



Submission of the Commonwealth Human Rights Initiative (CHRI) for the Universal Periodic Review of Rwanda. July 2010.

A. The current normative and institutional framework of the country under review

I. Political Space in Rwanda

1. Since the end of the Rwandan genocide and civil war in June 1994, the Rwandan Patriotic Front (RPF) has been the dominant ruling political party. There are two leading ethnic groups in Rwanda, the Hutu's and the Tutsi's. During the colonial era and under the government of Juvenal Habyarimana, differences between the two were politically engineered creating legal, political and economic divisions. The RPF is not a political party limited to one ethnic group, however due to its formation in Uganda among Tutsi exiles, the majority of senior figures within the RPF are Tutsi.
2. In 2008 the RPF coalition won an overwhelming majority in the legislative chamber, the Chamber of Deputies. The majority of appointed delegates in the legislature are RPF supporters. At the moment there are only 11 representatives who are not members of the RPF and all of them are in partnership with the RPF. RPF influence is felt at all levels of government and it has been reported that there is RPF influence over all provincial councils.¹ The RPF have a similarly powerful role within the executive; all ministers are RPF officials and the civil service is almost entirely dominated by the RPF. The RPF have made frequent use of the concept of 'genocide credit' (a term coined by an influential academic study on the subject) to resist criticism of their human rights record.² The RPF have argued that because of Rwanda's genocide a controlled approach to civil and political rights is required in Rwanda.³ This has been the justification for restricting the activities of political parties and freedom of speech.⁴
3. The forum for political parties a structure created by the RPF to oversee political parties in Rwanda had a major role in the drafting of the constitution. There were numerous allegations that the RPF dominated the process and were responsible for intimidating other political parties during the consultation period over the new constitution.⁵ Notionally the RPF is meant to be constrained by constitutional provisions (Article 54 and Article 52) which outlaw the politicisation of local government. The RPF circumnavigates these provisions by maintaining that they run family orientated local community organisations that are apolitical. Many organisations including CHRI have shown that the distinction between 'family' and 'party' is a largely false dichotomy and that the RPF has an enormous influence in Rwanda through unofficial cadres.⁶ The RPF's political manoeuvring not only

¹ CHRI London commissioned field report, written by William Jones of Balliol College Oxford and Never Again Rwanda. (Kigali, April 27th 2009)

² John Pottier "*Re-Imagining Rwanda: Conflict Survival and Disinformation in the Late Twentieth Century*" (Cambridge University Press, Cambridge, 2002)

³ For an example see Sarah Bosley "Rwanda: kagame stands firm. Rights? Yes, but food on the table first" the Guardian, London, Friday 28th May 2010

⁴ Rene Lamanchar "The Dynamic of violence in Central Africa" (University of Pennsylvania Press, Philadelphia, 2009)

⁵ Priscilla Yachat Ankut "The role of Constitution Building processes in Democratization" "International IDEA Democracy-building & Conflict Management, Case Study, 2005

⁶ Yashpal Ghai "Rwanda' Application for membership of the Commonwealth: report and Recommendations of the Commonwealth Human rights Initiative" (CHRI, New Delhi, 2009)

constricts political space but also impedes the maintenance and defence of human rights within Rwanda. Close to the deadline for making this submission we have received media reports of RPF political opponents and opposition election (August 2010 Presidential election) campaigners being allegedly intimidated and harassed by Rwandan authorities.

(a) Freedom of Speech

4. Prior to the genocide free speech was a highly limited right within the Rwandan Constitutional system. The 1991 Constitution only partially recognised free speech. During the Genocide the media especially the government controlled radio was instrumental in inciting racial hatred and coordinating attacks. Rwanda has acceded to the ICCPR and restates its provisions within its 2003 constitution. However, the 2003 Constitution subjects the right to free speech to one of the most extensive restrictions in the world. These restrictions along with a weak civil society and indigenous independent media have led to a weak culture of free speech within Rwanda.
5. Article 34 of the 2003 constitution guarantees “freedom of the press and freedom of information” but limits the exercise of freedom of speech in accordance with ‘the law’. This means that freedom of speech must be interpreted in line with other laws, such as the laws that promote racial harmony and ban genocide ideology. This effectively makes freedom of speech a heavily qualified right, subject to a significant degree of interpretation by the government. The section also states that the exercise of freedom of speech must not “prejudice public order and good morals”. Following Law No 18/2002 of 11 May 2002 operation of the press is subject to regulation by the High Media Council (see (iv) below).
6. The following in particular continue posed a significant and serious threat to freedom of speech in Rwanda.

