Inclusive dialogue, freedom of speech in Rwanda and the milestone decision of the African Court in the matter of *Victoire Ingabire Umuhoza v Republic of Rwanda*

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ABSTRACT: As the first decision of the African Court on Human and Peoples' Rights on the interpretation of human rights and, specifically, on freedom of speech in a post-genocide context, the case of *Victoire Ingabire Umuhoza v the Republic of Rwanda* (*Ingabire* decision) sets an important judicial precedent and standard for Africa. It is significant for the application of human rights and democratic principles in post-genocide contexts and their relevance for sustainable peace-building processes. This article discusses those aspects of the *Ingabire* decision relating to freedom of speech within the framework of the African Charter and within Rwanda's National dialogue framework. It highlights the tensions between the Court's liberal standard for freedom of expression and the conservative standard underpinned by Rwanda's state-driven approach to dialogue and social cohesion. The article argues that despite the liberal approach to free speech it applied in the *Ingabire* decision, the African Court did not map out a clear standard, which might be based on as a national guide for balancing free speech rights and necessary restrictions on it in post-genocide contexts and contexts of post-ethnic-based violence; further that in the specific case of Rwanda, this omission presents a challenge to an effective, inclusive national dialogue framework and for peace building.

TITRE ET RÉSUMÉ EN FRANCAIS:

Dialogue inclusif, liberté d'expression au Rwanda et décision de la Cour africaine dans l'affaire *Victoire Ingabire Umuhoza c. République du Rwanda*

RÉSUMÉ: En tant que première décision de la Cour africaine des droits de l'homme et des peuples sur l'interprétation des droits de l'homme et, en particulier, sur la liberté d'expression dans le contexte de l'après-génocide, l'affaire *Victoire Ingabire Umuhoza c. République du Rwanda* (décision *Ingabire*) crée un précédent judiciaire et un standard importants pour l'Afrique. Cette décision est importante pour l'application des droits de l'homme et des principes démocratiques dans les contextes post-génocide et leur pertinence pour des processus durables de consolidation de la paix. Cet article traite des aspects de la décision *Ingabire* relatifs à la liberté d'expression dans les cadres de la Charte africaine et du dialogue national rwandais. Il met en exergue les tensions entre le raisonnement libéral de la Cour en matière de liberté d'expression et l'approche conservatrice étayée par la position du Rwanda en matière de dialogue et de cohésion sociale. L'article affirme qu'en dépit de l'approche libérale de la liberté d'expression qu'il a appliquée dans la décision *Ingabire*, la Cour africaine n'a pas défini de norme claire, qui pourrait être basée sur un guide national visant à établir un équilibre entre le droit à la liberté d'expression et les restrictions nécessaires dans les contextes de génocide et de violence post-ethnique. En outre, dans le cas spécifique du Rwanda, cette omission constitue un défi pour un cadre de dialogue national efficace et inclusif et pour la consolidation de la paix.

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S Namwase 'Inclusive dialogue, freedom of speech in Rwanda and the milestone decision of the African Court in the matter of *Victoire Ingabire Umuhoza v Republic of Rwanda*' (2018) 2 *African Human Rights Yearbook* 487-508
http://doi.org/10.29053/2523-1367/2018/v2n1a20

KEY WORDS: free speech, post-genocide, inclusive dialogue, Ingabire, Rwanda

CONTENT:

1 INTRODUCTION

The Rwandan government has faced considerable criticism for its excessive restrictions on and violation of the freedom of speech and expression of its citizens.[1] However, the government often cites abuse of free speech as a catalyst for the genocide of 1994 in which over 800 000 Tutsi and moderate Hutus were killed, to maintain that restricting free speech is necessary in order to deter those who may seek to stoke ethnic tensions and risk another genocide in the country.[2] At the same time, however, under its Constitution the Rwandan government undertakes as one of its fundamental principles the use of dialogue in a constant quest for solutions and consensus on national issues.[3] The government also boasts of Rwandan-based frameworks of dialogue as home-grown solutions towards national healing and social cohesion in its specific post-genocide context.[4] Amidst the local and international criticism and the danger of self-censorship which the Rwandan government itself acknowledges,[5] it is apparent that excessive free speech restriction while pursuing inclusive dialogue

1 Amnesty International 'Justice in jeopardy: the first instance trial of Victoire Ingabire' (2013) https://www.amnestyusa.org/wp-content/uploads/2017/04/afr47 0012013en.pdf (accessed 12 July 2018); J Yakaré-Oulé (Nani) 'Genocide or denying free speech? A case study of the application of Rwanda's genocide denial laws' (2014) 12 *Northwestern Journal of International Human Rights* 191; JM Allen & GH Norris 'Is genocide different? Dealing with hate speech in a post-genocide society' (2011) 7 *Journal of International Law and International Relations* 146.

2 M Faustin 'Preventing genocide by fighting against hate speech' (2016) 4 *International Journal of Advanced Research* 117.

3 Art 10 Constitution of the Republic of Rwanda; The Rwandan Senate 'The constant quest for solutions through dialogue and consensus in Rwanda' (2014) https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/9583/The%20constant% 20quest%20for%20solutions%20through%20dialogue%20and%20consensus%20in%20Rwanda.pdf?sequence=1&isAllowed=y (accessed 12 July 2018).

4 Rwanda Senate (n 3).

5 Rwanda Senate (n 3) 28.

presents contradictions in Rwanda's otherwise progressive and unique context, and a dilemma for the effective deployment of dialogue for social cohesion.

The recent decision of the African Court on Human and Peoples' Rights (African Court) in the matter of *Victoire Ingabire Umuhoza v Republic of Rwanda*[6] (*Ingabire* decision) reaffirms that even in post-genocide countries such as Rwanda the restriction on freedom of expression remains subject to established checks and balances under the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR). The decision also advances the liberal application of free speech in political spaces, including a high degree of tolerance for offensive or shocking speech, but offers minimal engagement with the complexity of such an approach in a post-genocide context. As such, the case affords minimal guidance on balancing free speech restrictions and inclusive dialogue in Rwandan or similar contexts.

