



## **COMMENT**

**on**

**the Law Relating to the Punishment of the Crime  
of Genocide Ideology of Rwanda**

London  
September 2009

## **I. Introduction**

1. In this Comment, ARTICLE 19 sets out its concerns about the Law No. 18/2008, the Law Relating to the Punishment of the Crime of Genocide Ideology (hereinafter the “Genocide Ideology Law” or “Law”) that was adopted on 23 July 2008 by the Rwandan Parliament.<sup>1</sup>
2. ARTICLE 19's Comment of the Genocide Ideology Law is informed by international human rights law, in particular the right to freedom of expression as encompassed by Articles 19 and 20 of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”), a core international human rights treaty to which Rwanda acceded on 16 April 1975.<sup>2</sup> It is recalled that Article 19 of the ICCPR states:
  - 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.
3. Article 20 of the ICCPR then states:
  - 1) Any propaganda for war shall be prohibited by law.
  - 2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
4. As a result of ratifying the ICCPR, Rwanda is not only bound as a matter of international law by the provisions of the ICCPR, but is obliged to give effect to that treaty through national legislation.<sup>3</sup> ARTICLE 19 also notes that Rwanda has ratified the African Charter on Human and Peoples' Rights on 15 July 1983 which also guarantees freedom of expression.<sup>4</sup>
5. Although ARTICLE 19 relies on international human rights provisions on the right to freedom of expression in particular, this Comment is based on a comprehensive and coherent understanding of international human rights law as contained in other provisions of the ICCPR, including its provisions on equality,<sup>5</sup> as well as those contained in other key international human rights instruments, notably the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (hereinafter the “Genocide Convention”) and the Convention on the Rights of the Child of 1989 (hereinafter the “CRC”).<sup>6</sup> Furthermore, ARTICLE 19 relies on relevant jurisprudence of the International Criminal Tribunal for Rwanda on the crime of genocide. In addition to such international human rights authorities, ARTICLE 19 also relies in particular on *The Camden Principles on Freedom of Expression and Equality* (hereinafter the “Camden Principles”), a progressive interpretation of international law and standards prepared by ARTICLE 19 in

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<sup>1</sup> The full text of the Law is enclosed in the Appendix to this Comment.

<sup>2</sup> See UN Treaty Collection

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>3</sup> Articles 2(1)(b), 14(1) and 16, Vienna Convention on the Law of Treaties 1969.

<sup>4</sup> See [http://www.achpr.org/english/ratifications/ratification\\_african%20charter.pdf](http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf) Article 9 of the African Charter on Human and Peoples' Rights states: “1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.”

<sup>5</sup> See notably Articles 2, 3, 14, 26 and 27 ICCPR.

<sup>6</sup> Rwanda acceded to the Genocide Convention on 16 April 1975 and ratified the CRC on 24 January 1991.

consultation with high-level inter-governmental officials, civil society representatives and academic experts.<sup>7</sup>

6. ARTICLE 19 is alarmed by the Genocide Ideology Law principally because the central concept of “genocide ideology” is extraordinarily broad and would catch a whole range of forms of expressions concerning genocide. Indeed, the definition of “genocide ideology” violates international law on genocide and “hate speech” in multiple ways. Furthermore, the system of penalties also breaches international human rights law, particularly with respect to children. We contend that the law is so contrary to international human rights law and humanitarian values that it is fundamentally flawed. We also consider that the Genocide Ideology Law is counterproductive to its apparent objectives. Its current application suggests that it presents a catalyst for, rather than a barrier against, future human rights atrocities in Rwanda. In our view, therefore, Rwanda’s state organs should simply repeal the law in its entirety, refrain from adopting a similar law in the future and fully implement Rwanda’s actual obligations under international human rights treaties, in particular the ICCPR, but also the Genocide Convention and the CRC.

## **II. Analysis of the Genocide Ideology Law**

### **A. *The context of the Genocide Ideology Law***

7. At the outset of this Comment, ARTICLE 19 acknowledges the particular context within which this law emerged. That context obviously encompasses the historical legacy of the Rwandan genocide in the early months of 1994 in which over eight hundred thousand people, overwhelmingly Tutsis, were systemically and viciously killed, but also the role that certain media played in creating the conditions that gave rise to the genocide.<sup>8</sup> That role was especially acknowledged in the landmark case of the International Criminal Tribunal for Rwanda on the use of hate propaganda to provoke the Rwandan genocide, that of Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, three media executives who were found guilty of genocide, as well as conspiracy and incitement to commit genocide, and the crimes of persecution and extermination.<sup>9</sup> ARTICLE 19 notes that the Trial Chamber emphasised that “freedom of expression and freedom from discrimination are not incompatible principles of law” and in doing so reflected the

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<sup>7</sup> ARTICLE 19, *The Camden Principles on Freedom of Expression and Equality* (April, 2009); available at: <http://www.article19.org/advocacy/campaigns/camden-principles/index.html>

<sup>8</sup> On the Rwandan genocide generally see: Linda R Melvern, *Conspiracy to Murder - The Rwandan Genocide* (London: Verso, 2006); Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2003); Linda R Melvern, *A People Betrayed: The Role of the West in Rwanda’s Genocide* (London: Zed Books, 2000); Alison de Forges, Human Rights Watch and Fédération internationale des ligues des droits de l’homme, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999); available at: <http://www.hrw.org/reports/1999/rwanda/>; Romeo A Dallaire, “The End of Innocence: Rwanda 1994,” in Jonathan Moore (ed), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (New York: Rowan and Littlefield, 1998) 71-86; Philip Gourevitch, *We wish to inform you that tomorrow we will be killed with our families*, (London: Picador, 1998); Guy Vassall-Adams, *Rwanda: An Agenda for International Action* (Oxford: Oxfam, 1994).

