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**Expert Opinion and Translation of Draft Law on the Press
of the Republic of Rwanda**

Prepared by Internews

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Part 1: Commentary on Draft Law

I. Introduction

The draft Law on the Press of the Republic of Rwanda (*hereinafter*, the "Draft Law") seeks to regulate certain aspects of publishing and dissemination activity in the print and electronic media within the territory of the Republic of Rwanda. It is premised on diversity of ownership and viewpoint in the mass media. In our opinion, the Draft Law contains some very important provisions that have the potential to enhance the exercise of mass media freedoms. However, it also contains certain provisions which if not deleted or revised will pose unreasonable risks to the exercise of press freedoms and the public's right to receive information and ideas. These provisions are problematic under the standards of Article 19 of the International Covenant on Civil and Political Rights (AICCPR).¹

We should make clear that we approach this task from the perspective of U.S. lawyers who are familiar to some extent with media regulatory models in civil law systems. As such, we definitely have a bias toward the placement of considerable emphasis on protection of mass media rights and freedoms, while at the same time we recognize that all legal systems place restrictions on the exercise of these rights in order to protect other public and private interests. This requires a legislature to balance many interests which at times might be in conflict, but mass media freedoms are based on the notion that individuals and society as a whole benefit when those freedoms are given considerable weight in this balancing process. Underlying this is the belief that such freedoms are essential to political democracy, summed up in the public's right to know information and to benefit from the exchange of ideas. At the same time, we are aware of the fact that abuse of the media was an important component in Rwanda's searing experience in 1994, and understand the concerns that have led to the placement in the Draft Law of measures intended to prevent such re-occurrence.

There is much to be said and written about the special circumstances of media regulation in post-conflict societies. Certainly, in Kosovo and in Bosnia-Herzegovina, the international community is addressing the standards that ought to be employed to meld the building of a free and independent press with the need to prevent a renewal of genocidal or related conflict. There are delicate balances to be recognized in such post-conflict zones, balances that may require slightly different standards and machinery to assure both stability

¹ Rwanda is a party to the ICCPR. Article 19 of the ICCPR states in full:

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

and free speech practices. In the time available, it is difficult to address the application of these concepts in Rwanda.

We must also point out that we have prepared these comments in considerable haste, due to a short deadline for completion. We do not say this to excuse any of the substance of what we attempt to say, but only to point out why the style of many of our comments might appear to lacking in subtlety or tact. We have great regard for all those who have undertaken the writing of this complex legislation, and for the translators who worked so quickly to provide an English translation. None of our remarks should be taken as an indication that we mean to disparage those efforts.

Finally, we would welcome the opportunity to respond to any questions about these comments.

II. General Observation

A problem that is found in many places in the Draft Law is the absence of specificity in its provisions: general aspirational statements are set forth without necessary detail for their practical application. This makes much of the language about media rights vulnerable to the absence of any meaningful means of implementing or enforcing them. It also means that those many of the provisions regarding imposition of sanctions for perceived abuses of news media freedoms are lacking the precision necessary to be suitable legal norms.

III. Specific Comments

Article 1. We do not know the significance of placing the first sentence in italics and inside quotes. Also, we note that sentence two limits freedom to the expression of “opinions”. We suggest expanding this by stating something to the effect that “The freedom to engage in expressive activity by means of...”. Also, the last part of sentence two could be a problem, if not viewed in conjunction with the second paragraph of Article 2. This is because the language in Article 1 makes it appear that the exercise of press freedoms is limited to those defined in the provisions of the Draft Law, when in fact Rwanda is also bound by the guarantee of freedoms set forth in Article 19 of the ICCPR.²

Article 2, Paragraph 3. It might be helpful if “censorship” were to be more closely defined. In some mass media legislation, this word is defined to exclude any system or requirement of pre-publication or pre-broadcast review of a media outlet’s content. An example is Article 3 of the Russian law (which we will make available upon request).

Article 4, Paragraph 3. We understand from the explanatory notes why this provision has been placed in the Draft Law. However, we wonder whether it is not too restrictive. By requiring that all media operate within one particular form of business organization, the Draft Law might make the media vulnerable to manipulation by means of amendment of the requirements for incorporation (such as increasing the minimum amount of required capital contribution).

Article 8. It is difficult to comment on this and related provisions without knowing more about company law in Rwanda. Article 8 refers to “commercial legislation” (“legislation commerciale” in the French original), but in many commercial codes the questions of the form of business organizations are not addressed. Perhaps they are in the Rwanda Commercial Code, but we wonder whether Rwanda also has an applicable Company Law. In addition, whatever the relevant legislation, we wonder whether a “news company”

² It is also possible that the 1995 Rwanda Constitution contains similar guarantees. However, a copy of that document is not available as we prepare these comments.

(“Enterprise de presse”) is a specific legal form that is in some legal sense different from other permissible forms of business organization. If so, why?

Article 13. This definition of the rights of reply, correction, and rebuttal must be read in conjunction with Articles 42-53. Please see our discussion below regarding those provisions.

Article 15. What is meant by the term “professional journalist” in sentence two? Is this term different from that of “journalist” as defined in Article 63? If so, in what way, and why? Does it require a particular form of training, or experience?

Article 16. This article appears to establish a system of “notice registration” for print media, as opposed to a system of “application for registration”. Notice registration requirements are found in the media laws of a number of countries: they do not give government officials any discretion for the denial of registration on substantive grounds (in other words, anything other than failure to provide the specific items of information required). On the other hand, if a government official is given such power, this becomes something closer to a licensing system, which could be problematic for the exercise of press freedoms by giving the government authority to deny registration on grounds of content or other subjective considerations. However, the Draft Law does not establish any mechanism for such review, which in our opinion is wise. In this regard, if indeed Article 16 is a notice registration system, what is the reason for requiring a “description of the publication” and information about its “orientations”? Could these be viewed and applied as requirements to describe the publication’s content and/or editorial direction, which might be used as grounds for denial of registration?

Article 19. The first two sentences appear to contradict each other. It should be sufficient that the publication bears responsibility for its contents without requiring that there be an absolute requirement of identification of a specific author. If the third clause (concerning photographs) is for the benefit of the author—to ensure recognition of his or her contribution, the clause is useful. If it is for the purpose of identification for purposes of responsibility, then our comment about the newspaper’s general responsibility is applicable.

Article 20. This qualifies our views on Article 19. We would require some special showing before there is a forced revelation of the identity of an author. In addition, we have a technical drafting question here. The first sentence appears to give the Publisher discretion (“may reveal”) (the French original also appears to convey the same sense [“peut reveler”]) whether or not to reveal the identity of an author. We wonder if this was the drafter’s intent. On a more substantive matter, we think that the phrase “in the event of legal proceedings” is too ambiguous. If there is going to be a provision such as Article 20, it should be limited to only those proceedings in which the authorities can show that the author’s identity is material to the outcome of the proceeding. Also, we suggest that it should not apply unless the authorities can show that no other means can be found for determining the identity of the author.

Articles 21-23 (Advertising) In general, these distinctions have merit. It is, however, always problematic to establish categories where violations could lead to punitive sanctions for other reasons. Here, as an example, the line between editorial, free and other advertising can be a difficult one. A publication may wish to promote an activity through advertising in exchange for a service. The line between advertising and commercial advertising may be hard to recognize.

Article 24, Paragraph 2. It is difficult to envision the circumstances when “publication alone” might constitute fraud, etc. What is the purpose of this latter part of the sentence?

Article 29. We are not certain of the meaning of this provision. Does it mean that the company enjoys protection of the copyright laws, or that it is susceptible to liability for

copyright violations? Also, is this provision consistent with Rwanda's copyright laws? If so, is it really necessary?

Article 30, Paragraph One. Our comments regarding Article 29 apply here as well.

Articles 31 and 32. We do not understand why these provisions have been placed in the "Copyright" section of the Draft Law.

Article 31. The requirement of pre-distribution deposit has potential for abuse. It allows for the possibility of pre-distribution restraint.