The article illuminates the absence of clear guiding principles at the national and regional level, on free speech restrictions in post-genocide contexts and the contradictions and challenges this presents for inclusive and participatory dialogue in Rwanda. It does this in five parts. Part 1 is the introduction. Part 2 broadly discusses the link between free speech, political participation and inclusive dialogue and also reflects on the challenges of free speech and free speech restrictions in post-genocide contexts, part 3 discusses the *Ingabire* decision, highlighting its strong and weak points of relevance for inclusive dialogue in post-genocide contexts; and part 4 discusses Rwanda's national dialogue framework and the contradictions and challenges posed by unclear free speech restrictions. The article concludes the discussion in part 5 by calling for more specific guidelines within the framework of the African human rights system, for the application of free speech rights and restrictions in post-genocide contexts and contexts affected by ethnic-based violence in Africa, with the overall objective of facilitating open and inclusive dialogue.

2 FREEDOM OF SPEECH AND INCLUSIVE DIALOGUE IN POST-GENOCIDE CONTEXTS

2.1 Freedom of speech in post-genocide contexts

'Freedom of speech' is used to refer to the international treaty right to hold and express one's opinion,[7] which is recognised in article 19 of the Universal Declaration of Human Rights (Universal Declaration) and

6 Application 3 of 2014, 24 November 2017.

7 Amnesty International 'What is freedom of speech?' (2017) https://www.amnesty. org.uk/free-speech-freedom-expression-human-right (accessed 13 July 2018); E Howie 'Protecting the human right to freedom of expression in international law' (2018) 20 *International Journal of Speech-Language Pathology* 2.

articulated similarly but more extensively in article 19 of ICCPR in the following terms:

> 1 Everyone shall have the right to hold opinions without interference.
>
> 2 Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

In the African Charter it is articulated in article 9 in the following terms:

> 1 Every individual shall have the right to receive information.
>
> 2 Every individual shall have the right to express and disseminate his opinions within the law.

The United Nations (UN) Human Rights Committee (Human Rights Committee) has noted that freedom of expression is indispensable to the full development of an individual and of society and constitutes a foundation stone for every free and democratic society.[8] The Committee further links the centrality of freedom of speech to the realisation of transparency, accountability and the promotion of human rights.[9] The African Commission on Human and Peoples' Rights (African Commission) makes similar observations, noting its preambular conviction that respect for freedom of expression can lead to good governance and can strengthen democracy.[10] As Howie notes and as the Human Rights Committee emphasises, freedom of speech protects all forms of communication, including political discourse and commentary on public affairs.[11] Wierzynska argues that post-conflict states can insure against a reversion to violence by ensuring civic engagement in political and public affairs.[12] She argues that a civic culture which internalises democratic practices and includes political participation and public contestation is essential for channelling discord through peaceful processes.[13] Thus, just as free speech is essential for building democratic societies, it is central to building inclusive and tolerant societies and is at the core of initiatives aimed at dialogue in divided and post-conflict societies. Petäjä[14] observes that healthy democracies are not created where citizens are locked in 'echo chambers' and only interacting with comfortable and familiar views, but rather when they are presented with a variety of opposing views, including 'dangerous' and 'deviant' ones.[15] He argues that in this way and in such societies, communication processes might be considered

8 UN Human Rights Committee 'General Comment 34, Freedoms of opinion and expression' (2011) UN Doc CCPR/ C/GC/34 para 2, http://www2.ohchr.org/english/ bodies/hrc/docs/gc34.pdf

9 As above.

10 Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa (2002) ACHPR /Res.62(XXXII)02.

11 Howie (n 7).

12 A Wierzynska 'Consolidating democracy through transitional justice: Rwanda's gacaca courts' (2004) 79 *New York University Law Review* 1934.

13 As above.

14 U Petäjä 'What is the value of freedom of speech?' in A Kierulf & H Ronning (eds) *Freedom of speech abridged? Cultural, legal and philosophical challenges* (2009).

15 Petäjä (n 14) 31 & 32.

'reliable' as they are grounded in an environment rich in diverse perspectives and ideas.[16] In turn, regular interaction with opposing ideas eventually contributes to creating a more tolerant society.[17]

Following the genocide in Rwanda in 1994, where approximately 800 000 people were killed pursuant to Hutu ethnic extremist ideology,[18] the country promulgated a new Constitution in a post-conflict context, in which the principle of dialogue was embedded as a framework for conflict resolution and nation building. There is no standard international definition for a dialogue and there are open questions and ambiguities regarding the concept of a national dialogue.[19] However, a working definition developed for practitioners is that national dialogues are nationally-owned political processes the aim of which is to generate consensus among a broad range of stakeholders during deep political crises, in post-war situations, or in contexts of far-reaching political transitions.[20] The objectives of national dialogues vary depending on their contexts. They may address short-term objectives, or broader-based change processes which may require rebuilding new political systems or framing new social contracts. In the short-term framework, dialogues usually are mechanisms for crisis management or prevention, while in the longer term framework, they may seek to redefine state-societal relations and are more likely to involve a wide range of society and on a large-scale basis, with a view to generating widespread support from the target society.[21] Murray also notes that dialogues may not always be designed to decide matters, as in some cases they may be merely to serve the purpose of catharsis, recognition and relationship building, among others.[22]

In line with the foregoing discussion on freedom of speech, there is some hypothesis that successful national dialogues are those which uphold the principles of inclusion; transparency; public participation; a far-reaching agenda; a credible convener; appropriate and clear rules of procedure; and an implementation plan.[23] All these conditions would thrive in an environment that allows for a liberal application of freedom of speech. However, as in the case of Rwanda and some post-genocide or ethnic-based violence contexts, freedom of speech often is restricted to avoid a return to violence through hate speech. It is here that the challenge for inclusive dialogue through free speech lies.

16 As above.

17 Petäjä (n 14) 28.

18 'Rwanda genocide: 100 days of slaughter' BBC 7 April 2018, http://www.bbc.com/news/world-africa-26875506 (accessed 12 July 2018).

19 Berghof Foundation Operations *National dialogue handbook: a guide for practitioners* (2017) 18.

20 Berghof Foundation Operations (n 19) 21.

21 Berghof Foundation Operations (n 19) 21-22.

22 C Murray 'National dialogue and constitution-making. National dialogue handbook Background paper 2. Berlin: Berghof Foundation' 2017, www.berghof-foundation.org/publications/national-dialogue-handbook (accessed 11 July 2018).

23 S Stigant & E Murray 'National dialogues: a tool for conflict transformation?' (2015) *United States Institute for Peace* 1.

