

**“Genocide Ideology” laws in Rwanda: Rule by Law or  
Rule of Law?**

*The compatibility of the “Genocide Ideology” laws and the “Rule  
of Law”*



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## Executive summary

In the aftermath of the 1994 genocide in Rwanda the government decided to set up a “genocide divisionism” campaign in order to eradicate all ethnicity in the country and hereby prevent a new outburst of ethnic violence. The consequent established “genocide ideology” laws are highly criticised by non-governmental organizations, arguing that they violate international human rights law, specifically the freedom of speech. This paper examines the compatibility of the “genocide ideology” laws and the internationally accepted requirements for a rule-of-law state.

Chapter one is written in order to broaden the reader’s knowledge on the “genocide ideology” act, describing the three “genocide ideology” laws and the criticism of non-governmental organizations (NGOs) on the laws. Specifically the vague terms used in the laws and excessive punishments for the crime are major points of concern. Afterwards the law enforcement mechanism, the Rwandan criminal courts, is described and some statistical information concerning cases is provided. The chapter ends with a comparison between the Rwandan law criminalizing “revisionism, negotionism and trivialisation” of the genocide and the German law banning Holocaust denial.

In chapter two a literature review on the principle of “rule of law” is described. Consequently three main elements that create the foundation for a rule-of-law state are highlighted, to wit: a clear and consistent legal framework; strong enforcement mechanisms; and an independent judiciary. In chapter three these elements are used as guideline for describing the criticism of NGOs on the “genocide ideology” laws. Afterwards the in 2011 conducted review of the “genocide ideology” law is described. The revised version of the law shows some improvements, however, the law is at this writing not yet enacted, as it is waiting for the approval of the Rwandan government and parliament.

In the final chapter the highly debated case of Victoire Ingabire, a political opponent of president Kagame, is described. Ingabire is currently imprisoned for, among others, genocide denial. The trial is by several NGOs described as flawed and unfair.

This dissertation ends with a short summary of the main findings of the sub questions, followed by a general conclusion and some considerations for further research. The final part consists of a set of recommendations for the Rwandan government, which are based on three main points: a revision of the laws, the independency of the judiciary and the transparency and treatment of cases.

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## Introduction

After a long history full of complex ethno-political conflicts between two ethnic groups in Rwanda, the Hutu and the Tutsi, the 1994 genocide in Rwanda took place. The tensions between the Hutu and Tutsi escalated on the sixth of April 1994, when the Rwandan Hutu president Juvénal Habyarimana was assassinated. From that moment on, Hutu extremists started with a three-months nation-wide genocidal campaign to eliminate the whole Tutsi population. Within three months approximately 800,000 Tutsi as well as moderate Hutu were murdered and millions fled the country. The Rwandan Patriotic Front (RPF) from Uganda, a rebel group consisting mostly of Tutsi refugees, seized control of the country in July 1994 putting an end to the genocide. Important to note here is that the subsequent period was thus the result of military victory, instead of negotiated settlement, decreasing the legitimacy of the new government. Following the ending of the genocide the new RPF government not only faced the challenge of bringing justice to everybody affected by the genocide, it also had the task of protecting the Rwandan population from a new outburst of violence. In the aftermath of the genocide the Rwandan government therefore decided to set up the highly disputed “genocide ideology” laws to prohibit “genocide ideology” in order to prevent new violence. As enshrined in article 2 of the penal code of Rwanda, genocide ideology is: *“an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing [sic] on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war”* (Amnesty, 2010, p.13).

The objective of this paper is to assess the compatibility of the abovementioned “genocide ideology” laws and the requirements for a rule-of-law state. As mentioned before, the “genocide ideology” laws were established to prohibit discourse aiming at exterminating people based on for instance ethnicity. Non-governmental organizations (NGOs) argue the laws are in contradicting the rule of law, which is characterized by several elements, for instance clear and easily accessible laws, an independent judiciary, and a fair share of proportionality in any restrictions imposed on freedoms. Amnesty International for example states that whereas prohibiting hate speech is a legitimate aim, the “genocide ideology” laws violate international human rights law, leaving space for political manipulation (Amnesty international, 2010, p.7). The main question of this dissertation is consequently defined as following: “To what extent are the “Genocide Ideology” laws in Rwanda compatible with the generally accepted requirements for a rule-of-law state?”

To answer this central question, a number of sub questions have been formulated:

- What are the “genocide ideology” laws?
- What are the generally accepted requirements for a rule-of-law state?
- How are the “genocide ideology” laws criticized by non-governmental organisations?
- How does the “genocide ideology” law affect the Rwandan population?

### **Methodology**

Due to the limited timeframe, extensive desk research, thus collecting and analysing information, has been assessed as most efficient method for this specific research. As several researches have already been carried out by, amongst others, human rights organizations, sufficient information was available. Thus in order to answer the aforementioned sub questions, extensive desk research has been conducted, using academic journals, articles, books, public reports, news articles and reports of non-governmental organizations (NGOs), such as Amnesty International and Human Rights Watch. Furthermore, to be able to critically answer the second sub question, by examining and comparing several academic articles, a literature review on the principle of “rule of law” has been conducted. Finally, to establish a thorough research on the impact of the implemented “genocide ideology” law on the population of Rwanda a case study has been carried out.

As the “genocide ideology” laws are a highly complex and sensitive topic, finding unbiased sources, specifically from the government, has proven to be challenging throughout this research. For example, while conducting this research, finding data concerning cases and charges related to the “genocide ideology” laws proved to be difficult due to low transparency from the Rwandan government. Assessing a complex and sensitive situation as the one in Rwanda needs careful application of sources and research. As outsider, without being fully aware of the different aspects of the conflict, relying solely on previously conducted researches is challenging and needs careful and comprehensive use of different sources. Some sources are therefore excluded from the research, as they were assessed being too subjective and politically motivated.

The findings of the desk research will be elaborated in the four chapters following this introduction. Chapter one will explain and critically assess the Rwandan “genocide ideology” laws, followed by a description of the most important enforcement mechanism related to the aforementioned laws, to wit the Rwandan criminal courts. Afterwards a comparison will be made between the Rwandan “genocide ideology” laws and the law

banning holocaust denial in Germany. In chapter two a literature review on the principle of “rule of law” will be described, analysing and comparing different requirements for creating a rule-of-law state, according to various scholars. Chapter three will discuss the criticism of human rights organizations on the “genocide ideology” laws, followed by a summary of the subsequent reaction of the Rwandan government. In the final chapter a case study will be carried out to elaborate the effect of the “genocide ideology” laws on the Rwandan population. This chapter will describe the highly debated and criticised case of Victoire Ingabire, a political opponent of the current president who is currently imprisoned for, amongst others, denial of the genocide. The trial will be described, as well as the criticism of several actors on this case. This paper will end with a conclusion followed by recommendations for the Rwandan government.

## Chapter 1. Genocide Ideology

The impact of the genocide continued to echo throughout Rwanda after the RPF put an end to the massacre in July 1994. The genocide left the country destroyed with a ruined infrastructure, more than 100,000 suspected perpetrators imprisoned, nearly one million people murdered, and a population traumatized by the slaughter. Moreover most of the Hutu leaders that had been in charge of Rwanda before the genocide, had fled the country in fear of reprisals or were murdered. Above all this, the outburst of new violence was threatening the country and revenge murders still occurred throughout Rwanda and surrounding countries (USHMM, 2012). Quickly after the reconstruction of the country began, the new government started with drafting a legislation to quell divisionism and genocide ideology, to erase the ethnic divide between the Hutu and Tutsi that instigated the genocide. This first chapter aims to broaden the reader’s knowledge on this “genocide ideology” act, describing the three important laws that were established during the “genocide ideology” campaign, as well as the law enforcement mechanism, the Rwandan criminal courts, that is used to prosecute the alleged perpetrators. The chapter ends with a comparison between the Rwandan law criminalizing “revisionism, negotionism and trivialisation” of the genocide and the German laws banning Holocaust denial as this contributes to carrying out a critical research on the Rwandan law and is useful for making recommendations after the research is completed.

### 1.1 The campaign against Genocide Ideology

In the process of transitional justice in the wake of the genocide, the highly disputed “genocide ideology” laws were enacted. Rwandan state officials started with a widespread campaign against “divisionism” in 2001, which in 2004 was transformed into the campaign against “genocide ideology”. According to the Rwandan constitution, the aim of this campaign was to “fight the ideology of genocide and all its manifestations and to eradicate all ethnic, regional and any other form of divisions” (Rwanda Constitution, 2003, preamble). Besides the government speeches that were held to encourage the population to lose their ethnic affiliation, and the establishment of four parliamentary commissions to investigate and convict putative cases of “genocide ideology”, the government also endeavoured to legally enforce their campaign to remove all ethnicity in Rwanda with “genocide ideology” laws (Dalporto, 2012, p893). With removing all ethnic affiliation between Hutu and Tutsi people, by enforcing the newly established laws that are described hereafter, the government made an attempt to remove the risk of new ethnic violence.

### 1.1.1 Genocide Ideology Laws

Before moving on to the relevant laws please note that when using the term “genocide ideology” laws I refer to the enumeration of all three below mentioned laws, to wit the 2001 law on “divisionism” or “sectarianism”, the 2003 law on “negationism” and the 2008 law on “genocide ideology”. Whereas only one law explicitly refers to the crime of “genocide ideology”, namely the 2008 law “Relating to the Punishment of the Crime of Genocide Ideology”, the three laws are often used intertwined and are all three established during the campaign against “genocide ideology”. The laws in their entirety can be found in appendix I. In this paragraph only the articles that are most important for this research will be described.

The first law enacted by the government during their campaign to eradicate the ethnic division between the Hutu and the Tutsi was the law No. 47/2001 “On Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarism” of December 18 2001, also known as Rwanda’s “ethnic divisionism” law. Article 2 of this law states: *“This law aims at punishing any person guilty of the crime of discrimination and sectarianism”* (Law No. 47 bis/2001, article 2).

Article 1 this law describes the definitions of the law:

*“1° Discrimination is any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is party;*  
*2° Sectarianism means the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination mentioned in article one I\*;*

*3° Deprivation of a person of his/her rights is the denial of rights provided by Rwanda Law and by International Conventions to which Rwanda is party”* (Law No. 47 bis/2001, article 1).

