PARALEGAL MANUAL

Training Manual forTrainers of Community-Based Paralegals

LASP LASPNET
LEGAL AID SERVICE PROVIDERS' NETWORK

FOREWORD

There has not been a systematic way of capacity building of community paralegals which in effect compromises on the standards of paralegals being enrolled in the field and hampers access to justice.

Training of paralegals in Uganda has been problematic since there has not been a standardized form of training of paralegals with exception of the Law Development Centre that has a program that is approved and overseen by the Uganda Law Council. Besides the Law Development Centre, most Legal Aid Service Providers in training paralegals will use different standards and period in training of the paralegals.

The Legal Aid Service Providers Network (LASPNET) Paralegal Manual is an initiative to help train community paralegals so that they may be recognized by the Law Council. The intention is to have both professional and community paralegal working hand in hand. Community paralegals are essential in helping LASPs reach the grass roots because they are trusted by the community, available and cost effective which enable the poor and marginalized to access justice.

This Manual is therefore a guide and reference tool for the training of paralegals. The intention of this manual is to contribute to improving of standards in paralegal work with the ultimate goal of creating of a formidable movement of paralegal with one voice and standards.

LASPNET also strongly believes that this manual will be a great resource to individuals, LASPs and communities engaged in capacity building and training of paralegals to improve access to justice for the less privileged, marginalized and vulnerable communities in Uganda.

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Chairperson of the LASPNET Board

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Disclaimer

The contents of this Manual are the sole responsibility of the authors and do not necessarily reflect those of the DGF.

List of Acronyms

A2J	Access to Justice
AU	African Union
ADR	Alternative Dispute Resolution
CAO	Chief Administrative Officer
CLV	Community Legal Volunteers
CPR	Civil Procedure Rules
CBP	Community Based Paralegal
DGF	Democratic Governance Facility
DPP	Directorate of Public Prosecution
GBV	Gender Based Violence
LASPs	Legal Aid Service Providers
LASPNET	Legal Aid Service Providers Network
LCCs	Local Council Courts
PSWO	Probation & Social Welfare Officer
UDHR	Universal Declaration of Human Rights
ULC	Uganda Law Council
UN	United Nations
UNHCR	United Nations Human Rights Council

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MODULE 1: INTRODUCTION

INTRODUCTION AND BACKGROUND TO THIS MANUAL

This training manual provides basic information; instructions and skills for community-based paralegals in Uganda to offer legal first aid to poor and vulnerable persons in need of legal assistance. The manual provides paralegals with resources needed to provide access to justice for indigent persons who might otherwise have not had support to resolve their legal problems. It provides skills for paralegals to assist clients through legal conflicts; enables paralegals to provide assistance to people who are caught up in the criminal justice system; and supports them to have better knowledge and information about the structure of the Court system in Uganda.

Background

Whereas Uganda has made significant progress in reducing poverty, with the national poverty headcount falling from 24.5% in 2009/10 to 19.7% in 2012/13 (Uganda Poverty Status Report 2014), majority of the population remains vulnerable. In 2012/13 more than half of the non-poor population was classified as insecure, living below twice the poverty line: and more than four million Ugandans (11.8% of the population) cannot afford two meals a day (National Population and Housing Census report 2014).The Poverty Status report identified areas of vulnerability, highlighting that many people are employed in the Agricultural Sector; and are vulnerable to climatic shocks, pests, plant and animal diseases and price fluctuations; while those working in the informal sector usually receive low and irregular income. About 21.4 million Ugandans (63% of the population) are either poor or vulnerable to poverty. The poorest and most vulnerable households often have limited assets or productive capabilities and cannot afford basic services. They find it difficult to integrate into society or to take advantage of the emerging economic opportunities. The poorest individuals with limited capacity to withstand shocks and cope with risks, are likely to struggle to improve their standard of living[1]. Many poor and vulnerable persons in rural areas have land as one of their main assets. However, the dominant land disputes and land grabbing have removed this source of security for poor and vulnerable people, many of whom are powerless against their oppressors.

Legal aid is a key intervention in enhancing access to justice for the poor. Legal aid refers to "the provision of legal advice or representation by a lawyer, an advocate or a paralegal, as the case may be, to a client at no cost or at a very minimal cost"[2].Legal aid addresses poor and vulnerable people’s challenges arising from affordability of user costs, lack of legal representation, alienation due to technicalities and ignorance of legal rights .Legal aid services include advice, ADR, counselling and psychosocial support, referrals as well as legal and human rights awareness. It enables poor and vulnerable people to resolve their disputes, and empowers them to claim their rights.

Methodology for developing the manual

The manual has been developed in a consultative process, using members’ information materials and research carried out by LASPNET, backed up by reviewing and simplifying the relevant laws for paralegals. Desk research was also undertaken to compile information to enable easy understanding and use of the manual. LAPNET further undertook a needs assessment of paralegals’ and community legal volunteers’ legal information needs, which was incorporated into the manual. The manual was pre-tested amongst LASPNET members and paralegals to ensure its usability and relevance to members, paralegals and community legal volunteers.

[1] Uganda Poverty Status Report 2014:73
[2] Advocates (Legal Aid to Indigent Persons) Regulations

Structure of the Manual and how to use the Manual

This manual seeks to provide paralegals with knowledge and skills to provide legal assistance to people within the communities to navigate everyday issues, assist when they are confronted by rights abuses and seek redress where their rights have been violated as well as refer appropriately.

This manual serves as a guideline that the trainer can use adapting it to his/her own training information strategies. The manual contains a lot of information to enable paralegals and CLVs to assist people with legal needs. As such, care and time need to be taken to ensure that trainees understand the relevant laws and procedures well. Ideally, the training should be undertaken for a period of 15 days (which do not need to be continuous) to enable facilitators to teach the key issues; and for participants to understand and participate in role plays and ask the relevant questions to enable them to understand the topics well.

The Manual is broken down into 12 key topics covering a broad spectrum of legal information on key matters what paralegals and CLVs are expected to deal with while providing legal assistance to people. The first facilitates an understanding of paralegals and CLVs and their role; and essential skills for paralegal work. The manual also contains topics on human rights and Uganda's legal framework. The manual also provides knowledge and skills on handling criminal and civil cases; family law (marriage and divorce); children's rights; the law on inheritance; contracts, employment law; land laws; and the law on compulsory acquisition of land. The manual also contains sample documents that paralegals can use when handling cases. Under each topic/chapter will find the objectives; training outcome, exercises and materials for use.

UNDERSTANDING THE CONCEPT OF ACCESS TO JUSTICE

Justice refers to the administration of the law; and fair and unbiased (equitable) treatment of all people under the law. Justice implies fairness; moral rightness; and a legal system in which every person receives his/her due from, including all rights[3]. Access to justice is the ability of people to seek and obtain a solution to their legal problem through formal or informal institutions of justice[4]. Access to Justice is more than improving a person's access to courts or guaranteeing legal representation. Access to Justice is denied in cases where people (especially disadvantaged persons) fear the system; where the system is not available for people without funds to access it; where individuals have no lawyers; where they do not have information or knowledge of their rights. Effective access to Justice requires all individuals, regardless of their means and social status, to have equal opportunities to resolve their disputes.

Barriers faced by people in using the system to resolve their disputes include[5]

- Lack of funding to pay a lawyer, including costs associated with resolving a dispute, for instance, transport costs, fees for filing cases, transporting witnesses etc.
- Distance to the place where the dispute is being resolved – this is related to transport costs to the dispute court or tribunal
- In some cases women and children's face problems in accessing justice because of culture
- Formal judicial processes take long, yet poor people cannot usually afford the time involved in waiting for a dispute to be resolved
- Most times people do not have access to free or low cost legal aid services (information, advice and representation; and paralegals to provide legal first aid to people with legal problems.
- Ignorance of the law and procedure to seek legal redress

Accordingly, Community-based informal justice systems including Paralegals, Local Council Courts and traditional justice systems can provide accessible justice to majority of people who use these systems to report and resolve disputes especially at the earliest opportunity.

GUIDE FOR IDENTIFYING PARALEGALS

QUALITIES OF A GOOD PARALEGAL OR CLV.

- Should be willing to Volunteer though could be facilitated with transport and coordination costs
- A Person of integrity and respected in community
- Must have form of formal education (at least O-Level), with the ability to read or write
- Reside within community
- Some are part time or full time employees
- Approachable and willingness to serve
- Has empathy and passionate about access to justice and human rights
- A good attitude to work and open to learning
- Able to work under minimal supervision and can withstand pressure

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[3]The Law Dictionary http://dictionary.law.com/Default.aspx?selected=1086#ixzz3jQbOULvW
[4]United States Institute of Peace; Necessary Condition: Access to Justice http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-law/access-justice
[5] United States Institute of Peace; Necessary Condition: Access to Justice http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-laW/access-justice

GUIDE FOR TRAINERS

The paralegal training is mostly based on the pedagogical methods with a combination of participatory learning approaches. Alternative Law Education makes the facts written in the legal text a reality for the victim of human rights violation in his or her own context. The Paralegal trainer designs and conducts the training, keeping the principles of "adult learning" in mind for paralegals who are expected to work with and for poor, vulnerable and marginalized persons.

Trainers should:

- Assess the knowledge of trainees and their different levels of understanding and application of the law so that they can pitch the training according to the trainees' needs.
- Study the manual and the recommended reference material and decide whether to modify, adapt or enrich the training in a motivating manner
- Create and invent supporting materials, exercises and pictures to enhance training;
- Deliver information in a clear motivating way and encourage participation
- Conduct group discussions
- Regularly review the training program with the paralegals to ensure that they understand what the training entails and whether it meets their expectations.
- A brief oral evaluation should take place every day and a detailed final evaluation form of both the trainers and the topics will be made by the paralegals at the end of the training.

SKILLS FOR PARALEGAL TRAINERS

An effective trainer requires the following:

Skills:

- Ability to show approval and acceptance of participants.
- A manner of training which generates and uses the ideas and skills of participants.
- Communicate clearly what the training program entails. Participants must be assured that the training is relevant; and that the specific skills and information gathered will enable them do their work.
- Listen to what other person says. Respond to person with supportive, usually non-verbal expressions or gesture.
- Ask questions to help participants in their thinking.
- Give feedback in a way of helping individuals to change their behavior.
- Use various methods of training.
- Flexible in responding to participants changing needs.
- Provides a participatory learning environment
- Training should be designed with learner centric methodology

Attitude:

- Should perceive people as having inherent worth and dignity, irrespective of their attributes and achievements.
- Respect and encourage individuality since people learn at different rates and different styles.
- Enthusiasm for the subject and capacity to put it across in an interesting way
- Demonstrate an authentic caring attitude towards the group.
- Should believe in gender, equality, and non-discrimination.
- Should have knowledge of the rights based approach.

- Should be in charge of the training

Knowledge:

- Relevant laws on which s/he is conducting training.
- Latest developments (new laws, amendments and bills)
- Methods of conducting trainings
- Acknowledges new ideas even if shred by participants

Competency:

- Ability to bring the group together and control it without damaging.
- Organizational ability, so that resources are booked and logistical arrangements are smoothly handled.
- Ability of noticing and resolving participant's problems.

MODULE TWO: UNDERSTANDING THE ROLE OF PARALEGALS

Objective: This session will enable participants understand what a paralegal is; the legal definitions of paralegals; and scope of work that can be done by paralegals. It will cover the following:

- Who is a Lawyer/Advocate and a paralegal?
- What is the difference between a Paralegal, Advocate/Lawyer and Community based Paralegal
- Why do we need to use paralegals?
- What can paralegals do?

Objectives and learning outcomes	By the end of this module, participants should be able to • Explain who a lawyer, paralegal or CLV is; and their roles in enhancing access to justice. • Identify the qualities and qualifications of a good paralegal/CLV • Understand the law governing paralegal work • Appreciate why paralegals are needed in communities • Understand what paralegals can/cannot do • Develop an understanding among the participants about their role in enhancing access to justice
Participant Group	Community Based Paralegals providing legal aid services
Duration	2 hours
Contents/Topics	Introduction of the design and topic of the workshop. • Who is a paralegal • Difference between Advocates, Paralegals and Community Based Paralegals • Why do we need paralegals • What do paralegals do? • Qualities of a good paralegal
Methods	• Presentation • Reflection, • Small group discussion, group discussion, role play, presentations, questions for analysis, quiz.
Learning Materials for Participants	• Paralegal manual • White Board or Flip-Chart and Markers

Who is a Lawyer/Advocate?

A lawyer is a professional who is qualified to offer advice about the law or represent someone in legal matters. Lawyers must have a degree in Law from a recognized university. In order to represent a person in Court, a lawyer in Uganda must also have a diploma in legal practice; and be enrolled as an advocate of the High Court of Uganda. The work of lawyers in Uganda is regulated by "The Advocates Act" - Chapter 267 of the Laws of Uganda. Under the Advocates Act, Regulations were developed to support the delivery of legal aid services in Uganda.

Who is a Paralegal?

The Regulations, referred to as' The Advocates (Legal Aid to Indigent Persons) Regulations, define a paralegal as a person who holds a qualification in law, other than a degree in law, recognized by the Law Council.

The proposed Paralegal Regulations define a paralegal as a person who holds a qualification in paralegal studies or any other academic qualifications recognized by the Law Council for this purpose. The person must also have fulfilled the Law Council requirements concerning experience and learning as may be set by the Law Council. On getting these qualifications, a paralegal can apply to the Law Council to be registered.

The Advocates Act established the Uganda Law Council, a government agency which is responsible for regulating the legal profession and the provision of legal aid in Uganda.

The Law Council has developed Regulations to govern Paralegals – their training and scope of work. The Paralegal regulations[6] define a Paralegal as any person who holds qualifications in paralegal studies or other qualifications recognized by the Law Council. The Regulations propose a training curriculum for paralegals. All institutions who train paralegals must be registered with the Law Council; and their training program must be approved by the Law Council. The Paralegal regulations require all paralegals to be registered with the Law Council. This manual contains the topics that the Law Council has suggested for paralegal training. Paralegals are not lawyers; and they do not practice law. Paralegals are referred to by various titles including community legal volunteers (CLVs), Human Rights Advocates, Barefoot paralegals, etc. (CLVs) are currently not regulated by the Uganda Law Council

CLVs are men and women based in the community who can help with simple legal problems and assist members of the community to access justice. They must be over 18 years and must have received the necessary training. Some organizations refer to people they have trained on basic legal knowledge as Paralegals, Community Activists and Human Rights Volunteers among others. **However, for purposes of this Manual, the term CLV is used to refer to community members who have attained basic legal knowledge[7].**

Why do we need paralegals?

Most legal aid providers use paralegals to provide legal assistance to poor, vulnerable and marginalized persons at community level. Paralegals provide first-aid legal assistance for people who may otherwise not have been able to access the justice system or protect their rights. They are the eyes and ears for the community in respect of legal rights. People often feel intimidated by legal procedures and are unsure of what to do when they get a legal problem. The situation is worse when people are illiterate, poor or marginalized (e.g. women and children). Most times, they are not even sure they have a right in the first place. Communities need paralegals for the following reasons:

WHAT IS A PARALEGAL AND WHAT DO THEY DO?

[6] The advocates (training, registration and regulation of paralegals) regulations, 2016

[7] USAID SAFE manual on training community legal volunteers on safeguarding land rights in Uganda

(i) Knowledge of the law and legal procedures:

Paralegals receive training on laws that commonly affect people; and are able to use their legal knowledge to advise and assist people with their legal problems. Most times, when a lay person faces a legal problem, they usually do not understand the legal procedure or the law that applies to their particular problem. In other cases, people are reluctant to approach institutions that can assist in resolving their disputes due to the cost and time involved in engaging with these institutions. Not having information about their rights; and reluctance to approach justice institutions leads to people suffering injustices and not fighting for their rights. They are more likely to become victims of abuse.

(ii) ***Paralegals are accessible:***

Poor and vulnerable people, especially in rural areas find it difficult to access legal assistance. There are very few lawyers compared to the number of people; and the number of issues for which they seek justice. Lawyers' services are usually expensive and unaffordable to poor people. Some areas have legal aid programs, but there is very high demand for legal aid services; and legal aid offices are usually located in city or town centers; yet poor people may not afford transport costs to access legal aid providers. ***Paralegals usually work in the communities in which they live, which makes it easier for people with legal problems to access them. In this case, paralegals greatly reduce the cost and time involved in handling a request for legal assistance***.

(iii) **Follow up cases:**

Paralegals are part of the communities which they serve. This means that they are nearer to the poor and vulnerable people; they usually know the context and history of the case; and they can easily follow up cases and/or agreements to ensure that all parties are fulfilling their obligations. With their knowledge of the law, paralegals provide advice and assistance to people on the most appropriate course of action when they get a legal problem. Most people with legal problems usually refer these cases to police or to Local Council Courts. In many cases, cases are reported to police yet they are not of a criminal nature. Even when criminal cases are reported to Police, people within the community are unaware of the procedures and their roles and responsibilities when they report a criminal case.

A paralegal knows the law and the legal system; and knows s/he understands the strengths and limitations of the legal system. As they conduct client interviews & maintain general contact with the client; they know where cases have to be taken; and would advise people on the most appropriate forum to report or take a case

When people get legal problems in Uganda, they first approach Local Council Courts or Police. Sometimes cases are taken to Police yet Police does not have a mandate over these cases. In other cases, people go to Court where their cases take a long time yet it could have been resolved in other ways.

A paralegal bridges the gap between community, lawyers and formal justice system. S/he helps in raising awareness about the law, advising people of their rights, follows up cases, and mediate conflicts.

Paralegals serve many functions including advising people of their basic rights, assisting lawyers and providing legal education and training. In addition, paralegals can deliver legal services to people outside the traditional legal system, and to those living in rural or remote areas.

What can paralegals /CLVs do?

Paralegals have knowledge of the law and of legal processes. However, they are not lawyers, which means that there are limits to what a paralegal can or cannot do. Paralegals can do the following:

- **Provide basic advice and counseling** to individuals and groups on their rights and how to resolve their problems
- **Provide guidance** on how to institute a legal matter in court or how to respond in case a case has been instituted against a person.
- **Make referrals** to appropriate persons, lawyers and offices to assist parties with their challenges.
- **Assist parties** to write complaints, petitions, agreements and affidavits to resolve their problems.
- **Act as mediators** or counselors to assist parties to amicably resolve their problems. In cases where cases are resolved for instance under traditional dispute resolution mechanisms, a paralegal can support the process through providing guidance on the law; and adding a legal and rights perspective to the dispute resolution process.
- **Accompany parties** to court to offer moral support, assist and direct them as regards language of the court and court procedures.
- **Be a link** between suspects, lawyers, families and doctors through coordination since they are always traversing the justice system.
- **Education and Awareness:** A paralegal is involved in bringing about legal awareness in communities through community education programs. S/he educates people about what their rights are; and motivates them to fight for their rights. In a way they empower the masses to know and use the law.
- **Adding social Perspective to the legal issues**: A paralegal adds a social perspective to a legal issue. Since paralegals are based within the community, they usually have knowledge about the parties, the case and the social issues surrounding the case. Whereas a lawyer may focus on the legal side of the case without paying attention to the social angle of the case, a paralegal pays attention to the social angle of the case. In many instances, a case can be presented as a legal issue when it is in fact, a social issue. Counselling parties on the social issue may significantly contribute to addressing the case brought to the paralegal.

Important to note

- Paralegals must work under the supervision of a lawyer who provides occasional guidance on how best to approach a complicated issue.
- "Although CLVs do various activities they MUST NOT pretend to be lawyers/advocates."

Qualities of a good Paralegal

A good paralegal must

- Have a good knowledge of law and their enforcement procedures.
- Be a person of good character that is respected within her/his community.
- Be committed to providing support to persons seeking justice.
- Have excellent communication skills.
- Be compassionate.
- Be a person of integrity, who is able to keep issues divulged to her/him confidential.
- A law abiding citizen

Knowledge assessment:

	Question	Answer
1.	A paralegal can: a. Represent people in Court b. Advise clients about their rights	B
2	CLVs are: a. Men and women based in the community who can help with simple legal problems and assist members of the community to access justice. b. People with degrees in law	A
3.	How can a paralegal assist people with their legal problems?	• Advice and counselling • Guidance • Make referrals • Act as mediators

MODULE 3: ESSENTIAL SKILLS FOR PARALEGAL WORK

Objectives	The main objectives of this module is to enable participants to: • Understand the needs of a legal aid client • Understand the importance of communication in providing legal assistance • Develop Communication and writing skills • Obtain interviewing skills and techniques • Dos and don'ts in correspondence with other parties.
Learning Outcomes	By the end of this module participants should be able to: - Have an understanding of the legal aid client; and how they communicate - Understand the different types of communication - Know how to communicate to clients, respondents and other stakeholders - Know how to exercise patience during client interviews. - Know issues that can block communication
Participant Group	Paralegals providing legal aid services
Duration	4 hours including role plays
Contents/Topics	• Types of communication – verbal and non-verbal • Listening skills • Interviewing skills • Impartiality – avoiding judgmental communication • Letter writing/formal communication • Getting the story from a client
Methods	• Presentations • Role play on verbal and non-verbal communication • Role play to demonstrate listening skills • Questions for analysis • Group work on letter writing • Case stories for role play and group work
Learning Materials for Participants	Paralegal manual, flip chart, markers, white board

2.1 Communication skills

What is communication?

Communication is the act of transferring information from one person or place to another. People communicate in a number of ways – through words, actions, behavior, etc. There are many other indirect ways that people communicate (perhaps even unintentionally) with others, for example the tone of our voice can give clues to our mood or emotional state, whilst hand signals or gestures can add meaning to a spoken message.

A paralegal should know the local language and needs to have or develop good communication skills because s/he spends a lot of time interacting with people; and should therefore know how to communicate with them. Good communication skills are important when it comes to doing paralegal work, that is, advising clients, counselling, mediating, writing letters, interviewing clients. Listening is also an important part of communication.

In the section on "what to do when approached by a legal aid client" the manual provides a profile of a legal aid client to enable participants understand what the client has gone through, what they need; and ensuring that the paralegal's communicates in a way that addresses the client's anxiety.

2.2 Types of Communication

There are various types of communication; and participants are familiar with them. The primary types of communication are:

2.2.1 Verbal communication

Verbal communication is sending a message through a spoken language that is understood by both the sender and receiver of the message. Examples of verbal communications include face-to-face talking, listening to a lecture or seminar, and listening to a television program. In fact, if you are listening to this lesson, you are engaged in a verbal form of communication.

Some words have meanings associated with them. The meanings attached to words can be literal; or otherwise known as denotative, which relates to the topic being discussed, or, the meanings can take context and relationships into account, otherwise known as connotative.
For instance, the when the word 'funa size yo' is used, it has a connotative meaning, so does 'teeka sente woolaba'. In the same way proverbs are used as connotative manner, to be interpreted by the hearer of the communication in relation to his/her context.

Facilitator: Ask participants for some examples of words in their language which have a connotative meaning.

2.2.2 Non-verbal communication

Non-verbal communication is defined as communication **WITHOUT** words. It is the act of conveying a thought, feeling, or idea through physical gestures, posture, and facial expressions. It includes behaviors such as facial expressions, eyes, touching, and tone of voice, as well as less obvious messages such as dress, posture and distance between two or more people. When a person gives non-verbal signals, these signals give clues and additional information and meaning over and above what someone has spoken.

Body language is a form of nonverbal communication that can be used to send a message. You can often tell if someone is happy or upset simply by looking at their facial expressions, postures or gestures. For example, a clenched fist may indicate anger, rolling one's eyes may signal disbelief or annoyance

People rely on non-verbal clues to communicate; or to interpret other people's communication. Non-verbal communication can replace or substitute verbal messages. However, non-verbal communication is ambiguous. When verbal messages contradict non-verbal messages, people rely on the non-verbal behavior to judge another's attitudes and feelings, rather than assuming the truth of the verbal message alone. Written communication can also have non-verbal attributes. E-mails and web chats give people the option of changing text font colors, stationary, emoticons, and capitalization in order to capture non-verbal clues. For example, an email written in capital letters can indicate that the writer is **angry** or **upset**.

Certain forms of nonverbal communication have different meanings in different cultures. Eye contact is one aspect of nonverbal communication that differs across cultures. In some countries, direct eye contact is considered to be a sign of trustworthiness and interest in an individual's words. However, in some instances, a prolonged gaze may be considered by some to be a sign of sexual interest or attraction. In Africa and Japan, eye contact is generally avoided, as direct eye contact may be considered to be disrespectful.

Types of Non-Verbal Communication

- **Body Movements** for example, hand gestures or nodding or shaking the head;
- **Posture**, or how you stand or sit, whether your arms are crossed;
- **Eye Contact**, where the amount of eye contact often determines the level of trust and trustworthiness; ***HOWEVER***, eye contact may be misunderstood, depending on the context. Within the African context lack of eye contact is a sign of respect for the person you are talking to.
- Aspects of the voice apart from speech, such as pitch, tone, and speed of speaking;
- **Facial Expressions**, including smiling, frowning and blinking.

Exercise on Nonverbal Communication – what do these mean? Exercise
Facilitator to ask participants to interpret the forms of non-verbal communication below – to demonstrate their understanding of non-verbal communication. Could have participants do a role play

ACTION	POSSIBLE MEANING
Smiling or laughing when messages are serious	You are not taking the message seriously
Interrupting people when they are talking	You do not value what the other person is saying
Introducing yourself with a smile and a firm handshake	Shows that you are confident
Leaning slightly forward	Indicates interest
Folding arms	Can convey defensiveness
Nodding	Demonstrates understanding
Interrupting conversations	You are not paying attention or not listening
Looking at the clock, your phone	Shows disinterest
Pointing a finger at someone	You are upset or angry

2.2.3 Written communication

Written communication involves any type of message that makes use of the *written* word. It includes letters, E-mails, books, magazines, the Internet or via other media.

Exercise: Ask participants to name the type of communication below:

1. If someone asks you to do something and you shake your head from side to side
2. If someone asks how you are and you say 'I am fine'
3. Reading a book
4. Listening to a radio program

2.2.4 Communication skills

Verbal, non-verbal and written communication requires skills. These include listening, observing, speaking, questioning and analyzing (figuring out) gestures.

- **Listening**

Listening is the ability to accurately receive and interpret messages in the process of communication. It means paying attention not only to the story, but how it is told, the use of language and voice, and how the other person uses his or her body. In other words, it means being aware of both verbal and non-verbal messages. A person's ability to listen effectively depends on the degree to which you perceive and understand these messages.

Listening is not a passive process. The listener can, and should be as engaged in the process as the speaker. The phrase '**active *listening'*** is used to describe the process of being fully involved. Active listening involves paying attention to what one is being told; and the tone and words used. Another skill of listening relates to reflection - repeating and paraphrasing what you have heard, showing the person that you truly understand what has been said. ("***So, what you're saying is...***").

Being a good listener is one of the best ways to be a good communicator. No one likes communicating with someone who does not take the time to listen to the other person. If you're not a good listener, it's going to be hard to understand the client's story. Effective listeners make sure to let others know that they have been heard, and encourage them to share their thoughts and feelings fully.

Listening is NOT the Same as Hearing
Hearing refers to the sounds that enter your ears. It is a physical process which, provided you do not have any hearing problems, will happen automatically.

Common Barriers to Listening

(a) There are many reasons why interpersonal communications may fail. In many communications, the message (what is said) may not be received exactly the way the sender intended. It is, therefore, important that the communicator seeks feedback to check that their message is clearly understood.

(b) Barriers to communication can occur at any stage in the communication process; and may lead to your message being distorted and causing misunderstanding(s).

(c) It is common for a person to be formulating a reply to someone when the other person is still talking. This means that we are not really listening to all that is being said. Even good listeners are often guilty of critically evaluating what is being said before fully understanding the message that the speaker is trying to communicate. As a result, we make assumptions and reach conclusions about the speaker's meaning, which may not be accurate.

(d) Even if we are not formulating a response whilst listening, we may still be thinking of other things, although subconsciously. During a conversation, how often thoughts such as "***What am I going to have for my dinner***", "***Will I have time to finish that report?***" or "***I hope I am not late picking the children up***" crossed your mind? At such times, we are distracted and not giving our full attention to what is being said. In other words we are not actively listening to the speaker.

A skilled communicator must be aware of these barriers and try to reduce their impact by continually checking understanding and by offering appropriate feedback.

Common barriers to listening

- **Use of jargon.** Over-complicated, unfamiliar and/or technical terms.
- **Emotional barriers and taboos.** Some people may find it difficult to express their emotions and some topics may be completely 'off-limits' or taboo.
- **Lack of attention, interest, distractions, or irrelevance to the receiver.**
- **Physical disabilities such as hearing problems or speech difficulties.**
- **Physical barriers to non-verbal communication.** Not being able to see the non-verbal cues, gestures, posture and general body language can make communication less effective.
- **Language differences and the difficulty in understanding unfamiliar accents.** Even when communicating in the same language, the terminology used in a message may act as a barrier if it is not fully understood by the receiver(s). For example, a message that includes a lot of specialist jargon and abbreviations will not be understood by a receiver who is not familiar with the terminology used.
- **Expectations and prejudices which may lead to false assumptions or stereotyping.** People often hear what they expect to hear rather than what is actually said and jump to incorrect conclusions.
- **Cultural differences.** The norms of social interaction vary greatly in different cultures, as do the way in which emotions are expressed. For example, the concept of personal space varies between cultures and between different social settings.
- **Psychological Barriers:** the psychological state of the communicators will influence how a message is sent, received and perceived. For example, if someone is stressed they may be preoccupied by personal concerns and not as receptive to the message as if they were not stressed. Anger is another example of a psychological barrier to communication, when we are angry it is easy to say things that we may later regret and also to misinterpret what others are saying.
- **Physical Barriers:** an example of a physical barrier to communication is geographic distance between the sender and receiver(s).Communication is generally easier over shorter distances. The Baganda have a saying that talking at a distance is appropriate for people who are quarrelling or arguing.

Exercise – facilitator and participants brainstorm on other things that can be barriers to listening

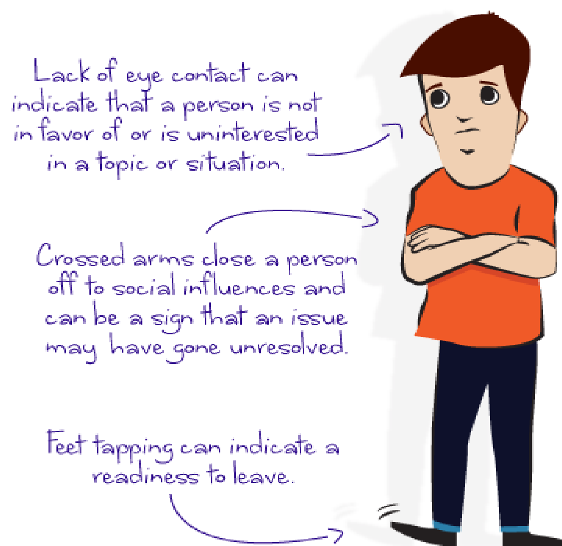
Possible responses to the brainstorming

- **Trying to listen to more than one conversation at a time**, this includes having the television or radio on while trying to listen to somebody talk; talking on the phone while listening to another person at the same time; or being distracted by some dominant noise in the immediate environment.
- **You find the communicator attractive/unattractive** and you pay more attention to how you feel about the communicator and their physical appearance than to what they are saying. Perhaps you simply don't like the speaker - you may mentally argue with the speaker and be fast to criticize, either verbally or in your head.
- **You are not interested** in the topic/issue being discussed and become bored.
- **Not focusing** and being easily distracted, fiddling with your hair, fingers, a pen etc. or gazing out of the window or focusing on objects other than the speaker.
- **You are prejudiced or biased** by race, gender, age, religion, accent, and/or past experiences.
- **You have preconceived ideas or bias** - effective listening includes being open-minded to the ideas and opinions of others, this does not mean you have to agree but should listen and attempt to understand.
- **You make judgments**, thinking, for example that if a woman was out late at night, then she must be of poor morals.
- **Previous experiences** – we are all influenced by previous experiences in life. We respond to people based on personal appearances and encounters. If we stereotype a person we become less objective and therefore less likely to listen effectively.
- **Pre occupation** - when we have a lot on our minds we can fail to listen to what is being said as we are too busy concentrating on what we are thinking about. This is particularly true when we feel stressed or worried about issues.
- **Sudden Changes in Topic:** When the listener is distracted they may suddenly think about something else that is not related to the topic of the speaker and attempt to change the conversation to their new topic. You should also note when the client suddenly changes the topic – they may not be comfortable going further with that particular line of conversation.
- **Selective Listening:** This occurs when the listener thinks they have heard the main points or have got the substance of what the speaker wants to say. They filter out what they perceive as being of key importance and then stop listening.
- **Day dreaming:** Day dreaming can occur when the listener hears something that sets off a chain of unrelated thoughts in their head – they become distracted by their 'own world' and adopt a 'far-away' look.
- **Advising:** Some people want to jump in early in a conversation and start to offer advice before they fully understand the problem or concerns of the speaker.

- **Having a Closed Mind** - we all have ideals and values that we believe to be correct and it can be difficult to listen to the views of others that contradict our own opinions. The key to effective listening and interpersonal skills more generally is the ability to have an open mind - to understand why others think about things differently to you; and use this information to gain a better understanding of the speaker.

Non-Verbal Signs of Ineffective Listening.

While it is important for the paralegal to pick the non-verbal clues from the client, it is also important to pay attention to ***YOUR OWN*** non-verbal communication. Your body language, eye contact, hand gestures, and tone all color the message you are trying to convey. A relaxed, open stance (arms open, legs relaxed), and a friendly tone will make you appear approachable, and will encourage others to speak openly with you. Generally signs of not paying attention while listening include being distracted - fidgeting, doodling, looking at a watch; engaging with your phone when the person is speaking.



Clarity and Concision: Good communication means saying just enough - don't say too little or talk too much. Try to convey your message in as few words as possible. Say what you want clearly and directly, whether you're speaking to someone in person, on the phone, or via email. If you ramble on, your listener will either tune you out or will be unsure of exactly what you want. Think about what you want to say before you say it; this will help you to avoid talking excessively and/or confusing your audience.

Friendliness: Through a friendly tone, a personal question, or simply a smile, you will encourage people to engage in open and honest communication with you. It is important to be polite in both face-to-face and written communication.

Empathy: Even when you disagree with someone, it is important for you to understand and respect their point of view. Using phrases as simple as "I understand where you are coming from" demonstrate that you have been listening to the other person and respect their opinions.

Open-Mindedness: A good communicator should enter any conversation with a flexible, open mind. Be open to listening to and understanding the other person's point of view, rather than simply getting your message across. By being willing to enter into a dialogue, even with people with whom you disagree, you will be able to have more honest, productive conversations.

Respect: People will be more open to communicating with you if you convey respect for them and their ideas. Simple actions like using a person's name, making eye contact, and actively listening when a person speaks will make the person feel appreciated. On the phone, avoid distractions and stay focused on the conversation.

If you are making written communication, convey respect through email by taking the time to edit your message. Be polite and clear in your message.

Feedback: Being able to appropriately give and receive feedback is an important communication skill. You should also be able to accept, and even encourage, feedback from others. Listen to the feedback you are given, ask clarifying questions if you are unsure of the issue.

Picking the Right Medium or forum: An important communication skill is to simply know what form of communication to use. For example, some serious conversations are almost always best done in person. When providing legal assistance, for instance advice, or mediation, choose a quiet place where there are no other people so that the client is encouraged to talk; and to ensure that the discussion is confidential. People will appreciate your thoughtful means of communication, and will be more likely to respond positively to you.

Exercises
1. What are the physical signs of 'active listening'?
2. Break into groups and take turns to practice active listening. One person observes, one person acts as the client and last person acts as the paralegal. (15 minutes)

Interviewing skills

When a person with a legal problem approaches the paralegal, the paralegal will have to get information from a client regarding their problem and the facts surrounding them, which information forms the basis of the paralegal's next action – be it advice, referral, mediation, etc.

The paralegal needs to have good interviewing skills in order to get information from, and effectively assist a client. This will enable you to obtain an accurate picture of your client's problems. When interviewing a client, ensure that the client feels comfortable so they can openly talk with you. A client who comes to you needs help, therefore, it is important to make sure they do not feel intimidated. Furthermore, it is important to ensure that the person understands your role as a paralegal or helper and theirs as a client.

The following ideas will assist you when conducting interviews:

- Be respectful courteous to your client
- Ensure that the atmosphere is conducive and that your interviewee is at ease. Have the interview in a quiet environment where the client is not afraid of people hearing his/her problems.
- Encourage the interviewee to tell the story in their own words
- Remain calm and attentive throughout the course of the interview. Practice active listening to ensure the client feels heard and that what they have to say is important
- Avoid appearing judgmental, disbelieving or disapproving of the interviewee's conduct
- Follow up their statement with specific questions
- Ask open ended questions and avoid using leading questions
- Try to summarize back to the interviewee what you think (s)he stated to ensure accuracy of facts

Role play
Organize a role play involving a client who approaches a paralegal, and in interviewing the client, the paralegal is doing the following

- Having the interview in a room full of other people
- Talking on the phone while listening,
- Rolling eyes at the client.
- Interrupting and making judgmental statements to the client
- Keep looking at his/her watch while the client is talking
- Changing the topic to an entirely different one when the client is talking.

The trainer can act the role of the paralegal; and thereafter ask participants to give feedback on the interviewer's behavior.

Note to the facilitator:
At the end of this module, participants should know how to get the story out of the client through the interview and listening to the client. Participants should be more conscious of barriers to communication, especially, the things we do not say, but communicate through body language, facial expression, and tone of voice.

MODULE FOUR: HUMAN RIGHTS

Objectives and learning outcomes	By the end of this module participants should be able to know: • The basic human rights of people in Uganda • Constitutional provisions on fundamental human rights • The different classes of human rights • Sources of human rights
Participant Group	Paralegals and/or CLVs
Duration	2 hours including role plays
Contents/Topics	• Sources of human rights • Characteristics of human rights • Constitutional provisions on fundamental human rights • Classification of rights
Methods	• Presentations • questions for analysis
Learning Materials for Participants	Paralegal manual, flip chart, markers, white board

What are human rights?

Human rights refer to the entitlements which every human being has irrespective of his or her race, nationality, ethnicity, gender age, religion or any other status. Each human being is entitled to each of these rights equally and without discrimination. Human rights belong to all people equally because all human beings have equal worth and dignity. The human rights that people are entitled to are derived from a number of sources:

Sources of human rights

The primary sources of Human rights are the United Nations Universal Declaration of Human Rights and the various human rights documents and treaties such as the International Convention on Civil and Political Rights as well as the International Convention on Social, Economic and Cultural Rights.

Universal Declaration of Human rights

Origin of the Declaration

The Universal Declaration of Human Rights (UDHR) which was adopted by the UN General Assembly in December 1948 was the result of the experience of the Second World War. With the end of that war, and the creation of the United Nations, the international community vowed never again to allow atrocities like those of that conflict happen again. World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The document which became the Universal Declaration of Human Rights was taken up at the first session of the General Assembly in 1946. The Declaration contains thirty articles affirming an individual's rights which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions, and other laws. The Declaration was the first step in the process of formulating the International Bill of Human Rights which was completed in 1966, and came into force in 1976, after a sufficient number of countries had approved them.

