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Reflections on Rwanda's electoral regulations

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1. Introduction

The aim of this report is to analyse in a comparative perspective the current political-institutional and electoral framework of Rwanda at the national and local level. This report is based on the analysis of existing laws regarding or influencing elections in Rwanda, a few studies on the electoral process in Rwanda and most important on intense exchange and discussion with various members of the national electoral commission of Rwanda during a visit in Rwanda between 16-23 August 2005. I have been using and citing, with a few exceptions, the English version of the laws which all exist in the three official languages: Kinyarwanda, French and English.¹

There are of course strong limitation of what can be done in a one week mission. Thus the report cannot claim to give a complete analysis of all the issues at stake. Much rather the report aims at looking at the current institutions in a more comparative and theoretical way and may therefore contribute to improve further the electoral processes in Rwanda. The author is fully responsible for any misinterpretation or lack of understanding how things work in Rwanda.

I would like to thank the National Electoral Commission, the Executive Secretary Pierre Damien Habumuremyi, for the invitation, the program and the openness of the discussion as well as the SDC who has not only been financing but been supporting and facilitating this mission greatly.

2. Principles of democracy and elections

Given the variety of political institutions that exist in democracies worldwide, there is no “right” or “wrong” political system. However there are some basic principles of democracy in general and electoral systems in particular which showed to be important. Dahl (1998: 37f) as one of the leading contemporary democratic theorists sees the following five **criteria** as essential for a democracy:

Effective participation: All citizens shall have an equal and effective opportunity for making their views known to other citizens.

Control of the agenda: Citizens must have the exclusive opportunity to decide how and what matters are placed on the agenda. Policies have to be open to change. These are fulfilled as long as freedom of speech, freedom of association and freedom of press is guaranteed.

Voting equality: Every citizen must have an equal and effective opportunity to vote and all votes must be counted as equal (one person one vote).

¹ This is important because in many countries with more than one national language translation issues tend to increase confusions about the meaning of regulations. As far as I know the relevant version for legal documents in Rwanda is the text in Kinyarwanda.

Enlightened understanding: Each member must have equal and effective opportunities for learning about the relevant alternative policies or the policies candidates stand for and their likely consequences.

Inclusion of all adults: All adult permanent residents should have the full rights of citizens which are defined in the first four criteria. All adults should have the right to vote and the right to stand as candidates.

This allows for a variety of political and electoral institutions. Regarding electoral systems specifically a number of **principles** are acknowledged as important in electoral design (see for a more extensive list of principles and guidelines: African Union 2002; EISA 2004; Reynolds et.al 2005; SADC Parliamentary Forum 2001). A distinction can be made between principles connected to the electoral process and principles connected to the electoral institutions.

Regarding the *process* the following principles are generally considered important:

Build acceptance: Maybe most important for an electoral system is, that the rules of an election are accepted by all major political forces. All groupings relevant in an electoral process should feel that the rules and its application are fair and give everybody the same chance of electoral success. Only if everybody feels that the rules are good and fair, one will accept the outcome of a democratic electoral process. If this is not the case, some groups may feel that they need to use non-democratic measures to obtain their interests and hence elections lead to greater conflict potential. Groupings relevant in political processes include major parties, interest groups and civil society organisations. In addition it includes the international community because mistrust in electoral processes and outcomes can severely affect the relation to other countries and international organisations.

Define the rules before the game: Essential for acceptance of the electoral process is that the major elements of the electoral framework are clear before the electoral process itself begins. There should not be any discussion about the electoral framework, the procedures and the laws during an election. And if there are such discussions it should be clear how disputes are settled.

Make once accepted rules hard to change: It is very common, that parties and politicians try to maximize their influence in a forthcoming election by introducing electoral rules favourable for themselves. For example in the USA there are constant debates about the shape of electoral districts and both major parties – democrats and republicans – try, when they have the power to do so, to shape electoral districts in a way that it maximises their parties' possible electoral success. Therefore it should not be easy to change electoral rules. Furthermore, a good system is a system everybody understands. New electoral institutions bring uncertainty in the electoral process and sometimes have unintended side effects.

Regarding the electoral *institutions* there exist some general principles too (see Norris 2004: 66f) :

Simplicity: Electoral systems should be easy to understand by voters and politicians. There should be a direct link between the votes and the electoral outcome and who ends up in government.

Transparency: The overall electoral process should be open and accessible to external monitoring to guarantee free and fair elections.

