MEDIA LAWS

TRAINING CURRICULUM

USAID
FROM THE AMERICAN PEOPLE

RWANDA

DECEMBER 2013

INSTITUTE FOR
WAR & PEACE REPORTING

USAID
FROM THE AMERICAN PEOPLE

INSTITUTE FOR WAR & PEACE REPORTING

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INSTITUTE FOR
WAR & PEACE REPORTING

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RWANDA

DECEMBER 2013

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ABOUT
INSTITUTE FOR WAR & PEACE REPORTING

The Institute for War & Peace Reporting gives voice to people at the frontlines of conflict and transition to help them drive change. IWPR empowers citizens and their communities to make a difference – building their skills, networks and institutions, supporting development and accountability, forging peace and justice.

Working in three dozen countries, IWPR's innovative programs are crafted to respond to the needs of the people they serve. Projects prioritise locally informed objectives and lead to sustainable outcomes. Beneficiaries include citizen and professional journalists, human rights and peace activists, policymakers, educators, researchers, businesses, and women's, youth and other civil society organisations and partners.

Headquartered in London with coordinating offices in Washington, DC and The Hague, IWPR is overseen by an international board of trustees made up of internationally recognized journalists and media professionals, business and financial sector executives, philanthropists and civil society leaders. Its 125-person global staff is led by an executive management team of experts in media and governance, program development and management, policy and advocacy, financial development, finance and human resources.

ABOUT IWPR'S PROGRAMMES

The strength of IWPR's programming is rooted in its ability to help individuals and groups develop the knowledge, skills, relationships and platforms they need to communicate clearly, objectively, effectively, persuasively and safely and to use that knowledge and those tools to affect positive change. Projects and initiatives are developed in partnership with local organizations and are designed to meet the unique needs of the individuals and groups they will serve and the communities in which they operate.

IWPR'S GLOBAL PROGRAMMING FOCUS

Promoting Free Expression

IWPR builds the skills of professional and citizen journalists working in traditional media (newspapers and magazines, radio, TV) and in social and new media (Facebook, Twitter, Internet news magazines and portals, blogs and other online vehicles). Programs train and mentor them to report fairly and objectively with the goal of achieving internationally recognized standards of reporting and analysis. Reporters, editors, producers, bloggers, and managers learn the value of producing substantive content that informs while helping to define the roles of citizens, civil society, government, the media, business and others in building fair, pluralistic, democratic systems that value and respect the opinions of all constituencies. Whether in repressive or closed societies, transitional environments, or democratically developing states, IWPR encourages the development and exercise of freedom of expression, assembly, and belief and uses journalism as a tool to advance peace and social justice.

Strengthening Accountability

Working with international and local partners, IWPR supports the capacity of civil society and human rights groups to more effectively advocate for government and institutional accountability and transparency, with programming designed to reduce corruption, strengthen rule of law, and promote basic rights. It promotes and publicizes the work of international courts and tribunals that support justice and hold individuals and groups responsible for crimes against humanity. IWPR helps communities to more effectively fight against immediate and longer-term threats by building knowledge, empowering, and supporting citizen activism, and helps countries and regions to heal from conflict and war through support for transitional justice.

Building inclusive Societies

IWPR has supported peace and reconciliation in conflict zones around the world for 20 years. These efforts, along with campaigns and activities that encourage free and fair elections, counter extremism, and enhance the ability of civil society organizations to be effective, are all critical to building societies that value and build on the strengths of all of their peoples, including their women, youth, minorities, and traditionally marginalized communities. Societies are most inclusive and cohesive, and strive for the benefit of all citizens, when economies are strong, people are healthy, and the populace is educated; hence, IWPR's focus on these areas of concern.

IWPR employs a skilled staff and expert consultants in a variety of fields to support its capacity-building activities and to assist in providing journalists, civil society and civic activists with the basic and advanced skills and knowledge that support sustainable and positive change. It employs tools and technologies in programming that encourages citizen understanding, participation, and involvement and builds local expertise. All programs and projects are measured and evaluated to ensure that future initiatives and those who participate in them benefit from valuable "lessons learned."

CONTACT

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ABOUT **IWPR RWANDA**

The USAID funded project Rwanda Decides is an 18-months initiative working to build the capacity and confidence of the Rwandan Media in reporting on the 2013 Parliamentary elections, the follow-on post-elections activities, and improving the quality and accuracy of reporting in Rwanda.

Working with local partners, including RALGA, Never Again Rwanda, and the Network for Independent Community Radio Stations, Rwanda Decides trains professional and citizen journalists and media outlet managers in understanding and applying the new media reforms - with an emphasis on the Access to Information Law. Further, the project works to build professional relationships between journalists and local elected officials so that each party may better understand their respective roles and responsibilities in providing accurate and timely information to the citizens of Rwanda.

The project looks beyond the 2013 Parliamentary elections and seeks to create a foundation that links elected officials, journalists, and citizen reporters to an enlivened and confident local civil society network.

All the connections supported by IWPR will help provide a more competent and assertive media as the country heads towards the Presidential elections in 2017.

IWPR wishes to thank USAID and our partners for their support and lively engagement in the Rwanda Decides project.

CONTACT

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TIMELINE
RWANDA MEDIA-RELATED LAWS

LAWS ENACTED	YEAR
Penal Code Act of Rwanda	1977
Constitution	1991
Arusha Peace Accords	1992-93
Organic Law for Prosecuting Genocide No.8	1996
Telecommunications Law No. 44	2001
Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism Law No. 47	
Press Law No. 18	2001-02
Constitution	2003
Rwanda Information Office Law No. 47	2006
Repression of Genocide Ideology Law No. 18	2008
Media Law No. 22	2009
Media High Council Law No. 30	
Electronic Messages, Electronic Signatures and Electronic Transactions Law No 18	2010
Access to Information Law No. 04	2013
Rwanda Agency Broadcasting Law No. 42	
Law Relating to Access to Information	

MAPS

EAST AFRICA

RWANDA

INTRODUCTION

The aim of this handbook is to equip the reader with an understanding of Rwanda's new media laws, both in terms of the rights and obligations introduced, as well as in terms of the regulatory and institutional structure they have established. The handbook is presented in seven modules, which complement each other to allow for a full appreciation of the normal and institutional framework for media regulation in Rwanda.

MODULE ONE **CIVICS OVERVIEW** provides a brief history of Rwanda and explains how the country's government and legal system is organized. It also outlines the process of enactment of legislation and describes the roles of various agencies in this regard.

MODULE TWO **CONSTITUTIONAL PROTECTION OF FREEDOM OF EXPRESSION** analyzes the provisions of the Rwanda Constitution which relate to the exercise of the freedom of expression. It analyzes the constitutional balance between this freedom and the other constitutional imperatives. This Chapter also contains an elaboration of relevant international instruments binding on, and applicable in, Rwanda in terms of the Constitution.

MODULE THREE **MEDIA LAWS** contains a detailed explanation of the laws governing freedom of expression in Rwanda. It examines the former legislative framework relating to the media, demonstrates how the laws enacted in 2013 differ from those that were enacted in 2009 and stipulates the rights and duties of media practitioners and other stakeholders under the new legal framework. In particular, the Chapter explains the laws relating to defamation, libel divisionism and genocide ideology in terms of their rationale, application and possible defences.

MODULE FOUR **MEDIA REGULATION** analyzes the framework established under the Media Law for the regulation of media in Rwanda. In particular, it examines the role, function and operation of the Rwanda Media Commission (RMC), as a self-regulatory body, and the Rwanda Utilities Regulatory Authority (RURA) which is the statutory regulator. It also studies how these organs will work together to fulfill their shared mandate to regulate and develop the media.

MODULE FIVE **MEDIA CAPACITY BUILDING** examines the role, function and operation of the Media High Council (MHC), which is the statutory body established to enhance the capacity of the Rwandan Media. Its powers and duties in this regard are also explained. This Module will also consider how the MHC will work with other related agencies and organs in the execution of this mandate.

MODULE SIX **PUBLIC BROADCASTING** focuses on the provision for a public broadcasting organ, the Rwanda Broadcasting Agency (RBA), a statutory body established to satisfy the needs of the national community and the interests of the general public. Its mission, roles, function and operations are considered. The Module also delves into the rationale for shifting from a state to a public broadcaster and considers the implications for this change for citizens, the government and the media fraternity generally. The distinction between a 'private' and 'public' broadcaster is also explained under in this Module.

MODULE SEVEN **ACCESS TO INFORMATION** considers the legal and institutional framework for accessing information in the hands of the state or public authorities and some private entities. It also considers how laws similar to Rwandan law have been used in other countries to obtain such information. The rationale for this law, and practical challenges to its full implementation will also be analyzed.

SUMMARY **KEY ISSUES AND EMERGING TRENDS** The final section of the Handbook contains a summary of key issues covered in the modules and also considers potential trends that media law in Rwanda may take, including the possibility of the decriminalization of libel and what this might mean for the practice of journalism in Rwanda.

MODULE ONE
CIVICS OVERVIEW

SUMMARY

This Module provides a broad overview of the legal and administrative structure of Rwanda's government. The Constitution of Rwanda (http://www.rwandahope.com/constitution.pdf) prescribes a multi-party system of government where political organizations are allowed to freely mobilize for support. Further, government is divided into three independent but complementary branches which include the executive, judiciary and legislature. This module looks at each of the three branches but places greater emphasis on the legislature and the various legislative processes. This is critical for participants to appreciate the background and effect of various media laws considered in subsequent modules.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The current political and administrative structure of the government of Rwanda;
- The effect of the colonial legacy on the country's legal, political and administrative structure;
- The different legislative processes in place and how they function.

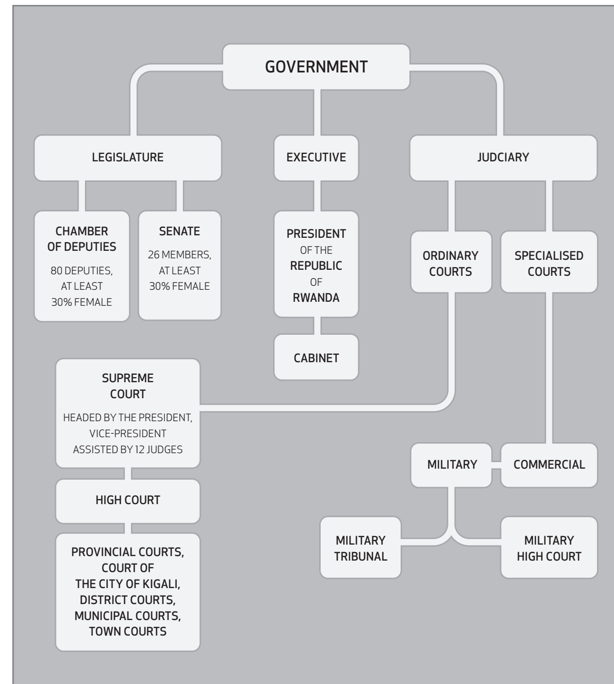
1.0 BACKGROUND

Rwanda like many other African countries was under German colonial rule as early as 1897. Following the defeat of the Germans in World War I, the country was handed over to Belgium in 1917. As was the case where ever they operated, the Belgians exploited Rwanda in many ways and greatly influenced the country's post-independence politics. As part of their colonial strategy, they applied the divide and rule policy to consolidate their power. This created tensions and sowed early seeds of resentment between the two major groups in Rwanda, which sparked off civil wars in 1959 and eventually contributed to the outbreak of genocide in 1994. The 1994 genocide claimed over 800,000 lives in a period of barely three months.[1] To date, Rwanda and the world at large are still grappling with the tragic effects of the genocide.

Significantly, this history has a great bearing on the law and present structure of the Rwandan government. The country's Constitution which is the highest law of the land for instance prescribes an all-inclusive government and bars ethnic-based discrimination. A number of organic and ordinary laws just like the Constitution also prohibit conduct that is likely to reignite ethnic tensions. Most media laws and the penal law fall with in this category of laws.

1 *Des Forges, Leave None to Tell the Story: Genocide in Rwanda, New York: Human Rights Watch, 1999.*

1.1 STRUCTURE OF GOVERNMENT



Rwanda operates a multi-party system of government where political organizations are allowed to operate freely provided that they act within the law and in respect of democratic principles. Among the key responsibilities of political organizations under the Constitution is the education of citizens on democracy and elections and the duty to ensure that both men and women have equal access to elective offices. The Constitution prohibits political organizations from mobilizing on the platform of race, ethnicity, tribe, clan, religion or any other division that may give rise to discrimination. Breach of this may result into suspension of the organization's activities and in the most extreme cases dissolution of the responsible political organization. In the event of dissolution, all Members of the Chamber of Deputies elected on the Organization's ticket automatically lose their seats and by elections shall be conducted to replace them.

The state's belief in a multi-party system is reflected in Article 57 of the Constitution. Pursuant to that provision, the state undertakes to extend grants to duly registered political organizations. Funding is very critical for the well-functioning of such organizations especially those outside power. Commitment to a multiparty political dispensation is also reflected in Article 58 which requires the President of the Republic and the Speaker of the Chamber of Deputies (branch of Parliament) to belong to different political organizations. This discourages domination of high political offices by a single party that has access to resources.

Government is further structured into three independent but complementary branches under Title IV of the Constitution. These include the executive, legislature and judiciary. Under the decentralization policy, some residual powers and roles of these major branches of government may be exercised at local levels i.e. Provinces and Districts. There are a total of five provinces i.e. North Province, South Province, East Province, West Province and Kigali which is also the capital. These are further divided into

districts also referred to as akarere and municipalities also known as umugyi.

i) EXECUTIVE

Executive power is vested in the President of the Republic of Rwanda and his Cabinet. The President is the head of state and is elected through universal adult suffrage for at most two terms each constituting of seven years. The Cabinet on the other hand is appointed by the President and constitutes of the Prime Minister, Ministers, Ministers of State and other members as determined by the President. In addition to welding executive powers, the President may make laws in exceptional circumstances. For instance he/she is required to promulgate all laws delivered to cabinet within fifteen days. Before such promulgation, the President may have such laws reconsidered by Parliament. The President may also promulgate decree laws with the same effect as ordinary laws where it is absolutely impossible for Parliament to hold a session. Such laws must be adopted by Cabinet and if not adopted by Parliament at its next session become null and void. The President is also mandated to issue Presidential Orders in which case these must be approved by Cabinet.

In addition, the President is authorized by the Constitution to negotiate and ratify international treaties on behalf of the state (Article 189). This authority is only limited where the treaty in question relates to peace, commerce, international organizations or where it requires committal of state resources or seeks to modify laws already adopted by Parliament. In this case ratification of such treaty should be authorized by Parliament. Upon ratification, the President is enjoined to notify Parliament. Some of the regional and international treaties to which Rwanda is party include; the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil Political Rights, Convention on the Rights of the Child, Convention on the Prevention and Punishment of the Crime of Genocide and the African Charter on Human and People's Rights.

Overall, the chief role of the executive comprised of the President and Cabinet is to formulate and implement government policies. In the case of Ministers, Ministers of State and other Cabinet members, implementation of law and policy is by way of Orders (Article 120).

ii) JUDICIARY

The Judiciary represents the second branch of government and is separate and independent from the two other branches i.e. the Executive and Legislature. To emphasize this independence, once confirmed in office all judges enjoy a permanent tenure of office. Under the Constitution, judicial power is vested in the courts and is exercisable by the Supreme Court and other duly established courts. Importantly, courts must exercise judicial power in the name of the people.

Courts are categorized into ordinary courts and specialized courts. Ordinary courts constitute of the Supreme Court, High Court of the Republic, Provincial Courts and the Court of the City of Kigali, District Courts, Municipality and Town courts. The Supreme Court is the highest court of the land and is headed by the President of the Supreme Court who is deputized by a Vice President. These are assisted by a team of twelve other judges. The President and Vice President of the Supreme Court are elected by the Senate each for a single term of eight years. Pursuant to Article 147, the President of the Republic is required to propose two candidates in respect of each post for consideration and eventual election by the Senate.

Immediately below the Supreme Court is the High Court which exercises unlimited subject matter and geographical jurisdiction. It is a court of first instance in matters involving administrative law, political organizations, elections and other matters as prescribed under organic law. The High Court also determines appeals from lower courts i.e. Provincial Courts, Court of the City of Kigali, District Courts, Municipality and Town Courts.

In addition to ordinary courts the Constitution establishes specialized courts. One of these is the Gacaca courts which have since been phased out. The Gacaca courts were responsible for the trial of the crimes of genocide and crimes against humanity committed between October 1st 1990 and December 31st 1994 with the exception of those in respect of which jurisdiction is vested in other courts. The other specialized courts are the Military courts which comprise of the Military Tribunal and the Military High Court, as well as Commercial Courts as established by Law No. 59/2007 of 16th December 2007.

iii) LEGISLATURE

Rwanda operates a bicameral system of Parliament i.e. Chamber of Deputies and Senate. The Chamber of Deputies is comprised of 80 Deputies and of these at least 30% (24) should be women (Article 76). It should be emphasized that Twenty four (24) is the bare minimum and presently there are fifty one (51) women Deputies all together which represents 64% of the Chamber of Deputies. To date Rwanda is the first country in the world with a female dominated parliament. In addition to women representatives, the National Youth Council elects two (2) representatives and the Federation of Associations of the Disabled is also allowed to elect 1 member to the Chamber of Deputies. The remaining 53 representatives are each elected by universal adult suffrage for a five year term through the secret ballot system.

The Senate on the other hand is composed of twenty six (26) members thirty percent (30%) of whom must be women. Of the 26, 12 represent the Provinces and City of Kigali while 8 are appointed by the President of the Republic and 4 by designated members of the Forum for Political Organizations. In his/her appointments, the President should consider historically marginalized communities. The remaining 2 representatives must be University lecturers at the rank of Associate Professor and above in a public and private university. Beyond the 26, former Presidents who have completed their term honorably or resigned may submit a request for admission into the Senate to the Supreme Court. The term of office for all Senators except former Presidents is eight years and this is nonrenewable.