Article 36. This is a case—notice by distributors or sales persons that they are acting in that capacity—where the restriction may hardly be warranted and the consequences might be potentially limiting. What benefit or need is there to have a process of recording (or registering) for distributors? In this regard, see our comment at Article 95.

Article 37. Does this article apply to public broadcasters (we ask this in light of sentence one of Article 3 of the Draft Law).

Articles 37 and 38. These provisions seek to establish a system of broadcast licensing. This is an extremely sensitive area that has been riddled with controversy in many countries. It requires very careful attention in order to try to create a system that is fair to all parties, and perceived as fair to all parties. It appears that licensing in the Draft Law is viewed as a two-step process: (1) approval of an application by the High Press Commission (the "Haut Conseil de la Presse"), with the subsequent issuance by the Ministry of Information of an "authorization"; and (2) the signing of an "establishment and operation agreement" with the Information Ministry. These provisions raise a number of questions:

- First, it appears that the decision whether to grant or deny a license application is made by the High Press Commission, and that the issuance of the "authorization" by the Ministry is purely a ministerial act. Is this indeed the case? If so, we believe that the language should be drafted more clearly so that this crucial point is explicitly stated.
- Second, the Draft Act does not appear to set forth any procedural requirements or standards for the licensing process. For example, is an applicant given a right to be heard by the High Press Commission? Also, is there a right to appeal (to another body, or to a court), a denial of a license application?
- Third, The Draft Act does not appear to address the term of an authorization. Is it indefinite, or intended to be for term of years? It also does not address the questions of suspension and/or termination of an authorization (except for an ambiguous reference in Article 78 (ambiguous because Article 78 does not state who makes such a decision, or on what grounds). Who would make such decisions? Under what standards? What right of appeal to a license holder so affected?
- Finally, and of great significance, are the provisions in Articles 77-79 regarding the status and powers of the High Press Commission. Experience in many countries has shown that the independence of such a body is crucial, and yet Article 77 does not provide much help with this question. In fact, independence might be impossible, given the placement of the Commission "under the supervision of the President of the Republic. This provision would insure that the crucial matters of broadcast licensing would be a matter of great political controversy. Article 79 also adds to this problem by placing the extremely important matter of composition of the Commission up to the President. In this regard, it should also be noted that Article 79 is silent as to any qualifications for membership on the Commission, or as to any input into the Commission's work from professional journalists or representatives of media owners.

Article 38. This provision suggests another potential problem. Care must be taken to insure that arbitrary decisions about content do not influence the licensing process. In this

regard, the requirement of information about a program's "general characteristics" suggests that this might become a factor.

Article 40. We would note concern about a requirement that there be a "status" of journalists. While it is important to have professional ethics and to create a cadre of professionals, it is our general view that this should be done through the institutions of the press and not by requirement of law.

Chapter Three, Articles 42-53 [Price's comments]. We note the distinction in U.S. law that has permitted a right to correct, reply or rebut with respect to radio and television (usually on the basis of scarcity) but has precluded such a legislated right with respect to the printed press. If anything, the rights with respect to radio and television are vanishing as well. These "rights" are considered to interfere with the publisher's right to speak (subject to defamation and similar rules) and allow for the potential of damaging disputes over what is correct or incorrect, who has been damaged, and when such rights should accrue.

If such rights exist, and perhaps they are justified in the context of Rwanda, we suggest that there be developed more of a tradition of self-regulation to assure their reasonable implementation. For example, the requirement of "equivalence" for placement may or may not be taxing. Some newspapers have regular corrections columns in which modifications appear. There must be flexibility in this. A self-regulatory body can determine a statement of good practices, it can encourage voluntary compliance, and it can be charged with preparing a report on the impact of the rights contained in these articles. To the extent such "rights" can be removed from state enforcement, the better.

Publications may have difficulty telling whether a right of reply should be answered by "associations" or individuals in Article 47. It is unclear why a veto clause ought to exist.

Article 48 seems an extension of an already stretched logic. As a matter of self-regulation it makes sense. But as a matter of legislation it is too much a matter of micro-management.

Article 50 should be shifted to a policy of self-regulation or referral to an association of publishers. At the least, there should be a process of mediation or conflict resolution prior to the imposition of a fine. Any fine should be limited. There should be no reference to criminal suits.

Articles 42-53 [Krug's comments]. These provisions, which address the rights of reply and correction, make up a major portion of the Draft Law. In conjunction with the definitions in Article 13, Article 42 permits a claim for correction if published material contained false statements of fact. Articles 44 and 47 permit a claim for reply to any slanders on the "honor", "reputation", or "interests" of a person or group.

The question of whether recognition of such rights is appropriate is a very controversial one in mass media law. It is an area in which a divide exists between common law and civil law systems. In the United States, the U.S. Supreme Court has ruled that a duty to permit a reply is unconstitutional. The concerns of journalists in the USA and elsewhere about such rights are grounded in the danger of their chilling effect and their intrusion into the independent editorial judgment of editors. At the same time, most civil law countries (among them the European countries of Austria, France, Germany, the Netherlands, and Spain) have correction and/or reply provisions.

In the Draft Law, some of the provisions in this area are less sweeping than those found in a number of other legal systems. For example, the right of correction is available only in regard to incorrect statements of fact (Article 13). Also, it appears that this right is granted only to "public servants" (Article 42). In addition, the right of reply is available not in regard to all statements of opinion, but only those which slander the "honor", "reputation", or "interests" of a person or group. In this regard, however, it should be noted that Article 13

and Articles 44 and 47 contain some problematic ambiguities. First, who decides whether a claim to exercise a right of reply satisfies the statutory criteria? Presumably, this will be a court, but the Draft Law is silent on the procedures for assertion of such a claim, or defense against it. Among the many questions here will be the allocation of burden of persuasion on this question. Second, the concepts of “honor” and “reputation” are closely related to the law (such as defamation or libel law) regarding protection of personality rights, and we wonder whether the Civil Code of Rwanda addresses these questions. If so, a question arises as to whether the elements of proving such an offense under the Civil Code should also be the elements employed in the Draft Law. If not, there is a danger of lack of legal uniformity in this complex and controversial area.

One aspect of the correction/response scheme is very positive. This is the provision in Article 48 which states that a rebuttal may not contain “attacks, harmful or libelous criticism”. It appears that one goal of this provision is to shield the media outlet from liability in cases where the publication of a rebuttal would lead to a legal violation. However, there is a drafting problem here: what is the media outlet to do in this situation? Does Article 48 grant it a right not to publish the rebuttal? The language of Article 48 does not address this question, instead simply saying that a rebuttal must not contain such offensive language. Also, there is another possible problem: the terms used in Article 48 (“attacks, harmful or libelous criticism”) are not the same as “slanders” on “honor”, “reputation”, or “interests”. The elements of all of these might vary considerably. This leaves room for considerable disparity in construction and application of these terms in a legal proceeding.

Chapter IV [Special Problems with Respect to Certain Types of Publications]
(Articles 54-62).

We understand the concern in Rwanda with certain content questions. At the very outside, however, we think that restrictions should be limited to those permitted in Article 10 of the European Convention on Human Rights and under the conditions there imposed. We make this statement, despite the fact that Rwanda is not a party to the European Convention, because we believe that Article 10 has by far and away received more close attention and rigorous judicial analysis (by the European Court of Human Rights) than any other comparable provision in any other international human rights instrument.³

Not much is served, and much may be lost, by a general statement such as the first sentence of article 54. The grounds for limitation in article 54 were not present in our draft.

³ We note that the language of Article 10 is similar in certain significant ways to that in Article 19, ICCPR. Article 10 states in full:

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Again, the limitations present in Article 10 of the European Convention could be a model of what boundaries there should be to such an approach.

For example, in Article 57, this would eliminate material regulating content related to banditry, lying, theft, laziness, cowardice or debauchery. These issues may be important to affect in terms of Rwandan identity, but the provisions go far beyond what would be generally sustainable and seem—except in extreme circumstances—unrelated to the kinds of concerns that, given Rwanda’s recent history, might be temporarily tolerated. Actions of the press, collectively, and with the support of the government, to limit stereotyping, especially where such stereotyping may lead to a resumption of killings, could be desirable. But the broad categories in Article 57 with the sanctions imposed, can lead to undue censorship.

