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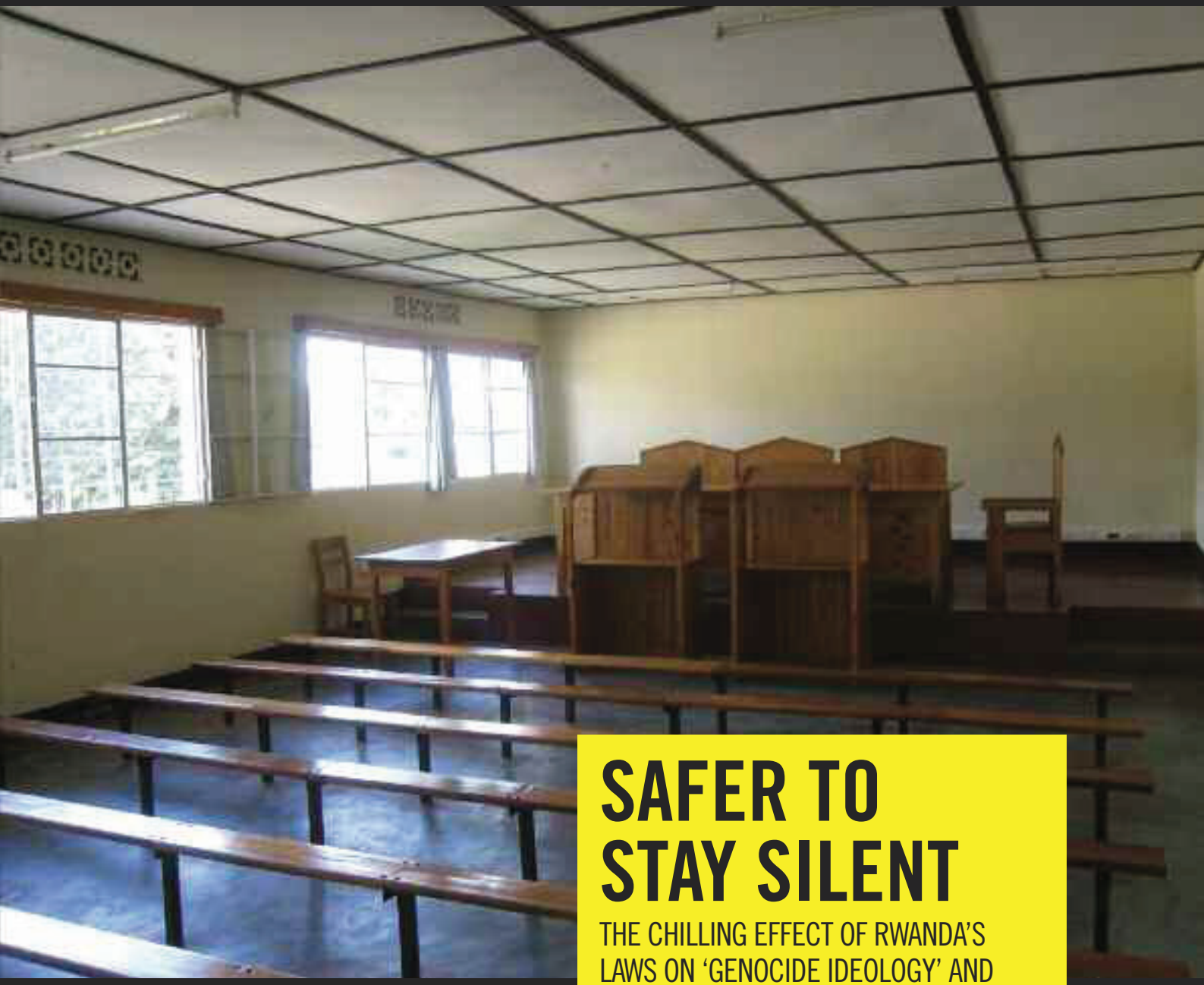

SAFER TO STAY SILENT

THE CHILLING EFFECT OF RWANDA'S LAWS ON 'GENOCIDE IDEOLOGY' AND 'SECTARIANISM'

AMNESTY INTERNATIONAL

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Cover photo: Courtroom in Rwanda, November 2009.

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GLOSSARY

ACHPR: African Commission on Human and Peoples' Rights

BBC: British Broadcasting Corporation

CID: Criminal Investigations Department

EU: European Union

FARG: Genocide Survivors' Assistance Fund (Fonds National pour l'Assistance aux Rescapés du Génocide)

FDLR: Democratic Forces for the Liberation of Rwanda (Forces Démocratiques de Libération du Rwanda)

FDU-Inkingi: United Democratic Forces – Inkingi (Forces Démocratiques Unifiées – Inkingi)

ICCPR: International Covenant on Civil and Political Rights

ICTR: International Criminal Tribunal for Rwanda

LIPRODHOR: Rwandan League for the Promotion and Defense of Human Rights (La Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme)

MDR: Democratic Republican Movement (Mouvement Démocratique Républicain)

NGOs: Non-governmental organisations

NPPA: National Public Prosecution Authority

PDP: Pact for People's Defence (Le Pacte de Défense du Peuple)

PS-Imberakuri: Ideal Social Party (Le Parti Social Imberakuri)

RFI: Radio France International

RPF: Rwandan Patriotic Front

RTLM: Radio Télévision Libre des Milles Collines

UNDP: United Nations Development Programme

UNHCR: United Nations High Commissioner for Refugees

VOA : Voice of America

1. INTRODUCTION

SUMMARY

Rwanda's laws on "genocide ideology" and "sectarianism", more commonly known as "divisionism", were introduced in the decade following the 1994 Rwandan genocide. Up to 800,000 Rwandans were killed during the 1994 genocide, most of them ethnic Tutsi, but also some Hutu who opposed this organized killing and the forces that directed it. Aware of the role that hate speech[1] and the infamous hate radio Radio Télévision Libre des Milles Collines (RTLM) played in inciting genocidal participation,[2] the post-genocide government led by the Rwandan Patriotic Front (RPF) enacted laws to encourage unity and restrict speech that could promote hatred.

Following six years of extensive reforms to the conventional justice system, the Rwandan government announced a review of the "genocide ideology" law in April 2010. Amnesty International welcomes this government initiative. This report identifies Amnesty International's concerns about the current legislation and its application in light of the Rwandan government's review process.

Prohibiting hate speech is a legitimate aim, but the Rwandan government's approach violates international human rights law. Rwanda's vague and sweeping laws against "genocide ideology" and "divisionism" under "sectarianism" laws criminalize speech protected by international conventions and contravene Rwanda's regional and international human rights obligations and commitments to freedom of expression. The vague wording of the laws is deliberately exploited to violate human rights.

Prosecutions for "genocide ideology" and so-called "genocide ideology-related" offences were brought even before the law defining this offence was promulgated. People continue to be prosecuted for "divisionism", under "sectarianism" laws, even though "divisionism" is not defined in law. Rwandans, including judges, lawyers and human rights defenders, expressed confusion about what behaviour these laws criminalize.

These broad and ill-defined laws have created a vague legal framework which is misused to criminalize criticism of the government and legitimate dissent. This has included suppressing calls for the prosecution of war crimes committed by the Rwandan Patriotic Front (RPF). In the run-up to the 2010 elections, legitimate political dissent was conflated with "genocide ideology", compromising the freedom of expression and association of opposition politicians, human rights defenders and journalists critical of the government.

Individuals have exploited gaps in the law for personal gain, including the discrediting of teachers, for local political capital, and in the context of land disputes or personal conflicts. Several "genocide ideology" and "divisionism" charges based on flimsy evidence resulted in acquittals, but often after the accused spent several months in pre-trial detention. Many such accusations should have been more thoroughly investigated, but broad laws offer little guidance to the police and prosecution.

The cumulative result of these laws is to deter people from exercising their right to freedom of expression. This chilling effect means that people who have yet to have any action taken against them nonetheless fear being targeted and refrain from expressing opinions which may be legal. In some cases, this has discouraged people from testifying for the defence in criminal trials.

The laws have had a corrosive effect on mutual trust in a society already fragile after the 1994 genocide and run counter to the government's stated commitment to national unity.

At times, the Rwandan government went to great lengths in seeking "genocide ideology" prosecutions. One such case involved the prosecution of a failed asylum-seeker for statements made abroad. Such cases, in the context of public statements by government officials insinuating guilt of individuals before trial, contribute to the broader chilling effect and do little to instil trust and confidence in the justice system.

The Rwandan authorities have taken a number of strides towards improving their conventional justice system, most notably the abolition of the death penalty, to improve the delivery of justice and to try to secure transfers of genocide suspects from the International Criminal Tribunal for Rwanda (ICTR) and other national jurisdictions.[3] However, many improvements appear stronger on paper than in practice, others are untested, and concerns around fair trials remain.

Rwanda's efforts to reform many of its laws in line with its international obligations make the problematic nature of "genocide ideology" and "sectarianism" laws increasingly apparent. These laws have undermined confidence in the judiciary, impeding government attempts to have genocide suspects living abroad extradited to be brought to trial in Rwanda. They have also damaged efforts to create conditions that will encourage Rwandese refugees to return home. The laws have attracted extensive international criticism in the lead-up to the August 2010 presidential elections.

The Rwandan government announced a review of the "genocide ideology" law in April 2010. Amnesty International hopes it will result in amended legislation and practice to prohibit only expression amounting to advocacy of hatred that constitutes incitement to hostility, discrimination or violence, while allowing freedom of expression in line with Rwanda's international human rights obligations.

Freedom of expression is essential to and interrelated with the realization and exercise of all human rights.

There was a sudden surge of international attention to these laws following the arrest of defence attorney, Peter Erlinder, a US citizen, in May 2010 on charges of genocide denial under a 2003 law and his subsequent bail.[4] This report does not specifically deal with this case, or the 2003 law, but addresses the application of similar and related laws.

"Genocide ideology" is a sensitive issue in Rwanda. Rights groups and journalists are regularly rebuked in media outlets close to government for drawing attention to deficiencies in the law. Amnesty International hopes that this report will be received by the Rwandan government and other key stakeholders as a useful contribution to the review process announced by the Rwandan government.

METHODOLOGY

This report is based on numerous interviews conducted by Amnesty International staff in Rwanda in September and November 2009 and March 2010. They conducted interviews in Rwanda's capital, Kigali, as well as in the provinces. Interviews were in English, French or Kinyarwanda with French translation. Some individuals were interviewed on more than one occasion.

Amnesty International staff interviewed several Rwandan government officials about the justice sector in general, including the application of "genocide ideology" and "sectarianism" laws. These officials included the Minister of Justice, the Prosecutor-General, the Deputy Prosecutor General, the Inspector-General of Courts, the then Director of Prisons and the then Director of Kigali Central Prison.

Amnesty International staff visited Kigali Central Prison, Kigali, as well Mpanga Prison, Nyanza. They were authorized to conduct a small number of interviews with prisoners convicted of "genocide ideology" and detainees accused of "genocide ideology", but only in the presence of prison staff, making the interviews of limited use. They also interviewed opposition politicians accused of, or charged with, "genocide ideology" and "sectarianism", as well as family of individuals accused of "genocide ideology" and "sectarianism".

