8 Rwanda

1 INTRODUCTION

The Republic of Rwanda, a landlocked state in the African Great Lakes region of East Central Africa, is one of the smallest countries on the continent. With a land area of 63,890 km^2 and a population of about 12.6 million, Rwanda is located a few degrees south of the equator, and is bordered by Burundi, with which it has close ties, the Democratic Republic of the Congo, Tanzania and Uganda.

The population is young (more than 60% are aged 24 years or younger), predominantly rural, and comprises three main ethnic groups – the Hutu (about 84%), Tutsi (14%), and Twa or Pygmy (1%).

Prior to the Berlin Conference of 1884–85, which assigned the territory to Germany as part of German East Africa, the region was home to several kingdoms. In the 19th century, King Kigeli Rwabugiri of the dominant Kingdom of Rwanda initiated *uburetwa*, a system which forced Hutus to work for Tutsi chiefs, causing a long-lasting rift. While the Germans did not significantly alter the country's social structure, direct colonial rule was implemented after Belgian forces took control of Rwanda and Burundi during the First World War. The Germans and Belgians both entrenched the status quo of Tutsi dominance.

Ethnic tensions were high amid the clamour for decolonisation in the late 1950s, with Hutus rejecting Tutsi calls for independence based on the prevailing Tutsi monarchy. In November 1959, a violent incident sparked a Hutu uprising in which hundreds of

Tutsis were killed and thousands, including the Tutsi king, Kigeri V, were forced into exile. The violence prompted Belgium to organise elections in 1960. The result was a massive Hutu win, marking a dramatic shift in the power structure in their favour. Following a constitutional referendum in 1961, the Tutsi monarchy was abolished and a republic established.[1]

In that same year, the country's first direct elections saw Gregoire Kayibanda, a Hutu, elected president. He shepherded the country to independence on 1 July 1962, and proceeded to turn the country into a one-party state. Ethnic violence continued throughout his tenure. In December 1963, several hundred Tutsis entered southern Rwanda from Burundi and advanced to within 20 km of the capital, Kigali, before being repelled by the Rwandan Army.[2] In all, 10 such attacks occurred between 1962 and 1967, each leading to retaliatory killings of large numbers of Tutsi civilians in Rwanda and creating new waves of refugees.

Kayibanda, the only candidate, was re-elected in 1969; but in July 1973 he was overthrown by defense minister Major General Juvénal Habyarimana in a military coup.[3]

For most of the next 20 years Habyarimana ruled dictatorially, and it was widely suspected that electoral fraud ensured his unopposed re-elections. Though some economic progress was made, the great majority of Rwandans remained in dire poverty. Hutu–Tutsi tensions remained high, as they also did in neighbouring Burundi. In 1988, some 50,000 Hutu refugees fled to Rwanda from Burundi following ethnic violence there. Violence erupted in Rwanda again in October 1990, when forces of the mainly Tutsi rebel Rwandan Patriotic Front (RPF) invaded from Uganda, launching a civil war.[4]

The RPF demanded a share in power, ultimately forcing Habyarimana to introduce a constitutional amendment reintroducing multi-party politics. This constitution was never effective, however, as the war provoked a parallel process that supplemented internal reforms with a negotiated settlement. On 4 August 1993, Habyarimana signed a power-sharing agreement with the Tutsis in Arusha.[5]

However, Habyarimana was killed on 6 April 1994, when his aircraft, also carrying Cyprien Ntaryamira, president of neighbouring Burundi, was shot down close to Kigali International Airport. His assassination ignited ethnic tensions in the region and helped spark the Rwandan Genocide.

Blaming the RPF for the shooting, Hutus slaughtered some 800,000 people in just 100 days. The victims were not all Tutsis. Political opponents, irrespective of ethnic

origin, were targeted as well. Lists of government opponents were handed to militias, who were told to kill them and their families. At the time, identity cards noted the holder's ethnicity, so militias set up roadblocks where Tutsis were killed, usually with machetes.

The Uganda-backed RPF took the capital of Kigali in July, ending the killing of Tutsis. Some two million Hutus then fled across the border into the Democratic Republic of the Congo (then called Zaire), fearing revenge attacks. Human rights groups say the RPF killed thousands of Hutus as they took power.[6]

The RPF quickly established a government of national unity with Pasteur Bizimungu (a Hutu) as president, and RPF leader Paul Kagame (a Tutsi) as vice president. Following a dispute over the make-up of a new cabinet, Bizimungu resigned in March 2000 and Kagame became president, a position he still holds.[7]

In 2003, a new Constitution was introduced which, among other things, limited the president to two terms in office. This Constitution was amended in December 2015, and as a result of those changes and a subsequent court ruling Kagame may legally be president until 2034.[8]

Kagame has prioritised economic development, launching a programme to develop Rwanda as a middle-income country by 2020. Annual growth between 2004 and 2010 averaged 8%, and there have been noted improvements in health care and education.

Tourist numbers have grown rapidly, as has the Human Development Index – between 2006 and 2011 the poverty rate reduced from 57% to 45%, and life expectancy rose from 46.6 years in 2000 to 59.7 years in 2015. Gross domestic product per capita in 2014 was US$772, compared with US$303 for neighbouring Burundi, its former 'twin' state.

The literacy rate for those aged 15 and over is estimated at 70.5% (male 73.2%, female 68%).[9] State-owned publications predominate in the print sector, which includes:

- *The New Times* – private, pro-government, English-language
- *Rwanda Herald* – private, English-language
- *Rwanda Newsline* – owned by Rwanda Independent Media Group, English-language
- *Umuseso* – sister paper to *Rwanda Newsline*, Kinyarwanda-language.

On the positive side, Rwanda's telecommunications sector has grown rapidly since it was liberalised in 2001, and the number of companies providing telephone and

internet services increased from one – the state-run Rwandatel – to 10 or more currently. Kigali is connected to provincial centres by microwave radio relay and cellular telephone. Combined fixed-line and mobile-cellular telephone density has increased and now exceeds 40 telephones per 100 persons.[10]

Government owns and operates the only television station, *Television Rwandaise*. Government-owned and operated Radio Rwanda has a national reach, and there are also nine private radio stations. Internet users were estimated to number 1.1 million in 2014, about 9.2% of the population,[11] and Rwanda ranked in first place in Africa for broadband download speeds (62nd globally) with a speed of 7.88 Mbit/s in February 2013.[12]

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Rwanda. The chapter is divided into five sections:

- Media and the constitution
- Media-related legislation
- Media-related regulations
- Media self-regulation
- Media-related case law based on decided cases

The aim of the chapter is to equip the reader with an understanding of the main laws governing the media in Rwanda. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Rwanda, to better enable the media to fulfil its role of providing the public with relevant news and information, and to serve as a vehicle for government–citizen debate and discussion.

2 THE MEDIA AND THE CONSTITUTION

In this section you will learn:

- ❑ The definition of a constitution
- ❑ What is meant by constitutional supremacy
- ❑ How a limitations clause operates
- ❑ Which constitutional provisions protect the media
- ❑ Which constitutional provisions might require caution from the media or might conflict with media interests
- ❑ What key institutions relevant to the media are established under the Constitution of Rwanda
- ❑ How rights are enforced under the Constitution

- What is meant by the 'three branches of government' and 'separation of powers'
- Whether there are any clear weaknesses in the Constitution of Rwanda that ought to be amended to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

In December 2015, Rwanda introduced 'The Constitution of the Republic of Rwanda of 2003 Revised in 2015'. The discussions in this chapter are based on this 2015 revision of the 2003 Constitution.

The Constitution of Rwanda sets out the foundational rules for the Republic of Rwanda. These are the rules upon which the entire country operates. The Constitution contains the underlying principles and values of the laws of Rwanda.

A key constitutional provision in this regard is article 1(1), which states: 'All power derives from Rwandans and is exercised in accordance with this Constitution. No individual or section of people can arrogate to themselves the exercise of power. National sovereignty belongs to Rwandans who exercise it directly by means of referendum, elections, or through their representatives.'

Further to this, article 4 states: 'The Rwandan State is an independent, sovereign, democratic, social and secular Republic. The founding principle of the Republic of Rwanda is: Government of Rwandans, by Rwandans and for Rwandans.'

Article 10 deals with fundamental principles of the State of Rwanda. It commits to preventing and punishing crimes of genocide and revisionism of genocide, as well as eradicating genocide ideology and all its manifestations – article 10.1. Discrimination and divisionism based on ethnicity, region or on any other grounds are to be eradicated, and national unity is to be promoted – article 10.2, and power sharing is to be equitable – article 10.3.

Rwanda is committed to building a state governed by the rule of law, a pluralistic democratic government, and equality of all Rwandans and between men and women, and this is to be affirmed by women occupying at least 30% of positions in decision-

making organs – article 10.5. A state committed to promoting social welfare and establishing appropriate mechanisms for equal opportunity to social justice is to be built – article 10.5, and solutions are to be constantly sought through dialogue and consensus – article 10.6.

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such law could be challenged in a court of law and could be overturned on the ground that it is 'unconstitutional'.

The Constitution of Rwanda makes provision for constitutional supremacy. Article 3 specifically states that: 'The Constitution is the supreme law of the country. Any law, decision or act contrary to this Constitution is without effect.' However, the phrasing of many of the articles in the Constitution speaks against this as numerous articles are subject to a version of the following: 'This right is exercised under conditions determined by law.' This undermines the supremacy of the Constitution by making rights subject to statutes. The ultimate strength of the constitutional supremacy article will be determined by the judges of the Supreme Court.

Subsection 5 of the Rwandan Constitution is entitled 'Hierarchy of laws and their authentic interpretation'.

Article 95 gives the hierarchy of laws as follows:

1. Constitution
2. Organic law – these are laws designated as such and empowered by the Constitution to regulate other key matters in the place of the Constitution
3. International treaties and agreements ratified by Rwanda
4. Ordinary law – statutes passed by Parliament
5. Orders.

A law cannot contradict another law that is higher in the hierarchy.

The Supreme Court interprets laws, according to article 96. Cabinet may request an interpretation – or indeed any person may request such through the Bar Association. In cases of conflict between the languages in which a law was published in the Official Gazette, the language in which that law was adopted prevails.

2.3 Definition of a limitations clause

It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth.

Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution.
The Constitution of Rwanda makes provision for three types of legal limitations on the exercise and protection of rights contained in Chapter IV, 'Human Rights and Freedoms'.

2.3.1 Internal limitations

These are limitations that are right specific and contain limitations or qualifications to the particular right that is provided for in the Constitution. These will be dealt with in more detail when discussing the applicable rights below.

2.3.2 Constitutional limitations

Article 136 of the Constitution of Rwanda deals with states of siege and emergency. It provides that a state of emergency is provided by law and declared by the president with the approval of Cabinet. Significantly, article 136 provides that a declaration of a state of emergency must specify the part of the national territory to which it applies, and indicate the rights, freedoms and guarantees provided by law that are suspended under the state of emergency. A state of emergency must be clearly justified and may not exceed a period of 15 days without the approval of a two-thirds majority vote in each chamber of Parliament – that is, the Chamber of Deputies and the Senate.

Article 136 makes certain rights non-derogable. A state of siege or emergency cannot under any circumstances violate the right to life and physical integrity of the person or the rights accorded to people by law in relation to their status, capacity and nationality.

Further, the principle of non-retroactivity of criminal law, the right to legal defence, freedom of conscience and religion are also non-derogable. Unfortunately, many of the critical rights for the media, including the basic right to freedom of expression and the right to information, can be derogated from in a state of emergency.

2.3.3 General limitations

The last type of limitation is a general limitations provision. General limitations provisions apply to the provisions of a bill of rights or other statement setting out the fundamental rights. These types of clauses allow a government to pass laws limiting rights, generally provided this is done in accordance with the constitution.

Article 41, entitled 'Limitations of rights and freedoms', makes it clear that a law may limit any right entrenched in the Constitution. It states: 'In exercising rights and freedoms, everyone is subject only to limitations provided for by the law aimed at ensuring recognition and respect of other people's rights and freedoms, as well as public morals, public order and social welfare which generally characterise a democratic society.' This is an interesting provision that requires some explanation.

- It is clear that rights can be limited on two main bases: to protect the rights and freedoms of other individuals; and to protect public morals, public order and social welfare which generally characterise a democratic society.

- It is important to note that there is no requirement that a limitation of a right be narrowly tailored to suit the public purpose.

- Lastly, it is not clear why it is necessary to have internal limitations clauses if there is a general limitations clause as well. Often, internal limitations clauses effectively undermine the substantive nature of the rights to which they apply.

2.4 Constitutional provisions that protect the media

The Constitution of Rwanda contains provisions in Chapter IV, 'Human Rights and Freedoms', which directly protect the media, including publishers, broadcasters, journalists, editors and producers.

2.4.1 Rights that protect the media

FREEDOM OF EXPRESSION

The most important provision that protects the media is article 38, entitled 'Freedom of press, of expression and of access to information'. These freedoms are recognised and guaranteed by the state in this article.

