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IN DEMOCRATIZATION**

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**Case Study
Rwanda**

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LIST OF ABBREVIATIONS

CSO	Civil Society Organisations
CCOAIB	Conseil de Concertation des Organisations d'Appui aux Initiatives de Base
DFID	Department for International Development
FFRP	Forum of Rwandan Women Parliamentarians
GTZ	German Technical Cooperation
MRND	<i>Mouvement Révolutionnaire National pour le Développement (MRND)</i>
MDR	Movement Démocratique Republicain, Parmehutu
NURC	National Unity and Reconciliation Commission
NGO	Non Governmental Organisation
RPF	Rwandese Patriotic Front
RPA	Rwandese Patriotic Army
UNIFEM	United Nations Fund for Women
UNDP	United Nations Development Fund

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Methodology

The methodology used for this study includes interviews of officials of the now defunct Legal and Constitutional Commission, meetings with academicians and relevant actors in the democratization process in Rwanda. The analysis and critics of articles, monographs and reports published on the constitution making process in Rwanda are also an important aspect of the methodology.

Limitation of the study

This case study focuses on the 2003 constitution building process of Rwanda within the broad spectrum of the historical/political realities of the Rwandan state. It examines the constitution building as a whole while highlighting, in particular, the roles of stakeholders in the process, methods of inclusion/participation adopted during the process and the limitations there of; the process of engendering the constitution, the role of the international community and the spoiling factors of the process.

1. Background

1.1 Country background

Rwanda is situated in the central part of Africa. It is landlocked between Uganda, Burundi, Tanzania and the Democratic Republic of Congo with an area of 2.6 million hectares of which 1.4 is suitable for cultivation. The country is characterized by an uneven mountainous land with an average height of 1,500 m above sea level. This topography has given Rwanda the name 'Country of a thousand hills'. The current population is 8.3 million of which 90% live on subsistence agriculture in rural areas¹. Over population is a serious problem and 60% of Rwandans lives below the national poverty line of one dollar a day.

The Rwandan population is composed of three groups- Twa, Hutu and Tutsi. Historically, each identity group has had a different socio-economic specialization. In general, Hutu were agriculturists, Tutsi were cattle rearers and Twa were hunter-gatherers. Before the 1994 genocide, official statistics reported that the Hutu made up 85%, Tutsi 10% and Twa 5%. Since the current government is committed to non-politicization of ethnic differences, there is at present no reliable statistics on the respective sizes of these three groups. Rwanda has three official languages, French, English and Kinya-rwanda.

1.2 Short overview of Rwandan History since Independence in 1962

The post-independence Rwandan political landscape has been characterised by discrimination and division among the Rwandan people. It has never been possible to create a political leadership that would be inclusive and acceptable countrywide. Many of the internal political problems have their roots in the colonial period. The policy of divide-and-rule instigated by the colonial administration kept Rwandan's interests separate and discouraged national integration of the three identity groups. Although serious efforts were made under the transition government to promote an integrated and harmonious Rwanda, discrimination and divisionism is still a major factor of Rwandan life today.

¹ Republic of Rwanda, Ministry of Finance and Economic Planning, Vision 2020, Kigali, November 2002 p. 46. Between 1989 and 1999, the office of the President of the Republic of Rwanda organised at Village Urugwiro reflection sessions on the future of the country. On the basis of the ideas expressed, central level services worked out a document on vision entitled "Vision 2020".

For a certain time in Rwanda's history, the political leadership was dominated by the Tutsi monarch (pre-colonial era – 1962). During this period, a privileged status was conferred on the Tutsis both by the colonialists and the Roman Catholic Church. Independence was declared on 1 July 1962 with Gregoire Kayibanda as President of the first republic (1962-1973). Under Kayibanda, Rwanda was a Hutu state first and foremost. His regime maintained the view that Tutsi were aliens, outsiders, a different race, and this distinction justified their treatment, as resident aliens.² The first republic came to an end with the coup d'etat that saw Hutu, Juvenal Habyarimana as President of the second republic (1973-1994).

The Habyarimana regime abolished the Tutsi monarchy and established a one party state in Rwanda. Under this regime, the Tutsis were given a political identity as an ethnic group rather than an alien race that conferred on them status of a people indigenous to Rwanda.³ However, power was concentrated in the hands of the President and his close family allies. This led to growing opposition, not only among the Tutsis, but also among the Hutus who did not come from the same region as the President and were therefore excluded from positions of authority.

A chronic problem of refugees characterized the first and second republics, which both Kayibanda's and Habyarimana's regimes were unwilling to resolve citing the small size of Rwanda and "overpopulation" as the reasons for not repatriating over one million Rwandans, mainly Tutsis, in the Diaspora.⁴ Rwandan refugees, mainly in Uganda formed the Rwandese Patriotic Front (RPF), whose goals were to secure the "repatriation of Rwandans in exile and to reform the government of Rwanda, including political power-sharing."⁵ In 1991, the RPF launched incursions that sent shock waves into Rwanda. Members of opposition parties within Rwanda saw this as an opportunity to have an informal alliance with the RPF so as to destabilize the regime of Habyarimana which they had grown increasingly dissatisfied with. A cease-fire agreement led to the signing of the

² *Rwanda, Death, Defiance and Despair*, African Rights revised 1995 edition P.11.

³ Ambassador T Rudasingwa, *Concept of Human Rights and its Application in Africa*, Syracuse Journal of International Law and Commerce, spring 1999. Accessed At Westlaw, 26 Syracuse J.Int'l. & Com 173. 2 May 2003

⁴ The so-called 1959 "revolution" which occurred after the sudden and mysterious death of the Tutsi monarch in Bujumbura brought an abrupt end to Tutsi rule and signaled the outbreak of violence across the country in which tens of thousands of Tutsis were killed and many more fled into exile

⁵ United Nations Department of Public Info: *The United Nations and Rwanda 1993-1996*, 10 United Nations Bluebook Series 8 (1996)

Arusha Peace Accords that provided for power sharing, democracy and rule of law⁶. Habyarimana accepted these accords only because he was compelled to do so, but had no intention of complying with what he himself regarded as “a scrap of paper.”

