TOPIC 9. THE LEGAL FRAMEWORK

Making sure that plans are carried out.

Preface:

Please note that Topic 9 is built around the **Guide to Legal Information for Parents Living with HIV/Aids Living in Uganda** – a booklet written by lawyer Emma Ssali Namuli in 2003. The booklet was produced because it was very clear that most parents who came to the original Memory Project training programme did not know how to use the laws of their country to protect their children or their property.

The legal guide book is based on the family laws that apply in Uganda. But many of the basic principles apply in other countries and therefore the ideas put forward in Topic 9 are likely to be useful for parents living in different countries.**HOWEVER, it is absolutely essential that the person who is co-ordinating the workshop gets up to date information about family law in the country where the workshop is taking place. It will be ideal if a local lawyer or para-legal can be present at the workshop to make sure that everyone understands how to use the laws that apply in their country to protect their children and their property and where to go for reliable advice.**

The Guide to Legal Information, a specimen **Will Form** and Guidelines for people **writing a Will** are referred to in Topic 9 and can be downloaded from this website:
www.memorybooks.org.uk/legal-advice-childrens-planning

Icons used in this document:



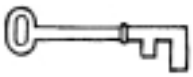
This is where you can get a picture of how the topic fits into the whole structure of the Memory Book training programme and what it aims to achieve with the group members.



When this icon appears at the beginning of each topic it describes how the topic is broken into sessions or group activities and provides a guide to the time to be spent on each session. Elsewhere this icon details what needs to be taught by the end of a particular session or activity



Elephants don't forget and you should not forget this important piece of information or idea.



Key facts for the trainers/workshop leaders to get across during the session.



Guidance notes for trainer/leaders on how to run this session.



A story that draws a picture of a situation or explains a point or idea to the group.



Material/sheet to be given out to the group.

Background information for trainers/workshop leaders



Writing down important information for children, and talking with them about how they will survive if their parents die, is at the centre of the Memory Project. But this important work of preparing children for difficult times ahead may all fall apart if parents don't take the next step of making a written Will to confirm who they want to take responsibility for their children and how any property is to be shared out. ***This topic explains how to use the laws of the country to help protect children.***

Many parents are not aware that the law is there to protect them and their children. In fact many feel that they have so little property, and women in particular often feel they have few rights, so there is no point making a Will. They also don't know where to get advice and fear the legal process will be very complicated and costly.

Topic 9 helps parents to know more about family and property law, explains that their children are entitled to be protected by the law and encourages them to take steps to give their plans the force of law. The important message to get across is that, in families where one or both parents have a life threatening illness, or where children are at risk of being separated from parents or senior relatives for any other reason, it is essential not to leave anything to chance.

Before starting on this topic workshop leaders need to read right through the Guide to Legal Information and the Guidelines to making a Will. Then, depending on the amount of time available, the main needs of the group members and availability of a lawyer or para legal to answer specific legal questions, a decision will have to be made about how much detail to give to workshop members. If time is short and no legal advisor is available, it is strongly recommended to stick to the essentials of:

- Choosing and appointing a guardian
- Registration of property
- Making a Will

It will also be important to give group members practical information about how to find a lawyer or legal advice scheme such as FIDA , how to get help from local community leaders and how to find the local court and public administration offices.

The Legal Framework.



Aims of this session are to:

- Find out what workshop members already know about how the laws of their country can be used to protect children and property.
- Find out what workshop members want the law to do for them and their children; identifying key issues to cover in depth and responding to other questions and concerns within the time available.
- Provide specific input on Guardianship, Protecting property and Will Making based on information from the Guide to Legal information (Uganda) (adapting this information for workshops taking place in other countries.)
- Share ideas with workshop members about who they could turn to for legal advice in their locality.
- Discuss ideas about where to store the Will and what to do with other important documents such as birth certificates, baptism records, land registration papers, medical records etc. Also where to store the Memory Book and other personal information relating to individual children if they are too young to look after it themselves.
- Encourage individual workshop members to list the steps they need to take to ensure that plans for their children and distribution of their property are carried out according to their wishes.
- Give everyone a chance to take the first steps towards writing a legally valid Will.

