GUIDE TO LEGAL INFORMATION FOR PARENTS LIVING WITH HIV/AIDS IN UGANDA



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ACKNOWLEDGEMENT

Living with HIV/AIDS is a challenge. Going public about one's HIV status can add to the pressures and problems. But it also gives the chance to talk openly to children about the family situation and to get advice about how to make secure plans for their future care. This book has been written following many legal advice sessions with individuals and groups of NACWOLA mothers who have led the way in being open about their health with their children and family.

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Table of Contents

MEMORY PROJECT

1. CONSTITUTIONAL PROVISIONS RELATING TO WOMEN AND CHILDREN 2

2. LAW OF MARRIAGE
Definition of marriage 2
Proof of marriage status 2
Types of marriage 2-5
Common misunderstandings 5

3. SEPARATION
Definition of Separation 6
Requirements for Separation 6
Division of property and custody of children . . .6

4. DIVORCE
Definition of Divorce 7
Requirements for Divorce 7
Division of property and custody of children . . .7

5. LAWS AFFECTING CHILDREN
Definition of a child 8
Rights of children 8
Adoption 8
Guardianship 8
Custody 9
Maintenance 9

6. LAW ON SUCCESSION
Why make a will? 10
Inheritance with a will (Testate Succession) 10-13
Inheritance without a will (Intestate Succession) 13-15

7. DOMESTIC VIOLENCE 16

8. USEFUL INFORMATION
Organisations which offer support or advice 17
Structure of the legal system 17
Structure of the local government & community systems 17

1. Constitutional Provisions Relating to the Family

The Constitution of Uganda 1995 is the supreme law of Uganda and all other laws are guided by it. Article 31 of the Constitution of Uganda provides for the rights of the family. This article states:

- Only individuals who are above the age of 18 years can marry.
- Both partners must have consented to the marriage.
- Following the marriage a man and woman are entitled to equal rights in the marriage, during the marriage and at the time when this marriage is dissolved.
- It is the right and duty of parents to look after their children..

The Constitution also states that Parliament shall make appropriate laws to protect the rights of widows and widowers:

- To inherit the property of their deceased spouses.
- To enjoy parental rights over their children.

In addition the constitution states:

- Children may not be separated from their families or the people entitled to bring them up against the will of their family or of those persons, except according to the law. This means that a relative cannot take a child away from the mother **unless they have permission from the court.**

2. Law of Marriage

DEFINITION OF MARRIAGE.

- Marriage is the voluntary union of a man and a woman for life or until they divorce. This applies to any of the legal forms of marriage in Uganda.

- If a man and woman have not been married by one of the forms of marriage which are legal in Uganda, they are not considered to be married however long they have stayed together. It is very important to be clear about marital status. ALL parents, but particularly those who are living with HIV, need to know if they are or were legally married by one of the forms of marriage which are recognised under the laws of Uganda. These are described below.

In some cases where the marriage was not legal, or where the woman cannot prove that she was legally married, there is a risk that after her husband's death their property might be siezed by relatives of the late husband. Another risk is that after seizing all their property the father's relatives might not accept responsibility to care for her children.

In the case of a mixed marriage (for example where a Moslem man has married a Christian woman) it is particularly important to check that the marriage was legally performed and registered.

Any parent who is not sure if her marriage is legal needs to get advice from the place where the ceremony was performed, or from an official person such as a qualified lawyer or the District Executive Secretary.

If the original marriage certificate is lost it is important to get a certified copy from the place where the marriage was registered. This provides proof that the marriage existed and could be of great importance to children who are claiming their rightful share of family property.

TYPES OF MARRIAGE.

The following notes describe the five types of marriage which are legally recognised In Uganda:

- Civil Marriage
- Christian Marriage
- Customary Marriage
- Hindu Marriage
- Islamic Marriage

2. Law of Marriage *(continued)*

MEMORY PROJECT

Civil Marriage

CIVIL MARRIAGE AT THE DISTRICT EXECUTIVE SECRETARY'S OFFICE [FORMERLY DISTRICT COMMISSIONER]

A civil marriage conducted by the District Executive Secretary allows a man to marry only one wife and a woman to have only one husband. People married before the DES are married for life unless a court of law brings their marriage to an end or until one of the partners dies.

A man or woman who has been married in a civil ceremony cannot marry again either in church or under customary law or before another District Executive Secretary unless his/ her marriage partner is dead or until the marriage has been brought to an end by a court of law [Divorce].

In order to have a civil marriage the following must be fulfilled:

1. **Age.** The people who intend to get married should both be 18 years of age or older. Consent of parents may be required if either the man or the woman is under 21 years of age and is not a widow or widower.
2. **Voluntary consent.** The man and woman must both be willing to marry the other.
3. **Unmarried status.** The man and woman must not already be married except where they are converting a customary marriage into a civil mariage. (see below under Customary Marriage.) Civil marriage can also take place following legal divorce from a former partner.
4. **No close relationships.** The woman and man intending to marry should not have any close blood relationship.
5. **Notifying intent to marry.** The couple must give 21 days notice to the public of their intention to marry. This notice is put on the District Executive Secretary's notice board. If no-one objects in this time, the couple may be married.
6. **Timing of ceremony.** The ceremony must take place between 8.00a.m. and 6.00 p.m.
7. **Witnesses.** There must be at least two witnesses at the ceremony in addition to the DES.
8. **Licenced place for marriage.** The marriage must take place in a licensed place [the District Executive Secretary's office is a licensed place of marriage] and must be conducted by a licensed person eg. the District Executive Secretary. (If in doubt the couple should ask to see the licences.)
9. **Registration.** The marriage should be recorded in the register and a certificate of marriage given to both parties. This certificate should be signed by the husband and wife, the DES and the two witnesses.