Moreover, there is also the recognised danger that national dialogues can be appropriated by leaders to consolidate their power and reinforce the *status quo*.[24] As such, it is necessary to understand the restrictions on free speech in post-genocide or ethnic-based violence contexts and how these might enhance or subvert the objectives of inclusive dialogue.

2.2 Restriction on freedom of speech in post-genocide or ethnic-based violence contexts

There is considerable consensus among some scholars that the application of freedom of speech in post-genocide or ethnic-based violence contexts must be different from its application in countries that have never experienced these atrocities. Thus, Palmer decries attempts to apply the very liberal American standards of free speech in post-conflict Kosovo while the country was still facing the challenge of ethnically-based hate speech.[25] He specifically notes that the American model, with little to no hate speech regulation, may be better suited for a robust democracy as opposed to the more fragile post-conflict democracies.[26] Palmer compares the American model, of which the jurisprudence reveals the dividing line between protected and regulable speech as the line between advocacy and incitement to imminent lawless action, and the German model which 'remains dictated by whether the speech represents a potential threat to the values of mutual respect and equality espoused in the Basic Law'.[27] Palmer observes that the German model uses equality and dignity as the organising principles for free speech regulation in an evolving post-genocide context, to deter intolerant groups and to ensure inclusive participation in German democracy.[28] On the contrary, the American model of freedom of speech, which emphasises individual autonomy and non-government interference, and the open debating of ideas in the search for truth in the free market place of ideas, is based on a unique set of historical circumstances in America.[29]

Allen and Norris maintain the same line of argument, pointing out that the more liberal United States approach on restricting free speech is based on how to avoid future possible harm rather than on a reaction to previous genocide experiences. [30] In comparing the United States to Rwanda which still faces the remnants of the genocide's legacies, they argue that attempting a liberal approach such as that in the United States might in fact threaten Rwanda's fragile peace, especially

24 As above.

25 LR Palmer 'A very clear and present danger: hate speech, media reform, and post-conflict democratization in Kosovo' (2001) *Yale Journal of International Law* 179 180.

26 Palmer (n 25) 182.

27 Palmer (n 25) 196-197.

28 As above.

29 As above.

30 Allen & Norris (n 1) 159.

considering the alleged continued existence of militant groups which deny that the genocide ever happened there.[31]

However, even while recognising that countries dealing with post-genocide contexts or ethnic-based violence may have legitimate fears and concerns about identifying and containing the abuse of free speech, Allen and Norris note that in some cases governments may be overzealous in their restrictions, and even wonder whether countries dealing with the aftermath of genocide should have greater latitude to restrict speech and, if so, what considerations they should take into account. In particular, they explore the paradox of expecting a nation struggling to establish the rule of law after conflict, to provide effective checks on the potential misuse of speech restrictions.[32] This threat of excesses occurs especially when such states seek to criminalise legitimate government criticism as a threat to national stability.[33]

As a remedy, Allen and Norris propose that Rwanda take a case-based approach to evaluate the threat posed by an alleged abuse of free speech through hate speech. In this way, the determination of a free speech violation would depend on the context in which the allegedly harmful use of speech occurred. They suggest that such a case law standard could seek to protect the free speech only to the extent that its attack on personal dignity does not pose a greater danger to public peace.[34] They reason that over time, Rwandan courts can adjust the weight of each element in the case law standard to account for a decreased risk of a return to violence due to free expression. However, they also acknowledge that to effectively implement the case law standard, the judicial arm of government must be strong and independent, a factor still lacking in the Rwandan context. This is especially the case considering that Rwanda's judiciary has reportedly previously played a key role in allowing the application of vaguely-worded laws on genocide ideology, to suppress criticism against the government.[35]

It is also important to note that the case law-based approach offers little in the way of foreseeability of liability for purported abuse of free speech in a post-genocide context. Moreover, while there are established international and regional treaty standards for restrictions on free speech as will be discussed below, the principles of subsidiarity and margin of appreciation, particularly in post-genocide contexts, mean that concerns over balancing free speech rights and lawful restrictions in these contexts remain. In the particular case of Rwanda, the concern extends to the effectiveness of its progressive continuous dialogue initiative. This dilemma is further explored in the ensuing discussion of the decision of the African Court in the matter of *Victoire Ingabire*.

31 Allen & Norris (n 1) 178.
32 Allen & Norris (n 1) 148.
33 Allen & Norris (n 1) 154.
34 Allen & Norris (n 1) 172.
35 Allen & Norris (n 1) 173.

3 *VICTOIRE INGABIRE V THE GOVERNMENT OF RWANDA*

The African Court's decision in the matter of *Victoire Ingabire v Republic of Rwanda* was based on a 2014 application against the government of Rwanda in connection with Ingabire's arrest, detention and trial, which she alleged were done in violation of her freedom of speech and right to a fair trial. In 2012 the High Court of Rwanda convicted the applicant on the charge of revisionism of genocide based on article 4 of Law 33 of 2003 punishing the crimes of genocide ideology, crimes against humanity and war crimes, as well as the crime of treason to threaten state security and the Constitution under the 1977 Penal Code. She was sentenced to nine years' imprisonment. In 2013 the Supreme Court upheld her conviction on appeal. Citing the existence of concurrent crimes, the Court imposed a punishment of 15 years' imprisonment based on Law 84 of 2013 on the repression of the ideology of the crime of genocide and the 2012 Penal Code for the crime of minimising genocide and crimes of conspiracy and threatening state security.[36] Both the latter laws had replaced Law 33 of 2003 and the 1977 Penal Code respectively.[37]

The main allegations of the applicant's criminal conduct and her counter-claim of free speech violations by the state related to certain public remarks she made on two separate occasions. One set of remarks concerned demands for the memorialisation of Hutus who the applicant alleged had also suffered atrocities during the 1994 genocide in Rwanda but who had never been memorialised. The second set of remarks were criticisms of sectarianism against the regime including against the President of the Republic of Rwanda and the Rwandan judiciary.[38] In relation to the genocide, the applicant while at the Kigali Genocide Memorial allegedly stated in Kinyarwanda:[39]

> If we look at this memorial, it only refers to the people who died during the genocide against the Tutsis. There is another untold story with regard to the crimes against humanity committed against the Hutus. The Hutus who lost their loved ones are also suffering; they think about the loved ones who perished and are wondering 'When will our dead ones also be remembered?'

