



QUESTIONNAIRE ON THE IMPACT OF ADVERTISING ON MARKETING PRACTICES ON THE ENJOYMENT OF CULTURAL RIGHTS

The request for the Commission for Human Rights (NCHR) to answer questions related to protection of human rights as far as marketing and advertising is concerned, was made by the United Nations Special Rapporteur in the field of Cultural Rights, pursuant to Human Rights Council Resolution 19/6 on the enjoyment of cultural rights as impacted by marketing and advertising.

In this regard, the NCHR is coming up with its contribution on some questions raised by the Special Rapporteur.

- 1. Has your country adopted specific regulations on advertising and marketing methods and contents aimed at protecting human rights? If so, please specify the content of such regulation. Does the regulation apply both to off-line and online advertising?**

In Rwanda, there are provisions in some laws that protect human rights with regard to advertisement and marketing such as the Penal Code, the law governing Telecommunications, the law governing Electronic messages, electronic transaction and electronic signature. This is laid out in the Penal code. In fact, the Penal criminalizes offences against intellectual property. Article 37(7°) of the **Organic Law N° 01/2012/OL of 02/05/2012 Instituting the Penal Code** stipulates that *Discredit: may arise out of advertising or promotion and may, in particular, occur with respect to: a. the manufacturing process of a product; b. the suitability of a product or service for a particular purpose; c. the quality or quantity or other characteristics of products or services; d. the conditions on which products or services are offered or provided ; e. the price of products or services or the manner in which it is calculated.*

In addition, the same law, Article 37(8°) states that misleading the public means an act that may arise out of advertising or promotion and may, in particular, occur with respect to:

- a) The manufacturing process of a product;*
- b) The suitability of a product or service for a particular purpose;*

- c) *The quality or quantity or other characteristics of the product;*
- d) *The nature of the product , designs, marks and the patent of a competitor or an enterprise whose activities are similar to those of another enterprise;*
- e) *The geographical origin of products or services ;*
- f) *The conditions on which products or services are offered or provided ;*
- g) *The price of products or services or the manner in which it is calculated*

The law n° 36/2012 of 21/09/2012 relating on competition and consumer protection states in its Article 38 that *any advertising that may encourage risky behavior dangerous for health or safety of persons is prohibited.*

In addition, the same law, in its Article 39 stipulates that comparative advertising shall be the one that compares goods or services by identifying explicitly or implicitly, a competitor or goods or services offered by a competitor or an enterprise without prejudice to the competition. Comparative advertising shall be permitted if it meets the following conditions: 1° it must not be misleading or likely to mislead the consumer; 2° it must be for goods or services meeting the same needs or intended for the same purpose; 3° it must objectively compare one or more characteristics of goods or services compared.

Furthermore, consumer rights are guaranteed by Article 42 of the law on competition and consumer protection. According to the provision of the law, the seller shall be liable for any lack of conformity which exists at the time the commodity was delivered to the consumer. In the case of a lack of conformity, the consumer shall be entitled to have the commodity brought into conformity, repaired or replaced free of charge or have an appropriate reduction of the price or the contract rescinded with regard to that commodity.

It should be noted that there is a body that is in place and is trying to regulate the way goods are handled and advertised.

Rwanda Utilities Regulatory Agency (RURA) was created by law n° 39/2001 of 13th September 2001 and was published in the Government Gazette n° 20 of 15th October 2001 with the mission to regulate certain public Utilities. It is now governed by the Law n°09/2013 OF 01/03/2013 establishing Rwanda Utilities Regulatory Authority (RURA) and determining its mission, powers, organisation and functioning.