Christian Marriage

Christian marriages take place in the church or meeting place of different Christian faiths including Catholic, Protestant, Orthodox, Seventh Day Adventist and Pentecostal.

In order to have a Christian marriage the following must be fulfilled:

1. **Age.** The people who intend to get married must both be 18 years of age or older.
2. **Voluntary agreement.** The man and woman must both be willing to marry each other.
3. **Unmarried status.** The man and woman must not be married but, the marriage could follow after legal divorce from a former partner or following the death of a former married partner.
4. **No close relationship.** The woman and man must not have any close close relationship.
5. **Notifying intent to marry.** The couple must give 21 days notice to the public of their intention to marry. This notice is read at the Church where the ceremony will take place on 3 consecutive Sundays.
6. **Timing of the ceremony.** The ceremony must take place between 8.00 a.m. and 6.00 p.m.
7. **Witnesses.** There must be at least two people to act as witnesses at the ceremony in addition to the minister conducting the service.
8. **Licence to perform marriage ceremony.** The Church where the ceremony is to take place and the person who is to conduct the ceremony must be officially licenced. If in doubt the couple should ask to see the licences.
9. **Registration.** The marriage should be recorded in the church register at the time of the marriage and a certificate given to both parties.

The law of Uganda recognizes marriages conducted according to the customs of a specific community [clan/tribe] to which the man and woman who are getting married belong. If the man and woman do not belong to the same tribe the customs of the man's tribe are followed. The couple must make sure that they fulfill all the requirements of the particular tribe where they are to be married. Customary marriages are polygamous in nature (i.e. a man is allowed to marry any number of wives that he can maintain.)

2. Law of Marriage *(continued)*

Customary Marriage

In order for a Customary Marriage to be legally valid the following must be fulfilled:

1. **Age.** Both the man and the woman must be 18 years old or older. This is a requirement of the law because under the Penal Code Act, it is unlawful and therefore a crime to have sex with a person below the age of 18 years.
2. **Taboos.** The man and woman cannot marry under custom if their marriage would be against the traditions or culture of their tribe. For example among many tribes in Uganda, people belonging to the same clan cannot marry.
3. **Bride wealth.** Customs of many communities in Uganda require the payment of bride wealth as agreed upon by the relatives of the man and the woman who want to marry. However the relatives are free to agree that they do not want bride wealth to be paid. There may be other requirements and these vary for the different customs or tribes.
4. **Voluntary consent.** Both the man and woman must agree to get married. The law does not allow parents to force their children to marry.
5. **Ceremonies required by custom.** Both the man and the woman have to fullfil the ceremonies as required by the custom[s].
6. **Registration.** Under the law of Uganda, the husband and wife are required to register their customary marriage at the sub-county (Gombolola) headquarters within six months of completing all the ceremonies of marriage. Both of them will then be given a customary marriage certificate. (If the marriage is not registered in time the couple might be fined.)The bride wealth can also be recorded in the Marriage Register Book.
7. **Customs allowing a man to marry more than one wife.** Many customs [tribes] in Uganda allow a man to marry more than one wife. These customs are concerned about promoting good family relations and morality among the wives and children and therefore a man may be required to build a separate home for each of his wives. He should also allocate to each wife a clearly identifiable piece of land for cultivation.
8. If a man takes his first wife according to custom, any other wife must also be married under customary law.
9. **Circumstances where a customary marriage can be turned into a Christian marriage.** If a man marries only one woman under customary law he can take the same woman to church so that their marriage is blessed or he can take her to the District Executive Secretary for a civil ceremony. But if the man has more that one wife under customary law he cannot turn his marriage into a Christian marriage.

THE IMPORTANCE OF REGISTRATION OF CUSTOMARY MARRIAGE.

Failing to register does not mean that there is no marriage but it may be more difficult to prove at a later date.

- For example in some cases when a husband or wife dies, other clan members may deny that their clansman/clanswoman was married to a particular woman/man. The man or woman might then be robbed of their property and sent away from the home.
- Registration gives some protection because it is sound proof that the marriage existed and was legally recognised at the time.
- But If a marriage is not registered, the only way to prove that the couple were married is to call witnesses to the marriage ceremony – but the witnesses might have died or might be unwilling to support the person who wishes to prove that the marriage took place.
- If the bride wealth has been recorded in the Register Book it may help to sort out disputes in cases where the couples want to divorce.

2. Law of Marriage *(continued)*

Marriage Under Islamic Law

The law of Uganda recognizes marriages celebrated between two Moslems according to Sharia law. The following are the requirements set out by the Qur'an:

1. **Mahari (dowry.)** The man must give the woman he intends to marry something to convince her to marry him. This might be property or a promise, for example that he will take her to Mecca. The promise must not be against the Qur'an, e.g. it is not acceptable for him to promise that he will never divorce her.

   NOTE: Mahari is given to the bride to be, not to her parents. If Mahari is not given then the marriage may not be recognized by Islamic law.

2. **Age.** Although the Law governing Islamic Marriages allows moslems to marry at 16, moslems are expected to obey the Constitution of Uganda which states that the minimum age for legal marriage is 18.
3. **Marriage Ceremony.** This may take place in a Mosque which is a licenced place for performance of marriages, or in the bride's home. Not all Imams are licenced to perform marriages and it is important to check, to make sure that the marriage is valid.
4. **Registration of Marriage.** If the marriage takes place in the Mosque, it should be registered at the time of the ceremony. Otherwise it is the duty of the husband to register the marriage at the Mosque within one month from the date of the ceremony. If the husband dies within one month of the marriage, the widow must register the marriage.
5. **Circumstances in which a Moslem man can have more than one wife.** Sharia law allows a man to marry up to four wives provided that certain conditions are fulfilled, for example when the first wife has an incurable illness or if she is unable to bear children.