Mirror politics and propaganda continued to be rife within Rwanda and the population was goaded to defend itself against fabricated attacks of the RPF infiltrators and to attack and kill their Tutsi neighbours.⁷ Hence when Habyarimana’s plane was shot down on the 6 April 1994 the Rwandan army and the *interahamwe* ethnic militia immediately erected roadblocks around the city of Kigali. Before dawn the following day the Presidential guard and ethnic militia started killing Tutsis as well as Hutu known to be in favour of the Arusha Accords that favored power sharing between Hutu and Tutsi. The killing of Tutsi spared neither women nor children and continued up to 18 July 1994 when the RPF triumphantly entered Kigali. Nearly 1 million Rwandans (mostly Tutsis) perished during this period.

1.3. Brief constitutional history of Rwanda

1.3.1 The Rwandan constitutions of 1962, 1978 and 1991

The first constitution of Rwanda was that of 24th November 1962. During the period covered in this phase, the history and politics of constitution making was the sole responsibility of the colonial office acting by and through the colonial officials in Rwanda. The result was that the dominant ruling class of the country –at that time the Hutu, was made to serve the interests of the colonizers. Rwandans had practically no part to play and were not even considered as entitled to be consulted. Thus the history and politics of the constitution of 1962 was made by the colonialists with limited inputs from “Native experts.” Although the 1962 constitution envisaged a pluralist regime with various political parties to participate in elections, a single party system was quick to emerge in Rwandan political life.

The Constitution of 1978 that came thereafter did not make changes in terms of democracy. It is important to note that the 1978 constitution came into existence after 5

⁶ Arusha Peace Agreement on Power-sharing articles 6 (d) 24, 40, 72,73 and 83

⁷ Radio Rwanda and later the RTLM founded in 1993 by people close to President Habyarimana played anti-Tutsi propaganda. There were also other propaganda Agents like Leon Mugesera, Vice President of the MRND and lecturer at the National University of Rwanda who published two pamphlets accusing the Tutsi of planning genocide against the Hutu

years of absence of a constitution in Rwanda⁸. The provisions related to human rights survived, but other 31 articles of the constitution of 1962, including those regarding the judicial review were absent⁹. Another characteristic of this constitution is the abolition of multi party system. Only the *Mouvement Révolutionnaire National pour le Développement* (MRND), the ruling party then, was allowed to operate in Rwanda and only the president of this party was allowed to run for presidential elections¹⁰. This situation continued until 1991, when the pressure of both internal and external opposition obliged president Habyarimana to adopt a new constitution recognizing a multi party system. In the meantime, the war of 1990 was going on and lasted (with long periods of cease-fire) close to four years. Its final three months coincided with the period of the genocide, which was only halted by the ultimate triumph of RPF in July 1994.

The 1991 constitution later amended by the Arusha Peace Accords¹¹ essentially re-introduced multiparty democracy¹² and upheld the principle of separation of powers and rule of law. The 1991 constitution, together with the Arusha Peace Accord and additional Protocols on Rule of law constituted the Fundamental Law of Rwanda until the 2003 Constitution was adopted.

Constitutional development ought to operate within social and cultural contexts. Where a society is culturally and ethnically divided, as is the case with Rwanda, constitutional legitimacy should involve striking a balance between the protection of the wider minority interests and the power of the central state authority. Sadly, this was not the case. For example, soon after Rwanda attained its independence, the principle of limited government that was embodied in the 1962 constitution was replaced by the practice of absolute government, which concentrated state power in the hands of the President. Both Kayibanda and Habyarimana appropriated power and generally conducted their affairs with

⁸ The Constitution of 1962 was suspended after the coup of 1973, when President Habyarimana took over power. This situation continued until 1978.

⁹ E. Ntaganda, *Rétrospectives du Constitutionnalisme rwandais : quelles leçons pour la nouvelle constitution rwandaise* 2002, p. 7, unpublished paper.

¹⁰ See art. 40 of the 1978 constitution

¹¹ The 1991 Constitution was adopted on 30 May 1991. On 18 August 1992, the Protocol of Agreement between the Government of Rwanda and the Rwandese Patriotic Front (RPF) on the Rule of Law was signed at Arusha,

¹² Art 7, 1991 Constitution of Rwanda

impunity.¹³ The judicial apparatus that is generally responsible for upholding the rule of law was in a state of comatose that rendered it unable to, and ineffective in protecting the rights of the Rwandan citizens. The absence of constitutionalism in both the first and second republic governments of Rwanda is arguably, a direct consequence of the processes that were used to adopt those constitutions.