However, as with many freedoms in the Rwandan Constitution, these are not absolute. The article goes on to limit them by stating:

> Freedom of expression and freedom of access to information shall not prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy.

The article then goes on to provide that the conditions for exercising these freedoms are determined by law. For example, there is a law relating to how the freedom of access to information is to be exercised, which is dealt with under the legislation provisions of this chapter.

PRIVACY

Article 23 of the Constitution of Rwanda, which is entitled 'Respect for privacy of a person and of family', offers some important protection for the media. It specifies in its first paragraph that '[t]he privacy of a person, his or her family, home or correspondence shall not be subjected to interference in a manner inconsistent with the law'.

Paragraph 3 states that the confidentiality of correspondence and communication shall not be waived, 'except in circumstances and in accordance with procedures determined by the law'. This would include email and telecommunications. The protection of a person's correspondence is important to the working journalist.

A person's home is inviolable as well, according to article 23. It states that '[n]o search or entry into a home shall be carried out without the consent of the owner, except in circumstances and in accordance with procedures determined by the law'.

In all these instances, the circumstances in which the rights may be limited are not specified. There are no grounds for such action stated anywhere in the Constitution, and the power of 'the law' to determine the procedures which can limit these rights is problematic because, in effect, a constitutional right is subject to an ordinary statute.

RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE

Article 26 of the Constitution of Rwanda gives every Rwandan the right to move freely and to reside anywhere in Rwanda, as well as to leave the country and return. The article states that '[t]hese rights may only be restricted by law for reasons of public order and of national security, in order to avert a public threat or to protect persons in danger'.

This right is important in that it permits Rwandan journalists to cover events in other parts of the country, such as elections. This right is not extended to non-citizens.

PROTECTION OF FREEDOM OF CONSCIENCE

Article 37 provides the protection of freedom of conscience: 'Freedom of thought, conscience, religion, worship and public manifestation thereof is guaranteed by the State in accordance with the law.' Freedom of thought and the public manifestation thereof is important for the media as it provides additional protection for commentary on public issues of importance.

However, there is the internal limitation that propagation of ethnic, regional, racial discrimination or any other form of division is punishable by law. In practice, this restriction is known as the law on 'divisionism'.

PROTECTION OF FREEDOM OF ASSOCIATION AND THE RIGHT TO FORM TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Article 31 entrenches the right to form trade unions and employers' associations. It states: 'The right to form trade unions for the defence and promotion of legitimate professional interests is recognised. Every worker may defend his or her rights through a trade union in accordance with the law. Every employer has the right to join an employers' association.'

Article 39 of the Constitution of Rwanda provides that: 'The right to freedom of association is guaranteed and does not require prior authorisation.' These rights not only guarantee the rights of journalists to join trade unions but also of the press to form press associations and of entrepreneurs to form media houses and conduct media operations.

As discussed previously, constitutional rights are never absolute. Article 39, for example, contains an internal limitation in that the right it bestows is exercised under conditions determined by law.

2.4.2 Other constitutional provisions that assist the media

PROVISIONS REGARDING THE FUNCTIONING OF PARLIAMENT

A number of provisions in the Constitution regarding the functioning of Parliament are important for the media, including the following:

- Article 68 specifically states that no member of Parliament may be prosecuted, pursued, arrested, detained or judged for his or her opinion expressed or vote cast in the exercise of his or her duties. The effect of this is to protect freedom of

expression for members of the chambers of Parliament, which ought to assist in ensuring robust debate.

- Article 70 specifies that the sittings of each chamber of Parliament are public; however, each chamber may decide, by an absolute majority vote of members present, to sit in camera upon request of the president of the Republic, the president of the Senate, the speaker of the Chamber of Deputies, one-quarter of the members of the concerned chamber or the prime minister.

PRINCIPLE OF OPEN JUSTICE

Article 151.2 requires that court proceedings are conducted in public unless the court determines that the proceedings are to be held in camera, in circumstances provided for by law. Article 151.3 requires that every judgement must be written in its entirety and delivered in public, together with the grounds for the decision.

PRINCIPLE OF DIALOGUE

Article 10 of the Rwandan Constitution sets out the fundamental principles which the state of Rwanda commits itself to upholding. Article 10.6 is the 'constant quest for solutions through dialogue and consensus'. We think that the emphasis on dialogue and consensus to which the Rwandan state has committed itself necessarily requires a dialogue between the state and its people, which in turn necessitates a free press and the free flow of information.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals or institutions *from* the media. It is important for journalists to understand which provisions in the Constitution can be used against the media.

2.5.1 Dignity and privacy

Article 23 deals with 'respect for privacy of a person and of family'. The privacy of a person, his or her family, home and correspondence are protected, and the person's honour and dignity are to be respected.

Article 38, which guarantees freedom of the press, expression and access to information, limits these freedoms in stating that every citizen has the right to honour and dignity, and the protection of personal and family privacy.

Dignity is a right that is often raised in defamation cases because defamation, by definition, undermines the dignity of the person being defamed. This right is often set up against the right to freedom of the press, requiring a balancing of constitutional rights.

Similarly, the right to privacy is often raised in litigation involving the media, with the subjects of press attention asserting their rights not to be photographed, written about or followed in public, etc. The media has to be careful in this regard. The media should be aware that there are always 'boundaries' in respect of privacy that need to be respected and which are dependent on the particular circumstances, including whether or not the person is a public figure or holds public office, and the nature of the issue being dealt with by the media.

2.5.2 Internal limitation to the right to freedom of expression, freedom of the press and access to information

According to article 38 on freedom of the press, of expression and of access to information limits, exercising these rights may not prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honour and dignity, and protection of personal and family privacy.

These grounds upon which the rights to freedom of expression, the press and access to information can be limited are extremely broad. Consequently, it is possible for laws to be drafted widely, thereby restricting these rights provided for in the Constitution.

2.5.3 Denial and revisionism of genocide

The first noted, and presumably the most important, fundamental principle in article 10 of the Rwandan Constitution relates to the country's genocidal history. It aims at the prevention and punishment of the crime of genocide, fighting against denial and revisionism of genocide as well as eradication of genocide ideology in all its manifestations.

As is clear from the case section below in this chapter, article 10 has been used against the media to repress even discussions about the causes and history of the genocide.

2.5.4 Discrimination

Article 16, paragraph 2 makes discrimination of any kind or its propaganda punishable by law. Specifically, this relates to, among other things, ethnic origin,

family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability or any other kind of discrimination. The second fundamental principle listed in article 10 also addresses the requirement to eradicate discrimination and divisionism.

While equality is an important principle and right, it must be noted that any prohibition upon expression, such as propaganda, potentially undermines the work of the media if the term 'propaganda' is interpreted too broadly.

2.5.5 States of siege and emergency provisions

Article 136 deals with 'state of siege and state of emergency'. Such a state may be declared by the president, following approval by Cabinet. A declaration of a state of siege or a state of emergency must be clearly justified, specify the part of national territory to which it applies and its consequences. It also has to indicate the rights, freedoms and guarantees provided by law that are suspended, and the duration of the state of siege or state of emergency, which may not exceed 15 days. It cannot be extended beyond 15 days without the approval of Parliament, which requires a two-thirds majority vote of the members of each chamber – that is the Chamber of Deputies and the Senate.

Several of the important rights that protect the media could be derogable under state of emergency provisions, among them: the right to privacy – article 23; the right to liberty and security of person – article 24; the right to freedom of movement and residence – article 26; the rights to freedom of the press, of expression and of access to information – article 38; the right to freedom of association – article 39; and the right to freedom of assembly – article 40. Article 136 requires any declaration of a state of emergency to indicate which rights, freedoms and guarantees provided by law are suspended.

Article 137 details the circumstances under which a state of siege or of emergency may be declared. A state of emergency is declared when the 'gravity' of the circumstances do not 'warrant the declaration of a state of siege'. Such circumstances include both 'a public disaster' and a 'constitutional crisis'. Unfortunately, the term 'constitutional crisis' is not defined.

There are some rights and principles that article 136 paragraph 6 make non-derogable under a state of emergency, namely: the right to life and physical integrity of the person; the rights accorded to people by law in relation to their status, capacity and nationality; the principle of non-retroactivity of criminal law; the right to legal defence; and freedom of conscience and religion.

2.5.6 Ignorance of the law is not an excuse

Article 176 assists the media in that laws and orders cannot enter into force without their prior publication in accordance with procedures determined by law. However, it goes on to state that ignorance of a duly published law is not an excuse. Accordingly, journalists should endeavour to stay up to date with legislation affecting them.

2.6 Key institutions relevant to the media established under the Constitution of Rwanda

While there are no media-specific institutions established under the Constitution of Rwanda, there are a number of state organs that are important to the media.

Article 139 of the Constitution establishes a number of national commissions, specialised organs and national councils. And again, a number of these are relevant to the media, in particular:

- The National Commission for Human Rights
- The Ombudsman
- The judiciary
- The High Council of the Judiciary.

Article 139 provides for 'a law' to establish other national commissions, specialised organs and national councils, as well as removing them, where it is deemed necessary.

2.6.1 The National Commission for Human Rights

The responsibility for promoting human rights in Rwanda is particularly exercised by the independent National Commission for Human Rights (NCHR), according to article 42 of the Constitution of Rwanda.

Bodies such as human rights commissions are important for the media because, if they are truly independent of government, ordinary people as well as institutions such as the media can turn to them for protection of their human rights, such as the right to freedom of expression.

Such bodies are important in preserving human rights and can act as a bulwark against heavy-handed or illegal government restrictions on fundamental rights. It goes without saying that the effectiveness of such institutions is usually linked to the level of genuine independence they enjoy.

The NCHR is governed by the law, Determining Missions, Organisation and Functioning of the National Commission for Human Rights, Law 37 of 2013 (NCHR Law). The law states that the NCHR is independent and permanent, and that it shall not be subject to instructions from any other organ – article 3.

The NCHR's overall mission is to promote and protect human rights – article 4 – through, among other things, educating the public, collaborating with local and foreign organisations, and examining violations in Rwanda committed by state organs and those working in the public service abusing their powers, as well as associations and individuals – article 5. It is also required to monitor respect for human rights throughout the elections process – article 6.5.

The NCHR has permanent judicial police powers – article 8, and may file legal proceedings in civil, commercial, labour and administrative matters – article 9 – for violations of human rights guaranteed by the Constitution.

The NCHR consists of the Council of Commissioners, which comprises seven members, a Bureau of Commissioners (comprising the chairperson and the vice chairperson, according to article 31 of the NCHR Law) and a General Secretariat of Commission – article 15. All commissioners must be Rwandan. Cabinet submits a list of seven candidate commissioners to the Senate for approval, and on Senate acceptance they are appointed by a presidential order – article 21.

The candidates are nominated by a committee, which is charge of selecting candidate commissioners – article 19. This selection committee comprises five members and they are appointed from: non-governmental organisations (NGOs) for the promotion and protection of human rights; the Public Service Commission; civil society; and other relevant experts with expertise and skills in human rights issues.

During his or her term of office, a commissioner shall not be prosecuted, arrested, or sentenced due to his or her views expressed or other acts committed in carrying out his/her duties.

The committee in charge of selecting candidate commissioners submits to the government a list of seven selected candidates. At least 30% of those candidates must be female – article 20. The Cabinet then submits for Senate approval seven candidate commissioners before their appointment by a presidential order – article 21. Should some candidates on the list not be approved by the Senate within 15 days, the committee in charge of selecting candidate commissioners has to put forward candidates to replace those not approved. Cabinet then submits the replacement candidates, whose number is equivalent to those not approved.

NCHR Council of Commissioners' members serve four-year terms, which may be renewed only once – article 23. A commissioner may be removed from office if: he or she is no longer able to perform his or her duties; has demonstrated behaviour contrary to his or her duties; abuses human rights; jeopardises the interests of the Commission; or has been definitively sentenced to at least six months of imprisonment without suspension of sentence – article 26.

2.6.2 The Ombudsman

Article 139 of the Rwandan Constitution includes the Office of the Ombudsman as one of the specialised organs assisting in resolving important issues facing the country, and article 86 gives the Senate the responsibility to approve the appointment of the ombudsman and his deputies. The ombudsman is governed by a law, Determining the Mission, Powers, Organization and Functioning of the Office of the Ombudsman, Law 76 of 2013 (Ombudsman's Law). In terms of article 4 of the Ombudsman's Law, the Office of the Ombudsman's mission includes to:

- Act as a link between the citizen and public and private institutions
- Follow up the enforcement of access to information law
- Prevent and fight injustice and corruption.

The ombudsman's funding comes from the state's budget, subsidies, donations and bequests – article 41 of the Ombudsman's Law. The ombudsman and deputy ombudsmen, who must be Rwandan, are appointed by presidential order once the Senate has selected them from a list agreed upon by the Cabinet.

The ombudsman's mission focuses strongly on dealing with corruption, particularly among civil servants, and promoting good governance in both government and NGOs. Of interest to the media is point 15 of article 4 of the Ombudsman's Law, which requires the Office of the Ombudsman to follow up the enforcement of the law relating to access to information.