   In all cases the man is expected to love and treat his wives equally.

Hindu Marriage

The law of Uganda recognises the marriage between two people of the Hindu religion who are married according to Hindu beliefs and laws provided that the usual legal conditions are met. These include the age of the couple, their voluntary consent to the marriage and the other requirements which apply to all legally recognised marriages.

The ceremony must be performed in a licenced place and by a person who is licenced to perform marriages and the marriage must be registered at the time of marriage.

Some Common Misunderstandings About Marriage

If a man marries another woman while his wife is still alive, without first getting a divorce in court, he commits an offence called BIGAMY. If the woman he marries is aware that he is already married, she also commits an offence.

Some men marry before a District Executive Secretary and then take another woman to be married in the church. This is not allowed by the law. It is a criminal offence and the second marriage is not recognised. This means that the second woman is not a wife according to the law.

Some people believe that if they are married by the District Executive Secretary that they can make an agreement to be married for a specific period of time and at the end of that period their marriage comes to an end. The law does not allow such agreements.

Although it is a practice in some Christian Churches to refuse to marry someone who has been divorced, it is actually their legal right to be married again in their Church.

3. Separation

MEMORY PROJECT

DEFINITION OF SEPARATION.

During separation the marriage still exists but for some reason the husband and wife have decided to live apart for the time being. Separation can be both formal and informal.

Informal separation means that a married couple have decided to stay apart for a period of time. They can make their own arrangements about who will stay with the children and payment of maintenace because at any time they may decide to return to live together. On the other hand they might move on to formal separation or apply for divorce through the court*.

Formal separation is a legal arrangement where the married couple receive an order from the court* giving the terms on which they will live separately. These include decisions about who will live in the family home, responsibility for care of children, financial support etc.. During the time that a couple are legally separated the matrimonial property is not shared out. The couple remain married to each other and neither of them can re-marry.

*In the case of Customary , Hindu or Islamic marriages, the couple have the choice to follow traditional rules over Separation. However if any of the parties are dissatisfied with the arrangements they can appeal to the formal court system. Or if there is any disagreement over care or maintenance of children, the case will be referred to the formal court system for decision.

REQUIREMENTS FOR SEPARATION.

The person seeking formal separation through the Court must prove that the other partner has committed one of the following:

- Adultery (having sexual relationship outside the marriage)
- Cruelty (this could include physical, psychological or sexual behaviour.)
- Desertion (leaving the married partner and the family home.)

4. Divorce

MEMORY PROJECT

DEFINITION OF DIVORCE.

Divorce is a legal process which permanently ends a marriage. After divorce the parties are considered to be single and are free to marry again.

Before the divorce is allowed, decisions have to be made about custody of children, maintenance and division of the matrimonial property.
Different divorce procedures are followed depending on where the marriage took place.

- Christian and Civil Marriages are dealt with by a judge in the High Court.
- Customary Marriages are dealt with according to the Customs of the man. In Customary marriages the children usually stay with the father (except in the case of a breastfeeding baby.)
- Hindu Marriages are dealt with according to Hindu rules.
- Islamic Marriages carried out under Sharia Law are dealt with according to the rules laid down in the Qu'ran.

However if any of the concerned parties in Customary, Hindu or Moslem divorce proceedings are not satisfied with the decisions made, they can appeal to the formal court system.

Also, in all cases where there is a dispute about custody of children, the case will be referred to the Family and Childrens Court where the judge will have the final say.

REQUIREMENTS FOR DIVORCE THROUGH THE FORMAL COURT SYSTEM.

For a man to get a divorce he must be able to prove that his wife has committed adultery.

For a woman to get a divorce she must be able to prove that the husband has committed adultery and in addition one of the following:

- Cruelty (this could include physical, psychological or sexual abuse.)
- Bestiality (un-natural sexual activity with an animal.)
- Changing from the Christian faith and marrying another person.
- Desertion (leaving the wife and family home.)

CUSTODY OF CHILDREN.

According to the laws of Uganda, decisions about how children should be cared for must be guided by the principle of "the best interest of the child" and this principle will be applied by the Judge who handles the divorce application.

Parents are always given preference when custody of their children is being decided. For example where the child is still breast feeding, preference is likely to be given to the mother of the child. But where the mother of the child is not in a strong position, for instance if she is too sick to properly look after the child, custody might be given to the father of the child.

But where neither of them is in a position to take care of the children, then the judge would consider relatives or any other person who is in a better position to protect the children.

GENERAL ADVICE

Women who are faced with divorce need reliable legal advice from a qualified lawyer who is experienced in family law.

Whether the woman is bringing the divorce action or her husband is divorcing her, she needs to know her rights about custody of the children. If she wishes to care for them she needs to be well prepared with evidence (and witnesses) to show that she is capable of looking after the children.

The woman needs to show proof of what possessions and property belongs to her. The general rule about division of property on divorce is:

- Both partners can claim back possessions which they brought with them into the marriage. This is considered to be their personal property.
- Property acquired during the marriage is assumed to be jointly owned and, on divorce, it may be split equally. However, this is subject to decision of the court and there are still variations in the way property is divided.

When a marriage between a couple of different faiths or traditions is breaking down, it is very important for the woman to get accurate advice about her rights from a qualified lawyer or from a trustworthy member of the community. If necessary she should be ready to turn to the official court system to make sure that her case is fairly dealt with.

5. Laws Affecting Children

MEMORY PROJECT

A CHILD IS A PERSON WHO IS BELOW THE AGE OF 18.