Amnesty International staff interviewed 24 representatives of international and Rwandan non-governmental organizations working in the field of justice, as well as seven foreign diplomats and donors funding the justice sector. Staff met eight Rwandan lawyers currently practising in Rwanda, including lawyers willing to represent individuals accused of "genocide ideology" and "sectarianism", and four former judges who now occupy other positions within the Rwandan justice system.

Follow-up telephone interviews were conducted between March and June 2010. The

report does not take into account developments after the end of June 2010.

Many individuals agreed to share their stories under assurances of confidentiality. For this reason, their names and some identifying details are omitted from the report.

This report is not intended to be a comprehensive overview of all "genocide ideology" and "sectarianism" cases, convictions and acquittals. Instead, our research documents problematic trends in how these laws have been applied. We have not developed a list of cases which we would recommend that the Rwandan government review. We hope that such a review will, however, form part of the review process of the "genocide ideology" law to ensure that national legislation, on paper and in practice, accords with Rwanda's international human rights obligations and commitments.

Amnesty International sent a letter to the Rwandan Minister of Justice on 12 July 2010 summarizing the findings of this report and requesting the Government of Rwanda's official comments within two weeks. The Rwandan government commented on the findings, but declined to provide technical clarifications on the breakdown of statistics and procedural elements relating to the application of the "genocide ideology" and "sectarianism" laws.

Amnesty International would like to thank Rwandan government officials who shared statistics of "genocide ideology" cases and facilitated our access to prisons, as well as those who met with us and discussed, often at length, the Rwandan justice system and some of the issues raised in this report. We thank all the others who met with us, especially those individuals who shared their stories in the hope that their experiences could enhance freedom of expression for their fellow Rwandans.

BACKGROUND

The 1994 Rwandan genocide looms large over life in Rwanda. As many as 800,000 ethnic Tutsi, as well as some Hutu who opposed the organized killing and the forces that directed it, were killed in the 1994 Rwandan genocide. These abuses occurred within the context of the October 1990 to July 1994 armed conflict between Rwandan government forces and the then armed opposition group known as the Rwandan Patriotic Front (RPF).[5] In addition to the genocide, both parties to the armed conflict committed gross human rights abuses.

The Rwandan Patriotic Front (RPF), which has been in power since it halted the 1994 genocide, tightly controls political space, civil society and the media, contending that this is necessary to prevent renewed violence.[6] Prohibitions against "divisionism" under "sectarianism" laws were promulgated in 2002, as the political transition came to an end with elections the following year.

Since 2003, the Rwandan government has conducted a broad campaign against what it describes as "divisionism" and "genocide ideology". A series of four parliamentary commissions from 2003 to 2008 investigated allegations of "divisionism" and "genocide ideology" which involved public denunciations of hundreds of Rwandans as well as both Rwandan and international organizations. Denunciations were rarely followed by judicial proceedings, leaving many accused without any opportunity to clear their names. These commissions promoted expansive interpretations of "divisionism" and "genocide ideology" which have criminalized dissenting voices and speech permitted by international human rights conventions.

The first Commission, which published its findings just months ahead of the 2003 parliamentary and presidential elections, effectively called for the dissolution of the Democratic Republican Movement (MDR), the strongest opposition party, and named 47 individuals as responsible for "discrimination and division".[7] It interpreted "divisionism" to include opposition to government policies.[8] The report prompted the collapse of the MDR, and its leader, Faustin Twagiramungu, was only able to run in the presidential elections as an independent candidate.[9] Such allegations against MDR members, without recourse to due process and coming shortly before the 2003 presidential elections, were part of a government-orchestrated crackdown on the political opposition. The report also accused journalists from *Umuseso*, a private Kinyarwanda paper, and one of the few critical of the government, of being "propagandists of division".[10]

The second Commission, established in January 2004 to investigate killings of several genocide survivors in Gikongoro Province, expanded the concept of "genocide ideology" accusing a host of international organizations of sowing division and supporting genocidal ideas.[11] The Rwandan government issued a public statement endorsing the Commission's findings[12] which attracted criticism from international actors.[13]

The third enquiry was undertaken by the Rwandan Senate and published in June 2006. It defined "genocide ideology" as including criticisms of lack of media freedom ("totalitarian regime muzzling the opposition"), calls for prosecutions of RPF war crimes ("unpunished RPF crimes"), and challenging the detention without adequate investigation of Hutu ("Hutus [are] detained on the basis of some simple accusation"). According to this Senate definition, key areas of human rights work were criminalized as "genocide ideology". The report, again, identified several international organizations, including Amnesty International, as culpable in the dissemination of "genocide ideology".[14]

The fourth Commission identified cases of "genocide ideology" in schools manifested as hurtful comments and tracts against survivors, destroying or stealing school materials of survivors and defecating in the beds of survivors.[15] While there was legitimate concern over such acts, as well as incidents of hate speech in schools, this report led to unfair dismissals and other abuses.[16]

After the fourth Commission's report was published, some school personnel who had been denounced were dismissed without due process.[17] The extrajudicial form these "genocide ideology" accusations took shaped the environment for other such accusations and contributed to the wider chilling effect.

Denunciations for "genocide ideology" need to be placed in the wider context of the role accusations have played in post-genocide Rwanda.

In the aftermath of the 1994 genocide, the Rwandan government faced the challenge of assuring justice for those killed during the genocide. The majority of such trials took place before gacaca courts, a series of community tribunals to expedite trials of the vast majority of people suspected of participation in the genocide and reduce the prison population.

Gacaca tribunals did not meet international fair trial standards, a concern expressed by Amnesty International, but the Rwandan authorities claimed that their fairness could be ensured by the participation of the local population.[18] Gacaca lacked sufficient safeguards to prevent false accusations, especially after 2004 when accusations were gathered by local administrative officials, rather than at public *gacaca* hearings. Those accused were unable to challenge charges before the case came to trial. [19] As one Rwanda scholar explained, "denunciation also became part of everyday life on Rwanda's hills as neighbours settled local scores through genocide accusations (both true and false)."[20] As *gacaca* comes to an end, it is imperative that vague laws on "genocide ideology" and "sectarianism" do not become tools for denunciation based on political or personal disputes.

The impact of broadly defined "genocide ideology" and "sectarianism" laws is best understood in conjunction with other measures used to limit criticism and dissent. Political opposition groups were intimidated, harassed and prevented from registering in the run-up to the 2010 presidential elections, as happened during the 2003 presidential elections and 2008 legislative elections. A 2009 Media Law placed undue restrictions on press freedom, and journalists critical of the government remain barred from government press conferences. Newspapers were shut down by the Rwandan High Media Council (HMC), a body closely linked to the ruling party.[21] Restrictions on freedom on expression and association, compounded by ambiguous "genocide ideology" and "sectarianism" laws, as well as those that criminalize "insulting the President", have a cumulative effect in silencing dissent in Rwandan society.

2. LEGAL ANALYSIS AND AMBIGUITY

OBLIGATIONS AND COMMITMENTS TO FREEDOM OF EXPRESSION

The 2003 Rwandan Constitution ensures freedom of association, assembly, opinion and the press.[22] International treaties to which Rwanda is a party, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR) guarantee rights to freedom of assembly and freedom of expression.[23]

Article 19 of the ICCPR guarantees the right to freedom of opinion – which may not be restricted or limited – and the right to freedom of expression.[24] The ICCPR allows state parties to impose limits on freedom of expression, but only if provided for by law and necessary to protect the rights of others, such as the right to be free from discrimination, and for the protection of national security, public order, public health and morals.[25] Any such restrictions must also be necessary – which includes a requirement of proportionality – to meet one of the enumerated legitimate aims. States are also required, under Article 20(2) of the ICCPR, to prohibit advocacy of hatred that constitutes incitement to hostility, discrimination or violence. However, any such prohibitions which result in restrictions of freedom of expression must also comply with the three-part test for restrictions under Article 19(3).[26] As the Human Rights Committee has stated, restrictions on freedom of expression "may not put in jeopardy the right itself."[27]

'GENOCIDE IDEOLOGY' AND INTERNATIONAL LAW

Although Rwanda committed itself to "fighting the ideology of genocide and all its manifestations" in the 2003 Constitution[28], "genocide ideology" was not defined or proscribed by Rwandan law until October 2008.[29] The infraction is defined in articles 2 and 3 of Law No 18/2008 relating to the punishment of the crime of genocide ideology. For clarity, the definition is reproduced in full below:

> **Article 2: Definition of "genocide ideology"**
>
> The genocide ideology is an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing (sic) on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war.

Article 3: Characteristics of the crime of genocide ideology

The crime of genocide ideology is characterized in any behaviour manifested by acts aimed at deshumanizing (sic) a person or a group of persons with the same characteristics in the following manner:

1. Threatening, intimidating, degrading through diffamatory (sic) speeches, documents or actions which aim at propounding wickedness or inciting hatred;

2. Marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading createing (sic) confusion aiming at negating the genocide which occurred, stiring (sic) up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;

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

The law constitutes an impermissible restriction on freedom of expression under international law. Article 19(3) of the ICCPR requires that any restriction on freedom of expression be "provided by law." This includes a requirement of certainty. The vague language of the law on "genocide ideology" fails to establish certainty as to what behaviour is prohibited. Moreover, the extremely broad scope of conduct and speech that is, or may be, prohibited under this law, all of which are punishable by long terms of imprisonment, fail to meet the international requirement of proportionality, as they go well beyond that which is necessary to prevent hate speech or meet any other legitimate interest.[30]

Examples of the vague language as well as the broad scope includes terminology such as "propounding wickedness", "marginalizing", "laughing at one's misfortune", "mocking", "boasting", "despising" and "stirring up ill feelings".

Additionally, the law calls for punishment of: "Any person who disseminates genocide ideology in public through documents, speeches, pictures, media or any other means."[31] This provision leaves unclear whether journalists could be prosecuted for reporting on cases of alleged "genocide ideology". This lack of clarity may infringe journalists' rights to freedom of expression and compromise their professional duty to inform the public.

The sanctions outlined in articles 4 to 13 of Law No 18/2008 provide for heavy custodial sentences ranging from 10 to 25 years and fines of between 200,000 and 1 million Rwandan francs[32] to be doubled for recidivists, with life imprisonment for people also convicted of genocide. Leaders and former leaders in the public sector, private sector, NGOs and religious institutions may receive 15 to 25 years in prison

and fines of 2 – 5 million Rwandan francs.[33] Political organizations and NGOs can be dissolved and fined 5 – 10 million Rwandan francs.[34]

Children under 12 years found guilty of "genocide ideology" can be sentenced to up to one year in a rehabilitation centre. Those aged 12 to 18 are sentenced to half the adult penalty, up to 12.5 years in prison and a fine of 500,000 Rwandan francs.[35] The sentence, in whole or part, could be served in a rehabilitation centre, but this remains at the judge's discretion.[36]

Parents, guardians, teachers and headmasters of convicted children may be sentenced to 15 to 25 years in prison, if proven that they "inoculated" the child with "genocide ideology".

