FREEDOM OF EXPRESSION IN RWANDA

PEACE BUILDING OR PEACE DESTROYING?

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Acknowledgement of Authorship

I, the undersigned, Katarzyna Romanska, candidate for the MA degree in the Legal Studies Department at Central European University, declare herewith that the present thesis is exclusively my own work, based on my own research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Budapest, 25 November 2008

Katarzyna Romanska

Dedication

In Memoriam

Ryszard Kapuściński

1932 - 2007

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May your struggles not be forgotten.

Executive Summary

When free speech is discussed in post genocide Rwanda opinions are generally of 1. Those who favor strict limits because of the ill consequences in the run-up to the 1994 genocide or 2. Those who are in favor of greater press liberties with the hope of fostering an open, plural dialogue. Both groups are in agreement about the end—a peaceful, stable society that will not repeat the mistakes of the past. As it concerns Rwanda's recovery, the country has made great strides. As it concerns the government, the current political establishment has paid lip service to the notion of a free press but in fact has erred on the side of suppressing press freedoms. Incidents of intimidation and violence are documented herein. This thesis is based, in large part, on interviews conducted with journalists in Rwanda in 2007.

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Introduction

"Free speech is to a great people what winds are to oceans and malarial regions, which waft away the elements of disease and bring new elements of health; and where free speech is stopped, miasma is bred, and death comes fast."

Henry Ward BEECHER

"The greatest threat to freedom is the absence of criticism."

Wole SOYINKA

Why does Rwanda need freedom of speech? I often hear this question when I speak of my research into the field of freedom of expression in post-genocide Rwanda. No doubt the opponents of unrestricted freedom of speech find much inspiration for their argument in the case of Rwanda, and rightly so. The negative role played by certain journalists and media outlets in Rwanda's genocide undermined the credibility of the profession[1]. Today it seems well-founded to argue that the content of newspapers and radio and television broadcasts in Rwanda should be controlled. There are many reasonable arguments to back this approach. These arguments look back at the recent history of the country, to a time in which there were no limits established to the hate speech propagated by radio RTLM[2] and the *Kangura* newspaper. Largely because restraints weren't in place to limit hate speech, the Rwandan spring and summer of 1994 saw events that claimed nearly one million lives. An opinion in favor of suppression of free speech certainly acknowledges the social and cultural conditions of present-day Rwanda, such as low-levels of education, the society's inability to think critically, under-running currents of a still-alive hatred and remorse, and above all, a particular sensitivity of Rwandans to ethnic and separatist speeches. The 2003 ruling in "the media case"[3] by the International Criminal Tribunal for Rwanda (ICTR) confirms the view that there

1 United States Embassy in Rwanda Press Release, United States Embassy Marks World Press Freedom Day. 2007. Available at < http://rwanda.usembassy.gov/utils/eprintpage.html > (accessed 18 November 2007)

2 Radio Télévision Libre des Mille Collines (RTLM) was a Rwandan hate radio station which broadcast from 8 July 1993 to 31 July 1994. It played a significant role during the April-July 1994 Rwandan Genocide.

3 The International Criminal Tribunal for Rwanda (ICTR), which sits in Arusha, Tanzania, in December 2003 convicted Ferdinand Nahimana, founder and ideologist of the Radio Télévision Libre des Mille Collines (RTLM), and Hassan Ngeze, chief editor of "Kangura" newspaper, to life in prison. Jean Bosco Barayagwiza, a high-ranking

should be little margin for the justification of hate speech.[4] Individuals who had spread hate speech in the run-up to the genocide and during the time of bloodshed have been accused of crimes against humanity and sentenced to thirty years and more in prison.[5] The message from the International Criminal Tribunal for Rwanda is clear: hate speech needs to be curtailed and it will not go unpunished.

A heated discussion on the stricter control of speech versus freedom of expression in vulnerable societies erupted in the milieu of academics, free speech lawyers and above all – journalists - who in most cases are the very subjects of the decisions taken as a result of such disputes. This debate aims to find an answer to a question of utmost importance for Rwanda and all the post-conflict countries in a similar situation. Is a liberal free speech standard more damaging or more beneficial for post-conflict democracies amid a tenuous, fragile peace?

The role of media during the genocide has been researched and discussed by various academics and pundits—some of whose opinions are enumerated below. Recently, a ruling in the so-called "media trial" espoused important principles concerning the role of media that had not been addressed at the level of international criminal justice since Nuremberg, three defendants have been sentenced for crimes against humanity.[6] It should be pointed out that the discussion which erupted after the ICTR ruling does not revolve around the guilt of the defendants. No one doubts that the defendants in the media trial were guilty of terrible crimes.[7] It rather focuses on the reasoning which the tribunal gave for its ruling, for this expansive legal reasoning could provide a legitimate platform for the governments to severely limit the freedom of expression in their respective countries. In her article *Journalism and Genocide,* Dina Temple-Raston discusses both the dangers

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board member at RTLM and the founder of the Coalition for the Defence of Republic (CDR), a political party, received a 35-year jail term. These sentences have been recently reduced to 30, 35 and 32 years in prison respectively. All three suspects were found guilty in 2003 of committing genocide, incitement to genocide, conspiracy, crimes against humanity, extermination and persecution. (http://www.un.org/apps/news/story.asp?NewsID=24826&Cr=rwanda&Cr1=)This case, dubbed as "the media case", was the first of its kind since the Allied Tribunal at Nuremberg in 1946 sentenced Nazi publisher Julius Streicher to death for his anti-semitic publication "Der Stürmer".

4 Catherine MacKinnon, Prosecutor v. Nahimana, Barayagwiza, & Ngeze. Case No. ICTR 99-52-T, in The American Journal of International Law, Vol.98, No.2. (Apr.,2004), pp. 325-330

5 International Criminal Tribunal for Rwanda, La Chambre d'appel reduit les peines d'emprisonnement de Nahimana, Barayagwiza et Ngeze, Availabe at: <http://69.94.11.53/default.htm> (accessed 4 December 2007)

6 Catherine MacKinnon, Prosecutor v. Nahimana, Barayagwiza, & Ngeze. Case No. ICTR 99-52-T, in The American Journal of International Law, Vol.98, No.2. (Apr.,2004), pp. 325-330

7 Joel Simon, Of Hate and Genocide. In Africa, Exploiting the Past, Columbia Journalism Review, 2006. Available at: < www.cpj.org/op_ed/comment_jsimon_13jkan06.html > (accessed 22 November 2007)

of and the need for such a ruling. She also points out that the interest of the international community and Rwandans who are seeking justice may be on opposite sides of the barricade. Joel Simon, the Executive Director of Committee to Protect Journalists, argues against overrestrictive regulation of hate-speech,[8] joining the stand represented by Floyd Abrams, who in an Open Society Justice Initiative (OSJI) report highlights ambiguities and even errors in the Trial Chamber's legal reasoning which may be conducive for governments, notably African governments, to restrain freedom of the press.[9] Lars Waldorf in *Censorship and Propaganda in post-Genocide Rwanda* examines a number of cases of the harassment of journalists and human rights activists, showing that indeed anti-hate speech laws more often that not serve as suppressive tools for the government to silence any kind of criticism.[10] These opinions involve lengthy legal reasoning and it is not my intention to make place for their analysis here. Rather, I mention them to point to a fundamental paradigm—that many argue for liberal press freedoms in Rwanda.

On the other hand there are academics who emphasize Rwanda's unique situation in which, consequently, the particular approach to freedom of speech and the press cannot be lifted from another country and affixed to Rwanda.[11] Louis Aucoin acknowledged: "Today's problem of incitement and hatred in Rwanda is a special problem and (...) the government has both a right and a responsibility to adopt specific measures to address the situation (...) [without] destroying the freedoms of the press and the freedoms of speech."[12] John C. Knechtl emphasizes the difference between post-conflict countries and U.S. history and its attachment to the First Amendment protection. Laura Palmer in *A Very Clear and Present Danger: Hate Speech, Media Reform, and*

8 ibidem

9 Hirondelle News Agency, ICTR/Medias - *A Report Warns ICTR Against Conclusions of the Media Judgment*, 2007 Available at < www.hirondellenews.com/content/view/49/26/> (accessed 18 November 2007)

10 Lars Waldorf, Censorship and Propaganda in Post-Genocide Rwanda, International Development Research Center, 2007. Available at <http://www.idrc.ca/en/ev-108305-201-1-DO_TOPIC.html> (accessed 19 November 2007)

11 A.K. Wing, M.R. Johnson, The Promise of a Post-Genocide Constitution: Healing Rwandan Spirit Injuries, Michigan Journal of Race and Law, 2002. Available at <http://international.westlaw.com/> (accessed 25 November 2007)

12 Aucoin Louis, Plenary Session: The Rwandan Constitution: Its Contents (II) Freedom of Speech, Press, and Information,in Conference on Constitution Development, Kibuye-Rwanda 62, 63 (Aug. 24, 2001) (comments of Louis Aucoin of the United States of America) (unpublished draft of conference proceedings, on file with Professor Wing).

Post-Conflict Democratization in Kosovo, also strongly argues for the importance of the context for the introduction of incitement and divisionism regulatory laws.[13]

How does Rwanda address the problem of free expression in a delicate and unprecedented context to be found nowhere else in the world? There is no doubt that the road which the country has traveled for the past 14 years is marked by incredible achievements and economic progress; Rwanda today is well on the way to development.[14] But Rwanda's most important goal is to maintain long term and stabilized peace which will enable further development and secure the future of its people. Is this country taking the right path when introducing strict press laws and meticulously monitoring the media? For instance, a law which criminalizes "public incitement to divisionism" has already been introduced by the Rwandan Parliament.[15] The current Tutsi-led regime, which consolidated power in the 2003 election, has increasingly used allegations of ethnic "divisionism" to silence critics, including those writing for the press.[16] Is this approach necessary? And more importantly, does it ultimately undermine peace or build it up? Does it contribute to the frustration of the society or its education? Where does harmful incitement to divisionism end and constructive criticism begin? Questions aside, it is perhaps without need to mention that the people whose viewpoints differ share the same goal: a sustainable peace. Therefore, in this paper I will take a closer look at the creative and destructive potential of free speech in Rwanda.

The first chapter focuses on the international standard of free speech protection. The goal of this chapter is to discuss different solutions adopted in diverse parts of the world for the protection of free speech in order to compare and inspire the possible legally wise solutions for Rwanda. To this author it is obvious that the legal precedent from other countries, let alone the continents cannot and should not be directly transplanted to Rwanda, a country with an unprecedented history and a difficult social and national situation. However it is important and useful to look into other human

13 Laura R. Palmer, A very Clear and Present Danger: Hate Speech, Media Reform, and Post-Conflict Democratization in Kosovo. Yale Journal of International Law, 2001. Available at <http://international.westlaw.com/> (accessed 25 November 2007)

14 National Human Development Report Turning Vision 2020 Into Reality,UNDP, 2007. Available at <http://www.undp.org.rw/publication.html> (accessed 1 December 2007)

15 No 47/2001 on 18/12/2001 on prevention, suppression and punishment of the crime of discrimination and sectarianism. Available at <http://www.amategeko.net/?Parent_ID=15&Langue_ID=An> (accessed 1 December 2007)

16 Joel Simon, *Of Hate and Genocide. In Africa, Exploiting the Past*, Columbia Journalism Review, 2006. Available at: < www.cpj.org/op_ed/comment_jsimon_13jkan06.html > (accessed 22 November 2007)

rights legal orders for several reasons related either to their inspirational value or to the fact that they are legally binding on Rwandan authorities. First I analyze the United States Supreme Court as an example of the most liberal approach to freedom of expression rights, the proceed to the European system of the Council of Europe as an example of the most successful and effective system in protecting human rights standards. Then I discuss the declaratory Universal Declaration of Human Rights and the legally binding International Covenant of Civil and Political Rights because Rwanda is a member party to these documents. Finally the African Union human rights regime in the form of the African Charter of Human and Peoples' Rights is examined because this is the international body that African countries are most likely to recognize.

The second chapter examines Rwanda's historical background. It discusses the hypotheses of the Hutu/Tutsi/Twa origins and takes a closer look at the conditions that enabled the Habyarimana regime to manipulate the whole nation into the genocide. The Chapter also looks at the media role in the genocide. It analyses how the lack of laws regulating free speech contributed to the deformation of the journalistic ethic and how the subsequent governmental moves led to an uninhibited governmental control over media that, according to law, were suppose to be independent. The Chapter delineates certain tendencies that need to be avoided if Rwanda is not to be prone to such nation wide manipulation in the future.

The third chapter proceeds to analyze the current situation of media in Rwanda. On the basis of the analysis of the media related laws in place and the interviews with the journalists and officials living and working in the country the chapter discusses the role of government control and monopoly in the media and how the lack of free speech makes media vulnerable to abuse. It looks into how much has changed since the pre-genocide media practices from the part of the government and what are the dangers of the current dynamics in the media market in Rwanda. A considerable place in the chapter is dedicated to the introduction and discussion of the legal framework for freedom of expression in Rwanda, in particular: the Constitution, the High Council of the Press, the law of 11/05/2002 Governing the Press, and the law no 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism.

This paper anticipates that even in the Rwandan context, the benefits of free speech in peace-building efforts outweigh the dangers of Rwanda's potential destabilization. Although the free speech experiment may be initially difficult, it is indeed the better way to achieve long-term peace.

CHAPTER ONE

Framing the Discussion—International Standards for Press Freedom

The following chapter deals with different regional and global legal systems of human rights protection with special attention to the right of freedom of expression. The discussion focuses particularly on free expression issues related to hate speech, public order and security, libel and slander. It seeks to address questions arising in the Rwandan context while looking at the solutions applied in the field related to freedom of expression rights in the world.

I present first the United States Supreme Court as an example of the most liberal approach to freedom of expression rights. The European system of the Council of Europe follows as an example of the most successful and effective system in protecting human rights standards. The Universal Declaration of Human Rights and the legally binding International Covenant of Civil and Political Rights are discussed as examples of a global system of human rights protection but more importantly because Rwanda is a member party to these documents. Finally the African Union human rights regime in the form of the African Charter of Human and Peoples' Rights is examined.

The United States – the most liberal standard

The United States has more than a two hundred-year-history of constitutionalism during which the U.S. Supreme Court, more often than not, has protected free speech. American socio-political conditions constitute an important context in which such approach to speech has proven viable and rather harmless to the state's security. The U.S. political system is a mature liberal democracy, with long traditions, based on the principle of governmental non-interference and individual freedom. The United States' political setting has a well-developed system of checks and balances between legislature, executive, judiciary and civil society. There is less doubt as to the independent status of the United States Supreme Court judges, who appointed by subsequent Presidents, hold their offices for life and are less inclined to political persuasion because of the tenure they enjoy.

Freedom of expression is guaranteed and protected by the First Amendment which provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

> right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[17]

The strictest scrutiny applies to any governmental attempt to regulate speech. For example, in the name of a robust and uninhibited public debate, statements regarding public figures are restricted only by exceptions to the rules of liability; there is no criminal libel regarding public figures. Over time in the United States, case law on hate speech has preferred to give freedom to the speaker while subordinating harm it may cause to the victim. It is, notably, a mistrust of government that characterizes the protection of free speech in the U.S. The assumption prevails that once the government is given powers to restrict speech it will continue to extend the limitations.[18]

The First Amendment of the U.S. constitution promotes open debate because of an inherent belief that only within the context of a public discourse can truth come to the surface. Therefore, the legal opinions that have proceeded have tended to place the values espoused in the First Amendment over values in society. Legal analyses historically, concerning rights, duties and responsibilities of the individual to the society, have not developed simultaneously with the First Amendment theory which implies the primacy of the First Amendment values over other societal values. It is a theory premised upon the following justifications: the promotion of democracy, search of truth and individual self-fulfillment. These justifications are reflected in U.S. Supreme Court opinions.[19]

First, there is a direct link between freedom of speech and vibrant democracy. Free speech is an indispensable tool of self-governance in a democratic society. Concurring in *Whitney v. California* (1927), Justice Louis Brandeis wrote: "Freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth."[20] On a communal level, free speech facilitates the majority rule. It is through talking that consensus is fostered and a common will is created. Whether the answers reached are wise or foolish, free speech helps us ensure that the answers usually conform to what most people think. On individual level speech is a means of

17 The Constitution of The United States, Available at: http://www.usconstitution.net/const.html#Am1, last visited August 7 2008

18 Andras Sajo, Freedom of Speech, Warszawa, Instytut Spraw Publicznych, 2004

19 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech,* Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.

