

SPECIFICITIES OF THE RWANDAN DEMOCRACY: SOCIO-POLITICAL CONTEXTS AND INSTITUTIONAL OUTCOMES

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“The future of democracy in Africa is predicated on the development of constitutional arrangements that set up viable institutions within which to conduct the business of governance and that foster an environment where peace and development can flourish.”¹

ABSTRACT

This paper explores the contexts that caused the shaping of the current Rwandan democracy the way it is. It argues that the institutional choices come as an attempt to solve the major crises of the past on the one hand, and as the reflections of what the Rwandan actors would like their democracy to be in present and future. The first section is on the socio-political context. The second is on the social character of the Rwandan democracy as well as institutional choices. The major sources of this paper include the Rwandan constitution, Rwandan archives and a literature on democracy in the world and in Africa.

INTRODUCTION

Constitutions of countries are not written from the vacuum. Whether inspired by internal or external forces, dictated by past or present experiences, they reflect the views – and represent the teleological vision – of the society that shapes them. Odogu defines a constitution as “a fundamental or ‘organic law’ that establishes the framework of government of a state, assigns the powers and duties of governmental agencies, and establishes the relationship between the people and their government.”² According to

¹ Ndulo, M., “Democratic Governance and the Roots of conflict in Africa”, in Giannakos, S.A., (ed.), *Ethnic Conflict: Religion, Identity and Politics*, Athens, Ohio University Press, 2002, p. 150.

² Udogu, I., “National Constitutions and Human Rights Issues in Africa”, *African and Asian Studies*, Vol.2, No.2, 2003, p. 3.

Hameso, “A constitution is an important social and political contract as it allows judgment by “the people.”³

In her contemporary history, Rwanda has already had at least three major constitutions: one in 1962 the other in 1978, and the last in 1991. The first two inaugurated the First and the Second Republics, whereas the one of 1991 was shaped as a fundamental law guaranteeing the management of power during the advent of multiparty system. That in 2000 the transitional government initiated the process of writing another constitution explains that Rwandan political actors and the Rwandan people thought that they were experiencing a new situation that needed new laws and institutions which would fit their present and future demands.

This paper explores the contexts that caused the shaping of the current Rwandan democracy the way it is. In other words, it examines to what extent the institutional framework reflects the socio-political context of the shapers of this democracy. To do so, I address two interrelated questions: What contexts shaped the design of the current Rwandan democracy? What institutions and laws came as a result of the choices of the Constitutional Commission after consulting the bulk of Rwandan people?

In order to answer these questions, I identify major socio-political crises that inspired the shapers of the Rwandan constitution that was inaugurated in June 2003, and then pass through the constitution, identifying to what extent those crises are addressed and prevented. It becomes clear that the institutional choices come as a solution to those crises of the past on the one hand, and as the reflections of what the Rwandan actors would like their political regime to be in future; that is, the need for achieving national unity and reconciliation, building a nation of rule of law, fighting against any other genocide in future, achieving equality and inclusion of all Rwandans in spheres of power, etc.; in one word, building a full Rwandan democracy.

THE CONTEXT

³ Hameso, S., “Issues and Dilemmas of Multi-Party Democracy in Africa,” *West Africa Review*, Vol.3, No. 2, 2002, p. 4.

An Unsettled Socio-political Past

The process of writing the Rwandan constitution coincided with the end of the transition that has started in July 1994. The choice of this time was not random. Indeed, with the adoption of the constitution on the 4 of June 2003, and the organization of presidential and legislative elections, Rwanda ceased to be under transition and embraced a democratic process. In order to understand what guided the content of the constitution, it is important to analyze the context that has inspired the shapers of the constitution.

Rwanda has been ruled by authoritarian regimes since her independence in 1962 until 1994.⁴ Power was centralized and the administration functioned on a top down system. Rwandan presidents ruled the country in the same way as absolute kings. They personalized power through clientelism and propaganda. Although a multiparty form of government has existed in Rwanda since 1959 until 1965, it has been proven that democracy and the rule of law have never existed in Rwanda. In 1965, the party of president Kayibanda, Republic Democratic Movement (M.D.R.) Parmehutu, became a *de facto* single party. The Second Republic was established in July 1973 after a coup d'Etat by president Habyarimana. The latter instituted a single party called National Revolutionary Movement for Development (M.R.N.D.) in 1978. During the same year a new constitution was written in order to replace the previous one, which dated from 1962. It was then a custom for most African rulers after taking over power by putsch to first ban the constitutions they found and then write new ones. The First Republic (1962-1973) and the Second Republic (1973-1994), claiming to represent the Hutu majority, have been characterized by the rule of ethnic discrimination against Tutsi and Twa minorities.⁵

⁴ See for example the list of regime countries in Boix, C., *Democracy and Redistribution*, New York, Cambridge University Press, 2003, p. 106. McCall recalls that whereas the United States' Founding Fathers envisioned a nation of laws and not of men, "In pre-genocide Rwanda, it was a nation of men and not of laws." (McCall, R. et al., *Trip Report, Rwanda*, July 8 through 20, 2002, p. 4.)

