



USAID | **SOUTHERN AFRICA**
FROM THE AMERICAN PEOPLE

PARALEGAL TRAINING MANUAL

PRODUCED BY

FEDERATION OF WOMEN LAWYERS (FIDA-LESOTHO)

IN COLLABORATION WITH

COMMUNITY LEGAL RESOURCE CENTRE (CLRAC)
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REVISED BY

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1.0 INTRODUCTION

The paralegal training manual has been designed to assist to support training of paralegals. The manual serves just as a guideline that the trainer can use adapting it to his/her own training information strategies.

Trainers should:

- Anticipate trainees' needs and their different levels of understanding
- Study the manual and the recommended reference material thereof carefully and decide whether to modify, adapt or enrich the training in a motivating manner
- Create and invent supporting materials, exercises and pictures to enhance the training;
- Deliver information in a clear motivating way and encourage participation
- Conduct group discussions

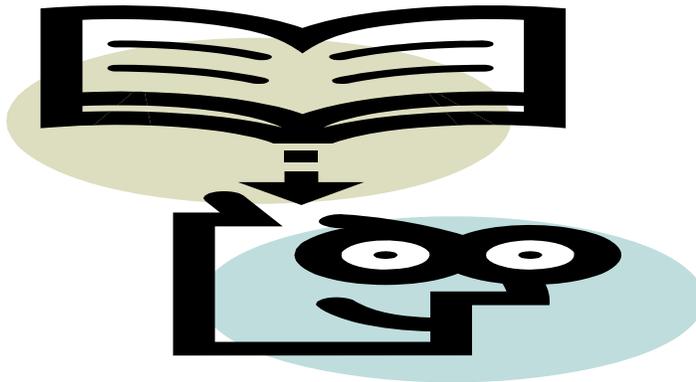
The trainers should regularly review the training programme with the paralegals to ensure that they understand what the training entails and whether it meets their expectations. A brief oral evaluation should take place everyday and a detailed final evaluation form of both the trainers and the topics will be made by the paralegals at the end of the training.

CHAPTER ONE

THE ORGANISATION

Know All about FIDA

- Establishment of FIDA,
- Mission Statement



- Its Objectives
- Membership
- Programmes
 - Paralegal training
 - Legal Aid Clinic
 - Political and Economic empowerment of women;
 - Gender mainstreaming
 - Advocacy and Lobbying
- Mode of operation
- Services offered

Reference Material:

All About FIDA
South African Street law Training Manual.

CHAPTER TWO

PARALEGALS

2.0 WHAT IS A PARALEGAL?

Paralegals are community-based people who are trained in basic legal skills, for instance, problem solving, advice-giving and statement taking in order to assist their communities with legal advice whenever necessary. The paralegals provide legal first aid.

2.1 The following topics have to be fully explained and covered:

- Origins of paralegals



- Types of Paralegals
- Why we need paralegals
- Roles of paralegals
- Training programmes for paralegals

Reference Material:

FIDA's Training Text Book
South African Street Law Training Manual

CHAPTER THREE

COMMUNICATION SKILLS

Paralegals should have the skill of communicating effectively with all groups within the society. They will meet with different types of people in performance of their daily work and it is important for them to know how to handle and talk to each of them if they were to achieve their goal.

3.0 What is Communication?

Communication is a transmission and understanding of information from the source through a medium to the receiver.

In this chapter the trainer should look into the following topics:

- Communication media
- Choice of medium
- Preparation of information
- Choice of Audience

3.1 Types of Communication

- Word of mouth
- Written
- Signs/signals
- Body language

3.2 Public speaking

3.3 Paper Presentation

3.4 Listening

3.5 Asking questions

3.6 Analysing statements/information

3.7 Improving communication skills

- Arousing interest
- The receiver
- Feedback
- Evaluation of Effectiveness of communication

Reference Material:

Centre, A.H., Effective Publications

Cozby, P.C., Methods in Behavioural Research

Gibbert, N., Researching Social Life

Strauss, G. and Sayles, L.R., Personnel: The Human Problems of Management

CHAPTER FOUR

THE LEGAL SYSTEM OF LESOTHO

It is very important for the paralegals to understand the legal system of Lesotho and that the existing systems can be used interchangeably.

