Inside the rise and fall of Computer Misuse Act

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BY NELIZABETH KAMURUNGI

The November 8, 2022, Parliament sitting opened amid intense debate over the Nyege Nyege Festival, which the Legislature sought to block on the grounds that it contravened Uganda's moral values.

For much of the session, Parliament appeared to assume a policing role, as the presiding officer suspended matters of national importance to focus on legislation curbing online freedoms through the Computer Misuse (Amendment) Bill, 2022, a law that human rights activists later argued would curtail fundamental rights of expression and public criticism.

The Bill, sponsored by Kampala Central MP Muhamad Nsereko, was passed amid applause, chest-thumping, and the silencing of dissenting voices. Speaker Anita Among, who presided over the sitting, and other proponents did not shy away from the controversial nature of the legislation, which they said was necessary to regulate online conduct and protect citizens from misuse of communication platforms.

Tabled for first reading on July 19, the amendment contained seven clauses designed to strengthen the Principal Law passed in 2011. It sought to: enhance provisions on unauthorized access to information or data; prohibit unlawful sharing of information relating to children; criminalize hate speech, the sending or sharing of malicious information; and restrict persons convicted under the law from holding public office for 10 years.

Mr Moses Magogo, MP for Budiope East and chair of the Committee on ICT and National Guidance, led the majority in supporting the Bill. The committee also introduced provisions criminalising the misuse of social media, under which several Ugandans have faced charges.

On the day of debate, Mr Dan Kimosho (Kazo), stood in for Mr Nsereko, presenting the Bill to the House. Speaker Among urged members to support it, noting: "Honourable members, when you do not support the Computer Misuse Bill, yet you are the same people running here and there saying 'They're abusing me.'"

Only a handful of legislators opposed the Bill. These included Shadow Attorney General Wilfred Niwagaba and Chief Opposition Whip John Baptist Nambeshe. Mr Atkins Katusabe also criticised the law, citing serious deficiencies in its fundamental parameters.

Ms Goretth Namugga (Mawogola County South) was the only legislator to author and sign a minority report opposing the Bill. Her efforts to present the report were met with heckling and booing, and Speaker Among at one point stopped her presentation amid accusations of disrespect.

Minority report

In her minority report, Ms Namugga argued that the Bill duplicated existing laws, violated the 1995 Constitution, and conflicted with previous court rulings. She also criticised the punitive nature of most penalties.

"The entire Bill should not stand as part of our laws. The clauses are already catered for in existing legislation, and some offend the Constitution. The fundamental rights to access information electronically, and to express oneself over computer networks, are at risk," she said.

Attorney General Kiryowa Kiwanuka countered her claims, arguing that the Bill offered clarification rather than duplication.

"What we see in this Bill is more of a clarification on what was already in the law, making it clearer. So, it is not duplication per se," he said.

The House proceeded to pass the Bill with amendments, including increasing penalties for offences from 250 currency points to 750, or imprisonment of up to 10 years, or both. Authorization to access information was clarified as consent from the individual concerned or as allowed by law.

Mr Magogo further introduced provisions regulating social media misuse, making it an offence to publish or share prohibited information under a disguised or false identity. Conviction could result in fines up to 500 currency points, imprisonment of up to five years, or both.

Critics, including Ms Namugga, protested the punitive nature of these measures. Others, including Mr Silas Aogon (Kumi Municipality), proposed higher fines as deterrents, with Speaker Among supporting the measures.

401
NO OF PETITIONS



Kampala Central MP Muhamad Nsereko who sponsored the Bill. PHOTO/ COURTESY

Deleted clause

Parliament, however, deleted the clause barring convicted leaders from holding public office, arguing it was excessive and discriminatory. The Bill also expanded jurisdiction by repealing Section 30(3), allowing prosecution of offenses committed outside Uganda. Dr Chris Baryomunsi, the minister for ICT, explained that technology enables authorities to pursue offenders abroad, with the Attorney General agreeing it did not contravene Ugandan law.

Jubilation followed the passage of the law, with Speaker Among thanking legislators:

"Those who think they should play around with people's names must answer for it. We are here to legislate, and the laws will catch them," she said.

However, the excitement has been short-lived. The Constitutional Court has annulled the law on a technicality, striking down key provisions, including: Section 11 on unauthorised data access; Section 23 on sharing information about children without consent; Section 26 on information deemed to ridicule or demean others; Section 28 on sending malicious information; and Section 29 on social media misuse.

The annulment has also raised questions about the conduct of the 11th Parliament in handling contentious legislation and the robustness of procedural adherence in enacting laws.

ekamurungi@ke.nationmedia.com

KEY PROVISIONS

- Criminalise unauthorised access to data (Section 11)
- Ban sharing information about children without consent (Section 23)
- Penalise content that ridicules, demeans, or degrades others (Section 26)
- Prohibit sending malicious information (Section 28)
- Restrict social media misuse, including false or disguised identities (Section 29)
- Increase penalties: fines up to 750 currency points or imprisonment up to 10 years for serious offences

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