Article 6 paragraph 3 gives the ombudsman the power to identify laws that hamper the general interests of the population. The ombudsman and his or her deputies have the powers of judicial police, the power to prosecute, and the power to request the Supreme Court to reconsider and review judgements rendered by other courts – articles 11–15.

The Office of the Ombudsman consists of the Ombudsman Council and the Permanent Secretariat – article 18. The Ombudsman Council is the supreme organ of the management of the office. It comprises the ombudsman and deputy ombudsmen

– at least 30% of the deputy ombudsmen must be women – articles 19 and 20. For each position of the Ombudsman Council, the government submits for Senate approval the names of candidates agreed upon by Cabinet. Approved candidates are appointed by presidential order.

The permanent secretary of the Office is appointed by presidential order upon request of the Office – article 27. Although the Office of the Ombudsman has autonomy to recruit and appoint its staff members, those staff members are governed by the General Statute for Rwanda Public Service. The organisational structure of the Office is determined by prime minister's order.

The ombudsman serves a five-year term, and the deputies serve for four years – article 20. The terms are renewable only once through the same procedure that was applied in the first term. The ombudsman and deputy ombudsmen may be removed if they fail in their duties, their integrity is compromised, or they no longer exhibit the qualities for which they were appointed to the post – article 22.

2.6.3 The judiciary

The judiciary (or judicature) is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government, and the media is essential to building public trust and respect for the judiciary, which is the foundation of the rule of law in a society. The media needs the judiciary because of the courts' ability to protect the media from unlawful action by the state and from unfair damages claims by litigants.

Judicial authority is vested in the judiciary, which is composed of ordinary and specialised courts. Article 152 clarifies that ordinary courts comprise the Supreme Court, the High Court, intermediate courts and primary courts, with the Supreme Court being the apex court in Rwanda.

Specialised courts include the commercial courts and military courts. An organic law may establish or remove either type of court, and a law determines their organisation, functioning and jurisdiction. Article 150 of the Constitution provides that the judiciary is independent and exercises financial and administrative autonomy.

- *The Supreme Court*
  - In terms of article 153 of the Rwandan Constitution, the president and vice president of the Supreme Court are appointed by presidential order after approval by the Senate and consultation with

Cabinet and the High Council of the Judiciary (HCJ). They are appointed for five years, according to article 156, and this term is renewable once.
- Other judges of the Supreme Court are appointed by the president after consultation with the Cabinet and the HCJ, according to article 154.

- *The High Court and the Commercial High Court*
  - In terms of article 153 of the Rwandan Constitution, the president and vice president of the High Court and Commercial High Court are appointed by presidential order after approval by the Senate and consultation with Cabinet and the HCJ.
  - They are appointed for five years, according to article 156, and this term is renewable once.

Article 157 of the Constitution of Rwanda specifies that the president, vice president and judges of the Supreme Court, as well as the presidents and vice presidents of the High Court and the Commercial High Court, may be relieved of their duties for misbehaviour, incompetence or gross professional misconduct upon request by a three-fifths majority vote of either the Chamber of Deputies or the Senate, and a decision to remove them from office is taken by a two-thirds majority vote of each chamber of Parliament in a joint sitting.

2.6.4 The High Council of the Judiciary

In terms of article 149 of the Constitution of Rwanda, the HCJ is the 'supreme governing organ of the Judiciary' and as such sets general guidelines governing the organisation of the judiciary. It appoints and removes the court registrars and judges in charge of ordinary and commercial courts.

The HCJ is governed by the organic law, Determining the Organization, Powers and Functioning of the High Council of the Judiciary, Organic Law 7 of 2012. Its budget comes out of the Supreme Court budget. The HCJ has 28 members which comprise:

- Judges elected from the various levels of courts by their peers
- Academics
- A Ministry of Justice representative
- The president of the NCHR
- The ombudsman
- Court registrars also elected by their peers.

Importantly, this wide selection pool contributes to the independence of the body. The chairperson of the HCJ is the president of the Supreme Court.

Elected members of the HCJ hold office for four years and may not serve more than two consecutive terms.

2.7 Enforcing rights under the Constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced.

Article 15 guarantees all persons equal protection of the law, and several other articles make contravention of the provisions in question 'punishable by law'. Article 43 makes the judiciary the guardian of human rights and freedoms, and states that this duty is exercised in accordance with the Rwandan constitution and other laws. However, there is no further detail provided of how those protections are to be enforced, and it is left to the Penal Code (Organic Law 1 of 2012) to determine procedures and penalties. Chapter IX of the Penal Code deals with offences which infringe human rights, Chapter X deals specifically with offences against privacy, and Title III Chapter V deals with press offences. These are dealt with in more detail in the legislation section below.

Article 49 requires every Rwandan to respect the Constitution and other law of the country, and it also gives every Rwandan the right to defy superior orders if they constitute a serious and obvious violation of human rights and freedoms.

Perhaps one of the most effective ways in which rights are protected under the Constitution is through the provisions of the Constitution that govern the procedure for making amendments to it.

Paragraph 2 of article 175 of the Constitution of Rwanda specifies that a three-quarters majority vote of the members of each chamber of Parliament is required before an amendment or revision of the Constitution may be made. Paragraph 4 states that no proposal of amendment to article 175 is permitted.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as 'branches of government' and 'separation of powers', yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that governmental power is exercised by three branches of government, namely: the executive; the legislature; and the judiciary. The Rwandan Constitution recognises them as separate and independent from each other, but complementary. Chapter VII of the Rwandan Constitution deals with the branches of government.

THE EXECUTIVE

Article 97 of the Constitution of Rwanda provides that the executive power of Rwanda vests in the president and in Cabinet. The president promulgates laws – article 106, has the power to call a referendum – article 107, and is commander-in-chief of the Rwanda Defence Force – article 108.

The president is elected whenever the Office of the President becomes vacant, in terms of article 105 of the Constitution. Organic Law 17 of 2003, Governing Presidential and Parliamentary Elections, specifies in article 5 that all Rwandans who are at least 18 years of age as of the date of elections and are registered on the electoral list are eligible to vote. However, article 10 of the law lists those who do not have the right to vote, namely:

- Those who have been deprived of that right by a competent court
- People convicted of, or who have confessed to, genocide
- People convicted of murder or manslaughter
- Refugees and detainees.

The president is elected for a five-year term and may be re-elected once, according to article 101 of the 2015 Constitution. This is in accordance with most international practices. After that he/she may apply for a seat in the Senate and that term is not subject to any time limit.

However, there is a serious constitutional exception made to this in article 172 of the Constitution of Rwanda, which falls under Chapter XI, 'Transitional Provisions'.

Under the 2003 Constitution, the president was elected to a seven-year term renewable once. The 2015 revision to that Constitution specifies in the first paragraph of article 172 that the president in office at the time the new constitution came into force should continue to serve the term of office for which he was elected. The second paragraph of article 172 states that a seven-year presidential term of office is established to immediately follow the conclusion of the existing term of

office. According to the third paragraph of article 172, the provisions of article 101 take effect only after that seven-year term. This could potentially give the presidential incumbent an effective term of 41 years made up of: two seven-year terms (2003–2017); one seven-year term served according to the second paragraph of article 172; and a further two five-year terms served according to article 101.

Article 114 makes a former president exempt from prosecution for treason or serious and deliberate violation of the Constitution if no legal proceedings in respect of that offence were brought against him/her while in office.

Article 115 of the Constitution of Rwanda provides for a Cabinet consisting of the prime minister, ministers, state ministers and other members who may be determined by the president of the Republic, where deemed necessary. The prime minister is selected, appointed and dismissed by the president, according to article 116. Other Cabinet members are appointed by the president after consultation with the prime minister.

The Cabinet implements national policies agreed upon by the president and the Cabinet, according to article 117, and Cabinet is accountable to the president and Parliament. Article 132 specifies that the president cannot dissolve the Chamber of Deputies due to a serious matter of national concern more than once during his or her term of office.

Article 131 gives the Senate authority to set up commissions of inquiry for oversight of Cabinet activities; however, it cannot conduct interpellation – i.e. ask a government official to explain an act or policy – or initiate a motion of no confidence. Article 132 specifies that the Senate cannot be dissolved.

THE LEGISLATURE

Legislative or law-making power in Rwanda vests in Parliament which, in terms of article 64 of the Rwandan Constitution, consists of two chambers:

- The members of the Chamber of Deputies, known as deputies
- The members of the Senate, known as senators.

Parliament debates and passes laws, and exercises control over the executive in accordance with procedures determined by the Constitution.

Article 74 of the Rwandan Constitution gives each chamber of Parliament its own budget and specifies that each enjoys financial and administrative autonomy.

The president of the Senate and the speaker of the Chamber of Deputies must be Rwandan, and may not hold any other nationality – article 66, third paragraph. No parliamentarian may be a member of the Chamber of Deputies and the Senate at the same time – article 67. Cabinet members may not be drawn from either of these chambers.

The Chamber of Deputies, according to article 75, consists of 80 deputies of whom at least 30% must be women. Deputies are elected for a five-year term and may be re-elected to additional terms. Article 79 states that, for election purposes, the president dissolves the Chamber of Deputies at least 30 days, and not more than 60 days, before the end of the parliamentary term. Elections must be held prior to the expiry of their terms of office.

According to article 83 of the Law Governing Presidential and Parliamentary Elections, Organic Law 17 of 2003, appointments to the Chamber of Deputies take place as follows:

- 53 members are nominated by political organisations or stand as independent candidates and are elected by universal suffrage in a secret ballot using a closed list and based on proportional representation
- 24 women are elected according to national administrative entitites. A presidential order determines the number of persons to be elected and the electoral constituency
- Two member are elected by the National Youth Council
- One member is elected by the federation of the associations for the disabled.

The Senate is composed of 26 senators appointed as follows – article 80:

- 12 elected by specific electoral colleges in accordance with national administrative entities
- Eight appointed by the president of the Republic
- Four designated by the National Consultative Forum of Political Organisations, established in terms of article 59
- One academic or researcher holding at least the rank of associate professor from a public university or institution of higher learning elected by the academic and research staff of the same institution

- One academic or researcher holding at least the rank of associate professor from a private university or institution of higher learning elected by the academic and research staff of the same institution.

In addition, former heads of state who successfully completed their term of office or resigned voluntarily may become members of the Senate upon request to the president of the Senate and approval by the Bureau of the Senate, which is composed of the president of the Senate and two vice presidents. Senators who are former heads of state are not subject to term limits.

The Supreme Court approves the list of candidates to the position of senators, according to the Organic Law Governing Elections (Organic Law 17 of 2003). The eight senators appointed by the president are not subject to approval by the Supreme Court, and their appointment follows the election and designation of senators from other organs.

The modalities by which the Supreme Court approves the list of candidates to the position of senators, their requirements and their election are determined by the Organic Law Governing Elections – article 80.5. The organs responsible for the nomination of senators are required by article 80.5 to take into account national unity and the principle of gender equality as at least 30% of elected and appointed senators must be women.

According to article 81 of the Rwandan Constitution, elected and appointed senators serve a five-year term, renewable once. A senator may be removed from office by a court decision.

Each chamber, through the organic law determining its functioning, may provide for gross misconduct which may lead to removal from office of a member, but in that case the decision can be taken only with a three-fifths majority vote of the members of the chamber concerned (Organic Law 6 of 2006: Establishing Internal Rules of Procedure of the Chamber of Deputies in the Parliament, and Organic Law 8 of 2012: Establishing Internal Rules of the Senate). These organic laws and article 70 of the Rwandan Constitution specify that the sittings of each chamber of Parliament are public, but each chamber may decide to sit in camera under certain circumstances.

THE JUDICIARY

Judicial power, as discussed previously in this chapter, vests in the courts. Essentially, the role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law.

2.8.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state in order to guard against the centralisation of power, which may lead to abuses of power. This is known as the separation of powers doctrine. The aim, as the Constitution of Rwanda has done, is to separate the functions of the three branches of government – the executive, the legislature and the judiciary – so that no single branch is able to operate alone, assume complete state control and amass centralised power. While each branch performs a number of different functions, each also plays a 'watchdog' role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the constitution.

2.9 Weaknesses in the Constitution that ought to be strengthened to protect the media

There are a number of respects in which the Constitution of Rwanda is weak. If these provisions were strengthened, there would be specific benefits for Rwanda's media.

2.9.1 Remove internal constitutional qualifiers to certain rights

The Constitution of Rwanda, as set out above, makes provision for certain rights in Chapter IV to be subject to 'internal' limitations – that is, the provision dealing with a right contains its own limitations clause, setting out ways in which a government can legitimately limit the ambit of the right. As has been more fully discussed above, the right to freedom of expression, for instance, contains such an internal limitation.

Article 41 of the Constitution contains a generally applicable limitation on rights and freedoms. This applies to all of the provisions of Chapter IV of the Constitution of Rwanda – that is, to the fundamental rights and freedoms. It allows government to pass laws limiting rights generally, provided this is done in accordance with article 41. It makes the ambit of the rights and the grounds for limitation much clearer for the public because there are no specific limitations provisions that apply to each right separately.