MATERIALS needed for this session:

- Resources may not stretch to give everyone a copy of the Guide to Legal Information. But it is important to give out copies of the guidelines for making a Will and the sample Will form. (As explained above this legal information applies to Uganda and must be checked with a local lawyer if it is used in any other country.)
- Copies of the Action Plan worksheet which can be found at the end of this document or can be downloaded from www.memorybooks.org.uk
- The workshop leader should also search out and make a list of any useful information about support organisations, legal advice centres, law firms etc in the locality.
- Provide usual newsprint, marker pens and scrap paper.
- Walking and Talking exercises.



KEY FACTS for the trainer or workshop leader to get across to the group during the session:

- Although the legal system may seem distant and difficult to understand, it is actually there to help and everyone has the right to be protected by the laws of the land.

- This training topic will focus on the parts of the law that are particularly important to help parents make good plans for the future of their children.These include guardianship arrangements, protecting property and making Wills.

- Other important information covered in the Guide to Legal Information include the law on marriage, separation and divorce; laws on adoption, custody and maintenance; detailed information on inheritance with or without a Will, and the legal protection available to people affected by domestic violence.There is unlikely to be time to deal with all these subjects during the Topic 9 workshop, but the booklet will be available and efforts will be made to help people who need specific information.

- In order to make legally binding plans for their children parents need to be clear about whether they are legally married and to know the legal status of their children. (See Section 2, 3 and 4 of Guide Book.)

- Parents need to know what property, land or funds they own or are entitled to inherit; they need to make clear records of whatever they own and make sure that ownership of property is properly registered. This way there will be less risk of property being seized by the wrong people at the time of their death

- If relatives cannot or will not agree to take care of children, parents need to find someone who is willing and suitable to become the guardian so that children are not left to cope alone. Information on choosing guardians and making the arrangements legally secure is given in section 5 of Guide Book.

- Information about WHY and HOW to write a Will is spelled out in Section 6 of the Guide Book, backed up with a sample Will Form and Guidelines for the person making a Will.

- Emphasise that to be legal a Will must be correctly signed and witnessed. A good Will clearly shows:

  - How property is to be shared,

  - Formal guardianship arrangements

  - Any other instructions about the future care of children.

- This workshop will provide a chance to start the process of writing a Will.

- Finally reassure everyone making a Will doesn't make people ill or cause them to die sooner. This is "an old wives tale". The truth is that once you have put your affairs in order, including making a Will, you will have more peace of mind and more time and energy left to get on with your life.



How to run this session:

- ⇨ Tell group members that this workshop will help them to know how to use the laws of their country to make sure that plans for their children are carried out as they wish.
- ⇨ First of all you want to find out what they already know. So you are inviting them to take part in a QUIZ on Families and the Law.
- ⇨ Sample questions are given in the box below. Use any that seem relevant or add others that will be useful for your group.
- ⇨ Encourage people to call out their ideas, not to be shy about getting it wrong, because every answer can be discussed and explained.
- ⇨ Don't let this drag on too long but reassure the group that these and other questions will be covered in more detail later in the workshop.

The Law is there to protect us all.



Questions for the Legal Quiz

Sample questions:
(**answers in brackets apply in Uganda.**)

Q. How old do you have to be to make a legal Will?
A. (21.You also have to be of sound mind, sober, and understand what you are doing.)

Q. Can a woman make a legal Will?
A. (Yes.Women are equal under the law.)

Q. Can a woman own property or land?
A. (Yes, but it is important that it is registered in her name.)

Q. Does a Will have to be written on a special printed form?
A. (No but it must be properly signed, dated and witnessed. Using a Will form makes it easier to include all the correct details.)

Q. Can a relative or other person take a child away from the mother?
A. (Not without permission from the court.)

Q. What is the legal age for getting married ?
A. (18. This is the legal age regardless of what form of marriage has taken place)

Q. If a couple have lived together for many years is it the same as being married?
A. (No, and there is a risk that if the father of the children died his relatives might seize the property and refuse responsibility to care for the children.)

Q. Is a Customary Marriage recognised by the law and would a wife or widow have the same rights as women having a civil or religious marriage?
A. (Yes, so long as it is registered within six months at the Sub County offices.The woman will then have some protection from the law if there are disputes.)

