

THE CONSTITUTION MAKING PROCESS IN RWANDA: LESSONS TO BE LEARNED

**A paper prepared
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1. Background

Throughout its constitutional history, Rwanda has never had a constitution that really responded to its problems as a nation. Reasons were numerous, among which:

- Constitutions were often inspired by foreign models, completely ignoring the realities of Rwanda;
- Citizens were never involved in the constitutional elaboration processes;
- Constitutions were tailored to suit aspirations of those in power at such particular times of Rwanda history.

Main objectives of the past constitutions were successively identified as follows:

- Abolition of the monarchy and establishment of the republic (1961);
- Consolidation of the Republic and establishment of a theoretical multiparty system (1962);
- Suppression of multiparty party system and establishment of a single party system (1978)
- Re-establishment of multiparty system (1991);
- Establishment of the Fundamental Law (1994) containing several texts and organizing their implementation. Such a fundamental law included:
 - The Constitution of 1991;
 - The Arusha Peace Agreement of August 4, 1993 which aimed at ending the then prevailing war through negotiation, establishing the rule of war, repatriating Rwandan refugees, establishing the sharing of power and the merging of armies;

- The RPF (then victorious over the defeated government forces) declaration of 17/07/1994 establishing inclusive Government Institutions, and renouncing sharing power with political parties and formations that organized and perpetrated genocide;
- The protocol of agreement between political incumbent forces (RPF, MDR, PDC, PDI, PL, PSD, PSR and UDPR) regarding the establishment of national institutions, signed on Nov.14, 1994. The same protocol adopted the RPF declaration of July 1994 and organized the sharing of seats in the Transitional National Assembly.

In the immediate post-conflict situation, this Fundamental Law merits recognition for having organized actual power sharing among different political parties and formations recognized in the country and establishing the rule of law. However, it is flawed by the fact that it was made of *different texts, which were compiled at different times, in different situations and motivated by divergent preoccupations*, to such a point that some of its provisions had become obsolete and contradictory.

2. Brief constitutional history of Rwanda

The first constitution of Rwanda dates back on 24th November, 1962. Until then, the history and politics of constitution making was the sole responsibility of the colonial office acting by and through colonialists in Rwanda. The influence of colonizers was so great that the dominant ruling class, the Hutu, had practically to serve their interests and Rwandans had no role to play and were not even consulted at all. The process allowed limited inputs from native experts. Although the constitution instituted a pluralistic regime, a single party system (MDR Parmehutu) was quickly to emerge and rule alone.

The constitution of 1978 that came subsequently did not make any changes in terms of democracy. It is important to note that it came into existence after five years of *continued absence of constitution* in Rwanda, owing to the suspension of the 1962 constitution, following the coup d'état of 1973 by Juvénal Habyarimana. The main characteristic of this constitution was the abolition of a multiparty system, the only MRND¹ party being allowed to operate in Rwanda and its chairman being the only one allowed running for

¹ Mouvement Révolutionnaire National pour le Développement (MRND)

presidential elections². This situation continued until 1991 when both internal and external pressure 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 for four long years, culminating into genocide that was stopped by RPF in July 1994.

The 1991 constitution later amended by the Arusha Peace Accords³, essentially reintroduced multiparty democracy, and upheld the principle of separation of powers and the rule of law. The 1991 Constitution, together with the Arusha Peace Accord and additional protocols on the rule of law constituted the Fundamental Law of Rwanda that governed the country, until a new constitution was adopted in 2003.

3. A new Constitution: the rationale.

The agreement between the then Government of the Republic of Rwanda and the Rwandan Patriotic Front on power sharing in a broad-based Government provided for a new constitution to govern the country after the transition period. To this effect, a Constitutional Commission was created to tackle the task of elaborating a new constitution basing on real aspirations of the citizens.

It is in this conjunction that the new constitution was set up. According to Kirsti Samuels (2006), “ *In post-conflict or post-authoritarian transitions, a new constitution often acts as a symbolic break with the past, and creates expectations that a new peaceful phase in the country’s history is about to begin. Moreover, inclusive and participatory constitution-making processes legitimize the government, provide a forum for national dialogue and negotiation of divisive issues, and can play a psychological role in developing a sense of nation, by including the citizens in developing a common vision for the future of their country.*”⁴

² See art. 40 of the 1978 Constitution

³ The 1991 Constitution was adopted on 30th May 1991. On 18th 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 and on 4th August 1993, the Arusha Peace Accord was signed between the warring parties.

⁴ Kirsti Samuels, 2006. *Paradoxes And Compromises In The Design Of Post-Conflict Constitutions*, in Research Partnership On Postwar Statebuilding. Website: (<http://state-building.org>).