In our view the internal limitations provisions are not necessary given the existence of the general limitations clause.

2.9.2 Independent broadcasting regulator and public broadcaster

There is no doubt that the broadcasting sector would be greatly strengthened if the Rwandan Constitution provided for an independent broadcasting regulator and

public broadcaster. Given the importance of both these institutions for ensuring access to news and information by the public, it is suggested that such amendments to the Constitution would be in the public interest, and would serve to strengthen both the media and democracy more generally in Rwanda.

2.9.3 Strengthen the independence of institutions

While it is laudable that the Rwandan Constitution makes provision for institutions such as the NCHR, the fact that the structural independence and appointments procedures of these institutions are not provided for sufficiently in the Constitution is a weakness and undermines their independence.

3 THE MEDIA AND LEGISLATION

In this section you will learn:

- ❑ What legislation is and how it comes into being
- ❑ Legislation governing journalists
- ❑ Legislation governing the print media
- ❑ Legislation governing the online media
- ❑ Legislation governing the broadcasting media generally
- ❑ Legislation governing the state broadcasting sector
- ❑ Legislation governing broadcasting signal distribution
- ❑ Legislation that undermines a journalist's duty to protect sources
- ❑ Legislation that prohibits the publication of certain kinds of information
- ❑ Legislation relating to the interception of communication
- ❑ Legislation that specifically assists the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by Parliament, which is the legislative authority. According to the Constitution of Rwanda, legislative authority in Rwanda vests in a Parliament, which is made up of two chambers, namely the Chamber of Deputies and the Senate – article 91, and in special circumstances the president may promulgate decree laws that have the same force as ordinary laws. However, they cease to have legal force if not adopted by Parliament at its next session – article 92.

Article 73 specifies that an organic law determines the functioning of each Chamber (Organic Law 8 of 2012: Establishing Internal Rules of the Senate, and Organic Law 6 of 2006: Establishing Internal Rules of Procedure of the Chamber of Deputies in the Parliament).

There are rules in the Constitution of Rwanda which set out the different law-making processes that apply to different types of legislation. It is important for journalists and others in the media to be aware that the Constitution of Rwanda requires different types of legislation to be passed in accordance with particular procedures. The procedures are complicated and need not be explained in detail here. In brief, the different kinds of laws that each have particular procedures include:

- Ordinary laws subject to article 85 (which are laws on defence and national security, and laws approving international treaties or agreements) – article 91
- Ordinary laws not subject to article 85 – article 91
- Ordinary laws dealing with the functioning of the Senate – articles 88 and 91
- Organic laws – articles 85 and 91
- Organic laws dealing with the functioning of the Senate – articles 85, 88 and 91
- Laws impacting government revenue or state expenditure – articles 89 and 91
- Laws amending the Constitution – articles 85 and 175
- Decree laws – article 92
- Unwritten customary law – article 176

3.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by parliament during the law-making process. If a bill is passed by Parliament in accordance with the various applicable procedures required for different types of bills, as set out above, it becomes an act once it is promulgated by the president, in terms of article 106 of the Constitution of Rwanda. The president has to promulgate a law within 30 days of its receipt or he may request that it be returned to Parliament for a second reading. If it is again passed by Parliament, the president has 30 days in which to promulgate it. According to the Constitution of Rwanda.

An act must be published in the Official Gazette of the Republic of Rwanda and becomes law only when it is has been so published – article 176.

It is important to note that some laws governing certain media-related aspects came into force prior to the coming into effect of the 2015 Constitution of Rwanda. As they were passed by the governing authority of the time and have yet to be repealed, they are still good law.

3.2 Legislation governing journalists

Article 2 paragraph 20 of the law Regulating Media, Law 2 of 2013 (Regulating Media Law), envisages a media self-regulatory body to be set up by journalists themselves, the responsibility of which is to ensure compliance with the principles governing media and to defend the general interest.

The Rwanda Media Commission (RMC) was established in accordance with this law, and is the body particularly responsible for enforcing the journalistic code of ethics, acting as the primary and highest adjudicator of complaints against the media, representing the broader interests of journalists, and defending media freedom and media consumers in general.

Article 3 of the Regulating Media Law is extremely ambiguous: it requires Rwandan journalists and representatives of foreign media organs to be accredited by the media self-regulatory body (which is presumably the RMC, a statutory, yet ostensibly self-regulatory, body that is dealt with in detail below). However, article 3 also refers to journalists working for a foreign media organ to be given accreditation by a competent public organ, and it is not clear if this refers to the RMC or another body.

Article 5 deals with obligations of a journalist, and it states that the main obligations of journalists are to inform, educate the population, promote leisure activities, defend the freedom of information, and analyse and comment on information.
The state is required by article 8 to recognise and respect the freedom of the media and its freedom to receive information in accordance with the law. Every journalist has the right to freedom of opinion and expression, including the right to seek, receive, give and broadcast information and ideas through any media. This is an important article because it supports the media's right to provide news to the public.

Any resourceful person the journalist believes competent may be interviewed – article 14, and the journalist is not liable for any comments of that person reported verbatim. Article 14 also gives a journalist the right to refuse pressure or instructions from anyone who is not a member of the editorial team of the publication employing him or her.

A journalist whose rights have not been respected may, according to article 15, lodge a petition with the media self-regulatory board, the RMC. Where the journalist does not receive satisfaction from the RMC, he or she may refer the matter to a competent court.

Article 12 gives a journalist free access to all sources of information, the right to freely

inquire on all events of public life, and the right to publish them within the provisions of the law.

3.3 Legislation governing the print media

The Regulating Media Law deals with the media in general, but contains several key articles specific to print media. The requirement for registration of newspapers set out in article 16 of the Regulating Media Law is out of step with international best practice. These kinds of restrictions effectively impinge upon the public's right to know by setting barriers to print media operations.

The requirement of right of reply or correction is provided for. Article 22 of the Regulating Media Law gives the NCHR and other public competent organs, registered associations and NGOs in charge of human rights, the authority to exercise the right of reply, correction or rectification at their own initiative or on request when an accusation in a media organ warrants it in terms of their responsibilities.

Article 16 requires the owner of a new media organ to apply in writing to the competent public organ. Note that the term 'competent public organ' is not defined. However, the 2013 formal memorandum of understanding (MOU) between the self-regulatory RMC and the state body, the Rwanda Utilities Regulatory Authority (RURA), entered into in accordance with article 4 of the Regulating Media Law, makes it clear that RURA issues permits for starting new print media organs – article 5 of the MOU; however, the RMC issues the certificate of registration for new media organs in terms of article 4 of the MOU. Consequently, both bodies are involved in the formal registration process.

Article 5 of the MOU empowers RURA to revoke print media licences should the RMC request it to do so, in terms of article 4 of the MOU.

Any application to RURA to start a print media organ must have, accompanying the RURA forms: a certificate of registration from the RMC; a document certifying that the company is registered as a print media organ; and a copy of national identity or passport of the director and chief editor of the applicant.[13]

Chapter V, 'Press Offences' in the Organic Law Instituting the Penal Code, Organic Law 1 of 2012 (Penal Code), starts at article 699 and includes print, audio, audio-visual, information communication technology and the internet as falling under its authority.

Article 700 details the penalties and other consequences of not complying with the requirements for starting a media organ. These include a fine and suspension of the

newspaper or other press enterprise until official authorisation is granted. Repeated offences will result in permanent withdrawal of the authorisation to establish a newspaper or other press enterprise.

The right of correction, reply and rectification in print media is specifically addressed in article 21 of the Regulating Media Law. Every individual, association, public entity and organisation with legal personality has this right. If the applicant is unsatisfied with the result of his/her request, a case may be filed with the RMC and, if still unsatisfied, with a competent court.

The definition of 'print media publications' in the Regulating Media Law is extremely broad and includes 'documents made public, multiplied by whatever method and regularly published in a specific period of time'. Further, the definition of 'print, audio or audio-visual media communication' is a 'message transmitted to the public through signs, gestures, written works, images, sounds or messages which do not bear any characteristic of a private correspondence'. The definition of 'media organs' includes 'print media publications and news agencies that circulate, at continued or regular intervals, general or specialised pieces of information meant for being disseminated'. These definitions taken together are extremely broad, with the consequence that the registration provisions apply to a significant range of print media activities.

Another body that is important to the print media is the Media High Council (MHC) established in terms of the law, Determining the Responsibilities, Organisation and Functioning of the Media High Council (MHC), Law 3 of 2013 (MHC Law).

The MHC is, according to article 2 of the MHC Law, an independent institution responsible for media capacity building. Previously, the MHC was also involved in regulation of the media, but the enactment of this law removed that responsibility from this body.

Article 4 specifies that a prime minister's order determines the supervising authority of the MHC, so its independence is clearly compromised. However, article 6 gives this body some important responsibilities, namely to:

- Advocate for media capacity building, and to build partnerships with other institutions to facilitate this
- Conduct regular research enabling media capacity building
- Participate in initiating and implementing policies and strategies to develop the media sector

- Liaise, collaborate and cooperate with other national, regional and international institutions with similar or related responsibilities

- Assist in setting up an enabling environment that facilitates investments in the media sector.

3.4 Legislation governing the online media

Article 20 of the Regulating Media Law provides that the provisions of that law relating to print media and audio or audio-visual media (that is, broadcasting), also apply to information published via the internet. This seems extremely draconian given the registration and licensing provisions that apply to print or broadcast media, and it is not clear whether or not this is enforced in practice. Indeed, article 19 gives every person the right to receive, disseminate or send information through the internet and create a website through which information is disseminated to the public. It specifically states that doing so does not require the person to be a professional journalist.

3.5 Legislation governing the broadcasting media generally

3.5.1 Legislation that regulates broadcasting generally

Broadcasting in Rwanda is regulated by the following legislation:

- Establishing Rwanda Utilities Regulatory Authority (RURA) and Determining its Mission, Powers, Organisation and Functioning, Law 9 of 2013 (RURA Law)

- Regulating Media, Law 2 of 2013 (Regulating Media Law)

- Determining the Responsibilities, Organisation and Functioning of the Media High Council (MHC), Law 3 of 2013 (MHC Law)

- Organic Law Instituting the Penal Code, Organic Law 1 of 2012 (Penal Code).

3.5.2 Establishment of RURA, the RMC and the MHC

Rwanda has more than one regulatory authority for broadcasting.

RURA is established in terms of article 1 of the RURA Law.

The RMC is established under the terms of article 2.20 of the Regulating Media Law,

which required the establishment of an organ set up by the journalists themselves. The RMC was established as the self-regulatory body for the media in Rwanda.

Generally, broadcasting in Rwanda is regulated by RURA. RURA works in cooperation with the RMC to regulate audio, audio-visual and internet media matters related to content, according to the MOU signed between the two bodies in 2013.

According to article 2 of the MHC Law, the MHC is an independent institution responsible for media capacity building. Previously the MHC was also involved in regulation of the media, but the enactment of this law removed that responsibility from the MHC.

3.5.3 Main functions of RURA, the RMC and the MHC

RURA

RURA was established, in terms of article 2.1 of the RURA Law, to regulate public utilities including telecommunications, information technology, broadcasting and converging electronic technologies, including the internet and any other audio-visual information and communications technology (ICT). It works in cooperation with the RMC on issues relating to media content, according to the MOU signed by the two organs in September 2013.

Article 4 of the RURA Law mandates RURA to set up necessary guidelines in order to:

- Implement laws and regulations
- Ensure compliance with those regulations
- Ensure service delivery by the licensed entities
- Issue permits, authorisations and licences for the regulated sectors
- Ensure fair competition in all regulated sectors. (RURA is also responsible for postal, energy, water, sanitation, transport and other public utilities.)

Article 5 of the RURA Law provides that specific missions of RURA with regard to the media shall be governed by prime minister's order.

RURA is empowered to carry out investigations, impose administrative sanctions, settle and facilitate the settlement of disputes, and issue directives to regulated service providers, according to article 6. It may also regulate tariffs and charges – article 7, require any regulated public utility to provide information – article 8, and may be empowered by an order of the justice minister with judicial police powers – article 9.

THE RMC

The RMC is involved in registering a new media organ. Article 16 of the Regulating Media Law requires the owner of a new media organ to apply in writing to the competent public organ. Note that the term 'competent public organ' is not defined. However, the 2013 formal MOU between the self-regulatory RMC and the state body, RURA, entered into in accordance with article 4 of the Regulating Media Law, makes it clear that the RMC issues the certificate of registration for new media organs in terms of article 4 of the MOU.

Further, article 4 of the Regulating Media Law specifies that both the RMC and RURA are involved in regulating audio, audio-visual media and the internet. In this regard, the RMC appears to focus on the daily functioning of the media *vis-à-vis* content issues, while RURA is responsible for overall regulatory issues.

THE MHC

Article 6 of the MHC Law gives the MHC some important responsibilities, including to:

- Advocate for media capacity building, and to build partnerships with other institutions to facilitate this
- Conduct regular research enabling media capacity building
- Participate in initiating and implementing policies and strategies to develop the media sector
- Liaise, collaborate and cooperate with other national, regional and international institutions with similar or related responsibilities
- Assist in setting up an enabling environment that facilitates investments in the media sector.

