



Promoting Justice Through Mediation

Position Paper on the Mediation Bill 2023

June 2024

1. Introduction

The Institute for Legal Research and Advocacy for Justice (ILRAJ) is pleased to present its position paper on the Mediation Bill, 2023. This Bill represents a forward-thinking approach to dispute resolution in Sierra Leone, aiming to provide a comprehensive framework for settling civil and commercial disputes through mediation. It is a significant legislative initiative designed to enhance access to justice via alternative dispute resolution mechanisms. The Bill seeks to provide a structured and regulated framework for mediating civil and commercial disputes.

Mediation offers numerous benefits as an alternative dispute resolution mechanism, including reduced legal costs, faster resolution times, and more amicable settlements. ILRAJ supports this Bill and offers its observations and recommendations to ensure its effective implementation and impact. While the Bill is a substantial step towards promoting alternative dispute resolution, certain amendments and additions are necessary to strengthen its efficacy and inclusivity.

Our goal is to contribute to developing a robust legal framework that resolves disputes efficiently and fosters a culture of conflict prevention and resolution throughout Sierra Leone. The recommendations provided herein address various aspects of the Bill.

ILRAJ looks forward to continued collaboration with the government, the Law Reform Commission, and other relevant stakeholders to ensure the successful implementation of this vital legislation. Through these efforts, we aim to build a mediation system that resolves disputes effectively and promotes justice, transparency, and sustainable development in Sierra Leone.

2. Scope and Application

The Mediation Bill 2023 represents a significant legislative step towards enhancing the framework for alternative dispute resolution in Sierra Leone. The Bill delineates its scope and application meticulously, ensuring that mediation is utilised where it is most appropriate and effective. Section 2 of the Bill explicitly outlines the exclusions, stating that the Act shall not apply to arbitration within the meaning of the Arbitration Act, 2022; employment-related disputes that fall under the remit of the Industrial Court; and disputes relating to the payment of tax, customs, and excise duties.

This clear delineation is commendable as it helps to prevent overlaps with other established dispute resolution mechanisms and promotes efficiency in the legal system. By specifying these exclusions, the Bill ensures that mediation is used in the most beneficial contexts, thus preventing potential conflicts with other legal processes. Additionally, the Bill clarifies that it does not replace any existing mediation, arbitration, or other dispute-resolution

processes provided for in other enactments, nor does it permit mediation or arbitration processes to negate any rights or obligations that parties cannot freely decide under any enactment.

However, while the Bill marks a substantial advancement, certain amendments and additions are necessary to strengthen its efficacy and inclusivity. It is crucial to ensure that the exclusions do not inadvertently limit access to mediation for parties who could benefit from this process. To address this concern, several recommendations are proposed.

First, although the Bill rightly excludes specific areas to avoid conflicts with existing legal frameworks, it should provide mechanisms for parties in excluded categories to access mediation voluntarily if all parties agree. This inclusive approach ensures that those who prefer mediation over litigation or other forms of dispute resolution are not denied this option. This would enhance the flexibility and user-friendliness of the mediation process, making it accessible to a broader range of disputes.

Second, to uphold the principles of voluntary participation, the Bill should include provisions ensuring that parties are fully informed of their rights and the implications of choosing mediation. This includes understanding that mediation is a collaborative process aimed at a mutual agreement, not a binding determination imposed by a third party.

Finally, the Bill should allow for flexibility in its application to accommodate the evolving nature of disputes and the legal landscape. This could include provisions for periodic reviews and updates to ensure that the scope and exclusions remain relevant and effective.

3. Establishment of the Mediation Center

A vital feature of the Mediation Bill 2023 is the establishment of a centralised Mediation Center. This development represents a significant step towards providing a formalised and structured approach to mediation in Sierra Leone. The independence of the Center, as outlined in the Bill, is crucial for maintaining the impartiality and credibility of the mediation process. Ensuring that the Center operates without undue influence from external entities will foster trust and confidence among the public and the disputing parties.

A centralised Mediation Center can ensure consistency in mediation procedures by adhering to best practices and ethical guidelines. This standardisation can lead to fairer and more predictable outcomes for disputing parties, enhancing the overall reliability of the mediation process. With uniform standards, the Center can ensure that all mediators are adequately trained and accredited, fostering a high level of professionalism and competence within the mediation community.

The centralisation of mediation services allows for the pooling of resources such as training materials, mediator databases, and administrative support. This can improve efficiency and

cost-effectiveness by reducing duplication of efforts and maximising the use of available resources. A centralised body can also facilitate the organisation of comprehensive training programs and continuous professional development for mediators, ensuring they remain well-equipped to handle a wide range of disputes.

It can oversee the quality of mediators through rigorous training programs, evaluations, and accreditation processes. This oversight helps maintain high standards of practice and fosters public trust in the mediation system. The Center can also implement robust complaints and disciplinary mechanisms to address any issues of mediator misconduct or incompetence, thereby safeguarding the integrity of the mediation process.