Article 59 seems to open the act of posting to many of the restrictions otherwise present in the law. This could limit too drastically the importance of this civic mode of getting oneself heard. For example, it is hardly clear that right to rebut, reply or correct should be applicable to posting, or that there should be notification of identity of posters. The tradition of wall posting should mean that the range of limits should be different and narrower than the range of limits on the broadcast media and the printed press.

Article 62 is slightly unclear. It could be read as maintaining special locations for the incumbent.

Division III: The Journalists Profession

Article 63-68: Definition of a Journalist. Definitions of journalists, and official issuance of cards of accreditation can become a “licensing” process subject to abuse. Not all statutes which provide such definitions and consequent privileges for journalists have such a censorious fate. Here, the question is how fixed, selective and arbitrary the process will be for providing a press card and how regular the process of cancellation of a press card under Article 65 would be. All we can say here is that while a benign procedure, with non-discriminatory administration, is possible under the statute, given the potentially political nature of the Haut Conseil, abuses may very well be likely

One of the problems of definition is whether (as the statute seems to provide) a great many people involved in the process must be accredited (for example translators) proof-readers, or it would be far better to limit this to core operation of the journalistic profession. The answer turns on the extent to which definition of journalism is a two-edged sword with rights and responsibilities. It would be better if many of the actors so described in Article 63 did not have “duties” or responsibilities.

Article 64 has the potential dangers we have suggested if the nature of a “favorable” decision allows much discretion.

In article 65, it is unclear whether “loss of the position of professional journalist” or lack of collaboration should be grounds for withdrawal of a press card. Some of the most distinguished journalists have been involuntarily unemployed for honorable stretches of time.

Article 67. Perhaps the period of time for validity is too short or should be presumed to be renewed unless there is an adverse intrenction.

Article 69-71. These provisions, which provide for a right of access to information and access to officials, as well as protection of confidential sources and notes, are very helpful. With more time, we would have a number of detailed suggestions as to methods of making these provisions more amenable to practical implementation.⁴ For example, the

⁴ In this regard, we suggest reference to a recent publication of the American Bar Association's Central and East European Law Initiative, entitled "Freedom of Information: A Concept Paper".

articles do not address the matters of sanctions against custodians of public documents who are unwilling to make them available. Also, as to the very important protection in paragraph two of Article 69, we suggest that this could be stated more directly: he or she (the journalist) shall not be subject to any process by which he or she is compelled to make disclosure.

Articles 72-76.

One of the dangers of the “rights and responsibilities” formula is the conditioning of “rights” (rights perhaps that should belong to all citizens) on the existence of a set of responsibilities. This is a fearful symmetry.

It is important that journalists meet the ethical standards involved in Sections 72-76, but the potential for state intervention raises the stake for sanctions against most journalists (particularly in contexts in which there has been a tradition of low ethical practice). Where everyone is a potential violator, the danger of arbitrary state action is great.

We would suggest that the Haut Conseil, working with journalists associations, develop a set of ethical standards and a process of determining how and when they will be implemented and the limited circumstances in which violations will be a cause for direct action by the Haut Conseil (such as by withdrawing a press card.

In other words, each of the duties provided in this section is a worthy goal for a society. But each of the duties, improperly administered, can be the basis for discriminatory action that undermines journalistic independence.

Articles 77-79. Regarding these provisions on the High Press Commission [“Haut Conseil de la Presse”], please see our comments at Articles 37-38 above. While those comments are stated in the context of broadcast licensing, we should point out in particular that our deep concerns regarding the lack of independence for this important body relate to print media supervision and regulation as well.

Meanwhile, we also offer these further comments:

1. In each case under Article 78 where it is stated that the Commission shall “give its opinion”, the Draft Law is ambiguous as to whether this means a binding opinion or an advisory opinion.

2. If the opinion in Article 78 as to authorizations to engage in broadcasting is merely advisory, this establishes an important inconsistency between this approach and Article 38, where it appears that the Commission renders a binding decision on the Information Ministry as to whether an authorization should be granted or denied.

Division IV (Infractions and Liability) (Articles 80-101). This section of the Draft Law contains a number of provisions dealing with extremely sensitive subjects, particularly in light of Rwanda's recent history and the requirements of international agreements to which Rwanda is a party.⁵ While we do not take the position here that such forms of media

⁵ In particular, we have in mind here the following:

The ICCPR, Article 20, which states in full:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The Convention on the Prevention and Punishment of the Crime of Genocide, which in Article 3 lists among the punishable acts “Direct and public incitement to commit genocide”; and

The International Convention on the Elimination of All Forms of Racial Discrimination, which in Article 4 states (in full):

regulation of content are categorically unacceptable, we do believe that a number of the provisions in Division IV go beyond what is necessary and, if enacted, would create a climate that would be chilling of media freedoms and the frustration of democratic goals that those freedoms are meant to advance.

Article 81, Paragraph 2. the term "Administration" is not defined. Does this refer to the Information Ministry, the High Press Commission, the Presidency, or some other body? Also, regarding the reference to an "injunction": (1) from what body would the injunction be sought? Is this referring to a court order?; and (2) what form of injunction is at issue -- an injunction requiring the media outlet to comply with Articles 14, 15, 17, or 39, or an injunction ordering the cessation of the outlet's expressive activity?

Article 88. We are not certain that we understand this provision. Why is it necessary, since it seeks to sanction those who use the press to provoke other authors? Would not that use of the press make the instigator directly responsible under the Draft Law anyway?

Article 89. We believe strongly that many aspects of this article require modification. In its present form, it poses an inordinate risk of self-censorship for a number of reasons including:

1. Paragraph one establishes a scheme of strict liability for the publication of "false news". This means that a defendant can be found guilty for publication of incorrect information, even when he or she was at fault.
2. In Paragraph one, there are a number of problems of definition. The vague nature of concepts such as "slander and insults", interference with "law and order", and interference with "morality" would give opponents of particular media content ample room for prosecution, even though a journalist in any given case might not have any thought that she or he is violating such standards.⁶ Who defines what is "morality"? Are any of these terms defined in the Penal Code?

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

⁶ We recognize that Article 19.3 of the ICCPR includes protection of public order and morals as legitimate aims of restrictions on expressive freedoms. However, these must be "provided by law" (in other words, expressed in the Penal Code and related statutes with precise

3. Paragraph two contains provisions that are simply incompatible with a system of democratic governance. For example, the imposition of sanctions for "any offense" [not defined] against the President is a wide-open license for the suppression of any viewpoints that might not be favored by the President. The same can be said regarding the sanctioning of defamation and insults directed at "the people in government". Certainly, if a legal system imposes sanctions for defamation and insult, persons in government should also be protected to some extent, but they should not receive greater protection than that afforded private individuals. We also believe that these objectives are not among those listed as legitimate under Article 19.3, ICCPR.
4. The reference to "other crimes of humanity" is in error. War crimes, terrorism, and genocide are crimes in themselves. They do not fit within the separate category of acts that constitute crimes against humanity.
5. We believe that some of the offenses listed in the paragraph beginning with "incitement to discrimination..." (such as discrimination based on "appearance") go beyond the requirements in CERDS Article 4, Genocide Convention Article III, and ICCPR Article 20. Where they do go beyond those carefully drafted international norms, they become an instrument for possible manipulation of permissible content in the media, leading to self-censorship and perhaps arbitrary prosecution of journalists.

Article 90. We wonder whether the provisions of this article and those of Article 76 of the Draft Law are compatible with each other. For example, are the references to liability for use of "private or confidential remarks" or images in a "private place" consistent with the requirement that such acts are to be sanctioned only if they are not related to content associated with an effect on public duties (Article 76)? In our opinion, it is plausible that a confidential remark by a public official might well have an effect on his or her public duties. In addition, this article again raises the question of the Draft Act's compatibility with similar provisions in the Penal or Civil Codes.

Article 91. We assume that "preventive incarceration" relates to pre-trial detention, and that Rwanda's laws regarding this matter are consistent with international standards (for example, as to the maximum amount of time to which one may be subject to such detention with a court review). In addition, we recommend that an addition to this article be made to state that "except in cases enumerated in Article 92".