The object of the Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is the document through which UN members spelled out the rights and freedoms that are both fundamental and universal as well as principles for promoting respecting observance of these rights and freedoms. The UDHR is a primary source of persuasive authority in international human rights law. It provides the foundation for the specific human rights treaties concluded within the UN framework. Together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the UDHR forms part of the International Bill of Human Rights.

Convention Rights

There are three different types of Convention Rights. These are Absolute Rights, Qualified Rights and Limited Rights. Absolute rights are those rights that cannot be breached under any circumstance. These include the Right to Life and No punishment without legislation. On the other hand qualified rights are those rights which a state can lawfully ‘frustrate’ in certain circumstances. By and large in such provisions the right is laid out in the beginning of the provision and then qualified by certain criteria such as whether the interference is in conformity with the law; is in pursuance of a just aim, and whether it is essential in a democratic society.

United Nations Charter

Almost every independent nation in the world is a member of the United Nations (UN). Having signed on to the UN Charter, which is a binding treaty, these nations have obliged themselves to cooperate with the UN in achieving its primary purposes, one of which is to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.".

Core International Human Rights Instruments

The UN has concluded ten specific human rights treaties which form the core of primary international human rights law. Although they are non-binding, these treaty body documents are significant sources of persuasive authority both on the scope of the fundamental rights and freedoms found in a particular treaty and what constitutes violations of those rights and freedoms.

Universal Human rights instruments

Besides the core UN human rights agreements, there are other treaties and documents regarding human rights such as those resulting from the Geneva Conventions. A number of these agreements relate to particular subjects, for instance, rights of indigenous peoples and minorities; prevention of discrimination; rights of women; rights of the child; protection of persons in detention or imprisonment; promotion and protection of human rights; right to health; right to work and to fair conditions of employment; freedom of association; rights of asylum seekers and refugees; war crimes and crimes against humanity, including genocide; and, humanitarian law.

United Nations Human Rights Council

The United Nations Human Rights Council (UNHCR) is the UN organ responsible for the promotion and protection of all fundamental rights and freedoms throughout the world. The UNCHR performs this function in part by monitoring all human rights issues globally and by issuing recommendations in the form of resolutions on situations involving human rights violations. UNCHR resolutions are a significant source of persuasive authority on the scope of the fundamental rights and freedoms embodied in international human rights law and on what constitutes violations of those rights and freedoms. Additionally, the UNCHR fulfills its function by facilitating the Universal Periodic Review, an ongoing assessment of the human rights records of all UN member states.

In Africa:

The African Union (AU)

The AU is the intergovernmental organization for the African continent. The African Charter on Human and People's Rights is the principal AU human rights treaty. The Charter, and other human rights documents comprise the AU human rights framework.

African Commission on Human and People's Rights

The African Commission on Human and Peoples' Rights (African Commission) has the mandate of monitoring the compliance of AU member states with the African Charter. The Commission also acts as a semi-judicial body: it hears complaints on alleged violations of the African Charter, and issues non-binding decisions in the form of recommendations.

African Court on Human and People's Rights

The African Court on Human and Peoples' Rights (African Court) hears cases and disputes involving the interpretation and application of the African Charter and other AU human rights treaties, and it makes binding decisions. This court may also interpret and apply UN human rights instruments with regard to AU member states that have ratified them.

Brainteaser: Ask participants to state any human rights they know. These can be listed on a flip chart and later ticked off as being correct after learning about human rights

Characteristics of Human Rights

- ***Universal*** – human rights belong to every one regardless of their age, gender, religion, nationality, or status.
- ***Natural*** – human rights are 'in born', that is, and every human being is entitled to human rights by virtue of being human. Human rights are not given, bought, earned or inherited. People are born with them. They are not granted by a government. Rather, government is supposed to promote and protect human rights
- ***Inalienable*** – the rights and freedoms cannot be taken away

A Summary of the Universal Declaration of Human Rights
1. Everyone is free and should all be treated in the same way.
2. Everyone is equal irrespective of differences in race, sex, religion, language etc.
3. Everyone has the right to life and to live in freedom and safety.
4. No one has the right to treat you as a slave nor should you make anyone your slave.
5. No one has the right to hurt you or to torture you.
6. Everyone has the right to be treated equally by the law.
7. Everyone has the right to ask for legal help when their rights are not respected.
8. No one has the right to imprison you unjustly or expel you from your own country.
9. Everyone has the right to a fair and public trial.
10 Everyone should be considered innocent until guilt is proved.
11. Everyone has the right to ask for help if someone tries to harm you, but no-one can enter your home, open your letters or bother you or your family without a good reason.
12. Everyone has the right to travel as they wish.
13. Everyone has the right to go to another country and ask for protection if they are being persecuted or are in danger of being persecuted.
14. Everyone has the right to belong to a country.

15. Everyone has the right to marry and have a family.
16. Everyone has the right to own property and possessions.
17. Everyone has the right to practice and observe all aspects of their own religion and change their religion if they want to.
18. Everyone has the right to say what they think and to give and receive information.
19. Everyone has the right to take part in meetings and to join associations in a peaceful way.
20. Everyone has the right to help choose and take part in the government of their country.
21. Everyone has the right to social security and to opportunities to develop their skills.
22. Everyone has the right to work for a fair wage in a safe environment and to join a trade union.

Chapter IV of Uganda's Constitution 1995 lists the following as fundamental rights:

- Right to life
- Right to dignity of human persons
- Right to personal liberty
- Right to fair hearing
- Right to compensation for property compulsorily acquired
- Right to private and family life
- Right to freedom of thought, conscience and religion
- Right to freedom of expression
- Right to peaceful assembly and association
- Right to freedom of movement
- Right to freedom from discrimination on the grounds of ethnic group, place of origin, circumstance of birth, sex, religion or political opinion

The above rights are justiciable, that is, citizens can go to court to enforce them, if denied and get redress. Article 20 of the Constitution states that "*the rights and freedoms of the individual and groups enshrined in this Constitution shall be respected, upheld and promoted by all organs and agencies of government and by all persons*"

Some of the remedies available in case of violation of Human rights include; compensation, damages, reparation

Classification of human rights

Human Rights can be classified in several ways. These are:

(a) Legal Rights

These are rights laid down in the Constitution, Laws of Parliament and judicial decisions. Most legal rights are written down, that is, they originate from a law.

(b) Moral rights

These are rights that are based on general principles of fairness and justice. They are general principles, standards, or practices relating to right and wrong conduct. They can vary according to the beliefs of each family, tribe, culture, philosophy or religion. People do not always agree on what is moral. While moral rights often serve as a basis for legal rights and laws governing behavior, they cannot be enforced in a Court of law; unless the moral right is also a legal right.

(c) Human Rights

These are universal rules (norms). They are also called natural rights and they belong to people by virtue of the fact that they are human beings. Human rights can also include legal rights; and they are usually provided for under the Constitution.

Categories of human rights

Human rights are classified into three categories, referred to as 'generation of rights.

First-generation human rights (Civil and Political Rights)

First-generation human rights, often called "blue" rights, deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature; and are aimed at protecting individuals from the excesses of the state. First-generation rights include the right to life, being equal before the law, freedom of speech, the right to a fair trial, right to vote; and freedom of religion. At the international level, they were given status through articles 3 to 21 of the Universal Declaration of Human Rights; and later in the International Covenant on Civil and Political Rights.

Second-generation human rights (Social and Cultural Rights)

Second-generation human rights are sometimes referred to as "red" rights or security-oriented rights because they provide social and economic security. They impose a duty on government to promote and fulfil them, though this depends on the availability of resources. A duty is imposed on the state because the state is the one which controls resources. These rights are mainly economic, social and cultural in nature; and they guarantee equal conditions and treatment to different members of society. These rights include the right to be employed in just and favorable conditions, rights to food, housing and healthcare as well as social security and unemployment benefits. They are found under articles 22 to 28 of the UDHR and the International Covenant on Economic, Social and Cultural Rights.

Third generation rights

Third-generation human rights (green rights) are those rights that go beyond civil and social rights. They remain largely unofficial and include a very broad spectrum of rights like:

- Group and collective rights
- Right to self-determination
- Right to economic and social development
- Right to a healthy environment
- Right to natural resources
- Right to communicate
- Right to participation in cultural heritage
- Rights to inter-generational equity and sustainability

The African Charter on Human and People's Rights incorporates many third generation rights including the right to self-determination, right to development, right to natural resources and right to satisfactory environment.

Children's rights

Rights of children are internationally recognized, through the International Convention on the Right of the Child. Many countries including Uganda have established national laws to put the convention into effect. Specific rights of children are dealt with in this manual.

Knowledge assessment – each participant should be given his/her sheet of paper to answer the question. Thereafter they exchange and mark each other:

	Question	Answer
1.	Human Rights are: a) Rights of the President and his family b) Entitlements of poor people c) Entitlements that every human being has irrespective of their race, social status, color, religion, gender, age. d) Entitlements of police and the army	
2	What are the sources of human rights? a) Text books b) Religious books c) International human rights instruments and the Constitution	
3.	Name five human rights you have learnt in this session?	

MODULE FIVE: GENDER BASED VIOLENCE

Objectives and learning outcomes	By the end of this module participants should be able to know: • What Gender based violence is • Forms of GBV • Legal framework protecting GBV • The different classes of gender based violence • Where to report GBV
Participant Group	Paralegals and/or CLVs
Duration	4 hours including role plays
Contents/Topics	• Forms of Abuse • Causes and Effects of Domestic Violence • Where to report
Methods	• Presentations • Questions for analysis • Role plays
Learning Materials for Participants	Paralegal manual, flip chart, markers, white board

Understanding Gender Based Violence

Definition

Gender Based Violence is an umbrella term used to describe any harmful act physical or mental that is perpetrated against a person's will on the basis of unequal relations between women and men, as well as through abuse of power.

This includes domestic violence which has been defined as any act or omission of a perpetrator which arms ,injures or endangers the health, safety, life ,limb or well-being whether mental or physical ,of the victim or tends to do so and includes causing physical abuse ,sexual abuse ,emotional ,verbal and psychological.

Gender Based Violence (GBV) in particular, sexual and physical violence is widespread in Uganda and is mainly committed against women and girls. GBV mainly occurs in private spaces such as homes, schools etc. If the violence is not severe the victim can be entitled to both civil and criminal redress

GBV can be committed by family member, a married persons, any person sharing a home with another or even any person in a school setting

Forms of GBV

There are different forms of GBV that have been identified which are:

- Physical Violence (includes battering, sexual assault, at home, school or in the workplace
- Psychological / emotional violence (includes deprivation of liberty, mental torture , forced marriage, sexual harassment, at home or in the workplace
- Treatment of women as commodities which includes trafficking women and girls for Sexual exploitation) **Economic Violence** which includes denial of rights to property **Harmful**
- **Traditional Practices** which include widow inheritance, Female Genital Mutilation/cutting, early or forced marriages, denial of education for girl child
- Sexual Gender Based Violence which includes sexual harassment, rape and defilement

Victims and Perpetrators of GBV

- Perpetrators are often current or former close family members, teachers or friends of the family.
- Women and girls are primary victims due to unequal power relations
- **Survivor/Victims:** a person who has directly or indirectly suffered from Gender Based violence, Victims usually used in legal medical sectors, Survivor is the term generally preferred in the psychological and social support sectors because it implies resiliency.
- **Perpetrator:** is a person who commits an act of gender Based Violence

Causes of GBV

The causes of GBV range from social and economic factors

- **Economic Instability**
The major cause of GBV is economic instability whereby if a man is not economically established yet culturally a man is portrayed as strong, educative creative and clever and a woman is the opposite of all these traits tension will be in a family.

- **Social attitudes and gender inequalities**
The way parents bring up their children, leads to a disparity between boys and girls, which is a source of GBV in later life. For example boys grow up knowing that they are not supposed to wash their own clothes, cook or help in the housework and when they grow up with this kind of attitude and get married to a woman who comes from a home where duties are equally shared between girls and boys, this can create tension that might lead to violence.
- **Others include :** Alcohol consumption, moral degenerations ; Frustration /anger due to inferiority complex or other social related issues; Lack of respect for each other;
- Poverty and lack of basic necessities drives young women and girls to accept gifts by men who eventually force them into sex.
- Ignorance of the rights as well as laws in place by the victims thus offenders take advantage of the ignorance.

Women's isolation and lack of social support, together with male peer groups that condone and legitimize men's violence.

Effects of GBV

a) Physical effects; these include pain from bodily injuries that result into chronic health complication especially among the women.
b) Psychological scars such as shame, suicidal thoughts, shame, fear, depression, withdrawal among others often impede the establishment of healthy and rewarding relationships in the future.
c) Social effects such as rejection by spouses, withdrawal from social and community participation, stigma which in turn damage women's confidence of venturing into public spaces which limits their ability to participate in income generating activities.
d) Economic effects like loss of jobs due to absenteeism, inability to effectively participate in productive work effect on women's family and dependents due to inability to carry out care work(for instance household work and care for the sick).**e)**
Other negative effects include:
Divorce or broken families which leads to jeopardizing family's economic and emotional development
e) Babies may be born with health disorders as a result of violence experienced by the mother during pregnancy (i.e. premature birth or low birth weight).

Victims of gender violence may vent their frustrations on their children which has collateral effects on children who witness violence at home (emotional and behavioral disturbances e.g. withdrawal, low self-esteem, nightmares, self-blame. Children, on the other hand, may come to accept violence as an alternative means of conflict resolution and communication. It is in these ways that violence is reproduced and perpetuated among others.

Legal Framework on Gender based Violence

There are policy frameworks and structures for gender based violence prevention and protection which include;

- The Penal Code Act and its Amendment
- The Domestic Violence Act of 2010,
- The prevention of Trafficking in Person Act (2009), and;
- The Prohibition of Female Genital Mutilation Act (2010)

Gender based Violence Responsible institutions

The institutions that are mandated by law to respond to GBV include the following among others**:**

- **Local Council Courts**: A case of SGB may be reported to the local council court where the victim resides. Once the LCC receives the case it will document the abuse, taking details, hear the case within two days of receiving the complaint, where the abuse is repeated, refer the case to the Magistrates Court. Where the nature of the violence requires involvement of the Police e.g. Where sexual violence and repeat offender or sever physical injury the matter will be referred to the Police and Magistrates Court.
- **Specialized departments under police** e.g. the Child and Family protection unit and where the police office officer receiving the complaint may investigate the matter; record statement made by the victim or representative, assist the victim including giving advice and or referral to a shelter .Where signs of physical and sexual abuse are present, ensure the victim undergoes a medical examination and receives medical examination.

- **Magistrate's courts**: Every magistrates court may receive and hear a complaint of gender based violence. Where domestic violence is involved the court upon receiving the complaint may issue a protection order. A protection order means a court order prohibiting domestic violence, restricting a person from harassing or threatening another person's or restraining a person from contacting another person. If you don't get desired outcome from the Magistrates court, you are entitled to appeal to the High court.

Procedure to acquire a Protection Order

- The application for a protection order shall be supported by an affidavit and any reports or documents to be relied upon shall be attached to the application
- After receiving the protection order the court shall summon the perpetrator
- The application for a protection order shall be heard within forty eight hours
- The application may be brought by the court on any day the victim is sure that he or she will suffer hardship if the case is not dealt with.

Handling of GBV cases

In order to prosecute a sexual offense, it takes diligence, time and patience. It involves several steps, from investigation through sentencing. There are several stages in the prosecution of SGBV offences and these are;

- A victim of SGBV may tell a friend or family member about the assault. Therefore the victim should not change clothes before being taken for medical examination. In most cases, first entry point of call is the Local Councilors.
- Once the matter is reported to the Police, police Form 3B is obtained and the victim examined. In cases of sexual assault, the victim should be examined once by medical professionals. Also, one must ensure that each gender of the victim is examined by a professional of the same gender to the extent possible.

NB: A physical examination of the victim should be carried out ONCE by a medical doctor who shall make a report in accordance with the Police Form 3B.

- If the offense has just immediately occurred, the victim should be taken immediately to a health care center to get treatment. For both medical and evidentiary reasons, a victim should be treated within 72 hours.
- When a victim of SGBV reports at the Police that he or she has been violated the police will take his or her statement of the crime.
- The investigator assigned to the case must keep personal information about the victim   and the case completely confidential. The Prosecutor should only share information about the sexual offense when it is necessary to provide assistance and intervention (such as a referral), and even then, only with the written permission of the victim.
- The evidence gathered such as clothes, semen, undergarments, any objects used should be kept in a safe and secure place as exhibits.
- A report shall be made by the Police having gathered all this evidence and submitted to the State Attorneys to prosecute the offender.

Learning Exercise

1. Lisa and four other girls were lined up in a corridor and one by one was taken into a room by one Henry and two other boys. Each girl who would leave the room emerged with a rag with blood around her waist and no clothes, limping and crying, others fainted in pain and shock. Which facts prove that Henry and the two other boys committed an act of sexual violence?
2. Explain the causes and effects of Gender based Violence?

MODULE SIX: HANDLING LEGAL PROBLEMS

Objectives	The main objectives of training module are to enable participants to gain knowledge and skills to handle legal problems. Specifically, participants will gain skills in interviewing, advising and counseling; and Mediation
Learning Outcomes	Participants should be able to know : • Understand the needs and concerns of legal aid clients; • Steps in handling legal aid cases including interviewing clients, providing advice and counselling, ADR; • Steps in the mediation process • Client referral, • Letter writing, • record keeping
Duration	1 day
Contents/Topics	• Profile of a legal aid client and their needs • Steps in providing legal assistance. These include - Interviewing and the purpose of the interview - Interview techniques - Advice and Counselling; and the purpose of this - Alternative Dispute Resolution (ADR) and its advantages - Mediation – which cases can be mediated; and when mediation should not be considered - Stages in mediation - Client referral - Letter writing - Record keeping, reporting and documentation
Methods	Presentations, group discussion, role play, question and answer sessions,
Learning Materials for Participants	Paralegal handbook
Equipment	Flip charts, marker pens, cards, push pins, blank sheets.

Note to facilitator: *by the end of this module, participants should be able to carry out an interview to get facts from the client, using the techniques provided and the communication skills gained in the previous chapter. They should also be conversant with carrying out the mediation process*

What to do as a Paralegal when approached by a client with a problem?

Facilitator: to set the ground for the session, first ask participants what they would do if they are approached by a person with a legal problem.

Presentation to participants

In module two we noted that paralegals serve many functions including providing legal advice, counselling, mediation and legal education. Paralegals can also advise on instituting a legal claim or how a person can respond to a case against him/her. Paralegals also assist people at police and Court; and can act as mediators; and can refer people to appropriate authorities to assist them.

So then, how does one approach a situation when a person presents a paralegal with a legal problem?

First of all, the paralegal needs to understand the situation of a person who is seeking legal assistance. A study on justice needs in Uganda in 2016 looked at people's legal problems in daily life. It found that:

a) Almost 88% of Ugandan people had experienced one or more justice need(s) that were serious and difficult to resolve over a four year period.
b) Justice problems have severe negative consequences such as stress related illnesses, economic costs and a loss of time.
c) Poor and less educated people are likely to get into legal problems, but have less knowledge and capacity to solve them. They do not know where to look for information and advice.
d) Poor people in rural areas and people who are less educated tend to seek less information and advice because of a lack of knowledge and greater negative perception about the prospects of solving their problem.
e) When people first get legal problems they usually seek information from among their social networks (family and friends), the Local Council Courts and the police.

By the time a person approaches the paralegal, s/he has probably sought assistance from the family, friends, religious leaders, police, local councils, etc. The client has been subjected to a lot of emotional trauma; has probably spent the little money s/he have; but the legal problem has not been resolved/or it has become worse. The person is at his/her wits end; and is desperate.

This chapters covers ADR interviewing skills, referrals (etc) these are full topic by themselves so trainer could break them down and title and clearly mark them with exercises, questions for each topic

A paralegal needs to utilize all his/her communication skills to ease the clients' anxieties. A paralegal should not promise heaven and earth to the client, as you will only increase disappointment if the desired outcome does not happen; or if it takes long to happen. A paralegal should manage the client's expectation by giving a projection outcome and period it will take to realize justice

Legal aid Client's needs

A client approaches a paralegal to help him/her solve their problem. The client does not necessarily want to go to Court. In fact only 5 percent of cases in Uganda end up in Court. For a poor and vulnerable person, litigation can be a long, laborious and costly process and full of anxiety. Nevertheless, litigation should remain an option of last resort when necessary to enforce rights and access justice.

Steps in handling legal aid clients

Interviewing clients:

In a meeting between the paralegal and the client, the client opens up and talks about his/her problem and concerns; and expectations. The paralegal listens, notes down and questions the client for necessary information. There is a sharing of information, views and needs through verbal communication.

Purpose of the interview:

1. One fundamental purpose of the interview is to know the facts; or the client's story. The paralegal has the responsibility of gathering the facts. The fact that the client has approached you itself indicates that s/he has identified some legal problems. But the client may not know what facts and documents are significant and relevant. As the helper, the paralegal has to extract the necessary information. Expressing feelings like disillusionment, disgust, pain etc. can also constitute important facts.
2. Identify witnesses and documents that are required to support the client's case.
3. Building the professional relationship with the client. The paralegal needs to assure to the client that his interests will be well taken care of and he and his feelings will be genuinely respected. If the client does not trust you, s/he may not divulge certain secrets and may not find it easy to discuss certain delicate matters.
4. Information given during the client interview will determine the next course of action for the client.

Setting the environment:

Ensure an atmosphere that encourages expressions of feelings. Organizing an interview in an open place with other people listening in might block the client from providing the required information. No one wants to tell their problems when everyone else is listening in. If there is no sufficient privacy, you will not be able to get all the details from the client; and may thereby decide on a course of action which is not fit for the situation.

Interviewing Techniques

1. Let the client tell the story in his/her own words. Nevertheless, sometimes a client can tell you a long story which may/may not be related to the case, but which, for the client, is therapeutic. The paralegal needs to gently guide the client back to the story. The process of pulling the story out of the client is sometimes not straight forward.
2. Interviewing is done with a purpose; and attending to small things can provide fruitful results. Paralegals should be patient and careful listeners. The paralegal should listen with interest and only interrupt when seeking clarification.
3. Physically responding to what is said, commenting and questioning on certain significant matters will assure comfort. The paralegal should mind the manner and tone of their questions. You may have to tolerate the client's silence at times as they process their feelings and thoughts.
4. Use non-verbal cues like nodding to encourage the client to talk.
5. Take notes. A paralegal is should keep records of the clients handled; and the notes are part of this record. It is from these notes that the paralegal may have to prepare written communication on behalf of the client; or use them during mediation.
6. At the end of the interview, paraphrase back to the client what you have heard, to ensure that you have picked the right information.

*Beware of clients who come with their own solutions and/or prescriptions. Sometimes they would have provided inaccurate information to persuade you into taking a certain course of action, which may not yield the best outcomes. In other cases the clients have been to many legal aid providers or paralegals and they have not accepted the advice of the lawyers or paralegals so they keep looking for the person who will tell them what they want to hear. Other clients just want to go to Court; or to have the person they disagree with to be arrested, for example; and will not accept any advice that is not related to what they want

Advice and counseling:

One of the things that a paralegal is allowed to do is to advise people who seek assistance about their legal rights and/or, the legal implications of their actions. People in need of legal assistance approach the paralegal with a mixture of emotions and trauma. In many cases the client has moved from one person to another; and from place to place seeking a solution to their problem. The lack of success and possibly, escalation of the problem along the way creates a lot of tension and emotions for the client.

`If a client is for example, reporting a husband or partner for child maintenance, in addition to child maintenance they have hurt feelings of someone they once loved, who is treating them in a manner they feel is unfair. Sometimes the partner has moved onto another person, so all the anger of being left becomes part of the client's emotional baggage as they ask for legal assistance.

In listening to the client's story, the paralegal needs to note and acknowledge the clients' emotional status. Statements like: "that must have made you feel awful'; or "I can imagine how that made you feel" indicate to the client that you understand their situation.

After interviewing the client, the paralegal needs to help the client make decisions regarding their legal problem. This function of communicating advice to a client, influencing and facilitating decisions is called ***counselling***. According to Blacks' Law Dictionary, counsel means advice and assistance given by one person to another in regard to a legal matter, proposed line of conduct, claim or contention.

During Counselling the paralegal should act responsibly while communicating legal advice to the client.

- Take care to speak in client's language. A lay man cannot understand legal terminology.
- Assist the client in understanding his rights and duties.
- Explain all options in the situation with consequences and costs.
- Assist the client in making choice from available options.
- No option should be forced upon the client.

Alternative Dispute Resolution (ADR)

ADR is the method for settling disputes without going to Court. *ADR* is a cheaper and faster process of resolving disputes, especially for poor and vulnerable people who cannot afford the cost of using the formal justice system. ADR empowers and enables the parties to develop and seek mutually acceptable solutions, which they choose to meet their needs. ADR uses a neutral third party to help the parties communicate, develop ideas and resolve the dispute. In this case, the paralegal is the third party who assists parties to amicably resolve a dispute. It is now mandatory for even all civil matters filed in court to first undergo through a process of mandatory mediation with support of court annexed mediators

Advantages of using ADR:

- ADR is faster, cheaper, uses less formality; and is less confrontational or adversarial. In court, a judge determines who was right and who was wrong, then imposes a penalty or award.
- One of the main reasons to choose mediation over litigation is when there are concerns about maintaining an important relationship with the person on the other side. Mediation is more cooperative and collaborative, so it is a good choice for disputes that involve relationships or neighbors.
- It encourages creativity and searching for practical solutions, it avoids the unpredictability involved when decisions are rendered as a result of the traditional or formal dispute resolution mechanisms.
- The ADR process usually results in improved communications between disputing parties and is therefore better for ongoing relationships
- Most importantly, the parties retain control of the outcome.

Mediation

Mediation is a voluntary process in which two or more parties involved in a dispute negotiate, with the assistance of an impartial third party (in this case, the paralegal), to generate their own solution to settle their dispute. Unlike most dispute resolution mechanisms that involve a winner and a loser, mediation is about finding a solution that works for both or all parties involved. A number of the disputes that clients will bring to you will be matters that can be resolved through mediation. An effective mediator is expected to help parties focus on the future – on where the parties want to be, not where they are now or where they were in the past. With good negotiation skills, a mediator can assist the parties to focus on their best interests. The paralegal's role is to help people with a dispute to evaluate their goals and options and find their own mutually satisfactory solution.

Unlike a judge or an arbitrator, the mediator does not take sides or make decisions.

Advantages of Mediation

- Mediation is a much cheaper, quicker and more pleasant process than going to Court
- The goal of mediation is for all parties to work out a solution they can live with and trust. It focuses on solving problems, not uncovering the truth or imposing legal rules.
- Because the mediator has no authority to impose a decision, nothing will be decided unless both parties agree to it. Knowing that no result can be imposed by the mediator greatly reduces the tension of all parties – and it also reduces the likelihood that someone will cling to an extreme position.
- If mediation does not produce an agreement, either side is free to go to Court.

In some cases a client will come with only one option – taking the person they are reporting to Court. This can be a result of the way the respondent has treated the client, causing him/her anger and resentment. The client may want to pay back the person for the treatment they have received. The paralegal/mediator in this case would have a responsibility of explaining the advantages of mediation to a client. If the client does not see the advantages/benefits, they will not buy into the solution, hoping the process fails.

Which cases can be mediated?

Typically, only civil cases can be mediated. The general exception is that certain nonviolent criminal matters, such as harassment, often allow mediation. Civil cases that are mediated include land disputes, family or property disputes, inheritance or succession claims; child maintenance; and employment disputes.

However, in your work as a paralegal, you will come across a client in a police cell or prison who needs your services. On the face of it, this is a criminal case. However, many people report civil cases to police, making them criminal. When you realize that the case is of a civil nature, engage the police and request for a mediation so that if an amicable settlement is reached, then the complainant can withdraw the case. This process is also referred to as '**DIVERSION'**, that is, when a case is diverted from the criminal justice system because it should not be there in the first place. Diversion should be more practiced especially when dealing with cases of children in conflict with the law

Are there cases where I should not consider mediation?

As a general rule, a paralegal should not consider mediation in criminal cases. Criminal cases should be referred to the police for investigation and prosecution. HOWEVER, as indicated above, many cases are registered with police as criminal cases yet they are really of a civil nature. For instance, cases like '***criminal trespass***' where a person typically reports that another person has entered their land with an intention of annoying them. In most cases when one looks closely at the facts and interviews the person reported, you will discover that it is a case of a land and property dispute, which is in fact a civil case. In such cases, mediation can proceed to facilitate a diversion of this case from the criminal justice system.

A paralegal's decision to mediate or not mediate may be governed by the following factors:

	WHEN TO MEDIATE	WHEN NOT TO MEDIATE
1	If it is important to maintain relationship	The fundamental rights of a party will be violated
2	The clients cannot afford the time and cost of litigation	The parties are not willing to collaboratively negotiate a solution to their dispute
3	When it is in the best interest of the parties (or of a party) to keep the facts of the case confidential	When a crime has been committed, for example, rape, murder, etc.
4		When the life of a party is in danger
6		When the matter is purely a matter of interpreting the law

Stages to the mediation process:

Write a letter to the person against whom the case is reported, informing him/her about the matter reported to you; and that you would want this matter to be resolved amicably. The letter should invite him/her for a meeting on a date and venue provided. **Sample letters are found in the paralegal handbook**.

Inviting the person against whom a case has been reported facilitates fairness in this process. It enables the other person to also state their side of the story. This is the principle of natural justice (and the duty to act fairly), by listening to the other person's side of the story before deciding on the next option.

On the appointed date of the meeting, the paralegal should ensure that the meeting will be held in a private place where the parties will be free to talk.

Sometimes, parties come with friends/relatives/neighbors to the mediation. At the beginning of the mediation it is desirable to speak to only the parties involved as they may not want to share information with people who are not part of the case in the room, especially if the case concerns personal relationships. In other cases, sometimes involving land or boundary disputes it may be desirable to have testimonies of neighbors. More importantly, it is desirable for the paralegal to visit the scene of the land dispute and get more clarification from neighbors and/or local leaders.

During mediation the paralegal is a **NEUTRAL** third party; and is not representing the client at this time. S/he is a facilitator of the dispute resolution process. It is important, especially for the person who has been reported to trust the neutrality of the mediator; as this will facilitate opening up and agreement on key issues. The mediator should explain this issue to the client at the time when s/he is inviting the other party for the meeting.

The Cycle of Mediation cycle

While mediation is a flexible process, it has definite stages in its progression. These stages are not cast in stone and parties undergoing mediation may find themselves alternating from one phase to the next.

Phases of mediation

a) **Preparation**

During the preparation phase, the paralegal should prepare for the mediation by taking steps to ensure that the parties have agreed to mediate; that the parties know the date and venue of the mediation; and the people who should attend the mediation.

b) **Opening**

Mediator's Opening Statement. At the mediation, welcome the parties warmly and let each person introduce her/himself and in what capacity they are present at the meeting. Explain the goals and rules of the mediation, and encourages each side to work cooperatively toward a settlement.

Introduce yourself. Explain your role as mediator to the parties. For instance "*My name is Moses. I am a paralegal and I am going to mediate this matter.*" This should be followed by an explanation of the dynamics of the mediation process. For example of the foregoing is set out below:

- *"I am not a judge. My duty is to facilitate communication between both of you so you can reach a mutually agreeable solution to your dispute.*
- *To start, I will like for us to agree on some ground rules that will guide this process. Thereafter, we will begin the mediation with each party making a statement or their presentation of the matter.*
- *I may decide to have private meetings with each of you or a joint meeting to explore how best this dispute may be resolved.*
- *Subsequently, we will review the terms we have been able to agree on and reduce it into writing. Is this acceptable to you?"*

c) **Establish ground rules**

Disputes can bring out disturbing emotional reactions which can escalate, rather than reduce, breakdown in communication between parties. In order to avoid this and ensure that the mediation is conducted in a conducive and amiable environment, it is important to establish some ground rules at the beginning of the mediation. The ground rules may vary from case to case, however, common ones include: t**he prohibition of interruptions, name-calling, insults, etc.**

d) **Establish confidentiality:**

Assure the parties that the proceeds of the mediation, with exception of the parties' permission, will remain confidential and cannot be used against them in a court of law. Parties must also actively declare their willingness to adhere to the principle of confidentiality. This will allow parties to talk more freely about their matter without fear that their disclosures might be used against them.

e) **Establish parties' authority to settle**

Your efforts at mediation will be ineffective if the parties present do not have the authority to settle. This is particularly important where one or more of the parties at the mediation are appearing in a representative capacity, whether on behalf of the government, a company, an authority, a group, or a person. For instance, if a company was to send an office assistant to represent them in an employee termination case, it is unlikely it would give full and complete authority to him/her to settle. Confirmation by the mediator of authority to settle of all parties is an integral prerequisite to a successful mediation proceeding.

f) **Parties Opening Statements**.

Each party is invited to describe, in his or her own words, what the dispute is about and how he or she has been affected by it; what s/he wants from the other party; and to present some general ideas about resolving it. While one person is speaking, the other is not allowed to interrupt – this is one of the rules of the mediation.

Listen actively to each party and ask open-ended questions to encourage them to clarify ambiguities and provide more information (e.g. avoid interrupting). At the end of each party's presentation, thank them. Summarize their statements and ask if that is an accurate representation of what they intended to communicate. Ask if there are any additions they wish to add to their statement. This will enable you get an accurate picture of the story from their perspective.

g) **Understanding the problem**

The mediator may try to get the parties talking directly about what was said in the opening statements. This is the time to determine what issues need to be addressed. This stage allows parties to agree on the problem and explore possible options to address the problem. Bear in mind that parties' real interests and needs could be different from the problem they are stating. For instance, a woman may come to you with a child maintenance case yet she actually wants to reconcile with the father of the child. Therefore, it would be wise to identify and consider the client's real underlying interests and needs. Having a caucus with each party in the dispute is helpful at this stage as it allows for deeper exploration of issues, as well as identifying potential compromises towards amicable resolution of the dispute.

h) **Private Caucuses.**

The private caucus is a chance for each party to meet privately with the mediator (usually in a nearby room) to discuss the strengths and weaknesses of his or her position and new ideas for settlement. The mediator may caucus with each side just once, or several times, as needed. These private meetings are considered the guts of mediation.

i) **Joint Negotiation:**

After caucuses, the mediator may bring the parties back together to negotiate directly.

j) **Solution exploration**

Group together similar ideas offered by the parties. The terms of settlement for each dispute should be created by the parties. Evaluate and clarify each idea weighing their advantages and disadvantages, and where necessary, encourage them to negotiate modifications to the ideas proffered to suit their peculiar need.
Ensure that their solutions are clear and comprehensive taking into account all aspects of their dispute. In addition, the solutions must be practical and workable.

The acronym **R.E.A.L** captures and helps you keep in view the criteria to deploy in evaluating their solutions.
Realistic
Effective
Acceptable
Lasting

k) **Resolution/Closure**

This is the end of the mediation. Once the parties have come to a definite conclusion, reduce their terms of settlement into writing to be signed by the parties, to which it becomes a binding agreement evidencing the parties' amicable resolution of their dispute.
In the event that not all of the issues in a dispute are resolved, it does not make the mediation proceeding unsuccessful. In such circumstances, areas of agreement can be put into the terms of a written settlement referred to above and signed by parties, while areas on which no agreement was reached may, by mutual agreement of the parties be submitted to arbitration**,** litigation or any other dispute resolution mechanism.

Mediation – things to keep in mind

1. Always remember that it is not a process of determining legal right or wrong, but of identifying common grounds and underlying interests with a view to generating a mutually acceptable settlement.
2. Your responsibility in mediation is not to offer a solution to the parties' dispute(s) but to facilitate communication between them to enhance their negotiation and increase chances of reaching amicable and mutually acceptable solutions.
3. Be respectful to the parties and treat them equally, paying equal attention to each of them.
4. You must be and remain impartial and neutral throughout the course of the negotiation.
5. Actively listen to determine what the parties *really* want. Sometimes you may find a person reporting a person for one case, but you realize from the way the conversation is going, that the party is upset about something else. This is common in cases involving personal relationships.
6. Some people would like to be perceived as strong, so they fear losing, and thereby stick to hardline or entrenched positions. They do this at the expense of identifying and focusing on their underlying interests and motivations, which holds the key to serving both parties better in terms of reaching a mutually gratifying outcome. It is therefore important to identify some of these issues and explore them during the caucus meetings
7. If you caucus (hold a private meeting) with one side to explore issues, you should do the same with the other party.
8. Take a break when necessary. For instance, when parties have come to a deadlock; to allow parties to regain their composure or prevent a faceoff; or to allow for you or the parties reflect on what has been said.

Client referral

As a paralegal, you may not be able to handle each case from the beginning to the end all by yourself. Often, you will need to refer your clients to agencies or persons who would be able to offer expert solutions to their challenges. Often, you will need to make referrals to lawyers, the Human Rights Commission, human rights organizations, government officials/offices, appropriate authorities, etc.

- The paralegal therefore needs to familiarize him/herself with the services and the procedures for accessing their services.
- You will need to keep the contact details of the relevant organizations and when possible, maintain some form of relationship with these persons/organizations to facilitate ease of approach when a referral is deemed necessary.
- You may also need to write referral letters to these persons/agencies and you should ensure that you follow up on the actions.

Letter writing

Paralegals will often need to write letters to facilitate clients' cases. You will need to develop good writing skills in order to be effective in your role.

When writing letters, the paralegal must bear in mind the following principles:

- Letters must be kept as simple and as brief as possible
- Letters must be correctly addressed to the person to whom it is written
- There must be a clear indication of the capacity in which they are written
- There must be a clear indication of what is required from the recipient
- Letters must be dated
- Letters must be signed at the end by the paralegal, though in certain instances, the party/parties may also need to sign. Therefore determination of the proper signatory will be done on a case-by-case basis.
- Copies of letters must be to stakeholders and relevant parties to keep them officially informed
- Letters should include in its contents a request for a response from the person receiving the letter
- Letters should be delivered quickly and as much as possible; proof of delivery (e.g. – receiver's signature) should be obtained.

Record-keeping, reporting and documentation

A paralegal needs written records of matters which s/he handles. You must be able to take and keep accurate records of clients' cases. They must be able to articulate who the party is, parties' issues, dates and times of meetings, advice given, steps taken, referral (if any), as well as monitor and document the entire process of the case for future reference. Records kept should be brief and easy to read.

Another very important part of record keeping is **documenting evidence** in support of a victim's case. Documentation is not just about keeping a record of their statements. It could also involve, for instance, taking pictures of injuries sustained, and keeping copies of correspondence, etc.

1. Nakayima was in a relationship with Alooni since 1982, and bore five children with him. Sometime in, 2014 Alooni got another woman and left Nakayima in the house alone with her five children. He does not provide any support to her. Nakayima is failing to meet the daily and educational needs of her children. She tried going to Alooni's father to report the matter and she was told that Alooni is free to do whatever he wants; and that her children are her responsibility. She reported the matter to the LC in 2015 and has never received a response since then. She approaches the paralegal for assistance.