The potential drawbacks of a centralised mediation center include it can become bureaucratic, potentially leading to delays in scheduling mediation sessions and resolving disputes. The added layers of administration might slow down the process, making it less responsive to the needs of the parties involved. Over-reliance on a single central body can also lead to rigidity, reducing the flexibility needed to address unique or complex cases.

A centralised approach might not cater to the specific needs and cultural nuances of diverse communities within Sierra Leone. Mediation often requires an understanding of local customs and practices, which a centralised center may lack. This disconnect can undermine the effectiveness of mediation, as parties may feel that their cultural contexts are not adequately respected or understood.

Depending on its location, a central Mediation Center could create barriers for those who need to travel significant distances to access mediation services. Travel costs for mediators and disputing parties can become prohibitive, especially for individuals from remote or economically disadvantaged areas. This geographical centralisation could inadvertently limit the accessibility of mediation services.

Centralisation might also lead to a disconnect from local mediators who have a deep understanding of specific community dynamics. Local mediators are often more attuned to the intricacies of local disputes and can offer more culturally relevant solutions. A centralised system might overlook the value of these local insights and expertise, leading to less effective mediation outcomes.

A single centralised center could limit competition and innovation in the mediation field. Without the presence of multiple mediation providers, there may be fewer incentives for continuous improvement and adaptation. Competition often drives innovation, leading to the development of new techniques and approaches that can enhance the effectiveness of mediation.

Given the potential advantages and drawbacks of a centralised Mediation Center, a hybrid model may be the most effective approach. This model would involve a central body responsible for setting standards, providing resources, and ensuring overall quality control

while allowing for regional or community-based mediation centers to address local needs and preferences.

In the hybrid model, the central body's functions will include setting and enforcing standards for mediation practices, providing training and accreditation for mediators, collecting and analysing data to inform policy and improve services, and coordinating public awareness and education campaigns.

The regional and community Mediation centers will offer mediation services tailored to local cultural and community dynamics, ensure accessibility by reducing travel distances for disputing parties, maintain a close connection with local mediators and stakeholders, and foster competition and innovation in mediation practices.

The hybrid will combine the strengths of a centralised system with the flexibility and cultural sensitivity of local mediation centers and enhance the accessibility, efficiency, and effectiveness of mediation services in Sierra Leone. This approach can ensure that mediation remains a viable and attractive option for dispute resolution across diverse communities, promoting greater access to justice and social harmony.

4. Governing Body

The Mediation Bill 2023 proposes the establishment of a Board as the governing body of the Mediation Center responsible for formulating and implementing policy. The composition of this Board includes a Chair, who should be a legal practitioner with not less than fifteen years standing and representatives from the Labour Congress, the Sierra Leone Chamber of Commerce, the Employers' Federation, and the Council of Paramount Chiefs. While the intention to incorporate diverse perspectives is commendable, several critical aspects regarding the qualifications and expertise of Board members need to be addressed to ensure the Board's effectiveness in fulfilling its mandate.

The Bill stipulates that the Chair should be a legal practitioner with at least fifteen years of standing. While this requirement ensures that the Chair has significant legal experience, it does not guarantee that the individual has the necessary skills or expertise in mediation or alternative dispute resolution (ADR). Mediation is a specialised field that requires specific training and experience distinct from general legal practice.

To ensure effective leadership, the Chair should possess qualifications or specialise in mediation or ADR. Not all lawyers are trained in mediation techniques or have practical experience. Appointing a Chair without these specific skills could undermine the Board's ability to guide the Center effectively. Therefore, the Bill should be amended to require that the Chair have demonstrated expertise and experience in mediation or ADR. This could include qualifications from recognised mediation training institutions or substantial practical experience in the field.

The Board's composition includes representatives from the Labour Congress, the Sierra Leone Chamber of Commerce, the Employers' Federation, and the Council of Paramount Chiefs. While these representatives bring valuable insights from their respective sectors, it is crucial that they also possess skills or experience related to ADR. The effectiveness of the Board in promoting and implementing mediation policies hinges on the members' understanding and expertise in ADR.

The representatives should ideally have a background or training in mediation, conflict resolution, or a related field. This ensures that the Board is well-equipped to address the complexities of mediation and implement best practices. Without this expertise, the Board may struggle to fulfil its responsibilities effectively.

Therefore, we recommend that the Bill be amended to require that the Chair be a legal practitioner with fifteen years of standing and possess specialised training or certification in mediation or ADR. The Chair should have a proven track record of involvement in mediation or ADR processes, demonstrating their capability to lead the Center effectively. Other members of the Board should undergo mandatory ADR training. This training could be a prerequisite for an appointment or a requirement to be completed within a specified period after the appointment. Clear selection criteria should be established to prioritise candidates with existing ADR experience or qualifications. This ensures that all Board members have a foundational understanding of mediation principles and practices. Continuous professional development programs should be implemented for Board members to keep them updated on the latest trends and best practices in mediation and ADR. This can include workshops, seminars, and certification programs.