Inclusiveness: The electoral system should allow all significant interest to be represented in the legislature. “Regardless of whether minorities are based on ideological, ethnic, racial, linguistic, regional or religious identities, the exclusion of significant shades of opinion has from legislatures, particularly in the developing world, has often been catastrophically counterproductive” (Reynolds 2005: 161).

Governability: Electoral systems should produce electoral outcomes that facilitate government formation and legislative decisions-making. To guarantee that, it is common to reduce the number of parties through the electoral system, either through small electoral districts or through legal thresholds that give representation only to parties with more than a certain percentage of the votes (e.g. 5%)

Accountability and Responsiveness: Elected parties and politicians should remain accountable and be responsive to the voters. This works in two ways. Governments and presidents should be constantly accountable to the parliament and at election times to the electorate. This means that an electoral system should make sure that bad performing politicians and parties can get voted out and replaced by other parties and politicians.

3. Political institutions in Rwanda

The following chapter discusses various elements of Rwanda’s electoral regulations at the different levels. Different laws are important for an electoral framework in addition to the constitution:

- There is a law governing the last national presidential and legislative election and there is a law regulating the local elections.
- Responsible for all the elections and central for the electoral process is the National Electoral Commission.
- Because parties are obliged to register and only registered parties are allowed to present candidates, the regulations on parties matter for the elections too.
- Different laws regulate decentralised local political structures. These decentralised structures are currently subject to a major reform, therefore some of the descriptions and comments in this report may be out of date.

3.1 National level

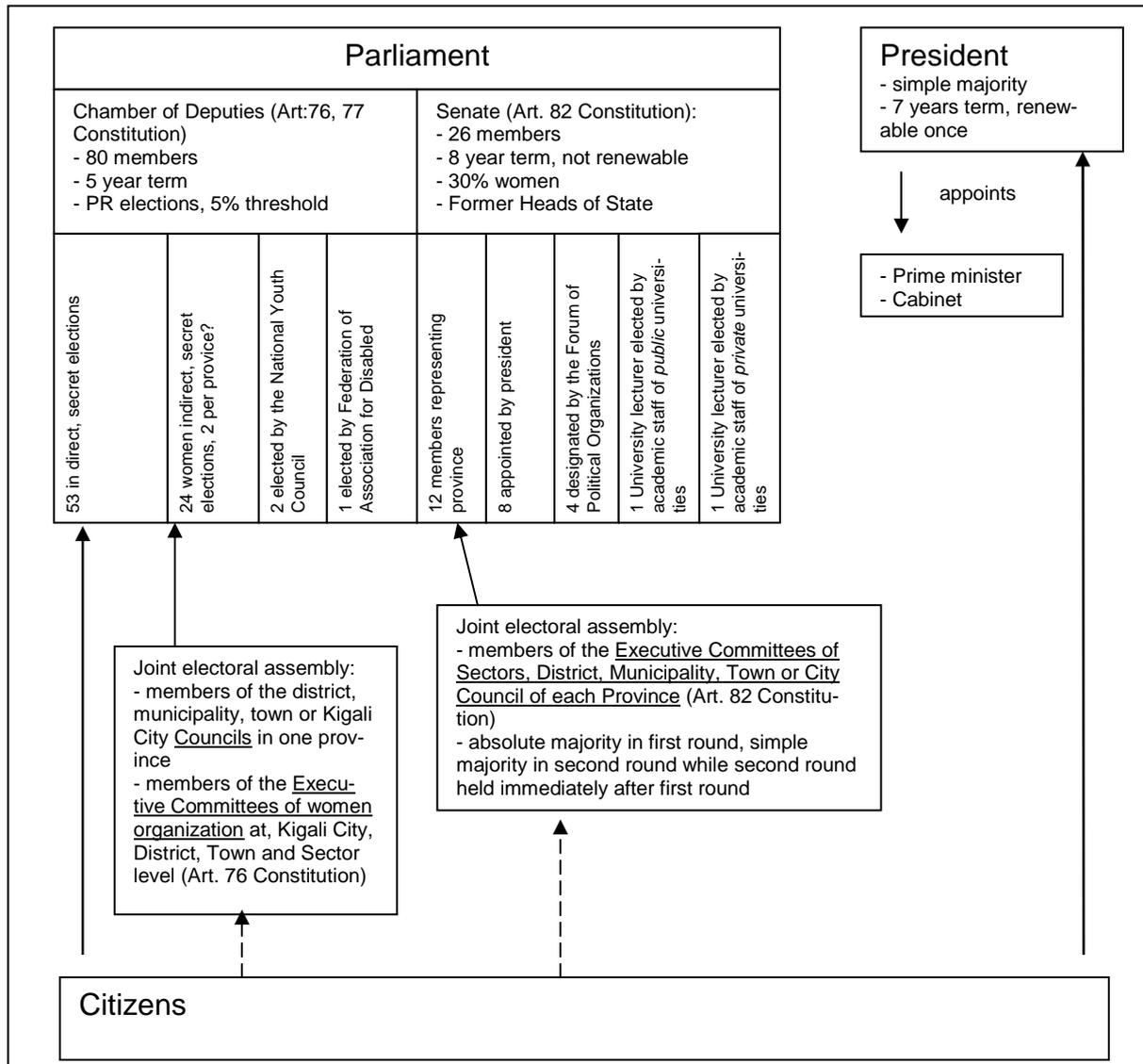
Rwanda is a presidential system with direct election of the president and a two chamber parliament (see figure 1). The parliament is comparatively symmetric in terms of power, meaning that the second chamber, which is the Senate, has important power, which is not always the case in two chamber systems. The Senate (according to Art. 88 of the constitution) votes on all laws, with the exception of the financial laws and the budget, which is in the power of the chamber of deputies. In addition, the Senate has the authority to elect the judges of the Supreme Court and the Prosecutor of the Republic and his or her deputies. The Senate further has to approve a number of appointments made by the president such as the members of national commissions, the Ombudsman and his deputies, Ambassadors, Representatives to international organisations, Provincial Prefects, and heads of public enterprises. This gives the Senate in some respects even greater power than the Chamber of Deputies.

