PARLIAMENT OF UGANDA

MINORITY REPORT ON THE REPORT OF THE COMMITTEE OF INFORMATION COMMUNICATION TECHNOLOGY & NATIONAL GUIDANCE ON THE COMPUTER MISUSE (AMENDMENT) BILL, 2022

Moved Under Rule 205 of the Rules of Procedure

SEPTEMBER, 2022

1.0 Introduction;

We acknowledge that whereas the advent of technology and use of computers have played a big role in the development and modernization of the world, technology is associated with some mishaps and as a result our country is facing the effects of computer misuse and manipulation of technology. It is against this background that we enacted various laws to remedy the mischiefs associated with manipulation and abuse of technology these include; the Computer Misuse Act, 2011; The Penal Code Act, Cap. 120; The Uganda Communications Act, 2013; The Data Protection and Privacy Act, 2019; The Regulation of Interception of Communications Act, 2010; The Electronic of Transactions Act; and The Access to Information Act, 2005; among others.

On 19th July 2022, Hon. Mohammad Nsereko, MP, Kampala Central tabled the Computer Misuse (Amendment) Bill, 2022 and the same was referred to the Committee on Information, Communication Technology, and National Guidance in accordance with Rule 129(1) of the Rules of Procedure of Parliament.

Unfortunately, upon perusal of the Computer Misuse (Amendment) Bill, 2022 and the proposed amendments in the report of the Majority we have established that the same do not address challenges but rather would lead to the creation of more mischiefs and ambiguities.

Pursuant to Rule 205 of the Rules of Procedure of the Parliament of Uganda, we hereby present a dissenting opinion from the opinion of the majority of the Committee.

2.0 Areas of Dissent

We fundamentally differed from the position of the Majority Report on the following aspects;

1. *Unauthorized access*
2. *Unauthorized sharing of information about children*
3. *Hate speech*
4. *Unsolicited information*
5. *Misleading or malicious information.*
6. *Social Media*

3.0 Dissenting Observations.

3.0.1 Unauthorized access.

Clause 2 of the Bill intends to amend Sec. 12 of the Principal Act by criminalizing the sharing of information about or relating to any person without prior authorization from such a person.
This clause duplicates Section 4 of the Access to Information Act, 2005. It also duplicates cyber laws like Section 5(1) of the Electronic Transactions Act, 2011.

The Data Protection and Privacy Act, 2019, and the Regulation of Interception of Communication Act, 2010 provide for the protection of personal information. Besides, Article 27(2) of the Constitution jealously protects the right to privacy, and rightly so. It states '' No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property''. There is no reason to legislate on this clause.

This clause is likely to undermine other very important laws in this country like Ant-Corruption Act, the IGG Act, and the Evidence Act among others.

The law presupposes that whoever does not want his or her voice, acts/ performance recorded, ought to keep the same away from the public or those who may record the data. The clause prohibiting voice and video recording if passed into law would equally, and on the other side, have an effect of fomenting recklessness by encouraging unfiltered utterances and careless conduct in public places and otherwise, occasioning a toll on morals.

Recording anyone who has availed themselves to be recorded does not in any way violate the recorded party's rights.

If clause 2 is left to stand as part of the Bill, it will substantially deter journalists from carrying out investigations on corruption allegations which, in most cases is done stealthily and this will subsequently kill investigative journalism and unjustifiably delimit the freedom of press.

Clause 2 is likely to jeopardize intelligence gathering and evidence collection by security agencies. Combating crime will be very difficult when the public is restricted from the free disclosure of information about other persons.

Recommendation

Clause 2 of the Bill should be deleted since it is a duplication of the existing laws and unjustifiably delimit the freedom of press.

3.0.2 Unauthorized sharing of information about children.

Clause 3 of the Bill seeks to protect children from being exposed digitally without the consent of their parents/guardian. We note that children are already well protected under Section 8 of the Data Protection and Privacy Act, 2019 which provides as follows;

> ***"Personal data relating to children***
>
> ***A person shall not collect or process personal data relating to a child unless the collection or processing thereof is;***
>
> ***(a) carried out with the prior consent of the parent or guardian or any other person having authority to make decisions on behalf of the child;***
>
> ***(b) necessary to comply with the law; or***
>
> ***(c) for research or statistical purposes."***

Reading Section 8 of the Data Protection and Privacy Act vis-à-vis clause 3 of the Bill leaves no conclusion, but that they are one and the same.