5. Mediation Procedures: Initiation and Conduct

The procedures outlined in the Mediation Bill 2023 for initiating and conducting mediation are comprehensive and well-structured, ensuring that the process is fair and efficient.

The Bill allows any party to a dispute, with the consent of the other party, to submit the dispute to mediation. This submission can be made through various modes of communication, including writing, telephone, fax, telex, e-mail, or any other electronic means. This flexibility in communication methods makes initiating mediation accessible and convenient for all parties involved. Submissions made verbally must be confirmed in writing unless the parties agree otherwise. This ensures a clear and documented record of the agreement to mediate, which helps prevent misunderstandings and disputes about initiating the process.

Mediation proceedings officially commence when the other party accepts the invitation to mediate. Like the submission process, acceptance can be communicated through multiple channels, including writing, telephone, fax, telex, e-mail, or other electronic means. An

acceptance by telephone or other verbal means should ideally be confirmed in writing to ensure clarity. However, the Bill provides flexibility by stating that a failure to confirm in writing does not invalidate the mediation proceedings. This provision ensures that procedural technicalities do not hinder the mediation process, allowing parties to focus on resolving their dispute.

The Bill also specifies a timeframe for acceptance. If the invited party does not accept the invitation within fourteen days or the period specified in the invitation, it is considered a rejection of the mediation invitation. This clear timeframe helps to expedite the mediation process, ensuring that parties cannot unduly delay proceedings.

The conduct of mediation under the Bill is designed to be fair, transparent, and effective. One of the critical aspects is the requirement for mediators to disclose any potential conflicts of interest. This disclosure is crucial for maintaining the principles of neutrality and impartiality, which are foundational to the credibility of the mediation process. Parties must have confidence that the mediator does not have any bias or vested interest in the outcome of the dispute.

The Bill also allows for flexibility in the number of mediators. This flexibility means that parties can agree to appoint more than one mediator for particularly complex disputes or seek expert advice when necessary. This pragmatic approach ensures that the mediation process can be tailored to the specific needs of the dispute, thereby enhancing its effectiveness.

Moreover, the mediation procedures outlined in the Bill ensure that parties are well-informed throughout the process. The ability to communicate via various channels and the requirement for written confirmations help to keep all parties on the same page. This transparency contributes to a smoother and more efficient mediation process.

6. Integration of Traditional and Customary Practices

The Bill provides a robust framework for alternative dispute resolution in Sierra Leone. However, for the Bill to achieve its full potential and gain widespread acceptance, it is crucial to integrate traditional dispute resolution mechanisms with formal mediation processes. This integration can enhance the acceptability and effectiveness of the Mediation Act, ensuring it resonates with the cultural context of Sierra Leone. Leveraging the authority and respect that traditional leaders hold within their communities can help create a more culturally relevant and widely accepted mediation system.

Ghana's mediation framework is a notable example of successfully integrating customary dispute resolution methods with modern ADR processes. In Ghana, customary dispute resolution emphasises consensual and reconciliation-based approaches involving community leaders such as family heads, elders, and chiefs. These traditional authorities

play a significant role in managing and resolving conflicts through processes akin to negotiation, mediation, and arbitration. This seamless integration ensures that mediation respects local customs and traditions, enhancing its legitimacy and fairness in the eyes of the disputants.

For instance, in many Ghanaian communities, the involvement of respected elders and the focus on reconciliation and apology are crucial elements of the dispute resolution process. This culturally sensitive approach has helped build trust and acceptance among disputants, making mediation a widely embraced method of conflict resolution in Ghana.

Several other African countries have successfully integrated traditional dispute resolution mechanisms into their formal mediation frameworks. These examples provide valuable insights for Sierra Leone. In South Africa, section 211 of the 1996 Constitution recognises customary law and allows traditional healers and chiefs to be involved in mediation processes. This integration ensures that mediation processes are culturally relevant and widely accepted. In Kenya, the legal system recognises customary law and permits using traditional dispute resolution mechanisms known as "baraza," where elders and chiefs play a significant role.

Integrating traditional dispute resolution mechanisms with formal mediation processes can significantly enhance the acceptability and effectiveness of the Mediation Act in Sierra Leone. The Bill calls for a register of mediators maintained by the Council of Paramount Chiefs. This is a strong starting point. It must include express provisions that define the specific roles of traditional leaders in the mediation process.

When established, the Center must research and document traditional dispute resolution practices in Sierra Leone. It must identify elements that can be effectively incorporated into formal mediation. It must involve respected community members as observers or advisors in mediation, fostering a sense of ownership and accountability.

In addition, mediators should be trained to understand and respect local customs and practices. Incorporating culturally appropriate practices, such as involving community elders and focusing on reconciliation, can help build trust and acceptance among disputants.

7. Appointment of Board Members and Governance

Section 8 of the Bill outlines the appointment and governance structure of the Board for the Mediation Center. While this section aims to ensure effective oversight and administration of mediation services, it raises several critical concerns, particularly regarding the process for appointing Board members and the potential risks of politicisation.

