

ALTERNATIVE REPORT OF THE CIVIL SOCIETY ON THE UNIVERSAL PERIODIC REVIEW OF RWANDA 2011

INTRODUCTION

In the spirit of preparing the Universal Periodic Review on Rwanda, a number of Civil Society organizations of Rwanda formed a coalition on the initiative of the Ligue des Droits de la Personne Humaine dans la Region des Grands Lacs (LDGL) in order to work out this alternative report.

These organizations were divided again into thematic groups in accordance with their mandates. Each group produced a specific report, and this report constitutes a digest of it. It was also validated by a plenary session¹ in the presence of other Local and International Organizations and missions.

1. Freedoms of expression, opinion, press and association.

Freedom of the press

These freedoms are guaranteed by the constitution in its Article 34², but their benefits are very limited in fact through fear of legal proceedings. The population is afraid to express themselves freely on questions related to general interest with journalists particularly falling victim to this climate, as is reflected in the following and very recent cases:

- Since 13 April 2010, the Umuseso and Umuvugizi independent newspapers have been suspended by the Media High Council for 6 months, whereas the presidential elections are envisaged on August 9, 2010.
- Threats and intimidations are uttered against the journalists of private media. It is the case in particular of **Mr. Jean Bosco Gasasira**, Publication director of the Umuvugizi newspaper currently exiled in Uganda. Dated 24 June 2010, the editors association of the same newspaper, **Mr. Jean Leonard Rugambage** was assassinated by armed men in front of his residence in Kigali. According to the police force, this crime would be perpetrated by one of the close relatives of a victim which the journalist would have killed during the genocide. Surprisingly, Mr. Rugambage was discharged for the same facts in front of the Mugina Gacaca jurisdiction. At the time of his death, Rugambage was working on an article which implicated the Rwandan government in an attempted murder of the General Kayumba Nyamwasa in South Africa few weeks before.
- Journalists of the private press consider that the High Council of the Media is not independent of the national authorities or the public leaders as well as private actors. It makes decisions arbitrarily against the media and the journalists whom it should protect.

¹ The Coalition thanks the International Service for Human Rights (ISHR), UNCT, and the Center for Civil and Political Rights (CCPR) for their technical and financial support.

² Article 34 Of the constitution dated 04 June 2003 and revised on 13 August 2008

As an example, the radio emissions in Kirundi and Kinyarwanda of the radio operator BBC on FM were suspended in Rwanda as of 25 April 2009 to 23 June 2009 by this authority for reasons which seem to be arbitrary and related to the fact that the BBC was giving more opportunity during their broadcast to the people suspected to be genocide perpetrators or political opponents.

Regulations related to the repression of the crime of the ideology of genocide and consequences on freedom of the press

Law No 48/2008 of the 09/09/2008 on the interception of communications and law No 18/2008 of the 23/07/2008 regarding repression of the crime of genocide ideology constitutes a serious obstacle on the freedom of expression. Pursuant to the first law, the information sources for journalists are not protected any more. Legal proceedings are committed towards whomever under pretext of the erroneous interpretation of articles 2 and 3 of the law on genocide ideology.

Freedom to take part in the political life

The law governing political parties is favorable compared to the right of association, but it is less effective in practice. Some political parties are not registered pursuant to this law for various reasons, sometimes related to political considerations. Particular cases are the **Democratic Green Party** and **FDU-Inkingi** that are still not authorized to exist legally. Their political meetings either are refused or disturbed by the police force, which is contrary with Article 21 and 22 of the International Convention on Civil and Political Rights.

Cases of arrest and taking in for questioning for political reasons have been recorded. Particularly, they concern **Mrs. Victoire Ingabire Umuhzo**, President of the FDU-INKINGI Party; **Mr. Bernard Ntaganda**, Founder and President of the Social Party-Imberakuri (arrested on 24 June 2010, file transmitted to the office the prosecutor on 28 June 2010, currently maintained in detention).