3.5.4 Appointment of members

RURA

RURA comprises the Regulatory Board and the General Directorate – article 13 of the RURA Law. The Regulatory Board consists of seven members, including the director general, and is RURA's supreme management and decision-making organ.

The RURA Law does not specify how the candidates are selected, but the chairperson and members of the Regulatory Board are appointed by presidential order for a term of four years, renewable only once – article 16.

The director general is also appointed by presidential order, but has a term of five years, renewable only once – article 32. The director general is head of the General Directorate, has executive powers, and coordinates and directs RURA's daily activities – article 33. He or she assigns employees in accordance with the laws upon their appointment by the Regulatory Board – article 33. Regulations governing the staff, organisational structure and responsibilities of departments are determined by the Regulatory Board – article 35. RURA is supervised by the Prime Minister's Office in terms of article 11 of the RURA Law.

THE RMC

There are no statutory provisions regarding the RMC as it is a self-regulatory body. The RMC Board is currently composed of seven commissioners appointed by a general assembly of journalists and media practitioners. The RMC Secretariat currently has nine members and is headed by an executive secretary, who is responsible for managing the day to day affairs of the RMC.[14]

THE MHC

The MHC has a board of directors as its supreme governing body. The Board of Directors consists of seven members all appointed by presidential order. Members serve a three-year term of office renewable only once – article 9. According to article 10, the Board is responsible for, among other things:

- Providing strategic vision, directing decisions and approving action plans of the MHC
- Approval of internal rules and regulations of the MHC
- Approval of the MHC annual budget
- Evaluating the performance of the MHC
- Monitoring the performance of the MHC Executive Secretariat.

A director can be removed from office for, among other things, jeopardising the interests of the MHC, being no longer able to perform his/her duties due to physical

or mental disability, being found guilty of crimes relating to divisionism and genocide, or being sentenced to a term of imprisonment of six months or more – article 12.

Article 16 sets up an Executive Secretariat headed by an executive secretary. Article 17 makes the executive secretary responsible for various MHC issues including:

- Implementing the decisions taken by the Board of Directors
- Monitoring daily activities of the MHC
- Drafting plans of action, proposals and budgets
- Performing any other task relevant to the MHC assigned to him or her by the Board of Directors.

The executive secretary is appointed and dismissed by an order of the prime minister – article 18. Article 4 specifies that a prime minister's order determines the supervising authority of the MHC, so its independence is compromised.

3.5.5 Funding for RURA, the RMC and the MHC

RURA

According to article 36 of the RURA Law, the property and funding of RURA comes from:

- Fees levied on application and grant of licences, permits, contracts, concessions and allocations to each public utility operator
- Grants, donations and legacies
- Annual regulatory fees based on a percentage of the turnover from each regulated service (not more than 1% of regulated service's turnover, and must be uniform across one sector – article 37)
- All administrative fines imposed by the Regulatory Board
- Loans
- Fees for services rendered by RURA

- Any other payment or property due to RURA in respect of any activity related to the regulated services.

THE RMC

We were unable to ascertain the sources of funding for the RMC, but we assume that these are sourced from media houses, possibly in the form of membership fees, given that it is a self-regulatory body.

THE MHC

According to article 20 of the MHC Law, the property and funding of the MHC comes from:

- The state budget allocation
- Grants, donations and bequests
- Loans
- Funds from its services
- Former property of the MHC.

3.5.6 Making broadcasting regulations

Unfortunately, the Regulating Media Law, the RURA Law, and the MHC Law do not specify how media-related regulations are to be made.

3.5.7 Licensing regime for broadcasters in Rwanda

BROADCASTING LICENCE REQUIREMENT

Article 4.9 of the RURA Law empowers RURA to issue permits, authorisations and licences required for regulated sectors. In terms of article 700 of the Penal Code, any person or organisation that illegally starts an audio or audio-visual press enterprise (which clearly encompasses broadcasting) shall be liable to a fine. The effect of article 700 of the Penal Code is to make it an offence to broadcast without a licence.

CATEGORIES OF BROADCASTING LICENCES

Rwanda completed its migration to digital terrestrial television (DTT) by June 2015. Consequently, a reference to television means a reference to DTT unless satellite television is specified.

RURA's Broadcasting Service Licence application form identifies the following types of services for which licence applications can be made:[16]

- Free-to-air television
- Subscription satellite television
- FM radio
- IPTV
- Any other service, for which it requires a description

BROADCASTING LICENSING PROCESS

RURA has a number of different application forms and/or procedural guidelines for different kinds of broadcasting services. Section III of the Broadcasting Services application form[15] requires information relating to:

- Source of content (locally produced/imported [in percentages]). If content is imported, the international source has to be identified, e.g. the BBC

- Types of programmes (commercial advertising, cultural, sports, political, religious, entertainment, etc.)

- Time and hours of operation per day

- Expected date of commencement of operations.

Any foreign licences held by the applicant have to be specified, and a very precise location of the studio is required, but no other guidelines are provided. In particular, the form does not give any further information on requirements for each category.

RURA has also issued an advisory document entitled 'Procedures to Award Frequencies in FM Band (87.5-108MHz)', which sets out requirements and criteria to be fulfilled for an FM frequency to be awarded to an applicant. In terms of this document, applicants had to:

- Be registered in the name of a natural person or a legal entity owned by a person or persons normally resident in Rwanda

- Prove that the manager/s of the radio station have more than five years' experience in broadcasting

- Provide financial projections of the business plan

- Provide a weekly programme of the intended radio station, with more than 60% local content (Monday to Sunday and 06:00 to 22:00)

- Not hold, directly or through associations, any controlling interest in other licences for FM broadcasting in Rwanda

- Be paying regularly all required fees and following the technical terms of the licence (for existing broadcasters). New applicants had to prove they had the financial means to pay regulatory and spectrum fees, and be able to provide technical broadcasting means to operate within the assigned frequency bandwidth

- Be ready to commence providing FM radio broadcasting services within one year of the date of being awarded the licence.

As a general rule, the Regulating Media Law gives any person or legal entity the right to establish a media company – article 11, but article 16 requires someone wishing to set up a new media organ to apply in writing to RURA. RURA then puts in place instructions to determine the requirements for setting up the media organ.

The RMC registers and issues a certificate of registration for a new media organ, and works with RURA on matters related to content. However, RURA regulates the audio, audio-visual and internet media in terms of licensing and technology used.

3.5.8 Responsibilities of broadcasters under the RURA Law

All broadcasters are required to adhere to the guidelines and regulations governing their activities, and article 4 of the RURA Law mandates RURA to:

- Set up necessary guidelines in order to implement laws and regulations

- Ensure compliance with those regulations

- Ensure service delivery by the licensed entities

- Issue permits, authorisations and licences for the regulated sectors

- Ensure fair competition in all regulated sectors. (RURA is also responsible for postal, energy, water, sanitation, transport and other public utilities.)

RURA is empowered to carry out investigations, impose administrative sanctions, settle and facilitate the settlement of disputes, and issue directives to regulated service

providers, according to article 6. It may also regulate tariffs and charges – article 7, require any regulated public utility to provide information – article 8, and may be empowered by an order of the minister with judicial police powers – article 9.

The requirement of right of reply or correction is provided for. The right of correction, reply and rectification is specifically addressed in article 21 of the Regulating Media Law. Every individual, association, public entity and organisation with legal personality has this right. If the applicant is unsatisfied with the result of his/her request, a case may be filed with the RMC and, if still unsatisfied, with a competent court. Further, article 22 of the Regulating Media Law gives the NCHR and other public competent organs, registered associations and NGOs in charge of human rights, the right to exercise the right of reply, correction or rectification on behalf of someone else, either on their own initiative or on request when an accusation in a media organ warrants it in terms of their responsibilities.

The Penal Code specifies large fines as the penalty for any journalist who refuses to publish a correction, a reply or rectification either in a newspaper – article 701, or on audio or audio-visual media – article 702.

Article 23 of the Regulating Media Law specifies that audio or audio-visual media organs are required to keep their recorded programmes for at least three months after broadcast. If any complaint or petition relating to those programmes arises before the expiry of those three months, the obligation to keep those recordings ceases only once the complaint or petition is concluded.

3.5.9 Are RURA, the RMC and the MHC independent regulators?

RURA

RURA cannot be said to be independent in terms of regulating the media. Despite its founding act (RURA Law, article 21) requiring that its Regulatory Board shall always act in 'an independent, transparent and objective manner', article 5 makes its specific mission with regard to the media subject to a prime minister's order. Further, article 11 specifies that RURA is supervised by the Prime Minister's Office.

THE RMC

The RMC is established according to the Regulating Media Law article 2.20 as 'an organ set up by journalists themselves', and as such a level of independence is presumed. Unfortunately, the RMC's 'Blueprint on Self-Regulation in Rwanda' could not be sourced, so further analysis is not possible.

THE MHC

The MHC cannot be said to be independent in terms of regulating the media. Despite its founding act (MHC Law, article 2) stating that the MHC is an independent institution, the organ's supervising authority is determined by a prime minister's order – article 4, and all members of the MHC's Board of Directors are appointed by presidential order – article 9.

The executive secretary is appointed and dismissed by an order of the prime minister – article 18, and in terms of article 16, the personnel of the executive secretariat are governed by the general statutes for Rwanda Public Service Law, 2 of 2002 – which clearly identifies them as government employees.

3.5.10 Amending the legislation to strengthen the broadcast media generally

There are a number of weaknesses with the legislative framework for the regulation of broadcasting generally in Rwanda:

- Splitting the departments of RURA responsible for broadcasting and internet issues away from the more basic utilities would facilitate a better focus for the regulatory body. Although RURA board members are required to have a breadth of knowledge in fields related to public utilities, the market forces and technical issues relating to broadcast and internet media require specialised knowledge that generalists cannot be expected to have.

- There ought to be more public participation in the broadcasting service licensing process.

- The RURA Board is not sufficiently independent. The law does not currently state how candidates for the Board are selected, but their appointment by presidential order speaks against independence. Additionally, having RURA's mission relating to the media specifically governed by prime minister's order further compromises its independence. In any event, it is clear that there is no public nominations process and that a multi-party body such as Parliament is not involved in the appointment of RURA board members.

- The MOU between RURA and the RMC should specify in detail the process of licensing new media, including highly specific and detailed requirements as to content, staffing, transmitter equipment and sustainability. Procedures used to evaluate the applications should be clearer, and objective criteria should be used in frequency allocation. The MOU should also clarify the regulations regarding

cross-ownership of media (in relation to print and broadcast media). Further, the existing ambiguities as to the precise roles of RURA and the RMC ought to be clarified.

3.6 Legislation governing the state broadcasting sector

The state broadcaster in Rwanda is the Rwanda Broadcasting Agency (RBA), which was established as a new institution in the place of, and taking over most of the assets of, ORINFOR (*Office Rwandais d'Information*), which had functioned as the state broadcaster since its creation in 1963. The RBA's governing law is, Establishing Rwanda Broadcasting Agency and Determining its Mission, Organisation and Functioning, Law 42 of 2013 (RBA Law).

3.6.1 Establishment of the RBA

The RBA was established in terms of article 1 of the RBA Law, as a body with separate legal personality and administrative and financial autonomy.

3.6.2 The RBA's mandate

Article 2 of the RBA Law states that the objective of the RBA is to provide a wide range of information and broadcasts, as well as entertainment programmes, via radio broadcasting, television and modern information technology.

Objectives of the RBA specified in article 4 include to:

- Provide national and international news
- Provide educational, recreational and entertainment programmes
- Promote Rwandan culture and act as a catalyst for national development
- Establish relations and collaborate with other regional and international partners
- Deliver to residents of Rwanda the benefit of new ICTs.

It is important to note the provisions of article 4 paragraph 9, which require the RBA to ensure equitable distribution of infrastructure for audio and video broadcasting by interested licensed operators. This seems to imply that the RBA controls the country's signal distribution infrastructure.

3.6.3 Appointment of RBA board members

The RBA operates through a Board of Directors and a Directorate General in terms of article 5 of the RBA Law.

The Board of Directors of the RBA comprises seven members, at least 30% of whom must be women, who are appointed by a 'Presidential Order upon approval by the Cabinet after transparent and public selection' – article 8 paragraph 2 of the RBA Law, though how this takes place is not clarified. They are selected from civil society and the private sector. Directors are appointed for a three-year term, renewable only once.

Article 6 identifies the responsibilities of the Board of Directors, which includes:

- Establishing the strategic vision and action plan of the RBA
- Ensuring that the RBA operates in the general interest of the population
- Approving the RBA's annual activity plan and various aspects of its financial management
- Approving the internal rules and regulations of the RBA
- Monitoring the performance of the Directorate General of the RBA.

The General Directorate of the RBA is involved in the daily activities of the RBA – article 15, and its responsibilities include the monitoring and coordination of Editorial Board activities and artistic output. The director general and deputy director general of the RBA are appointed and dismissed by presidential order. The president of the Republic appoints them after consultation with the Board of Directors.

