

MODULE 11

Legal guardianship and making a will



Trainer's introduction

This module aims to increase participants' awareness of their legal rights and responsibilities. It provides information on how the law can help parents legally protect their children and make sure the children are provided for after they are gone. This is an important module for all participants. It gives parents living with HIV information that will help them know their rights and plan for their children's futures. It also helps carers to know the parents', guardians' and childrens' rights and to support others.

Because of differences in national and customary laws, it is not possible to provide a generic guide that will fit the circumstances of every country. However, this module can be used as a starting point for exploring some of the issues with participants and raising awareness among them of the importance of understanding their rights and making a will.

We strongly encourage you to identify a local expert to help you run this session (see Trainer's guidance, page 106). This person should have a good understanding of international and national law relating to making wills, property rights, marriage rights, women's rights, parents' and guardians' rights and responsibilities, and children's rights for the country in which you are working.

Length of module: 5 hours, including video

(This can be shorter if you show only selected parts of the video rather than the whole film.)

Aims

The aims of this module are to:

- make participants aware of the importance of understanding parents' and guardians' rights in law and the responsibilities that go with them, and children's rights
- increase participants' understanding of parents', guardians' and childrens' rights in the law
- increase participants' awareness of local services that can help in legal matters.

Key learning outcomes

By the end of this session participants will:

- be aware of the importance of understanding legal rights and have an understanding of relevant laws and the legal rights of parents, children and guardians
- understand the importance of making a will, and have a basic understanding of how to prepare to make one
- be better informed about the legal services and information services that are available locally, and how to use them.

Trainer's preparation

Module plan (with suggested times)

- Introducing the topic – **5 minutes**
- Legal rights and responsibilities – **3 hours 30 minutes (whole video)**
- Making a will – **45 minutes**
- Where to go for information and support – **30 minutes**
- Reflection – **15 minutes**



Materials you will need

Overhead/flipchart 1: Outline of Module 11

Handout 1: A local alternative (appropriate to your region) to the *Guide to legal information for parents living with HIV/AIDS in Uganda* (see Appendix 1: Key course materials, page 123). This should be provided or prepared by the legal resource person and is not included in this manual.

Handout 2: Will form, drawn up by the legal resource person and trainer

Handout 3: Local sources of information and support, drawn up by the legal resource person and trainer

Video: *Neria* (see Appendix 1: Key course materials, page 123)

TV and video player

Trainer's guidance

Introduction

It is very important to read the trainer's notes for this module (page 114). These suggest background reading to help you prepare.

Before the module starts, you are strongly encouraged to identify a legal resource person. We recommend you work with a support person from your country's branch of FIDA (the International Federation of Woman's Lawyers). FIDA teaches women their rights and obligations under the law through attorney volunteers, and translates laws from complicated legal terms into everyday language and then into local languages. FIDA also trains community-level paralegals.

If there is no FIDA representative available, try to find a legal person who has experience working with community groups, non-governmental organisations, or government institutions such as the police or social services. They should also understand the aims of the course and feel positive about taking part.

You will need to brief the outside speaker carefully about his or her role and responsibilities, the background of the participants, and the aims and key activities within the module. If you intend to use legal documents as resource materials, you will need to work with this person before the session to simplify these documents and if possible translate them into the local language, use everyday terms, and address any particular needs of participants might have.

Introducing the topic

At the beginning of the module, introduce the legal expert to the group. Then explain that this module is important, because information from many countries shows that often people, particularly women, are not aware of their legal rights. Many people do not make a will and so it is unclear in law who the deceased person intended to leave their money, land and property to, or who they would have appointed to look after their children. This situation arises, firstly, because there is often a spoken (oral) rather than

written tradition of stating last wishes. When the information is not legally recorded, this system is sometimes abused and people and children lose what is rightfully theirs. Secondly, sometimes people are confused about how to sort out traditional ways of dealing with these issues from their legal rights. And thirdly, many people do not make a will because they are not aware of the legal protection it gives, or it seems too complicated a process and they do not know how to get help to make one.

Say this session will help all participants to learn about their rights and how to find help to make a will, to protect the futures of their children. Go through the topics to be covered in the module and how it is structured.

Overhead/flipchart 1: Outline of Module 11

Please use the list in the module plan on page 106, but without the suggested times.