1.4 The post-genocide transition setting

After the triumphant entrance of the RPF into Kigali in July 1994, a new transitional government was formed. It adopted the Arusha Accords as its constitutional base, though with some important modifications. The Mouvement Révolutionnaire National pour le Développement (MRND) and all other individuals involved in the genocide were banned from participating in government. The Arusha Accords had attempted to establish a balance of power between the MRND, the RPF and the Mouvement démocratique républicain, Parmehutu (MDR). But the effects of the genocide and the RPF military victory gave it a dominant position. The RPF justified this imbalance by pointing out that it had stopped the genocide and had the historic responsibility to complete its undertaking to re-establish order, security and stability. The RPF was awarded the presidency, which was assumed by Pasteur Bizimungu. The new post of vice president was created and assigned to General Paul Kagame who also became the Minister of Defense. The MDR's Faustin Twagiramungu became Prime Minister. In the transitional legislature, the eight main political parties (that had not participated in the genocide) each received thirteen seats. Six seats were allocated to the army that further illustrated the RPF's domination of state institutions as well as the political importance of the armed forces.¹⁴

¹³ The 1962 Constitution of Rwanda had a limited equality clause which was expanded in the 1978 constitution to include fundamental liberties identified in the Universal Declaration of Human Rights and an inclusion of race, colour, origin, ethnic group, Clan, affiliation, sex, opinion or social position. See generally chapter 1 article 1, Chp 11, art 16-17 Rwandan Constitution, 1962. See also article 11 and 16 1978 Constitution of Rwanda

¹⁴ Jean-Paul Kimonyo et al (2004) supporting *the post –genocide transition in Rwanda, the role of the international community*. Working paper No 32 of Democratic Transition in Post Conflict Societies Project, Netherlands Institute of International Relations, 'Clingendael'.

According to Kimonyo, the two main tasks of the transition government were to restore security and to rebuild the economic and political infrastructure. The main security problems faced by the government at that time were;

- The murders being committed by groups of genocidaires remaining in the country
- The bloody incursions of the *Interahamwe* from their bases in Zaire
- The revenge murders and looting carried out by some Rwandan Patriotic Army (RPA) soldiers and by ordinary civilians.

The ethnic militia who participated in the genocide fled into exile in neighboring countries and seemed only to be waiting to return to Rwanda to complete the genocide. This situation remained a serious threat to the relative peace in Rwanda. It also remained a constant source of conflict within Rwanda and between Rwanda and its neighbours especially with the government facing significant insurrections in Northern Rwanda launched from bases in Zaire. This precarious security situation as well as the latent ethno-political tensions radicalized during the genocide began to cause serious dissent in the new government. There was also the problem of the genocide survivors who felt that they are not well represented in government and who blamed the government for being too lenient with the perpetrators of genocide, preferring vengeance and retribution to reconciliation and unity. At the same time, opposition leaders were demanding more political power and an end to human rights abuses and revenge killings.

In 1995, Prime Minister Twagiramungu and interior Minister Seth Sendashonga resigned from the government and went into exile followed by three other colleagues. These departures signaled the further tightening of RPF political control. This period also experienced efforts by some politicians to again mobilize the population along sectarian, regional and ethnic lines as well as by the publication of newspaper articles denying the genocide.¹⁵ After 1997, the RPF initiated a series of important reforms intended to prevent the repetition of catastrophic conflicts that have characterized Rwandan history since its independence. Every Sunday, it held a series of detailed discussions on the causes of political conflict in Rwanda; participation included the most senior political leaders along

¹⁵ Kimonyo (n. 14) above.

with influential representatives from other sectors of society. Important government initiatives emerged from these discussions including the *gacaca* for trying the perpetrators of genocide, the policy of decentralization and the establishment of the National Unity and Reconciliation Commission (NURC).¹⁶

The second part of the transition period 1999-2003 began in the context of almost total RPF control of the political sphere. Internally, the transition government prevented resurgence of ethnic violence and extremism by imposing strict rules to curb the activities of political parties, the media and civil society. Partisan political activities were banned at the grassroots level as the government sought to restructure the political culture through popular education and development of a more consensual form of political participation. With an emphasis on unity, this mode of governance imposed a limitation on freedom of expression while at the same time marginalizing, and in some cases criminalizing diverse viewpoints.¹⁷

The RPF had played a lead role in a coalition of eight political parties that formed successive "unity" governments since the genocide. The transitional legislative body, which composed of appointed representatives of the eight parties operated under the tight control of the RPF leadership. The transitional legislature passed a new political party law that defined criteria for political participation, including a number of restrictions that limit political space.¹⁸ The Forum of Political Parties was formed with the stated intention of enhancing political consensus but with powers to recall members of parliament. Majority non-RPF politicians denounced the institution as an instrument of RPF's political domination. But the RPF government argued that the Forum of Political Parties was a classic instrument for consensus-based democracy.

The RPF had defined, shaped and controlled political discourse throughout the nine-year transition period and the distinction between the RPF and the government had become increasingly blurred, and in some cases, appeared non-existent. Government and party representatives were dismissive of opposing points of views and generally labeled them "divisionists"- a serious charge in Rwandan context that equates the term in many

¹⁶ Kimonyo (n. 14) above

¹⁷ National Democratic Institute (NDI) Assessment of Rwanda's pre-election political environment and the role of political parties, August 3-11 2003 sourced at <[http:// www.usaid-rwanda.rw](http://www.usaid-rwanda.rw)> last accessed on 26th May 2005

¹⁸ One of the key criteria for registration was non-involvement in the 1994 genocide

minds with genocidal sympathies.¹⁹ It will seem like what in fact happened after the ushering in of the RPF government was a change of guards with the Tutsis regaining the political and economic power that they had lost in 1959.²⁰ Under Kagame, there was no proclaimed theory of ethnic exclusivity and the regime presented itself under the transition setting as democratic because in its structures the RPF shared power with the former opposition parties. In reality, Tutsi occupied most of the important political offices. Members of the remaining Hutu political parties who vied for the few available openings were easily played against each other and weakened by been involved with the worst excesses of genocide. Besides, the suspicion of any form of Hutu politics after genocide had turned their once thriving organizations into “empty bureaucratic hulls.”²¹

The majority controlling political positions had all come from abroad, none having lived in Rwanda prior 1994. This social structure and cultural strangeness embodied in Tutsi supporters coming from abroad to take up political positions made it an alien form of power and promoted an ideology of ethnic exclusivism. The memory of the genocide, which weighed on everybody’s soul like a heavy stone contributed in keeping the chasm wide open. The Tutsi kept it open by constant reminders, while the Hutu tried to deny it in order to extricate them from collective guilt.²² RPF leaders continued to ask for more understanding for the use of harsh methods given the extraordinary situation that Rwanda found itself in after the genocide. Fortunately, the human rights violations that had characterized the immediate post-genocide years had diminished significantly. The security of ordinary civilians improved due to increasing professionalism of the army and the creation of a National Police. The NURC summits in 2000 and 2002 sent a strong political signal in favour of reconciliation and people of diverse backgrounds were increasingly integrated into State institutions.