Any decisions that concern a child must be based on the principle of being **in the best interests and well being of that child.** This means that any action or decision made by anyone, including the court, must always be guided by the child's needs and welfare.

RIGHTS OF CHILDREN.

This list of the rights of children is promoted by the United Nations and is incorporated in the Children Statute as the basis for the care and upbringing of children to ensure their growth, development and security.
Children have the following rights -

- **Right to food.** A child should be provided with adequate food and a balanced diet to ensure his/her development.
- **Right to shelter:** A child should be provided with adequate shelter.
- **Right to medical care, immunisation and treatment.** The parents of a child have no right to refuse treatment for a child for any reason at all.
- **Right to clothing.** A child should be adequately clothed taking into account the means of the parents or guardians.
- **Right to be listened to.** The child's opinions and wishes should be taken into account, depending on the child's age.
- **Right to education and guidance.** A child should be adequately guided to ensure proper development. No parent/guardian has the right to refuse to educate a child.
- **The right to live with his/her parents.** Where possible children should be brought up within their own family. No one has the right to take children away from their parents unless there is abuse or neglect.
- **The right to be protected from violence and ill-treatment.** Children should feel safe with in the family, at school and in the community.
- **The right to be protected from discrimination.** A child should not be discriminated against for any reason including race, religion, poverty, disability, HIV status.
- **The right to be protected from harmful customary practices.** Although a child should participate in cultural practices it is against the law to force a child to participate in any practice that may cause physical or psychological harm of any kind.

ADOPTION.

Adoption is a legal process for placing a child permanently in the care of adults who are not the birth parents. When an Adoption Order has been granted by the Court the adopters have the same rights and responsibilities towards the child as if the child had been born to them. The Court provides an Adoption Order which proves that the adopters are the legal parents of the child.

Adopters may be related to the child or may be friends or contacts of the birth family who have been asked to take care of the child because the birth parents are no longer able to provide. Alternatively, adopters may be unrelated and unknown to the birth family and have been put in touch with the child through a registered adoption agency. In either case the arrangements must be investigated by the Probation & Social Welfare Officer before the Court grants an Adoption Order.

When a child is adopted the biological parents of the child give up all their rights over the child. At the same time the adopted child gains the same rights as a natural child born to the adoptive parents. For example, following the death of adopters, the adopted child is entitled to share property equally with natural born children.

When an adopted child reaches the age of 18 years, he/she has the right to be told the identity of his or her biological parents.

GUARDIANSHIP.

A guardian is a person who takes responsibility for looking after children when parents have died or when they are not able to care for their children because of illness or other problems.

Guardianship can be formal or informal.

- If a relative takes a child into his or her home, for example following the death of the child's parents, this is an informal arrangement. It does NOT have to be approved by the court.
- If an unrelated person takes a child into his or her home, the person concerned has to apply to the Children and Family Court for permission to become the child's guardian.
- Even when someone has been named as Guardian in the parent's Will, IF this person is unrelated to the child, he or she must apply to the Children and Family Court to become the child's guardian.

Applying to the court to become guardian to a child.

- It is a very simple process so that anyone who is willing and able to care for an orphan or a homeless child can easily and quickly apply.

(continued on next page)

5. Laws Affecting Children.. (continued)

- The person who wishes to become the Guardian fills in a short form (available from the Children and Family Court.)
- The form is read by the magistrate and if there are no objections (eg. from relatives or other people who know the child) the magistrate confirms the arrangement.
- The child is allowed to live with the guardian while the application is dealt with.

Supervision and support of guardians and children.

- There is no special system for inspecting or supporting guardians. But children being looked after by guardians should be protected by the same laws and community safeguards as any other children.
- Although some children may have inherited property or belongings which might help towards their upkeep, there are no guardianship allowances and most people who become guardians take full responsibility for the child.

Choosing guardians.

- People who become guardians take on a major responsibiity – bringing up someone else's child(ren) until they are old enough to manage independently.
- If there is no close relative available to take care of children, parents need to think carefully about who is in the best position to take responsibility.
- Children's views are important.
- It is essential to ask the proposed Guardian and not leave them to find out from the Will.

CUSTODY OF THE CHILD.

The person who has actual physical care of a child has custody of the the child. The custodian may be either of the parents, another relative or an unrelated adult who is taking care of the child for the time being. When parents are living separately or are divorced a decision has to be made about where the children will live. In the case of serious illness or problems in the family the child may be placed in the custody of a relative or friend of the family.

The custody arrangement may be informal and short term or it may be as a result of a legal Custody Order made by the Family and Children Court.

When a formal Custody Order has been made it is an offence for anyone else to try to take the child(ren) away from the custodians.

Even though a Custody Order is in force, and the child is living away from home, he or she remains a legal member of the birth family. When the child reaches 18 years of age the Custody Order comes to an end.

ALL DECISIONS ABOUT CUSTODY MUST TAKE INTO ACCOUNT THE BEST INTEREST OF THE CHILD.

MAINTENANCE.

Maintenance means the payment of money to look after a child. Under the Child Statute 1996 both parents have an obligation to maintain their children by providing for all their basic needs including food, shelter, clothing, love and care. For parents who are living separately, the parent who is caring for the children can ask the Magistrate in the Family and Children Court to make a maintenance order against the other parent. The money is intended for the upkeep of the child(ren) and it is an offence to mis-use the money.

The Family and Children's Court can make a Maintenance Order in the following circumstances:

- When the parents of a child are living apart.
- When a marriage has ended.
- While the mother is pregnant even though she may not be married to the father.

A Maintenance Order can be made for children up to the age of 18.