Only a short period after the law was enacted both international and national human rights organizations started to spread their concerns about the vagueness of the law and the potential abuse of the law (Dalporto, 2012, p876).

In the same year that Kagame became president, in the year 2003, the parliament enacted law No. 33 bis/2003 Repressing the Crime of Genocide, Crimes Against

Humanity And War Crimes. This law states that criminalizing “revisionism, negotionism and trivialisation” is a crime and will be punished as described in article 4 of the law:

*“Shall be sentenced to an imprisonment of ten (10) to twenty (20) years, any person who will have publicly shown, by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence.*

*Where the crimes mentioned in the preceding paragraph are committed by an association or a political party, its dissolution shall be pronounced”* (Law No. 33 bis/2003, article 4).

This law will be further described and analysed in the third part of this chapter, where a comparison with the German laws banning holocaust denial will be made.

Law No. 18/2008 Relating to the Punishment of the Crime of Genocide Ideology, criminalizing “genocide ideology”, was passed in 2008. Legislators argued that the law was “necessary to help fight the deadly ideology which plunged the country into the 1994 Genocide” (Ssuuna & Buyinza, 2008, para.1).

As mentioned in the introduction, article 2 of this law describes “genocide ideology” as:  
*“an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war”* (Law No. 18 bis/2008, article 2).

The abovementioned article 2 is rather straightforward and is consistent with general and clear words as is also used in international conventions. Yet the terms used in the following article, specifying the criteria for “genocide ideology” highly aggravates the imprecision and turmoil surrounding the term (Human Rights Watch, 2008, p.41).

This article 3 of the law describes the characteristics of the crime of genocide ideology:  
*“The crime of genocide ideology is characterized in any behavior manifested by acts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:*

*1. Threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;*

*2. Marginalizing, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;*

*3. Killing, planning to kill or attempting to kill someone for purposes of furthering genocide ideology” (Law No. 18 bis/2008, article 3).*

The abovementioned law includes a wide range of imprecise and very broad terms, such as “intimidating”, “mocking” and “propounding wickedness” which makes the law widely usable for abusive interpretation (Al, 2010, p.14). Due to the impreciseness surrounding the definition of genocide ideology the risk of unwarranted use of the law is certainly present (Hill, 2012, p.48). Moreover according to a report of Amnesty International the punishments fail to meet the international requirement of proportionality. The report states that the law goes “well beyond that which is necessary to prevent hate speech or meet any other legitimate interest” (Amnesty International, 2013, p.19).

These punishments of the crime of genocide ideology are enshrined in article 4:

*“Any person convicted of the crime of genocide ideology as mentioned in Articles 2 and 3 of this Law shall be sentenced to an imprisonment of ten (10) years to twenty five (25) years and a fine of two hundred thousand (200.000) to one million (1.000. 000 ) Rwandan francs.*

*In case of recidivism, the penalty provided for in the preceding paragraph shall be doubled” (Law No. 18 bis/2008, article 4).*

The abovementioned penalties for the crime of genocide ideology are severe. Critics argue that the excessive penalties increase the culture of fear surrounding the law, stating that it would scare people from giving their opinions. In this regard the law has more chance of facilitating human rights atrocities than protect them (Article 19, 2009, p.3). What is just as frightening is the inflexibility of the penalties, which does not leave any space for the judiciary to reflect each separate case and give a judgment according to specific facts. Seen the seriousness of the topic it is highly desirable that the laws are used in a right manner and for this, flexibility of punishments according to specific facts is necessary (Rwanda: Joint Governance Assessment Report, 2008, p.33).

## 1.2 Enforcement of the Genocide Ideology laws

From the beginning of the post-genocide period it was necessary for the new government to invest in justice, reconciliation and reconstruction processes aiming at a stabilized country, where Hutus and Tutsis were able to live next to each other. Yet the enormous scale and complexity of the atrocities committed during the genocide left the complete judicial system in Rwanda destroyed. A difficulty was that a great deal of the judiciary of Rwanda had been killed or had fled the country. For instance only 244 of the 758 judges and 12 of the 70 prosecutors were left (HiiL Innovating Justice, 2012, p.29). Yet for the prosecution of those involved in genocide the judicial system had to be rebuilt. State officials were therefore addressed to re-establish the judicial system and to start with prosecuting the accused perpetrators. The judicial response in the aftermath of the genocide consisted of three main processes that tried the alleged suspects: the International Criminal Tribunal for Rwanda (ICTR), the national Rwandan criminal courts and the local Gacaca courts. Gacaca courts, translated as *justice on the grass*, were a unique response to the demand for justice in Rwanda. From 2002 until 2012, the courts were used to try those prosecuted perpetrators alleged of less severe atrocities, such as “simple” murder or property damage (Tiemessen, 2004). Those involved in the genocide were prosecuted in one of the three courts, depending on their degree of involvement. For the prosecution of alleged suspects of the abovementioned “genocide ideology” the national Rwandan criminal courts is most relevant. The following paragraph provides some background information on this. Afterwards, some statistics of cases will be given and an example of a disputed case will be described.

### 1.2.1 The Rwandan criminal courts

The highest court in the national judicial system is the Supreme Court. On a lower level are the High Courts of the Republic, the Intermediate Courts and the Primary Courts. While some information on cases of the “genocide ideology” laws tried before the Supreme Court, High Courts and Intermediate Courts can be found on the internet, official statistics that demonstrate in which courts the case were tried, are not available (Amnesty International, 2010, p.19). Relevant to note here is that the Rwandan constitution grants the Supreme Court the task of coordinating and supervising activities of lower courts and tribunals, as well as ensuring judicial independence. While judicial independancy is thus guaranteed by the constitution, throughout this paper we will see criticism on this independancy, related to governmental influence in the judiciary.

### 1.2.2 Cases

Due to low transparency it remains difficult to provide reliable statistics on the number of cases and the related charges tried before the Rwandan criminal courts. In absence of these official statistic it is difficult to differentiate between cases where a charge is based for example on “mocking”, “stirring up feelings”, or on murder in the name of Hutu power. Perhaps the government’s restraint concerning these statistic results from the criticism on the laws. The absence of transparent and reliable statistics certainly increases the difficulty in assessing how the vague laws are being (mis)used (Amnesty International, 2010, p.20). Yet according to available official Rwandan government statistics, 792 cases of ‘genocide ideology’ were tried before Rwandan courts at first instance in 2007. This number of cases decreased to 618 in 2008 and in 2009, 435 cases were brought before court at first instance. A report on judicial activity in 2007 and 2008 cited by Deputy Prosecutor General Alphonse Hitiyaremye provides a similar number by arguing that the Rwandan courts initiated 1,304 cases that entangled “genocide ideology” (Human Right Watch, 2008, p40; pall, 2010, p.27). Moreover 749 cases of “revisionism” and related crimes, such as arson, destruction of property and denial of genocide, were brought before court in 2009, of which some have been prosecuted under the 2008 “genocide ideology” law. Of these 749 cases, 489 suspects were convicted receiving punishments ranging from life imprisonment (five cases) to being jailed for less than five years (169 cases) (Amnesty International, 2010, p.19).

Despite of the fact that the Supreme Court ensures judicial independency, human rights organizations have criticised several trials. For example according to an Amnesty International report, individuals have used gaps in the laws for personal benefits (2010, p.8). According to the Human Rights Watch report ‘Law and Reality’, published in 2008, at least one prosecution appears to have been executed in the first place because a speaker, Célestin Sindikubwabo, challenged in her declaration the position of the official truth about about RPF war crimes. She argued, “the defendant had fled to Burundi because he had seen RPF soldiers killing local people”. After a few days Sindikubwabo was arrested and sentenced to twenty years imprisonment for “gross minimization of the genocide” (Human Rights Watch, 2008, p40).

This case shows a perfect example of how the laws are misused in an unproportional manner, using excessive punishments. Moreover it shows how easily fear surrounding the “genocide ideology” laws can be developed. In its 2011 report, Human Rights Watch describes the campaigns against “genocide ideology” and “divisionism” as a “significant

obstacle to securing defence testimony in Gacaca courts” (Human Rights Watch, 2011, p.43). Some interviewed defence witnesses expressed their fear testifying in defence of the accused perpetrator. This reluctance to testify is also mentioned in a Penal Reform International (PRI) report that describes their findings on a research on Gacaca courts from 2001 through 2009. While facing the harsh punishments as in the abovementioned case of Célestin Sindikubwabo, witnesses will think twice before delivering a statement that could be viewed as “genocide ideology” or denial of genocide. Of course this highly diminishes the credibility of the Gacaca courts in general.

### 1.3 Denazification in Germany

As stated before, the “genocide ideology” laws are highly criticised by NGOs such as Human Rights Watch and Amnesty International. Yet important to remember is that Rwanda, after the genocide, certainly found itself to be in an enormously difficult and vulnerable position in which measures to prevent a new outburst of violence were inevitable. To carry out a critical assessment on the compatibility of the “genocide ideology” laws and the rule of law, it might be helpful to take a look at similar post-genocide policies enacted in other countries. For example, throughout Europe after World War II, several countries, amongst others France, Austria and Germany decided to criminalize the denial of the extermination of the Jews.

During the passed years, Rwandan authorities, in their defence to the critique on the impreciseness, vagueness and turmoil of the “genocide ideology” laws, have compared the laws to the German law banning holocaust denial. Paul Kagame for example refers to the holocaust denial in Germany arguing that foreign criticism on the genocide denial law in Rwanda is western hypocrisy. He states, "The same people who have those laws (banning Holocaust denial) are saying we shouldn't have them. We're not blind to this" (McGreal, 2013, para.34). For this comparison it has therefore been decided to focus on the German law. In the following paragraph both the Rwandan and German law related to genocide denial will first be explained after which they will be compared on several elements.