The Bill stipulates that the Chairman and members of the Board shall be appointed by the President for a term of three years, with eligibility for re-appointment for one additional term, not exceeding two terms in total. Centralising the appointment power with the President presents significant risks. This approach may lead to appointments based on political loyalty rather than merit, expertise, or impartiality, undermining the independence and credibility of the Mediation Center. Board members appointed through a politicised process may feel beholden to political interests, which can detract from their ability to focus solely on the effective and impartial administration of mediation services.

The involvement of the President in the appointment process introduces the risk of politicisation, particularly in our highly polarised political context. The perception or reality of political influence can erode public trust in the Mediation Center, diminishing its effectiveness and acceptance among disputing parties who seek an unbiased resolution process. For a mediation system to be effective, it must be perceived as impartial and independent from political influence.

Alternative approaches to the appointment process should be considered to mitigate the risk of politicisation. One effective alternative is the establishment of an independent selection committee. This committee could include representatives from various sectors, such as the judiciary, legal profession, civil society, and academia. Such a body would be better positioned to assess candidates based on their qualifications, experience, and commitment to the principles of mediation rather than political considerations.

Another approach could involve parliamentary oversight in the appointment process. The President could nominate candidates but subject to approval by a parliamentary committee. This additional layer of scrutiny would help ensure that appointments are made transparently and based on merit, thus enhancing the credibility and independence of the Mediation Center.

8. Referral of Disputes to Mediation by the Court

The Mediation Bill allows the court to refer disputes to mediation at any stage of the proceedings if it believes that mediation will facilitate the resolution of the dispute. This court-ordered mediation is a significant feature promoting the use of alternative dispute resolution (ADR) mechanisms within the judicial system. The parties must inform the court of their agreement to mediate, and the court then refers the dispute to mediation. This provision ensures that mediation is considered a viable option for dispute resolution and encourages parties to seek amicable settlements.

A reference to mediation by the court results in a stay of the court proceedings. This stay remains in effect until the mediation process is completed. If the mediation leads to a settlement, the agreement is recorded and enforced as a court judgment. This provision

ensures that the mediation process is taken seriously and that settlements reached are given the same legal standing as court judgments. If only a partial settlement is achieved, the court continues the proceedings for the unresolved issues. This dual approach allows for flexibility and ensures that unresolved matters are still addressed judicially.

Judicial oversight is a crucial component of this process. The court maintains oversight of the mediation by requiring mediators to report the outcome of the mediation. This reporting ensures that the court is informed of the progress and results of the mediation, allowing it to take necessary actions based on the outcome. This oversight mechanism helps maintain the integrity and effectiveness of the mediation process.

Similar to Sierra Leone, the Kenya Mediation Bill 2020 allows the High Court to refer disputes to mediation. The court can direct parties to consider mediation, and if they agree, the court refers the dispute to a mediator. This provision underscores the judiciary's role in promoting ADR mechanisms and encourages parties to resolve disputes amicably.

The referral to mediation results in a stay of the judicial proceedings, which remains in effect until the mediation process is completed. If the mediation succeeds, the court records and enforces the settlement agreement. This ensures that mediated settlements have legal standing and are enforceable, similar to court judgments. Judicial oversight is also emphasised, with mediators required to report to the court on the outcome of the mediation. This ensures that the court is kept informed and can take necessary actions based on the mediation results.

9. Enforcement of Settlement Agreements

Settlement agreements reached through mediation are binding and enforceable as if they were court judgments. This provision ensures that parties adhere to the terms of the settlement, giving mediated agreements the same legal standing as court judgments. If the mediation is court-referred, the settlement agreement is submitted to the court for approval and enforcement. This integration with the judicial system ensures that mediated agreements are legally recognised and enforceable.

The Bill provides detailed procedures for the termination of mediation and subsequent steps. According to Section 35, mediation ends under various conditions, such as the execution of a settlement agreement, non-payment of a deposit, a declaration by the mediator or parties that the mediation is terminated, and other similar circumstances. These provisions ensure that all terminations, whether partial or complete, are reported to the Center and the court if the mediation was court-referred. This requirement for reporting maintains transparency and allows the court to resume proceedings from where they left off if mediation does not result in a full settlement.

Settlement agreements reached through mediation in Kenya are also binding and enforceable as court judgments. This provision ensures that parties comply with the terms of the mediated settlement. The Kenya Bill includes detailed provisions for recognising and enforcing settlement agreements, adding an extra layer of scrutiny and protection for the parties involved. The court can refuse to enforce a settlement agreement only on specific grounds, such as if it was obtained through fraud or contrary to public policy. This safeguard ensures that mediated agreements are fair and just.

