

# Intimate Partner Violence and Mediation

## How mediation can be harmful

Mediation is a process that is used in some humanitarian contexts to address a variety of interpersonal conflicts outside of the formal rule of law. In many contexts physical, economic, emotional and sexual violence is illegal, including when perpetrated against women and adolescent girls by a male spouse. IPV is therefore a crime punishable by law through the formal legal system. However, informal justice mechanisms, customary courts, heads of extended families, community leaders and faith leaders may choose, instead of supporting women and adolescent girls to report these crimes to the police for investigation and prosecution of the perpetrator, to instead bring couples together to facilitate mediation.

Women and adolescent girls' often have rights to protection under the law, including protection from intimate partner violence (IPV), that fail to be appropriately enforced and weak police and judicial systems across the world continue to need strengthening to adequately protect women and girls from violence, including IPV. In this context, many women and girls do not have confidence in the formal legal system to deliver justice and protection from male abusers. Some women and adolescent girls may therefore request their GBV case worker to support her to seek mediation to address the physical, sexual, emotional and economic abuse her male partner is perpetrating against her.

GBV case workers should know mediation to address intimate partner violence is not recommended.<sup>1</sup> Family, faith-based or community-led/customary court mediation processes often contribute to ongoing power and control over women and adolescent girls by their male partners, and rarely results in an end to the violence itself. In addition, formal systems of evidence, protection of witnesses, and due process are not followed. Mediation of IPV places women and adolescent girls at risk and is unlikely to result in outcomes that promote respect for women and adolescent girls' choice, rights, safety and wellbeing. Below are some risks that are important for you to understand and to appropriately explain to the women or adolescent girls engaged in the GBV case management process:

- Mediation rarely results in an end to the male abuser's choice to use violence to control his female partners. In fact, mediation has been shown to lead to an increase in violence.<sup>2</sup>
- The mediation process itself maintains and contributes to the male abuser's ongoing power and control over women and adolescent girls. The process of mediation presumes that both parties can speak equally freely, confidently and safely. However, given the tactics male abusers use to maintain power and control over their female partners, and social norms that may not enable women and adolescent girls' to speak freely publically or consider their views to have equal weight or worth, it is unlikely that women and adolescent girls are going to speak freely and without fear of consequences.
- Making a referral to mediation can cause harm to the survivor. The male abuser may get angry that she has told others about the violence and may increase the violence or threats of violence to increase his control and to silence his female partner during the mediation process, or to have her withdraw the request for mediation.
- IPV will only end if the male perpetrator chooses to stop being violent or women and adolescent girls' are supported to leave abusive relationships and have the legal rights and resources, social and economic, to do so.
- Mediation often presents the conflict as a marital problem and requests change on both sides. This leads women and adolescent girls who are being abused and controlled by their male partner to be expected to change their behavior to reduce the violence being perpetrated against them. IPV survivors cannot control the male abuser's behavior, actions or choice to be violent – mediation therefore supports further internalization of blame for the violence they are experiencing. This internalization of blame is part of the abuse cycle in IPV and contributes to women and girls staying in relationships where they are abused by their male partners.
- Those who are likely to 'mediate' within family, community, faith-based and customary mechanisms rather than uphold the rule of law, often themselves reflect the harmful social norms that justify IPV and regard male perpetrated abuse of women and adolescent girl partners as a matter of marital discord or conflict, rather than a crime. They may even hold prejudices against women and adolescent girls who report IPV and expect women and girls to be physically, sexually, economically or emotionally abused as an acceptable type of discipline in societies where women and girls live under the control of male partners. This makes it unlikely that women and adolescent girls' rights will be respected.
- There is a high risk of survivor-blaming within the mediation process. The perpetrator, who is used to blaming the survivor, will have a platform to articulate his position, and given the harmful social norms in place, and women and girls may feel intimidated or scared to answer back, he may sound convincing. Mediation may therefore result in women and

adolescent girls being asked to change their behavior as a condition for violence reduction by their male spouse.