#### 1.3.1 German law banning Holocaust denial

After the systemic destruction of approximately six million Jews during World War II, Germany established similar laws to the “genocide ideology” law in Rwanda. The legislation was passed in 1985 and strengthened in 1994 making publicly supporting, denying or belittling the extermination of the Jews punishable. Just as the Rwandan laws,

the German law was established with the aim to stamp out, at the earliest stage, the resurrection of ethnic divide (Dahmann, 2005). The crime of Holocaust denial is punishable under paragraph 3 of the following section of the German penal code, § 130 Public Incitement of the German Criminal Law (1985, Revised 1992, 2002, 2005). This paragraph will therefore be used for the comparison. This paragraph states:

“(…)

*(3) Whoever publicly or in a meeting approves of, denies or belittles an act committed under the rule of National Socialism of the type indicated in Section 6 subsection (1) of the Code of Crimes against International Law, in a manner capable of disturbing the public peace shall be punished with imprisonment for not more than five years or a fine.*

(…)”

The Rwandan law that mostly relates to the law banning holocaust denial is article 4 of Law No. 33 bis/2003 Repressing the Crime of Genocide, Crimes Against Humanity And War Crimes. This article states:

*“Shall be sentenced to an imprisonment of ten (10) to twenty (20) years, any person who will have publicly shown, by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence.*

*Where the crimes mentioned in the preceding paragraph are committed by an association or a political party, its dissolution shall be pronounced”* (Law No. 33 bis/2003, article 4).

### 1.3.2 Comparison to the Rwandan Law

To start, it can be stated that the text of article 4 of the Rwandan law is written in much broader and imprecise terms than the text of paragraph 3 of the German law on Holocaust denial. For the crime to be punishable under the German law, the crime should be committed “in a manner capable of disturbing the public peace”. Such a criteria as “disturbing public peace” is not included in the Rwandan law. Moreover the terms used in the Rwandan law, for example, ‘rudely minimised’, are far more broad and undefinable.

What is most striking in this comparison are the differences in the punishments for the crime of denying, minimizing or belittling genocide. Whereas the punishment under the German Law is “*imprisonment for not more than five years or a fine*”, the perpetrators convicted under Rwandan law “*Shall be sentenced to an imprisonment of ten (10) to twenty (20) years*”. Thus whereas the Germany law provides space for judicial discretion

in punishing according to each specific case, as the law only states a maximum sentence, the rigid Rwandan punishments do not leave any space for such judicial discretion, as the minimum sentence is as high as ten years imprisonment (HiiL Innovating Justice, 2012, p.48).

A difference can also be noticed when looking at the punishment for offenders under eighteen years. Offenders of genocide denial under eighteen years under the German law are punished by community service (Bazyler, 2009, p.3). The Rwandan law criminalizing genocide denial does not include a section describing punishment for children. Yet while looking to the “genocide ideology” law the Rwandan offenders between twelve and eighteen are punished by half the penalties for adults. Children under the age of twelve can be sent to rehabilitation centres for a maximum of a year (Law No. 18/2008 of 23 July 2008, art. 9).

When making a comparison between the two laws, important is to make a reference to the contexts in which the laws were established. Both the German and Rwandan law against genocide denial are formed by their role in post-conflict societies, yet while looking more in depth in the situations a remark should be made about the different context in which the laws were established. Whereas the laws in Rwanda were set up in a context where the victims of the genocide had to continue living next to the killers, this was not, to the same extent, the case in Germany. The regional differences during the implementation of the laws are also significant. Whereas Rwanda was surrounded by unstable countries, including the Democratic Republic of Congo, Germany was surrounded by countries that altogether have been able to develop in a flourishing region (Pall, 2010, p.13).

Furthermore while the Rwandan authorities keep on comparing the two laws with each other, it is also necessary to look at the law enforcement mechanisms and to the judicial system. It becomes clear that whereas the Rwandan law exist in a context of political involvement with the judiciary, the scope and application of the German law has highly been limited by the courts (Pall, 2010, p.31). For example article 5 of the constitution makes a difference between “statements of opinion and false statements of facts”. This prevents an extensive interpretation of the law banning Holocaust denial (Campioni and Noack, 2012, p.50). In Rwanda such a law does not exist.

Thus whereas Rwandan authorities in their defence to the critique on the impreciseness, vagueness and turmoil of the “genocide ideology” laws, have argued that their laws are similar to the laws banning Holocaust denial in Germany, after a short comparison it has to be stated that the resemblance between the two can be disputed. Thus the attempt of the Rwandan authorities to legitimize their law is not plausible (Pall, 2010, p.19).

After having described the ‘genocide ideology’ law, the following chapter will discuss the principle of “rule of law”. For this, the elements that are generally accepted as required in order to establish a rule-of-law state will be described.

## Chapter 2. The Rule of Law

In July 2000, the Rwandan Ministry of Finance and Economic Planning launched a report describing a new vision for Rwanda. This vision 2020 strives for Rwanda to become a “modern, strong and united nation, proud of its fundamental values, politically stable and without discrimination amongst its citizens. The report moreover states:

*“The country is committed to being a capable state, characterised by the rule of law that supports and protects all its citizens without discrimination. The state is dedicated to the rights, unity and well-being of its people and will ensure the consolidation of the nation and its security.*

[...]

*The State will ensure good governance, which can be understood as accountability, transparency and efficiency in deploying scarce resources. But it also means a State respectful of democratic structures and processes and committed to the rule of law and the protection of human rights in particular”* (Rwanda Vision 2020, July 2001, first pillar).

According to the abovementioned statement, Rwanda is highly committed to establishing a rule-of-law state. In contrast, NGOs have criticised the government’s policy and argue that the authorities use the law for their own benefits and that Rwanda is thus, instead of a rule-of-law state, a rule-of-men state. To assess this dichotomy it is important to first find out what the characteristics of a rule-of-law state are. This chapter starts with a literature review, in order to come up with a well fined, generally accepted, definition of “rule of law”. To be able to assess to compatibility between the “genocide ideology” laws and a rule-of-law state, the following elements are described: a clear and consistent legal framework, including the principle of proportionality; strong enforcement mechanisms; and the independency of the judiciary.

### 2.1 Literature review of Rule of Law

To carry out a thorough research in order to answer the central question a literature review has been conducted on the principle of “rule of law”, as scholars and lawyers have been debating about the concept for centuries and one agreed definition still does not exist. Specifying a definition of rule of law that is narrow enough to be measurable across various cases is therefore necessary for writing this dissertation.

The principle already existed in the 19<sup>th</sup> century when Albert Venn Dicey described the following three characteristics of the rule of law: “absence of arbitrary power on the part of

the government; ordinary law administered by ordinary tribunals; and general rules of constitutional law resulting from the ordinary law of the land” (Dicey, 1902, p.179-92). Despite of the fact that many different opinions of what requires a rule-of-law state have been developed, it is generally agreed that the rule of law is in its essence concerned with the protection of individuals from possible or unforeseen interference with their essential interests, for example because of arbitrary use of government power. The simplest definition that covers the scope of the term is: “The rule of law means that government officials and citizens are bound by and abide by the law” (Tamahana, 2012, p.232). The basis of the concept is thus that the state is governed through “settled, standing Laws”, instead of “Absolute Arbitrary individuals” (Radin, 1989, p.781). What is moreover an important is that the laws are righteous and proportional (Beatty, 2005). Basically, rule of law endeavours to protect the rights of its citizens from arbitrary use and misuse of government power.

Despite of the fact that many different definitions of the rule of law have been established, they do share a similar meaning of the goal of the rule of law. According to Fallon, most of the definitions of the rule of law consist of the following three values: “protection against anarchy and the Hobbesian war of all against all, creation of conditions in which people can plan their affairs with reasonable confidence that they can know in advance the legal consequences of their actions, and protection against some types of official arbitrariness” (Stromseth, Wippman & Brooks, 2006, p. 73).

While the goal of the rule of law is clear, scholars and institutions have argued about the elements of a rule-of-law state. David M. Desborough, special advisor at LexisNexis and involved in the development of the rule of law in Gambia highlights the important of a transparent legal system, arguing that it creates the foundation of the rule of law. The article moreover states that a transparent legal system includes: “a clear set of laws that are freely and easily accessible to all literate persons, strong enforcement structures, and an independent judiciary” (Marenah, 2011, para.1). It has been decided to use the previously mentioned elements as guideline throughout this final paper as they cover the founding aspects of the rule of law and relate to the research on the ‘genocide ideology’ laws. In the following paragraph the three concepts will be further analyzed.

## 2.2 A transparent legal system

### 2.2.1 A clear and consistent legal framework

In order to establish a transparent legal framework, creating the foundation for a rule of law state, it is necessary to implement clear laws and procedures that are freely and easily accessible, and predictable to all people. It may seem obvious, yet it is still important to state that it should be possible for everyone to clarify the law for himself or herself if everyone is bound to it. The European Court of Human Rights (ECHR), a court that has worldwide influence with its authoritative verdicts and interpretations on human rights, also highlights the importance of accessibility. It is therefore interesting to take a look at the following statement of the ECHR:

*"[...] the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case ... a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail"* (Centre for Public Law, 2006).

A clear and consistent legal framework is thus a necessity in a rule-of-law state and states have to do everything in their power to live up to it. Yet according to David Beatty, the threat of unclear laws will always remain and is especially present in constitutional law (Beatty, 2005). In his book “The ultimate rule of law” he therefore highlights the importance of the principles of proportionality and necessity, arguing they are essential parts of a clear and consistent legal framework. According to Beatty, specifically constitutional law tends to include vague terms, which consequently leads to judges being charged with interpreting while they are unlimited by a clear text. He reacted to this problem by stating that turning away from interpretation en moving towards applying the principle of proportionality would lead to the “ultimate rule of law” (Beatty, 2005). Thus in order to be able to measure the constitutionality of disputed actions of the government David Beatty advances a shift from the focus on “interpretations” towards applying the principle of proportionality.

Looking more in depth to this concept, the principle of proportionality holds that “state action must be a rational means to a permissible end that does not unduly invade fundamental human rights” (Engle, 2012, p.1). The principle has been established to avoid excessiveness use and arbitrariness of the limitations on the restriction of basic human rights. In other words, the measure that invades the basic human rights, such as

freedom of speech, must have a legitimate aim. Moreover it must be a necessary measure in order to serve this aim. Thus there has to be a solid argument for restricting one’s right to freedom of speech and political space and the limits must be carefully tailored and applied.