The laws on the repression of the crime of genocide and genocide ideology become a worrying base to arrest people because of their opinions; it is for example the case of Victoire Ingabire Umuhzo and her lawyer Me Peter Erlinder (citizen of the United States) and Me Bernard Ntaganda. The latter was summoned twice by the senate to explain his language qualified to be divisionism and genocide ideology.

Right of association

The law n° 55/2008 of 9 September 2008 in force in Rwanda governing international and national Non Governmental Organizations provides that NGOs operating in Rwanda are made to register each year. The procedure of registering provides that NGOs must provide the accounts and an activity management report and show the impact of their activities. This process of registering as well as related controls constitutes a serious handicap to the good progress of their activities and an unquestionable threat on the independence of active NGOs in Rwanda.

Although it was also denounced by the Committee of Human Rights in March 2009, no improvements have been presented³.

Recommendations:

- The State should repeal the law on the interception of communication and revise the law repressing genocide ideology by clarifying the components more;
- The State should soften the law governing NGOs by removing the mode of annual recording;
- The State should remove obstacles to the recognition of new political parties and open spaces for political movements in order to consolidate the democracy;
- The State should revise the law on the press and the law governing the High Council of Media in order to make the latter apolitical and independent.

2. Administration of justice and detention conditions.

Access to justice and its functioning

After the genocide of the Tutsi in 1994, achievements in the restoration of the legal system are to be noted. However, taking into consideration the operational reform, challenges still persist.

Certain reforms undertaken in the sector of justice instead of affirming the independence of justice weakened it in its substance. For example, the Superior Council of Magistrature (SCM) is not independent any more in its composition⁴. Indeed it is composed of a named representative of the Ministry of Justice, a member of the bar, the President of the National Commission of Human Rights, two seniors of universities and the ombudsman.

Regarding the Independence of the judges, their independence is guaranteed by the constitution but in practice, the magistrates are subjected to the system of mandate, which violates the principle of the stability of the judge. In addition, the system of contractual and itinerant judges, of which the duration of their contract varies between seven months and a year, also seriously impedes the independence of the magistrates. Moreover, the system of contract of performance to which the seating magistrates and the prosecution are subjected is likely to compromise the effectiveness of the judges and the quality of the court orders.

Access to justice for the vulnerable people remains a challenge which the State must address. This access is not guaranteed to all, and in spite of the recommendations made in this direction

³ Ref. final observations of Human Rights Committee CCPR/C/RWA/CO/3, §21.

⁴ Ref. final observations of Human Rights Committee CCPR/C/RWA/CO/3, §18

by the Committee of Human Rights in March 2009, few realizations are to be talked about on this question⁵.

Regarding the criminal responsibility of the Head of the State, article 115 of the constitution lays out that a former president of the Republic cannot be the subject of investigation for the crime of high treason or serious and deliberate violations of the constitution if it were not done during the course of function (revision 13 August 2008). This article goes against several provisions of the International Convention on Civil and Political Rights, as it supports cases of impunity.

The Gacaca jurisdictions continue to function in spite of the irregularities raised, such as the absence of adequate training of judges (Inyangamugayo), the right to a fair trial, including the right to an effective appeal. The absence of progress is notorious in spite of the recommendations adopted by the Human Rights Committee in March 2009, while at the same time the end of their activities is regularly postponed by the authorities. To date, it seems not very probable that the Gacaca jurisdictions will be able to come to a conclusion about the whole pending Gacaca cases by the end of the year 2010⁶.

Detention conditions

In spite of the efforts made by the Government to make better the penitentiary system, the system continues to face serious problems such as prison overpopulation. Although many defendants were adjudicated in front of the Gacaca jurisdictions, the number of prisoners remains very high. Their number passed from 62,499 at the end of October 2009 to 64,665 in February 2010. The capacity of reception of the 14 prisons of Rwanda is 43,000 prisoners, or an occupancy rate of 149%⁷,

Moreover, the separation between defendants and the condemned is not assured⁸.