A different account in the judgment of the Supreme Court, however, alleges that the applicant in fact propounded a theory of double genocide in a version of the remarks which states:[40]

> For instance, this memory has been dedicated to people who were killed during the genocide against the Tutsi, however, there is another side of genocide: the one committed against the Hutu. They have also suffered they lost their relatives and they are also asking, 'When is our time?

36 Application 3 of 2014 (n 6) para 32.
37 Application 3 of 2014 (n 6) para 112.
38 Application 3 of 2014 (n 6) para 151.
39 As above.
40 Application 3 of 2014 (n 6) para 154.

In respect of the second set of remarks made in criticism of the government, the judiciary and public officials, the applicant allegedly stated that

> political power is 'dominated by a small clique' that has 'a secret parallel power structure around President Kagame, DMI [Directorate of Military lntelligence], the local defence force ... the judiciary and the executive branches of the government'.

The applicant allegedly further stated that she was ready to fight against

> the yoke [of fear], poverty, hunger, tyranny, servitudes, corruption, unfair gacaca court system, repression, prison term for works of general interests (TlG), reasons that lead people to flee the country, inequality, expropriation, homelessness, lack of self-esteem and killing through torture.[41]

Article 5 of Law 84 of 2013 on the Crime of Genocide Ideology and related offences defines the offence of negation of genocide as

> Any deliberate act, committed in public aiming at:
>
> (1) stating or explaining that genocide is not genocide;
>
> (2) deliberately misconstruing the facts about genocide for the purpose of misleading the public;
>
> (3) supporting a double genocide theory for Rwanda;
>
> (4) stating or explaining that genocide committed against the Tutsi was not planned.

Article 6 of the same Law criminalises the minimisation of genocide as any deliberate act committed in public, aimed at downplaying the gravity or consequences of genocide and downplaying the methods through which the genocide was committed.

The 2012 Penal Code[42] mentions the same offence in the following terms in article 116:

> Any person who publicly shows, by his/her words, writings, images, or by any other means, that he or she negates the genocide against the Tutsi, rudely minimises it or attempts to justify or approve its grounds, or any person who hides or destroys its evidence shall be liable to a term of imprisonment of more than five (5) years to nine (9) years.

In relation to the second set of remarks, the 2012 Penal Code criminalises 'incitement of insurrection or trouble amongst the population' in the following terms in article 463:

> Any person who, by speeches held in meetings or public places, or writings, images or emblems, any posters, sold or on sale or displayed to the public, knowingly spreads rumours, excites the population against established government, or incites or attempts to incite citizens against each other or attempts to alarm the population with intention to cause trouble on the national territory of the Republic of Rwanda, shall be liable to a term of imprisonment of ten (10) years to fifteen (15) years.

On 3 October 2014 the applicant seized the African Court with the matter, praying for orders among others that the foregoing provisions of the Penal Code Act and Law 18 of 2013 on the crime of genocide ideology be repealed with retroactive effect. She alleged a violation of, among other rights, her freedom of opinion and expression under articles 18 and 19 of the Universal Declaration, article 19 of ICCPR and article 9 of the African Charter. She also alleged a violation of her fair trial rights, the principle of legality in article 11 of the Universal

41 Application 3 of 2014 (n 6) para 160.

42 Organic Law 1 of 2012, http://itegeko.com/en/codes-lois/organic-law-n-01201 20l-of-02052012-instituting-the-penal-code/ (accessed 13 July 2018).

Declaration, article 15 of ICCPR and article 7 of the African Charter.[43] In particular, the applicant contended that her remarks related to power management, resource sharing and the administration of justice as well as the history of the country, and that they were protected under Rwanda's Constitution and international law as part of free speech.[44] She also argued that the laws criminalising genocide negation were vague and unclear and did not meet the requirement of necessity for restricting individual freedoms.[45]

The applicant specifically stated in a letter to the African Court read during the proceedings as follows: [46]

> We are not against a law to punish those who minimise the genocide committed against Tutsis in Rwanda, as is the case for other genocides committed elsewhere. But we demand solid benchmarks to avoid any amalgamation and the use of such a law for political purposes- Thus, we demand that such a law clearly show the border between the legitimate freedom of opinion and the actual crime of minimisation of genocide.

It should be noted that on 3 March 2016 the Rwandan government withdrew its declaration under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), thereby barring the filing of individual complaints by its citizens to the African Court. However, the Court later ruled that Rwanda's withdrawal had no effect on Ingabire's application and that it had jurisdiction to continue hearing the case.[47]

The Court found that the respondent state had violated article 9(2) of the African Charter and article 19 of ICCPR in respect of the applicant's freedom of speech and opinion.[48] It ordered the respondent state to take all necessary measures to restore the applicant's rights and submit a report of such measures to the Court within a period of six months.[49] However, in relation to the prayer to repeal the impugned laws and to annul the national courts' decisions, the African Court reiterated that it was not an appellate court and, as such, could not grant these orders.[50] It also declined to grant the applicant's prayer for release, as its powers to do so were limited to exceptional and compelling circumstances, which the applicant had not demonstrated. However, it noted that this did not preclude the respondent state from taking the measure on its own initiative.[51] As neither the state nor the petitioner had made claims for reparations, the court deferred such a determination.[52]

43 Application 3 of 2014 (n 6) para 77.
44 Application 3 of 2014 (n 6) para 120.
45 Application 3 of 2014 (n 6) para 121.
46 Application 003 of 2014 (n 6) para 123.
47 Application 3 of 2014 (n 6) para 45.
48 Application 3 of 2014 (n 6) para 173.
49 As above.
50 Application 3 of 2014 (n 6) para 167.
51 Application 3 of 2014 (n 6) paras 168 & 169.
52 Application 3 of 2014 (n 6) para 173.

While some have observed that the African Court did not grant any of the specific prayers in the application,[53] it cannot be said that the decision was a total loss for the applicant or indeed for human rights and peace building on the continent. Such a statement would obscure some of the critical declarations made by the Court regarding the extent, relevance and limits on free speech in post-genocide Rwanda. However, as indicated earlier, although the Court affirms some key principles of free speech, tolerance and participation, which are relevant for fostering inclusive dialogue in post-genocide contexts, it avoids a systematic and extensive engagement on defining, determining and guiding the limitations of free speech in such contexts. The next subsection discusses these progressive aspects of the decision, and points to some legal obscurities and omissions to argue that these sustain a legal vacuum which can be exploited to serve political exclusion in the guise of lawful restriction on free speech rights in post-genocide contexts.