(i) Divisionism Negationism and Trivialisation

7. Article 13 of the 2003 Constitution prohibits Divisionism, Negationism and Trivialisation but does not specify the substantive legal tests for such offences. These laws completely prohibit the exercise of speech in certain areas and there are few defences available to the accused. Rwandan Judges, when interviewed about these laws have failed to distinguish between the three offences, and in practice the three offences are often used interchangeably.⁷
8. These laws are often used against civil society groups and political parties. In November 2004, the Minister of Justice refused to grant legal status to the Community of Indigenous Peoples of Rwanda (*Communauté autochtones rwandais* - CAURWA) on the basis that advocacy on behalf of the Batwa minority population, promoted divisionism. In 2004 a parliamentary commission made accusations of divisionism and called for the disbandment of the Rwandan League for the Protection of Human Rights in Rwanda (*Ligue rwandaise pour la promotion et la defense des Droits de l'Homme*, LIPRODHOR) whose leadership fled the country. A new leadership has been subsequently appointed which contains members who are described as being more “RPF friendly”.

(ii) One Truth Ideology⁸

9. In practice it has been noted that disagreement or divergence from the RPF’s ‘one truth’ ideology has been sufficient to engage Divisionism laws and their provisions.⁹ This is not official law but RPF

⁷ Human Rights Watch “ Law and Reality: Progress in Judicial Reform in Rwanda” Human Rights Watch, July 2008

⁸ One truth refers to the following contentions: 1. The Catholic Church assisted the colonial administration in introducing divisions amongst the Rwandan people and aided the perpetrators of genocide. 2. Hutu political leaders organized genocide of a Tutsi minority. The Hutu leaders bear sole responsibility. 3. The Rwandan Patriotic Army (RPA) authorities and soldiers were not responsible for the genocide or any crimes relating to the genocide. Any instance of RPF killing was collateral damage.

⁹ Ibid

ideology. The division between the two however is often heavily blurred. At the time of the 2003 Presidential election the RPF accused the Liberal party of “Divisionism” when they were criticising the RPF. In practice the ‘one truth ideology’ has been used in conjunction with charges under Article 13, giving this whole area of law a distinctly political context.

(iii) 2008 Genocide Ideology laws

10. This was passed as a way of further operationalising the constitutional provisions described above in paragraph 7. The concept of genocide ideology, was referred to by the relatively new term in Kinyarwanda "Ibengabyitekerezo bya jenocide," meaning literally the ideas that lead to genocide. These laws are more ideological in their content than Article 13 - and the actual legislation of the 2008 Genocide ideology law goes much further than simply prohibiting discriminatory practice.
11. Article 2 of the 2008 law defines Genocide Ideology as an “an aggregate of thoughts” defined by speeches and conduct aimed at promoting or inciting genocide or extermination. Article 3 includes terms such as “mocking”, ‘laughing’ and ‘boasting’ in relation to genocide victims as being an element of the crime of genocide ideology. These terms are open to a wide degree of interpretation which has the potential to be politicised and abusive. There have been several incidents of abusive interpretation, most notably in 2009 when the BBC’s local language radio service was suspended when it scheduled the broadcast of a debate questioning President Kagame’s idea that the Hutu population should stage a mass apology for the genocide.¹⁰ A noted international human rights organisation in its analysis of the 2008 Act, has argued that the law is incompatible with other areas of international law in relation to incitement to genocide.¹¹

(iv) The High Media Council

12. The High Media Council is a semi autonomous body which is intended to operate at arm’s length to the executive under the terms of Chapter III Law No. 18/2002 of 11/05/2002. It is empowered to advise on the suspension and censorship of publications. Its autonomy is highly questionable and the office of the President has the ability to issue orders to interfere in its running. It is also largely composed of RPF members and sympathisers.
13. The RPF have repeatedly argued that the legal regime restricting freedom of speech in Rwanda is analogous to European holocaust denial law. This is not the case for a number of reasons and this argument is often made in a political, not a legal context. Firstly holocaust denial laws are tightly defined and do not have any normative ideological content. Secondly holocaust denial laws are required to be proportionate in response and contextual in application. Rwandan laws fulfil neither of these criteria.

(b) Judicial Framework

14. There have been a number of concerns raised about the competence and levels of training that judges receive at all levels of the judiciary. Political interference with the judiciary has been observed especially in connection to trials of political interest and in cases of those accused of “Divisionism”. The cabinet has unconstitutionally intervened with judicial appointments and judges have acknowledged that loyalty to the RPF is important in selection for office.¹²
15. Gacaca Courts are community courts situated within a system set up under Organic Law no. 33/2001 of 22 June 2001 and Organic Law no. 16/2004 of 19 June 2004. They were designed to deal with

¹⁰ Media Institute/IFEX Alert, “Government suspends BBC radio service for ‘unacceptable speech’ in programme on genocide”, 29 April 2009; available at: http://www.ifex.org/rwanda/2009/04/29/government_suspends_bbc_radio_service/.

¹¹ Article 19 “ Comment on the Law Relating to the Punishment of the Crime of Genocide Ideology of Rwanda” Article 19, London, 2009

¹² Human Rights Watch “ Law and Reality: Progress in Judicial Reform in Rwanda” Human Rights Watch, July 2008

lower level genocide cases and have judges elected from the local population. They have handled the majority of Genocide cases to date. The following are some serious concerns on the Gacaca courts.

