

# THE REPUBLIC OF RWANDA

## ARTICLE 19's Submission to the UN Universal Periodic Review

For consideration at the tenth session of the UPR Working Group, January - February 2011

### Executive Summary

1. ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) is an international, non-governmental human rights organisation established in 1986 that works around the world to protect and promote the right to freedom of expression and information, including by making submissions to the UN on countries' performance in implementing established freedom of expression standards. ARTICLE 19 has observer status with ECOSOC.
2. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the UPR for Rwanda. Given the expertise of ARTICLE 19, this submission focuses on Rwanda's compliance with its international human rights obligations in respect of freedom of expression, in particular:
  - Limits on freedom of expression through **defamation legislation**;
  - Overly **restrictive legislation on media**;
  - Lack of **independence and pluralism of media**;
  - **Harassment and attacks on journalists**;
  - **Intimidation of political opponents**; and
  - **Genocide ideology legislation**.

These issues are described in detail, followed by ARTICLE 19's recommendations for action to address these areas of concern.

### Limits on freedom of expression through defamation legislation

3. Despite several amendments, Chapter 8 of the Rwandan Penal Code criminalises defamation and defamatory denunciation with penalties of up to three years' imprisonment. Moreover, definitions of many criminal offences are vague, unclear and broad, which allows legislation to be manipulated to repress free speech. Further criminal sanctions on media for defamation are imposed by the 2009 Media Law (that replaced the previous draconian 2002 Press Law); the Media Law also contains criminal penalties for journalists who "incite discrimination" or "show contempt to the president".
4. This legislation has been regularly used against government critics and the media. For example, in 2009 the Government brought criminal defamation charges against Jean Bosco Gasasira, editor-in-chief of the Rwandan bimonthly *Umuvugizi*, an independent newspaper, for publishing an article that alleged a government prosecutor and physician were involved in a romantic relationship. Gasasira faced a sentence of up to one year of imprisonment because of the article. The case was highly politicized from the beginning. Days before the charges were brought, the Minister of Information announced that the days of certain publications were "numbered" and that *Umuvugizi* was being "brought to justice." More recently, in February 2010, three journalists (former editor Charles Kabonero, acting editor-in-chief Didas Gasana, and reporter Richard Kayigamba) of the Kinyarwanda-language weekly *Umuseso*, known for its critical coverage of the Government, were sentenced to prison over a story reporting on an extramarital affair between the mayor of the capital, Kigali, and a government minister. Kabonero was

sentenced to one year in prison and Gasana and Kayigamba to six-month prison terms. The three were also ordered to pay damages of 1 million Rwandan francs (1,700 USD) to the two officials.

5. ARTICLE 19 points out that the imposition of criminal penalties for acts of defamation creates a chilling effect on expression and leads to self-censorship both by the media and by private individuals. Criminal defamation laws are unnecessary since civil defamation laws provide adequate protection for reputation, as evidenced by the increasing number of countries that have abolished criminal defamation rules.

### **Overly restrictive legislation on media**

6. In addition to the Penal Code, a number of other Rwandan laws severely restrict freedom of expression and create other problems for media.
7. Under the 2009 Media Law, all Rwandan journalists must be authorized by the Media High Council to practice their profession. In order to receive authorisation, applicants must present a number of documents (e.g. a detailed curriculum vitae, a criminal record; a payment receipt issued by Rwanda Revenue Authority) and must have either an associate's degree in journalism or communication, a certificate obtained from an institute of journalism and communication, or a university degree in another field with training in journalism. Journalists without one of these qualifications must obtain them within five years to continue in their positions. Foreign journalists must also apply for permission from the Media High Council. ARTICLE 19 notes that this authorisation system and entry requirements are inconsistent with international freedom of expression standards as they fail to recognise that the right to express oneself through the mass media is universal; it does not only belong to persons whom the government considers particularly qualified or suitable. They also deprive the general public of the right to receive information and to independently choose ideas from diverse sources. The qualification demands also negate the fact that the Rwandese population is largely illiterate and such entry level requirements are not even required of senior bureaucrats in the public administration.
8. The Media Law also imposes high media licensing fees. The start-up cost is 23 million Rwandan francs (41,000 USD) for a newspaper, 45 million Rwandan francs (81,000 USD) for a radio station and 105 million Rwandan francs (187,500 USD) for a TV station. These prohibitively expensive fees restrict people from being able to found new media companies.
9. Furthermore, the Media Law grants the Media High Council the power to suspend newspapers and imposes an obligation on all publishers to notify the government of all new press publications at least one month before the publication of their first issue. The Law also requires journalists to reveal their sources when authorities deem it necessary to carry out criminal investigations or proceedings.
10. The telecommunications network is regulated by the 2001 Telecommunications Act and supervised by the Regulation Council whose functions include the distribution of licences for telecommunications services in the country. The 2001 Telecommunications Act (Chapter 14) gives the government full discretionary powers in regard to the telecommunications sector in order to guarantee the territorial integrity of the country. It allows for the suspension of private communications, the indefinite suspension of broadcasting services and the confiscation of broadcasting equipment in order to prevent