20 Whitney v. California, 274 U.S. 357 (1927)

participation. Participation in the decision-making process ensures people are treated as subjects, and not objects of the governmental decisions.[21]

Another explanation is related to the pursuit of truth. It is encapsulated in a metaphor of the "marketplace of ideas", a notion that is associated with Holmes' dissent in *Abrams v. United States*, in which he argued that "the best test of truth is the power of the thought to get itself accepted in the competition of the market."[22] The marketplace of ideas metaphor does not posit that truth will emerge instantly from the free trade in ideas. It merely suggests that a free trade in ideas is the best test of truth. The American love of the marketplace of ideas metaphor stems in part from the national optimism, the American "constitutional faith" that, given long enough, good will conquer evil. Humanity may be fallible, and truth illusive, but the hope of humanity lies in its faith in progress. The marketplace metaphor encourages us to take the long view. Americans like to believe, and largely do believe, that truth has a stubborn and incorrigible persistence.[23]

Freedom of speech is part of the human personality itself, a value intimately intertwined with human autonomy and dignity. In the words of Justice Thurgood Marshall: "The First Amendment serves not only the needs of the polity but also those of the human spirit — a spirit that demands self-expression."[24] For many Americans freedom of speech is the right to defiantly, robustly and irreverently speak one's mind just because it is one's mind. Freedom of speech is thus bonded in special and unique ways to the human capacity to think, imagine and create.[25]

Such a liberal attitude toward speech has nonetheless been tempered by the recognition of certain categories of speech of lesser societal value, which the state can regulate. These categories include libel and slander, profanity, obscenity, incitement to riot, and utterance of "fighting words."[26]

21 Rodney Smolla, Speech. Overview. The First Amendment Center, available at: http://www.firstamendmentcenter.org/speech/overview.aspx>, last visited July 30th 2008

22 Abrams v. United States 250 U.S. 616 (1919)

23 Rodney Smolla, Speech. Overview. The First Amendment Center, available at: http://www.firstamendmentcenter.org/speech/overview.aspx>, last visited July 30th 2008

24 Procunier v. Martinez 416 U.S. 396 (1974)

25 Andras Sajo, *Freedom of Speech*, Warszawa, Instytut Spraw Publicznych, 2004

26 See generally Federal Comm'n v. Pacifica Found, 438 U.S. 726 (1978) (obscenity); Brandenburg v. Ohio, 395 U.S. 444 (1969) (incitement to riot); Beauharnais v. Illinois, 343 U.S. 250 (1952) (libel); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (fighting words).

Speech rights in the United States occupy a preferred position. Though this approach often fails to take into account the violence and harm to the victim that accompanies hate speech. The speech that would qualify in Rwanda as divisive would not even be considered by the U.S. courts if it didn't fall into very narrowly defined limitation categories like for instance Chaplinsky's "fighting words" or Brandenburg's "imminent danger."

Equality was a central concern of the drafters of the international instruments, and the importance attributed this right was a direct response to hate crimes and hate speech. The U.S citizens in contrast have a right to:[27]

- Desecrate the national flag as a symbol of protest.
- Burn the cross as an expression of racial bigotry and hatred.
- Espouse the violent overthrow of the government as long as it is mere abstract advocacy and not an immediate incitement to violence.
- Traffic in sexually explicit erotica as long as it does not meet a rigorous definition of "hard core" obscenity.
- Defame public officials and public figures with falsehoods provided they are not published with knowledge of their falsity or reckless disregard for the truth.
- Disseminate information invading personal privacy if the revelation is deemed "newsworthy."
- Engage in countless other forms of expression that would be outlawed in many nations but are regarded as constitutionally protected in the United States.

The United States approach to the freedom of expression would hardly be applicable in Rwanda. American scholars themselves point out to the rising violence evidenced by the growing proliferation throughout the country of racist, anti-Semitic, anti-female and homophobic speech.[28] A wide-ranging debate has ensued in response concerning the desirability and constitutionality of legislation restricting hate speech. In Rwanda, where the nation emerged from a severe civil war and a genocide the radical U.S. approach taken wholesale could prove more harmful than beneficial.

27 Rodney Smolla, *Speech. Overview*. The First Amendment Center, available at: http://www.firstamendmentcenter.org/speech/overview.aspx>, last visited July 30th 2008

28 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech,* Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.

The Council of Europe

By the beginning of the twenty-first century, Europe was the region with the most advanced integrationist system embodied in the structures of the European Union. The main organization safeguarding human rights interests in Europe is the Council of Europe. It has 47 members and therefore covers more states than the European Union. These countries, although diverse in aspects of culture, history, languages and political systems managed to develop the world's most successful system of international law for the protection of human rights currently in force—the European Convention on Human Rights (ECHR).[29] The European Court of Human Rights based in Strasburg (the ECtHR) and the Council of Europe organs oversee the implementation of the Convention.

The basic provision providing for freedom of expression in the Council of Europe member states is contained in article 10 of the European Convention. It provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."[30]

Freedom of expression is the only right in the European Convention that is characterized as requiring duties and responsibilities, which might legitimate state restrictions on its exercise. The Convention further provides that the restrictions and penalties must be prescribed by law and must only be those "necessary in a democratic society." However it does not contain any specific limitation on speech or expression that promotes racial or ethnic hostility or hatred. Such vagueness of provision leaves more room for judicial interpretation. At the same time the law is rendered dependent on the degree of independence and competency of the judges. In addition the Convention

29 Id.
30 European Convention of Human Rights, Article 10

specifically affirms equality and non-discrimination rights providing that "the enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."[31]

The European nations were particularly mindful of the atrocities committed in furtherance of genocide during the Second World War. For this reason a strong ethics exist within the community to eradicate all forms of ethnic hatred. The organs of the Council of Europe additionally encouraged the member states to enact legislation against incitement to racial, national and religious hatred and violence and recommended a periodical review of the laws in light of the contemporary circumstances.[32]

The case law of the European Court of Human Rights contains a considerable amount of decisions related to freedom of expression. The Court has generally taken a cautious approach, deferring to national governments through granting them a margin of appreciation, particularly in the areas of national security and public morals.[33] The case law indicates that the Court's tolerance of speech restrictions depends on a variety of factors, including the breadth of the restriction, the public interest involved, and proportionality.[34]

The Court has not squarely addressed the limits countries may place on speech for national security reasons, but several cases provide guidance concerning the Court's likely view on such issues. For example in a series of cases involving civil service practices the Court ruled that a loyalty oath may be required as a condition of civil service employment.[35]

The Court has been confronted indirectly with the issue of proper limits of hate speech hate speech

31 Id. Article 14

32 Andras Sajo, *Freedom of Speech*, Warszawa, Instytut Spraw Publicznych, 2004

33 The margin of appreciation doctrine is premised on two assumptions. First, even in democratic societies, what is necessary to further the state interest may vary from state to state; second, the states' own view of what is necessary is entitled to some deference by an international court. Source: P.Van Dijk and G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*.

34 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, Stanford Journal of International Law, 57 1992-1993, p. 100. Available on Westlaw.

35 Glasenapp v. Germany, 104 Eur. Ct. H.R. (ser. A)(1986); Kosiek v. Germany, 105 Eur. Ct. H.R. (ser. A) (1986)

in a number of cases involving journalists charged with defamation. One of these case was *Lingens v. Austria*, in which Lingens published two articles strongly criticizing a prominent politician in relation to the support the politician exhibited toward a former Nazi candidate. Austrian courts convicted the journalist of defamation and had him fined. The ECtHR ruled that this conviction violated article 10 of the European Convention. The opinion reads:

> "Freedom of political debate is at the very core of the concept of a democratic society (…) The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards the private individual (…) [A politician] must (…) display a greater degree of tolerance. No doubt Article 10(2) enables the reputation of others (…) to be protected (…) but the requirements of such protection have to be weighted in relation to the interests of open discussion of political issues." [36]

With regard to reputation, the European Court of Human Rights held that "the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual [because a politician] knowingly lays himself to open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance"[37] Reputation damaging expressions are more worthy of protection if dealing with an issue of public interest. Opinions per se do not cause enough damage to justify the restriction of speech. The intensity of the offence matters as well – the deliberate offence is not worthy of protection. The reputation interest of a governmental body has the smallest weight in balancing the outcome, and as such bodies should be subject to close scrutiny by other branches of the government, the press and the public opinion.[38] However discrediting a democratic institution may threaten the security of the state therefore the criticisms concerning governmental bodies are subjected to a certain limit.

Opinions are fully protected under the ECHR. In the Court's view there can be no test of truth when it comes to the opinions. Even harsh criticism in strong polemical language published on a slim

36 Lingens v. Austria, 103 Eur. Ct. H.R. (ser. A) (1986)
37 Lingens v. Austria, 103 Eur. Ct. H.R. (ser. A) (1986)
38 Castells v. Spain, April 23, 1992, Application number 00011798/85

factual basis will be protected.[39] Offensive value judgments are not protected per se, but the ideas that offend or shock are rather quite regularly protected. It is up to the Court to determine which factual statements or value judgments are offensive.[40] The journalist will not be protected if he acted with deliberate carelessness in violating his professional duties and responsibilities. The Court emphasized that opinions and correct factual statements deserve the same protection and that freedom of the press is necessary for the formation of public opinion. Exaggeration and degree of provocation by a journalist is protected as it is necessary for a public watch-dog role of the press.[41]

Although the European Convention does not specifically limit speech that promotes racial or ethnic hatred, the decisions of the ECtHR support the position that such restrictions are permissible and encouraged. The debate in the Court seems to center not on the legitimacy of such legislation but on the extent to which such legislation must be harmonized with the express rights of the media.[42]

Article 10(2) expressly authorizes restrictions of speech on grounds of national security, territorial integrity, or public safety, and for prevention of disorder and crime. An underlying problem is that the censors may abuse the language of crime. Such categorization might be merely a convenient pretext to block otherwise harmless critical expression. It is then quite a challenge to find the right balance between necessary preventive measures and the unreasonable curtailment of speech.

The boundary between speech advocating violence and protected government criticism was drawn in cases *Ceylan v. Turkey* and *Sener v. Turkey*.

Ceylan, the applicant, was one of the workers' leaders. He wrote an article calling for standing up and unification of the whole proletariat against the laws and anti-minority policies the government was enacting. The article was published at the time of a violent separatist movement in south-east Turkey, in the context of unrest and terrorism. The Turkish National Court found the article to be inciting to violence. It accepted the Turkish government's position that the law and its application

39 Andras Sajo, *Freedom of Speech,* Warszawa, Instytut Spraw Publicznych, 2004
40 Id.
41 Andras Sajo, *Freedom of Speech*, Warszawa, Instytut Spraw Publicznych, 2004
42 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.

served not only to maintain "national security" and "prevent disorder" but also to preserve the "territorial integrity" of Turkey.

The European Court of Human Rights disagreed. It stated that freedom of expression is subject to exceptions "which must, however be construed strictly, and the need for any restrictions must be established convincingly (…) The article in question, despite its virulence, does not encourage the use of violence or armed resistance or insurrection."[43] Justice Bonello wrote in his concurring opinion: "When the invitation to the use of force is intellectualized, abstract and removed in time and space (…) then the fundamental right to freedom of expression should generally prevail" The judge was not convinced that "the instant suppression of those expressions was indispensable for the salvation of Turkey."[44] The Court found that the employment of criminal law and the severity of the penalty was excessive.

In *Sener v. Turkey* the applicant was convicted by the Turkish courts for publishing an article that was allegedly disseminating separatist propaganda against the indivisibility of the state. The article described what Mrs. Sener called genocide carried out by the Turkish authorities.

Like in *Ceylan*, the ECtHR was concerned with the use of criminal sanction "where other means were available for replying to the unjustified attacks and criticisms of its adversaries."[45] According to the Court the article taken as a whole did not glorify violence and it did not incite hatred. It classified the article as "an intellectual analysis of the Kurdish problem which calls for an end to the armed conflict."[46] In other words the European judges reclassified the article from sedition to legitimate criticisms of government and found punishment disproportionate.[47] As we will see later this case could almost literally be applicable on the ground in Rwandan.

The underlying standard for journalism in Europe is that "journalists should be protected even in cases of exaggeration as long as professional standards are observed. Professionalism means fair

43 Ceylan v. Turkey, Application no. 23556/94
44 Id.
45 Ceylan v. Turkey Application no. 23556/94
46 Sener v. Turkey, Application no. 26680/95
47 Andras Sajo, Freedom of Speech, Warszawa, Instytut Spraw Publicznych, 2004

and balanced presentation. Opinions (value judgments) are protected as a rule as long as they do not amount to gratuitous insult."[48] As to false factual statements, the standard includes the notion of fairness—the provided picture needs to be balanced, accommodating contrary views and presenting them with comparable weight.[49]

Many of the standards applicable in Europe could serve for an inspiration to the Rwandan authorities. Europe developed its present standards on the debris of the Second World War and the horror of Holocaust. Europe knows and appreciates both the constructive and the destructive power of the word. There is a lot of potential for the norms developed by the ECtHR if applied to Rwanda. Yet in order to accurately interpret and apply these principles the independence of the judicial bodies must be unquestionable. Only independent judges that are not under any pressure are able to assess and balance the delicate matters concerning the freedom of expression in the long-term interest of the Rwandan society.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is directly incorporated into article 17 of protocol VII of the Arusha Accords, now part of the fundamental law of Rwanda.[50] The UDHR sets forth specific inalienable rights and freedoms which cannot be abridged by any nation. Although technically non-binding as a source of international law, the UDHR was meant to set a common standard of achievement to which all states, including Rwanda, should aspire.[51]

Provision for freedom of expression is formulated under article 19 of the Universal Declaration:

> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of the frontiers."[52]

48 Id.
49 Id.
50 Human Rights Watch, Available at: <http://www.hrw.org/reports/2001/rwanda/rwnvilg-14.htm>, Last visited August 7, 2008
51 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.
52 Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d. Sess., U.N. Doc. A/810 (1948)

Although the Declaration does not contain any specific restriction clause with respect to speech its general limitation clause, Article 29(3) states: "These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."[53] A significant goal of the U.N. is to promote respect for human rights "without distinction as to race, sex language, or religion."[54] This can be interpreted as a limitation on any speech that promotes racial, sexual, linguistic or religious discrimination. Furthermore, Article 30 of the UDHR reads: "Nothing in this Declaration may be interpreted as implying for any State, group or person any rights to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein."[55] On one hand this provision authorizes states, under certain circumstances to derogate, limit or restrict rights it proclaims. On the other hand the states are to be mindful of not destroying any of the rights set out in the Declaration, including the right to free expression. The main principles governing the Declaration are rights of equality and non-discrimination.

The two Covenants – the International Covenant of Civil and Political Rights and the International Covenant of Economic and Social Rights—give teeth to the Declaration's provisions. Declaration is a non-binding document that merely sets out and aspirational standard regarding human rights for the U.N. member states. The legally binding right to freedom of expression is contained in the Covenant on Civil and Political Rights under article 19.

International Covenant of Civil and Political Rights

The International Covenant of Civil and Political Rights (ICCPR) is a United Nations treaty based on the Universal Declaration of Human Rights. It is a legally binding document for all the state parties that are signatories of it. The Human Rights Committee is the body supervising the states' compliance with the provisions of the ICCPR. Rwanda ratified the ICCPR in 1976 and is bound by its provisions.