It was against this political background that the 2003 Constitution building process began and ended in Rwanda.

¹⁹ NDI Assessment report (n.10) above

²⁰ *Rwanda, Preparing for Elections, Tightening control in the name of unity*, Human Rights Watch Backgrounder, May 8 2003 accessed at <[Http://www.hrw.org/Rwanda](http://www.hrw.org/Rwanda)> May 9 2003

²¹ Human Rights Watch (n .20) above.

²² Human Rights Watch (n. 20) above.

2. The 2003 Constitution- building Process

The 9-year transition period in Rwanda was governed by a set of texts called fundamental laws that included the constitution of 1991, the Arusha Peace Agreement, the Rwandese Patriotic Front Declaration as well as the Agreement between political parties. In accordance to the Arusha Peace Agreement and the Law No 23/99 dated 24/ 12/1999, the Legal and Judicial and Constitutional Commission (Constitutional Commission) was set up in the year 2000 to prepare a new constitution and revise the laws of Rwanda. Specifically the mission of the Constitutional Commission was to;

- Prepare the draft bill of the constitution.
- Search for, receive and collect thoughts given by the population and to make use of examples from other countries;
- Explain to the population what the constitution is and the main ideas which it is to comprise of;
- Prepare the draft bills of laws that govern the last transition period
- Put together all the laws that must be modified in order to adapt them to the constitution.

2.1 The stakeholders

The RPF led government had through its actions, professed its historic responsibility to complete its undertaking to re-establish order, security and stability in Rwanda. Constitution making was seen as part of that grand effort. It therefore, was politically committed to the processes necessary for the building a new constitution for Rwanda. As far as the RPF government was concerned, the new constitution was to be a result of negotiations and compromise between the government and opposition parties. It was also expected that the constitution would signify a mutual commitment, pact or settlement among Rwandan political elites in order to enforce limits on state authority, no matter which political party may control the state at any given time. It was important to have a constitution that will secure and accommodate the fears of all Rwandans; especially those

of the minority and to legitimate and institutionalize the reforms that had already been initiated by the RPF led government during the transition period.

The Armed Forces of Rwanda were also politically significant. Six seats had been allocated to them in parliament during the transition government. It was therefore understandable that they will hold an important stake in the Constitution building process.

Civil society organizations in the form of religious and communal associations, professional groups, women's associations, trade unions, student associations and other non-governmental organizations saw the constitution making process as an opportunity to make input in the future of a nation that had been plagued by conflict and divisionism. A democratic constitution for Rwanda meant that the institution of civil society would exist as a right, playing an active role in ensuring that limitations are placed on the powers of governments and that rights of individuals are respected and promoted. Accordingly, CSOS came together under the umbrella of Conseil de Concertation des Organizations d'Appui aux Initiatives de Base (CCOAIB). CCOAIB was then used by as a platform on which CSOS drafted a memorandum with specific recommendations to the Constitutional Commission.

Women groups in particular, saw the constitution making process as an opportunity to influence the national agenda by insisting that the Constitution must take due account of the socio-economic and cultural realities, reflect the positive values of Rwandan culture and include a gender perspective, in order to guarantee the well-being of society as a whole and social progress and to safeguard social harmony. They argued that to achieve this goal, the principle of gender equality and the principle of the prohibition of gender-based discrimination should be clearly stated in the constitution. Women therefore organized themselves and held a formidable stake in the constitution building process.

The Forum for Political Parties, a structure created by the RPF to oversee political parties in Rwanda also held a major stake in the process. During the transition period, the RPF allegedly dominated the forum and used it to discipline and control members of other parties in Rwanda. Inevitably, this forum formed the basis upon which political party based representation to the Constitutional Commission was anchored. Rwandans in the Diaspora also had a stake in the process as they saw it as an opportunity to make their inputs and contributions on what the future of the country should be.

The largely illiterate, rural based Rwandan population who had suffered the brutal and traumatic effect of genocide welcomed constitutional reform from the perspective of its usefulness as a prerequisite for conflict transformation and sustainable peace. To them, a new constitution meant a new agenda for growth and development. It was a way to articulate national dreams and draw attention to existing contradictions and promote a new culture of tolerance, inclusion and participation.

2.2 The Legal, Judicial and Constitutional Commission

The Legal, Judicial and Constitutional Commission was the Commission in charge of elaborating the Constitution and reviewing other laws as agreed upon by Arusha Accord Peace agreement as set up by Law N° 23/99 dated 24th December 1999 modified by Law N° 26/2000 of November 3rd 2000. The Commission composed of the 12 Rwandan Commissioners who were elected by the National Assembly on the 10th July 2000 out of fifteen Candidates. When the law setting up the Constitutional Commission was modified and completed by Law No 26/2000 dated on 3rd November 2000, the functioning of the Commission was given a board made up of a President, Vice President and an Executive Secretary. The National Assembly elected the members of this Bureau on the 23rd November 2000. The law stated that the Council of the Commissioners was to be the highest level decision-making body so that the Commission may achieve its objectives.²³

The under listed were elected members of the Commission;