<sup>9</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v The Prosecutor* (Case ICTR-99-52T), Judgment of the International Criminal Court for Rwanda, 3 December 2003; *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v The Prosecutor* (Case ICTR-99-52-A), Judgment of the Appeals Chamber of 28 November 2007. The appellate court upheld the Trial Chamber’s conclusion on the constituent elements of the crime of direct incitement to commit genocide. The relevance of international criminal law for the media was first asserted in 1946 when Julius Streicher, editor-in-chief of the anti-semitic newspaper *Der Stürmer* was convicted by the International Military Tribunal at Nurembourg. *Judgment of the International Military Tribunal for the Trial of Major War Criminals* Cmd 6964 (London: HMSO, 1946).

fundamental premises of *The Camden Principles*.<sup>10</sup> (The judgment of the Appeals Chamber is discussed further below.)

8. Yet to properly understand the context of the Genocide Ideology Law, it is also important to understand the significance of the so-called “campaign against genocide ideology” that has recently been launched in Rwanda. Reports of authoritative media and human rights non-governmental organisations indicate that the legacy of genocide is being manipulated by the Rwandan government to suppress political dissent and opposition in a range of ways. Most significantly, this has been done through cases involving the crime of genocide ideology. According to available information, about 1,300 such cases were initiated in the Rwandan courts in the 2007-2008 judicial year, even before it was defined by the Genocide Ideology Law itself.<sup>11</sup> Rwandan authorities have used prosecution, or the threat of prosecution under the law to trample opposition, including calls for justice for war crimes committed by the ruling Rwandan Patriotic Front (RPF). A range of Rwandan and foreign individuals and media organisations have been denounced as actual or potential violators of the Genocide Ideology Law.<sup>12</sup> Most notoriously the BBC’s local language radio service was suspended in the country following the station’s feature of its weekly of a programme that was to include a debate on forgiveness among Rwandans after the genocide.<sup>13</sup> Moreover, teachers and pupils at schools have been directly warned by prominent political figures that children “found guilty of harbouring the genocide ideology [can] be denied admission in any school in the country ... [and] also be prosecuted in the courts of law when he or she turns the prescribed age”.<sup>14</sup> Such reliance on the Genocide Ideology Law in itself has had a chilling effect on freedom of expression, from political to juvenile speech. Furthermore, this Law comes in the context of a broader crackdown on the media organizations. Individual journalists are being imprisoned without any legitimate cause<sup>15</sup> and media organisations have been targeted with suspension for activities such as comparing the current government to that which was in power in the run-up to the genocide in 1994.<sup>16</sup> The situation of the media in

<sup>10</sup> *Nahimana* at para 1074. See Introductory Statement of the Camden Principles which starts: “These Principles are founded on the understanding that freedom of expression and equality are foundational rights... They are also mutually supporting and reinforcing human rights. It is only when coordinated and focused action is taken to promote both freedom of expression and equality that either can effectively be realised.”

<sup>11</sup> See “The genocide in Rwanda: The difficulty of trying to stop it happening ever again”, *The Economist*, 8 April 2009.

<sup>12</sup> See *Human Rights Watch World Report*, Country Chapter on Rwanda, January 2009; Human Rights Watch, *Law and Reality: Progress in Judicial Reform in Rwanda*, 24 July 2008.

<sup>13</sup> The weekly programme, “Imvo n’Imvano” was to include comments by a former presidential candidate, Faustin Twagiramungu, opposing the government’s attempt to have the country’s entire Hutu population apologise for the genocide, since not all Hutu people had killed Tutsi or otherwise participated in the genocide. It also included a man of mixed Hutu-Tutsi ethnicity questioning why the government had refused to allow relatives of those killed by the Rwanda Patriotic Front (RPF), led by President Paul Kagame, to mourn for their loved ones. The Information Minister, Louise Mushikiwabo, said she contacted the BBC on the issue expecting them to reconsider “after hearing from us, but the broadcaster took no heed, leaving the government with no option but to take decisive action to save millions of Rwandans from the past of genocide ideology”. See Media Institute/IFEX Alert, “Government suspends BBC radio service for ‘unacceptable speech’ in programme on genocide”, 29 April 2009; available at: [http://www.ifex.org/rwanda/2009/04/29/government\\_suspends\\_bbc\\_radio\\_service/](http://www.ifex.org/rwanda/2009/04/29/government_suspends_bbc_radio_service/). Although the ban, which was imposed on 26 April, was lifted on 23 June 2009, the Information Minister again warned the BBC that the government would reinstitute the ban if it did not modify its editorial position on the genocide; available at: <http://www.newswatch.in/newsblog/4327>

<sup>14</sup> See speech of Deputy Speaker of Parliament Denis Polisi to the students of Ecole Notre Dame de la Providence as reported in “Students harbouring Genocide Ideology to be denied admission – Polisi”, *The New Times*; available at: <http://www.newtimes.co.rw/index.php?issue=13982&article=4464>.