The overall role of the two chambers is to deliberate on and pass laws while at the same time providing oversight over the executive. This legislative role is, however, not limited to Parliament. As observed above, the President reserves some residual legislative functions. It should also be noted at this point that unlike the case in many other countries across the world where parliamentary representation is based on constituencies, in Rwanda Members of

Parliament represent the whole nation and not just their electorate. A Member of Parliament is also not allowed to double as a Minister as is common in other East African Countries. Similarly a member of the Chamber of Deputies cannot at the same time double as a Senator.

1.2 LEGISLATIVE PROCESSES

In terms of legislative process, the two Chambers are independent but complimentary in nature. Ordinary sessions of both chambers are to take place on the same dates and each chamber is required to hold three ordinary two months long sessions under the Constitution. The first session commences on February 5th, the Second on June 5th and the third on October 5th. An extra ordinary session may however be convened upon convocation by the Chambers President or Speaker as the case may be after consultation with other members of the bureau. The President of the Republic may also request for an extra ordinary meeting on basis of a Cabinet proposal or that of a quarter of the members of the Chamber.

It should be noted that joint sessions of the Chamber of Deputies and Senate are generally prohibited save for where the Constitution mandates a joint session or where required by formal ceremony. Under the Constitution extra-ordinary joint sessions can only take place subject to a common agreement between the Presidents of both Chambers or at the request of the President of the Republic. An extra-ordinary joint session is also permitted if requested by at least one quarter of members of each Chamber. In each of these cases where it is permitted, the extra ordinary session is restricted to consideration of only those issues for which it was convened. Such issues must have been brought to the notice of Parliament before commencement of the extra ordinary session. Once matters for which the extraordinary session have been concluded, the session is closed.

Across board, the requisite quorum for each Chamber is 3/5 (three fifth) and sittings of all chambers are open to the public except in a few circumstances. This includes where the President of the Republic, President of Senate or Speaker of the Chamber of Deputies or a quarter of the members of either Chamber or the Prime Minister formally requests for any of the chambers to sit in camera. Such a request if granted by an absolute majority of members excludes the public from sittings of the respective chamber.

A. LEGISLATIVE FUNCTIONS OF THE CHAMBER OF DEPUTIES

The Chamber of Deputies has the right to initiate legislation. This right is only shared with the Executive acting through Cabinet. Proposed legislation should be presented at a plenary session and if found to have basis is transmitted to a relevant committee of the Chamber of Deputies for examination prior to their consideration and adoption in the plenary session (Article 92). The Constitution also makes provision for an urgent consideration of legislative proposals upon petition by either a Member of Parliament or the Cabinet. Where the petition is initiated by Cabinet, it must be considered while in the case of one made by a Member of Parliament, the chamber must decide on the validity of the urgency (Article 94). As soon as a decision confirming the urgency of the Bill has been made, such a bill is considered before any other matter on the agenda (Article 94).

The Chamber has the duty to consider and adopt Bills presented before it in the plenary session. A separate vote is required on every article contained on the Bill as well as the entire Bill (Article

93). During voting, every parliamentarian is called by name and he/she votes by replying in a loud voice (Article 93). When the Bill has finally been adopted into law it takes the form of either organic law or ordinary law. An organic law governs specific matters for which it is reserved as well as matters that require special laws. In terms of hierarchy, the Constitution ranks high above all laws including organic law. Organic law is equally higher than ordinary law.

Bills on matters of which the Senate is competent to legislate on are required to be transmitted to the Senate once they have been adopted by the Chamber of Deputies (Article 95). The only exception is organic law on the internal regulations of Senate. Where the Senate does not approve the contents of the transmitted Bill or where Senate proposals for amendment are not acceptable to the Chamber of Deputies, both Chambers are required to set up a commission (Article 95). Upon finalization of its work, the Commission is enjoined to notify both Chambers who in turn take the final decision. If no compromise is reached by the Chambers, the bill should be returned to its initiator.

B. LEGISLATIVE FUNCTIONS OF THE SENATE

The Senate unlike the Chamber of Deputies does not initiate legislation. For the most part its main role is to approve laws adopted by the Chamber. Pursuant to Article 88 of the Constitution, the Senate is required to vote on:

a) Laws relating to the amendment of the Constitution

b) Organic laws

c) Laws relating to the establishment, modification, functions and dissolution of public enterprises, parastatal and territorial organizations

d) Laws relating to fundamental freedoms, rights and duties of the person

e) Criminal law and laws relating to the organization, jurisdiction of courts and procedure in criminal cases.

f) Laws relating to defense and security

g) Laws relating to election and referenda

h) Laws relating to International agreements and treaties

The Senate is generally not a law making body but exists to approve the different laws adopted by the Chamber of Deputies. Even then, it approves only those laws for which it is mandated to approve under the Constitution.

1.3 CONCLUSION

The structure of government in Rwanda is very much informed by the country's colonial history which was defined by exploitation and discrimination. To date, Rwanda operates a civil law system based on the Belgian system. Following the 1994 genocide that was sparked off by colonial disruptions of divide and rule, Rwandans came together to promulgate a new Constitution in 2003. The Constitution brings all Rwandans together irrespective of ethnic background and prohibits any form of discrimination. In the same way laws and all government structures are required to reflect the diversity of Rwanda to avoid a repeat of factors that sparked off the 1994 genocide. This explains why a number of laws including media laws criminalize conduct likely to generate hatred and tensions among the people.

QUESTIONS FOR DISCUSSION

1. *Briefly describe the present structure of government in Rwanda.*
2. *Explain the role of the following*
   a) *Legislature*
   b) *Judiciary*
   c) *Parliament*
3. *How are Parliamentarians elected?*
4. *Do you think the structure of government in Rwanda creates the required checks of power balance in Rwanda? Explain.*
5. *What is your opinion on the 30%requirement of women representation in government decision making organs and the 64 % women representation in parliament?*
6. *What is the procedure for ratification of regional and international human rights laws in Rwanda?*
7. *Distinguish between organic law and other forms of law.*

FURTHER READING

1. *Constitution of the Republic of Rwanda, 2003*
2. *Des Forges, Leave None to Tell the Story: Genocide in Rwanda, New York: Human Rights Watch, 1999.*
3. *Herbert M. Kritzer (2002), Legal Systems of the World: A Political, Social and Cultural Encyclopedia, Vol. III.*
4. *Ravinder Josh (1997), Genocide in Rwanda: An Examination of the Root Causes, EAST AFR.J. PEACE HUM. RIGHTS, Vol. 3 No. 1*
5. *William A. Schabas & Martin Imbleau (1997), Introduction to Rwandan Law, 3-30.*
6. *Ratification of International Human Rights Treaties-Rwanda, University of Minnesota Human Rights Library, available at www1.umn.edu*

MODULE TWO

CONSTITUTIONAL PROTECTION OF FREEDOM OF EXPRESSION

SUMMARY

This Module addresses the Rwanda Constitution and freedom of expression. It introduces students to the regional and international standards on freedom of expression and how these standards are dealt with in the Rwanda Constitution. Second, the module highlights Article 34 of the Rwanda Constitution and how it promotes freedom of expression. This is complemented by a discussion of various domestic laws that restrict this freedom in Rwanda.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The international instruments providing for freedom of expression;
- The regional standards on freedom of expression and its restrictions;
- Article 34 of the Rwanda Constitution and the limitations on freedom of expression;
- The domestic laws that restrict freedom of expression.

2.0 **INTRODUCTION**

The current Constitution of Rwanda [http://www.mod.gov.rw/?Constitution-of-the-Republic-of] was adopted in 2003 after a Referendum and subsequent confirmation by the Supreme Court. Similar processes have been undertaken in Countries recovering from ethnic or racial polarization, South Africa is an example in this regard. Such processes help build cohesion and legitimacy for the Constitution. Before the 2003 Constitution was adopted, the country's legal structure was premised partly, on the 1991 Constitution, the 1992 and 1993 Arusha Peace Accords [http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/rwan1.pdf] and the Organic Law of August 1996. Importantly, the 2003 Constitution was adopted against the desire to promote and protect human rights. Freedom of expression is recognized under Article 34 of the 2003 Constitution as one of the fundamental human rights. The discussion below is organised into three sections. These include: International and regional standards on freedom of expression, the practical application of Article 34 and how it relates to other laws and finally a conclusion.

2.1 **INTERNATIONAL AND REGIONAL STANDARDS ON FREEDOM OF EXPRESSION**

The discussion in this section is brief and is only meant to provide context to the discourse on the practical application of Article 34 and how it relates to other laws in Rwanda. Freedom of expression is included in various international and regional instruments. These include: Article 19 of the Universal Declaration on Human Rights (UDHR) [http://www.un.org/en/documents/udhr/], the obligations under this declarations are not binding on states but the treaty has acquired the character of customary international law; further, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) [http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx] also protects the expression of what may be termed false information. Rwanda became a state party to the ICCPR in 1975. Article 9 of the African Charter on Human and Peoples' Rights (ACHPR) [http://www.achpr.org/instruments/achpr/]also protects freedom of expression. Rwanda ratified the ACHPR in 1983. Freedom of expression under both the ICCPR and the ACHPR is not an absolute right. This right has limitations. In both cases the limitations are premised on exercising the right within the law. In terms of the ACHPR, the limitation is complemented by Article 27(2) which provides that all rights in the treaty have to be exercised with regard to rights of others, collective security, morality and common interest. It is important to state at this point that there is no indication that at the time of ratification of the above treaties, Rwanda expressed reservations on the application of provisions on freedom of expression.

Although, Rwanda is a monist state and international and regional treaties may be considered to be part of the legal regime, this has to be interpreted in terms of Article 190 of the 2003 Constitution. This provision requires that international treaties that have been adopted should be gazetted. The ICCPR was ratified by Decree-Law No 08/75 of 12/02/1975, while the ACHPR was ratified under Law No 10/1983 of 17/5/1983. This indicates that both the ICCPR and the ACHPR were gazetted. Even then, this is not conclusive; the treaties were ratified before the Constitution was enacted. Moreover, the 2003 Constitution does not have express provisions on the status of international treaties that came into force before 2003. This affects the application of international and regional freedom of expression standards to the Rwanda context.

Nonetheless, in order to understand the interpretation of freedom of expression and the attendant limitations in an African context, the Declaration of Principles on Freedom of Expression in Africa 2002 [http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html], is instructive. Principle 1 provides that freedom of expression is a fundamental and inalienable human right and an indispensable component of democracy. Principle II (2) provides that any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society. In Scanlen & Holderness / Zimbabwe the African Commission interpreted a similar phrase 'within the law' as follows:

> *The Commission adopts a broader interpretation of phrases such as "within the law" of "in accordance with the law" in order to give effect to the protection of human and peoples' rights. To be "within the law" the domestic legislation must be in conformity with the African Charter or other international human rights instruments and practices. The Respondent State cannot argue that the limitation placed by AIPPA was permissible "within the law" i.e. within its domestic law. This would be tantamount to admitting that the exercise of freedom of expression is left solely at the discretion of each State Party. This, in the opinion of the Commission, will cause jurisprudential/interpretational chaos, as each State Party will have its own level of protection based on their respective domestic laws.*

Thus the domestic limitations and laws have to conform to the ACHPR. Additionally, the ACHPR seems to suggest a uniform standard for the protection of freedom of expression. This may be difficult, especially in terms of the unresolved issue on the relationship between the Rwanda Constitution and the application of the ICCPR and the ACHPR. That said, the three key principles that underpin the limitations to freedom of expression are summarized below.

> *…restrictions on freedom of expression must pass the so-called three-part test: (1) they must be provided by law; (2) their purpose must be to protect a legitimate interest; and (3) they must be truly 'necessary' for the protection of that interest. The first condition means, first and foremost, that the restriction cannot be merely the result of the whim of an official. There must actually be an enacted law or regulation which the official is applying. In addition, the law must meet certain standards of clarity and precision so that it is clear in advance exactly what is prohibited. Vaguely worded edicts with potentially very broad application will not meet this standard. The second condition means that restrictions on freedom of expression may only be enacted in order to protect the legitimate aims listed above. The third condition means that the restriction must be truly 'necessary'; not just 'reasonable', or 'useful'. Restrictions should also be proportionate, and only invoked when other, less restrictive measures would not be effective.*[2]

It is clear that the requirement for a law extends to the law being clear. Vague laws do not meet the standard required in Principle II (2) of the Declaration of Principles on Freedom of Expression in Africa. Also, the second requirement is related to the first requirement. The restriction has to serve a legitimate interest which is provided in the law. Finally, the restriction should be necessary in a democratic society and not just reasonable or useful.

2.2 THE PRACTICAL APPLICATION OF ARTICLE 34 AND HOW IT RELATES TO OTHER LAWS

Article 34 of the 2003 Constitution is similar to Article 19 of the ICCPR and Article 9 of the ACHPR. Article 34 provides as follows:

> *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.*

Article 34 does not explicitly refer to the term 'freedom of expression.' Nevertheless, the provision refers to freedom of speech and freedom of information. These can be interpreted to refer to 'freedom of expression.' This provision is similar to Article 27 of the ACHPR, especially, with regard to morality and respect for family. Also, similar to Article 9 of the ACHPR, the provision restricts the enjoyment of the right through subjecting the same to the law as reiterated under Article 34 and 43 of the 2003 Constitution. An obvious distinction between Article 34 of the 2003 Constitution and Article 9 of the ACHPR is the creation of an institutional framework in Rwanda, through the 'High Council of the Press' (currently, the Media High Council). That said, this section focuses on the interaction between Article 34 and other laws that restrict its application. Laws restricting freedom of expression mainly affect the media. As such, the analysis commences with a discussion on how the Media Law No 02/2013 of 08/02/2013 (hereafter the Media Law) affects Article 34.

The Media Law has its origins in the Press Law No 18/2002. This was later repealed by the Media Law No. 22 of 2009. In terms of restricting freedom of expression under Article 34 of the Constitution, Article 6 (1) of the Media Law prohibits journalists from publishing government information (from the executive, legislature and judiciary) which may affect national security and national integrity. Further, Article 7 of the Media Law also prohibits the publication for children, any information that promotes malicious, indecent and delinquency acts that are likely to divert or demoralize children. Finally, Article 9 of the Media Law also restricts freedom of expression. It states that information should not jeopardize the general public order and good morals, an individual's right to honour and reputation in the public eye and the right to inviolability of a person's private life and family. The Media Law sets parameters for the enjoyment of freedom of expression in Article 34 of the Constitution.

Article 34 of the Constitution is also restricted by provisions in the Law Relating to Access to Information, No 04/2013 (Hereafter the Access to Information Law). Article 4 of the Access to Information Law prohibits the publication of confidential information withheld by a public or private body, where such information may among other things, destabilize national security.

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2 *Article 19 Implementing Freedom of Expression A Checklist for the Implementation of the Declaration of Principles on Freedom of Expression in Africa (2006) 3.*

Also, the Penal Code restricts freedom of expression provided in Article 34 of the Constitution. For example, Article 463 of the Penal Code Act of Rwanda criminalizes speech made in public places, which incites the public against established powers, or incites citizens against each other. This section criminalizes speech that creates unrest in the territory of Rwanda. Persons who are charged under this section are liable to imprisonment for a term of ten to fifteen years.

Finally, the Repression of Genocide Ideology Law No 18/2008 affects freedom of expression. Article 2 defines 'genocide ideology' as an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing (sic) on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war. This provision restricts freedom of expression.

There are other laws that restrict freedom of expression under Article 34 of the Constitution. These laws include; the Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism Law No 47/2001 and the Electronic Messages, Electronic Signatures and Electronic Transactions Law No 18/2010.

2.3 **CONCLUSION**

The international and regional standards on freedom of expression appear to be applicable in Rwanda. However, the lack of explicit provisions in the 2003 Constitution, on the status of international and regional treaties ratified before 2003, affects the application of international and regional standards on freedom of expression.

Nonetheless, Article 34 of the 2003 Constitution is quite similar to the international and regional treaties on freedom of expression. It provides restrictions to the enjoyment of this right. These restrictions have to be provided by law. Rwanda has enacted a number of laws that define the application and enjoyment of freedom of expression. These laws provide restrictions to freedom of expression.

QUESTIONS FOR DISCUSSION

1. *What was the supreme law in Rwanda immediately before the 2003 Constitution?*
2. *Identify at least two international instruments ratified by Rwanda that provide for freedom of expression? What is the major distinction between these two instruments?*
3. *To what extent have these international legal instruments shaped media freedoms in Rwanda?*
4. *How has Africa responded to the protection of freedom of expression? In particular, identify the provision that protects this right? Also, identify the specific instrument that sets out the regional standard on this right?*
5. *What provision in the Rwanda Constitution of 2003 protects freedom of expression? What provisions in the Constitution restrict this freedom?*
6. *To what extent has freedom of expression been protected in Rwanda?*
7. *Identify and explain at least three domestic laws in Rwanda that restrict of the freedom of expression provided in the Constitution?*
8. *How have practicing journalists related with the laws restricting freedom of expression in Rwanda?*
9. *Discuss the relevance of Article 463 of the Penal Code in Rwanda, highlighting its impact on freedom of expression under the Constitution.*

FURTHER READING

1. *Amnesty International Safer to Stay Silent the Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and 'Sectarianism' (2010) AFR 47/005/2010.*
2. *Article 19 Implementing Freedom of Expression A Checklist for the Implementation of the Declaration of Principles on Freedom of Expression in Africa (2006).*
3. *Kamatali J M 'Freedom of Expression and Its Limitations: The Case of the Rwandan Genocide' (2002) 38 Stan. J. Int'l L. 57.*
4. *McCracken P Insult Laws: Insulting to Press Freedom A Guide to Evolution of Insult Laws in 2010 (2012) World Press Freedom Committee and Freedom House.*
5. *Pall Z 'Light Shining Darkly: Comparing Post-Conflict Constitutional Structures Concerning Speech and Association in Germany and Rwanda' (2010) Columbia Human Rights Law Review 42:5.*
6. *Schabas W A 'Hate Speech in Rwanda: The Road to Genocide'(2001-2) 46 McGill L. J. 141*
7. *297/05: Scanlen & Holderness / Zimbabwe*

MODULE THREE
MEDIA LAWS

SUMMARY

This module addresses the media laws in Rwanda. It introduces participants to the history of media laws in Rwanda. This historical overview is limited and focuses on some of the most prominent media laws that were in force before the media laws enacted in 2013. The module also discusses the new media laws. It specifically highlights media laws that were enacted in 2013 and compares these to the repealed laws. Finally, the module narrows the discussion to defamation, libel and genocide ideology.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The historical overview of media laws in Rwanda;
- The new media laws in force in Rwanda, especially those enacted in 2013 (both primary and secondary laws);
- Laws on defamation, libel and genocide ideology.