'DIVISIONISM' AND INTERNATIONAL LAW

The Rwandan government acknowledges that "Rwanda does not have a particular law defining divisionism" in its July 2009 report by the Ministry of Justice to the African Commission on Human and Peoples' Rights (ACHPR).[37] Rwanda's report goes on to state:

> "The term however, is closely linked to discrimination and sectarianism – whose definitions are found in the Law No 47/2001 on 18/12/2001 on Prevention, Suppression and Punishment of the Crimes of Discrimination and Sectarianism. Divisionism is though generally understood as the use of any speech, written statement or action that is likely to divide people or spark conflicts among people, or cause an uprising which might degenerate into strife among people based on discrimination. It is thus considered illegal to do anything that is tantamount to divisionism based on race, tribal, ethnic, religion or region in Rwanda."[38]

Rwanda needs to clarify exactly how "divisionism" relates to "sectarianism", as charges have to be clearly defined in law to establish certainty as to what behaviour is prohibited, as required by Article 19(3) of the ICCPR. The law on "sectarianism" which appears to act as the reference point for "divisionism" prosecutions is vague, ambiguous and criminalizes expression protected by international conventions. For clarity, the definition is reproduced in full below:

> **Article 1 of Law No 47/2001**
>
> According to this law:
>
> 1. Discrimination is any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical

> features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is a party;
> 2. Sectarianism means the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination mentioned in article one I*;
> 3. Deprivation of a person of his/her rights is the denial of rights provided by Rwanda (sic) Law and by International Conventions to which Rwanda is party.[39]

The French version of Article 1(2) differs from the English. It reads *"La pratique du sectarisme est un crime commis au moyen de l'expression orale, écrite ou tout acte de division pouvant générer des conflits au sein de la population, ou susciter des querelles*" which translates as, "The practice of sectarianism is a crime committed by any oral or written expression or any act of division that could generate conflicts among the population or cause disputes".[40] The French version is broader than the English as it refers to oral or written expression that could cause "disputes", whereas the English version criminalizes expression which causes "uprisings which might degenerate into strife".

The law potentially criminalizes legitimate political dissent. It suggests that two offences are criminal: a) "the use of speech, written statement or action that divides people, that is likely to spark conflicts among people" and b) speech, written statements or actions "that causes an uprising which might degenerate into strife among people based on discrimination…".

The sweeping and imprecise nature of the "sectarianism" law fails to meet the requirements of legality in international human rights law. The law does not give individuals a proper indication of how the law limits his or her conduct and is not formulated with sufficient precision for individuals to know how to regulate their conduct. It thereby violates Rwanda's obligations under the ICCPR.[41]

It is unclear in the law whether the term "conflict" includes only violent conflict. It is also unclear whether it is meant to be limited to conflict over issues of discrimination or could encompass political differences of opinion and personal disputes, including over family and land. Accordingly, it would seem to prohibit a great deal of expression beyond what international law permits, and falls short of the "necessary" and "proportional" limits to freedom of expression which can be invoked under the ICCPR.

Under this law, individuals guilty of "divisionism" under the "sectarianism" law may be punished with up to five years in prison, a hefty fine of up to five million Rwanda francs and the loss of civil rights.[42] The most severe penalties are reserved for individuals in positions of responsibility, "government officials, a former government official, a political party official, an official in the private sector, or an official in (a) non-governmental organisation." However the term "official" is left

undefined.

The UN Human Rights Committee criticized Rwanda in 2009 for excessive restrictions on media freedom through use of "divisionism" laws and stated that Rwanda should "cease to punish so-called acts of 'divisionism'" and ensure any restrictions are compatible with the ICCPR.[43]

AMBIGUOUS LAWS THAT CREATE CONFUSION

Rwanda's laws on "genocide ideology" and "sectarianism" are replete with ambiguity. Almost all Rwandans interviewed by Amnesty International were unclear what constitutes "genocide ideology" and what conduct is criminal under this law.

Prosecutions related to "genocide ideology" were underway before the "genocide ideology" law was promulgated in October 2008, exacerbating confusion about what was illegal. According to a 2007 – 2008 government report on justice in Rwanda, there were 1,034 trials connected to "genocide ideology" which were prosecuted as assassination, murder, poisoning, aggravated assault, arson, damage to goods and cattle, negationism, revisionism, discrimination and threats. Those prosecutions which came to trial in that period resulted in eight convictions to life in prison, two convictions to more than 20 years in prison, 36 between 10 and 20 years in prison, 96 between 5 and 10 years, 91 to less than five years and 102 acquittals.[44] It is not clear how some of these prosecutions were related to "genocide ideology". It is also unclear whether "genocide ideology" was seen as an aggravating factor in these cases and taken into account in sentencing, even before a law was promulgated criminalizing "genocide ideology".

Rwandan authorities found defining "genocide ideology" a difficult task. As early as 2006, two years before the law was passed, a Senate report stated that it was not easy to provide a "systematic definition" of "genocide ideology".[45] This echoed comments made by the Rwandan government in response to the 2004 EU Declaration critiquing the broad nature of "genocide ideology" and "divisionism":

> [T]he terms 'ideology of genocide' and 'divisionism' are approximate translations of the following Kinyarwanda terms … [and the] Rwandan people are clear about the meaning and the content of these Kinyarwanda terms.[46]

In the course of this research, a number of Rwandans with specialist knowledge of Rwandan law, including lawyers and human rights workers, were unable to precisely define "genocide ideology", demonstrating that these laws are unclear, even to Rwandans, in the Rwandan context and in Kinyarwanda.

Several human rights defenders expressed confusion about this term, with one activist saying, "You need to define what genocide ideology is".[47] Uncertainty about the contours of criminality under this law particularly concerned human rights workers, given past accusations against some of their organizations. In the absence of a strict definition, many chose to restrict their areas of work and self-censor to avoid falling foul of a law that is unclear.

Ordinary Rwandans were also confused about the term. In one instance, Rwandan officials identified a prisoner to Amnesty International delegates as having been convicted of "genocide ideology" even though her conviction was handed down in 2005, three years before the "genocide ideology" law came into force. The prisoner, a Rwandan farmer, confirmed that she had pleaded guilty to "genocide ideology" though her family had been forced to sell their ox to pay for a lawyer, as she needed someone to explain to her what "genocide ideology" was. It was not clear whether this individual had been convicted of "genocide ideology" or another similar offence. Although the "genocide ideology" law was promulgated in October 2008, the term has been used since 2003 to refer to conduct prohibited in earlier laws including "divisionism", "sectarianism" and "gross minimalization" of the genocide.[48]

Even judges, the professionals charged with applying this law, noted that the law was broad and abstract. One judge, otherwise exceptionally well-informed about recent judicial developments in Rwanda, explained that it would be better for us to consult the law directly, noting the definition was "broad" and "not scientific", though "clear in the Rwandan context".[49] One former Rwandan judge expressed concern that it was hard for judges to apply the "genocide ideology" law because of its abstract nature.[50] The law fails to articulate to the public what conduct is criminal and does not offer sufficient guidance for judges to rule on such cases.

One defence lawyer for a 16-year-old student accused of "genocide ideology" expressed concern that the minor had not lived through the genocide, did not have "an historical experience of genocide" and consequently could not have a "genocide ideology".[51] A well defined hate speech law would clearly show that inciting violence based on ethnic lines does not require a prior personal experience of living through the genocide.

The Rwandan government needs to urgently revise the "genocide ideology" law to conform to international standards, so that genuine incidents of hate speech are differentiated from legitimate freedom of expression. Rwandan authorities, international NGOs and Rwandan human rights groups all agreed that genuine instances of hate speech occur in Rwanda. [52] Many such cases reportedly happen in the months around the genocide commemoration period.[53]

3. CASES UNDER THESE LAWS

NUMBER OF CASES

Official Rwandan government statistics show a significant number of "genocide ideology" and "sectarianism" cases. According to these statistics, 792 cases of "genocide ideology" (ingengabitekerezo ya jenoside) were brought before Rwandan courts at first instance in 2007, a year before the 2008 law on "genocide ideology" was promulgated. In 2008, 618 such "genocide ideology" cases were heard at first instance, even though the law did not come into force until October 2008. In 2009, 435 "genocide ideology" cases were tried before Rwandan courts at first instance, according to these statistics.[54]

When Amnesty International requested statistics which disaggregate convictions, acquittals and sentences for "genocide ideology" or "divisionism" and which demonstrate which courts these cases had been tried in, the National Public Prosecution Authority said they did not hold such records.[55] Neither was Amnesty International able to obtain these from the Inspector General of Courts.[56] Amnesty International also requested this information in a July 2010 letter to the Minister of Justice.

Of 749 cases of "genocide revisionism and other related crimes" which were brought before Rwandan courts in 2009, 260 resulted in acquittals. It is not clear, however, from the statistics what constitutes a crime related to "genocide revisionism" and how many of these were prosecuted under the 2008 law on "genocide ideology".[57] Nevertheless, the statistics are consistent with information gathered from Rwandan lawyers who defend individuals accused of "genocide ideology", and who told Amnesty International researchers that many accused are acquitted, though often only after spending several months in pre-trial detention.[58] This reinforces the chilling effect within the Rwandan society.

Of the 489 individuals convicted of "genocide revisionism and other related crimes" in 2009, five were sentenced to life imprisonment, a further five were sentenced to more than 20 years in jail, 99 were sentenced to 10 – 20 years in jail, 211 received a custodial sentence of 5 – 10 years, and the remaining 169 received jail terms of less than five years.[59]

The breakdown of cases "related to genocide revisionism and other related crimes" in 2009 included murder, poisoning, manslaughter, beating and causing injury, arson, destruction of property, killing of animals, denial of genocide and revisionism, discrimination and divisionism, and threats. It is not clear from the Rwandan government's official statistics which laws were used to prosecute such

infractions.

The absence of transparent, comprehensive and reliable statistics on the number of "genocide ideology" and "sectarianism" cases reported and prosecuted and on sentences with regional breakdowns adds to the difficulty in assessing how these vague laws are being used and potentially misused.

FAILURE TO ADEQUATELY INVESTIGATE ACCUSATIONS

Defence lawyers gave examples of cases which resulted in prosecutions which should have been dropped at the investigation stage. These included, for example, private comments which were misheard by passers-by. Many "genocide ideology" cases, including legitimate cases of hate speech, as well as false accusations, take place during the genocide commemoration period when tensions are particularly acute.[60]

Failure to adequately investigate "genocide ideology" accusations stems, in part, from the broad and ambiguous nature of the law, which offers little guidance to police investigating allegations and prosecutors pressing charges. One Rwandan human rights activist told Amnesty International that "genocide ideology accusations put someone to the side," suggesting that accusations, regardless of whether they result in prosecutions, are enough to marginalize someone.[61]

POLITICAL MANIPULATION TO SILENCE DISSENT

"Genocide ideology" prosecutions, together with government statements on "genocide ideology" which provide the political context for such prosecutions, combine to suppress legitimate political dissent.

The 2006 Senate Report on "genocide ideology" states that the "genocide ideology" takes the form of a political broadside, more often than not biased and unjust". It gives the examples of "totalitarian regime muzzling the opposition, the press, freedom of association and of speech; accusation of divisionism against political opponents and civil society associations; guilty conscience of the international community that does not condemn sufficiently the post-genocide regime; appeals to suspend international assistance".[62] This expansive interpretation of "genocide ideology", when read in conjunction with the 2008 law on "genocide ideology", criminalizes dissenting voices and speech permitted by international conventions. It restricts debates about freedom of association and expression in Rwanda.