53 Id. Art 29(3)
54 U.N. Charter Article 1 (3)
55 Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d. Sess., U.N. Doc. A/810 (1948)

Freedom of expression is often termed the core of the Covenant and the touchstone for all other rights guaranteed therein.[56] The right contained in Article 19 reads as follows:

> " 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals."[57]

The formulation of Art. 19(1) comes as a result of a discussion in the course of which the view prevailed that freedom of opinion and freedom of expression were two different things. Freedom of opinion was said to be a purely private matter, belonging to the realm of the mind, while freedom of expression was a public matter, or a matter of human relationship.[58] The freedom to form an opinion and to develop this by way of reasoning was held to be absolute and, in contrast to freedom of expression, not allowed to be restricted by law or other power.[59] Art 19 (1) requires States Parties to refrain from any interference with freedom of opinion (by indoctrination, brainwashing, influencing the conscious or subconscious mind with psychoactive drugs or other means of manipulation) and to prevent private parties from doing so. Although delineation between impermissible and permissible interference (advertising, campaigns, propaganda) with freedom of opinion is not easy, one can speak of infringement of the right to free opinion when those opinions are elicited against a person's will—or at least without their implicit approval.[60] In *Kang v. Republic of Korea* the Human Rights Committee established a violation of the applicants' right to hold an opinion. Kang had been

56 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, Second Edition, p. 438
57 International Covenant of Civil and Political Rights, Article 19
58 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd Edition, p. 441
59 Id.
60 Id. 442

detained in a solitary confinement for 13 years on the sole basis of his communist political opinion and was subjected to the "ideology conversion" system.[61]

Freedom of expression is protected in Art. 19(2) with respect to "information and ideas of all kinds." Every communicable type of subjective idea and opinion, of value-neutral news and information, of commercial advertising, art works, political commentary regardless of how critical, etc. is protected, subject to permissible limitations in para. 3. It is thus impossible to attempt to close out undesirable contents by restrictively defining the scope of protection.[62] Mere dissemination of ideas and information should be distinguished from actions going beyond this that have to do with the active implementation of these ideas.[63] Manfed Nowak gives an example of the foundation of an anti-State association, as well as concrete preparations to topple the government as actions that may be criminal acts not covered by the protection of Article 19. Yet states parties may not extent the right to states' security so far as to penalize and suppress mere expression of opinions, even though their content may be highly critical.[64]

Freedom of expression and information may be restricted only under certain conditions. Interference must:

- be provided by law
- serve one of the listed purposes, and
- be necessary for attaining this purpose

Article 19(3) emphasizes the special duties and responsibilities associated with the exercise of freedom of expression and information. In contrast to other international and national human rights catalogues the Covenant in principle establishes rights of the individual and duties of the state parties. The Covenant also establishes obligations to protect human rights against interferences at the horizontal level.[65] This means that every right of the individual implies duties on other individuals. Article 19 rights are quite capable of violating rights of others, especially the right to

61 No. 878/1999, paras. 2.5, 7.2, and 7.3
62 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd Edition, p. 438
63 Id. p. 445
64 Id.
65 Id. p. 459
65 Id.
65 Id.

privacy. Moreover, due to its potential in influencing public opinion, the exercise of freedom of expression tends toward concentration and monopolization, which leads to conflicts with freedom of expression and opinion of others. The power of large media enterprises suppresses the freedom of the press of smaller publishers.[66]

The duties flowing from the right to free expression therefore are: a general duty to disseminate information truthfully, accurately and impartially; the opinion-makers have an obligation not to abuse their power at the expense of others; the State party is required to take action against excessive media concentration and to ensure the diversity of opinion and general access to published opinions.[67]

Restrictions on freedom of expression must be set down in formal legislation or an equivalent unwritten norm of common law and adequately specify the permissibility of given interference by enforcement organs. Interference based on a vague statutory authorization violates Article 19.[68] In this context Rwandan law on divisionism could be held to constitute a violation of free speech rights guaranteed by the ICCPR.

Interference must be necessary to attain one of the purposes listed in the provision. This requirement implies that the restriction must be proportional in severity and intensity to the purpose being sought and may not become the rule. Therefore, as an exception to the rule, interference must be interpreted narrowly in cases of doubt.[69]

With respect to permissible purposes for interference with Article 19 rights there are five. First is the respect of the rights and reputation of others. In this are the principle of proportionality must be strictly observed, particularly in the political arena. Not every attack on the good reputation of others must be sanctioned, since freedom of expression (especially freedom of the media) would otherwise be stripped of their fundamental importance for the process of formation of political opinion. Moreover, the requirements placed on proof must not be set too high.[70]

66 Id.
67 Id.
68 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd Edition
69 Id.
70 Id. p. 462

Second is the issue of national security. Restrictions on freedom of expression to protect national security are permissible only in serious cases of political or military threat to the entire nation. Procurement or dissemination of military secrets may be prohibited for this reason. Publication of a *direct* call to violent overthrow of the government in an atmosphere of political unrest or propaganda for war also falls within this ground for restriction. Many governments have however a tendency to invoke protection of national security to justify far-reaching restrictions on freedom of expression of opposition groups and critical media. In a number of cases against South Korea, Belarus and African states, the Human Rights Committee has rejected these attempts and found violations of Article 19 despite governmental efforts to justify these restrictions and punishments on national security grounds.[71]

The third acceptable ground for restriction is public order, which can be understood as a prevention of disorder and crime as well as maintenance of all of those "universally accepted fundamental principles, consistent with respect for human rights, on which a democratic society is based."[72] Since "public order" may otherwise lead to a complete undermining of freedom of expression, particularly strict requirements must be placed on the necessity and proportionality of a given statutory restriction. The minimum requirements flow from a common international standard, which being essential to the maintenance of democracy may not be set too low. In a number of cases against Uruguay, Belarus, South Korea and various African states, the Committee found that the vague accusation of subversive or dangerous activities raised against the critics of the regime and the sanctions imposed for this (particularly arrest) were not justified by any of the purposes listed in Article 19(3) including public order.[73]

The fourth and fifth ground for permissible restriction is public health and public morals. Public health in the discussed context has minor practical relevance and for this reason this author chooses not to discuss it in greater detail. The protection of public morals includes prohibitions of or restrictions on pornographic or blasphemous publications. However, in an individual opinion in the case *Hertzberg at al. v. Finland*, three Committee members added that the concept of public morals is relative and that such restrictions on freedom of expression should not be applied in a manner as

71 e.g. Nos. 458/1991, 518/1992, 574/1994, 628/1995, 780/1997, 921/2000
72 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd Edition, p. 465
73 Manfred Nowak, U.N. Covenant on Civil and Political Rights. CCPR Commentary, 2nd Edition, p. 465

to "perpetuate prejudice or promote intolerance (…) It is of special importance to protect freedom of expression as regards minority views, including those that offend, shock or disturb the majority."[74]

The African Charter of Human and Peoples' Rights

Historically Africa was subjected to a particularly strong, intense form of colonial rule. With the fall of colonial era the post independence governments inherited a powerful means of restraining the media and restricting freedom of expression.[75] Additionally due to low levels of education and democratic awareness, and a weak legal and political culture, the rule of law was not firmly established. It suffices to mention that where the rule of law is not respected considerations of power alone will dominate. Legal strategies for enhancing freedom of expression are important, but they must be pursued within a framework that seeks to address the political reality of a country.[76] Neither international treaties nor pressure form major aid-donors have cracked the crust of national security legislation that restricts freedom of expression throughout much of the continent.

The substantive provisions of the African Charter were drafted to combine universal human rights norms established in other international human rights instruments with concerns specific to African traditions and conditions.[77] In addition to guaranteeing civil, political, economic, social and cultural rights, the African Charter secures such rights as self-determination, development, peace and security.[78] The communal aspect of the African tradition is strongly emphasized in all pan-African documents. The African Charter is unique in that it places obligations and requirements on the state as well as on the individual, and lists fundamental duties of the individual to the family and society, the State, other legally recognized communities and the international community.[79] The Charter provides: "Individuals have the duty to contribute to the best of [their] abilities, at all times and at

74 Individual opinion by Committee members Opsahl, Lallah and Tarnopolsky in No. 61/1979

75 Claude E. Welch Jr., *African Charter and Freedom of Expression in Africa*, In: Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, Stephen Bowen (ed.), Secrecy and Liberty: National Security, Freedom of Expression and Access to Information, Hague, 1999

76 Id.

77 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.

78 African Charter of Human and Peoples' Rights, Available at:<http://www.achpr.org/english/_info/charter_en.html>, last visited August 7 2008

79 African Charter of Human and Peoples' Rights, Available at:<http://www.achpr.org/english/_info/charter_en.html>, last visited August 7 2008Id.

all levels, to the promotion and achievement of African unity."[80] It also provides: "Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."[81] Article 27(2) constitutes a general limitation on the rights set out by the Charter: "The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."[82] The Charter therefore recognizes an interrelationship between the fundamental rights of the individual and the societal interests of promoting and strengthening African unity, culture and values. Furthermore under African customary law, human rights are viewed as *collective* rights, and individual rights exist only *within* the concept of the community. Thus consistent with the Charter and tradition, a restriction on the individual rights set out in the Charter is permitted.[83]

Consistent with this tradition freedom of expression is a right that may be considerably limited even in accordance with the African Charter. Article 9 of the Charter constitutes the weakest formulation of freedom of expression of any of the major international human rights document. It provides:

> "Every individual shall have the right to receive information.
> Every individual shall have the right to express and disseminate his opinions within the law."

The term "within the law" refers to national legislative limitations of restrictions adapted to further competing interests such as state security or the strengthening of Africa's culture and values. In fact this formulation opens up the way for robust governmental restrictions on speech in African countries. It is a so-called "claw-back" clause restricting rights from the start. Other major human rights treaties give considerably less scope to such restrictions.[84]

The categories of expression that have been limited by the various African nations include those that

80 Id. Article 29(8)
81 Id. Article 28
82 Id. Article 27
83 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.
84 Claude E. Welch Jr., *African Charter and Freedom of Expression in Africa,* In: Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, Stephen Bowen (ed.), Secrecy and Liberty: National Security, Freedom of Expression and Access to Information, Hague, 1999

conflict with the governments' approach to development and nation building, as well as national security. Rwanda sets an example of this dynamic. Some argue that such restrictions are necessary so that newly emergent nations may develop their own institutions, achieve stability and unity, and promote public faith in the government. They argue that criticisms of governmental institutions and policies should be minimized because investigative or critical journalism might provoke a volatile reaction within the society, which in Africa more often than not is an amalgamate of different ethic groups.[85] These arguments, particularly in the Rwandan context, cannot be entirely dismissed.

The African Commission of Human and Peoples Rights have carried out the supervision of the Charter. The establishment of the new African Court of Human and Peoples' Rights in 2004 has recently enriched the mechanism of supervision.

Since its creation in 1987, the Commission has played a marginal role in protecting freedom of expression.[86] The major responsibility of the African Commission lies in its examination of reports from states who are party to the Charter and in making non-binding recommendations. Initial reviews of reports have been brief, but more importantly the states have submitted patently inadequate documentation. Additionally the physical isolation of the Commission in Gambia has limited the impact of the Commissioners on the governments. Chronic staff shortages and problems have affected the Commission's efficiency; individual members hold other positions (often in a government) and their availability for the work in the Commission is limited.[87] Public scrutiny of the reports submitted to the Commission has been practically non-existent.

The African Commission has also power to receive communications on human rights violations (usually generated by the NGO's) and make the relevant recommendations that have no binding legal force. The recommendations to the communications that dealt partly with Article 9 are sparse

85 Elizabeth Defeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, Stanford Journal of International Law, 57 1992-1993, Available on Westlaw.

86 Claude E. Welch Jr., *African Charter and Freedom of Expression in Africa*, In: Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, Stephen Bowen (ed.), Secrecy and Liberty: National Security, Freedom of Expression and Access to Information, Hague, 1999

87 Id.

and vague, and did not provide any significant elaboration of on the scope and ways of judicial and legislative protection of the free expression rights.[88]

The newly established African Court of Human Rights based in Arusha, Tanzania has been given more powers for protection of the human rights standards in Africa. Individuals and non-governmental organizations have a right to bring cases before the Court but only if they have been recognized by the state subjected to scrutiny as having an observer status. In Europe individuals, groups of individuals and NGOs claiming to be victims of rights violations have the power to submit cases to the Court without any additional recognition from a state. This reservation is significant, as it is unlikely that many African states will recognize the competence of the African Court to hear individual or NGO petitions, and thus, individuals and NGOs are unlikely to be direct participants in the human rights process. Currently it is the Commission, the State parties, African Intergovernmental Organizations that have the direct and automatic access to the Court.[89]

The African Court is the most expansive compared to the other courts in the area of applicable subject matter jurisdiction. It is not bound only to the implementation and interpretation of the governing conventions and protocols. The African Court can also apply any instrument or source of law concerning human rights that is ratified by the State concerned. This, over time, will permit the African Court to address new human rights related issues and considerably develop the binding precedent.[90]

The African Charter provisions on freedom of expression are complemented by an additional declaratory document adopted during the 32nd Ordinary Session of African Commission on Human and Peoples' Rights. In 2002, the Commission passed the Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa (the Resolution) which elaborates on the scope of the Article 9 of the Charter. The Resolution conveys the Commission's commitment to the principle of universal freedom of expression through all forms of communication as well as

88 The cases that dealt in part with Article 9 of the African Charter on Human and Peoples Rights are: International PEN v. Ghana, Amnesty International v. Sudan (1999), Amnesty Interantional v. Zambia (1999), Constitutional Rights Project, CLO, Media Rights v. Nigeria (1999), Interights et al. v. Egypt (2002), Legal Defense Center v. Gambia (2000), Liesbeth v. Eritrea (2003), Mbayo v. DRC (2002), Media Rights Agenda v. Nigeria (1998), John D. Ouko v. Kenya (2000); et al., Available at: <http://www1.umn.edu/humanrts/africa/comcases/allcases.html>, last visited August 7, 2008

89 Protocol to the African Charter of Human and Peoples' Rights on the Establishment of the African Court of Human and Peoples' Rights, Available at <http://www.achpr.org/english/_info/court_en.html>; Last visited 22 August, 2008

90 The American Society of International Law, <http://www.asil.org/insights/2006/09/insights060919.html>

protection from actions inhibiting this right. The Commission did, however, recognize the necessity of restricting freedom of expression if the prohibition is provided in law, serves a legitimate government interest, and is necessary in a democratic society.[91]

The Resolution appeals for a commitment to pluralism in opinions in mass media, access to the media by vulnerable or marginalized groups and the promotion of African culture and languages in the media. In addition, it calls for the independent mass media outlets to recognize that complete state control over the media is not consistent with the ideals freedom of expression ideals. According to the Resolution, the government-controlled media outlets should be granted editorial independence and should be governed by a board free from political or economic influence.[92] The document is not legally binding on the states.

Permissible limitations on free expression rights included in the ACHPR are vague, bodies of precedent and experience are not well developed, applications for remedies are few, and the governments criticized by the treaty bodies usually disregard the recommendations concerning the offending laws or practices. A vague or weakly-worded treaty can be developed or interpreted over time provided there is a political will. The limitations of the African Charter are striking and in the case of freedom of expression, the political will necessary to interpret its protections broadly has been lacking.[93] A hope arises with the creation of the African Court of Human and Peoples' Rights, which has more power to implement human rights standards in the states-parties to the African Charter.

91 Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa, Available at: http://www.achpr.org/english/declarations/declaration_freedom_exp_en.html, last visited, August 7 2008.

92 David Baluarte, Jamal Jafari*, News From the Regional Human Rights Systems,* Human Rights, Winter, 2003, Available on Westlaw.

93 Claude E. Welch Jr., *African Charter and Freedom of Expression in Africa*, In: Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, Stephen Bowen (ed.), Secrecy and Liberty: National Security, Freedom of Expression and Access to Information, Hague, 1999

CHAPTER TWO

A Tale of Two Invented People—the Historical background of the Rwandan Conflict

Who are the Hutu and who are the Tutsi? The RPF, the current ruling political party of Rwanda, insists they are the same people. The proponents of Hutu Power claim however they are distinct ethnic or even racial groups.

There are many answers one hears in Rwanda - some claim the difference doesn't exist and was a colonial legacy or a simple socioeconomic difference: either a class difference between poor and rich, or a division of labor between pastoralists and cultivators. Some other say that the difference is socio biological: Hutu and Tutsi are two distinct peoples with separate histories, until Tutsi migrants conquered the settled Hutu communities and reduced them to the status of servile population.[94]

It is essential to understand the discussion that takes place around this question as it had a significant impact on the country's tragic history and all the developments that took place in the realm of freedom of expression in Rwanda. There are several hypothesis represented in the milieu of academics which are related to the origin of the Hutu, the Tutsi and the Twa.