Outline the steps or processes you would engage in to assist Nakayima.
Possible responses: the paralegal could call a meeting between her and Alooni to try to resolve the matter through **mediation.** When **mediation** does not solve the problem, you could assist Nakayima by writing a letter referring her to a legal aid service provider to provide a lawyer's assistance

2. Kayibanda's son was driving a vehicle when he knocked a person, and ran away. When police could not find Kayibanda's son, the arrested Kayibanda and detained him in place of his son. Kayibanda's wife comes to you for assistance with this matter. Outline the steps or processes you would engage in to assist Kayibanda.

Possible responses: You could approach the officer behind the counter at the police station and attempt to **request** his release on grounds that Kayibanda is not the one who committed the offence. Where this does not yield any result, you could write a **letter of petition** to the Uganda Human Rights Commission or to the Professional Standards Unit of Police (to complain about police's unprofessional conduct). Where this does not produce the desired result, or if circumstances dictate, you may refer Kayibanda's case to a pro-bono lawyer for Court legal assistance.

Nyeko is a small scale trader who is trying to grow his business in supply of foodstuffs to schools. He got a contract to supply beans and maize flour to Dube Secondary school and it is his biggest contract so far. However, for two school terms months, the school has not paid him for some beans supplied, claiming that some of the beans had weevils. Despite Nyeko's request, the school did not return the defective beans to him.

Outline the steps or processes you would engage in to assist Nyeko.
Possible responses: You could, in this case, first **write a letter of demand** on Nyeko's behalf. Please follow the guidelines regarding letter writing. A sample demand letter is also found in the sample documents at the end of the manual; and in the paralegal handbook.
If the school does not respond to the demand letter, the paralegal could attempt mediation. If mediation fails, you would advise and counsel Nyeko on his options if he chooses to undertake litigation then the paralegal could then assist Nyeko in either preparing Court documents or referring him to a lawyer for further assistance to go to Court.

MODULE SEVEN: COURT STRUCTURE IN UGANDA AND THEIR JURISDICTION

Objectives	The main objectives of training module are to enable participants to: • Understand the Court structure in Uganda and where cases can be filed.
Learning Outcomes	• Participants should be able to identify the courts with jurisdiction to resolve the matter
Duration	3 hours
Contents/Topics	• Background to Uganda's judiciary and judicial system • Current Court structure and its jurisdiction
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook
Equipment	LCD, flip charts, marker pens

General Background to Uganda's Judiciary

Before Britain colonized Uganda, administration and judicial power was exercised by local authorities like tribal kings, chiefs and clan leaders. All of them worked primarily to enforce local customary law. To some extent, these authorities still exercise judicial powers to date under the system referred to as "Traditional or Informal Justice mechanisms". Islamic law was also practiced in some areas of northern Uganda, especially in West Nile region.

Britain colonized Uganda in 1884; and in 1902, the British announced The Uganda Order-in-Council which established the High Court of Uganda and other subordinate/secondary Courts. Thereafter, Britain's legal system, theory and practice of law (jurisprudence) was gradually imposed in Uganda. In fact, several laws observed in Uganda today were brought about during the colonial era. Because of the British colonial rule, English was introduced as the language of the Courts – up to today.

On Uganda's independence in 1962, the 1902 Order in Council was re-enacted and slightly modified. The resulting legal system consisted of the High Court, which hears cases involving murder, rape, treason, and other crimes punishable by death or life imprisonment; and subordinate magistrates' courts, which hear cases for crimes punishable by shorter terms of imprisonment, fines, or whipping. Decisions made by Magistrates can be appealed to the High Court. For civil cases, the court to hear a case depends on the value of the subject matter. However, the High Court has unlimited authority (jurisdiction) to hear all cases.

In 1967 a new Constitution was established which declared that decisions of the High Court could be appealed to the Court of Appeal for Eastern Africa (CAEA), or to a new Court of Appeal established by Parliament. This became the de facto legal system until the collapse of the East African Community (EAC) in 1977 when the Uganda government withdrew from the CAEA and created a national Court of Appeal.

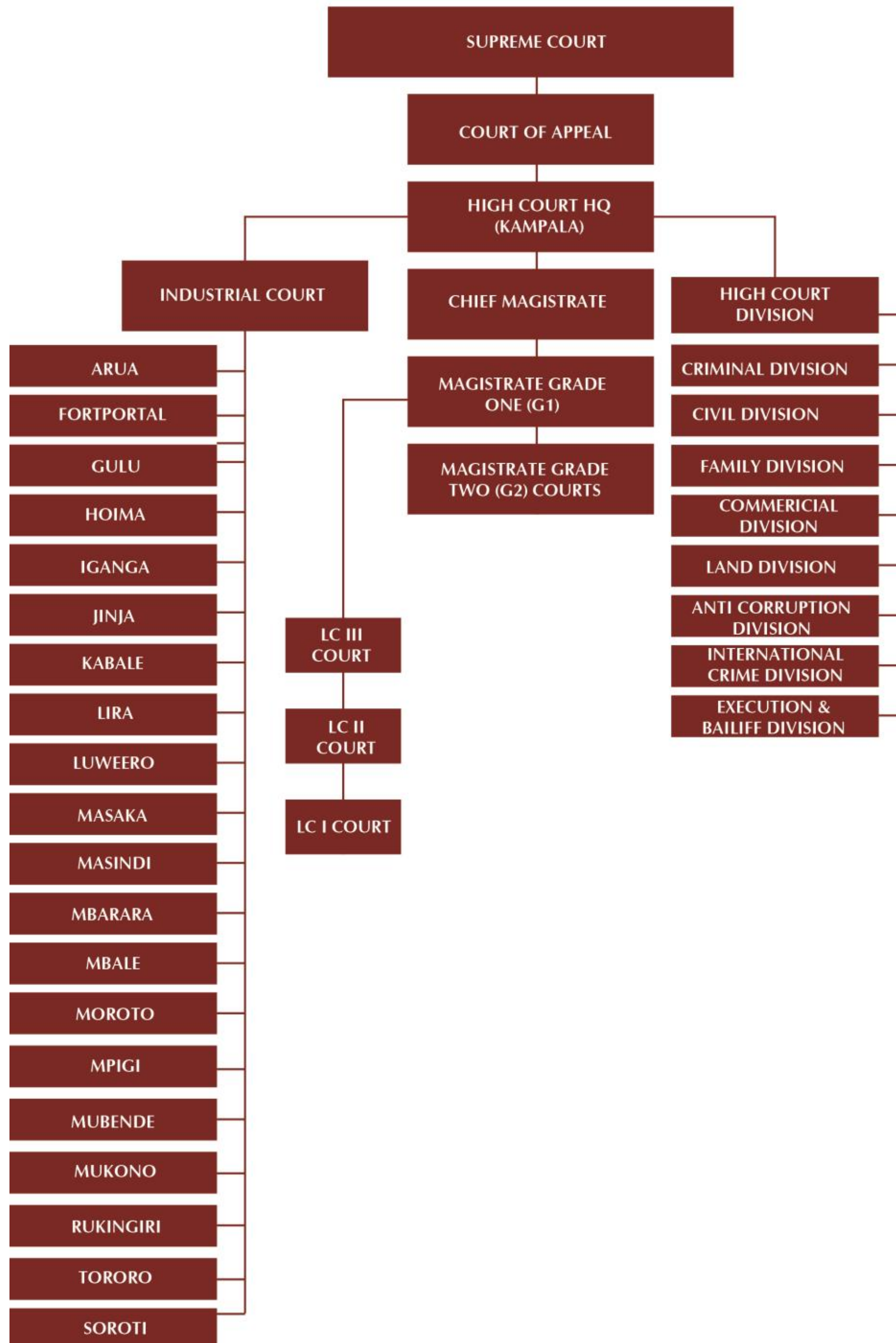
In 1987 the NRM government introduced the Constitution (Amendment) Bill, 1987, and the Judicature Act (Amendment) Bill, 1987. The name of the Court of Appeal was changed to the Supreme Court of Uganda headed by the Chief Justice.

In 1995 a new Constitution was enacted as the supreme law of Uganda. It spells out more specifically the key obligations of the Judiciary. Article 126(1) of the constitution states that "***Judicial power is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with law and with the values, norms and aspiration of the people***". In addition, Article 128(1) states that; "***In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority".***

Hoima Court

Court Structures in Uganda

The current court structure consists of the Supreme Court at the top, a Court of Appeal/ Constitutional Court, the High Court and the Magistrates Court. Also there are the Local Council Courts.



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Note: The headquarters of the High Court Are situated in Kampala although the high Court has circuits.

The Supreme Court

The Supreme Court is established by Article 130 of the Constitution. It is the highest Court within the judicial pyramid as a final court of Appeal in Uganda. It has no original jurisdiction that is, it has no powers to hear a case for the first time; except for cases where the law says that the particular cases can only be heard for the first time in the Supreme Court, for instance Presidential Elections petitions. The Court is headed by the Chief Justice and the decisions of the Supreme Court form precedents (guides) which are followed by all lower courts.

Court of Appeal / Constitutional Court

The Court Appeal was created by the 1995 Constitution. It is -positioned between the Supreme Court and the High Court. As its name suggests, it hears cases or appeals from the High Court. The Court of Appeal also has no powers to hear a case for the first time; except for cases that are brought to interpret the constitution. In this case it sits as a Constitutional Court. It is headed by the Deputy Chief Justice.

High Court

The High Court of Uganda is established by Article 138 of the Constitution and is the third court in order of hierarchy. It can try any case of any value or crime of any magnitude in Uganda. Appeals from all Magistrates Courts go to the High Court. The High Court is headed by the Principal Judge who is responsible for the administration of the court and has general supervisory powers over Magistrate's Courts.
The High Court has several divisions including the Civil Division, the Commercial Division, the Family Division, the Criminal Division, the Land Division, the Execution and Bailiffs Division, the International Crimes Division and the Anti-corruption Division. The High Court is also decentralized into circuits at Fort Portal, Arua, Masindi, Gulu, Jinja, Masaka, Mbale, Mbarara, Soroti, Lira, Nakawa, Masindi and Kabale.

Magistrates Courts

Magistrate's Courts are the lowest courts, with three levels: Chief Magistrates, Magistrates Grade I and Magistrates Grade II. Magistrates' courts handle most of cases in Uganda. There are currently 38 Chief Magistrates' Courts, 120 Magistrates' Grade I Courts and over 100 Magistrates' Grade II Courts. Each Chief Magistrates' Court has a Chief Magistrate who supervises all magistrates Courts within his/her areas of jurisdiction. Decisions of the Magistrates Courts can be appealed to the High Court. To include pecuniary and territorial jurisdictions of magistrates.

Local Council Courts

In 1988, the NRM government established Local Council Courts (LCCs) to adjudicate over selected disputes or cases. LCCs significantly contributed to making justice more accessible to poor, vulnerable and marginalized persons at local levels. Indeed, a study on Justice Needs in Uganda 2016 found that when people get legal problems, they usually first approach LCCs or police. LCCs apply customary norms and provide local audience for dispute resolution. LCCs are established from the village level (LC1), to the parish level (LC2), and on to the sub-county level (LC3). There are about 60.000 LC Courts countrywide; and they are supervised by the Chief Magistrate.

Composition of local council courts

The Local Council Court of a village or parish is made up of all members of the executive committee of the village or parish.

The local council court of a town, division or sub-county is made up of five members appointed by the town council, division council or sub-county council on the recommendation of the respective executive committee. At least two members of the town, division or sub-county local council court shall be women.

The Local Council Courts Act 2006 gives powers to LCCs to hear and decide certain cases. According to this the Act, LCCs can try and determine:

(i) cases of a civil nature (whose value does not exceed UGX two million)relating to:
  a) Debts
  b) Contracts
  c) Assault or assault and battery
  d) Conversion
  e) Damage to property
  f) Trespass
  g) Nuisance

When trying cases under this section, LCCs cannot hear cases that are over Two Million Uganda Shillings

(ii) LCCs also hear cases of a civil nature governed only by customary law relating to:
  a) disputes in respect of land held under customary tenure;
  b) disputes concerning marriage, marital status, separation, divorce or the parentage of children;
  c) disputes relating to the identity of a customary heir;
  d) Customary bailment.

Bailment refers to the temporary placement of control or possession of personal property by one person (the bailor) into the hands of another (the Bailee) for a particular purpose which has been agreed upon. The Bailee only receives possession of the property but the bailor retains its ownership. **During the specific period** a **bailment exists, the Bailee's interest** in **the property** is **superior** to **that** of **all others, including the bailor, unless the Bailee violates some term** of **the agreement. Once the purpose for** the bailment **has been accomplished, the property will** be **returned** to **the bailor** or **disposed** of **pursuant** to **the bailor's directions.**

"Customary law" means the rules of conduct established by custom , norm and long usage having the force of law and not forming part of the common law nor formally enacted in any legislation;

In trying cases under this section, the authority of LCCs is not limited by the monetary value of the subject matter in dispute

(iii) LCCS also hear cases that arise out of violations of bye-laws and Ordinances that have been made under the Local Governments' Act
(iv) Matters indicated under the Children's Act (these have been detailed in the section on Children's rights)
(v) Matters relating to land

What decisions or orders can a Local Council Court make?

A Local Council Court may make an order for any one or more of the following reliefs (solutions)
(a) Reconciliation;
(b) Declaration;
(c) Compensation;
(d) Restitution;
(e) Costs;
(f) Apology; or
(g) Attachment and sale; and
(h) If the case relates to violation of a bye-law or Ordinance, the LCC can impose a fine, community service or any other penalty authorized by that bye-law or Ordinance.

If a LCC hears a case relating to
(i) Debts, Contracts, Assault or assault and battery, Conversion, Damage to property; or Trespass; or
(ii) Cases of a civil nature governed only by customary law relating to disputes in respect of land held under customary tenure; marriage, marital status, separation, divorce or the parentage of children; identity of a customary heir; or Customary bailment.

And awards compensation exceeding Five Million Shillings, the LCC must refer the case to the Chief Magistrate of the area to put this order into effect. If the Chief Magistrate finds that the judgment award is too much, s/he may reduce the amount of the award taking into consideration awards that have been made in similar cases.

Appealing from a decision of a court

A person who is not satisfied with a decision of a court can take his or her case further up to be decided upon by a higher court whose decision will cancel or agree with or confirm that of the lower court. This is done through a process called an ―*appeal*.‖ From the list of courts drawn above, a person who is displeased with a decision of the LCI can appeal to the LCII. Appeals from LCII go to LCIIIs. If a person is not satisfied with the decision of the LCIII, then that can appeal to the Chief Magistrate's Court. From the Chief Magistrate, one can apply to the High Court for that decision to be re-considered. A person who is not happy with the High Court's decision can apply to the Court of Appeal, and from there to the Supreme Court.

Authority of Courts:
Some courts have only original jurisdiction while others have appellate jurisdiction. Original jurisdiction is the power of a court to hear or try cases taken to it for the first time without previously having been heard in another court. Appellate jurisdiction is the power of a court to hear appeals. The High Court has both original and appellate jurisdiction. This means that such a court can hear a case taken to it for the first time or cases referred to it on appeal. [8]

Informal Dispute resolution Mechanisms

The Land Act gives traditional or cultural institutions the authority to determine disputes over customary ownership, acting as mediators between persons who are in dispute.

- Such methods include the use of family and clan elders or a neutral third person (mediator).
- In addition, the Land Act provides for appointment of two (2) or more mediators in each district.
- These mediators are appointed on a temporary case by case basis.
- The role of mediators is to act as neutral third parties who help parties to a land dispute to reach a mutually agreed settlement of their land problem.

MODULE EIGHT: CRIMINAL LAW AND PROCEEDURE

Objectives and learning outcomes	By the end of this module participants should be able to distinguish between a civil and a criminal case; and understand criminal procedures to enable them assist people in conflict with the law.
Duration	3 hours
Contents/Topics	• Difference between civil and criminal cases • Stages of a criminal case • The process of arresting; and rights of a person who has been arrested • Unlawful situations for arrest and detention • How a paralegal can support a person who is arrested • Bail and sureties • Remedies for unlawful detention
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook
Equipment	LCD, flip charts, marker pens

Civil and Criminal cases

There are two types of cases: ***civil*** and ***criminal*** cases. The word 'criminal' arises out of the word 'crime'. In this case, where a crime has been committed, then that becomes a criminal case. For a case to qualify as a crime, it must be written in some law; and the punishment for the crime duly indicated.

In Luganda, crimes are referred to as 'omusango gwobumenyi bw'amateeka' that is, a crime involving breaking the law.

Facilitator: ask participants what a crime is called in the local language. Enable them to distinguish between the fact that a case and a crime are different, since a case if civil.

Most of the crimes in Uganda are written in Uganda's Penal Code Act, where they are also referred to as offences. Crimes are **generally** offenses against the state, and are accordingly prosecuted by the state.

Civil cases on the other hand, are typically disputes between individuals regarding the legal duties and responsibilities they owe one another. These cases are decided through civil law suits, usually instituted by one individual suing another, or a company or government.

Key differences between a criminal case and a civil case:

		Criminal cases	Civil cases
1	Parties to the case	Crimes are considered offenses against the state, or society as a whole. That means that even though one person might kill or another person, murder itself is considered an offense to everyone in society. Accordingly, crimes against the state are prosecuted by the state, and the prosecutor (not the victim) files the case in court as a representSative of the state. The case will for example read Uganda Vs Ssentongo , criminal case No02 of 2017	With a civil case, the person or people who have been wronged are the ones to file the case. A case will for example appear as follows Muwonge Vs Namutebi Civic suit no 002 of 2017
2	Mediation	As a general rule, mediation is not advised in criminal cases, since they are perceived to be offences against society. However, a process called "Plea bargaining" can be used for criminal cases which is a negotiation of some sorts. The plea bargain is any agreement in a criminal case between the prosecutor and the accused person whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor. This may mean that the accused person will plead guilty to a less serious charge, or to one of the several charges, and in return the prosecutor will dismiss the other charges. It may also mean that the accused person will plead guilty to the original criminal charge in return for a more lenient sentence. Plea bargaining allows both parties to avoid a lengthy criminal trial and may allow suspected offenders to avoid the risk of conviction on a more serious charge at trial.	Mediation is encouraged in civil case. Currently the courts have a program of mandatory or compulsory mediation. Even when a civil case is filed in court, the court will require the parties to first explore the option of settling the matter amicably.
3	Naming	A person against a criminal case is opened is called a SUSPECT. When the case goes to court, s/he is referred to as the OFFENDER or ACCUSED PERSON.	A person against whom a civil case is filed is referred to as the "DEFENDANT"
4	Result of case	When a person is accused of a criminal case, and evidence is proved against that person, he is convicted and s/he is expected to be punished. Punishment can be in terms of jail time, community service, a caution; or a monetary punishment in the form of a fine. However, a criminal case may involve both jail time and monetary punishments in the form of fines. Capita; offences or grave offence like Robbery Murder carry heavy punishment including life imprisonment or for highest degree of murder even death sentence can be handed down by a judge	Civil cases generally only result in monetary damages or orders to do or not do something. However, in cases where a person fails to pay the monetary damages in a civil case, s/he may be committed to prison for a period of not more than six months. While in prison, s/he is referred to as a civil debtor

5	Proof required	The standard of proving that an accused person committed an offence is very high. The prosecution/state has a burden of proving a case 'beyond reasonable doubt'. This means that by the time a magistrate or judge says that an accused person is guilty, s/he must be fully convinced; and have no doubt that the accused person committed the offence. In case the state has not brought enough evidence to show that the accused person committed the crime; and the magistrate has any doubts as to whether or not the accused person committed the offence, then any doubts must be resolved IN FAVOR' of the accused person	The proof required in civil cases is by a lower standard, known as "the preponderance of the evidence OR balance of probability" (which essentially means that it was more likely than not that something occurred in a certain way).
6	Linking people to the case	In a criminal case, IT IS NOT ENOUGH for prosecution to show that an offence was committed. The prosecution must prove that IT IS THE ACCUSED PERSON WHO COMMITTED that offence and that the accused person had a prior mind and planned to commit the offence	In a civil case a person can be held responsible for a wrong even if it was committed by another person. Under the principle of vicarious liability for example, a master can be held responsible for the acts of his/her servants, if the servant was doing the acts in the course of his/her employment. For example a driver driving a car negligently and causing death can make a company liable for compensation On the other hand, a person can be taken to Court for failure to take an action, usually referred to as negligence.
7	Decision on punishment	If an accused person is found guilty, the sentence and punishment for that crime must fall within the punishment prescribed for that offence. If a judge deviates from the prescribed punishment, then s/he must provide detailed explanation as to why, in that particular case, s/he is deviating. The reasons are usually related to the facts of that case, and are normally referred to as aggravating or mitigating circumstances	There are no prescribed decisions or damages in civil cases. The amount of damages or compensation will depend on the evidence presented before Court proving the loss or damage that was suffered by the person reporting the case due to the defendant's actions.
8	Rights of persons before	An accused person in a criminal case which is punishable by life imprisonment or a death sentence is	A defendant in a civil case is not given a lawyer and must

	and during trail	entitled to a lawyer paid and if s/he cannot afford one, the state must provide a lawyer.	pay for one, or else defend him or herself.
9	Constitutional provisions on rights of people who are arrested – Article 23 (3) of the Constitution	Uganda's Constitution provides for safeguards for people who are caught up in the criminal justice system. These include: - The right to liberty and security of person; and freedom from arbitrary arrest or detention - Right to equality before the law; - Right to be presumed innocent until proved guilty - Right and to a fair and public hearing by an impartial tribunal - Right not to be accused of an offence when the accused's actions did not amount to an offence when they were done - Rights to be informed of the case against the accused - Right to a lawyer in capital cases - Right to a speedy trial	The protections for accused persons in criminal cases are not available to a defendant in a civil case.

Types of criminal cases

There are various categories of criminal offences. Misdemeanors are minor offences that carry light sentences on conviction. On the other hand, a felony is a grave offence which carries severe penalties. The assistance which paralegal gives to a person in a criminal matter will partly depend on the type of offence. Whereas a person can obtain police bond for a misdemeanor, the same person cannot easily get police bond in respect of a felony unless their justifiable circumstance.

The typical course of a criminal case includes:

Criminal prosecution develops in a series of stages, beginning with a crime taking place, arresting of the suspect and having the trial.

A criminal case goes through the following stages:

a) A crime takes place.

When a crime takes place, a suspect is identified. As the name suggests, a 'suspect' is the person who is thought or suspected to have committed the crime or offence. After a crime takes place, a report needs to be made at the police station in the area where the crime took place.

A paralegal can accompany the victim of the crime to the police station and assist them to report the case and make a statement. The victim should be allowed to make the statement in his/her own words. The paralegal should make sure that the victim's statement covers all the issues that are relevant to the case.

On the basis of the statement, the police is supposed to carry out an investigation into the case. If the evidence or statement made does not disclose a crime, then police should close the case. On the other hand, if police has reasonable ground to believe that the suspect committed the crime, then police will file a case a case against the suspect (now referred to as the 'offender' and get a warrant of arrest. The paralegal can assist the victim by following up the matter at the police station until it gets to court.

In some cases, right violations are committed by law enforcement officers, especially the police. When people, attempt to report violations by members of law enforcement to police, their attempts may be rejected. In this

instance, the paralegal's best strategy would be to approach a professional organization like a legal aid provider, human rights organization or a pro bono lawyer to assist in the matter.

b) Arrest

Criminal prosecution usually begins with an arrest by a police officer. As a general rule, a police officer must have a warrant of arrest before arresting any person suspected of committing a crime. However, a police officer can lawfully arrest without obtaining a warrant of arrest where a) (s)he witnesses the commission of a crime, or b) another person who witnessed the commission of the crime is willing to accompany the police officer to the police station and provide evidence. . In almost all other cases, the law requires that a police officer must first obtain a warrant before arresting a person for a specified crime. Consequently, it would amount to an unlawful arrest for the police to enter into the house of a suspect and to seize him without first showing the suspect the warrant for his arrest.

When a police officer or any person knows that a person is planning to commit an offense, he might arrest the person without warrant, to prevent the commission of the offense, if the offence cannot be otherwise prevented.

What the police must do upon an arrest

1. When arresting a suspect, the police must inform him/her in a language that s/he understands, of the charges being brought against them in a language that they understand.
2. After being taken into custody, the police must, within 48 hours, produce the suspect before Court.
3. While the suspect is in police custody, s/he must be given access to lawyer, doctor and family
4. The police must maintain a register of persons in detention at the station. This register should contain details such as name, gender, age, time of arrest and nature of offence.

A warrant of arrest is an official document signed by a magistrate or a judge which authorizes a police officer to arrest the person named in the warrant. The warrant should identify the crime for which an arrest has been authorized.

Judicial Arrest

Judicial officers, magistrates and judges can order the arrest of a person who commits an offence in their presence. This usually occurs when the person commits perjury (lying under oath) or jumps bail. Or if in contempt of court

Arrest by private party

A private individual also has the power to arrest if s/he witnesses the commission of a crime. The person arrested must however be handed over to the police.

After being arrested, a person is taken into police custody. While at police, a suspect can apply for police bond.

Arrest without warrant

This is the most common form of arrest and is a process often abused by the police and other law enforcement agents. The law permits three categories of persons to arrest without a warrant:

- Police officers (other law enforcement agents fall within this category)
- Judicial officers
- Private persons

Rights of a person under arrest

Even when under arrest, an accused person is still entitled to certain rights and liberties. These include:
a) The right to know the charges (accusations) brought against them at the time of the arrest, in a language they understand. This right enables the accused person to prepare their defense in good time.
b) The right to inform or have the authorities notify their family or friends that they have been arrested or detained and the place where they are being kept in custody.
c) The right to receive police bond if the offence qualifies for police bond (Police bond is FREE).
d) The right to remain silent and avoid answering questions that may incriminate them
e) The right to be treated with respect and dignity, and not be tortured or suffer cruel, inhuman or degrading treatment or punishment.
f) The right to receive visits from family members, friends, doctor and their lawyer within reasonable hours.
g) The right to medical care or to be examined by a doctor of their choice.

Unlawful situations for Arrest and detention

As earlier noted, a police officer can arrest a person without a warrant in circumstances where the crime was committed in the presence of the officer, or where s/he reasonably suspects a person to have committed a criminal offence. Some unlawful conditions often associated with arrests and detentions are:
1. **Arrests without a warrant**. The police cannot lawfully arrest a person who was not seen committing an offence in the presence of the arresting officer or a witness without first producing a warrant. Arrest without a warrant is also unlawful when the law provides that with respect to a specified crime arrest must be made with a warrant.
2. Arrests made without informing the arrestee of the reasons for their arrest and detention.
3. Refusal to grant police bond when the offense is of a category for which police bond can be given and the suspect has fulfilled the conditions of bail.
4. **Continued detention without trial**. Investigations of crimes must be taken seriously by the police and should be promptly carried out in every case to avoid prolonged detention of suspects or detaining people who did not commit the crime.
5. **Forcing a suspect to make or give a statement after an arrest**. A person arrested and detained has the right to remain silent. This is to avoid a situation where he/she will give statements that may incriminate him/her. The use of torture and intimidation to extract confessional statement from suspects is wrong.
6. **Refusing to let lawyers, paralegals or family interview detainees in private**. The police cannot legally insist on being present during an interview.
7. **Confining an arrested person to a place not legally or officially recognized**. Any person who has been arrested must be taken or held in an officially recognized place of detention i.e. a police station.
8. Holding a suspect beyond 48 hours and in case of children beyond 24 hours
9. in case of children arresting without informing parents and or guardians an not informing probation officer

Summons

Summons are a document issued by a judicial official mandating a person to appear before a court to answer a complaint brought against them. It is always in writing and contains the following details:
(1) A statement of the complaint against the person;
(2) An order to appear before the court at a certain time and place ; and
(3) Signature of the magistrate.

What to do when your client has been arrested and detained:

1. Visit the police station or detention center and request to see the person arrested or detained. It is important to be courteous and polite at all times. Your aim at this point is to obtain accurate information that will help you decide on the appropriate action to take. Information to be obtained should include:
   a. His or her identity;
   b. The reason for the arrest;
   c. The time of arrest and place of custody;
   d. The identity of the law enforcement officials concerned;
   e. The time of the arrested person's first appearance before a judicial or other authority.

A paralegal's guide to the police station

Police Station Front Desk: The Front Desk Counter at the police station would be your first point of call at any police station. It is usually manned by a police officer. These officers are responsible for receiving and recording reports, registering new detainees, receiving enquiries from and providing information to the public. Be courteous and direct. State clearly your purpose for visiting the station and what you would like to see done.

2. **Guide the arrested person in making his statement**. Inform him/her that they have a right to remain silent or to refuse to give a statement to the police. Police is not supposed to harass, torture, or use any other form of duress to obtain a statement or confession from a suspect
   Freedom from torture, cruelty and degrading treatment are fundamental rights, which must be respected by all. In case a suspect has chosen to make a statement, you can help to ensure that the information disclosed in the statement is accurate and given without force. Statements made at police stations by arrested persons will be used as evidence in the court of law should the police decide to prosecute the matter.
3. **If the suspects represented by a lawyer, advise them not to make a statement until their lawyer arrives**. When they do not have any legal representation, review their statement with them to ensure it is accurate. Ensure that the statement does not contain irrelevant stories or repetitions to avoid contradictions or doubt.
4. **Contact family members of the arrested person**. Although suspects have a right to contact their families and lawyers, they may not be able to do so. Your assistance in notifying them will therefore be important. If the suspects plans to apply for police bond, the paralegal can arrange with the suspect's family to ensure that the suspect will be able to fulfil the conditions of police bond.
5. **Assist in applying for police bond if the offense is not a serious one**. Police bond is granted in circumstances where a suspect is released without being charged on the condition that the suspect returns to the police station at specified times.

> Any person has the right to apply for police bond. Application for police bond can be made to the officer in charge of a police station. Remember that POLICE BOND IS FREE.

In some cases the police may refuse to grant police bond even if the offence is one which qualifies for police bond. Examples of such instances are:

- Where the detainee has no known address or his address is doubtful
- If they have reasons to believe that the suspect might escape or not return to police
- If they have reasons to believe that the suspect might interfere with investigations
- If they have reasons to believe that the suspect might go on to commit another crime if released

Once a suspect that has been granted police bond and are thereafter taken to Court, the bond granted by police expires. The defendant will then have to apply to Court for bail.

6. Make referrals to lawyers, when necessary. Most cases will need the intervention of a lawyer. Where a detainee cannot afford a lawyer, you may need to refer them to a Legal Aid provider or assist them in getting a *pro bono* lawyer to represent them and assist in their defense. It is therefore beneficial to develop a working relationship with legal aid providers, pro bono lawyers, human rights NGOs and other bodies willing to assist in securing or providing legal aid to poor detainees.

c) **Police prepares the suspect(s) file and forwards it to the Resident State Attorney (RSA).** If the RSA finds sufficient evidence, will sanction (authorize) the file. According to current procedures, the file is supposed to be sanctioned within 48 hours.

d) **If a case is sanctioned to go to Court**, the suspect is taken to Court at which time the Magistrate reads the offence against which the person is charged. At this stage the person is referred to as an 'accused person'. The Magistrate will ask the accused person whether or not s/he admits the offence.
If the accused person admits the offence, then the judicial official will indicate that s/he has entered a 'plea of guilt', which means an admission of guilt. The Judicial official will remand the accused person and let him/her know of the date when the sentence will be read to him.

If the accused person wants to plead guilty at this stage, s/he can also undergo a process called "Plea Bargain". This is an arrangement where an accused person agrees to plead guilty in exchange for a more lenient sentence. The plea bargaining process is between the accused person and the prosecutor.

A ***prosecutor*** is government's representative responsible for presenting the case in a criminal trial against the accused person. S/he is also called the State Attorney

What is Plea Bargain?
The agreement on the sentence between the prosecutor and the accused person depends on the amount of evidence against the accused person. Sometimes the prosecutor and accused person agree to a plea bargain deal, but the judicial official can decide to change the sentence, especially if the offence is grave; and the evidence against the accused person is overwhelming.

If the accused person does not admit the offence, then the Magistrate will ask the prosecution about the next steps. If the prosecution indicates that inquiries are still going on, then the Magistrate will remand the accused person to prison and give a date when the person will return to Court. If the offence is bailable, that is, if it is the kind of offence for which bail can be given, then the accused person can raise his hand and apply for bail.

Handling of capital offence upon Arrest
If a person is accused of a capital offence, that is an offence whose punishment is either life imprisonment or the death penalty, the person will be brought before a Magistrate who will read the charges or offence to the accused person. The Magistrate will then inform the accused person that s/he has no authority to hear the accused's case because it is only triable by the High Court. The Magistrate will then remand the accused person. Bail in capital

offences is only given by the High Court; and the accused person has to give exceptional grounds, for instance grave illness that cannot be treated in prison.

A person charged with a capital offence can only be tried in a High Court. However, while investigations are going on, the accused person will first brought to a Magistrate's Court for mentioning of the case. Mention of the case refers to when the case is read out in Court, and the prosecution informs Court about the status of investigations in the case. While in the Magistrate's Court, a person accused of a capital offence is not allowed to indicate to Court whether or not s/he is innocent or guilty – this is done in the High Court. When investigations are concluded in a capital offence, the prosecution will inform the Magistrate upon which the accused person will be committed for trial of the case by High Court.

Bail

Bail is the temporary release of an accused person from prison awaiting trial, sometimes on condition that a sum of money be paid to guarantee that the accused person will appear in court. Bail is a Constitutional Right, based on the fact that a person who is charged with a criminal offence is **presumed innocent until proven guilty**. Bail is therefore an important mechanism to protect people from wrongful detention. It also contributes to reducing prison congestion, since it allows a person to be at home and take care of his/her family as the case goes on.

*A **capital** offence is a crime which is treated very seriously that death may be considered a suitable punishment. Any criminal charge which is punishable by the death penalty, called "capital" since the defendant could lose his/her head. In Uganda such crimes include murder, rape, defilement, treason. A charge of a capital offense **usually** means no bail will be allowed*

Article 23(6) of the Constitution states that:

A person arrested in respect of a criminal offence has a right to apply to court to be released on bail. Court may allow the person to be released on bail on conditions which court considers reasonable. If a person is charged with a non-capital offence, then s/he can apply to Court to be released on bail if s/he has spent 60 days in prison without the case being tried.

A person charges with a capital offence can apply to be released on bail if s/he has remained in prison for 1800 days before the case is committed to High Court for trial.

Factors that Court considers while deciding whether or not to give an accused person bail?

When an accused person applies for bail, s/he must demonstrate to Court the following:

1. That s/he has a permanent home
2. That the accused person has substantial sureties.
3. The offence is bailable (one for which bail can be given. This usually refers to cases which are not capital in nature)

A surety is a person who agrees to take responsibility for an accused person to ensure that the accused person will attend his/her hearing in Court. The Court usually binds the surety by a certain amount of money (which may be paid immediately; or not in cash); or property. Should the accused person fail to appear in Court on the set date and time (also referred to ***as jumping bail;*** *or* ***absconding***) without a reasonable cause, then the money or property may be forfeited or taken by the Court.

Who can be a surety?

- A responsible person in society; respectable and of good behavior
- Not have a criminal record
- The person should have a home where s/he has been staying for at least six months. The surety may be asked to prove their identity and residential address
- The person should be in position to ensure that the accused person attends Court. The surety may be asked to provide details of how long s/he has known the defendant and describe their relationship, for example as the defendant's parent, wife or husband.
- Should be over 18 years of age,

What can a surety do if s/he thinks the defendant will default?

If you believe the defendant is likely to violate the conditions that Court gave him/her and not turn up to court, the surety should request court to be discharged from his/her obligations as a surety. S/he must first produce the accused person to Court before applying for a release of surety. The surety’s obligations will continue until an order is made by court that cancels the surety’s undertaking. When a person is discharged from being a surety the accused person is usually taken back into custody.

If the court is satisfied that the person you are surety for has been served with the Order to Appear, the court may issue a warrant for his or her arrest. The Supreme Court Judge may refuse your application, discharge you from your obligations as a surety, grant new bail conditions or cancel the grant of bail and place the person you were surety for into custody.

4. The accused person must not be in position to influence the investigations, for instance through threatening witnesses or the person who made the complaint to police
5. Does not have a criminal record related to this particular offence – generally having no prior criminal record can be used as a ground when requesting for bail. If a person has been repeatedly arrested, tried and convicted for a particular offence, then s/he is regarded as a habitual offender; and thereby not fit to be in society.
6. Court will also consider the seriousness of the offence and the punishment; and the available evidence against the accused person. Serious crimes or felonies are not generally bailable, except under special circumstances which include illness that cannot be treated in prison, advanced age, etc.

If an accused person fails to meet some or all of the requirements above, then s/he can be denied bail. On the other hand, if prosecution has overwhelming evidence against a person, then bail may not be granted because the accused person may be more inclined to run in order to escape punishment.

7. The accused person may also be detained and refused bail for his/her own safety

How to apply for bail

For simple cases, the accused person can apply for bail by word of mouth after putting up his/her hand in Court to signal to the judicial official that s/he has something to tell Court. For serious offences, the bail application must be made in writing to High Court. It is advisable to get a lawyer to draft this application. Court will decide on whether or not to grant bail after listening to the accused person.

If bail is not given the Magistrate will give reasons for not granting bail, upon which the accused will be remanded to prison. The Magistrate will give a date when the accused person will return to Court for the hearing of his/her case. However, even when remanded in prison, the accused person can still apply for bail if s/he fulfils the conditions that are required for getting bail.

Cash bail and non-cash bail

Cash bail – this is the sum of money asked by Court as security to ensure that the accused person goes to Court. It is paid immediately (there and then), although it is refundable in case the accused person is not found guilty.
Non-cash bail – is a sum of money asked by Court to be paid by a surety ONLY when the accused person FAILS to appear in Court. It does not have to be paid there and then

It is up to the judicial official to determine whether bail will be cash or non-cash, considering the circumstances of the case. For serious offences a judicial official may request for a high cash bail. Simple offences usually attract non-cash bail.

Refunding of bail

Bail money is returned to the accused person upon successful completion of the case that is to say when final judgment is pronounced.

Bail money is refundable if an accused person is found guilty or not found guilty. The process is as follows:

- When the case is concluded, write a letter to the Judicial official(Magistrate, Chief Magistrate ,Registrar) who heard the case, requesting for refund of the bail money
- Attach a bail form on which you have been reporting to Court; and the receipt you received when bail was paid
- Attach a copy of the accused person’s identification papers(ID);Claimant’s bank account; Order for refund by court and Discharge order
- Wait for the judicial official’s response
- Once the judicial officer ascertains that the case was indeed completed, the request will then be forwarded to the accounting officer to release the bail funds directly to the claimant. Where claimant’s bank details are not provided, the payment process is delayed, as cash refunds are no longer acceptable.

Jumping bail

Jumping bail refers to a situation where a suspect or an accused person to fails to appear for a court appearance after being given **bail,** without a reasonable explanation. Jumping bail is usually done with the intention of avoiding prosecution, sentencing or going to jail. ... It is also called "skipping" bail. Where an accused person jumps bail, the judge or magistrate may issue a warrant of arrest for the accused person to be brought before the court. Where this occurs, the surety will lose the bond used to guarantee the appearance of the accused in court to answer charges brought against him. Please note that the surety cannot be arrested for a suspect jumping bail.

e) Trial of criminal cases

A criminal trial begins with the prosecution bringing evidence and witnesses to prove the case against the accused person. The accused person has a right to question or cross examine the witnesses brought by the prosecution. As a paralegal, you can advise the client to ensure that the accused person brings out any inconsistencies in the prosecution witnesses' evidence.