Sierra Leone ratified the Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation on August 7, 2019. By doing so, Sierra Leone has committed to facilitating the enforcement of international mediated settlement agreements, thereby promoting mediation as an effective and reliable method of resolving commercial disputes. This commitment can enhance the attractiveness of Sierra Leone as a destination for international business and dispute resolution. The Mediation Bill 2023 should align with the principles of the Singapore Convention to ensure the seamless integration of international best practices in mediation.

10. Interaction Between Mediation and Other Dispute Resolution Mechanisms

Further clarification on the interaction between mediation and other dispute resolution mechanisms would significantly enhance the Bill's comprehensiveness. Clear guidelines on how mediation can complement rather than compete with processes like arbitration and judicial proceedings would be beneficial. For instance, providing explicit pathways for transitioning between mediation and arbitration or court proceedings when appropriate could streamline dispute resolution and offer parties a more integrated approach to resolving their conflicts.

Under Rule 32 of the Commercial and Admiralty Court Rules 2020, the parties may choose to have their dispute settled by an external person or body, and the pre-trial Judge shall give directions and stipulate a time limit which shall not exceed 21 days. In the context of the Mediation Bill, this rule raises several questions about its application to mediation.

Firstly, it is essential to clarify whether the "external person or body" referred to in Rule 32 can be interpreted as a mediator under the Mediation Bill. If so, the Mediation Bill should explicitly state this to avoid any ambiguity. This interpretation would align with the Bill's objective of promoting mediation as a viable alternative dispute resolution mechanism.

Secondly, the 21-day time limit stipulated by Rule 32 could be seen as a constraint on the mediation process, which often requires flexibility and time to allow parties to reach a mutually agreeable solution. While it is important to ensure that mediation does not unduly delay the resolution of disputes, the Bill could include provisions allowing for extensions of

this period if both parties agree and if the mediator deems it necessary for the mediation process. This would ensure that the mediation process is thorough and effective, rather than being rushed to meet a strict deadline.

The Bill should provide clear guidelines on how parties can transition from mediation to arbitration or court proceedings if mediation does not result in a settlement. This could include a streamlined process for referring unresolved disputes back to the courts or to an arbitration panel, ensuring that the dispute resolution process remains efficient and integrated.

11. Recognition and Enforcement of Foreign Mediation Settlement Agreements

One crucial aspect that the Bill does not address is the recognition and enforcement of foreign mediation settlement agreements. This omission could potentially limit the effectiveness of the Bill in an increasingly globalised world where cross-border disputes are common. Including provisions for the reciprocal recognition and enforcement of foreign mediation settlement agreements would enhance the Bill's comprehensiveness and international applicability.

In today's interconnected world, businesses and individuals often engage in transactions that span multiple jurisdictions. Consequently, disputes arising from such transactions frequently involve parties from different countries. Mediation, as a form of alternative dispute resolution, is increasingly used to settle these international disputes due to its flexibility, confidentiality, and cost-effectiveness. However, for mediation to be a truly effective tool in resolving cross-border disputes, the resulting settlement agreements must be recognised and enforceable across jurisdictions.

Without provisions for the recognition and enforcement of foreign mediation settlement agreements, parties may be reluctant to engage in mediation, knowing that any settlement reached may not be enforceable in another jurisdiction. This uncertainty can undermine the attractiveness of mediation as a dispute resolution mechanism and may lead parties to opt for more adversarial and costly litigation processes instead.

Many jurisdictions have recognised the importance of facilitating the recognition and enforcement of foreign mediation settlement agreements. For instance, the Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, provides a uniform and efficient framework for enforcing international settlement agreements resulting from mediation. The Convention allows parties to directly enforce mediated settlement agreements in countries that are signatories, thus providing certainty and promoting the use of mediation in international disputes.

Incorporating similar provisions into the Bill would align Sierra Leone with international best practices and enhance the country's attractiveness as a venue for dispute resolution. It would also signal Sierra Leone's commitment to fostering an environment conducive to international trade and investment.

To address the current gap, the Bill should include provisions allowing reciprocal recognition and enforcement of foreign mediation settlement agreements. This means that Sierra Leone would recognise and enforce settlement agreements reached through mediation in other jurisdictions, provided those jurisdictions offer similar recognition and enforcement for Sierra Leonean agreements.

The Bill should specify that foreign mediation settlement agreements will be recognised and enforced in accordance with international standards such as those set forth in the Singapore Convention on Mediation. This would provide a clear and consistent framework for the enforcement process.

The Bill should outline specific conditions under which foreign mediation settlement agreements will be recognised and enforced. These conditions could include the agreement must be in writing and signed by the parties; the agreement must arise from a mediation process that was conducted in a fair and impartial manner; the agreement must not contravene public policy or the laws of Sierra Leone and the agreement must not have been obtained through fraud, coercion, or undue influence.

The Bill should establish procedural mechanisms for parties seeking to enforce foreign mediation settlement agreements in Sierra Leone. This could involve submitting a certified copy of the agreement to a competent court, along with evidence that the agreement meets the necessary conditions for recognition and enforcement.

