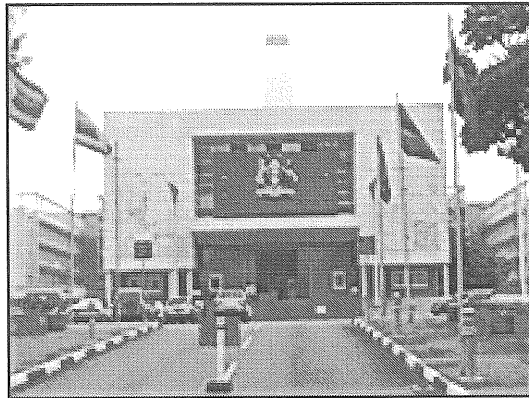


REPUBLIC OF UGANDA



PARLIAMENT OF UGANDA

REPORT OF THE SESSIONAL COMMITTEE ON INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT) ON THE UGANDA COMMUNICATIONS (AMENDMENT) BILL, 2016

Office of the Clerk to Parliament
Parliament Building
Kampala

MARCH 2017

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Uganda 2016
Rt. Hon. Speaker and Hon Members;

1.0 INTRODUCTION

The Minister of Information, Communications Technology and National Guidance in accordance with Rule 221(2) of the Rules of Procedure of Parliament, reinstated the Uganda Communications (Amendment) Bill, 2016, on Wednesday, 5th October, 2016, and consequently the House referred the Bill to the Committee on Information and Communications Technology (ICT) for consideration.

2.0 BACKGROUND TO THE BILL

The Bill is seeking to amend Section 93(1) of the Uganda Communications Act 2013.

3.0 METHODOLOGY

3.1 During the process of analysing the Bill, the Committee interacted and received views from the following stakeholders:

1. The Ministry of Information, Communications Technology and National Guidance
2. The Uganda Communications Commission (UCC)
3. National Information Technology Authority-Uganda (NITA-U)
4. The Vision Group
5. Uganda Institute of Communication Technology (UICT)
6. Uganda Human Rights Commission (UHRC)
7. MTN Uganda Limited
8. Airtel Uganda Limited
9. Uganda Telecommunications Limited (UTL)
10. Representatives of Nkumba University Students Guild

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- 11. Foundation For Human Rights Initiatives (FHRI)
- 12. National Association of Broadcasters (NAB)
- 13. Human Rights Network for Journalists (HRNJ)

3.2 The Committee invited the following Committees of Parliament to make submissions on the Uganda Communications (Amendment) Bill, 2016. These were:

- a) The Committee on Rules, Privileges and Discipline
- b) The Committee on Human Rights
- c) The Committee on Defense and Internal Affairs
- d) The Committee on Science and Technology

3.3 In addition to the above the Committee held a workshop with Uganda Communications Commission (UCC) to further consult on the Bill.

4.0 OBJECTIVE OF THE BILL

The object of the Bill is to remove the requirement for Parliamentary approval of regulations made by the Minister under Section 93(1). The tendered justification for the proposed Bill was that Parliament enacted two conflicting provisions, Section 93(1) that requires parliamentary approval of the regulations made and Section 93(3) that obliges the Minister to lay the regulations before parliament.

5.0 OBSERVATIONS

In the process of scrutinizing the Bill, the Committee observed that there were strong views both in support of the Bill as well as those opposed to the Bill, which required harmonization. These included the following:

5.1 Precedents in the Legislative Processes


a) Those advocating for the Bill argued that:

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- It is a general principal that when regulations are laid before Parliament, they become subsidiary legislation and Parliament can raise whatever concerns it has with the regulations or advise the Executive to review them accordingly.
 - Regulations do not amend the principal legislation; they only enable its implementation/enforcement.
 - Article 79(2) of the Constitution provides for delegation of subsidiary legislative function by Parliament.

b) Other stakeholders submitted that the delegated function is predominantly exercised by the Minister responsible for the sector. However, there are precedents in the legislative process where regulations require the approval of Parliament. These include:

- The Uganda Revenue Authority Act, 1991 gives the powers to make regulations to the responsible Minister in consultation with the Authority.
- The Uganda National Roads Authority Act 2006 gives the powers to make regulations to the responsible Minister in consultation with the Board.
- The National Environment Act 1995 gives the responsible Minister power to make regulations.
- The Bank of Uganda Act 1993 gives the responsible Minister power to make regulations in consultation with the Board.