4.1 Nature of Lesotho legal system.

The trainer has to explain:

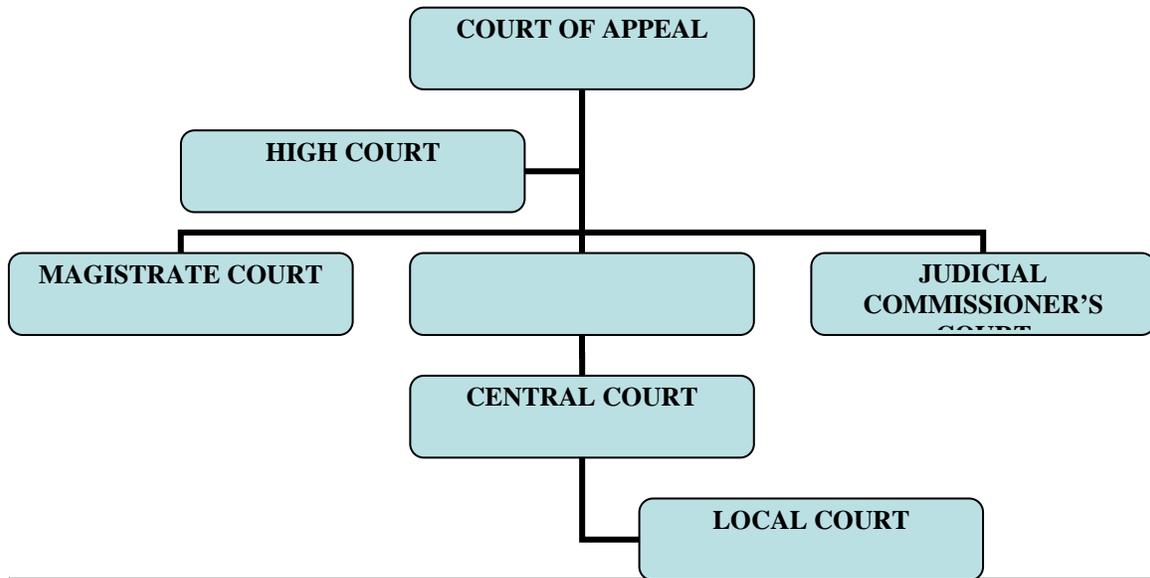
- The system and its origins
- Repugnancy Clause
- Types of laws applicable and the Choice of law
 - Common Law
 - Customary Law
 - Statute Laws; and
 - Judicial Precedents

4.2 Problems of Legal Dualism

- Choice of Law
- Choice of Court
- Conflict of laws

4.3 Courts Structure

COURT STRUCTURE



Reference Material:

Legal Dualism of Lesotho 1981

Roman-Dutch Law Proclamation No. 2b of 1884

Judge-made Law - Decisions of the High Court and Court of Appeal

Laws of Lerotholi

CHAPTER FIVE

CRIMINAL AND CIVIL LAW PROCEDURES

5.0 INTRODUCTION

It is important that the paralegals should appreciate different types of laws as they may find themselves faced with situations where they have to assist somebody in any field of law. There are two categories of law, namely, Civil and Criminal law. This chapter looks into these laws.

5.1 Criminal Law

- a) Its origins
 - b) Define Crime
 - c) Give the differences between a crime and an offence. (give examples)
 - d) State the parties involved in a criminal matter and various institutions that play major roles in criminal justice.
- Requirements for criminal liability;
 - Rights of the offender;
 - Rights of the victim;
 - Importance of evidence;
 - Punishment
 - Purposes of punishment.

5.2 Criminal Procedure

- Arrest (with or without warrant)

- Charging
- Remand
- Indictment
- Bail application
- Court proceedings
- Conviction
- Sentencing
- Appeal.

5.2.1 Requirements for criminal liability

- a) Legality
- b) Conduct
- c) Compliance with the definition of proscription
- d) Unlawfulness
- e) Capacity; and
- f) Culpability (*mens rea*)

Reference Material:

C.R. Snyman 3rd ed - Criminal Law page 29 - 30

Purposes of Punishment

- a) Prevention
- b) Deterrence
- c) Reformation

d) Retribution

Criminal Procedure and Evidence

a) Criminal Procedure

b) Evidence

5.3 CIVIL LAW AND PROCEDURE

- Define civil law
- Its origins
- Difference between criminal and civil law
- Jurisdiction

5.4 Civil Procedure

- State different stages of a civil matter;
- Give terminology that is given in this type of case;
- State importance of responding to papers in time; and
- State that costs for the suit are borne by the parties.
- How to file a civil case;
- How to file pleadings
- Importance of observing periods of responding to certain papers;
- How to lead evidence

Reference Material:

***Criminal Procedure and Evidence Act of 1981
High Court Rules and Subordinate Court Rules***

CHAPTER SIX

SPECIFIC LAWS

FAMILY LAW

6.0 What is Family Law?

Family law is that part of law that looks into:

- Formation of marriage;
- Legitimacy of children;
- Administration of estates;
- Inheritance
- Succession;

6.1 Definition of marriage

“Marriage is a legally recognized voluntary union for life in common of one man and woman to the exclusion of all others while it lasts.”