The Bill should also specify grounds upon which the court may refuse to recognise or enforce a foreign mediation settlement agreement. These grounds could include the agreement is not binding or final according to the laws of the jurisdiction where it was made and the agreement has been subsequently modified or invalidated by a competent authority in the originating jurisdiction.

12. Confidentiality Provisions

The Bill stipulates in Section 33(1) that all information, including the settlement agreement, related to mediation proceedings shall be confidential and not admissible as evidence in any court or other proceedings unless confidentiality is expressly waived by the parties. This provision is fundamental to the mediation process as it ensures that parties can communicate openly without fear that their statements will be used against them in subsequent legal proceedings. By promoting confidentiality, the Bill seeks to create a safe

space for disputants to explore mutually acceptable solutions without the concern of legal repercussions.

Additionally, Section 33(2) of the Bill outlines specific circumstances where confidentiality does not apply. These exceptions include situations where disclosure is necessary to implement or enforce a settlement agreement, where disclosure is required by law, and where information is sought or offered in proceedings related to alleged negligence or misconduct of a mediator, legal practitioner, or expert occurring during mediation proceedings. These exceptions are necessary to balance the need for confidentiality with the requirements of legal accountability and enforcement. By defining these exceptions, the Bill ensures that confidentiality is not absolute and can be breached when justified by significant legal or ethical considerations.

The confidentiality provisions in the UNCITRAL Model Law on International Commercial Conciliation are similar to those in the Sierra Leone Mediation Bill. The UNCITRAL Model Law ensures that all information related to conciliation proceedings is confidential and not admissible in other proceedings unless agreed by the parties or required by law. This alignment underscores the global standard for maintaining confidentiality in mediation and conciliation processes. The UNCITRAL Model Law also prevents parties from introducing any information from the conciliation process as evidence in other proceedings, promoting a secure environment for honest and open dialogue, which is essential for effective mediation.

The confidentiality provisions in the 2023 Bill are robust and aligned with international standards such as those in the UNCITRAL Model Law and the WIPO Mediation Rules. They encourage parties to speak freely and negotiate in good faith. By ensuring that information disclosed during mediation cannot be used in subsequent proceedings, the Bill fosters an environment conducive to open and honest discussions. This openness is critical for reaching mutually acceptable settlements. The explicit exceptions to confidentiality, such as those required to enforce settlement agreements or legal accountability, provide clear guidelines for when confidentiality may be breached.

This clarity helps maintain the balance between confidentiality and legal requirements, ensuring that parties understand the circumstances under which their disclosures may become admissible.

While the Bill outlines exceptions to confidentiality, it could benefit from more detailed guidelines on how these exceptions are to be applied. For instance, specifying the process for determining when disclosure is "required by law" could prevent misuse and ensure that parties are fully aware of their rights and obligations.

To prevent the misuse of the exceptions, the Bill could include provisions that require parties seeking to disclose confidential information to obtain prior approval from a court or an independent body.

Section 33(3) mandates that all materials provided during mediation should be returned to the providing party upon termination of mediation. This provision could be strengthened by specifying secure methods for handling and disposing of these materials to further protect confidentiality. Establishing clear protocols for the secure return and disposal of documents would enhance the overall security of the mediation process.

13. Professional Training and Development

The effectiveness and credibility of mediation services heavily depend on the professional training and development of mediators. In countries like Ghana, significant investments have been made in training programs that ensure mediators are skilled in the technical aspects of mediation and are also culturally competent and capable of handling complex disputes involving power imbalances and sensitive issues. For Sierra Leone, the establishment of comprehensive training programs for mediators is essential to ensure the success and sustainability of the mediation process.

The Bill emphasises the importance of training mediators to ensure that mediation is conducted effectively, impartially, and competently. According to the Bill, the Mediation Centers are responsible for accrediting mediators and establishing training programs. This provision highlights the critical role of structured and rigorous training in maintaining the quality of mediation services. Comprehensive training programs should equip mediators with the necessary skills to manage various disputes, from commercial and civil cases to more sensitive and complex conflicts.

The Bill mandates that mediators must be accredited and their names entered into a register maintained by the Mediation Centers. This ensures that only qualified and impartial mediators conduct mediation proceedings. Accreditation serves as a quality control measure, ensuring that mediators meet specific standards of competence and ethics before they are allowed to practise. This process boosts the credibility of mediation services and instils confidence in the disputing parties that their mediator is competent and impartial.

Like Sierra Leone, mediators in Kenya are accredited and registered by the Mediation Committee. The Committee keeps a register of mediators and oversees the accreditation process to ensure high standards of mediation practice. This centralised oversight helps maintain uniform standards across the country, ensuring that all mediators adhere to the established ethical and professional guidelines.

For Sierra Leone, establishing comprehensive training programs for mediators is essential. These programs should cover a wide range of topics, including the technical aspects of mediation, cultural competence, and techniques for handling power imbalances and sensitive issues. The training programs can ensure that mediators are prepared to facilitate fair and effective mediation processes by equipping mediators with these skills.