3.0 HISTORICAL OVERVIEW OF MEDIA LAWS IN RWANDA

This section is limited in scope. The discussion mainly focuses on the media laws that were repealed by the media laws of 2013. Additionally, the section majorly discusses primary laws and only refers to subsidiary legislation in passing. In the main, the section discusses the Media Law No. 22 of 2009 and the Media High Council Law No. 30 of 2009. The section also briefly discusses the Electronic Messages, Electronic Signatures and Electronic Transactions Law No 18 of 2010, the Telecommunications Law No 44 of 2001 and the Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism Law No 47 of 2001. These are meant to provide a broad picture of the era preceding the 2013 media laws. That said, the section commences with a brief discussion of the general history of the media in Rwanda.

3.1 HISTORY OF THE MEDIA IN RWANDA

During the pre-colonial era, information in Rwanda was mainly transmitted by word of mouth and in some cases, through the use of special instruments. For example, drums, such as, the impruruza, this was sounded to warn of an impending attack. This form of 'traditional media' was criticised for among other reasons, distorting information and conveying inaccurate information.

The colonial era brought with it new types of media and these were representative of the forms of communication that were prominent in Europe. This era saw the growth of 'contemporary media'. This included: print media, radio and television stations. For example, in 1933, the first newspaper Kinyamateka was introduced by white missionaries. This progressively moved from the publication of religious related articles, to the publication of political pieces in the 1960s. Other newspapers such as Temps nouveaux d'Afrique were published. In 1959, government introduced a state owned newspaper, Imvaho. Also, in 1961, the first radio station, Radio Rwanda started broadcasting. Thus, the colonial era was a period of substantial growth in terms of both platforms and outreach for the media sector in Rwanda.

The immediate period after the colonial era, was characterised by retrogression in terms of the media. It has been reported that the independence governments that followed the colonial era, stifled the media, especially private media entities. The newspapers that were allowed to operate were closely affiliated to particular political groups. For example, Urumuri rwa Democracy set up in 1963, was owned by a political party MDR Parmehutu. Another newspaper, Le Coopérateur-Umunyamuryango was set up by TRAFIPRO in 1965. It is further reported that between 1973 and 1989, the media environment was unsafe and there were very few or no newspapers published in English. The immediate period after independence was characterised by politically inclined print media.

On a positive note, the liberation struggle of the 1990s was highly influenced by radio and newspaper articles. However, some radio stations, especially those that were closely associated with the government at the time, aggravated the events that led to the genocide in Rwanda. Nonetheless, some radio stations and newspapers advocated inclusiveness and the need for democracy.

This brief provides an overview of the history of the media in Rwanda. This history indicates that the media grew through the various governments, but was hijacked by the political events that affected the independent state. This led to a biased media that in most cases fostered division and highlighted ethnic tension. This was the background against which various laws on the media were enacted, for example the Press Law No. 18 of 2002. The discussion below highlights some of these laws.

3.2 THE MEDIA LAW No. 22 OF 2009

This law repealed the Press Law No. 18 of 2002. Generally, the law sets the framework for the operation of the media in Rwanda. This section discusses the major provisions in the Media Law and how these defined the media environment before 2013.

Notably, under Article 3 of the Media Law, journalists were required to seek permission to practise their profession from the Media High Council. The Media High Council issued successful applicants with press cards. This position meant that government was the central authority in the regulation of the affairs of journalists. At the time the Media Law was in force (2009), discussions on media self-regulation were taking place in other parts of the world. The advantages of media self-regulation as opposed to government were being debated.[3]

The above provision of the Media Law was also attended by onerous requirements for a press card under Article 5. Among other requirements, applicants were enjoined to present a criminal record, payment receipt issued by the Rwanda Revenue Authority, as well as, a certified copy of a degree or certificate in journalism. Further, Article 2 of the Media Law defined the term 'journalist' to exclude freelance journalists. The provision only recognized professional journalists. This greatly affected the number of applicants who could successfully obtain a press card in Rwanda. It follows, that the restrictions also affected the realization of freedom of expression.

Further, Articles 9 to 11 put in place provisions on the temporary and permanent withdrawal of a press card. This further restricted freedom of expression and the practise of journalism in Rwanda. In 2010, the Media High Council enacted regulations on the issuance of press cards. These regulations also clearly spelt out provisions on the withdrawal of press cards. The regulations were similar to the Media Law.

Moreover Articles 12 and 13 enacted duties of journalists and restrictions on journalism. These duties were provided in a framework that provided journalists with limited rights under Article 19 to 22 of the Media Law. For example, Article 20 allowed courts to order journalists to disclose sources for purposes of conducting criminal investigations or proceedings. This provision was open to abuse as it did not provide courts with a standard upon which such orders were to be made.

Also Article 50 placed grave restrictions on camera journalists. These would only be granted permission to practice their profession by the Media High Council. Like the provisions on press cards, the consent from the Media High Council for the practice of photo-journalism constrained freedom of expression. The number of people who could practice photo-journalism was restricted. This had a direct effect on the content that could be published through this type of journalism.

Articles 74 to 76 enacted penalties for various offences under the Media Law. These penalties included among others, the suspension and also in some cases, closure of media houses. These penalties were restrictive in light of the fact that there were alternative penalties that were not so restrictive on the freedom of expression.

Finally, Article 83 of the Media Law provided two penalties for a single offence. The provision had the effect of further punishing suspended members of the media, through recourse to criminal law. This was the position for offences, such as, publication of false news intended to undermine security agencies, genocide ideology and contempt of the head of state among others. This state of affairs and the presence of severe and in some cases unfair penalties affected the operation of the media and freedom of expression in Rwanda.

3 Office of the Representative on Freedom of the Media Organization for Security and Co-operation in Europe The Media Self-Regulation Guidebook (2008) 13.

3.3 THE MEDIA HIGH COUNCIL LAW No. 30 OF 2009

The Media High Council law was enacted pursuant to Article 34 of the 2003 Constitution. The Media High Council law sought to create a Media High Council, provide for its administrative structure and also its functions. The Media High Council could then enforce the provisions of the Media Law No. 22 of 2009. The discussion below highlights some of the key provisions in the Media High Council Law.

The responsibilities of the Media High Council were enumerated in Article 6 of the Media High Council Law. These included; the protection of media freedom, the implementation of media laws, the licensing of media activities, the issuing of press cards and the enforcement of standards in the media industry.

These responsibilities all pointed towards a government institution directing affairs in all aspects of the media industry. For example, the Media High Council enacted regulations for broadcasters, restricting programme content. Article 5 (3) of these regulations enjoined licensees to ensure that their content was in good taste and promoted decency. This standard was subjective and unreasonable. Also, under the Media High Council Content Services Licensing Framework, the Council adopted a four-tier system of broadcasting. This included among others, public service broadcasting and commercial broadcasting. It is difficult to argue that the Media High Council could impartially regulate government and private broadcasters. Finally, the Media High Council also put in place requirements and procedures for broadcasting content licensing. Article 6 of these regulations on the application of for a content licence required the applicant to submit criminal records for the Managing Director, Chief Editor and Publishing Editor. Again, this put the government in a place of overt control and restricted freedom of expression.

Other responsibilities, such as, ensuring that the media had equally covered all political organizations and the monitoring of the media during election campaigns, effectively narrowed the functions of the Media High Council to a politicized agenda. This affected the development of the media industry in Rwanda.

Additionally, according to Article 8 of the Media High Council Law, the administrative organs of the Media High Council were the Board of Directors and the Executive Secretariat. These organs and the Media High Council generally, were supervised by the Ministry of Information. Articles 4 and 5 of the Media High Council Laws were instructive in this regard.

3.4 OTHER RELEVANT LAWS

Other laws, such as, Penal Code Act of Rwanda 1977, the Electronic Messages, Electronic Signatures and Electronic Transactions Law No 18 of 2010, the Telecommunications Law No 44 of 2001 and the Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism Law No 47 of 2001 are also important in understanding the historical perspective of media laws in Rwanda.

Section 166 of the Penal Code Act of Rwanda criminalized speech made in public places, where such speech incited the public against established powers, or incited citizens against each other. This section criminalized speech that created unrest in the territory of Rwanda. Persons who were charged under this section were liable to imprisonment (two to ten years) and a fine of 2000 to 100,000 francs or one of these penalties.

Also, sections 186 and 187 of the Penal Code Act also criminalized speech in Rwanda. These sections penalized persons who insulted foreign heads of state, representatives of foreign governments, officials of intergovernmental organisations and the family members of the above officials. Persons charged under these sections were subject to imprisonment for terms of three months to three years and a maximum fine of 5000 francs, or both penalties.

Article 8 of the Electronic Messages, Electronic Signatures and Electronic Transactions Law No. 18 of 2010 provides that intermediaries and service providers cannot be held liable for the content transmitted through their networks. This promotes freedom of expression as these platforms are available as alternative media platforms. This law is important in light of the increasing internet usage in Rwanda.

The Telecommunications Law No. 44 of 2001 is still in force. Article 24 of this Law provides for the protection of personal information and data from calls made by clients. Nonetheless, this provision has a claw-back clause which allows the regulatory body to obtain such information pursuant to the law. The circumstances and procedures for obtaining such information are not elaborated in the law. This provision restricts freedom of expression in Rwanda.

The Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism Law No 47 of 2001, is also relevant. Article 3 of the Law provides that the crime of sectarianism occurs when a person makes through speech, written statement or action, causes conflict that results into an uprising that may degenerate into strife. This provision is challenging to freedom of expression. The provision assumes that the accused is aware of the consequences of the speech or statements yet this may not be the case. This affects the way in which people choose to express themselves. It is also worth noting that this provision does not provide a standard for determining what kind of speech or statements are regulated by this blanket provision.

3.5 **THE NEW MEDIA LAWS IN RWANDA**

After wide consultations and debate, the new media laws were enacted. The recommendations from the debate were captured in the National Dialogue on the Media. Thereafter, the Ministry of Information, the Media High Council, the Rwanda Governance Advisory Council and members from the media discussed the outcomes of the dialogue and resolved to amend the Media Law No. 22/2009 and the Media High Council Law No. 30/2009. This resulted into the new media laws. These include; the Media Law No. 02/2013, the Media High Council Law No. 03/2013 and the Access to Information Law No. 04/2013. However, this section will focus on the Media Law and the Media High Council Law. The Access to Information Law is discussed separately later in the course.

3.5.1 The Media Law No. 02 of 2013

The Media Law No. 02 of 2013 repealed the Media Law No. 22 of 2009. This section highlights some of the progressive reforms that were built into Media Law No. 02 of 2013. First, Article 2 (19) relaxed the definition of a professional journalist to include all persons who have basic journalism skills. The requirement for a degree or certificate in journalism was removed from the definition. This implies that all journalists can be protected under the rights provided to them in the law.

Second, Article 3 introduces a new body in the accreditation of local and foreign journalists in Rwanda. That is, the Media Self-Regulatory Body - The Rwanda Media Commission. This Body replaced the Media High Council in the accreditation and granting permission to applicants who sought to practice the profession of journalism. This distinction puts journalists in the driving seat, in terms of determining how their affairs are managed. It also makes them accountable and more professional. Nonetheless, the government retained control over the accreditation of journalists working for foreign media companies.

Third, the Media Law No. 02 of 2013 does away with the requirement of press cards. It follows that the penalties of temporary and permanent withdrawal of press cards are not included in the new law as they are redundant in the absence of press cards.

Also, Articles 11 to 13 provide for various rights for journalists. These rights are not new and were present in the Media Law No. 22 of 2009. However, their retention indeed indicates that the government is interested in fostering freedom of expression in Rwanda. These rights include; right to establish a media company, right to collect information, and a right to confidentiality. That said, the right to confidentiality is followed with a claw-back clause which allows the court to order journalists to disclose their sources in cases of criminal investigations and proceedings. This was part of the Media Law No. 22 of 2009 and is still reflected in the Media Law No. 02 of 2013. This restricts freedom of expression.

Further, Article 22 is also a welcome provision as it allows human rights organizations to seek replies, rectification and correction on behalf of persons subject to accusations in a media organ, likely to harm their reputation or confidence, on the basis of any form of discrimination or any other grounds based on their responsibilities. This enhances public confidence in the media and promotes freedom of expression.

Finally, the Media Law No. 02 of 2013 repealed the section on offences and penalties under the Media Law No. 22 of 2009. This implies that severe penalties, such as, suspension and closure of media houses over what was termed 'press offences' are no longer part of the media law in Rwanda.

3.5.2 Media High Council Law No. 03 of 2013

The Media High Council Law has repealed some of the responsibilities of the Media High Council. For example, the issuance of press cards, the implementation of media laws, as well as, ensuring that the media had equally covered all political organizations and the monitoring of the media during election campaigns, are no longer covered under the Media High Council Law. These responsibilities have been replaced by more progressive responsibilities that focus on building capacity in the media. This is reflected in Article 6 of the Media High Council Law 03 of 2013.

Article 8 provides for two management organs for the Media High Council. These are; the Board of Directors and the Executive Secretariat. Be that as it may, the key distinction under the Media High Council Law No. 03 of 2013, is that these organs and the Media High Council will be supervised by a body to be named in a Prime Minister's order.

3.6 LAWS ON DEFAMATION, LIBEL AND GENOCIDE IDEOLOGY

This section focuses on the discussion to freedom of expression and how it relates to the offences of defamation, libel and genocide ideology. These offences are provided in the Penal Code 2013, and other specific laws, such as, the Repression of Genocide Ideology Laws (Law No 18 of 2008).

3.6.1 Defamation

Article 288 of the Penal Code 2013, criminalizes malicious and public acts made by a person to adversely affect the dignity of another person or to cause such a person public contempt. This is the general offence of defamation. A person who is convicted of this offence is liable to a term of imprisonment of six (6) months to one (1) year and a fine of one million (1,000,000) to five million (5,000,000) Rwandan francs or one of these penalties. It should be noted that despite the amendment of the Penal Code of 1977, this offence (which was previously Section 391) is still present in the new Penal Code. It should also be noted that in the Penal Code 2013, the punishment for defamation has been raised from eight days to six months as the minimum sentence. Also, the fine has considerably been increased from 1,000 to 1,000,000 Rwandan francs.

Article 267 also provides for a specific offence of defamation, that is, defamation on the basis of sex with the intent to humiliate another person's work. A person convicted of this offence is liable to a term of imprisonment of at least two (2) months but less than six (6) months and a fine of two hundred thousand (200,000) to five hundred thousand (500,000) Rwandan francs or one of these penalties.

Also Article 317 criminalizes defamatory acts that are specifically intended to facilitate extortion. A person who is convicted of this offence is liable to a term of imprisonment of two (2) years to five (5) years and a fine of five hundred thousand (500,000) to five million (5,000,000) Rwandan francs.

These provisions on defamation in the Penal Code 2013, are some of the restrictions imposed on freedom of expression in Rwanda. Defamation was part of the Penal Code of 1977 and is still an offence under the Penal Code 2013.

3.6.2 Libel

Libel involves the publication of an untruth about another which will do harm to that person or his/her reputation, by bringing into ridicule, hatred, scorn or contempt of that person. It is usually equated to the publication of defamatory information. The Penal Code 2013 does not provide for the offence of libel. However, the offence of defamation which is discussed above may be relied upon to prosecute persons (especially) journalists who publish defamatory information. Although the Draft Penal Code included the offence of libel, that is, Article 298, which prohibited the publication of falsified information about a person without mentioning that the information was falsified, this provision was not included in the Penal Code 2013. To this end, libel may not be considered a criminal restriction on freedom of expression in Rwanda.

3.6.3 Genocide Ideology

The Repression of Genocide Ideology Law (Law No 18 of 2008), criminalizes publications that minimize or justify Genocide. Article 2 of the Law defines Genocide Ideology. Article 3 provides the characteristics of the offence. Article 4 of the Law discourages open debate on the genocide that took place in Rwanda. Article 4 also imposes serious penalties for contravening this law. The Law is ambiguous and does not clearly define some of the phrases like 'negating genocide'. The law further provides that children who are convicted under the law may be sent to a rehabilitation center, if they are below the age of twelve. Children between the age of twelve and eighteen are subject to half the penalties of adult offenders, with the possibility of spending some time in a rehabilitation center. Article 7 penalizes NGOs that violate the Law.

The Genocide Ideology Law also imposes heavy penalties for persons who disseminate genocide ideology in public through documents, speeches, pictures, media or any other means. The Genocide Ideology Law is currently being amended and there are reports that the law will be more specific and some of the offences will be reduced. In its present form the Genocide Ideology Law restricts freedom of expression and in some cases these restrictions may not pass the test for limitations on freedom of expression.

3.7 **CONCLUSION**

Generally, the historical perspective points to various restrictions on freedom of expression. These were reflected in onerous requirements for the registration of journalists under the Media Law; the prominent role of government, through the Media High Council, in the regulation of the media; as well as through various laws, such as, the Telecommunications law and the law on Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism. This was the broad framework against which reforms were undertaken to improve media laws in Rwanda.

