

## **ARTICLE 19 Individual Submission to the Universal Periodic Review of Rwanda**

### **For consideration at the 23rd session of the Working Group to be held in October/November 2015**

23 March 2015

#### **Executive summary**

1. ARTICLE 19 welcomes the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Rwanda. This submission focuses on Rwanda's compliance with its obligations under international human rights law to protect and promote the right to freedom of expression and information.
2. ARTICLE 19 observes that Rwanda has made some positive progress towards implementing many recommendations that it accepted during its first UPR to advance protections for freedom of expression and information. This includes progress in reforming media laws and moving towards a system of media self-regulation.
3. Nevertheless, there are still numerous concerns in relation to freedom of expression, and areas for further improvement. This submission addresses the following:
  - Laws restricting freedom of expression
  - Media self-regulation
  - Attacks on journalists
  - Access to information

#### **Laws restricting freedom of expression**

4. Rwanda's legal framework is used to restrict the right to freedom of expression, in particular media freedom. While there have been positive reforms since the first UPR, there remains a restrictive environment for freedom of expression.

#### Regulatory framework for the media

5. During the last UPR, Rwanda committed to examine the media regulation system and eliminate all provisions that may hinder freedom of expression. It committed to review the 2009 Media Law to bring it into conformity with international standards, and to reform the High Media Council in order to strengthen its credibility and independence.
6. On 11 March 2013, Rwanda promulgated Law No. 02/2013 of 08/02/2013 (the Media Law) and Law No. 03/2013 of 08/02/2013 determining the responsibilities, organisation and functioning of the Media High Council.
7. The Media Law included a number of positive reforms:
  - Recognition of a Media Self-Regulatory body to regulate the conduct of journalists (Article 4) which is empowered to deal with violation of journalists' rights (Article 15);
  - Recognition of legal rights for journalists including the right to collect information; a limited right to confidentiality of journalistic sources; and the right to call on any resourceful person to provide information;
  - Lifting of some restrictions incompatible with the right to freedom of expression that were previously placed on journalists, including prohibitions on "the use of unlawful methods to obtain or to disseminate information", "neglecting essential information", and "distorting ideas contained in an information or a text";
  - Recognition of the rights to reply, rectification and correction, thus providing more proportionate remedies to individuals harmed by the media;
  - The media profession will be allowed to set its own professional standards through the self-regulation mechanism;

- Removal of requirement that journalists should hold particular academic qualifications, opening the profession to a greater number of people;
  - Recognition of a broader, though still limited, definition of a journalist and giving freelancers the same rights as employed journalists;
  - Removal of the requirement that photo-journalists have authorisation from the media authorities to perform their profession;
  - Liberalised system of sanctions for the media, including the repeal of “suspension” and “closure of a publication” as penalties, both of which are disproportionate restrictions on the right to freedom of expression.
8. However, notwithstanding this progress, the Media Law fails to meet international freedom of expression standards:
- i. **The law adopts a narrow definition of a journalist** despite General Comment 34 stating that “journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”
  - ii. **The state defines legal duties that are required only of journalists.** The law sets out several obligations for journalists, including to inform and educate the population and promote leisure activities, to defend freedom of information, and to analyse and comment on information. While these are framed as legal duties and thus presumably carry liability, there is a lack of clarity in the law as to how these duties will be enforced and by whom. The imposition of such duties, especially when combined with this lack of clarity, provides a basis for authorities to harass journalists or otherwise undermine their independence.
  - iii. **Adequate safeguards against abuse of restrictions are lacking.** Article 9 allows restrictions, if journalists “jeopardise the general public order and good morals, an individual’s right to honor and reputation in the public eye and to the right to inviolability of a person’s private life and family”, but does not require such restrictions to be necessary in a democratic society or proportionate.
  - iv. **The confidentiality of journalistic sources is not adequately protected.** According to the law, courts can require journalists to reveal their sources in any legal proceedings, even where alternative channels of receiving that information have not been exhausted. International standards are clear that compelling journalists to reveal their sources should only occur where there is an overriding requirement in the public interest, and the circumstances are vital, for example, to protect human life, prevent a major crime, or to the defence of a person accused of committing a major crime. Alternative means for obtaining that information also must have been exhausted.

#### Genocide Ideology Law

9. During its first UPR, Rwanda accepted several recommendations to ensure the Genocide Ideology Law of 2008 is not manipulated or interpreted in a manner that illegitimately restricts the exercise of the rights to freedom of opinion, expression or association.
10. In line with these commitments, a revised version of the 2008 law on genocide ideology was promulgated in October 2013. It contains several improvements, including:
- A more precise definition of the offence stating “genocide ideology” must be “characterised by thoughts based on ethnicity, religion, nationality or race to foment genocide and/or support genocide”;
  - Criminal intent for the offence must be proven, thereby reducing the scope for abusive prosecutions;
  - An act of “genocide ideology” must be carried out in front of more than one person;
  - The maximum prison sentence has been reduced from 25 to nine years.
11. These changes limit the scope of the offence, bringing it closer to the international standards set out in Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. However, ARTICLE 19 is concerned that by retaining the broad concept of “genocide ideology”, as distinct

from “incitement to genocide”, there remains scope for this law to be abused to silence critical voices or commentary on important matters in the public interest.