The principle of proportionality is enshrined in international law. An important United Nations covenant is article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of opinion and the freedom of expression. This multilateral treaty was adopted by the United Nations General Assembly in 1966 and on April 16, 1975 Rwanda acceded to the ICCPR (Werchick, 2008). The treaty allows state parties to impose restrictions on freedom of expression, yet only if provided for by the law and if the restriction is necessary to protect the rights of others, such as the protection of national security. Paragraph 2 of article 20 obliges states to prohibit war propaganda, hate speech and other advocacy of hatred leading to incitement of violence:

*“Any propaganda for war shall be prohibited by law”*

*“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”* (Article 19, 2008, p6).

Despite of the obligation to prohibit the aforementioned acts, such as propaganda for war, any restriction of freedom of expression must comply with the requirements described in paragraph 3 of article 19 of the ICCPR in order to prevent the jeopardy of the freedom of expression itself (Amnesty International, 2010, p.13).

Article 19(3):

*“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.”* (ICCPR, article 19(3))

### **2.2.2 Strong enforcement mechanisms**

A well-functioning rule-of-law state is not possible without strong enforcement mechanisms to promote adherence to the law. Thus, besides clear and intelligible laws and procedures that are easily accessible, an important part of a transparent legal system is the enforcement mechanisms. Parts of these mechanisms are for instance courts and prisons, yet also those who directly engage in discovering criminal activity fall under the

scope. When assessing the level of rule of law in a country it is important to bear in mind the enforcement mechanisms. Yet while the enforcement mechanisms of the “genocide ideology” campaign can be contested, the focus of this dissertation is more on the disputed content of the laws and how they can be interpreted in different ways, opening possibilities for misuse. This aspect of the rule of law will therefore not further be discussed throughout this paper.

### 2.2.3 Independence of the Judiciary

The final element that is part of the foundation of a rule-of-law state, as described in this chapter, is the independency of the judiciary. As mentioned before, according to David Beatty (2005) constitutional laws often encompass vague terms and interpretation of judges have influence on the use of the laws. Even is the principle of proportionality is perfectly applied an independent judiciary is highly important to avoid misuse of the laws.

Judicial independence is the principle that ensures that the judiciary is excluded from the two other branches of government, which are the executive and legislative. A fundamental element of the independence of the judiciary is the separation of powers. In the decision-making process the judges should act in total freedom to decide the case impartially, without restrictions or inappropriate influence. An important element that contributes to the independence of the judiciary and constitutes the backbone of the judicial independence, next to separation of powers, is life tenure of the judges. Irremovability of judges who are appointed until retirement is necessary in order to exclude external influence (Hiil Innovating Justice, 2012, p.64)

Without an independent and impartial judiciary, the most developed system of rights and procedures would be meaningless. Every person’s right to have a fair trial, solely based on the law and without any inappropriate influence depends on the independence of the judges. Having described the basic requirements for establishing a rule-of-law state, the following chapter will describe the criticism on the “genocide ideology” laws as well as the consequent response of the Rwandan government.

### Chapter 3. Criticism to the laws and response of the government

Since the start of the widespread campaign against “divisionism” in 2001, several NGOs have expressed their concerns about the “genocide ideology” laws by arguing that the government takes advantage of the laws by oppressing the opposition and by suppressing free speech. Especially in the run-up to the presidential elections in 2010 the law came under international critical review and concerns were announced. This chapter describes these concerns, expressed by Amnesty International in their 2010 report “Safer to Stay Silent: The Chilling Effect of Rwanda’s Laws on ‘Genocide Ideology’ and ‘Sectarianism’”, and by Human Rights Watch in chapter VII of the 2008 report on judicial reform titled ‘Law and Reality: Progress in Judicial Reform in Rwanda’. Within this chapter the elements of the rule of law, as described in the previous chapter, will be used as a guideline throughout this chapter. Thus the clarity of legislation of the “genocide ideology” laws and the independency of the judiciary will be assessed in this chapter.

#### 3.1 Unclear, imprecise and unproportional rules and procedures

To start, several NGOs have expressed their concerns about the clarity and preciseness of the “genocide ideology” laws and procedures of related trials in Rwanda. For instance, Amnesty International describes that “many Rwandans, even those with specialized knowledge of Rwandan law including lawyers and human rights workers, were unable to precisely define genocide ideology”. Moreover, “even judges, the professionals charged with applying the law, noted that the law was broad and abstract” (Amnesty International, p.17-18).

To take a more precise look on the specific laws, law No. 47/2001 On Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarism of December 18 2001, Amnesty International and Human Rights Watch have both assessed the definition of the crime of sectarianism too vague. The definition states:

*“Sectarianism means the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination mentioned in article one”* (Law No. 47/2001).

Amnesty International refers to the “sweeping and imprecise nature of the “sectarianism’ law”. Moreover, “the law does not give individuals a proper indication of how the law limits

his or her conduct and is not formulated with sufficient precision for individuals to know how to regulate their conduct” (Amnesty International, 2010, p.16).

Moving on to article 4 of law No. 33 bis/2003 criminalizing “revisionism, negotionism and trivialisation”, that prohibits among others the publication of “[...] *writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds* [...]”. This article has been critically assessed according to the reports of the above-mentioned NGOs. Human Rights Watch for instance has argued that the term “rudely minimised” is too vague. Moreover neither the Rwandan constitution nor the 2003 law does include clear definitions of the terms “revisionism”, “denial”, or “gross minimization” (Human Rights Watch, 2008, p.35).

Concerning the 2008 law on “genocide ideology” both NGOs criticise the definition of the crime. Amnesty International emphasizes the vagueness of terms such as “stirring up ill feelings”, “propounding wickedness”, and “mocking” (Amnesty International, 2010, p.14). Human Rights Watch moreover states that the crime is “largely disconnected from the crime of genocide itself. It does not require that the perpetrator intend to assist or facilitate genocide, or be aware of any planned or actual acts of genocide” (Human Rights Watch, 2008, p.42). Another report of Human Rights Watch published in 2010 also states that “the absence of the requirement to prove “intent” and “causality” for the crime is of great concern” (Human Rights Watch, 2010, p.1).

In addition to the abovenmentioned critique on the terms used in the laws, various NGOs argue that the laws are contradictory to the principle of proportionality. Critics argue that the broad laws criminalise more than what is required to protect the rights of others, such as the right of expression and the protection of public order (HiiL Innovating Justice, 2012, p.49). Amnesty International emphasizes the restriction of the freedom of expression stating “The RPF became increasingly sensitive to criticism in advance of the presidential elections. [...]. The authorities continued to misuse broad and ill-defined laws on ‘genocide ideology’ and ‘sectarianism’. The laws prohibits hate speech, but also criminalize legitimate criticism of the government” (Amnesty International, 2011, para.7). Not only Amnesty International and Human Rights Watch criticize the laws, also the US Department of State in its 2009 report notes that the enforcement of the laws has silenced debates and/or criticism of the government (US Department of State, 2009).

As a result of the unclear laws, in combination with excessive punishments, for example custodial sentences with minimum sentences of between one and three years and maximum of life imprisonment, citizens fear to speak out, what leads to an infringement with the freedom of expression. This fear of people for speaking out certainly had its effect on the fairness of trials, for example the Gacaca Courts, where witnesses were afraid to testify for an accused perpetrator. For example according to Amnesty International: *“The cumulative result of these laws is to deter people from exercising their right to freedom of expression. This chilling effect means that people who have yet to have any action taken against them nonetheless fear being targeted and refrain from expressing opinions, which may be legal. In some cases, this has discouraged people from testifying for the defence in criminal trials”* (Amnesty International, 2010, p.8).

### 3.2 Interference of government with judiciary

Not only the terms that are used and the broad scope of the laws have received critique, NGOs also have spread their concerns about the political influence in the enforcement processes of the laws. Specifically in the case of Rwanda where the laws are described as vague, imprecise and confusing, influences of the other two branches of the government can have a major effect on cases, which is obviously in contradiction of the rule of law (Human Rights Watch; Amnesty International). Human Rights Watch for instance mentions the independence of judiciary in their 2008 report ‘Law and Reality’ and in their submission for the Universal Periodic Review of Rwanda session in January 2011. The political influence in prosecutions, specifically against political opponents and against independent journalists, and accusations of “divisionism” are major points of concern. The US State Department in its 2009 report notes: “Government officials sometimes attempted to influence individual cases, primarily in Gacaca cases” (US Department of State, 2009, part e.). Human Rights Watch furthermore states that judicial independence is lacking in practice, despite of the fact that it is guaranteed by law: article 140 of the constitution states that: “the judiciary is independent and separate from the legislature and the executive branches of government” and that “the judiciary shall enjoy financial and administrative autonomy” (Rwandan Constitution, article 140).

### 3.3 Response of the government

Whereas NGOs focusses on the weaknessess of the laws, the government refers to the need for the laws to help fight the deadly ideology which plunged the country into the 1994 Genocide” (Ssuuna & Buyinza, 2008, para.1). Moreover, as stated before, they keep

referring to genocide denial laws in other countries, such as the law against holocaust denial in Germany. Yet the government has recognized the shortcomings of the laws and in general the government agrees with the critique that the laws leads to frictions between criminalization of ‘genocide ideology’ and divisionism and the execution of freedom of speech, specifically concerning the principles of necessity and proportionality. In reply to these concerns, the government announced a review on the possible abuses of the “genocide ideology” law in April 2010 and if necessary a revision of the law would follow. As Louise Mushikiwabo, the Government Spokesperson for Rwanda and Minister of Foreign Affairs stated in a New York Times interview: “if the law has proved to be dysfunctional, it will be revised. We don’t want to abuse our citizens” (Kron, 2010, para. 14).

