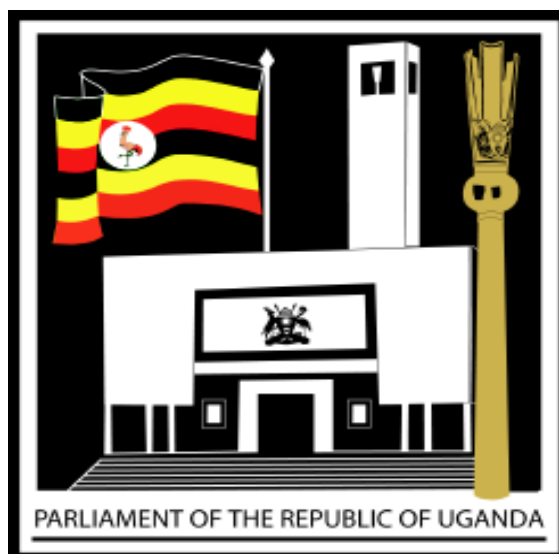


REPUBLIC OF UGANDA



MINORITY REPORT ON THE REGULATION OF INTERCEPTION OF COMMUNICATIONS BILL, 2007

Office of the Clerk to Parliament

Parliament Building

Kampala

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MINORITY REPORT ON THE REGULATION OF INTERCEPTION OF COMMUNICATIONS BILL, 2007

The Rt. Hon Speaker,

Hon Members,

1.0 INTRODUCTION

As we are aware that the Regulation of Interception of Communications Bill, 2007 touches the marrow of the rights and freedoms of human beings, we ought to handle it with utmost care and dexterity. I implore Honourable Members of Parliament to use a high degree of reason so that that we do not go down into the chronicles of history as ordinary folks who just followed the kraal mentality in times of dire need of action.

Rt. Hon. Speaker, you are aware that this Bill spurred a lot of fury and debate among the population of this nation. This cuts across the geo-political and religious divides. It touches the real life of all citizens alive and not yet born.

When the Bill was first introduced by the Minister of Security to the Committee on Information and Communications Technology (ICT), the whole country was awash with the news that the Minister claimed to the media that they wanted to regulate on what they were already doing! Phone users in Uganda know that this illegal act is being perpetuated by the security organs.

Rt. Hon. Speaker, the intention of the Bill defeats its current form. In the proposed Bill, all powers were vested in the Minister of Security. The applicants for the so-called lawful interception are all security personnel under the Minister in one way or another; it is the Minister to issue the warrants; any aggrieved party of the act has to appeal to the Minister first; it is the same Minister to make regulations for carrying into effect the provision of this Act. Therefore he is the complainant, the prosecutor, the Judge and the executioner at all times.

2.0 FINDINGS

2.1 CONFLICT WITH OTHER EXISTING LAWS

2.1.1 The Constitution of Uganda

Chapter 4 of the Constitution of Uganda lists those rights and freedoms of individuals and groups which must be respected, upheld and promoted by all organs of government and all persons.

Article 27(2) of the Constitution provides that no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

Although this right/freedom is not absolute, under Article 46(1) of the Constitution, it can only be taken away in case of an emergency.

If government wants to create another exception, it should amend the relevant provisions of the constitution, which is the supreme law of the land. It is needless to say that the bill should be harmonized with the Constitution of Uganda. The bill needs to be in tandem with other laws to ensure uniform practice across all government agencies in prying into the privacy of the individual.

The Bill in its current form is overly broad and vague, on the grounds under which the right to privacy may be interfered with. The grounds provided under clause 5 of the Bill are not specific and are subject to the designated Judge's "reasonable" belief.

Furthermore, allowing the government to intercept communications of the media practitioners would infringe on the freedom of the media as whistle blowers would be afraid to divulge information.

A felony under the Penal Code Act is any offence punishable by death or imprisonment for over three years. This is even worse if it is read with the provisions of Part IV of the Anti-Terrorism Act, 2002. The above is compounded by the lack of precise definitions of the terms "national security" and "economic interests."

Generally, the restrictions of the above rights by the bill in its current form do not pass the Oakes test and pose a great threat to the enjoyment of fundamental human rights.

2.1.2 Uganda Communications Act (Cap 106)

Section 63 of the above-mentioned Act makes it an offence for one to open any postal article or reveal or disclose the contents of the postal article or destroys or detains any postal article otherwise than in accordance with the said Act.

Section 66 of the Act makes it an offence for any operator of a communications service or system or its employee to intercept any communication between other persons sent by means of that system or service without a court order.

The obligation for operators to maintain confidentiality of the content of all communications on their networks is further provided for in all the licenses issued by UCC.

In view of the above, the Bill must be harmonized with the provisions of the UCC Act otherwise there will be two statutes conflicting with each other.

2.1.3 Anti-Terrorism Act

The Bill is not only trying to legislate on matters, which are already provided for by Anti-Terrorism Act, but in some cases the Bill contradicts/conflicts with the provisions of the said Act.