After prosecution completes bringing its evidence, a paralegal can assist the accused person to weigh the evidence presented to see whether a case has been presented. In assessing the prosecution's evidence, the following factors essential to prove criminal responsibility can be considered:

i. Legality - the offence must be written in law and a punishment prescribed **at the time the offence was committed**. A person cannot be convicted of an act which did not constitute an offence when it was committed
ii. Linking the accused person to the crime – the prosecution must clearly link the accused person to the offence.
iii. Men's rea (intention) – this refers to the criminal intention to commit the crime, also referred to as a guilty mind. Prosecution must prove that the accused person had an intention to commit a crime. In other words, s/he has a guilty mind.
iv. Actus Reus - this refers to the actions of a person related to the commission of the crime.

To prove criminal liability, prosecution must prove that the accused person had an intention to commit the crime; AND that s/he committed it. Having a guilty intent alone is not enough.

If, at the end of the prosecution's case, criminal liability has not been established, the paralegal can advise the accused person who is not represented by a lawyer to inform the judicial official that a case has not been proved against him; and apply for the case to be dismissed on the basis that the accused person has '***no case to answer***'.

Should the judicial official determine that the accused person has a case to answer, the judicial official will inform the accused person; and will indicate a date when the accused person will present his defense to the facts presented by the prosecution. The paralegal can assist the accused person to identify witnesses who can help prove his/her innocence; and ensure that the witnesses attend Court on the date indicated by Court. ***It is the responsibility of the accused person to ensure that the witnesses attend court***.

After prosecution and the accused person present their cases, a process called 'submission' takes place. This is a process whereby each side makes presentations to the judicial official to persuade him/her about the guilt or innocence of the accused person. In Uganda, an accused person is presumed innocent until proved guilty. This means that the prosecutor has the responsibility to prove the case against an accused person **beyond reasonable doubt.**

The phrase ‘beyond reasonable doubt’ refers to a standard that must be met by the prosecution’s evidence in a criminal case. This means that no other logical explanation can be derived from the facts except that the accused person committed the crime, thereby overcoming the presumption that a person is innocent until proved guilty. The responsibility of proving a case beyond reasonable doubt is on the prosecution.

In case there are any doubts about the guilt of the accused person, this doubt should be used in favor of the accused person.

f) **Judgment**

After considering the evidence and submissions from prosecution and the accused person, the judicial official will make a decision. This is referred to as a verdict. If the accused person is found to be innocent, s/he will be set free. In case s/he is found guilty, the judicial official will make that pronouncement and indicate a date when s/he will sentence the accused person.

g) **Sentencing**

During the sentencing phase of a criminal case, the court determines the appropriate punishment for the convicted defendant. In determining a suitable sentence, the court will consider a number of factors, including the nature and severity of the crime, the defendant's criminal history, the defendant's personal circumstances and the degree of remorse felt by the defendant.

The paralegal can assist the accused person to prepare mitigating factors. A mitigating factor is any information or evidence presented to Court regarding the accused person or the circumstances of the crime that might result in a lesser sentence. They can include the fact that the accused person is a first time offender who is also remorseful, mental illness, cooperation with the authorities.

h) **Appeal**

A person convicted of a crime may ask that his or her case be reviewed by a higher court. If that court finds an error in the case or the sentence imposed, the court may reverse the conviction or find that the case should be re-tried.

Remedies available to victims of unlawful arrest and detention

Article 23 (7 & 9) of Uganda’s Constitution provide remedies for a person who has been unlawfully arrested and detained. Under Article 23(7), a person who is unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the State or an agency of the State or other person or authority.

On the other hand, a person who has been detained without being produced in Court has a right through himself or his representative, to apply for a ‘***writ of habeas corpus***’Article 23 (9) of the Constitution. The writ of habeas corpus is usually directed to the person holding a person to produce the person in Court so that the Court can determine the legality of his/her detention; as well as determine whether the detention should continue or not.

Habeas corpus proceedings are meant to ensure that a prisoner can be released from unlawful detention i.e. detention lacking sufficient cause or evidence or detention incommunicado. The detention must therefore be forbidden by the law.

In other cases, a person accused of a case which is not a capital nature, is entitled to be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for one hundred and twenty days (Article 23 5(b) of the Constitution. A person accused of a capital offence is entitled to be released on bail if he remains in custody for 180 days without having his case committed for trial to the High Court(Article 23 5(c) of the Constitution..

Knowledge assessment questions

Case One:
Hakim works as a mechanic in Kisseka market where he repairs vehicles for several clients. One day while a client had left his vehicle with Hakim to replace brakes, a thief stole side mirrors from the vehicle. When the client came for his vehicle and found that the side mirrors were missing, he had Hakim arrested and he is currently detained at Wandegeya police. How can you assist Hakim in this case?

Case two:
Albert went to visit Kasule at his home in Kinnawattaka. While at Kasule's home, police arrived and arrested everyone in the home including Albert. It is not known where Albert was taken. Albert's relatives heard about the arrest and have come to you for assistance. They cannot afford a lawyer. What can you do as a paralegal?

Question and answer session – Facilitator asks participants questions and they brainstorm on the answer.

1. John is arrested and charged with murder. John's family wants to meet with the victim's family to offer compensation so that they withdraw the case and get John released. What is your advice?
2. Richard is arrested and charged with defiling 8 year old Mary. Mary's parents are demanding for 3 million from Richard so that they drop the case. What advice would you give
3. Ssalongo owns a bakery and employs a driver to distribute bread to shops. One day his driver knocked down and killed a cyclist and ran away. The police have arrested Ssalongo because he employs the driver. Nnalongo comes to you for advice and assistance in this case. What would be your advice?

On the criminal aspect – Ssalongo did not commit the crime, so police would not be able to establish the motive and action. However, being an employer, Salongo could be vicariously liable for the actions of his driver if they are done in the course of his employment.

On sentencing: What are the aggravating and mitigating factors?

A case scenario: Beatrice and her four sisters and three brother lived with their parents. Beatrice's father practiced incest, raping and impregnating Beatrice's sisters. Beatrice's father was reported to police who demanded for fuel to go and arrest him. The mother had no fuel, so Beatrice's dad was not arrested. Her mother left the home; but she could not go with her children because she could not afford to look after them.

Beatrice's father continued raping his daughter and after impregnating her three sisters, he started raping Beatrice who reported the case to her brothers and sisters, but nothing could be done. The father impregnated Beatrice; and continued raping her. One day after raping her, Beatrice lost her head and hit her father repeatedly, killing him. She was arrested for murder.

The Judge heard her case during which Beatrice admitted to having killed her father; and her brothers and sisters testified as to how the father continually raped them. Since Beatrice admitted the case, the judge has found her guilty. Sentencing of the case is within four weeks. Beatrice's family approach you, asking to help them put together some mitigating factors so that the judge does not have to give Beatrice a death sentence.

What mitigating factors would you come up with?

After answering this question, you can choose to inform participants that this was a real life case, where the judge sentenced the girl to only one night in prison even after she had found the accused guilty. The judge gave her reasons for this decision – the accused had already been victimized by the people who were supposed to protect her (her father and the police to whom she reported the case and they did nothing). Having been already victimized, the judge would not victimize her again by imprisoning her.

MODULE TEN: HANDLING CIVIL CASES AND CIVIL PROCEDURE

Objectives and learning outcomes	By the end of this module participants should know how to handle civil cases; and how they can assist a person who has no lawyer to represent themselves in a civil case. Participants should also know the steps in a civil case and the importance of each step in the litigation process.
Duration	3 hours
Contents/Topics	• What is a civil case? • Self - representation in civil cases - Basic questions to address before taking case to court - Preparing a plaint - Filing documents - Process after case is filed - Defending a claim - Procedure in civil cases - Terminology used in civil cases
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook
Equipment	LCD, flip charts, marker pens

What is a civil case?

Civil cases are usually disputes between individuals regarding the legal duties and responsibilities they owe one another. These cases are decided through civil law suits, usually instituted by one individual suing another, or a company or government.

Approach to handling civil cases

As a paralegal going to Court should be an option of last resort; and instead adopt an approach of trying to resolve the dispute amicably through advice, counseling and alternative dispute resolution. If this is not fruitful, the paralegal can consider referring the person to legal aid providers or pro bono lawyers to assist them take the case to Court.

Litigation is not a bad or ineffective method of obtaining justice. The problem with litigation, however, is that due to its adversarial nature, it involves complex language and procedure and sometimes requires the huge expense of hiring lawyers. As a result, this method of dispute resolution is not realistically available to persons without considerable financial means and due to a vast backlog of cases within the court system, it often takes a long time to get a final decision from the court.

Representing yourself in civil proceedings

In case a person has tried to resolve their legal problem and failed, then s/he has a right to have their dispute to be resolved in a Court of law or a tribunal. However, procedures in Court are complicated, that is why it is advisable to have a lawyer assist a person through this process. However, not everyone has access to a lawyer; and sometimes the lawyer is too far from the place from where the dispute is to be resolved; which requires a person to represent themselves.

1. Basic questions to address before taking a case to Court?

a) Do you have a valid case to take to Court?

Civil cases are taken to Court on the basis of a c***ause of action'***. A cause of action refers to 'a fact or a combination of facts which sufficiently justify a right to sue to obtain money, property; or the enforcement of a right against another party. Cause of action also refers to a legal theory upon which a person takes a case to Court (for instance, negligence, breach of contract.

The *cause of action* is the heart of the complaint which initiates the law suit. It generally includes both the legal theory (the legal wrong the plaintiff claims to have suffered) and the remedy (the relief a court is asked to grant). The claimant needs to take care to file a proper case in Court. If it is not done properly, then the person who is filing may lose his case because of simple technicalities.

A person who is filing a case in Court is also referred to as the 'Plaintiff'. S/he must prove certain points in order to win a given type of case. These are called the 'elements' of that cause of action. For instance in a case of negligence, the plaintiff must prove the existence of a duty; a breach of that duty; link the breach to the defendant; and the damage occasioned as a result of that breach. If the plaintiff does not indicate enough facts to support every element of this claim, then the person whom s/he is taking to Court can apply to Court to dismiss the case for failing to state a claim for which relief can be given.

Specific causes of action can arise out of contract-based actions; statutory causes of action; torts such as assault, battery, invasion of privacy, fraud, slander, negligence, intentional infliction of emotional distress and suits in equity such as unjust enrichment.

b) Are you out of time?

Before you start your case, you should check that you are still allowed by the law to take a case to Court. Civil proceedings must be started within a fixed period called a limitation period. After the limitation period has expired, the claim usually cannot be brought unless a person can give a reasonable explanation to Court as to why s/he could not bring the case in time.

2. How to prepare a Plaint

The first step in filing a civil case is by preparing a complaint, also referred to as a "Plaint". The person filing the complaint is the "plaintiff." The party whose actions are being complained about is the "defendant." A sample plaint is found in the paralegal handbook.

If you prepare your own complaint, it must be either legibly handwritten or typed and on one side of the paper only. Leave margins on both sides and at the top and bottom of the paper. The first page should begin with the case "caption." The caption includes the name of the court, the names of all the parties, and a space for the case number. (Court staff will fill in the case number once a number has been assigned.

The Plaint/complaint must be written in English, because English is the official language of the Court system.

3. Filing documents

After preparing and signing the Court documents, the person filing the case has to file the case in the registry of the Court which is indicated in the heading of the complaint/plaint. The registry staff check the documents to ensure that that they are completed correctly. The registry can also provide basic procedural information about the Court.
Note:

(a) Registry staff are not lawyers. They cannot provide the litigant with legal advice about his/her matter or tell them what to say in Court. A litigant cannot rely on any information given to them by the Registry staff.

(b) Please treat all registry staff with respect and courtesy. Much as the plaintiff may have a lot of stress and anxiety about his/her case, s/he should be mindful not to pass on their emotional distress to the Registry staff. Even when the plaintiff has to express his/her frustrations to the registry staff, it must be done politely.

Process of filing Court documents:

You may file a Court document by delivering it in person to the Court registry where it is received, stamped and filed. You cannot file documents by emailing them to the registry.

- Ensure that you have attached all the documents which you will rely on in Court. Do not attach original documents – if they are official documents, obtain and attach certified copies. In other cases, attach photocopies, and ensure to bring original documents when the hearing of the case begins.

- If you are filing in person, bring the original document to be filed and a copy of the document. The registry will stamp and file the original document, and stamp the copy which will be returned to you. You will be responsible for making as many additional photocopies of the stamped copy that was returned to you as are required so that copies can be served on all the other parties, as well as ensuring that you keep at least one copy for yourself.

4. Be polite

You should be polite to everyone that you encounter in the process of bringing a case to court and during the hearing itself. This includes court staff, your opponent and their lawyers and people that you subpoena to ask for documents or to give evidence to support your case.

5. Language

If you require an interpreter, inform the Court who will arrange for one to attend and translate for you. It is the duty of Court to ensure that the interpreter is present on all occasions you are appearing in court. However, it is the responsibility of the litigant to inform Court that s/he requires the services of an interpreter.

6. Court fees: Filing fees:

When a person files documents with the registry, s/he will be required to pay a filing fee. Documents that require a fee to be paid include any documents that are commencing proceedings and any applications that are made in the course of the court case. The fees payable for filing documents are prescribed; and you can ask the Court Registry staff to advise you on the fees payable. All fees are payable into a designated bank. Do not give money to Court staff for filing fees. You have to pay and receive a receipt of payment.

If a person cannot afford to pay the Court fees, s/he can apply for a waiver of court fees in certain circumstances, under the Pauper Act of Uganda. An application for a waiver of fees is basically informing the Court that the person has a case, but is too poor to pay the fees; and an injustice will happen if s/he is unable to file his/her case in Court. However, the requirements for fulfilling conditions as a pauper are quite stringent; and can be humiliating.

7. What Court does after filing your case

a) Opening the case

If a person submits the necessary documents to Court and pays the required fees, a case will be 'opened'. Opening a case involves assigning a case number and a magistrate or judge. Once a case is assigned a case number, everything that s/he receives from Court will have that case number on it.

b) Summons and service

"**Service of process"** refers to the procedure of notifying the defendant that a law suit has been filed against him/her; what the case is about; and the time for filing an answer. Service must be undertaken in the process specified under the Civil Procedure Rules (CPR). A case will not proceed against a defendant who has not been served.

Generally, the plaintiff is required to serve each defendant with a copy of the summons, the plaint and copies of any other applications that are filed along with the plaint. This is referred to as 'effecting service". The plaintiff is responsible for effecting service; and making additional copies of the documents for service (in case there are more than one defendant).

The copy of the summons will indicate the date by which the defendant(s) should have filed their replies to the plaintiff's claim. The days are usually calculated from the date of receiving the summons?/the date of the summons?

The plaintiff is required to make every effort to serve the summons to the defendant(s) in person. It is not enough to leave the summons at the defendant's home; or with a wife or child. If summons are being served on a company or government agency, they must be received by a person who is authorized to receive them. In the case of a company, it is the Managing Director or Company secretary. If the case is against government, the summons have to be served on the Attorney General of Uganda.

The plaintiff can use the services of a "process server" – a person who serves legal papers for a fee. After effecting service, the person who effects service must file with the court a "return of service." This is a statement made under oath indicating that service was effected; when the service was made; and who received the summons.

All other documents that are filed have to be served on the other party in the same way as summons are served. If the other party to the case is being represented by a lawyer, then all documents should be served on the lawyer. The plaintiff also has to indicate on the plaint, the address at which documents will be served on him/her so that other parties and the Court can communicate with the plaintiff.

Filing documents does not mean that they will become evidence in your case. The evidence will be received at the hearing before the Registrar or Judge. However, when filing the case, you have to indicate the documents that you will present as evidence in Court.

c) What happens after service is effected?

Once a defendant is served, several things may happen. The defendant may file an answer, file a motion (application) or, perhaps, do nothing. If a defendant files an answer, the next step would be a scheduling conference where both the plaintiff and defendant meet with the judicial official to decide on a few things, for instance what the issues to be determined are; deadlines for doing or filing certain documents in the case.

There are a number of different motions which may be filed before an answer is filed. If the defendant is served within a few days of the expiry of the days indicated in the summons, s/he may apply to extend the time within which to file the defense, provided that the defendant provides good reasons for not being able to file his/her defense in time.

If a defendant does not file something within the time for filing a response; and the process server swears on oath that s/he served the defendant in person but the defendant either refused to accept the summons; or having received the summons, has not filed a defense; then the plaintiff may ask court to enter a default judgment.

d) What happens if the defendant cannot be served in person; or cannot be found?

If the plaintiff makes all reasonable efforts to find the defendant in order to effect service, but fails to find him/her, then the plaintiff will return to Court with the summons and swear an oath that s/he has made every effort to find the defendant but failed. The plaintiff will then apply to Court to serve the defendant(s) by way of "substituted service".

A PERSON WHO HAS BEEN SERVED WITH SUMMONS SHOULD NEVER IGNORE THE SUMMONS. IF YOU IGNORE THE SUMMONS, THEN JUDGMENT CAN BE ENTERED AGAINST YOU, WITH SEVERE CONSEQUENCES UNDER CIVIL PROCEDURE RULES EVEN IF THE DEFENDANT REFUSES TO ACKNOWLEDGE THE SUMMONS, THE PROCESS SERVER WILL INDICATE IN THE RETURN ON SUMMONS THAT THE DEFENDANT REFUSED SERVICE, AND THE CASE WILL PROCEED IN THE ABSENCE OF THE DEFENDANT

Substituted service

Substituted service is derived from the word "to substitute, meaning that you replace the process of personally serving a party, to another process of serving the party with Court documents in another way. When a plaintiff swears on oath that s/he made every effort to find the defendant in order to serve him/her, then Court will give an order that the defendant can be served in another way – referred to as substituted service. This is usually done by placing a notice in a registered newspaper informing the defendant that a case has been filed against him/her; and that the defendant is required to file his/her defense within the days specified in the notice.

A notice of substituted service will run for the number of days given in the order for substituted service. If the defendant(s) does not enter appearance and file a defense at the expiry of the days in the order for substituted service, then the plaintiff will ask Court to enter a judgment against the defendant.

8. Defending a claim

If you are a defendant; and you have been served with a plaint and summons indicating that a suit has been filed against you; then you are required to file a defense within the days that are indicated on the summons to file a defense. Your defense should provide your contact details. If you are filing the defense through a lawyer, then your lawyer will be your contact for the Court proceedings. If you need more details about the claim being made against you, you can ask the plaintiff for more information.

Your answer to the plaintiff's claim should be specific relating to the claims, either denying or admitting, wholly or in part. If you also have a claim against the plaintiff, you should state so in your defense. Your claim against the plaintiff is called a '***counterclaim'.*** If you think the plaintiff does not have a claim or cause of action against you, indicate so in your defense, stating that the facts relied upon by the plaintiff to bring the case to Court to not reveal a cause of action against you.

If you believe that the Court does not have authority to hear your case (jurisdiction), you can both raise it in your defense; and also raise it at the earliest opportunity when the case begins to be heard.

If, at any stage during the case you feel that the judicial official hearing your case may not be fair, you could apply to have the judicial official to excuse himself/herself from hearing your case. You must have reasonable facts to

9. Entering appearance

If a party has started a case against you, you must let them and the Court know if you wish to defend the claim. You can do this by filing a notice of appearance or by filing a defense. If you do not enter an appearance or do not attend at Court on the day your case is scheduled, the Court may make a binding decision, including a costs order, against you in your absence.

10. Settling your case

Court encourages all parties to try to settle their dispute themselves. There is a procedure called 'mandatory mediation' in which Court will first refer the case to a mediator to try and resolve the case so that it does not go through a litigation process.

11. Notices of Motion

A notice of motion is a written application to Court after a case has started asking the Court to make an order about something. A notice of motion can be used for a number of reasons, including seeking directions or clarification on matters in dispute. The notice also tells the other party where and when the Court will hear the motion. A notice of motion must be filed together with an affidavit stating the facts on which you rely and, if relevant, specifying the kinds of documents in respect of which the order is sought.

If you are attending the hearing of a motion in Court, make particular note of the time the case is listed to commence. If you do not attend, the motion may be dealt with, including dismissed, in your absence.

You must sign every pleading, motion and memorandum that you file. At no time should any communication about or filing in your case be sent directly to a judge. If you want to ask the court to do something, you must file a motion. All pleadings and motions should be filed with the Clerk of Court. Any documents filed subsequent to the initial pleading must be served on parties. Unless otherwise ordered, service of subsequently filed documents on a defendant represented by a lawyer is made to the lawyer representing the party.

However, if the defendant's lawyer has not made an appearance at the time of filing any notice of motion or other application, the plaintiff must serve the defendant(s) with any documents filed subsequent to the initial pleading. When the plaintiff serves the defendant(s) with subsequently filed documents, the plaintiff is required to file an affidavit of service which states who was served, what document was served, how the document was served and when it was served.

All documents should be titled. If filing an application, like a notice of motion, it should indicate the original case from which the application arises. A sample notice of motion is found in the annex in the handbook containing sample documents.

12. Discovery

Discovery is the process of obtaining information and evidence relevant to your case. There are many different ways to obtain discovery. The most common are: interrogatories (written questions) and requests for production of documents. Most discovery requests are directed to the parties in the case, although under certain circumstances, discovery can be obtained from non-parties. Conduct of discovery is governed by the Civil Procedure Rules (CPR). There are some documents to which in most situations you cannot have access, for example, communications between parties and their lawyers.

When conducting discovery, be sure to make your requests promptly so that the party responding has sufficient time before the discovery deadline to answer or object. It is also important to respond to any discovery requests you receive by the deadline indicated unless the other party agrees, in writing, that you may have additional time.

13. Affidavits

An affidavit is a statement prepared by a person which is used to provide the Court with written evidence. The statement must be sworn or affirmed to be true in front of a lawyer who is certified to act as a Commissioner for Oaths. The affidavit should be counter-signed by the Commissioner for Oaths. The person making an affidavit is called the "deponent". An affidavit can be made by: a plaintiff or applicant; a defendant or respondent; a witness; or an expert who has knowledge relevant to a case.

An affidavit checklist is contained in the paralegal handbook; and it will help the person making the affidavit to write it properly.

14. Adjournments

If either the plaintiff or defendant wishes to postpone the hearing of a case (adjournment), s/he should request the Court for an adjournment. An adjournment can be made in person on the date the case comes up for hearing; and the person requesting the adjournment should provide good reasons as to why s/he seeks an adjournment.

A request for adjournment can also be made by letter, but it should be with the consent of all other parties to the case. The request for adjournment should ordinarily be made well before the day of the hearing.

15. Hearing of the case

When a case is filed in Court, it will be assigned to a judge (if the case is in the High Court); or to a Magistrate (if the case is in a Magistrate's Court). The judge or Magistrate is required to be impartial and to determine the case based on the evidence and the relevant law.

A party to the case is not permitted to contact the Judge or Magistrate directly regarding the case. Communication to the judicial official should be formal. You must not seek legal advice from the Judge or Magistrate about your case.

If you are required to file documents (such as statements of claim, defenses, affidavits, notices of motion) they are to be filed in the Registry. Copies are not to be sent to the Judge or Magistrate (unless requested) and sending such documents does not mean that they have been filed as required by the Rules.

16. Appearing in Court

If you are representing yourself in Court take particular note of the following points:

a) The Court always makes a list of cases ***(cause list)*** to be heard in a particular week. If you are being represented by a lawyer, then s/he gets the cause list for the following week at the end of each week. The cause list is also pinned at the notice board of the Court.

b) When your case is coming up for hearing, the Court will send you a 'hearing notice' to inform you of the date of the case. A hearing notice is a document informing the parties of the date for hearing the case. If the Court is hearing an application arising out of the case filed in Court, then the date for hearing the application is indicated on the application or notice of motion.

c) Check the hearing notice or cause list to confirm the time and location of your hearing. If you are not at the Court on time your case may be dismissed or a default judgment entered in your absence.

d) Be prepared. Be clear about what you want to say and speak slowly and clearly. Wait for your turn to speak and do not interrupt the Judge or other party.

e) You must always conduct yourself courteously in Court. Bow to the Registrar or Judge as you enter and leave the court room, turn off mobile phones and do not eat or drink in court.

f) Address the Judge as "Your Honor" or the Registrar or Magistrate as "Your Worship". Stand to speak and sit while the other party speaks. Do not interrupt or talk over the Judge, Registrar or other parties.

g) Bring at least three copies of all relevant documents to court: one for you, one for the Judge or Registrar and one for every other party.

h) Bring your own paper and stationery to take notes of what is being said in Court.

i) Pleadings, such as statements of claim, summonses and defenses are a part of the Court's record of the proceedings.

j) Other documents on which you wish to rely to support your case, including affidavits, must be handed up as evidence at the hearing. This is called "tendering the evidence". You may not be allowed to use such documents unless you have given them to your opponent well before the hearing in accordance with orders made at a directions hearing.

k) If you are relying on witnesses during your case, you must ensure that they come to Court on the day when they are scheduled to give their evidence or testimony.

l) If the other party brings witnesses and they testify in Court, you will have an opportunity to ask them questions about what they have said. Your questions to the witnesses of the other party should be aimed at weakening their testimony in order to make your case stronger.

m) If you are giving evidence, you may have to take an oath – swearing that you are going to tell the truth to Court. If you give false information to Court, you may be charged with an offence of telling lies under oath, and sentenced for perjury.

n) Take time to prepare your case. After you give evidence, the other party may want to question you on the evidence you have given. Answer slowly and carefully. The other party may want to annoy you by saying things to make you get angry. Do not lose your temper and answer angrily to the other party or the judicial official as it may make your evidence appear untrustworthy.

o) If the matter for which you are reporting the case took place a while ago, it is possible to forget simple things like the time, place, what someone was wearing, etc? Go over the evidence you want to give in Court, and ensure that you remember important dates and times (if they are relevant to the case). If you give uncoordinated evidence on simple things then it could discredit all your evidence.

p) In the course of giving your evidence, the judicial official may ask you some questions in case your testimony is not clear to him/her. Answer calmly and carefully.

q) Court proceedings are conducted in English. In case you require an interpreter, inform the Court so that an interpreter is got for you.
r) After all the witnesses have been heard, both parties will have an opportunity to make submissions about your case, the evidence received and the other party's case at the hearing. If there are any inconsistencies that were brought out in the other party's case during hearing, bring them to the attention of the judicial official to weaken the other party's case and make your case stronger.

If you lose:
Before filing a case; or entering appearance as a defendant, you should consider the possible consequences of losing. You should carefully consider whether or not you have a cause of action. Furthermore, you should take the opportunity provided by Court to try and settle the case before hearing begins.

17. Judgment

A judgment is the Court's decision about the case. Judgment may be given immediately at the hearing or it can be given later. This is called "reserving judgment". If judgment is reserved, you will later be notified of the date, time and place that the judgment will be given. Once the case is heard and you lose the case, the winning party may ask Court for an Order for you to pay the other party's costs of the case. If the other party is represented by a lawyer, you may also have to pay the lawyer's legal fees and expenses of the case.

The winning party is also entitled to seek certain costs that it incurs during the lawsuit, such as costs for bringing witness, photocopying, and transport and filing fees. In some cases, these costs can easily add up to millions of shillings. It is common for a winning party to seek its costs from the losing party. If you lose the case, you may end up paying a lot more, including losing property which can be sold off to recover the other party's expenses in the case.

18. Costs

Even where a party is representing himself/herself, s/he still incurs costs to take a matter to Court; which the losing party still has to pay. It is for this reason that, where you can, try and settle a dispute out of Court rather than engage in litigation.

Court Ordered costs

If you lose a case, Court may order you to pay the other party's costs. If they are legally represented, it may mean that you have to pay for their lawyers and Court fees. If you are successful however, you may be awarded costs which may enable you to recover some of the fees that you have paid or owe, for example filing fees from the other party. However, even if you are successful, it is unlikely that you will recover all of your costs involved in bringing the case. Your costs will not include, for example, income you have lost because you have taken time off work to come to Court.

19. Appeals and reviews

If you are not satisfied with the decision of a Judge or Magistrate, you may be able to appeal that decision. If the decision is made by a Magistrate, you can appeal to the Chief Magistrate. If it is made by the Chief Magistrate, appeal to the High Court. If the decision is made by the High Court, appeal to the Court of Appeal. If the Court of Appeal decides against you, then you can appeal to the Supreme Court.

There is not however an automatic right to appeal every decision a Judge makes. Depending on the type of decision, sometimes you will need the Court of Appeal's permission (or leave) to appeal. For example, if the decision is not a final decision in the case you will normally require leave to appeal.

Bear in mind that every time you decide to appeal, it has a consequence on the costs that you may have to pay in case your appeal is not successful. You must therefore carefully review your decision to appeal; and do so when you have good reasons (grounds) for appealing.

An appeal against a judgment is instituted by filing a document known as a "*Notice of Appeal".* This is usually filed within 14 days from the date when the judgment was delivered. If you do not file the notice of appeal within this time, then you must first file an application to Court to allow you to file outside the stipulated time; and giving good reasons as to why you were not able to file the notice of appeal in time.

After filing the notice of appeal, you need to prepare a "*Memorandum of Appeal"* which is the document setting out the reasons why you are not satisfied with the judgment. An appeal can be made on either one or two of the following reasons:

a) That the judge or magistrate made a mistake on the law that is applicable to the case;
b) That the judge or Magistrate did not properly consider the facts of the case; and thereby came to a decision against you.

20. Terminology

Some useful terms which have been used above include:

Adjournment	Postponing a Court hearing or other Court appearance to another date.
Affidavit	A written statement prepared by a person. The statement must be sworn or affirmed to be true in front of a Commissioner for Oaths.
Affidavit of service	Statement filed with the court showing when you mailed copies of a document and to whom the copies were sent. The certificate of service appears at the end of the pleading or motion.
Caption	Appears on the top of the first page of any document submitted to the court. On the complaint, includes the name of the court, the names of all the parties, and a space for the case number.
Civil case	A case that is not criminal.
Cause of action	The set of facts upon which the party relies to ask the court for "relief." See also claim.
Civil Procedure Rules (CPR)	The rules that govern the way civil proceedings are undertaken
Claim	The set of facts upon which the party relies to ask the court for relief. See also cause of action.
Competent	As to a party, when he/she is of legal age and without mental disability or incapacity.
Defense	In a civil case, the reasons why the defendant disputes the claim against them. A Written Statement of defense is the document filed at Court by the defendant to notify the Court and the plaintiff that they dispute the claim.

Defendant	The party whose actions are being complained about in the complaint by the plaintiff. A person who has proceedings commenced against them in a Court.
Deponent	The person who is swears an affidavit.
Discovery	The process of obtaining facts and information about the case from the other party in order to prepare for trial.
Effect	As to service, providing the party(ies) to the case with copies of documents.
Entity	This legal term refers to anything other than a natural person – that is, an organization (such as a company, club, partnership, governmental agency).
Et al	"And others."
File	Describes the process necessary to begin the case in the court. Also refers to the process of submitting a document to the court.
Filing	Taking or sending documents to the Court Registry. The Registry staff will stamp the document and put it on the Court file and return stamped copies to be served on the other parties.
Frivolous	As to a lawsuit, lacking a factual and/or a legal basis.
In forma pauper is	Literally, "in the character or manner of a pauper." Describes the permission given to a person to proceed without prepaying the costs or fees of the court.
Interrogatories	Written questions directed towards a party, usually as part of discovery.
Leave	To seek leave of the Court is to ask for the Court's permission.
Mediation	An informal and confidential process in which a neutral third party (mediator) facilitates settlement discussions between the parties. Any settlement is voluntary, and the parties lose none of their rights to trial by judge or jury in the absence of voluntary settlement. The mediator has no authority to make a decision or impose a settlement.
Notice of Motion	A written application to the Court after a case has started asking the Court to make an order(s) about something. The notice also tells the other party where and when the Court will hear the application. .
Party to Proceedings	Someone who is participating in the lawsuit, usually either the plaintiff or the defendant.
Personal Service	Giving documents to a party personally, that is, face to face.
Plaintiff	A person who starts a civil case against another person in a court.
Pleadings	Documents that consist of the complaint, answer; reply; answer to a cross-claim; third-party complaint; and third-party answer. The pleadings set forth the parties' formal allegations of their respective claims and defenses.
Process servers	Individuals who serve legal papers.

Pro se	"For one's own behalf;" a person who does not retain a lawyer and appears for him/her self in court.
Registry	A place at the Court where people can file documents and make enquiries.
Relief	The assistance or benefit that the party seeks from the court. See also remedy.
Remedy	The assistance or benefit that the party seeks from the court. See also relief.
Reply	Response to a counterclaim.
Return of Service	A statement made under oath and filed with the court that service of the complaint was effected, and explaining when service was made and by what method.
Sealed Copy	A document or form that has been filed with the Court and has a court stamp on it.
serve	To provide the other party(ies) with a copy of a document that has been filed. Each document filed with the court must be served on the other party(ies).
Service of process	The formal process of giving or sending a document to another party in a case. As to the complaint, the procedure of notifying a defendant that a lawsuit has been filed, what it is about, and the time for filing an answer.
Statement of Claim or Plaint	A plaintiff files a statement of claim to start a civil case. It tells the Court and the defendant what orders the plaintiff is claiming and sets out the facts the plaintiff says entitle the plaintiff to those orders.
Summons	A document issued by the court and served by the plaintiff to inform the defendant that a case has been brought against the defendant.
Third-party	A party to the case other than the plaintiff or defendant.
Transcript	Where sworn testimony is reduced to writing

MODULE ELEVEN: FAMILY LAW

Objectives and learning outcomes	By the end of this module participants should know the different types of marriages in Uganda and how to enter into a valid marriage under the different laws governing marriage in Uganda. Participants will also know how to end each of the different types of marriages. The difference between Judicial separation and divorce
Duration	4 hours
Contents/Topics	• What is a marriage? • Types of marriages in Uganda – Church, civil, Islamic and customary marriages • Cohabitation • Termination of marriages
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook
Equipment	LCD, flip charts, marker pens

Family law (also called matrimonial **law**) is an area of the **law** that deals with **family** matters and domestic relations, including: Marriage, administration of estates, Succession and Inheritance.

Knowledge assessment questions

1. Samuel began a relationship with Juliet in 1995. They began living together in 1997 and have 3 children. Are they married? Participants should explain their answers.
2. Ask participants to tell you about the different types of marriages they know.
3. If I marry a woman according to the customs of our Acholi customs; and later want to separate with her, how would I do that as a man?

What is a marriage?

"Marriage is a legally recognized voluntary union between a man and a woman for life to live as husband and wife, to form a family under any of the existing legally recognized forms of marriage... The laws governing marriage in Uganda are found in the 1995 Constitution, the Marriage Act Cap 251; and Marriage of Africans Act Cap 253. The two Acts are applied to marriages conducted in the District Registrar's office who is the registrar of marriages; and also in Christian churches. Muslim marriages are governed under the Marriage and Divorce of Mohammedans Act Cap 252. Another type of marriage is the customary marriage which is governed under the customary marriage (Registration) Act Cap 248.

Types of marriages in Uganda

There are five kinds of marriages recognized under the laws of Uganda namely:

i. Civil Marriage
ii. Church Marriage
iii. Islamic Marriage
iv. Customary Marriage
v. Hindu Marriage.

Church marriage

A church marriage takes place when a man and woman decide to get married according to the Christian religion. The Christian faith includes Protestants, Roman Catholics, Anglicans, Seventh Day Adventists, Orthodox, Pentecostal churches. The place where the marriage takes place must be licensed as a place of worship.

Requirements for a church marriage:

a) Both parties must be at least 18 years old.
b) Both parties must voluntarily agree on their own to the marriage
c) Both parties must be single, that is, they are not in an existing marriage.
d) Both parties must not be closely related by blood or otherwise e.g. sisters, brothers, grandchildren, nieces, nephews, adopted children, parents, cousins etc.
e) The marriage must take place in a licensed place of worship during the day between 8.00am and 6.00pm

A church marriage is monogamous, that is, one man and one woman until death separates them.

Procedure to be followed for a church marriage to take place:

1. The partied appear before a recognized Church Minister who registers them upon fulfilling certain requirements of that particular church. For instance, Church of Uganda requires that the parties must be baptized, must have been confirmed, and must present a consent letter from the bride's parents.
2. The Church thereafter announces the banns/notice for three consecutive weeks. The ban/notice must be published for 21 days before the marriage can be celebrated
   Banns are an announcement in church of the parties' intention to marry and a chance for anyone to put forward a reason why the marriage may not lawfully take place.
3. The marriage ceremony must be undertaken in a place that is licensed to conduct marriages; and the Church Minister/Priest/Pastor must be licensed to conduct marriages.
4. The marriage ceremony must be witnessed by at least two other people who are adults; other than the minister conducting the marriage,
5. One of the people getting married must be a resident within the district in which the marriage is intended to be celebrated for at least the 15 days.
6. After the marriage ceremony is conducted, the marriage should be recorded in the register book kept at the church where the ceremony has taken place.
7. A marriage certificate must be issued and signed by both of the people who have got married; and witnessed by the two witnesses. The certificate is then handed over to the couple; and a copy kept at the Church.

However, a marriage remains voidable until it is consummated. Consummation is the process of having sexual intercourse in a marriage.

Civil Marriage

A civil marriage is a marriage that is conducted by the Registrar of Marriages. There is an office of the Registrar General who may appoint other people to also conduct civil marriages. At the District level a civil marriage is conducted by the Chief Administrative Officer (CAO). This marriage is recognized in law just like the Church marriage.

Requirements for a civil marriage to take place

a. The people marrying should be at least 18 years of age. Consent of a parent or guardian is not required.
b. The man and woman intending to marry must not be in another relationship or existing marriage. However, people who previously celebrated a customary marriage can get married in a civil marriage.
c. Both people getting married should have voluntarily agrees to get married.
d. The people who are getting married must not be closely related by blood or otherwise e.g. sister, brothers, grandchildren, nieces, nephews, adopted children, parents, cousins etc.
e. The Registrar of Marriages or the District Registrar (CAO) must display a notice of the intended marriage for at least three weeks to allow any person who has a reason as to why the people should not get married to inform the Registrar or CAO before the marriage ceremony.
f. One of the parties must be a resident within the district in which the marriage is intended to be celebrated for at least the 15 days.
g. The marriage must take place in the District Registrar's office; and must be conducted by the Registrar of Marriages or the District Registrar (CAO).
h. The marriage ceremony must take place during the day, between 8.00 am and 6.00 pm on any day of the week.
i. The Registrar of Marriages or the District Registrar (CAO) must provide a certificate of marriage which must be signed by the people who have got married, two witnesses and the Registrar of Marriages or the District Registrar (CAO).

In a civil marriage, a man is allowed to marry only one woman; and a woman to marry one man, that is, the marriage is monogamous.
If any of the above requirements are not fulfilled then **the marriage is void and illegal form** the beginning and has no legal consequences.