Legal rights and responsibilities

Activity 1 Looking at the issues, using the video *Neria*

Suggested time: 2 hours 30 minutes (less if you do not show all of the video)

We have provided an outline of the story in the *Neria* video to help you prepare for this session. If you have access to the internet you could go to www.mfdi.org (Media for Development website) for additional information.

Video outline

Patrick and Neria are a married couple in Zimbabwe who have worked hard together to build a comfortable home and life with their son and daughter in the city. Their loving partnership ends suddenly with the death of Patrick in a road accident. Patrick did not leave a will and Neria's life is turned upside down, as Patrick's brother Phineas takes their car, bank book, furniture and house. Phineas, using tradition to suit his needs, leaves his brother's family high and dry. At first Neria watches helplessly. But when Phineas takes her children, Neria takes action. Her friend encourages her to seek legal help and Neria learns that law and tradition can both be on her side, as she fights for her rights in the community court.

You will need to watch the video before the module. As it is quite long, decide beforehand whether you want to show all or only parts of the film, which runs for 103 minutes in total. If you choose to run selected parts there will be more time for discussion points.

Before the session it would also be helpful to write a short handout for participants that records some of the learning points from the video, particularly about possible problems and how to get legal advice and help.

Introduce the activity by saying that you will watch and discuss the video together. Explain that the aim of this activity is to improve participants' understanding of the importance of making practical and legal plans, and knowing and fighting for rights. Say that the activity is useful to all participants, whether they are parents living with HIV or carers supporting other parents. It provides a starting point for people to relate their own needs to the issues raised in the video and begin the process of getting help.

Ask participants to make a note of questions. If they are using too much time in the activity to ask detailed questions, tell them they have to move on, but that they can follow up these points with the legal expert or yourself in the break.

Play the video and stop it at certain points that you have identified beforehand so that the participants can reflect on and discuss the key issues.

We have suggested points for pausing the video for discussion. You may want to add others. There will probably not be enough time to discuss all of these points so choose the ones you think are most relevant to your participants' needs. You will have planned up to two hours for this part of the activity. A common problem is running out of time for the later discussion points: make sure you manage the time carefully to allow the group to adequately cover each of the key points you have chosen.

Suggested points for pausing the video for discussion:

- **After Scene 7**, when the family is driving back to Patrick's mother's village. **Discuss** the nature of the relationships between the different family members.
- **After Scene 9**, in the bar in the village, when the brothers are watching the band and talking about the death of a friend. **Discuss** how the men react to the news that the deceased man left a will when he died.
- **After Scene 18**, following Patrick's death, Phineas takes money and a bank book from his dead brother's wardrobe. **Discuss** what the participants feel as they watch this happening. What do they think of Phineas's actions?
- **After Scene 22**, in which the family is discussing the inheritance ceremony. **Discuss** the different opinions the family has on carrying out the ceremony. How is tradition affecting what is done?
- **After Scene 25**, when Neria is talking with her work colleagues about Phineas taking her property. **Discuss** the reactions and opinions of Neria's colleagues. Do the participants agree with any of the points they make? Can they think of examples from their own communities that back up what is being said?
- **After Scene 26**, when Connie, Neria's friend, is advising Neria to talk to a lawyer. **Discuss** what the participants feel about Connie's advice. What do they think they would do in Neria's situation?
- **After Scene 29**, when Neria confronts Phineas about taking away her children. **Discuss** what Phineas says about having respect for ancestors and about curses. Do they think it is fair or appropriate of him to say this?
- **After Scene 32**, when Neria visits the lawyer. **Discuss** what the lawyer tells her. Are any of the participants surprised about the strength of Neria's position, according to the lawyer?
- **After Scene 34**, in which Neria goes to court (for the first time). **Discuss** the outcome of the case and Phineas's reaction.
- **After Scene 36**, when Phineas goes to court as plaintiff in protest. **Discuss** what he says to the court, how Neria reacts to his statements and the outcome of this second case. How do the participants feel about it? Do they find her case encouraging?
- **After the final Scene 37**, in which Neria takes part in a ceremony to choose another husband. **Discuss** what participants feel about the choice she makes and her statement: "I have my own life to live."

Allow about two hours for this part of the activity.