For instance, section 22 of the Anti-Terrorism Act provides that information obtained through interception of communications is admissible in court as evidence while section 7 of the Bill provides that such information is admissible as evidence in criminal proceedings only with leave of court.

In the circumstances, therefore, what is provided for in the Bill should be taken as an amendment of Anti-Terrorism Act.

2.2 DOMESTIC VIOLENCE

Many activists objected to the Bill, including the Uganda Women Network (UWONET) who issued a statement stating that it will perpetuate domestic violence. The Bill does not safeguard the protection of the women.

2.3 ASSISTANCE BY SERVICE PROVIDERS

Under this section service providers are required among other things to ensure that:

- Their networks/systems are technically capable of supporting lawful interception.
- They install soft and hardware facilities and devices to enable interception.
- The services are capable of rendering real time and full time monitoring facilities for interception.
- They provide interfaces from which intercepted communication can be transmitted.

Section 11(4) of the Bill provides that a telecom service provider shall, at its own expense, acquire the facilities and devices which will be required. The above provisions have the following ramifications:

- i) The service providers will meet the cost of as directed but they will pass it over to the consumer.
- ii) This will impact negatively on the cost of communication services and therefore defeat Government's policy of access to affordable ICT services.

Related to the above is the provision in all licenses issued by UCC requiring operators to maintain confidentiality of the content of all communications over their networks from inference, eavesdropping or recording by the licensee or any of its employees or any of its employees or agents.

The licensees are further required to institute reasonable safeguard the confidentiality of business and personal data concerning its subscribers which it acquires in course of its business.

Apart from the cost, the requirement in section 8(1) of the Bill will amount to a contravention of the provisions of the licenses by service providers.

If the Bill is passed, it will call for UCC to go through the elaborate process of amending all licenses granted to service providers. But **worse** still, service providers may use this window to interfere with the content of all communications on their networks.

3.0 OBSERVATIONS

Rt. Hon. Speaker,

- 3.1 There is no provision for reporting to Parliament or other agencies regarding the intercepted parcels and communications to ensure accountability and to limit abuse.
- 3.2 There is no mechanism for discriminating and/or for ensuring that communications that are not relevant to detection or investigation of crime are excluded.
- 3.3 The legislation will allow for fishing expeditions by law enforcement authorities. The information collected will not be satisfactorily coherent and no measures are contained in the bill to ensure cogency and integrity of the information intercepted and monitored for the purposes of being used in judicial proceedings. The Bill does not contain safeguards to ensure cogency have been inbuilt in the legislation.
- 3.4 The legislation creates an environment for passive law enforcement. The law enforcer's office is reduced to a clearing house for information inertly collected. Unwilling ordinary people such as service providers are compulsorily conscripted into law enforcement. There is a danger of the law enforcer being overwhelmed by irrelevant and large quantities of material. Accordingly, instead of promoting effective law enforcement, the Bill may have a negative impact on effecting law enforcement.
- 3.5 Furthermore, the Bill allows for imposition of the consequences of a search without the positive act of a search by a law enforcement agent. The traditional safeguards against the negative effects of a search and the traditional protection of privacy have not been incorporated into the legislation.
- 3.6 The law imposes an irrational and strenuous compulsion on the service providers and consumers of electronic and postal services. It calls for expensive processes of installing the required equipment and facilities as well as administrative human resource to carry out the government directives. It is undisputable that this will ultimately lead to increase in the cost of communication related services to the common man.

4.0 RECOMMENDATIONS

- 4.1 Parliament should amend the Anti-Terrorism Act and include some of the provisions of this Bill instead of passing this Bill.
- 4.2 The amendment of the Anti-Terrorism Act should only deal with matters relating to the Act and should not include any other felony.
- 4.3 Interception of communications should only be permitted in dire times of emergencies during wars, terrorist attacks and calamities, but not to pry on the rights of persons.

5.0 CONCLUSION

The weaknesses identified above, namely, absence of clear definition of the type of offences which may be monitored; the absence of any reporting mechanism on monitored communication to ensure accountability; the absence of provision for compensation where communication is monitored unlawfully; and the indirect sanctions of unlawful interference of the communications to obtain evidence, distinguish this Bill from legislations in other democratic countries.

For now and ever shall be, the bill vestiges a repressive legislation aimed at shrinking democratic space unless brought in conformity with human rights enshrined in the Constitution. When the State imposes certain restrictions on the exercise of freedom, this should not put in jeopardy the right itself. Whilst it is true that certain restrictions are permissible for public safety and security, it is also true that some of the vilest human rights violations have been committed in the pretext of such derogations.

Rt. Hon. Speaker,

It is our prayer that this Parliament instead amends the Anti-Terrorism Act and includes some of the provisions of this Bill without enacting another law.

I beg to move.

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NO.	NAME	SIGNATURE
1.	Hon. Oceng D. Alex Penytoo	
2.	Hon. Otto Ishaa Amiza	
3.		