⁵ See Mulinda, Kabwete, C., *L'idée de démocratie au Rwanda, de 1948 à 1994*, Butare, UNR, 1997; Reyntjens, F., *Pouvoir et Droit au Rwanda. Droit Public et Evolution politique 1916-1973*, Tervuren, MRAC, 1985 ; USAID, "Rwanda, Democracy and Governance Officer", December 2002, http://www.usaid.gov/ftp_data/pub/OP/PSC/69602s00800.html, accessed on 3/11/2004, p.2.; Republic

As a result, ethnic exclusion has been one of the major policies that have harmed the bulk of Rwandans. Although Hutu, Tutsi and Twa ethnic identities are precolonial realities, it is colonial rule that has rigidified and polarized the cleavages between Hutu and Tutsi.⁶ During the First and the Second republic, the Hutu and Tutsi identities were highly politicized. Indeed, until 1965, The First Republic has established a regime based on ethnic identity, not on competition over programs and ideas. The regime became also regional, favoring the Hutu of South at the expense of North. The Second Republic continued with ethnicity and regionalism. In the process, nepotism, and sectarianism developed in favor of the ruling elite close to the family of the president.⁷ One of the consequences of ethnic violence and exclusion is the refugee issue. Refugees of majority Tutsi fled the country in many waves of political violence: since the civil war of November 1959 until 1962 and violence up to 1967; in 1972-1973 following the massacre of intellectual Tutsis; and in 1990 after the first attack of the Rwanda Patriotic Front (RPF) led by refugees.

In 1991, multiparty system was again established in Rwanda, after the collapse of Communist regimes in 1989 and the Conference of La Baule in which the then French President urged many African leaders to embrace democracy as a condition to continue to enjoy the economic and diplomatic co-operation with the European community. But as on the military ground the RPF was harassing the Habyarimana regime, in the political ground opposition parties were asking for democratization and power sharing. The Arusha Peace Accord initiated from 1992 to August 1993 between the government, the opposition parties and the RPF rebellion party, did not solve the political conflict. Instead, the government chose to radicalize resentment against Tutsi and Hutu moderate

of Rwanda, Ministry of Local Government and Social Affairs, *National Decentralization Policy*, Kigali, May 2000, p.3; USAID, *Rwanda Democracy and Governance Assessment*, Final Version, Washington DC, November 2002, pp. 32-33.

⁶ See especially Mamdani, M., *When Victims Become Killers, Colonialism, Nativism, and the Genocide in Rwanda*, New Jersey, Princeton University Press, 2001; pp. 76-102; Twagilimana, A., *The debris of Ham: Ethnicity, Regionalism, and the 1994 Rwandan Genocide*, Lanham, Md, University Press of America, 2003.

⁷ Komisiyo y'igihugu y'amatora, *Uburere mboneragihugu ku matora mu Rwanda*, Kigali, 2002, pp. 50-51.

leaders. The government established serious media hatred apparatus against the Tutsi and Hutu moderate. Apart from the regular official army and police, MRND and CDR (Coalition for the Defense of the Republic), both Hutu extremist parties, have created armed militias. These militias participated in killings and human right violations in 1992 until 1994. As a result, massacres of Tutsi communities from 1991 until 1994 increased in degree.⁸ At the end of 1993, the party of the president (M.R.N.D.), together with other pro-government parties created a clique that united all political elites under a group called “Hutu Power,” which meant parties of Hutu who are against any sharing of power and cohabitation with Tutsis. Even opposition parties (Democratic Republic Movement, Social Democate Party, Liberal Party and Christian Democrat Party), which had ethnically mixed members, were split into moderate members and extremist members, the latter joining the government side. The Hutu power clique rejected the Arusha Peace Accord that foresaw the inclusion of all parties in a transitional government to be formed a month after the signature of the accord on 4th August 1993. The opposition party members who chose to join the government in the “Hutu power” clique participated in the media hatred messages, and thereafter in the killings and in the genocide against Tutsi.⁹

The ethnic hatred mobilization, the militarization of the population through militia formation that were added to the regular army and police became the tools of the genocide, which was defined by the Hutu ruling power as the final solution. Although lists of Tutsi to be killed had started to be elaborated before April 1994 and despite the fact that massacres were carried out since 1991, the signal of the genocide for the whole country came after the crash of the presidential plane in the night of the 6 April 1994. It was estimated that between 800,000 and 1 million Tutsi and Hutu moderate were killed between 6 April 1994 and 19 July 1994 when the RPF rebels stopped the genocide and

⁸ African Rights, *Death, despair and defiance*, African Rights, August 1995a; Des forges, A., ‘Leave none to tell the story’, *Genocide in Rwanda*, Human Rights Watch, Paris, I.F.H.R., 1999; Chrétien, J.P. (sous la direction de), *Rwanda: les médias du génocide*, Paris, Karthala, 1995; Prunier, G., *The Rwanda Crisis: History of a Genocide, 1959-1994*, London, Hurst & Co, 1995; Guichaoua, A., ed., *Les crises politiques au Burundi et au Rwanda, (1993-1994)*, Paris, Karthala, 1995.

⁹ African Rights, *Death, despair..., op.cit.*; Guichaoua, A., ed., *Les crises politiques..., op.cit.*

formed a government of National Unity. This government included all parties which did not participate in the genocide.

Politics during the Transition: an Attempt at Improving the Situation

The government of National Unity was made of eight parties. The previous ruling party MRND and other small parties which were involved in the genocide were excluded from the government. The transition was scheduled for a period of five years, after which elections could be organized.¹⁰ Parties were forbidden to operate at the local level; they had only meetings of their political bureaus in the capital Kigali.

As the transitional government inherited a country which was destroyed by war and genocide, it had to focus on reconstruction of the infrastructure, and on rehabilitating the Rwandan population. Since July 1994 refugees who fled the country from 1959 onwards started to return home, whereas the defeated Hutu government took with it more than two millions of people of Hutu majority. The transitional government focused therefore on the mobilization of the population to return home. This task was carried out together with the United Nation High Commission for Refugees and other UN agencies, with other governments and Non-Governmental Organizations.