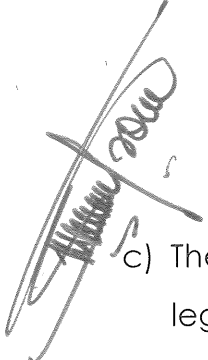
Committee Observations

The Committee notes that:

- Although both precedents obtain in Uganda's jurisdiction, approval of regulations by Parliament is the exception and not the norm;
- Concerns were expressed by various stakeholders over delays and abuse of the delegated authority by the Minister. However, these concerns were not substantiated;



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c) There is no stipulated procedure by Parliament to handle delegated legislation.

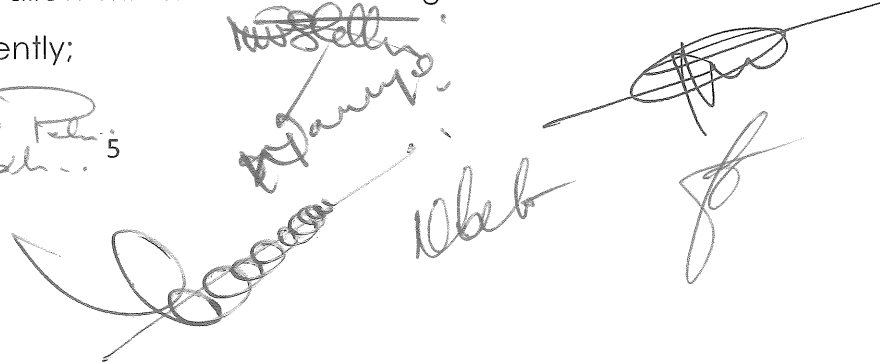
5.2 Emergence of New Technologies

The Committee noted that;

- The ICT sector is highly dynamic and fast evolving and as such new areas have emerged within the sector that were not provided for under the Uganda Communications Act, 2013;
- Due to the technical nature of the sector, the making of regulations for the sector requires extensive technical expertise which is provided by the Uganda Communications Commission and the parent Ministry. In addition due to the dynamic nature of the sector, the making of regulations requires an expeditious process which should not hinder regulation of the sector;
- The technical nature and dynamism of the sector is evident in the areas for which regulations are required as contained in provisions of Section 93(2). These include:

- a) Communications emergency response
 - b) Interconnection and access
 - c) Quality of service
 - d) Competition and protection of operators and consumers from anti-competitive behavior and practices
 - e) Standardization and equipment standards and type approval, including energy requirements
 - f) The Universal Services Fund obligations – establishment and management of the Rural Communications Development Fund (RCDF)
 - g) Research and collaboration with education institutions
- Practical considerations and administrative needs make it unavoidable that in some cases Parliament will allow Ministers to make Regulations in order to function effectively and efficiently;


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- The Ministry and UCC have the expertise to prepare legislation that addresses technical matters and meet the needs of the Communications sector;
- Additionally, because regulations can be passed and brought into force more quickly than Acts of parliament, matters requiring immediate action such as emergencies can be dealt with in a timely manner by regulation, and may therefore not require the approval of Parliament.

Committee Observation

The Committee appreciated the dynamism and technical nature of the sector which would require urgency and expertise in regulating the sector. However, the Ministry did not provide demonstrable evidence of failure to respond to any such emergencies that would have been exacerbated by the rigorous parliamentary approval.

5.3 International Obligations

The Committee noted that:

- The Uganda Communications Commission (UCC) is allied to many international bodies, like the International Telecommunications Union (ITU) based in Geneva, Switzerland, that is part of the United Nations (UN) system. The ITU has 191 Member States and more than 700 sector members and associates.
- Such bodies set standards and regulations which UCC must follow. One of the requirements is for Member States to have a regulatory framework which is in line with the set standards.
- Regulations managing spectrum are influenced by decisions which require highly sophisticated technical expertise which may not easily be available to Parliament.



5.4 Remedy for Aggrieved Parties

The Committee noted that anybody aggrieved by the regulations or decisions made by the Minister have a right to appeal to the Uganda Communications Tribunal which is provided for in the law or appeal to the courts of law.