(i) Denial of access to counsel

16. Individuals who go before the Gacaca courts are not permitted access to lawyers under Article 14 of the of the 2004 Gacaca law. This is in violation of Article 19 of the Rwandan Constitution, Article 7(1)c of the African Charter of Human and Peoples Rights and Article 14(3)d of the ICCPR. It has been well documented that the Gacaca courts have the ability to alter an individual's legal and social status and they are not, 'community owned tribunals' that are to be kept outside the purview of international human rights standards.¹³ Moreover penalties they can enforce and the resources of the state are fully behind the operation of the Gacaca courts.

(ii) Evidentiary Standards

17. There are no formal limits, guidelines, standards, rules or laws of evidence, evidentiary procedure or witness testimony before the Gacaca courts. The process of evidence gathering often relies on hearsay or other incomplete evidence and there are few opportunities for the accused to test the evidence against them.¹⁴ Until 2008 RPF officials played a significant role in evidence gathering. Individuals cannot dispute the substance or procedure of the charge. This violates Article 19 of the Rwandan Constitution, Article 7(1) (a) and (d) of the African Charter of Human and Peoples Rights and Article 14 (1) and (3) of the ICCPR.

(iii) Politicisation of Justice

18. Under Article 15 of Organic Law no. 16/2004 of 19 June 2004 the RPF were empowered to provide logistical assistance to the conduct of the courts. The RPF also were to encourage members of the population to provide monitoring and enforcement.

B. Implementation and efficiency of the normative framework for the promotion and protection of human rights

(a) The August 2010 Presidential Election

19. The capacity of opposition parties to run in these elections has been greatly hampered by mixture of unfair electoral practices and legislation that gives control of the process to RPF officials. The following is of particular concern:
20. Organic law n° 19/2007 of 04/05/2007 gives control of the registration of political parties to the Minister of Local government. The terms of registration have a large number of detailed procedural requirements and those failing to comply cannot enjoy freedom of association as a political party. The Minister of Local Government has said that by his interpretation of the law unregistered political parties are illegal.
21. The Permanent Consultative Council of Opposition Parties is not officially recognised as a body. There is currently only one opposition party registered for the August 2010 elections the Parti Social Imberakuri whose leader Bernard Ntaganda is the party's candidate for President and they have complained that they have been subject to a significant amount harassment intimidation and threats of violence.

¹³ P Clark "The Rules (And Politics) of Engagement: The Gacaca Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda" from "After Genocide: Transitional Justice, Post- Conflict Reconstruction and Reconciliation in Rwanda and Beyond" Eds P Clark and ZD Kaufman Hurst and Company, London (2008)

¹⁴ Lars Waldorf "Mass justice for mass atrocity: rethinking local justice as transitional justice" Temple Law Review Vol. 79 No.1 (Spring 2006) : 1-88

22. The National Election Commission (NEC) and the Ministry for Local Government are all RPF controlled and there have been several statements suggesting that Commission is disproportionately favouring the RPF. Although judicial review of public bodies is available as a remedy in the 2003 constitution neither the Minister of Local Government nor the NEC have had their decisions reviewed. Field reports indicate that in order to resolve disputes in the public domain individuals have to go to the local Abunzi, who are local Umnduigudu level (village level) elders. These are often political appointments which are subject to RPF influence. A 2005 report criticised the NEC for similarly using uncertainties in the electoral law to hamper the activities of opposition parties in and around the period of the 2003 presidential election.¹⁵

(b)The Judicial Independence of the Gacaca Courts

23. Originally the Organic Law of 19th June 2004 Establishing the Organization, Competence and Functioning of the Gacaca courts did offer some prospect of judicial independence by excluding political leaders, administrative officials, magistrates and police officers and soldiers from serving as judges on the courts. This is now no longer the case and all of the judges are locally appointed leaving them open to influence by the RPF. Since 2007 agents of the National Service of Gacaca Jurisdictions have been authorised to regulate the charging and prosecution of individuals. There is no oversight as to the charging process and facts that are used in the charging process is often used in the trial and sentencing process without scrutiny or independent verification.

(c) Independent Media and intimidation of journalists

24. On the 13th of April the High Media Council suspended the independent Kinyarwanda newspapers Umuseso and Umuvugizi for sixth months following allegations that they had been insulting President Kagame and alarming the public contrary to Article 83 of Law No. 18/2002. The ban means that these newspapers will be unable to cover the upcoming election. Their language of publication and political stance makes them different from other printed media which is either RPF funded or directly supports the RPF. On 25th of June Jean Leonard Rugambage, the acting editor of Umuvugizi newspaper was murdered in Kigali and RPF spokespersons have denied allegations of the government's involvement.

¹⁵ George Lutz "Reflections on Rwanda's Electoral Regulations" (SDC, University of Bern, Nov. 2005)