In order to regulate certain public utilities, in conformity with article 4 of its Law, RURA's main mission shall consist of the following:

1° to set up necessary guidelines in order to implement laws and regulations in force;

2° 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;

3° to ensure the continuity of service delivery by the licensed or authorized service providers and the preservation of public interest;

4° 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;

5° to protect and promote consumers' interests;

6° to promote the availability, accessibility and affordability of regulated services to all consumers including low income, rural and disadvantaged consumers;

7° to promote efficient development of regulated sectors in accordance with Government economic and financial policy;

8° to promote and enhance general knowledge, sensitization and awareness of the regulated sectors including but not limited to:

a. the rights and obligations of consumers and service providers;

b. the ways in which complaints are lodged and resolved;

c. the missions, powers and functions of RURA;

9° to issue permits, authorizations and licenses required for regulated sectors, in accordance with the relevant governing laws and regulations;

10° to monitor and ensure compliance by regulated network or service providers in line with their licenses, permits and concession obligations;

11° to ensure fair competition in all regulated sectors.

RURA establishes rules for reviewing regulation-related complaints and grievances of users against service providers and complaints of providers among themselves or against their customers. RURA stays in contact with international and regional conferences and forums to identify changes in technology and techniques for efficient and appropriate regulatory prescriptions for the allocation and use of scarce national utility resources. Monitoring Performance of Service Providers: A key measure of the effectiveness is how broad and thorough are the guidelines RURA develops to monitor and evaluate performance of service providers. Key indicators are service expansion,

quality of service and penetration rate for service access. Monitoring and Responding to Changing Markets Signals: RURA facilitates Services Providers and Consumers to find ways to resolve regulatory questions, issues and concerns. The goal is to ensure that the utility sector functions in an efficient, transparent and mature manner.

2. Please indicate whether specific categories of the population are protected by such regulation, such as children, women, minorities and indigenous peoples.

The Constitution of the Republic of Rwanda, in Article 27 provides for *that the State shall put in place appropriate legislation and institutions for the protection of the family and the mother and child in particular in order to ensure that the family flourishes.*

Furthermore, Rwanda is signatory of the **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.**

According to Article 7(a)(i) of the Optional Protocol, States Parties shall, subject to the provisions of their national law take measures to provide for the seizure and confiscation, as appropriate, of goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the protocol. **Article 3(ii)(b) of the Optional Protocol provides for that** each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature (prostitution and pornography). **Article 9 (5)** adds that parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

The Optional Protocol is part of national laws in conformity with **article 190 of the Constitution of the Republic of Rwanda which states that** upon their publication in the Official Gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be **more binding** than organic laws and ordinary laws except in the case of non-compliance by one of the parties.

In this regards, *the Law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child defines in its Article 3 (5º) worst forms of child labor* : the worst forms of child labor that include to indulge children in slavery or similar practices; children trafficking; to turn them into debt bondage; to have them replace grownups in forced labour; to use them in conflicts and wars; the recruitment, use, **procuring or offering of a child for prostitution or for the production of pornography or for pornographic shows**; the use, recruitment and procuring or offering of a child for illicit activities such as manufacture and marketing of drugs; the work which is likely to harm the health, safety or morals of a child. According to **Article 51 of the same law, all forms of economical exploitation of a child by requiring him/her to accomplish a work that is likely to**

put him/her at risk or to compromise his or her education or to harm his or her health or his/ her physical, mental, spiritual, moral or social development such as drug trafficking and usage of alcohol and cigarette business and consumption, prostitution, beggary, child trafficking, slavery and kidnaping, pornography business, or any other form of exploitation and incitation are prohibited and punishable by Law.

In addition, the Law n°02/2013 of 08/02/2013 regulating media provides for restrictions to media for children. In its article 7, the law states that *the media for children is particularly prohibited from acting as illustrations, story or opinion praising or promoting any malicious, indecent and delinquency acts that are likely to divert or demoralize them.*

Furthermore, the Rwanda Penal code provides for special protection of children and minors. It states in its Article 230 that *Advertising of children pornographic pictures*. Any person who displays, sells, rents, disseminates or distributes pornographic pictures, objects, movies, photos, slides and other pornographic materials involving children shall be liable to a term of *imprisonment of more than five (5) years to seven (7) years and a fine of five million (5,000,000) to twenty million (20,000,000) Rwandan francs.*

3. Is advertising covered by the general provisions on freedom of expression and/or does your country differentiate between commercial speech and non-commercial speech? Do specific regulations distinguish between advertising and other contents, and if so, which are the criteria used to make this distinction?