### What support should be provided?

1. As highlighted in guidance on GBV case management and healing education, as a GBV case worker you can support women and adolescent girls being abused by male spouses to understand the dynamics of IPV and to challenge the internalized patriarchal beliefs that justify male violence against their female partners as acceptable. Explain to the IPV survivor that you would like to share information on IPV with her and with her consent, discuss the dynamics of IPV and how mediation can play into male control over her. Provide further information on the likely mediation process and associated harmful consequences and risks outlined above at a pace and level appropriate to your client's developmental stage, stage of recovery and resilience.
2. Provide information to the IPV survivor throughout the GBV case management process on available services to support her.
  - Criminal justice services: Be up to date on the legal protections available to women and girls in your context. Understand the formal legal system and the risks and gaps in its implementation and enforcement. Provide women and adolescent girls' with accurate information regarding access to justice through the formal legal system to prosecute male perpetration of spousal abuse. This option may not be realistic in many settings, and providing information on the following services may be more feasible, acceptable and safe for women and girls.
  - Civil justice services: Many women and adolescent girls experiencing IPV find legal support useful because it enables them to gain a divorce, claim child custody, and supports their rights to household and personal economic assets and resources. This legal support, combined with some of the other services below, may support an IPV survivor to leave an abusive male partner.
  - Psychosocial support services: Provide information to women and adolescent girls about how they can access psychosocial support beyond individual GBV case management by participating in women and girls safe spaces, social networks, activism and community level psychosocial support services for women and girls. **Connecting with other women and girls helps IPV survivors to rebuild social networks**, often deliberately destroyed as a tactic of isolation created by an abusive male spouse. It also supports women and adolescent girls experiencing IPV with other women and adolescent girls who speak out against GBV and gender inequality, who may even share personal experiences of their own recovery.
  - Safe houses: In urban settings in particular, safe houses may be an option for IPV survivors and their children, which can offer a safer

way to leave an abusive relationship. If the survivor chooses to go to a safe house, a plan must be established with the survivor to help her feel comfortable and safely return to her community. However, it is important to note that safe houses are not an appropriate option in all contexts. They are not a permanent solution and often aren't run well, which may put survivors at increased risk of violence. There is also an assumption that the survivor is willing or able to leave, and the case worker should talk her through the support mechanisms that are available to her and help identify where she would feel most safe. It is not recommended that case workers house survivors due to safety and security risks posed to both the survivor and the case worker. In some cases, you may be able work with a trusted local hospital and find an appropriate female staff member that may be able to provide her with a bed overnight if she does not already have identified community support mechanisms.

- Economic empowerment: Many women and adolescent girls experiencing IPV find economic resources a critical factor in their ability to leave an abusive relationship. Economic control of women and girls is a common factor in male perpetration of IPV to ensure IPV survivors believe they have no option or independent financial resources to leave. Economic empowerment activities often also combine with enhancing confidence, mobility, and social networks for women and older adolescent girls, which may all contribute to an increased range of choices for IPV survivors.
3. Partner with other access to justice actors to strengthen the formal justice system to effectively protect women and girls from IPV.
  4. Partner with rule of law actors, GBV activists and women's rights actors to influence stakeholders who provide mediation, such as faith leaders, community leaders, heads of extended families, and customary court judges. Engage these mediators in the community to instead support referrals of survivors to women and girl safe spaces and GBV case management services and support their own understanding of IPV/GBV and women and girls rights to protection and equality.

### Key Considerations/Takeaways

1. GBV case workers should never be the mediators.
2. Mediation often increases male perpetrators of IPV control and violence against their female partners.
3. Mediation often facilitates victim blaming and replicates societal patriarchal norms that justify IPV against women and adolescent girls.
4. It is not recommended to refer survivors to external mediation processes, even if they request them. Instead, the case worker should try to inform the survivor about the negative consequences of mediation

and provide positive referrals that are aligned with the survivor-centered approach.

5. Healing education in GBV case management can support women and adolescent girls to rethink internalized patriarchal beliefs that normalize or excuse IPV.
6. Women and girls safe spaces and networks, access to formal legal support, economic empowerment, and psychosocial support services offer women and adolescent girls experiencing IPV increased options and choice to facilitate their safety and wellbeing.



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<sup>1</sup> Interagency GBV Case Management Guidelines 2016

<sup>2</sup> Dunnigan, A (2003). *Restoring Power to the Powerless: The Need to Reform California's Mandatory Mediation for Victims of Domestic Violence*, 37 U.S.F. L. REV. 1031, 1052.