



**UNWANTED  
WITNESS**

"Amplifying Voices, Changing lives"

Block 381, Plot No. 26, Nsibambi Village  
P.O. Box 71314 Clock Tower K'la

Tel: +256 414 697635

Email: [info@unwantedwitness.org](mailto:info@unwantedwitness.org)

Website: [www.unwantedwitness.org](http://www.unwantedwitness.org)

**RECEIVED**  
18 AUG 2022  
**IN PRMS**

**MEMO TO:**

THE INFORMATION, COMMUNICATION TECHNOLOGY AND NATIONAL GUIDANCE  
COMMITTEE OF PARLIAMENT OF UGANDA

**RE: UNWANTED SUBMISSIONS ON THE COMPUTER MISUSE (AMENDMENT)  
BILL OF 2022**

**BACKGROUND**

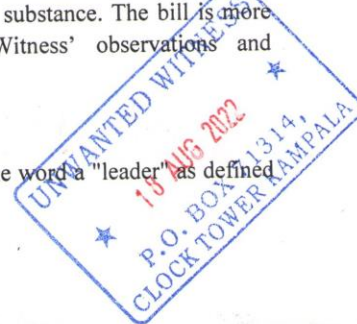
On the 19th day of July, 2022, Honourable Nsereko Mohammad, tabled to this Parliament a private Member's bill: Computer Misuse (Amendment) Bill 2022, (hereafter referred to as "the bill") the objectives "enhancing the provisions on unauthorised access to information or data; to prohibit the sharing of any information relating to a child without authorisation from a parent or guardian; to prohibit the sending or sharing of information that promotes hate speech; to provide for the prohibition of sending or sharing false, malicious and unsolicited information among others. The Bill is purportedly intended to cover "gaps" in the existing principal Act (The computer Misuse Act, 2011) and bringing it up to speed with the rapid advancement in computer-generated technology that has led to the adoption of numerous online and social media platforms as a means of communication and interaction.

Uganda currently has a total number of 13.9 million internet users and the State has a legitimate interest to make sure that the cyberspace is safe and secure for everyone and ultimately to fulfil its obligation to close the digital divide among Ugandans and scale citizen participation in e-governance of their country. However, this obligation must be fulfilled in accordance with the laws of Uganda and international human rights standards which prohibit unjustifiable, unnecessary, and disproportionate restrictions of human rights and freedoms.

Whereas the purposes and objectives of the bill look legitimate, most of the clauses are likely to breed unintended consequences if passed in their current form and substance. The bill is more prohibitory than regulatory. The following are Unwanted Witness' observations and recommendations.

**Amendment of Sections 2 and 27A in the principal Act**

Section 2 of the Principal Act is intended to be amended to insert the word a "leader" as defined in the Leadership Code Act, 2002.



Section 2 of The Leadership Code Act, 2002 defines a leader as a person holding or acting in any offices specified under the second schedule of the Act.

The second Schedule of the Leadership Code Act, 2002, provides a list of leaders and this includes; Political leaders, like the president, Vice President, speaker and deputy speaker and many others.

This proposed amendment once passed will be discriminatory because it is only focusing on leaders as defined under the Leadership Code Act, 2002. This implies that other leaders that have no intentions to aspire for leadership as defined in the Leadership Code Act, 2002 are manumitted to abuse the Computer Misuse Act. It hence creates two classes of citizens which should not be the spirit of the law.

#### **Recommendations**

- This definition should be deleted and the law should equally apply to everyone without discrimination.
- The clause if passed has consequence of frustrating public discourse among leaders through self-censorship to avoid losing their offices. This is inimical to democracy which thrives on participation, freedom of expression, free speech and unbridled access to information.

The impugned Bill under clause 7 proposes to amend Section 27 of the Principal Act by inserting section 27A. The impugned amendment intends to impose a 10 year restriction on anyone convicted under the Act from holding any public office, it further states that a leader in possession of a public office upon conviction shall be dismissed from office.

#### **What are the challenges**

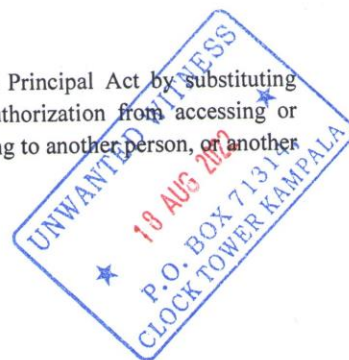
Whereas, the ostensible purpose of this amendment may look legitimate, if the clause is passed in its present form and substance, it has a chilling effect on Ugandans either intending to take up leadership or those already in leadership positions.