The other priority was security. As the defeated government established itself in neighboring countries, it continued to train youths, attack the country borders, kill Tutsi survivors, and destabilize the country. In 1996, when Rwanda got involved in the war in former- Zaire, Rwandan and Congolese rebel troops attacked the camps and organized the return of the bulk of refugees back to Rwanda. In other neighboring countries, negotiation was used in order to reach the return of refugees. Of 2,101,000 refugees registered in neighboring countries (Burundi, Tanzania, Uganda, and Congo) at the end

¹⁰ IND, "State Structures", <http://www.ind.homeoffice.gov.uk/default.asp?Pageld=3515>, accessed on 4/10/2004, p. 2.

of August 1994, only 62,400 remained in those countries in 1999.¹¹ Rwanda withdrew from Congo since October 2002, because the government had estimated that security had improved, and the Democratic Republic of Congo had committed itself to respecting the Pretoria Peace Agreement that asked Congo to hand over Rwandan rebels and Rwandan government to withdraw from the Congolese territory. However, up to now, Hutu rebels are still operating in Congo.

Institutionally, some programs of decentralization and grassroots elections have taken place. The government has decided to empower cells, sectors, districts and provinces and give them some administrative and financial autonomy. In June 1999, the Government announced the extension of the transitional period by four additional years. At the same time, in March of the same year, it had initiated grassroots elections. In March 2001, District Councils were elected.¹²

Decentralization was concerned with creating the policy and legal framework, as well as putting in place appropriate institutions for democratic local governance, transferring fiscal responsibilities and financial resources to decentralized units, and building local administrative capacities of communities of elected leaders through sensitization activities.¹³ Support for the decentralization program came from many bilateral as well as multilateral co-operations. One of them was the United States Agency for International Development. The public sector has been reformed so as to meet the requirements of decentralization policy.¹⁴ Therefore, since at least 2000, it can be said that Rwanda has become a unitary and decentralized country.¹⁵

¹¹ UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action*, Oxford, Oxford University Press, 2000, pp. 250-251, *passim*.

¹² Rwanda has 5 provinces, 30 districts and 416 sectors since 2006. It had 154 communes before the reform of 2000, and 106 communes since 2000.

¹³ Bartholomeeussen, S., and Twahira, D, *Appraisal of the Decentralization Process in Rwanda*. Final Report, The Hague, September 2003, pp. 6-7, 12.

¹⁴ See USAID, *Rwanda Democracy and Governance Assessment*, p. 9.

¹⁵ See Lijphart, A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999, p. 190.

Concerning the process of solving the ethnic conflict, the transitional government established since 1998 the National Unity and Reconciliation Commission (NURC). The main tasks of this commission have been to go all over the country mobilizing population with messages and activities of reconciliation, unity and justice. The transitional government through the NURC and other channels committed itself to fighting against ethnic division and exclusion. The teachings of NURC include the motto that Hutu, Tutsi and Twa are above all Rwandans; that the Rwandan identity is more important and inclusive than the Hutu, Tutsi and Twa identities; and that those identities should not be politicized because they led the country to violence and genocide since 1959.¹⁶ In this respect, the episodes of precolonial history which stress that these groups had never discriminated against each other are taught to various categories of people. One of the gatherings for the NURC mobilization is the reeducation camps (*Ingando*) in which students, militaries, and former rebels integrated into the army and others are taught values of unity and reconciliation. The process of unity and reconciliation stresses other values that Rwandans share and that should help them avoid discrimination: same language¹⁷, same culture, cohabitation, intermarriages across history, etc.

Overall, many internal and external observers have recognized that the transitional government led by RPF has made significant efforts towards the rule of law during the transition.¹⁸ However, they have at the same time pointed out problems that still undermine the area of political freedom. Key to the latter criticism was the fact that political organizations were still forbidden to operate in the interior of the country.¹⁹ The government claimed that much needed first to be done in terms of pacification before opening fully free political debates. Since 2007, political organizations operate at all administrative levels, that means nationally and locally.

¹⁶ Sebasoni, S., "La vision ethniste de la société rwandaise », <http://www.rpfinkotanyi.co.rw/news/vision%20ethniste.htm>, accessed on 3/11/2004, pp. 1, 2.

¹⁷ According to the census of 2002, 99.4% of the population speak kinyarwanda, which is the local language. French is spoken by 3,7%, English by 1.8% and Swahili (east African language) by 3.8%. (Service National de Recensement, *Recensement général de la population et de l'habitat Rwanda : 16-30 août 2002, Recensement 2002 en bref*, Kigali, Février 2004, p.23 ; Sebasoni, S., "Le Rwanda à l'aube d'une ère nouvelle », <http://www.orinfor.gov.rw/DOCS/lecteurs13.htm>, accessed on 3/11/2004, p. 2.)

¹⁸ See for example USAID, *Rwanda Democracy and Governance Assessment*, p. 7.

¹⁹ USAID, *Rwanda Democracy and Governance Assessment*, pp. 26-27.

THE OUTCOME

A Democracy that improves Society

During the transition, the Rwandan government committed itself to elaborate a new constitution that could mark the end of the transitional period in 2003 and inaugurate a democratic period. Until then the government used following legal documents: the Constitution of 1991 which had been elaborated during the beginning of the multiparty system, the Peace Accord of Arusha of August 1993 and the Declaration of the RPF made soon after the latter gained power in July 1994.

In November 2000, the Legal and Constitutional Review Commission was established. 12 members were appointed as Commissioners. Their mission was to coordinate the activities of consultation of the population, of research, etc. Their duty was to draw a new constitution to be presented to the population in 2003 for amendment through referendum.²⁰

The 12 member commission began its work in January 2001 and undertook a massive consultation process. The commission first conducted an education campaign about the constitution process. Then from January to June 2002, meetings and consultation of the commission with the Rwandan population were organized. Ideas from individuals and groups throughout the Rwandan society were collected. The results of these consultations, which include 14,000 questionnaires and 35 memoranda, as well as extensive oral testimony, were the basis for writing a constitution draft which was to be amended and approved by the transitional national assembly and then presented for approval to the population in a referendum.²¹

²⁰ IND, "State Structures",...p. 1.