3.1 Necessity and proportionality of free speech restrictions in post-genocide contexts

One of the strong points in the *Ingabire* decision is the African Court's emphasis that even in post-genocide contexts, limitations on free speech rights must only be such as are strictly necessary in a democratic society and proportional to legitimate purposes for the restriction.[54] While these assertions have previously been made by academic and human rights organisations, the *Ingabire* decision stands as the first legal proclamation on the issue by the African Court, which sets a significant precedent. The Court's assertion upholds the international standards for limitations on free speech under the African Charter and ICCPR. ICCPR provides the basis for the limitation of free speech rights in the following terms in article 19(3):

> (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.

Article 27(2) of the African Charter, which contains the general limitation clause on rights, including free speech rights, restricts the right in the following terms: 'The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.'

These limitations are further enumerated in General Comment 34 by the Human Rights Committee and the Resolution of the African Commission on Human and Peoples' Rights on the Adoption of the Declaration of Principles of Freedom of Expression in Africa (Principles on Freedom of Expression in Africa). The Human Rights Committee

53 GN Ruhumuliza 'Victoire Ingabire loss at the African Court: the untold dismantling of African cronies' 13 June 2018, http://www.newtimes.co.rw/opinions/victoire-ingabire-loss-african-court-untold-dismantling-african-cronies (accessed 20 July 2018).

54 Application 3 of 2014 (n 6) para 142.

explains in General Comment 34 that the limitation on free speech rights must not jeopardise the right itself and that it must meet the strict tests of necessity and proportionality.[55] Restrictions must be necessary for a legitimate purpose and must not be overbroad under the proportionality test, but rather, they must be proportionate to the interest to be protected.[56] They must also take account of the form of expression in issue as well as the means of its dissemination. Thus, freedom for uninhibited expression during public debate and speech concerning public figures is particularly high.[57] General Comment 34 further clarifies that limitations of free speech rights must never be invoked as a justification to muzzle advocacy for tenets of democracy and human rights;[58] further that all public figures, including those in the highest political offices such as head of state, are 'legitimately subject to criticism and political opposition'.[59] The Principles on Freedom of Expression in Africa also maintain the requirement for legitimate and necessary interests on free speech restrictions in a democratic society.[60] Principle XII requires public figures to tolerate a greater degree of criticism and that no one is to be found liable for opinions or statements about public figures, which it was reasonable to make in the circumstances.[61] On national security, the principles provide that restriction must demonstrate a real risk of harm to a legitimate interest and a close causal link between the risk of harm and the expression of free speech rights.[62]

Although the African Court in *Ingabire* did not make specific reference to General Comment 34 and the Principles on Freedom of Expression in Africa, it did apply the standards in those instruments, particularly to the second set of remarks made by the applicant, to conclude that the restriction on her free speech rights did not meet the necessity and proportionality tests.[63]

With reference to the post-genocide context, the Court acknowledged that as Rwanda had to deal with an atrocious history of genocide, it was warranted that the Rwandan government take measures to promote social cohesion and enact laws on the minimisation or negation of genocide.[64] However, it noted that such laws could not be applied at any cost to the rights and freedoms of individuals in disregard of international human rights standards.[65] For instance, while the African Court acknowledged that in post-genocide contexts, statements that deny or minimise genocide are not legitimate

55 UN Human Rights Committee (n 8) paras 21-22.
56 UN Human Rights Committee (n 8) paras 33-35.
57 As above.
58 UN Human Rights Committee (n 8) para 23.
59 UN Human Rights Committee (n 8) para 38.
60 Declaration of Principles (n 10) Principle II.
61 As above.
62 Declaration of Principles (n 10) Principle XIII.
63 Application 3 of 2014 (n 6) paras 142, 143 & 144.
64 Application 3 of 2014 (n 6) para 147.
65 Application 3 of 2014 (n 6) para 148.

exercises of free speech and should be prohibited by law,[66] it also upheld the principle of the presumption of innocence by choosing the version of remarks which exonerated the applicant, and finding that the applicant's reference to the Hutu being victims of 'crimes against humanity and war crimes' did not amount to a negation of genocide and, as such, was a legitimate exercise of free speech.[67]

However, the Court did not demonstrate the application of the necessity and proportionality test on this question. It would have been interesting to assess further whether the applicant's statements about the Hutu being victims of crimes against humanity and war crimes could be described as criminal offences under Law 84 of 2013 and the 2012 Penal Code as a minimisation of genocide and, as such, whether this criminalisation would meet the requirement of a restriction on free speech that is necessary and proportionate in a democratic society. This discussion by the Court would also have been beneficial in testing the limits of 'uninhibited' and, therefore, open and inclusive public debate on questions regarding the facts of the genocide in Rwanda.

3.2 Political participation and inclusion

The African Court's progressive application of international free speech standards is more evident with respect to the second set of remarks made in criticism of the government. The remarks in issue alleged among others that political power in Rwanda was dominated by a small clique which had a secret parallel power structure around President Kagame, the Directorate of Military Intelligence, the judiciary and other executive branches of government.[68] The African Court specifically stated in respect to these remarks:[69]

> The Court notes that some of these remarks may be offensive and could have the potential to discredit the integrity of public officials and institutions of the state in the eyes of citizens. However, these statements are of the kind that is expected in a democratic society and should thus be tolerated, especially when they originate from a public figure as the applicant is. By virtue of their nature and positions, government institutions and public officials cannot be immune from criticisms, however offensive they are; and a high degree of tolerance is expected when such criticisms are made against them by opposition political figures. An examination of these statements cannot reasonably be considered as capable of 'inciting strife', creating 'divisions among people' or 'threatening the security of the state'. In fact, even though these statements were made at different times before the applicant was jailed for the same, there is no evidence showing that the statements caused strife, public outrage or any other particular threat to the security of the state or public order.