If the level of maintenance is not enough the parent who takes care of the children can go back to the Court to ask for an increase. The Court will take into consideration the income of the person providing maintenance and the needs of the child.

6. Inheritance & the Law on Succession

MEMORY PROJECT

INHERITANCE is the process by which property left by a deceased person is shared out among named people according to the wishes written in the will of the person who has died (Testate succession.) If the dead person has not made a will the property will be shared out according to rules laid down in the law. (Intestate succession. See below.)

THE BENEFITS OF MAKING A WILL INCLUDE:.

- A well planned Will makes sure that property is fairly shared out amongst family members in an orderly way.
- The person writing the will has peace of mind that his or her wishes will be followed and that needy dependants will be properly taken care of.
- A clear Will helps to avoid misunderstandings and quarrels among relatives.
- Those who have been named in the Will can be sure of getting their entitlement.
- The Will can include all the person's property, including money or items which might not have been known about by the relatives.

IN THE CASE OF PARENTS AFFECTED BY HIV/AIDS THERE ARE ADDITIONAL REASONS FOR MAKING A WILL. THESE INCLUDE:

- A legal Will makes it more difficult for greedy relatives or other untrustworthy people to steal property from a widow who is in poor health or from vulnerable orphans.
- In cases where the parent dies leaving very young children it is particularly important that arrangements for the management of property and guardianship of children are clearly stated. In this case a reliable person chosen by the parent takes responsibility instead of the children being left at risk while relatives or neighbours argue – or possibly take on care of the children for wrong reasons such as their desire to get their hands on the property.
- In the many child-headed families youngsters who have no experience of managing property or handling finances will have some protection if the parent leaves a legal Will which clearly describes the land and other property. This gives them evidence which will be recognised by the Court in the event that relatives or neighbours encroach on the property or try to take it from the children.
- In the many households where orphans have been taken in or where, following re-marriage, there are complicated step-relationships within the family, the person writing the Will has the opportunity to state exactly which children are entitled to inherit or benefit from family property. Or to specify that all children in the household are to be treated equally. Either way, the children are left with clear instructions which will have the backing of the Court.
- The Will provides a way for the writer of the Will to be sure that his debts will be settled and that any money owed will be repaid.
- Other important instructions can be included in the Will, for example the arrangements for Guardianship of young children and the writer's wishes about burial arrangements.

PROBLEMS THAT COME UP WHERE THERE IS NO WILL OR WHERE THE WILL HAS NOT BEEN PROPERLY WRITTEN INCLUDE:

- Some of the dead person's property may never be known about and therefore will not reach the people who are entitled to claim it.
- There are likely to be quarrels and extra claims from people who feel they should have a share in the inheritance.
- The property will be distributed according to the Succession Act and this might not be the way that the owner of the property wished.
- The whole process of sorting out the property and satisfying the claims of different relatives and dependants will be long and complicated and may also require expensive legal advice.



IMPORTANT NOTES:

Some people feel they have so little property that it is not worth making a Will. But however little there is, it is important to leave a clear list and instructions about how it should be shared. WITH a Will at least children have a chance to hold their home together. Without a Will, even the pots and pans and mats from the family home may be siezed.

INHERITANCE UNDER A WILL. (TESTATE SUCCESSION.)

A WILL is a document which gives the wishes of the testator or writer of the will about how his or her property is to be shared among the people named in the Will. The Will only comes into operation after the death of the testator.

The Will contains important instructions or information given by the Testator. For example the Will may state where the person would like to be buried; it may include the name of guardians for any young children of the family; it should also give the name of the person who will be responsible for carrying out the instructions in the will.The benefit of writing a legal will is that the person's property will be divided up as he or she wishes and other

6. Inheritance & the Law on Succession *(continued)*

instructions will be carried out as requested. But if there is no will, or if the will is faulty, the property will be divided up according to strict rules which are described below in the section on **INHERITANCE WHERE THERE IS NO WILL - INTESTATE SUCCESSION.**

WRITING A WILL.

A Will can be written by anybody male or female, married or single, provided that the person is:

- 21 years old and above;
- Of sound mind [not mad];
- Not drunk at the time of writing the will;
- Able to understand that he or she is making a Will.

The Will is not recognised in law if the writer does not meet all these conditions. If the Will is not valid for any reason the property of the dead person will be distributed as if he/she had not left a Will.

The Will has to be in writing and the language of the Will should be simple so there are no misunderstandings.

The Will can be:

- In any language which the writer speaks and understands well.
- Hand-written by the person making the will (the testator.)
- Dictated by the testator to someone who can be trusted to write down exactly what he or she wishes to say and should be read back to the testator.
- Written by a lawyer following the instructions of the testator. The lawyer will charge a fee for this work.
- Filled in on a prepared form such as the form available from the website

CONTENTS OF THE WILL.

The person writing the will should give the following information:

- Full name and the place where he or she lives.
- The day, month and year when the will is written.
- A full list of all the property.
- Names of wife [wives] or husband and children.
- Instructions about how the property is to be shared out.
- If any money is owed to the writer of the will the details should be recorded including the name of the person who owes money, the amount owed and whether it should be paid back.
- If any money is owed by the writer of the will, the details should be recorded including the name of the creditor, the amount owed and instructions about how the money is to be paid back.
- Names of guardians of young children.
- Names of one or two people who are willing to act as Executors – that is to carry out the instructions given in the Will.
- Signature of person making the Will.
- Signature of two people who have seen the Will be signed.

All the property listed in the Will should be owned by the person making the Will. For instance:

- A man cannot .....
- A woman cannot .....
- A father or mother cannot make a will giving away property which belongs to a son or daughter.
- A neighbour's land cannot be given away in the Will.