"Genocide ideology" accusations were levied against leaders of opposition political

parties in the lead-up to the 2010 presidential elections, as part of a clampdown on opponents and critics. There were stark parallels with how "divisionism" accusations had been used for similar ends in the 2003 presidential elections.[63]

Victoire Ingabire, an opposition politician and presidential aspirant, was repeatedly denounced by media close to the government as espousing "genocide ideology" and "divisionism" in the months leading up to the elections.[64] On 21 April 2010, Victoire Ingabire was charged with "genocide ideology", "minimizing the genocide" and "divisionism", as well as an additional charge which falls outside the scope of this report, "collaboration with a terrorist group", the Democratic Forces for the Liberation of Rwanda (FDLR).[65] The arrest followed her summons to the Criminal Investigations Department (CID) in Kigali the previous day, her sixth such summons by the police since January 2010. The prosecution promptly brought her before Gasabo Intermediary Court (*Tribunal de Grande Instance de Gasabo*) on 21 April, where she pleaded not guilty on all counts.

Bernard Ntaganda, the leader of the Ideal Social Party (PS-Imberakuri) – the only new opposition party to secure registration – was accused of "genocide ideology" and was called before the Rwandan Senate in late 2009 to respond to "genocide ideology" accusations.[66] In April 2010, the Senate's political commission said they felt such accusations were well-founded.[67] The timing and manner in which these accusations were levelled against Bernard Ntaganda suggest a political motivation. Bernard Ntaganda was arrested on 24 June 2010, as research for this report was being finalized. At the end of June 2010, he had not yet been charged and information on the substance of allegations against him was not publicly available.

As to the case of Victoire Ingabire, in which criminal charges have been filed, Amnesty International has not had the opportunity to examine all of the material related to the charges, as prosecution investigations were still ongoing at the end of June 2010.[68] However, the organization examined an English translation of her speech at the Gisozi Genocide Memorial in Kigali, which forms part of the charge of "genocide ideology".[69] Amnesty International considers that the content of this speech cannot reasonably be construed as hate speech. Victoire Ingabire's decision to raise the issue of RPF war crimes at a genocide memorial has been seen by many as ill-judged, given sensitivities around the memorial. However, calling for the prosecution of RPF war crimes does not amount to hate speech. Rather, her words appear to state that victims of war crimes which fall within the mandate of the International Criminal Tribunal for Rwanda (ICTR) have a right to justice under international law.[70]

Rwandan officials have asserted that the charges against Victoire Ingabire stem not from her words per se, but from their context or underlying philosophy. Prosecutor General Ngoga stated:

> The issue is the philosophy behind it. It is not one of criminality, it's one of philosophy. The insistence [on accountability for RPF war crimes] is not based on the concern that this is a group that will be

> forgotten. No, it is based on an attempt to play down the bigger project of the genocide.[71]

The timing of these accusations against leading opposition politicians in the run-up to the 2010 presidential elections and the manner in which they were brought strongly suggest a political motivation. The broad nature of "genocide ideology" and "divisionism" laws facilitate this by allowing prosecutions that focus on perceptions of a speaker's alleged underlying philosophy, rather than an analysis of whether speech constitutes advocacy of hatred that amounts to violence, discrimination or hostility. Such broad laws are particularly open to political influence in terms of who to prosecute, on what charges and based on what evidence. Redrafting the laws will in itself not necessarily prevent misuse against legitimate political dissent unless other steps are taken, including proper investigation of cases, an end to statements by senior officials insinuating guilt before trial, and ensuring prosecutorial and judicial independence.

PROSECUTIONS FOR STATEMENTS MADE ABROAD

There appears to be an emerging pattern of Rwandans being prosecuted on their return to Rwanda under "genocide ideology" and "sectarianism" laws for statements made in exile or as part of asylum proceedings abroad. The cases that Amnesty International documented took place between November 2009 and May 2010.

Deogratias Mushayidi, a Rwandan opposition politician, was detained in Burundi on 3 March 2010 by Burundian security forces and handed over to Rwanda two days later. On 18 March, he was brought before the Nyarugenge Intermediary Court (*Tribunal de Grande Instance de Nyarugenge*) and charged with "genocide ideology", using false documents, threatening state security, and collaboration with a "terrorist" group, the FDLR. He pleaded guilty to using false documents, a fake Burundian passport, but not guilty to the other charges.[72] At the end of June 2010, Deogratias Mushayidi had not yet been brought to trial.

Deogratias Mushayidi had been living in Tanzania in recent months, using it as a base for his political party, Pact for People's Defence (PDP). According to a PDP party member interviewed by Amnesty International, Deogratias Mushayidi planned to return to Rwanda to contest the 2010 presidential elections.[73] The PDP had already distributed party membership cards in Rwanda and neighbouring countries.[74]

The "genocide ideology" charges appear to relate to statements that Deogratias Mushayidi made outside Rwanda. It is an unusual case, as he is a Tutsi survivor who lost his family during the genocide, and was the RPF's representative in Switzerland during the 1990-1994 civil war. "Genocide ideology" charges have, for the most part, been brought against Hutu.

Amnesty International has not been able to ascertain which statements the charges are based on and therefore does not have sufficient information to comment on whether the charges against Deogratias Mushayidi are well-founded. However, the manner of his arrest which appears to contravene formal extradition proceedings is concerning.

Innocent Irankunda, a Rwandan man in his twenties, was arrested in Kigali in October 2009 on "genocide ideology" and forgery charges after being deported from Germany following a failed asylum application.

On his arrival in Rwanda, authorities went through his bags and found documents relating to his asylum claim. They reportedly told him there was a lot of "genocide ideology" in his file. As part of his asylum request in Germany, Innocent Irankunda had claimed that the RPF had killed his family and that only one side had been judged before *gacaca*. Following his arrest, he retracted this statement and said that these family members were still alive.[75]

The prosecution requested that Innocent Irankunda be sentenced to 20 years in prison for the "genocide ideology" charge and an additional 10 years for the forgery charge. The court did not recognise the "genocide ideology" charge when the case came to trial. The court's ruling said that, "as Irankunda wanted to show with the forgery that he was being persecuted by the Rwandan government and as he had also stated that the former RPF soldiers had killed his parents, this could better be interpreted as defamation and not genocide denial." Instead, they convicted him of using forged documents submitted as part of his asylum claim and sentenced him to four years in prison. [76]

It is troubling that this "genocide ideology" charge was brought against Innocent Irankunda. It is even more concerning that the prosecution brought charges against a failed asylum-seeker for a declaration made as part of asylum proceedings abroad. The case received significant media attention within Rwanda and was commented on in the media before trial by the Spokesperson for the National Public Prosecution Authority (NPPA), Augustin Nkuzi,[77] demonstrating that senior officials were aware of the charges.

Prosecutions under a broad and ill-defined law run counter the Rwandan government's stated aim of creating the conditions at home which will encourage Rwandans abroad, including refugees and asylum-seekers, to return to Rwanda voluntarily. Aware of the RPF's roots as an insurgent group born out of exile, the government knows that returns are important for political stability. Such cases do little to assuage the fears of Rwandans abroad that they could return in safety. Aware of this, a diplomat representing a donor state indicated to Amnesty International that revision of the "genocide ideology" law in line with international standards could be an important pre-requisite for movement towards declaring "cessation" of refugee status for Rwandans in the Great Lakes region.[78]

The 1951 Convention relating to the Status of Refugees recognizes that refugee

status can end under certain clearly defined conditions. For cessation to be declared there must be substantial, effective and durable changes in the circumstances of the country of origin which led to the recognition of refugee status.[79]

In determining whether cessation is justified, a fundamental question is whether the refugee can effectively re-avail themselves of the protection of their country of origin. Protection must be durable, effective and available and goes beyond mere physical security or safety. It needs to include the existence of a functioning government and basic administrative structures, as evidenced through a functioning system of law and justice, as well as the existence of adequate conditions to enable residents to exercise their rights, including their right to a basic livelihood. The general human rights situation in the country, including an independent judiciary, fair trials and access to courts, and respect for freedom of expression, are key indicators.[80]

Recognizing that circumstances in the country of origin are often inter-linked, the Office of the United Nations High Commissioner for Refugees (UNHCR) has elaborated that all relevant factors such as serious violations of human rights, severe discrimination against minorities, or the absence of good governance must therefore be taken into consideration before cessation is declared.[81]

While states may initiate the application of cessation clauses under Article 1C(5) and (6) of the Convention relating to the Status of Refugees, UNHCR also occasionally issues a cessation notice in relation to a particular country or group. UNHCR, Rwanda and host countries have been discussing progress and establishing benchmarks for cessation.[82] On 13 May 2010, the governments of Rwanda and Uganda and UNHCR signed a new communiqué stating that "the status of Rwandan refugees in the Republic of Uganda shall cease when the cessation clause is invoked by 2010."[83]

PERSONAL MANIPULATIONS OF 'GENOCIDE IDEOLOGY'

The vague definition of "genocide ideology" has left it open to abuse at a local level where individuals appear to have used it to settle personal disagreements, including to discredit teachers, for local political capital, to acquire land and in the context of personal disputes. Amnesty International has documented recent cases where "genocide ideology" accusations have been fabricated by students to discredit teachers.[84]

The divisive impact of "genocide ideology" legislation is compounded by the reality and perception that most accused come from one ethnic group. One academic researcher in 2005 – before the "genocide ideology" law was promulgated – found that local officials in two communities "almost arbitrarily branded" common crimes as "genocide ideology" if the victims were Tutsi survivors. In one such case, a fight

with a male genocide survivor appears to have been caused by an argument over a woman.[85] Amnesty International has only documented one case of a Hutu who attempted to bring charges against a Tutsi for "genocide ideology". The individual apparently took offence at being called a Hutu by a Tutsi neighbour. After attempting to press charges, the file was investigated by the police, but dropped by the prosecution.[86]

Despite the stated aim of the "genocide ideology" and "sectarianism" laws to foster unity, in some cases that Amnesty International has documented, they have in fact provided a framework for what would otherwise be personal disputes.

4. CHILLING EFFECT

Rwanda's raft of repressive legislation – "genocide ideology", "sectarianism" and "insulting the President" laws – exerts a chilling effect[87] on numerous aspects of daily life in Rwanda, curtailing Rwandans' ability to fulfil other human rights. This chilling effect, the cumulative result of the laws and they way that they are applied in practice, causes people who have yet to have any action taken against them fear to exercise their rights to freedom of expression and refrain from expressing views which may be legal. Several people interviewed by Amnesty International raised their concerns that legitimate criticism of the government may result in "genocide ideology" accusations.

PUBLIC DENUNCIATIONS BY GOVERNMENT OFFICIALS

Public statements on "genocide ideology" by government officials, other than the prosecution, insinuate guilt before accused individuals are brought to trial.

Allegations of "genocide ideology" were used to justify extrajudicial killings in police custody from November 2006 to May 2007. The then Commissioner General of Police, Andrew Rwigamba commented in June 2007 on a spate of extrajudicial executions in police custody, a practice which appears to have subsequently stopped. He stated that "the suspects involved in these cases were of extreme criminal character ready to die for their genocide ideology". The detainees were killed before judicial proceedings against them had begun and only one was held on accusations of "genocide ideology".[88]

HUMAN RIGHTS DOCUMENTATION AND ADVOCACY

Keen to ensure cohesion, the Rwandan government frowns upon dissent and wants civil society to be a partner in service delivery, rather than a counterweight to government. As Rwandan Minister Protais Musoni stated:

> There are two debates on the role of civil society organizations in developing countries by international scholars. On one side civil society is a counter power to government and on the other civil society is seen as an effective partner in service delivery and the development process. Rwanda favours the latter approach.[89]

The nature of human rights reporting which draws attention to state responsibility

for human rights violations challenges this prevailing government discourse.