The foregoing assertions by the Court reflect the guidelines in General Comment 34 and the Principals on Free Speech for Africa, which clarify that the exercise of free speech in political debate or criticism and opinion on public and political figures ought to be uninhibited and that

66 Application 3 of 2014 (n 6) para 158.
67 Application 3 of 2014 (n 6) para 159.
68 Application 3 of 2014 (n 6) para 159.
69 Application 3 of 2014 (n 6) para 161.

such figures ought to expect public criticism and maintain a high degree of tolerance for it.[70]

Although the African Court did not enunciate political participation as an independent legal issue and as an aspect of free speech, the Court's reference to the applicant as a public figure and as a member of the political opposition from whom public and political criticism ought to be expected, underscores the relevance of political participation and free political speech and echoes the principles of diversity and inclusion which are also enunciated by the Principals on Freedom of Speech in Africa in the following terms:[71]

> Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things –
>
> ... availability and promotion of a range of information and ideas to the public.

As discussed in part 2, a liberal approach to free speech is essential to foster political participation and inclusive dialogue in post-genocide contexts, which would ultimately help to build social cohesion and tolerance. The African Court's liberal interpretation of freedom of speech in relation to the applicant's political criticism of governance structures in her country was a fundamental contribution to the question of inclusive dialogue in post-genocide contexts and in Rwanda.

However, the Court neglected to apply its liberal approach on the specific question of permitting offensive speech as free speech in a post-genocide context. It might have been insightful if the Court had made specific reference to General Comment 34 which protects free speech, including offensive speech, and negates the restriction on free speech when it is being used to further the interests of human rights and democratic principles, as seemed apparent from the applicant's remarks. This would then have warranted the Court to pronounce itself on the delicate balance critical in post-genocide contexts, between offensive speech as free speech and offensive speech as hate speech.

It should further be noted that while some of the foregoing progressive aspects of the *Ingabire* decision are to be applauded, the African Court did not apply a systematic evaluation of two specific principles, namely, legality and margin of appreciation, which are critical to the justification of free speech restrictions in post-genocide contexts, as discussed below.

3.3 Legality and margin of appreciation

The doctrine of margin of appreciation is based on the recognition within international legal systems that states are better placed to adopt national rules, policies and guidelines to meet the unique needs of their societies, in line with those countries' economic and political

70 UN Human Rights Committee (n 8) paras 33, 35 & 38; Declaration of Principles (n 10) Principle XII.

71 Declaration of Principles (n 10) Principle III.

circumstances.[72] The margin of appreciation is informed by the principle of subsidiarity on which international and regional human rights systems are grounded, on the basis that regional or international supervisory mechanisms cannot substitute themselves for the domestic procedures or mechanisms of respondent states which are already striving to implement treaty or charter rights.[73] The emphasis of both principles, therefore, is that the primary competence to promote and protect human rights within domestic contexts lies with states.[74]

However, the doctrines do not oust the mandate of regional mechanisms to monitor, assist, guide, supervise and oversee the implementation of international treaty or charter provisions and to insist on better protection standards within the domestic contexts of ratifying states, should such standards be found wanting. As such, the African Commission has rejected a restrictive interpretation of both the margin of appreciation and the principle of subsidiarity which would require a hands-off approach from African regional treaty mechanisms.[75]

In the *Ingabire* decision, however, the African Court did not make a systematic evaluation and application of the margin of appreciation principle, even though it was used by both parties to argue their case.[76] Among the applicant's arguments was that the offences with which she had been charged, namely, the minimising of genocide and spreading of rumours to undermine the authority of an established government, were vague and unclear. In deciding the issue, the Court stated:[77]

> ln the instant case, regarding the applicant's assertion that the laws relating to the minimisation of genocide [are] vague and unclear, the Court notes that some provisions of the aforementioned laws of the respondent state are couched in broad and general terms and may be subject to various interpretations.
>
> Nonetheless, the nature of the offences that these laws seek to criminalise, is admittedly difficult to specify with precision. ln addition, considering the margin of appreciation that the respondent state enjoys in defining and prohibiting some criminal acts in its domestic legislation, the Court is of the view that the impugned laws provide adequate notice for individuals to foresee and adapt their behaviour to the rules. The Court therefore holds that the said laws satisfy the requirement of 'the law' as stipulated under article 9(2) of the Charter.'

A critical reading of the reasoning in the foregoing statement demonstrates that the African Court avoided an examination of the requirements of legality and foreseeability of criminal laws, a fundamental requirement for fair trial rights and free speech restriction. It in fact appears as if the Court used the margin of appreciation doctrine to justify the vagueness of laws in post-genocide contexts. While the applicant's argument regarding the vagueness of laws was made under a claim for free speech rather than for fair trial rights, and the principle of legality was discussed in relation to non-retroactivity and not to the specificity of law, it is submitted that the

72 *Prince v South Africa* (2004) AHRLR 105 (ACHPR 2004) para 51.
73 *Prince* (n 72) para 50.
74 *Prince* (n 72) para 52.
75 *Prince* (n 72) para 53.
76 *Prince* (n 72) paras 124-127.
77 Application 3 of 2014 (n 6) paras 136-138.

African Court had the discretion under articles 3 and 27 of the African Court Protocol to identify the claim of vagueness of laws as an independent legality and fair trial rights issue, in addition to being a violation of free speech. Article 3 of the Protocol extends the Court's jurisdiction to all disputes and cases submitted to it concerning interpretation and application of the Charter and any other relevant human rights instrument ratified by the states concerned, while article 27 mandates the Court to make appropriate orders to remedy a violation where it finds one. It is submitted that these provisions read together with the objective to enhance the promotion of rights under the African Court Protocol provide the basis for the African Court's discretion to identify and amplify critical rights violations which may have been obscured in an application before it.

The applicant's claim regarding the vagueness of genocide minimisation laws and charges on 'spreading rumours to discredit the government' ought to have been approached as violation in its own right. This approach would have warranted a closer examination of the laws in question and a scrutiny of whether they meet international human rights standards of legality and free speech restriction. It would for instance have forced a discussion about the ambiguity of the offence of 'spreading rumours to undermine the government', for which the applicant was convicted following her political remarks, and the contradiction this presents for the Court's liberal application of free speech in political debate, including a high tolerance for offensive speech. It would also have invited an examination of whether the applicant's statements alleging that the Hutu suffered crimes against humanity was genocide minimisation per the Penal Code and Law 84 of 3013 and which warranted her conviction by the High Court. However, the Court appears to have privileged the margin of appreciation doctrine at the expense of such a critical evaluation, thereby giving too much leeway to the respondent state on what amounts to 'law' under freedom of speech restrictions in domestic contexts.