The *Chamber of deputies* has 80 members, however only 53 of those (2/3) are elected directly through a closed list Proportional Representation (PR) system. In addition to the registered parties, individual candidates can run for elections. Each list or each candidate has to have at least 5% of the votes. 24 seats are reserved for women, two per province, through indirect elections, 2 are elected by the National Youth Council and 1 is elected by the Federation of Association for Disabled.

There is no direct election for any of the 26 *Senate* seats. 12 Senate members represent provinces and they are elected by an electoral assembly consisting of members of the executive Committees of the Districts (and Municipalities and Cities) and the Sectors. Elections are held in two rounds whereby an absolute majority is required in the first round while in the second round a simple majority is sufficient. 8 members (31%) are appointed by the president, 4 are designated by the Forum of Political Organizations, and 2 are reserved for university lecturers elected by the academic staff of private and public universities separately.

The *president* is elected directly through a simple majority for a 7 years term. The president appoints the prime minister.

Figure 1 The electoral system and the national political institutions



Discussion:

- *Rwanda has a typical presidential system with a two chamber parliament which is common in many countries. This system should guarantee various checks and balances between the executive and the legislative as well as between different chambers. Furthermore the reservation of some of the seats for special groups (women, youth, handicapped, forum of the parties) in the Senate as well as in the chamber of deputies are designed to ensure minority representation.*

- *However, overall the system with a mixture of direct elections, indirect and special elections and appointment of some members is very complex and it's consequences difficult to understand. Reducing some of the complexity seems desirable.*
- *The allowance of single candidates in PR closed list elections does not make much sense because it seems almost impossible for a single candidate to gain more than 5% of the votes. What happens if a single candidate would make 5% of the votes and then would be entitled to more than one seat remains unclear. This would be the case if he/she exceeds 5%.*

3.2 Local levels

To understand the electoral framework for local elections it is essential to understand the decentralized structures. The constitution states that the territory is divided into Provinces, Districts, Cities, Municipalities, Towns, Sectors and Cells (in descending order); however it does not specify the number, boundaries etc. (Art. 3 Constitution). Art. 168 further defines that Districts, Municipalities, Towns and the City of Kigali are decentralized entities with legal status and administrative and financial autonomy. This means that neither the Provinces nor the Sectors and Cells can claim autonomy from any subordinate level of government through the constitution. The head of the Province is directly appointed by the President. Among others tasks, his/her role is to supervise the Districts.

The prefect of a Province is responsible for the removal, reduction or the merging of Districts or the changing of their boundaries (Law on districts, Art. 5). Boundaries of Sectors and Cells are established by Presidential decree on request of the District Council (Law on districts, Art. 2).