Characteristics of Church and Civil Marriages

A church and civil marriage have similar characteristics:

- Once a man or woman has been married, they cannot get married to someone else unless they have divorced; or one of them dies.
- The marriage must be between a man and a woman.
- The marriage is for life; unless they divorce
- The marriage is celebrated in a licensed place by a person licensed to conduct the marriage. It must be conducted during day time (8.00am-5.00pm) and in an open place

Rights enjoyed under the civil and church marriage

The 1995 Constitution of Uganda guarantees all parties to equal rights both at marriage and when the marriage has been dissolved. These rights include;

- The wife has a right to use the husband's names and take it for eternality even after divorce
- The parties to the marriage have a right to maintain each other in marriage including in sickness, in poverty, riches and in good health until death parts them.
- Parties have rights to share properties acquired together during the subsistence of the marriage and enjoy the same during marriage.
- Parties also have a right to own property individually upon agreement; and can dispose them off through the sell or through the will upon death.
- Children born within the marriage are presumed to be the children of the marriage, unless the contrary is proved.

- Both the parents have rights to have access, enjoyment and company of their children during marriage and upon divorce.
- If the parties happen to divorce, Court may order either of them to be paid alimony or maintenance of the other until dies or remarries.

Alimony is an allowance paid by a person's former husband/wife to maintain that person after divorce. Alimony is a result of a Court order to that effect; and Court can order the husband/wife to begin paying alimony even when the divorce or separation case is still going on.

- If the parties divorce, any property acquired before divorce may be shared depending on the agreements reached upon by the parties during marriage. If there was no such agreement, the property remains for the person who purchased them.
- Both parties enjoy the right of protection with regard to family property. For instance, no person shall sell, exchange, transfer, pledge, mortgage or lease any land; enter into any contract for the sale, exchange, transfer, pledging, give away any land; or enter into any other transaction in respect of land- from which they are sustained except with the prior written consent of the other spouse;
- The wife or husband party has the right to remarry upon the death or divorce of his or her partner.

Difference between a church and civil marriage
The main difference between a church and a civil marriage is that the church marriage is conducted by the religious leader of the church where the marriage takes place; while the civil marriage is conducted by the Registrar of Marriages or the Chief Administrative Officer (CAO) of the district

MOHAMMEDAN OR ISLAMIC MARRIAGES

What is an Islamic Marriage?

Islamic marriage is a marriage celebrated according to the Islamic faith. It allows a Manto marry more than one wife (up to four), but on fulfillment of the Islamic requirement of loving all of them equally. However, a man can also choose to marry one woman. Islamic marriages are governed by the **Marriage and Divorce of Mohammedans Act.** The most common form of marriage under Islam is "Nikah".

Requirements for an Islamic marriage

Any person intending to marry under the Islamic marriage has to have the following:

1. The woman intending to marry must not be in any other relationship or existing marriage
2. Both parties must not be closely related by blood or otherwise e.g. sisters, brothers, grandchildren, nieces, nephews, adopted children, parents, cousins etc.
3. The man must give the woman he intends to marry "mahr" or dowry, which is intended to convince the woman to marry him. This could be a gift, property or any kind of promise which does not violate the ideals of Islam. Mahr is given to the bride, not her relatives. Mahris determined by the woman.
4. The Quran does not state the age of marriage at which persons are to marry. Nevertheless Muslims have to abide by the laws of Uganda which do not allow a girl to engage in sexual relations before the age of 18 years.
5. An Islamic marriage is only valid between persons professing the Mohammedan religion
6. The consent of the parents is desirable although it's not a mandatory requirement
7. in case of divorce or death of the spouse, the remaining spouse must wait for up to three months before they can remarry.
8. The marriage ceremony must take place in the mosque or the home of the bride

9. The registration of marriage should take place within one month of the marriage ceremony. Registration may take place at the mosque at the time of the ceremony. In case the husband dies within one month of the marriage, the widow must register this marriage. Failure to register the marriage is an offence which can result into one month's imprisonment or payment of a fine

Procedure for an Islamic marriage to take place

Under this marriage, the families of the parties play a big and very important role.

1. The marriage is entered into after an offer has been made and it has been acceptable. The families of the parties do the negotiations.
2. The parties then chooses where they wish to be wedded. The wedding can take place either at home or in a mosque which the parties will have chosen.
3. The ceremony is always presided over by an Imam or Family Mwalimu. This ceremony must be witnessed at least by two people including the parties' trustee (wali).

Characteristics of an Islamic/Mohammedan marriage

a) A man can marry up to four wives provided he treats them equally in all material needs and matrimonial obligations.

   A man can also marry more than one wife in the following circumstances:
   - If his wife becomes terminally ill
   - If his wife is barren

b) The man or woman cannot marry up to one month after divorce or death of a spouse
c) Mahr, which is the wealth given to the wife, belongs to the wife and she has the right to go with it upon the dissolution of the marriage

CUSTOMARY MARRIAGES/ TRADITIONAL MARRIAGE

A customary marriage is a marriage, which is celebrated according to the traditions or customs of a particular community or ethnic group. In case both parties intending to marry belong to different tribes, they have the freedom to choose which custom to follow provided they fulfil the necessary requirements of that tribal custom.

What is required for a customary marriage to take place?

a) The parties must have attained the age of 18 years
b) Parties cannot be allowed to marry if their marriage is against the cultural norms, for instance marriage by people from the same clan
c) Both parties must not have previously contracted a monogamous marriage, which is still subsisting.
d) There must be payment of bride price if prescribed by the culture under which the marriage is to take place. Bride price has to be agreed upon by relatives of both parties to the marriage. The man is formally introduced to the woman's family.
e) Both parties must consent to the marriage.
f) It is advisable that the customary marriage is registered at the sub-county not later than six months after the completion of the ceremony with at least two witnesses in the sub-county where the marriage took place. Thereafter they will be given a customary marriage certificate. However, non-registration does not invalidate the marriage provided all the necessary customary requirements were met.

Procedure of registering a Customary Marriage

- Every sub county has the authority to register customary marriages and every sub county chief shall be the registrar.
- Two people who were present at the celebration of the marriage must witness the registration of the customary marriage.

- A certificate of a customary marriage issued shall be conclusive evidence of the marriage.
- It's a requirement to have a marriage by custom registered.
- Any adult member of society who may include but not limited to parents, brothers, sisters, uncles and aunts, of either party, chiefs, clan heads or other understanding person can witness the ceremony.

A man can marry more than one wife under a customary marriage. However, he cannot marry another woman in church or before the District Registrar.

A customary marriage can be converted into a Christian marriage or a civil marriage by undertaking the church or civil marriage ceremony. This marriage will no longer be governed by the Customary Marriage (Registration) Act; but will be governed by laws governing marriages in Church or the District Registrar who will issue a marriage certificate after the marriage.

Offences and penalties in a marriage

a. Bigamy – if a married person undertakes a marriage ceremony with another person while his/her spouse in still alive and yet is not exceeding 5 years}.
b. An unmarried person who undergoes a marriage ceremony with a married person commits an offence. If s/he is found guilty, s/he can be imprisoned for a period up to 5years.
c. If one of the parties makes a false statement, for instance using a false name, or stating a false age.
d. A minister or person performing or witnessing a marriage knowing that he/she is not duly qualified to do so. If the minister is found to be guilty, s/he can be imprisoned for a period up to 5 years.
e. Refusing/neglecting duty to fill out the marriage certificate.
f. Impersonation in marriage, for example pretending to be someone else so as to get married to a particular person.
g. Going through a ceremony of marriage, knowing that the marriage is invalid. If found guilty, a person can be imprisoned for a period up to five years.
h. Failure to register a customary marriage within 6 months is an offence punishable by fine of 500shillings.

COHABITATION

Cohabitation is an arrangement where a man and woman decide or choose to live together as husband and wife, without undergoing any form of legally recognized marriage. The law does not recognize cohabitation as marriage. It does not matter how many years a man and a woman have been living together or the number of children that they have. A marriage exists only if they formalize their relationship under any of the recognized types of marriage.

SEPARATION

Separation is the temporary suspension of spouses from their marital duties for a specified period. It applies to all types of marriage. Separation can be as a result of the parties agreeing; or one of the parties can petition court for separation. At the end of the agreed period, the parties may either get back together or start divorce proceedings.

Types of separations.

There are two types of separation namely:

a) Separation by Agreement (Mutual Separation)

Under this category of separation, a husband and wife agree to stay away from each other for some time. They may enter into an agreement called a "Separation agreement" which lays out the terms governing the separation.

b) Judicial Separation (Separation by Court)

This is when a husband or wife applies to court by way of petition for an order of separation.

Grounds for judicial separation

Any person applying for separation has to prove:

a) Adultery
b) Desertion(where a husband or wife abandons the other without good reason for two years or more)
c) Cruelty (includes violence, physical abuse, and mental torture among others).

If the court is convinced with the above grounds it may order for separation. If Court is not convinced, it may dismiss the request for separation because if insufficient evidence.

Effect of separation

a) The effects of both separation by agreement and judicial separation are the same. These are:
b) Separation does not end a marriage. During the separation the parties are still considered husband and wife and cannot remarry. It is illegal for a husband and wife to get sexually involved with another man during separation.
c) The purpose of separation is to give a chance for the parties to reflect and negotiate on working out their problems and decide if they want to get back together.

When does Separation come to an end

The separation comes to an end under the following circumstances:

a) The other spouse applying to the court to have it reversed. The person applying needs to prove that the order was obtained in his/her absence or that the desertion was justified.
b) The parties voluntarily agreeing to get back together.
c) The period agreed upon is reviewed; or it comes to an end

Termination of marriage

Termination of marriage is a situation when a marriage comes to an end through divorce.

DIVORCE

Divorce is when a marriage is lawfully brought to an end either by court or other competent agency. It is also referred to as a dissolution of marriage, that is, a marriage becomes dissolved.

How Church and Civil marriages are dissolved

Church and Civil marriages are dissolved the same way that is by a husband or wife requesting or applying to Court to dissolve the marriage.

Grounds for divorce for a Church and Civil marriage

- Where one of the parties commits adultery. Adultery refers to a situation where a man has sexual intercourse with a woman who is not his wife (including relative); or a woman having sexual intercourse with a man who is not her husband.
- Where a husband has changed his religion from Christianity to another religion, and gone through a form of marriage with another woman
- Bigamy (Where an already married man/woman remarries another man/ woman
- In cases of rape, sodomy or bestiality
- Cruelty Desertion for a period of two years and above

Bars to Divorce

However, sometimes even after a wife or husband has proved the grounds above, Court may refuse to give the person divorce. This can be done in case the wife/husband:

a. **Condoned t**he wrongful behavior of his/her spouse. Condoning refers to the act of forgiving or accepting the wife or husband's wrongful behavior which could otherwise be a reason/ground for divorce. If someone does not object to certain behavior, one may be said to have condoned it. For instance, if a wife applied to Court for divorce stating that the husband committed adultery, the husband could raise the defense that she condoned it, or knew about it and did not object to it.

However, adultery will not be taken to have been condoned unless the parties resume staying together and having sexual intercourse after the adultery.

b. **Connives or conspires to set up**, or agrees to a situation which involves the other spouse doing the wrongful act which would be the reason for divorce. For instance if a wife gets a woman for her husband in order to get a reason for divorce. If the husband has sexual intercourse with the other woman, the wife may not get the divorce if it is proved that she connived to get the woman for her husband.

c. **Collusion r**efers to the presenting of a divorce petition by way of a bargain or agreement between the parties. The reason why this is a bar to divorce is that true facts will be hidden from the court and in some case marital offence will be procured or pretended for the purposes of securing a divorce.

How do you petition for divorce?

A husband or wife can get a lawyer who will help them request the Court for divorce by writing and presenting a petition to Court. Petitions for divorce by Africans have to be made to the Chief Magistrates' Court. If one or both parties are not Africans, they should petition the High Court. If the Court is convinced about the grounds for the divorce, they will give a first order, called a ***Decree Nisi or Separation.***

Under a decree nisi, Court grants a separation order for a period of six months. The six months' period is also referred to as the 'cooling period', which gives parties a chance to cool off from whatever it is that led to filing the divorce petition. The cooling off period gives parties time for possible reconciliation and during this time no party is allowed to remarry or commit adultery.

If no reconciliation and/or reconsideration of divorce has occurred during the six months, then court will make a final order for divorce, referred to as a ***decree absolute*** which dissolves the marriage.

"The secret to a long marriage? Never get divorced!"

Divorce under customary law

A divorce under customary law is undertaken according to the customs of the tribe to which the parties belong; or were married. In many cases it involves a refund of the bride price (if any was paid); and a meeting between elders where it is agreed that the parties divorce. A letter is usually written to this effect. A person can also go to Court by using procedures as those applicable to Church or Civil marriages in as far as it is possible.

How is an Islamic Marriage ended (divorce)

There are five types of divorce in Islam, namely:

a) ***Talaq***: this is where a husband obtains his divorce by announcing his intention three (3) times at intervals of one month; and waits for three months (Iddat) to ensure that the wife is not pregnant. If sexual intercourse resumes within that period then the Talaq is cancelled. Talaq is usually on the following grounds:
   - Adultery
   - Insubordination and disobedience
   - Unreasonable denial of sexual intercourse by the wife
   - Changing religion

Note: In practice for you to divorce a woman, you have to give gift. And obtain certificate of divorce from the Uganda Muslim Supreme Council.

b) ***Khul***: If a wife is unwilling to continue with a marriage she can return her marriage dowry to her husband and get a divorce. This is only on the following grounds:
   - Sexual dissatisfaction on the wife's part;
   - Failure of the husband to maintain his wife;
   - Cruelty to the wife
   - Desertion by the husband for at least three months.
   - Changing religion
   - Failure of man to pay Mahri

c) ***Mabaraah***: A wife and husband can obtain divorce if they mutually agree to terminate the marriage and have worked out financial settlements.

d) ***Lian***: this is divorce by the Court and the only ground for this form of divorce is adultery. It happens where the husband accuses the wife of adultery and swears before the Court five times that his wife is guilty of adultery. The wife also swears five times denying the adultery. Where this happens, the Court may find that the wife and husband cannot live in peace after such an experience and order divorce.

e) ***Faskh***: this is divorce by Court and it is available to a wife on the following grounds:
- Fear that her husband will injure her, for example, if the husband is violent, abuses her, or forces her to do something wrong;
- When the husband has deserted her;
- Where is becomes known that the husband is related to her
- When she did not consent to the marriage; or had not yet reached marriage age.
- Where the husband and wife do not fulfil their sexual obligations even after four months of marriage; due to refusal by the husband.

Custodial rights

In case the couple divorcing have children, the parties need to ask court to make additional orders in relation to who of the parties will remain with the children (custody). Where the children involved are of infant age (normally 7years and below)court will usually grant custody to the mother unless it is shown and proved that there are circumstances that put the child at risk and present the woman as an unsuitable mother. In other circumstances the parents must prove to court that they are capable of taking care of the children and this does not include their financial capability. Where a woman is granted custody, Court normally makes an additional order for maintaining the children.

Maintenance of a woman (alimony):

On dissolving a marriage, a woman or man may also be entitled to money to maintain her (known as ***alimony***). This is money paid to a wife/husband by the husband/wife during the period of the petition for divorce or when a decree absolute/final divorce is made, for her maintenance. Alimony is calculated taking into account the wife's assets, the husband's assets and the person who led to the divorce. Alimony normally ends where the wife undergoes a subsequent marriage. Alimony is a result of a Court order to that effect; and Court can order the husband/wife to begin paying alimony even when the divorce or separation case is still going on.

Marital property:

The husband or wife may also be entitled to a share in marital property when a divorce is granted. Marital property is the assets and liabilities acquired during the time of the marriage. This kind of property should *ideally* be shared out equally between the man and woman. However, Court may make a decision depending on the particular circumstances of each case. If the property belongs to both the husband and wife, each of the parties takes the percentage that was contributed when it was being purchased. If they contribute equally, each party takes 50 percent.

MODULE TWELVE: CHILDREN'S RIGHTS

Objectives and learning outcomes	By the end of this module, participants should be knowledgeable about children's rights and know how to handle cases involving children.
Duration	3 hours
Contents/Topics	• Who is a child? • Rights of children • Duties and responsibilities of parents/guardians; and community members • Powers of Local Council Courts over children's affairs • Children and the Law • Care and protection of children • Handling cases involving children • Role of Local Council Courts in handling cases involving children • Diversion & Detention of children
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook
Equipment	LCD, flip charts, marker pens

Facilitator: first ask participants to define who a child is; and identify rights of children which they know.

Who is a Child?

A child is a person who is below 18 years[8]. Every decision regarding a child should be made with the welfare of the child being the guiding principle; and any matter concerning a child must be handled as quickly as possible without delay.

The rights of children are consolidated into the Constitution, Children's Act Chapter 59 of the Laws of Uganda and Children's (Amendment) Act 2016. The Acts put the constitutional provisions[9] into effect; and emphasizes protection of children by upholding their rights, protection, duties and responsibilities.

[8] S.2 Children's Act and the constitution article 34

[9] Article 34. Rights of children.

(1) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.

(2) A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.

(3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.

(4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.

(5) For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.

(6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.

(7) The law shall accord special protection to orphans and other vulnerable children. Children's rights as listed in the Constitution

When making decisions for a child, certain standards need to be taken into account as follows:

- The welfare or best interests of the child;
- The child's wishes if they are able to express them. Ensure that the child participates in making the decision which concerns him or her
- The survival and development of the child
- Not discriminate the child
- The child's age, sex and other background information and overall needs
- The harm suffered or likely to be suffered
- The capacity of the parents or guardians to provide for the child
- The likely effects of any changes in the child's circumstances

Children's Rights

Children's rights outlined in the Children's Act are aimed at promoting an environment to foster the survival, protection and development of the child. A brief summary of the children's rights are:

1. The right to stay with parents (s. 4) - a child has the right to stay with their parents or guardians, unless this would not be in their best interests
2. Duty to maintain a child (s. 5) - every parent, guardian or any person with custody of a child has the duty to maintain that child. This duty gives a child the right to education and guidance, immunization, food, shelter, clothing and medical attention.
3. Any person who has custody of a child shall protect the child from discrimination, violence, abuse and neglect.
4. The right to leisure, cultural and artistic activities – a child has the right to leisure and to participate in sports and other cultural and artistic activities, which are not harmful to its development.
5. The right to provision in situations of armed conflict or disaster - children in situations of armed conflict or disaster must be provided with the necessary services and resources that ensure their survival.
6. Protection from harmful practices (s. 7) - children must not be made to take part in social or customary practices which are harmful to their health.
7. Protection from harmful employment (s. 8) - children should not be employed or engaged in activities which may endanger their health, education, mental, physical or moral development.
8. Children with Disabilities (s. 9) - parents of children with disabilities and the Government shall take steps to see that those children are assessed as early as possible to determine the extent and nature of their disabilities; offered appropriate treatment; and given facilities for their rehabilitation and equal opportunity

Duties and Responsibilities

Parents and guardians (s. 6)

- Every parent, guardian or person in charge of a child has the duty to care for and safeguard the child.
- If both parents are dead, then the relatives of either parent may assume that responsibility.

Members of the community (s. 11(1)

The community has the duty to report any abuse of rights or neglect to provide a child with adequate food, shelter, clothing, medical care or education to the Local Council. On receiving the report of abuse or neglect of a child, the Secretary for Children's Affairs may call the offender to discuss the matter and then make a decision in the best interests of the child. Where the offender fails to comply with the decision of the Secretary for Children's Affairs the matter may be take into the Village Executive Committee.

Local Councils (s.10)

Local Councils have the general duty to promote the welfare of the child. The Local Councils have to:

- Appoint a Secretary for Children's Affairs
- Mediate in situations in which children's rights are abused
- Assist orphaned children to succeed the property of their parents. However ***LCs do not have the power to distribute the property***
- Keep a register of children with disabilities and give them assistance
- Provide accommodation to any child who is lost, abandoned or seeking shelter
- Trace the parent or guardian of a lost or abandoned child and on failure refer the child to the Probation, Social and Welfare Officer (PSWO) or to the Police.

Children and the law

Family and Children Courts (FCC) were established under the Children's Act to:[10]

a. Handle all matters concerning children including criminal charges. (However when a child is charged with an adult, the matter is taken to a relevant Court)
b. -Make orders concerning children against whom an offence has been proved by the High Court
c. Have power to hear and determine applications relating to child care and protection
d. Make supervision and care orders

The Procedure in the Family and Children Court (s.16 and 18

When hearing cases involving children, the FCC is guided by the following principles:

- The Court must sit as often as necessary. Court sittings will be in private
- Proceedings of the Court are to be conducted informally
- Parents or guardians shall be present whenever possible
- The child has the right to have a lawyer represent them
- The right to appeal shall be explained to the child
- No other people are allowed in the court room except witnesses, parents or guardians, the PSWO or a person whom court has authorized.

Care and Protection of Children

Child Maintenance

It is the responsibility of both parents of a child to maintain the child to ensure the fulfilment of the child's rights as outlined above. When the child is staying with both of his/her parents, maintenance is provided by both parents.

However, there are circumstances during which the child is not staying with both parents. These include situations when a child is born out of wedlock; or when the parents have separated. Under these circumstances, one parent may remain with the child (referred to as custody). The parent with custody can seek for the other parent to contribute to supporting expenses related to bringing up the child – referred to as '***maintenance'.***

Paralegals can provide full support for a person seeking maintenance; and settle the matter without having to take it to Court. This usually involves organizing a mediation between the two parties to ensure an amicable resolution of the matter.

[10] S. 13-18 of the Children's Act

Maintenance is calculated according to the income of the person from whom maintenance is sought. It has to take into consideration the person's other responsibilities; and the need to leave some money for him/her for their own upkeep. A person seeking maintenance does not have a right to demand for any amount of money s/he wants. The amount depends on the income of the person they are seeking maintenance from. It should also be noted that both parents have a responsibility for maintaining the children.

If it is not possible to settle the maintenance case amicably, then the person who has custody of a child or a mother, father, guardian of the child, can apply for a maintenance order[11]. The maintenance order is made by a complaint on oath to the FCC against the father or mother

Procedure for a maintenance order

Any person who is a mother, father or guardian of a child may apply to court for a maintenance order

The application shall be accompanied by an affidavit together with any reports or documents to be relied upon as evidence by the person seeking the order. When the court has received the application it shall issues court summons to the father or mother against whom the order is sought to appear in court on the day mentioned in the summons

The court shall hear evidence from both sides and shall make an order as it deemed fit.

Maintenance shall include feeding, clothing, education and the general welfare of the child

The court may order a payment of a monthly sum of money as may be determined by the court, having regard to the circumstances of the case and to the financial means of the father or mother, for the maintenance of the child.

If satisfied, the FCC can make a maintenance order which includes:

- A monthly sum of money or a one off payment according to the financial means of the father or mother
- Funeral expenses where the child has died
- Costs of incurring the order
- Feeding, clothing, education and the general welfare of the child

A maintenance order can be changed to either increase or decrease the amount of money paid. The Order may also be changed where a parent ceases to have custody of the child.

A maintenance order can also be made against the property of a deceased mother or father; and to claim expenses even after the death of a child.

Where a person fails to pay the maintenance order court may attach earnings or sell or redistribute property.[12] It is an offense to misuse maintenance money[13].

Procedure for a maintenance order

Any person who is a mother, father or guardian of a child may apply to court for a maintenance order
The application shall be accompanied by an affidavit together with any reports or documents to be relied upon as evidence by the person seeking the order

[11] S. 76 Children Act
[12] S. 77 Children Act
[13] S. 80 Children Act

When the court has received the application it shall issues court summons to the father or mother against whom the order is sought to appear in court on the day mentioned in the summons

- The court shall hear evidence from both sides and shall make an order as it deemed fit.
- Maintenance shall include feeding, clothing, education and the general welfare of the child
- The court may order a payment of a monthly sum of money as may be determined by the court, having regard to the circumstances of the case and to the financial means of the father or mother, for the maintenance of the child;

Handling cases involving children

As a paralegal, you will receive cases involving children. These could include child labor cases, defilement, child marriages, maintenance cases, and criminal cases involving juvenile offenders. If they are cases of capital nature a paralegal should make referral to Police and even help the complainant to report the case and to also reserve evidence

Interviewing children

In some cases, you will receive cases where a child is the victim of an abuse, in which case you will among other things, need to interview the child to enable you to decide on the most appropriate course of action. Interviewing children, especially abused children, is more complex than interviewing adults. It requires a lot of patience and sensitivity. Sometimes, the child only has an idea that something bad has happened to them.

Tips on interviewing children

- Ask open-ended questions and allow the child to tell the story in his/her own words.
- Where possible, ask for the child to act out or demonstrate the abuse they suffered.
- Explain to them what may be required of them at the police station or at the welfare office so they do not become intimidated by the entire procedure.
- Do not interview children in the presence of the alleged offender or they may become intimidated and conceal the truth.
- Ensure a friendly and empathetic environment that communicates compassion to the child affected especially a victim of a crime
- Assure them that they will be protected and will not be punished for revealing the truth. Every action must be taken with the best interests of the child in mind.

Handling criminal cases involving children

Criminal liability of children: Children are held responsible for a crime when they are of 12 years and above . A child under the age of 12 years is presumed to be incapable of committing a crime. It is presumed that at that age, a child does not have the capacity to appreciate the nature of the wrongful act which the child has done. Therefore, a child below 12 years cannot be charged with a criminal offence[14].

Children above12 years but below 18 years can be arrested and charged if suspected of having committed an offence. Such children are referred to as juvenile offenders. A juvenile offender may be charged and tried in a juvenile court.

Court inquiry into the age of a person appearing before the court[15]

[14] s.88 of the Children's Act
[15] s. 107 and 108 of the Children's Act

Where a person who appears to be a child is brought before the Court; the Court can make inquiries into the age of that person. The person can undergo a medical test; and a medical certificate given regarding the age of the person shall be sufficient evidence. Other corroborative evidence can be used such as school report card

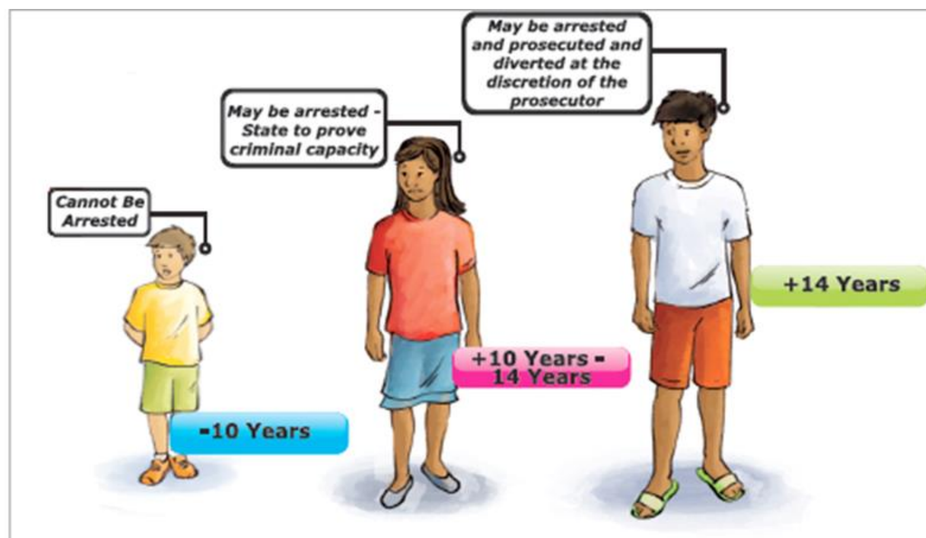
Procedure for a child who has been arrested

The system for dealing with juvenile offenders is generally aimed at exempting children from the adult system of prosecution, detention and punishment. Uganda has a system for handling juvenile offenders, referred to as 'juvenile justice'. The hearing in the juvenile justice system are essentially welfare based and deal with children as in need of compulsory measures of treatment and/or care. In as much as it is possible, children are diverted away from the criminal justice system.

Arresting a child

A child may be arrested by a police officer who may caution and later release the child[16]. The police may handle and conclude a case against a child, without going through the formal court procedures. Or can divert the cases in consultation with parent, guardian, and probation officer but with knowledge and consent of the child and the complainant.

If the child is not released, then police must immediately inform his/her parents or guardians and the secretary for Children's Affairs about the arrest. Police must interview the child in the presence of his/her parents/guardians – unless it is not in the best interests of the child. In the absence of the child's parents/guardian, the Probation and Social Welfare Officer (PWSO) or fit person will attend. The child is also entitled to legal representation.
If detained at the Police station the children should never be detained in the same cells as adults and should not be detained form more than 24 hours. Arrest of children should be only after full investigation into the alleged crime, except if the police realizes they have to remove the child from community for its own safety



[16] S. 89 of the Children's Act

Role of local council courts in handling children's cases.

The Local Council Courts Act of 2006 gives powers to the village Local Council Court (LCC) where the child resides or where the case arises, to handle all civil cases involving children.

In addition, the village LCC has the authority to deal with the following criminal cases involving children:[17]

a) Affray (fighting in a public place);
b) Being idle and disorderly (loitering and engaging in immoral activities in public) except for begging in a public place
c) Common assault
d) Causing actual bodily harm
e) Theft under s. 254 of the Penal Code Act
f) Criminal trespass under s. 302 of the Penal Code
g) Malicious damage to property under s. 335 of the Penal Code Act

Any of the above cases involving children should first be taken to the village LCC. If a case involving a child in any of the above case is proved, then the village LCC can, in addition to the punishments prescribed for the offence in the Penal Code, make any of the orders below:

(i) Reconciliation;
(ii) Compensation;
(iii) Restitution;
(iv) Community service;
(v) Apology; or
(vi) Caution.

In addition to the above orders, the LCC can also make an order requiring the child to attend guidance, supervision and advice sessions to people nominated by the Court, for up to 6 months.

If a child is brought before a LCC, the Court cannot make an order cannot make an order to remand (take to prison or juvenile detention center) the child.[18]

Appearing before Court

- If a child is taken to Court, the Magistrate or the presiding officer will read and explain the nature of the offence to the child. The Magistrate has a duty to ensure that the child has understood the nature of the offence.
- If the child admits the offence, the Magistrate should record the admission. The Magistrate then asks the prosecutor to give the facts of the case. If the child does not admit the offence, then Court will fix a date for hearing the case. The Magistrate will also request the PSWO to make inquiries about the child's social background and submit a report. The report will indicate the social and family background of the child, the conditions in which the child is living and the circumstances under which the offence was committed. The information in the report is also provided to the child; and a copy of the report is given to the child's parents or guardians or legal representatives.

  During this time, a child may be released on bail, either on court bond or with sureties, who may be the child's parents. A child may be released on bail without any terms. No cash should be paid for the bond or bail of a child.
- If bail is not granted by the court the child may appeal to a higher court.

[17] s. 92 Local Council Courts Act 2006
[18] S. 92(8) of the Local Council Courts Act 2006

Remand/imprisoning a child (s. 91)
If a child is not released on bail the Court may make a remand order placing the child in custody of a remand home. If there is no remand home near the Court, the court shall make an order placing the child in a safe place.

Where a child is remanded the following must be observed:
- A child should not be remanded with adults
- The privacy of the child must be respected
- Remand must be for a very short time (s. 91 (4)
- Wherever possible court shall consider alternatives to remand such as close supervision or placement with a fit person recommended by the PSWO.

The cases should be fast tracked and handled in prescribed time.

- Imprisoning a child should be done only if there is no other option;
- A child should not stay in police cells beyond 24 hours.
- All criminal proceedings against a child shall be heard in private.
- Court should consider non-custodial option when case approved.
- A child should be asked in friendly language about the case and not interrogated
- A child should not be given corporal punishment.

Handling cases involving children by Court (s. 99)
Every case involving a child must be handled quickly and without delay. If the case has been taken to Court, it must be concluded within three months. If Court fails to conclude the case within three months, the case must be dismissed with no further proceedings against the child in respect of the same offence.

In serious cases handled by a Court superior to the FCC, the maximum period for remand for the child shall be 6months, after which the child shall be released on bail. All serious cases must be concluded within 12 months, after the child has been taken to court, otherwise they shall be dismissed with no further proceedings made against the child on account of the same offence.
Restrictions on using certain words (s. 101) when handling cases involving children.

- When a child is found guilty of an offence, the words “sentence” and “conviction” are not used. Rather, Court uses the word “proof of offence against a child”. Furthermore, if a child is found to have committed an offence, Court will not use the word “convicted of an offence” but will instead use the words “order”.

Courts which try children’s cases:
Family and children’s Courts (FCC)
FCCs can try criminal cases involving children[19] except offences that whose punishment is death; and an offence where a child is jointly charged with an adult. Where a case has been proved against a child, the FCC can make any of the following orders:

a) Absolute discharge (to set the child free)
b) Caution (warn) the child;
c) Conditional discharge for not more than 12 months – in this case the Court would set the child free for a period of not more than 12 months on condition that s/he does not commit another offence during those 12 months

[19] S. 93 of the Children’s Act

d) Bind the child to good behavior for a maximum of 12 months
e) Compensation; restitution, or a fine taking into consideration the means of the child but the Court cannot make an order to detain a child if they fail to pay the fine;
f) A Probation Order for not more than 12 months (this order should not require the child to be put in a remand home)

Children in a Magistrates Court (s. 103)

A child jointly charged with an adult may be tried in a magistrate's court[20]. The High Court hears cases of a child jointly charged with an adult, where the case falls under the jurisdiction of the High Court[21].When hearing cases against a child, the High Court shall observe the procedures used in handling cases involving a child.
Where a child is tried in a court superior to a FCC and the case is proved against the child, the FCC will decide the best order for the child.

Detaining or imprisoning a child

When making a decision on a detention or probation order for a child who is found guilty of an offence, the FCC shall consider a Welfare Report made by the PSWO[22]. It should be remembered that imprisoning a child should only be done of there is no other option; and if a child has to be imprisoned, it should be in a suitable place. A child shall not be detained in the same place as adults.
Children can be detained under the following guidelines:

a. A child under 16 years can only be imprisoned for a maximum of 3 months
b. A child above 16 years is imprisoned for a maximum of 12 years. Imprisonment in case of an offence punishable by death, must not be for more than 3 years for any child.

National Rehabilitation Centre for Children (s. 96 and 97)

The Kampiringisa Boys' Approved School has been designated by the Minister as the detention center. The Detention Centre shall have a separate wing for girls.

Note: Imprisonment of a child whether for remand or to serve orders must be a measure of last resort. A child should be given bond during trial and given non-custodial sentences as much as applicable

[20] S. 103 Children's Act
[21] S. 104 Children's Act
[22] S. 95 Children's Act

MODULE THIRTEEN: INHERITANCE/ SUCCESSION

Objectives and learning outcomes	By the end of this module, participants should be able to articulate the laws regarding succession and inheritance in Uganda. They should then be able to provide legal assistance to people involved in succession or inheritance cases. Participants should be able to prepare a will.
Duration	3 hours
Contents/Topics	• The requirements for a valid will • What makes a Will invalid • Beneficiaries of a deceased person's property • Process of administering property in case there is a Will • Process of administering property in case there is no Will • Responsibilities of people administering deceased people's properties
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook, Sample of will found in the annex to this manual
Equipment	LCD, flip charts, marker pens

Knowledge assessment:

Facilitator should begin by asking participants what happens to a person's property when s/he dies; who is entitled to inherit the property and the process. Ask about the rights of widows, girls and children generally. Inquire about their experiences in succession cases; and what they have seen happening in the areas where they live.

Inheritance/Succession Law

Inheritance Law is the Law which governs the manner in which a person's property is handled after s/he dies. This includes the manner of distributing the property, people who are entitled to benefit from the deceased person's property (also referred to as the 'estate'; and how to go about getting permission to deal with a deceased person's estate. The laws governing succession include The Succession Act and the Administrator General's Act Chapter 157.

Types of inheritance

There are two types of inheritance:

1. Where a person dies leaving a Will – this is referred to as **testate succession**.
2. Where a person dies leaving no will – this is referred to as **intestate succession**.

Testate Succession

This is a situation where a person dies, having written g a ***valid*** Will. A **WILL** is a document made by someone before his/her death, stating how his/her property should be dealt with after s/he dies. The person who makes the Will is then called the Testator, where the term testate succession is derived.

Who can make a Will?

a) A man or woman who is above 18 years old and is of sound mind can make a Will.
b) A married woman can make a Will to dispose of any property which she could have been capable of giving out when she was alive
c) A deaf or dumb person can make a Will if s/he is able to know what s/he is doing
d) A person who is ordinarily insane may make a Will during a period when s/he is not insane
e) A person cannot make a Will when s/he is in a state of mind arising out of drunkenness or from illness or from any other cause during which the person does not know what s/he is doing.

The person who makes a will is referred to as the testator

Importance of writing a Will

1. A Will spells out how a Testator's wishes should be carried out and provides for an orderly succession.
2. A Will spells out how all the property and assets are to be distributed and dealt with. The property is thus protected from being taken by people who may not be entitled to it under the Law.
3. A Will may provide for how the minor children should be looked after (guardianship).
4. The Testator chooses who will distribute the property (Executor), as s/he knows who is most suitable to carry out his last wishes.
5. The Testator may give property to those who would ordinarily not be considered if there was no will.
6. The beneficiaries get what they are entitled to under the Will.

Types of wills

There are two different types of wills

a) Written or ordinary wills

These are Wills made in normal situations by any person who has the capacity to make a Will. Wills are usually most respected and valid if made in writing by a person during his/her lifetime. A written Will can be used as evidence in court.

b) Privileged Wills

A privileged will refers to a Will made by any member of the Armed forces who has reached 18 years; and is involved in war; or is a mariner at sea. Privileged Wills are made by people in dangerous situations where there are chances that the person may be killed in action; and would thereby not have time to make a normal will.

Method of making privileged wills.

- A privileged will may be made in writing or by word of mouth. If made in writing, it does not have to be signed. If the Will is written by a different person and signed by the testator, it does not have to be witnessed.
- If the testator has written instructions for preparing his/her will but dies before it can be prepared, these instructions are taken to be his/her will
- If the testator gives verbal instructions for preparing his/her will in the presence of two witnesses; and they are put in writing while s/he is still alive; but s/he dies before signing the Will, such instructions are taken to constitute his/her will even though they were not written.
- a testator may make a will by word of mouth by declaring his or her intentions before two witnesses if they are present at the same time;

NOTE: A privileged will made by word of mouth shall be null at the expiration of one month after the testator has ceased to be entitled to make a privileged will.

Format of a Will

A Will can be written in any form as there is no set format although it must be dated signed or thumb printed by the Testator, attested (witnessed) by two people in the presence of each other. You can write a will by filling in a form that is provided by the Administrator General's office. You can write it on paper using pen and paper. You can type it.