Further Section 4 (1) (g) and (3) of the children Act also protects the privacy of children, thus;

"

> ***(1) Every child shall have the right to;***
>
> ***(g) safety, privacy, information and access to basic social services***
>
> ***(3) A person who contravenes the provision of subsection (1) commits an offence and is liable on conviction, to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.***
>
> "

Therefore, the above cited provisions sufficiently cover the privacy of the children whereupon Clause 3 doesn't add any value in the protection of children.

Recommendation; *Clause 3 of the Bill should be deleted since it is a duplication of the existing laws.*

3.0.3 Hate speech.

Hate speech has no conclusive definition and is therefore abstract, it is devoid of certainty in legal interpretation. Precision and clarity in the definition of a criminal offense is essential if a person accused of the offense is to have a fair trial. This is an abstract offence that cannot be defined with precision which makes the offence stated under clause 4 of the Bill ambiguous and contrary to the provisions of Article 28 (12) of the Constitution.

The offense is hinged on the resultant action rather than the intention of the person sharing the information. The use of the word likely is very subjective as it will depend on the feelings of the victim and not the circumstances. There is ambiguity as to what amounts to hostility, ridicule, and divisions. The Bill does not specify who determines the nature and magnitude of hostility and divisions. All these ambiguities are susceptible to abuse and will subsequently occasion injustice.

Besides the spirit and letter of Clause 4 of the Bill which seeks to criminalize hate speech is sufficiently covered by the penal code Act through penalization of the offences of sectarianism and incitement to violence.

Section 41 (1) of the Penal Code Act criminalizes the actions of a persons who prints, publishes, makes or utters any statement or does any act which is likely to —

(a)degrade, revile or expose to hatred or contempt;

(b)create alienation or despondency of;

(c)raise discontent or disaffection among; or

(d)promote, in any other way, feelings of ill will or hostility among or against, any group or body of persons on account of religion, tribe or ethnic or regional origin commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

This in essence remedies the mischief, if any, which Clause 4 of the seeks remedy.

Recommendation.

Clause 4 is ambiguous and does not precisely define the offence created thereunder. Therefore Clause 4 should be deleted.

3.0.4 Unsolicited information.

Section 26(1) of the Electronic Transactions Act, 2011 regulates unsolicited commercial communication to consumers of ICT services and products.

The intended amendment is couched as criminalizing unsolicited information which lacks a definition of what exactly amounts or constitutes to unsolicited information. So, the absence of clear parameters of what constitutes unsolicited information renders clause 5 ambiguous and in conflict with the right to freedom of speech and expression guaranteed by Article 29, the right to access information and is a limitation of the enjoyment of the stated rights and freedom contrary to Article 43(1) and (2)(c) of the Constitution.

There is information that is already in the public domain. Sharing of such information is an offense according to this clause. This violates Article 43(1) of the constitution. It also cuts off investigative journalism and citizen journalism among others.

All information coming into possession of an individual or entity could potentially be categorized as solicited or unsolicited, clause 5 could be misused and abused by the Government and its agencies to curtail sharing and dissemination of information, which would limit freedom of expression and access to information. This clause will be subjected to other constitutional petitions similar to section 25 of the Principal Act.

Recommendation; Clause 5 should be deleted.

3.0.5 Misleading or malicious information.

In the case of ***Charles Onyango Obbo and Anor v Attorney General (Constitutional Appeal 2 of 2002)*** the Supreme Court held that the penalization of the publication of false news under Section 50 of the Penal Code is unconstitutional.

It is our considered position that clause 6 contravenes Article 92 of the Constitution of Uganda that is restrictive on retrospective legislation. The said provision restricts

Parliament from passing any law that alters the decision or judgment of any court as between the parties to the decision or judgment.
This Bill seeks to reintroduce the same offense, this is tantamount to overturning a court judgment by legislation. This is unconstitutional, we cannot continue to legislate in abuse of the constitution of the Republic of Uganda.

There is no need to add this clause which is above all unconstitutional.