Migration Hypothesis[95]

In 1988 in a UNESCO General History, Bethwell Ogot accepted that both groups had long inhabited the region and noted that the number of pastoralists increased sharply from 15th century. From where did these pastoralists among the ancestors of contemporary Tutsi come? This is where the views differed among the supporters of the thesis of separate origins.

Colonial anthropologists, explorers and missionaries (John Seligman, John Hanning Speke, Father Leon Classe) all subscribed to the "Hamitic hypothesis" which stated that the "Hamitic" Tutsi

94 Mahmood Mamdani, *When Victims Become Killers. Colonialism, Nativism and the Genocide in Rwanda,* Oxford 2001

95 Id.

people were superior to the “Bantu” Hutus because they were deemed to be more ”white” in their facial features, and thus destined to rule over the Hutus.

Other anthropologists had their own ideas. Roland Oliver claimed Tutsi came from southern Ethiopia; Chris Ehret said Tutsi came from the east, and are the continuation of Southern Cushites; Jean Hiernaux argued that on the basis of archaeological and genetic evidence Tutsi are ancient East Africans, with distinctive physical features. Hiernaux argued also that Tutsi were a civilizing Caucasian influence in Negro Africa. He described the population's distinctive features (long thin nose, tall, long, narrow heads "elongated East African"). This hypothesis was widely criticized for its racial drive.

Common Cultural Community Hypothesis

The ancestors of Hutus and Tutsi came together and created different types of communities. In *economic sense they were divided into* pastoralist and agricultural groups. This notion however is not sustainable in the light of recent research which challenges the equation of Tutsi with pastoralism. The Hutu had cattle before Tutsi appeared on the scene. Also agricultural and pastoralist activities were hardly exclusive, many Hutu had cattle and many Tutsi farmed the land.[96] This division of labor observed between the two at the onset of the colonial period is better thought of as a division enforced through the medium of political power rather that as a timeless preoccupation of two separate groups. In a *cultural sense they formed* a community comprising the Kinyarwanda language with over ten million speakers spread over the whole region; the cultural identity *Munyarwanda* (the Rwanda people) exists alongside in tension with political identity Hutu/Tutsi; cohabitation and marriage that spans centuries. In marriage a wife took on the identity of a husband. The descent to children in Rwanda is patrilineal, so it happens that the child of generations of intermarriage comes into the world unequivocally as Hutu or Tutsi.[97] Today's Tutsi and Hutu are children of intermarriages who *have been constructed as* either a Hutu or a Tutsi.

96 Catherine Newbury, *The Cohesion of Opression: Clientship and Ethnicity in Rwanda*, 1860-1960, New York, Columbia University Press, 1989, p.206

97 Mahmood Mamdani, *When Victims Become Killers. Colonialism, Nativism and the Genocide in Rwanda*, Oxford 2001

Mamdani's Hypothesis:[98]

This hypothesis, first put forward by Mahmood Mamdani, proposes that Hutu and Tutsi are political identities that changed with the changing history of the Rwandan state. That is why the search in migrations in a dim history for origins will be inconclusive because Hutu and Tutsi are political and not cultural identities. Ancestors of Hutu and Tutsi most likely had separate historical origins. Hutu did not exist as an identity outside of the Rwandan state; it emerged as a trans-ethnic identity of the subjects in the state of Rwanda. Tutsi may have existed as an ethnic identity before the establishment of the state of Rwanda.

Typically of cattle pastoralists, Tutsi men were armed and accustomed to fighting to protect their cattle against raiders and to raid for the cattle themselves. More aggressive and better organized for military purposes than Hutu farmers, the Tutsi eventually conquered much of the region and established their rule there, despite constituting a minority.

The mechanisms of the state allowed the rulers to absorb the most prosperous of their subjects into their own ranks through intermarriage, Tutsi became more and more a transethnic identity and the channels of social mobility remained open.[99] A Hutu who gained status through wealth or by becoming a chief could become a Tutsi through a ritual of Kwihutura – literally cleansing of one's Hutuness. And in turn if a Tutsi lost his cattle and turned to farming for a living and married into a Hutu family, then they would become a Hutu.[100]

Predecessors of today's Hutu and Tutsi created a single cultural community of the Kinyarwanda speakers, through centuries of cohabitation, intermarriage and cultural exchange. The cultural community is to be found today both within borders of Rwanda and outside of it. Hutu and Tutsi emerged as *state enforced political identities* in the context of emergence of Rwandan state. It is the history of that state that made Hutu and Tutsi bipolar political identities.[101]

To be a Tutsi was thus to be in power, near power or simply to be identified with power - just as to be a Hutu was to be a subject. At the end of 19th century the king Rwabugiri's reforms highlighted

98 Id.
99 Id.
100 Id.
101 Id.

the growing political distinction that divided the subject population from this identified with power. Yet when contrasted with the Belgian rule that was soon to follow one can spot two mitigating features:

a) Hutu continued to be present at the lower levels of officialdom;

b) The boundary between Hutu and Tutsi was softened by a degree of social mobility (which proved to be a fact of a great social importance)

Colonialism and exacerbated cleavages

From 1894 until the end of World War I, the territory of today's Rwanda constituted a part of the German East Africa. Germans chose to rule Rwanda indirectly largely relying on the Tutsi monarch and his chiefs. In 1924 Belgium took over from Germany and ruled the territory until 1962.

The Europeans were generally impressed with the ruling Tutsi. Reasoning from the premises of social Darwinism, many Europeans believed Tutsi political and economical success testified to their superiority. This conviction laid the basis for the development of the 'Hamitic' myth according to which Tutsi and everything humanly superior in Central Africa came from ancient Egypt or Abyssinia.[102]

If Hutu-Tutsi evoked a subject-power distinction in the pre-colonial Rwandan state, the colonial state gave it an added dimension; by racializing Hutu and Tutsi as racial identities it identified one as indigenous and the other as alien. By making Tutsi and Hutu identities evocative of colonial power and colonial subjugation—and not just local power relations--colonialism made them more volatile than ever in history.[103]

The Tutsi may have emigrated from elsewhere but they did not see this as a politically significant fact. While royal myth claimed a sacred origin for the *mwami* they never claimed a foreign origin. The idea that the Tutsi were superior because they came from elsewhere and that the difference

102 Paul J. Magnarella, *The Background and Causes of the Genocide in Rwanda,* Journal of International Justice, 2005 (Available on Westlaw)

103 Mahmood Mamdani, *When Victims Become Killers. Colonialism, Nativism and the Genocide in Rwanda*, Oxford 2001

between them and the local population was a racial difference was an idea of a colonial origin.[104] Racialization was as much an intellectual as an institutional construct. Belgian colonizers translated their vision of civilization mission in Rwanda into an institutional imprint. Institutions that undergirded the identity "Tutsi" were established within political, administrative legal regimes. 'Nothing so vividly defined the divide [between Tutsi and Hutu] as the Belgian regime of forced labor which required armies of Hutus to toil en masse as plantation chattel, on road construction, and in forestry crews and placed Tutsis over them as taskmasters.'[105]

Belgians also froze the channels of vertical mobility for both groups. In 1933 an identity card system was introduced that indicated Hutu, Tutsi or Twa 'ethnicity'. In subsequent generations all persons were designated as having the 'ethnicity' of their fathers, regardless of the 'ethnicity' of their mothers.

For the first time in the history of Rwanda the identities Hutu and Tutsi held permanently. Tutsis went from "(…) being at the top of the *local* hierarchy in the pre-colonial period to the bottom rung of a hierarchy of *alien* races in the colonial period."[106]

Independence and 1959 revolution

Under colonialism, Hutu and Tutsi had become synonymous with an indigenous majority and an alien minority. Decolonization was a direct outgrowth of an internal social movement that empowered the majority constructed as indigenous against the minority constructed as alien.

Belgium altered its policy of discrimination in the late 1950s to favor the Hutu. Foreseeing the inevitable dominance of the majority Belgian colonial administrators sided with them, claiming to promote a democratic revolution.[107]

In 1957 a group of nine Hutu intellectuals had published the so-called Hutu manifesto, which complained of the political, economic and educational monopoly of the Tutsi 'race' and

104 Mahmood Mamdani, *When Victims Become Killers. Colonialism, Nativism and the Genocide in Rwanda*, Oxford 2001

105 Paul J. Magnarella, *The Background and Causes of the Genocide in Rwanda*, Journal of International Justice, 2005 (Available on Westlaw)

106 Mahmood Mamdani, *When Victims Become Killers. Colonialism, Nativism and the Genocide in Rwanda*, Oxford 2001, p.102

107 Paul J. Magnarella, *The Background and Causes of the Genocide in Rwanda*, Journal of International Justice, 2005 (Available on Westlaw)

characterized the Tutsi as foreign invaders.[108] In November 1959, the pro-Hutu Parmehutu party started a revolt that resulted in bloody ethnic clashes. By 1963 these and other Hutu attacks had resulted in thousands of Tutsi deaths and the flight of about 130,000 Tutsi to neighboring countries.[109]

Belgian authorities organized communal elections in mid-1960. The Parmehutu and other pro-Hutu parties won the majority of posts. As a result, Gregoire Kayibanda (an author of the Hutu Manifesto) became Rwanda's president designate.[110]

First and Second Republic

As a result of a referendum Rwanda was declared independent on July 1, 1962. President Kayibanda soon established a style of rule that resembled that of the traditional Tutsi kings. He became remote, secretive and authoritarian.[111]

Between 1959 and 1964, as many as 200,000 Tutsi fled Rwanda after two failed attempts to restore Tutsi political power by force and in the face of massacres carried out by Hutu. Tutsi exiles settled in refugee camps in Tanzania, Congo and Uganda. A reactionary Hutu regime led by a former teacher Gregoire Kayibanda introduced in Rwanda strict laws introducing discriminatory ethnic quota system in education, civil sector an employment.[112] Many Rwandan Tutsi were eliminated in the name of public safety, many more driven into exile. Kayibanda ensured that the remaining Tutsi were extracted from politics. Rwanda was a Hutu state first and foremost, and this was maintained by retaining the view of racialization put forth by the colonialists: Tutsi were aliens, outsiders, a different race, and this distinction justified their treatment as resident aliens.[113]

By late 60s unemployed Hutu school-leavers constituted a significant and a volatile group. The Rwandan situation was further exacerbated by events in neighboring Burundi. In the spring of 1972 some Burundian Hutus rebelled against the Tutsi military regime and the regime forcefully put down the rebellion and embarked on a campaign to execute educated Burundian Hutu. About

108 Id.
109 Id.
110 Id.
111 Id.
112 Id.
113 Adrien Katherine Wing, Mark Richard Johnson, *The Promise of a Post-Genocide Constitution: Healing Rwandan Spirit Injuries*, University of Michigan Law School, 2002. (Available on Westlaw)

100,000 Hutu were killed and twice as many fled for their lives, many into Rwanda. President Kayibanda capitalized on the situation by eliminating several hundred Rwandan Tutsi in the name of public safety and producing another huge wave of Tutsi refugees.[114]

Hutu students initiated protest to express their solidarity with the Hutu of Burundi, which turned into country wide clashed and massacres. This time polarization between Hutu and Tutsi turned into grievances of poor against rich. Kayibanda was criticized for not having done enough to advance Hutu representation in the civil society. The paralysis of power brought about another tension between Hutu from the South (Kayibanda) and Hutu from the north.

After the military coup, which brought to power General Juvénal Habyarimana (a Hutu northerner) in 1973 launching the Second Republic, Tutsis were given 'indigenous' status and allowed limited participation in politics, subject to an extensive quota system that regulated their access to public office, education, and land.

This shift in approach was dictated by the philosophy of the 1973 coup, which regarded the Tutsis as a historically privileged minority. The Second Republic had two objectives—justice and reconciliation—whereby reconciliation with the Tutsis was to be reached in the context of justice for the Hutu. The Second Republic derived its legitimacy from being a fruit of "a moral revolution" which aimed to embrace and protect all Rwandan people, Hutu as well as Tutsi.[115] The majority of exiled Tutsi remaining in neighboring countries was not however invited to come back to the country. As soon as Habyarimana realized there were not only in-country Tutsis (who were small in numbers and posed no significant threat to his power) but huge numbers of Tutsi refugees who wanted to reclaim their rights and land. Reflecting this tension, his priorities tightened, becoming harsher towards the Tutsi cause than the Kayibanda's regime. Habyarimana' s Rwanda became a single party dictatorship. His party, the Mouvement Revolutionnaire National pour le Developpement (MNRD) was enshrined in the constitution.

In Uganda, Rwanda's neighbor to the north, Tutsi immigrants were considered 'squatters'. In 1990 there was intense debate over their citizenship status. New land distribution schemes were declared

114 Paul J. Magnarella, *The Background and Causes of the Genocide in Rwanda,* Journal of International Justice, 2005 (Available on Westlaw)
115 Legum, ed., Africa Contemporary Record, 1979-80, p. B283

under which Ugandan citizens, who did not want to share scarce land with the refugees, would be the sole beneficiaries. Those perceived as Rwandan migrants (though some were originally from Uganda), were forcibly moved to settlements without rights to the redistributed land.[116] Neither Tutsi refugees who came to Uganda after the 1959 Hutu revolution nor their children were able to acquire Ugandan citizenship and as such did not even qualify to enter secondary school.[117] The failure to recognize Tutsi refugees as citizens left the diaspora in Uganda with a need to "belong" to the Rwandan society and with a sense of entitlement to citizenship rights in Rwanda. In late 1980s the Tutsi generation raised in exile formed the Rwandan Patriotic Front (RPF), which at the beginning of October 1990 crossed the Ugandan-Rwandan border and invaded Rwanda, starting a civil war.

Rwanda was able to repel the RPF's attack largely thanks to French troops sent by President Francois Mitterrand.[118] But the outbreak of war was the pretext for a new wave of Tutsi persecution within Rwanda. Having failed to suppress the RPF guerrillas and under international pressure to come to terms with the RPF's demands, Habyarimana began peace talks that continued through 1992-1993, alienating him from the Hutu hardliners in his government. [119]

In August 1993, the Habyarimana government signed a peace treaty with the RPF, officially bringing the war to an end. The Arusha Peace Accords[120] provided for power-sharing in all government institutions (art 2.3) and the repatriation of Tutsi refugees (art.2.4) under the supervision of the United Nations Assistance Mission in Rwanda. Habyarimana agreed to the merge the RPF with the national army.

In Rwanda, as in many countries in Africa where politics is polarized along ethnic lines, political control largely determines who has access to resources. The power sharing agreement was

116 Gerard Prunier, *The Rwanda Crisis,* Columbia University Press, 1995. p. 182

117 http://biography.jrank.org/pages/2859/Kagame-Paul.html

118 see: Andrew Wallis, *Silent Accomplice: The Untold Story of France's Role in the Rwandan Genocide*, 2007

119 The term "extremist" is most often used in the Rwandan context to refer to people from a Hutu ethnic group who represented a certain set of political and social convictions. These views entailed unwillingness to share power with the Tutsi minority, desire to turn Rwanda into an ethnically uniform Hutu land by means of ethnic cleansing, supremacy of the Hutu majority in politics and economy. Coalition for the Defense of the Republic (CDR) and Movement Republicain National pour la Democratie et le Developpement (MNRD) were the main political formations endorsing these views.

120 Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, Available at www.incore.ulst.ac.uk/cds/agreements/pdf/rwan1.pdf (accessed: January 29, 2008)

unacceptable to hard-line Hutu politicians. But for the RPF citizenship rights and return to Rwanda were essential conditions to ceasing hostilities. The country became polarized even more along the ethnic lines.

The Genocide

On April 6th 1994, President Habyarimana died when his plane was shot down. Within thirty minutes of the crash, barricades were erected in Kigali and massacres of Tutsi, declared accomplices of the RPF, began.[121] In the thirteen weeks after April 6, at least 800.000 people were slaughtered—perhaps as much as three quarters of the Tutsi population.[122] Thousands of Hutu were also slain because they opposed the killing campaign and the forces directing it. The political opposition willing to meet the citizenship demands from the RPF and to accept the return of Tutsi refugees was soon exterminated.