- | | |
|-----------------------------|---------------------|
| 1) Tito RUTAREMARA | President |
| 2) Alfred MUKEZAMFURA | Vice President |
| 3) Jean MUTSINZI | Executive Secretary |
| 4) Judith KANAKUZE | Member |
| 5) Marie Therese MUKAMULISA | Member |
| 6) Domitila MUKANTAGANZWA | Member |
| 7) Jacques KABARE | Member |
| 8) Jean Baptiste MUHIRWA | Member |

²³ <http://www.cjcr.gov.rw/eng/>

- | | |
|-----------------------------|--------|
| 9) Emmanuel NSABIMANA | Member |
| 10) Augustin NZINDUKIYIMANA | Member |
| 11) Hamidou OMAR | Member |
| 12) Emmanuel TWAGIRUMUKIZA | Member |

Eight of the members of the Constitutional Commission were representatives of the coalition of eight political parties that formed part of the unity governments since the genocide. The ruling RPF (represented by the President of the Constitutional Commission), the MDR, the Social Democrat Party (PSD), The Liberal Party (PL) and the Christian Democrat Party (PDC). All these parties formed during the political liberalization in Rwanda beginning in 1991 and played active roles in government during the immediate post-genocide, although many of these parties later came to be viewed as “satellites” of the RPF. Other political parties represented were, Parti Démocratique Islamique (Islamic Democratic Party), Parti pour le Progrès et la Concorde (Party for Progress and Concord), Parti Socialiste Rwandais (Rwandese Socialist Party): social-democratic party and Union Démocratique du Peuple Rwandais (Democratic Union of the Rwandese People). Two of the Commissioners were CSO representatives, one was a representative of the Armed Forces and one member was appointed on an independent basis.

It is clear that only the parties who were willing allies of the ruling RPF could make the final shortlist for the Constitutional Commission’s membership.

2.3 Time- line of the constitution- building process

The commission was given a fixed time frame of three years within which to complete its work. Interviews with RUTAREMARA²⁴ provided a rough guide as to how the three -year period was broken down and utilized by the Constitutional Commission. According to RUTAREMARA, the members of the Constitutional Commission used the first six-months after the inauguration of the commission to understudy and understand the process they had been called upon to undertake. This period consisted of a teambuilding

²⁴ Tito RUTAREMARA personal interview, February 2005. Tito was the President of the Judicial, Legal and Constitutional Commission. He presently serves as the OMBUDSMAN of Rwanda.

seminar in which members of the Constitutional Commission developed their rules of practice and procedure and agreed to work on a consensus basis. The agreement to work on a consensus basis was consistent with the spirit of consensus democracy that was being nurtured by the RPF led government of national unity in Rwanda. Effectively, the Constitutional Commission would not take a decision on any issue unless its members were in agreement.

In the three weeks immediately following, a constitutional building seminar, which attracted a broad based participation from both local and international participants, was organised. It was at this seminar that, the Constitutional Commission elaborated a strategic Action Plan of Action in which it divided its work into six main phases spanning over the period starting from April 2002- 2003.²⁵ These phases were as follows;

- a) Training and sensitization of the population about the constitution
- b) The consultation of the population on the content of the constitution
- c) The writing and validation of the draft text of the constitution
- d) The referendum on the text of the constitution as approved by parliament
- e) The management of the last period of the transition
- f) The harmonization between the laws and the new constitution.

In 2002, Members of the Constitutional Commission and thousands of their trained assistants fanned out to spend six months in the provinces so that constitutional education and discussions could become an integral part of community life. During these six months the main ideas of constitutionalism in Rwanda were explored. A 60 questions questionnaire was developed around issues that were considered to be potentially controversial areas for the constitution. Such issues included, land, marriage, divorce etc. Literate people completed the questionnaires and for the largely illiterate population of Rwanda, the members of the Constitutional Commission and their staff facilitated group discussions.

The Constitutional Commission developed a database in which the responses from the

²⁵ Towards a new constitution for Rwanda, Plan of Action 2002-2003 for a detailed time line of the process.
<http://www.cjcr.gov.rw>

population were recorded. RUTAREMARA explained the grading system that was used in analyzing the data received; Expert opinions in relation to specific issues attracted 2 points score. Where an interest group expressed an opinion, a 3 point score was given. Detailed memorandum submitted by groups attracted a 4 point score. The Constitutional Commission made available free telephone lines, email address to obtain feedback from the population. A website was also developed. All answers received from the populace were summarized in a booklet and taken back to the people of Rwanda in a period of one month. This one-month period signified a simple validation of the initial findings made by the Constitutional Commission on the ideas that people wanted reflected in the Constitution.

The Constitution Commission took 2 months to draft the Constitution. The two months drafting period ended with a three days seminar that drew the participation of 800 people including those in the Diaspora. International experts were invited from Belgium, South Africa, Europe and America to study the constitution and ensure that it conformed to current international standards. Thereafter, another three months period was used to receive further comments and amendments to the constitution.

The draft was then presented to the cabinet and given to the transitional parliament to debate on. The parliamentary debate took 2 months and came up with some amendments to the draft constitution. Amendments made by the parliament were again taken back and presented to the Rwandan people. The constitution was then put to referendum on 26 May 2003 and it obtained an overwhelming 93% support. It was promulgated into law in June 2004. Below is a rough guide as to how the three-year period was utilised;

Activity	Timeframe
<ul style="list-style-type: none"> • Teambuilding exercise • Understanding the task ahead 	6 months
<ul style="list-style-type: none"> • International seminar on constitution building • Developing internal rules of procedure for the Constitutional Commission • Elaboration of strategic Plan of Action 	1 month
<ul style="list-style-type: none"> • Country visits to draw from/ Learn from experience of others countries in constitution building 	3 months

<ul style="list-style-type: none"> • Training and sensitization of the population about the Constitution • Distribution of questionnaires and collecting feedback • Discussions on the main ideas of the Constitution 	6 months
<ul style="list-style-type: none"> • Summary of answers received • Feedback of answers received taken back to the population 	1 month
<ul style="list-style-type: none"> • Constitution drafting 	2 months
<ul style="list-style-type: none"> • Presentation of draft to the executive 	1 month
<ul style="list-style-type: none"> • Presentation of draft to parliament • Parliamentary debate on draft • Amendment of draft constitution 	2 months
<ul style="list-style-type: none"> • Presentation of amended draft to population 	1 month
<ul style="list-style-type: none"> • Presentation to the Electoral Commission • Organization of Referendum • The Referendum 	6 months

The leadership of the Constitutional Commission was responsible for both the design and implementation process of the new constitution.