In terms of the Media Law No. 02 of 2013 and the Media High Council Law No. 03 of 2013, Rwanda has made substantial progress in promoting freedom of expression. Some of the challenges that were implicit in the Media Law No. 22 of 2009 and the Media High Council Law No. 30 of 2009, have been repealed. These include the issuance of press cards by the Media High Council, which has been replaced with the Rwanda Media Commission a self-regulatory body and the sections on offences and penalties for 'press offences'.

The provisions on defamation are still present in the Penal Code 2013. The penalties for these offences are greater than those in the Penal Code 1977. With regard to libel, the Penal Code 2013 does not provide a specific offence on libel. This is a positive step in relaxing the restrictions on freedom of expression. Finally, the law on Genocide Ideology is being amended.

QUESTIONS FOR DISCUSSION

1. *Briefly discuss the forms of traditional media in Rwanda?*
2. *What were the functions of the Media High Council under the Media High Council Law No. 30 of 2009?*
3. *Apart from the Media Law No. 22 of 2009 and the Media High Council Law No. 30 of 2009, please discuss at least three other laws that restricted freedom of expression before 2013.*
4. *What do you appreciate about the Media Law No. 02 of 2013?*
5. *Identify at least two distinctions between the Media High Council under Law No. 30 of 2009 and Law No. 3 of 2013?*
6. *In your opinion, do you think defamation should be criminalised? Give reasons for your answer.*
7. *What are the implications of the Genocide ideology law on freedom of expression?*

FURTHER READING

1. *Thompson A (ed) The Media and the Rwanda Genocide (2007) Kampala: Fountain Publishers.*
2. *Ministry of Information in the Prime Minister's Office Media Policy in Rwanda (2004).*
3. *Armijo E 'Building Open Societies: Freedom of the Press in Jordan and Rwanda' (2009) INT'L J. COMM. L. & POL'Y Issue 13.*
4. *Waldorf L 'Revisiting Hotel Rwanda: Genocide Ideology, Reconciliation, and Rescuers' (2009) Journal of Genocide Research Vol 11 Issue 1.*
5. *Office of the Representative on Freedom of the Media Organization for Security and Co-operation in Europe The Media Self-Regulation Guidebook (2008).*

MODULE FOUR
MEDIA REGULATION

SUMMARY

This Module deals with the regulation of media in Rwanda. It considers the operations of the Rwanda Media Commission (RMC) and the Rwanda Utilities Regulatory Authority (RURA). It defines their roles, functions and purposes and explains their relevance to media practitioners in Rwanda.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The legal basis for the regulation of media in Rwanda;
- The role, function and operation of the RMC;
- The role, function and operation of RURA;
- How the RMC and RURA jointly exercise their mandate.

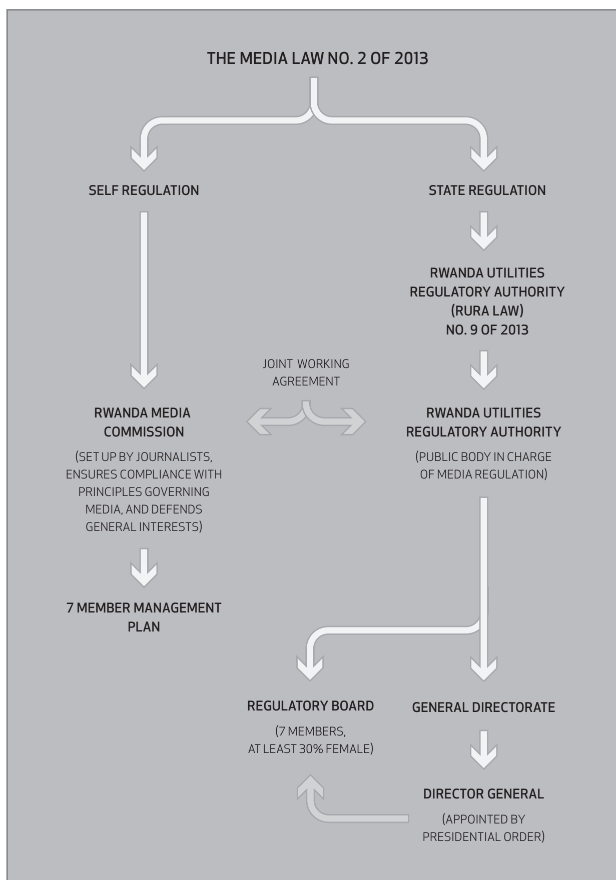
4.0 INTRODUCTION

Regulation of the media in Rwanda is both by means of self-regulation under the mandate of the RMC, as well as by state regulation under the RURA.

Article 4 of the Law regulating Media ('the Media Law')[4] provides that the daily function of media and the conduct of journalists in Rwanda shall be regulated by the Media Self-Regulatory Body. At the same time, it also provides that the national utilities statutory regulator shall also carry out the regulation of audio, audio-visual media and internet. Given the mutually reinforcing roles provided to the self-regulatory body and to the national utilities statutory regulator, Article 4 of the Media Law further provides that these organs should have a joint working agreement and must determine their plan of action.

Article 2 (20) of the Media Law defines the media self-regulatory body as an organ set up by journalists themselves whose responsibility is to ensure compliance with the principles governing media and to defend the general interest. This organ is known as the Rwanda Media Commission (RMC). Under Article 2 (21) of the same law, the national utilities statutory regulator is defined as a public body in charge of media regulation. This organ is known as the Rwanda Utilities Regulatory Authority (RURA).

It is therefore important to understand the nature, function and operation of both the RMC and RURA as independent entities, but also to appreciate how they cooperate to regulate media in Rwanda.



4 Law No.2 of 2013 enacted on 8th February 2013.

4.1 THE ROLE, FUNCTION AND OPERATION OF THE RMC

As already noted, the RMC is an organ set up by journalists themselves whose responsibility is to ensure compliance with the principles governing media and to defend the general interest (Article 2 (20) of Media Law). The RMC is managed by a seven-member panel, which was sworn in on September 26 2013.

Under the Media Law, the RMC has the mandate to accredit Rwandan journalists, where they exercise the profession in a registered media company, in a freelance capacity or as the representative of a foreign media organization in Rwanda (Article 3). For their part, foreign or Rwandan journalists working for foreign media organizations have to be given accreditation by a competent public organ (Article 3).

The RMC is also required under the Media law to regulate the daily function of media and the conduct of journalists in Rwanda (Article 4).

The RMC also has powers to protect journalists whose rights are infringed. According to Article 15 of the Media Law, a journalist whose rights recognized by that law are not respected is entitled to lodge a petition with the RMC or any other competent organs to amicably resolve any matter. Where such journalist is not satisfied, they are allowed to refer the matter to a competent court (Article 15).

The RMC also has a prominent role with regard to the right of correction, reply or rectification. Under Article 21 of the Media Law, every individual, associations, public entity and any organization with legal personality has the right to request for correction, reply or rectification of an article or a story published in a media organ. This request is required to be submitted to the Publishing Director of media organ by registered mail, letter delivered with acknowledgement of receipt or electronic mail with acknowledgment of receipt. The RMC is required to determine the modalities for correction, reply and rectification. Where the applicant for correction, reply or rectification is unsatisfied with the decision made by the media house, such person is entitled to file a case with the RMC. In the absence of amicable settlement, the person is entitled to file a case with a competent court.

4.2 THE ROLE, FUNCTION AND OPERATION OF RURA

The Rwanda Utilities Regulatory Authority was created by the Law Establishing the Rwanda Utilities Regulatory Authority and Determining its Mission, Powers, Organization and Function ('the RURA law').[5] The law was made pursuant to the Constitution of Rwanda of 4th June 2003 (as amended to date) [http://www.mod.gov.rw/?Constitution-of-the-Republic-of It also operates as a repeal of the Law Establishing an Agency for the Regulation of Certain Public Utilities[6] as well as all prior legal provisions that may be contrary to the RURA law (Article 52).

The RURA law established the RURA with legal personality as well as administrative and financial autonomy (Article 1). RURA is empowered to regulate a number of public utilities, including telecommunications, information technology, broadcasting and converging electronic technologies including the internet and any other audiovisual information and communication technology (Article 2). RURA is headquatered in Kigali but may open branches throughout the country considered necessary (Article 3).

RURA's mission under the law is: (i) to set up necessary guidelines in order to implement laws and regulations in force; (ii) to ensure compliance by public utilities with the provisions of laws and regulations governing the regulated sectors in an objective, transparent and non-discriminatory manner; (iii) to ensure the continuity of service delivery by the licensed or authorized service providers and the preservation of public interest; (iv) to protect users and operators interests by taking measures likely to guarantee effective, sound and fair competition in the regulated sectors within the framework of applicable laws and regulations; (v) to protect and promote consumers' interests; (vi) to promote the availability, accessibility and affordability of regulated services to all consumers including low income, rural and disadvantaged consumers; (vii) to promote efficient development of regulated sectors in accordance with Government economic and financial policy; (viii) to promote and enhance general knowledge, sensitization and awareness of the regulated sectors including but not limited to the rights and obligations of consumers and service providers, the ways in which complaints are lodged and resolved, and the missions, powers and functions of RURA; (ix) to issue permits, authorizations and licenses required for regulated sectors, in accordance with the relevant governing laws and regulations; (x) to monitor and ensure compliance by regulated network or service providers in line with their licenses, permits and concession obligations; and (xi) to ensure fair competition in all regulated sectors (Article 4).

While this general mission is equally applicable to the media, the law additionally provides that the specific mission of RURA with regard to the media shall be governed by a Prime Minister's Order (Article 5).

In order to fulfill its mission, RURA is clothed with a number of powers under the law, which are: (i) to carry out investigations including inspections at service delivery sites of the regulated service providers in the purpose of ensuring compliance with their obligations; (ii) to impose administrative sanctions in case of a violation of this Law and other laws and regulations governing regulated sectors; (iii) to settle and facilitate the settlement of disputes related to regulated services; and (iv) to issue directives to the regulated service provider whose license to operate has been cancelled, suspended, modified or revoked, and appoint an administrator (Article 6). RURA additionally has the power to regulate tariffs and charges (Article 7) and to obtain any information regarding activities of public utility providers (Article 8). The RURA law also provides that there shall be an Order of the Minister in charge of Justice which shall determine certain of RURA employees to be vested with judicial police powers, and that the Minister of Justice will also appoint some RURA competent employees to be vested with the power to represent it before courts of law (Article 9).

The law also gives RURA the power to access any commercial premises of any natural person or legal entity, at any time, in accordance with the law, either with or without notice, to inspect and obtain any necessary information. However, these powers are only exercisable by the Regulatory Board or by employees of RURA where there are reasonable grounds to believe that any natural person or legal entity violates the provisions of the law governing the concerned regulated utility or this Law (Article 10).

Under the law, RURA shall be supervised by the Prime Minister's Office. The law also provides that an Order of the Prime Minister shall determine modalities of which Ministries in charge of regulated sectors shall coordinate activities with RURA in the implementation of their respective mandates (Article 11). RURA's finances, however, are audited by the Auditor General of the State finances (Article 40).

RURA is managed by the Regulatory Board and also by the General Directorate (Article 13). The Regulatory Board is the supreme management and decision making organ of RURA and it has full powers and responsibilities to manage the agency's property in order for it to fulfill its mission (Article 14). The Regulatory Board has a wide range of responsibilities under the RURA law, but the major function of the Board appears to be to determine the general vision of RURA and ensure its implementation General; (Article 19). To this end, the Regulatory Board is empowered: to set up the general regulations and directives in accordance with the laws in force; to determine at any time tariffs, charges related to networks interconnection or infrastructure shared by public utilities providers; to take any decision pertaining to the regulation of public utilities, particularly any decisions relating to the granting, suspension and withdrawal of a license, authorization or permit; to take administrative sanctions in case of violation of legal and regulatory provisions or of the contents of permits, licenses, authorization and other directives; to take decisions on any disputes referred to it; and to conciliate, upon request of parties in dispute (Article 20). However, under the RURA law, it may delegate some of these powers to the Director General in order for RURA to l its missions (Article 20). The Board is additionally empowered to enact Statutes governing the staff, organizational structure and responsibilities of departments of RURA (Article 35).

In the execution of its mandate and in the exercise of its powers, the

5 Law No.9 of 2013 enacted on 1st March 2013. It came into force upon publication in the Official Gazette on 8th April 2013 (Article 53).

6 Law No.39 of 2001 enacted on 13th September 2001.

Board is required to: (i) promote the interests of subscribers and potential users who require goods and services provided by public utilities in respect of the price and quality of goods and services, and where appropriate, to ensure the variety of those goods and services, taking into consideration the interest of service providers; (ii) have due regard to the security of the Republic of Rwanda and protection of the country when making decisions concerning public utilities; (iii) carry out the general and specific regulatory duties laid down by relevant legislation in respect of each public utility and any administrative function associated with these duties; (iv) preserve and protect the environment, the conservation of natural resources and the health and safety of services users; and (v) advise public utility providers with the aim of ensuring improvement in the service delivery. In these and all other respects, the Regulatory Board is required to always act in an independent, transparent and objective manner, and without discrimination when carrying out its activities (Article 21).

The Board consists of seven (7) members including the Director General who serves as its rapporteur. The law also mandates that at least thirty percent (30%) of the members of the Board be female (Article 14). Members of the Board are appointed by a Presidential Order for a term of four (4) years renewable only once, except for the Director General. The Chairperson of the Board is appointed under the same Order. However, the Vice-Chairperson of the Board is elected by the Board Members during their first meeting, from amongst themselves (Article 16). Board Members have to be persons of integrity and who possess a breadth of knowledge, in fields related to public utilities or in the regulation of public utilities. They should also not have been irrevocably sentenced to a term of imprisonment equal to or exceeding six-months (Article 15). Additionally, while serving on the Board, a Member may not: be associated with, hold a managerial post or a senior office in any private organization pertained, in one way or another, to public utilities governed by this Law; hold shares or interests in a business of public utilities either by themselves or their first degree relatives; have served as public utility manager for three (3) years preceding their appointment to the Regulatory Board; or carry out any activity whatsoever likely to hamper the functioning of RURA (Article 17). A person's membership to the Board may cease through any of the following ways: (i) end of his/her term of office; (ii) resignation in writing; (iii) incapacity due to physical or mental illness as certified by an authorized medical doctor; (iv) irrevocable sentence to a term of imprisonment equal to or exceeding six-months (6) with no suspension of sentence; (v) three (3) consecutive absences from the Board meetings within period of one (1) year with no valid reasons; (vi) in the event that they no longer meet the requirements considered for their appointment to the Regulatory Board; (vii) display of conduct incompatible with their duties; (viii) hampering the smooth functioning of RURA; (ix) when they are guilty of the crime of genocide or genocide ideology and (x) upon their death (Article 18).

The RURA law forbids the Board from doing anything which is prejudicial to the national security or which may affect relations with foreign countries (Article 29). The Supervisory organ of RURA has the power to nullify any decision of the Regulatory Board if it appears that the security of Rwanda or of a foreign country may be adversely affected by it. However, in exercising this power, the Supervisory Organ of RURA is required to first provide explanations to the Regulatory Board in a meeting which it requested in writing to be convened. If the Regulatory Board insists upon executing the decision, the Supervising Organ must nullify it. RURA has the right of audience before courts of law with regard to any of its decisions that are nullified in this manner (Article 30).

For its part, the General Directorate of RURA is headed by a Director General, who is appointed by Presidential Order for a term of office of five (5) years, renewable once (Article 32). The Director General of RURA has executive powers and is required to coordinate and direct RURA's daily activities. The Director General is answerable to the Regulatory Board on how its decisions are implemented (Article 33). The main responsibilities of the Director General of RURA are: (i) to initiate and present to the Regulatory Board any plan and activities aimed at promoting the development of RURA and the achievement of its mission; (ii) to implement, monitor and ensure the enforcement of the regulation policy of RURA and the decisions of the Regulatory Board in accordance with laws governing the regulated public utilities; (iii) to assign employees in accordance with the laws upon their appointment by the Regulatory Board; (iv) to serve as a legal representative of RURA; (v) to ensure the daily management of RURA; (vi) to elaborate the draft of the annual budget and submit it to the Regulatory Board for approval; (vii) to produce the annual activity report of RURA; (viii) to enforce contracts, agreements, conventions and international treaties which have been ratified by Rwanda in relation to regulated sectors; and (ix) to perform any other duties as may be assigned by the Regulatory Board which are under RURA's missions (Article 33).

In the fulfillment of its mandate, RURA is empowered to impose upon any natural person or legal entity which fails to provide information requested within the time limit specified by the Law, a daily administrative fine of two hundred thousand (200,000) to two million (2,000,000) Rwandan francs (Article 48). RURA is also empowered to impose upon any natural person or legal entity that provides wrong information a daily administrative fine of five hundred thousand (500,000) to five million (5,000,000) Rwandan francs (Article 48). In addition, any natural person or legal entity that shows an anti-competitive practices and the abuse of their dominant position is subject to an administrative fine determined by the Regulatory Board, but such fine is required to not exceed ten percent (10%) of turnover of the natural person or legal entity wherever they operated when the faults are committed (Article 49).

4.3 THE PARTNERSHIP AND INTERACTION BETWEEN RMC AND RURA

As earlier noted, Article 4 of the Media Law establishes a regime of joint regulation between the RMC, a media-self regulatory body, and the RURA, a statutory regulatory body. Article 4 further mandated that these two organs enter into a joint working and that they determine their plan of action for properly executing their shared regulatory function under that provision.

To this end, on September 12 2013, the RMC and the RURA signed a Memorandum of Understanding articulating their shared mandate and responsibilities and setting out a framework for cooperation and collaboration in furtherance of their joint obligation ('the Memorandum'). The Memorandum was signed by the Chairperson of the RMC, Mr. Robert Mugabe and by Maj. Francois Régis Gatarayiha, the Director General of RURA.

The Memorandum states its purpose as being to determine a joint working agreement of both the RMC and the RURA in media regulation and to specify the area of collaboration between the parties in regard to media (Article 1). In the Memorandum, 'media' is understood as including any process, whether in print, visuals, audio or audio-visual, signs or internet to disseminate, broadcast and make known to the general public facts, opinions and any other expression of thought particularly in order to inform, educate and train to promote leisure or entertainment (Article 2 (5)) while a 'permit' is understood to mean any document issued by RURA which authorizes the holder to carry out the activity prescribed therein (Article 2 (8)).