There is no specific regulation in this regard. However there are some legal provisions in different laws. For instance, Article 53 of the **law n°18/2010 of 12/05/2010 relating to electronic messages, electronic signatures and electronic transactions** states that *A person, who sends unsolicited commercial communications to consumers, shall provide the consumer with the option to cancel his /her subscription to the mailing list of that person and identify particulars of the source from which that person obtained the consumer's personal information upon the request by the consumer.*

7. Is the use of private data for commercial purposes regulated in your country? If so, please describe briefly such regulation.

In conformity with article 25 of the Law n° 44/2001 of 30/11/2001 governing telecommunications, *the public telecommunications operator cannot use any personal, call traffic or billing data about a user when marketing its services without the explicit written permission of that user. In the case of contravention of paragraph (1) of this Article, users in the first instance request the public telecommunications operator to cease using their personal details for marketing purposes. In cases of continued contravention, the user may notify the Regulatory Board, which issues a notice prohibiting the public telecommunications operator from using the*

user's personal details and may order the operator to pay compensation to the user as the Board determines.

9. Please describe rules regulating outdoor advertising including the use of billboard or screens in your country. Have enforcement mechanisms been established in this respect? Please indicate whether other forms of communication, such as public interest messages and artistic creation, can also be displayed outdoors, including on billboards and screens, and how these are regulated.

The **Instructions of the Kigali City Council n° 05/12 of 28/10/2012 relating to advertisement rules in the Kigali City** is quite specific on the way advertising is to be handled in the town center. The Article One stipulates that purpose of the Instructions determine the advertisement rules in the Kigali City.

It gives definitions to some words:

1° billboards: a poster or writings put to a place, to deliver a specific message. There are several types of billboards according to the message to be delivered: billboards, signs of indication, road traffic signs and other signs;

2° billboards with single support: billboards implanted in the ground using a unique support;

3° posters on houses: billboards intended to be placed on the walls of houses; but they are not graffiti on such houses;

4° graffiti on the walls: all drawings or writings inscribed on the walls;

5° graffiti on windows: drawings or writings inscribed on the windows of a house;

6° billboards on bridges for pedestrians: signs for pedestrians on the safeguards;

7° billboards with several supports: billboards implanted in the soil using more than one support;

8° advertising boxes: boxes which are transparent or luminous with flashlights attached to the inside, or by using the sun's rays;

9° clocks: panels marking climate and time of the City, be it closed or attached to poles, towers or buildings;

10° movable billboards: small billboards which are not attached to a place, that can be moved at any time.

In addition, the instructions fixe modalities for advertising. Thus, Article 3 provides for that Advertising in Kigali City is done according to the following three (3) modes: 1° implanted billboards or posters on houses, on bridges, on walls and other areas; 2° movable signs on vehicles, on ribbons, papers, and other; and 3° audiovisual advertising.

Each method of advertising is intended for a specific location to avoid the disorder, and it must respect the vision of the City of Kigali.

It also determines measurements of implanted billboards (Article 5), place of establishment of billboards (Article 12); non-paying billboards (Article 18); message to put on the billboard (Article 20); Insurance of billboards (Article 22) and the Refusal to remove a billboard (Article 25).

In addition to this, the Law n° 26/2005 of 17/12/2005 relating to investment and export promotion and facilitation provides as a measure to accept that an international company be registered to have its headquarters in Rwanda it is to the effect that it shall perform in Rwanda a minimum of three (3) of the following services in order for its offices to be accepted or those related to other companies operating outside Rwanda. It shall be submitted under market control and sales promotion planning.