²¹ USAID, Rwanda Democracy..., p. 40.

Rwanda's new constitution was amended through referendum at the rate of 93.42 percent, whereas the rate of participation to the referendum was 87 percent. It became effective on 4 June 2003.²² It is worth noting that in the preamble of the constitution, mention is already made about the commitment of Rwandan people to unity and reconciliation, to equality of rights for all Rwandese regardless of their different ethnic identities and gender, and to fight the ideology of genocide that led to the killing of "more than a million of Rwandans." The preamble goes on to remind and stress that Rwandans share common language, common culture, a long shared history "which ought to lead to a common vision of our destiny". Before dealing with the articles of the constitution that establish political institutions and stipulate power management, let me first focus on the articles that concern relevant and specific issues of the Rwandan society.

Fights and Prevents Genocide

Due to the fact that the threat of genocide is not yet totally wiped out, the constitution contains many provisions to ensure the protection of Rwandans against genocide and to urge all structures of power against the ideology of genocide. To begin with, article 9, §1 on fundamental principles, stipulates that the Rwandan state commits itself to fighting the ideology, and practices of genocide.

Article 13 in the chapter on fundamental human rights principles, states again that "the crime of genocide, crimes against humanity and war crimes do not have a period of limitation", and that "revisionism, negationism and trivialization of genocide are punishable by law". These provisions are practically important, because until now perpetrators are still being prosecuted and there are countries and individuals who still negate the genocide against Tutsi.

On the other hand, the state commits itself to solving issues caused by the genocide (survivors, need for memory). In this respect, Article 14 underscores that the state

²² CJCR, « Le Président de la République a promulgué la nouvelle Constitution le 4 juin 2003 », <http://www.cjcr.gov.rw/indexfr.htm>, accessed on 3/11/2004.

commits itself to the welfare of the survivors of genocide “who were rendered destitute by the genocide committed in Rwanda from October 1st, 1990 to December 31st, 1994, among others.” Again, article 51 mentions that: “...The state has the duty to preserve the national cultural heritage and sites of genocide against the Tutsi.”

In order to manage and monitor activities aimed at the fight against genocide, a commission ad hoc was instituted. Indeed, article 179 establishes the National Commission for the fight against genocide. This commission is expected to deal with activities such as Research on genocide, advocacy for the cause of survivors both within the country and abroad, etc.

Fosters National Unity

Another issue which is omnipresent in the constitution is national unity and reconciliation. Due to the fact that articles on national unity are numerous, I will present only some of them here. Article 16 on human rights chapter states that “All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law.” More precisely, article 9, § 2 underlines that the Rwandan state commits itself to the eradication of ethnic, regional and other divisions and to the promotion of national unity; whereas § 3 urges to equitable sharing of power.

Values of unity are included in following articles: article 5 consecrates Kinyarwanda to be the national language, whereas the official languages are Kinyarwanda, French and English; article 6 declares that the motto of the republic is: unity, work, patriotism. Articles 61 and 104 oblige the elected and appointed members of the government including the President, of the Parliament and of the Judiciary to take the oath in which they swear to respect national unity, among other values.

To monitor national unity through the promotion of Kinyarwanda, the state stipulates the creation of the Rwanda Academy of Language and Culture (article 50) in order to

strengthen national unity through the language that is shared by all Rwandans, and legalize the existing National Unity and Reconciliation Commission (article 178).

Builds Gender Equality

In the article 9, § 4, the Rwandan state commits itself to “building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty percent of posts in decision making organs”. Article 52 obliges political organizations to ensure equal access of women and men to elective offices.

Article 185 establishes the “Gender” Monitoring Office as an independent public institution to monitor issues of gender in public and private arenas. In the same vein, article 187 establishes the National Council of Women.

As a result of the promotion of gender equality, Rwanda has become one of the top countries in the world to have more female members in Parliament with 48.8 percent of female in the Chamber of Deputies (39 out of 80 are women) after the elections of 2003.²³ They were 30 percent in the Senate, 37 percent in the Executive, and 41 percent in the Supreme Court. Overall, women have been involved in the whole process of institutional building during the transition. According to Dr. Kantengwa, RPF had the tradition of inclusiveness at an early stage. Women were included in its structures long before it gained power in 1994.²⁴ According to the general census of August 2002, women were 52.27 percent of the Rwandan population.²⁵ The same lady indicates that “The entire text of the new Rwandan Constitution is concerned with equal opportunity and social justice. Above all, the 203 articles are fully engendered and in accordance with

²³ “Women in Parliament”, *Economist*, 1st April 2004; Inter-Parliamentary Union, *Women Elected in 2003: the year in perspective*, Geneva, January 2004.

²⁴ Kantengwa, J., *Women’s participation in Electoral Process in Post-Conflict Countries: The Case of Rwanda*, New York, IPU, United Nations and the Permanent Mission of Norway, March 2004.

²⁵ Service National de Recensement, *Recensement général...*, p. 13.

the existing international legal instruments.”²⁶ Following the legislative elections of September 2008, women in parliament reached 45 out of 80, i.e., 56.3 percent, making Rwanda the top country in the world to have the biggest number of women parliamentarians. This trend has continued even in the recent legislative elections of 2013.

Aims at a better Economic Life

After recognizing that every person has the right to private property (article 29), article 30 stipulates however that “Private property of land and other rights related to land are granted by the State”. This mention is necessary because land is a highly scarce resource in Rwanda. More than 80% of population are in the agriculture sector, rural, and need land which is at around 40% arable. Also, Rwanda is the most densely populated in Africa with more than 10 million people on only a territory of 26,338 km². Consequently, many court disputes are related to land.²⁷

On education matters, article 40 states that “Every person has the right to education”. It is worth noting that before 1994, it is ethnic quota that decided who should study and at what proportion, not merit. In addition, the current government policy of free primary and secondary education in public schools is an innovation.