IMPORTANT NOTES:

It is important to leave a note with the Will saying where to find title deeds to houses or land, bank books, insurance documents and any other official papers which relate to property which is covered by the Will.

SIGNING THE WILL.

It is essential that the will is properly signed and witnessed, otherwise it will not be valid.

- The writer of the Will should sign and date each page of the Will to prevent forgeries.
- If the person making the Will is not able to write, the pages can be marked with a thumb print.
- The signing or thumb printing must be witnessed by two independent people. They do NOT have to read the Will but they must understand that it is a Will and they must be prepared to sign to say that they have seen the Will being signed by the writer. Witnesses have to provide full names, occupation and address.
- Any person aged 21 or above of normal intelligence can be a witness.
- A person who expects to receive something through the Will should not be a witness as this may disqualify him or her from receiving the gift. It is also considered dangerous for a witness to know what is written in the Will, particularly if there is something promised in the Will for someone close to the witness in case it raises the temptation to kill.

6. Inheritance & the Law on Succession *(continued)*

MAKING CHANGES TO A WILL.

The writer of the Will can change it as many times as necessary for example if there is a change of circumstances such as a new child born into the family; re-marriage or marrying another wife, owning a new home or losing an old property.
Changes or additions to an existing Will are made as follows:

- Changes to the Will should be written in a new document which will be attached to the original Will.
- The new document should state clearly that it makes changes to the earlier Will dated…….(give date the earlier Will was signed.)
- The document should give a clear list of changes or additions to the original Will.
- Every page of the new document should be signed or thumb-printed and dated.
- Two people should witness the signing or thumb-print giving their name, address, occupation and the date.



IMPORTANT NOTES.

If many changes are needed it is generally better to write a new Will and this should clearly state that it replaces the previous Will (dated……)

The Law of Uganda states that when a person marries or re-marries any Will made before that marriage is no longer valid. Therefore a new Will must be made at the time of marriage or divorce.

Only the writer of the Will – the Testator – can make changes to the Will. Nobody else other than a Court of Law has the power to change a Will left by a dead person. Not even a Local Council member, a clan chief or church leader has the right to interfere with the wishes of the person who has died.

PROVISION FOR DEPENDANTS WHO HAVE BEEN LEFT OUT OF A WILL.

It is a general principle that the person making the will – the testator - should provide for his or her dependants – for example the wife and children. If a wife or child or other dependant has not been provided for in the Will, they should apply to the Court to ask for a re-distribution of the property so that they get their appropriate share.

This is a very important provision, for example if a man has taken another wife and when he dies he leaves everything to the second family. In such cases the first wife and dependant children should ask for the Court to allocate them a fair share of the property.



IMPORTANT NOTES.

KEEPING THE WILL IN A SAFE PLACE.
The original copy of the Will should be kept in a safe place. Safe places include:

- a trusted friend ◆ a lawyer ◆ an accountant
- 'Safe deposit' or strong box within the Bank.
- High Court Registry * ◆ Office of Resident Judges*
- Administrator General's office*

(*information on where to find these offices is given in the last section of this guide)
The Will should NOT be handed over to a member of staff in any of these offices. But enquiries should be made about which official person has authority to keep personal and private documents. The Will can then be handed to this named person. A receipt should be obtained.

It is also advised to keep a copy of theWill in a safe place within the family home, such as locked in a strong metal box. This means the Will is quickly available when the person dies so that family members can read instructions, for example about funeral arrangements and guardianship arrangements.

Older children, a trusted friend or senior relative should be told where the original Will and copy of the Will have been stored.

GENERAL ADVICE ABOUT STORING OTHER IMPORTANT DOCUMENTS.

- It is important to keep original marriage and divorce certificates in a safe fire-proof place. IF they are lost certified copies can be obtained from the place where the marriage was registered and the divorce granted.
- Other important paperwork including title deeds to land, share certificates, bank books and any other documents which prove ownership of property should all be stored safely.
- It is important to make photocopies of all documents in case the originals get lost or damaged. The copies should be stored in a DIFFERENT place.
- If possible copies of relevant documents should be provided for each child of the family.
- Older children, a trusted friend or senior relative should be told where these valuable documents are kept.

6. Inheritance & the Law on Succession *(continued)*

DISTRIBUTING THE PROPERTY ACCORDING TO THE WILL.

Following the death of a family member, those who are named in the Will of the person who has died cannot just claim their property. They must wait for permission from the Court for the instructions in the Will to be followed in an orderly manner.

If the writer of the Will has appointed an Executor this person will have responsibility for taking the action described below. If there is no Executor, the immediate family must choose a senior relative or trusted friend to carry out these duties.
To start the process the Executor or person appointed by the family should do the following:

- Collect a death certificate from the hospital where the person has died. Or obtain a letter from the Local Council certifying the death of the person.
- The death should then be reported to the office of the Administrator General. This can be done direct or through the District Executive Secretary of the District in which the person lived.
- An advertisement must then be placed in a local newspaper to notify members of the public that an application is to be made to the Court to distribute the property of the person who has died in line with the instructions in his or her Will. Anyone who wishes to stop the process has 14 days in which to make a complaint to the Court.
- If no complaints are received an application should be made to the relevant Court for a Grant of Probate – that is for permission for the Executor or family members to gather property and share it out as directed in the Will.
- If the value of the property left by the dead person is U.shs. 100,000 or more Probate is granted by the High Court. If the value of the property is less than U.shs. 100,000 Probate can be granted by the local Magistrate's Court.
- A copy of the Will should be left on the Court file.
- When these formalities have been followed the property can then be distributed to the people named in the Will.

HOW PROPERTY IS SHARED WHERE THERE IS NO WILL (Intestate succession.)