Rwandan human rights groups feel particularly vulnerable to accusations of "genocide ideology", given vague and unsubstantiated allegations against Rwanda's leading human rights organization, the Rwandan League for the Promotion and Defense of Human Rights (LIPRODHOR) by parliamentary commissions in March 2003 and June 2004. Several of LIPRODHOR's staff fled as a direct result of these accusations and were granted asylum abroad.[90] While several years have since passed, Rwandan human rights defenders continue to cite this as a defining moment which still constrains their work.

Several human rights workers interviewed by Amnesty International said that ambiguities in these laws made them uncertain about what behaviour is acceptable. Many prefer to shy away from politically sensitive areas of work, such as "genocide ideology", "divisionism" and RPF war crimes. Where they do document delicate issues, such as restrictions on freedom of assembly of opposition politicians at the local level, they tend to refrain from publishing or delay publishing to reduce potential repercussions.[91]

One Rwandan human rights activist said, "Genocide ideology is a form of intimidation. If you dare to criticize what is not going well, it's genocide ideology. Civil society and the population prefer to shut up."[92] As one representative of an international NGO working in Rwanda said, "Genocide ideology leads to general self-censorship."[93] Another said, "The population has to shut up, otherwise you risk being accused of genocide ideology."[94]

Rwandans who have been accused of "genocide ideology" and their families rarely appear to solicit legal advice or trial monitoring from national human rights groups, unlike on other charges.[95]

Public denunciation of international human rights groups has only served to heighten the fears of national human rights defenders. One such editorial in the pro-government newspaper, Focus, in June 2009 lumped Amnesty International together with "tribalists", "sectarian operators" and "deniers of the Genocide":

> Truly, the tribalists, the sectarian operators and their Human Rights Watch, Amnesty International and other international pressure group friends, and deniers of the Genocide are grasping at straws whenever they go out to hurl more accusations against this government.
>
> They are flabbergasted when they learn that Kagame has taken certain senior members of the ruling RPF for not providing proper leadership; for lining their pockets at the expense of the public and for committing other offences of bad governance.
>
> By tribalists let's be clear what we mean – we mean Hutu tribalists

> within and outside Rwanda. And of course we do not mean that every Hutu is a tribalist, just like we know there also are Tutsi tribalists; but for the purposes of this editorial we are talking about Hutu tribalists.[96]

In the run-up to presidential elections in August 2010, the rhetoric of senior government officials against Amnesty International and Human Rights Watch escalated, as did the swathe of articles and opinion pieces in pro-government media attempting to discredit their work.[97]

One such opinion piece in the government-aligned *New Times*, which otherwise focused on women's rights, called Amnesty International and other international organizations "human rights terrorists" for their criticism of the "genocide ideology" law.

> Why shout wolf at 'the law against genocide ideology', for instance, when 'anti-Semitism' is all but too clear to you?
>
> Human Rights Watch, Amnesty International, Commonwealth Human Rights Initiative, Reporters Sans Frontières, The Committee to Protect Journalists and other 'human rights terrorists' must give Rwanda a chance to stay her course of evolution.[98]

EFFECTS ON THE MEDIA

"Sectarianism" and "genocide ideology" legislation compromises the ability of journalists to inform the Rwandan public. This has not only affected Rwandan journalists, but also impacted on international media outlets, such as the British Broadcasting Corporation (BBC), that broadcast more critical coverage of Rwanda than domestic radio stations.

On 25 April 2009, the BBC Kinyarwanda service was suspended by the Rwandan government after it aired a trailer for a programme discussing forgiveness after the 1994 genocide. The trailer included Faustin Twagiramungu, a former presidential candidate, opposing attempts to have all Hutus apologise for the genocide as not all had participated in it. It also contained a statement from a man of mixed ethnicity reflecting on why the government had not allowed relatives of those killed by the RPF to grieve.[99]

The government argued that the broadcast incited "divisionism" and constituted genocide denial although nothing in the trailer could reasonably be construed as such, let alone as hate speech, as defined in the ICCPR. Rwanda's then Information Minister, Louise Mushikiwabo, accused the programme of containing "coded messages". In an interview with the *East African*, she said, the speakers invited "won't deny the genocide outright. But we know the hidden messages, and they know exactly what they are doing."[100]

This incident was the culmination of a series of public attacks by government officials against the BBC. The BBC was named in a 2006 Senate Report, alongside other organizations including Voice of America (VOA), Amnesty International and Human Rights Watch, as responsible for disseminating "genocide ideology".[101] The then Rwandan Police Spokesman said that "the ideology of these [VOA and BBC journalists] must be reviewed" at a public meeting in 2006.[102]

The BBC service, which is funded by the British Foreign and Commonwealth Office,[103] was reinstated in June 2009 following negotiations between the BBC and the Rwandan government.

IMPACT ON THE RIGHTS OF DEFENDANTS

The chilling effect of "genocide ideology" and "sectarianism" legislation may also hamper the ability of accused, especially in sensitive cases, to present a defence.

The 2006 Senate report on "Genocide Ideology" stated that comments such as "Hutus [are] detained on the basis of some simple accusation" constitute "genocide ideology".[104] This may impede the right to a defence.

The impact of "genocide ideology" legislation on the willingness of defence witnesses to testify came to the fore during court proceedings to decide whether genocide cases could be transferred to Rwanda from the International Criminal Tribunal for Rwanda (ICTR).

As part of the ICTR's completion strategy to wind up their operations, the ICTR Prosecutor proposed the transfer of five cases to Rwanda.[105] Since indictments had already been issued against the genocide suspects in these cases, any transfer would be subject to the decision of a panel of judges that the defendants would receive a fair trial in Rwanda.[106] All Trial Chambers and Appeal Chambers at the ICTR that ruled on potential transfers to Rwanda ruled against transfer.[107] This was partly due to the possibility that the threat, or perceived threat, of "genocide ideology" accusations may prevent witnesses coming forward and inhibit the right to a fair trial. The Appeal Chamber in Kanyarukiga ruled:

> [...] The Trial Chamber further noted that some defence witnesses feared that, if they testified, they would be indicted to face trial before the Gacaca courts, or accused of adhering to "genocide ideology". The Appeals Chamber observes that the information available to the Trial Chamber demonstrates that regardless of whether their fears are well-founded, witnesses in Rwanda may be unwilling to testify for the Defence as a result of the fear that they may face serious consequences, including threats, harassment, torture, arrest, or even murder.[108]

In the United Kingdom (UK), court proceedings took place to decide whether four Rwandans arrested in December 2006 on allegations of involvement in the 1994 genocide would receive a fair trial if they were extradited to Rwanda. Arrest warrants for the suspects were issued on the basis of a Memorandum of Understanding between the UK and Rwandan governments after the Rwandan government agreed to waive the death penalty. The District Court that handled the case at first instance ruled in favour of extradition. However, this was overturned by the UK High Court in April 2009. The Court concluded that, "the appellants would suffer a real risk of a flagrant denial of justice by reason of their likely inability to adduce the evidence of supporting witnesses."[109] In overturning the District Court's ruling, it stated:

> The [magistrate] judge's dismissal of the admitted fact that witnesses have been attacked and killed with the throwaway observation "this applies to both prosecution and defence" defies restrained comment. And the possibility of accusations of "genocide minimization" is especially troubling. It pre-empts what is acceptable and what is unacceptable speech. But that must be inimical to the giving and receiving of honest and objective evidence.[110]

The Rwandan government recognized this as a problem. As part of subsequent attempts to secure transfers from the International Criminal Tribunal for Rwanda (ICTR) and other jurisdictions, they amended legislation governing domestic trials of any transfers of cases from the ICTR or other states to Rwanda. The new law exempts witness testimony from prosecution:

> Without prejudice to the relevant laws on contempt of court and perjury, no person shall be criminally liable for anything said or done in the course of trials.[111]

Even in transfer and extradition cases, these technical legal changes may be insufficient to assure defence rights. Without revising the "genocide ideology" laws, and addressing the wider context for restrictions on freedom of expression, witnesses may still be reluctant to come forward. Witnesses' fear of prosecution is not based solely on immunity for statements in court, but also on their perception of how far they feel able to exercise rights to freedom of expression in everyday life. Further steps need to be taken to reassure people that they can exercise such rights without fear of punishment.

The late Alison Des Forges, who served as an expert witness for the Prosecution at the ICTR, was accused of "genocide ideology" after she presented her findings at a June 2008 conference in Kigali that progress in the justice sector was insufficient to assure fair trials in high-profile genocide cases. The Minister of Justice, Tharcisse Karugurama, responded by saying Des Forges risked becoming "a spokesperson for "genocide ideology".[112] One Rwanda scholar responded by stating: "If Des Forges could be labelled a proponent of genocide ideology, how much easier would it be to level the same accusation against any Rwandan who testifies in defence of genocide suspects?"[113]

Some lawyers indicated that significant progress had been made in dissociating themselves from the charges against their clients, compared to the years immediately following the genocide.[114] Nevertheless, some Rwandan defence lawyers working on prominent "genocide ideology" cases expressed reservations about meeting with delegates from Amnesty International due to the sensitive nature of the cases and their work.

5. RESPONSE OF INTERNATIONAL ACTORS

Rwanda's development partners rarely use their influence to publicly advocate for reform of laws on "genocide ideology" and "sectarianism".

