

## Chapter 3

### The Electoral Framework and Election Administration

Article 1 of the Constitution of the Republic of Rwanda (2003, as amended), defines Rwanda as “an independent, sovereign, democratic, social and secular Republic”.

The President of the Republic is the Head of State and Government and is also the Commander-in-Chief of the Rwanda Defence Forces. Article 98 of the Constitution states that the President “is the guardian of the Constitution and guarantees national unity.

The President is elected on the basis of a single national constituency, requiring a simple majority. An elected term is seven-years, and according to the Constitution a person can only serve a maximum of two terms.

Legislative power is vested in the parliament, consisting of two chambers (Chamber of Deputies and the Senate).

#### Legal Framework for the Elections

Rwanda's record of ratification of the UN human rights instruments is commendable, notably having ratified all of the eight treaties considered to be the core human rights instruments and Rwanda is thereby a signatory to the major regional and international instruments relating to elections, including: The Universal Declaration of Human Rights; the International Convention on Civil and Political Rights; The International Convention of the Elimination of Discrimination Against Women; The International Convention on the Elimination of Racial Discrimination; and the African Charter on Human and People’s Rights of 1981.

In terms of national legislation, the key legal instruments for the conduct of the election are:

- The Constitution of the Republic of Rwanda (2003, as amended)
- The Presidential Election Law (No. 27/2010)
- Law on Political Parties
- Law No. 18/2008 of 23/07/2008 Relating to the Punishment of the Crime of Genocide Ideology
- Law Relating to the Organisation and Functioning of the National Electoral Commission (No. 31/2005)
- Law on Media (No. 22/2009)
- Regulation Providing for Access to Public Media during Presidential Election Campaigns
- Media High Council Guidelines for Election Coverage by Media
- Regulations as issued by the National Electoral Commission

The Rwandan Constitution enshrines the basic principles regulating genuine and democratic elections. Article 100 of the Constitution provides that, “The election of the President of the Republic shall be by universal suffrage, through a direct and secret ballot”.

Article 45 provides that, "All citizens have the right to participate in the government of the country, whether directly or through freely chosen representatives in accordance with the law". In addition, freedom of press and information are recognised and guaranteed by the State (Article 34); freedom of association is guaranteed (Article 35); and the right to peaceful assembly in accordance with the law is also provided for (Article 36).

Further, Article 52 of the Constitution provides for a "multi-party system of government" for political organisations fulfilling the conditions required by law, establishing their right to operate freely. And according to Article 53, "Rwandans are free to join political organisations of their choice or not to join them".

### **National Electoral Commission**

Article 180 of the Constitution provides for the creation of the National Electoral Commission (NEC), and defines it as an "independent commission responsible for the preparation and the organisation of local, legislative, presidential and referendum or such other elections". The NEC is to ensure "that elections are free and fair" and is to submit each year its programme and activity report to the Parliament. Law No. 31/2005 provides for the organisation and functioning of the NEC.

In terms of the structure of the NEC, it has a seven-member commission, including the Chairperson and Vice-Chairperson. The current Chair is Prof. Dr. Karangwa Chrysologue. The Commission serves a three-year mandate, which is renewable once. At least two of the seven members must be lawyers and at least 30 per cent of the commission must be women.

For the nomination and appointment of the Commission, the Government presents names to the Senate for approval and members are appointed by Presidential order. According to the NEC's own materials, the seven Commissioners are from "different political parties and civil society". During the elections period the Commission works permanently one month before elections until the publication of results.

A permanent Executive Secretariat, headed by an Executive Secretary, supervises the daily activities of NEC and manages personnel and property. The Executive Secretariat comprises technicians who manage the day-to-day affairs of NEC and the electoral process. The Executive Secretariat includes three departments, each headed by a Director. These are: Administration and Finance; Electoral Operations; and Information and Communication Technology.

For the purpose of organising the elections, NEC establishes branches for each of the four Provinces and for Kigali City, each of which has a Co-ordinator. NEC also establishes a branch for each of the 30 Districts, with a responsible officer as well as a series of Sector Co-ordinators within each District. NEC utilises volunteers to work in the polling stations on the day of the election, supplementing its regular electoral staff. NEC estimated that it would have some 65,000 persons in total working on the election day itself.

NEC published an Electoral Calendar for the 2010 Presidential Elections, which clearly set out the various stages and activities for the conduct of the election. Key pre-election elements included:

- *Preparation of electoral budget January 2009*
- *Procuring election materials August 2009*

- *Updating voter lists (phase 1 and 2) August – September 2009*
- *Updating Voter Lists (Phase 3) June 2010*
- *Publication of Provisional Voter List July 2010*
- *Cleaning Provisional Voter List July 2010*
- *Publication of Final Voter List 23 July 2010*
- *Recruitment of Polling Agents June 2010*
- *Civic and Voter Education February 2009 – August 2010*
- *Nomination of Presidential Candidates 24 June – 2 July 2010*
- *Declaration of Final List of Candidates 7 July 2010*
- *Design and Printing of Ballot Papers 9 July – 5 August 2010*
- *Conduct of Election Campaigns 20 July – 8 August*

NEC informed the COG that the total budget for the election was some 8.5 bn RFA (c. US\$10 million). Of this 83 per cent, was provided from the national budget and 17 per cent from donors. NEC said their intention for future elections is to increase the proportion drawn from the national budget.