<sup>15</sup> See the cases of Asumani Niyonambaza and Amani Ntakundi; Reporters Without Borders, “Two journalists given jail sentences in separate cases two days apart” 13 August 2009; available at <http://www.rsf.org/Two-journalists-given-jail.html>

<sup>16</sup> See the case of the independent weekly newspaper *Umuseso*; Reporters Without Borders, “Independent Weekly Suspended for Three Months”, 7 August 2009; available at: <http://www.rsf.org/Independent-weekly-suspended-for.html>

Rwanda was taken up in the recent Concluding Observations on Rwanda, the UN Human Rights Committee, which stated:

While taking note of the State party's explanations with regard to the role of the press in the 1994 events, the Committee notes with concern reports that journalists who have criticized the Government are currently subjected to intimidation or to acts of aggression by authorities of the State party and that some have been charged with "divisionism". International press agencies are reported to be under threat of losing their licences by employing certain journalists (art. 19 of the Covenant).

**The State party should guarantee freedom of expression for the press and the media, as well as for all citizens. It should make sure that any restriction on the exercise of their activities is compatible with the provisions of article 19, paragraph 3, of the Covenant and cease to punish so-called acts of "divisionism". The State party should also undertake investigations into the above-mentioned acts of intimidation or aggression and punish their perpetrators.**<sup>17</sup>

9. The Human Rights Committee also more generally "expressed its concern about the instability of the current situation in regard to the reconciliation within Rwandan society", despite the ongoing period of "reconstruction".<sup>18</sup> The lack of political rights and freedoms has undoubtedly hindered the fight against poverty. It has held back the realisation of economic, social and cultural rights, and stunted economic growth.<sup>19</sup> More seriously and with specific regard to the Genocide Ideology Law, although it is apparently directed at preventing genocide in Rwanda, the current climate of silencing and fear generated around the law only makes such a massive human rights violation more likely.<sup>20</sup>

## **B. Legal Basis and Purpose**

10. ARTICLE 19 notes that the Genocide Ideology finds its legal basis in a number of provisions of the Rwandan Constitution, including Article 9 which commits the state to the promotion and enforcement of "fighting the ideology of genocide and all its manifestations", whilst not defining the scope of that term.<sup>21</sup> The Preamble also refers the law establishing the gacaca jurisdictions, the community-based courts which were created in 2001 to provide a speedy and informal way to resolve a backlog of cases involving many thousands of alleged genocidaires. ARTICLE 19 notes these gacaca jurisdictions as well as the convention courts, which together comprise a single judicial system, have come under increasing criticism recently from human rights organisations and the UN Human Rights Committee for lacking independence and fair trial guarantees.<sup>22</sup>

<sup>17</sup> Concluding Observations of the Human Rights Committee, 31 March 2009 CCPR/C/RWA/CO/3, para 20.

<sup>18</sup> *Ibid*, para 3.

<sup>19</sup> Rwanda is 165 out of 179 countries with data on the 2008 Human Development Index, see [http://hdrstats.undp.org/2008/countries/country\\_fact\\_sheets/cty\\_fs\\_RWA.html](http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_RWA.html) "The genocide in Rwanda: The difficulty of trying to stop it happening ever again", *The Economist*, 8 April 2009.

<sup>20</sup> Kenneth Roth, "Opinion: The power of horror in Rwanda", *The Los Angeles Times*, 11 April 2009. The Economist notes that open political opposition in Rwanda "is declining" and "[a]t elections the formal opposition parties largely mimic the government line and then join the government afterwards".

<sup>21</sup> Constitution of the Republic of Rwanda of 4 June 2003.

<sup>22</sup> Concluding Observations of the Human Rights Committee, 31 March 2009 CCPR/C/RWA/CO/3 state that "the Committee notes with concern that the Gacaca system of justice does not operate in accordance with the basic rules pertaining to the right to a fair trial, particularly with regard to the impartiality of judges and protection of the rights of the accused. The lack of legal training of judges and reports of corruption continue to be causes of concern to the Committee, as do exercise of the rights of defence and respect for the principle of equality of arms, in particular in cases where sentences of up to 30 years' imprisonment are handed down (art. 14 of the Covenant). See also *Human Rights Watch World Report*, Country Chapter on Rwanda, January 2009; Human