One exception was the European Union's October 2004 declaration in response to the Rwandan Parliament's June 2004 report on "genocide ideology". The Rwandan Parliament had accused the international community of "sowing division within the Rwandan population" through international NGOs "like ... Trocaire, CARE International, [and] NPA [Norwegian People's Aid]."[115] The EU's response stated in part:

> The EU regrets that the Government of Rwanda has not unequivocally stated that those mentioned in the parliamentary report are presumed innocent until the contrary is proven. Individuals have been publicly accused on the basis of information that is insufficiently substantiated. The report therefore has an intimidating impact.
>
> [...]
>
> The EU is however concerned at the liberal use of the terms 'ideology of genocide' and 'divisionism' and in this regard would impress upon the government the need to clarify the definition of these terms and how they relate to the laws on discrimination and sectarianism and to the freedom of speech in general.
>
> Freedom of expression, freedom of association and freedom of the press are the basis of a democratic and inclusive state. The EU urges the Government to open up political space and to allow the expression of different views and perspectives. [116]

Instead of clarifying definitions of "genocide ideology" and "divisionism", the Rwandan government responded to the EU statement with strident criticism.[117]

Rwanda's development partners also raised concerns in July 2008 about Rwanda's legislation on "sectarianism" and the pending bill on "genocide ideology", which subsequently became law. These concerns were underscored in the Joint Governance Assessment, an assessment of governance in Rwanda jointly undertaken by the government of Rwanda and Rwanda's development partners. The report raised concerns that i) it was doubtful that laws were clearly drafted enough

to allow a person to know whether their conduct would amount to a breach of the law violating the principle of legality; ii) the laws did not include a requirement of intentionality (that the offender intended to cause harm); iii) penalties did not allow for sufficient judicial discretion to ensure that sentencing is proportionate to the circumstances of each case; and iv) the laws may not have struck the appropriate balance between prohibiting hate speech and supporting freedom of expression. It recommended that the Rwandan government:

> Re-examine the draft law on genocide ideology, paying attention to the quality of drafting, in particular in relation to specifying more clearly the principles of legality, intentionality and supporting freedom of expression.[118]

The 2009 Human Rights Report by the US Department of State found that "laws prohibiting divisionism, genocide ideology, and genocide denial continued to discourage citizens from expressing viewpoints that might be construed as promoting societal divisions" and that "the government's enforcement of laws against genocide ideology or divisionism discouraged debate or criticism of the government".[119]

In private, diplomats continue to express concerns about the way the "genocide ideology" and "divisionism" laws are defined and applied. One development partner involved in supporting the Rwandan justice sector went as far as to say that "anything goes into genocide ideology, if you want it to".[120]

Rwanda's development partners appear increasingly aware that the same "genocide ideology" laws that contributed to Rwanda's failure to have genocide cases transferred from the ICTR and other jurisdictions may stand in the way of refugee returns to Rwanda. The Rwandan government is keen to implement a cessation clause for Rwandan refugees in the Great Lakes. The onus will be on the Rwandan government to prove, amongst other things, that returning refugees would not be prosecuted for statements made while they were in exile and protected under the ICCPR.

6. GOVERNMENT REVIEW OF THE LAW

As recently as February 2010, the Rwandan government continued to consider the "genocide ideology" law "fair".[121] A change in tenor of recent Rwandan government statements on the "genocide ideology" law suggests new government interest in reviewing this legislation. A review was announced as the law came under greater international scrutiny in the run-up to the 2010 presidential elections

Tharcisse Karugarama, Minister of Justice, has confirmed that the Rwandan Government has commissioned a study to examine potential abuses of the law.[122] The Government Spokesperson for Rwanda, Louise Mushikiwabo, revealed in a *New York Times* interview that, "if the law has proved to be dysfunctional, it will be revised. We don't want to abuse our citizens".[123] Rwanda's President Paul Kagame has suggested that this review may result in amendment of the law, "Is it said badly? Is it confusing? Maybe we need to fine-tune it to have it clear so that the grey area is reduced".[124]

Amnesty International welcomes the Rwandan government's expression of commitment to review "genocide ideology" legislation. We urge the Rwandan government to examine not only persons wrongly convicted of "genocide ideology", but also the wider chilling effect of the legislation.

We hope the review will result in a "genocide ideology" law that allows the government to deter hate speech where needed, but also protects the right of freedom of expression enshrined in international conventions. Such a law would contribute to an enabling environment for the fulfilment of other human rights. To achieve this, the Rwandan government's ongoing review must encompass other legislation that impacts on freedom of expression – including laws on "sectarianism" and "insulting the President" which are often used concurrently with "genocide ideology" charges – to ensure that other laws are not misused in its place.

Revising these laws and clarifying what is legal and illegal will go some way towards building confidence in the judicial system and trust between neighbours. Revision of "genocide ideology" legislation must be accompanied by training of police and prosecutors to ensure that hate speech accusations are subject to strict vetting in adherence with the law.

Legal amendments and government commitments on paper will not, however, be enough to stem the chilling effect of past legislation. This will require public statements from the government, as well as a review of the cases of individuals currently convicted of "genocide ideology" and "divisionism" under "sectarianism" laws, demonstrating a new approach to freedom of expression.

7. RECOMMENDATIONS

TO THE RWANDAN GOVERNMENT

- Urgently initiate the announced review process of the current "genocide ideology" law, as well as other laws unduly restricting freedom of expression, including those on "sectarianism" and "insulting the President" to bring them in line with Rwanda's obligations under international human rights law.

- Allow consultation between Rwandan lawyers, judges, international legal experts, civil society actors and international NGOs, including those considered critical by the government, on the proposed legislation.

- Provide regular information, made publicly available, on the application of the "genocide ideology" and "sectarianism" laws pending their revision, including the number of prosecutions, convictions and acquittals, and the sentences imposed. Include this information in reporting to treaty bodies, including the Universal Periodic Review (UPR) and in periodic reports to the ACHPR.

- Significantly revise the "genocide ideology" and "sectarianism" laws and ensure that the laws are clearly and precisely drafted to prohibit only that expression prohibited in Article 20(2) of the ICCPR by means that are strictly necessary and proportionate to meet this aim.

- Make a clear public commitment to freedom of expression and publicly agree to review past convictions under "genocide ideology", "divisionism" or related laws.

- Where the case review reveals concerns regarding the fairness of a trial or where it is unclear whether the culpable conduct in any given case would amount to hate speech under Article 20 of the ICCPR, those convicted should be released unless they can be afforded prompt, fair retrials under a law that accords with international human rights law.

- Where the case review reveals convictions based on the valid exercise of rights, such as freedom of expression that does not amount to hate speech under Article 20 of the ICCPR, prisoners should be immediately and unconditionally released.

- Refrain from making public accusations of "genocide ideology" and "divisionism" against critics of government.

- Instruct government officials, other than the prosecution, to avoid commenting on the guilt or innocence of individuals prosecuted under revised hate speech laws before their cases come to trial.

- Provide increased resources to the Rwandan judicial system and instruct the judicial system to rigorously investigate accusations to speed up trials and reduce the length of pre-trial detention.

- Clarify which of the Kinyarwanda, English and French versions of Rwandan laws is authoritative, in the event that the translations differ from each other.

- Issue a standing invitation to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and to the Special Rapporteur on Freedom of Expression and Access to Information of the ACHPR.

TO THE RWANDAN LEGISLATURE

- Significantly revise the "genocide ideology" and "sectarianism" laws and ensure that the laws are clearly and precisely drafted to prohibit only that expression prohibited in Article 20(2) of the ICCPR by means that are strictly necessary and proportionate to meet this aim.

- Revise the "genocide ideology" law and amend the draft penal code to ensure that the age of criminal responsibility is appropriate.

- Ensure that children prosecuted under a hate speech law are treated in a manner that takes due account of their age and that children are not imprisoned except as a measure of last resort and for the shortest appropriate time.

TO THE RWANDAN NATIONAL PUBLIC PROSECUTION AUTHORITY

- Provide regular information, made publicly available, on the application of the "genocide ideology" and "sectarianism" laws pending their revision, including the number of prosecutions, convictions and acquittals, and the sentences imposed. Include this information in reporting to treaty bodies, including the UPR and in periodic reports to the ACHPR.

- Publicly agree to review past convictions under "genocide ideology", "divisionism" or related laws.

- Where the case review reveals concerns regarding the fairness of a trial or where it is unclear whether the culpable conduct in any given case would amount to hate speech under Article 20 of the ICCPR, those convicted should be released unless they can be afforded prompt, fair retrials under a law that accords with international human rights law.

- Where the case review reveals convictions based on the valid exercise of rights, such as freedom of expression that does not amount to hate speech under Article 20 of the ICCPR, prisoners should be immediately and unconditionally released.

- Direct prosecutors to register only those hate speech accusations that have been subject to thorough investigation.

TO RWANDA'S DEVELOPMENT PARTNERS

- Support efforts by the Rwandan government to significantly revise the "genocide ideology" and "sectarianism" laws to prohibit only advocacy of hatred that amounts to incitement of violence, discrimination or hostility against a protected group by means strictly necessary and proportionate to achieve that aim, and not legitimate freedom of expression or dissent.

- Where necessary, provide technical assistance and facilitate exchanges of expertise between international lawyers with expertise on hate speech laws and freedom of expression and the Rwandan government in efforts to amend the current legislation in line with international standards.

- Urge the Rwandan government to issue a standing invitation to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and to the Special Rapporteur on Freedom of Expression and Access to Information of the ACHPR.

ENDNOTES

1 For the purposes of this report, Amnesty International defines hate speech to be any advocacy of hatred that constitutes incitement to discrimination, hostility or violence against others by reason of their race, religion, nationality, gender, sexual orientation or similar status.
2 Radio Télévision Libre des Milles Collines (RTLM), a Rwandan radio station, communicated orders for carrying out the genocide. It told people to put up roadblocks, conduct searches, and named people to be targeted and areas to be attacked.
3 Organic Law No. 31/2007 of 25/07/2007 relating to the Abolition of the Death Penalty, published in the Official Gazette, 25 July 2007, promulgated 25 July 2007.
4 Law No. 33 BIS/2003 Repressing the Crime of Genocide, Crimes Against Humanity and War Crimes, promulgated 6 September 2003, Article 4.
5 The RPF and its armed wing, the Rwandan Patriotic Army (RPA) were formed in Uganda by ethnic Tutsi exiled in Uganda after they, or their parents, fled Rwanda following massacres of Tutsi by Hutu in 1959 and 1963. Their stated aim was to assure the right to return of refugees.
6 Jean Paul Kimonyo, "Understanding Rwanda's Journey", *Huffington Post*, 8 March 2010. Jean Paul Kimonyo is a policy advisor in the Office of the President of Rwanda.
7 Amnesty International press release, *Rwanda: Escalating repression against political opposition* (Index: AFR 47/004/2003), 22 April 2003.
8 République Rwandaise, Assemblée Nationale, *Rapport de la Commission Parlementaire de contrôle mise en place le 27 décembre 2002 pour enquêter sur les problèmes du MDR*, accepted by the National Transitional Assembly, 14 April 2003, unofficial French translation.
9 Amnesty International press release, *Rwanda: Run-up to presidential elections marred by threats and harassment* (Index: AFR 47/010/2003), 22 August 2003.
10 République Rwandaise, Assemblée Nationale, *Rapport de la Commission Parlementaire de contrôle mise en place le 27 décembre 2002 pour enquêter sur les problèmes du MDR*, accepted by the National Transitional Assembly, 14 April 2003, unofficial French translation.
11 The organizations included CARE International, Trocaire, Norwegians People's Aid, BBC, VOA, Human Rights Watch and the Catholic Church. See République Rwandaise, *Rapport de la Commission Parlementaire ad hoc crée en date du 20 janvier 2004 par le Parlement, Chambre des Députés, chargée d'examiner les tueries perpetrées dans la province de Gikongoro, l'idéologie*

génocidaire et ceux qui la propagent partout au Rwanda, accepted by the National Assembly, 30 June 2004, unofficial French translation.

12 Rwandan Ministry of Information press release, *Conclusions du gouvernement sur le rapport de la Commission Parlementaire chargée d'enquêter sur les assassinats de Gikongoro et sur l'idéologie de génocide dans le pays*, 18 September 2004, unofficial French translation.

13 Council of the European Union, *Declaration by the Presidency on behalf of the European Union on the Statement of the Rwandan Government to the Parliamentary Report on Genocidal Ideology*, Brussels, 6 October 2004, 1311/04.

14 Rwandan Senate, Rwanda*: Genocide Ideology and Strategies for its Eradication*, 2006, pp.18-19.

15 National Assembly, *Rapport d'analyse sur le problème d'idéologie du genocide evoquée au sein des établissements scolaires*, December 2007, unofficial French translation.

