



## NOTE

on

# Draft Rwandan Law on Access to Information

February 2011

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## 1. Overview

In October 2009, ARTICLE 19 reviewed the draft Law on Access to Information provided by the Rwandan Media Council.<sup>1</sup> This note reviews the revised draft and highlights some additional areas of the bill where further revisions and clarifications would be useful to strengthen it.

Overall the revised draft remains a significant progressive piece of legislation that if adopted would set a comprehensive framework for access to information in Rwanda and would be one of the best access to information laws both in Africa and globally. The new draft is largely the same as the October 2009 draft but does include some mostly positive revisions. These include improved protection of whistleblowers, a reduced time frame for response by government bodies, revision of the sanctions, and new rules on implementation by public bodies. Other changes, which are more problematic include a revision of the application to private bodies, and the removal of a provision on the superiority of the law. In addition, we believe that the exemptions provisions could be further clarified and improved.

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<sup>1</sup> Comments on Draft Rwandan Law on Access to Information, October 2009.  
<http://www.article19.org/pdfs/analysis/rwanda-comments-on-draft-rwandan-law-on-access-to-information.pdf>

## 2. Application to the Private Sector

The revised draft includes a new provision in Article 2 that defines a private body as “a body that is not a public authority but that carries on any trade, business, profession or function of a public nature.” While it is welcome that the draft better defines its application to private bodies that carry on public functions as was suggested in our previous Comment, this new definition would appear to be inconsistent with the provisions in Title IV and limits the application of the law to private bodies previously covered.

Under Title IV, the definition of private bodies is significantly broader. Article 15 states that the right of access to information also applies to private bodies that hold information “necessary for the enforcement or protection of any right or freedom recognized under the Constitution or any other written law.” Article 16 further allows a minister to designate private bodies for application under the law as either as for protecting rights or for doing a public function.

The addition of the limited definition under Article 2 may have the inadvertent effect of limiting the application of the law only to those private bodies that are carrying out public function since it does not include those other bodies that hold information that may be necessary for enforcing a private right.

Definition 4 under Article 2 should be amended to incorporate both aspects as listed in Article 16 by stating that it applies to private bodies that meet the following criteria:

- 1° it holds or has control of information necessary for the enforcement or protection of a right or freedom recognized under the Constitution or any other Law; or
- 2° it carries on any trade, business, profession or function of a public nature;

In addition, it should be amended so that the private access right is balanced against other human rights such as freedom of expression. So for example, it would not be used against private media as a means to try and obtain the names of the confidential sources of information. Under the Canadian Access to Information Act, materials collected for journalistic purposes by the Canadian Broadcasting Corporation are not obtainable.<sup>2</sup>

### **Recommendations:**

- Amend definition in Article 2 to include private bodies that “hold or have control of information necessary for the enforcement or protection of a right or freedom recognized under the Constitution or any other Law”
- Ensure that private access right is balanced with right of freedom of expression when applying to media organisations

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<sup>2</sup> §68.1 states “This Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative or programming activities, other than information that relates to its general administration.”

### 3. Reduced timeframe for responses

Under Article 9 of the revised draft, the time limit for government bodies to respond to requests has been reduced from 7 working days to 5 working days and responses to information requests from journalists has been reduced from 3 days to 2 days.

We believe that this is a welcome improvement on the draft, which was already progressive. Timely responses by bodies to requests is an essential part of ensuring an effective right to information.

However, this will also require that public and private bodies are better organised both in the internal access provisions and their recordkeeping. This will require that public bodies are given sufficient resources to implement the law.

#### **Recommendations:**

- Ensure that government bodies are given enough resources to be able to respond in designated timeframes

### 4. Protection of Whistleblowers

The revised draft includes a new section, Article 31 on “Protection of person making disclosure”. This new section includes prohibitions of reprisals against persons who make disclosures in the public interest.

We welcome this additional provision to the draft and believe that it will go a long way towards protecting of whistleblowers in the public sector. The draft could be further strengthened by clarifying the kind of bodies this applies to, the inclusion of a specific provision authorizing the disclosure of information to non-government entities including the media and Members of Parliament, and an non-exhaustive list of issues which would by default be considered in the public interest including disclosure of corruption, violations of law, and violations of human rights.

We also believe that in the longer term, it would be better for Rwanda to adopt a comprehensive whistle-blower protection law as has been adopted in South Africa, Ghana and last year in Uganda<sup>3</sup>. As we noted in our previous review, such a comprehensive law could also set up a framework for receiving of disclosures and investigations. We note that a bill is currently pending before the Parliament that will provide many of these provisions and would urge that the two bills be harmonized.<sup>4</sup>

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<sup>3</sup> Whistle-blowers Protection Act, 2010.

<sup>4</sup> Draft Law on Protection of Whistleblowers.

<http://www.parliament.gov.rw/re/images/PDFs/umush.%20itegeko%20abarabura%20abanyabyaha.pdf>

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### Recommendations:

- Include specific provisions on disclosure of information to media, MPs and a non-exhaustive list of issues that are in public interest
- Adopt a comprehensive whistle-blower law with framework for disclosures

## 5. Revision of Sanctions Provisions

Under Article 28, we note that there have been significant changes in the amount of fines that can be imposed for failing to follow the law and at what point a prison sentence can be imposed.

We welcome the new provisions which impose liability personally on officials rather than on the body. We believe that it is important that public officials are held responsible for failing to properly follow the law. We also welcome that senior officials are held responsible if they have created an atmosphere or allowed one to fester where the right of access to information is undermined.