11. Article 1 of the Genocide Ideology Law states that the purpose of the Law is to both prevent and punish the crime of genocide ideology. The purposes of the law are further revealed through the assertion in the final preambular paragraph which makes a causal connection between the existence of the law and the elimination of any future threat of genocide. It states that “it is necessary to prevent and punish genocide ideology in order not for genocide to be committed again in the country”. Whilst this is presented as an underlying premise for the law, ARTICLE 19 submits that it is questionable as to whether such a belief actually exists or whether it is simply an excuse to explain why prosecutions under the law have been pursued with such vigour. Moreover, we also question whether the claim – that a law on *genocide ideology* must be adopted to ensure that there will *never again* be a genocide – can be really substantiated. We believe that if that really were the best method of prevention, the international community would have agreed to include a requirement on states to adopt such a law within the Genocide Convention itself. We also point out to the vast majority of states which neither have legislation resembling the Genocide Ideology Law nor have suffered genocide as suffered by Rwanda in 1994. We acknowledge that there is no legislation that absolutely guarantees the prevention of genocide. But there is much evidence to suggest that the best way to prevent it is for the state to implement human rights laws that protect, among other things, the right to freedom of expression.

**C.     *The definition of “genocide ideology”***

12. The central provisions of the Genocide Ideology Law are Articles 2 and 3 that define the concept of “genocide ideology” and set out the characteristics of the crime respectively. Genocide ideology is considered to encompass the following: “an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war”. The characteristics of genocide include “any behaviour aimed at dehumanizing [*sic*] a person or a group of persons with the same characteristics” by (1) “threatening, intimidating, degrading through diffamatory [*sic*] speeches, documents or actions which aim at propounding wickedness or inciting hatred”; (2) “marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading createing [*sic*] confusion aiming at negating the genocide which occurred, stirring [*sic*] up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred”; (3) “killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology”.
13. Overall a very broad, imprecise and even confusing array of activities and expressions is covered by the notion of genocide ideology. Article 3 encompasses terms which are widely open for abusive interpretation – such as “marginalising”, “laughing”, “mocking”, “boasting”, and “creating confusion aiming at negating the genocide which occurred” and “stirring up ill feelings” – or which very obviously have no place in any law – such as “propounding wickedness”. Also certain behaviour covered by Article 3 of the Genocide Ideology Law, most obviously killing, should be covered by ordinary criminal law anyway without needing the added dimension of genocide ideology.

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Rights Watch, *Law and Reality: Progress in Judicial Reform in Rwanda*, 24 July 2008. For earlier reports see Amnesty International, “Rwanda – Gacaca: A Question of Justice”, 17 December 2002 and “Rwanda: The Troubled Court of Justice” 26 April 2000.

*i. The relevance of the Genocide Convention*

14. ARTICLE 19 has a number of more specific comments about these provisions – first through the lens of the Genocide Convention and second through that of the ICCPR. The fact that the Genocide Ideology Law seeks to combat genocide ideology rather than genocide suggests that this law suffers from a lack of connection with international law on the crime of genocide. Whilst the law’s target of “genocide ideology” is not found in the Genocide Convention or any international human rights instruments, genocidal acts covered by the Genocide Convention – such as the assistance or facilitation of genocide, awareness of any planned or actual genocide – are absent from the law. Articles 2 and 3 of the Genocide Ideology Law however mirror Articles II and III of the Genocide Convention in terms of setting out the definition and types of acts covered, though are far broader than the narrowly tailored prescriptions contained in the latter which state:

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

15. From this perspective, if the law is intended to target any genocide related form of expression, it should be directed at the “direct and public incitement to commit genocide” which Rwanda is required to prevent and punish as a state party to the Genocide Convention.<sup>23</sup> ARTICLE 19 notes that the key provisions of the Genocide Convention are reproduced in the relevant context of the 1994 Rwandan Genocide through Articles 2(2) and (3) of the Statute of the International Criminal Court for Rwanda. The interpretations given to these provisions by the International Criminal Court for Rwanda are especially pertinent for they allow a probing into the reach of the Genocide Ideology Law.
16. In the leading judgment on issue of incitement to commit genocide, the Appeals Chamber in *Nahimana* considered that a person may be found guilty of the crime of direct and public incitement to genocide if he or she directly and publicly incited the commission of genocide and had the intent directly and publicly to incite others to commit genocide.<sup>24</sup> It emphasised:

... there is a difference between hate speech in general (or inciting discrimination or violence) and direct and public incitement to commit genocide. Direct incitement to commit genocide assumes that the speech is a direct appeal to commit an act referred to in Article 2(2) of the Statute; it has to be more than a mere vague or indirect suggestion. In most cases, direct and public incitement to commit

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<sup>23</sup> Article III(c) Genocide Convention.