The government suited actions to their words as a national group was commissioned to investigate the laws. Moreover reviews by experts from North America and Western Europe were examined and comments from human rights organizations were requested. The frame of reference for the review included: “A comparison of the Rwandan law with similar laws in Europe and elsewhere; an indication of strengths and weaknesses; the interpretation of the law by courts; and the proposal of a draft amended law” (Hill, 2012, p.51). The outcome of the two reports resulted in the creation of a draft bill that was approved by the Council of Ministers on June 27, 2010. To date the amended version of the “genocide ideology” law is submitted to the government and parliament for debate yet still not approved. The amended text is therefore not yet available for the public. However some NGOs state that the amended version includes some improvements, for example a narrower definition of the crime and a decrease in imprisonment sentences, as the maximum sentence for imprisonment would become nine years. On the other hand the crime of ‘genocide ideology’ is still punishable by imprisonment. Moreover, the law still includes vague language, as described by several NGOs, that can be used to criminalize freedom of expression (Human Rights Watch, 2013; Jambonews, 2013).

Despite of the revision of the law, and its improvements, freedom of expression remains restricted. The amended “genocide ideology” law opposes the governments’ continuing misuse of the ill-defined laws (Amnesty International, 2012, para.6). The Rwanda Bureau of Information and Broadcasting (ORINFOR), in an article published on April 15<sup>th</sup> 2013 reports that 42 arrests for “harboring the genocide ideology” and “uttered inflammatory speeches that negate the genocide” have been executed in the three weeks following the national commemoration on April 7, 2013, of the genocide (ORINFOR, 2013, para. 1-2).

## Chapter 4. Case study Victoire Ingabire

*“Facing life in jail, the women who dared to take on Paul Kagame”*

(Howden, 2010)

This chapter describes a case study of one of the most debated trials in Rwanda that is related to “genocide ideology”, namely the case of the famous opposition politician Victoire Ingabire Umuhoza. Whereas the case has been criticised by several actors as being highly flawed and marked by political motivations (Human Rights Watch, 2012; Amnesty International, 2013), Ingabire was still found guilty of “conspiracy against the country through terrorism and war” and “genocide denial”. The chapter starts with the background of the case after which an in depth research on the trial, including the indictment, defence and judgement will be described. The final part of the chapter provides an analysis of the criticism of NGOs.

### 4.1 Case background

Mrs. Victoire Ingabire Umuhoza, a Hutu politician, was born on October 3, 1968, in Rwanda. During the 1994 genocide she fled to the Netherlands where she graduated in business economics and corporate management. Victoire Ingabire returned to her home country on January 10, 2010, to contribute to the rebuilding of her country after she had been in exile for 16 years. She returned, being the head of her political party, the Unified Democratic Forces (UDF), with the intention to register the party in order to run against Paul Kagame in the presidential elections of August 2010. Just a few minutes after returning home from exile in the Netherlands, Ingabire delivered a speech (Appendix II) at the Kigali Genocide Memorial Centre in which she emphasized the need to understand the sadness of the whole population, referring to the necessity to include the suffering of the Hutus. In the speech she highlights the fact that besides the enormous amount of atrocities committed by Hutu on Tutsi people, also Hutu suffered during the genocide. In an important part of the speech she states the following: “[...] if we look at this memorial, it only stops at people who died during the Tutsi genocide. Hutus who lost their people are also sad and they think about their lost ones and wonder, ‘When will our dead ones be remembered?’

*“For us to reach reconciliation, we need to empathize with everyone’s sadness. It is necessary that for the Tutsis who were killed, those Hutus who killed them understand that they need to be punished for it. It is also necessary that for the Hutus who were killed,*

*those people who killed them understand that they need to be punished for it too. Furthermore, it is important that all of us, Rwandans from different ethnic groups, understand that we need to unite, respect each other and build our country in peace. [...]* (Victoire Ingabire Umuhiza, 2012).

In April 2010, three months after delivering the speech, Ingabire was placed under house arrest. In the mean time, Paul Kagame was re-elected in the presidential elections. Afterwards she was released on conditional bail.

## 4.2 Trial

### 4.2.1 Charges

Ingabire was re-arrested on October 14, 2010, on suspicion of “threatening national security and public order” and “buying and distributing arms and ammunitions to the terrorist organisation” (Warner, 2012, para.5). With terrorist organisation is mentioned rebel group the Democratic Forces for the Liberation of Rwanda (FDLR). As the hearings of the case against Ingabire in Kigali High Court began, charges were added related to ‘genocide ideology’ and ‘divisionism’, resulting in Ingabire facing six charges in the final indictment. The final six charges in the indictments could be placed in two categories: charges related to speech and charges related to terrorism. In the first category, the three charges were “creating an armed group; complicity in terrorist acts; and complicity in the violation of state security by terrorism and armed violence” and the other category the three charges were: “inciting the public to rise against the state; genocide ideology; and sectarianism” (JAMBO asble, 2012). The state prosecutor asked the judges to give Ingabire the maximum life sentence. The Deputy Prosecutor General Alphonse Hitiyaremye stated: “These crimes amount to a life sentence. We request a life sentence for Victoire Ingabire” (Musoni, 2012, para.2).

### 4.2.2 Defence

Before moving on the the sub paragraphs please note that in this part, concerning the defence, judgement and criticism on the trial, only the relevant information for this research will be described. The case obviously is far greater than can be covered in this dissertation and it has thus been decided to particularly focus on the charges on “genocide ideology” and “divisionism”.

An important part of the defence of Ingabire against the charges was a legal challenge launched in March 2012 in which the accused demanded the Supreme Court to challenge the constitutionality of articles 2-9 of the Law No.18/2008 relating to the punishment of the crime of genocide ideology. This legal challenge was launched under article 145 of the Constitution which gives the Supreme Court power to analyse laws concerning their constitutionality, and if necessary nullify these laws. Ingabire specifically stated that the article 2 and 3 of the law are in contrast with the articles 20, 33 and 34 of the constitution guaranteeing freedom of expression (Appendix III). She argued that the “genocide ideology” law is too broad and is being exploited by the government to restrict freedom of thought (Karinganire, 2012).

In October 2012, the Supreme Court dismissed Ingabire’s abovementioned legal challenge stating that there is no contradiction with the freedom of expression, that the extent of the law is meaningful, and that the laws are clear. However, the Court does state that articles two and three can need some more clarification in some specific cases. The nine-Judge panel ruled: “The court finds that the laws on freedom of speech and expression were not compromised by the law against the genocide ideology in any way. The court observes that while freedoms of expression should be upheld, in principle it should not give anyone a right to abuse other laws under that cover” (Kagire, 2012, para.9).

#### 4.2.3 Judgement

In its final judgement on October 30, 2012, the Court changed two of the six charges stating that Ingabire was found guilty of “conspiracy to harm the existing authority and the constitutional principles using terrorism, armed violence or any other type of violence’ and of ‘grossly minimizing the genocide’” (Amnesty International, 2013, p15). Yet she was acquitted of the four other charges including, genocide ideology, promoting ethnic divisionism and supporting armed groups. Concerning the acquittal of “genocide ideology” the Court argued that all the statements made by Ingabire could not be defined as inciting genocide. The verdict was eight years imprisonment.

#### 4.3 Criticism on the case

As stated before, human rights organizations have criticised the trial of Ingabire, stating that it was flawed and included “politically motivated charges” (Human Rights Watch, 2008). Africa director at Human Rights Watch, Daniel Bekele for example argued: “The prosecution of Ingabire for “genocide ideology” and divisionism illustrates the Rwandan

government’s unwillingness to tolerate criticism and to accept the role of opposition parties in a democratic society”. He moreover stated: “Several factors lead us to conclude that Ingabire did not receive a fair trial”. “These include the politically motivated charges, such as “genocide ideology,” doubts about the reliability of some of the evidence, senior government officials’ public statements before the trial about Ingabire’s guilt, and broader concerns about the lack of independence of the Rwandan judiciary in politicized cases” (Human Rights Watch, 2012, para.8).

Striking in this case is the interference of the government as well as the government-controlled media, what had already convicted Ingabire “in the court of public opinion”. Paul Kagame, who as president of Rwanda should obviously refrain from interfering in judicial proceedings, to ensure the independancy of the judiciary, explicitly confirmed Ingabire to be guilty with the following statement:

*“On our side we have evidence, which has been brought to her attention, and about 10 things she has been denying. Now she’s saying that seven of them are actually true and this has come as a result of the overwhelming evidence that was put in front of her including the people she was working with, the former soldiers in the FDLR who are here in our hands, who are testifying to these accusations”* (Kalinaki, 2010, para.12).

Specifically the use of words as “our side” is striking as it highly shows the political interference in the judiciary in this case. This interference is further outlined by the great amount of newspapers that seem to be influenced by the government’s political motivations. For instance, Louise Mushikiwabo, foreign affairs minister told The Independent newspaper on August 7, 2010: “She is a criminal... She is bad news, she is connected to the FDLR and terrorist groups and she has a criminal history”. Moreover she stated in The East African on May 3, 2010: “There is no place for people like Ingabire in Rwanda. Not now and not in many years” (Human Rights Watch, 2012, para.15). According to Africa director at Human Rights Watch, Daniel Bekele: “The odds were stacked up against Ingabire before any evidence had been produced,” Bekele said. “In these circumstances, it was highly unlikely she would receive a fair trial” (Human Rights Watch, 2012, para.17).

Besides political interference and the one-sided media portrayal, more concerns were raised about the reliability some of the evidence after intimidation of a witness called by the defense. Moreover the use of illegitimate documents and witnesses highlight the

serious violations of the principles of criminal law in the case of Victoire Ingabire (JAMBO asbl, 2012).

Alltogether it can be stated that Victoire Ingabire has received an unfair trial. The unconstitutionality of the laws on which the accusation of Ingabire is based, together with the broadness and impreciseness of the laws and the interference of the government in the judiciary shows that the case is highly flawed. This again outlines the shortages of the “genocide ideology” laws and the easiness of abusing the laws for, for instance, political motivations. Yet important to note here is that while the public prosecutor asked for life imprisonment, the High Court sentenced Ingabire to eight years in prison. Thus on the other hand the judiciary may not be as influenced by the government as the critics argue. Perhaps the Rwandan government not always get its way.

## Conclusion

The Rwandan government began with the widespread government’s campaign against “genocide ideology” in 2001. In order to prevent a new outburst of violence the government believed it to be necessary to establish new legislation to stamp out the ethnic divide between Hutus and Tutsis that fuelled the 1994 genocide. Therefore, from 2001 until 2008 three highly disputed laws were established: the Law on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarism in 2001, in 2003 the parliament enacted the Law on Repressing the Crime of Genocide, Crimes Against Humanity And War Crimes. In 2008 the law Relating to the Punishment of the Crime of Genocide Ideology was passed.