The Bill should also emphasise the importance of ongoing professional development. Mediators should be required to engage in continuous learning to keep their skills up to date. This could include attending workshops, seminars, and advanced training courses. Ongoing professional development ensures that mediators remain knowledgeable about the latest developments in mediation practices and are continually improving their skills.

The accreditation process should be rigorous, ensuring that only qualified individuals are allowed to practise as mediators. The Mediation Centers should develop and enforce strict accreditation standards that include comprehensive training, practical assessments, and adherence to a code of ethics. By maintaining high standards for accreditation, the quality and credibility of mediation services in Sierra Leone can be safeguarded.

To ensure the continuous improvement of mediation services, regular evaluations and feedback mechanisms should be established. Accredited mediators should undergo periodic evaluations to assess their performance and adherence to professional standards. Feedback from disputing parties should also be collected and used to inform training and development programs.

14. Sustainable Funding and Infrastructure

Securing sustainable funding and building robust infrastructure are essential for the long-term success of mediation services in Sierra Leone. The Bill includes several provisions to ensure the Mediation Center has the financial resources necessary to operate effectively and fulfil its mandate.

In countries like Ghana, mediation programs have thrived due to sustainable funding and robust ADR infrastructure. This support has come from a combination of governmental and non-governmental sources, including international donors, private sector partnerships, and local government budgets. Such funding ensures that ADR centers are adequately resourced, allowing them to provide high-quality mediation services, conduct public education campaigns, and invest in the continuous professional development of mediators.

Establishing a stable financial foundation for the Mediation Center is crucial. Sustainable funding will enable the Center to maintain its operations, support the training and accreditation of mediators, and promote mediation as a preferred method of dispute resolution. Without reliable funding, the effectiveness and accessibility of mediation services may be compromised, limiting their impact on improving access to justice.

Section 16 of the Bill establishes a Mediation Fund for the Center, which is a practical approach to ensuring sustainable funding. The funds for the Center will consist of monies appropriated by Parliament, grants, gifts, donations, or bequests and administrative fees generated by the Center.

The funds will be applied to various essential activities, including the payment of staff salaries, public education on ADR, research, human resource development, and other purposes determined by the Board in consultation with the Minister. This diversified financial base provides a stable foundation for the Center's activities and ensures its long-term viability.

Section 42 of the Bill outlines the costs associated with mediation, stipulating that expenses are generally borne equally by the parties unless otherwise agreed. This includes fees for the mediator, administrative assistance, advisors, experts, and other related expenses. The Bill ensures that these costs are reasonable and proportionate to the complexity of the issues in dispute and the work carried out by the mediator. This approach promotes fairness and transparency in allocating mediation expenses, encouraging parties to engage in the mediation process.

The WIPO Mediation Rules provide a structured approach to allocating costs, specifying that an administration fee is payable to the Center and that the mediator's fees are determined based on the complexity of the dispute. The mediator may request deposits in advance, ensuring the mediation process is financially supported. If a party fails to pay, the mediation may be terminated. This ensures that the financial aspects of mediation are managed transparently and fairly, preventing delays and ensuring that mediators are compensated for their work.

The allocation of costs should be structured to ensure fairness and transparency. The mediator's fees and administrative expenses should be clearly defined and proportionate to the complexity of the dispute. Requiring advance deposits can help secure the financial viability of mediation proceedings.

Sustainable funding should be directed towards building robust ADR infrastructure. This includes establishing well-equipped mediation centers, providing necessary resources for mediators, and investing in public education and outreach programs to raise awareness about the benefits of mediation.

15. Leveraging Technology in Mediation

In an increasingly digital world, integrating technology into mediation processes offers significant advantages in terms of accessibility, efficiency, and convenience. The Mediation Bill should include provisions emphasising the need for technology to facilitate mediation, particularly online mediation platforms. These provisions are essential for enhancing the reach and effectiveness of mediation services, especially in light of the lessons learned during the COVID-19 pandemic.

One of the primary benefits of leveraging technology in mediation is the improved accessibility it offers. In Sierra Leone, many parties involved in disputes may reside in remote

or rural areas far from established mediation centers. Traditional in-person mediation can pose logistical challenges and significant costs for these individuals. By incorporating technology-enhanced mediation options, such as online mediation platforms, the Bill can ensure that all parties, regardless of their location, have equal access to mediation services.

Online mediation platforms allow disputing parties to participate in mediation sessions from the comfort of their homes or offices, eliminating the need for travel. This convenience reduces costs and makes it easier for parties to schedule and attend mediation sessions, thereby increasing participation rates. Furthermore, technology can facilitate the involvement of mediators and experts from different regions, bringing diverse perspectives and expertise to the mediation process.

The use of technology in mediation provides greater flexibility and convenience for the disputing parties. Online mediation platforms can offer various features, such as video conferencing, document sharing, and real-time communication tools. These features enable a more dynamic and interactive mediation process, allowing parties to communicate effectively and efficiently.