In Lesotho, there are Civil Law and Customary Law Marriages. Each is as legitimate, legal and authoritative as the other.

6.2 Civil Law Marriage

Requirements for a valid civil law marriage:

- Capacity to marry;
- Spouses’ consent

- Other consents where necessary (Section 3 of the Marriage Act 1974)
- Solemnisation of the marriage by a duly appointed Marriage officer
- Cohabitation

6.3 Customary Law

Requirements of a customary law marriage:

- Consent of the parties to marry
- Parents' consent
- Payment of Bohali (or part thereof)

6.4 Impediments to marriage

Civil Law position:

- Subsisting marriage
- Insanity
- Blood Relationship
- Other

Customary law position:

None.

6.5 Solemnisation

Civil Law position:

- Marriage Officer's office
- Consent
- In a building with all doors open
- Witnesses
- "Till death do us part"
- Signatures of both spouses, their witnesses and the Marriage officer
- Declaration: Husband and wife

Customary Law position:

- Confirmation of marriage (Ho hlabisa Bohali)

6.6 Consequences of marriage

Civil Law Position

- Change of domicile, name and surname by the woman
- Community of Property (except as provided for by ante-nuptial contract)
- Reproduction;
- Independence (to a limited extent with regard to women as they become minors under the guardianship of their husbands).

Customary Law Position:

- Community of Property
- Reproduction
- Wife becomes part of the family
- Polygamous

6.7 Termination of marriage

Civil Law Position

- Divorce
- Death of one of the spouses

6.8 Ground for divorce

Civil Law Position

- Adultery
- Malicious desertion
- Constructive desertion
- Irretrievable breakdown of marriage

6.9 Death of one spouse

Civil Law Position

- Remarry
- Division of assets

Customary Law Position

- Wife remains part of the family
- Children born after the husband's death are legitimate

6.10 Ante- nuptial contract

- Definition
- How it operates

6.11 Invariable Consequences of Marriage

- Husband remains head of the family;
- Children born of the marriage belong to the husband's family;
- Spouses' obligation to maintain the family.

Reference Material:

Hyde v Hyde Woodmansee as cited by Prof. Hahlo in The South African Law of Husband and Wife. Fifth edition at page 21 (Laws of Leretholi)

CHAPTER SEVEN

INHERITANCE

7.0 Introduction

- Definition
- Validity of marriage and inheritance

7.1 Customary Law Position

- Who inherits
- Women's position
- Widow's rights
- Written instructions
- Succession
- Inheritance of land

7.2 Civil Law position

- Testate Succession
- Intestate succession
- Women's position
- Widow's rights
- Inheritance of land
- Administration of Estates

7.3 WILL

The Will refers to instructions made by the testator before his/her death. Under Customary law, such is referred to as '**Written instructions**'.

- Types of Wills
- Requirements
- Capacity to write a Will
- Revocation of a Will
- Codicil

Reference:

Laws of Lerotholi

Administration of Estates Proclamation No. 19 of 1935

Intestate Succession Proclamation of 1953

CHAPTER EIGHT

MAINTENANCE

8.0 Introduction

- Definition
- Who sues for maintenance
- When to sue for maintenance
- Marital status
- Jurisdiction
- Requirements
- Documents
- Employment/Income

8.1 Court Action for Maintenance

- Issuance of Summons
- Necessary Evidence
- Maintenance order
- Right of Appeal to High Court
- Contempt of Court

CHAPTER NINE

SEXUAL OFFENCES ACT NO.3 OF 2003

9.0 Introduction

This Act is meant to consolidate and repeal all laws relating to sexual offences. Its main objectives are to combat sexual violence and to prescribe appropriate sentences for sexual offences.

9.1 What is a Sexual Offence

- domestic violence,
- sexual harassment,
- offering a child or a woman for sex;
- rape, etc.

9.2 What could be the main causes of sexual offences

- Legal inequality between men and women;
- Poverty
- Sex discrimination entrenched in the Laws of the country
- Violence against women being given low priority at policy-making level
- Legislation on violence against women not fully implemented
- International Conventions that are intended to eliminate violence against women are given low priority

9.3 Forms of Violence

- Domestic violence
- Sexual abuse

- Violence against children
- Other forms of violence (against women)

9.4 Rights of Victims

- Guidance
- Counselling
- Damages
- Other forms of intervention

9.5 Measures for Reducing Sex Discrimination

- Amendments to the Lesotho Constitution and other legal instruments that are meant to protect women and children against abuses;
- Integrating women into the development agenda
- Women empowerment
- Sustainable human development
- Law reform
- Advocacy

References:

Case Law

The Constitution of Lesotho

Sexual Offences Act NO.3 of 2003

CHAPTER TEN

LABOUR LAW

10.0 Introduction

The laws relating to labour and employment are contained in the Labour Code Order 1992 and are applicable to all workers in the private sectors. Public sector employment laws are contained in the Public Service Act.