communications which “could appear dangerous for the safety of the State, contrary to the law, to public order or to good manners”. Such a vague formulation is open to interpretation and therefore this legislation can be used as an instrument of intimidation.

### **Lack of independence and pluralism of media**

11. The restrictive media regulations, combined with other types of periodic government repression, have forced the Rwandan media to operate in an atmosphere of pervasive self-censorship and have helped destroy media pluralism. Self-censorship by journalists is widespread, due to the fear of harassment by governmental authorities or pro-government groups and individuals. The media are also hindered by a lack of infrastructure and financial resources.
12. In the aftermath of the 1994 Rwandan genocide, much emphasis has been placed on building press freedom and increasing the number of independent radio, television and print press outlets. However, progress has been slow and comparatively little has been achieved in the way of developing new independent media outlets. The Government retains a monopoly over television broadcasting, and although it authorizes the licensing of private television stations, it also owns and operates the country's only private television station. Apart from the Government-owned and operated Radio Rwanda, there are only dozens private radio stations operating in the country. Broadcasts from commercial and community-owned radio stations tend not to report heavily on current affairs or engage in investigative reporting. In order to avoid difficult political issues many radio stations orient their programmes around simpler, less controversial topics.
13. There are only few independent newspapers in circulation. The *New Times*, an English-language paper with close ties to the Government and whose shareholders reportedly include senior government officials, is the only daily newspaper. Independent media critical of the government face reprisal from the Government. For example, in 2007, the Minister of Information revoked the authorization of the English language weekly newspaper, *The Weekly Post*, just three days after publication of its first edition, without a required court order. The Minister provided no justification for the action. Recently, in April 2010, the Government suspended two independent newspapers, *Umuwigizi* and *Umuseso*; *Umuwigizi* continues to publish online, but was blocked inside Rwanda at the beginning of June 2010.
14. Foreign radio stations remain an important source of independent news, but are subject to government censorship. For example, a French radio station was taken off the air entirely in November 2006 following criticism of the Rwandan government by a French judge. BBC and Voice of America were threatened by the Government in connection to their reporting leading up to the 2008 parliamentary elections. In April 2009, BBC Kinyarwanda services were suspended for allegedly providing a platform for genocide deniers.

### **Harassment and attacks on journalists**

15. Harassment and intimidation of journalists, through arrests and illegal detention or from expulsion from events, as a means of exerting official control over the media, is an established pattern in Rwanda.
16. For example, two journalists, Dominique Makeli and Tatiana Mukakibibi, were arrested and imprisoned for more than 10 years without ever being sentenced because of the

alleged impact of their reporting during the genocide. The journalists appeared before a gacaca court but were never tried. In February 2007, Jean Bosco Gasasira, editor of *Umuwigizi* newspaper, was assaulted by three unidentified men armed with iron bars in Kigali; a few days before the attack, he had published several articles critical of the RPF. In January 2007, following the publication of an open letter condemning the country's press freedom violations in the private newspaper *Umurabyo*, the paper's editor Agnes Uwimana Nkusi was arrested and charged with sectarianism and discrimination. Nkusi was kept in pre-trial detention based on conclusions that she represented a "threat to state security"; in April 2007, she was sentenced to a year in prison and ordered to pay \$760 in fines. In February 2009, during a lecture by High Court President Johnston Busingye to police cadets on human rights in policing, police expelled two journalists from the *New Times* who had been invited to cover the event; police subsequently forced the journalists to delete their photographs when they were unable to produce their letters of permission from the Ministry of Internal Security to attend. In August 2009, a gacaca court in Butare sentenced Amani Ntakundi, a journalist for the biweekly *Rushyashya*, to three months in prison for taking photos of a gacaca trial; Ntakundi, who had a permit to take notes issued by the national agency for gacaca courts, claimed he was unaware that he needed separate permission to take photos.