Under the Memorandum, the RMC is mandated to execute certain specific responsibilities, which are: (i) to establish a code of ethics of journalists to be adhered to by all journalists and to update it from time to time; (ii) to regulate media content by enforcing the code of ethics within the framework of self-regulation; (iii) to set up procedural rules of handling complaints related to code of ethics of journalist and impose sanctions if necessary; (iv) to register and issue a certificate of registration for new media organ; (v) to accredit all Rwandan and foreign journalists working for Rwandan media organs; and (v) to propose to RURA that a license previously granted to a media organization be suspended or revoked in case of violation of any Law and regulations relating to media in Rwanda (Article 4).

For its, part, the responsibilities of RURA under the Memorandum are: (i) to jointly work with the RMC to handle audio, audio-visual and internet media matters related to content; (ii) to assist and provide technical support to the RMC where applicable; (iii) to issue permits for starting new print media organizations; and (iv) to suspend or revoke, upon the proposal made by the Rwanda Media Commission, the license of any print media organ (Article 5).

Article 6 of the Memorandum articulates certain common responsibilities of both the RMC and RURA. Under the terms of this provision, each party is required to ensure that the other has access to all necessary information to facilitate the implementation of the Memorandum. The parties are also forbidden from transferring or assigning any rights and obligations arising from the Memorandum without the prior written consent of the other party. They also undertake to collaborate in regulating cross ownership in media sector.

Each party undertakes to strictly observe the independence of the other party when performing the responsibilities under the Memorandum (Article 8). The parties also commit to work towards promoting credibility and trust of the media to the public through improving quality standards in media sector (Article 9).

Under the terms of the Memorandum, either party may request changes to this Memorandum, and any changes, modifications, revisions or amendments to this Memorandum which are mutually agreed upon by and between the parties shall be incorporated by written instrument, and effective when executed and signed by both parties (Article 10). Any conflicts that may occur in the performance of duties under the Memorandum are required to be amicably settled (Article 11), and both parties are mandated to ensure its full implementation and its effective realization (Article 13). The Memorandum is required to be read and interpreted in a manner consistent with all applicable laws and regulations of Rwanda (Article 7). Similarly, under Article 12 of the Memorandum, it is provided that the Memorandum shall be valid as long as Article 4 of the Media law remains in force.

The Memorandum clarifies certain ambiguities left by the Media Law, especially in terms of how the RMC is supposed to exercise its mandate under Article 4 of the Media law to 'regulate the daily function of media and the conduct of journalists in Rwanda'. In particular, Article 4 of the Memorandum makes it a key mandate of the RMC to establish a code of ethics for journalists and, using this code, to regulate media content and to provide a mechanism for handling complaints relating to breach of the code. There already exists a 'Journalists and Media Code of Ethics in Rwanda' which was developed in 2004 by a small group of Rwandan journalists. It remains to be seen whether the RMC will continue to use this Code, or whether it will choose to enact a complete new one.

4.4 **CONCLUSION**

The Media law and the RURA law establish a robust framework for the regulation of the media in Rwanda. The conclusion of a Memorandum of Understanding between the RMC and the RURA is also a significant development that makes it easier for journalists and media houses to understand the framework under which the regulation of the media in Rwanda is to be conducted.

QUESTIONS FOR DISCUSSION

1. *How is the Media Regulated in Rwanda?*
2. *What is the overall responsibility of the Rwanda Media Commission (RMC)?*
3. *Identify at least two functions of the RMC*
4. *Identify at least five functions of the RURA?*
5. *What is the difference between RMC and RURA?*
6. *What is your opinion about the joint working mechanism between RMC and RURA?*
7. *Do you think the established joint working mechanisms between RMC and RURA will work? Explain.*

FURTHER READING

1. *The Journalists and Media Code of Ethics in Rwanda (2004)*
2. *The Law Regulating Media (Law No.2 of 2013)*
3. *The Law Establishing the Rwanda Utilities Regulatory Authority and Determining its Mission, Powers, Organization and Function (Law No.9 of 2013)*
4. *The Memorandum of Understanding Between the Rwanda Media Commission and the Rwanda Utilities Regulatory Authority (September 2013)*

MODULE FIVE
MEDIA CAPACITY BUILDING

SUMMARY

This Module deals with media capacity building in Rwanda. It considers the current role, functions and operations of the Media High Council (MHC) and explains the importance of the MHC for media professionals in Rwanda.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The role and functions of the MHC;
- The composition and organization of the MHC;
- The operations of the MHC;
- Major changes introduced by the new MHC Law.

5.0 INTRODUCTION

The function of capacity building of the media in Rwanda is exercised by the Media High Council (MHC) as established under the Law determining the responsibilities, organization and functioning of the Media High Council ('the MHC Law').[7] The MHC Law was enacted pursuant to the Constitution of Rwanda of 4th June 2003 (as amended) [http://www.mod.gov.rw/?Constitution-of-the-Republic-of], and in particular, to the provisions of Articles 33, 34, 62, 66, 67, 88, 89, 90, 92, 93, 94, 95, 108 and 201 of the Constitution. Under Article 24 of the MHC Law, all prior legal provisions contrary to it, including but not limited to, the old Law determining the mission, organization and functioning of the Media High Council ('the old MHC Law')[8] are repealed.

As its full title suggests, the MHC Law determines the responsibilities, organization and functioning of the Media High Council and vests it with legal personality as well as financial and administrative autonomy (Article 1).

The sections below examine the composition of the MHC and analyze its roles and functions as provided under the MHC Law.

5.1 THE ROLE AND FUNCTIONS OF THE MHC

Under Article 2 of the MHC Law, the Council is established as an independent institution responsible for media capacity building.

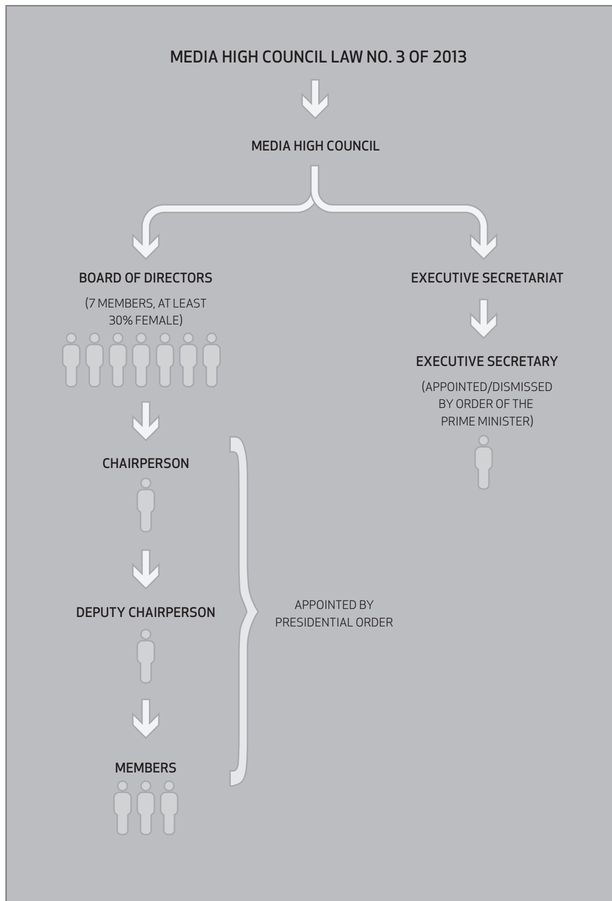
In this regard, the MHC is tasked with a number of responsibilities, the main ones of which are: (i) to advocate for media capacity building; (ii) to build partnership with other institutions in a bid to mobilize resources for media capacity building; (iii) to conduct regular research enabling to build media capacities; (iv) to participate in initiating and implementing policies and strategies to develop the media sector; (v) to build innovative capacities and to produce media content that disseminates and promotes the Rwandan values, culture and products; (vi) to liaise, collaborate and cooperate with other national, regional, and international institutions with similar or related responsibilities; (vii) to assist in setting up an enabling environment that facilitates investments in the media sector; and (viii) to perform any other functions prescribed by Law that are not inconsistent with its mandate (Article 6).

7 Law No.3 of 2013 enacted on 8th February 2013. The Law came into force upon publication in the Official Gazette on 11th March 2013 (Article 25).

8 Law No.30 of 2009, enacted on 16th September 2009.

5.2 **THE COMPOSITION AND ORGANIZATION OF THE MHC**

The MHC is managed by two organs, that is to say, the Board of Directors and the Executive Secretariat (Article 8). The organizational chart and structure of the MHC are to be finally determined by an Order of the Prime Minister (Article 19).



5.2.1 The Board of Directors

The Board of Directors is the supreme governing organ of the MHC. It is required to consist of seven (7) skilled and competent members who are persons of integrity. At least thirty percent (30%) of the Board Members must be female. The Board, including its Chairperson and Deputy Chairperson, are required to be appointed by Presidential Order. The Members of the Board can only serve for a three (3) year term of office which is renewable only once (Article 9).

The Board of Directors have overall supervisory capacity over the MHC. In particular, they are mandated: (i) to provide strategic vision of MHC; (ii) to direct and take decisions; (iii) to approve the MHC's action plans; (iv) to approve the internal rules and regulations of MHC before they are published in the Official Gazette of the Republic of Rwanda; (v) to approve the draft annual budget proposal of MHC before being submitted to relevant authorities; (vi) to evaluate the performance of MHC in accordance with the action plan and the budget; (vii) to approve the quarterly and annual activity and financial reports of the MHC; and (viii) to monitor the performance of the Executive Secretariat (Article 10).

Board Members of the MHC are prohibited from performing any remunerated activities in the MHC. Additionally, they and companies in which they are shareholders are shareholders are prohibited from bidding for any tenders offered by the MHC (Article 11).

In any case, Membership of the Board of Directors ceases where a Member: (i) dies; (ii) resigns; (iii) jeopardizes the interests of the MHC; (iv) is no longer able to perform his/her duties due to physical or mental disability certified by an authorized medical doctor; (v) has been found guilty of sectarianism and divisionism; (vi) has been found guilty of the crime of genocide ideology; (vii) has confessed and pleaded guilty to the crime of genocide; (viii) has been sentenced to a term of imprisonment equal to or exceeding six (6) months; (ix) evidently no longer fulfills the requirements considered during their appointment (Article 12).

Where a Member of the Board of Directors loses their membership when the remaining period of his/her term of office is equal to or exceeding six (6) months, the vacancy on the Board thereby created is required to be filled within sixty (60) days. In such circumstances, the new Board Member designated to replace such person serves to complete the remaining term of office of the replaced person (Article 13).

Meetings of the Board are required to be convened and chaired by the Chairperson of the Board, or, in their absence by the Vice Chairperson. The Chairperson of the Board is also mandated to act as the legal representative of the MHC (Article 14). The MHC Law envisages the issuance of a Presidential Order to determine the sitting allowances payable to Board Members for attendance at meetings (Article 15).

Any other matters or issues related to the functioning and operation of the Board of Directors which are not expressly covered by the MHC Law are to be addressed by internal rules and regulations formulated by the MHC (Article 14).

5.2.2 The Executive Secretariat

The Executive Secretariat is managed by an Executive Secretary. The MHC Law envisages that the MHC shall have internal rules and regulations determining who may act for and on behalf of the Executive Secretary in their absence. However, all other matters pertaining to the personnel of the Executive Secretariat of the MHC are to be governed by the General Statutes for Rwanda Public Service (Article 16). The Executive Secretary is can only be appointed or dismissed by an Order of the Prime Minister (Article 18).

The Executive Secretary is tasked with the day to day management and oversight of the MHC. In particular, the Executive Secretary has the following responsibilities: (i) implementing all the decisions taken by the Board of Directors; (ii) monitoring the daily activities of MHC; (iii) heading, monitoring and supervising the performance of the personnel of MHC; (iv) drafting plans of action and submitting the same to the Board of Directors; (v) drafting the proposals for the organizational chart and structure of MHC and submitting them to the Board of Directors; (vi) drafting budget proposals for the MHC and submitting the same to the Board of Directors; (vii) monitoring the daily management of the property of MHC; (viii) attending meetings of the Board of Directors and acting as rapporteur for the same (at which they may provide views but may

not take part in any vote); (ix) drafting proposals for the internal rules and regulations of MHC and submitting them to the Board of Directors; (x) submitting activity and financial reports on quarterly and annual bases; and (xi) performing any other tasks relevant to the responsibilities of MHC as may be assigned to them by the Board of Directors (Article 17).

5.3 THE OPERATIONS OF THE MHC

The head office of MHC is located in Kigali, but may be transferred elsewhere in Rwanda upon request by three-quarters (¾) of the members of the Council's Board of Directors (Article 3).

Article 4 of the MHC Law envisages that there shall be a Prime Minister's Order which shall determine the supervising authority of the MHC. Under this framework, the MHC shall be required to sign a performance and evaluation contract with the supervising authority, which contract shall be valid for the duration of the term of office of members of the Board of Directors. The contract shall be signed by the Chairperson of the Council's Board of Directors, on behalf of the MHC, on the one hand and by the supervising authority on the other hand (Article 5).

Every year, the MHC is required to submit to the supervising authority a plan of action for the following year by 30th June and an activity report of the previous year by 30th September (Article 7).

The property and funds for the running of the MHC are those which may be sourced from: (i) State budget allocation; (ii) grants, donation and bequests; (iii) loans; (iv) funds from its services; and (v) former property of MHC (Article 20). Such property is required to be used, managed and audited in accordance with relevant national laws governing use of public resources. The MHC is required to have an internal audit unit which must submit an audit report to the Board of Directors with a copy to the Executive Secretary of MHC (Article 21). The budget of the MHC must also be approved and managed in accordance with relevant national laws on management of public resources (Article 22).

5.4 MAJOR CHANGES INTRODUCED BY THE NEW MHC LAW

As earlier noted, the new MHC Law (2013) replaced the old MHC Law (2009).

Under the old MHC law, the High Council had a wide regulatory mandate over media houses and practitioners in Rwanda. For instance, under the old MHC Law, the MHC had a broad mission, which extended to the protection, control and promotion of the media and media professionals in Rwanda. The MHC was also mandated to protect the public for whom media are intended (Article 2 of old MHC Law).

In this regard, under the old MHC Law, the MHC was given a wide range of responsibilities relevant to this regulatory mandate. In particular, it was tasked with: (i) promoting and defending media freedom and working towards media development in general; (ii) ensuring full implementation of the laws and principles governing print, audio, audiovisual or internet-based journalism; (iii) issuing licenses for the establishment of media enterprises; (iv) deciding on the temporary suspension of media organs as provided for by the Law on media; (v) participating in fixing the price of press cards; (vi) determining the format of press cards; (vii) issuing or withdrawing press cards; (viii) ensuring that media organs abide by the country's culture; (ix) participating in the formulation of national media policy; (x) ensuring that media act as a catalyst to foster national development; (xi) ensuring that medias serve as a catalyst to promote unity among Rwandans; (xii) monitoring whether political organizations and political coalitions enjoy equal access to public media organs during election campaigns; (xiii) issuing instructions governing the public media coverage of campaign debates and other election campaign activities; (xiv) ensuring that public organs give equal coverage to various election-related news; (xv) establishing a code containing contracts and setting out responsibilities and rights of audio or audio visual media organs; (xvi) participating in determining tariffs for broadcasting frequencies; (xvii) determining the mode of advertising through public-oriented audio or audio visual media organs; (xviii) determining the mode through which one oral or audiovisual media organ could broadcast programs of another oral or audiovisual media organ; (xix) participating in journalists capacity building; (xx) advocating for development of journalism in general and participating in soliciting for basic equipment; (xi) advocating for journalists to reach the main source of information; (xxii) assisting journalists in instituting guidelines governing their conduct and journalism profession in Rwanda; (xxiii) issuing instructions governing the protection and regulation of media which would be published in the Official Gazette of the Republic of Rwanda (Article 6 of the old MHC law).

Evidently, the MHC had an extensive regulatory mandate under the old MHC law. Although it had a media capacity building function, this was understated, especially in terms of the emphasis in the old law on the regulatory aspects of the MHC mandate. As seen above, under the new MHC law, the mandate of the MHC is now restricted to media capacity building, and all functions relating to regulation or media oversight have been taken out of the ambit of the role of the MHC (Articles 2 and 6 of new MHC Law).

The major change introduced by the new MHC law therefore has been to curtail the regulatory function of the MHC and to restrict its role to the development and building of the capacity of the media in Rwanda.

5.5 **CONCLUSION**

The role of the MHC under the new MHC Law has been focused and restricted to media capacity building. In these premises, it might be that with the new specialized function and mandate of the MHC, there will be increased focus and attention to the facilitation and support for media in Rwanda. The role of the MHC under the 2013 law is therefore in the nature of a partner to media houses and practitioners, which portends well for the development of the media in Rwanda.

QUESTIONS FOR DISCUSSION

1. *Identify at least four functions of the MHC;*
2. *Briefly describe the composition and management of the MHC;*
3. *Describe the mechanisms established (or to be established) under the Law for the supervision and oversight of the MHC's organs;*
4. *What major changes have been introduced by the new Media High Council Law of 2013?;*
5. *Do you think the introduced changes will bring about skilled and professional journalists in Rwanda? Explain.*

FURTHER READING

1. *Law determining the mission, organization and functioning of the Media High Council, Law No.30 of 2009;*
2. *Law determining the responsibilities, organization and functioning of the Media High Council, Law No.3 of 2013.*

MODULE SIX
PUBLIC BROADCASTING

SUMMARY

This module explains the role, function and operation of the Rwanda Broadcasting Agency (RBA), in its capacity as a public broadcasting organ, established by law to satisfy the needs of the national community and the interests of the general public. The module also analyzes the rationale for shifting from a state to a public broadcaster and considers the implications for this change for citizens, the government and the media fraternity generally. The distinction between a 'private' and 'public' broadcaster is also explained under in this Module.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The nature, role and functions of the RBA;
- The composition and organization of the RBA;
- The operations of the RBA;
- The major changes introduced by the RBA Law.