10.1 The Law Applicable

- Public Service Act 1995 (for Public Servants)
- Labour Code Order 1992 (for Private Sector)

10.2 Contract of Employment

- Definition
- Fixed Term contract
- Specific Performance
- Contract without reference to time

(See Section 62)

- Minimum Age (**See Section 124**)
- Probationers (**See Section 75**)
- Wages

10.3 Trade Unions and Employers Organisations

- Freedom of Association
- Registration
- Membership

10.4 Employees' Entitlements

- Weekly rest and public holidays
- Hours of work

- Paid Holidays
- Educational Leave
- Sick Leave
- Maternity Leave
- Night Work
- Compensation under Workmen's Compensation Act 1977

See sections 117 to 135

10.5 Termination of Contract of Employment

- Notice of termination
- Dismissal
 - No capacity
 - Contact
 - Operational requirements (*See Section 66*)
- Disciplinary hearing (*See Section 75*)
- Written reasons for dismissal
- Certificate of service (*See Section 77*)
- Time limit for lodging claim (*See Section 70*)
- Severance pay

Sexual Harassment

10.6 How the contract is concluded

- By word of mouth
- By conduct
- Maybe in writing

10.7 What can invalidate a Contract

- Absence of the legal requirements
- Failure of the other party to fulfil the obligation
- Intervening impossibility

Reference:

Case Law

Labour Code

Public Service Act

CHAPTER ELEVEN

PROPERTY LAW

11.0 Introduction

Lesotho is a patrilineal society, and as such the property within the family is allocated or inherited patrilineally.

11.1 Property Rights

- Customary Law position
- Civil Law position

11.2 Movable Property

- Livestock
- Furniture
- Clothes and blankets
- Value of property

11.3 Immovable Property

Immovable property includes land, houses, buildings and every thing that is attached on the land.

CHAPTER TWELVE

MOTOR VEHICLE ASSURANCE

Third Party Motor Vehicle Assurance is provided by the Motor Vehicle Insurance Order 1972. When a person has been involved in an accident, he/she is compensated by the government through the Road Fund.

12.1 How to Lodge a Claim

- a) Request an MVA booklet from the Insurance;
- b) Filled in terms of section 14 (1) of the order;
- c) Ask the medical doctor who examined the patient/deceased to fill the medical report part that appears in the booklet;
- c) Attach the copy of the accident report or death certificate to the claim booklet;
- d) Relevant pages of the claimant's passport are copied and attached to the claim;
- e) Attach Receipts of medical or funeral expenses;
- f) Relevant pages of the claimant's health book;
- g) Affidavit of claimants detailing circumstances of the accident; and
- h) Eye witness account of the accident if available

All these documents are to be handed to the Lesotho National Insurance Group for compensation

If the claimant is a minor, his/her parents are to file a claim on his/her behalf. A claim can be lodged with or without the assistance of a lawyer.

All claims lapse after two years.

Reference:

Motor Vehicle Insurance Order No. 18 of 1972)

CHAPTER THIRTEEN

HUMAN RIGHTS

Human rights are, legitimate valid and justified claims that a human being has simply by virtue of being a human being.

Characteristics of Human rights

- Universality;
- Interrelatedness;
- indivisibility;
- Interdependence; and inalienability.

Human Rights In Lesotho

These are guaranteed in the Constitution. The Bill of rights provides for:

- Right to life
- Right to personal liberty
- Right to freedom of movement and residence
- Right to freedom from inhuman treatment
- Right to freedom from slavery and forced labour
- Right to freedom from arbitrary search or entry
- Right to respect for private and family life
- Right to a fair trial of criminal charges against him and to a fair determination of his civil rights and obligations
- Right to freedom of conscience
- Right to freedom of expression
- Right to freedom peaceful assembly

- Right to freedom of association
- Right to freedom from arbitrary seizure of property
- Right to freedom from discrimination
- Right to equality before the law and the equal protection of the law and to participate in government

13.2 Children's Rights

- Right to have a family
- Right to have a good name
- Right to be heard
- Right to education
- Right to quality health care
- Right to good nutritious food
- Right not to be manipulated and forced to have sex
- Right to play
- Right not to be forced to do hard work
- Right not to be assaulted
- Right to be guided