3.6.4 Funding for the RBA

The RBA is funded, according to article 17 of the RBA Law, by income from services rendered, revenue from its property, government subsidies, partners' subsidies, donations and bequests, as well as movable and immovable property.

3.6.5 The RBA: Public or state broadcaster?

Without the clearly mandated involvement of a multi-party body such as Parliament, presidential appointments of the RBA Board infer executive involvement to a very great extent. However, there are some aspects of the regulatory framework for the RBA which suggest that it is at least somewhat publicly inclined. Article 9 provides that the members of the Board shall 'demonstrate independence' and 'shall always act in the public interest'.

The director general and the deputy director general, who are responsible for the daily activities of the RBA, are both appointed and dismissed by presidential order. They are nominated by the president after consultation with the Board of Directors of the RBA. The words 'after consultation' in this context indicate that the Board

does not have a veto over whom is appointed as the director general and the deputy director general. Again, these requirements would indicate that the RBA is strongly influenced by the executive at the highest levels.

3.6.6 Weaknesses in the RBA Act which should be amended

Important weaknesses which ought to be addressed through legislative amendments are the following:

- Appointments of RBA board members ought to be made by the president on the recommendation of the Chamber of Deputies following a public nominations, interview and short-listing process.

- The RBA Board ought to be able to appoint and dismiss the director-general of the RBA without any involvement from the president.

- The RBA Law ought to explicitly state whether or not the RBA acts as a public or a state broadcaster. Further, it ought to be amended to transform the RBA from a state into a public broadcaster in line with international best practice.

3.7 Legislation governing broadcasting signal distribution

Unfortunately, the laws of Rwanda are unclear with regard to how signal distribution is regulated in the country. Signal distribution is not specifically mentioned in any of the governing statutes, although there are some indications that signal distribution is carried out by the broadcasters themselves – see, for example, article 4 paragraph 9 of the RBA Law, as well as article 7 of the Satellite Television Regulations.[17]

On the other hand, RURA's policy document entitled 'Managing the change from analogue to terrestrial digital broadcast in Rwanda'[18] makes it clear that RURA envisages that the signal distributor, the MUX Operator, should not be a broadcaster, in order to ensure sufficient neutrality to focus on the success of providing the DTT platform.[19] This appears to indicate a growing understanding of the need to separate the roles of signal distribution and broadcasting.

In the law, Governing Telecommunications, Law 44 of 2001 (Telecommunications Law), the term 'signal distribution' does not appear; however, the definition of 'telecommunications network' in article 1 is broad enough to include a signal distribution network.

Further, the Telecommunications Law empowers RURA to make regulations on

various aspects of telecommunications licensing. Acting in terms of the Telecommunications Law, RURA has passed 'Regulations governing licensing for Digital Terrestrial Television', which deal extensively with signal distribution. These regulations are dealt with elsewhere in this chapter.

3.8 Legislation that undermines a journalist's duty to protect sources

A journalist's sources are the life-blood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and will be respected and protected by a journalist. This is particularly true of so-called whistleblowers – inside sources that are able to provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often provide special protection for journalists' sources. It is recognised that without such protection, information that the public needs to know would not be given to journalists.

❖ **Regulating Media, Law 2 of 2013**

Article 13 guarantees journalist confidentiality in respect of his or her sources, but includes a paragraph giving the court the right to order a journalist to reveal his or her sources of information whenever it is considered necessary for purposes of carrying out investigations or criminal proceedings.

Article 10 authorises the seizure of documents and audio-visual recordings, provided the seizure is exercised only in terms of an urgent court decision and in accordance with legal provisions governing seizure.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Section 9 of the Penal Code is headed 'Support of citizens to better administration of justice and national security'. Section 9 subsection one deals with 'Obstructing the course of justice' and makes a period of imprisonment, a fine or both, the punishment for a number of offences, including:

- Failure to appear when regularly summoned by a prosecutor, a judicial police officer or other authority – article 569
- Voluntary refusal to give evidence to judicial authorities in respect of the guilt or innocence of another – article 576
- Refusal to answer questions from judicial authorities – article 577

- Refusal to answer questions from security organs – article 578.

Section 9, subsection three deals with 'Common provisions relating to disclosure of information'. It makes imprisonment, a fine or both, the penalty for:

- Delaying disclosure or provision of information without good cause by any person obliged to do so – article 590

- Refusing to provide information without justification or withholding information – article 591.

Clearly, these provisions might well conflict with a journalist's ethical obligation to protect his or her sources. However, it is important to note that whether or not requiring a journalist to reveal a source is in fact an unconstitutional violation of the right to freedom of expression will depend on the particular circumstances of each case, particularly on whether the information is available from any other source. Consequently, it is extremely difficult to state that these provisions are, by themselves, a violation of the right to freedom of expression under the Constitution.

3.9 Legislation that prohibits the publication of certain kinds of information

The first paragraph of article 9 of the Regulating Media Law specifically provides that censorship of information is prohibited. Sadly, the same law and a number of other statutes contain provisions which clearly undermine the public's right to receive information and the media's right to publish information.

These statutes are targeted and prohibit the publication of certain kinds of information, including:

- Prohibition of publications relating to legal proceedings

- Prohibition of publications relating to proceedings held in camera

- Prohibition of publications relating to state security–related information

- Prohibition of publications that are alarming

- Prohibition of publications that constitute incitement

- Prohibition of publications that insult national symbols

- Prohibition of publications that insult Parliament and administrative authorities
- Prohibition of publications affecting relations with foreign states and external tranquillity
- Prohibition of publications that are contrary to public morality
- Prohibition of publications that constitute gender-based violence
- Prohibition of publications that undermine public order
- Prohibition of publications that are contrary to the interests of children
- Prohibition of publications that invade privacy
- Prohibition of publications that are defamatory
- Prohibition of publications that undermine religion
- Prohibition of publications that do not acknowledge that they are not original
- Prohibition of publications that promote discrimination
- Prohibition of publications that promote sectarianism
- Prohibition of publications that negate or justify the Tutsi genocide
- Prohibition of publications relating to voting.

3.9.1 Prohibition of publications relating to legal proceedings

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Section 9, subsection 2 of the Penal Code is entitled 'Discrediting the judiciary and committing violence against those in judicial organs'. Insulting a judicial officer is an offence in terms of article 586 of the Penal Code, and the punishment is a period of imprisonment, a fine or both.

Further, publicly discrediting a judicial decision using words, writings, images or any acts – article 588 – is an offence. The punishment is a period of imprisonment, a fine or both.

3.9.2 Prohibition of publications relating to proceedings held in camera

❖ **Regulating Media, Law 2 of 2013**
Article 6.2 of the Regulating Media Law prohibits journalists from publishing judicial proceedings, parliamentary sessions and Cabinet deliberations held in camera.

3.9.3 Prohibition of publications relating to state security–related information

❖ **Regulating Media, Law 2 of 2013**
Article 6.1 of the Regulating Media Law prohibits journalists from publishing documents from legislative, executive or judicial powers, where those powers have deemed confidentiality necessary in respect of national security and integrity.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 447 of the Penal Code prohibits the publication of state secrets (defined in article 448 as including information which must not be revealed to a foreign government in the interests of national defence). Intentional publication of state secrets constitutes the offence of treason, in terms of article 447 read with article 449. The offence is punishable by a long period of imprisonment, or a lesser term of imprisonment if the publication was negligent as opposed to intentional.

3.9.4 Prohibition of publications that are alarming

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 463 of the Penal Code makes it an offence to, by writings, images or emblems, posters sold, on sale or displayed to the public, knowingly spread rumours to create alarm in the population. The offence is punishable by a term of imprisonment.

3.9.5 Prohibition of publications that constitute incitement

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 463 of the Penal Code makes it an offence to, by writings, images or emblems, posters sold, on sale or displayed to the public, knowingly spread rumours to incite the citizens against the government. The offence is punishable by a term of imprisonment.

3.9.6 Prohibition of publications that insult national symbols

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 532 of the Penal Code provides, among other things, that '[a]ny person who, publicly and intentionally, contempts, despises, removes, destroys or desecrates the national flag or official emblems of sovereignty' of Rwanda is guilty of an offence and

is liable to a period of imprisonment, a fine or both. This is also the case for disrespecting or desecrating the national anthem – article 535, including intentionally changing the text or notes of the national anthem – article 536. Contempt of official insignia is also liable to these penalties – article 538.

3.9.7 Prohibition of publications that insult Parliament and administrative authorities

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Article 539 of the Penal Code makes imprisonment, a fine or both, the penalty for any person who brings into contempt, verbally, in writing or by caricaturing an MP, a member of the Cabinet, security officers or any other person in charge of a public service 'in the exercise or at the occasion of his/her mandate'.

If the act takes place during a session of Parliament or if it is directed to any of the top ranking authorities, the penalties are doubled.

3.9.8 Prohibition of publications affecting relations with foreign states and external tranquillity

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Bringing the Republic of Rwanda into international disrepute

Article 451 of the Penal Code makes imprisonment, ranging from seven years to life, the penalty for spreading false information with the intent to create a hostile international opinion against the Rwandan state.

Defamation of foreign princes

Article 483 of the Penal Code makes slandering publicly any foreign head of state, senior official or representative of diplomatic and consular corps, as well as representatives of international organisations, an offence which is punishable by imprisonment.

Abusing foreign symbols

Article 484 of the Penal Code makes it an offence to abuse the flag or symbols of a foreign state. The offence is punishable by imprisonment.

3.9.9 Prohibition of publications that are contrary to public morality

❖ **Regulating Media, Law 2 of 2013**

Article 7 of the Regulating Media Law specifically prohibits media for children from 'acting as illustrations, story or opinion praising or promoting any malicious, indecent and delinquency acts that are likely to divert or demoralize them'.

Article 9 of the Regulating Media Law specifies the limits to freedom of opinions and information by stipulating that these 'shall not jeopardize … good morals'.

The Regulating Media Law does not specify a punishment in either case, though the Penal Code does contain provisions which would apply – see below.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Chapter VI of the Penal Code is headed 'Offences of immorality'. Article 188 deals with the exhibition, sale or distribution of objects of a sexual nature. This is obviously extremely broadly framed and could conceivably include medical and other types of material that has very little to do with pornography. Objects of a sexual nature include songs, writings, symbols, images, emblems or any other object of a sexual nature.

The punishment is imprisonment, a fine or both. The same penalties apply to any person who transports, exports, imports or advertises such objects, and also to any person who produces such writings, drawings, who has printed or produced them, as well as any person who designed them.

Article 211, in the same chapter, states that '[a]ny person who uses ... children ... in pornography shall be liable' to both a term of imprisonment and a fine.

3.9.10 Prohibition of publications that constitute gender-based violence

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 202 makes it an offence to commit gender-based violence through the use of pictures, signs, speeches or writings, with a penalty of imprisonment, a fine or both.

3.9.11 Prohibition of publications that undermine public order

❖ **Regulating Media, Law 2 of 2013**
Article 9 of the Regulating Media Law specifies the limits to freedom of opinions and information by stipulating that these 'shall not jeopardize … general public order'.

The Regulating Media Law does not specify a punishment, though the Penal Code does contain provisions which would apply – see below.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 704 of the Penal Code makes any person who commits a press offence with the intent to undermine public order and territorial integrity, liable to both imprisonment and a fine.

3.9.12 Prohibition of publications that are contrary to the interests of children

❖ **Regulating Media, Law 2 of 2013**
Article 9 of the Regulating Media Law specifies the limits to freedom of opinions and information by stipulating that these 'shall not jeopardize … the protection of children'.

The Regulating Media Law does not specify a punishment, though the Penal Code does contain provisions which would apply – see below.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 211 of the Penal Code states that '[a]ny person who uses ... children ... in pornography shall be liable' to both a term of imprisonment and a fine.

Article 229 of the Penal Code makes any person who records a child's image or voice, or disseminates it in any way, for pornographic purposes, liable to both imprisonment and a fine.

Article 230 of the Penal Code makes it an offence to display, sell, rent, disseminate or distribute pornographic pictures, objects, movies, photos, slides or other pornographic material involving children. The offence is punishable with imprisonment and a fine.

3.9.13 Prohibition of publications that invade privacy

❖ **Regulating Media, Law 2 of 2013**
Article 9 of the Regulating Media Law specifies the limits to freedom of opinions and information by stipulating that these 'shall not jeopardize … the right to inviolability of a person's private life and family'.

The Regulating Media Law does not specify a punishment, though the Penal Code does contain provisions which would apply – see below.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 281 of the Penal Code provides that taking a picture or audio-visual recording without permission constitutes an offence of invasion of personal privacy, which make a person liable to imprisonment, a fine or both. It can be presumed, therefore, that publishing such a picture or broadcasting such an audio-visual recording would be an offence, unless article 291 applied.

Article 291 specifies that legal action for offences against privacy are instituted by the

Public Prosecution service upon request of the victim, his or her authorised representative or rightful claimant. However, article 705 exempts a journalist from criminal liability when the revelation is in the public interest.