This genocide was not an uncontrollable outburst of rage by a people consumed by "ancient tribal hatreds."[123] Nor was it the preordained result of poverty and over-population. The genocide resulted from the deliberate choice of a modern elite—from 1959, the Hutu elite in Rwanda—to foster hatred and promote fear to keep itself in power. This small, privileged group set the majority against Tutsis to counter political opposition within Rwanda.[124] The terror of 1994 was followed by another humanitarian disaster, as some two million Hutu refugees fled to Zaire, Burundi and Tanzania.

In the summer of 1994, the Tutsi-led RPF took control of Rwanda and has held power since. Thousands of Tutsi refugees from all over the region returned to Rwanda hoping for the restoration their dignified lives as citizens of Rwanda with full political and social rights. However, while readily granting Rwandan citizenship to most who requested it, the RPF has used the pretext of preventing a recurrence of genocide to limit civil and political rights in numerous ways. The political opposition was suppressed, dissidents exiled or jailed on charges of divisionism. In 2003,

121 Stuart Beresford, *In Pursuit of International Justice: the First Four Year Term of International Criminal tribunal for Rwanda*, Tulsa Journal of Comparative and International Law, 2000 (Available on Westlaw)
122 Human Rights Watch, *Leave None to Tell the Story*, available at <http://www.hrw.org/reports/1999/rwanda/> (accessed January 23, 2008)
123 Id.
124 ibid.

under the RPF leadership, a new constitution was adopted which made many fundamental rights subject to limitation by statutory law.[125] Today, equal rights are officially guaranteed to both Hutu and Tutsi, although the names of these ethnic categories are not permitted to be spoken.

The role of media in the Rwandan conflict

Pre-colonial Rwanda was a completely oral civilization with no written press.[126] Not much changed during German colonization. Belgian colonization, which followed, advanced the printed word, mainly with the development of missionary schools, printing press, radio technology and legislation on the freedom of the press. The first Rwandan newspapers of general and political interest emerged.

The Decree of March 6, 1922 on freedom of the press in Belgian colonies was applied to Rwanda in 1929. The law was very restrictive and gave many arbitrary prerogatives to the General Governor of the Belgian Congo and Rwanda Urundi. Publications contributing to erosion of Belgian authority were severely punished. Such a framework did not encourage an environment favorable to the development of free press and thought. The decree remained in effect until February 1959.

The first widely published Rwandan newspaper *Kinyamateka* founded by the White Fathers in September 1933 was a publication of the Catholic Church. It contained mainly religious news but was also a channel through which the colonial and local authorities communicated with their subjects.[127] Soon more newspapers appeared. Many of them were publications of the Catholic Church. The titles included: *A Gisiyo Gaturika mu Rwanda; Amahoro ya Kristu, Umuyobozi, Servir, Echo du Seminaire* and *L'Ami*, the last two for students and graduates of the High Seminary of Nyakibanda.[128]

A political press came to life by the side of the Catholic publications in early 1950, following the increased political awareness among the Rwandan elite. Among the well-known newspapers was *Soma* ("Read") that was first published in August 1955 by Aloys Munyangaju, the pioneer of

125 Human Rights Watch, *Leave None to Tell the Story,* available at <http://www.hrw.org/reports/1999/rwanda/> (accessed January 23, 2008)
126 Jean Marie Katamali, *Freedom of Expression and Its Limitations: The case of Rwandan Genocide*, Stanford Journal of International Law, 2002, p.2 (Available on Westlaw)
127 Id.
128 Id.,p.3

journalism in Rwanda.[129] This paper then became *Ijwi rya Rubanda Rugufiri* ("The voice of the small citizens") and emerged as the organ of Rwanda's first political party, the Association for the Social Promotion of the Mass, in favor of Hutu led democracy. About the same time, the *Rwanda Nziza* ("Beautiful Rwanda") newspaper was created by the National Union of Rwandans, a mainly Tutsi political party in favor of the monarchy.

Amid the emergence of a number of politically oriented newspapers, *Kinyamateka* remained the premier Rwandan newspaper. Throughout the 1950s *Kinyamateka* changed it's line to reflect the times and to give "the oppressed" an opportunity to express their views.

> "*Kinyamateka* became the press of the people. It became their confidant and it expressed their grievances. Thanks to this new forum, an increasing number of Rwandan peasants became more aware of the causes of their suffering and their complaints more focused. Partially, thanks to it, the spirit of reform or evolution which was agitating Hutu elites was conveyed to the peasant at the grassroots level."[130]

In 1955 *Kinyamateka* was entrusted to Gregoire Kayibanda, which according to some was a crucial step in preparing ground for the 1959 Hutu revolution. Kayibanda, being a good editorialist, knew when and how to criticize the regime moving step by step towards the people's revolt. He certainly had an effective tool in hand to prepare the soil for revolution. At the same time the colonial authorities closed their eyes to a number of articles, which could have been qualified as subversive. On the eve of revolution the Belgian authorities abolished the old expressive restrictions from the 1922 Decree. It may have been that the colonial authorities aimed at establishing greater press freedom or perhaps they just lost control of the media to those forces in Rwanda who wanted to achieve their political goals. One thing is certain – the role played by the press in the 1959 revolution shows what potential a word has in pursuing the interests of one or the other group and how harmful the absence of any regulation of speech can be.

On July 1, 1962 Rwanda became independent. The editor of *Kinyamateka*, Gregoire Kayibanda became its first President and it was anticipated that, as a teacher and a former journalist, he would promote rather than suppress freedom of speech. These hopes were to be failed. In the first

129 Id., F18

130 Jean Marie Katamali, *Freedom of Expression and Its Limitations: The case of Rwandan Genocide*, Stanford Journal of International Law, 2002, p.2 (Available on Westlaw), p.3

Constitution of the young independent country a provision on freedom of expression was incorporated:

> "Everyone has a right to express and impart freely his opinions by all legal means. Everyone has the right to seek information, without any hindrance, from any source accessible to all. Those rights find their limitations in legal and regulatory prescriptions, as well as in the respect of the state's security and honor of others."[131]

This provision remained in the sphere of theory. The decline and disappearance of some of the powerful pre-independence newspapers followed. Even the venerable *Kinyamateka* eventually retreated to its pre-1954 standard.[132] One of the main reasons the paper waned was the 1968 imprisonment of its general editor and the expulsion of its Italian director after it published a story labeling Kayibanda's presidency as autocratic.[133] The authorities of the First Republic developed their own propaganda instruments. The first such newspaper was the *Imvaho* ("Authentic Truth") which came out in 1960 in Kinyarwanda.

In addition to the written press the radio played a significant role in the development of sanctioned media in Rwanda during the First Republic. The first Rwandan radio station was launched in 1961. In 1964, through the creation of the Ministry of Information, the government centralized all information services.[134] Non-political journals as well as small school papers flourished. There was also one important independent publication created during that time—*Dialogue*—a journal for intellectuals founded in 1967.[135]

Upon the seizure of control by General Juvenal Habyarimana in 1973, the situation in freedom of speech changed little up until the 1990s. Habyarimana replaced the Ministry of Information with ORINFOR (Rwandan Office of Information). As a government agency directly affiliated with the cabinet of the president, ORINFOR monopolized information in Rwanda. The government empowered OINFOR to grant or refuse authorization to launch new journals and to publish questionable content. In addition to wielding censorship capacities, ORINFOR established obligatory copyright registration. The provisions on freedom of expression were not altered,

131 Id. F 32
132 Id. F33
133 Id. F34
134 Id.. 37
135 Jean Marie Katamali, *Freedom of Expression and Its Limitations: The case of Rwandan Genocide*, Stanford Journal of International Law, 2002, p.2 (Available on Westlaw), p.5

however the MNRD manifesto declared that this freedom should be exercised with discipline so as to reinforce the social order and consolidate national unity.[136]

Any remaining hope for freedom of expression faded with the adoption of the new Constitution in 1978. This document, which remained in effect until 1991, made no specific references to freedom of the press. Its article 18 stipulated that "the freedom of conscience as well as the freedom to manifest one's opinion in all matters are guaranteed, except in case of repression for infractions committed during their exercise."[137]

Apart from the government owned press and radio, only *Kinyamateka* and *Dialogue*, both owned by the Catholic Church, continued publishing during this period. *Kinyamateka* changed its course so as to criticize social injustice caused by the Kayibanda and Habyarimana regimes. The leadership of the journal however faced serious threats from the government.[138] In 1987 a new monthly independent journal called *Kanguka* ("Wake Up") was launched. As a response to this journal, which was in opposition to the government line, President's brother-in-law, Seraphin Rwabukumba, founded a journal *Intera* in 1989. The government newspapers and radio broadcasts dominated the Rwandan media scene and set the ground for the future events.

Not all human rights violations were directly war-related. In May 1991, several journalists signed a letter to the president protesting what they termed "the censorship orchestrated by certain authorities with regard to the independent press." In the beginning of that year, the government arrested at least ten journalists in connection with articles they had written and charged many of them with defamation, subversion or "threatening state security." Many of the offending articles related to government corruption, including corruption within the president's family. At least four journalists were detained in late November, one was badly beaten, and several others went into in hiding. Some also faced civil defamation charges initiated by former or current government officials. In August 1991, the government enacted a new press law that increased government control of the press.

Despite such a situation, the number of independent journals increased. There were now over fifty journals, compared to fewer than a dozen before the start of the war. The proliferation was due to

136 Id., F41
137 Id., F43
138 Id, p.5

the government's decision in July 1990 to permit greater freedom of the press as part of a declared transition to a multiparty democracy. In July, an independent journalist's association was formed – the first of its kind in Rwanda. In addition to defending journalists from government attacks and promoting professional standards, the association lobbied against the new press law.

This rebirth of expressive freedom was however deceiving. The government used different free speech standards for different groups. Government friendly media enjoyed greater freedoms, while dissenting writers often faced punishment. [139] Such a situation set the basis for the media-led disaster that was yet to come. In the absence of a defined law protecting the journalists in Rwanda, both protection and prohibition of press freedoms were left to arbitrary interpretations of prosecutors and judges up until the new 1991 media law was introduced. This law guaranteed freedom of the press and the protection of confidential sources.[140] Yet it also introduced rules requiring a prior declaration before starting any journal, a registration of copyrights and an administrative and judicial registration procedure. The law also empowered the court to "withdraw a press card from any journalist who might be found guilty of any infraction and to punish any journalist whose writing provoked criminal acts, disobedience or insurrection in the army."[141] It should be added that the current 2007 law on media is comparable to the 1991 pre-genocide media law.

The law created a discretionary legal authority which empowered the state to silence journalists through a variety of means between 1991 and 1994. Journalists were intimidated, arrested and even killed. Among the supposed crimes cited by the state were: "publishing articles contrary to government's interests; publishing articles supporting the opposition; sapping army morale; publishing articles criticizing the government and government officials; collaborating with the enemy; asking impertinent questions to the president during interviews; publishing confidential documents; publishing cartoons of the president and writing provocative articles."[142]

On the other hand some journalists linked to the extremist groups were publishing calls for violence and hatred against Tutsi. Such people, like Hassan Ngeze from *Kangura* were rarely disciplined.

139 Jean Marie Katamali, *Freedom of Expression and Its Limitations: The case of Rwandan Genocide*, Stanford Journal of International Law, 2002, p.2 (Available on Westlaw), p. 6
140 Id.
141 Id.
142 Id.

High officials, including president Habyarimana, defended these journalists on the ground that what they wrote was simply an exercise of their freedom of expression. Jean Marie Katamali writes in his article:

> "It appears that just as on the eve of the 1959 Revolution, the government in the early 1990s realized that it was losing control it had previously exercised on the freedom of expression and decided to change its tactics to allow not unlimited, but government controlled freedom of expression. By using its financial means to constrain powers and human capacity, the government created media that looked independent to outsiders, but which was under its full control behind the scenes. These outlets conveyed messages of hatred and violence that could not have been published in the official media. Thus under the guise of promoting the freedom of expression, the government achieved its objective of controlling press while spreading its propaganda."[143]

Rwanda is a fine example of how media played a crucial role in encouraging genocide. Some of these media outlets were indeed created for the sole purpose of furthering the genocide. There were public media managed by the government: *Radio Rwanda*, Rwandan Television, Agence Rwandaise de Presse and two official newspapers *Imvaho* and *La Releve*. The privately owned print media in pre-genocide Rwanda can be divided into four categories related to their political bias:[144]

- Newspapers aligned with MNRD and CDR (pro-Hutu, pro-government)[145]
- Political opposition newspapers[146]
- RPF newspapers[147]
- The print media of the Rwandan Tutsi diaspora[148]

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143 Jean Marie Katamali, *Freedom of Expression and Its Limitations: The case of Rwandan Genocide*, Stanford Journal of International Law, 2002, p.2 (Available on Westlaw), p. 7

144 Jean Marie Vianney Higiro, *Rwandan Private Print Media on the Eve of the Genocide*, in: Allan Thompson ed., The Media and the Rwanda Genocide, 2007

145 Newspapers in this group were: Akanyange, Umurwanashyaka, Écho des Mille Collines/Impanda, Intera, Interahamwe, Kamarampaka, Kangura, La Médaille Nyiramacibili, Umurava, Le Courrier du Peuple and Shishoza. Most of their editors were Hutus from northern Rwanda.

146 Opposition political parties, particularly the Mouvement Démocratique Républicain (MDR) and the Parti Social Démocrate (PSD), were associated with Agatashya, Ibyikigihe, Ikindi, Ijambo, Intwali-Ijwi rya J.D.R., Intumwa/Le Méssager, Isibo, Izuba/Le Soleil, La Griffe, L'Ère de Liberté, Umuranga, Nouvelle Génération, Nyabarongo, Republika, Rukokoma, Soma, Verités d'Afrique, Umuturage w'U Rwanda, Urumuli rwa Demokarasi and Umurangi. Their editors came from southern Rwanda.

147 Buracyeye, Kanyarwanda, Kanguka, Kiberinka, Le Flambeau, Rwanda Rushya and Le Tribun du Peuple (also known as Umuvugizi wa Rubanda et Le Partisan) strived to be the voice of the Tutsi. Their founders and editors were all Tutsi and members of the RPF living in Rwanda.

148 Alliance edited by Alliance National Unity (RANU), an organization that later changed its name to the Rwandan Patriotic Front (RPF); Congo Nil, edited by Francois Rutanga in Belgium; Impuruza, edited by Alexander Kimenyi in the United States; Inkotanyi, edited by the RPF; Intego, edited by Jose Kagabo in France; Munyarwanda, edited

Among Rwanda's print media of the 1990s the publication with the greatest impact on the population was *Kangura*, the newspaper issued every two months. It was known for its "hysterical hatred of Tutsi and any Hutu who expressed a desire for change, freedom and democratic openness."[149] It was established in May 1990 and headed by Hassan Ngeze, a former ticket controller from the northern town of Gisenyi. *Kangura* soon became known for its publication of the so-called "Ten Hutu Commandments" which were the ultimate written expression of ethnic hatred and discrimination among Rwandans. Although the main tool in genocide promotion, *Kangura* was not the only printed medium that adopted that line. The list of such media was extensive.[150] These media outlets adopted a particular method of promoting their message. It was repetitive, consistent, and it demonized the enemy, namely the Tutsi. The papers would reinforce tribal alliances and emphasize that Hutu and Tutsi had little in common. These messages also aimed at sewing fear of the Tutsi dominated RPF which was said to be exterminating Hutus. No journalists were ever disciplined or prosecuted for these conducts.

A large number of Rwandans could not read or write and as a result radio became a strategic way for the government messages to reach the population. Initially this role was assumed by the government controlled Radio Rwanda. In March 1992, Radio Rwanda was first used in direct incitement to killing of Tutsi in the region of Bugesera.[151] The call brought about its desired end—a disaster with hundreds of Tutsi murdered. Controlling the media proved to be strategically important. In April 1993 *Radio Television Libre des Mille Collines* (RTLM) was created. Its tone was informal and lively in the contrast to the official tone of Radio Rwanda. The station was meant

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by the Association of Concerned Banyarwanda in Canada; Avant Garde; Le Patriote; Huguka; and Umulinzi. These publications were circulated clandestinely in Rwanda.