Reference Material:

The Constitution of Lesotho - 1993

Universal Declaration on Human Rights (UDHR)

International Convention on Civil and Political Rights (ICCPR)

International Convention on Social, Economic and Cultural Rights (ICSECR)

Convention of Elimination of All Forms of Discrimination Against Women (CEDAW)

Beijing Platform for Action

Children's Act - 1978

Convention on the Rights of a Child (CRC)

CHAPTER FOURTEEN

RECORD KEEPING

14.0 Introduction

Every human organisation needs written records of matters which the management needs to keep in mind as guides to routine action, decision-making, formation and making of rules and policies, the legal validation of the organisations status, procedures and relationship with other organisations and individuals.

14.1 Types of records

- Administrative records
- Financial records
- Policies
- Minutes of meetings

14.2 How May Records be kept?

Records may be kept by filing either

- Alphabetically
- Numerically
- Geographically

14.3 Sources of Records

- Mail
- Minutes
- Proposals

- Budgets
- Cash Transactions
- Banking Transactions
- Credit Transactions
- Financial Reports
- Income and Expenditure statements

Cash transactions

- Payments
- Receipt
- Analysis of day to day transaction
- Petty cash

Assets

- Long term
- Short term
- Registration
- Control and Management rules

Fundraising Activities

- Subscription
- ••••Client fees
- Donations
- •••••Production of materials for resale
- •••••Production of materials T-shirts and caps

Reference Material:

*Organisational Constitution
Finance Manual*

CHAPTER FIFTEEN

HIV AND AIDS

15.0 Introduction

HIV and AIDS is currently a pandemic disease which is killing the population by numbers. Its real causes are yet unknown. Although efforts are being made to find a cure, at the moment there is still no full proof known cure or preventative medication.

15.1 What is known About HIV and AIDS

Possible theories of how it is transmitted.

- Sexual contact
- Sharing instruments such as razor blades, toothbrushes, earrings, etc.
- Nursing those who are infected without protection
- Blood transfusion

15.2 Current ways through which HIV/AIDS is controlled

- Use of certain drugs such as AZT, ARVs, nevarapine and others
- Availability and accessibility of these drugs to the ordinary person
- Use of indigenous medicine

15.3 Prevention

- Abstinence
- Be faithful
- Condomise

15.4 Voluntary testing and counselling

Reference Material:

*Protect yourself Aids Programme Unit and Positive Action
Turning a Crisis into an Opportunity: Strategies for Scaling up the National Response
to the HIV/AIDS Pandemic in Lesotho.*

SPECIMEN FOR MAKING THE JOINT LAST WILL

THE JOINT WILL OF

(Born on 19)

AND

(Born on 19)

- 1-

PREAMBLE

THIS IS THE LAST WILL AND TESTAMENT OF

property, presently residing at _____
(Born _____) and
married to each other in community of
in the district of _____

-2-

REVOCATORY CLAUSE:

We revoke and cancel and amend all previous wills.

TESTOR

TESTARORIX

AS WITNESS 1.
2.

AS WITNESS 1.
2.

Codicils and other testamentary writing hereto for made or executed by us.

REQUEST

3.1 Subject to a life usufruct which we hereby give to the survivor of us we Bequeath and give to our daughter.....

3.2 Subject to a lifetime usufruct which we hereby give to the survivor of us we Give and bequeath to our son.....

We give and bequeath to the survivor of us which we own presently and in the

In the event of our simultaneous death we bequeath all our children but subject to the proviso that such assets shall immediately pass to the control and management of who is directed to care for such property for the benefit of and

We hereby give authority to the saidpower and Authority to keep and care for such property until..... and.....have attained the age of 25 years.

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 Δ of moderate value Δ valuable Δ very valuable

2. *The objectives of the training were:*
not clear Δ clear Δ 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 Δ agree Δ strongly agree Δ

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 Δ disagree to some extent Δ
8. How useful was the group work and exercises?
 not at all useful Δ not very useful Δ useful to some extent Δ
 very useful Δ

What suggestions do you have for improving the methodology or group work?

.....

- 9 The audio-visual material (such as the video programmes,
 transparencies drawings and diagrams) used in this module were:
 clear Δ unclear Δ

10. How useful was the information kit?
 not at all useful Δ useful to some extent Δ very useful Δ

11. Overall, the trainers were prepared and their session well presented
 strongly disagree Δ undecided/ disagree Δ agree Δ strongly disagree

12 Do you have any suggestions for the trainers?

.....

- 13 The general atmosphere and relationship have been very constructive:
 strongly disagree Δ agree more or less Δ agree Δ strongly agree