Cases of illegal detention are also noted in some prisons (e.g., Nsinda). There exist cases of people being held without being accused or being presented in front of their natural judge. There were 546 prisoners held in illegal detention in February 2010.

Arrests for vagrancy of people belonging to vulnerable groups, such as street children, beggars and prostitutes are also observed, in particular in the capital, Kigali. These people are often arrested in an arbitrary way and transferred to unofficial detention centres. In spite of the concerns of the Human Rights Committee on this question⁹, few improvements were produced. In the same way, some people are arrested by the police force for not possessing identity cards and are also transferred to unofficial detention centres.

⁵ Ref. final observations of Human Rights Committee CCPR/C/RWA/CO/3, §18

⁶ Ref. final observations of Human Rights Committee CCPR/C/RWA/CO/3, §17

⁷ Ref. Rapport de monitoring de l'exécution des peines au Rwanda de PRI et LIPRODHOR, Avril 2010 p.38 www.liprodhor.org.

⁸ PRI, Pratique de la prison, ensemble des règles minima pour le traitement des détenus, point 8 concernant la séparation des détenus, p. 265.

⁹ Ref. final observations of Human Rights Committee CCPR/C/RWA/CO/3, §16

These unofficial detention centres cause serious problems taking into consideration the minimum rules of the United Nations as far as detention is concerned. It is particularly the case of the detention centre of Gikondo in Kigali which is used as a transit centre before prisoners are transferred to the Centre of Iwawa¹⁰.

Recommendations:

- The State should guarantee that the courts operate according to the principles formulated in Article 14 of the International Convention on Civil and Political Rights.
- The State should revise article 115 of the constitution to guarantee the equality of all citizens before the law.
- The State should guarantee the independence of judges by assuring the stability of the functioning magistrates. Corruption should be clearly proscribed. Finally, the system of evaluation of the work of the judge by the contracts of performance should be abandoned.
- The State should make sure that the police force does not carry out any arbitrary arrest, more particularly with regard to the most vulnerable groups of the population.
- The State should close nonofficial detention centres where the rights and other guarantees of detention are not assured.

3. Land problems and habitat

The Government set up the organic law n°08/2005 of 14 July 2005 of land use in Rwanda but its application violates property rights and in particular the right to an appropriate and prior compensation in expropriation cases¹¹.

Recommendations:

- To respect the right to an appropriate and prior allowance for any person having been dispossessed of his/her land.
- To take measures to protect property rights that are envisaged by the constitution and the International Convention on Social, Economic and Cultural Rights and to envisage alternative resources to provide for the food needs of the population.

¹⁰ Iwawa is a professional centre for youth that can be transformed in an unofficial detention centre

¹¹ Expropriation cases of Gaculiro, Kinyinya, (District of Gasabo), Kigali (Kiruhura) and Rugenge Sectors, Kigali city.

4. Education

The efforts of the State to ensure education for all are to be underlined. However, the teaching reform of 2009 that provides that teaching is exclusively in English is a factor of discrimination. This reform, in conflict with article 5 of the Constitution, penalizes teachers who do not always have the necessary training to teach the courses in this language and French-speaking pupils¹².

Recommendations:

- The State should promote multilingualism, in particular within the framework of teaching, in accordance with article 5 of the Constitution.
- The State should reinforce the continuous training programs of teachers in order to insure appropriate teaching quality.

5. Protection of women and children's rights

In spite of some notable achievements in the field of promotion of the socio-economic and political rights of women and children, several issues remain:

- Article 9 subparagraph 4 of the constitution grants to women at least 30% representation in decision making systems. Even though 56.25% of the Parliament are women, the representation of women in the local government remains low. In 2009, only 7% of the mayors (and 13% of the vice mayors) were women. Within the high administration the under representation of women is also alarming (17% executive secretaries of the Districts and Sectors, 13% Vice-chancellors and Vice-rectors, Financiers and Administrators. In secondary schools, female teachers constitute 25% of the teaching staff¹³). In fact, article 9 paragraph 4 of the Constitution of 4 June 2003 is only applied in voluntary bodies (Advisory counsel on local level, conciliators, the National council of women, etc...).