Penal Code 2012 (N° 01/2012/OL of 02/05/2012)

12. Many provisions in the penal code contain vague, illegitimate and disproportionate restrictions on freedom of expression.
13. **Insult laws:** Article 289 threatens imprisonment of between two and six months and/or a fine of up to 3,000,000 RWF (approx. \$4,180USD) for insult of another person. In Article 539, insulting an official or the police “by words, gestures, threats, writings or drawings” could lead to imprisonment between one to two years and/or a fine of up to 500,000 RWF (approx. \$700USD). Penalties are doubled where insult is directed towards a senior official during a parliamentary session. General Comment No. 34 makes clear that “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned”. International mechanisms on freedom of expression state that “defamation laws should reflect the importance of open debate about matters of public concern and the principle that public figures are required to accept a greater degree of criticism than private citizens.”<sup>1</sup> The Penal Code reverses the principle that the more senior the public official, the greater the degree of criticism that he/she should tolerate. Even absent their application by a Court, the existence of the provisions in the criminal code has a chilling effect on the freedom of expression.
  - In May 2014, Jeannette Mukamana and Rose Nishimwe, from campus radio station, Radio Salus, were arrested after a broadcast that the authorities claimed insulted the President. They were only released after the intervention of the Rwanda Media Commission.
14. **Criminal defamation:** Articles 288 and 290 of the 2012 Penal Code forbid defamation in both public and private arenas. UN and regional independent mechanisms on freedom of expression have called on States to decriminalise defamation, since criminal laws on defamation fail to strike the proper balance between individuals’ reputation rights and freedom of expression.<sup>2</sup> Individuals’ reputations can be protected more effectively, with proper safeguards against abuse, through the civil law. The UN Human Rights Committee and the African Commission on Human and People’s Rights<sup>3</sup> has called on States to consider decriminalising defamation.<sup>4</sup>
  - On 26 February 2015, Burasa Jean Gualbert, Managing Editor of *Rushyashya Newspaper* was convicted of defamation, handed a 6 month suspended sentence, and fined 3.2 million RWF (approx. \$4,640USD) by the Nyarugenge primary court. Burasa was accused of defamation after the publication of an article critical of a documentary about the history of football in Rwanda, produced by Muramira Regis, entitled ‘Kera habayeho’ (‘What happened in the past’).
15. **Provisions on National Security:** National Security offences are vague, and not narrowly tailored to the revelation of information that is intended to be, and actually is, injurious to national security. Article 447 and Article 449 state that any revelation of State Secrets intended to be “against the interests of Rwanda” is categorised as treason and punished by between ten and 25 years’ imprisonment. “Spreading false information with an intent to create a hostile international opinion against the Rwandan State” (Article 451) provides for life imprisonment for offences during wartime and between seven and ten years during peacetime.
16. National security is frequently the basis on which the authorities censor the media, and fear of prosecution contributes to a climate of self-censorship. On 4 September 2013, police arrested and questioned Joseph Hakuzwumuremyi regarding his sources for a story detailing a reshuffle within the Rwanda National Police. Police demanded that he remove the story from his website because

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<sup>1</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 30 November 2000; available at: <http://www.article19.org/data/files/pdfs/igo-documents/three-mandates-dec-2000.pdf>. See also: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/20/17, 4 June 2012, at para. 88; European Court of Human Rights (ECtHR), *Lingens v. Austria*, 24 June 1986, Application No. 9815/82, at para. 42.

<sup>2</sup> Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002

<sup>3</sup> Resolution on repealing criminal defamation laws in Africa, African Commission on Human and Peoples’ Rights, ACHPR/Res 169 2010

<sup>4</sup> HR Committee, General Comment No. 34, *op. cit.*, at para. 47

he allegedly obtained information illegally. He removed the story but did not divulge his sources and was released from custody after several hours. Such arbitrary harassment has a chilling effect on the media and investigative journalism.