Under the law of torts, a person who publishes false information against another can be sued for defamation. Cyber Harassment is also prohibited under section 24 of the principal Act; Section 24 of the principal Act states that; One commits the offense of cyber-Harassment if she/he uses a computer, or knowingly permits any electronic communication device to be used for, making any request, suggestion, or proposal that is obscene, lewd, lascivious or indecent; threatening to inflict injury or physical harm to the person or property of any person.

Offensive communication is prohibited under section 25 of the principal Act and cyber-stalking is also prohibited under section 26 of the principal Act.

Recommendation; Clause 6 should be deleted.

3.0.6. Social Media

This issue was not discussed in the committee neither was it among the clauses the computer misuse (Amendment) Bill seeks to amend. The committee has not taken a deep analysis of the issue, neither were the witnesses the committee interrogated had any input. We do not support this clause for subsequent legislation. Besides the issue of social media is covered in section 19, 25 and 26 of the principal Act.

Recommendation.

The recommendation to include social media be rejected.

Conclusion.

The entire Bill should not be left to stand as part of our laws as all the clauses are already catered for in existing legislation and in some instances offends the Constitution of the Republic of Uganda. The fundamental rights to access

information electronically and to express oneself over computer networks are utterly risked by this Bill. If passed into law, it will stifle the acquisition of information. The penalties proposed in the bill are overly harsh and disproportionate when compared to similar offences in other legislations. This bill if passed, it will be a bad law and liable to constitutional petitions upon ascent.

PROPOSED AMENDMENTS TO THE COMPUTER MISUSE (AMENDMENT) BILL, 2022

CLAUSE 2 AMENDMENT OF SECTION 12 OF PRINCIPAL ACT

Delete clause 2.

Justification

Clause of the Bill is duplication of the existing laws and unjustifiably delimit the freedom of press and expression.

CLAUSE 3: INSERTION OF SECTION 22A IN PRINCIPAL ACT

Delete Clause 3.

Justification

Protection of privacy and data relating to children is covered under the existing law namely the Children Act and the Data Protection and Privacy Act, 2019.

CLAUSE 4: INSERTION OF SECTION 23A IN PRINCIPAL ACT

Delete Clause 4.

Justification

Clause 4 is ambiguous and does not precisely define the offence created thereunder.

CLAUSE 5: INSERTION OF SECTION 24A IN PRINCIPAL ACT

Delete Clause 5

Justification

The amendment is ambiguous and in conflict with the right to freedom of speech and expression guaranteed by Article 29, the right to access information and is a limitation of the enjoyment of the stated rights and freedom contrary to Article 43(1) and (2)(c) of the Constitution.

This provision is somehow already covered under Section 26(1) of the Electronic Transactions Act, 2011.

CLAUSE 6: INSERTION OF SECTION 26A IN PRINCIPAL ACT

Delete Clause 6.

Justification

The clause contradicts the Supreme Court decision in Charles Onyango Obbo and Another Vs Attorney General, CA No. 2 of 2002 where it was that the penalization of the publication of false news is unconstitutional.

Other aspects of the clause are covered under the principal Act whereby Offensive communication is prohibited under section 25 of the principal Act and cyber-stalking is also prohibited under section 26 of the principal Act.

INSERTION OF A CLAUSE BY THE COMMITTEE ON THE USE OF SOCIAL MEDIA

The recommendation to include social media be rejected.

Justification

This issue was not discussed in the committee neither was it among the clauses the computer misuse (Amendment) Bill seeks to amend.

MEMBER SIGNATURE SHEET.

No	Name	Constituency	Signature
1.	Mamusga Gorrethi	Mandera County	

Appendix.

Panel Code Act Cap.120

41. Promoting sectarianism

(1)A person who prints, publishes, makes or utters any statement or does any act which is likely to —

(a)degrade, revile or expose to hatred or contempt;(b)create alienation or despondency of;(c)raise discontent or disaffection among; or(d)promote, in any other way, feelings of ill will or hostility among or against,
any group or body of persons on account of religion, tribe or ethnic or regional origin commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(2)It shall be a defence to a charge under subsection (1) if the statement was printed, published, made or uttered, or the act was done with a view to exposing, discouraging or eliminating matters which promote or have a tendency to promote sectarianism.