16 Representatives of international NGOs working in the field of justice in Rwanda affirmed to Amnesty International that ethnic slurs exchanged between students in schools gave genuine cause for concern. Amnesty International interviews with representatives of international NGOs working on justice in Rwanda, 23 September 2009, Kigali, Rwanda.

17 Human Rights Watch, *Law and Reality*, 2008, p.39

18 Amnesty International press release, *Rwanda: Gacaca – gambling with justice* (Index: AFR 47/003/2002), 19 June 2002. For example, judges were picked for their integrity, rather than for any legal training. Defendants did not have the right to legal counsel, even though they could receive life sentences.

19 Human Rights Watch, *Law and Reality*, 2008.

20 Lars Waldorf, "Revisiting 'Hotel Rwanda': genocide ideology, reconciliation and rescuers", Journal of Genocide Research, 11(1), March 2009, p.107.

21 Amnesty International public statement, *Rwanda: End human rights clampdown before presidential elections* (Index: AFR 47/003/2010), 23 April 2010; *Amnesty International Report 2010*; Law on Media, No 22/2009 of 12/08/2009, published in the Official Gazette, 17 August 2009.

22 Constitution of the Republic of Rwanda, Official Gazette No. Special, 4 June 2003, Article 34.

23 African (Banjul) Charter on Human and Peoples' Rights, adopted by the Organisation of African Unity on 17 June 1981, entered into force on 21 October 1986, ratified by Rwanda on 5 May 2003, Articles 10 and 11; International Covenant on Civil and Political Rights, G.A. res. 2200A

(XXI), 999 U.N.T.S. 171, entered into force on March 23 1976, ratified by Rwanda on 16 April 1975, Articles 21 and 22.

24 ICCPR, Article 19(1) and (2).

25 ICCPR, Article 19(3).

26 Manfred Nowak, ICCPR Commentary on Article 20, paras 18-19; Human Rights Committee, *Ross v. Canada*, 736/1997.

27 Human Rights Committee, General Comment 10 (1983), para. 4.

28 Constitution of the Republic of Rwanda, Official Gazette No. Special, 4 June 2003, Article 9.

29 Law No 18/2008 of 23/07/2008 relating to the Punishment of the Crime of Genocide Ideology, promulgated October 2008.

30 ICCPR, Article 19(3).

31 Law No. 18/2008 of 23/07/2008 relating to the Punishment of the Crime of Genocide Ideology, promulgated October 2008, see Article 8.

32 Approximately US$ 331 – US$ 1,657 as of June 2010. Per capita gross domestic product (GDP) was $343 in Rwanda in 2007. United Nations Development Programme (UNDP), Human Development Report, 2009, http://hdrstats.undp.org/en/indicators/152.html

33 Approximately US$ 3,312 – US$ 8,283 as of June 2010.

34 Approximately US$ 8,283 – US$ 16,566 as of June 2010.

35 Approximately US$ 838 as of June 2010.

36 Law No. 18/2008 of 23/07/2008 relating to the Punishment of the Crime of Genocide Ideology, promulgated October 2008, Article 9.

37 Rwandan Republic, Ministry of Justice, *The 9th and 10th Periodic Report of the Republic of Rwanda Under the African Charter on Human and People's Rights, Period Covered by the Report 2005 – July 2009*, July 2009, p.22.

38 Rwandan Republic, Ministry of Justice, *The 9th and 10th Periodic Report of the Republic of Rwanda Under the African Charter on Human and People's Rights, period covered by the report 2005 – July 2009*, July 2009, p.22.

39 Law No. 47/2001 on 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism, promulgated 18 December 2002.

40 Unofficial translation.

41 ICCPR, Article 19(3).

42 Approximately US$ 8,283 as of June 2010.

43 UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Ninety-Fifth Session*, New York, 31 March 2009, CCPR/C/RWA/CO/3.
44 Deputy Prosecutor General, Alphonse Hitiyaremye, cited in Fondation Hirondelle, "Rwandan Official Proposes Rehabilitation of Persons Convicted for Genocide Ideology", 30 May 2008, http://www.hirondellenews.com/content/view/11115/80/
45 Rwandan Senate, *Rwanda: Genocide Ideology and Strategies for its Eradication*, 2006, p.16.
46 Cited in Frontline, "Frontline Rwanda: Disappearances, Arrests, Threats, Intimidation and Co-option of Human Rights Defenders 2001 – 2004", 2005, p.100.
47 Amnesty International interview with Rwandan human rights activist, 19 November 2009, location withheld, Rwanda.
48 Amnesty International interview with Rwandan convicted of "genocide ideology", 24 November 2009, Mpanga Prison, Nyanza, Rwanda.
49 Amnesty International interview with Rwandan judge, 25 March 2010, Kigali, Rwanda.
50 Amnesty International interview with former Rwandan judge, 17 November 2009, Kigali, Rwanda.
51 Amnesty International interview with Rwandan lawyer, 24 September 2009, Kigali, Rwanda.
52 Amnesty International interview with a representative of an international NGO, 23 September 2009, Kigali, Rwanda; Amnesty International interview with Rwandan lawyer, 24 September 2009, Kigali, Rwanda; Amnesty International interview with Rwandan judge, 25 March 2010, Kigali, Rwanda.
53 The genocide commemoration period is officially held each year during the 100 days when Rwandans were killed during the 1994 genocide. Numerous commemoration ceremonies are organized at the national and local level by the Rwandan government and survivors' organizations, notably IBUKA (remember), and decent burials take place. The period is particularly tense, as people remember family members who were killed during the genocide. At the same time, some Hutu say that they feel that some commemoration events wrongly ascribe collective guilt to Hutu, including those that did not kill during the genocide, exacerbating tensions.
54 Rwandan government statistics on genocide ideology in 2009 on file with Amnesty International.
55 Amnesty International meeting with Deputy Prosecutor General, 16 November 2009, Kigali, Rwanda.
56 Amnesty International meeting with Inspector General of Courts, 25 March 2010, Kigali,

Rwanda.

57 Rwandan government statistics on genocide ideology in 2009 on file with Amnesty International.

58 Amnesty International interviews with Rwandan lawyers, 24 September 2009, Kigali, Rwanda.

59 Rwandan government statistics on genocide ideology in 2009 on file with Amnesty International.

60 Amnesty International interviews with Rwandan lawyers, 24 September 2009, Kigali, Rwanda.

61 Amnesty International interview with Rwandan human rights activist, 23 September 2009, location withheld, Rwanda.

62 Rwandan Senate, *Rwanda: Genocide Ideology and Strategies for its Eradication*, 2006, p.19.

63 See Chapter 1, background, above.

64 See, for example, the following articles published on two consecutive days in January 2010. Editorial, "Rwanda: FDU Ingabire Desecrates Memory with Double Genocide Theory*", New Times*, 17 January 2010; Edmund Kagire, "Rwanda: Ingabire Espouses Double Genocide Theory", *New Times*, 17 January 2010; Edmund Kagire, "Rwanda: Political Parties, CNLG Slam Ingabire 'Divisionist' Politics", *New Times*, 18 January 2010; Edmund Kagire, "Rwanda: Government Won't Stand Violation of the Laws – Interior Minister", *New Times*, 18 January 2010.

65 The FDLR is an armed opposition group operating in eastern Democratic Republic of Congo (DRC). It is mainly composed of Rwandan Hutu. It contains remnants of the *Interahamwe* and former Rwandan soldiers responsible for the 1994 Rwandan genocide, as well as fighters not involved in the genocide, including many too young to have participated in the genocide.

66 Amnesty International interview with Bernard Ntaganda, 24 March 2010, Kigali, Rwanda.

67 Nasra Bishumba, "Rwanda: Senators Call for Ntaganda Probe", *New Times*, 23 April 2010.

68 Victoire Ingabire was released on bail, subject to certain travel restrictions, on 22 April 2010. On 31 May 2010 the prosecution stated to the media that investigations into her case may take a year. See Rwanda News Agency, "Investigation into Ingabire cases could take a year – prosecution", 31 May 2010, www.rnanews.com/politics/3486-investigation-into-ingabire-cases-could-take-a-year-prosecution.

69 English translation of speech made by Victoire Ingabire, 16 January 2010, Gisozi Genocide Memorial, Kigali, Rwanda from FDU-Inkingi letter to Chief Executive Officer of the *New Times*, no date.

70 UNHCR, "Note, la Situation au Rwanda," confidential, 23 September 1994. The UN High Commissioner for Refugees estimated that between 25,000 and 40,000 people were killed by the

Rwandan Patriotic Army (RPA) from April to August 1994. Amnesty International documented several killings by the RPF during this period through field research conducted in August 1994. See Amnesty International, *Rwanda: Reports of killings and abductions by the Rwandese Patriotic Army, April – August 1994* (Index: AFR 47/16/94), 19 October 1994. Prosecutions by the Rwandan government for RPA abuses in 1994 which took place in the years immediately following the genocide were labelled "crimes of revenge" or "human rights violations", not war crimes or crimes against humanity. Approximately 32 soldiers, mainly of low rank, accused of killing or violating the rights of civilians in 1994 were prosecuted, of whom 14 were tried, convicted and received custodial sentences. See Human Rights Watch, *Law and Reality*, 2008, p.90, pp.103-109.

No prosecutions for RPF war crimes have been initiated by the ICTR, although cases which fall under its temporal jurisdiction, 1 January 1994 – 31 December 1994, also come under its mandate which covers serious violations of international humanitarian law committed in Rwanda during this period, as well as genocide prosecutions. UN Security Council Resolution, S/RES/995 (1994), 8 November 1994.

In an isolated case, the ICTR did transfer an RPF war crimes case file to Rwanda for prosecution. Four former RPA officers were tried for the killing of 13 members of the Roman Catholic clergy in Kabgayi district in June 1994. On 24 October 2008, the Military Tribunal of Kigali sentenced two captains, who pleaded guilty, to eight years' imprisonment. The other two were acquitted. The trial was said to fall short of international fair trial standards and failed to prosecute those alleged to have directed the killings. See *Amnesty International Report 2009* and *Amnesty International Report 2010.*

War crimes and crimes against humanity committed by the RPF and RPA before, during and after the 1994 Rwandan genocide remain largely unprosecuted. Calling for the prosecution of such crimes constitutes "genocide ideology" according to the Rwandan Senate's 2006 report on genocide ideology. See Rwandan Senate, *Rwanda: Genocide Ideology and Strategies for its Eradiction*, 2006, p.18, footnote 6.

71 Prosecutor General Martin Ngoga quoted in Nick Wadhams, "Rwanda: Anti-Genocide Laws Clashes with Free Speech", *Time*, 5 May 2010.

