

**REPORT OF THE SELECT
COMMITTEE ON
EDUCATION, TRAINING
AND ICT
ON THE INFORMATION
AND COMMUNICATIONS
(AMENDMENT) BILL,
2020.**

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INTRODUCTION

Following the second reading of the **Information and Communications (Amendment) Bill 2020** on the 30th November, 2020, by Hon. Dawda Jallow, the Attorney General and Minister of Justice, the plenary, in accordance with Clause 68 (1) of the Revised Standing Orders 2019, referred the said bill to the Assembly Business Committee (ABC). The ABC further committed the Bill to the Select Committee on Education, Training and ICT as provided for in Clause 68 (2).

The Committee convened meeting on the 5th day of February, 2020, to discuss the provisions of the Bill that are being proposed for amendments. During the session, Hon. Members made reference to the parent act (**Information and Communications Act, 2009**), the Interpretation Act and the 1997 Constitution of the Republic of The Gambia.

The Bill seeks to amend sections 138, 165, 173, 232, 235 and 236 of the Parent Act. Each of these sections will be discussed in separate paragraphs. However, section 232, 235 and 236 will be analyzed in one paragraph as they address similar issues. The main objective of the Bill is to strengthen the protection from interference with the right to privacy and correspondence.

1. MEMBERS OF THE COMMITTEE

HON. MEMBERS OF THE COMMITTEE

1. Hon. Yaya Gassama
2. Hon. Alhagi Mbow
3. Hon. Saikouba Jarju
4. Hon. Ousman Touray
5. Hon. Fakebba N.L Colley
6. Hon. Alhagie Darboe
7. Hon. Sedia Jatta
8. Hon. Sainey Touray
9. Hon. Alfusainey Ceesay
- 10.Hon. Alhaji Sankung Jammeh
- 11.Hon. Abdoulie Ceesay
- 12.Hon. Bakary Njie
- 13.Hon. Muhammed Mahanera
- 14.Hon. Ndey Yassin Secka
- 15.Hon. Alhagie S. Darboe
- 16.Hon. Muhammed Magassy
- 17.Hon. Matar Jeng

Support Staff

- | | |
|---------------------|------------------------|
| 1. Mr. Mamadou Bah | Senior Assistant Clerk |
| 2. Ms. Isatou Sonko | Committee Clerk |
| 3. Mr. Modika Bah | Research Officer |

Subject Matter Specialists

1. Mr. Sekou O.M Dibba
2. Mr. Momar K.F Samba

AMENDMENTS OF SECTIONS

1. AMENDMENT OF SECTION 138

The committee observed that this amendment is an insertion. It does not delete any provision of the Parent Act. What the bill seeks to do is to subject all interceptions and interference with the right to privacy by the National Security Agency or Investigating Authority to the High Court. The Parent Act enables the State to monitor or intercept communication of individuals without supervision or control.

The committee agreed with the proposed amendment that court orders must be sought in order to justify interception and interference. However, concerns were raised as to whether obtaining court order will not prejudice urgent situations. The Committee looked at the amendment closely and realized that it allows ex-parte application which is a mechanism used in urgent situations to obtain court orders.

In addition, the committee made observations on the wordings “National Security Agency or Investigating Authority”. The Committee is of the view that these phrases should be interpreted. However, they are not defined in the Interpretation Section of the Amendment Bill, the Parent Act and the Laws of The Gambia 2009. Thus, the Committee holds that an interpretation for the phrases is essential and needs to be incorporated in the Amendment Act.

In addition, the committee scrutinized the Amendments by taking into consideration grammar and construction. It was observed that section **138A (5)(a)** of the Bill should be expanded by adding “**and address or location**” immediately after identity.

The rationale is that people bear similar names so addresses can be an additional guide to distinguish individuals.

Furthermore, the committee observed that under section 138A (5)(e) the letter “d” should be added to the word “terminate”.

Resolution: It was resolved that the rationale for the amendment of section 138 is welcome subject to observations made in this report.

2. AMENDMENT OF SECTION 165

The Committee observed that the Bill intends to substitute the provision of the Parent Act “**a computer system**” with the words “**Information communication technology tools and services.**”

The committee is of the opinion that the amendment will expand the scope of privacy information that requires protection from unnecessary interference. Thus, the amendment provides more protective range than the Parent Act. It covers information on all other devices.

Resolution: It was resolved that the amendment of section 165 of the Parent Act is justifiable and reasonable.

3. AMENDMENT OF SECTION 173

Firstly, the Committee corrected an error of reference. The amendment makes reference to **S. 173A** of the Principal Act and there is no such section. Therefore, instead of **section 173A** it should be **S. 173**.

The Committee also observed that the Amendment Bill seeks to delete the entire provision of section 173 of the Parent Act.

In considering this amendment, the Committee put the question that the amendment will only be justified if the content of 173 is addressed in other sections. However, after going through the entire Parent Act and the Amendment Bill, the Committee concluded that the proposed deletion is not addressed in any other section.

Thus, the amendment of section 173 was held to be unjustifiable as the issue of producing fake data or threatening a person to obtain information has not been dealt in any other section.

Resolution: It was decided that the deletion of 173 is not tenable.

4. AMENDMENT OF SECTIONS 232, 235 and 236

These sections of the Principal Act are amalgamated because the Committee observed similar comment for each. They deal with the refusal, revocation and suspension of license respectively. In each case, the victim is given fourteen working days after being notified to challenge the refusal, revocation or suspension of license before the High Court.

The Committee considered the fourteen days period whether is short or not. They observed that weekend and public holidays are not part of it and that the fourteen (14) days period will be equivalent to three weeks. Thus, the Committee found it reasonable.

The count starts from the day the individual or victim is notified. The manner in which he or she should be notified has not been addressed. The Committee held that in sections 232, 235 and 236, the notification of refusal, revocation or suspension should be communicated to the victim in **writing** to ensure fair play and consistency with the Parent Act. The Principal Act demands notification to victims or applicants in writing.

CONCLUSION

The general objective of the Bill is good. It will prevent abuse of power and unnecessary interference of privacy. The amendment will safeguard section 23 of 1997 Constitution which deals with protection of privacy.

The Committee, therefore, recommends that the Bill be passed with the necessary alterations and amendments as highlighted above.