<sup>24</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v The Prosecutor* (Case ICTR-99-52-A), Judgment of the Appeals Chamber of 28 November 2007 at para 677.



genocide can be preceded or accompanied by hate speech, but only direct and public incitement to commit genocide is prohibited under Article 2(3)(c) of the Statute. This conclusion is corroborated by the *travaux préparatoires* to the Genocide Convention.<sup>25</sup>

17. In this way, the Appeals Chamber decision in *Nahimana* judgment supports the contention that the scope of Article III(c) of the Genocide Convention does not apply to hate speech that does not directly call for the commission of genocide. At the same time, in upholding the view of the Trials Chamber, the Appeals Chamber held that the specific context is a factor to consider in deciding whether discourse constitutes direct incitement to commit genocide.<sup>26</sup> It found that the appellate court also indicated that crime is an inchoate offence, punishable even if no act of genocide has actually resulted from it.<sup>27</sup> Finally, the Appeals Court found that acts of direct and public incitement to commit genocide must be clearly identified. None of these standards on the direct and public incitement of genocide are met by Article 3 of the Genocide Ideology Law. The law's definition of genocide ideology therefore cannot find any legal basis in international law on the crime of genocide, but in fact contravenes that law.

*ii. The relevance of the ICCPR*

18. Even if the Genocide Ideology Law is intended to catch a broader range of expressions than direct and public incitement to commit genocide, it should still meet the thresholds contained within Articles 19 and 20 of the ICCPR. It is recalled that Article 20 imposes an obligation on states to prohibit only the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In terms of the meaning of this in practice, Principle 12 of *The Camden Principles* offers helpful guidance on the interpretation of Article 20. It states:

12.1. All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech). National legal systems should make it clear, either explicitly or through authoritative interpretation, that:

- i. The terms 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.
- ii. The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group.
- iii. The term 'incitement' refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.
- iv. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech.

12.2. States should prohibit the condoning or denying of crimes of genocide, crimes against humanity and war crimes, but only where such statements constitute hate speech as defined by Principle 12.1.

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<sup>25</sup> See *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v The Prosecutor* (Case ICTR-99-52-A), Judgment of the Appeals Chamber of 28 November 2007 para 692 of judgment and footnote 1658.

<sup>26</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v The Prosecutor* (Case ICTR-99-52-A), Judgment of the Appeals Chamber of 28 November 2007 at paras 698-715.

<sup>27</sup> See also Article 25(3)(b) of the Statute of the International Criminal Court which provides that any person who "orders, solicits or induces" the commission of a crime falling under the jurisdiction of the Court shall be individually responsible for such a crime "which in fact occurs or is attempted". However, Article 25(3)(e) of the Statute for the International Criminal Court provides that a person may incur responsibility for direct and public incitement to commit genocide and it does not require the commission or attempted commission of such a crime".



12.3. States should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions, unless such expression constitutes hate speech as defined by Principle 12.1.

12.4. States should ensure that persons who have suffered actual damages as a result of hate speech as defined by Principle 12.1 have a right to an effective remedy, including a civil remedy for damages.

12.5. States should review their legal framework to ensure that any hate speech regulations conform to the above.

19. The Genocide Ideology Law clearly fails to meet the standards in Article 20 of the ICCPR and Principle 12 of *The Camden Principles*: Article 3 does not spell out the requirement for an intention to promote hatred publicly or an imminent risk of discrimination, hostility or violence. Also, the criminalisation of “confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence ...” is clearly at odds with Principle 12.2 of *The Camden Principles*.

20. Finally, given that any law on hate speech is direct interference with the right to freedom of expression, it must also meet the conditions of the three part test contained in Article 19(3).<sup>28</sup> The Genocide Ideology Law, however, fails to meet these standards for restrictions on freedom of expression that are reflected in Principle 11 of *The Camden Principles* which reads:

11.1. States should not impose any restrictions on freedom of expression that are not in accordance with the standards set out in Principle 2.2 and, in particular, restrictions should be provided by law, serve to protect the rights or reputations of others, national security or public order, or public health or morals, and be necessary in a democratic society to protect these interests. This implies, among other things, that restrictions:

- i. Are clearly and narrowly defined and respond to a pressing social need.
- ii. Are the least intrusive measure available, in the sense that there is no other measure which would be effective and yet less restrictive of freedom of expression.
- iii. Are not overbroad, in the sense that they do not restrict speech in a wide or untargeted way, or go beyond the scope of harmful speech and rule out legitimate speech.
- iv. Are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorise.

11.2. States should review their legal framework to ensure that any restrictions on freedom of expression.

21. In summary, the Genocide Ideology Law’s central concept of “genocide ideology” violates international human rights law and standards, particularly those contained in Article III of

<sup>28</sup> First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct”; *Sunday Times v United Kingdom* (1979) 2 EHRR 229 at para 49 (European Court of Human Rights). Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must also be necessary to secure one of those aims in the sense that there must be a “pressing social need” for the restriction. Furthermore, the reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued. *Lingens v Austria*, Application No 9815/82, Judgment of 8 July 1986, paras 39-40 (European Court of Human Rights).

the Genocide Convention and Articles 19 and 20 of the ICCPR, in a multiple ways. ARTICLE 19 therefore considers that the law is fatally flawed from the perspective of international human rights law. Nevertheless we continue to consider the remainder of the provisions to highlight its other problematic features.

