Another challenge arises if conflicting parties fight during ADR sessions. This can happen, especially in cases involving married couples, and the arbiters then have to separate the parties to allow their tempers to cool. Joyce Lawino, the Programme Coordinator at FIDA Kawempe explains how to deal with this: *“To prevent clients from fighting, we make sure that the conflicting parties are sitting at a reasonable distance from each other so that, in case their tempers flare, they do not ‘get physical’. We also have a security person nearby who can help us to bring order if a fight takes place.”*

## Box 6: Dealing with relatives

- *“If a conflict involves your elder like an uncle or grandfather, it is better to give the case to another community volunteer because the person may say that you are being disrespectful when you find them in the wrong. They say “How can this little girl tell me what to do?” – Florence Nabirye, Community Volunteer, Busota, Kamuli*
- *“Most of the people in these villages are our relatives. Even our neighbours are our relatives. Sometimes you find yourself with a conflict involving your cousins or uncles and it is hard because they think you are supposed to support them even when they are in the wrong. When you do not, they get annoyed. They sometimes even do not come when we call them to resolve their disputes.”- Joseph Mwase, Community Volunteer Nakulyaku, Kamuli*

## Refusal to comply and a transient population

This is especially challenging in Kawempe, where most of the residents are temporary settlers and it is therefore difficult to force them to commit to long-term agreements. Some respondents even intentionally leave the area to evade commitments made during a mediation process, which also impairs follow-up visits for monitoring purposes. Anne Kampire, a former Programme Coordinator for FIDA in Kawempe explains: *“Sometimes people can stubbornly refuse to follow the agreement, and when you try to look for them, you find that they moved away from the area. If someone does not want to commit to their responsibility, they can run away to a place where they cannot easily be found.”* If this happens, a reminder is given and,

Joseph Mwase at work in Nakulyaku Parish, 2008



if it persists, litigation is used. Judith Tumusiime, a FIDA legal officer narrates: *“Jennifer Naisanga of Namwendwa village in Kamuli, claimed maintenance for her children because her husband abandoned her in a rented house and went to live with another woman. Local council courts held in her favour, she got money from the husband once and he later refused to pay. She reported to the Probation and Welfare Office and was given maintenance fees once. When the husband again stopped, she went to FIDA he paid money for 3 months only. The case was referred to court in 2007, it was concluded in her favour in January 2010. We are now in the process of executing the case to attach the man’s commercial building and rent it out for maintenance fees. It has been a long, hard process.”*

### Skills required

Sometimes the arbiters and mediators lack the essential skills needed during ADR. For example, some are not able to promote peaceful discussions between the parties. Because of this, conflicting parties sometimes end up fighting during sessions. Barbra Babweteera, the former Programme Coordinator of FIDA Kamuli remarks

that *“Usually when there are cases of fighting, part of the blame can be put on the mediators because of the way they handle the session. Some of them even spark these fights by being emotional and taking sides.”* Another constraint relates to recording skills: sometimes, records are not kept or not kept properly, making it difficult to hold individuals accountable for their actions. Statements may be denied or the stories changed as the matter is being settled. This has been addressed by encouraging record keeping and training and mentoring to enhance communication skills, within the modest financial capacity of the programme.

### Service provision by volunteers

Finally, no payment is given to the community volunteers for their services yet expenses are sometimes incurred. While they received a bicycle in 2005 and have been drawing a monthly allowance of US\$ 11, bicycles wear out and volunteers must sometimes travel to distant villages. On many occasions, they find paying for additional expenses quite difficult. This has resulted in their activities and their impact being mostly limited to the programme area.

## 6. ADR processes: lessons learnt

Several factors contributed to the successful introduction and use of ADR:

### The ADR approach successfully built on local attitudes

Most times, the conflicting parties were found willing to resolve their disputes amicably rather than going to court. They responded positively to the invitations to meet and to work together to come up with solutions to their problems. The parties were usually honest when telling their sides of the story: those who were not entirely open at first often changed during the dispute resolution

process. This led to effective decision-making for all concerned, as it enabled the root cause of any difference to be unearthed. It is such attitudes that assisted the programme in the use of ADR and in resolving a large number of cases.