Article 92. This article lists a number of offenses for which a journalist might be susceptible to pre-trial detention. This might not be problematic if the crimes listed were among those for which a journalist might be found guilty anyway. However, it is extremely problematic because it lists a number of offenses that are not found anywhere else in the Draft Law, suggesting that somehow a journalist could be detained for these even though they are not identified as a crime anywhere else (or their elements listed). Are these listed as crimes (with elements of the crimes set forth) in the Penal Code? We are thinking, for example, of the offenses of "collusion with the enemy" and dissemination of items "likely to upset the army's discipline or morale or to impede the nation's war effort". These come very close to the kind of open-ended protections of "national security" that have been used around

definitions) and "necessary" (satisfying a standard where the proponent of restrictions must demonstrate why they must be imposed in a given set of circumstances). In our opinion, Article 89 should at the least be brought into compliance with Article 19.3 by echoing these standards.

the world to prosecute journalists for the dissemination of information that is not agreeable to the authorities.

Article 93. We are not clear on what is meant by "common law" in paragraph two. We doubt that Rwanda, as a civil law legal system, permits widespread use of judicial precedent as binding law (one sense of the term "common law"). The French original does not provide insight to this question. Did the drafters perhaps have in mind a concept such as "generally applicable law"?

Article 94, Paragraph three. Please see our comment directly above regarding the term "common law".

Article 95. The listing of five categories susceptible to liability is similar to the so-called "cascade" or "waterfall" effect used in similar provisions in a number of civil law legal systems. It establishes strict liability for a number of persons not directly involved in the preparation of offensive content, and would not have know that they were participating in the dissemination of such content. We wonder about the fairness of extending such liability to printers and distributors (those persons in category five).

Article 97. Please see our comment above (in connection with Article 93) regarding the term "common law".

Article 98. We question the appropriateness of this provision, which seeks to establish legal liability for perceived breaches of rules of professional ethics. This makes such ethical standards into legal standards, thereby rendering any distinction meaningless. In our opinion, this does not promote the effort to have journalists as a profession advance themselves and the public interest through self-regulation.

Part 2: Translation of Draft Law

REPUBLIC OF RWANDA
LOCAL ADMINISTRATION
AND CORPORATE AFFAIRS MINISTRY
B.P. 3445 KIGALI

**Government Bill no. ... dated ...
with respect to the Press.**

EXPLANATORY STATEMENT

I. INTRODUCTION

Since time immemorial, the Rwandans have come up with the ways and means of exchanging information.

The document « Tubanze tumenye imiterere y'amategeko agenga Itangazamakuru mu Rwanda kandi tunayakurikize mbere yo kuyavugurura », which the Minister of Information sent to the Prime Minister on 7 / 17 / 1997, reveals that since the colonial period, Rwanda has had laws regulating the press. As an example, one can cite the legislative ordinance dated March 5, 1922 with respect to the Press, approved by Decree dated August 6, 1922, applicable to Rwanda pursuant to the decree dated June 10, 1929, and amended by the legislative ordinance no. 166 / Sûreté dated June 13, 1944; the decree dated October 22, 1942 with respect to the right of reply in the press; Ordinance no. 221 / 224 dated September 1, 1960 with respect to official press documents.

However, one cannot but note that this legislation was applicable to all Belgian trust territories and its colony, the Congo. This situation lasted, even after Independence, until 1991, a year during which a flourishing written press came to life. One should note that this period coincides exactly with the return of the multi-party system to our country. It is in this social-political context that Law no. 54/91, dated November 15, 1991, with respect to the press was promulgated.

Why must this law be revised?

Our country has just emerged from the tragic genocides and massacres which plunged it into mourning in 1994.

The media - especially the private media - played a reprehensible role in this slaughter which took more than one million human lives. The press, such as the R.T.L.M., Kangura, Umurwanashyaka, La Médaille Nyiramacibiri, etc. had become the driving force behind the dissemination of a divisive and racist ideology. It goes without saying that, in order to avoid those mistakes which proved fatal to us in the past, the revision of the law with respect to the press would seem to be a judicious one.

It should be noted that, above all, the approval of private radio and television stations must be scrutinized in order to avoid a recurrence of the tragic R.T.L.M. experience.

Moreover, the Law no. 54/91, dated November 15, 1991, has fallen into disuse and has been strongly criticized. The Minister of Information deems that the loopholes in this law allowed corrupt politicians to manipulate the members of the press (this took place in 1991, 1992, 1993 and 1994).

For their part, the journalists blame this law for not advocating their profession.

The main criticisms which have been leveled are:

- that it is a repressive law,
- that certain terms and concepts used in this law are not clearly explained, which leads to various interpretations,
- that it is a censorial law,
- that it does not clearly define journalists' rights and duties.

Revision work on the press laws.

The revision work on Law no. 54/91, dated November 15, 1991, began shortly before the 1994 genocide. Thus, on December 15-16, 1993, the experts from the Ministry of Information, as well as those from the Office Rwandais d'Information [Rwandan Information Bureau] (ORINFOR), representatives of the journalists' associations, as well as legal experts, met in the Centre de Pastorale Saint-Paul in Kigali. They drafted the bill of a new law which was to be submitted to the Council of Ministers for examination. Unfortunately, this did not happen, as the horror of the genocide and massacres immediately plunged the country into mourning.

After the seating of the Gouvernement d'Union Nationale [National Unity Government], the idea of revising the press law was not abandoned. From April 24 to April 25, 1995, an ad hoc working session took place at the Hôtel des Diplomates in Kigali. It was made up of 23 people, including 3 delegates from the Assemblée Nationale de Transition, staff from the Ministry of Information, executives from the Office Rwandais d'Information (ORINFOR), certain journalists from both the private and official press, legal experts, as well as representatives of the commercial corporation. This seminar generated a report which was used as the basis for a bill which the Ministry of Information sent to the Prime Minister on August 22, 1996.

The same bill would be amended and sent again to the Prime Minister on September 16, 1996. Thereafter, another bill would follow on 3 / 27 / 1997.

After the ministerial shuffle on 3 / 28 / 1997, the Ministry of Information received new responsibilities, including the continuation of the revision work on the press law. The Ministry's new leaders began with an in-depth analysis of the existing legislation existing in our country with respect to the press. This analysis was detailed in the document referred to in the introduction and is a comparative study of all the revision bills with respect to the law dated November 15, 1991, as well as all other possible scenarios.

This draft, which is appended to the present explanatory statement, is the synthesis of all the previous drafts and other documents which constitute the authority with respect to the press. Other documents may be cited:

- Fédération professionnelle des journalistes du Québec, Guide de déontologie de la Fédération professionnelle des journalistes du Québec [Ethics Guide for the Professional Federation of Journalists in Quebec], Montreal, 1996;
- Reporters sans frontières [Reporters without boundaries], Presse et Déontologie dans l'Afrique des Grands Lacs [The Press and Ethics in the African Great Lakes Region], 1995;
- Reporters sans frontières [Reporters without boundaries], Projet du «Loi-cadre» sur la Presse [Press «Umbrella Law» Bill], 1995;
- H. BLIN et al, Traité du droit de la presse [Treatise on Rights of the Press], Librairies Techniques, Paris, 1969;
- Jacques Robert, Droits de l'homme et Libertés fondamentales [Human Rights and Fundamental Liberties], Montchrestien, 6th edition, Paris, 1996, pp. 615 - 736.
- Centre Culturel Américain [American Cultural Center], Journalisme professionnel [Professional Journalism], Kigali, 1992.

II. THE NEW LAW

The revision draft of this law includes new additions; the main ones are:

1. Definition of a journalist.

The definition of a journalist in Law no. 54/91, dated November 15, 1991, is not very clear. To avoid an erroneous interpretation, the term «journalist» was clearly defined.

2. Journalists' rights and duties

The new law is innovative in that it clearly defines a journalist's rights and duties.

This shows that the time has come for Rwandan journalists to become true professionals, especially as it has been shown that the press can destroy (if it is used incorrectly), but can also be the seeds of development.