#### **D. Penalties**

##### *i. General penalties*

22. As indicated earlier, the Genocide Ideology Law provides for very severe penalties for individuals convicted of genocide ideology. Pursuant to Article 4, anyone convicted of the genocide ideology as defined by Articles 2 and 3, shall be sentenced to an imprisonment of 10 to 25 years and a fine of 200,000 to 1,000,000 Rwandan francs (approximately €245 to €1,230). In the case of recidivism, that penalty is doubled. Article 5 requires that anyone found guilty of genocide ideology who was also convicted of genocide shall also be sentenced to life imprisonment. Under Article 6, current or former leaders in public or private administrative organs, political organisations or non-governmental organisations, or religious leaders convicted of the crime of genocide ideology shall be sentenced to harsher sentences than ordinary people, 15-25 years and a fine of 2,000,000 to 5,000,000 Rwandan francs (approximately €2,460 to €6,145). Under Article 8, those who are convicted of disseminating genocide ideology in public through documents, speeches, pictures and other media shall be sentenced to 20-25 years imprisonment and a fine of 2,000,000 to 5,000,000 Rwandan francs (approximately €2,460 to €6,145). The level of fines is extremely high for the vast majority of individuals to pay in Rwanda, a country whose GDP per capita estimated at only €687 or US\$1,000 for 2008.<sup>29</sup>
23. Article 11 also provides anyone who kills another, conspires or who attempts to kill basing on the ideology of genocide shall be sentenced to a life imprisonment. For this crime there are no mitigating circumstances. This is extremely harsh for a “crime” that is so poorly defined and itself illegal under international law.
24. ARTICLE 19 is seriously concerned about the severity of these penalties because they are likely to have the effect of silencing individuals in relation to forms of expression which fall within the scope of “genocide ideology”. It should be noted that in cases involving any form of expression, the imposition of a penalty – whatever the character of that sanction – engages the right to freedom of expression. This restricts the type of penalties or sanctions that may be imposed, their amount in the case of fines or length in the case of custodial sentences. Under international law, it is well established that an excessive sanction, even for otherwise legitimate restrictions, represent a breach of the right to freedom of expression. The European Court on Human Rights, for example, has noted that excessive sanctions exert an unacceptable chilling effect on freedom of expression.<sup>30</sup> In view of this, ARTICLE 19 considers that the system of penalties is not in compliance with international standards concerning the protection of the right to freedom of expression.
25. Under Article 13, anyone found guilty of making false accusations of genocide ideology is liable to punishment under the Penal Code. Presumably this provision had been added to allay concerns that the law would be abusively applied. Yet, the provision has not prevented the high number of cases on genocide ideology, as noted earlier.

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<sup>29</sup> See CIA World Factbook on Rwanda at <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html> (last updated 3 September 2009.)

<sup>30</sup> See *Tolstoy Miloslavsky v. the United Kingdom*, Judgment of 13 July 1995, Application No. 18139/91, para 51 (European Court of Human Rights).

*ii. Associations and organisations*

26. The law also imposes harsh penalties for associations and organisations, which nevertheless should be and are liable under international criminal law for acts of genocide.<sup>31</sup> Article 7 provides that any association, political organisation or non-profit making organisation convicted of the ideology of genocide shall be punished through its dissolution or a fine of 5,000,000 to 10,000,000 Rwandan francs (approximately €6,145 to €12,290) without prejudice to individual liability of any participant in the commission of the crime. Many such associations and organisations, including non-governmental organisations in Rwanda, would be bankrupted if they were levied such a fine for overstepping the low threshold for “genocide ideology”.
27. ARTICLE 19 considers that the system of penalties as it applies to associations and organisations, as the system of penalties in relation to individuals, is not in compliance with international standards concerning the protection of the right to freedom of expression.

*iii. Children*

28. The Genocide Ideology Law contains several provisions that relate to children found guilty of genocide ideology and their parents, guardians and teachers. Article 9 provides that a child found guilty of genocide ideology shall be taken to a rehabilitation centre for up to 12 months, if he or she is under 12. If he or she is between 12 and 18 years, he or she shall receive half the sentences referred to in Article 4 of the law. Part or whole of the sentence may be served in the rehabilitation centre. The follow-up procedures for children sent to such rehabilitation centres would be governed by a government minister for the centres.
29. ARTICLE 19 is deeply considered about these provisions which impose harsh sentences on children upon conviction for genocide ideology. It is especially troublesome that Article 9 suggests criminal responsibility can be attributed to someone below the age of 12.<sup>32</sup> Also, those between 12 and 18 only have the possibility of serving their sentence at a rehabilitation centre; they may go to an adult prison for a conviction under the law. Although the provisions take some account of the age of children, under the CRC all those under the age of 18 are entitled to be treated within the criminal justice system in a manner that due account of their age.<sup>33</sup> This entails, among other things: the right to be detained separately from adults, except where this is not in the child’s best interests;<sup>34</sup> the right to privacy at all stages of the criminal proceedings;<sup>35</sup> and the right to be detained or sentenced to imprisonment as a last resort and for the shortest appropriate time.<sup>36</sup>

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<sup>31</sup> The International Criminal Tribunal gave a life sentence to Alfred Musema, a director of a tea plantation who allowed trucks to be used to hunt down and exterminate civilians, after it found him criminally responsible under international law for genocide and crimes against humanity. Musema took no steps to prevent the participation of the tea factory employees or the use of vehicles in the Alfred Musema Case ICTR-96-13-T, Judgment of 27 January 2000.