While it has been argued that states enjoy a narrow margin of appreciation where there is substantial consensus among member states on an issue and a wider one where there is none, it has also been argued that the margin is narrower for states that are considered undemocratic or weak democracies.[78] As observed from the above discussion regarding free speech limitations in post-genocide countries, it is understood that the particularity of each context negates the possibility of consensus on the nature and extent of free speech restrictions in post-genocide contexts and as such offers a wide margin of appreciation to each post-genocide state. However, it is submitted that the supervisory role of regional and international human rights institutions remains and ought not to be disregarded, particularly for countries, including Rwanda, that are still ranked low on global human

78 H Rubasha 'Accommodating diversity: is the doctrine of margin of appreciation as applied in the European Court of Human Rights relevant in the African human rights system?' unpublished LLM thesis, University of Pretoria, 2006.

rights and democracy indexes, and which still face ethnic-based violence and tensions.[79]

Thus, the *Ingabire* decision was a missed opportunity for the African Court to offer some comprehensive judicial guidance on critical aspects of limiting free speech in a post-genocide context and in the specific case of Rwanda, where previous criticisms have been scholarly and couched as mere academic recommendations. While the Court did emphasise the continuing application of international human rights standards and even promoted a liberal and inclusive approach to political debate, its obscuring of legality requirements and uncritical application of the margin of appreciation doctrine undermines the contributions of the decision. The positive aspects, however, do hold relevance for Rwanda's national dialogue framework, especially as they pertain to inclusion, diversity and tolerance of opposing political views, among others. On the downside, the Rwandan government's approach to its national dialogue framework using 'home-grown solutions', while supported by the margin of appreciation doctrine, without the scrutiny of international and regional human rights standards and legality requirements, is open to political exclusion, as further discussed below.

4 FREEDOM OF SPEECH, HOME-GROWN SOLUTIONS AND THE NATIONAL DIALOGUE FRAMEWORK IN RWANDA

The missed opportunity in *Ingabire* and the enduring obscurity surrounding legality and foreseeability of free speech restrictions in post-genocide contexts, coupled with a wide margin of appreciation, plays out in Rwanda's national dialogue process, making the dialogue framework prone to excesses and exclusion.

The Rwandan Constitution guarantees the right to freedom of expression in article 33 as follows:

> 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.

Rwanda also ratified the African Charter in 1983 and acceded to ICCPR in 1975[80] which, as discussed above, provide regional and international standards for the protection of freedom of speech and expression. This recognition of free speech rights is a foundation which can facilitate the implementation of article 9 of the Rwandan Constitution, containing fundamental principles that include, among others, the promotion of national unity; fostering the rule of law and a pluralistic democratic

79 Freedom House rankings; Freedom in the World 2018, https://freedomhouse.org/report/freedom-world/2018/rwanda (accessed 12 July 2018).

80 www.achpr.org/states/; https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal /Treaty.aspx (accessed 12 July 2018.

government; and, most critically, the constant quest for solutions through dialogue and consensus.

The Rwandan government has adopted a home-grown solutions approach to resolving national issues and has extended this approach to the critical area of national dialogue and building social cohesion after the genocide.[81] This approach was the basis for the gacaca courts which offer a form of traditional justice and were instrumental in absorbing cases from an overburdened formal justice system after the genocide. Other traditional solutions include the dialogue frameworks of *Umushyikirano* and *Umuganda*.[82] These frameworks avail a lens through which the concept of national dialogue in Rwanda is implemented at the level of the presidency and at the lowest intercommunal level respectively. As indicated earlier, while these frameworks incorporate some principles of freedom of speech, there are aspects of their implementation which deviate from the free speech standards recognised under Rwanda's Constitution and its treaty obligations, but which are then justified under the banner of 'home-grown solutions'. This has implications for the effectiveness of these dialogue frameworks in meeting their intended objective to build inclusive and cohesive societies.

4.1 Inclusive dialogue: *Umushyikirano* and *Umuganda*

The Rwandan government has emphasised social cohesion and trust between citizens and the state and between individuals through strengthened linkages within communities and between them and the state.[83] The government seeks to achieve this objective through a comprehensive policy framework of dialogue and consensus using the country's traditional cultures, which are adapted to its contemporary governance structures.[84] Rwanda's national dialogue framework is unique and progressive for sustainable peace building because it is a 'continuous dialogue' as opposed to dialogue after or during violent conflict.

Under the constant quest for solutions principle, the Rwandan Constitution established a National *Umushyikirano* Council, which once a year brings together the President of Rwanda and citizens' representatives to debate national issues and to promote national unity.[85] This event is also referred to as the National Dialogue Summit. It is chaired by the President and involves the participation of members of cabinet, parliament, local government and others to debate issues of national unity and governance. The debate is broadcast live on television and radio, allowing citizens to participate with questions and

81 The Senate (n 3) above.
82 As above.
83 The Senate (n 3) 21.
84 As above.
85 Art 140 Constitution of Rwanda (n 3).

comments by telephone on a toll-free number.[86] According to some insights offered by a member of a key policy think-tank, in Rwanda the agenda for the *Umushyikirano* is set by the Prime Minister's office, which invites participants, including those from civil society, on the basis of 'relevance'.[87] The government determines what is relevant depending on what it deems 'necessary'.[88] The *Umushyikirano* results in resolutions that are referred to responsible Ministries for follow up and may eventually become law.[89] Thus, this platform is critical for inclusive citizen participation and a way to influence national laws and policies.

By contrast, *Umuganda*, yet another recognised mechanism for consensus building and dialogue under Rwanda's constitutional framework, occurs at the community as opposed to the presidential level. It is a form of unpaid community work, which was introduced in 1998 as part of the efforts to rebuild the country after the genocide in 1994.[90] The programme is institutionalised under Organic Law 53/2007 which governs community work and under Prime Ministerial Order 58/03 which defines the organisation, and functioning of the community work, defines the supervising committees and their relations with other relevant organs, among other things.[91] *Umuganda* takes place every last Saturday of the month and lasts for three hours. Rwandan citizens between the ages of 18 and 65 years are obliged by law to take part in *Umuganda* and those who default may be fined.[92] While the main organising principle under *Umuganda* is communal labour, it also offers a platform for citizens to discuss issues arising within their communities and to raise concerns with their leaders.[93] These issues for discussion at *Umuganda* are identified at the level of the *Mudugudu*, a set of approximately 20 to 30 homes, and agreed upon with the village head.[94] However, the village head also receives an agenda from the district level before the *Umuganda*.[95] At the end of each discussion there may also be a conflict resolution space opened up for any conflict in the community.[96]

86 The Senate (n 3) 26; interview held on 17 January 2018 in Kigali, Rwanda (details on file with author).

87 Interview (n 86).

88 As above.

89 As above.

90 *Umuganda* http://www.rwandapedia.rw/explore/umuganda (accessed 12 July 2018).