After the video

At the end of the video, you can ask participants if their opinions about writing wills have changed at all, and if so, how and why. Or have a general discussion about the issues raised along less structured lines. Summarise the main points and emphasise the importance of making a will. Allow 30 minutes for this.

Activity 2 Looking at participants' rights

Suggested time: 1 hour

For this activity you will need to provide a set of guidelines of key information on legal rights for parents, children and guardians, including local laws of succession (who

benefits from the property and money of the person who has died) and the importance of a will. This is Handout 1. Firstly, you will need to contact local relevant organisations (see Appendix 2: Legal resources and contacts, page 127) to find out if there is a legal guide for the country in which you are working that is similar document to the *Guide to legal information for partners living with HIV/AIDS in Uganda* (see Appendix 1: Key course materials, page 123).

If no local guide is available, ask your legal resource person to prepare a handout for participants on local legal rights for people living with HIV and AIDS, adapting the information in the *Guide to legal information for partners living with HIV/AIDS in Uganda* to the local legal context. Ask your legal resource person to explain the key points in the handout clearly, step by step. Be ready to answer questions and help participants understand the difference between traditional ways and rights under the law. Ask participants to continue their discussion at the break if they use too much time on questions that are not helpful to the rest of the group.

1. Introduce the activity by saying that the legal resource person will spend the next hour helping the group understand the legal rights of parents, children and guardians, and how to prepare legally for the future of children. Encourage the group to ask questions after each point. Say it is important to understand — so if something is not clear, participants should not hesitate to ask for further explanation.
2. Give each participant a copy of Handout 1 to keep for their own reference.
3. Close the activity by summarising the main points and the importance of knowing your legal rights.

Making a will

Explain to participants why it is important to make a will. Say that it is helpful to make practical arrangements as early as possible – for the guardianship of children, leaving your land, property, money to the people you choose; settling your debts; payment of school fees; funeral costs and so on. Explain that, although it can be painful to think about these things, making plans can reduce worry in the future. A legally recognised will can prevent family arguments and allow children to inherit what is legally left to them. If the group watched the video *Neria* you can link back to the participants' discussion in Activity 1.

Allow 10 minutes for this introduction.

Activity 3 How to write a will

Suggested time: 45 minutes

For this activity you will need to read the trainer's notes (page 114) carefully beforehand, and be prepared to explain what makes a will legal. You will also need to check with your legal resource person that the will form in Handout 2 (page 111) is legal for the country in which you are working. If it is not, you will need to change the form with his or her help before the module.

1. Ask the group for ideas on what a will is and what makes it legal. Record comments on a flipchart. After five minutes, explain what a will is and how it will need to be written to make it legal for the country in which you are working. Ask your legal helper to explain further, if there are questions.
2. Allow 15 minutes to go through the key points you have taken from the trainer's notes (page 114) and summarise points on the flipchart as you speak.
3. Give each participant a copy of Handout 2 (page 111). This is an adapted version of FIDA Uganda's will form, which you might have changed further with the help of your legal helper. Go through the form step by step with participants. Encourage your legal

helper to answer questions too. You can suggest that people make notes about how they would like to fill in the form, but that they will need to think carefully before making the final decisions about what they will actually write in each part of the will form. Allow 30 minutes for this.

Where to go for information and support

Activity 4 Looking at where participants can go for advice

Suggested time: 30 minutes

Before the module you will need to ask your legal resource person and others for the names of useful local organisations that participants can contact to obtain information and support about their legal rights and making a will. We have provided information for some countries in Appendix 2: Legal resources and contacts (page 127). To provide detailed information from your country that meets your participants' needs and includes local contacts, you will need to do some research and preparation beforehand. This activity provides vital support that helps motivate people to tackle what may feel like an unpleasant task.

1. Give out Handout 3: the list you have prepared of names, addresses and other contact details of useful local organisations and people.
2. Explain that you understand that some people might feel they need more information and support before sorting out the legal aspects of the futures of the children and writing a will, or helping others do these things.
3. Ask the participants to look at Handout 3, and then go through it with them. Be ready to answer questions.

Reflection

Activity 5 Reflecting on the module

Suggested time: 15 minutes

Explain that the aim of the activity is for participants to reflect on what they have done in the module and to share key learning points with each other. Say that they can do this quietly with another person, but if anyone wants to speak to the whole group they are welcome to do so.