<sup>32</sup> With this respect, we note that although the CRC does not set the minimum age “below which children shall be presumed not to have the capacity to infringe penal law”, the United Nations Standard Minimum Rules for the Administration of Juvenile (“the Beijing Rules”) recommend that this age should not be set at too low a level and should reflect emotional, mental and intellectual maturity; see the Beijing Rules, available at <http://www.un.org/documents/ga/res/40/a40r033.htm>.

<sup>33</sup> Article 37(c) CRC.

<sup>34</sup> *Ibid.*

<sup>35</sup> Article 40(2)(b)(vii) CRC.

<sup>36</sup> Articles 37(b) CRC,

The regime of penalties vis-à-vis children, therefore, depends on a proper functioning system of juvenile justice system, including special laws, procedures and institutions for determining the criminal liability of children.<sup>37</sup> Furthermore, children have to basic guarantees against arbitrary detention and procedural protections ensuring fair trial.<sup>38</sup> This is especially important as special juvenile justice laws, procedures and practices can result in reduced protection as compared to adult criminal justice.

30. Beyond these concerns, ARTICLE 19 also emphasises the especially harmful impact that the Genocide Ideology Law has had and will continue to have upon classroom discussions and debates on historical events and personal experiences in Rwanda and beyond – and the right of every child to express themselves freely about them.<sup>39</sup> In this regard, the Genocide Ideology Law contravenes the child's right to freedom of expression as contained in Article 13 of the CRC,<sup>40</sup> but also the child's right to education as contained in Article 28 and 29 of the CRC.<sup>41</sup>
31. Article 11 concerns penalties awarded to parents and to other guardians of children found guilty of genocide ideology. The provision states that “[i]n case it is evident that the parent of the child referred to in Article 9 of this Law, the guardian, the tutor, the teacher or the school headmaster of the child participated in inoculating the genocide ideology”, these individuals shall be sentenced to 15 to 20 years imprisonment. Furthermore, a teacher or a director referred in the preceding paragraph cannot be reintegrated into his teaching career.
32. This provision raises a number of concerns, besides the excessive sentences for parents, guardians and teachers of children found guilty of genocide ideology. First, the words “in case it is evident” suggest a very low standard for determining whether such an individual has “inoculated” a child with genocide ideology, which would not meet the standard of proof in criminal trials (such as “beyond reasonable doubt”) or even civil cases (such as “on a balance of probabilities”). Second, this provision criminalises parents, guardians and teachers for actions including encouraging children to think for themselves in the exercise of their freedom of thought, arguably one of the features of a “good education”.<sup>42</sup> In doing so, it goes against Article 14(2) of the CRC which states:

States Parties shall respect the rights and duties of the parents, and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

### **III. Recommendations**

- **The Rwandan Legislature should immediately repeal the Genocide Ideology Law in its entirety.**

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<sup>37</sup> Article 40(3) CRC. See also the UN Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”) adopted by the UN General Assembly in 1985.

<sup>38</sup> Articles 37 and 40 CRC.

<sup>39</sup> See above discussion on the recent campaign against genocide ideology above.

<sup>40</sup> This reflects Article 19 ICCPR.

<sup>41</sup> See in particular Article 29(1) CRC which states: “1. States parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the national country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) the development of respect for the natural environment.”

<sup>42</sup> Article 14 CRC and Article 18 ICCPR.

- To facilitate the ongoing process of reconstruction following the 1994 genocide, the Rwandan government should implement fully its international human rights obligations, under the ICCPR, the Genocide Convention and the CRC.
- The Rwandan government should protect and promote the right to freedom of expression as defined in international human rights law and *The Camden Principles*.

#### **IV. Text of Law Relating to the Punishment of the Crime of Genocide Ideology**

##### **LAW N°18/2008 OF 23/07/2008 RELATING TO THE PUNISHMENT OF THE CRIME OF GENOCIDE IDEOLOGY**

**We, KAGAME Paul,**  
President of the Republic;

**THE PARLIAMENT HAS ADOPTED AND WE SANCTION, PROLMULGATE THE FOLLOWING LAW AND ORDER IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.**

##### **THE PARLIAMENT:**

The Chamber of Deputies, in its session of May 20, 2008;

The Senate, in its session of April 25, 2008;

Pursuant to the Constitution of the Republic of Rwanda of 4 June 2003 as amended to date, especially in its articles 9, 62, 66, 67, 88, 89, 90, 92, 93, 95, 108, 118, 152 and 201;

Pursuant to Organic Law n° 16/2004 of 19/6/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 as modified and complemented to date, especially in Article 14;

Pursuant to the Law n° 33 bis/2003 of 06/09/2003 punishing the crime of genocide, crimes against humanity and war crimes;

Pursuant to Decree-Law n° 21/77 of 18/8/1977 instituting the Penal code; Considering the fact that after the genocide of 1994, the crime of genocide ideology is still persisting in the country;

After considering the fact that it is necessary to prevent and punish genocide ideology in order not for genocide to be committed again in the country;

##### **ADOPTS:**

##### **CHAPTER ONE: GENERAL PROVISIONS**

##### **Article One: Purpose of this law**

This Law aims at preventing and punishing the crime of genocide ideology.