3. Creation of a High Press Commission (H.P.C.)

The National Press Commission (N.P.C.), as set forth in Law no. 54/91 dated November 15, 1991, never came into effect. Journalists' organizations which were supposed to implement it never got together to do so. In the present bill, it became necessary to create another group to advise the government on all questions relating to the press.

This is the organizations, called the «High Press Commission (H.P.C.)», which shall determine the terms of equal access to the public media for all the country's political factions (political parties, commercial corporations, etc.).

4. The press card

The old law stated that press cards had to be issued by the National Press Commission (N.P.C.), but we must point out that this commission was never in operation, particularly after the Genocide.

Insofar as the new law is concerned, it is innovative in that it sets forth that press cards would be issued by the various news organizations to their journalists and other assimilated employees.

5. News organizations

Experience has shown that in Rwanda, newspapers are not viable. In fact, one sees newspapers come into being, only to disappear some months later. Thus, the new law intends to promote the formation of news organizations which have the human and financial resources to carry out their mission of imparting information. Thus, only those news organizations shall be authorized to create and found press organizations (private newspapers, radios and/or television stations).

It is within this scope that the following conditions shall be required of each entity - natural person or legal entity - which wants to found a news organization:

- the submission of an authorization duly issued by the Ministry in charge of that business;
- a financing plan for the corporation or the project;
- a definition of the coverage (or the area served) by the publication or the station;
- a guarantee that the publication or the stations shall not be purveyors of hatred and/or divisiveness.

6. Forbidden publications

The present law attempts, in particular, to protect children and youth in general by categorizing those publications which might be harmful for morale and morality.

7. With respect to the crackdown on infractions

The new law is innovative in that it differentiates between civil and criminal liability insofar as the press is concerned.

Insofar as criminal liability is concerned, this law refers, purely and simply, to the criminal code, it being understood that journalists must be treated in the same manner as other citizens.

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LAW No. ... DATED ... WITH RESPECT TO THE PRESS.

We, Major General Paul KAGAME, President of the Republic,

THE NATIONAL ASSEMBLY HAS PASSED AND WE APPROVE AND PROMULGATE THE LAW, THE CONTENTS OF WHICH MAY BE FOUND BELOW, AND WE ORDER THAT IT BE PUBLISHED IN THE «OFFICIAL JOURNAL» OF THE REPUBLIC OF RWANDA.

The National Assembly, in session on

In view of the Fundamental law of the Republic of Rwanda, specifically:

- the Constitution, dated June 10, 1991, Articles 18, 69 and 75, first paragraph;
- and the Accord de Paix d'Arusha [Arusha Peace Agreement], in the section with respect to the constitutional state, Article 6;

Revised Law No. 54/91, dated November 15, 1991, with respect to the Press.

HEREBY PASSES:

DIVISION ONE

LIBERTY OF THE PRESS

CHAPTER ONE:

PRINCIPLES.

Article one

«The Press is free».

The freedom to express its opinions by means of the press shall be exercised within the scope of the provisions of this law.

Article 2

The freedom of the press includes the freedom of opinion, and the freedom to seek, receive or disseminate information or ideas by means of the press, with the exception of the repression of infractions committed in the exercise of this freedom.

The freedom of press is only subject to the restrictions which are expressly set forth in the present law and the international treaties for the protection of human rights, of which the State is a signatory.

Censorship is not authorized.

Article 3

The written and audiovisual press, both private and public, shall be governed by the present provisions.

The journalist's profession shall be practiced pursuant to the provisions of the present law.

Article 4

Any individual or legal entity has the right to found a press organization, subject to the conditions set forth in the present law.

The incorporation of a news company, either for written or audiovisual press is unrestricted, subject to the formalities set forth in the present law.

All press media must be incorporated as a news company.

CHAPTER II:

DEFINITIONS

Article 5

As defined by this law, the press is understood to include any printed, visual or auditory means or procedure which would provide for the broadcast to or information of the public of all events, opinions or other ideologies.

The main objective of the press is to inform, educate and entertain the public.

Article 6

The following are deemed to be press media: written press publications, radio or television broadcast stations and press agencies which continuously or at regular intervals, issue general or specialized items of information.

Article 7

A foreign press distributor is defined as any unit which has a corporate office in Rwanda but distributes foreign press.

Article 8

News companies are those commercial enterprises which are subject to commercial legislation and the present law.

Article 9

The following are deemed to be written press publications: any written matter which is made public, reproduced by any printing methods and appearing regularly, such as newspapers or printed periodicals, drawings, engravings, photocopies, faxes, booklets, brochures, posters.

Article 10

The following publications, listed below, are not deemed to be press publications:

- a) printed matter with respect to private, family or corporate interests;
- b) matter published for delivery, the appearance of which covers a limited time or which constitutes an addition or the up-date of publications which have already appeared;
- c) publications whose principal goals are the search for or development of the transactions of commercial, banking or industrial enterprises and publicity or advertising organizations;
- d) publications whose principal goals are the dissemination of schedules, programs, quotations, models, plans or budgets;
- e) publications with respect to administrative documents;
- f) publications of a scientific, artistic, cultural, technical or professional nature.

[Illegible handwriting]

Article 11

Audiovisual press communication is defined as the making available to the public, by means of a process of telecommunications, signs, written matter, images, sounds or messages of any kind which cannot be characterized as private correspondence.

Article 12

Posting in the press is defined as any public announcement done in order to publish either a legal enactment with respect to products or services, or to promote a cause, an idea, a product, a service, or to generate any other effect which might be desired by the posting entity.

Article 13

The right to reply consists, for a natural person or a legal entity, of the right to express an opinion which is contrary to the one which is slandering his honor, his reputation or his interests in a press publication.

The right of correction is defined as the restatement of facts which were incorrectly reported in a press publication.

The right of rebuttal consists of attaching the answer or the correction to any new comments.

DIVISION TWO:

OPERATION OF A NEWSPAPER CORPORATION

CHAPTER ONE:

WRITTEN PRESS PUBLICATIONS

Section 1:

Registration:

Article 14

Any press publication must have a Publisher and a Chief Editor.

When a person is the owner or lease holder of a news company or holds the majority of the capital or the votes, this person is the Publisher.

In other cases, the Publisher is the legal representative of the newspaper corporation.

Article 15

The Publisher must have the legal capacity and be a resident of Rwanda.

The Chief Editor must be a professional journalist.

Article 16

Any launching of a written press publication is first subject to a written statement (with return receipt requested), at least one month before its first appearance, by the Publisher to the Ministry which is in charge of information.

This statement must contain the following information:

1. The owner's identity if he is a natural person, or the articles of incorporation if it is a legal entity.
2. The full name and address of the Publisher and the Chief Editor.
3. The publication's name.
4. The full address of the news corporation.
5. The publication's periodicity.

6. A description of the publication.
7. The publication's language(s).
8. A specification sheet stating the publication's [Blank] and orientations.

Any modifications with respect to the above-mentioned information must be declared within the following eight calendar days.

Article 17

Should the Publisher have immunity, he must designate a Co-publisher who does not have any immunity.

All the obligations imposed on the Publisher are applicable to the Co-publisher.

Section 2:

Article and advertising editing.

Article 18

Any newspaper or periodical publication must bear the first and last names and the addresses of the Publisher and the Chief Editor.

Article 19

The articles in the newspaper or publication must be signed by their authors.

Those authors who submit unsigned articles or use a pseudonym must submit to the Publisher, in writing, before their article's insertion, their true identity.

Published photographs which are independently published must bear the name or brand of the author or the licensee of the reproduction rights.

Article 20

In the event that the articles are not signed by their authors, the Publisher may reveal their identities to the authorities in the event of legal proceedings. Otherwise, the latter shall be presumed to be the author of the article in question.

Article 21

The Director of a press publication must make available to the public the current advertising price schedule for his organization.

Article 22

An advertising message must be direct and must appear as a true advertisement to the public.

Editorial advertising must be labeled «advertising» or «communiqué», or any other label selected by the news corporation, subject to the fine set forth in Article 82 of the present law.