#### **Recommendations**

- This particular clause is incurable and should be abandoned because it goes against the principles of the principle of civic participation which is facilitated by the right to freedom of express and speech and free flow of information in a participatory democracy like ours that thrives on "the buying and selling" of ideas.

#### **Amendment of Section 12 in the principal Act**

Clause 2 of proposed bill intends to amend Section 12 of the Principal Act by substituting subsection (1) with provisions prohibiting a person without authorization from accessing or intercepting any program, sharing any information about or relating to another person, or another person's data or information, voice or video recording.





The amendment is vague and overly broad, it loops in both legitimate actions of citizen journalists building an accountable and transparent society. For example the clause does not exempt recording, recording and sharing of photos and videos of public officers and private individuals flouting traffic laws which is and should be a protected form of free speech and expression. Therefore, the clause if passed in its current form whether its purpose is constitutional, the effects are likely to be unconstitutional for unjustifiably, unnecessarily and disproportionately restricting legitimate conduct that is protected by the bill of rights and international instruments.

#### Recommendations

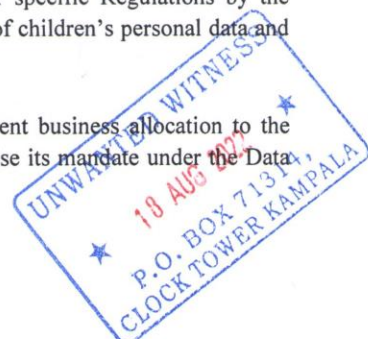
- This clause is redundant and should not be passed, the existing legal regime provides sufficient civil remedies and protection to any who claims his or her rights are violated. Articles 50(1) and 27 of the Constitution of the Republic of Uganda read together with the Data Protection and Privacy Act, 2019 and Sections 3, and 9 of the Human Rights (Enforcement) Act, 2019 provide sufficient civil remedies to any one who complains of violation of his or her human rights including his or her right to privacy. The amendment of this section by insertion of subsection (1) (a), (b) and (c) is redundant and inimical to citizen journalism.
- In the alternative, the clause should specifically exclude the unauthorised access of computer systems, sharing of private information and the voice and video recording of a person for legitimate and justifiable causes discussed in the foregoing paragraph.

#### Amendment by insertion of Section 22A in principle Act

Clause 3 of bill intends to amend the principle Act, by inserting Section 22A to criminalise the sharing, sending, and transmitting of personal information about or relating to children without the consent of their parents. The ostensible purpose of the clause is already fulfilled under Section 8 of the Data Protection and Privacy Act, 2019 together with its regulations. Section 8 prohibits the collection and processing of personal information related to children without their parent's consent. Section 35 the Act criminalises disclosure of personal information of a data subject including children. This makes Clause 3 of the Bill redundant.

#### Recommendations

- The proposed amendment in this clause should be ignored since the existing legal regime sufficiently protects children's personal data and information.
- Parliament should rather fast track the drafting of sector specific Regulations by the relevant ministries and regulators to fortify the protection of children's personal data and privacy.
- We further recommend that the government gives sufficient business allocation to the Personal data protection office to enable the office to realise its mandate under the Data



protection and Privacy Act, 2019 in order to tackle most of the objectives set out in the memorandum of the bill.

#### **Amendment by insertion of Section 23A**

Clause 4 of the Bill proposed to insertion of Section 23A in the Principle Act legislate against "hate speech" by prohibiting a person from writing, sending or sharing any information through a computer which is likely to ridicule, degrade or demean another group of persons, a tribe, and ethnicity, a religion or gender and any speech that promotes hostility against a person, group of persons, a tribe, an ethnicity, a religion or gender. This clause does not precisely define what amounts to hate speech. If this proposed amendment is passed in its current form and substance, it is susceptible to law abuse and whimsical interpretation by law enforcement officers to target dissidents against sectarianism and nepotism.

#### **Recommendation**

- We recommend that this clause is deleted. World over, there is no precise definition of hate speech. The understanding of 'Hate speech' is subjective from society to society and from person to person.

