



THE UGANDA LAW SOCIETY

VIEWS ON THE ANTI-PORNOGRAPHY BILL, 2011

TO BE PRESENTED TO THE LEGAL AND PARLIAMENTARY AFFAIRS COMMITTEE

17TH OCTOBER, 2013

Introduction and General Principles

The principle behind the requirement to pass the Anti-Pornography law has been necessitated by the dangers pornography (in all its forms) it poses to the moral fabric of the community, the defects in the existing law and the abuse of rights to entertainment, broadcast and publishing.

The Anti-Pornography Bill makes provisions for prohibition of pornography and provides for a Committee whose role is to ensure the eradication of pornography.

Constitutionality of the Bill

The 1995 Constitution of Uganda, under Article 37 provides for protection and promotion of fundamental and other human rights and freedom among which is the right to belong to, enjoy, practise, profess, maintain and promote among others any culture, cultural institution and tradition.

The Constitution further under Article 43 (1) provides for the enjoyment of the rights and freedoms prescribed in its Chapter 4 without prejudice. Needless to say, the Constitution is supreme (Article 2).

On the other hand, the Anti-Pornography Bill under Clause 5 defines pornography to mean *“any cultural practice radio or television programme, writing, publication, advertisement, broadcast, upload on internet, display, entertainment, music, dance, picture, audio or video recording, show, exhibition or any of the preceding that depicts:*

- a) a person engaged in explicit sexual activity or conduct*
- b) sexual parts of a person such as breasts, thighs, buttocks or genitalia,*
- c) erotic behavior intended to cause sexual excitement or*
- d) any indecent act or behavior tending to corrupt morals.”*

In contrast to Clause 5 (b), in Uganda the Bagisu and Karimajong (also recognized as Uganda's indigenous communities under the 3rd Schedule to the Constitution) have had cultural practices and dressing that are in conflicts with the definition of pornography. The Bagisu during what they call “Kadodi Dance” which is part of an annual custom to initiate their boys into manhood through circumcisions, the girls in one way or another expose their breast and thighs. The Karimajong have time immemorial had a kind of dressing exposes their thighs.

To this end, by virtue of the above provisions the Bill under the above specified provision is unconstitutional.

Review/Evaluation of Clauses and Recommendations

Taking into consideration the provisions under the Penal Code Act Cap 120 and the Electronic Media Act, Cap 104, it is notable that prohibition of pornography is partially

and as such the act is not clear as to what amounts to behavior tending to corrupt morals.

The Bill further holds liable a proprietor of a leisure or entertainment place or business or a body corporate on commission of the offence of pornography. This provision read together with the definition of pornography as under Clause 2, as it depicts lack of connectivity regarding the offender; Clause 18 presents the proprietor as the offender which in the view of the recipient community, the legislation does not communicate. This provision is further exclusive of other entities that do not fall in the category of leisure and entertainment and are not bodies corporate.

Implementation

- The operationalisation of the provisions of the Bill will be impracticable if passed into law. The Bill does not provide for a continuous form of supervision by the Committee apart from the periodic inspection. The Bill criminalises use of the internet by Internet Service Providers (ISP) of means other than those provided by the Anti-Pornography Committee. This is a weak measure against Internet Service Providers (ISP) in as far as monitoring is concerned. The internet can as well be accessed in the enclosure of a person's residence. Unless one is present to witness usage of the internet, it is hard to take note of what an internet user has downloaded or uploaded against the fast and tie and again novel development in technology.
- Further, given the international media access in Uganda, regulation of television programmes, writings, advertisements, music not produced in Uganda will be impossible and the purpose of the Bill will thus not be achieved.
- On the other hand, the Bill does not provide for an ICT expert as a member of the committee who in this sense would be better placed to guide the committee on formulating guidelines for ISPs. This provision therefore remains hardly workable in as far as implementation is concerned.

Conclusion

Notably, the principle of the Bill is moral with noble intentions such as to protect the children, maintain cultural values and guard against moral decadency among others. However, against the likelihood of duplicity of legislation, it is recommended that the Legal and Parliamentary Affairs committee explores the option of enriching the existing laws by way of amendment.

102

**COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS
SCHEDULE OF ACTIVITIES FROM WED. 24th/9/13 TO FRIDAY 18th/10/13**

| SN. | DAY-DATE-TIME | SUBJECT | PERSONS TO MEET |
|-----|--|--|---|
| 1. | | CMB Petition | <ul style="list-style-type: none"> • Hon. Khiddu Makubuya • MMAKS Advocates |
| 2. | Wed. Sept 25 th | CMB Petition | <ul style="list-style-type: none"> • Hon. Syda Bumba |
| | Thur. Sept 26th | PARLIAMENTARIANS FOR GLOBAL ACTION (PGA) CONFERENCE | |
| 3. | Tue. Oct 1 st | The Implementation of Government Assurances Bill, 2008 | <ul style="list-style-type: none"> • The Rt. Hon. Prime Minister • The Hon. Attorney General |
| 4. | Wed. Oct 2 nd | The Anti-Pornography Bill, 2011 | <ul style="list-style-type: none"> • Human Rights Initiative • Uganda NGO Forum |
| 5. | Thur. Oct 3 rd | The Anti-Pornography Bill, 2011 | <ul style="list-style-type: none"> • The Uganda Police Force • UJCC • ULS (Memorandum) |
| 6. | Tue. Oct 8 th | The Chattels Securities Bill, 2009 | <ul style="list-style-type: none"> • The Attorney General • The Law Reform Commission |
| | Wed. Oct 9th | NATIONAL INDEPENDENCE DAY CELEBRATIONS | |
| 7. | Thur. Oct 10 th | The Chattels Securities Bill, 2009 | <ul style="list-style-type: none"> • The Uganda Banker's Association • Law Development Centre |
| 8. | Tue. Oct 15 th | The Chattels Securities Bill, 2009 | <ul style="list-style-type: none"> • Uganda Law Society • Makerere university |
| 9. | Wed. Oct 16 th | Reports on Bills | In-house meeting to discuss progress on bills and arrangements for the field visit. |
| 10. | Thur. 17 th – Sat. 19 th Oct 2013 | Field Visit of the Committee to MSK, MBR and KLE | High Courts, IGG, DPP and UHRC |

NOTE: All the meetings will be held in Rm 139 at 11:00am.