Q. If a couple separate or divorce, which parent gets custody of the children?
A. (The decision made by the court must be guided by “the best interest of the child.”)

Q. What age does someone cease to be a child?
A. (18.)

Q. What is a guardian?
A. (A person who takes responsibility for looking after a child whose parents have died or cannot look after the child because of illness or other problems.The guardian could be a relative or unrelated person named by the parent.)

Q. Does anyone check on the suitability of the guardian?
A. (If the guardian is a relative, there is no involvement by the court. If the guardian is unrelated he or she has to apply to the Children and Family Court for permission to become the Guardian.)

Questions for the Legal Quiz

More sample questions:
(**answers in brackets apply in Uganda.**)

Q. Do Guardians get an allowance to help them look after the child?

A. (There is no official system for supervising or financially supporting guardians but some children might inherit property which could help towards their upkeep. This means it is very important to talk to the person you want to become the guardian, to make sure they are willing and have the means to cope.)

Q. Do children have a say in who should be their Guardian?

A. (All decisions that concern a child must be based on what is in the best interest and well being of the child. So it is essential to consult children who are old enough.)

Q. What happens to property and money if the parent doesn't make a Will?

A. (The whole process of sorting out the property will be long and complicated and maybe costly. Property will be distributed according to the Succession Act and this might not be what the parent wanted. There is also a risk that greedy relatives could claim money that should go to the children. When parents know they have a serious illness it is particularly important for them to make a Will.)

Q. If a parent has very little property is it worth the bother of a Will?

A. (However little there is it is important to leave a clear list of belongings and instructions about how they should be shared. If this is in the form of a legal Will at least children have a chance to hold their home together. Without a Will even the pots and pans and mats might be seized from the family home.)

Q. If a person cant read and write can he or she still make and sign a Will?

A. (Yes, the Will can be dictated to a trusted person and each page marked with a thumb print. This must be witnessed by two independent people.)

Q. What happens to the Will once it is written and witnessed?

A. (The orginal should be kept by a trusted person (lawyer, accountant) or placed in a strong box at the bank or left at the office of the High Court Registry, the Resident Judge or Administrator General. In all cases a receipt should be taken and a copy of the Will kept in a safe place in the family home. Older children or a trusted friend needs to know where to find the Will.)

Q. What happens if the father of children dies without leaving property to his legal wife or children or where they don't agree with the terms of the Will?

A. (It is essential to get advice from a lawyer and/or to report the situation to the office of the Administrator General.)

Q. What happens if relatives try to seize property or throw a widow out of her home following the death of the husband?

A. (This is illegal and the woman should report immediately to the office of the Administrator General, the local council of the area where she lives and the local police.)



⇨ Next ask group members to split into small groups of 3 or 4 to discuss ways the legal system can be used to protect their children and ensure their wishes are carried out.

⇨ After 15" bring them back together to pool ideas. Make sure that the key topics of Will Making, Appointing Guardians and Registration of property are included in the feedback.

⇨ I**NPUT OF LEGAL INFORMATION.** Introduce lawyer, para legal or community leader. (If no outside speakers are available this will fall to the workshop leader.) Input should be based on information from the Guide Book, **adjusted as necessary for different countries/legal systems.** Although it will be important to try to deal with questions and concerns on various other legal aspects of family law, it is important to keep the focus on the three Key Topics:

1. **Property issues.** This should include the importance of:

   - ▲ Keeping copies of documents which prove ownership and registering any property, land or rights to money.
   - ▲ Listing all personal possessions, furniture, clothing etc within the family home;
   - ▲ Providing information about where important documents are kept.
   - ▲ Advice should be given on how and where to register property (advice from lawyer, Local Council member, official of the District Administrator's office or local court.)

2. **Identifying and appointing a legal guardian.** In situations where the parent has already been widowed or where the other parent or close relatives are unwilling, unable or unsuitable to take care of children, it is essential to find another responsible person who is willing and able to take on this responsibility. The role of Guardian is clearly described in Section 5 of the Guide Book. Particularly important points include:

   - ▲ Discussing the plan well in advance with the proposed guardian and making sure that he or she is willing and able to take on the responsibility.

   - ▲ Discussing finances with proposed guardian. If there is no money or property available to help with supporting the children this has to be faced rather than left until it is too late to make an alternative plan.