#### **Amendment by insertion of Section 24A in the Principal Act**

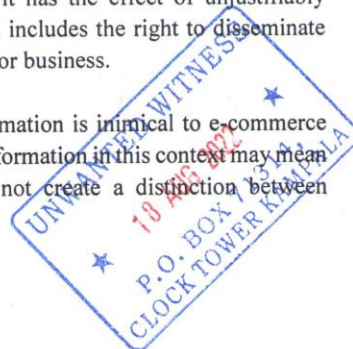
Clause 5 of the bill intends to amend the Principal Act by inserting section 24A to criminalise the sending and sharing unsolicited information. What amounts to "unsolicited" or "solicited" information is not defined.

This provision is not only vague but also overly broad; it has the effect of looping in both legitimate and illegitimate expression and sharing of information.

For instance, commercial advertising which is protected speech and already regulated under the Electronic transactions Act, 2011 is as well looped in this impugned clause of the bill. Section 26 of the Electronic Transactions Act, 2011 prohibits the sending of unsolicited commercial messages to a consumer unless such unsolicited commercial message is received by and with an opt-out option to the consumer at no cost.

If this clause is passed in this current form and substance, it has the effect of unjustifiably restricting legitimate freedom of speech and expression which includes the right to disseminate information and right to carry on any lawful occupation, trade or business.

The amendment that imprecisely criminalises sharing of information is inimical to e-commerce that thrives on online advertisement. Whereas the unsolicited information in this context may mean "cyberflashing" which is illegitimate, the amendment does not create a distinction between legitimate and illegitimate unsolicited information.





#### Recommendation

- We recommend that a clear parameter of what prohibited unsolicited messages is provided in the bill.
- In the alternative, the entire clause should be deleted for avoidance of looping both legitimate and illegitimate speech.

#### Amendment by insertion of Section 26A in the principal Act

Clause 6 of the Bill intends to prohibit sending, sharing or transmitting any "misleading" or "malicious" information about or relating to any person through a computer. It is our opinion that the purpose and effect of the above clause are in substance identical to the offence of criminal libel in the Penal Code Act, Cap. 120 laws of Uganda that is intended to protect the reputation of another. This makes the clause redundant. Any victim of the purported misleading or malicious information has sufficient remedy in civil courts to in the tort of defamation if he or she feels aggrieved, the criminal justice system that costs the State a lot of taxpayers money should not be used as a tool to settle individual squabbles who have an option of seeking civil remedies. The decision of justice Mulenga in Charles Onyango Obbo is very instructive on the aspect of criminalising speech, he stated that :

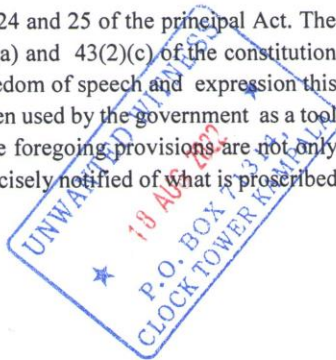
"In my view, of the Constitution for criminalising every statement that is published even if that statement has not caused any prejudice to the rights of others. Even if there is a violation or prejudice of other peoples' rights, there is a remedy or remedies that are provided under the existing law where one can seek redress in a civil court. This means that our society must learn to accommodate a wide variety of views, beliefs etc, even if such views or beliefs are repugnant and contrary to our own."

#### Recommendation

- The clause should be deleted for being redundant. It is likely to add unnecessary and unjustifiable restrictions on freedom of expression and speech and access to information that are already overly regulated in the aforementioned manner. It intends to add a financial burden on the State in settling individual squabbles of citizens who have an option of seeking civil remedies.

#### Overall recommendations

- Parliament should instead review and repeal Sections 24 and 25 of the principal Act. The above impugned are inconsistent with Articles 29(1)(a) and 43(2)(c) of the constitution for having an effect of unjustifiably restricting the freedom of speech and expression this demonstrated by the fact that the said Sections have been used by the government as a tool for persecuting dissidents and and silence dissent. The foregoing provisions are not only vague but also broad that citizens are not fairly and precisely notified of what is proscribed conduct and allowed conduct.



- The government should strengthen the enforcement and implementation of the Data Protection and Privacy Act. This can be done by establishing a close relationship between the Office of the National Data Protection and the office of the Director of Public Prosecution.

## CONCLUSION

The proposed Computer Misuse (Amendment) Bill, 2022 is a looming nightmare to the freedom of expression and speech, e-governance and the digital economy. We therefore ask Parliament to review the amendment in consideration of our submission above repeal Sections 24 and 25 of the Principal Act.