### **Media Self-regulation**

17. During its first UPR, Rwanda accepted several recommendations to safeguard media independence. Since then, a number of reforms have been initiated to move towards a system of media self-regulation.
18. On 1 June 2012, the government adopted a new media policy to strengthen media self-regulation and reduce statutory regulation. The policy allows media practitioners to regulate themselves by holding each other accountable through a voluntary process based on a code of ethics.
19. After the promulgation of the Media Law, journalists established a self-regulation body, the Rwanda Media Commission (RMC), with the following mandate:
  - Promote, nurture and protect ethical journalistic practices;
  - Defend media freedom;
  - Speak on behalf of the media community regarding the promotion and protection of ethical principles and media freedom.
20. Between September 2013 and the end of 2014, RMC had registered 49 complaints (39 cases were filed by ordinary citizens against media houses; five cases were filed by journalists against media houses, three cases were filed by journalists against government officials, and two cases were filed by government officials against journalists.) 48 of the cases were resolved and no one has appealed their decisions to the High Court.
21. Nevertheless, the RMC has faced a number of challenges. This includes a lack of public understanding of self-regulation and lack of adequate resources to effectively carry out its mandate.
22. There has been government interference with the RMC. On 27 October 2014, BBC Kinyarwanda radio was suspended after BBC TV aired the documentary "Rwanda, The Untold Story," which argued that the number of Hutus killed in the genocide was higher than generally recognised. The Rwanda government accused the BBC of genocide denial. The broadcast was suspended by Rwanda Utilities Regulatory Authority (RURA), without consulting the Rwanda Media High Council, the competent body for dealing with complaints regarding content.

### **Harassment, intimidation and attacks on journalists**

23. During its first UPR, Rwanda committed to take measures to protect human rights defenders, journalists and media workers, and to ensure that allegations of harassment of journalists are impartially investigated and perpetrators are brought to justice.
24. However, journalists continue to report harassment and intimidation. The RMC has been requested to intervene on numerous occasions to protect journalists, but no perpetrator has been held responsible for the violations. Impunity remains a problem:
  - On 6 November 2014, Felix Uwitonze, a journalist with *Radio and TV 10*, was detained by officials of Fund for the Support of Genocide Survivors (FARG) while on duty. They threatened to seize his equipment, but released him after the RMC intervened. There has not been an investigation into this attack, and no one has been held to account.
  - On 17 November 2014, Muhizi Elisee, a journalist with the online publication *Umuseke.rw* was threatened by a police-officer in Muhanga district, who also confiscated his camera. There has not been an investigation or accountability for the harassment.
  - On 8 December 2013, Jean Bosco Twagirayezu, a journalist with *Radio Flash*, complained of being harassed by the police and Alexander Mvuyekure, Mayor of Gicumbi. He claimed the harassment, including threats of being detained in a hole in the ground and poisoned, began as

a result of stories he ran about reported deaths in the district. There has not been an investigation into these threats and no one has been held accountable.

- On 2 June 2013, security officials confiscated three Kinyarwanda tabloids, *Impamo*, *Intego* and *Rushyashya*, in Gatuna, the country's border-crossing with Uganda. Most independent newspapers are printed in Uganda because it is cheaper than using the sole, state-owned printer in Rwanda. The newspapers were held on the grounds that they contained articles discussing whether the President might seek re-election for a third term. They were released after 3 days, only after the newspaper owners agreed to stop reporting on the possibility of the President seeking a third term.

### **Public participation and access to information**

25. During its first UPR, Rwanda accepted several recommendations to increase participation in decision-making and the political process.
26. The Access to Information Law (No. 04/2013), enacted in March 2013, represents substantial progress, demonstrating intention to entrench transparency and enhance public participation in governance. The legislation largely complies with international best practice in the scope of its application to the public and private sector, the establishment of principle of proactive disclosure, the strong emphasis it places on the public interest, and the limited grounds it requires for exemptions.
27. However, ARTICLE 19 remains concerned that there are numerous barriers to the effective implementation of the Access to Information Law. These include:
  - The public lack awareness of the legislation and how to exercise their right to information;
  - Poor record management by government officials;
  - A pervasive culture of secrecy in government and the fear of punishment for disclosure. Initial evidence shows some government officials give no or only partial responses to requests, and give preference to requests for non-controversial information;
  - Access to information can depend on individuals' personal contacts in government, rather than it being a right for all people exercised through formal channels;
  - Civil society and journalists fear reprisals for information requests on issues deemed controversial.
  - Government officials fear disclosing information considered "too official" and tend to forward information requests to the relevant government spokesperson as an alternative to disclosure.

### **Recommendations:**

28. In light of these concerns, ARTICLE 19 calls upon Member States to put forward clear and strong recommendations to the government of Rwanda to:
  - i. Give full support to the RMC and the principle of media self-regulation, and cease interfering with its work and the work of the media;
  - ii. Reform the Penal Code in line with international standards on freedom of expression, including by revising national security provisions, and repealing criminal defamation, libel, insult, and offences that protect the honour of the State and its officials;
  - iii. Ensure the revised "genocide ideology" law is not manipulated or interpreted in a manner that restricts the exercise of freedom of opinion, expression or association, interpreting the offence in line with Articles 19 and 20(2) of the ICCPR and the Genocide Convention of 1948;
  - iv. Undertake measures to protect journalists from harassment and attack, ensuring independent, credible investigations and prosecutions;
  - v. Ensure the full and effective implementation of the Access to Information Law, including by enhancing information collection and management by authorities, addressing the culture of secrecy and fear of reprisals for information disclosures, and undertaking extensive national public education programmes.