   - ▲ Making sure that old enough children agree with the plan.

   - ▲ In cases where parents cannot find a suitable guardian, or the chosen guardian cannot cope without financial support, the parent must be encouraged to speak without delay with a representative of Local Council, church or any available support group or CBO. However difficult it is to face this situation, the later it is left the more difficult it will be to make a good plan for the children.



- Some workshop members may already have attended Topic 7 on **Planning for Children** which includes work on choosing a Guardian and they may be able to contribute ideas and encouragement to their colleagues.

3. **Making a legal Will.** Information about the importance of making a Will and the problems that can arise when there is no Will are clearly described in Section 6 of the Guide Book. A specimen Will Form and Guidelines for a person who is making a Will are also available from this website and copies of all these documents are given at the end of these notes for Topic 9. The Will provides the place for the parent to write down the Property and Guardianship issues mentioned above. It is important to stress:

    - Even when parents have very little property, it is essential to make a Will. It will ensure that even small domestic items are protected – which could be vital for children who are left to cope with very few possessions.The Will also provides a place to write down guardianship arrangements and hopes and wishes for how the children will cope.

    - Parents don't need to fear making a Will because they can't read or write or are not used to formal language. Help can be provided by officials from the Local Council, the Court or from local support groups.

    - Before the end of the workshop there will be an opportunity to think about what to put in a Will and to take the first steps in writing it out.

4. **Round up of other issues** raised by members of the group. These might include:
    - Questions about different forms of marriage.

    - How an individual can find out if her marriage is legally recognised.

    - How to prevent paternal relatives chasing the mother and children from the home following the death of the father.

    - Dealing with domestic violence.

    Information on these and other topics can be found in the Guide to Legal Information, but some questions will undoubtedly need to be referred for legal advice or help sought from local council members, police or agencies such as NACOA, FIDA, Hope after Rape – or whatever similar agencies are working in other countries.

    - Following the above input of information, ask workshop members to return to small groups, to share any information they have on where to turn to in the community for practical support on making secure plans for their children.This might include names of reliable lawyers, court officials, Local Council members, anyone who has helped to steer them towards getting sound legal advice.



⇨ After 15 minutes bring everyone back together to pool information and if possible put together a list of local resources and reliable people who could be asked for advice. This can be given out later on to the Workshop members.

BEARING IN MIND THAT SOME WORKSHOP MEMBERS MAY HAVE DIFFICULTY WITH WRITING, IT WILL BE IMPORTANT TO HAVE TACTFUL HELPERS AVAILABLE FOR THE FINAL TWO ACTIVITIES.

⇨ **ACTION PLAN.** Provide a copy of the Action Plan sheet for each person. Next ask each person to spend 10 minutes writing a simple list of actions which he or she will take towards making a clear legally valid plan for the children. This might include:

- ▲ Talking to relatives to find if any of them could care for the children.
- ▲ Considering possible guardians, clarifying legal status of children.
- ▲ Hunting for documents to establish ownership of property.
- ▲ Thinking through what should be included in the Will and who should be named as beneficiaries.

⇨ **STARTING ON THE WILL.** Finally explain that remaining time on the workshop will be used to give everyone a chance to experiment with writing a Will.

- ▲ Provide a copy of Will form and Guidelines for each person.
- ▲ Provide scrap paper to work on so that the Will form is kept clean for final use.
- ▲ Go through main sections of Will form explaining anything that isn't clear enough.
- ▲ Invite workshop members to work alone or with a partner to make a start on writing information that could go into the final Will.
- ▲ Timing of this session depends on time available.

Ending the session.

Be aware that talking about making a Will forces people to face hard facts about their health, possible lack of support from extended family, shortage of money and goods to pass on to children and generally realising that there is a lot to be done to leave things in good order.

So be ready to bring the workshop to a close with supportive words or an exercise such as Walking and Talking (*for Topic 9 at the end of this document*) which will give everyone a chance to share their hopes and fears with a colleague who is probably facing similar thoughts.

More ideas on good ways to close a hard session are given in the section on Ideas for Workshop Leaders, to be found at - *www.memorybooks.org.uk/help-for-memory-book-trainers* of the website.