Essential contents of a Will

A Will should have the following information:

1. The names and addresses of the Testator (person making the Will).

2. Date when the Will is made.
3. The Will should clearly describe the assets of the testator. The testator should clearly describe his assets. Assets can include property e.g. land, vehicles etc.; shares in a company, insurance, NSSF, bank accounts, etc. The deceased person should own the property at the time of his/her death.
4. His/her creditors and debtors and amounts due
5. His/her children, and indicate whether any of them are minor. In case there are minor children, the testator should appoint a guardian(s) to look after the young children.
   In many cases, if there is s surviving parent they usually become the guardians of the children, unless they are proven to be unfit to do this job.
6. Other dependent relatives
7. How his/her property will be distributed amongst his children and dependent relatives. The Testator must provide for certain essential people in his/her Will. These include:
   a) Testator's wife/wives or husband recognized by the law,
   b) Minor children who are below 18 years of age whether they are legitimate (born during wedlock) or illegitimate (born outside wedlock)
   c) Dependent relatives who were totally or substantially depending on the Testator for survival; not those occasionally received assistance from him/her.

A will can be written in any language. When applying to court for permission to fulfil the deceased's wishes in the Will, a will that is not written in English must be translated into English

If a testator does not make provisions for people whom s/he should ordinarily provide for (e.g. his wife or children), then s/he should give reasons in the Will as to why s/he is leaving them out. The person who has been left out can contest the Will in Court; and Court will look into the reasons provided and see whether or not they were reasonable.

8. The testator has the liberty to give his property to other persons of his choice as beneficiaries. These include friends, charitable organizations and legal entities like companies.
9. Property may also be left to a person, not for his/her own benefit but for the benefit of others. Such a person upon whom property is conferred is called a Trustee and the person it is really intended to benefit is a beneficiary. Such an arrangement is suitable and proper where the Testator may not wish to confer his/her property directly to his/her young children or persons with disabilities who are to manage the property well.
10. The executor is accountable as to how the property has been dealt with and the other matters spelt out in the Will.
11. Appoint the customary heir/heiress.
12. If the testator has any debts, s/he should indicate how the debts will be paid off
13. Names of Executor(s). An Executor is the person that is named in the Will to fulfil the testator's wishes as contained in the will
14. Other wishes may be stated such as the burial place and any other ceremonies to be; or not to be performed.
15. The will must clearly state that it is "the last will and testament" of the person making the Will; and replaces previous wills.

The testator cannot give out the matrimonial home. It is automatically taken over by the surviving spouse(s) if the Testator was married. Minor children of below age of 18 years and dependent relatives are also entitled to live there.

Executing (or implementing) a will.

Except for privileged Wills, every person making a Will must:

i. Sign or put his thumb mark to the will.
ii. The will must be signed by at least two other witnesses, each of whom must have seen the testator sign the will. It is not necessary that more than one witness is present at the same time. The witnesses need not know the contents of the Will and must not be beneficiaries to the Will or else they will lose whatever they have been given in the Will.

Making changes to a Will

A testator can make changes to a Will anytime by writing another document altering some part or parts of the Will. Changes can be made to a Will under any of the following circumstances (examples):

- When one gets more property; or loses property that was earlier indicated in the Will as his/hers;
- If the testator gets more children or dependents
- When one wants to change the heir
- When the heir in the original Will dies
- When any of the persons who was given a share in your will dies
- When any of the witnesses to the Will dies
- When one marries if they were not married at the time of the first Will
- If after making a Will the Testator re-marries upon divorce or death of his/her spouse.

The document in which a testator makes changes to a Will is called a ***codicil***. It must be signed by the testator and must be witnessed by at least two adults.

How can a Will be revoked (Cancelling a Will)

A Will may be cancelled in two ways:

1. By making another will or by writing to declare that the original Will is cancelled
2. By marriage - once one gets married the Will that was made before that marriage is automatically cancelled.

Where to keep a Will

A Will should be kept in a safe place, namely: a bank, the Administrator General's office, with a lawyer, the Registrar of a court, with a trusted friend or relative, or with a church leader. A trusted friend or relative should know where the Will is being kept but the contents of the Will should never be revealed until the Testator has died. The person with whom a Will is kept should make it known immediately upon the death of the Testator.

Invalid Wills

A Court can declare a will to be invalid (that is, Court will not recognize this will) if there are grounds or evidence invalidating the will. These include:

1. The testator was of unsound mind or senile and therefore did not understand what she/he was doing at the time.
2. The Will was not made voluntarily. It could have been made under force or threats.
3. If the Testator was under the age of 18 years.
4. If the Testator got married after making the Will.
5. If the wife/wives, husband, minor children who are below 18 years of age and dependent relatives are not catered for, without giving reasonable explanations.
6. If the Will is not clear, i.e. ambiguous.
7. If the whole estate or the subject matter of the Will perishes either before the death of the Testator or before the execution of the Will.
8. If the Testator made another Will after the one being contested.
9. If the Will was not signed by the Testator or witnessed.

If Court declares a Will to be invalid, then the testator's wishes cannot be followed. The entire property or estate of the deceased will therefore be treated as if s/he died without making a Will. The property will then be distributed according to the law which governs situations where a person dies without making a Will (intestate succession).

It is an offence to deal with or distribute property of a deceased person without obtaining permission (called Probate) from Court.

What happens after the death of the Testator?

After a testator dies, the person(s) who have the will should come forward, read the Will to ascertain the testator's wishes regarding the burial place, burial ceremony and funeral expenses. Upon the death of the testator, the executor or administrator of the deceased's estate becomes the deceased's legal representative; and all the property of the deceased person vests in the executor or administrator. The executor has to request Court for permission to divide the property according to the wishes of the testator.

a) If the person died in a hospital or health facility, a death certificate should be issued. If s/he died at home, a letter from the LC should be made ascertaining the death, date s/he died and when and where s/he was buried.

b) The Executor(s) mentioned in the Will must apply to court for special permission or authority called '***Grant of Probate'*** to carry out the wishes of the Testator in the will. The application to Court should include for instance proof of death (death certificate or LC letter indicating date and place of death, and burial; and a copy of the Will.

At this point, the will becomes a public document, and can be viewed by anyone who wants to see its contents

c) After making an application for grant of probate to Court, Court will make an order for an advertisement to be put in the gazette and in a recognized newspapers for 14 days. The advertisement is meant to inform the public of the executor's application for the grant of probate, calling upon any member of the public who has any objection to the Will or to the Executors who have applied for grant of Probate, to raise it.

*Anybody who interferes with the property of a deceased before probate is granted by Court commits an offence called **intermeddling** and is liable to prosecution. It is also illegal for anybody to tamper with or alter the contents of another person's Will.*

d) If no objection is made within the time given by the Court, then the Court will grants probate to the Executor(s) after satisfying itself that the person(s) who have applied for probate are the right Executor(s) named in the deceased's Will; the will is valid and not forged; the Executor(s) are capable of carrying out the wishes of the testator; and that the testator has named all his/her dependents.

What happens if the Will becomes contested?

If a person is not satisfied with the contents of a will; or believes that it is forged; or has some other reason, s/he can make a complaint, or protest to Court. The protest or complaint is normally in written form called a Caveat.

When a protest or complaint is made, Court will listen to the grounds of the objection. If court is satisfied with the evidence brought before it, it will declare the Will invalid and the property will be distributed as if the person died without a Will (intestate succession).

The Court may also make alterations or adjustments to the Will to make provisions for the entitled persons who have been omitted in the Will.

What happens if there is no Executor to carry out the Testator's wishes?

A person can makes a valid will but does not appoint an executor; or the executor may die before the testator; and the testator does not appoint another executor. In this case, the person who would be entitled to administer the estate if the Testator had died without a Will can apply to Court for Letters of Administration with the Will annexed (attached) upon being chosen by the family of the deceased. This could be the wife or husband of the deceased or adult children of the age 21 years above.

How is a Will executed?

Execution of a will refers to the process of fulfilling the deceased's wishes in the will in as far as they can be practically fulfilled. Execution of the will is done as follows:

The execution of a Will is carried out in the following manner:

1. The Debtors pay to the Executor what is owed to the deceased.
2. Creditors are paid from the estate in the following order or priority:
   a) Medication fees and funeral expenses are met.
   b) Court fees or lawyer's fees are paid, if any.
   c) Money due to employees and those who rendered services to the deceased within the last month before his/her death.
   d) All other debts are paid in their order of preference.

Managing the deceased's property (estate).

The executor is supposed to manage the deceased's estate according to the wishes of the deceased contained in the will. If the executor mismanages the estate of the deceased he or she may be prosecuted and imprisoned. Also, where the Executor acts negligently s/he may be made to compensate the people on whose behalf s/he is managing the estate.

Where to apply for a Grant of probate

A grant of probate may be applied for;

- If the total value of the estate does not exceed ten thousand shillings, then the application is made to the Magistrate Grade II;
- If the total value of the estate exceeds ten thousand shillings does not exceed fifty thousand shilling, then the application is made to the Magistrate Grade I;
- If the total value of the estate exceeds ten thousand shillings does not exceed one hundred thousand shilling, then the application is made to the Chief Magistrate;
- If the estate is valued at more than 50 million shillings, then the application is made to the High Court;

Intestate Succession

Intestate succession refers to the inheritance of an estate of a person who has died without making a Will. It also occurs when a Will has been revoked by a subsequent or latter marriage; or by Court. When a person dies intestate, his property becomes entrusted into a personal representative or ***administrator***, who holds the property in trust for the people who are entitled to the property under the law. The personal representative has to apply to court for ***Letters of Administration*** which authorizes him/her to manage the estate.

Letters of Administration

Before any one deals with the property of someone who died without making a will, s/he must first obtain Letters of Administration from Court. Through Letters of Administration, Court allows the administrator to deal with the property of a person who has died without leaving a Will.

The following persons have a right to apply for letters of administration in order of priority and these include; wife/wives or husband of the deceased, children of the deceased who are of age and close relatives of the deceased.

Where to apply for Letters Administration

A. Where the property which forms the estate is less than 10 million shillings, the application is made to the Magistrate's Court

B. Where the property is more than 10 million shillings, the application is made to the High court.

Administrator General

The Administrator General is a public officer who is responsible for administering estates of dead persons. In every district, the Administrator General is represented by the Chief Administrative Officer (CAO). The CAO also recommends to the Administrator General persons to be issued with Certificates of No Objection, holds family meetings and advises families of deceased persons where necessary. In some cases, the court can grant Letters of Administration to the Administrator general.

An executor or administrator of an estate holds the property on behalf of the beneficiaries of the deceased person.

Role of the Administrator General

1. The office of the Administrator General in law is automatically in charge of estates of persons who have died without making Wills.
2. Receives reports of death.
3. Resolves disputes among the beneficiaries of family members.
4. Issues Certificate of no Objection.
5. Is a Public Trustee, that is, ensures that the rights of the beneficiaries especially of the minor children to inherit property are not violated where there is no Will.

How letters of administration are obtained

- Obtain a death certificate (if the person died in hospital or a local authority); or a letter from local authorities (confirming the date of death and burial).
- The close family of the deceased needs to sit and agree on the person/people to apply for letters of administration.
- Report the death to the Administrator General Office with all the relevant documents including a letter from the Local Council introducing you and informing him of the death of such a person, a death certificate.
- When you report to the Administrator General, a file will be opened; and the Administrator General will call for a family meeting to confirm that the family agreed for the person applying to become the administrator of the estate. The Administrator General will keep minutes of this meeting. If the family fails to agree on the administrator, then the Administrator General will take over administration of the deceased person's estate and go on to distribute the property according to the law.

- If the family meeting agrees to the administrator, the administrator will then apply to the Administrator General for a certificate of No Objection. The Certificate of No Objection is clearance which enables the administrator to apply to Court for Letters of Administration.
- The Administration General issues a certificate of No Objection after scrutinizing the above documents and confirming that the applicant is the right person who should administer the estate.
- The application is filed in court in form of a petition by the applicant requesting to administer the estate. The applicant also signs a document in which he/she undertakes to administer the deceased's estate in a just and proper manner according to the law.
- The application is advertised in the newspaper for 14 days.
- If any objections are raised by the public, they are heard and decided by the Court. If there are no objections, then the administrator will be granted letters of Administration to administer the deceased's estate.

The administrator becomes the personal or legal repetitive of the deceased person; and is authorized to distribute the deceased person's property. After 6 months, the Administrator must submit an inventory to Court, to account for how s/he has dealt with the property of the deceased person

Circumstances under which the Administrator General is granted Letters of Administration

1. If a deceased person appoints the Administration General in a Will as sole executor.
2. The person appointed in the Will as executor renounces executorship.
3. The person appointed as an executor dies before the person who made the will; and no executor is appointed afterwards.
4. A person dies without making a Will; and there is a dispute.
5. The deceased person has not appointed an executor in his Will.
6. There is no application that has been lodged for probate or Letters of Administration within 2 months of death of the deceased.
7. The Administrator General sees that the Executor or Administrator is mismanaging the estate. The Administrator General however has to apply to Court first for revocation of the probate or Letters of Administration.

Who is entitled to the property of a person who dies without leaving a will?

According to the law, when a person dies without leaving a will, only specific peoples can share his/her property. The property is shared in percentages. The following categories of the people can inherit property under intestate succession:

a) **Surviving spouse - husband or wife** who was married to the deceased person in a legally recognized marriage with the deceased person at the time of his/her death. The husband and wife must have been living together as members of the same household 6 months prior to the death.

b) **Children** of the deceased who may either be born during wedlock, outside wedlock and adopted children. All children of the deceased – male and female – are entitled to benefit from the estate.

c) **Dependent relatives –**these are relatives who solely or substantially depended on the deceased person while s/he was still alive.

d) **Customary heir** – this may be a child or relative of the deceased person who is recognized by local customs of the tribe or community of the deceased as being the deceased's customary heir. The heir may be male or female.

Legal heir; this is the living relative nearest to the deceased who usually takes over when there is no customary heir.

Under what grounds can letters of administration be revoked?

Letters of Administration may be cancelled for the following reasons:

1) Where the letters was obtained fraudulently or dishonestly by making a false statement or by concealing information from court
2) Where the letters have become useless for example where the administrator dies or becomes insane or where the administrator used the deceased's estate for their personal gain to the disadvantage of the beneficiaries
3) Where the person to whom the grant was made has refused to distribute the estate, to file an inventory and/or to account for how s/he has managed the estate.

Distribution of property under intestate succession.

Residential holding

The residential holding is the place where the deceased person was living at the time of his/her death. Where the deceased person left more than one house, the matrimonial home is taken to be the one in which s/he was living until the time of death. The residential holding is never distributed. If a husband dies, a widow may remain and stay in the residential holding until she dies. On her death the house is then passed to the legal heir. The children are expected to stay in the home until they attain maturity age, which is 18 for males and 21 for females.

Distribution of property

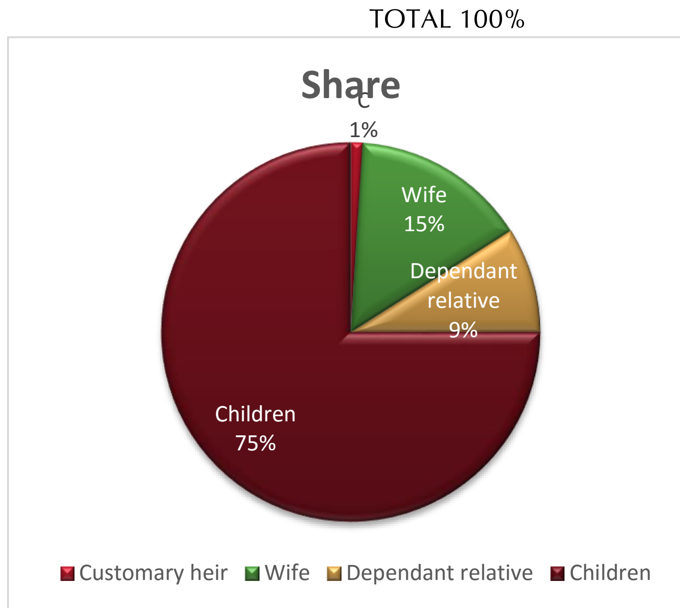
The method of distribution depends on the categories of beneficiaries left behind. The property of the person who dies intestate shall be divided among the following classes of people in the following manner:

NB. However in light of the case of Law and Advocacy for Women in Uganda v. Attorney General [2010] UGCC 4; Constitutional Petition No. 8 of 2007 the distribution of property as described below is no longer law and mandatory and can only be used as guide.

A. Where the deceased (intestate) is survived by a customary heir wife/wives/husband, children and a dependent relative;

- The customary heir receives 1%
- The wife/wives/husband receives 15%
- The dependent relatives receives 9% and
- The children receive 75% of the whole of the property of the deceased (intestate).

TOTAL 100%

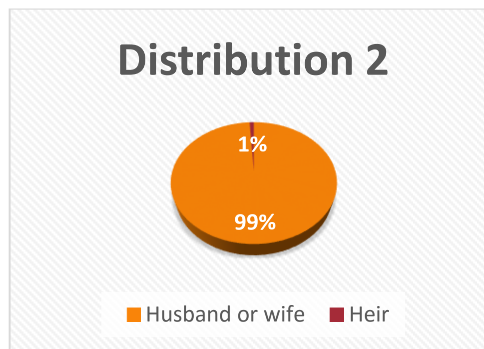


B. Where the deceased (intestate) is survived by a husband or wife and a customary heir:

a) The wife receives 99%

b) Customary heir receives 1%.

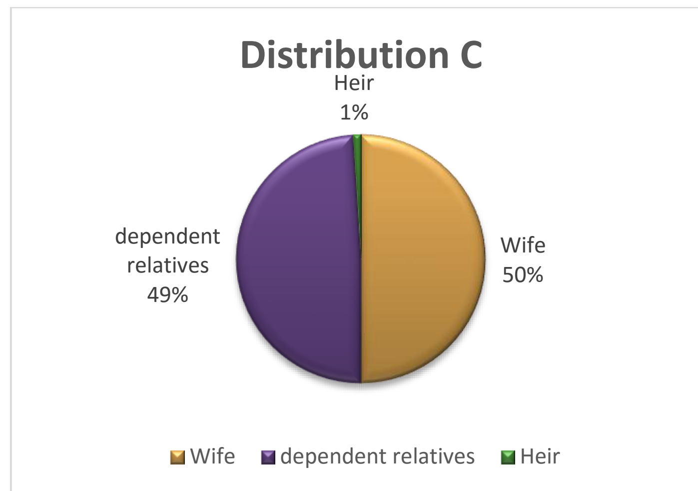
Total 100%.



C. Where the deceased leaves a widow, dependent relatives and a customary heir

- The wife receives 99%
- dependent relatives receive 49 %
- Customary heir receives 1%.

Total 100%.



In practice, the family members and relatives are also free to draw up for their own scheme of distribution. This scheme or arrangement must be approved by the Court.

Where no person takes any proportion of the property as a wife/husband, dependent relative, children or relatives most closely related to the deceased, the whole of the property shall belong to the customary heir. However where there is no customary heir, the customary heir's share shall belong to the legal heir.

When the deceased leaves no one to inherit the property, Court may distribute the property to those nearest in relation; or the property may be left in the hands of the Administrator General who is the government officer in charge of deceased people's property.

Note: the above distribution of property is based on Section 27 of the Succession Act. However the case highlighted above declared the section null and void.
In practice, administrators to the estate of the deceased can distribute the estate according to the above percentages however the distribution is subject to courts approval.

Since courts make laws through precedents, this is the position that now courts follow when a person dies infestation

Common offences committed under both testate and intestate succession.

- Intermeddling with the property of the deceased
- Failure to give a true account or inventory to court; or making a false account of how the property has been administered.
- Providing false information in evidence on oath amounts to perjury
- Mismanagement of an estate by the administrator
- Stealing a Will
- Concealment of a Will
- Destroying a Will
- Forging a Will
- Eviction or attempt to evict from a residential holding a wife or child of an intestate.

Questions.

Facilitator should divide participants into three groups, each to handle one questions. They should discuss the questions and give their responses in plenary.

1. Mutyabule had 55 children from sixteen women. His oldest child is 16 years. He had a piece of land where his home was where he lived. In addition he had a shop where he used to get money to look after his family. He used to look after his elderly mother who is sick and bed-ridden. When he died his brothers came and told the children and their mothers to leave the home and handover the shop, saying that the land was given to Mutyabule by his father and when he dies, the land must go back into the family and be used by the remaining brothers. They have also told Mutyabule's daughters to look for men to marry them as they are not supposed to live on his property anymore. You find Mutyabule's daughter in the market one night and ask her why she is not at home. She tells you that she has nowhere to sleep because her uncles chased her mother, brothers and sisters from the home.**How would you assist her**?

2. Sarah was born in a family of seven. She has four brothers and two other sisters. Sarah's mother had a piece of land in the town and when she died, the brothers took over the land and are planning to sell it. When the sisters demanded for their share, they were told that girls are not entitled to inherit anything from their mother since some of them are married. They were told that their property is at their husband's home. One of Sarah's sisters is not married, her brothers have told her to quickly look for a man and leave their mother's house. Sarah comes to you for help. How would you help her?

3. Namuddu's mother left her father when they were little children and married another man. Namuddu's father got another woman and had children with her. When Namuddu's father died, her biological mother came for the funeral and after the funeral she said that she will remain in the home since she is the one whom her father had married in church. She insists that Namuddu's step mother leaves the home since she is not a 'real' wife. Namuddu's step mother comes to you for help. What would you advise her? And how would you assist her?

MODULE FOURTEEN: CONTRACTS

Objectives and learning outcomes	The main objectives of training module are to enable participants to acquire knowledge about contracts and provide assistance to people in matters relating to contracts and their enforcement
Duration	2 hours
Contents/Topics	• What is a contract? • Offer and acceptance • Terms of contracts – conditions and warranties • Defenses to a claim on a contract • Breaching a contract and compensation for breach
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook.
Equipment	LCD, flip charts, marker pens

What is a contract?

A contract is a voluntary arrangement between two or more people or parties, and it can be enforced by law as a binding legal agreement. A contract can be written or unwritten (oral). Each party to the contract must have the legal capacity to enter into the agreement. For instance, a child below 18 years does not have the legal capacity to enter into a contract. Forming a contract requires one of the parties to make an offer for something, the other person to agree to the offer and give something in exchange.

Offer

An offer is an expression of willingness to enter into a contract on certain terms. The offer is made with the intention that is will become binding as soon as it is accepted by the person to whom the offer is made. For instance, when a person goes to a shop selling clothes, the person selling the clothes is offering them for sale; or intends to sell the clothes. If the person who wants to buy the clothes accepts the offer, and the terms (e.g. the price), then a contract is made when the buyer pays for the clothes and the seller receives the money. An offer can be in different forms, for instance a letter or a newspaper advertisement. A person may withdraw the offer before it has been accepted.

For a contract to be valid, there must be a common understanding between the person making the offer and the person accepting the offer, about the contract. If a person is selling one orange in a basket, but the person intending to buy thinks that the seller is selling the whole basket of oranges, then there is no common understanding (also called meeting of the minds) about the item to be sold.

An offer must be accepted exactly the way it was made, without modifications. If a person changes the offer in any other way, this is called a counter-offer and it kills the original offer. For instance if a person goes to a shop to buy a shirt and is told that the shirt is 20,000/-; but the customer offers to pay 10,000/-, then the customer is making a counter-offer – this is what usually happens when the customer bargains for the price. The customer makes a counter-offer, which the seller may accept or refuse.

Rejection of an offer or lapse of time

An offer can be terminated if it is rejected by the person to whom the offer is made, that is, if the person to whom the offer is made does not accept the terms of the offer; or makes a counter-offer (referred to above). On the other hand, the person making the offer may indicate the time within which the offer should be accepted. If that time lapses without the offer being accepted then the offer is taken to be terminated.

Implied contract

In some cases a contract can be implied if the circumstanced imply or indicate that an agreement has been reached even though it is not done specifically. For instance if a person visits a doctor who examines the person; and the patient thereafter refuses to pay after being examined, then the patient is taken to have breached or violated the contract

In most simple contracts, something of value must pass from one party to the contract to the other party to the contract. This is referred to as consideration. Therefore, consideration is a promise of something of value given by one party to the contract in exchange for something of value given by the other party to the contract. Consideration could be money given in exchange for a good or service. It can also be when one party agrees not to do something in exchange for something else.

Form/Types of contracts

1. Written: As a general rule, contracts must be in writing and signed.

- A person who signs a contract will be bound by the terms of the contract even if s/he did not read the contract.
- Any provision in the agreement which forms part of the contract is referred to as a "contractual term". Each contractual term creates an obligation for the parties to the contract.
- Remedies for breach of contract include monetary compensation for the loss (damages); cancellation of the contract (for serious breaches). In some cases, a person can be required by Court to perform his/her obligations in the contract (especially if the damages may not be enough to cover the loss).

2. Oral: In some cases a contract can be made by word of mouth (orally). Such contracts can also be implied through the actions of the parties to the contract.. However, it is always prudent to have the contract in writing because the written document can be used to prove the terms and conditions of the contract. Contracts for land, or for high amounts of money should be in writing.(e.g. Oral contracts beyond 500,000 can't be enforced).

Terms of a contract

Conditions and warranties

A contractual terms can be classified as a condition or a warranty. A ***condition*** is a key element of a contract and if breached, it allows the other party to cancel the contract. In a rental agreement, an example of a condition is the obligation to pay rent by the tenant. If the tenant fails to pay rent, then the landlord can cancel the agreement.

A ***warranty*** on the other hand is a promise to do or not to do something, breach of which would entitle the person who suffers from the breach to get compensation, but not necessarily lead to a cancellation of the contract. In sale of goods, for example, a warranty is a promise that the good or product will function without problems for a specific period of time.

Whereas a warranty may be included in a contract, some warranties are implied by law, that is, the law assumes certain promises, especially in sale of goods. For example, if selling a product or good, the law assumes that the product is of a quality that can be sold and that it is suitable for the particular purpose for which it is bought.

Third parties to contracts

Only those people who are parties to a contract can sue or be taken to Court over the contract. However, a person who is not a party to a contract may enforce a contract if the contract expressly provides that s/he may enforce it' or if the contract gives a benefit to the third party.

Defenses to a claim on a contract.

There are some factors that can lead to cancellation of a contract. In other cases the factors may give the party who is disadvantaged an option of cancelling the contract. Such factors include:

(a) ***Mistake:*** an incorrect or wrong understanding by one or more parties to a contract. There are three types of mistake:
   i. Common mistake – when both parties are mistaken about the facts. A common mistake can lead to cancellation of a contract ONLY IF the mistake was very essential to make the subject matter different from what was contracted; and making it impossible to perform the contract. If one party knows about the mistake and the other one does not, and the party who knows about the mistake promises or guarantees the existence of the subject matter, then the party will be in the wrong, if the subject matter does not exist.
   ii. Mutual mistake – this takes place when both parties are mistaken about the terms. Each believes that they are contracting to something different.
   iii. Unilateral mistake: occurs when only one party to a contract is mistaken about the terms or the subject matter of the contract. This contract will be upheld, unless it is shown that the other party was aware of the mistake and tried to take advantage of the mistake. A contract can also be cancelled if there is a mistake in the identity of the contracting party (if the identity of the other party was very important.

(b) ***Incapacity*** – as stated earlier, each party to a contract must have the legal capacity to enter into a contract. Such capacity includes mental capacity; or if the person is below 18 years.

(c) ***Duress*** – this is a threat to do harm which is made to force a person to do something against his/her will or judgment. For instance, if a person threatens to kill a party to the contract to force him/her to enter into the contract. The person who was threatened only needs to prove that the threat was made, and it made him/her enter into the contract

(d) ***Undue influence:*** this involves one person taking advantage of a position of power over another person to make him/her enter into the contract.

(e) ***Misrepresentation*** – this is a false statement about a fact, which is made by one party to the contract to the other party, which persuades the other party to enter into the contract. If a person knowingly makes a false statement about the type, quality or purpose of the good, which statement induces the other person to buy the item? Misrepresentation may allow the disadvantaged party to cancel the contract or get compensation for any loss if s/he proves that s/he relied on the false fact to enter into the contract.

Setting aside a contract

There are four different ways in which contracts can be set aside. A contract may be deemed 'void', 'voidable, or 'unenforceable' or 'ineffective' or 'ineffective'. Voidness implies that a contract never came into existence. Voidability implies that one or both parties may declare a contract ineffective at their wish. Unenforceability implies that neither party may have remedy of going to court for a remedy.

Breach of contract

Breach of contract refers to (a) non-performance (b) poor performance (c) partly performing or (iv) performance which is significantly different from that which was reasonably expected. The innocent party may choose to cancel the contract if it is a major breach, provided that the breach has caused foreseeable loss. After a breach has occurred, the innocent party has a duty to mitigate loss by taking any reasonable steps. Failure to mitigate means that damages may be reduced or even denied altogether.

Damages

There are several different types of damages.

- Compensatory damages – these are given to the party which was disadvantaged by the breach of contract. Compensatory damages compensate the plaintiff for actual losses suffered as accurately as possible.
- Liquidated damages: these are an estimate of loss agreed to in the contract.
- Nominal damages consist of a small cash amount where the court concludes that the defendant is in breach but the plaintiff has suffered no quantifiable financial loss, and may be sought to obtain a legal record of who was wrong.
- Punitive or exemplary damages are used to punish the party at fault; but even though such damages are not intended primarily to compensate, nevertheless the claimant (and not the state) receives the award.

Specific performance

In some cases it would be unfair to allow the defaulting party to just pay damages to the injured party. In such cases Court may make an order for the contract to be performed (specific performance).

Exercise:

1. Ayena agreed with to buy a Bull from Abiriga for UGX 1 million; and by the time of payment the bull had died; but Abiriga did not inform Ayena of this, though he took Ayena's money. When the date for delivering the bull came, Abiriga did not show up and since then he has refused to pick Ayena's calls. Ayena became frustrated and reported a case to police which arrested Abiriga. Abiriga's wife approaches you to assist her; and knowing that this case could be resolved amicably, you request police to allow you to facilitate an amicable settlement between Abiriga and Ayena. You begin by having a discussion with Abiriga; and he confirms that he received the money and it is not his fault that the bull had died. What would you tell Abiriga?

2. Namiiro heard an advert on radio about some 'magic pills' which can enlarge hips in two weeks. Namiiro went to the shop which sells the pills and was given the same assurance. She bought the pills and took them for three months as advised in the shop. The size of her hips has not changed. She went back to the shop to get a refund of her money; and was told that they cannot refund her money. Namiiro has approached you for assistance. You have written to the sellers of the pills and they have agreed to meet with you to talk about this issue. What issues will you advance to the sellers during the meeting?

MODULE FIFTEEN: EMPLOYMENT OR LABOUR LAW

Objectives and learning outcomes	The main objectives of training module are to enable participants to acquire knowledge on employment law in Uganda, right and responsibilities of employers and employees.
Learning Outcomes	Participants should be able to provide support to people in need of legal assistance regarding their employment
Duration	3 hours
Contents/Topics	• Definition of an employee • Duties of employers • Rights and duties of employees • Payment of wages • Settling employment disputes • Powers of a labor officer • Disciplinary actions • Termination of employment
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook Employment Act, 2006
Equipment	LCD, flip charts, marker pens

Introduction

Labor laws are the laws that govern a person's employment or work with their employer. In Uganda, laws relating to labor and employment are found in the Employment Act 2006, Occupational Safety and Health Act, 2006, Workers Compensation Act 2000 Cap 225. These laws apply to all workers in the private sector. Terms of employment for public sector employees (public servants) are contained in the Public Service Act, 2008. The Employment Act applies to all employees under a contract of service. The Employment Act does not apply to employment outside Uganda

Definitions:
An employee" means any person who has entered into a contract of service including any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organization. This definition excludes a member of the Uganda Peoples' Defense Forces and independent contractors.
2. "Employer" means any person or persons, including a company, a public body or local authority, a, a partnership for whom an employee works or has worked under a contract of service.

Employing children

A Child under the age of 14 years shall not be employed in any business or workplace except for light work carried out under supervision of an adult and as long as it doesn't affect the child's education or health. A child shall not be employed between the hours of 7 p.m. and 7 a.m. Any person, including a Labor Union or employer's organization, may complain to a labor officer if he or she considers that a child is being employed in breach of this section.

RIGHTS AND DUTIES IN EMPLOYMENT

Working hours

Where an employee works for more than 8 hours a day; or more than 40 hours per week, then if the employee is working on normal working days, s/he is entitled to be paid at a minimum rate of one and a half times of the normal hourly rate. If the employee works on public holidays then s/he is entitled to twice the hourly rate. Once the employee is paid for working on a public holiday, then s/he will not be entitled to a day's holiday for having worked on the public holiday.

Annual leave and public holidays

- An employee is entitled to a 7-day holiday with full pay if s/he works for every four months that s/he works continuously. The holiday can be taken at such time as agreed between the employer and the employee.
- An employee is entitled to a holiday on every public holiday, with full pay
- If an employee works on a public holiday, then s/he is entitled to compensate this work by taking a day's holiday with full pay. This holiday can be taken on any other day that would be a day of work.
- Any agreement to give up the right to get a minimum annual holiday, or to give up the holiday in order to receive compensation, that agreement shall not be valid; and it will be ineffective.
- The provisions on annual leave and public holidays applies only to employees who have continuously worked with the employer for at least six months; and works for sixteen hours or more per week.
- On termination of employment, an employee is supposed to receive a holiday with pay proportionate to the length of service for which s/he has not received such holiday; or be paid a compensation instead of the holiday.

Sick pay

- An employee who has continuously worked for one month or more with an employer (and works for at least 16 hours a week), but is not able to work because of sickness or injury is entitled to sick pay as follows:
- For the first month of sickness, the employee has the right to receive full wages and other benefits for his/her family as indicated in the contract of service
- If the employee's sickness continues to the end of the second month then the employer has a right to end the contract of employment, but must fulfil all the terms of the contract up until the time of ending the contract;

- For an employee to be entitled to sick pay, s/he must inform the employer as soon as possible about his/her absence from work and the reasons for it. Furthermore, if requested by the employer, the employee must produce a written certificate signed by a medical practitioner indicating that the employee is unable to work; and also indicating the period for which the employee will not be able to work. However, the employer may require a certificate from another doctor and in this case the employer must pay for the fees and transport in connection with issuing this additional certificate

Maternity leave

- A female employee who gives birth or suffers a miscarriage is entitled to maternity leave of 60 working days on full pay. At least four weeks of the leave period must take place after the child birth or miscarriage.
- After giving birth, a female employee is entitles to return to the job she held immediately before her maternity leave, or to a reasonably appropriate alternative job, on terms that are not less favorable than those she would have has if she had not been absent on maternity leave.
- In case the female employee has a sickness and cannot work which affects the employee or her baby, and it is not advisable for the employee to work, the employee will have the right to work within eight weeks after the date of giving birth or miscarriage on the terms mentioned above.
- A female employee who gives birth is entitled to the same rights above if she gives notice of not less than seven days in advance, or a shorter period as may be reasonable, indicating that she intends to return to work. If the employer requests so, then the notice must be in writing.
- If a female employee wants to exercise her rights under maternity leave, she may be requested by her employer to provide a medical certificate indicating her condition from a qualified medical practitioner or midwife.

Paternity leave

A male employee is entitled to a period of four working days (called paternity leave) which occurs after the delivery or miscarriage of a wife. After the paternity leave, the male employee has the right to return to the job which he held before he went for the paternity leave.

Repatriation or returning an employee to his/her home

1. Where an employer recruits a person and takes him/her to a work place which is more than 100 kilometers from his/her home, then the employer is supposed to return the employee to his/her home in case:
    a) The period of service specified in the contract expires
    b) The contract is ended because of the employee's sickness or accident;
    c) The contract of employment is ended through an agreement between the employer and employee, except if there is a provision in the contract that indicates that the employer does not have to repatriate or return the employee.
    d) If the contract is ended on the orders of a labor officer, the industrial court or any other court.
2. In case an employer takes the employee's family with the employee to the work place which is more than 100 kilometers from the employee's home, then the employer has to return the employee's family back to his/her home in case the employee is being returned home, or if the employee dies.
3. Where a person has been employed for at least 10 years, then the employer is supposed to repatriate the employee regardless of where the employee was recruited.
4. In some circumstances, a labor officer may exempt an employer from the responsibility of repatriating an employee in case the labor officer is satisfied that it is fair to do so in relation to the agreement between the employer and employees; in case an employee has been suddenly dismissed for misconduct.

EMPLOYER'S RESPONSIBILITIES

Provide work

An employer is required to provide the employee with work in accordance with the employment contract, during the period when the contract is in existence. However, this responsibility will not apply in case the contract cannot be implemented through no fault of the employer or employee, if the employee had terminated the employment contract; the performance of the contract is put on hold.

However, sometimes an employer may be relieved of his/her responsibility to provide work to the employee in situations where the employer's business is interfered in by natural disasters, a strike, economic or technological factors beyond the employer's control, which result into a shortage of work. In case the employer fails to provide work due to the reasons in this paragraph, s/he shall still have to pay the employee for each day s/he has not provided the work. On the other hand, if the employer provides the employee with alternative employment at the same wage but the employee refuses the alternative employment, then the employer will not have a duty to pay the employee for the days for which the employee is not working.

Pay wages

- An employee who is entitled to be paid shall be paid with money. In case an employee is sentenced and imprisoned, the employee will not be entitled to wages for the period that s/he is imprisoned.
- An employer cannot make conditions regarding the place or manner in which wages are paid; or spent
- An employee who is contracted to work for one day at a time is entitled to be paid at the end of that day. The same rules apply to an employee who is contracted to work for a week, a fortnight or a month.
- If the employer provides accommodation to the employee, then the employer shall not require the employee to leave the premises until the employee has been paid his or her terminal benefits.
- When an employee's contract of service is terminated, the employer has to pay the employee's wages and other payments and benefits within seven days from the date of ending the contract.
- An employee's wages must be paid directly to him or her. No one is allowed to receive an employee's wages, except if the employee agrees in writing to have his/her wages to be paid out to another person.
- It is not allowed to make deductions to an employee's wages for purposes of making any paybacks aimed at ensuring that the employee keeps his/her job.

Deductions from an employee's wages

- The law allows some deductions to be made from an employee's wages. These include:
  (a) Taxes, rates or subscriptions, whose payment is authorized by law;
  (b) Instances where an employee has agreed in writing to make a deduction from his/her wages to contribute to a pension fund or scheme;
  (c) A reasonable deduction to cover rent or accommodation provided to the employee by the employer; or to the employee's family (in case the employee has agreed to the deduction); and
  (d) Deductions to a labor union.

- An employer is required to provide the employee with equipment, tools and machinery which are required for the employee to do his/her work. The employer shall not require the employee to pay for these items or to deduct the cost from the employee's wages
- An employee's wages can be attached through an order of Court. However, this attachment should not be more than two-thirds of the employee's wages which are due for that period.

Pay statements

Whenever an employer pays wages to an employee, the employer is supposed to provide the employee with a written statement indicating the amount that has been deducted from the wages; and the purpose for which deductions have been made. The statement must also indicate the net amount to be received by the employee after the deductions. If an employer fails to provide the pay statement as required, the employee can make a complaint to a labor officer.

Whether payments can be made if employee is absent from work.

An employee is not entitled to receive wages for any period that s/he is absent from work without permission. However, if an employee has been in continuous service for at least three months, then if the employee is absent from work because of unique incidents that prevent the employee from reaching work; or because s/he has received summons to attend Court or another public authority, then this does not amount to absence without good reason.

In case the employee is absent because of a death of a family member or dependent relative, then his/her absence is not taken as absence without good reason, if s/he takes no more than three days on one of these occasions, or a maximum of six days in a year.