149 Marcel Kabanda, Kangura: *The Triumph of Propaganda Refined*, in: Allan Thompson ed., The Media and the Rwanda Genocide, 2007

150 This list includes: Umurwanashyaka ("Militant"), created in March 1991; L'Echo des Milles Collines ("Echo Of A Thousand Hills"), created in June 1991; Interahamwe ("Those Who Act Together"), created in January 1992; Medaille Nyiramacibiri, created in July 1991; Intera Step, created in December 1989; Zirikana ("Remember"), created in August 1992; Jyambere ("Develop"), created in August 1991; Pawa Pawa ("Power Power"), created in November 1993; Kamarampaka ("Referendum"), created in July 1991; Ikindi ("More"), created in March 1991; Umurava ("Commitment"), created in May 1991; Indoptable Ikinani ("Invincible Ikinani"), created in June 1992; Kiberinka ("Twilight"), created in August 1991; Verites d'Afrique Impamo ("Truths of Africa"), created in August 1992; Umurangi ("Megaphone"), created in September 1991; Ibyikigihe ("Present Events"), created in 1992; and Ijisho Lya Rubanda ("Public Eye"), created in December 1990 (in : Jean-Pierre Chretien et al., Rwanda: Les Medias du Genocide 20, 1995)

151 Alison Des Forges, *Call to Genocide: Radio in Rwanda*, 1994, in: Allan Thompson ed., The Media and the Rwanda Genocide, 2007

to be the voice of the people and the price for a single share was kept low to attract ordinary citizens to support the effort.[152] The founders of RTLM were mainly Hutu hardliners with the President being the main financial contributor to setting up the radio station. The channel was soon to become the most powerful genocide-inciting tool.

The genocide was caused by a lack of an independent judicial system, a lack of laws effectively protecting the journalists, a façade of "independent" media that were in fact government controlled, a culture of obedience, a particular historical situation and a lack of checks and balances that would protect free speech—all of these enabled a group of fanatics to prepare, organize and execute genocide. Even though the content of in the media might have been despicable it was the susceptibility of media to abuse and control that enabled this kind of content to dominate the Rwandan airwaves and newspapers. What has changed in Rwanda fourteen years after the genocide? Has a government committed to the slogan "Never Again" revised its approach? Or are the media still vulnerable to the abuse from the part of the politicians who in a worst case situation could again take advantage of the fear and remorse under-running in Rwandan society? Is the society in *the land of a thousand hills* learning the art of dialogue and critical thinking or is it served the only *correct* version of reality? The following chapter will examine the media market in Rwanda as of 2008.

152 Id.

CHAPTER THREE

Eyes Everywhere - the Current Social and Political Situation

The Rwandan Patriotic Front (RPF) ended the 1994 genocide by defeating the civilian and military authorities responsible for the killing campaign. After its conquest of Rwanda, the RPF was split into a political division, which retained the RPF name, and a military one, called the Rwandan Patriotic Army (now the Rwandan Defense Forces). The RPF continues to be the dominant political party in Rwanda under President Paul Kagame.

Although managing the country with a recent history of genocide requires the leaders of the country to display an exceptional sense of responsibility, it also creates a risk of arbitrarily imposing a definition of this responsibility without the right to challenge it.[153] This is why the RPF has maintained tight control in the field of the politics in Rwanda over the past 14 years. Since 1994, the RPF has turned "consensual" politics into a veritable mode of governing and marginalized the importance of criticism and opposition. The doctrine and politics of national unity adopted by the RPF in fact contradicts the exercise of political freedom and pluralism. The restrictions on civil and political rights are introduced in the name of country's stability and the society's duty to promote unity and reconciliation. Civil society, media and politicians of different political associations are forced to follow this line.

Which way to political liberalization?

Political liberalization in Rwanda should be viewed in the context of the experience of democratization from the years 1990-1994. The RPF justified its control over political life on its analysis of this period and invoked that the political leaders at the time were immature and irresponsible. That era of liberalization coincided with a period of civil war which resulted in the gradual polarization of political lines. For the RPF it is clear that a multi-party system was incapable of stemming the extremist tide that led to genocide. On this basis the formation was convinced that

153 *End of Transition in Rwanda: A Necessary Political Liberalization*, International Crisis Group, Africa Report no.53, 13 November 2002, p.2

the only way to eradicate ethnic divisions is to impose a discourse of unity. Paul Kagame summed up this sentiment in 1995 when he stated: "If you try to organize elections, to authorize parties to grow like mushrooms and allow competition, you will be making an even bigger problem for yourself than the one you already have: dividing people who are already divided. What does the multi-party system mean in our African societies? That I will use every tactic to distinguish myself from my neighbor with the aim of winning more votes then he wins. (…) You will never have a united country. We will never have a democracy: people will pounce on each other. One party would emerge to defend those who perpetrated the genocide, then another would arise saying that members of the former should be tried. (…) You would have a great war. We must analyze the problems that are in store for us and those that we are going to solve."[154] The RPF's political platform is informed by the belief that "the population must be reeducated and the political leaders must develop a greater sense of responsibility as a prerequisite for democratization. Liberalization is thus contingent on a change of mindset, meaning, in effect, the achievement of the ideological objectives laid down by the RPF."[155]

Since 1990 the RPF has advocated the application of political and economic reforms, under a new leadership, aimed at creating a "New Rwanda" rooted in the concept "participatory approach." This means that the population and the leadership work together for the transformation of the country and the emancipation of the society. This can happen only once the population has been educated and the elites gain a sense of responsibility. In the RPF's view the Rwandan people have never been free to discuss their problems and have always been waiting for the instructions and guidance from their superiors.[156] This fostered the culture of obedience which enabled the previous governments to manipulate the population into committing the genocide. Therefore it is important to help the people resist such political manipulation by firstly addressing urgent issues of hunger, illiteracy and obscurantism and secondly by gradually instilling democratic principles. It seems that the RPF believes the people are not ready to be given the floor for a robust discussion quite yet.

The RPF as a political party perceives itself as being on a mission of educating the Rwandan people how to make their own decisions, how to think critically, and how to conduct fruitful discussion

154 In: Francios Misser, "Towards a New Rwanda?", Karthala, 1995, an interview with the vice-President Kagame.
155 *End of Transition in Rwanda: A Necessary Political Liberalization*, International Crisis Group, Africa Report no.53, 13 November 2002, p.4
156 Report on the Reflection Meetings held in the office of the President of the Republic, Kigali, August 1999, p. 46

about their problems. All this must be done in the spirit of unity, and anyone who is sowing the seeds of divisionism will be placed under strict scrutiny.

On one hand such an approach identifies some serious issues that have to be addressed in Rwanda. On the other hand it is inherently contradictory while aiming at educating the people in a critical discourse that yet has to conform to the principle of unity. Rwanda is a country where appearances are deceptive. Order, security and the state of infrastructure are tangible realities that can be attributed to the government. However these appearances conceal the persistence of certain ways of thinking such as rumors or prophecy.[157] Without a public forum these circulate privately in small circles. The patterns used to explain events such as genocide continue to be partisan and "different communities are deeply entrenched in antagonist stereotypes."[158] If a sustainable peace is to be achieved these stereotypes must be made available for *verification* in a critical public discourse. Yet, in pursuit of national unity the domain of public criticism "has been whittled away to an artificial pluralism installed not only in national bodies and political parties but also in opposition forces of the press and civil society."[159] The activities of Rwandan civil society organizations are only tolerated as long as they are compatible with the official government line.

The situation of the press had initially been different. After the RPF came to power, the press had begun to be more diversified. The publications representing different views participated alongside the government press in the debate on the reconstruction of Rwanda. An open forum for public debate had been created. Beyond covering regional issues, the articles dealt with the problems of daily life in urban communities, the economic issues and the problems of nepotism and corruption among leaders.[160] Since 1998, press freedom started to be gradually restricted and the indispensable tool of sustainable peace and democratic, critically thinking society has been rendered ineffective in the name of unity and policies articulated by the ones in power.

[157] *End of Transition in Rwanda: A Necessary Political Liberalization*, International Crisis Group, Africa Report no.53, 13 November 2002, pp.10-11
[158] *Id.*
159 *Id.*
160 *Id.*

Spotlight on Rwanda—Civil and Political Rights

According to the human rights reports issued in 2008 by the U.S. State Department, Human Rights Watch and Amnesty International, Rwanda has committed violations of human rights in the following areas: citizens' rights to change their government, extrajudicial killings, freedom from torture, fair trial, freedom of expression and association and rights of women and children.[161] Tensions persisted between and within Rwanda's main ethnic groups. The government took some positive steps to advance respect for human rights that "resulted in a June 2007 law that abolished restrictions on political party organizational efforts at the local level, a dramatic drop in reports of the torture and abuse of suspects, and passage of legislation that significantly expedited the gacaca process."[162] However in 2007, Rwanda was ranked 181 out of 195 countries in terms of respect for press freedom by the USA-based organization, Freedom House. Harassment, threats, intimidation and violent attacks against journalists, in particular those working for non-state media, continued.[163]

There are 38 newspapers, journals and other publications officially registered with the government.[164] The newspapers are distributed mainly in the bigger cities and rarely get to the rural areas. Newspapers perceived as independent do not have high circulation numbers and are published irregularly due to financial problems. The literacy rate among adults in Rwanda is only 65 percent.[165] That is why radio is the most widespread and possibly most influential mean of communication in Rwanda. Radio stations are possibly even more expensive to run than newspapers. Need of funds from the advertisements makes them more dependent and more prone to manipulation from the decision makers. The question of financial pressure is discussed below.

Foreign radio stations – the BBC and the Voice of America (VOA) remained an important source of independent news, despite the spread of local private radio stations. According to Committee to Protect Journalists by late 2006, Rwanda had 10 private radio stations—four commercial, four

161 U.S. Department of State 2007 Human Rights Country Reports: Rwanda, Bureau of Democracy , Human Rights and Labor, March 11, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>; Human Rights Watch Annual Report 2008 available at: <http://www.hrw.org/wr2k8/>; (last visited July 20, 2008)

162 Id.

163 Amnesty International 2008 Report, available: <http://thereport.amnesty.org/eng/regions/africa/rwanda>, (last visited July 20, 2008)

164 U.S. Department of State 2007 Human Rights Country Reports: Rwanda, Bureau of Democracy , Human Rights and Labor, March 11, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>; Human Rights Watch Annual Report 2008 available at: <http://www.hrw.org/wr2k8/>; (last visited July 20, 2008)

165 United Nations Development Program, Human Development Index 2007, Available at: http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_RWA.html, (last visited on July 29th 2008)

religious, and two community stations—in addition to the state-owned Radio Rwanda and three affiliated community stations. The commercial radio stations mostly shied away from investigative news and political commentary. A notable exception came in late summer when some commercial stations aired talk shows criticizing authorities over a ban on motorcycle taxis in the capital, Kigali. Television broadcasting remained a state monopoly with just one government owned channel.

Legal Framework for Freedom of Expression in Rwanda

Freedom of expression is guaranteed with certain reservations by the Constitution of the Republic of Rwanda. Other principal domestic documents regulating the state of free expression are:

- 11/05/2002 – Law n° 18/2002 Governing the Press.
- 12/11/2002 – Presidential Order n° 99/01 on Structure, Organization and Functioning of the Press High Council.
- 18/12/2001 - Law n° 47/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism, defining "act of divisionism"

The Constitution

The Constitution in the article 34 provides:

- "Freedom of the press and freedom of information are recognized and guaranteed by the State.
- Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honour, good reputation and the privacy of personal and family life. It is also guaranteed so long as it does not prejudice the protection of the youth and minors.
- The conditions for exercising such freedoms are determined by law.
- There is hereby established an independent institution known as the High Council of the Press.
- The law shall determine its functions, organization and operation."166

The Constitution provides in this article for the limitations of the free expression. Rwanda being a place where media played a vital role in orchestrating the genocide is not a country where free speech standards would be interpreted as liberally as for example in the United States. Like in

166 The Constitution of the Republic of Rwanda, Available at: <www.cjcr.gov.rw/eng/constitution_eng.doc>

Europe where the notion of human dignity is regarded in laws regulating free speech, the Rwandan Constitution acknowledges its history and introduces a possibility of imposing adequate limitations on media in the interest of the Rwandan people. These limitations are: public order, good morals, the right of every citizen to honor, good reputation, the privacy of personal and family life and the protection of youth and minors. Although the fundamental law thereby guarantees the rights to freedom of expression and freedom of information, the formulation of the article 34 is vague enough as to allow the authorities to significantly restrict these rights. Since the judicial system of Rwanda has not interpreted so far the scope of those possible limitations in favor of the journalists, possibly due to lack of its independence, the statutory laws drafted and adopted by the legislature have proven to be overly broad, vaguely defined and what is probably most important remain unchallenged.

The Constitution also provides for creation of the mechanism of protection of the media freedom. The institution, which by the letter of law should be independent, is the High Council of the Press (HCP).

The High Council of the Press – a Media (Freedom) Guardian?

The High Council of the Press has been created by the Law n° 18/2002 Governing the Press in the article 73. The structure, organization and functioning of the National Press Council are specified by a Presidential Decree n° 99/01. The mission of the High Press Council entails:[167]

- guarantee and ensure freedom and protection of the press and of other means of mass communication;
- ensure respect for press ethics;
- check whether political parties and associations enjoy equal access to official means of information and communication;
- give advice on authorizations as to setting up audio-visual press enterprises;
- give advice on decisions to suspend, to ban the publication of a newspaper or periodical or to close down a radio or T.V. station or a press agency;
- issue a press card;

The High Council of the Press is the only officially established authority that has a mission of "ensuring the freedom and protection of the press." In order for it to carry its duties effectively its' independence must be undisputed, and guaranteed not only by the letter of law but also by the

167 11/05/2002 – Law n° 18/2002 Governing the Press.

structural and organizational arrangement of its work. Even though the Rwandan Constitution calls the HCP "an independent institution" and the law 18/2002 Governing the Press defines it in article 73 as an "autonomous body as far as press is concerned" there are some serious reservations as to the actual independence of the HCP that need to be raised. The first issue concerns the organizational independence of the HCP. According to law 18/2002 art.73 the National Press Council directly reports to and is supervised by the Office of the President of the Republic. It is the President of the Republic that by means of a Decree defines the structure, organization and functioning of the HCP. In other words, it is the President who decides how and by whom the decisions regarding the freedom of the press are undertaken. The second issue relates to the financing sources for the activities undertaken by the Council.

Patrice Mulama, the Executive Secretary of the High Council of the Press described the position and function of the institution in an interview conducted by this author on May 9th, 2007:

Katarzyna Romanska: When was the High Council of the Press established?

Patrice Mulama: The High Council of the Press began functioning in 2003. Art. 74 of the Media Law establishes HCP, art 34 of the Rwandan Constitution also mentions HCP.

KR: Is it an independent body?

Independence is a relative term. On one hand there is the financing issue. Our financing comes in 100% from the Ministry of Finance. It needs to be approved by the Parliament and then the monthly disbursements go though the Central Bank from the Ministry. We try to look for funds from outside to sponsor our different projects but all in all HCP is a government financed body. However when it comes to the decision-making - HCP is independent. The documents on HCP also say it is independent.

KR: The powers of the HCP are quite substantial…

HCP is advisory body to the government. We monitor the media. If the media break the law HCP can act in a number of different ways: we can mediate but we can also advise suspension or banning by the government. HCP can put sanctions on the journalists. We write reports which go to the Ministry of Information, we can appeal to the author of an article to publish an apology, to rectify

an article, we can and do call a journalist to a public hearing. If we recommend suspension it can be for a maximum 1 year.

KR: Did you already happen to summon a journalist for a hearing in relevance to an "inappropriate" article?

Yes, in 2004 Kabonero and Bizumuremyi were summoned for a public hearing, they never showed up.

KR: So what happens if the accused don't show up?

If the journalists never show up, they are assumed to have been present and the decisions are taken anyway - demand of apology, demand of rectification or recommendation of the suspension.

KR: Did you ever recommend suspension of a newspaper?

