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Legal Alert on
**The Succession
Amendment
Act 2022.**

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A glance at the possible effect of the Succession (Amendment) Act, 2022 on the cultural values and practices of communities in Uganda

In *Law Advocacy for Women in Uganda v Attorney General Constitutional Petition No. 13/05 & 05/06*, the Constitutional Court found several provisions of the Succession Act Cap. 162 to be inconsistent with certain provisions of the Constitution in as far as they were unfair in their treatment of men and women in Uganda. These provisions were found to be discriminatory on the basis of sex as they made unequal provisions for men and women in relation to inheritance, guardianship and other succession matters. The provisions in question are sections 2n (i) and (ii), 14, 15, 23, 26, 29, 43, 44, of the Succession Act Cap 162.

The Succession (Amendment) Act. 2022 repeals, replaces many of these impugned provisions in line with modern principles of equality. The Act introduces gender neutral wording throughout its provisions by substituting discriminatory words—e.g., “a married woman or woman” to “spouse; “man” to “person”—and inserts immediately after the word “his” the word “or her”, “father” the word “or mother”, “son” the word “or daughter”.

The new gender-neutral wording of the law also altered Section 27 of the original act, in relation to succession of a person who dies intestate. While the former provision only applied to a male intestate, this has been replaced in the amendment to encapsulate both male and female intestate among other changes. Further, the provision provides for the percentage to be inherited from the estate. Where an intestate is survived by a spouse, a lineal descendant, a dependent relative and customary heir, it increases the percentage of the spouse from 15% to 20% and reduces that of dependent relatives from 9% to 4% but maintains the percentages of the lineal descendants at 75% and the customary heir at 1%.

The new amendments have the possibility of significantly altering the cultural ideals of many communities regarding inheritance and customary holding of land such as clan land. This may have a significant bearing on customary holdings of property in Uganda, such as customary ownership of land as provided for under Article 237(2) of the Constitution of Uganda. Majority of land today in Uganda remains held in customary tenure subject to the laws and customs of the people of that culture.

Under the customs of a majority of Uganda’s tribes, customary property such as land was to be passed down primarily to the male descendants, and clan land was thus meant to go to the male heirs excluding the female descendants. In light of Articles 21(1), (2), (3), 31, and 33(6) of the Constitution the practice of excluding female descendants was declared null & void as being inconsistent with several constitutional provisions. Female descendants in Uganda are now entitled to a share of the customary land held in the estate of their parents.

Similarly, female spouses can inherit their deceased spouse's share of the customary land. Under the Amendment Act, a widower or any descendant can now also claim a share in the estate of a female who dies intestate. The holding of clan land is premised primarily on the custom that the land belongs to that clan and will continue to run within the next generations of that clan to come in perpetuity. However, under the Amendment, this will seemingly be relegated to the past. The land passed down to the female descendants under the new provisions can now end up in the hands of their spouse who naturally hails from a completely separate clan or custom.

It is trite law that in the hierarchy of laws the constitution is supreme, and indeed the recent raft of provisions in the Succession (Amendment) Act, 2022 are to bring the law in line with the supreme law of land. However, the new bill opens up a new point of friction between the written laws and the ideals and practices of our cultures as a people. Yet, there was a need to promote the ideals of equality and justice enshrined in our constitution with the new law. Consequently, the future of certain cultural practices held dear by certain Ugandan communities hang in the balance as we slowly grope forward as a nation trying to build an identity for itself in an ever-changing modern world.

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