If an employee has completed at least three months' continuous service and gets absent from work due to any of the reasons above, s/he is still entitled to be paid wages. The employer is not entitled to deduct the employee's wages because of the absence.

Death of an employee

In case an employee dies during the period of the employment contract, then his or her heirs or legal representatives are entitled to the wages and other payments that were due to the employee at the time of his/her death.

If an employee dies from his/her workplace or while travelling to work, the employer is required to transport the employee's body to the place of burial.

Provide Details of Employment.

Within twelve weeks from the beginning of an employee's employment, the employer must provide the following details to the employee in relation to the employment:

1. The names and addresses of the parties to the employment contract; the title of the job which the employee will do; the place where the employee's duties will be undertaken.
2. The date on which the employment begins, which indicates the date which the employee's period of continuous employment will begin.
3. The wage which the employee is entitled to receive, how they will be calculated, the intervals when payments will be made and the deductions or other conditions to which the wages will be subjected.
4. The employee's normal working hours and the shifts or days of the week when work is to be done. The contract should also indicate the rate of overtime pay which applies to the employee.
5. The number of days of annual leave to which the employee is entitled and the employee's rights to wages during leave.
6. The rules governing an employee's incapacity to work as a result of sickness or injury, including provision for sick pay.
7. The period of notice which exceeds the notice period for ending the contract provided above

- If the information above is contained in a document, then the employer can refer the employee to the document where the information is contained. The document must be reasonably accessible during working hours at the work place; and should be in a language which the employer can understand.
- In case of any changes regarding the information to be provided above, then the employer must provide written notice to the employee about the change.
- The employer must keep a written copy of the information s/he provides above, and of any changes.
- In case of any disagreements between the employer and the employee concerning the terms and conditions of employment, then the written information and any notice of change will be used as a point of reference regarding the terms and conditions about which there is a disagreement.

Certificate of service

On ending the contract of service, an employee may request the employer to provide a certificate of service indicating the names and address of the employer and employee; the nature of the employer's business; the length of time that the employee has continuously worked for the employer; the job which the employer was performing, wages paid; and if the employee requests, the reasons for ending the contract. As much as possible, the certificate of service should be written in a language which the employee understands.

Labor officer

Every district is supposed to have at least one Labor Officer. A Labor officer has the power to undertake a labor inspection for purposes of ensuring legal provisions relating to work conditions and protection of workers; to provide technical information and advice to employers, employees and the most effective way of obeying the law; and to notify the Minister about shortcomings or abuses which are not covered by the Employment Act.

Powers of labor officer

1. A labor officer has the power enter into any work place in order to carry out an inspection
2. To examine or make an inquiry to ensure that the law is being followed. In doing this, the Labor officer may question any witness of employee of the company on any matters concerning the application of the Law. The Labor officer can also require books or documents to be produced in order to make sure that the law is being followed.

3. Where the Labor officer believes that there is a present or possible danger to the health or safety of workers, s/he can close the work place. In this case, the Labor officer must notify the Commissioner of Labor about the closure within forty eight hours of closing the work place.

4. On approval by the Commissioner of Labor, the Labor officer may require an employer to correct any fault or problem with the work place which poses a danger to the health and safety of workers. S/he can also order for a work place to be closed down or for work to be stopped if s/he believes that there is a looming danger to the health and safety or workers. An employer can appeal against any order of the Labor officer to the Industrial Court.

Settling disputes

In case an employer neglects or refuses to fulfil the terms of an employment contract, or in case a labor dispute arises regarding the rights or responsibility of an employer or employee under a contract of employment, the person who is affected may report the matter to a labor officer.

When the Labor officer receives the complaint, s/he can work to resolve the matter by an agreement between the parties which involves as much as possible, the workers or the Labor Union which may be present at the work place.

When a complaint is reported a Labor officer, the Officer has the power to:

i. Investigate the complaint, receive any defense to the complaint and settle, or try to settle the complaint through making a decision or by agreement, with the involvement of any Labor Union
ii. require any person to attend as a witness; require documents relating to the complaint to be produced
iii. Hold hearings to establish whether the complaint has a basis according to the law.

If the person making the complaint fails to appear before the labor officer within the specified period, the labor officer will assume that the complaint was settled. Alternatively, the labor officer can forward the case to another date.

Power to prosecute

A labor officer may begin civil or criminal proceedings before the Industrial Court in relation to a disobeying the Employment Act or regulations made under the Employment Act.

A person commits an offence is s/he?

a) Prevents or delays a labor officer to do his/her work under the Employment Act
b) Fails to implement any order, advice or request by the Labor officer which is made under the Labor officer's powers.
c) Prevents or tries to prevent a person from appearing before the Labor officer.15
d) Records or tries to record wrong, inaccurate or insufficient information in an employee's records of service with the intention of cheating the employee or employer or public authority; or if a person tries to cover up his/her actions
e) Being an employer or employee, fails without good reason, to respond to a Labor officer's written request.

Sexual harassment at the work place

Sexual harassment refers to any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the conduct is expressly or impliedly made as a condition of an individual's current or future employment. Such advances are made by a person who is in a position of authority over the employee in the work place. Sexual harassment includes use of written or spoken language; physical behavior or visual images of a sexual nature. The harassment subjects the employee to behavior which the employee does not welcome and finds it offensive. The nature and frequency of the behavior could then affect the employee's productivity or job satisfaction.

Every employer who has more than 25 employees must have measures in place to prevent sexual harassment at the work place. An employee who is sexually described as above can report the matter to a labor officer.

Discipline and termination of a contract of employment.

In some cases an employer can take disciplinary action against the employee instead of ending the contract. Disciplinary action is taken in the case of neglecting, failing of the employee to carry out his/her duties under the contract of employment. Disciplinary action can include a written warning, a reprimand; or suspension from work.

Disciplinary rules

a) Disciplinary rules must be written; and in a language understandable by both the employer and employee. The disciplinary rules must be readily available to employees. The rules must be applied equally to all employees and muse not discriminate on the basis of race, gender, religion, political opinion, nationality, marital status or affiliation or planned affiliation to a labor union.
b) The employer will deal with minor violations through providing informal advice and correction rather than using formal procedures.
c) Disciplinary rules must indicate the penalties for violating the rules; and consequences of future violations.
d) The employer must ensure that an employee who is faced with a disciplinary action is made aware of the complaints against him/her; the form which the disciplinary proceedings will take and consequences of the proceedings. The employer will also provide the employee with reasonable time; and an opportunity to answer the allegations that form the basis of the disciplinary action
e) Disciplinary procedures must be undertaken without unreasonable delay after investigations are done.

Disciplinary penalties

- The employer's decision on the kind of punishment to give will take into consideration, the employee's circumstances as well as the circumstances surrounding the violation. An employer will not impose a punishment after more than 15 days when the incident which caused the disciplinary action took place.
- An employee is not likely to have his/her employment ended when s/he commits the first disciplinary violation, except in extraordinary circumstances. Dismissal for misconduct will be considered in cases of serious misbehavior or repeated violations of disciplinary rules.
- An employee will receive a written warning for a first minor violation. In serious violations, an employee will receive a reprimand.
- In case of serious misconduct, or when an employee persistently commits less serious acts, the suitable punishment will be dismissal where the violations is in relation to theft of or willfully damaging the employer's property; physically assaulting or deliberately putting the safety of the employer, fellow employees of the public in danger; being unable to do the employee's work due to intoxication.

- In case the employer decides to dismiss an employee, s/he must give the employee notice; or wages instead of notice. Ordinarily, an employee will not be dismissed if s/he did not receive a final written warning informing the employee that s/he was in danger losing the job because of his/her behavior. Before deciding to dismiss the employee, the employer must first consider options for punishment. Summary dismissal shall be considered only for the most extreme cases where dismissal is the suitable punishment.
- If an employee is arrested, charged and imprisoned for a criminal offence committed outside working hours, this shall not give reasons for dismissal or other disciplinary action. The employee would also need to consider whether the conviction affects the employer's suitability for his/her work.
- A violation of disciplinary rules will no longer be taken into consideration after two years elapse, if the employee has not committed further violations.
- The decision to take disciplinary action by an employer can be arrived at by taking into consideration the nature of the employee's neglect or failure, the penalty imposed by the employer, the process followed by the employer in imposing the penalty, the reformed conduct of the employee and any personal circumstances of the employee.
- An employee cannot be suspended from work for more than 15 days in any six-month period.
- An employer who does not take disciplinary action within 15 days from the date when s/he gets to know about the event which requires disciplinary action will be taken to have given up his/her right to take disciplinary action

Suspension

- If an employer is making inquiries about an employee, and the employer believes that the inquiry might reveal information that would lead to an employee being dismissed, then the employer can suspend the employee, and pay only half of the employee's wages. However, the suspension is not supposed to exceed four weeks; and the suspension must not be for a longer period than the inquiry. If the inquiry lasts less than four weeks then the suspension should not exceed the inquiry period.

Complaint by employee

- If an employee thinks that the employer did not have a good reason to implement disciplinary action or suspension with half pay on the employee, then the employee may make an oral or written complaint to the labor officer within four weeks from the time the penalty or suspension was undertaken.
- When an employee makes a complaint regarding disciplinary action or suspension, the labor officer will look into the circumstances that led to the disciplinary action, and seek to first settle the matter through mediation.

If the disciplinary penalty has not been withdrawn, or the employee been paid for the period when s/he was suspended, then the labor officer will make a decision as to whether it was reasonable to impose the disciplinary action or suspension with half pay, and communicate the decision with reasons to the employer and employee.

- If the labor officer determines that the disciplinary action or suspension with half pay was not reasonable, the labor officer may make an order that:
  - The original punishment be withdrawn;
  - The original punishment be withdrawn and replaced by another specific lesser punishment
  - The employer pays the employee the wages that were not paid when the employee was on suspension with half-pay
- Where a labor officer makes an order to revoke the suspension or disciplinary action, then the employee's personal records must not reflect any information regarding the disciplinary action or suspension. In case the punishment has been reduced, then only the lesser punishment must be recorded in the employee's personal records.
- If an employee makes a complaint regarding his/her disciplinary action or suspension, it will not affect the employee's other rights under the contract of employment.

Termination of employment

Notice periods

- An employer cannot end a contract of service by the employee unless the employer notifies the employee of his/her intention to end the contract of employment. This is referred to as 'notice'. The notice must be written and must be in a language that the employee can understand. However, in some cases the employer may not be required to give notice. These cases are:
  - If the contract of employment is ended immediately without notice.
  - Where the termination is due to the fact that the employee has reached retirement age;

- The period notifying the employee of the employer's intention to end the contract of employment is as follows:
  - If the employee has worked for a period of more than six months but less than a year, then the employee must be given a notice of not less than two weeks;
  - If the employee has worked for more than twelve months but less than five years, then the notice period must not be less than one month;
  - If the employee has worked for a period of five years but less than ten years, then the notice period must not be less than two months;
  - If the employee has worked for ten years and above, then the period of notice must not be less than three months.
  - During the notice period, the employee must be given at least one-half day off per week to enable him/her look for new employment.
- Any agreement between the employer and employee made to exclude the requirement of notice is of no effect. However, the employee can agree to be paid instead of receiving notice.
- If the employee is entitled to leave at the time of ending the contract, then the period of leave is not to be included in the notice period.

- A contract of employment can be terminated under the following circumstances:
  1. By the employer providing a notice to end the contract
  2. Where a contract is for a fixed period, it is terminated when the period ends and the employer does not renew the contract within one week from when the contract expires.
  3. Where the employee ends the contract (with or without notice) as a result of difficult behavior by the employer towards the employee.
  4. If the employer gives an employee notice to end the contract of employment but the employee ends the contract before the notice period expires.
- The date of ending the contract of employment is assumed to be the date when the notice expires. In case of a contract of service for a fixed term, the date of ending the contract is taken to be the date when the period of the contract ends. If the employee ends the contract with or without notice; or if the employee is given notice to end the contract but s/he leaves before the end of the notice period, then the date of ending the contract is taken to be when the employee stopped working. In case an employee reaches the age of retirement, then the date of ending the contract is taken to be the date when the employee reaches retirement age.

Notification and hearing before termination

- Before making a decision to dismiss an employee for misconduct or poor performance, the employer must explain to the employee the reason for which the employer is considering dismissing the employee.
- Before reaching a decision to dismiss an employee, the employer must provide reasonable time to the employee to prepare his/her side of the story in relation to the misconduct or poor performance. The employer must hear and take the employee's side of the story into consideration.
- An employer is likely to pay the equivalent of four week's net pay if s/he fails to observe the requirements in this section. This is irrespective of whether or not the immediate dismissal is justified; or whether the dismissal is fair.

Employee's options in case of summary dismissal

What is summary dismissal?
Summary dismissal is dismissal without notifying the employee of any notice to terminate the employment contract or payment instead of notice. It does not require advance notice to the employee and wages are only paid to the time of dismissal. An employer has a legal right to summarily dismiss an employee without notice for serious misconduct or other conduct which justifies such dismissal.

Take a complaint to labor officer

In case an employee feels that they have been dismissed summarily without justification, the employee can present a complaint to the labor officer within six months from the date of summary dismissal. The labor officer have to make a decision as to whether the employee was unfairly dismissed; and will first seek to settle the matter through mediation.

If the labor officer comes to the conclusion that the employee was dismissed without justification, the labor officer will inform the employee the former employee of his/her decision; and order the employer to pay the net wages which the employee would have been entitled to if s/he had been given the notice to which s/he was entitled under the contract of employment. If the dismissal comes before the period for paying the employee's wages, then the employer is supposed to pay the wages due for the period which the employee has worked.

The labor officer can also order the employer to pay for any other losses which resulted from the dismissal which arise between the date of dismissal and the date of expiry of the notice period. In a complaint regarding unfair dismissal, the employee has the responsibility of proving that s/he was dismissed. On the other hand, the employer has the responsibility to justify the reasons for the dismissal.
An employee who makes a complaint against unfair dismissal to a labor officer still has rights to pursue a complaint regarding violation of his/her legal rights; or violations of the contract of employment.

(6) For any complaint of unfair dismissal, the burden of proving that a dismissal has occurred rests on the employee, and the burden of justifying the grounds for the dismissal rests on the employer.

Unfair termination

If an employee has been continuously employed for at least 13 weeks and is terminated, s/he has the right to complain to a labor officer within three months after the termination, about the unfair ending of the contract. If an employee is on probationary contract and is terminated, s/he does not have the right to complain about unfair ending of his contract of employment.

What amounts to unfair termination?

Termination of an employment contract is taken to be unfair if it is done for any of the following reasons:

- The pregnancy of a female employee, or reasons connected to the pregnancy
- The fact that the employee took or planned to take leave which s/he was entitled to under the contract of employment
- The fact that an employee is a member, or proposes to join a labor union
- The employee has participates, or plans to participate in activities of a labor union outside working hours; or during working hours with the permission of the employer within working hours.
- An employee refusing to join or withdraw from a labor union
- An employee who wants to work as, or has acted in the capacity of a labor union officer or worker's representative
- An employee's race, sex, religion, political opinion or association, nation of origin and nationality, marital status, HIV status or disability;
- Where an employee has started, or plans to take a complaint or other legal processes against his/her employer, except if the labor officer is of the opinion that the employee's behavior is irresponsible and has no basis.
- An employee has been absent from work for a period of up to three months and has reasonable justification for being absent, including absence due to injury or illness.

Termination of an employment contract is taken to be unfair if it is done for any of the following reasons:

- The termination is because of any of the reasons indicated above; or if the employer did not act in fairly in all the circumstances surrounding the termination. In deciding whether the employer's action was fair, the labor officer will consider the employment code of discipline, the steps taken by the employer in coming to the decision to dismiss the employee, how that decision was communicated; and how the appeal against that decision was handled. The labor officer will also consider the extent to which the employer has fulfilled or observed with the legal requirements in connection with the termination; and the employer's previous practices when dealing with similar circumstances that led to the employee's termination. In addition, the labor officer will consider the behavior and capabilities of the employee up to the date of terminating the employment contract.

An employee's right to complain about unfair dismissal is in addition to any right that the employee has under the contract of employment.

If the employee files a case in Court and Court finds that the dismissal was not fair, then court may give an order to restore the employee on the job, unless the employee does not want to be restored on the job; if the circumstances surrounding the dismissal make continued employment of the employee difficult; it is not reasonably practical to restore the employee on the job; or if the unfairness of the dismissal is only because the employer did not follow the proper process for dismissing employees. Court can also order the employee to pay compensation to the employee.

Industrial action *is a situation where workers/employees join together to do something (for instance a strike) to show that they not happy with something at their work place, for instance their pay, working conditions, planned actions by a company, for instance, laying off staff. Industrial action is usually undertaken after employees meet and collectively decide on what they will do about to protest their unhappiness. The purpose of the Industrial action is to try and force their demands; or press the employer to address their grievances.*

Industrial action

The fact that workers in a company are organizing a lawful strike or other form of industrial action does not establish a reason for dismissing staff; or undertaking disciplinary action. An employee who participates, or intends to participate in a lawful strike or other form of industrial action will not be dismissed or punished for that reason.

Actions that can be taken when unfairly terminated

- An employee who feels that s/he has been unfairly terminated can take a complaint about the unfair termination to the labor officer. If the labor officer concludes that the complaint about unfair termination has some grounds, then the labor officer can give the employee an award of compensation.
- The order for compensating an employee who has been unfairly terminated **must include** a basic order for the employer to compensate the employee with four weeks' wages. The Order may include additional compensation to be decided by the labor officer after considering:
  - How long the employee has worked with the employer;
  - The employee's reasonable expectation of how long his/her contract would have lasted with the employer if it was not terminated.
  - Available chances for the employee to get similar or suitable employment with another employer
  - The amount of severance pay that an employee is entitled.

Severance pay is the compensation which an employer provides to an employee who has been laid off, whose job has been eliminated, who has decided to leave the company through mutual agreement, or who has left the employer for other reasons. The exact benefits under severance pay depend on the employee's contract with the employer and the staff conditions of service.

  - An employee's right to claim for his/her unpaid wages, expenses or other claims which s/he is owed.
  - Any expenses that the employee may have reasonably suffered resulting from the termination; and the efforts made by the employee to reduce the losses arising out of the termination.
  - Any conduct of the employee which caused or contributed to the termination
  - Any compensation, including employer's goodwill or voluntary payments in respect of the termination, which have been paid and received by the employee.

- The minimum amount of additional which may be awarded is one months' wages of the dismissed employee; and the maximum amount is three months' wages.

Case study: Rita was employed as a secretary with XOXO Company. She had been working there for 4 years. One day she stopped coming to work; and did not call or send any one to inform her employers why she did not come to work. The manager of XOXO tried calling her but she did not pick her phone. After two weeks she returned to work and when the manager asked her why she was absent from work for two weeks, Rita started abusing the manager. When her fellow co-workers tried to stop the argument, she decided to beat them one by one. The manager called security and asked them to escort her off the building. She was dismissed there and then.
Ritah has come to you as the labor officer to file a complaint about unfair termination or summary dismissal. How would you handle this case?

Settling cases of termination

An agreement between an employer and employee stating that the employee cannot take a complaint relating to termination of employment to a labor officer must be in writing, signed by both employer and employee; and must have a statement by a labor officer that the terms of the agreement are fair and reasonable. The labor officer's statement must also indicate that the employee's rights under the law and under the contract of service have been paid. This also applies to an agreement between the employer and employee that complaint under sections 64 or 70 will not be considered.

Continuing employment.

- Continuous service of employment begins and includes the first day an employee begins to work and includes the last day on which that work is completed. Continuous service therefore means, an employee's period of uninterrupted service with the employer. It will be assumed that an employee's service with the employer will be continuous whether or not the employee remains in the same job.
- An employee who works for 16 hours or more in a week is taken to be working in continuous employment.
- An employee's service remains continuous even when s/he is absent from work on annual, education, maternity or sick leave; or is on suspension in accordance with the law and the contract of employment. Employment is also continuous if the employee is on suspension.
- Employment is also continuous when the employee is temporarily laid off from work by the employer; is absent because of a strike or industrial action in which s/he did not participate; due to a prison sentence which is not related to his/her work; or in accordance with the agreement of the employer.

Severance Allowance.

An employer must pay severance allowance to an employer who has been in continuous service for six months or so, if the employee:

- Has been unfairly dismissed by the employer
- Dies in the service of his/her employer, except if the cause of death is by the employee's own serious and deliberate misbehavior.
- Ends his/her contract due to physical incapacity which is not caused by his/her own serious and deliberate misbehavior;
- Dies, or the employer becomes insolvent; or if the labor officer terminates the employee's contract resulting from the employer's inability or refusal to wages.

No severance allowance is payable if

- the employee is summarily dismissed with justification;
- The employee is dismissed, but refuses an offer to be re-employed at the same work place under similar terms and wages that the employee had immediately before the dismissal
- The employee deserts his/her employment, or leaves his/her place of work without permission for a period of more than three days without providing any explanation to the employer.

In case severance pay is payable to an employee, it must be paid when the employment ends. In case severance pay is payable for an employee who dies, it must be paid to the surviving spouse of the employee within 30 days after the employer is informed about the employee's death. In case there is no spouse, payment can be made to a dependent relative, guardian of children who are not yet 18 years; or such other adult as the labor officer may decide.

An employer commits an offence if s/he fails to pay severance allowance, or fails to pay the severance allowance without good reason. If the employer is found guilty, s/he must pay twice the amount of the severance pay.

Remedies, Jurisdiction and Appeals

An employee who claims to have his/her rights invaded can only make a complaint to the labor officer. If a labor officer has not stated the decision from the complaint within 90 days of submitting the claim, then the person complaining can take up an action to the Industrial Court.

A person who is not satisfied with the labor officer's decision can appeal to the Industrial Court, which can confirm, adjust or change the decision of the labor officer.

Invalid provisions of employment contracts

Any provision in a contract of service will not be valid if it excludes or limits the operation of the Employment Act to disadvantage the employee; if it prevents any person from taking a complaint to a labor officer; undertaking any proceedings under the Employment Act; giving evidence in connection with any such complaints or proceedings. An exception is where the provision forms part of a written agreement to settle a dispute, and the agreement has been approved by a labor officer as fair and reasonable in all circumstances.

MODULE SIXTEEN: LAND AND PROPERTY LAW

Objectives and learning outcomes	By the end of this module participants should be knowledgeable about the laws applicable to land in Uganda; the land management and dispute resolution structures, types of land ownership and rights under each type of ownership.
Duration	6 hours
Contents/Topics	• Background to Uganda's judiciary and judicial system • Current Court structure and its jurisdiction
Methods	Presentation and discussion; question and answers
Learning Materials for Participants	Paralegal handbook The 1995 Constitution of the Republic of Uganda The Land Act, 1998 The Land Acquisition Act, Chapter 226 The Registration of Titles Act, Chapter 230
Equipment	LCD, flip charts, marker pens

Introduction

Land, sometimes referred to as **dry land**, is the solid surface of the earth which is not permanently covered by water. Majority of Ugandans especially in rural areas depend on land for their livelihood which makes land an important factor in the lives of many people. Land is important for agriculture, shelter and housing. As such access to, control and management of land affects people's livelihoods and well-being.

Land laws in Uganda

There are several laws governing land in Uganda. The main law is the Constitution of Uganda, 1995. Other laws include the *Land Act***,** *the Land (Amendment) Act 2004*, *the Land (Amendment) Act 2010* and the *Registration of Titles Act*. These laws also provide for the nature, procedure and forms of land ownership rights as well as redress in cases where the rights are or have been infringed.
Article 237 (1) of the Constitution states that land in Uganda belongs to citizens of Uganda. This means that Ugandans are the ones to decide how to use their land and what laws should apply to land ownership.

Article 26 guarantees the fundamental right of every person to own property individually or with others. It also protects the right of every person not to be dispossessed of their land without compensation. This article provides the major basis under which land in Uganda is owned and held.

To administer and manage land, Articles 238 to 240 of the Constitution establish land management institutions - the Uganda Land Commission and the District Land Boards; and states the functions for each of these institutions. Each district has a district land board which is supposed to deal with all matters connected with land in that district, such as registration and transfer of land, as well as resolving land disputes.

Article 237 (3) of the Constitution recognizes four ways of holding land in Uganda, referred to as land tenure systems. Land tenure refers to the way in which a person can own land. As paralegals, you need to understand the land tenure systems in order to properly advise persons because each form of land ownership or tenure may have different ways for seeking solutions in case of land disputes.

What are the different land tenure systems in Uganda

Note to Facilitator

1. Lead a question & answer session on land tenure systems and laws applicable in Uganda. You can ask participants to name the different tenures and what each one involves, without necessarily expecting them to respond with precise technical terms, descriptions will do.
2. Write answers in a table on a flip chart. Supplement answers and wrap up the session by distributing copies of the map on land tenure in Uganda and referring participants to the information below. The questions should include the following;
   - What types of land ownership are you aware of in your community? How does it work?
   - What are some of the issues arising from the land holding system in your community?

There are four types of land tenure systems recognized in Uganda. These are:

Mailo tenure

Mailo land tenure is a system of land ownership which was created by the 1900 Buganda Agreement whereby chiefs and kings were given land (measured in miles) in exchange for their political cooperation. This form of land ownership is common in Buganda and some areas of Eastern Uganda. Mailo land is registered land, and the person who **owns** mailo land does so forever. A person who owns a mailo land title has absolute ownership of that land. Although the land originally belonged to chiefs, with time ordinary citizens started buying parts of this land from the chiefs and were issued with titles for it.

Rights of a Mailo owner: a mailo Land owner is free to exercise full powers of ownership of the land such as using and developing the land for any lawful purpose; entering into any transaction connection with the land; as well as giving out of the land to any person through inheritance, selling it, or giving out a lease on the land. The mailo tenure system recognizes occupancy by tenants (locally known as Kibanja holders) these are people who settled on the land with the consent of the mailo landowner. If there are kibanja holders on the mailo land, then the owner can only exercise his/her rights subject to the legal rights of the Kibanja holder(s); or rights of lawful or *bona fide* occupants.

How can a person transfer mailo land?

- The person who wants to transfer applies to transfer the land. The Applicant must have fully completed set of transfer forms which include a Transfer form and two Consent forms, a photocopy of the duplicate certificate of title and two authentic passport photographs of the buyer and seller.
- The Applicant presents the documents to the Valuation Division for valuation assessment for Stamp duty. The Applicant checks with the Valuation Division within a period of 3 working days to pick the form and proceed to pay stamp duty and registration fees in the Bank. Stamp duty is 1% of the value of the land. Assessment for payment of Registration fees is done by the respective District Cashiers.
- Pay the fees in the bank; get a receipt and your Transfer form embossed. Submit all documentation together with the Duplicate Certificate of Title, receipts and photocopies of all documents to the Mailo Registry.
- The photocopy is stamped 'Received'. The applicant is asked to check after 10 working days
- The Applicant presents identification documents and the Photocopies to collect the Duplicate Certificate of Title. The applicant signs for the Title and the Photocopy is stamped 'Returned' on completion.

Freehold

Freehold land is registered under the Registration of Titles Act. Like Mailo land, the owner of a freehold holds it forever (in perpetuity); and has full rights of ownership such as using and developing the land for any lawful purpose; entering into any transaction in connection with the land; as well as giving out the land to any person by will or through inheritance; or selling it.

Lease land

b) Leasehold land tenure system

Leasehold tenure is a form of ownership whereby a land owner, or government gives a person the right to exclusively possess the land for a specified period, usually in exchange for payment of rent and a requirement to fulfil some conditions which are specified in the lease agreement. Any owner of land in Uganda – whether through freehold, Mailo or customary tenure – may grant a lease to another person. In practice, much of the land that is leased was previously owned by government bodies, particularly the Land Commission and the District Land Boards. On giving the lease, the land owner usually imposes a condition on the lease owner, for instance to develop the land. In Uganda one can get a lease from an individual, a local authority, an organization/Company, an institution like Buganda Kingdom or from Uganda government. The minimum period for a lease to be registered for Ugandans is three (3) years and five (5) years for non-citizens. The maximum period is 99 years. The person granted a lease for an agreed period of time is entitled to a Certificate of Title. An example of leasehold ownership is ***Kyapa mu Ngalo*** which is given by Buganda Land Board. The difference between Freehold and Leasehold Land Tenure System in that whereas Freehold is held forever, a leasehold is held for a specific period of time agreed to in the lease agreement.

A person who is granted a lease has exclusive possession of the land for the period specified in the lease, as long as s/he is fulfilling the terms and conditions of the lease agreement, which include payment of rent and premium. Non-Ugandans can only get land rights through the leasehold form of tenure.

Rights of an owner of land under Leasehold Tenure.

A person who owns land under leasehold can only use it based on the conditions that are stated in his or her lease agreement. He or she can sell the lease, give it as security to a bank, construct a family or business building, or give it away in a will. However, any beneficiary of this lease will still only own it for the number of years stated in the lease agreement. When that time expires, the lease also comes to an end and the land lord gets back the right to control his or her land. However, the tenant/lessee is free to re-apply for extension of the lease that he or she has been holding to landlord/landowner/lessor.

How to transfer land under leasehold and freehold land tenure system

- The person seeking to transfer (applicant) must have fully completed Transfer forms which include a Transfer form and two Consent forms, A photocopy of the duplicate certificate of title and two authentic Passport photographs of the buyer and seller.
- The Applicant presents the documents to the Valuation Division for valuation assessment for Stamp duty. The Applicant checks with the Valuation Division within a period of 3 working days to pick the form and proceed to pay stamp duty and registration fees in the Bank. Stamp duty is 1% of the value of the land as assessed by the Chief Government Valuer.
- Pay the fees in the Bank, get a receipt and your Transfer form embossed. If a person is transferring a lease, s/he should get permission (consent) from the owner of the land under which the lease was obtained. Submit all documentation together with the Duplicate Certificate of Title, receipts and photocopies of all documents to the Leasehold/Freehold Registry.

- The photocopy is stamped 'Received' and returned to the applicant who is asked to check after 10 working days.
- The Applicant presents identification documents and the Photocopies to collect the Duplicate Certificate of Title. The applicant signs for the Title and the Photocopy is stamped 'Returned' on completion.

How to Convert a Leasehold to a Freehold Land Title

- The Applicant must have in his/her possession fully completed Forms (4, 5, 10, 19 & 23) in duplicate (two copies), a set of 3 authentic deed plans, Duplicate Certificate of Title, 3 Passport Photographs, Receipts of Payment and a forwarding letter requesting for a conversion from Leasehold to Freehold title signed by the District Land Officer of the respective District where the land is located. If the land was titled after the coming into force of the 1995 Constitution, then a Surrender Deed/Agreement of the Lease is required. It is prepared by the Secretary DLB to be signed by the DLB and the applicant / registered proprietor.
- The Applicant presents the full set of original documents and a photocopy of the same, to Department of Land Administration for checking. The photocopy is stamped 'Received' and returned to the applicant. The applicant checks with the Department of Land Administration after 10 working days to confirm their approval or rejection, and is given a letter advising him/her on the fees to be paid.
- Once approved, the documents are forwarded to Department of Land Registration to issue a Freehold Title. The applicant checks after 10 working days if there is a Surrender Deed/Agreement to be processed.
- The Applicant presents the photocopy given to him/her by the Department of Land Administration stamped 'Received' and identification documents on collecting the Freehold Title after 20 working days. The applicant signs and the Photocopy is stamped 'Returned' on completion

Customary land tenure

Customary Land tenure system is land held or owned communally or jointly by particular groups of people in a given area regulated by customary rules. This is the most common land tenure system in Uganda and is predominant in north, south and eastern Uganda. In this case, people own their land, have their rights to it, but majority do not have land titles. Some owners on such land allocate specific areas to themselves with known and defined boundaries usually marked by ridges, trenches, trees and provisional mark stones. Land under this system is owned forever and used according to the customs and practices of a community. These rules will apply to any person who lives on such land. Under customary tenure, a family is recognized as a legal person represented by the head of the family. The family/ individual therefore has access and user rights to this land but the actual ownership lies with the Communal Land Association. However, if customary rules go against what the Constitution of Uganda provides, such as the protection of rights of women, children and other vulnerable groups, then they cannot be applied and can be challenged in court.
Article 237(4) of the constitution allows all Ugandan citizens owning land under customary tenure to acquire certificates of customary ownership in respect of their land. The certificate of customary ownership is taken to be conclusive evidence of the customary rights and interests on the title. Customary land can also be converted to freehold by individuals, families or communities on application to a district land board. The rules of customary law also vary in different parts of the country. The Land Act 1998 states that customary land tenure shall be governed by rules generally accepted as binding by the particular community.

The principle underlying customary tenure is that land should be used by all and left for the future generations. Therefore customary land is generally understood not to be for sale compared to mailo, freehold or leasehold land which whose ownership is individualized. Since customary land is normally held communally, it is difficult to develop or sell as no one has the mandate to take full responsibility for it.

The mail disadvantage of customary tenure is that it tends to emphasize cultural values which are not always fair to everyone, especially women. Land users are not encouraged to make long-term investments on the land; and they may not take good care of the land like they would have done if it held individually.

It should however be noted that in order to change customary land to titled land, the process is expensive, long and tedious. This is not unexpected especially since the map and titling registries are centralized in Entebbe and Kampala, which may be far away. Not many people can afford the process of getting a title.

Characteristics of Customary tenure

- The land is held permanently forever
- It may be individually owned or held by a community (communal land)
- Where it is held as a community, there may be distinct sub divisions belonging to a person, family or traditional institution
- Land is acquired according to the customary norms and practices of that community.

What are the rights under customary tenure?

An owner of customary land may;

- Acquire a certificate of customary ownership however non acquisition of the certificate does not take away the right of the owner of the land. The certificate is recognized by financial institutions, bodies, authorities as a valid certificate and evidence of title.
- Give others rights to use and derive benefits from his/ her land
- Lease the land or part of it.
- A customary owner of land can do anything with the land that is acceptable by the laws and customs of his or her community. When individuals who own land customarily die, such ownership continues through the clan, relatives or the family of the owners. Any dealings with respect to land held under customary tenure must be subjected to the customs, norms and practices of that community.

Who may apply for a certificate of customary ownership?

The following land holders of unregistered land held under customary tenure may apply for a certificate of customary ownership. They include an individual person, family or community.

Procedure of acquiring a certificate of customary ownership?

- The applicant submits an application Form 1 to the District Land Board offices and a fee of 5,000/=is paid.
- The applicant has to fill in the forms in triplicate and submits them to the Recorder at the Sub-county who is the sub-county chief.
- The Area Land Committee puts a notice in a known place on behalf of the District Land Board of the applicant's intention to acquire a customary certificate.
- The Area Land Committee goes ahead to mark the boundaries, right of way and other forms of easements. The committee also makes a sketch map of the area.
- The committee makes a decision of the legitimacy of such using customary law as their guidance.
- The decision of the Areal Land Committee is put into writing. Three copies are made. The original is forwarded to the District Land Board together with a sketch map of the area.
- It is the recommendation which the board considers either to accept or reject with reasons for rejection. When the Board accepts its acceptance is put into writing and it is sent to the recorder who then issues a certificate of customary ownership at the sub county.

- A customary identification number is given to each certificate of customary ownership and a fee of 5,000/= is paid.

Public Land and Land held in trust by Government

Public land is land owned by government or local authority which has the right to lease it to any company, organization or individuals on specific terms and conditions.

Land held in trust by Government

Government or Local government shall hold in trust for the people, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological (environmental) and tourists purposes for the common good of all citizens.

Tenant by Occupancy

The Constitution of Uganda, 1995 created security of occupancy. The *Land Act* went on to protect occupants on registered land from unfair or unlawful eviction by identifying tenants by occupancy. Under this mode of ownership, one does not have full ownership rights since the land is actually owned by someone else. Types of this occupancy include:

Lawful Occupant

A lawful occupant occupies land by virtue of the repealed *Busuulu and Envujjo Law of 1928*, *Toro Landlord and Tenant law of 1937, Ankole Landlord and Tenant law of 1937*; or s/he was allowed by the registered owner to occupy the land. This includes a purchaser; or a person who occupied the land as a customary tenant but his or her tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

Bona fide Occupant

If a person was occupying the land by the time the Uganda Constitution 1995 came into force and utilized it or developed it unchallenged by the registered owner or his agent for twelve years or more; or had been settled on the land by Government or an agent of Government which may include a local authority, then s/he is known as a bonafide occupant. A *bona fide* occupant also includes people resettled on land under Government resettlement schemes. Where the occupant is resettled on registered land, s/he may be enabled to acquire registrable interests on the land.

Institutions of land management in Uganda?

The Land Act 1998 sets out a number of institutions to manage land and settle land disputes in Uganda. These include:

Other institutions for land administration and management in Uganda.

Other Land Administration and Management institutions	Level of operation	Roles
The Resident City/ District Commissioners (RCC/RDC)	District/City Level	• The RCC represents the President under the Kampala City Council Authority (KCCA) as provided under the KCCA Act 2010. • Article 203 of the Constitution gives the President power to appoint Resident District Commissioners (RDCs) in each district. • The RDC/RCC has a mandate to monitor Government funded projects, policies, and to implement local administration. • They may also carry out other functions as may be prescribed by the President or parliament. • They chair Security Committees at city or district level-including land which is a major cause of conflict. • The RDC/RCC should not interfere in on-going court cases. • RDC/RCC does not determine land ownership.
Police Land Protection Unit	National and District Level	• The Unit was formed to handle fraudulent or false land transactions. • It has the *Investigation Group* - it probes and prosecutes offenders who have committed land fraud and related crimes. The *Land Protection Group* - acts to stop illegal evictions, it sensitizes the community on land issues and handles enforcement of court orders. • The Unit works with; MLHUD, Administrator General's Office, Presidential Land Task Force CBOs and NGOs. • Each police station is required to have a land desk.

Land Administration and Management institutions	Level of operation	Roles
The Ministry of Lands, Housing . and Urban Development (MLHUD)	National Level	• Provides policy direction, national standards and coordination of all matters concerning lands, housing and urban development. • Passes policies and initiates laws to ensure sustainable land management. • Promotes sustainable housing for all and encourages orderly urban development in the country
Uganda Land Commission (ULC) – an independent body	National Level	• Holds (in trust) and manages land owned and acquired by the Government of Uganda inside and outside (Embassies, Consular Office) Uganda and obtains certificates of Title in respect of such land.
District Land Board (DLB)	District Level	• Established by the 1995 Constitution. The Land Act, 1998 specifies the membership of the Land Board, including that at least one third of the members must be women. The Land Act 1998 also indicates the functions of the Land Boards. • DLBs own (in trust) all land within a district which does not belong to person or authority and have power to sell, lease or otherwise deal with such. • They cause surveys, plans, maps, drawings and estimates made by or through its officers. • The Boards are also charged with facilitating the registration and transfer of issuance of land in their district, surveying and valuing the land and issuing certificates related to it. • Complies and maintains lists of rates of compensation payable in respect of crops and buildings of a non-permanent nature this is reviewed every year. • The District Land Boards are independent of both the Uganda Land Commission and the local district council. The District Land Tribunals are the highest authority for appeal in the District after which cases can be taken to the High Court in Kampala. Cases worth over 50 million shillings can be brought directly to the District Land Tribunal. DLBs are independent of the ULC and from influence by any person or authority in the performance of its functions.
Area Land Committees	Sub county or Division Level	• Area Land Committees are created by the Land Act 1998 which provides for the appointment of Land Committees in each parish, gazetted urban area and city division. Area Land committees comprise of four people drawn from the locality and with some knowledge of local land matters. • The main function of each committee is to determine, verify and mark the boundaries of customary land within the locality when an application for a Certificate of Customary Ownership is made. The committee carries out its tasks in collaboration with traditional institutions and also to advise members of the district land board on applicable customary laws in the area.