On public sector employment, article 45 notes that “All citizens have the right of equal access to public service in accordance with their competence and abilities.” Not ethnic identity: “Public servants are recruited, posted and promoted in conformity with the principle of equality of citizens, through an objective, impartial and transparent system on the basis of the competence, merit and integrity of applicants of both sexes.” (article 126) The government gives equal chances through power sharing, right recognition, and all people struggle by themselves without discrimination. Note that as the private sector and

²⁶ Kantengwa, J., Women’s participation..., p. 4.

²⁷ See the comment of Ndulo in his chapter already cited, p. 147.

the civil society are still weak, the state is the biggest employer in Rwanda. This is what makes this provision important in the constitution.

Finally, in order to fight against corruption of officials, article 182 establishes the creation of the Office of the Ombudsman (*umuvunyi*). This institution of Ombudsman is inspired from the Swiss case. Note that Article 32 urges to the respect of public property. The same article stipulates that any act of corruption is punishable by law.

A Democracy with context based Political Institutions

Form of regime

Rwanda has chosen the regime of semi-presidentialism.²⁸ According to the definition of premier-presidential regime, which is synonymous to semi-presidentialism, the president must be elected by popular vote; he or she must possess considerable powers, and finally, there must exist a premier and a cabinet that are subject to assembly confidence.²⁹

In the case of Rwanda, the three conditions are fulfilled, albeit with a small difference. Indeed, the president is directly elected under popular vote (article 100), the president possesses considerable powers, as we shall see later, and there exists a premier who is accountable both to the president and the Parliament (article 117).

The democratic principles of the Republic of Rwanda are also posited. The separation of legislative, executive and judiciary powers is also recognized and protected by law. Finally, the rule of law, the sovereignty to the people, the freedom of movement, of thought, opinion, conscience, religion, press and information are recognized and protected under articles 9, 2, 18, 33, 34, and 23.

²⁸ “Rwanda gets a new constitution”, *The Monitor*, <http://www.monitor.co.ug/specialincludes/mplsups/rwandasup/rwsup9.php>, accessed on 3/11/2004.

²⁹ Shugart, M.S., and Carey, J., *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge, Cambridge University Press, 1992, p.23; see also Lijphart, A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999, p. 121.

Political Organizations

The Rwandan state recognizes multiparty system (article 52). Political organizations (or parties) are urged to “abide by the Constitution and other laws as well as democratic principles and they should not destabilize national unity, territorial integrity and security of the nation.” (article 52 of the constitution and article 2 of organic law No.16/2003 of 27/06/2003) These requirements have been legalized because of the destructive experience of parties during the past. Recall for instance how all major parties that were in Rwanda in 1993 got involved in the “Hutu power” extremist phenomenon, when extremist Hutu members of those parties joined the “Hutu power” apparatus. The same article 52 urges political organizations to ensure equal access of women and men to elective offices.

Article 53 prohibits parties from using discrimination in their membership. Because since 1959 ethnicity and regionalism have cost lives of people, article 54 forbids parties from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division.

As a way of establishing a close collaboration among parties, article 56 establishes the Forum of political organizations. This is a consultative organ in which parties exchange ideas in order to consolidate unity, advise each other on national policy, and on internal matters regarding parties. Decisions are taken by consensus of all members.

The consultative Forum of political organizations is an innovation in the institutional history of Rwanda. Article 51 of law on political parties of 2003, provided for in Article 56 of the Constitution, stipulates that this Forum is an independent organ that enables parties to collaborate and share power.

In order to guarantee power sharing among parties, article 58 states that “The President of the Republic and the Speaker of the Chamber of Deputies shall belong to different political organizations.”

Again, article 35 of the law on political parties of 2003 prohibits parties from forming militias or military groups. This provision was to guarantee the universal monopoly of coercive power of the state, and avoid what has occurred between 1992 and 1994 when the ruling party MRND had the *interahamwe* militia, and the Hutu extremist party CDR had *impuzamugambi* militia as killing machines.

Furthermore, the electoral law seems to create certain mechanisms of reduction of the number of political organizations in the Chamber of Deputies or to increase the incentive of small parties to form coalitions. For example, the threshold is fixed at 5 percent of votes cast as a way to enter the Chamber of Deputies. Therefore, small parties run the risk of not gaining seats in the Chamber of Deputies, unless they form coalitions with other more promising parties.

Finally, the election of the 53 deputies among 80 is at a closed list and at proportional representation. This measure ensures party discipline among candidates and other politicians alike. In the same vein, if a deputy resigns or is expelled from his or her party, he or she automatically loses his or her seat (article 78). Thus, if the Forum of parties encourages the interparty collaboration, the party discipline ensures intraparty control of individual politicians. Before 2013, the adhesion to the Forum of parties was compulsory. But since that year, it has become voluntary.³⁰

On the Composition and Powers of the Executive, Legislative and Judiciary

Article 60 states that the branches of government (the Legislative, the Executive and the Judiciary) are separate and independent from one another but are all complementary.

³⁰ Article 50 of the Organic Law N° 10/2013/OL of 11/07/2013 Governing Political Organizations and Politicians, *Official Gazette*, n° *Special* of 12/07/2013.

The Parliamentary is composed of two chambers, the Chamber of Deputies and the Senate. The latter is an innovation, as a way to empower local provinces, and to balance the powers of the lower chamber.

The Chamber of Deputies is composed of 80 members as follows: (article 76)

- 53 are elected on the basis of direct universal suffrage, through a secret ballot using a system of closed list and proportional representation. (Article 77)³¹;
- 24 women are elected by specific councils in accordance with the administrative entities;
- 2 members elected by the National Youth Council;
- 1 member elected by the Federation of the Associations of the Disabled Persons.