Article 286 makes imprisonment, a fine or both the penalty for anyone who gathers personal information, and inserts and uses in it computers and other specialised equipment in a way likely to adversely affect the privacy of people.

This is also the penalty under article 287 for any person who records voices, keeps records or uses other means saved in computers and other specialised equipment information likely to adversely affect the privacy of another. The penalty is increased if such information is made known to third parties who are not authorised to know it without the consent of the concerned person.

3.9.14 Prohibition of publications that are defamatory

❖ **Regulating Media, Law 2 of 2013**

Article 9 of the Regulating Media Law specifies the limits to freedom of opinion and information by stipulating that these 'shall not jeopardize … individual's right to honour and reputation in the public eye'.

The Regulating Media Law does not specify a punishment, though the Penal Code does contain provisions which would apply – see below.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Any person who publicly commits an act against another which is likely to damage the honour or dignity of that person, or bring him or her into public contempt, is liable to imprisonment, a fine or both, under article 288. This is also the case of any person who, under article 289, publicly insults another person. Defaming and insulting a person in a private area is also liable to these penalties, but the time of imprisonment is shorter and the amount of the fine is less.

Article 286 makes imprisonment, a fine or both the penalty for anyone who gathers personal information, and inserts and uses in it computers and other specialised equipment in a way likely to adversely affect the dignity of people. This is also the penalty under article 287 for any person who records voices, keeps records or uses other means saved in computers and other specialised equipment information likely to adversely affect the dignity of another.

The penalty is increased if such information is made known to third parties who are not authorised to know it without the consent of the concerned person.

3.9.15 Prohibition of publications that undermine religion

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Article 278 of the Penal Code makes any person who, by acts, speeches, gestures, writing or threats, publicly humiliates rites, symbols or objects of religion liable to imprisonment, a fine or both.

3.9.16 Prohibition of publications that do not acknowledge that they are not original

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Any person who publishes, in any manner, an 'unoriginal' version of a person's statements, spoken words or pictures without stating that it is an 'unoriginal' version becomes liable to imprisonment, a fine or both, according to article 282 of the Penal Code. This article is noteworthy considering the growth of image-manipulation and sound editing software.

3.9.17 Prohibition of publications that promote discrimination

❖ **Instituting Punishment for Offences of Discrimination and Sectarianism, Law 47 of 2001**

Article 3 of the Sectarianism Law describes discrimination as the authoring of any speech, written statement or action based on ethnicity, region or country of origin, colour of the skin, physical features, sex, language, religion or ideas with the aim of denying a person or a group of persons their human rights.

Article 8 of the Sectarianism Law states that any person who makes public any speech, writing, pictures or images or any symbols over radio airwaves, television, in a meeting or public place with the aim of causing discrimination against people is guilty of an offence. Article 8 read with article 136 of the Penal Code makes a person liable to imprisonment and a fine if they commit the crime of discrimination.

Article 15 of the Sectarianism Law provides that the crime of discrimination is not time bound. This is not clarified in the legislation, but we presume it means there is no statute of limitations on the offence.

3.9.18 Prohibition of publications that promote sectarianism

❖ **Instituting Punishment for Offences of Discrimination and Sectarianism, Law 47 of 2001**

Article 3 of the Sectarianism Law describes sectarianism as an author making use of

any speech, written statement or action that causes conflict and that causes an uprising which may degenerate into strife among people.

Article 8 of the Sectarianism Law states that any person who makes public any speech, writing, pictures or images or any symbols over radio airwaves, television, in a meeting or public place with the aim of sowing sectarianism is guilty of an offence. Article 8 read with article 136 of the Penal Code makes a person liable to imprisonment and a fine if they commit the crime of sectarianism.

Article 15 states that the crime of sectarianism is not time bound. This is not clarified in the legislation, but we presume it means there is no statute of limitations on the offence.

3.9.19 Prohibition of publications that negate or justify the Tutsi genocide

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Article 116 of the Penal Code makes a person liable to imprisonment if they publicly, by their words, writings, images or any other means, show that they negate, minimise or attempt to justify or approve the genocide against the Tutsi.

Article 135 specifies the punishment for the crime of genocide ideology and related offences as imprisonment and a fine.

3.9.20 Prohibition of publications relating to voting

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Article 552 of the Penal Code legislates for imprisonment, a fine or both to any person who communicates false information, insults or influences voters' choices in any way.

3.10 Legislation relating to the interception of communication

The growth of wireless and cellular communications, along with advances in ICTs raise the possibility of the monitoring, recording and intercepting of communications by the media and others, including government.

❖ **The Law Relating to Electronic Messages, Electronic Signatures and Electronic Transactions, Law 18 of 2010 (Electronic Communications Law)**

The Electronic Communications Law notes in article 58 that access to a computer system is unauthorised where the person is not entitled to control or access it, and does not have permission to access it from a person entitled to give such permission.

And article 60 makes unauthorised access and interception of data on a computer system an offence.

The Penal Code's article 285 makes imprisonment, a fine or both the penalty for recording, intercepting, diverting or disclosing correspondence sent or received by any means of telecommunication or installing devices designed to carry out such interceptions without authorisation of the judicial or public prosecution authorities.

The latter part of article 58 of the Electronic Communications Law, however, provides that an intercepting person is not liable, where he or she is acting in reliance on any statutory power arising under any enactment for the purpose of obtaining information, or taking possession of any document or other property.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**
Article 281 of the Penal Code makes a person liable to imprisonment, a fine or both for maliciously invading the privacy of another by secretly listening and making that information known to the public without consent.

Article 291 specifies that legal action for offences against privacy are instituted by the Public Prosecution service upon request of the victim, his or her authorised representative or rightful claimant. However, article 705 exempts a journalist from criminal liability when the revelation is in the public interest.

3.11 Legislation that specifically assists the media in performing its functions

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of both public and private institutions. Such statutes, while not specifically designed for use by the media, can be and often are used by the media to uncover and publicise information in the public interest.

Legislation that assists the media in Rwanda includes:

- Relating to Access to Information, Law 4 of 2013 (Access to Information Law)
- Relating to the Protection of Whistleblowers – Law 35 of 2012 (Whistleblowers Law)
- Organic Law Establishing Internal Rules of Procedures of the Chamber of Deputies in the Parliament – Organic Law 6 of 2008 (Deputies Law)

- Organic Law Establishing Internal Rules of the Senate – Organic Law 8 of 2012 (Senate Law)

- Organic Law Instituting the Penal Code – Organic Law 1 of 2013 (Penal Code).

❖ **Relating to Access to Information, Law 4 of 2013**

Article 1 of the Access to Information Law describes this law's purpose as being to 'enable the public and journalists to access information possessed by public organs and some private bodies'. It also establishes procedures to promote the publication and dissemination of information.

Every person has the right of access to information in possession of a public organ and some private bodies, according to article 3. This includes:

- Information assessing activities, documents or records
- Taking notes, documents, extracts or copies of official documents or records
- Taking document or extracts of notified copies
- Obtaining information stored in any electronic form or through print-outs of information stored in a computer or any other device.

There are grounds for refusing access to the information referred to in article 3. Article 4 permits public organs and private bodies to withold information that may:

- Destabilise national security
- Impede law enforcement or justice
- Interfere in the privacy of an individual when it is not of public interest
- Violate legitimate protection of trade secrets or intellectual property rights
- Obstruct actual or contemplated legal proceedings against the management of a public organ.

Article 5 gives the minister in charge of information, in consultation with the concerned organs, the authority to issue an order determining which information could destabilise national security. If only part of a record may be published, the part that may be published has to be made available to any person who requests it.

Article 10 makes the provision of information an obligation without fee; however, the applicant may be charged for the making of copies. The Office of the Ombudsman monitors the enforcement of this law – article 17.

❖ **Relating to the Protection of Whistleblowers, Law 35 of 2012**

The purpose of the Whistleblowers Law is to protect, in the public interest,

whistleblowers who denounce illegal acts and behaviours in public and private institutions and elsewhere – article 1.

The Whistleblowers Law is focused on protecting whistleblowers who take their information to the authorities, and does not actually address procedures or protections for whistleblowers who approach the media.

Institutions to which the Whistleblowers Act applies
Article 1 in this law indicates that it applies to 'public and private institutions and elsewhere'. Hence, it applies to virtually every type of institution.

Protection given to whistleblowers
No person who discloses information may be sued in civil and criminal matters or under administrative process for whistleblowing done in good faith – article 16.

Article 19 makes any authority who takes action against a whistleblower liable to punishment, including under the Penal Code.

Article 12 requires the entity which receives the information to establish reliable mechanisms designed to protect whistleblowers, including receiving information in secret and filing disclosures using a code to identify the information provider. Note, however, that article 7 requires a whistleblower to disclose his or her identity, so information cannot be provided on an entirely anonymous basis.

Article 17 states that a whistleblower may be summoned to testify in court, but their identity will be protected by using codes for their identification, and they shall be interrogated in camera without cross-examination.

Who are public interest disclosures made to?
Article 6 specifies that whistleblowing is made to the relevant organ verbally, in writing or through any other means. Organs empowered to receive whistleblower disclosures are 'any public or private body to which, by virtue of the responsibilities and powers conferred upon it by law, any person discloses information in his or her possession or which has been brought to his or her attention'. Although it does not specifically name the Office of the Ombudsman, according to the Ombudsman's Law, Law 76 of 2013 that office has the mandate to investigate corruption.

Should the whistleblower approach a public organ which does not have relevant responsibility, article 10 specifies that the information together with the identity of the whistleblower must be forwarded to the relevant public organ. Such transferring of information could compromise the identity of the whistleblower.

On what grounds can an investigating authority decline to act on a public interest disclosure?

The Whistleblowers Law does not give an investigating authority grounds for declining to investigate information so much as it notes penalties for whistleblowers who disclose information unlawfully. Such an individual may be prosecuted and punished in accordance with legal provisions governing him/her at work, or the Penal Code, or both – article 18, if the information disclosed is contrary to the provisions of article 8, namely:

- The disclosure is false and is given on the grounds of hatred, jealousy or potential conflict between the whistleblower and the subject of the whistleblowing
- The disclosure is made in the interest of a person he or she seeks to protect
- The disclosure is made with intent to defame and dishonour the individual or entity subject to the disclosures.

Remedies to ensure that a whistleblower's claims are investigated

The organ which receives information that falls within its responsibilities from a whistleblower is required to make use of the information within three months – article 11. The organ that receives the information is also required to make a written record of the information including:

- The basis for the whistleblowing
- The person subject to the whistleblowing and his/her co-offenders
- The place and time of commission
- The circumstances and motives, if the latter are known.

Provisions relating to defamation in the Whistleblowers Act

Article 8 makes it clear that lodging false information for personal gain or on the grounds of hatred or to defame or dishonour the individual subject to the disclosures removes all protections from the whistleblower and makes him or her liable to prosecution.

❖ **Organic Law Establishing Internal Rules of Procedures of the Chamber of Deputies in the Parliament, Law 6 of 2008**

The Deputies Law governs the operations of the Chamber of Deputies. There are a number of provisions that assist the media in reporting on the activities and proceedings of the Chamber of Deputies.

- Plenary sittings of the Chamber of Deputies are public, though in camera

proceedings can be requested by the president of the Republic, the speaker, the prime minister or a quarter of the members present – article 14.

- Verbatim reports and minutes adopted by the plenary sitting are published on the website of the Chamber of Deputies and are available in the library of the Chamber of Deputies in hard copy – article 17.

- Plenary sittings of the Chamber of Deputies have audio-visual equipment recording and transmitting the proceedings. If possible, these recordings are transmitted to the public galleries and to all halls of the Chamber of Deputies – article 100.

❖ **Organic Law Establishing Internal Rules of the Senate, Law 8 of 2012**

The Senate Law governs the operations of the Senate. There are a number of provisions that assist the media in reporting on the activities and proceedings of the Senate.

- Plenary sittings of the Senate have audio-visual equipment recording and transmitting the proceedings. These recordings are transmitted to the public galleries 'by means of information and communication' – article 115.

- The plenary sittings of the Senate are public, though in camera proceedings can be requested by the president of the Republic, the president of the Senate, the prime minister or a quarter of the senators – article 23.

- The minutes and verbatim reports of the proceedings of the Senate are published and made available in the library of the Senate once they have been approved and signed – article 27.

❖ **Organic Law Instituting the Penal Code, Organic Law 1 of 2012**

Article 283 of the Penal Code is a particularly interesting provision in that it makes it an offence for a person serving as a keeper to reveal a professional secret entrusted to him or her by virtue of function, occupation or religious authority.

Although it does not say so directly, journalism could be deemed to be such a profession, particularly with regard to the protection of journalists' sources. However, caution is required in this interpretation because article 284 specifies that article 283 does not apply in cases where the law imposes or allows the revelation of a professional secret. These obligations are dealt with elsewhere in the chapter with regard to journalists and their sources.

4 REGULATIONS AFFECTING THE MEDIA

In this section you will learn:

- ❑ What regulations are
- ❑ Key regulations governing the media generally

4.1 Definition of regulations

Regulations are subordinate legislation. They are legal rules that are made in terms of an empowering statute (for example, an act of Parliament), and are made by a public functionary, usually a minister or a regulatory body.