Article 23

Free advertising must be free of any political, confessional or commercial consideration and must be free of any controversy. This free advertising may benefit programs which are, in particular, in favor of first aid, blood drives, the struggle against AIDS, road safety, bilingualism, nucleated habitats and justice.

Article 24

The contract linking a newspaper or a periodical with the entity publishing an announcement shall be subject to the ordinary rule of practice of contract law

The newspaper or periodical is not responsible for the content of the announcements it publishes, save in the event that its publication alone might constitute fraud, slander or be subject to legal proceedings.

The newspaper or periodical may legitimately consider to be abnormal any request for advertising which might be likely to incur its civil or criminal liability. Thus, a newspaper may refuse an advertisement which, in all good faith, it deems that the product or service offered is contrary to ...

... its fundamental opinions or likely to offend its clients.

Article 25

An advertiser may obtain, from a newspaper or periodical, the advantage of advertising exclusivity for products and services of the same type.

The newspaper or periodical shall handle any advertising which competes with that of its advertiser by placing it such a way as to considerably reduce the impact of the advertisement.

Section 3:

Printing

Article 26

The news company may have an associated printer or use an independent printer.

The printing contract between the publisher and the printer is governed by the regulations which are part of professional practices and the regulations of commercial law.

Article 27

The printer must indicate its name and address on all the printed matter made public, save in the case of printing work for the city or on toys, subject to the fine set forth in Article 83 of the present law.

Article 28

The size of the printing run must be visibly printed on all the copies of its ...
...newspapers or periodicals, subject to the fine set forth in Article 83 of the present law.

Section 4:

Copyright

Article 29

Each news company is subject to copyright.

Article 30

The following are subject to copyright: all publications of the written press, either domestic or foreign, sold, distributed or given away for reproduction in Rwanda.

The copyrighting shall be done by the Publisher or the Chief Editor with the Ministry which is in charge of Culture, at the time of publication of the issue.

The copyright of a press publication shall be done in duplicate, accompanied by a cover letter indicating the publisher's identity, the publication's name, the news company's complete address and the publication date.

The depositor shall immediately be given a receipt.

The deposit may be made by mail, the postmark providing the legal date.

The circulated copies must be identical to the deposited copies.

Article 31

Each news company must comply with judicial deposit. On that basis, the managing editor must give the "Procureur de la République" [District Attorney] of the "Parquet de Ressort" [Appeals Court] a signed copy of each issue, no later than two hours before distribution.

Article 32

Each news company must comply with administrative deposit. On that basis, the managing editor must give the Ministry in charge of information one copy of each issue at the time of distribution.

Article 33

The publication shall be deemed to be in effect as soon as the copies of the press publication leave the printer, save for those which shall be used for the judicial deposit.

Article 34

In the event of partial or complete disregard of the deposit prescribed by law, the deposit department in question may purchase the undeposited work in question or the missing issue on the open market; this shall be done at the expense of the person subject to the obligation to deposit.

Section 5:

Distribution:

Article 35

All news companies shall, themselves, ensure the distribution of its own newspapers and periodicals using the most appropriate methods, they being, in this case, bulk mailings and distribution services, peddling and sales on the streets.

Article 36

Whoever wants to act as a peddler, distributor or sales person on the street or in any other private or public location of the press publications must make a statement to the communal authorities of the area in which this business takes place.

The Statement must contain the identity and complete address of the person making the statement. He shall immediately be given a receipt.

CHAPTER II

AUDIOVISUAL PRESS PUBLICATIONS

Section one:

Establishment and operation agreement.

Article 37

In view of specific technical constraints having to do with the limitations of Hertzian frequencies, the companies and audiovisual communications businesses using this broadcast method must have an authorization.
more appropriate, [Sic]

Moreover, the authorizations shall be granted after evaluation of the interest of each project for the public, in view of the primary imperatives which are: the preservation of the pluralism of social-cultural trends, the diversification of operators and the need to avoid the abuses resulting from dominance, as well as those practices which might hamper the free exercise of the competition.

Article 38

Any natural person or legal entity which wants to found or operate a radio or television broadcasting station must have an authorization, issued with the approval of the Haut Conseil de la Presse by the Ministry in charge of information, and sign an establishment and operation agreement with this Ministry.

This authorization request must contain the following elements:

- the identity of the company's owner or the articles of incorporation, if it is a corporation;
- the program's length and general characteristics;
- the general rules for the programs' programming;
- the broadcasts' general production terms.

The agreement defines the specific obligations of the company being considered, as well as the contractual prerogatives and penalties at the disposal of the State and the Haut Conseil de la Presse to ensure that the contractual obligations are adhered to.

Article 39

Any audiovisual communications company must have a Managing Editor.

The Manager and, if such is the case, the Co-manager must have legal status

Article 40

The journalists practicing their profession in one or more audiovisual communications companies shall have the status of journalists, on the same basis as their colleagues in the printed press.

Section 2:

Advertising.

Article 41

The provisions with respect to the printed press with respect to advertising apply to radio and television.

CHAPTER THREE:

THE RIGHT TO REPLY, CORRECT AND REBUT

Section 1:

The right to correct, reply and rebut in the written press

§ 1. The right to correct

Article 42

The Managing Editor must insert, free of charge, within three days of their reception date for dailies or in the next issue of a periodical, all corrections which he may have received from a public servant regarding the documents from his department which were incorrectly reported.

In the event of a refusal to correct, the Court may order this insertion and sentence the Managing Editor to the fine set forth in Article 85 of the present law.

Article 43

The correction shall be published in a manner which is equivalent to that of the text to which it refers. This correction may not be longer than the original text, excluding the address, greetings, the usual closings and the signature..

§ 2. The right to reply

Article 44

The Publisher must insert, no later than three days after receiving them for dailies, and in the following issue for weeklies, the replies of any person who has been implicated in the newspaper or printed periodical, subject to the fine set forth in Article 85 of the present law.

Article 45

This insertion must be made in the same location and in the same typeface of the article which is its cause, and without interleaving.

The reply shall always be free of charge. It may comprise as many as fifty lines, even though the length of the article to which it is responding is lesser, and it cannot exceed two hundred lines, even though this article might be longer.

Article 46

Publishing a special edition from which the reply, which was to appear in the newspaper's regular edition, has been cut in the region serviced by this edition shall be equated with a refusal to make the insertion and shall be subject to the same penalties, without prejudice to any suit for damages.

Article 47

The right of reply may be exercised by associations, whose goal is to combat discrimination, based, in particular, on race, color, gender, religion, political or other opinions, social or national origin, wealth, birth or any other classification, when a person or group of persons have, in a newspaper or written periodical, been the subject of charges which are likely to reflect badly on their honor or their reputations as a result of the discrimination contained therein.

However, when the implication applies only to persons taken as individuals, the associations to which they belong may not exercise the right of reply unless it has received the latter's agreement.

§ 3. The right of rebuttal

Article 48

There may be a rebuttal when the journalist adds new commentaries to the reply or the correction.

The rebuttal is, itself, subject to a new right to reply.

The rebuttal or the new replies must have a bearing on the nature of the correction or the reply (or the rebuttal) and may not contain either attacks, harmful or libelous criticism, in particular on or of the Director, the journalist or third parties.

§ 4. The right to correct, reply and rebut

Article 49

Save in the event of force majeure, nobody may take advantage of the right to correct, reply or rebut, if the date of the text to which the correction, reply or rebuttal refers, as of the date of the appearance of the issue in question is more than:

- 1 week for a daily,
- 4 weeks for a weekly,
- 2 months for a semimonthly
- 6 months for any other periodical.

A request for correction, reply or rebuttal must be sent to the publication's Director by registered mail or by ordinary mail with a return receipt requested.

Article 50

The refusal to insert a correction, reply or rebuttal by the Director of a publication may give rise to a claim for damages, without prejudice to an criminal suits which might be brought.

The court to which the case is referred may, in addition to criminal and civil sentences, order the insert of the correction, answer or rebuttal within a period of time that it shall determine.

Section 2:

The right to correct, reply and rebut in the audio-visual press

Article 51

The correction, answer or rebuttal in the audio-visual press must be broadcast in a similar manner than those which contained the charge in question.