6.0 INTRODUCTION

The Rwanda Broadcasting Agency (RBA) was created by the Law determining the responsibilities, organization and functioning of the Rwanda Broadcasting Agency ('the RBA Law'),[9] to replace the Rwanda Bureau of Information and Broadcasting (ORINFOR) that had formerly existed under the Law determining the responsibilities, organization and functioning of the Rwanda Information Office ('the ORINFOR Law').[10]

The RBA Law was made pursuant to the Constitution of Rwanda of 4th June 2003 (as amended to date) [http://www.mod.gov.rw/?Constitution-of-the-Republic-of]. It was also made pursuant to the Organic Law No 06/2009/OL of 21/12/2009 establishing general provisions governing Public Institutions. Under Article 24 of the RBA Law, all prior legal provisions contrary to it, including but not limited to, the ORINFOR Law, are repealed. The RBA Law effectively establishes the RBA as the successor to the ORINFOR. According to Article 30 of the Law, all assets and funds of the ORINFOR automatically become the property of the RBA.

The RBA Law comprehensively determines the responsibilities, organization and functioning of RBA (Article 1). The following sections analyze these functions and responsibilities, and also highlight the major changes introduced by the RBA Law..

6.1 THE NATURE, ROLE AND FUNCTIONS OF THE RBA

The RBA Law established the Agency as a public service broadcasting institution, with legal personality as well as administrative and financial autonomy (Article 3).

Under Article 2 of the RBA Law, the Agency is tasked with providing a wide range of information and entertainment programs reflecting views and perspectives of a moving society and satisfying the needs of the national community and the interests of the general public. The Law also provides that in the fulfillment of its mission, RBA is required to use Radio, Television, print media and modern Information Communication Technology (Article 2).

The responsibilities of the RBA as a public service broadcasting institution are further elaborated under Article 5 of the RBA Law. These are mainly the following: (i) to provide the public with national and international news that is impartial and accurate; (ii) to provide Rwandans and foreigners with educational programmes; (iii) to provide the public with recreational and entertaining programmes; (iv) to contribute to the promotion of Rwandan culture; (v) to deliver to the public the benefit of emerging communications and technologies services; (vi) to ensure that the RBA acts as a catalyst of National development; (vii) to ensure good management of resources and activities of RBA and to ensure their exploitation; (viii) to establish relations and collaboration with other regional and international partners as appropriate; (ix) to distribute signals; and (x) to bring the World to Rwanda and Rwanda to the World.

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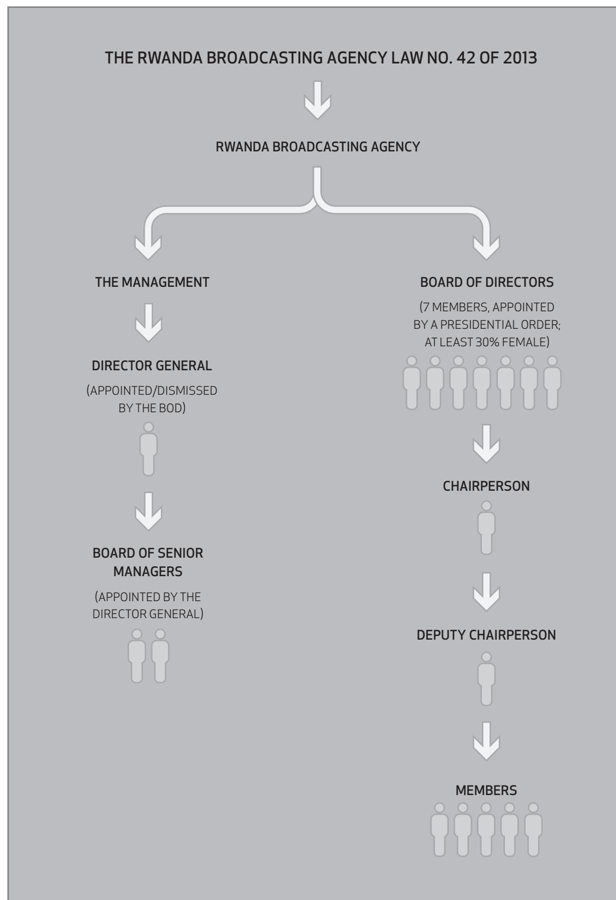
9 Law No. 42 of 2013, enacted on 16th June 2013.

10 Law No 47 of 2006 enacted on 5th October 2006.

6.2 **THE COMPOSITION AND ORGANIZATION OF THE RBA**

The RBA is administered by two organs: the Board of Directors and the Management (Article 8).



6.2.1 The Board of Directors

The Board of Directors is tasked with protecting the independence of the RBA. In particular, it has the following responsibilities: (i) approving the overall strategic vision and the plan of action of RBA; (ii) approving the RBA's annual plans and reviewing its output to encourage the highest quality; (iii) exercising full powers and responsibilities over the property of RBA in order to fulfill its mandate; (iv) establishing policies and operational guidelines and procedures for its activities; (v) examining the performance of the RBA in accordance with the Plan of action and the budget; (vi) approving the activity reports that summarize the main business of the previous period and updates of expenditure against budget; and (vii) monitoring the performance of the Management and the staff of RBA (Article 9).

The seven (7) members of the Board of Directors, including the Chairperson and the Vice Chairperson are appointed by a Presidential Order after a recruitment process conducted publically and transparently. At least thirty percent (30%) of the members of the Board of Directors must be women. Board Members are required to have relevant expertise by virtue of their education or experience covering as many aspects of Rwandan life as possible including but not limited to: Business and Finance, Law, the Arts, Broadcasting, Technology, Rural as well as urban affairs and so on. Members of the board of directors must be selected from both the civil society and the private sector. However, a Member of the Board should not be Member of Parliament nor a Senator or a high official of any political party. Members of the Board of Directors are appointed for a period of up to three (3) years renewable only once. The turnover of Directors is required to be managed to ensure a degree of continuity and balance of expertise over time (Article 10).

All members of the Board are required to be independent and impartial in the exercise of their functions. They must neither seek nor accept instructions in the performance of their duties from any authority, except as provided by the law. In addition, Board Members must act at all times in the overall public interest and must not use their position to advance their personal interests or those of any other party or entity (Article 11).

Meetings of the Board of Directors are held once in a term, on the basis that there must be at least three terms in one year. A meeting may also be held at any time if considered necessary by the Chairperson, or in the absence of the Chairperson, by the Vice Chairperson. A meeting must also be held where it is requested by a proposal in writing submitted by at least one third (1/3) of the Members of the Board. Any call for a meeting must be submitted in writing to the members of the Board of Directors at least fifteen (15) days before the meeting is held. However, the notice period for extraordinary meetings is at least five (5) days before the meeting is held (Article 12).

During the first term of the year the Board must, among other things, consider the activity report and the financial report of the previous year. During the third quarter, the Board must examine the draft annual Budget and plan of action for the following year. The RBA Law envisages that the procedures through which the Board meetings are convened and the mode of taking decisions at such meetings shall be determined by internal rules and regulations developed by the RBA (Article 13).

The Board of Directors is empowered to invite to any of its meetings any resource person whose expert advice may be required regarding any issue on the agenda. However, such invitee is not permitted to vote and may only attend such part of the meeting as is necessary for them to advice on the issues for which they were consulted (Article 14).

The resolutions and decisions of any meeting of the Board of Directors must be signed by its members immediately after the end of such meeting, and a copy sent to the Minister supervising the Agency within a period not exceeding five (5) days in order to give his or her views. The Minister is required to provide his or her views are required to be provided within fifteen (15) days from the receipt of the copy. Where the Minister fails to provide their opinion within this period, the resolutions of the meeting are deemed to have been definitively approved. The minutes of the meeting must be signed by the Chairperson and the rapporteur, and must be approved in the following meeting. A copy of the minutes must be sent to the Minister in charge of media within fifteen (15) days from the date of their approval (Article 15).

Members of the Board of Directors and any private companies in which they are shareholders are not permitted to perform any remunerated activity in the RBA (Article 17). Further, under Article 18 of the RBA Law, a person ceases to be a member of the Board of Directors where: (i) their mandate expires; (ii) they resign through writing; (iii) they are no longer able to perform their duties due to physical or mental disability certified by an authorized medical doctor; (iv) they are definitively sentenced to a term of imprisonment or is convicted of any criminal offence; (v) they are absent in meetings for three (3) consecutive times in a year with no justified reasons; (vi) they bring the RBA into disrepute; (vii) they demonstrate behaviour contrary to their responsibilities; (viii) they no longer fulfill the requirements considered at the time of their appointment to the Board of Directors; and (ix) where they die. The Minister in charge of media is required to indicate in a report meant for the competent authorities, whether one of the members of the Board of Directors is not worth its membership or where they have ceased to hold such position in accordance with the above-mentioned circumstances. Where one of the members of the Board of Directors leaves his or her duties before the end of his or her term of office, the competent authorities shall appoint the substitute. In such a situation, the appointee shall complete the remaining term (Article 18).

6.2.2 The Management

The daily management of RBA is undertaken by a Director General who may be appointed and dismissed by the Board of Directors. The Director General is entrusted with the task of coordinates and directing the daily activities of RBA and is answerable to the Board of Directors. The Director General is the most senior manager responsible for the editorial and artistic output of RBA (Article 19).

In particular, the Director General is responsible for: (i) creating an organizational structure, systems and procedures through which the business plans programmes and objectives will be effectively implemented; (ii) advising the RBA Board of Directors on organizational and operational matters; (iii) directing the preparation and production of an annual operational plan; (iv) determining organization's strategy and formulating business policies to produce, annually, the 5 years medium- term plan; (v) monitoring of senior management's performance and results. Correcting where necessary, poor results including- if necessary- dismissal of staff; (vi) informing, in writing, the Board of Directors about the progress of the activities of RBA at least once a term and (vii) representing the RBA in public and accounting for its operational activities before the law (Article 20).

The Director General of RBA is also empowered to attend the meetings of the Board of Directors and has the duty of acting as rapporteur at such meetings. The Director General may give their views at these meetings but is not permitted to participate in any vote during decision making. In addition, the Director General is not permitted to participate in any meetings that may take decisions affecting his or her personal interests. In such a case, the Board of Directors is required to elect from among themselves a rapporteur. The RBA Law envisages that RBA internal rules of procedure shall determine who substitutes the Director General in case of their absence (Article 22).

The Director General is assisted by a Board of Senior Managers which is appointed by him. Any of these senior managers may be designated with deputizing authority for the Director General but the positions to which deputizing roles are attached must be approved by the Board of Directors. The RBA Law envisages that RBA internal rules and regulations shall determine the responsibilities of such deputies (Article 21).

Under Article 23 of the RBA Law, the remuneration and benefits of the Director General, their Deputies and other members of staff of RBA must be in line with those provided for by legal provisions that govern members of staff of public institutions.

In terms of Article 24 of the RBA Law, the organizational structure and the responsibilities of RBA and its branches are determined by the Board of Directors, upon proposal by the Director General of the Agency, and with the knowledge of the Minister in charge of Media. In addition, all personnel of the RBA are required to be employed under media contracts as a means of recognize their independent status as journalists and media professionals, as distinct from civil servants.

6.3 **THE OPERATIONS OF THE RBA**

The head office of the RBA is in Kigali, although it may be transferred elsewhere in Rwanda if considered necessary. The Agency may also have branches elsewhere in the country and abroad as necessary to fulfill its responsibilities, upon approval by the Board of Directors (Article 4).

The Board of Directors is required to openly declare its commitments to the general public explaining RBA's roles, responsibilities and objectives which they pledge to deliver. These commitments, the imihigo or performance targets, are valid for a period equal to the term of office of the members of the Board of Directors (Article 7).

The RBA Law also envisages that a Prime Minister's Order shall state which Ministry will be responsible for bringing to cabinet matters requiring cabinet attention to support RBA under the law (Article 6).

The property and funds of the RBA are stated under Article 25 of the RBA Law to be comprised of: allocations from the national budget; (ii) government or donor subsidies; (iii) income from rendered services; (iv) interest from any of its investments; and (v) donations as well as legacies and grants. The RBA is also empowered to carry out advertising and to pursue other forms of revenue generation subject to approval by the Minister of Finance (Article 25).

Any and all property and funds of the RBA can only be used having regard to provisions of the RBA Law. Additionally, any use, management and audit of such funds or property must be carried out in accordance with relevant legal provisions relating to the use of public funds. The unit responsible for the daily auditing of the use of the property of RBA is required to submit a report to the Board of Directors with a copy to the Director General of the RBA (Article 26).

The budget of RBA is required to be approved and managed in accordance with the Agency's internal rules and regulations. The Minister of Finance is required to enter into a new Agreement with RBA that defines how money will flow from government to the Agency. This Agreement is required to: (i) cover means of devolving annual budgets for capital and revenue to RBA; (ii) draw up accounting procedures that ensure transparency and allow for auditing of RBA's accounts on an annual basis; and (iii) empower RBA to access its funds quickly and without further authorization so that it can react quickly to breaking news or competitive pressures without having to seek authorization from any government department (Article 27).

6.4 **THE MAJOR CHANGES INTRODUCED BY THE RBA LAW**

It should be noted that under the ORINFOR law, the ORINFOR was established as a state broadcaster. It was a government run institution whose content and editorial policy were formulated, monitored and closely supervised by the government. As such, its content reflected the interests and concerns of the government.

The RBA law, which establishes the RBA, provides for a fundamentally different role for the Agency. As noted above, the RBA's mission is a broad one. It is mandated to provide a 'wide range' of information that reflects the 'view and perspectives of a moving society' and which satisfies 'the news of the national community and the interests of the general public'. (Article 2) Evidently the RBA has been conceived to serve the public interest as opposed to advancing the needs or interests of government. Essentially, therefore, the RBA is established as a public as opposed to a state broadcaster which the ORINFOR was. To this end, the RBA is granted administrative and financial autonomy (Article 3) and given a wide range of latitude in formulating content and editorial policy that reflects impartiality, professionalism and commitment to the broader public interest as opposed to governmental concerns (Articles 5 and 24). Also, importantly, the RBA Law guarantees and requires the independence and impartiality of the Board of Directors of the RBA. They are forbidden from seeking or accepting instructions in the performance of their duties except as provided by law. They are further required to act all times in the 'overall public interest' and are forbidden from using their position to 'advance their personal interests or those of any other party or entity' (Article 11).

At the same time, the RBA is a public broadcaster as a distinct from a private broadcaster. A private broadcaster is one which is fully or substantially owned by private individuals and which therefore has absolute liberty, subject to prevailing national laws and policies, to determine its content and editorial policy. Such broadcasting entity is invariably profit-motivated and would be expected to broadcast news, events and content aimed at generating maximum revenue for its shareholders. For its part, as a public broadcaster, the RBA has the important mandate of generating and broadcasting content that both reflects and satisfies the needs and concerns of the general public (Article 2 of RBA Law). It may not promote the needs or concerns of the government exclusively or those of a section of the public, but rather is tasked with providing the public with information that is accurate and impartial (Article 5 RBA Law). Indeed, the RBA has a broad mandate that includes having to deal with issues that may not generate revenue for itself in the short run but rather aims at promoting the welfare of the public. In this regard, it is particularly tasked with acting a s a 'catalyst of national development' and, quite importantly, bringing 'the World to Rwanda and Rwanda to the World' (Article 5 RBA Law). The balance between profitability (and sustainability) of the RBA and its public service mandate is evident in the terms of Article 25 of the RBA Law which allows on the one hand envisages state support to the Agency through budgetary allocations and government subsidies, but on the other hand allows the Agency to obtain income from services it renders, interests from its investments, donations, advertising and any other revenue streams that may be approved by the Minister of Finance.

6.5 **CONCLUSION**

The RBA Law of 2013 establishes the RBA as an interesting 'hybrid' entity with the potential to fill an important gap in the Rwanda media landscape. On the one hand, the independence and autonomy granted to the Agency distinguishes it from its predecessor, the ORINFOR which was a state broadcaster, closely controlled and supervised by the government and which invariably promoted the views and interests of the government. On the other hand, its public nature and its reliance on public funds for its operations, distinguishes the RBA from a private broadcaster whose concerns about profitability may mean that they ignore certain issues that have implications for national development, in preference for more trivial but more lucrative content.

The RBA is legally positioned as an independent and autonomous entity from the state but which nevertheless is tasked with generating content and pursuing an editorial policy that reflects the needs and concerns of the general public and provides accurate and impartial information that may spur national development. It is thus very well placed to play an important 'gap filling' role in the media arena in Rwanda, one that is similar to the role played by the British Broadcasting Corporation in the United Kingdom or the National Public Radio in the United States.

QUESTIONS FOR DISCUSSION

1. *What do you understand by a) public broadcaster and b) state broadcaster?*
2. *Identify at least four functions of the RBA as a public broadcaster;*
3. *Briefly describe the composition and management of RBA;*
4. *Identify the important public accountability mechanism provided under the law for the operation of the RBA's Board of Directors;*
5. *What major changes have been introduced by the RBA Law? Do you think these changes will be realized in practice?*

FURTHER READING

1. *Organic Law No 06/2009/0L of 21/12/2009 establishing general provisions governing Public Institutions;*
2. *Law determining the responsibilities, organization and functioning of the Rwanda Information Office Law No 47 of 2006;*
3. *Law determining the responsibilities, organization and functioning of the Rwanda Broadcasting Agency, Law No. 42 of 2013.*

MODULE SEVEN

THE RIGHT TO ACCESS INFORMATION

SUMMARY

Rwanda is the ninth (9th) country in Africa to adopt a specific law on access to information. The right to information is also expressly protected under Article 34 of the country's Constitution [http://www.mod.gov.rw/?Constitution-of-the-Republic-of]. In addition, Rwanda is a state party to a number of regional and international treaties that guarantee the right to information. Under these treaties Rwanda is obliged to respect, protect, promote and fulfill the right to information. This Module explains the normative and procedural framework for access to information in Rwanda and provides an overview of the recent law relating to information. It also documents a number of regional and international good practices that access to information scholars and practitioners especially journalists in Rwanda can tap into as they implement the newly enacted law.