##### **Article 2: Definition of “genocide ideology”**

The genocide ideology is an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war.

**Article 3: Characteristics of the crime of genocide ideology**

The crime of genocide ideology is characterized in any behaviour manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

1° threatening, intimidating, degrading through diffamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;

2° marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;

3° killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology.

**CHAPTER II: PENALTIES**

**Article 4: Sentencing the crime of genocide ideology**

Any person convicted of the crime of genocide ideology as mentioned in Articles 2 and 3 of this Law shall be sentenced to an imprisonment of ten (10) years to twenty five (25) years and a fine of two hundred thousand (200.000) to one million (1.000. 000) Rwandan francs

In case of recidivism, the penalty provided for in the preceding paragraph shall be doubled.

**Article 5: Penalty awarded to a genocide ideology convict found guilty of the crime of genocide**

Any person found guilty of the ideology of genocide who was convicted of the crime of genocide, shall be sentenced to life imprisonment.

**Article 6: Penalties awarded to current and former leaders**

In case the perpetrator of the crime of genocide ideology is a leader in public administrative organs, political organisation, private administrative organs, or a non governmental organs, a religious leader, or a former leader in such organs, he/she shall be sentenced to an imprisonment of fifteen (15) years to twenty five (25) years and a fine of two million (2. 000. 000) to five million (5.000.000) Rwandan francs.

**Article 7: Penalties awarded to associations, a political organization and non profit making organization**

Any association, political organization or non profit making organisation convicted of the crime of the ideology of genocide shall be subject to a punishment of its dissolution in accordance with legal provisions relating to dissolution of associations, political organisations and non profit making associations and a fine of five million (5.000.000) to ten million (10.000.000) Rwandan francs without prejudice to individual liability of any participant in the commission of the crime.

**Article 8: Penalties for disseminating genocide ideology**

Any person who disseminates genocide ideology in public through documents, speeches, pictures, media or any other means shall be sentenced to an imprisonment from twenty (20)



years to twenty-five (25) years and a fine of two million (2. 000. 000) to five million (5.000.000) Rwandan francs

**Article 9: Penalties awarded to children guilty of the crime of genocide ideology**

In case a child under twelve years (12) of age is found guilty of a crime of genocide ideology, he or she shall be taken to a rehabilitation centre for a period not exceeding twelve (12) months

In case a child who is found guilty of the crime of genocide ideology is between twelve (12) and eighteen (18) years, he or she shall be sentenced to a half of the penalty referred to in Article 4 of this Law, without prejudice to the possibility that a part or whole of the sentence may be served in the rehabilitation centre.

**Article 10: Follow up of a child who is in or was in a rehabilitation centre**

An Order of the Minister in charge of rehabilitation centres shall determine procedures through which children referred to in Article 9 of this Law are followed up while in rehabilitation centres and during their social reintegration.

**Article 11: Penalties awarded to parents and to other guardians of the child**

In case it is evident that the parent of the child referred to in Article 9 of this Law, the guardian, the tutor, the teacher or the school headmaster of the child participated in inoculating the genocide ideology, they shall be sentenced to an imprisonment of fifteen (15) years to twenty five (25) years.

A teacher or a director referred to in the preceeding paragraph cannot be reintegrated into his teaching career.

**Article 12: Penalty awarded to a murderer, a conspirator or attempted murderer**

Without prejudice to the provisions of Article 4 of this Law, any person who kills another, one who conspires or who attempts to kill basing on the ideology of genocide shall be sentenced to a life imprisonment. There shall be no mitigating circumstance regarding this crime.

**Article 13: Penalties against false accusers**

Any person found guilty of false accusations of the crime of genocide ideology referred to in Article 4 of this Law shall be liable to the punishment provided for by the penal Code.

**Article 14: Damages**

Damages awarded to victims of the crime of the ideology of genocide shall be determined in accordance with provisions of civil procedure.

**CHAPTER III: FINAL PROVISIONS**

**Article 15: Abrogating provisions**

All prior legal provisions contrary to this Law are hereby repealed.

**Article 16: Commencement**

This Law shall come into force on the date of its publication in the Official Gazette of the

Republic of Rwanda.

Kigali, on 23/07/2008

The President of the Republic  
**KAGAME Paul**  
(sé)

The Prime Minister  
**MAKUZA Bernard**  
(sé)

**Seen and sealed with the Seal of  
the Republic:**

The Minister of Justice/Attorney  
General  
**KARUGARAMA Tharcisse**  
(sé)

**FURTHER INFORMATION:**

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