Throughout the years the beforementioned laws have been highly disputed. Specifically the use of vague terms and the excessive punishments related to the crimes are highly debated among non-profit organizations. Moreover, cases relating to the “genocide ideology” laws, tried in Rwandan criminal courts, have been criticized on their fairness and on political influence in trials. The general picture that rises from this research is that of a government that is reluctant in opening up political space and freedom of expression, which are necessary elements of a rule-of-law state. Despite the fact that it is certainly true that Rwanda found itself to be in an extremely vulnerable and difficult position after the genocide, where some restriction of speech was unavoidable, the laws have often been used to take down debates and to discredit the critics of the government. Specifically those who have expressed themselves on the crimes committed by RPF members, as well as members of the opposition parties, are places in a vulnerable position for being accused of “genocide ideology”.

Alltogether the imprecise laws, together with the interference of the government in the judiciary, have created a situation in Rwanda that does not resembles a rule-of-law state that is based on a clear and accessible legal framework and an independent judiciary. It can thus be stated that the laws certainly need to be revised in order for the “genocide ideology” laws to be compatible with elements of the rule of law.

As final point, whereas taking a critical position towards the implemented laws is highly required in order to protect civilians from government’s misuse of the laws, one should not forget to bear in mind the context of the whole situation. With a completely different and devastating history Rwanda cannot be expected to implement the Western democratical

standards in only a few decades. What is important is for NGOs and other involved actors to keep an eye on the situation and provide Rwanda with advice and support in the development towards a rule-of-law state. Ex-Minister of Justice/Attorney General Tharcisse Karugarama, who was replaced by Johnston Busingye on May 24, 2013, during the presentation of the Rwandan Report on the Implementation of the International Convention on Elimination of all Forms of Racial Discrimination on March 8th 2011, also outlines the importance to understand the country when judging the situation. He states:

*“[I]f a medical doctor diagnoses a serious disease wrongly, he/she will proscribe a wrong drug and could easily kill the patient. We call upon all our partners not to diagnose Rwanda wrongly, because that could easily kill the initiatives that Rwanda has undertaken to sort out its problems, especially those associated with distortions about its history and its people. We call upon all our development partners to accept that Rwandans know Rwanda better, care for Rwandans better and understand its history better and can solve its problems better, if supported by people of good will. If you want to know Rwanda better, come to Rwanda and deal with Rwandans to foster better understanding of the country.”*

The following section will consist of a set of recommendations for the Rwandan government.

## Recommendations

As stated in this dissertation, the Rwandan government has carried out a review of the “genocide ideology” law, which has led a revision of the law. This amended version is now submitted to the government and parliament for debate. As the revised version is not yet adopted at this writing the following recommendations have been made on the laws that are still in effect, thus on all three “genocide ideology” laws. However, a first and foremost recommendation is to speed up the process of approval of the revised law by the government and parliament. With the current situation on hold, and with people still being prosecuted under the disputed law, the criticism will increase and the promise of the government to effectively implement the revised law, which is meaningful and able to protect freedom of expression on paper as well as in practice, will more and more lose its credibility.

The following recommendations have been established after reviewing recommendations of several human rights organizations, such as Amnesty International (2010) and Human Rights Watch (2008). The recommendations have been made on the following elements: transparency and independancy of judiciary, revision of the laws, and finally the treatment of suspects in cases.

### Revision of the laws

The laws prove to be highly interfering with human rights law. It is therefore recommended to:

- Ensure the right of speech and political participation by permitting consultation between the several actors involved in the debate concerning the legislation, including the actors that are seen as critics of the government. These actors include for instance Rwandan lawyers, international legal experts, civil society and international NGOs;
- Revise the laws to guarantee a more precise and narrow definition of the crime, in accordance with international norms. Moreover ensure that the intention to commit, assist or incite genocide can be clearly indicated;
- Amend the laws on “genocide ideology” and “sectarianism” to protect civilians against misuse by ensuring that the laws are clear and precise to forbid solely that expression prohibited in Article 20(2) of the ICCPR which states that “Any

*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*”. Restrictions should strictly necessary and proportionate to meet the aim;

- Amend the law on “genocide ideology” and revise the draft penal code to guarantee that the age of criminal responsibility is suitable.

### **Independancy of judiciary**

As we have seen throughout this paper, the interference of the government in the judiciary is an important weakness of the Rwandan government. The following recommendations are therefore made:

- Guarantee independancy of the judiciary by commanding government officials to make an end to the interference in judicial proceedings.

### **Transparency and treatment of cases**

After doing research on cases related to the ‘genocide ideology’ laws it is clear that the treatments of the prospects and fairness of the trials could be improved at some points. It is therefore recommended to:

- Ensure transparency by disclosing information on the application of the laws on ‘genocide ideology’ and ‘sectarianism’ such as the number of prosecutions, acquittals and convictions and the sentences that are imposed;
- Ensure the fairness of a trial by researching whether the culpable behavior could be placed under the hate speech ensured under the aforementioned article 20. If this is unclear, the prosecuted should be released until they can receive a fair trial in accordance with international human rights law;
- Guarantee that children who are convicted for hate speech receive treatment that takes into account their age. Moreover imprisonment of children should solely be a punishment of last resort and for the shortest period of time that is appropriate;
- Punish perpetrators according to the principles of proportionality and necessity.

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## Appendices

### Appendix I – “Genocide Ideology” laws

#### Law No. 47/2001 On 18/12/2001 On Prevention, Suppression And Punishment Of The Crime Of Discrimination And Sectarianism

<b>LAW NO 47/2001 ON 18/12/2001 ON PREVENTION, SUPPRESSION AND PUNISHMENT OF THE CRIME OF DISCRIMINATION AND SECTARIANISM</b>	
<b>TITLE</b>	<b>18/12/2001 - LAW NO 47/2001 ON PREVENTION, SUPPRESSION AND PUNISHMENT OF THE CRIME OF DISCRIMINATION AND SECTARIANISM</b>
LAW ON PREVENTION, SUPPRESSION AND PUNISHMENT OF THE CRIME OF DISCRIMINATION AND SECTARIANISM	
Promulgation Date: 2002-12-18 Publication Date:0000-00-00 Status:Current	
<b>TABLE OF CONTENTS</b>	
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<b>TEXTE</b>	
<b><a href="#">Chapter 1. DEFINITIONS OF TERMS</a></b>	
<p><b>Article: 1</b> According to this law :</p> <p>1° Discrimination is any speech, writing, or actions based on ethnicity, region or country of origin, the colour of the skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is party ;</p> <p>2° Sectarianism means the use of any speech, written statement or action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination mentioned in article one I*;</p> <p>3° Deprivation of a person of his/her rights is the denial of rights provided by Rwanda Law and by International Conventions to which Rwanda is party.</p>	

## **Chapter 2. GENERAL PROVISIONS**

### **Article: 2**

This law aims at punishing any person guilty of the crime of discrimination and sectarianism.

### **Article: 3**

The crime of discrimination occurs when the author makes use 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 one or a group of persons their human rights provided by Rwandan law and International Conventions to which Rwanda is party.

The crime of sectarianism occurs when the author makes use of any speech, written statement or action that causes conflict that causes an uprising that may degenerate into strife among people.

### **Article: 4**

This law does not prevent the state or from taking decisions that give Rwandan nationals powers and rights different from those of foreigners.

## **Chapter 3. SANCTIONS**

### **Article: 5**

Any person guilty of the crime of discrimination or sectarianism mentioned in article 3 of this law, is sentenced to between three months and two years of imprisonment and fined between fifty thousand (50,000) to three hundred thousand (300,000) Rwandan Francs or only one of these sanctions.

When the offender of the crime of discrimination or sectarianism is a government official, a former government official, a political party official, an official in the private sector, or an official in non-governmental organisation, he/she is sentenced to between one year and five years of imprisonment and fined between five hundred thousand (500.000) to two million (2.000.000) Rwandan Francs or one of those two sanctions.

### **Article: 6**

Any association, political party, or non-profit making organisation found guilty of offences of discrimination is penalised with a suspension of between six months and one year and fin between 5.000.000 and 10.000.000 Rwandan Francs.

, Depending on the seriousness of the consequences of that act of discrimination on the population, the court may double the penalty, or decide to dissolve the concerned association, political party or non-profit making organisation, according to the law governing the dissolution of associations, political parties and non-profit making organisations.

### **Article: 7**

Any person who masterminds, or helps another mastermind a plan to discriminate or sow sectarianism as mentioned in article 3 of this law, is sentenced to between one year and five years of imprisonment and fined between five hundred thousand (500.000) and two million (2.000.000) Rwandan Francs or only one of these two sanctions.

### **Article: 8**

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 discriminating people or sowing sectarianism among them is sentenced to between one year and five years of imprisonment and fined between five hundred thousand (500.000) and two million (2.000.000) Rwandan Francs or only one of these two sanctions.'

### **Article: 9**

Any person who through education sows discrimination or sectarianism is sentenced to between six months and two years of imprisonment and fined between one hundred thousand (100.000) and six hundred thousand (600.000) Rwandan Francs, or only one of these two sanctions.  
 If the person who sows discrimination or sectarianism is an official mentioned in article 5 of this law, he/she is sentenced to between one year and five years imprisonment and fined between five hundred thousand (500.000) and one million (1.000.000) Rwandan francs or only one of these two sanctions.  
 When those who are taught discrimination and sectarianism comprise the youth below the age of twenty one, the sanctions mentioned in paragraph 2 of this article are doubled.

**Article: 10**

Is sentenced to death penalty or life imprisonment any one who kills, plot to kill or attempts to kill another person because of discrimination or sectarianism as mentioned in article one of this Law.

**Article: 11**

Without prejudice to provisions of the electoral law, any person who campaigns for himself/herself or for another person during elections using discrimination or sectarianism, is sentenced to between six months and five years of imprisonment and fined between five hundred (500.000) and five million (5.000.000) Rwandan francs.