The coalition of Civil Society Organizations worries about the persistence of cases of domestic violence in the country and insufficient measures to assist victims¹⁴. However, the lack of statistics relating to domestic cases of violence does not make it possible to have an objective vision of the problem.

The children living with their mothers in prison are deprived of a right to registration and to have a name. This is in contradiction with the provisions of the ICCPR and the Child Rights Convention.

¹² Teachers were fired and graduates did not benefit from their promised foreign scholarships as they had stood in francophone system that was used in teaching by that time.

¹³ Permanent executive secretary for Beijing PFA follow up, Statistics of men and women in decision making /Public organs/ positions, Feb 2009.

¹⁴ Ref. final observations of Human Rights Committee CCPR/C/RWA/CO/3, §11.

Recommendations:

- To redouble efforts to support the participation of women in the public life and in the private sector.
- The State should reinforce the strategies of sensitizing the issue of rape and to set up protection measures and assure the assistance to the victims of rape and marital violence.

6. Social protection of vulnerable groups

Article 66 of the law n° 13/2009 relating to the regulation of work in Rwanda stipulates that the protection of maternity must refer to the maternity benefits (insurance). For the time being this insurance does not exist. This goes against article 12 of the CEDAW.

The SMIG which must be fixed by ministerial decree is not yet available, thus paralyzing the salary negotiations between partners.

Batwas

In spite of the efforts made by the Government, the social situation of Batwas remains alarming. In addition, the official terminology (historically marginalized persons) to indicate them is not accepted by Batwas and infringes their cultural identity.

Batwas are always the subject of forced expropriation without land or financial compensation. Most of this population lives under deplorable conditions (e.g., Ndera in the Town of Kigali).

The representation of Batwas in public institutions and political authorities (in particular at the Parliament) is almost nonexistent.

LGBTI

The rights of LGBTIs are not sufficiently guaranteed by the State. The attempts of the Rwandan Parliament of criminalizing sex acts between adults of the same sex are alarming, even if it is necessary to put at the credit of the Government not to have followed the Parliament on this question. However, these sexual minorities do not enjoy their rights and freedoms envisaged in the constitution of the Republic of Rwanda in its articles 10, 35, 43 and 178.

Associations of LGBTIs are not officially recognized. In particular, this is the case of the association HOCA (Horizon Community Association) which does not have a legal existence in spite of various attempts.

Recommendations:

The State should:

- Set up maternity benefits

- Publish the ministerial decrees of application envisaged in the labor regulation
- Specify the clauses of article 82 subparagraph 2 of the constitution of Rwanda
- Recognize LGBTIs as a sexual minority in its constitution or its national rights and to prohibit all forms of discrimination based on sexual orientation
- Condemn harassing and all other forms of abuses against LGBTIs.

Conclusion

The coalition recommends to the Human Rights Council to engage in a constructive debate with the Rwandan delegation on the concerns raised by the Rwandan civil society in this report and make relevant recommendations with regard to Rwanda inviting it to engage in better practices in favor of the protection and the promotion of Human Rights in their universality and their complementarily. .

Annexe :**List of members organizations of the coalition:**

- Association Rwandaise pour la défense des droits de la personne et des libertés publiques (ADL)
- Forum des activistes contre la torture (FACT/Rwanda)
- Institut Rwandais pour le Dialogue et la Paix (IRDP)
- Ligue des Droits de la personne dans la région des Grands Lacs (LDGL)
- SERUKA
- Human Rights Watch
- LIPRODHOR
- COSYLI
- Association de la Jeunesse pour la Promotion des Droits de l'Homme et de Développement (AJPRODHO-JIJUKIRWA)