91 Prime Ministerial Order 58/03 of 24 August 2009, http://www.primature.gov.rw/fileadmin/user_upload/documents/Official%20Gazettes/2009%20Official%20Gazettes/Official_Gazette_no_46_of_16.11.2009.pdf (accessed 13 July 2018).

92 *Umuganda* (n 90).

93 As above: Also see The Senate (n 3) 21.

94 Interview (n 86).

95 Interview with member of civil society organisation, 19 January 2018 (details on file with author).

96 As above.

4.2 Free speech, national dialogue, and exclusion in Rwanda

While both the foregoing initiatives indicate exemplary and progressive platforms for dialogue, the main challenge of state-sanctioned free speech censorship remains pervasive and undermines the potential of these initiatives to achieve Rwanda's goal of social cohesion. The lack of clear legal standards for censorship and exclusion is rooted in a strong state oversight role in the national dialogue process, which is justified under the banner of preventing divisiveness and hate speech which fuelled the 1994 genocide in Rwanda. In the absence of clear pronouncements in the *Ingabire* decision on questions of legality and margin of appreciation in post genocide contexts, no ready international or regional guidelines exist to ensure that Rwanda's progressive approach towards a continuous national dialogue is not hindered by excessive free speech restrictions.

The Rwandan government has itself acknowledged the threat of self-censorship within its national dialogue framework.[97] Moreover, despite the objective to build social cohesion, a 2014 survey by the government revealed that some citizens still expressed fears of a resurgence of ethnic-based violence with some indicating as the basis for such fears poor relations between the Tutsi and the Hutu and between the Twa and the rest of the population.[98] The problem of censorship in the national dialogue framework is evident through the unclear basis for excluding certain groups and individuals from the *Umushyikirano* which, as observed above, is a critical forum for citizens' participation occurring at the highest possible level of political engagement in a domestic context. This issue is more pertinent when it is considered that Rwanda's 'home-grown solutions' approach embraces an unconventional brand of democracy which may not necessarily comply with the international human rights standards Rwanda has ratified. According to one interviewee from a national policy and research institution, there is a way to disagree in Rwanda and those who disagree 'unreasonably' may be disinvited to future *Umushyikirano* dialogue platforms, or even sent to prison.[99] The interviewee explained that one could even be sent to jail for violating the principle of 'constant quest for solutions through dialogue' and to reach solutions through consensus.[100]

However, no satisfactory explanation was offered for what objective criteria might be used to determine whether or not one was disagreeing 'reasonably', neither was any legal text offered as a reference to define what 'reasonably' meant in such cases.[101] Another member of civil society explained that certain political groups were excluded from *Umushyikirano* on the basis that they were 'illegitimate' or used

97 The Senate (n 3) 4 28.
98 The Senate (n 3) 8.
99 Interview (n 86).
100 As above.
101 As above.

'unconventional' methods of opposition and critique. The member further explained that to be considered 'legitimate' often required government to be involved in an organisation's activities or ideas.[102] Both interviewees mentioned that advocacy rather than activism was the basis for 'legitimate' civic engagement in Rwanda. The former involves research and government-backed findings as a basis for reform, while the latter, which is not, is considered illegitimate and disruptive.[103]

This approach is acknowledged by the Rwandan government itself which asserts that the post-genocide social cohesion process would be state rather than 'civil society'-led.[104] Unfortunately this has served to reproduce censorship and ethnic-based antagonisms which in turn undermine the country's sustainable peace-building efforts.[105] Even while by comparison *Umuganda* provides a much wider opportunity for inclusion and for an effective national dialogue process with limited state censorship as in the case of *Umushyikirano*, the problem of self-censorship, even at the *Umuganda* level, remains.[106] An intervention by the African human rights system by way of specific guidelines on free speech restrictions in post-genocide contexts, particularly on 'offensive' language and the high standards of tolerance expected from public figures, would help to reign in state excesses and facilitate truly open and inclusive dialogue processes in such contexts, including in Rwanda.

5 CONCLUSION

The lack of clarity in the *Ingabire* decision around legal standards of free speech limitations in post-genocide contexts does not portend well for the effectiveness of Rwanda's national dialogue framework. While the *Ingabire* decision affirmed the key principles of inclusive participation and tolerance for diverse political views, the under-evaluation of the critical principle of legality and the margin of appreciation doctrine in post-genocide contexts leaves a considerably high discretion with the state and as such renders the African Court's contribution to these questions of limited value. Unfortunately, as in the case of Rwanda, states do not always adopt an inclusive and democratic application of free speech limitations in line with their treaty and constitutional obligations. Even more unfortunate for progressive peace-building initiatives, such as continuous dialogue in Rwanda, is the fact that such excesses and exclusion could render these efforts ineffective and even counterproductive. In light of the pervasiveness of ethnic-based conflict on the continent, including

102 Interview with member of civil society organisation (n 95).

103 Interview (n 86); interview (n 95).

104 The Senate (n 3) 21.

105 S Buckley-Zistel 'Between past and future: an assessment of the transition from conflict to peace in post-genocide Rwanda' 2008 (Forschung DSF, 15); Osnabrück: Deutsche Stiftung Friedensforschung. http://nbn-resolving.de/urn:nbn:de:0168-ssoar-260387 (accessed 14 July 2018).

106 The Senate (n 3) 28.

currently in member states such as South Sudan, Kenya, Nigeria and Cameroon, and in light of the foregoing legal and policy vacuum, it would be beneficial for the African Commission to innovate a set of principles to guide the restriction on free speech in the specific contexts of ongoing and post-genocide or ethnic-based violence. This could form a basis upon which member states could develop more inclusive domestic initiatives for ensuring free speech serving the objectives of sustainable peace building in Africa.