2.4 Concept of inclusion adopted during the constitution building process and the limitations thereof

Rwanda, through its constitutional history, never had a constitution responding to its own expectations as a nation. All its former constitutions were either copied from foreign countries without considering the reality of the country or were just there to satisfy the interests of the leaders at that time.²⁶ Soon after Rwanda attained its independence, the principle of limited government that was embodied in the 1962 constitution was replaced by the practice of absolute government, which concentrated state power in the hands of the President. Both Kayibanda and Habyarimana appropriated power and generally conducted their affairs with impunity.²⁷ In either case, the population was not involved in the

²⁶ It has been argued that the 1962 constitution of Rwanda literally repeated provisions of the constitution of Senegal on civil rights.

²⁷ The 1962 Constitution of Rwanda had a limited equality clause which was expanded in the 1978 constitution to include fundamental liberties identified in the Universal Declaration of Human Rights and an inclusion of race, colour, origin, ethnic group Clan, affiliation, sex, opinion or social position. See generally

elaboration process of making the fundamental laws of the land at all.

The 2003 Constitution making process tried to mark a departure from these state of affairs. Right from the inception phase, the Constitution Commission seemed to be determined to include a broad based inclusivity and participation in the constitution making exercise. A constitutional training manual was developed as tool for training and sensitizing the Rwandan population about the constitution.²⁸ Target beneficiaries for the training included students in both tertiary and secondary institutions, the rural populace, Prisons and Rwandans in the Diaspora. The first challenge that confronted the Constitutional Commission was to educate people and help them to understand the philosophy of a constitution and its importance in the life of the nation. RUTAREMARA remarked that they “were surprised to discover that even some of the so called elites had no understanding of what a constitution was and what role it had to play in the life of the nation.”

The questionnaires were also a useful tool for obtaining feedback from the population. Memoranda received from civil society groups across the country were also instrumental in ensuring that the views of the greater populations were reflected.

A draft was written which was then presented to the population in a series of meetings. It was then presented to a broad meeting for validation and popular participation. On 25 2003, a national referendum was held of the new constitution.

While acknowledging that the Constitutional Commission worked very hard to consult with a large number of Rwandans as well as learn from tens of other constitutions worldwide, it has been argued elsewhere that the main features of the present constitution are beneficial to the perceived interests of the RPF and that political unanimity expressed through the referendum result was a consequence of political intimidation, terror and ethnic mobilization.²⁹ Secondly, popular participation in Rwanda has to be understood in a nuanced manner because political pressure from local authorities are often present.³⁰ This has contributed to the view that the process was fundamentally flawed; this point of view maintains that the constitution making process was neither representative nor participatory.

chapter 1 article 1, Chp 11, art 16-17 Rwandan Constitution, 1962. See also article 11 and 16 1978 Constitution of Rwanda.

²⁸ See the Constitution training manual of the Legal and Constitutional Commission of Rwanda <http://www.cjcr.gov.rw>

²⁹ Peter Urvin, (2003) *Rwanda's draft constitution: some personal reflections* <http://www.opjdr.org/constitution>

³⁰ Kimonyo (note 27) above

Only members of the Rwandan Patriotic Front (RPF) and sympathizers of the RPF-led government participated in forums and debates convened by the Constitutional Commission.³¹

In the context of an already narrowed political space, the debate around constitutional reforms was arguably formulated in terms of strategies of General Paul Kagame and his party RPF in order to give an appearance of legitimacy to their regime through the "no-party", but really "one-party", presidential and parliamentary elections that were scheduled to take place in the next year instead of the reconstruction of political links and coalitions around a common project of a democratic constitution for Rwanda.

Prisca MUJAWAYEZU³², executive secretary of the Conseil de Concertation des Organizations d'Appui aux Initiatives de Base (CCOAIB) is of the view that although the process of constitution making is generally perceived to have been inclusive and participatory, not all the provisions of the constitution can be said to be an outcome of the people's discussions. For example, even though civil society organizations had come together under the umbrella of CCOAIB to put forward recommendations for the constitution, not all their recommendations were taken on board. According to her, CSOS' proposal was that the president of Rwanda should be given a term of 5 years but 7 years were reflected in the constitution. Also, CSO had proposed that Supreme Court judges were to be voted but the final document of the constitution provided that judges are instead, to be nominated. Consequently, the preference of a 7 year term of office instead of the 5 year term popularly demanded has been interpreted by many as a reflection of the interests of the RPF government.³³ Also, the limitations on the rights of the freedom of expression are seen as protecting the RPF government.³⁴ Since it took power in July 1994, the RPF had banned political activities in Rwanda for other political organizations, even for political factions participating in its government. Dissent or political opposition was considered as a grave crime by the government, which led to the main Rwandan opposition parties having their headquarters in exile. The fact that limitations on freedom of

³¹ Press Release no 3/2002, Montreal issued by Rally for the Return of Refugees and Democracy in Rwanda (RDR)

³² MUJAWAYEZU Prisca, personal interview, February 2005

³³ MUJAWAYEZU (n 32) above.

³⁴ Article 34 2003 Constitution of Rwanda

expression have found expression in the new constitution buttresses the argument that the RPF was seeking a document that will allow it to maneuver and to sustain itself in power.