### **Voter Eligibility and Voter Registration**

In order to be eligible as a voter for the election, the legal criteria are that a person must be a citizen of Rwanda, at least 18 years of age and be registered to vote. The right to vote is also afforded to Rwandans registered in Embassies abroad.

Those persons denied the right to vote are persons defined as:

- Lacking integrity<sup>1</sup>
- Convicted of genocide or crimes against humanity
- Convicted of murder or rape
- Prisoners
- Refugees

The Voter List is to be updated annually and the NEC did this, publishing the revised Final Voter List on 23 July 2010. On the updated register there were 5,178,492 voters (of which 21,741 are in the diaspora) out of a population of some 10 million. The NEC informed the Observer Group that out of the total number of registered voters, some 62 per cent were youth and 54 per cent were women.

The Voter Lists are initially drawn from the National ID card database and are then, as stated, updated through a process of public verification. Further, the photos from the National ID database are incorporated onto the Final Voter List used in the polling stations on election day.

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<sup>1</sup> Under the Presidential Election Law a person of integrity includes any Rwandan who has not been convicted of the crimes of genocide, genocide ideology, discrimination, divisionism or corruption.

## **Candidate Eligibility and Nomination**

In order to be eligible as a Presidential candidate, a person must:

- Be of Rwandan nationality by origin
- Have at least one parent of Rwandan nationality
- Have Irreproachable morals and probity
- Not be sentenced to a prison term of 6 months or more
- Enjoy all civil and political rights
- Be at least 35 years of age
- Be resident at time of candidacy submission

For the purpose of this election there were four registered candidates. The eventual ballot order, based on the order of registration, was:

1. Paul Kagame (RPF)
2. Prosper Higiro (PL)
3. Jean Damascene Ntawukuriryayo (PSD)
4. Alvera Mukabaramba (PPC)

For candidates nominated by a registered political party a "dossier" of relevant information and documents has to be submitted to the NEC. This includes:

- Confirmation that he/she is the flag bearer for the political organisation or coalition
- A logo
- A copy of the person's ID and Voter Card
- A certificate of nationality issued within previous three months
- A certificate confirming that the candidate does not have any other nationality
- A certificate confirming that he/she has at least one parent of Rwandan nationality by origin

For independent candidates they must also submit a list of voters supporting their candidacy containing a minimum of six hundred registered voters, including a minimum of 12 persons domiciled in each District. The list must include the signature or fingerprint of all of the 600+ persons.

## **Complaints and Appeals**

The NEC can receive and deal with complaints regarding voter registration and is also charged with handling complaints regarding the election campaign. It can also receive complaints regarding the conduct of the process by lower level branches.

Complaints against the result of the election are to be made to the Supreme Court within 48 hours of the result being announced and the Supreme Court then has five days to make a decision.

Complaints can also be lodged in the polling station, where an official representative of a candidate feels there is something irregular. In such an event, the representative could note an 'observation' in the official polling station protocol. Such disputes at the polling station are dealt with by the official in charge of the polling station.

## **Key Issues**

- **Composition of the National Electoral Commission**

The NEC is considered to have largely done a good technical job in the organisation of the Presidential election. With regard to its composition, the law sets out some basic criteria, establishing the number of commissioners and the fact that at least two must be lawyers and at least 30 per cent must be women.

However, on the NEC's website there is a reference to the NEC members being drawn from "different" political parties and civil society. It would be helpful to be clearer about the background and/or affiliation of members as it is vital that the body responsible for managing the electoral process is inclusive and representative. Ideally such a body either needs to be completely independent of any political affiliation or comprise a good representative balance.

- **The New Presidential Election Law of June 2010**

The consolidation of the election laws into Law No. 27/2010 was a positive development, most notably also because a conscious effort was made to incorporate a number of lessons learned from previous elections as well as recommendations from observers. It also brings together provisions for the various electoral types into a single document.

One of the positive changes in the new law is the prescribed tabulation process as outlined in Article 61, which was simplified to create a three-tiered process from polling centre to district to national level. It should be noted that there were some concerns regarding the implementation of this aspect during these elections, but overall it is felt that the published law is an improvement.

- **Genocide Ideology Law**

The Genocide Ideology Law was promulgated as a furtherance of the fundamental principles of the Constitution, namely "fighting the ideology of genocide in all its manifestation". In the context of Rwanda, such a law is understandable. However, since its enactment in 2008, the law has drawn some criticism nationally and internationally for its broad definitions, which are subject to possible misinterpretation. It is noted that the Government indicated in April 2010, and again after the election, that it intends to review the law, and this is welcome.

- **Campaign Period**

The campaign period is fairly short, at just 18 days. Such a short period does not provide a great deal of time for smaller, less well-resourced, parties to conduct a national campaign.

## **Recommendations**

1. The NEC's website states that members are drawn from "different political parties and civil society". It would be helpful for this to be clarified to ensure transparency and confidence. There are various models for the composition of an electoral management body, and they can comprise of independent, non-political figures or be broadly representative of political contestants depending upon what is felt to be most

suitable in any given context. Whichever model is preferred it is important for the process to be clear and transparent.

2. Consideration could be given to lengthening the campaign period if it is felt that political parties would benefit.
3. It might be advisable for registration of political parties to be handled by an independent body, such as the NEC or a specially designated body, and for the procedures to be as inclusive as possible.