The law provides a way of sharing property when someone dies without making a Will. The same law covers cases where there is a Will but it is not valid because one or more of the conditions for making a legal Will have not been carried out. (These requirements are explained in the earlier section on Making a Will.)

The law works as follows:

- All the property is put together and taken as one whole making up 100 parts or 100%.
- These parts are then divided among the children, the widow(s) or the widower, the dependants and the customary heir. The percentages these persons get are as follows:
  - Children of the dead person have equal shares of 75 parts or 75% of the property left.
  - The widow [s] or widower gets 15 parts or 15% of the property plus the house where the family has been living.
  - Dependants share 9 parts or 9%.
  - The customary heir gets 1 part or 1%. If there is no customary heir the legal heir gets this share. Where the heir is a child this 1% is added to his share as a child.

DEFINITION OF WIDOW OR WIDOWS.

A widow is the wife of a dead man who has been **legally married** to him under any form of marriage which is recognised by the Law of Uganda. and who has been living with him as husband and wife for six months before his death.
Where the dead man had more than one wife, the widows are those women who were **legally married** to him under any form of marriage which is recognised by the Law of Uganda and who have lived with the dead man as husband and wives for six months before his death.

This means that a separated or divorced wife or wives are not eligible to receive a share of the dead man's property.



IMPORTANT NOTES:

A widow is NOT property and cannot be shared or given or taken by another male relative of a dead husband. However a widow can decide freely to remarry, even within her former husband's clan.

A widow has the right to live in the dead husband's home until her death or until she remarries. Anybody who tries to send her away breaks the law and may be punished by the Court.

A widow's personal property, including land, money, household goods, should not be treated as belonging to the dead husband and therefore should not be shared out..

6. Inheritance & the Law on Succession *(continued)*

DEFINITION OF A WIDOWER.

A widower is the husband of a dead woman who has been legally married to her under any form of marriage which is recognised by the Law of Uganda. He should have been living with her as husband and wife for six months before her death.

This means that a separated or divorced husband is not eligible for a share of the dead woman's property.

DEFINITION OF CHILDREN WHO ARE ENTITLED TO INHERIT FROM THE PERSON WHO HAS DIED.

These include:

- Children born within the marriage.
- Children born outside the marriage – in this case the dead person must have recognised them as his or her children even if they were not living in the same house.
- Children who have been adopted.

All of the children male or female, young or old, have equal rights to their share of 75% of the property.

IMPORTANT NOTES:

The children have the right to work out a different plan for sharing their 75% of the property. Their plan has to be approved by the court before being put to use. This is to make sure that those entitled to shares of the property under the law are not forced or threatened into giving up their shares. Examples include:

- If the older children decide that the younger children should get more property, perhaps to help with their education, or
- If the children are grown-up and they decide to take less and give more to their mothers.

DEFINITION OF DEPENDANTS AND THEIR RIGHTS TO INHERIT.

Dependants are people who looked to the dead person to provide them with all or most things needed in life.

They are entitled to share 9 parts or 9% of all the property left by the dead person including land (Kibanja), money in the house and in the bank, insurance policy, and business.

They are NOT entitled to a share of the home or houses where the dead person used to live, nor to the contents of those houses.

ARRANGEMENTS FOR THE HOME OR HOUSES LEFT BY THE DEAD PERSON.

The "main" home (matrimonial home) where the dead person lived cannot be shared or given away but will be used as follows:

- The surviving partner will continue to live in the main house.
- If the surviving partner is a widow, she lives there and has the right to cultivate the land around the home until she dies or remarries. At this time the main home and the land around it pass to the customary heir.
- If the surviving partner is a widower, he lives there and has the right to cultivate the land around the home untill he dies. At this point the main home and the land around it pass to the customary heir.
- If a dead man had more than one wife in different homes, they continue to occupy their different homes.
- Young children of the dead person who used to live in the home continue to live there till they are grown up.
- Other homes are treated the same way as the main house, i.e. The widow [s] occupying it continues to live there and has the right to cultivate the land around the home until she [they] remarries or dies..
  - Any young children of the dead person who lived there continue to stay there untill they grow up.
  - Any household property in the house is used by the widow [s].
  - If the widow remarries or when she dies, this home that she occupied is shared out according to the same percentages.

IMPORTANT NOTES:

The right to live in the houses, hold property and cultivate land around the houses is not part of the 15% share that is allocated to the wife/wives.

The right of occupation does not include the right to sell the property.

Relatives do NOT have the right to chase the widow(s) or widower from their home. Anybody who tries to interfere with the widows right to occupy breaks the law and could be punished by the Court.

Any widow who is troubled by relatives of her dead husband who try to chase her away should make a report immediately to the office of the Administrator General, the local council of the area and the police.

6. Inheritance & the Law on Succession *(continued)*

ACTION TO BE TAKEN TO SHARE OUT PROPERTY OF A PERSON WHO HAS DIED WITHOUT MAKING A WILL..