Also, the limitations on the functioning of political parties and the continued existence of the forum for political parties, which critics say, will serve the function of muzzling opposition and dissent.³⁵

The June 2003 Constitution guarantees freedom of association, assembly, opinion, and press but also subjects these freedoms to ordinary legislation, making it possible for legislators to limit them and making it impossible for courts to defend them on constitutional grounds (article 34). Still suffering the consequences of the 1994 genocide, Rwandans understandably seek to end the ethnic hatreds and discriminatory behavior that preceded attempts to eliminate the Tutsi minority. But the Constitution goes too far in prohibiting "divisionism" in overly broad and vague terms (article 33). Similarly a legitimate concern with preventing negation of the genocide has been unjustifiably stretched in a constitutional measure criminalizing "[r]evisionism, negationism and trivialization of genocide."

The Constitution permits multiple parties but prevents any effective local level political organization; it allows parties to create offices only at the national and provincial level (article 52). The Constitution says that parties "must constantly reflect the unity of the people of Rwanda" (article 54), a stipulation without further definition that could be used to eliminate political pluralism. The Constitution also entrenches a previously existing forum of political parties meant to ensure consensus and to fight divisionism (article 56). During the transition period, the RPF dominated the forum and used it to discipline and control members of other parties.³⁶

The fact that the series of consultative meetings and sensitization exercises on the constitution were conducted by the members of the constitutional Commissioners assisted by their trained assistants further raises the argument that elites were in the driver's seat controlling both the process and the contents of the consultations with the Rwandan largely illiterate population.

3. Analyses of structural issues in the Constitution –building process

³⁵ Peter Urvin, (2003) *Rwanda's draft constitution: some personal reflections* <http://www.opjdr.org/constitution>

³⁶ Rwanda, Human Rights overview <<http://www.hrw.org/english/docs/2003>>

3.1 Process of engendering the constitution

The participatory approach adopted by the Constitutional Commission allowed significant input by women and women's organizations. The women's movement actively mobilized around the drafting of the constitution to ensure that equality became a corner stone of the document. The umbrella organization, *Collectifs Pro Femmes/Twese Hamwe* and its member NGOS brought pressure to bear on the process and carefully coordinated efforts with Women Parliamentarians and the Ministry of Gender and Women in Development. During the 9-year period of post genocide transitional government from 1994-2003 the number of women's representation in parliament had reached 27.7% (by appointment) and a Ministry for Gender had been established. These organizations not only carried on a lobbying campaign but also worked to disseminate information about the draft constitution to women organizations throughout the country, holding consultations, meetings, and trainings on the proposed provisions. In particular, a seminar was organised in Kigali on the "Process of Engendering a New Constitution for Rwanda" for Rwandan MPs, representatives from the Pro-femmes Twese Hamwe, Rwandan women's associations, and delegations from the President's Office, the Primate's Office, the Government, the Supreme Court, the Legal and Constitutional Committee and other national committees, international bodies in Kigali and other partners of the Forum of Rwandan Women Parliamentarians (FFRP). The National Assembly and the Forum of Rwandan Women MPs (FFRP), in cooperation with the Inter-Parliamentary Union and the United Nations Development Programme, organized the seminar.³⁷

During the three-day event, participants discussed issues relating to the functioning of the Legal and Constitutional Committee in Rwanda and progress report on the proceedings; integrating gender policy in the Constitution; the inclusion of principles of gender equality and women's human rights for a gender-sensitive Constitution; a comparative study of issues linked to the elaboration of a new Constitution; the Constitution and the law; elaboration of laws, including that of the national budget, which take gender issues into consideration; women's access to decision-making; persuading the

³⁷ <[http:// www.ipu.org/splz-e/kigali](http://www.ipu.org/splz-e/kigali)>

Government to take more account of women's needs, and gender integration strategies in the Poverty Reduction Programme.

The women also focused on "reflecting on affirmative action and other principles of equity and equality"; "cooperation mechanisms between the FFRP and organisations for the promotion of women, and civil society at large, within the framework of the elaboration of a new gender-sensitive Constitution for Rwanda", and "strategies aimed at putting into action and implementing the principles enshrined in the Constitution". A consolidated document was produced on the development of these topics and the ensuing discussions which was submitted to the Constitutional Commission. The document that eventually emerged is remarkably progressive on gender issues.³⁸ An example can be seen in the introduction of Quotas / Reserved Seat System which has placed Rwanda in the lead of women representation globally with an increase representation of 23.1%, whereby women now comprise 48.8% of the lower house, a percentage never reached before by any parliament. This was achieved by the constitutional provision introducing reserved seats for women in the parliament. The new constitution (adopted in 2003) included a provision to reserve 24 of the 80 seats of the National Assembly for women. The constitution also includes a quota of 30% for women in the Rwandan Senate. In addition to the reserved seats, Rwandan electors voted another 15 women.

Perhaps another factor, which worked to the advantage of women, was the fact that, three out of the twelve member constitution drafting committee were women including Judith KANAKUZE who was also the representative of civil society on the Commission. KANAKUZE has had a long history of civil society activism and as such she played an important role within the Commission as both a gender expert and as a liaison to her primary constituency, the women's movement in Rwanda.³⁹

International organizations, including the Inter-Parliamentary Union, the United Nations Development Programme (UNDP), and the United Nations Development Fund for Women (UNIFEM) and the Economic Commission for Africa played a very supportive role by providing the necessary funding for consultative meetings and awareness raising among Rwanda women. The final constitution has been described by KANAKUZE as a

³⁸ Powley, Elizabeth Rwanda: Women Hold Up Half the Parliament (unpublished paper on file with author)

³⁹ Powley, (note 38) above.