The correction, answer or rebuttal must also be broadcast in the same time slot as the message containing the charge in question.

Save in the case of force majeure, the demand to exercise the right to correct or the right to reply must be sent to the station Director by registered mail, within 48 hours in the event of a news broadcast or a consumer magazine or within one week for a chronicle.

The request must contain the date and time of the broadcast, as well as the specific allegations made about the petitioner. It must also include the gist of his reply.

Article 52

In the event that the Director of the radio or television station does not follow up on the request within a period of 5 days of its reception, the interested party may refer the case to the Tribunal de Première Instance [Court of First Instance] which shall rule immediately and order, if it finds the request to have grounds, the broadcast of the correction, answer or rebuttal, without prejudice to any damages.

Article 53

The audio-visual news company shall be obliged to tape all its broadcasts and keep the recordings and all the associated documents for at least three months.

If, within this period, a complaint or claim is received with respect to one or more broadcasts, the obligation to keep the recordings, all evidence and documents shall be extended until the final closure of the proceedings.

CHAPTER IV:

SPECIAL PROBLEMS WITH RESPECT TO

CERTAIN TYPES OF PUBLICATIONS

Section One:

Forbidden or limited publications .

Article 54

The publication of information, even if it is true, may represent a great social danger.

The right to have knowledge of or to broadcast documents coming from the executive, judiciary or legislative branches may not be limited unless it is deemed necessary for the following reasons:

1. secrecy with regard to national defense, currency and public credit, state security and public safety.

[Page & Articles 56 and 57 missing]

The following are not subject to the present law: official publications, the origin of which is, in and of itself, a guarantee, and educational publications, which are subject to the control of the Ministry in charge of education.

Article 57

Those publications intended for young people must not contain any illustrations, stories, chronicles, columns or inserts which might impart a favorable image to banditry, lying, theft, laziness, cowardice, hatred or debauchery or any acts which might be qualified as crimes or infractions or are of a nature to demoralize children or young people, or inspire and uphold ethnic prejudice, subject to the fine set forth in Article 86 of the present law.

Section 3:

Foreign press system

Article 58

The written matter printed abroad shall be deemed to have been published in Rwanda when it has been put into circulation and is subject to the regulations of the present law.

Section 4:

Posting.

Article 59

Posting is the act of attaching a printed sheet to a wall or any bearing surface. It is nothing more than a form of the press and the freedom to post is nothing more than a corollary to the freedom of press.

Posting is not subject to any preliminary authorization or declaration, save for those restrictions which stem from property law and the powers of the administrative police.

Article 60

In principle, private and publicity posting is totally unrestricted.

The affixing of posters may give rise to taxes instituted for the sole purpose of generating revenue.

Article 61

Administrative posting shall be carried out by the public authorities, which shall determine the sites exclusively for posters with respect to the laws and other documents of the public authorities. On these sites, it is forbidden to post any private posters.

Those who remove, tear, cover or alter in any way whatsoever, in order to mock them or render them illegible, those posters which have been affixed at the order of the administration at one of the reserved sites, shall be punished pursuant to Article 87 of the present law.

Article 62

In each community, for the duration of any electoral period, special locations must be reserved for the Mayor for electoral posters.

These posters shall be affixed on all public buildings, excluding those panels reserved for administrative posting and places of worship.

Any infraction of the Mayor's instructions shall be punishable by a penalty determined pursuant to Article 87 of the present law.

DIVISION III:

THE JOURNALIST'S PROFESSION

CHAPTER ONE:

JOURNALISTS' QUALIFICATIONS

Section 1:

Definition of a journalist

Article 63

The term - **journalist** - refers to any person who is working as a journalist for a news company.

A journalist is defined as a person who carries out one or more of the following functions in order to impart information or options to the public:

- seeking information, reporting, interviewing,
- editing or preparing reports, analyses, commentaries or special reports,
- text translation and adaptation,
- press photography, filmed or electronic reporting,
- allocation, console (circulation, layout, etc.), text proofing,
- caricatures of current events,
- news drawing and graphics, coordination, direction or supervision of broadcasts or films on current events,
- management of information services, public affairs or similar activities.

Section 2:

Press card and accreditation.

Article 64

A journalist's profession is attested to by a press card issued to the journalist in question, by the news company to which he belongs, on the basis of a favorable decision by the Haut Conseil de Presse.

The format for this press card shall be determined by the Ministry in charge of information.

Article 65

The cancellation of a press card shall be decided upon by the news company in the event of dismissal. It shall inform the Haut Conseil de Presse.

This cancellation may also be decided upon by the Haut Conseil de Presse in the event of:

- serious or repeated violations of the provisions of the present law and/or those of the journalist's code of ethics,
- loss of the position of professional journalist,
- lack of justification for collaboration with a press organization for a period of six months.

In the event of an infraction, the Court may also cancel the press card.

Article 66

The decision to cancel the press card may be appealed to the competent courts.

Article 67

The card is issued for a period of one year and may be renewed for the same period of time, subject to a favorable decision by the Haut Conseil de la Presse.

Article 68

Foreign journalists working in Rwanda must be accredited by the Ministry in charge of information, which shall determine the terms of this procedure.

The accreditation may be refused if there is a dispute as to the journalist's true profession.

Journalists residing in Rwanda who are correspondents for the foreign press must also be accredited by the Ministry in charge of information.

CHAPTER II:

JOURNALISTS' RIGHTS AND DUTIES

Section 1:

Rights

Article 69

A journalist shall have free access to all the information sources and has the right to freely investigate all the aspects of public life and to publish them. The secrecy of public affairs cannot be imposed on him, unless it is by legal objection and pursuant to the provisions of Article 54 of the present law.

He shall be guaranteed professional secrecy with respect to his sources of information and his notes; his recordings or the filmed shots, as well as any information he might collect and store electronically. The press offices are inviolable.

Article 70

Upon presentation of a press card, or the accreditation accorded to a foreign journalist, a journalist may, in particular:

- pass through police lines and gain access to a site where an event, upon which he shall report, has taken place;
- have access, at any time, to those areas of airports normally reserved for arriving or departing passengers;
- in general, have priority status at the post and telephone offices and, specifically, for access to telegraph, telephone, telex and fax communications.

Article 71

Within the scope of his work, a journalist has the right to call upon and person or resource whom he deems sufficiently competent to analyze or comment upon an event with local, national or international implications, without, however, being held responsible for the opinions advanced by the person he is interviewing and being reported verbatim.

A journalist has the right to withstand all pressure and shall only accept editorial directives from the people in charge of editing or publishing.

Section 2:

Duties.

Article 72

A journalist must:

- defend the freedom of information, commentary and criticism.
- only publish verified information, or, if this cannot be done, add the customary reserves. A rumor cannot be published, unless it comes from a credible source, and if it is significant and of use in understanding a situation;
- carefully separate his personal feelings from the analysis and factual information in order to avoid confusing the public;
- correct any published information which has proved to be incorrect.

Article 73

A journalist must not:

- employ unfair or reprehensible practices in order to obtain or broadcast information, photographs and documents;
- suppress essential information or denatures texts or documents;
- confuse the journalist's profession with that of a press agent or propagandist, accept any direct or indirect orders from the announcers or do anything for the sake of money.

Article 74

A journalist shall not engage in plagiarism, slander, insults, defamations and groundless accusations. He may not accept any incentive whatever for the publication or suppression of information.

Article 75

A journalist must not engage in the cover-up of any audio-visual or printed documents, the broadcast and printing rights of which belong to others.

Article 76

A journalist must respect the private lives of individuals, as long as they do not have an effect on their public duties.

CHAPTER III:

HIGH PRESS COMMISSION

Section 1:

Competence.

Article 77

A High Press Commission has been created, an autonomous body overseeing the press, placed under the supervision of the Republic's presidency.

Article 78

The High Press Commission's function is to:

- guarantee and ensure freedom and protection of the press and other means of mass communications
- ensure that the press maintains its ethical standards.
- supervise fair access to the official means of information and communication between the political parties and various associations.
- give its opinion with respect to authorizations for the set-up of audio-visual news companies.
- give its opinion with respect to decisions to suspend or forbid the publication of a newspaper or periodical or the closure of a radio or television station or a press agency.
- give its opinion with respect to the granting of a press card, which has been decided upon by the news company.