**Article: 12**

Subject to the provisions of Rwanda's electoral law, any one who won elections and it is proved that he/she resorted to discrimination or sectarianism based on the provisions of article 1 of this law, the penalty is removal from the post the person competed for, denial of the right to vote and be elected for a period prescribed by courts of law. Without prejudice to the sanctions provided for in article 11 of this law. The post for which he/she was elected is again campaigned for

**Article: 13**

Any person guilty of the crime of discrimination or sowing sectarianism is denied national rights following the penalties provided for by the penal code and this fact is made public through means prescribed by the court.

**Article: 14**

A legal action as to damages for the offence of discrimination or sectarianism is carried out by any one who can give evidence of the prejudice he or she has suffered from as a result of that offence.

**Chapter 4. MISCELLANEOUS AND FINAL PROVISIONS**

**Article: 15**

The crime of discrimination and that of sectarianism are not time bound.

**Article: 16**

All previous provisions contrary to this law are hereby abrogated.

**Article: 17**

This law comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda. Kigali, on 18/12/2001

**Law No. 33 bis/2003 Of 06/09/2003 Repressing The Crime Of Genocide, Crimes Against Humanity And War Crimes.**

<b>LAW N° 33 bis/2003 OF 06/09/2003 REPRESSING THE CRIME OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES</b>	
<b>TITLE</b>	<b>06/09/2003 - LAW N° 33 BIS/2003 REPRESSING THE CRIME OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES</b>
<p>LAW REPRESSING THE CRIME OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR</p> <p>Promulgation Date: 2003-09-06                  Publication Date: 2003-11-01                  Status: Current</p>	
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<b>TEXTE</b>	
<p><b><a href="#">Chapter 1. GENERAL PROVISIONS</a></b></p> <p><b>Article: 1</b>                  This law represses the crime of genocide, crimes against humanity and war crimes.</p> <p><b><a href="#">Chapter 2. THE CRIME OF GENOCIDE AND ITS SANCTIONS</a></b></p> <p><b>Article: 2</b>                  The crime of genocide shall mean one of the following acts committed with intent to destroy, in whole or in part, a national, regional, ethnical, racial or religious group, whether in time of peace or in time of war:</p> <p>1° killing members of the group ;                  2° causing serious bodily or mental harm to members of the group ;                  3° deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in</p>	

whole or in part ;  
4° imposing measures intended to prevent births within the group ;  
5° forcibly transferring children of the group to another group.

**Article: 3**

Shall be sentenced to death any person who will have committed, in time of peace or in time of war, the crime of genocide as defined in Article 2 of this law.

**Article: 4**

Shall be sentenced to an imprisonment of ten (10) to twenty (20) years, any person who will have publicly shown, by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence.

Where the crimes mentioned in the preceding paragraph are committed by an association or a political party, its dissolution shall be pronounced.

**Chapter 3. CRIMES AGAINST HUMANITY AND THEIR SANCTIONS**

**Article: 5**

The crime against humanity shall mean one of the following acts committed within the context of a widespread or systematic attack directed against the civilian population because of their nationality, political opinions, ethnic or religious origins:

1 ° murder;  
2° extermination;  
3° enslavement;  
4° deportation or forcible transfer of population;  
5° imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;  
6° torture;  
7° rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity; 8° persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious reasons or any other form of discrimination;  
9° forced disappearance of persons;  
10° the crime of apartheid;  
11 ° other inhumane acts of a similar character intentionally causing great sufferings, or serious injury to body integrity or to mental or physical health

**Article: 6**

Shall be sentenced to death, any person who will have committed a crime against humanity provided for in point 1', 2°, 3°, 6°, 7° or 9 of Article 5 of this law.

Shall be sentenced to life imprisonment or an imprisonment of ten (10) to twenty (20) years, any person who will have committed a crime against humanity provided for in point 4°, 5°, 8°, 10° of 11 ° of Article 5 of this law.

Where the, crime against humanity provided for in the preceding paragraph is accompanied with inhuman and degrading treatment, the perpetrator shall be sentenced to life imprisonment.

**Article: 7**

Where the crime of genocide and the crime against humanity, provided for in Articles 2 and 5 of this law have been backed, by any means whatsoever, by an association or a political organization, its dissolution shall be pronounced.

#### **Chapter 4. WAR CRIMES AND THEIR SENTENCES**

##### **Article: 8**

The war crime is one of the following acts committed during armed conflicts when they target persons or property protected by the Geneva Convention of August 12, 1949 and its additional protocols I and II of June 8, 1977:

- 1° wilful killing;
- 2° torture or other inhuman treatments, including biological experiments;
- 3° wilfully causing great suffering, or serious injury to body or health ;
- 4° extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully such as premises devoted to religion, charitable organizations, schools, historical premises dedicated to arts and scientific experiments;
- 5° compelling a prisoner of war or other protected person to serve in intelligence service or administration of belligerent parties;
- 6° wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial ; 7° unlawful deportation, transfer or confinement ;
- 8° taking of hostages and subjecting them to terrorist acts ;
- 9° intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread long - term and severe damage to the natural environment and which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated ;
- 10° making improper use of distinctive emblems of humanitarian organizations or other protective signs of persons or objects recognized by the international law, with intention of killing, wounding or capturing the enemy ;
- 11° attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives ;
- 12° practices of apartheid and other inhuman and degrading practices, based on racial discrimination, which give rise to attempts to humiliate human dignity;
- 13° the transfer, by the occupying power of the whole population or its part into the occupied territory, or deportation or transfer of the whole population or its part of within or outside the occupied territory without considering the population's interests ;
- 14° an unjustified delay in the repatriation of war prisoners or imprisoned civilians, after the end of active hostilities;
- 15° the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court and without affording all judicial guarantees which are generally recognized as indispensable ;
- 16° killing or wounding a person knowing he or she is not involved in hostilities, or who laid down his or her weapons in case he or she was fighting, or no longer having means for self defence.

##### **Article: 9**

Shall be liable to the following penalties, any person having committed one of the war crimes provided for in Article 8 of this law:

- 1° a death penalty or life imprisonment where he or she has committed the crime provided for in point 1° 2° 3°, 9°, 11° or 16° of Article 8 of this law;
- 2° an imprisonment sentence of ten (10) to twenty (20) years where he or she has committed the crime provided for in point 6°, 7°, 8°, 10° or 12° of Article 8 of this law;
- 3° an imprisonment sentence of five (5) to ten (10) years where he or she has committed the crime provided for in point 4°, 5°, 13°, 14° or 15° of Article 8 of this law.

##### **Article: 10**

"War crime" shall also mean any of the following acts committed in armed conflicts:

- 1 ° employing poisoned weapons or other arms designed to cause unnecessary suffering;
- 2° pillaging public or private property;

3° collective penalties;  
4° attempts to human dignity, in particular rape, sexual slavery, forced prostitution, and any form of indecent assault;  
5° enslavement and slave trade, practices linked to slavery and hard labour in all their forms;  
6° using human shields;  
7° acts of violence meant to inspire or terrorize the whole or part of the population;  
8° forcing civilians, including children under eighteen (18) years , to take part in hostilities or to conduct works for military purposes;  
9° starving the civil population and preventing humanitarian aid to reach the population;  
10° separating deliberately children, from their parents or persons in charge of their security and welfare;  
11 ° refusal to cater for the wounded, patients, shipwreck victims and persons deprived of their freedom for reasons linked to armed conflicts;  
12° subjecting detainees or prisoners to bad treatments.

**Article: 11**

Any one who commits one of the war crimes provided for in Article 10 of this law, shall incur the following penalties:

1 ° death penalty or life imprisonment where he or she has committed the crime provided for in point 1',4',5',6',9' or 10° of Article 10 of this law;  
2° an imprisonment sentence of ten (10) to twenty (20) years, where he or she has committed the crime provided for in point 3°,8°,11° or 12° of Article 10 of this law;  
3° an imprisonment sentence of five (5) to ten (10) years, where he or she has committed the crime provided for in point 2° or 7° of Article 10 of this law.

**Article: 12**

Those persons protected by the Geneva Conventions of August 12, 1949 and its additional protocols are as follows:

1 ° civil population;  
2° civilians under the power of belligerent parties;  
3° the wounded, patients, civilians and servicemen who survived a shipwreck;  
4° members of religious, medical and hospital staff not directly involved in hostilities;  
5° war prisoners and imprisoned civilians;  
6° civilians and servicemen detained for reasons relating to armed conflict;  
7° servicemen put outside combat whatever the cause .  
Civilians behaving as servicemen shall not be protected by this article.

**Article: 13**

Shall be punished by an imprisonment sentence of seven (7) to twenty (20) years, any person who uses or orders to use against the enemy methods and means of war expressly banned by laws and practices applicable in armed conflicts as well as international conventions to which Rwanda is signatory.  
Where methods and means used or ordered to be used have resulted in the death of one or more persons, the culprit shall incur a life imprisonment or a death penalty.

**Chapter 5. OFFENCES TO HUMANITARIAN ORGANISATIONS**

**Article: 14**

Shall be punished by an imprisonment of six (6) months to five (5) years and a fine of fifty thousand Rwandan Francs (50,000 Frws) to one hundred Rwandan Francs (100,000 Frws) or one of these penalties only, any person who:

1° will engage in hostile acts against persons belonging to Red Cross and Red Crescent organizations in their

humanitarian activities;

2° will have willingly destroyed or damaged, during hostilities, equipment, installations or warehouses pertaining to such an organisation or placed under its protection.

**Article: 15**

The use of the logo of humanitarian organisations is exclusively reserved for health services as well as the staff and equipment of the International Committee for the Red Cross, the International Federations of Red Cross and Red Crescent as well as National Societies of the Red Cross and Red Crescent which are entitled to it under the Geneva Conventions of 1949 for the protection of victims in wartime.

**Article: 16**

He who, willingly and without being entitled to it, will have borne or flown the logo of humanitarian organisations, or any other sign which is an imitation or is likely to cause confusion, shall be punished by an imprisonment sentence of six (6) months to five (5) years and a fine of fifty thousand Rwandan francs (50,000Frw) to one million Rwandan Francs (1000,000Frw), or one of these penalties only. Courts shall, in addition, pronounce confiscation of objects marked with the logo, and order destruction of instruments that will have served to produce the illegal marking.