A senior relative or trusted friend of the family will need to take responsibility for following the legal process that is required when someone dies Intestate – that is without a Will. In some cases it may be decided to appoint a lawyer to act for the family. The process is as follows:

- The death certificate should be obtained from the hospital where the person died, or a letter should be requested from the Local Council confirming that the person has died.
- The Certificate or letter should be taken to the office of the Administrator General.
- A list of family members and dependants and as far as possible a list of all the property belonging to the person who has died should also be taken to the Administrator General.
- The Administrator General calls a family meeting and if the family members come to an understanding, a "Letter of No Objection" is given to them.
- In cases where the family members still cannot agree, the Administrator General will call further meetings to try to resolve disputes.
- If no agreement is reached after these extra meetings, the Administrator General's Office has authority to take over the management of the estate.
- In such cases the children or other dependents have to apply to the Administrator General's office every time they need money, for example for school fees or maintenance money.
- The person acting for the family applies to the Court for Letters of Administration. (The High Court where property is likely to be more than U.Sh 100,000 and the local Magistrates Court where property is under U.Sh 100,000.) The Court requires a copy of the death certificate.
- An advertisement must then be placed in a local newspaper to notify members of the public that an application has been made to the Court for Letters of Administration to distribute the property of the person who has died. Anyone who wishes to stop the process has 14 days in which to make a complaint to the Court.
- If there are no complaints within the 14 days the person acting for the family can return to the Court to collect the official Letters of Administration.
- Work can then proceed on identifying all the property, paying out any money owed, collecting outstanding debts and sorting out the correct proportions of property for the people who are entitled to inherit. (Detailed information about the way the property has to be divided is given further back in this section.)
- A detailed account of the property and the proposed shares together with a list of any funeral, legal and other expenses must be prepared for the Court.
- Property should not be distributed until permission is received from the Court.
- All important paperwork (including death certificate, bank books, land titles, social security, identity and employment documents) should be kept safely until advised by the Office of the Administator General.

7. Domestic Violence

Domestic violence is the physical, sexual or psychological abuse of a person in a family environment. Forms of Domestic Violence include:

Physical abuse
- Beating and kicking
- Slapping
- Choking
- Pushing and shoving
- Throwing objects at the victim

Sexual abuse
- Rape
- Unwanted sexual attention or demands
- Making demeaning remarks about one's gender

Psychological or emotional abuse
- Ignoring the partner's feelings
- Denial of affection or sex
- Humiliation in public
- Constant verbal abuse, criticism or ridicule

Economic abuse
- Denial of basic necessities for the home such as food
- Destruction of property
- Property grabbing/denial of inheritance rights/being chased out of the house.

Up to date the Laws of Uganda do not define domestic violence as a specific offence. But some aspects of behaviour which are frequently found in domestic violence are covered by Criminal Law.

For example beating and kicking are defined as assault which is a criminal offence. Therefore a woman who is assaulted by her husband or partner can report to the police and the case can be handled as an assault case.

Another example is rape. This is a very serious criminal offence and if a woman reports rape by her husband or partner it is possible for her to be assisted under the law.

Sexual abuse or defilement of children is also dealt with under the criminal law and if it occurs within the family, it should be possible for action to be taken under the existing laws.

HOW HIV INCREASES THE RISK OF DOMESTIC VIOLENCE.

Most people have heard of tragic cases where a woman's diagnosis of HIV has been followed by severe violence, degradation or cruelty from her husband or partner or from members of the extended family.

In many of these cases the woman has been diagnosed at the ante-natal clinic, so she is the first person in the family to be identified with HIV and is (wrongly) blamed and violently abused for bringing infection into the household.,

Violence also erupts – and women are battered – in families which are struggling with the fears, anger and financial worries brought about by Aids.

Women whose husbands die may be blamed by his relatives for infecting – and killing – him and they may take revenge with violence and property grabbing as well as isolating the woman and children when they most need help.

Children who are orphaned by Aids are also at risk of physical or sexual violence from relatives or step-parents who may resent them and may not have any built in sense of protection towards them. But the most extreme dangers and abuse are experienced by street children – boys and girls whose families have been destroyed by Aids and who have nowhere safe to go.

In ALL these cases of violence and abuse within the family or by extended family, women must refuse to suffer in silence. Even if the violence they have suffered is not taken seriously by the police or cannot be dealt with by the Courts, they must be encouraged to look for responsible people in the community, LC members, court officials, respected elders who will help them decide how to cope with their problems.

There is also a growing number of self help groups (such as NACOA) support groups (such as Hope After Rape) and organisations which provide legal and financial advice. (Details of some of these organisations are given in the reference list at the end of the booklet.) Women MUST look out for other women and they must look out for the children who, through Aids, belong to no-one and therefore belong to everyone.

8. Useful Information

MEMORY PROJECT

USEFUL CONTACT LIST.

In case of a legal problem and you need legal advice and a lawyer to represent you in court, the list below may be useful.

FIDA-U: UGANDA ASSOCIATION OF WOMEN LAWYERS
Plot 54 Bukoto Street
PO Box 2157 Kampala
Telephone: 041 4530 848

FIDA gives free legal advise to women and children, and sometimes men. They also provide legal counselling and legal awareness training to communities. They have branch offices in Mbarara, Mbale and Arua districts.

LEGAL AID PROJECT OF THE UGANDA LAW SOCIETY
Accacia Avenue, Plot No.6
Kampala
Telephone:

LAP also provides free legal advice and court representation. They have branch offices in Gulu, Hoima, Jinja.

NATIONAL COALITION OF WOMEN LIVING WITH AIDS
PO Box 4485, Kampala
Telephone 041 426 6177

NACOA offers support and advocacy for women and parents living with HIV. They work in Nothern Uganda.

The Administrator General
Ministry of Justice
Jinja Road, Kampala

This is the office that deals with estates of deceased people. They mainly handle estates of people who died without making a will.

Uganda Human Rights Commission
Plot22/24 Buganda Road, Kampala
PO Box 4929, Kampala
Telephone: 041 348 006/8
Fax: 041 255 261
This office attends to cases of human rights abuse of any kind.

Police - Child, Family and Protection Unit
This is one of the departments in the police headquarters of most Districts.

Hope After Rape

ACRONYMS.

FIDA	Uganda Association of Women Lawyers
LAP	Legal Aid Project of the Uganda Law Society
NACOA	National Coalition of Women Living with Aids