In addition to real-time interactions, technology can also support asynchronous communication. Parties can submit documents, proposals, and responses at their convenience, allowing for a more flexible mediation process that accommodates different schedules and time zones. This flexibility is particularly beneficial for parties who may have demanding work schedules or other commitments.

The COVID-19 pandemic highlighted the importance of technology in maintaining access to justice and dispute resolution services. During periods of lockdown and social distancing, many traditional in-person mediation sessions were disrupted. However, jurisdictions that had already embraced online mediation platforms could continue providing mediation services without significant interruptions.

Many countries have successfully integrated technology into their mediation processes, setting valuable precedents for Sierra Leone to follow. For instance, Singapore and Rwanda have implemented robust online mediation platforms that facilitate the resolution of disputes remotely. These platforms have proven effective in managing domestic and international disputes, providing secure and user-friendly environments for mediation.

Online mediation platforms can also support the collection and analysis of data, providing insights into the mediation process and outcomes. This data can inform policy decisions and contribute to the continuous improvement of mediation services.

Training programs for mediators should include components on using technology effectively in mediation. This will ensure that mediators are proficient in using online platforms and can guide parties through the digital mediation process.

The Bill should include provisions to ensure that all data and communications exchanged during online mediation sessions are secure and confidential. This includes implementing robust encryption and privacy measures to protect sensitive information.

The government should invest in the necessary technological infrastructure to facilitate widespread access to online mediation, particularly in remote and rural areas. This includes improving internet connectivity and providing access to digital devices.

16. Public Education and Awareness Campaigns

Public education and awareness campaigns play a crucial role in the successful implementation of mediation as an alternative dispute resolution mechanism. In many regions, particularly those with limited access to legal resources, there is often a lack of awareness about mediation and its benefits. Without proper understanding, parties may be reluctant to choose mediation over traditional litigation, missing out on the potential advantages of a more collaborative and less adversarial dispute resolution process.

Educating the public about mediation can help demystify the process, making it more approachable and appealing. It can also address common misconceptions and provide clear information on how mediation works, its benefits, and how to access mediation services. Public education campaigns can foster a culture of amicable dispute resolution, reduce the burden on the court system, and contribute to social harmony.

The Bill should mandate the creation of outreach programs aimed at educating the public about the benefits and availability of mediation. These programs should target various demographics, including individuals, businesses, and community leaders, to ensure widespread awareness.

Organising workshops and seminars in communities, schools, and workplaces can provide direct education about mediation. These events should be designed to explain the mediation process, its benefits, and how it integrates with traditional dispute resolution practices. Utilising media platforms such as radio, television, newspapers, and social media can help disseminate information about mediation. Engaging content, including informational videos, testimonials, and expert interviews, can reach a broad audience and raise awareness about mediation services.

Highlighting real-life examples of successful mediations can build trust and confidence in the mediation system. These stories should emphasise how mediation has helped parties resolve disputes amicably and efficiently, particularly those that have incorporated traditional practices. Providing detailed case studies and testimonials from individuals and businesses who have benefited from mediation can serve as powerful endorsements. These success stories can illustrate the practical benefits of mediation and encourage others to consider it a viable option.

Involving respected community leaders and traditional authorities in public education efforts can enhance credibility and acceptance. These leaders can act as ambassadors for mediation, promoting its benefits and encouraging their communities to embrace it.

17. Conclusion

The Institute for Legal Research and Advocacy for Justice (ILRAJ) supports the Mediation Bill, 2023 and believes it has the potential to significantly improve the landscape of dispute resolution in Sierra Leone. By addressing the recommendations outlined above, the effectiveness and reach of the mediation process can be further enhanced, ensuring that more individuals and businesses can benefit from this alternative means of resolving disputes. ILRAJ looks forward to working with the government, the Mediation Center, and other stakeholders to ensure the successful implementation of this important legislation.

The proposed amendments and additions to the Bill seek to bolster its effectiveness, inclusivity, and alignment with international best practices. Key recommendations include integrating traditional dispute resolution mechanisms, ensuring sustainable funding and robust infrastructure, leveraging technology, providing comprehensive training for mediators, and implementing public education and awareness campaigns. By addressing these key areas of improvement, Sierra Leone can establish a robust framework for alternative dispute resolution that promotes justice, transparency, and sustainable development.

These revisions will ensure that the Bill addresses the current needs of dispute resolution and anticipates future challenges, positioning Sierra Leone as a leader in alternative dispute resolution in the region. The successful implementation of these recommendations will not only enhance access to justice but also contribute to social harmony and economic development by providing efficient, culturally sensitive, and widely accessible mediation services.

ILRAJ remains committed to supporting the Mediation Bill, 2023 and is eager to collaborate with all relevant stakeholders to ensure the legislative framework is effectively operationalised. Through concerted efforts, Sierra Leone can build a mediation system that stands as a model for the region, demonstrating the power of alternative dispute resolution in fostering a fair and just society.