		• They advise DLBs in matters relating to land including ascertaining land rights.
The Land Fund	Nationwide	• The Land Fund was established to purchase the land of absentee mailo land owners who suffered from an arbitrary confiscation of land by the colonial administration. Its function was broadened to assist disadvantaged people throughout Uganda to buy land. The Fund is empowered to acquire land and also to resettle landless people.
Land Tribunals		• The Constitution of Uganda 1995 and Land Act 1998 provide for the establishment of Land Tribunals. The Tribunals are supposed to determine disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority.

Note to facilitator:
1. Give a group of 10 people (both men and women) a role play on land disputes to prepare for, the day before. Each of the various characters should prepare for their parts of the skit separately / privately. Remind the volunteers that the entire role play should not be more than 10 minutes.
2. Ask follow up questions to all the participants on what they observed in the role play. (10 minutes role play and 10 minutes follow up plenary discussions.)
3. In a brainstorming session, lead participants on the kinds of land disputes they witness in the community (10 minutes).
4. Ask them to share experiences on how they have observed cases of land disputes being handled, formally and informally (10 minutes)
5. Wrap up with a presentation on formal and informal land dispute resolution mechanisms (20 minutes

Other Formal and Informal Mechanisms for Land Dispute Resolution

Formal mechanisms include structures within the Judiciary while the informal structures include the traditional and cultural institutions.

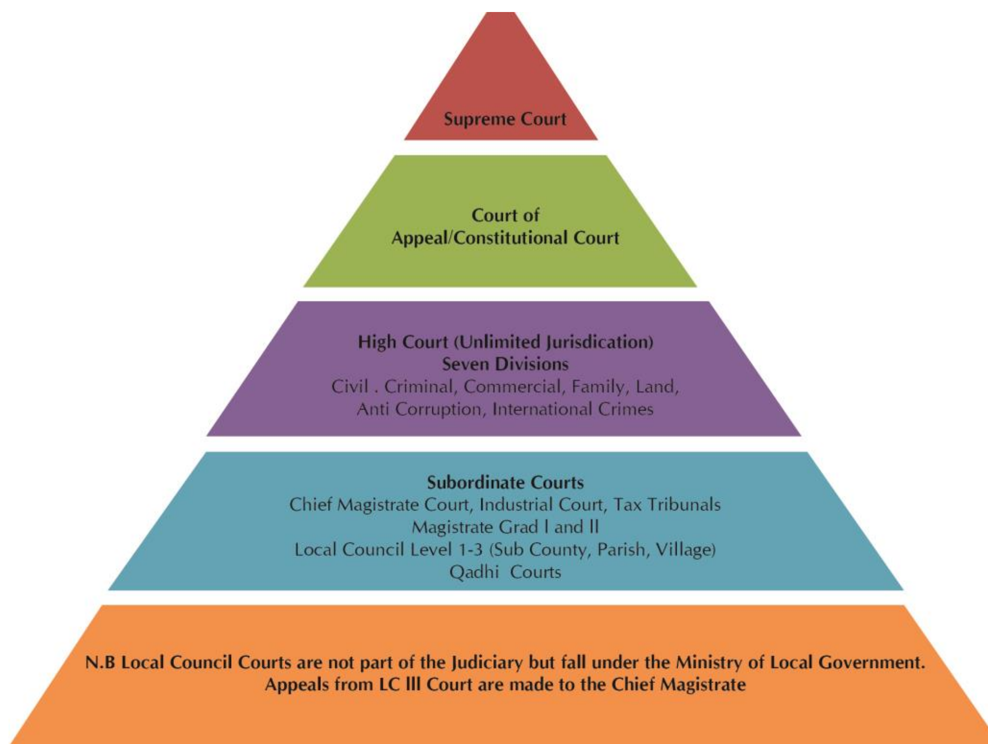
Formal mechanisms

a) The Judiciary

The judiciary settles disputes in the country, including land disputes brought before them. There are different levels of courts in Uganda, each with different powers. A court's power to decide a case is referred to as the court's ―jurisdiction‖. Jurisdiction may be determined according to the value of the property, location of the property and the type of land tenure system. In case of land disputes, the jurisdiction is determined by the monetary value of the land. Cases which involve ownership of land which is registered under the Registration of Titles Act are tried by the High Court.

Local Council Courts

Local Council Courts (LCCs) are very important for access to justice in local communities. LCCs were established through the Local Council Courts Act 2006. LCCs are found at village, parish, and sub-county level and are therefore geographically spread throughout Uganda. Each court has an executive committee which is duly constituted into a court when it is sitting with not less than five members. The courts are mandated to hear cases originating within their area of jurisdiction, including family disputes, unregistered land cases and assaults.
The arrangement of courts in order of their jurisdiction (from top to bottom) has been identified in a previous session, and are:



Adapted from the USAID SAFE training manual for community legal volunteers.

LCCs have no powers to distribute property under a Will, but to protect the property of the deceased on behalf of his or her children.

Appealing from a decision of a court

A person who is not satisfied with a decision of a court can take the case further up to be decided upon by a higher court. The higher Court's decision will cancel or agree with or confirm that of the lower court. This is done through a process called an **appeal**.‖ From the list of courts drawn above, a person who is displeased with a decision of the LCCs can apply to the Chief Magistrate's Court. From the Chief Magistrate, one can apply to the High Court for that decision to be re-considered. A person who is not happy with the High Court's decision can apply to the Court of Appeal, and from there to the Supreme Court.

Some courts have only *original* jurisdiction while others have *appellate* jurisdiction. Original jurisdiction is the power of a court to hear or try cases taken to it for the first time without previously having been heard in another court. Appellate jurisdiction is the power of a court to hear appeals.

The High Court enjoys both original and appellate jurisdiction. This means that such a court can hear a case taken to it for the first time or cases referred to it on appeal.

Informal Mechanisms

The Land Act gives traditional or cultural institutions the authority to determine disputes over customary tenure acting as mediators between persons who are in dispute.

- Such methods include the use of family and clan elders or a neutral third person (mediator).
- In addition, the Land Act provides for the appointment of two (2) or more mediators in each district. These mediators are appointed on a temporary case by case basis.
- The role of mediators is to act as neutral third parties who help parties to a land dispute to reach a mutually agreed settlement of their land problem.

Mediation under the Land Act.

The Land Act provides for the appointment of a mediator who is appointed by the Land Tribunal from time to time. A mediator shall be a person who:

i. Displays high moral character and proven integrity
ii. Is capable and able to enable parties in a disagreement or dispute to mutually agree or reconcile
iii. Is independent and not directed or controlled by any other person
iv. Believes in hearing each side, and desires to assist the parties to reconcile their differences, understand each other's point of view and be prepared to compromise to reach an agreement;
v. Does not force or direct any party to mediation to make a decision on the issue being mediated.

The person chosen to mediate has to be someone agreed to by both parties to the dispute.

- Paralegals have mediation skills; and would therefore support the mediation process under the Land Act.

Remember! Land is a major cause of conflict; and land cases can become violent. Paralegals should therefore be conscious of this and work carefully when mediating land disputes. You must inform local authorities (LCs, Police, RDC, GISO, etc) about the land dispute. Also, it is important in mediating cases for the rights of minorities, vulnerable groups and women to be handled with all due respect and rights based approaches.

Land Rights of Specific Categories

The Constitution clearly states the right of *everyone* to own land. It further points out that cultural practices which treat and/or undermine women's status are prohibited. Women have a right to own land in their own names.

Special categories of land holders and users

The right to protection of property, to own and use land is a basic human right which is essential for enjoying other rights such as the right to food, and the right to housing and shelter. Accordingly, the law provides for many ways in which individuals or associations can own land in Uganda. Below are brief descriptions of land ownership and for certain specific categories.

Ownership by Registration

Land owned under any of the four land tenure systems is registrable under the Registration of Titles Act and the land-owner holds a Certificate of Title. An owner of registered land has full ownership rights over the land described in his or her land Title. Certificates of titles are the only legal documents that give the holder full private ownership of a piece of land. The Registration of Titles Act provides that a Certificate of Title is conclusive proof of ownership; and a person who is registered as a proprietor cannot be evicted unless a Court has ordered for his/her eviction pursuant to the conclusion of a Court case.

Tenants in common

Two or more people can own a piece of land in equal parts without the land itself having to be physically divided. When a person dies, his or her share can be passed on to his or her heir/heiress, successor, or the person to whom he or she has left the share in a Will.

Communal Land Ownership

Under customary tenure land may be held communally by a family, clan or other group of people governed by the same set of rules and practices regulating the ownership and use of that land.

Spousal interest on family land

A spouse is a person who is legally married (in the types of marriage discussed before). *Family Land* is land on which the family ordinarily resides and derives sustenance. Section 29 of the Land Act limits dealings or transactions concerning family land without the consent of a spouse (wife or husband under the law). It states that a person ***cannot*** sell, exchange, transfer, pledge, mortgage (take a loan using the land as security), or lease any family land except with written consent of his or her spouse. The consent to be given by the spouse must be given freely in writing before the transaction. All registrars of titles and recorders in the case of customary land and tenancy by occupancy are not allowed to register any transaction for which spousal consent is required but not given.

Inheritance

Inheritance law provides for the protection of certain categories of people when it comes to the property of a deceased (dead) person, which includes land. The types of succession (testate and intestate have been discussed above).

Residential holding

This is also referred to as the main residence of the deceased person under which category his or her matrimonial home falls. Matrimonial home refers to the place where the deceased and his/ her family resided. Under *intestate* succession, this property should not be distributed. The surviving spouse and deceased's children are entitled to reside in it until, in the case of the spouse; he or she remarries or does not reside in it for a continuous period of six months. In the case of the children, upon the attainment of eighteen years for boys and twenty one years for girls.

Case story – for brainstorming and question and answer.

Apio was married to Edopu in church in 1988 and they had 8 children. When Edopu died in 2016 his family held a meeting and decided that Apio must leave Edopu's land so that his brother can occupy it. They argue that the land is held under customary tenure with Edopu being the owner and on his death, the property should go back to Edopu's family. Apio has nowhere to go; and her friend Adeke advises her that there is a paralegal who can assist her with her problem. Apio approaches you for assistance.

Describe her legal rights and the process you would begin to assist her.

How does one protect their interests in land?

1. Lodging a Caveat

A caveat is a written document which any person with a legal interest in the land can file with the Land registry notifying any interested parties about the nature of the person's legal interest in the said piece of land and prohibiting anyone from dealing with the land without notice to the person who lodges the *caveat*. If a person has evidence that his or her land rights is about to be infringed s/he may lodge a *caveat* on the certificate of title or certificate of occupancy or certificate of customary ownership in respect of the land in question with the Registrar of Titles or Recorder. The purpose of the caveat is to give notice to any person who wants to deal in that land that there is a third party with interests in the land; and it ensures that no one deals with the land without notifying the person who placed the caveat. Following this, a case may be heard in court clarifying the issues in contention.

How to register a Caveat

- The person who wants to register the caveat (applicant) must prepare two sets of documents which include a notice of the caveat and a sworn statement (affidavit) in which s/he indicates the nature of his/her interest in the land. The affidavit must be signed by the applicant and witnessed by an advocate and signed by a Commissioner for Oaths. The applicant must also attach two passport photographs. Stamp duty is paid on the application and thereafter it is stamped, indicating that the stamp duty was paid.
- The Applicant presents the full set of original documents and a photocopy of the same to the Office of Titles for processing. The photocopy is stamped 'Received' and returned to the Applicant.
- The Applicant checks with the Office of Titles after 10 working days to confirm that the caveat was lodged (placed) on the Register.

How to remove a Caveat based on a request by another person other than the person who placed.

- The person who wants to remove a caveat (applicant) prepares a document called "Withdrawal of caveat" of "Removal of caveat". The applicant also swears an affidavit which is signed witnessed by an advocate and Commissioner for Oaths. /he pays stamp duty and the documents are stamped indicating that stamp duty was paid. s/he should also attach a passport photo; a description of the land in question, and general receipts of payment of stamp duty and registration fees.
- The Applicant presents the documents together with a photocopy to Department of Land Registration for processing. The Photocopy is stamped 'Received' and returned to the Applicant. If the Land Registry decides that there are grounds to remove the caveat, it will issue a notice to the person who placed the caveat informing him/her that the caveat will be removed in 60 days unless the person shows reasons why the caveat should not be removed; or if the person who placed the caveat takes a case to Court in respect if his/her interest in the land.
- The Applicant checks with the Department of Land Registration after 10 working days to find out whether the 60 day Notice to the person who placed the Caveat has been issued, to show because why the caveat should not be removed. Notice to the person who placed the caveat is posted and a receipt obtained, that is placed on the file
- The Applicant writes a letter notifying the Land Office that the 60 days have ended (lapsed) without communication from the person who placed the caveat and therefore seeking removal of the said caveat.
- The Applicant checks with the photocopy stamped on 'Received' at the Department of Land Registration after 10 working days to confirm that the caveat has been removed from the Register.

How to carry out a physical search on land title

In case a person wants to make a transaction on registered land, s/he can undertake a 'search' in the land office to ensure that the land exists; that it has no caveats restricting transactions or other issues. These are referred to as "encumbrances". A search is undertaken as follows:

- Make a written request to the Commissioner, Land Registration requesting to carry out a search. Describe the Land - for Mailo land, indicate the County, Block & Plot no**;** for Leasehold: leasehold Register Volume and Folio Number and for Freehold, indicate the freehold Register Volume, Folio No and plot number.
- The request is presented to the Office of Commissioner Land Registration and stamped "received' by the Commissioner's Secretary and approved by a Registrar of Titles on behalf of the Commissioner.
- The request is forwarded to the Records Section to retrieve the file, then the applicant is sent to the Ministry's Cashier to pick a pay slip and pay the required amount in the bank. The Cashier informs the bearer which bank to make the payment.
- The payment is made in the bank and a receipt is obtained; and is presented to the Land Office. On verification of the receipt, the registry copy is retrieved and a search letter signed by a Registrar of Titles is issued to the bearer within three days after presenting the Bank receipt.

Lodging a complaint with Court

A person whose land rights have been violated may want to seek Court's intervention to protect his/her rights. This is done by lodging a plaint in Court. The process for filing a case in Court was covered above. The court in which a land case is taken depends on the nature of land ownership. In case of land registered under the Registration of Titles Act, the complaint is lodged with the High Court. The Land Amendment Act 2010 gives a registered owner the right to apply to Court for an eviction order against a lawful or *bona fide* occupant who fails to pay the annual nominal ground rent.

In cases of land held under customary tenure, the complaint may be lodged with the area Local Council Court. This is done by writing of a letter of complaint to a court and instituting a civil case against the other party. The letter should state relevant facts of the case and seek protections as provided under the Land Act. These could include eviction from the land, fines and/or compensation.

Land Rights of Marginalized Groups

Notes to facilitator

1. Divide the participants into four groups to define what they understand by the term marginalization (10 minutes) and identify ONE marginalized group in Uganda explaining characteristics are that demonstrate marginalization. One of them should report to the entire group. (45 minutes)
2. The definition should be written on a differently colored card from the card that identifies one marginalized group. For example, the definition should be on a blue card while the marginalized group and why they are marginalized should be on a pink card.
3. Sum up the discussion by highlighting key concepts that connote marginalization and that explain why people are marginalized. (10 minutes)
4. Divide participants into large groups and give each group one category of the marginalized groups identified in Step 1 above. In these groups, participants should discuss:
   - *who owns land in their community;*
   - *what type of land rights (control, access or use) the marginalized group they are discussing has in their community, if any and report back to the whole group (30 minutes)*

The term '**marginalization'** refers to a situation where a person or a group of people are treated as if they are not significant. Such people are pushed to the edge of society and given less attention, and their needs or desires are ignored. They are treated as if they are not important. They then become socially excluded from key decision-making processes, resource allocation or realization of rights. Social exclusion is the process in which individuals or people are systematically blocked from (or denied full access to) various rights, opportunities and resources that are normally available to members of a different group, and which are fundamental to social integration and observance of human rights within that particular group for instance employment, civic engagement and democratic participation. Social exclusion can be connected to a person's gender, religion, tribe, physical conditions. For example, disabled people can be marginalized from the education process if there are no facilities in schools to address needs of disabled people.

Question and answer: give examples of how the following categories of people can be marginalized:

1. People with disabilities
2. Women
3. The elderly
4. Children
5. Internally Displaced Persons
6. Refugees
7. People living with HIV/AIDS

Rights of women, children, PWDs and minorities relating to land.

Article 21 of the Uganda Constitution 1995 states that all persons are equal before and under the law in all spheres of political, economic social and culture life and in any other respect and shall enjoy equal protection of the law. Article 26 provides that every person has a right to own property individually or in association with others. Section 27 of the Land Act under provides for rights of women, children and PWDs regarding to customary land as follows:

- Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be invalid and ineffective.

Below are specific legal provisions protecting rights of marginalized groups:-

Rights of women

Article 33 of the Constitution provides for the rights of women as follows:

- Women must be given full and equal dignity of the person as men. They shall have the right to equal treatment with men and that right includes equal opportunities in political, economic and social activities.
- Women have the right to affirmative action for purposes of correcting the imbalances created by history, tradition or custom.
- Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are forbidden by the Constitution.

Sections 47(4) and 65(2) of the Land Act state that at least one member of the Uganda Land Commission and Land Committee respectively should be a woman. Section 57(3) of the Land Act also provides that at least one third of the membership to the District Land Board shall be women.

Section 4(3) the Local Council Courts Act provides that at least two (2) members of the town, division or sub county local council court shall be women.

Rights of Children

A child is a person who is under the age of 18 years. Article 34 (7) of the Constitution gives *special protection* to orphans and other vulnerable children. Children who have inherited land from their parents cannot be denied the right to that land because they are children. Paralegals can work with LCs and other organisations working with children to protect the rights of children.

Rights of PWDs

Article 35 of the Constitution states that PWDs have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential.

Rights of Minorities

Article 36 of the Constitution states that minorities have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programs.

Compulsory acquisition of land

Under Uganda's constitution, all minerals and petroleum in, on or under any land or waters in Uganda belong to government on behalf of the Republic of Uganda. This means that if any oil or precious minerals are found on someone's land then government has the right to compulsorily acquire the land for public use. Article 26 of the Constitution empowers government to acquire private land compulsorily. The Land Acquisition Act, Cap 226 provides for the compulsory acquisition of land for public purposes and related matters.

*A **statutory instrument** is a kind of law which allows the provisions of an Act of Parliament to be brought into force (or changed without Parliament having to pass a new law). Statutory instruments are also referred to as secondary or subordinate laws. An Act of Parliament usually contains the broader framework of the law; and the Act will give a Minister Powers to make more detailed orders, rules or regulations by means of statutory instruments – which provide the details of implementing the Act. Statutory instruments are usually made in several forms including Regulations, Rules, and Orders.*

For instance, government of Uganda passed the NGO Act 2016 to provide a general framework for the operation of NGOs in Uganda. In 2017, the Minister of Internal Affairs passed the NGO regulations to provide the detailed framework on how the NGO Act 2016 will be put implemented or enforced.

Acquisition

1. In case government is interested in acquiring a person or people's land for public purpose, it will authorize a person to go to the land to survey it, dig or get soil samples or do other necessary things to ensure the suitability of land for public purpose. If a person suffers damage as a result of this assessment then s/he is entitled to compensation.

2. In case the minister is satisfied that the land in question would be required by government for public purpose, then the Minister will, through a statutory instrument, declare that land to be required by government for a public purpose. The statutory instrument ***must*** specify where the land is located and its estimated size. If a plan of the land has been prepared, then the instrument should also inform the public about the place, and times when the plan can be inspected. If a plan has not been prepared, then the land must be marked out and measured; and a plan made.

Acquiring part of a house, factory or other building.

3. In case a statutory instrument is made, but it relates to only a part of a house, factory or other building, then if the registered proprietor or occupier of the house requests, then the instrument must be extended to include the whole house, building or factory. However, the registered proprietor or occupier of the house may withdraw or change his/her request any time before the assessment officer makes the award for compensation.
4. The attorney general will refer to court any disputes regarding whether or not the land proposed to be acquired forms or does not form part of a house, factory or building. In making a decision, the Court will consider whether the land which is proposed to be acquired is fully required by the registered proprietor or occupier while using the house, factory or building.

5. The Minister must ensure that a copy of the statutory instrument is given to the person who is the registered proprietor of the specified land; or to the controlling authority (in case the land is owned by the controlling authority). In case the registered proprietor is not the one occupying the land, then the Minister must also make sure that the person or people who occupy the land are also given a copy of the statutory instrument.
6. Immediately or soon after the statutory instrument in respect of government's intended takeover of the specified land, the assessment officer must publish a notice to this effect in the Uganda gazette. Furthermore, a notice will be posted at convenient places at or near the land, stating that government intends to take possession of the land. The notice must indicate the particular land to which the notice relates.
7. The notice must also be given to the registered proprietor of the land to which the notice relates. If the land is owned by the controlling authority, then the notice will be given to the relevant officer authorized to receive notices of the controlling authority. If the registered proprietor is not the one occupying the land, then the notice will also be given to the occupier(s).
8. The notice must also state that any person with a legal interest or claim to the land in question should appear ***in person*** or through his/her agent before the assessment officer on the date and time specified in the notice; and state the nature of the interest in the land; and specify the things for which s/he would like to be compensated for. The person could also indicate if they have any objection(s) to any plan of the land that has been made. The assessment officer could require the person claiming an interest to put his/her claims in writing, and sign. The date specified in the notice must not be less than 15 days after the notice; or more than 30 days after the notice is published.

Award of compensation

9. On the date specified in the notice above, the assessment officer will hold an inquiry into claims made by people with a legal interest in the land; or objections in respect of the land. The assessment officer will make an award which specifies the true area of the land, the compensation which should be paid for the land; and how it will be divided amongst the people who have an interest in the land, whether or not they have appeared before the assessment officer.
10. After making the award for compensation, the assessment officer will provide a copy of the award to the Minister and on the people who have an interest in the land who are absent when the award is made.
11. In the process of making an inquiry regarding compensation, the assessment officer can summon witnesses and request for documents.
12. Any person who is not satisfied with the award of the assessment officer may appeal to the High Court within 60 days from the date the award was made. The appeal may be made on the following grounds:
    a. The amount of the total compensation awarded
    b. How the compensation was divided out
    c. That the assessment officer failed or refused to include the person objecting when diving out the award.
13. Where a person to whom has been given an award disagrees with the award, and or refuses to accept payment; or creates a situation which makes it difficult for him/her to be paid, then the Attorney General can apply to High Court to make an order for the payment to be made to the Court, on such conditions as the Courts considers suitable.
14. Section 77 of the Land Act states that in the case of a customary owner, the value of land must be the open market value of the unimproved land; the value of the buildings on the land, location of the land – rural or urban area; the value of standing crops on the land, excluding annual crops which could be harvested during the period of notice given to the tenant. In addition, the government must pay a disturbance allowance of 15% of the compensation or, if less than a six-month notice is given, a 30% disturbance allowance.

15. Section 59 of the Land Act also states that District Land Boards must compile and maintain a list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that may be prescribed. Rates are used to determine compensation payments and must be reviewed annually. Compensation can be paid in-kind and may include items such as land, houses and other buildings, building materials, seedlings, agricultural inputs, and financial credits for equipment. Government cannot take over the land until *after* compensation has been paid.

Appeals

16. If the assessment officer makes an award and there is no appeal made within the required time, then government will go ahead and pay the compensation.

Taking possession of land by government

17. After the award has been paid, the assessment officer will take possession of the land. In some cases the assessment officer can take possession of the land after making the statutory instrument, but before making or paying out the award, if the Minister certifies that it is in public interest to do so.
18. **Enforcement of right to possession –** if the assessment officer or an officer appointed by the minister is prevented from taking possession of the land, then s/he may apply to the magistrate to make an order in respect of possessing the land. If the magistrate is convinced that the officer is entitled to possess the land, then the magistrate will make a pronouncement to that effect; and this pronouncement can be enforced as if it is an order of Court.
19. After the assessment officer takes possession of the land, the land must immediately be handed over to the Uganda Land Commission when it does not have any claims from third parties. Any claims or interests in the land will at this point be converted to claims for compensation.
20. After possessing the land, the assessment officer will send a copy of the statutory instrument and a certificate signed by the assessment officer to the Registrar of Titles, stating that the assessment officer has taken possession of the land; and the date when s/he took possession. When the Registrar receives these documents, s/he will transfer the land specified in the documents into the names of the Uganda Land Commission.

Government may change its mind in relation to the acquisition.

21. The minister may cancel the statutory instrument seeking for government's compulsory acquisition of land any time before the assessment officer takes possession of the land. When the statutory instrument is cancelled, government must compensate any person with an interest in the land who suffered damage as a result of any action that was taken in respect of the acquisition.
22. If there are any disputes regarding compensation after government withdraws its interest in the land, then the Attorney General can refer the matter to Court for a decision.

Government can temporarily occupy waste or farming land for a public purpose.

23. A minister can appoint a public officer to facilitate procuring of waste or farming land for government to use for a public purpose. The public officer must notify all people with an interest in the land about the purpose and period for which the land will be used. Government will compensate people with an interest in the land for the materials (if any) taken from the land and the standing crops on the land. Government should occupy this type of land for a period not exceeding three years from the time government occupies the land.
24. The Attorney general will refer dispute regarding the amount payable as compensation to high court for a decision. If the attorney general proves to Court that the public official cannot trace the person to whom compensation is payable; or the public official is unable to pay the compensation for a good reason, then the high Court may order the compensation to be paid into Court on specified conditions.

25. The public officer can enter onto the land and take possession under the following circumstances:
    a. After paying the compensation;
    b. After concluding an agreement to pay the compensation
    c. If there is a dispute, after the dispute has been referred to Court; or where Court has made an order regarding payment of compensation; or on payment of the monies into Court as per Court order.

End of temporary occupation.

26. When the period for the temporary occupation ends government must compensate any person who has an interest in the land for any damage done during government's occupation of the land which was not already compensated.
27. If the land has become permanently unfit to be used for the purpose for which it was used immediately before the occupation, then government can proceed to acquire the land as if it is required permanently for a public purpose and compensate people with any interest on the land.
28. However, if land has become unfit because stone, murram or other building or road-making material was taken from less than four percent of the total area of land, then government cannot go ahead to acquire the land permanently and compensate people with an interest in the land.
    Legal cases
29. In cases where the Attorney general is required to refer a dispute to Court for a decision, the case will be taken to a Magistrate's Court in the area where the land is situated. A person who is not satisfied with the decision of the magistrate can appeal to the High Court.

Agreement to receive land instead of compensation

30. Government can enter into an agreement with a person who has an interest in the land so that government acquires that person's interest; or that the person's right to compensation is settled by government giving him/her other land; or it is settled in any other way.

Annexures to the manual

SAMPLE DOCUMENTS

Letter inviting party for a mediation

Mrs. Rose Kachungwa
Rwamucucu village,
Kabale

Dear Madam,

RE: INVITATION FOR A MEDIATION IN RESPECT OF THE BOUNDARIES OF LAND LOCATED IN RWAMUCUCU VILLAGE.
The above matter refers.

Rwampora paralegals have received a case from Mr. Rwego of Kabale Rwamucucu village who states that he occupies a piece of land next to yours; and has occupied it since 1969.

Mr. Rwego has stated that in April 2015 you began farming on his land, and you have refused to leave the land even after he has repeatedly requested you to leave.

We would like to resolve this matter peacefully; and would like to invite you for a meeting at our offices located at Kabale district headquarters room 12A on 5th April 2016 at 2.00pm.

The purpose of the meeting is to hear your side of the story and try to resolve this case in an agreeable manner. Please come with copies of any documentation or witnesses you may have to prove your case.

Yours faithfully,

____
Ponsiano Mutebile
Community paralegal

Mediation agreement

MEDIATION AGREEMENT

THIS AGREEMENT made this .... day of ...., 20....... between _____________________ of c/o P. O. Box ...., Tel: ____________; email: _________________ (hereinafter called "first party " which expression shall where the context so admits include his successors in title) of the one part; and ___________________________ of C/o P. O. Box ______________________Tel: ___________________; email: ____________________ (hereinafter referred to as "The second party"), which expression shall where the context so admits include his successors in title) of the other part.

WHEREAS the first and second parties have been involved in a dispute involving (example) a *boundary dispute on in land situated in Awoja bridge Soroti*
____
____
____

AND WHEREAS the parties agreed to mediate this case in order to get to a mutually acceptable agreement in relation to the above said dispute;

AND WHEREAS:
The first party acknowledges that he trespassed onto the second party's property and planted crops on it.
The second party admits having beaten and slaughtered the first party's cows when they came onto his land

1. NOW WHEREFORE THE PARTIES AGREE as follows:
   a. The second party will compensate an amount of UGX 200,000/- for slaughtering his cows
   b. The first party will not enter onto the second party's property to graze his cows;
   c. Boundary marks will be planted to separate the land in the presence of traditional elders and Local Council members. This will be done within two weeks of signing this agreement.
   d. At the end of the boundary marking process, a party will be organized to indicate the end of this dispute

2. The parties and the mediator understand and agree as follows:

(a) The mediation has been entered into voluntarily and without force from any party
(b) Both parties have the authority to enter into the mediation agreement and make decisions

3. It is understood between the parties and the mediator that the discussions during the mediation; and the mediation agreement are strictly confidential. Any draft resolutions and any unsigned mediated agreements will not be admissible in any court or other contested proceeding. Only a mediated agreement signed by any parties will be so admissible. The only other exceptions to this confidentiality are if all parties waive confidentiality in writing or in an action brought by any party against the mediator. The parties agree not to call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the parties and the mediator as a settlement of the dispute.

IN WITNESS WHEREOF the parties have caused their hands to be affixed hereunto the day, month and year first above written.

Signed by: ___________________________

First Party

____

Second Party

In the presence of:

____

Mediator

____

Witness

Plaint

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF MASAKA LOCATED AT MASAKA
CIVIL SUIT NO. .... OF 2017

Ssalongo Karooli ....Plaintiff

Versus

Kityo Matyansi .... Defendant

Plaint.

3. The plaintiff is an adult male Ugandan of sound mind, whose address for purposes of this suit is .... (It may also be helpful to indicate your phone number).
4. The defendant is an adult female Ugandan of sound mind. The plaintiff undertakes to effect service of Court summons upon the defendant.
5. The Plaintiff's claim against the defendant is based on the following facts::
    a) On or about the 10th day of ..... at 2.30pm, the defendant was driving motor vehicle reg. no. UUD 302, of Volkswagen make from Makindye to Kibuye; when, at the roundabout, he entered the road without looking out for oncoming traffic, thereby knocking the plaintiff who was riding his bicycle to Namasuba. A copy of the police report is attached as "Annex A"
    b) As a result of the defendant's negligence, the plaintiff broke his arms and legs; and was hospitalized in Nakasero hospital for five months, incurring great expenses for medical bills. A copy of the medical bill is attached as "Annex B"
    c) The plaintiff was employed as a bank manager at .... Bank; and he has since lost his job, thereby failing to provide for his family comprising of a wife and five children. A copy of the plaintiff's termination letter and pay slips are attached hereto and marked as "Annex C and D" respectively
    d) As a result of the traumatic experience, the plaintiff has suffered untold mental suffering and psychological torture.
6. The Plaintiff would like this Honorable Court to award special and general damages to him, arising out of the defendant's action
7. This Honorable Court has jurisdiction to handle this matter

Signed by the said .... This day of 2017
Plaintiff
(07000000011)

APPLICATION FOR CUSTODY

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT………………..

FAMILY CAUSE NO: ……… OF 20…….

IN THE MATTER OF …………………….. (Name of the child and age)

AND

IN THE MATTER OF AN APPLICATION FOR CUSTODY

APPLICATION FOR CUSTODY

Under Rule 19(3) of the children (family and children court Rules) S.I 59-2

I ………………… (Name, address and relationship to the child) hereby apply for a custody order against ……………… (Person with the child and relationship to the child) on the following grounds:

1. That I am ……………………………… (Relationship to the child)
2. That I am a fit and proper person to take care of the child.
3. That the respondent ……………………………… (Give reasons as to why the respondent is not fit to stay with the children)

DATED at Kampala this …………………… Day of ……………………… 201……

____

APPLICANT

(Attach affidavit in support of the application)

APPLICATION FOR MAINTENANCE

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT………………..

FAMILY CAUSE NO: ……… OF 20…….

IN THE MATTER OF …………………….. (Name of the child and age)

AND

IN THE MATTER OF AN APPLICATION FOR MAINTENANCE

APPLICATION FOR MAINTENANCE

Under Rule 19(3) of the children (family and children court Rules) S.I 59-2

I, ………………………… (Name, address and relationship to the child) hereby apply for a custody order against ……………. (Person with the child and relationship to the child) on the following grounds:

1. That I am ……………………………… (Relationship to the child)
2. That I am a fit and proper person to take care of the child.
3. That the respondent ……………………………… (Give reasons as to why the respondent is not fit to stay with the children)

DATED at Kampala this …………………… Day of ……………………… 201……

____

APPLICANT

(Attach affidavit in support of the application)

Sample contract

Sample will

Last Will and Testament

LAST WILL AND TESTAMENT

Of ___________________________________

(Full Names)

____
____
____

(Village, District, Address)

Declaration

I hereby declare that this is my last Will and Testament and that I hereby revoke, cancel and annul all Wills and Codicils previously made by me. I declare that I am of legal age to make this will and of sound mind and that this last Will and testament expresses my wishes and I make it freely without any threat, force, or compulsion.

2. Family Details

I have the following adult children:

Name: _____________________ Date of Birth _________

Name: _____________________ Date of Birth _________

I am married to ____________________________ hereinafter referred to as my spouse.

I have the following minor children:

Name: _____________________ Date of Birth _________

Name: _____________________ Date of Birth _________

3. Appointment of Executors

3.1. I hereby nominate, constitute and appoint ________________________ as Executor or if this Executor is unable or unwilling to serve then I appoint ______________________ as alternate Executor.

3.2. I hereby give and grant the Executor all powers and authority as are required or allowed in law.

3.3. Pending the distribution of my estate my Executors shall have authority to carry on any business in which I may have any interest at the time of my death.

3.5. My Executors shall have full and absolute power in his/her discretion to sell all or any assets of my estate, and shall be entitled to let any property in my estate on such terms and conditions as may be acceptable to my beneficiaries.

4. Guardian

4.1. Failing the survival of my spouse as natural guardian I appoint ____________________ or failing him / her I appoint _____________________ to be the legal Guardian of my minor children named: _________________________ and _________________________ until such time as they attain the age of ____________ years.

5. Bequests to my Adult Children

5.1. I bequeath to my adult child named _______________, if he or she survives me by 30 (thirty) days, the following:

____

5.2. I bequeath to my adult child named _______________, if he or she survives me by 30 (thirty) days, the following:

____

5.3. Should any of my adult children named above not survive me by 30 (thirty) days, I direct that the bequest(s) made to him or her shall go to his/her natural, adopted or step children in equal shares.

4. Remaining Property

Save for the bequests listed in 5.1. And 5.2. Above I bequeath the remainder of my estate, property and effects, whether movable or immovable, to my spouse ______________________ in the knowledge that he / she shall provide for our minor children named _____________ and _____________.

7. Alternate Beneficiaries

7.1. Should my spouse not survive me by thirty (30) days I direct that the remainder of my estate as referenced in paragraph 6 above be divided amongst my minor children named ___________ and ___________ in equal shares?

7.2. Should my said spouse and I and my minor children all die simultaneously or within 30 (thirty) days of each other as a result of the same accident or calamity, then and in that event, I direct that the remainder of my estate as referenced in paragraph 6 above be divided amongst my adult children named ______________ and ______________ in equal shares and thereafter his/her natural, adopted or step children in equal shares where an adult child does not survive to benefit from this provision.

8. Special Requests

I direct that on my death I shall be buried at my family home in ___________________.

9. General

Should any provision of this will be judged by an appropriate court of law as invalid it shall not affect any of the remaining provisions whatsoever.

Signed on this ________________ day of ________________20_____ at this location ____________________________________ in the presence of the undersigned witnesses.

SIGNED: _____________________________

WITNESSES

As witnesses we declare that we are of sound mind and of legal age to witness a Will and that to the best of our knowledge ___________________, the author of this Will, is of legal age to make a Will, appears to be of sound mind and signed this Will willingly and free of undue influence or duress. We declare that he / she signed this Will in our presence as we then signed as witnesses in his/her presence and in the presence of each other witness, all being present at the same time.

Under penalty of perjury we declare these statements to be true and correct on this

_______________ Day of ________________ 20 __

At this location ______________________________.

Witness 1.

Name: _____________________________________

Address: _____________________________________

Signature: _____________________________________

Witness 2.

Name: _____________________________________

Address: _____________________________________

Signature: _____________________________________

EVALUATION

The following to be filled in by the participants name of participant:
.... institution:
.... occupation
.... sex:
.... country:
.... date:

Before leaving the training, would you please let us have your opinion about the training you have attended? In doing so, you will contribute to the quality of future trainings. Please complete the following final training evaluation questionnaire.

Mark the box which corresponds most closely to your opinion on each question.

1. Overall, how valuable did you find the training?
Of no value ☐ Of moderate value ☐ Valuable ☐ Very valuable☐

2. The objectives of the training were:
Not clear ☐ Clear ☐ Very clear ☐

3. Would you say that the training met all, some or none of your expectations? Explain briefly which of your expectations were not met and why:
....
....
....

4. Overall, the content of training was appropriate:
Strongly disagree ☐ Agree ☐ Strongly agree ☐

5. What have you learned in this training which you can apply most in your work?
....
....
....

6. What constraints might prevent you from applying what you have learned?
....

7. Overall, the methodology of the training was appropriate:
Strongly disagree ☐ Disagree to some extent ☐

8. How useful was the group work and exercises?
Not at all useful ☐ Not very useful ☐ Useful to some extent ☐
Very useful

What suggestions do you have for improving the methodology or group work?
....
....
....
....

9 The audio-visual material (such as the video programmers,
Transparencies drawings and diagrams) used in this module were:
Clear ☐ Unclear ☐

10. How useful was the information kit?
Not at all useful ☐ Useful to some extent ☐ very useful ☐

11. Overall, the trainers were prepared and their session well presented
Strongly disagree ☐ Undecided/ disagree ☐ Agree ☐ Strongly disagree ☐

12 Do you have any suggestions for the trainers?
………………………………………………………………………………..
………………………………………………………………………………..
………………………………………………………………………………..
………………………………………………………………………………..
13 The general atmosphere and relationship have been very constructive:
Strongly disagree ☐ agree more or less ☐ Agree ☐ Strongly agree ☐

REFERENCES

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