72 Interview with lawyer, 29 March 2010, Kigali, Rwanda.

73 Interview with PDP party member, 17 March 2010, location withheld.

74 Copies of membership cards on file with Amnesty International.

75 Interview with Innocent Irankunda, 25 November 2009, Kigali Central Prison, Kigali, Rwanda.
76 RP 0780/09/TGI/NYGE, *Prosecutor General's Office v. Innocent Irankunda*, Nyarugenge Intermediary Court, 27 November 2009.
77 Bosco R. Asiimwe, "Pastor Arrested in Fake Visa Scandal", *New Times*, 25 October 2009.
78 Interview with diplomat, 30 March 2010, Kigali, Rwanda.
79 UNHCR's Executive Committee (ExCom), a body of 79 members who advise on international protection issues, has further elaborated: "[I]n taking any decision on application of the cessation clauses based on "ceased circumstances", States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist....[A]n essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, inter alia, from relevant specialised bodies, including particularly UNHCR." UNHCR, ExCom Conclusion No. 69 (XLIII) (1992).
80 UNHCR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of Refugees (the "Ceased Circumstances" Clauses),* 10 February 2003, UN Doc. HCR/GIP/03/03, paras 15-16.
81 UNCHR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of Refugees (the "Ceased Circumstances" Clauses),* 10 February 2003, UN Doc. HCR/GIP/03/03, paras 11-12. "...Where the return of former refugees would be likely to generate fresh tension in the country of origin, however, this itself could signal an absence of effective, fundamental change. Similarly, where the particular circumstances leading to flight or to non-return have changed, only to be replaced by different circumstances which may also give rise to refugee status, Article 1C(5) or (6) cannot be invoked."
82 "UNHCR and Rwanda seek enduring solution for protracted refugee situation", UNHCR News Stories, 20 October 2009.
83 Joint Communiqué of the 8th Tripartite Meeting, 13 May 2010. See International Refugee Rights Initiative and Refugee Law Project, *A Dangerous Impasse: Rwandan Refugees in Uganda*, June 2010, p.3, footnote 12.
84 Amnesty International interview with international journalist, 3 March 2010, Kampala, Uganda; Amnesty International interview with lawyer, 22 March 2010, Kigali, Rwanda; Electronic

communication with representative of organization monitoring trial of teacher on "genocide ideology" charges, 5 May 2010.

85 Eugenia Zorbas, *Reconciliation in Post-Genocide Rwanda: Discourse and Practice*, PhD thesis, London School of Economics, 2007, p.104 quoted by Lars Waldorf, "Revisiting 'Hotel Rwanda': genocide ideology, reconciliation and rescuers", Journal of Genocide Research, 11(1), March 2009, p.108, footnote 72.

86 Amnesty International interview with Rwandan lawyer, 29 September 2009, Kigali, Rwanda.

87 Article 19*, Comment on the Law Relating to the Punishment of the Crime of Genocide Ideology in Rwanda*, September 2009, p. 4, para. 8.

88 Statement sent by Commissioner General of Rwanda National Police Andrew Rwigamba to Human Rights Watch researcher Christopher Huggins, 4 June 2007, electronic communication, Annex One, Human Rights Watch, "*There Will Be No Trial" – Police Killings of Detainees and the Imposition of Collective Punishments*, Volume 19, No. 10 (A), July 2007, p. 34.

89 Protais Musoni, *Building a democratic and good governance culture: Rwanda's experience and perspectives*, June 2004, Kigali.

90 Amnesty International public statement, *Rwanda: Deeper into the Abyss – Waging war on civil society* (Index: AFR 47/013/2004), 6 July 2004. Frontline, *Frontline Rwanda: Disappearances, Arrests, Threats, Intimidation and Co-option of Human Rights Defenders 2001 – 2004*, 2005, p.23.

91 Amnesty International interviews with Rwandan human rights defenders, 22 September and 11 November 2009, Kigali, Rwanda and 18 November 2009, location withheld, Rwanda.

92 Amnesty International interview with Rwandan human rights defenders, 22 September 2009, Kigali, Rwanda.

93 Amnesty International interview with international NGO staff working on justice issues, 22 September 2009, Kigali, Rwanda.

94 Amnesty International interview with Rwandan human rights defender, 24 September 2009, Kigali, Rwanda.

95 Amnesty International interview with Rwandan human rights defenders, 24 and 25 March 2009, Kigali, Rwanda.

96 Focus, "Why Tribalists are Scared of this Government", editorial, 4 June 2009.

97 Amnesty International public statement, *End Human Rights Clampdown Before Presidential Elections*, 23 April 2010.

98 Pan Butamire, "Rwanda owes a lot to its strong women", *New Times* opinion piece, 16 April 2010.

99 Transcript of broadcast on file with Amnesty International.

100 Josh Kron, "BBC genocide talk show pulled off air in restive Rwanda", *East African*, 11 May 2009, www.theeastafrican.co.ke/news/-/2558/595760/-/rgjdilz/-/index.html

101 Rwandan Senate, *Rwanda: Genocide Ideology and Strategies for its Eradication*, 2006, p.106.

102 Afrol News, "Rwanda journalists 'need ideology review', police", 2 February 2006, www.afrol.com/articles/17935

103 Foreign and Commonwealth Office and the British Broadcasting Corporation, "Broadcasting Agreement for the Provision of the BBC World Service", not dated, http://downloads.bbc.co.uk/worldservice/WS_Broadcasting_Agreement02FINAL.pdf

104 Rwandan Senate, *Rwanda: Genocide Ideology and Strategies for its Eradication*, 2006, p.18.

105 *Prosecutor v. Kayishema,* Prosecutor's Request for the Referral of the Case of *Fulgence Kayishema* to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 11 June 2007; *Prosecutor v. Munyakazi*, Prosecutor's Request for the Referral of the Case of *Yussuf Munyakazi* to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007; *Prosecutor v. Hategekimana*, Prosecutor's Request for the Referral of the Case of *Ildephonse Hategekimana* to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007*; Prosecutor v. Kanyarukiga*, Prosecutor's Request for the Referral of the Case of *Gaspard Kanyarukiga*, to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007; *Prosecutor v. Gatete*, Prosecutor's Request for the Referral of the Case of *Jean-Baptiste Gatete* to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 28 November 2007.

106 ICTR Rules of Procedure and Evidence, 11*bis*, Referral of the Indictment to Another Court.

107 ICTR Trial Chamber Designated Under Rule 11*bis*, *The Prosecutor v. Yussuf Munyakazi*, Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda, 28 May 2008; ICTR Appeals Chamber, *The Prosecutor v. Yussuf Munyakazi*, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11 *bis*, 8 October 2008; ICTR Trial Chamber Designated Under Rule 11*bis*, *The Prosecutor v. Gaspard Kanyarukiga*, Decision on Prosecutor's Request for Referral of Case to the Republic of Rwanda, 6 June 2008; ICTR Appeals Chamber, *The Prosecutor v. Gaspard Kanyarukiga*, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11 *bis*, 30 October 2008; ICTR Trial Chamber Designated Under Rule 11*bis*,

The Prosecutor v. Ildephonse Hategekimana, Decision on the Prosecutor's Request for Referral of Case to the Republic of Rwanda, 19 June 2008; ICTR Appeals Chamber, *The Prosecutor v. Ildephonse Hategekimana*, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11*bis*, 4 December 2008; ICTR Trial Chamber Designated Under Rule 11*bis*, *The Prosecutor v. Jean-Baptiste Gatete*, Decision on the Prosecutor's Request for the Referral of the Case to the Republic of Rwanda, 17 November 2008; ICTR Trial Chamber Designated Under Rule 11*bis*, *The Prosecutor v. Fulgence Kayishema*, Decision on the Prosecutor's Request for the Referral of the Case to the Republic of Rwanda, 16 December 2008.

108 ICTR Appeals Chamber, *The Prosecutor v. Gaspard Kanyarukiga*, Decision on the Prosecution's Appeal against Decision on Referral under Rule 11*bis*, 30 October 2008, para. 26, page 11.

109 *High Court of Justice, Vincent Brown aka Vincent Bajinja (et al.) v. Government of Rwanda and The Secretary of State for the Home Department*, [2009] EWHC 770, 8 April 2009, para. 66.

110 *High Court of Justice, Vincent Brown aka Vincent Bajinja (et al.) v. Government of Rwanda and The Secretary of State for the Home Department*, [2009] EWHC 770, 8 April 2009, para. 62.

111 Organic Law modifying and complementing the Organic Law No. 11/2007 of 16/03/2007 concerning the transfer of cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and other states, Official Gazette, 26 May 2009, Article 2 – Guarantee of rights of an accused person.

112 Amnesty International delegates' notes from Justice Sector conference, June 2008, Kigali, Rwanda.

113 Lars Waldorf, "Revisiting 'Hotel Rwanda': genocide ideology, reconciliation and rescuers", Journal of Genocide Research, 11 (1), March 2009, p.112.

114 Amnesty International interviews with Rwandan lawyers, 24 September 2009 and 29 March 2010, Kigali, Rwanda.

115 République Rwandaise*, Rapport de la Commission Parlementaire ad hoc crée en date du 20 janvier 2004 par le Parlement, Chambre des Députés, chargée d'examiner les tueries perpetrées dans la province de Gikongoro, l'idéologie génocidaire et ceux qui la propagent partout au Rwanda*, accepted by the National Assembly, 30 June 2004, unofficial French translation.

116 Council of the European Union, *Declaration by the Presidency on behalf of the European Union on the Statement of the Rwandan Government to the Parliamentary Report on Genocidal Ideology*, Brussels, 6 October 2004, 1311/04.

117 Rwandan Ministry of Information press release, *Conclusions gouvernement sur le rapport de la Commission Parlementaire chargée d'enquêter sur les assassinats de Gikongoro et sur l'idéologie de génocide dans le pays*, 18 September 2004, unofficial French translation.

118 Joint Governance Assessment: Rwanda, Draft Final, 23 July 2008, p.33, p.79.

119 US Bureau of Democracy, Human Rights and Labor, *2009 Country Report on Human Rights Practices: Rwanda*, 11 March 2010, http://www.state.gov/g/drl/rls/hrrpt/2009/af/135971.htm

120 Amnesty International interview with international donor, 29 September 2009, Kigali, Rwanda.

121 Justice Minister Tharcisse Karugarama quoted by Hereward Holland, "Rwanda says genocide law fair, not stifling opposition", *Reuters*, 19 February 2010.

122 Rwanda News Agency, "Government announces review of contentious genocide law", 5 April 2010.

123 Josh Kron, "Interview With the Foreign Minister and Government Spokesperson for Rwanda", *New York Times*, 28 April 2010.

124 Rwanda News Agency, "Government announces review of contentious genocide law", 5 April 2010.

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SAFER TO STAY SILENT
THE CHILLING EFFECT OF RWANDA'S LAWS ON 'GENOCIDE IDEOLOGY' AND 'SECTARIANISM'

Rwanda's laws banning "genocide ideology" and "sectarianism" are vague and sweeping, and have been used to silence legitimate dissent. The laws, introduced in the decade after the 1994 genocide, were designed to encourage unity and restrict speech that could lead to hatred. However, they have had a dangerous and chilling effect on Rwandan society.

In the run-up to the August 2010 presidential elections, these laws were used to restrict legitimate political activity. They have also been used to suppress calls for the prosecution of war crimes by the ruling Rwandan Patriotic Front. It is not clear what activities are prohibited by these vague laws – even to judges, lawyers and human rights defenders. As a result, these laws have led human rights workers to shy away from politically sensitive cases and have discouraged people from testifying for the defence in such cases.

This report outlines Amnesty International's concerns about these laws on paper and in practice. It calls on the government of Rwanda to ensure that, while outlawing acts of genocide and incitement to genocide, it upholds its international obligations to respect and protect freedom of expression.

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