### Well-trained, impartial mediators are essential

It proved essential to have impartial and patient mediators and arbitrators, who are also willing to listen. In both Kawempe and Kamuli, there were full-time legal officers and a programme coordinator who were not related to the clients and were perceived as neutral. We have seen that the women and men who have been trained are



ADR at work in a Kampala police station, 2010

advised never to handle cases in which they had an interest. As full-time employees, the programme staff also helped to monitor clients' progress and to follow up cases to their conclusion. Service providers have been trained in ADR over the life of the programme, and have been supervised and supported by the programme legal staff as they gained skills and experience in conducting ADR. Thorough training included imparting knowledge of the relevant laws of Uganda, good verbal and listening skills, problem solving techniques, respectful manner to the parties, and an ability to analyse a situation of conflict. Other traits, such as high ethical standards, are important to ensure the smooth implementation of ADR: this has been found helpful to help disputing parties appreciate their mistakes and commit to have their dispute resolved.

### ADR works best in a conducive environment

The environment in which ADR takes place must be conducive, non-intimidating and well prepared for open, honest meetings. The number of anticipated participants should be known in advance to prepare a suitable room

and seating arrangement for all the expected participants.

In many cases, people who are not the main parties in a dispute may be present during the various meetings to ensure that key people in the extended families and people respected in the community understand the process and the agreements reached. Mediators and conciliators also took account of the possibility of open hostility between the parties and prepared to take full control of the process if needed, by having the local council or other security personnel within reach.

### Good record keeping is important for successful ADR

Documenting all aspects of the discussions and resultant actions helps to avoid contradictory statements and allows for a detailed agreement of the outcomes to be drafted, spelling out each party's responsibilities and the way forward. Such an agreement also acts as future reference in case of any breach. If there is a need to go to court, the details of the clients, including details of the disputes and agreements, can be used as evidence.

## 7. Conclusion: ADR as an empowering, sustainable tool

As the programme comes to an end, a main conclusion that emerges is that, because of its characteristics and fit with the local cultural context, ADR can contribute to the sustainable and empowering delivery of justice in impoverished communities.

ADR has been a factor in sustaining benefits beyond the end of the programme because communities become involved and participate in the resolution of their own conflicts, once local government and community resource persons acquire the necessary knowledge and skills to solve disputes and to provide redress for any violation of human rights. Cases can then be solved cheaply and sustainably without the involvement of either the police or the courts of law. This benefits other service providers as well because it decreases their case loads.

With the use of ADR in conflict resolution, people, especially those living with and affected by HIV and AIDS, have also learnt about their rights and the law. Because of this, community awareness of their rights increases, while stigmatisation and discrimination reduce.

These benefits have been made possible by decentralising the ADR delivery mechanisms to the local community, thus fostering localised

community ownership and sustainability. Additionally, awareness raising and other training sessions have given community members and leaders a sense of understanding and ownership of the programme objectives. Local resources such as cultural and religious leaders, and existing government structures were very much involved in the implementation of the programme and will be part of its aftermath.

Such an involvement would not have been possible without studying the local culture in the programme areas (including cultural resources, norms and practices) during the planning and the implementation of the programme. The local culture often fosters reconciliation as an end in itself and ADR has shown to be the best option to promote this among disputing parties, compared with litigation where decisions are imposed and leave a winner and a loser. As ADR gives the conflicting parties the opportunity to suggest their own solutions, as they agree and reconcile, the likelihood of abiding by their own resolutions is also enhanced. The programme experience suggests that the law should therefore be reviewed to make better use of ADR, including in instances of minor cases of a criminal nature, if aggrieved parties are willing to negotiate and agree on settling a dispute.