“major watershed” for women. It both enshrines the concept of equality and makes provisions to eradicate the historic barriers that prevent women from participating in decision-making process.⁴⁰ Another landmark achievement is the entrenchment of a gender-monitoring unit in the constitution.

3.2 The Role of the international community

The role of the international community in the constitution building process was limited to financial contributions. The President of the Constitutional commission admitted that there were offers from the international community to provide technical assistance in the drafting of the constitution. In rejecting the offer, the President of the Constitutional Commission argued that the constitution is the law of the people and that Rwandans should be given the opportunity to draft their own laws. One wonders why the Constitutional Commission preferred such an “introverted” approach to drafting their constitution. One possibility is that the unfortunate experience of the international community standing by and doing nothing to stop the 1994 genocide had diminished the confidence of the Rwandans in the international community. Another possibility could be that the RPF dominated government simply wanted to manage the process and the content of the new constitution. They were therefore unwilling to leave anything to chance.

Admittedly, the process attracted a broad range of financial support from different donor agencies. The United Nations Development Fund (UNDP) and the British Department for International Development (DFID) made some financial contributions to the process of collecting the populations’ views on the constitution. The Swedish International Development Agency granted support for the consultation campaign adverts. While the Swiss Embassy supported the publication of booklets to raise awareness about the issue. The US and Canada supported a capacity building conference in Kibuye that permitted the Rwandan experts and stakeholders to meet with experts and law makers from other countries. Part of this financial contribution was used to educate women about the constitution. The Belgian embassy contributed computers and vehicles. UNIFEM provided some support for the awareness raising among women and UNICEF provided some

⁴⁰ http://www.quotaproject.org/cs/cs_Rwanda_Kanakuze_2004.pdf

amount for a cartoon campaign to teach children about their rights. The German Technical Co-operation (GTZ) provided an expert on election. The constitutional Commission also received assistance from the African Centre for the constructive resolution of disputes.⁴¹

3.3 Spoiling factors

The most serious difficulty encountered during the constitution building process was the general ignorance and illiteracy among the Rwandan population. It was particularly difficult to make people understand the philosophy and principles of the constitution. Also, local leaders did not mobilize the people to participate in the election.

Again one cannot overemphasize the fact that although there was a deliberate attempt to consult the people in the process of drafting the new constitution, it is difficult to turn a blind eye to existing political realities of a single party i.e. RPF dominance over the affairs of the Rwanda State at the time that the constitution was being drafted. Thus claims that the present constitution reflects the RPF ideology cannot be easily dismissed. Beyond, there were no spoiling factors as such.

4. Impact of the Constitution Building Process in Rwanda

The key ideas at the root of this constitution show that its elaboration was strongly based on the country's context and challenges and is concerned with finding lasting and adequate solutions to the problems. The fundamental principles revolve around the following; equitable power sharing, establishing the rule of law aimed at improving social welfare and social justice, a pluralist democratic system, fighting the ideology of genocide and all its manifestations, eradication of any identity-based divisionism, promoting national unity, equality of Rwandans among men and women and the constant quest for solutions through dialogue and social consensus.

The Constitution has also put in place measures to address conflict and its causes in Rwanda. The National Human Rights Commission of Rwanda came into force

⁴¹ Kimonyo (note 14) above.

in 1999 by parliamentary law with a limited mandate of educating and sensitizing Rwandan people on their human rights. It also had the task of preventing violations of human rights and bringing to justice violators of human rights. Article 177 of the new constitution has integrated the National Human Rights Commission into the constitution as a step towards molding Rwanda into a human rights state. The National Unity and Reconciliation Commission (URC) was also established by Parliamentary law in 1999. The establishment of the NURC under the transitional government had marked a milestone in fundamentally changing effects of bad governance based on discrimination in Rwanda. The 2003 constitution under article 178 has integrated the NURC into its framework for defeating social, economic and political underdevelopment in Rwanda. Similarly, article 179 also entrenches a commission for the fight against the genocide ideology.

Another interesting development is the constitutional entrenchment of the *gacaca* Jurisdiction. The enormous challenges of dealing with justice in post genocide Rwanda led to the introduction of a traditional justice system called *gacaca*. This is a system of participatory justice where the population is expected to participate in the search for truth. People take part in telling the truth, prosecuting and punishing perpetrators. It is believed that this system will accelerate the trials of accused persons, eradicate the culture of impunity and reconcile Rwandans to each other. Article 152 of the 2003 recognizes the jurisdiction of *gacaca* as part of the laws of the land to help address the question of impunity that has for long characterized the Rwandan State.

Moreover, the constitution is a product of the people. I say this because while at attending a grass root meeting in good governance, participants were asked to say one thing which they are proud to have contributed to in Rwanda. Many of them said it was the Constitution. People were pleased because they were consulted in the process of drafting the constitution. Jeanne IZAJE remarked that it was the first time people from Kigali had come to ask the opinion of people on how the country should be governed. Similarly, it is easier to influence behavioral changes because people feel that the constitution belongs to them. The constitution was compacted through an open and democratic manner and the process paid attention to the pains and aspirations of the people, their communities and their constituencies. According to Shyaka ANASTASE, the constitution enjoys much popularity and has built the very much-needed bridges between

and within groups across the country.⁴² Admittedly, democracy is oriented due to the context of the genocide and the limitations of freedom of expression etc, but the process of building the constitution was itself participatory.

In conclusion, I will say that one factor which contributes to the popularity of the constitution stems from the fact that it was drafted and adopted at a time when really needed. It marked the end of the transitional period, and more importantly, it put an end to the confusing documents forming the Fundamental Laws of Rwanda.

⁴² Interviews with Shyaka ANASTASE. Prof Shyaka is the Deputy Director and a Researcher at the Centre for Conflict Management at the National University in Butare