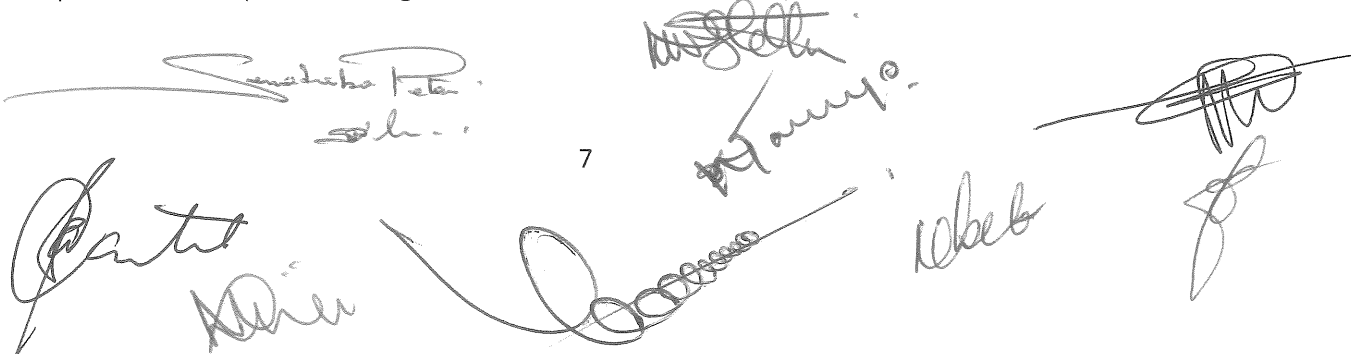
Committee Observation

The Committee observed that Uganda Communications Tribunal has not yet been constituted as provided for under Section 60 of the Uganda Communications Act, 2013. The Committee urges Government to urgently constitute the Tribunal to adjudicate disputes arising from regulating the sector.

5.5 Lack of Parliamentary procedure to handle subsidiary legislation

The Committee noted that:

- The requirement for Parliamentary approval entails regulations being laid before Parliament and presupposes that a procedure exists in Parliament for handling subsidiary legislation, similar to the procedure for handling a Bill.
- Both Section 93(1) and Section 93(3) subject the regulations to parliamentary procedure
- The proposed amendment suggests that Section 93(3) which requires laying of the regulations before Parliament is maintained and the provision of Section 93(1) which requires approval by Parliament is repealed
- The objective of the amendment is to avoid subjecting the regulation-making process to an onerous procedure which will encumber regulation of the communications sector
- The matters to regulate are not only numerous but are technical thus requiring detailed regulation. The requirement for Parliamentary approval requires scrutiny of the regulations in the same way that a Bill is scrutinized.



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5.6 Role of Parliament and the Executive

The Committee observed that:

- Some stakeholders were concerned that the Uganda Communications (Amendment) Bill, 2016, deals with regulating information and knowledge, which are key public and economic goods which affect numerous human rights such as freedom of expression and access to information and essentially goes to the heart of the democratic processes in the country.
- Section 93(1) is fundamental on checking the Minister when formulating regulations that affect the right to communication. It makes it mandatory for the Minister to seek parliamentary approval in making the regulations. Section 93(1) does not jeopardize the operations of the Minister and the Uganda Communications Commission. It only sets a strict standard on how the Minister formulates the regulations. The section promotes and protects the doctrine of separation of powers, a fundamental pillar in a democracy. The role of Parliament in providing checks and balances is very critical especially in the management of the communications sector which forms the bedrock of other fundamental freedoms.

Committee Observations

The Committee recognizes the importance of separation of powers and checks and balances between the different arms of government. The checks should be within the norms and the practice of parliamentary practice and not to interfere with the separate powers of the different arms of government. Article 128 of the Constitution provides for an independent Judiciary to arbitrate where there is conflict or complaint on the other two arms of government (the Executive and Parliament).

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5.7 Evaluation and observance of consistency of Regulations with the Act

The Committee noted that Section 93(1) provides that "The Minister may, after consultation with the Commission and with the approval of Parliament, by statutory instrument, make regulations for better carrying into effect the provisions of this Act."

Committee Observation

The Committee observed that;

- a) The requirement for approval of the regulations by Parliament was to provide for a better evaluation of the consistency of the regulations with the Act.
- b) The Committee recognizes the importance of parliamentary oversight over the Executive with regard to delegated legislation. However such oversight should be implemented in a way that does not interfere with the principle of separation of powers and proper application of the law.