Yes, we recommended the suspension of a newspaper once - in 2004 in case of *Umuseso*. The government never suspended it. The case was then taken to the court - and the editor got a penalty of 1 million of RWF and 1 year in jail in suspension. In 2005 we also recommended the suspension of *Imvaho* [KR: a government newspaper]. This decision was also ignored by the government. In an action of a protest against this disregard the head of HCP resigned. Everyone had an impression HCP though established by the government, its' advisory role was a mock. [KR: Please note that according to law HCP is to be an independent body. Mr. Mulama calls it here 'advisory to the government']

KR: What does the public hearing look like?

Public hearing is a gathering of several people. It is open to the public. The participants are: 9 HCP Board members, the newspaper editor and the petitioner who brought the article to HCP's attention. This crowd takes up the decision.

KR: What is the structure of the HCP?

HCP consists of 2 bodies: The Board, which is the highest executive body, and the Executive Secretariat.

KR: Who exactly is represented on the Board?

There are 9 members of the Board - 3 from the government, 3 from the independent media, 1 from the government medium and 2 from the civil society.

The Board, the highest executive body of an institution that is supposed to protect the independence of the media, is appointed and can be dismissed by the Cabinet. The selection of persons is made from a list of candidates proposed by the Minister of Information.[168] Four of its nine members are the government officials.

END OF INTERVIEW

In case of a controversy occurring in a published article HCP's role is to mediate between the petitioner and a journalist. More often than not the person denouncing the article is a prominent figure in the Rwandan political life with close ties to the main players on the HCP Board. The Presidential regulatory Decree does not mention any mechanisms of protection of the HCP's independence. The draft of a new bill on the Press Law suggests to give the institution desirable independence. It is not certain however if this will happen. Moreover in the previously mentioned article 2 of the Presidential Decree on the mission of the HCP the prerogatives focus rather on punishing the dissidents than fostering a diversified discourse.

The High Council of the Press does not evoke respect in the community of journalists it allegedly protects. The Rwandan correspondent of Reuters who prefers to remain anonymous said: "HPC is a useless institution and it is not respected in the community of the journalists. It has no power neither to protect nor to prosecute anybody. If they summon me for a hearing I will not go. They are too weak to do anything."[169]

The current law and the draft of a new Press Law does not limit the Council discretion in awarding press cards. In the recommendations on the draft of Rwandan Press Law and High Council of the Press law professors M. Price, P. Krug and E. Armijo suggest that the draft does not make it clear that "the Council will *not* withhold press cards to those journalists whose work has been or will be critical of the government." As it is now, the HCP enjoys much discretionary power in granting the press cards to the journalists.

168 12/11/2002 – Presidential order n° 99/01 on structure, organization and functioning of the Press High Council, article 4.

169 Interview conducted by Katarzyna Romanska, May 11th 2007, Kigali, Rwanda.

The High Council of the Press is an institution largely criticized for lacking independence and focusing its energy and resources on monitoring the country's journalists at the same time failing to defend the freedom of expression or to investigate alleged violations of journalists' rights. The HCP will have to face such criticism probably as long as the current laws regulating its structure and activity are in place.

To the Council's credit the U.S. State Department Human rights report points out: "(…) in August [2007] the council requested an explanation from the Minister of Information concerning his closure of the Weekly Post; the council also sent representatives to accompany journalists called by the police for questioning."[170]

Law of 11/05/2002 Governing the Press

Law of 11/05/2002 Governing the Press is currently the most elaborate legal document governing freedom of expression in Rwanda. Due to many drawbacks a new draft Press Law is currently being discussed. This discussion reveals many legal obstacles that stand in the way of the free press.

The government officials often refer to the rule of law when addressing issues arising in relevance to censorship and closure of subsequent newspapers. But it is not the rule of law that is a problem here but rather *how* the laws are formulated. In response to a critical article by John Honderich "Rwanda: Soon Press won't Breathe or Sneeze," Gabrielle Uwimana, an official from the Rwandan Ministry of Information wrote: "Rwanda believes in freedom of the press. That's why the government has put in place the media policy and established laws that create an environment where media freedom can flourish. Indeed, article 34 of our constitution promotes media freedom and law No. 18/2002 of May 11, 2002 Governing the Press elaborates on how this media freedom is exercised. (…) the draft Press Law is a result of wide-ranging consultations among journalists and all media stakeholders. In addition, the draft press law was enriched by comments by the Stanhope Centre for Communication Policy Research from USA."[171]

The Media Bill adopted by the Parliament in June 2002 has proven to be an effective tool of a

170 U.S. Department of State 2007 Human Rights Country Reports: Rwanda, Bureau of Democracy , Human Rights and Labor, March 11, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>; (last visited July 20, 2008)

171 Gabrielle Uwimana, *Rwanda: Country's Press Freedom Unimpeded,* 13 September 2007, available at: http://allafrica.com/stories/200709130021.html, last visited: July 23 2008

continued government control over the media. The High Press Council received the mandate of overseeing media activity but has little capacity to guard their independence. The law governing the press provided penal responsibility for offences committed in the print media including staff, writers, printers and vendors/distributors. By including those not in any way engaged in producing proscribed articles such as newspaper vendors, the cascading responsibility was open to abuse.[172]

Under the penal code, libel is still treated as a criminal offense. The government has used such laws to close down some media outlets like The Weekly Post, De-Liberations, France's RFI, and others with little justification. The stories of government officials harassing journalists and, at times, calling editors to ask them what kind of stories they have for the day and which reporters are writing them are circulating.[173] One of the journalists, who by now is in exile in a neighboring country describes this dynamic in his interview:

> M.R.[174]: "Within a year I discovered approximately 150 scandals, and I was harassed in many cases that I discovered and wrote about. (…) I am usually summoned to the office of the Chief of National Security service. They are asking me for my sources and they are threatening to sack me. (…) Recently the Rwandan rebels were captured in Uganda and they were supposed to be handed over to the Rwandan authorities. I managed to get the list of the names and I made a phone call to get a comment from a high official. The official asked me to come to his office and said he would send his people to pick me up. They did come and pick me up but instead of taking me to the office they took me to a local bar. There I met with the official who asked me not to disclose the information I had because it was a matter of the national security. Eventually I was pushed into the car, taken to a remote place and kept shut away for a week. I was fed well, nothing happened to me physically, but I was detained because they didn't want the information I had to leak. They informed even my editor about the situation. (…) If I write about the President, I need to

172 Amnesty International, *Rwanda: Summary of Concerns,* 14 October 2003, available at:<http://reliefweb.int/rw/rwb.nsf/0/88ffd14504c352d949256dc0000ba5f7?OpenDocument&Click=>, last visited: July 23 2008.

173 Media Sustainability Index Africa, IREX, Available at: <http://www.irex.org/programs/MSI_Africa/rwanda.asp>, Last visited July 23 2008

174 The initials of the interviewed journalist have been changed.

submit it to the President's Office, it gets edited, goes to the National Security service, goes back to the newspaper and I need to rewrite it. Only then it gets published."[175]

However, on a positive note, the government has agreed to amend the existing Press Law to remove sections that are considered to hinder press freedom. In the new draft of the Press Law, there are provisions that guarantee access to public information; if passed, they would end the restrictions that have been in place for decades.[176] Still, the team of experts from Stanhope Centre for Communications Policy research point out a number of weaknesses of the draft law they have been hired to comment. For example Professors Price, Krug and Armijo in their recommendations to the drafters bring attention to vagueness and overbreadth of the provisions relating to limitations of the press freedom in the draft law: "Terms like "ideas that are detrimental to human rights" and "likely to destabilize the country or disrupt good morals" are too broad, and can be used to chill speech. Part 3 of the article [17 of the draft law] which makes illegal "an individual attack on the person of the President" or other officials and diplomats, is inconsistent with international freedom of expression standards to which Rwanda is a party, and can easily be used to suppress any viewpoints that might be critical of the government."[177]

Law no 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism

There is still another legal document that has a huge impact on the condition of the free media in the central African country. It is probably the most effective tool of criminal suppression of all the dissenting voices. It is the reason for which many journalists avoid certain topics and why a list of "forbidden issues" has been created. This document, in which content based restriction of free speech is contained, is the law no 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism. The Article 1 of this document provides the definition of discrimination and sectarianism:

> "1° Discrimination is any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical features, sex, language, religion or

175 Interview conducted by Katarzyna Romanska, May 24th 2007, Kigali, Rwanda.
176 Media Sustainability Index Africa, IREX, Available at: <http://www.irex.org/programs/MSI_Africa/rwanda.asp>, Last visited July 23 2008
177 Monroe E. Price, Peter Krug, Enrique Armijo, *Draft Rwandan Press Law and High Council of the Press Law: Recommendations*, Stanhope Centre for Communications Policy Research

> ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is party;
>
> 2° Sectarianism means the use of any speech, written statement or action that *divides* people, that *is likely* to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination mentioned in article one;
>
> 3° Deprivation of a person of his/her rights is the denial of rights provided by Rwanda Law and by International Conventions to which Rwanda is party."[178]

Article 2 of the law specifies its aim:

> "This law aims at punishing any person guilty of the crime of discrimination and sectarianism."[179]

Article 1.2 is of a particular concern here. It is no more and no less than a content based limitation that can and is used by the government to silence anyone who expresses criticisms. "Any action that divides people" cannot be clearly defined in legal terms. For in this category may fall an incitement to genocide as well as an alternative political opinion – two extremes that can hardly be considered the same. In reality anything the government considers "dividing" has been qualified as a taboo topic. An anonymous international observer remarked:

> "The journalist are often getting threat phone-calls and are intimidated. Sensitive issues for which one can get in trouble are: corruption, mismanagement (those two entail double-standards), no criticizing gacaca as an institution. Rwanda has a "law on divisionism" which prohibits inciting to division not only between Hutu/Tutsi ethnic groups but also against RPF political party. In 2005 Charles Kabonero published in Umuseso an article on politicians-returnees from different countries and about the dividing political lines between them. Upon publishing this article Kabonero was accused of divisionism and convicted for fine in 2006. Another sensitive issue is mentioning anything of Hutu/Tutsi group. Normally the journalists who break the law with their publications should end up with their cases in the Court. Instead in Rwanda few cases are dealt with by the court and many more on the streets in accordance with the "fist law."[180]

178 Law No 47/2001 of 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism, available at: <http://www.amategeko.net/display_article.php?Motcle_ID=11443&Information_ID=1190&Parent_ID=30692280&type=public>, last visited: July 23, 2008.

179 Id.

180 Interview conducted by Katarzyna Romanska on 27th of April, 2007, Kigali, Rwanda

National Unity and the issue of "Silences"

Eleneus Akanga, the journalist whose Weekly Post has been shut down soon after registration says that one can freely talk and write about social policies.

> "In this area you can talk freely about anything. But when it comes to politics one has to be extra-careful. Criticizing a government policy can be mistaken for being anti-policy. Here officials never look at the points that the journalist or commentator is raising, they take any criticism for negativity and they will be quick to either silence the author through intimidation or a direct phone call. It is very tricky because they always want each policy to sail through. Issues [on the index are] the Gacaca courts, things that have to do with the presidency, person of the President, the army, unity and reconciliation, and then the genocide. [These] are considered matters where comment must be highly restricted. Failure to abide by this may be catastrophic to the authors or publications. If you are not harassed, threatened or beaten, your publication will be denied adverts and in a country where publications make less from sales, survival becomes extremely difficult."[181]

In her article "Reconciliation in Post-Genocide Rwanda" Eugenia Zorbas further enumerates the taboo topics or "Silences" as she chooses to call them. These additionally are:[182]

- Alleged RPF war crimes
- Different versions of Rwandan history, usually diverging in their account of the nature of the Hutu/Tutsi/Twa cleavages and the genesis of the Tutsi privilege.
- 'We are all Banyarwanda now': les Ougandais (English-speaking Tutsi returned from Uganda) occupy most of the spots in government and administration at the same time enforcing the notion of national unity for the benefit of everyone.
- Collective Hutu guilt

Public incitement to divisionism is punishable by up to five years in prison and/or heavy fines. Many journalists in Rwanda practice self-censorship. Non-protective law provisions and institutions and prolific physical and psychological harassment are for many sufficient arguments to stay within the limits delineated by the government on what is right, wrong and what can and what cannot be discussed. However, as a general tendency the press regularly published articles critical of senior government officials and government policy. Simultaneously there were "increased instances in which the government harassed, convicted, fined and intimidated independent journalists who

181 Interview conducted by Katarzyna Romanska on May 2nd, 2007, Kigali, Rwanda.
182 Eugenia Zorbas, *Reconciliation in Post-Genocide Rwanda*, African Journal of Legal Studies, Spring, 2004, available on Westlaw.

expressed views that were deemed critical of the government on the sensitive topics or who were believed to have violated law or journalistic standards."[183]

Below the reader will find statements made by different Rwandan journalists and officials on the issue of "silences." Most of the interviewees preferred to remain anonymous for fear of harassment and persecution:

XX (the New Times):

> **"KR: Can you write about anything in the newspaper or is the list of topics limited?**
>
> You rather cannot express opinions against the government. It happens that the government officials call and tell us what should be written and published in the New Times and what should be not.
>
> **KR: What happens if you write something "prohibited"?**
>
> If anybody writes things critical they can be sacked or imprisoned. No opinions are allowed that would be critical. Well, only opinions based on 'real facts' maybe. If things are well proven and documented, the journalists can write about mismanagement and corruption within the government but the story must be extremely well documented and it must rely on facts only. No speculations.
>
> **KR: Do you think that the government has a legitimate reason to control the media in Rwanda?**
>
> In Rwanda low levels of education are widespread - there is definitely lack of critical thinking ability. People take things wholesale. What's written must be true. I think this is a reason for the government to control media. Besides the extremists are still out there."

Former editor in chief of the New Times:

183 U.S. Department of State 2007 Human Rights Country Reports: Rwanda, Bureau of Democracy , Human Rights and Labor, March 11, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100499.htm>; (last visited July 20, 2008)

"We were not allowed to write about particular stories and certain people. On the other hand there were stories that we were pressed for. The Board expected me to endorse and publish articles badmouthing other newspapers etc. I was very frustrated with this pressure."

JBG (Umuvugizi):

"In September 2006 I published an article about nepotism, corruption and the genocide suspects within the government. I appealed for self-cleansing of the government before trying the citizens in the gacaca courts. I mentioned people by names; some of them were prominent politicians. These people however are well connected and remained in office. I also criticized the Appointment Committee of the RPF, which is appointing people to the high offices. Right after publishing that I was put under surveillance. The cars with no plates followed me. I received threat phone calls. In November 2006 a certain minister called me and said: "Stop and the advertisements will be back." Another other military general sent his people to tell me to stop writing about him."

BB (Reuters):

"I got in trouble in the past in relevance with the articles which I had written about the human rights abuse by the police and about the opposition during the election period.

KR: What do you mean by getting into trouble?

In this country the state security agents are the tools of control. They tap the phones, they follow people. But by now I am not very concerned about the content of my articles. Being Reuters correspondent I have no restrictions on what I write because it doesn't get published in Rwanda."

U.S. Embassy official:

"It seems that in Rwanda every story instead of having two sides has ten sides. We need to remember that when we discuss case of journalists' harassment. And such cases are quite a few.

KR: By this you mean that cases of restricting free speech here are not quite clear-cut situations?

Well, for example, there was a publication in the newspaper called *The Newsline*, by Charles Kabonero and Didas Gasana - the second person in charge at the newspaper. It was around the New Year's 2006-07. The article was criticizing the lack of political space in Rwanda and the closed and exclusive circle of people making the decisions about the country. And the author of this article didn't face any repercussions. However another article published by Agnes Nkusi in her newspaper brought about a completely different reaction. She wrote about the killings in 1994 and insinuated that there could have been a double genocide. She also accepted the judgments of the French judge Bruguiere, who accuses President Kagame of grave international crimes, as facts, and not necessarily as hypotheses. Now she's in jail. The prosecutor wanted for her 5 years. She got one year.