17. ARTICLE 19 is also concerned about the recent killing of Jean Leonard Rugambage, acting editor of *Umuwigizi* newspaper. Rugambage was shot leaving his home in late June 2010. Although the Government denies any connection to the murder, we note that *Umuwigizi*, which has been banned both in print and online in Rwanda, had consistently been critical of the government. On the morning he was killed, Rugambage published an article online alleging that the Rwandan Government was behind the attempted murder of one of their most outspoken critics, former General Faustin Kayumba. Kayumba is currently in critical condition in a hospital in South Africa.

### **Intimidation of Political Opponents**

18. ARTICLE 19 is also concerned by multiple reports of intimidation of political opponents in the face of the August 2010 elections. In many instances political opponents are labelled as criminals using the restrictive genocide ideology laws. Opposing political parties must register with the Government, a process that involves getting clearance from the police. Individual candidates must also be cleared by police to compete in the general elections. For example, Victoire Ingabire, the Hutu opposition political figure, one of incumbent president Kagame's biggest challengers, was barred from running for president as a result of being charged with genocide denial. While attempting to register in February 2010, Ingabire and her assistant, Joseph Ntawangundi were attacked. Also, Ingabire's American attorney, Peter Erlinder, was recently arrested upon arrival in Rwanda for genocide denial. Erlinder is the first foreigner to be accused under the Genocide Ideology Law (see below), and faces a minimum prison sentence of 10 years if convicted. These events obviously discourage public participation in elections, and interfere with freedom of expression.

### **Genocide ideology legislation**

19. Rwanda's genocide ideology laws create a wide range of problems for freedom of expression. Notwithstanding the particular context within which the respective legislation emerged, ARTICLE 19 opposes both sources of genocide ideology in Rwanda - Article 13 of the Rwandan Constitution, and the Law Relating to the Punishment of the Crime of Genocide Ideology of 2008 ("Genocide Ideology Law"). Article 13 of the Rwandan

constitution makes “revisionism, negationism and trivialisation of genocide” punishable by law. The vague concept of the crimes of genocide outlined in Article 13 allow the government to create a criminal charge out of ordinary political, scholarly, or even everyday discourse and rhetoric. Similarly, the 2008 Genocide Ideology Law is contrary to international human rights law: the Law’s central concept of “genocide ideology” is extremely broadly defined and covers a whole range of legitimate forms of expression. Indeed, the definition of “genocide ideology” violates international law under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the International Covenant on Civil and Political Rights of 1966 in multiple ways. Furthermore, numerous provisions on penalties also violate other provisions of international human rights law, notably the Convention on the Rights of the Child 1989. The penalties associated with the crimes under the Genocide Ideology laws are severe and also include penalties for children under the age of twelve. These extreme penalties add to the culture of fear surrounding the law, and help discourage people from voicing their opinions. As such, the Genocide Ideology Law in its current form is more likely to facilitate human rights atrocities than prevent them.

20. Since its introduction, the Rwandan Government has used the Genocide Ideology Law to suppress government critics and political opponents. Newspapers critical of the government are often accused of inciting ethnic hatred. According to available sources, 912 people are currently in prison on genocide ideology charges; of those, 356 are awaiting trial, and 556 have been convicted and sentenced. Notably, Paul Rusesabagina, whose autobiography was the basis for the film *Hotel Rwanda*, has been accused of revisionism and harbouring the double-genocide theory, based on the publication of his auto-biography.

### **Recommendations**

21. ARTICLE 19 considers the problems described above to amount to serious breaches of the right to freedom of expression as guaranteed under international law. We call upon the Human Rights Council to urge the Rwandan Government to:
  - Repeal all criminal defamation provisions and replace them with appropriate provisions in the civil law;
  - Immediately review the 2009 Media Law, with a view to bringing it in line with international standards;
  - Review the system of media regulation and repeal all provisions that interfere with freedom of the media, and create and maintain an environment in which the media can work freely, effectively and independently from political influence;
  - Conduct speedy, effective and impartial investigations of all cases of physical attacks against journalists, in particular the killing of Jean Leonard Rugambage;
  - Cease harassment of journalists and conduct an independent review of all cases of journalists imprisoned, fined or prosecuted in connection with their professional work, with a view to release those wrongfully imprisoned;
  - Ensure that opposition voices are not excluded from Rwanda’s political process, compromising freedom of expression during a pivotal period in the country’s development;
  - Repeal the Genocide Ideology Law in its entirety, refrain from adopting a similar law in the future and fully implement Rwanda’s actual obligations under international human rights treaties.