The Senate is composed of 26 members and at least 30 percent of whom are women. In addition, former Heads of State become members of the Senate upon their request as provided for in article 82. Those 26 members are elected or appointed as follows:

- 12 members elected by the specific councils in accordance with the administrative entities;
- 8 members appointed by the President of the Republic who shall ensure the representation of historically marginalized communities;³²
- 4 members designated by the Forum of political organizations: this helps small parties that did not reach the threshold (which is 5 percent) to be represented;
- 1 university Professor elected by the academic and research staff of public universities and institutions of higher learning;
- 1 university Professor elected by the academic and research staff of private universities and institutions of higher learning. (article 82)

³¹ In the same article, it is stipulated that “The list shall be compiled in full respect of the principle of national unity [...] and the principle of gender equality.”

³² This coincides with the explanation of Lijphart whereby “The principal justification of instituting a bicameral instead of a unicameral legislature is to give special representation to minorities...” (Lijphart, A., *Patterns of Democracy...*, p. 39.)

The term limit for members of the Senate is eight years, not renewable, except for former heads of State, whereas the one of the lower chamber is five years. Article 85, § 4 states that “Senators appointed by the President of the Republic are nominated last to enable the President to take into account the principle of national unity among Rwandans.”

The President of the Republic is elected by universal suffrage through a direct and secret ballot with a simple majority of the votes cast (article 100). He or she appoints the Prime Minister, and together form the Cabinet. However, the latter will be approved by the Chamber of Deputies, before taking office. The term of the president is seven years renewable only once. So, it is a fixed term (article 101).

The members of the Judiciary are the Supreme Court and other courts (article 140). The Supreme Court is headed by a president, assisted by a Vice-President and twelve other judges (article 146). The president and vice-president are proposed by the President of the Republic, and are elected by the Senate for a single term of eight years by simple majority vote. The list of the president of the Republic must have two candidates by post (article 148).

Concerning the Powers of these separate organs, the right to initiate legislation is concurrently vested in each Deputy (not the Chamber of Deputies as a whole) and the Executive acting through the Cabinet (articles 62 and 90). This provision could ensure local emphasis of policies by individual deputies³³. However, this fear is overcome, since articles 80 and 87 of the 2003 electoral law (or articles 87 and 104 of the 2010 electoral law) maintain that the electoral constituency is the whole territory of Rwanda both for the deputies and the President of the Republic. So, it is expected that at least, *de jure*, the elected deputy will not favor any local constituency at the expense of the whole nation. At the same time, the Chamber votes upon a bill; in this regard, there is a provision of voting on each article (partial veto) of the bill, as well as voting on the entire bill (pocket veto) (article 93 § 4).

³³ See Cox, G., *The Efficient Secret. The Cabinet and the Development of Political Parties in Victorian England*, Cambridge, Cambridge University Press, 1987.

The Senate has immense powers of voting organic laws, and electing high ranked officials in the judiciary. It approves appointments of members of national commissions, and other high public officials (article 88). However, it is the Cabinet that has the powers of proposing the list from which to elect those officials (articles 88, 112, and 114).

The executive has above all the power to execute the law, whereas the Judiciary has the judiciary power. Moreover, articles 110 and 112 consecrate the president as the commander-in-chief of the Rwanda armed forces and head of the Executive.

Finally, concerning the amendment of the constitution, $\frac{3}{4}$ majority votes of the members of both Legislative chambers is required. The amendment requires referendum for articles regarding the term of the President (article 193). This provision is very important if we consider to what extent many African heads of state tend to amend their constitutions so that they could remain in power. The $\frac{3}{4}$ majority votes required suggests that the Rwandan constitution is rigid.³⁴

CONCLUSION

This paper has attempted to read and understand the Rwandan democracy through the socio-political context of the country since 1959. In other words, it managed to understand what shaped this democracy. It has been made clear that the institutional provisions aimed at correcting the mistakes of the past, and at the same time laid the foundation for a peaceful sharing of power and coexistence of all Rwandans regardless of their differences. Provisions for avoiding authoritarianism, ethnicity³⁵, regionalism, gender discrimination, genocide and other forms of exclusion have been posited in the Constitution and implemented in policies and management of political affairs.

³⁴ See Lijphart, A., *Patterns of Democracy...*, p. 216.

³⁵ Frye has already indicated that “ethnic concerns may be paramount in designing political institutions.” (Frye, T., “A Politics of Institutional Choice: Post-Communist Presidencies”, *Comparative Political Studies*, Vol. 30, No. 5, October 1997, pp.523-552, p. 532.)

Furthermore, institutions that aimed at guaranteeing democracy, human rights, national unity, justice and equality have been established.

Since 2003, the resulting institutions have brought more hope in Rwandan life. But it is early to make a thorough evaluation. The attempt of this paper was only to show where the present institutions come from. The new constitution holds some advantages as compared to the previous constitutions. For instance, for the first time of the history of Rwanda, the ordinary people were involved in the consultation and writing of the constitution. This allows me to assert that the current Rwandan constitution is not “a borrowed” one. It draws heavily on the experiences of Rwandans, and at the same time it aims at solving concrete socio-political problems of the past and present, while it envisions a future believed to be better.

The working of the forum of parties though criticized has also produced some tangible results. As Horowitz argued, “[w]hen leaders compromise across ethnic lines in the face of severe divisions, there is usually a high price to pay.”³⁶ In a country of elitist politics such as Rwanda, interparty collaboration is a priority in order to produce compromise and the democratic culture of tolerance among competitors. Collaboration, when it works, helps to see the “other” party as opponent, adversary, not enemy. As we know, “when elephants fight, it is the grass that suffer.” Hence, I believe, collaboration is and has been able to avoid violent confrontation.