LEARNING OBJECTIVES

At the end of this module, participants are expected to have an understanding of:

- The foundations of the Right to Information and how it relates to other human rights and freedoms;
- The legal and procedural framework for the right to access information in Rwanda;
- Practicalities of enforcement of the law relating to access to information;
- Regional and international laws on the right to access information as well as good practices in implementation of the right to information.

7.0 INTRODUCTION

Sweden was the first country in the world to recognize and protect the right to information in its national legislation as early as 1766. This was followed by Finland and the US in 1951 and 1966 respectively. In 1946, the right to information was recognized by the United Nations as a fundamental human right and the touchstone of all freedoms to which the UN is consecrated. Over the years there has been a growing trend of recognition and protection of the right to information in various dimensions. The right to information (RTI) also known as the right to access information (ATI) or the right to know is now recognized by many countries. In some of these countries it is contained in the national constitution while in other countries national access to information laws have been enacted. A few other countries have the right to information as a constitutional right while at the same time maintaining ATI legislation. Rwanda falls in this category.

As of September 2013, at least 60 Countries across the world guaranteed the right to access information in their national Constitutions while 95 had specific laws on access to information. The 2003 Constitution of Rwanda protects the right in form of freedom of information under Article 34. Most recently in April 2013, the country became the ninth African country to enact an access to information specific law. This law is referred to as the Law Relating to Access to Information. Other African countries with an access to information specific law include; South Africa, Uganda, Zimbabwe, Angola, Guinea Conakry, Liberia, Ethiopia and Nigeria. .

7.1 RATIONALE FOR THE RIGHT TO INFORMATION

The right to information is premised on the fact that public bodies hold information not for themselves but as custodians of the public good. On this basis, citizens and in a few instances non-citizens are entitled to access information held by public bodies subject to exceptions provided for by law. Some countries have extended this obligation to private entities where the sought information is in the public interest. For example if it relates to public safety, health, environment and the enforcement of human rights and freedoms of citizens. Rwanda's recent law on access to information also extends to some private entities.

Aside from the fact that public bodies hold information as custodians, an informed citizenry is good for democracy. As former US President Thomas Jefferson once remarked- information is the currency of democracy. It is only where citizens are in the know that they can meaningfully participate in the affairs that concern them. This is the essence of a democratic dispensation to the extent that it promotes people power. In addition, an unhampered citizen access to information promotes accountability and transparency in government. It is only where citizens have accurate information that they can hold occupants of public offices accountable for their actions. With improved information access citizens are also able to monitor public expenditures. This ensures that public funds are put to their intended use and importantly that public official's act within the law. This in turn rids the country of corruption.

Above all, the right to information is a harbinger for the protection of all other rights- civil and political rights on one hand and economic, social and cultural rights on the other. Citizens must be aware of their rights and avenues for recourse where these rights are violated. Short of this their rights remain on paper. Information about violations is also key for proof and enforcement of citizen rights and freedoms. It is for this reason that the UN embraced the right to information as a touchstone of all freedoms in 1946.

In addition the right to information has been recognized as a key pillar of sustainable environmental management and development. Under the 1992 Rio Declaration signed in Brazil, countries recognized the importance of access to information in environmental management [http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163]. In particular Principle 10 of Declaration is to the effect that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 10 is more relevant in today's world where the environment is increasingly threatened by a growing population whose quest for natural resources is insatiable. It is not uncommon for policy makers to put the development agenda before the environment yet the two should co-exist side by side. In this complicity by governments

and resource hungry companies, it is the citizens that suffer from long term effects of degradation. For this reason it is important concerned persons are allowed access to information concerning all development projects and the effect of such projects on the environment. This way, citizens can insist on good environmental practices that promote sustainable development.

The above demonstrates the power of information and its relevance to citizens. States and their governments also enjoy a number of benefits in opening up to the public. First and foremost, they enjoy greater public confidence. Citizens are more trustful of open governments than they are of secretive governments. The state also enjoys full cooperation from the citizenry where it opens up to citizen participation by among others empowering citizens through information. This reduces chances of anarchy and instability. A state that does not win its citizens' confidence is susceptible to conflict and often times citizens or a section that feels excluded from government may take up arms to overthrow that particular government.

7.2 EXCEPTIONS TO THE RIGHT TO INFORMATION

It should be noted that the right to access information is not absolute and is subject to a few exceptions. Information related to national security, commercial secrets and privacy of others is often limited if not wholly exempted.

In applying the exceptions however, countries are expected to apply the overriding principle of maximum disclosure. An appropriate balance should be struck between the interests in disclosure and such exceptions like national security.

In all cases, where the sought information is for a greater public interest or relates to enforcement of rights and freedoms it should be disclosed mandatorily. Otherwise governments will hide behind these rather broad exceptions to deny citizens the important right to information.

7.3 REGIONAL AND INTERNATIONAL PROTECTION OF THE RIGHT TO INFORMATION

The right to information is protected under a number of regional and international treaties. The Universal Declaration of Human Rights (UDHR) of 1948 [http://www.un.org/en/documents/udhr/] is the first international document to recognize and protect every one's right to information under Article 19. While the UDHR is not binding on states as such, it not only formed a strong basis for protection of rights and freedoms but many sections of it have assumed the status of international customary law recognized by states across the world.

The International Covenant on Civil Political Rights (ICCPR) [http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx] which is binding on states is one of the numerous treaties inspired by the UDHR. Under Article 19 of the ICCPR, the right to access information is protected as part of freedom of expression. According to Article 19, freedom of information includes the right to seek and receive information. Modeled along this provision, many states still treat the right to information as part of freedom of expression. The Rwandan Constitution protects freedom of expression and freedom of information in one provision under Article 34.

At regional level, the right to information is contained in Article 9 of the African Charter on Human and Peoples Rights (ACHPR) [http://www.achpr.org/instruments/achpr/]. Under this provision, every individual shall have a right to receive information. Pursuant to this provision, in 2002, African Union member states established the office of special rapporteur and endorsed Principles on Freedom of Expression in Africa which among others reaffirm commitment of states to promotion of the right to information. The Special Rapporteur has most recently developed a model law on freedom of information in Africa. States in the process of drafting ATI specific laws may adopt provisions of the model law while those with existing laws can borrow inspiration. Among other Africa Regional initiatives is the African Charter on Democracy, Elections and Good Governance (Article 19), African Convention on Preventing and Combating Corruption (Article 9) and the African Charter on Values and Principles of Public Service and Administration (Article 6).

Such is the commitment of African states to the protection and promotion of the right to information- at least on paper. As observed above, a number of countries in Africa have gone ahead to protect the right in their national constitutions while nine have access to information specific laws.

7.4 THE RIGHT TO INFORMATION IN RWANDA

On April 2013, Rwanda became the ninth African country to enact a law on the right to access information. The Law Relating to Access to Information is modeled along the AU Model law on Freedom of Information and was well received by ATI activists across the world.

As observed in Module 1 under the Rwandan legal system, laws are implemented through Ministerial orders. Presently five Ministerial Orders have been issued in relation to implementation of the right to information in Rwanda. This section reviews the law and it's implementing orders

7.4.1 Purpose and Scope of the law

The purpose of the law relating to information is contained in Article 1. Under this provision, the law aims to enable the public and journalists to access information in the possession of public organs and in some instances that possessed by private entities. A public organ is defined as an administrative entity established by the Constitution or other laws or any other organ that uses money from the national budget or any money originating from tax revenues as provided by law. A private organ on the other hand is defined as one whose business is related to public interest and the rights and freedoms of the people. This description is expounded on in the Ministerial Order Determining Private Organs to which the Law Relating to Access to Information Applies. Under Article 3, private organs whose activities are deemed to be in connection with the general interest include those providing the following services;

a) Telecommunication services;

b) Transport services;

c) Medical services;

d) Educational services;

e) Security services;

f) Social Security services;

g) Production and commercialization of food, drink or other related activities.

Other private organs whose activities are considered to be in the general interest include private sector organizations provided for by the law; financial institutions and professional organizations. The Ministerial Order also provides a list of private organs whose activities are connected to human rights and freedoms. These include; local and international NGOs responsible for protection of human rights and freedoms; religious based organizations; political organizations and media organs.

In addition to the various private organs envisaged in the law, any person may seek an order of court to access information in possession of all other public bodies if the information is required to preserve the life or liberty of persons.

By extending the law to private entities the Rwanda ATI law is very progressive. Traditionally the right to information has always been

restricted to information in the hands of public bodies and their agents. There is however increasing concern over human rights abuses by private entities and these cannot be ignored any more. It is important that information in possession of such entities is freely accessible to the public for protection and enforcement of fundamental rights and freedoms. Some of the other countries that have extended the right to information to private entities include South Africa and Kenya. The AU model law on freedom of information mentioned above also guarantees access to information in possession of private bodies for purposes of human rights enforcement.

In addition to promoting public access to information, the law also aims to establish modalities and procedures necessary to promote the publication and dissemination of information.

7.4.2 The Right to Access Information

The right to access information is extended to every person under Article 3. Every person can access and assess activities, documents and records of public organs as well as private entities whose activities relate to human rights. The law also allows every person to take notes, documents and extracts of official documents and notified copies. Such copies may be in either electronic or hard copy format.

Just like the provisions requiring private entities to provide information related to human rights and freedoms, this provision is laudable to the extent that it provides every person with a right to access information. A number of laws across the globe including those of some countries in East Africa like Uganda and Kenya restrict the right to information to citizens. As it is, non-citizens can access information under Rwandan law. This is exceptionally good practice and reflects well with regional and international treaties which emphasize access for all irrespective of their citizenship.

7.4.3 Procedure for Accessing Information

There are two modes of accessing information under the law. These include proactive disclosure and personal applications for information.

Proactive Disclosure

Every public and private organ to which the law applies is required to proactively disclose vital information to the public under Article 7. The scope of information that should proactively be disclosed in contained in the Ministerial Order Determining in Details Information to be disclosed. Under Article 2 of the order, every public or private organ to which the law applies should disclose procedures for providing information within six (6) months following publication of the Order. Among the categories of information that should be proactively disclosed by the private organ and public organ to which the law relates is the following;

a) Particulars of the organization, its functions and duties;

b) Powers and duties of its officers and employees;

c) Procedure followed in decision making process;

d) Any guidance used by the authority in relation to its dealings with the citizens or others;

e) Books and classified information, it manages or used by its staff for the purposes of their duties;

f) Information in relation to the addresses of staff for the arrangement of someone who needs information in order to know where to get them;

g) Explanations of any proceeding in regard to the request of advice or representation of the citizens in the initiation of the policy or its implementation;

h) The budget allocated to each department of the agency, indicating the particulars of all plans and reports on disbursements made;

i) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

j) Particulars of Concessions, permits or authorizations granted by the organ;

k) The Particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

l) The names, designations, contact details and other particulars of its public information officer and his/her immediate supervisor;

m) Contracts between the organ and other people and in connection with public interest, human rights and freedoms.

Proactive disclosure is desirable to the extent that it reduces on the cost of obtaining information. It is also through proactive disclosure that potential information seekers are able to know about the relevant procedures for obtaining information from a particular entity.

Individual/Group Information Requests

In all other cases where the required information is not proactively disclosed, an individual or group of persons interested in obtaining information is required to initiate an information request under Article 9. An information request can be placed in any of the official languages and may be in writing, verbal, by telephone, internet or any other means of communication. Albeit except in cases of emergency, an information request must be in writing.

For the purpose of receiving and processing individual/group information requests, public and private organs to which the law applies are required to appoint information officers at all its branches. (Article 8 & 15)

Once an information request is received, the information officer is supposed to make a decision on whether to grant the application as soon as possible but in any case within three (3) days of receiving the application. Where the information request concerns life or personal liberty, response must be provided within twenty four (24) hours of receipt of request. In the case of an information request

by journalists, the information officer is required to provide the sought information within two (2) working days.

In the event that the Officer is unable to comply with the above timelines, he/she may seek an extension of time within which to provide the information. Such a request must be filed with the ombudsman and excludes requests for information related to life or personal liberty. In regard to these, the information officer must adhere to the strict timelines under the law. Where an application for extension of time has been granted, the officer has up to fourteen (14) working days to provide the requested information.

7.4.4 Transfer and Denial of Information Request

The procedure on transfer and denial of information requests is laid down in the Ministerial Order on Time Limit for the Provision of Information. Under the Order, if the information required is not in possession of the body to which a request has been made, the information officer is under obligation to transfer such a request to the relevant public body with in two days (2) from the date of receipt of such application (Article 5). Upon receipt, the relevant organ has up to seven days (7) from the date the application was first made to take a decision. Short of this, the request will be deemed to have been denied (Article 5).

In all cases where a request for information is rejected, the concerned information officer is required to communicate his/her decision to the person requesting the information. This should be within two (2) working days of receipt of application. In his communication to the requestor, the officer should specify the reasons for his decision including the relevant provisions of the law relied on in rejecting the application. The name and designation of the person who made the decision must also be indicated. (Article 6)

7.4.5 Fees

Under Article 10 of the Law Relating to Access to Information, there is no fee required for filing an information request. An individual requesting for information may however be required to pay a reproduction fee and the cost incurred in sending the requested information. Provisions on fees chargeable are provided for in the Ministerial Order on Charges of Fees Concerning Access to Information Law. Under the Order information is free however where person requesting for information does not bring the necessary equipment for harvesting the sought information, he may be charged the cost of making copies or sending the information. The requirement to pay a fee may be waived under the following circumstances:

a) Where the applicant is poor and falls within the category prescribed by the local authorities;

b) If the information is not provided with in the time lime provided under law;

c) Where the disclosure is in the public interest;

d) Where the cost of collecting the fee exceeds the amount of the fee;

e) Where payment of fee may cause financial hardship to the applicant.

7.4.6 Exemptions - Confidential Information

The right to information is subject to a few exceptions. Under the Law Relating to Access to Information confidential information is not accessible. Article 4 defines confidential information to include among others information that may destabilize national security, impede the enforcement of law and justice, interfere with privacy of any individual, infringe on trade secrets and intellectual property rights. Confidential information also includes that which would obstruct actual or contemplated legal proceedings against the management of a public organ.

Under Article 5, the Minister is required to issue an Order determining which information could destabilize national security. Pursuant to this provision the Minister of Local Government issued a Ministerial Order on Information that could Destabilize National Security. The objectives of this Ministerial Order include among others to;

a) Regulate the manner in which state information may be protected;

b) Promote transparency and accountability in governance while recognizing that state information may be protected from disclosure in order to safeguard the national security interest;

c) Define the nature and categories of information that may be protected from destruction, loss or unlawful disclosure ;

d) Provide for the classification and declassification of classified information;

e) Harmonize the implementation of the order with the promotion of the Access to Information Law.

Under this Order, National Security is defined to mean the protection, against internal and external threats, of national defence, of national foreign relations and the protection of national vital interests pertaining inter alia to national economy and national institutions of governance. National security is therefore broadly defined to include defence, foreign relations and the national economy. Information harmful to national security is subject to classification in which case it is not freely accessible by the public until it has been declassified. It is an offence to disclose or to acquire classified information punishable under the Penal Code.

An information officer is required to deny requests for information prejudicial to state security, defense or sovereignty. This includes information on military tactics and strategy; quality of deployment and intelligence. Additionally, the Order prohibits an information officer from issuing information relating to foreign relations if such disclosure would prejudice the country's diplomatic relations. Information critical to economic interests and infrastructural security is also protected.

7.4.7 Disclosure in the Public Interest

Where the public interest in the disclosure outweighs the interest in not disclosing, the public organ or private organ to which the law applies is required to disclose the required information. In determining what amounts to public interest regard must be paid to the following:

a) Promotion of a culture of informing the public about an organs activities;

b) Effective management and oversight of public funds;

c) Promotion of founded public debate;

d) Public information of any danger to public health or safety of the environment;

e) Proper discharge of the public authority's duties.

These considerations although apparently elaborate are in fact restrictive. For instance, threats to life and personal liberty are not considered under the description of what amounts to public interest. Human rights violations not only affect the individual whose rights have been disrespected but also affect the greater public. It is therefore a practice in many ATI laws to include information on human rights threats in defining what amounts to a public interest. The Model Law on Access to Information for Africa also takes this approach.

7.4.8 General Observations

The law relating to access to information in Rwanda is laudable and at par with international practice in many respects. The time within which information should be provided is exceptionally reasonable. Most countries provide for far longer duration in which the application must be granted i.e. 21 days. In addition, the law appoints office of the ombudsman as a promotional body. In particular the ombudsman is mandated to monitor and enforce the law. This is a good step in ensuring compliance with provisions of the law.

The waiver of fees is equally helpful especially in light of the fact that majority of Rwandans still live below the poverty line and may not afford charges in form of fees for access. It should also be observed that the law extends to private organs whose activities relate to public interest or affect the right to life and personal liberty. This is important in guarding against human rights violations by private entities.

The above notwithstanding the Law Relating to Access to Information imposes a broad restriction in the form of national security. It is not clear if the public interest override applies to information on national security and for instance if information relating to national interest should be disclosed in the greater interest of the public. It is important that information relating to enforcement of fundamental human rights and freedoms be granted even if it relates to national security.

Most importantly, the law ought to put in place an appeal mechanism in the event that an aggrieved party wishes to challenge the decision of an information officer rejecting his/her request. As it is now, once an application for information has been denied the information seeker has no recourse whatsoever. Common practice demands that in the event of denial, the aggrieved person is allowed a right to appeal. It is a practice to have appeals at two levels i.e. internally in which case each body must have an internal appeal mechanism and in court if the aggrieved is not contented with the decision of the internal mechanism.