Where a society is divided as was the case in Rwanda, constitutional legitimacy should involve striking a balance between the protection of the minority interests and the power of central state authority. This had sadly been denied in Rwanda, as soon after the independence, the principle of limited government enshrined in the 1962 Constitution was replaced by the practice of absolute government in the 1978 Constitution, concentrating power in the hands of the President, allowing conducting public affairs as he wished with total impunity.

In response to this, fundamental principles encompassing the new constitution of 2003 were to respond to all democratic and human values that had been violated in the past texts. Some of the transgressing acts were identified as having infringed upon the following core concepts:

- Equitable power sharing
- Establishing a pluralistic democratic regime
- Fight against genocidal ideology and all its manifestations
- Eradication of ethnic and regional divisions and promotion of national unity
- Equality among Rwandans and between men and women
- Edification of a Government committed to citizens' welfare and social justice
- Permanent concern of conflicts resolution through dialogue and consensus.

In this spirit, a process was launched to design and draft a new constitution that would govern the country emerging from genocide, where citizens had lost trust in the governing system.

4. Constitution drafting: the process

4.1 Institutional framework.

The nine year transition period in post-genocide Rwanda (1994-2003) was governed by a set of texts called the Fundamental Law including the 1991 Constitution, the Arusha Peace Accord, the Rwandese Patriotic Front Declaration (of July 1994) and the Political Parties Agreement (of November 1994) abiding with the former declaration and providing for power sharing mechanisms in the new Government. The later was established as a result of negotiations and compromise between the winning party and opposition. A Constitutional Commission was then set up to train and sensitize the

population about the constitution, to organize consultations in all strata of the population on the content of the constitution, to prepare and validate the draft bill of the constitution, to organize a referendum on the text of constitution approved by the Parliament and to harmonize all laws with the new constitution. The commission was given a time line of three years and agreed to work on a consensus basis.

4.2 A home-grown model through inclusive participation of an enlightened citizenry.

Through its constitutional history, Rwanda had never had a constitution responding to its own expectations as a nation. All former constitutions were copied and pasted from foreign countries without considering the reality, for the sole purpose of satisfying interests of leaders of the moment⁵. To give the 2003 Constitution new touch, the set-up Commission tried to depart from this state of affairs, to include a broad-based inclusive participation in the constitution making process. Surprisingly, as noted by one top officials of the Commission, “...some of the so called elites [in Rwanda] had little or no understanding of what a constitution was and what role it had to play in the life of a nation”. A set of questionnaires were administered and were very useful for obtaining feedback from the population. Memoranda received from civil society groups across the country were also instrumental in ensuring that views of larger populations were collected.

4.3 Addressing conjuncture challenges: political parties’ limitations.

Like other actors on the scene, political parties played a key role in the constitution making process. Yet the hottest controversy in the provisions of the new Constitution was the limitation set to political parties functioning, following the concern expressed by the population through consultations, over the negative role of political parties during the war. This was considered by certain western external opinion as a maneuver for “muzzling opposition and dissent”⁶. Indeed, considering to which extent they had been manipulated through rogue political parties, the population had soon chosen the option of doing without political parties.

⁵ As an example, it has been argued that the 1962 Constitution of Rwanda replicated provisions of the Senegal legal texts on Civil Rights.

⁶ Peter Urvin, (2003) *Rwanda’s Draft Constitution: some personal reflection*.
<http://www.opjdr.org/constitution>.

However, in a really democratic set-up, there was a need to deal with the situation in a fair manner, starting by allowing temporary half standards. Political parties were to be operational (creating offices, organizing rallies) at the national and provincial levels and to refrain from engaging populations right at the grassroots level. This was indeed done partly in consideration of the people's wish, but also in consideration of the still volatile and fragile state security. It is worth to be said that the ban has today been lifted totally in the law governing political parties.

It was again alleged the provision for parties to “*constantly reflect the unity of the people of Rwanda*” would mean to further eliminate political pluralism, yet ignoring the fundamental constitutional principle of unity had been advocated as a response to the long prevailing divisive system in the country. Finally, the Constitution could entrench a forum of political parties meant to be a debating platform fostering consensus and fighting divisionism. The forum has been pinpointed for being dominated by the ruling political formation and used to discipline and control members of other parties⁷. However, a rotating system of the governing board and committee members has proved to check any domination allegations.

4.4 Engendering the Constitution

The participatory approach adopted by the Constitutional Commission allowed significant input by women and women's organizations, which were actively mobilized around the drafting of the constitution to ensure that equality became its corner stone. Thus gender policy was introduced into the Constitution, principles of gender equality and women's human rights, and a provision for at least 30% of women in all decision-making instances was clearly put into the legal documentation and is observed scrupulously. It is interesting to mention that today Rwanda is rated first worldwide, as counting around 49% women in Parliament (Chamber of Deputies).