1. Ask participants to turn to the person sitting next to them and say what ideas or thoughts they are taking away, how they are feeling and what they have learned. Allow 10 minutes for this.
2. Next, say that if anyone would like to share their thoughts with the rest of the group, they are welcome to do so.

Close the module. Thank participants for their contributions and say you are looking forward to working with them on the next and final module.



Handout 2: will form

THE LAST WILL OF

Name:

Physical and postal addresses:

Date:

Make this will and revoke any former wills made by me.

I have made this will voluntarily while of sound mind.

Father's name:

Mother's name:

Grandparents' names (maternal and paternal):

My clan is:

My tribe is:

My religion is:

Date of birth:

Place of birth:

Home district:

Delete as applicable:

I am not married/married/widowed/divorced/separated from my husband/wife.

Answer this section if you are legally married:

The names of my husband/wife:

In the case of a man who has more than one wife, please provide all relevant names.

Date and place of marriage:

In the case of a man who has more than one wife, please provide details of all weddings.

Delete as applicable:

I am divorced/separated from my wife/husband named.

Details of all of my children:

Provide name, sex, date of birth, and names of mother and father for each child.

These are my dependants:

(These should be relatives or other people whom you would like to provide for in your will.)

Provide full name, relationship and full addresses for all dependants.

I have chosen my son/daughter/grandchild/brother/sister/other (delete as applicable)
to be my heir/heirress:

Provide full name, relationship and full address.

I appoint the following person/people to be guardian(s) of my young children:

Provide full names and addresses for all.

I own the following property:

Provide name, particulars and locations for each property.

I give my property to the following:

Provide full name, relationship and particulars for each property.

(Note: If your spouse and children are living in your principal residence, do not include your home and household property among the property to be distributed.)

I want my property to be distributed by my executors as follows:

Provide any special conditions for distributing your property.

The property I have given to my children below the age of 21 years will not be distributed to them immediately. It will be dealt with as follows:

If applicable, leave guidelines for spouse, executors or your children's guardians on how you wish them to maintain the property for the children until they are of age.

I am employed by:

Provide name and address of employer and your position.

I have the following bank account(s):

Provide account number(s), type(s) of account, your bank(s)/branch(es).

I have a shareholding/interest in the following business(es):

Provide names and addresses of business(es)/company/companies and percentage(s) of any shareholding/interest and insurance policy you own.

I have the following creditors and/or debtors:

Provide creditors' name(s) and address(es) and amount(s) owing.

Provide debtors' name(s) and address(es) and amount(s) owing.

I wish to be buried at:

Provide full details of location.

Any other information/wishes related to your funeral ceremony or any other matter not previously mentioned:

Declaration

I have made this will while of sound mind.

Name:

Date:

Signature/thumb print:

Witnesses

For each witness, provide full name, postal and residential addresses, and occupation.

Signature/Thumb:

Date:

MODULE 11 – Trainer's notes

When preparing this module, you might need to consult relevant national and international documents – for example, the **UN Convention on the Rights of the Child** (1989 – www.uncrc.info), the **African Charter on the Rights and Welfare of the Child** (1990 – www.africaninstitute.org/eng/afSystem/child/afcharter.php), Kenya's **Children's Act No. 8** (2001).

Legal rights

NACWOLA has developed a local guide called *Guide to legal information for parents living with HIV/AIDS in Uganda* (see Appendix 1, page 123 for details). This booklet includes detailed information on Ugandan property law, marriage and guardianship. We suggest that, if all your workshop participants come from the same country, you could work with the legal resource person to locate existing similar material from your region, or to develop material for your participants.

Acknowledgement: all legal information in NACWOLA's *Guide to legal information for parents living with HIV/AIDS in Uganda* was provided by Emma Ssali Namuli (lawyer and legal advisor to NACWOLA in 2002). Additional legal information has been provided by Dorah Kwikriza, NACWOLA's legal advisor as of 2003.