The current government has chosen to go a step further by emphasizing the Rwandan identity as a strategy for unity and reconciliation. Habib is right in his advocacy for the construction of national identity in order to strengthen democracy:

“...it is absolutely essential that a national political identity be generated that subsumes narrower ethnic and racial identities, so that manipulative elites are not able to exploit social and economic tensions within society to establish widely supported claims for secession. Failure to generate this national identity will leave

³⁶ Horowitz, D., “Constitutional Design...”, p. 21.

the forces of democracy forever vulnerable to such political elites, and to the civil war that will undoubtedly result if any such secession were ever attempted.”³⁷

The high wish is to see this policy of national identity work. The current government, after reminding all Hutu, Tutsi and Twa that they are above all Rwandans, has made sure that all are represented in the government.

Finally, as we all know, “[a] good constitution, while important, does not in and of itself create a democracy.”³⁸ It is more commitment for accountability, good governance, the respect of human rights, equality of all before law and devotion to work in order to develop the country that will hopefully save Rwanda and Rwandans. The constitution is just an instrument to help actors towards the respect of the above values. Democracy is a process; therefore, the design of the democratic institutions has been an outstanding step. To go for a further step is what Rwandan leaders and the Rwandan people should do by respecting all democratic principles, mechanisms and values that address Rwandan specificities.

REFERENCES

African Rights, *Death, despair and defiance*, African Rights, August 1995a.

African Studies Center, *Governance in post-genocide Rwanda*, <http://asc.leidenuniv.nl/events/event261011360.htm>, accessed on 3/11/2004.

Bartholomeeussen, S., and Twahira, D, *Appraisal of the Decentralization Process in Rwanda*. Final Report, The Hague, September 2003.

Boix, C., *Democracy and Redistribution*, New York, Cambridge University Press, 2003.

Chrétien, J.P. (sous la direction de), *Rwanda: les médias du génocide*, Paris, Karthala, 1995.

CJCR, “Deuxième conférence-débat sur le fonctionnement des partis politiques et le comportement de leurs leaders après la période de transition », le 24 juin 2002, <http://cjcr.gov.rw/actualite005.htm>, accessed on 3/11/2004.

³⁷ Adam Habib, “South Africa – The Rainbow Nation and Prospects for Consolidating Democracy”, *African Journal of Political Science*, Vol. 2, No. 2, 1997, pp. 15-37, p. 17.

³⁸ USAID, *Rwanda Democracy...*, p. 41.

CJCR, «La commission a animé un débat radio-télévisé avec les représentants des partis politiques agréés au Rwanda », le 14 avril 2002, <http://cjcr.gov.rw/indexfr.htm>, accessed on 3/11/2004.

CJCR, « Le Président de la République a promulgué la nouvelle Constitution le 4 juin 2003 », <http://www.cjcr.gov.rw/indexfr.htm>, accessed on 3/11/2004.

CJCR, «Même les autochtones ont exprimé leurs opinions sur la Constitution », <http://www.cjcr.gov.rw/indexfr.htm>, accessed on 3/11/2003.

The Constitution of the Republic of Rwanda, *Official Gazette*, n° Special of June 04, 2003.

The Constitution of the Republic of Rwanda, with amendments of 2nd December 2003, *Official Gazette*, N° Special Of 2nd December 2003.

The constitution of the Republic of Rwanda, with amendments of 8 December 2005, *Official Gazette*, n° Special of 08/12/2005.

The Constitution of the Republic of Rwanda, with amendments of 13/3/2008, *Official Gazette*, n° Special of 13/8/2008.

Cox, G., *The Efficient Secret. The Cabinet and the Development of Political Parties in Victorian England*, Cambridge, Cambridge University Press, 1987.

Des forges, A., *'Leave none to tell the story', Genocide in Rwanda*, Human Rights Watch, Paris, I.F.H.R., 1999.

Droit Francophone, «Rwanda, Description du droit national », <http://portail.droit.francophonie.org/doc/html/rw/dtn/2001dfrwdn1.htm>., accessed on 3/11/2004.

“Freedom in the World, Rwanda”, *Freedom House*, New York, 2003, <http://freedomhouse.org/research/freeworld/2003/countryratings/rwanda.htm>, accessed on 3/11/2004.

Frye, T., “A Politics of Institutional Choice: Post-Communist Presidencies”, *Comparative Political Studies*, Vol. 30, No. 5, October 1997, pp.523-552.

Government of the Republic of Rwanda, “Structure”, <http://www.rwanda1.com/government/rwandalaunch.html>, accessed on 3/11/2004.

Guichaoua, A., ed., *Les crises politiques au Burundi et au Rwanda, (1993-1994)*, Paris, Karthala, 1995.

- Habib, A., "South Africa – The Rainbow Nation and Prospects for Consolidating Democracy", *African Journal of Political Science*, Vol. 2, No. 2, 1997, pp. 15-37
- Hameso, S., "Issues and Dilemmas of Multi-Party Democracy in Africa," *West Africa Review*, Vol.3, No. 2, 2002.
- Horowitz, D., "Constitutional Design: Proposals versus Models", in Reynolds, A. (ed.), *The Architecture of Democracy*, Oxford, New York, Oxford University Press, 2002.
- IND, "State Structures", <http://www.ind.homeoffice.gov.uk/default.asp?Pageld=3515>, accessed on 4/10/2004.
- Ingabire, Umuhoza, V., « Rwanda : 'Le projet de constitution risque d'hypothéquer irrémédiablement l'avenir du pays,' selon le RDR », <http://www.r-online.info/news/printview.php?number2print=1030>, accessed on 3/11/2004.
- Inter-Parliamentary Union, *Women Elected in 2003: the year in perspective*, Geneva, January 2004.
- Kantengwa, J., *Women's participation in Electoral Process in Post-Conflict Countries: The Case of Rwanda*, New York, IPU, United Nations and the Permanent Mission of Norway, March 2004.
- LDJL, "Rwanda: Democratisation ou volonté de statu quo ?", <http://www.ldgl.org/ra02rda.htm>, accessed on 3/11/2004.
- Lijphart, A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999.
- Lijphart, A., "The Wave of Power-Sharing Democracy" in Reynolds, A. (ed.), *The Architecture of Democracy*, Oxford, New York, Oxford University Press, 2002.
- « Loi Electorale No. 17/2003 du 07/7/2003 relative aux élections présidentielles et législatives », *Journal Officiel de la République du Rwanda*, No. Spécial du 07/7/2003.
- Komisiyo y'igihugu y'amatora, *Uburere mboneragihugu ku matora mu Rwanda*, Kigali, 2002.
- Mamdani, M., *When Victims Become Killers, Colonialism, Nativism, and the Genocide in Rwanda*, New Jersey, Princeton University Press, 2001.
- McCall, R. et al., *Trip Report, Rwanda*, July 8 through 20, 2002.