4.5 The role of international community

The role of international community in the constitution making process was limited to financial contributions. There were offers for technical assistance in drafting the constitution which were rapidly rejected on the grounds that a

⁷ Rwanda, Human Rights Overview, <http://www.hrw.org/docs/2003>

constitution is the law of the people and the people should be given the opportunity to draft it on their own. Many accused that “introverted” approach, but soon it proved to be paying as nothing was to be left to manipulations. Many foreign partner countries provided logistics, supported conferences and trainings, procured vehicles, computers, etc.

5. Challenges

The most important and very significant challenge was the general ignorance and illiteracy in the population, making it difficult to understand the philosophy and principles of the constitution. Understandably, a locally designed and driven initiative relying on foreign funding has to encounter long delays in disbursements. Where donor-funded planned activities were not financed in time, Rwandan women were seen surrendering their best pieces of cotton-wear to make local polling booths. Reaching people living in exile in refugee’s camps was often not easy and the approach not friendly, although the initiative was welcomed by most of the consulted Rwandans in the Diaspora who considered the move as a positive sign for their prospective returning to their motherland.

6. Fundamental principles innovative implementing tools.

Before the challenging post-conflict perspective and in the aftermath of the horrendous genocide, the new Constitution brought about innovative responses to otherwise unsolvable problems. A National Unity and Reconciliation Commission was set up to reverse effects of bad governance through education and to fight against the genocide ideology. Similarly other institutions (Commissions for Women, Youth, Civil Service, Genocide Fighting, Education High Council, etc.) promoting good governance were provided for, as a response to the long period of bad governance that led to genocide. Gacaca jurisdictions system was instituted in the Constitution. These jurisdictions are considered as a participatory mechanism to search for the truth in genocide trials. This will be an accelerated way to try more than 825.000 cases otherwise unsolvable, in a bid to eradicate the culture of impunity that had long prevailed, and check genocide planners’ expectations that involving large numbers of people in killings as it had been during genocide would ensure them impunity.

Other instruments marking the core symbols of the nation, inclusive and not reflecting bias were set in motion:

- The flag has been designed through a participative approach whereby several actors were brought to contribution and citizens consulted.
- The national anthem was composed by a **genocide suspect prisoner** who won a nationwide contest; lyrics were produced through large consultations.
- The national logo was debated over to include core values embedded in Rwandan culture and include aspects of a futuristic vision based on technology and innovation as the development driver for the nation.

7. Lessons to be learned

The Constitution of Rwanda was made through a totally owned and homespun process that allowed drawing following lessons:

- The Constitution was elaborated *in the light of preoccupations strongly based on the country's context and challenges*. This increased the level of understanding and owning of the process by the citizens.
- The Constitution was deeply concerned with finding *lasting and adequate solutions to problems the country is faced with*. Temporary solutions had been found and put into use to respond to timely issues, but soon the country could fall back into lawlessness.
- Through the appropriate process, *fundamental issues were identified and translated into core principles* including equitable power sharing, consecrated separation of powers, rule of law, pluralistic democratic system, fighting against genocide ideology, eradicating divisionism and promoting national unity, gender equality and quest for solutions through dialogue and national consensus. Guardianship of these principles' respect was particularly entrusted a parliamentary institution, the Senate.
- The Constitution is a *product of the people who are proud of having been consulted, after long periods of unshared centralized power*. It is easier to change behaviors because the people have the feeling that the constitution belongs to them.
- The Constitution was drafted after *aggregated thoughts and insights gathered through an open and democratic process* that paid attention to the preoccupations and aspirations of the people. The principle of participative democracy was respected.

- Although not ruling out foreign interventions, Rwanda opted for a Constitution drafting process that is completely home-conceived and owned by the people, with the above declared benefits. This included tapping into cultural values that had for long proved to be effective in ruling the society. A genuinely owned constitution is now better understood by the citizens through continuous training and education, which stirred up the level of trust citizens nourish in government.

8. Conclusion

After decades of conflicts based on divisionism and sectarian malpractices in the conduct of public affairs, Rwanda opted for a Constitution that clearly provided for mechanisms allowing to do away with causes of all kinds of tribulations she had experienced in the past, the worst being the horrendous genocide that took away more than a million lives in just a hundred days. For Rwandans, the best process in constitution making process was a home-grown endeavor that genuinely responded to the quest for a better livelihood of her citizens in a lasting peace.

Although the Constitution was built on a background marked by genocide and infringement of freedom of expression and human rights abuse, the process that guided its drafting was fully participatory, which rendered the constitution very popular in itself. Consequently, citizens of all stocks saw their hand in the achieved result, owned it and trusted its expected implementation.

It should be highlighted that the constitution was drafted and adopted at a time when people really needed it. It marked an end of a long nine year transition period, but mostly it put an end to a plethora of confusing documents of which texts were forming the Fundamental Law. Getting out of that confusion also placed a note of trust in the form of the paramount Law that governs a country emerging from deep conflicts and status of a failed state.

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