Wills

The following notes use information from:

- *AIDS Action*, issue 41 (Healthlink Worldwide, London, UK, 1998) – see <http://aidsaction.info/aa/aa41.html#Will>.
- *Writing a valid will* by MC Mukoyogo, published by AMREF, PO Box 2773, Dar-es-Salaam, Tanzania (cited in *AIDS Action*, 41, 1998).
- *A guide to making a will*, developed by FIDA Uganda.

Please note that these are only guidelines and may need to be adapted for use in your country. However, they will be useful to share with your participants, to raise awareness of the importance of producing a will and to get them thinking about developing their own wills.

What is a will?

A will is a written document that makes clear what a person wishes to happen after their death regarding the distribution and maintenance of property or the rights, duties and responsibilities of certain individuals or groups. Making a will is easy – easier than many people think.

The following is adapted from guidelines developed in Tanzania in response to a growing number of women and children being left unprovided for (*Writing a valid will* by MC Mukoyogo, in *AIDS Action*, 1998).

A will must be made in accordance with local law, although the principles are similar everywhere. A will can:

- ensure property, land and valuables are passed on to the people that the will-maker would like to receive them
- make clear who has custody of children and, if there is no partner, appoint suitable guardians
- identify the person(s) who will ensure the will is acted upon (trustees or executors)
- provide instructions for the will-maker's funeral.

To be valid, a will must be:

- written in permanent ink or typed (this requirement may differ from country to country)
- signed by the person and clearly dated (note that a thumb print may suffice in some countries if the will-maker is not able to sign)
- witnessed by persons present at the same time as signing and dating the will. Those who will benefit from the will should not be witnesses. The number of witnesses required depends on the country.
- written when the person is of sound mind and has not been forced to do so by someone else.

Another requirement might be that a legal will must include any surviving husband, wife, children or relative who depends wholly or partly on the will-maker for basic needs. (This is the case in Uganda, for example.)

A will must be written according to the requirements of your country's current law of inheritance and succession in your country. The following example shows the information that a legal will should contain in Uganda:

- the name and address of the person making the will
- the date the will is made; the legal will is the one with the most recent date
- the age of the will-maker; this is to ensure that the will-maker is legally capable of writing a will
- name(s) of wife or wives (if any); the term wife or wives in law applies only to those women who are legally married under customary, religious or civil law
- name of husband (if any)
- name(s) of child/children (if any)
- names of relatives that the will-maker has been providing for and that the will-maker wishes to continue providing for even after death
- property/properties owned by the will-maker; this may include land, livestock, crops, household items, business items and shares in a company or partnership
- the way the property will be distributed, ie how much, and to whom
- the name(s) of the person(s) who will distribute the property and who will ensure all wishes in the will are followed exactly as they are written (the 'executor' of the will); this person may be the surviving husband or wife, a trusted relative or friend.
- signatures or thumb prints of the will-maker
- signatures of two witnesses; these must not be people who are being left property in the will.

There are other wishes that a will-maker may include in a will in Uganda, such as:

- guardian(s) who will look after any children who are less than 18 years old or still going to school
- salary entitlements due to the will-maker and related benefits under existing employment
- details of bank accounts held.

A will-maker (in Uganda) who cannot write a will personally can obtain a will form, ask a trusted person to fill it in, then sign it or make a thumbprint, or request the person to write down their wishes and sign the document or make a thumbprint.

Language: A will does not have to be written in English – it can be in any language as long as it is made by the will-maker or a trusted friend and understood by the will-maker.

Changing the will: Part or all of a will can be changed if the will-maker acquires more property, marries or remarries. The will with the most recent date will be taken as the recognised will.

Keeping the will safe: A will must be kept safe and with a trusted person or organisation. FIDA (Uganda) recommends keeping it with a bank, lawyer, husband or wife, trusted friend or religious institution. It is important to make at least two copies and leave the will with more than one trusted person, who must open it soon after the will-maker has passed away in order to avoid confusion and failure to observe his or her wishes.

FIDA Uganda's will form (adapted) – see Handout 2, page 111

Tell participants that people filling in the form (Handout 2) are asked to remember the following (paraphrased from the original):

- It is important for you to sign your will at the bottom of each page and also on the final page. The will should be signed in the presence of at least two witnesses who SHOULD NOT have been left any property in your will. The witnesses need not read the will since they are only meant to witness your signature. All witnesses should be over 21 years of age. You and these witnesses should also sign your will in each other's presence.