Section 2:

Organization.

Article 79

The High Press Commission shall elect a Chairman and office staff from amongst its members

The make-up, organization and operation shall be determined by a Presidential Decree.

DIVISION IV:

INFRACTIONS AND LIABILITY

CHAPTER ONE:

INFRACTIONS OF THE PRESS LAW

Section 1:

Procedural infractions

Article 80

Any news company which publishes a newspaper or periodical without complying with the provisions of Article 16 of the present law shall be subject to a fine of one hundred to five hundred thousand francs

Any news company which has launched a radio or television broadcasting service without complying with the provisions of Article 38 of the present law shall be subject to a fine of five hundred thousand to one million francs

Moreover, the Court may order that the station or the publication be shut down.

Article 81

A fine of twenty to one hundred thousand francs shall be levied on any news company which has published without complying with the provisions of Articles 14, 15, 17 and 39 of the present law.

If, notwithstanding the sentence, the publication continues before the obligations imposed by the above-mentioned articles have been complied with, the Administration may request an injunction against the publication or station.

Article 82

Any infraction of the provisions of Articles 21 and 22 of the present law shall be punished by a fine of one hundred thousand francs.

Article 83

Any infraction of the provisions of Articles 18, 27 and 28 of the present law shall be punished by a fine of twenty to one hundred thousand francs.

Article 84

Without prejudice to the provisions of Article 34 of the present law, any failure to comply with the obligatory deposit required by Articles 30, 31 and 32 shall be punished by a fine of twenty thousand francs.

Article 85

Without prejudice to the provisions of Articles 50 and 52 of the present law, the refusal to insert a correction, reply or rebuttal is subject to a fine of fifty to two hundred thousand francs

Article 86

Any infraction of the provisions of Articles 55 to 57 of the present law shall be punished by a fine of fifty to two hundred thousand francs

Article 87

The sanctions set forth by the provisions of Articles 36, 61 and 62 of the present law shall be in accordance with communal regulations.

Section 2:

Incitement to crimes and infractions

Article 88

The following are accomplices in crimes or infractions which are set forth in the Penal Code and punished by penalties set forth in this code: those who, by means of the press, directly provoke the author or authors to commit infractions, if the provocation had an effect or an attempt at one.

However if the provocation did not have an effect or an attempt at one, the instigators of the provocation shall be punished by one half of the penalty set forth in the Penal Code for the infractions which they committed.

Article 89

Notwithstanding the preceding Article

1. The publication of false news, slander and insults, as well as publications which interfere with law and order or morality shall be sentenced to the maximum allowable punishment set forth in the Penal Code.

2. Any offense committed by the press against the President of the Republic, flagrant insults delivered through the press against a foreign Head of State and foreign diplomatic personnel, the defamation and insults directed through the press at the people in government and in charge of enforcing the law shall be punished by the maximum penalty provided for by the Penal Code.

3. Any person convicted of one of the following infractions shall be punished by imprisonment for one to fifteen years and a fine of fifty thousand to one million francs, or to only one of the above:

- incitement to or the justification of war crimes, terrorism, genocide and other crimes against humanity.

- incitement to discrimination, hatred or violence against a person or group of people because of their origin, their appearance or the fact that they do not belong to an ethnic group, a nation, a race or come from a given region.

Section 3:

Other infractions

Article 90

Any person convicted of the invasion of privacy of others by means of the press shall be punished by imprisonment of at least one year and a fine of twenty to one hundred thousand francs, or to only one of the above:

- by picking up, recording, broadcasting or relating private or confidential remarks;
- by establishing, recording, broadcasting the image of a person in a private place without the latter's consent.

When the actions defined in this Article were carried out with the knowledge of the interested party, and with no opposition on their part when they could have opposed it, the consent of the latter is presumed.

Section 4:

Guarantees with respect to infractions of the press law

Article 91

In the event of infractions of the press law, a journalist may not be subject to preventive incarceration.

Article 92

Preventive detention may, however, be used in the following cases:

- direct provocation of an action qualified as a crime or an infraction, if the provocation had the effect of causing a crime or the attempt to commit one;
- justification of the crimes of murder, pillaging, arson, theft, war crimes, or crimes or infractions in collusion with the enemy and crimes against humanity;
- provocation of the military to disobedience;
- publication, broadcast or reproduction of false news items, of forged, falsified or untrue documents attributed to third parties, issued knowingly, which disturbed the peace and good order or is likely to do so, or likely to upset the army's discipline or morale or to impede the nation's war effort.

- offense committed against the President of the Republic and other foreign power set forth in Article 89 of the present law.

Article 93

The government's action arising from the crimes, offenses and infractions set forth by this law is limited to three full months, starting on the date on which the crimes were committed or the last day of the prosecution, unless these infractions are such that government action may not be limited, pursuant to international criminal law.

The limitation under common law shall be observed with respect to infractions committed through the press but which are punishable under the Penal Code or special laws.

Article 94

In the event of a press infraction, the distraint may only be applied to the material in question. In no event may it be applied to the means of production of this material.

The distraint may only be obtained through summary jurisdiction without prejudice to the judgment upon the merits.

Nevertheless, in order to enforce a judicial sentence on a news company, the distraint shall be executed pursuant to the legal provisions of common law.

CHAPTER II:

LIABILITIES.

Section One:

Criminal liability.

Article 95

In the following order, proceedings shall be instituted against the people listed below, for infractions committed through the press:

1. the Manager or Publisher;
2. failing that, the Editor;
3. failing that, the authors;
4. failing that, the printers;
5. failing that, the sellers, distributors or billposters.

When the identities of the main people responsible to be prosecuted have been established, the persons listed in points 2 through 5 above may be charged as accomplices, if their positions are defined by Article 91 of the Penal Code.

Insofar as the audiovisual element is concerned, the journalist or the person being interviewed shall be prosecuted as authors, then the Chief Editor and, finally, the Manager.

The latter two may also be charged as accomplices, if their positions are defined by Article 91 of the Penal Code.

Article 96

The liability for any press infraction committed in a printed document which is not a periodical shall be incumbent upon the author.

The latter shall not, however, be held liable if this document was published without his consent.

Section 2:

Civil liability.

Article 97

The victim's lawsuit for the reparation of damages caused is governed by the legal provisions of Common Law.

Article 98

The criminal and civil liabilities do not, in any way, exclude a lawsuit on ethical or disciplinary grounds.

Section 3:

Specific duress provisions.

Article 99

In the event of conviction for breach of the press laws, the confiscation of the documents or printed matter, billboards or posters may be ordered through legal process, on the condition that the distribution to the public has begun.

In any event, it may be ordered that all the copies sold, distributed or exposed to public view be suppressed or destroyed.

However, the suppression or destruction may only apply to certain portions of the seized copies.

Article 100

A seizure certificate shall be issued each time to the person whose printed matter was seized; it must state the law(s) which provided the grounds for the seizure.

Article 101

In the event of conviction pursuant to Article 89, a three month suspension of the newspaper may be announced in the same judicial decision. This suspension shall have no effect on the operator's employment contracts; the latter shall be held to all the resulting legal or contractual obligations.

DIVISION V:

TEMPORARY AND FINAL PROVISIONS

Article 102

News companies and publishers in existence before the effectiveness of the present law must comply with the provisions of Articles 14, 15, 16, 38 and 39, no later than twelve months from the date of its publication.

Article 103

All previous provisions which are in conflict with the present law are repealed.

Article 104

The present law shall become effective as of the date of its publication in the Journal Officiel of the Republic of Rwanda.

Kigali, [Blank date]

Major General Paul KAGAME
President of the Republic

Bernard MAKUZA
Prime Minister

Joseph Désiré NYANDWI
Minister of Local Administration and Corporate Affairs

Jean de Dieu MUCYO
Minister of Justice and Institutional Relations

Signed and sealed with the Republic's Seal

Jean de Dieu MUCYO
Minister of Justice and Institutional Relations

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