4.2 Key regulations governing the broadcast media

4.2.1 Regulations Governing Licensing for Digital Terrestrial Television, Regulation 4/RURA/2011 (DTT Regulations)[20]

The DTT Regulations apply to all DTT activity, including construction, maintenance, operation and management relating to digital multiplex and signal distribution in Rwanda, as well as the provision of signal distribution services – article 2. It makes provision for three signal distribution licence categories: national signal distribution licence; regional signal distribution licence; and community distribution licence – article 4.

The DTT Regulations specify in article 4(b) that there shall be two national signal distributors in Rwanda, though RURA may change this from time to time as necessary.

Signal distributors' primary obligations – article 5 – include:

- Ensuring that any broadcasting signal or content carried is sourced from a licensed content provider (this term is not defined, but we presume that a licensed content provider is in fact a licensed broadcaster)
- Providing signal distribution services in an equitable, reasonable and non-discriminatory manner
- Allocating one-third of transmission capacity to free-to-air services
- Giving priority to free-to-air services which contain 20% local content
- Ensuring free-to-air channels are accessible without constraints.

Data services may be provided as a value-added service, but may not exceed 15% of capacity allocated to a broadcaster in each multiplex – article 6(b).

Signal distribution licences are granted for a maximum of 15 years, depending on the category and service type – article 7. Article 9 clarifies the information that must be provided in a written application for a licence including:

- Name and business particulars of the applicant
- Names, addresses and contact numbers of the legal representative of the applicant
- Clearance from the Rwanda Revenue Authority
- Business registration certificate
- Information on the shareholding status of the company
- Article of association or MOU of the company, if any
- Description of the network and services, with five-year rollout targets
- Geographical area of activity
- Details of the communication network and an estimation of the investment and financing required
- A five-year business plan
- The performance bond from an insurance company or bank guarantee of US$200,000 valid for the duration of the licence.

Should the applicant fulfil all requirements, RURA will issue the licence within three months.

RURA assigns the spectrum rights according to requirement and availability, and the signal distributor is then responsible for allocating its capacity to content service providers – article 12. Radio frequency spectrum licences may be cancelled by RURA under conditions dealt with in article 13, and article 15 details the conditions for cancellation, suspension and revocation of licences for signal distribution.

Radio licences may be modified or altered by RURA or on request of the licence holder – article 14, and any licensee aggrieved by a RURA decision may refer the matter to a court of law.

RURA establishes the fees related to licences in article 16. There is an initial payment required on submitting an application for a licence, whether or not the application is successful. Successful licensees then pay a one-off, non-refundable licence fee plus an ongoing 1% of annual turnover to RURA. A payment to the Universal Access Fund is determined by the regulatory board, and shall not exceed 2.5% of annual turnover. If the operator also has a radio frequency licence, initial and annual fees also apply.

Article 16(d) permits RURA to use the method of auctioning to get a best bidder for the signal distribution if it is deemed necessary.

The signal distribution regulations include, in article 17, the grounds on which a licence may be refused, namely:

- In order to protect national integrity and/or national security
- For reasons of limitations on the frequency spectrum resources
- If RURA reasonably believes that competition in the signal distribution sector can be adversely affected
- If the applicant has failed in meeting the information requirement and related obligations.

The unsuccessful applicant must be given written reasons for refusals by the regulatory authority, though RURA is not bound to do so in the case of national security matters.

Application for licence renewal must be done no later than three months before the expiry of an existing licence. The procedure is the same as for the initial granting of the licence – article 18.

4.2.2 Regulations Governing Subscription Satellite Television, Regulation 2/RURA/2014 (SSTV Regulations)[21]

The SSTV Regulations apply to any person carrying out or intending to carry out subscription satellite television (SSTV) services – article 2. Any person intending to provide an SSTV service is required to apply for a licence – article 4.

Information required for the application includes – article 5:

- The full address of the place of operation, plus the local point of presence for foreign companies
- A copy of the identity or passport of the contact person
- The applicant's financial and technical capacity to carry out satellite broadcasting services
- The company profile
- The domestic registration certificate for national or foreign satellite television operators
- Performance bank guarantee of US$200,000
- A list of channels in the bouquet
- The agreements with the multi-channel satellite distributor as well as with the originator of the content, where the latter is applicable.

In the process of analysing the application, RURA also approves the channels that the applicant intends to air. Once the licence is approved, the licensee 'shall always broadcast the authorised channels' – article 18, but may reorganise and add channels to – article 19 – or remove channels from – article 20 – its bouquet. Article 22 requires the SSTV licensee to carry channels of the public television broadcaster in accordance with RURA's regulations.

The Regulatory Board is required to declare its decision within 90 days of receipt of the completed application – article 6, but if it requires additional time it has to provide the applicant with a written explanation for the delay.

Licences in this category are valid for five years, and can be renewed – article 9. A renewal application must be filed at least 90 days prior to expiry of the current licence, and the procedures are the same as for the original licence – article 11. Article 12 of the SSTV Regulations details the reasons for rejection of a licence application, and an unsuccessful applicant may reapply for a licence within three months following the rejection of the initial application – article 13.

Licence modifications may be initiated by RURA or on the request of the licence

holder – article 14, and licences may be transferred in accordance with the requirements of articles 15 and 16. The circumstances under which a licence may be revoked are dealt with in article 17.

An application fee of 500,000 Rwandan francs is required – article 5.8 and Annexure 3, an initial licence fee of 12,000,000 Rwandan francs is payable on the granting of the licence, and thereafter an annually payable regulatory fee based on a percentage of turnover is due – article 10.

5 MEDIA SELF-REGULATION

In this section you will learn:

- ❑ What self-regulation is
- ❑ Key self-regulatory provisions intended to govern the media in Rwanda

5.1 What is self-regulation?

Self-regulation is important because it usually involves regulations drafted and enforced by bodies which are established by media houses themselves. This alleviates the need for state regulation and improves the overall climate of media freedom in a country.

The key media self-regulatory body in Rwanda is the RMC, which was established in terms of the Regulating Media Law, Law 2 of 2013, specifically to regulate the media. Article 2 paragraph 20 of the Regulating Media Law envisages a media self-regulatory body to be set up by journalists themselves. The body has the responsibility of ensuring compliance with the principles governing media and defending the general interests of the media. The RMC was established in accordance with the mandate of this law, and is the body particularly responsible for enforcing the journalistic code of ethics, acting as the primary and highest adjudicator of complaints against the media, representing the broader interests of journalists and defending media freedom and media consumers in general. In April 2014, the RMC released the amended Rwanda Journalists and Media Practitioners' Code of Ethics (RMC Code of Ethics).

5.2 Key provisions of the RMC Code of Ethics

The key provisions of the RMC Code of Ethics are, in summary, as follows:

- *Journalists' obligations in information collection, processing, broadcasting and publication*
  - Defence of universal human values of peace, tolerance, democracy,

human rights, social progress and national cohesion respectful of each citizen in accordance with the Universal Declaration of Human Rights
- Honesty, to respect facts and search for the truth
- Social responsibility in terms of source and veracity of information published
- Spontaneous rectification and respect for the right of reply
- Be independent of external or internal pressure to modify or distort information
- Be mindful of the balance between information and fundamental regulations
- Refrain from plagiarism
- Observe the principle of presuming innocence before the verdict from a competent court or tribunal is announced in a punishable case.

- *Discrimination and hate speech*
  - Avoid incitement to hatred based on race, tribe, ethnicity, religion, sex, social status, disability, disease or health status or any basis for stigmatisation
  - Respect for private life and human dignity, in that broadcasting or publication of information related to someone's private life shall only be dictated by public interest. Further, journalists should not ridicule 'the underdog', including minors, the old, the bereaved or any underprivileged person or community.

- *Advocacy*
  - Separate comments from facts
  - Refrain from using sensational headlines and exaggerated facts
  - Separate information from advertisement material.

- *Comment*
  - Separate comments from facts.

- *Headlines, posters, pictures and captions*
  - Refrain from using sensational headlines and exaggerated facts.

- *Confidential sources*
  - The media has an obligation to protect confidential sources of information.

- *Payment for articles*
  - Maintain professional integrity in obtaining information and refusing any advantage – financial or in kind
  - Not exercise the duties of a media or public relations officer or institutional spokesperson while being a professional journalist.

- *Violence*
  - Avoid violence and obscenities or encouraging hostility
  - Protect minors and victims of rape, particularly in terms of not publishing information or images likely to lead to their identification
  - Publication of child pornography is prohibited.

- *General conduct*
  - Avoid violence and obscenities or encouraging hostility
  - Defend and protect the interests of the journalistic profession
  - If they have confirmed the RMC code of conduct, to recognise the jurisdiction and authority of the RMC
  - To make an effort to know national legislation and regulation governing the press.

In its code of ethics, the RMC also has a section detailing the rights of journalists. It goes so far as to say: '[a] journalist shall, in the exercise of his or her profession, claim the following rights':

- Free access to sources

- To refuse any subordination contrary to the press organ's editorial line

- To invoke the conscience provision. This means they may refuse to write or read political comments and editorials in contradiction with the rules of professional ethics, or to censor articles, radio, television and electronic works, or any other mass broadcasting aid from their peers, on grounds other than professional ones. Further, the refusal shall not be grounds for employment loss through firing, and if this happens, peers shall show solidarity and strongly denounce the act

- Security of person and working materials, legal protection and respect of their dignity, without any condition or restriction all over the national territory

- To refuse to disclose his or her sources. In no way shall journalists or media houses be subjected to threats owing to the refusal to disclose their sources

- For the editorial team to compulsorily be informed about any important decision likely to have an impact on the life of the institution, and at least be consulted before a final decision is made regarding editorial team recruitment, dismissal, transfer and promotion of a journalist

- To collective conventions and to an individual contract ensuring him/her material and moral security as well as remuneration proportional to his/her social role, which guarantees his/her economic independence.

The third section of RMC's document addresses enforcement of the code of ethics, including violations of the code, sanctions, complaints on adherence to the code, the right of reply, and interpretation and implementation of the code.

6 CASE LAW AND THE MEDIA

In this section we will deal with the following topics:

- ❑ An introduction to Rwandan case law
- ❑ How Rwanda's courts have dealt with a media-related law issue involving:
  - Minimisation of the genocide
  - Divisionism
  - Freedom of speech
  - Defamation of the president

6.1 An introduction to Rwandan case law

Rwanda's court and jurisprudential system is based on Belgian and German civil codes and customary law. Consequently, the case law is not as strictly based on precedent, as is seen in common law systems (mostly found in former British colonies).

Case law in Rwanda certainly affects the media and working journalists. However, accessing Rwandan case law is extremely difficult. Law reports on Rwandan case law have been available only since the last quarter of 2014.

This section focuses on judgments that have a bearing on media law or freedom of expression in some way. Please note that these judgements have been provided to us by local lawyers and are not published.

6.2 Using Rwanda's laws against genocide ideology, genocide minimisation and negationism to restrict free speech and the media

In the 2011 case of *Le Ministère Public v Agnès Uwimana-Nkusi and Saidati Mukakibibi* (Case No. RP 0082/10/HC/KIG), the High Court of Kigali convicted Ms Uwimana-Nkusi on four separate charges on the basis of four articles she wrote for the publication *Umurabyo*, namely:

- Threatening national security
- Genocide minimisation
- Defamation of the president
- Divisionism.

An appeal was lodged, and at the end of January 2012 the Supreme Court of Rwanda heard the case. The journalists' international team of lawyers argued points of Rwandan law as well as points of regional, international criminal and international human rights law.

In its judgment, the Supreme Court focused on the Kinyarwanda word *gutemagurana*, which Ms Uwimana-Nkusi stated should be interpreted as 'killing each other with machetes'. The prosecution insisted that the term implied that a 'civil war' had taken place rather than genocide. The Supreme Court's judgment was that article 4 of the 2003 law does not explain clearly the acts constituting genocide minimisation, and that the Supreme Court had never taken a decision clarifying that.

The Supreme Court cited examples from the Holocaust, where asserting that there were acts of mutual killing in that context were considered genocide denial. With this in mind, the Court stated that Ms Uwimana-Nkusi's use of the word *gutemagurana* did minimise the genocide, but that in using it she needed to have intended it as such. In reviewing the article in question as well as others written by Ms Uwimana-Nkusi, the Court came to the conclusion that there was no intent, and acquitted her.

Ms Uwimana-Nkusi was acquitted of the charges of genocide minimisation and divisionism, but her conviction for defaming the president stood. She was left to serve four years instead of 17, with a deduction of time served. Ms Mukakibibi's sentence was reduced from seven to three years as the Court found that both journalists' convictions were for the same crime in the same trial (threatening national security, under article 166 of the Penal Code) and that they should therefore have the same sentence.

Both journalists have appealed to the African Commission on Human and Peoples'

Rights, contending a violation of their fair trial rights, and challenging the convictions upheld by the Supreme Court. They argue that their right to freedom of expression has been violated. The case has been heard, but at the time of writing the decision is pending.

NOTES

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