6.0 General Observations and Recommendations

The Committee recommends that the Minister should consider the possibility of reviewing the entire law to take care of new developments in the sector, including the following:

- a) Reviewing the 2% levy on gross annual revenue of operators which is prescribed under Section 68 of the Uganda Communications Act 2013.
 - The Committee observes that the 2% was levied on telecommunications operators under the Uganda Communications Commission Act 2006 now repealed. With the enactment of the Uganda Communication Act 2013 the 2% levy was charged on all operators including broadcasters, which is negatively impacting the sector. For example, the Uganda Broadcasting Corporation which is a national broadcaster and charged with the responsibility to provide broadcasting services all over the country is also

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required under the Uganda Communications Act 2013 to pay 2% of its gross annual revenue to the Uganda Communications Commission.



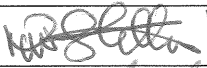


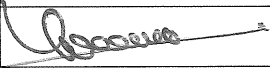

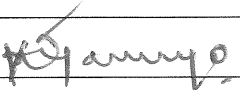

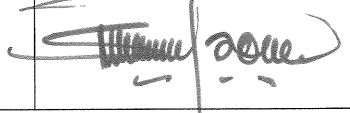
- b) Separate funding of the Uganda Communications Tribunal which is currently to be funded by the Uganda Communications Commission under Section 61(c) of the Act, which undermines the independence of the Tribunal.

- c) Separation of Uganda Institute of Communications Technology (UICT) from the Uganda Communications Commission (UCC). Section 5(w) of the Uganda Communications Act 2013 places UICT under the management of UCC yet UICT is established by another Act of Parliament, the Universities and Other Tertiary Institutions Act, 2001.

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**MEMBERS' SIGNATURE SHEET FOR THE UGANDA COMMUNICATIONS (AMENDMENT)
BILL, 2016 BY THE SESSIONAL COMMITTEE ON INFORMATION AND
COMMUNICATIONS TECHNOLOGY (ICT)**

| No. | Name | Constituency | Party | Signature |
|-----|--|-------------------------|------------|---|
| 1 | Hon. Turyahikayo K. Mary P, Chairperson | Rubabo County | NRM |  |
| 2 | Hon. Maxwell Patrick Ebong Akora --- Vice Chairperson | MARUZI | UPC |  |
| 3 | Hon. Abigaba Cuthbert .M | Kibale County | NRM | |
| 4 | Hon. Nyomera Namoe Stella | DWR Napak | NRM |  |
| 5 | Hon. Igeme Nathan Nabeta | Jinja East Municipality | NRM |  |
| 6 | Hon. Sematimba Peter | Busiro South | NRM |  |
| 7 | Hon. Ssemuli Anthony | Mubende Municipality | NRM | |
| 8 | Hon. Tinkasiimire Barnabas | Buyaga County | NRM | |
| 9 | Hon. Taban Idi Amin | Kibanda North | NRM | |
| 10 | Hon. Bwino Fred Kyakulaga | Kigulu North | NRM |  |
| 11 | Hon. Musana Eric | Buyaga East | NRM |  |
| 12 | Hon. Atiku Benard | Ayivu | INDEP | |
| 13 | Hon. Onyango Gideon | Samia Bugwe North | INDEP |  |
| 14 | Hon. Waira Kyewalabye Majegere | Bunya East | INDEP | |
| 15 | Hon. Biraahwa Mukitale S | Buliisa | INDEP | |
| 16 | Hon. Kantinti Apollo | Kyadondo East | FDC |  |
| 17 | Hon. Oguzu Lee Denis | Maracha | FDC | |
| 18 | Hon. Musoke Wakayima | Nansana Municipality | DP |  |

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PROPOSED AMENDMENTS TO THE UGANDA COMMUNICATIONS (AMENDMENT) BILL, 2016 BY THE COMMITTEE ON INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

Amendment to Clause 1

Replace Clause 1 with the following:

1. Amendment of Act No. 1 of 2013

Section 93 of the Uganda Communications Act, 2013 is amended:

- a) in subsection (1), by repealing the words ***“and with the approval of Parliament”***.
- b) by inserting a new paragraph (3a) immediately after subsection 3 as follows:

“Parliament may by resolution revoke the regulations or a particular provision of the regulations within 30 days from the date the regulations are laid.”

Justification:

To ensure efficient and effective execution of delegated authority to make regulations by the Minister.

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