Mozaffar et al., “Electoral Institutions, Ethnopolitical Cleavages, and Party Systems in Africa’s Emerging Democracies”, *American Political Science Review*, Vol. 97, No. 3, 2003, pp.379-390.

National Electoral Commission of Rwanda, and the International Foundation for Election Systems (IFES), *Workshop on Civic Education for Elections in Rwanda*, Final Report, Kigali, May 15th-May 18th 2002.

Mulinda, Kabwete C., *L’idée de démocratie au Rwanda, de 1948 à 1994*, Butare, UNR, 1997.

Ndegwa, S., “A Decade of Democracy in Africa”, *Journal of Asian and African Studies*, Vol.36, No. 1, 2001.

NDI, *Evaluation de l’environnement politique pré-électoral au Rwanda et le rôle des partis politiques*, du 3 au 11 août 2003.

Ndulo, M., “Democratic Governance and the Roots of conflict in Africa”, in Giannakos, S.A., (ed.), *Ethnic Conflict: Religion, Identity and Politics*, Athens, Ohio University Press, 2002.

« Organic Law No. 16/2003 of 23/06/2003 Governing Political Organizations and Politicians », *Official Gazette of the Republic of Rwanda*, No. special of 27/6/2003.

Organic Law No. 03/2010/OL of 18/06/2010 Repealing The Organic Law N°17/2003 of 07/7/2003 Governing Presidential and Legislative Elections as Amended and Complemented to Date, *Official Gazette of the Republic of Rwanda*, No. Special of 19/06/2010.

Organic Law N° 10/2013/OL of 11/07/2013 Governing Political Organizations and Politicians, *Official Gazette*, n° Special of 12/07/2013.

Prunier, G., *The Rwanda Crisis: History of a Genocide, 1959-1994*, London, Hurst & Co, 1995.

Reliefweb, International Crisis Group, “Consensual Democracy in Post-genocide in Rwanda: Evaluating the March 2001 District Elections”, <http://www.reliefweb.int/w/rwb.nsff>..., accessed on 3/11/2004.

Republic of Rwanda, Ministry of Local Government and Social Affairs, *National Decentralization Policy*, Kigali, May 2000.

Reyntjens, F., *Pouvoir et Droit au Rwanda. Droit Public et Evolution politique 1916-1973*, Tervuren, MRAC, 1985.

Robert, A-C., “Au Rwanda, vivre avec le génocide”, *Le Monde Diplomatique*, Juillet 2000, <http://www.monde-diplomatique.fr/2000/07/ROBERT/14027>, accessed on 3/11/2004.

“Rwanda gets a new constitution”, *The Monitor*, <http://www.monitor.co.ug/specialincludes/mplsups/rwandasup/rwsup9.php>, accessed on 3/11/2004.

Sebasoni, S., “La vision ethniste de la société rwandaise », <http://www.rpfinkotanyi.co.rw/news/vision%20ethniste.htm>, accessed on 3/11/2004.

Sebasoni, S., “Le Rwanda à l’aube d’une ère nouvelle », <http://www.orinfor.gov.rw/DOCS/lecteurs13.htm>, accessed on 3/11/2004.

Service National de Recensement, *Recensement général de la population et de l’habitat Rwanda : 16-30 août 2002, Recensement 2002 en bref*, Kigali, Février 2004.

Shugart, M.S., and Carey, J., *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge, Cambridge University Press, 1992.

Shugart, M.S., “The Inverse Relationship Between Party Strength and Executive Strength: A Theory of Politicians’ Constitutional Choices”, *British Journal of Political Science*, Vol.28, 1998, pp.1-29.

Strizek, H., “La situation des droits de l’homme au Rwanda. La vie après le génocide », *Missio*, 15, 2003.

Twagilimana, A., *The debris of Ham: Ethnicity, Regionalism, and the 1994 Rwandan Genocide*, Lanham, Md, University Press of America, 2003.

Udogu, I., “National Constitutions and Human Rights Issues in Africa”, *African and Asian Studies*, Vol.2, No.2, 2003.

UNHCR, *The State of the World’s Refugees: Fifty Years of Humanitarian Action*, Oxford, Oxford University Press, 2000.

USAID, *Rwanda Democracy and Governance Assessment*, Final Version, Washington DC, November 2002.

USAID, *Rwanda, Democracy and Governance Officer*, December 2002, http://www.usaid.gov/ftp_data/pub/OP/PSC/69602s00800.html, accessed on 3/11/2004.

U.S. Department of State, “Background Note: Rwanda”, Bureau of African Affairs, <http://www.state.gov/r/pa/ei/bgn/2861pf.htm>, accessed on 4/3/2004.

Vidal, Cl., "Rwanda, l'espoir en trompe-l'oeil", *Le Nouvel Observateur*, jeudi 19 juin 2003, No. 2015.

"Women in Parliament", *Economist*, 1st April 2004.