**Chapter 6. MISCELLANEOUS AND FINAL PROVISIONS**

**Article: 17**

Without prejudice to the provisions of the Penal Code relating to the attempt and criminal participation, the following acts shall be punished by penalties provided for by this law:

1° an order, even where not followed by an execution, to commit one of the crimes referred to by this law;

2° a proposal or an offer to commit such a crime and the acceptance of such a proposal or offer;

3° incitement, by way of speech, image or writing, to commit such a crime, even where not followed by an execution;

4° an agreement in order to commit such a crime, even where not followed by an execution;

5° complicity to commit such a crime, even where not followed by an execution;

6° failure to act, within the limits of one's possibility to act, on the part of those who had knowledge of orders given in order to execute such a crime or acts that prepare its execution, and could prevent its consummation or put an end to it;

7° an attempt to commit such a crime.

**Article: 18**

No interest can justify committing crimes provided for by this law. The official status of an accused at the time of committing a crime shall not exempt him or her from his or her criminal liability and shall not be a reason to benefit from mitigating circumstances.

The fact that any of such crimes provided for by this law has been committed by a subordinate shall not exempt the authority which is his or her superior from his or her criminal liability if he or she knew or had reasons to know that the subordinate was preparing to commit that act or had committed it and that the authority superior in hierarchy has not taken the necessary and reasonable measures to prevent the said act from being committed or to punish their perpetrators, and to inform the relevant authorities.

The fact that the accused has acted upon the order of the Government or of his or her superior authority shall not exempt him or her from his or her criminal liability where, patently, the order could lead to perpetration of one of the crimes punishable under this law.

**Article: 19**

From the phase of preliminary investigations up to the final judgement, the president of the relevant jurisdiction may, upon a written request by the injured party or the Public Prosecution, take any protective measures needed to safeguard the interests of the injured party as to civil liability.

<p><b>Article: 20</b>                  Legal proceedings as well as penalties pronounced for the crimes of genocide, crimes against humanity and war crimes are imprescriptible.</p> <p><b>Article: 21</b>                  All previous legal provisions contrary to this law are hereby abrogated.</p> <p><b>Article: 22</b>                  This law comes into force on the date of its publication in the Official Gazette of the Republic of Rwanda. Kigali, on 06/09/2003</p>
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**Law No.18/2008 Of 23/07/2008 Relating To The Punishment Of The Crime Of Genocide Ideology**

<b>LAW N°18/2008 OF 23/07/2008 RELATING TO THE PUNISHMENT OF THE CRIME OF GENOCIDE IDEOLOGY</b>	
<b>TITLE</b>	<b>LAW N°18/2008 OF 23/07/2008 RELATING TO THE PUNISHMENT OF THE CRIME OF GENOCIDE IDEOLOGY</b>
<p>O.G n°20 of 20 october 2008</p> <p>Promulgation Date: 2008-07-23                  Publication Date: 2008-10-15                  Status: Current</p>	
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<b>TEXTE</b>	
<b><a href="#">Chapter 1. GENERAL PROVISIONS</a></b>	
<p><b>Article: 1                      Purpose of this law</b>                  This Law aims at preventing and punishing the crime of genocide ideology.</p> <p><b>Article: 2                      Definition of “genocide ideology”</b>                  The genocide ideology is an aggregate of thoughts characterized by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war.</p>	

**Article: 3                      Characteristics of the crime of genocide ideology**

The crime of genocide ideology is characterized in any behaviour manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

1° threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting hatred;

2° marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;

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

**Chapter 2. PENALTIES**

**Article: 4                      Sentencing the crime of genocide ideology**

Any person convicted of the crime of genocide ideology as mentioned in Articles 2 and 3 of this Law shall be sentenced to an imprisonment of ten (10) years to twenty five (25) years and a fine of two hundred thousand (200.000) to one million (1.000. 000 ) Rwandan francs

In case of recidivism, the penalty provided for in the preceding paragraph shall be doubled.

**Article: 5                      Penalty awarded to a genocide ideology convict found guilty of the crime of genocide**

Any person found guilty of the ideology of genocide who was convicted of the crime of genocide, shall be sentenced to life imprisonment.

**Article: 6                      Penalties awarded to current and former leaders**

In case the perpetrator of the crime of genocide ideology is a leader in public administrative organs, political organisation, private administrative organs, or a non governmental organs, a religious leader, or a former leader in such organs, he/she shall be sentenced to an imprisonment of fifteen (15) years to twenty five (25) years and a fine of two million (2.000.000) to five million (5.000.000) Rwandan francs .

**Article: 7                      Penalties awarded to associations, a political organization and non profit making organization**

Any association, political organization or non profit making organisation convicted of the crime of the ideology of genocide shall be subject to a punishment of its dissolution in accordance with legal provisions relating to dissolution of associations, political organisations and non profit making associations and a fine of five million (5.000.000) to ten million (10.000.000) Rwandan francs without prejudice to individual liability of any participant in the commission of the crime.

**Article: 8                      Penalties for disseminating genocide ideology**

Any person who disseminates genocide ideology in public through documents, speeches, pictures, media or any other means shall be sentenced to an imprisonment from twenty (20) years to twenty-five (25) years and a fine of two million (2. 000. 000) to five million (5.000.000 ) Rwandan francs

**Article: 9                      Penalties awarded to children guilty of the crime of genocide ideology**

In case a child under twelve years (12) of age is found guilty of a crime of genocide ideology, he or she shall be taken to a rehabilitation centre for a period not exceeding twelve (12) months

In case a child who is found guilty of the crime of genocide ideology is between twelve (12) and eighteen (18) years, he or she shall be sentenced to a half of the penalty referred to in Article 4 of this Law, without

prejudice to the possibility that a part or whole of the sentence may be served in the rehabilitation centre.

**Article: 10 Follow up of a child who is in or was in a rehabilitation centre**

An Order of the Minister in charge of rehabilitation centres shall determine procedures through which children referred to in Article 9 of this Law are followed up while in rehabilitation centres and during their social reintegration.

**Article: 11 Penalties awarded to parents and to other guardians of the child**

In case it is evident that the parent of the child referred to in Article 9 of this Law, the guardian, the tutor, the teacher or the school headmaster of the child participated in inoculating the genocide ideology, they shall be sentenced to an imprisonment of fifteen (15) years to twenty five (25) years.

A teacher or a director referred to in the preceding paragraph cannot be reintegrated into his teaching career.

**Article: 12 Penalty awarded to a murderer, a conspirator or attempted murderer**

Without prejudice to the provisions of Article 4 of this Law, any person who kills another, one who conspires or who attempts to kill basing on the ideology of genocide shall be sentenced to a life imprisonment.

There shall be no mitigating circumstance regarding this crime.

**Article: 13 Penalties against false accusers**

Any person found guilty of false accusations of the crime of genocide ideology referred to in Article 4 of this Law shall be liable to the punishment provided for by the penal Code.

**Article: 14 Damages**

Damages awarded to victims of the crime of the ideology of genocide shall be determined in accordance with provisions of civil procedure.

**Chapter 3. FINAL PROVISIONS**

**Article: 15 Abrogating provisions**

All prior legal provisions contrary to this Law are hereby repealed.

**Article: 16 Commencement**

This Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 23/07/2008

## Appendix II – Speech of Victoire Ingabire at the Kigali Memorial Centre

“I would like to say that today, I came back to my country after 16 years, and there was a tragedy that took place in this country. We know very well that there was a genocide, extermination. Therefore, I could not have returned after 16 years to the same country after such actions took place. They took place when I was not in the country. I could not have fallen asleep without first passing by the place where those actions took place. I had to see the place. I had to visit the place.

“The flowers I brought with me are a sign of remembrance from the members of my party FDU and its executive committee. They gave me a message to pass by here and tell Rwandans that what we wish for is for us to work together, to make sure that such a tragedy will never take place again. That is one of the reasons why the FDU Party made a decision to return to the country peacefully, without resorting to violence. Some think that the solution to Rwanda’s problems is to resort to armed struggle. We do not believe that shedding blood resolves problems. When you shed blood, the blood comes back to haunt you.

“Therefore, we in FDU wish that all we Rwandans can work together, join our different ideas so that the tragedy that befell our nation will never happen again. It is clear that the path of reconciliation has a long way to go. It has a long way to go because if you look at the number of people who died in this country, it is not something that you can get over quickly. But then again, if you look around you realize that there is no real political policy to help Rwandans achieve reconciliation. For example, if we look at this memorial, it only stops at people who died during the Tutsi genocide. Hutus who lost their people are also sad and they think about their lost ones and wonder, ‘When will our dead ones be remembered?’

“For us to reach reconciliation, we need to empathize with everyone’s sadness. It is necessary that for the Tutsis who were killed, those Hutus who killed them understand that they need to be punished for it. It is also necessary that for the Hutus who were killed, those people who killed them understand that they need to be punished for it too.

Furthermore, it is important that all of us, Rwandans from different ethnic groups, understand that we need to unite, respect each other and build our country in peace.

“What brought us back to the country is for us to start that path of reconciliation together and find a way to stop injustices so that all of us Rwandans can live together with basic freedoms in our country.”

**Appendix III - Articles 20, 33 and 34 of the Rwandan constitution.**

**Article 20**

Nobody shall be punished for acts or omissions that did not constitute an offence under national or international law at the time of commission or omission.

Neither shall any person be punished with a penalty which is heavier than the one that was applicable under the law at the time when the offence was committed.

**Article 33**

Freedom of thought, opinion, conscience, religion, worship and the public manifestation thereof is guaranteed by the State in accordance with conditions determined by law.

Propagation of ethnic, regional, racial or discrimination or any other form of division is punishable by law.

**Article 34**

Freedom of the press and freedom of information are recognized and guaranteed by the State.

Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honour, good reputation and the privacy of personal and family life. It is also guaranteed so long as it does not prejudice the protection of the youth and minors.

The conditions for exercising such freedoms are determined by law.

There is hereby established an independent institution known as the “High Council of the Press».

The law shall determine its functions, organization and operation.