Another case is that of Bonaventure Bizumuremyi, an Umuco journalist. He has been charged with 4 things, regarding the article that appeared in Umuco in August 2006. He was charged with failure to appear for a hearing, he never appeared for the questioning regarding his article. He was charged with divisionism, because he questioned the Tutsi origin. He was also charged with defamation of the senior officials."

Eleneus Akanga (in exile)

"Take *ingando*[184] for example. The government believes that *ingando* is out there to promote unity and reconciliation. There was some controversy around ingando, but you cannot freely discuss that. If you want to write about a policy—say unity and reconciliation—it has to be done within certain limits. This is especially so when you are working for the government newspaper like the New Times. You will never see a critical article about *gacaca* in the New Times. You will never see a critical article about unity and reconciliation or about genocide survivors in the New Times. Nor you will see anything positive or touching about the genocide suspects in the New Times. And keep in mind this is the majority of this society."

Financial Pressure on the Rwandan Media

Financial pressure is along unofficial threats and "silences" a significant, and probably the most effective component of indirect censorship, which employs subtle silencing methods as opposed to more brutal and obvious techniques such as physical intimidation. Indirect censorship is particularly prevalent in the countries experiencing political transitions where governments can no longer afford to suppress media independence outright but are not yet ready to recognize the right of the media and the public to hold state actors accountable.[185] This pressure may take a form of "manipulation of both public and private sector advertising; covert subsidies to selected media outlets; orders to government agencies and employees not to subscribe to particular periodicals; selective denial of

184"Ingando" derives from the Rwandese verb "Kugandika" that refers to halting normal activities to reflect on, and find solutions to national challenges. When the National Unity and Reconciliation Commission was established, it formally developed Ingando as a tool to build coexistence within communities. The first beneficiaries were ex - combatants from the DRC. The programme later expanded to include school going youth and students at secondary and tertiary levels. By 2002, the training was extended to informal traders, and other social groups including survivors, prisoners, community leaders, women and youth.

Today, Ingandos are carried out countrywide and most are co-facilitated with communities. Ingandos entail residential camps, bringing together between 300 and 400 people per programme for between 3 weeks to 2 months depending on time available and focus of the sessions. The numbers also vary, although at each prison release, 1000 prisoners undergo Ingando. Topics are covered under five central themes: analysis of Rwanda's problems; history of Rwanda; political and socioeconomic issues in Rwanda and Africa, rights, obligations and duties and leadership. (Source: National Unity and Reconciliation Commission)

The government claims that ingando is simply an updated version of a Rwandan tradition. Here is where the controversy arises. Although indigenous practices certainly provide fertile ground from which reconciliation processes may bloom, ingando in its present form appears to be a modern RPF political creation that serves to consolidate the RPF's power. Like many other governments, the RPF has an interest in "inventing traditions" that legitimize current forms of social control or practice. Additionally, the government's appeal to culture may be an attempt to deemphasize the political utility of ingando as a mechanism of pro-RPF ideological indoctrination. (Source: Chi Mgbako, Ingando Solidarity Camps, Harvard Human Rights Journal, Spring 2005)

185 *Buying the News. A Report on Financial and Indirect Censorship in Argentina*, Legal Policy Series, Open Society Justice Initiative, New York, 2005

access to newsprint or printing facilities; imposition of unreasonable high registration fees; and politically motivated use of financial, tax, labor, and other laws (…)"[186] These tools allow the government to harass critical media and private businesses that support them. The chilling effects of such indirect censorship are particularly severe in countries undergoing democratic and market transitions, where the financial survival of many media outlets is under a permanent threat.

The 2002 Declaration of Principles on Freedom of Expression on Africa provides that: "States shall not use their power over the placement of public advertising as a means to interfere with media content" and that they have a positive obligation to "promote general economic environment in which the media can flourish." [187]

In Rwandan the issue of ownership and financial sticks and carrots poses a serious threat to the freedom of expression. With a majority of population being poor and rural there is a handful of businessmen with money for advertising. These are usually concentrated in the capital and are closely connected to the government. An international NGO observer points out:

> "The issue of financial sources for the newspapers is huge in Rwanda. Every newspaper is dependent on the people and its financing sources. Rwandan middle class with money is almost in 100% connected with politics. They are also the source of financing of course. Unlike the USA where there are independent people who have money and fund independent newspapers in Rwanda people with money are always connected to politics. This country is too small and has a history such that it was impossible for the independent middle class with money to develop. On principle stands there is no real opposition in Rwanda. The political parties don't really differ in their program. There is one general common view in the political scene with slight differences here and there regarding details. (…) There is no independence because the journalists are intimidated, threatened by not getting access to ads and info sources. I heard rumors that even the cabinet on one of the meetings discussed the issue who should receive access to ads."[188]

Advertising leverage is used to force owners and editors to fire or sideline critical journalists; to punish or make an example of critics. Financial pressure is also employed in the media by a government wanting to improve its own image or to educate the society in accordance with the lines delineated by the authorities. Such practices chill the entire media environment by fostering self-

186 Id.
187 http://www.achpr.org/english/resolutions/resolution67_en.html
188 Interview conducted by Katarzyna Romanska on 27th April, 2008, Kigali, Rwanda

censorship and widespread uncertainty about the limits of acceptable criticism.[189] The interviews with the harassed editors and journalists attached at the end of this paper mention a number of illustrative examples of indirect censorship in the form of advertising cuts, releases from work up to declaring the journalists "person non grata" in the country.

Yet a report by a senatorial committee shows that the majority of Rwandans believe there is freedom of expression.[190] According to this report 75 percent of respondents also "have trust" in leadership. " The report (…) established that 77% of respondents believed Genocide revisionism and denialism are very common and recommend stringent measures."[191] The report identified the factors contributing to the easy propagation of Genocide ideas and hatred to be poverty, hate and politicians. President Kagame commended the release of the report saying it has credibility because "Rwandans" researched it. The President emphasized this was indicative that Rwandans "understand" that problem at hand and want to solve it. Kagame also wondered if "Rwandans and "others" do have a uniform understanding of what is entailed in freedom of expression: "The underlying principle (freedom) is necessary and I am sure the will to have it established exists as well but the issue is does everybody understand it uniformly? (…) I don't believe freedom that makes some people use the same freedom to burden others is really what we need."[192]

The RPF rule instilled in the wake of the genocide has for is guiding principle the doctrine of national unity which is in the government's view the only way to peace. Liberalization of political life cannot be implemented immediately because the Rwandan people need to be first reeducated and given a deeper sense of responsibility. The culture of obedience that enabled the previous governments to manipulate the people into the genocide should be, according to the RPF, eradicated. The government sees the ability of critical thinking albeit in a spirit of national unity as a *sine qua non* for any liberalization in the political and civil spheres of life. The governmental approach accurately identifies certain important problems that bother the Rwandan society. Yet the government does not seem to acknowledge that the ways it chooses to achieve its long-term goals are misleading. It does not seem to notice that the very culture of obedience it wants to eradicate is

189 *Buying the News. A Report on Financial and Indirect Censorship in Argentina*, Legal Policy Series, Open Society Justice Initiative, New York, 2005

190 BBC Monitoring Africa, *Senate report shows majority of Rwandans believe there is freedom of expression*, April 26, 2007 (Available at Lexis Nexis)

191 Id.

192 Id.

fostered by the policies of controlled re-education and prohibition of a critical debate in the media on many issues not directly relevant to the prohibited grounds in the freedom of expression related case law.

CONCLUSION

Problems and questions arising under the free expression rights are addressed differently in different legal systems. This diversity in discourse about freedom of expression arises from the background in which it takes place—diverse history and political and legal cultures of respective countries or regions.

The United States is a mature democracy with a well-developed system of checks and balances. The American attachment to the principle of "freedom from the government" and the culture of individualism create an entirely different set of conditions for an implementation of the free speech standards than the Rwandan environment. The liberal approach stricken by the United States Supreme Court as it is in its present form could bring about more harm than benefit if applied in the post-genocide, overpopulated little African country. This is even more so if we consider that an increasing number of the American scholars point out to the rising violence evidenced by the growing proliferation of hate or discriminatory speech.

The Council of Europe countries, although diverse on many levels, managed to succeed in creating the most effective human rights protection system in the world. The European Court of Human Rights based in Strasbourg is a real guardian of free speech rights without dismissing the governmental concerns and reservations. Europe, with its' history of the Second World War and the Holocaust has much to offer to Rwanda. The European experience led to the acknowledgment of the dangers of speech and resulted in development of a free speech precedent, which could constitute an accurate source of inspiration for the Rwandan judiciary and the lawmakers dealing with the freedom of expression provisions.

The declaratory Universal Declaration of Human Rights and the legally binding International Covenant of Civil and Political Rights are parts of the global United Nations human rights protection system. The two documents are, unlike the US and European solutions, part of the fundamental laws of Rwanda, which in principle should be domestically respected and implemented. As of now it seems that the Rwandan nationals could bring many cases before the UN

Human Rights Committee. However the slow process of revising the individual communications and ineffectiveness of the Committee's rulings are not fostering an encouraging environment for the implementation of the global human rights standards in Rwanda. Moreover in almost all instances the regional systems functioned better than the global one.

Such regional system for Africa is enshrined in the African Charter of Human and Peoples' Rights. There are some positive signs indicating that the African human rights system is evolving in the rights direction and that the newly created African Court of Human Rights based in Arusha will gradually expand and elaborate the binding precedent in the member states of the African Union. Such expansion is necessary since the wording of the Charter is broad and prone to political manipulation. The "claw-back" clauses leave unusually much space for the domestic authorities to interfere with the human rights standards—freedom of expression being one of primarily targeted rights. Nonetheless a hope arises with the increased powers of the African Court and with the evolution of the human rights consciousness inn the African societies. For the freedom of expression to be appropriately protected in the region further developments will still have to take place.

Reporters Without Borders, a world-wide journalistic watch-dog organization publishes each year an annual Worldwide Press Freedom Index. Out of 169 countries Rwanda occupies 147th position. The first law on media—the 1922 Belgian Decree on the Press— set the scene for the Rwandan media laws to come in the future. The restrictive provisions of that law sound today all too familiar- arbitrary powers in the hands of the governor, authors of the articles publicly contributing to erosion of Belgian authority punished. Yet a number of newspapers emerged under this law in the 50's. Kinyamateka, a Catholic church publication was the main vessel of communicating the revolutionary ideas to the Hutu majority, a policy then accepted by the departing Belgians. Under the editorship of Gregoire Kayibanda, a later President of the First Rwandan Republic, the newspaper set the ground for the 1959 Revolution that claimed many innocent lives. It was then when the Rwandans first experienced the manipulative power of the media. The destructive potential of the media revealed itself in the absence of balance between freedom of expression and its desirable limitation. From then on the monopolization of information by the government proceeded. By 1990's the ground was prepared for a nation-wide, government controlled brainwashing through media. The imbalance of expressive protection in which the government

favorable media, even if extremist, enjoyed more freedom, and the dissidents, even if moderate, less protection, set the basis for the media led disaster.

In 1991 the new media law guaranteed freedom of the press and the protection of confidential sources. However it also introduced rules requiring a prior declaration before starting any journal, a registration of copyrights and an administrative and judicial registration procedure. The former Habyarimana law of 1991 and the Kagame law of 2007 both create a discretionary legal authority which empowers the state through the courts and other institutions to silence the critics. Extremist media supporting Habyarimana's genocidal regime mushroomed protected by free speech arguments without encountering and intellectual obstacle from the suppressed opposition media. The official line of thinking was, just like today, established and guarded for the benefit of the nation, whatever that "nation" might have been. Lack of independent judiciary, lack of laws effectively protecting journalists, façade of the "independent" media that in fact were government dependent and carefully fostered culture of obedience enabled fanatics to orchestrate a nationwide murder.

The present government is allegedly working for the prevention of a similar situation in the future. Yet in the organizational sphere of the freedom of expression (laws, soft and hard tools of influence and the government's approach to dissidents) not much has changed. Today the Rwandans are on the other extreme—with a list of unofficially banned topics that may contribute to exacerbating cleavages in the society. Although the motivation of the present regime makes sense – the pursuance of the policy of the unity and reconciliation—it is important to realize how many patterns from the pre-genocide era that contributed to catastrophe are being repeated: the pro-government media are being encouraged while the opposition media are being discouraged; the official line of reasoning is being promoted; there is little space for lessons of critical, independent thinking and constructive discussion; the culture of obedience is fostered and the government is looked upon for the clues on what is right and what is wrong; close governmental control over media is maintained through the official institutions such as the High Council of the Press, through the pressure-prone judiciary and through the statutory law such as the 2002 Media Bill; the financial pressure remains a powerful tool of influence that hinders the press freedom behind the scenes.

The government sees the ability of critical thinking albeit in a spirit of national unity as a condition for any liberalization. The governmental approach accurately identifies certain important problems

that Rwanda needs to face. Yet the government is far from acknowledging that the ways it chooses to achieve its long-term goals are misleading. It does not seem to notice that the very culture of obedience it wants to eradicate is fostered by the policies of controlled re-education and prohibition of a critical debate in the media.

Human rights reports confirm continued violations of civil and political rights of Rwandans. Freedom of expression is largely restricted despite being guaranteed by the international and domestic legal norms. Statutory laws elaborating on exercise of freedom of expression tend to be overbroad and vague leaving much space for abuse from the part of the authorities. The institutions created by these laws to protect freedom of the media in Rwanda are financially and organizationally dependent on the government and therefore are not able to play any significant role as a guardian of journalistic freedoms. The laws in place, and poor recognition in the milieu of the journalists renders the HCP is ineffective as a guardian of media freedom.

The government continues to exercise a tight control over the content of the media, its most useful legal tool being the "law on divisionism." The direct effect of this law has been a development of a catalogue of "restricted topics," which some call "silences" that are not to be discusses if one does not want to get in official or unofficial trouble. The patterns of thinking remained imposed largely with help of tools of indirect censorship such as financial pressure related to allocation of advertisements and human resources in the respective media.

The leadership justifies this with the arguments of a different historical context, different understanding of free speech and distrust towards norms advocated by the West based human rights groups. Relying on official senatorial report the Rwandan government calmly chooses to assume that all the Rwandans interpret the reality, their duties and freedoms and the future vision for the country in the same way as the government. The harassed journalists and scandalous practices of pressure creation in the media outlets remain in the zone of shadows. No legal remedy for such situations is provided in the domestic norms dealing with the freedom of expression.

J.S. Mill wrote in his book on liberty that freedom of expression for individuals should be limited only by requirement not to harm others. This is not valid for the freedom of expression of the powerful institutions such as governments, businesses, and the media. Here being casual about accuracy can do great harm. The most convincing justification for the media freedom is democracy

and peace building. Democracy needs a press that informs citizens accurately. It is clear that if the provisions for accurate reporting were too narrowly drawn the press would be chilled. Nobody can be absolutely certain of knowing everything right even with meticulous "fact checking." Yet the standard of accuracy can be achieved by providing evidence and qualifications, by letting the audience know when the information is uncertain and explicitly differentiating reporting from commentary or gossip. The media that rises to professional standards is the media that allows the readers and listeners to make independent assessment and to support democracy.

This paper discussed whether in the Rwandan context, the benefits of free speech in peace-building efforts outweigh the dangers of Rwanda's potential destabilization. Although the free speech experiment may be initially difficult, it is indeed the better way to achieve long-term peace. First, free speech is indispensable for a society to exercise itself in critical thinking and to accommodate different points of view. Secondly, free speech being a kind of a "safety valve," contributes to the construction of a stable and democratic society, whereby Rwandans may gradually release social and political tensions. If there is to be a sustainable peace in Rwanda there needs to be a sustainably thinking society that does not have to be told what to think or how to act. What is needed in Rwanda is the right structures. The structures that will allow for a truthful, pressure free, transparent functioning of the media. For such conditions to be created that government needs to show a benevolent will of securing the media independence and leading the Rwandan nation onto the path of a critical debate. Once the regime with good motives is gone, the people of Rwanda will not be in need of someone in the government to tell them what to do about their lives. If the philosophy of peace and inclusive democracy is to be sustained the Rwandans need to learn the exchange of opinions and the independent judiciary and accurate laws must appropriately secure the press freedom. It is not the content that should be of concern to the present policy makers aiming at sustainable peace. It is the structure of the media environment.

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