7.5 EXPERIENCES FROM OTHER COUNTRIES – LAW AND PRACTICE

As earlier indicated, there are presently over 95 countries with freedom of information laws. In most of these countries the media was at the fore front of campaigns for adoption of the law and remains among the top requestors for information. This section highlights experiences of the media in utilization of access to information laws around selected countries in the world. Specific examples are picked from S. Africa, Kenya, Liberia, Uganda, UK and USA.

7.5.1 South Africa- Following World Cup Expenditures

South Africa was one of the first four African countries to enact an access to information law. The South African Constitution also protects the right to information in close terms as the Promotion of Access to Information Act. Since its enactment, both the law on ATI and the Constitution have been tested by a number of stake holders including the media. Under the law, every person has a right to access information in possession of a public body. The law also allows access to information held by a private body if the information requested is needed for enforcement of fundamental rights and freedoms.

During preparations for the World Cup in 2010, the Mail and Guardian (M&G) newspaper requested for information relating to tendering of various goods and services by the FIFA World Cup Organizing Committee (LOC). Access to these records was denied by the LOC on the basis that it was not a public entity and therefore was not bound to provide the required information. M & G newspaper appealed against this decision to the court where among others LOC argued that the right to information did not apply to tender records as disclosure of such records would hurt the LOC's commercial interest.

In its finding, the court noted among others that where government funds are being disbursed by a private corporate entity the right to access to information applies to all records relating to such expenditure. Therefore although the LOC was not a public entity perse, it was bound to provide the requested information. This is because the South Africa Football Association (SAFA) a public body itself had assigned all its rights and obligations relating to the world cup to the LOC. To facilitate the activities of the LOC, the government was providing infrastructure, financial, legislative and executive support to the LOC. In addition eight of the board members of the LOC were government officials. All this confirmed that the LOC although a body corporate was a public entity to which the law applied.

In the alternative, court stated that even if the LOC was a private entity, it was still bound to provide the requested information. This is because under the law, any person could access information held by private bodies if such information was needed for enforcement of fundamental rights and freedoms. In the circumstances M& G needed the information to inquire into the propriety of the tender and to exercise its right to media freedom. On this basis, the court granted M & G access to tender records held by the Local Organizing Committee.

In this era of privatization, private bodies are increasingly assuming public functions yet they insist on remaining private. This constitutes a threat to the public good especially if these bodies are not checked. Access to information provides a key mechanism for holding such bodies accountable. The newly elected Rwanda Access to Information Law just like the South African law extends to private entities if the sought information is required for enforcement of fundamental rights and freedoms or where the private entity performs public functions. The South African experience sets an important precedent that the Rwandan media could enumerate in pursuit of information from private organs.

7.5.2 Kenya - Uncovering the Face of Corruption in the Electricity Sector

The 2010 Constitution of Kenya provides for the right of every citizen to access information held by the state (Article 35 (1) (a). Citizens can also access information from any other person if such is required for protection of any right or fundamental freedom (Article 35 (1) (b). Pursuant to this provision, in 2011 the Nairobi Law Monthly magazine sought to access information regarding various contracts entered into between the drilling companies and the Kenya Electricity Generating Company (KEGC). The magazine had previously published an article implicating senior officials of KEGC of corruption a fact that was disputed. In order to prove their claim, the Nairobi Monthly requested for more information touching on issues contained in the published article. KEGC denied this request and they approached the High Court of Nairobi for redress.

In deciding the matter, the High Court noted that the right to information 'is at the core of the exercise and enjoyment of all other rights by citizens. Importantly, the court drew the link between the right to information and other rights such as freedom of expression. To emphasize the fundamental nature of the right to information, the court further noted that the state has an obligation to provide open access to specific information requested.

In this vein, court found that KEGC being a state corporation was bound to provide information in its possession. In the circumstances however, court found that the Nairobi Law Monthly being a body corporate could not rely on Article 35 (1) which restricted exercise of the right to information to citizens. Secondly, the Nairobi Monthly could not rely on Article 35 (1) (b) to access information in possession of the state since that provision was restricted to information in possession of other persons and not the state. In short Article 35 (1) (b) did not extend to KEGC which was a public body.

To find that the Nairobi Monthly was entitled to information in possession of KEGC merely to enforce its rights to freedom of expression under would be to elevate the media above all other state entities. This would give the media an unrestricted right to demand for information from any person other than the state.

In the end the Nairobi Law Monthly did not succeed in obtaining the sought information but nonetheless its effort was an important milestone in implementation of Article 35 on the right to access information in possession of the state. Importantly, the court resoundingly affirmed the right of citizens to access information under the Constitution.

The case demonstrates not only the interconnectedness of the right to information to media rights but it also shows the ability of the media to use the right to information to hold public officials accountable. As Rwanda implements its own law, the media will be critical in testing its provisions. Luckily unlike the Kenyan law, Rwandan law extends the right to information to every person and not necessarily citizens. This provides a broad scope for accessing information.

7.5.3 Uganda - Opening the Oil Sector to Public Scrutiny

In 2006, Uganda discovered commercially viable amounts of oil in the Albertine region. Prior to this discovery the government of Uganda entered into Production Sharing Agreements (PSA's) with several oil companies. The details of these agreements were kept secret and not disclosed to the general public. In 2010 two journalists working with one of the leading daily newspapers the Daily Monitor (Charles Mwanguhya and Charles Onyango) filed a request for details of the PSAs under the Access to Information Act 2005. The request was filed with the Permanent Secretary in the Minister of Energy who also doubles as the Ministry's information officer under the law.

Their request was denied on ground that the PSA's contained commercially sensitive information which the government of Uganda was precluded from disclosing to the general public without approval of the oil companies. The two journalists appealed against this decision before the Chief Magistrates Court as provided for by law. In support of their appeal they argued that it was in the public interest to disclose details of these agreements as this would promote citizen participation in the emerging oil and gas sector.

In its finding the Chief Magistrates Court agreed with the petitioners that where the public interest in disclosure outweighed the harm caused by such disclosure, information disclosure is mandatory under the law. In the end however the court found that the petitioners had not sufficiently proved such public interest and dismissed their appeal.

The decision of the magistrate's court is presently on appeal to the high court. There is sufficient precedent from the higher courts in favor of the appeal and it is hoped that the high court will base on this to reverse the chief magistrate's decision. The ruling of the magistrate's court notwithstanding, the case is very important in many ways. Being the very first case to be brought under the provisions of the Access to Information Act 2005, it helped test the various provisions of the law especially those to do with mandatory disclosure. Following the outcome of the court which was publicized widely, there is increasing interest in information around the oil sector by the public.

Secrecy in the extractive sector promotes grave corruption and denies citizens a chance to benefit from their own resources. Instead they are condemned to a curse of poverty, civil strife and environmental degradation. As Rwanda implements its new law, the media should use the right to information to promote accountability in extractives.

7.5.4 Liberia – Access to Asset Declaration Forms

In November 2012, the Centre for Media Studies and Peace Building (CEMESP) wrote to the Liberia Anti-Corruption Commission (LACC) requesting for asset declaration forms submitted by cabinet ministers and their deputies. LACC acknowledged receipt of this request and asked the CEMESP to provide costs for reproduction of copies of the sought declarations. CEMESP wrote back seeking clarification on the number of pages contained by each declaration form and the associated costs of reproduction.

In a turn of events, the LACC informed CEMESP that it would not be in position to provide the asset declaration forms reasoning that such information was exempted from disclosure under the Liberia Freedom of Information Act. This decision was challenged by CEMESP before the Independent Information Commissioner. In their defence LACC argued that asset declarations contained personal information of the declarants which it was not authorized to disclose under the Freedom of Information Act and the Constitution of Liberia.

In deciding the matter, the commissioner agreed with LACC that a record of asset declarations contained personal information which could be treated as confidential but in the circumstances the public interest in the disclosure by far outweighed the harm occasioned by disclosure of such records. He noted further that asset declarations were part of efforts to fight corruption in Liberia and non-disclosure would defeat this purpose. On this basis LACC was ordered to disclose the sought information in the greater public interest.

7.5.5 USA- Access to Information Outweighs Privacy

The United States of America was among the first four countries in the world to pass an access to information law. Using this law, a prominent newspaper- the New York Times and Yale Law School's Media Freedom and Information Access Practicum (MFIA) approached the US Department of treasury seeking information on persons and companies licensed to conduct business with or in sanctioned nations like Iran and North Korea.

Their request for this information was denied by the department of treasury upon which they petitioned court for redress. The court decided in their favor but the department of justice remained reluctant to provide the names of licensed corporations on grounds that doing so would constitute an invasion of privacy. Determined to get this information, the New York Times and MFIA filed a motion for summary judgment before the Magistrate Judge of the Southern District of New York.

In its finding, the court found that the harm in disclosure was only speculative. The public interest in disclosure was greater that the contemplated harm if it existed. The US department of treasury was therefore obligated to disclose the names of individuals and companies licensed to do business with or in sanctioned nations.

7.5.6 The United Kingdom - Using Information to Promote Equality at the Workplace

Britain adopted an access to information law in 2000 although the law only came into force in 2005. Under the UK Freedom of

Information law, every person whether a citizen or not has a right to request for information in possession of public bodies across the country. Once such a request is received, it must be processed and the person requesting for the information informed of the decision within twenty working days.

In 2006, an anonymous information request was made to the British Broadcasting Corporation (BBC) to establish allegations of sex based pay inequalities at the station. In compliance with the request, the BBC provided information which showed that most female correspondents earned an estimated £6,500 less than their male counterparts. On its part, the BBC attributed these discrepancies to differences in experience levels. Apparently most male reporters were more experienced than their female colleagues and for that reason earned higher pay.

Following this revelation, the BBC undertook to take measures to address sex based pay discrepancies at the station. Gradually, the inequalities between male and female workers at the BBC have been bridged. This gain was as a result of one simple information request to the BBC and is telling of how much can be achieved if several similar information requests are filed.

7.6 **CONCLUSION**

In this module, we have explored the foundation, meaning and evolvement of the right to information over the years. The right to information entails the right to seek and receive information and is broadly protected in a number of regional and international treaties. In some countries the right is now recognized under the respective national Constitutions. In addition, over 90 countries across the globe have access to information specific laws. Citizens and the media are increasingly active in utilizing these laws to among others enforce fundamental rights and to achieve transparency and accountability in government. This module highlights some of the most outstanding experiences in utilizing the law on access to information. The media in countries which have just enacted access to information laws like Rwanda can build on these experiences to make even more significant gains.

QUESTIONS FOR DISCUSSION

1. *What is the right to information/right to know?*
2. *Why is it important to legally recognize and protect the right to information?*
3. *How can journalists/ the media use the law relating to information?*
4. *Identify at least five areas where the right to information can be applied?*
5.
   a) *What is information Classification?*
   b) *Outline the different levels of information classification in Rwanda?*
   c) *What is the procedure for declassification of such information?*
6. *What do you understand by national security as an exception to the right to information?*
7. *Do you think the law relating to access to information addresses concerns of accessing information in Rwanda? Explain.*
8. *What are the challenges (if any) of enforcing the law relating to access to information in Rwanda?*

FURTHER READING

A) *Domestic Legislation*

1) *Law Relating to Access to Information, 2013*
2) *Ministerial Order Determining in Details the Information to be disclosed*
3) *Ministerial Order on Private Organs to which the Access to Information Law Applies*
4) *Ministerial Order on Information that could Destabilize National Security*
5) *Ministerial Order on Charges of Fees Concerning Access to Information Law*
6) *Ministerial Order on the Time Limit for the Provision of Information*

B) *Regional and International Treaties/Declarations*

1) *International Covenant on Civil and Political Rights, UN Doc. A/6316 (1966), 999*
2) *U.N.T.S. 171. Uganda ratified the ICCPR on 21st June 1995. (Article 19)*
3) *African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), 27 June 1981 (Article 9)*
4) *African Charter on Democracy, Elections and Good Governance, 30 January 2007. (Article 19)*
5) *African Charter on Values and Principles of Public Service and Administration, African Union, 2011 (Article 6)*
6) *African Convention on Preventing and Combating Corruption, African Union, 7 October 2003 (Article 9)*
7) *Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17-23 October, 2002: Banjul, Gambia.*
8) *Model Law on Access to Information for Africa, African Union, 2013*
9) *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information at http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf.*
10) *Principles on National Security and Freedom of Information (Tswane Principles), 2013*

Case Law

1) *Nairobi Law Monthly Company Limited v. Kenya Electricity Generating Company and Others, Case No. 278 of 2011, High Court of Kenya*
2) *M & G Media Ltd v. 2010 FIFA World Cup Organizing Committee South Africa Ltd, Case No. 9/51422, South Gauteng High Court*
3) *Centre for Media Studies and Peace Building (CEMESP) v. Liberia Anti- Corruption Commission (LACC), Ref: IIC-D001-07-2013*
4) *Charles Mwanguhya Mpagi & Angelo Izama v. Attorney General, Misc. Cause No. 751 of 2009.*

Books and Articles

1) *Fatima Diallo and Richard Calland (2013), ACCESS TO INFORMATION IN AFRICA, LAW, CULTURE AND PRACTICE, Leiden.*
2) *Victor Brobbey, Kenneth Kakuru et al, Active and Passive Resistance to Openness: The Transparency Model for Freedom of Information Acts in Africa-Three Case Studies, Access to Information in Africa Project, 2013. Available on http://www.right2info.org/resources/publications/active-and-passive-resistance-to-openness_africa_2013*
3) *Maja Daruwala and Venkatesh Navak (Eds), OUR RIGHTS, OUR INFORMATION, Empowering People to Demand Rights Through Knowledge, CHRI, 2007.*
4) *Understanding the Tswane Principles, Open Society*

Justice Initiative Briefing Paper, June 2013.

SUMMARY

KEY ISSUES AND EMERGING TRENDS

The structure of government in Rwanda promotes broad-based governance and is meant to guide the country beyond the events that resulted into the tragic 1994 genocide. In the same light, generally the laws in Rwanda are enacted to promote unity; this explains the restrictions on media freedom as this freedom is sometimes perceived as a source of tension.

Freedom of expression is protected in international and regional human rights instruments. Rwanda has ratified the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights. Freedom of expression is also protected under the Constitution of Rwanda. Rwanda has also promulgated a number of laws that promote freedom of expression. For instance, the law relating to access to information in Rwanda is laudable and at par with international practice in many respects. Rwanda has also enacted a number of institutional reforms that symbolize a renewed commitment to freedom of expression. For instance, the role of the Media High Council (MHC) under the new MHC Law has been focused and restricted to media capacity building, which indicates that there will be increased focus and attention to the facilitation and support for media in Rwanda. The role of the MHC under the 2013 law is therefore in the nature of a partner to media houses and practitioners, which portends well for the development of the media in Rwanda. Another reform has been the institution of the Rwanda Media Commission (RMC) as a self-regulatory body and endowed under the Media Law of 2013 with a mandate, shared with the Rwanda Utilities Regulatory Authority (RURA), to regulate the practice of journalism in Rwanda. Additionally, the Rwanda Broadcasting Authority (RBA) law of 2013 establishes the RBA as an interesting 'hybrid' entity with the potential to fill an important gap in the Rwanda media landscape. The independence and autonomy granted to the Agency distinguishes it from its predecessor, the ORINFOR which was a state broadcaster and which invariably promoted the views and interests of the government. At the same time, the RBA's public nature and its reliance on public funds for its operations distinguishes the RBA from a private broadcaster whose concerns about profitability may mean that they ignore certain issues that have implications for national development, in preference for more trivial but more lucrative content. The RBA therefore well placed to bridge the gap in public service reporting that may be occasioned by a purely private media industry, while at the same time possessing the independence and autonomy to address and promote public rather than governmental interests.

However, challenges still remain with regard to the freedom of expression in Rwanda. For instance, the Rwanda Constitution of 2003 lacks express provisions on the status of international and regional treaties ratified before 2003. This affects the application of international and regional standards on freedom of expression. Article 34 of the 2003 Constitution provides for freedom of expression and is in many cases similar to the international and regional human rights instruments in this regard. It should be noted that this freedom is attended by restrictions. These restrictions have to be provided by law. It is also worth noting that restrictions on freedom of expression are not only manifested in the 2013 media laws. These restrictions although in distinct forms have been for the most part, prominent in Rwanda's media laws. Examples of laws that contained restrictions prior to 2013 include; the Media Law, the Media High Council law, as well the Telecommunications law and the law on Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism. This was the broad framework against which reforms were undertaken to improve media laws in Rwanda.

The Media laws of 2013 demonstrate a fair level of progress in narrowing down on the restrictions to freedom of expression. Some of the challenges that were implicit in the Media Law No. 22/2009 and the Media High Council Law No. 30/2009, have been repealed. These include the issuance of press cards by the Media High Council, which has been replaced with a self-regulatory body and the sections on offences and penalties for 'press offences'.

In the case of defamation, the offence is still alive and well in the Penal Code 2013. The penalties for this offence are much heavier, at least in terms of fines, as compared to the penalties imposed for defamation under the Penal Code 1977. With regard to libel, the Penal Code 2013 does not provide a specific offence on libel. This is a positive step in relaxing the restrictions on freedom of expression. The law on Genocide Ideology is being amended, we can only wait to see whether it will further restrict freedom of expression or relax the present restrictions.

The media laws 2013 indicate that there is political will to further open up media spaces in Rwanda. Also, as the country continues to walk the long road to unity, the media can be a very important tool in achieving this objective. This realization appears to be the background against which reforms are being made to encourage freedom of expression.

Generally, international relations and the geopolitical environment in terms of the East African Community appear to favour broader spaces for the media and enhanced freedom of expression; this may further encourage reform especially for laws that retain heavy penalties for offences that are related to the restriction of this freedom.

Finally, the offence of libel does not appear in the 2013 Penal Code. This is a positive message from the government to the media fraternity in Rwanda. It is possible that defamation will also be decriminalized in the near future. That said, this may depend on how the media in Rwanda reacts to the decriminalization of libel.