However, we are concerned that the fines have been reduced in many cases. We believe that the fines should remain high enough to act as a deterrent, especially for those at the senior level and that criminal sanctions remain as an option, even if in the first instance, if the offense is severe enough.

### Recommendations:

- Ensure that the sanctions are sufficient to provide a deterrent effect

## 6. Exemptions

Article 5 on "Exempt Information now includes some welcome revisions including the removal of exemption 5 on the release of pre-decisional information. "However, the scope of the exemption 6 (now 5) on public authorities appeals, has now become broader due to the removal of the limitation that stated that it relates only to the legal advice that they receive".

Under the national security exemption, we welcome the inclusion of the National Commission for Human Rights and the possibility of a binding decree rather than just guidelines. As we noted before, we believe that the Johannesburg Principles should be used as a template for the decree and any guidance.

We welcome the continued inclusion of the public interest test. It is a very progressive provision that will, if used as it is written, set a proper balance for the release of information.

Other areas that we suggested changes remain unchanged. As we noted in our previous analysis, we believe that it would be useful to include a better definition of 'personal privacy' that ensures that all information relating to the officials acting in their official capacity and to

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other persons such as corporate officials and others acting for business purposes, are not covered by the exemption.

We also believe that the 30 years limit for exemptions is overly long. Recently, the UK held an extensive consultation and is currently adopting legislation to reduce the time period to 20 years.<sup>5</sup> In India, secrecy of information is limited to 20 years while in Mexico, it can only be imposed for 12 years.

### Recommendations:

- Ensure that exemption 5 on public authorities is not overbroad in its coverage
- Include definition of personal privacy
- Reduce 30 years time limit on exemptions to 15 years

## 7. New Implementation requirements

We welcome the addition of Article 29 on implementation and enforcement. Based on our experience, we believe that public bodies need to have clear duties set out on implementation and this provision will greatly assist.

One additional function that they should be tasked with is the collection of information and generation of statistics relating to access requests made to them and the provision of that information to the Ombudsman yearly to facilitate the annual reports on implementation.

Under 29(4) relating to public private partnerships, we would suggest that academic institutions and non-governmental organisations should be included as they often play a key role in ensuring the implementation of laws, as has been observed in the case of various other countries.

We also welcome the new Article 30 on promotion of access to information by the bodies set below. It would also be useful to include public universities in the list of bodies that are tasked to educate.

We also welcome the removal of the provision in Article 7 that information officers can also be public relations officials. We believe that the two roles are significantly different and hold the potential for conflicts.

### Recommendations:

- Require that public bodies collect information and statistics on usage of law to provide to ombudsman
- Include academic institutions and NGOs in the bodies that promote access to

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<sup>5</sup> Review of the 30 Year Rule, January 2009. <http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf>, Ministry of Justice, Opening up public bodies to public scrutiny, 7 January 2011. <http://www.justice.gov.uk/news/newsrelease070111a.htm>

information

## 8. Relationship to other laws

Under Article 36, all inconsistent legal provisions are repealed. We recommend that it would be useful to mandate that the Ministry of Justice or Ombudsman develop a list of inconsistent legislation which would be repealed by the law. Otherwise, there is likely to be ongoing debates about other legislation.

However, a second provision in the previous draft on the superiority of the law when conflicts arise has been removed. We believe that the provision is important to setting out the importance of access to information as a basic human right which should be retained. Superiority is also important for setting its relationship with other future laws that are adopted.

### Recommendations:

- Task Ombudsman or other body to develop list of legal provisions repealed by law
- Include provision in previous draft which set up superiority of ATI law

## 9. Implementation Date

Under Article 37, the law is due to come into force after it is published in the official gazette. We would recommend that a fixed date is set, otherwise there is a fear that the government bodies might be less vigorous in implementing the law. We would suggest that it would be done in a phased manner with the publication systems being implemented within 6 months of the signing of the law with the access provisions being enabled one year or slightly longer from the signing.

### Recommendations:

- Set fixed date in legislation for it to come into effect

## 10. Conclusions and Key Recommendations

Overall the draft is excellent piece of legislation which if adopted would provide the citizens a strong right to information and set a benchmark for other countries in the region and across Africa. We believe that there are a few areas where the draft could be strengthened. We urge the Parliament to quickly begin considerations of the bill and move it swiftly through the legislative process.

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### **Recommendations on application to private sector:**

- Amend definition in Article 2 to include private bodies that “hold or have control of information necessary for the enforcement or protection of a right or freedom recognized under the Constitution or any other Law”
- Ensure that private access right is balanced with right of freedom of expression when applying to media organisations

### **Recommendations on timeframes:**

- Ensure that government bodies are given enough resources to be able to respond in designated timeframes

### **Recommendations on protection of whistleblowers:**

- Include specific provisions on disclosure of information to media, MPs and list of issues that are in public interest
- Adopt comprehensive whistle-blower law with framework for disclosures

### **Recommendations on sanctions:**

- Ensure that sanctions are sufficient to provide deterrent effect

### **Recommendations on exemptions:**

- Ensure that exemption 5 on public authorities is not overbroad in its coverage
- Include definition of personal privacy
- Reduce 30 years time limit on exemptions to 15 years.

### **Recommendations on implementation:**

- Require that public bodies collect information and statistics on usage of law to provide to ombudsman
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### About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. These publications are available on the ARTICLE 19 website:

<http://www.article19.org/publications/law/standard-setting.html>.

If you would like to discuss this Note further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us at the address listed on the front cover or by e-mail to [law@article19.org](mailto:law@article19.org)