The District is the main decentralised political unit and it has two main bodies to govern it:

- The District Council which has legislative functions
- An Executive Committee with a Mayor and 4 Vice Mayors with executive functions

The District Council is composed in the following way:

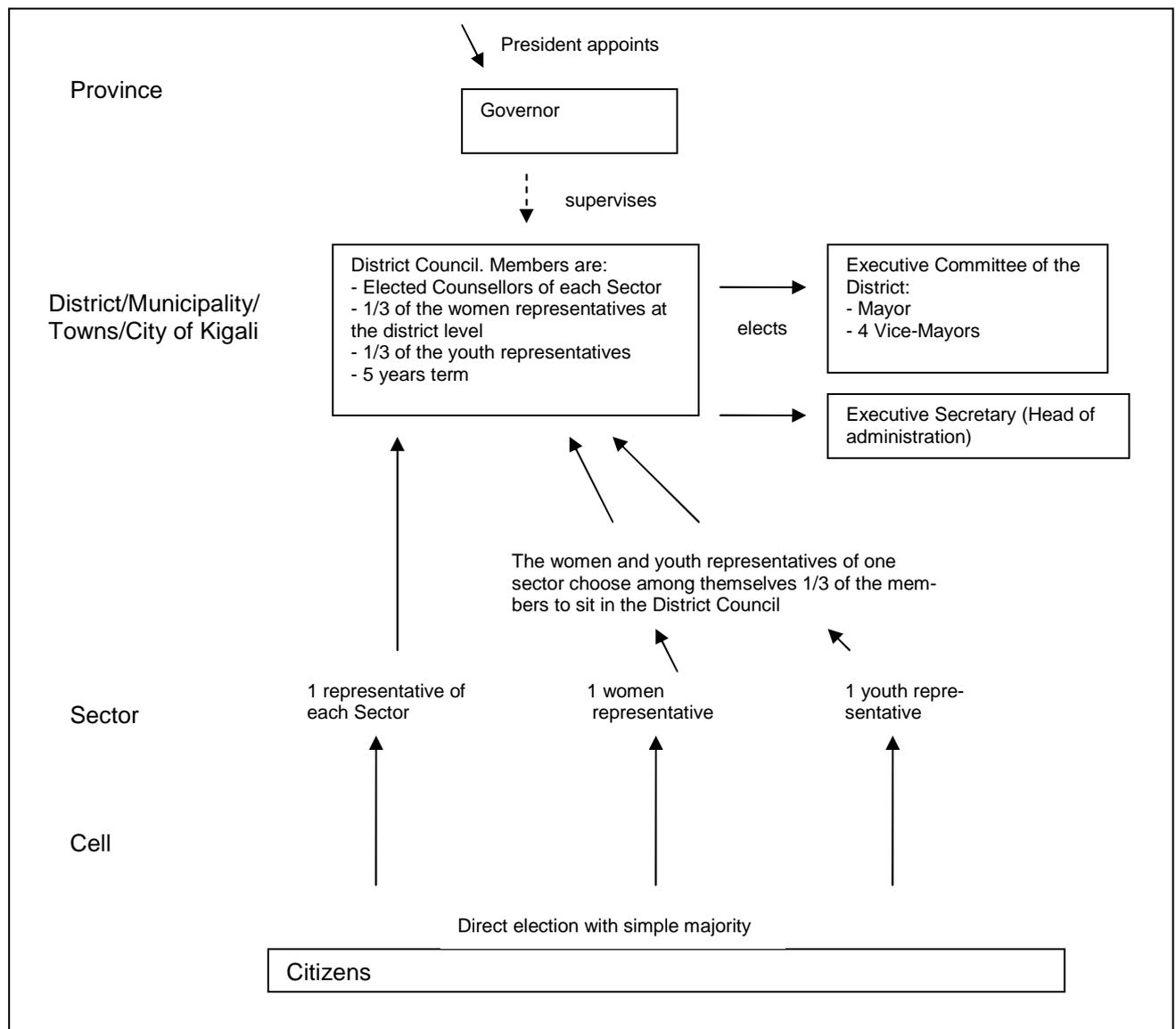
- Each Sector elects a representative of the Sector as member of the District Council
- The entire population of each Sector further elects a women representative and a youth representative. These representatives choose among themselves 1/3 that will become a member of the District Council, too.

To give an example: Let's assume a District with 12 Sectors. Each of these Sectors elects 1 Sector representative, 1 women representative and 1 youth representative, so there are separate elections for 3 representatives in each Sector. The 12 Sector representatives automatically become members of the District Council. The 12 women representatives choose among themselves 4 persons to sit in the District Council (1/3) and so do the 12 youth representatives. Finally the district

Council in this case will be composed of 20 members (12 + 4 + 4). Because the number of Sectors in each district can vary, the size of the different District Council varies accordingly.

The District Council members then elect the Executive Committee of the District which is composed of the Mayor and 4 Vice-Mayors.

Figure 2 Political Institutions at the Provincial and District level

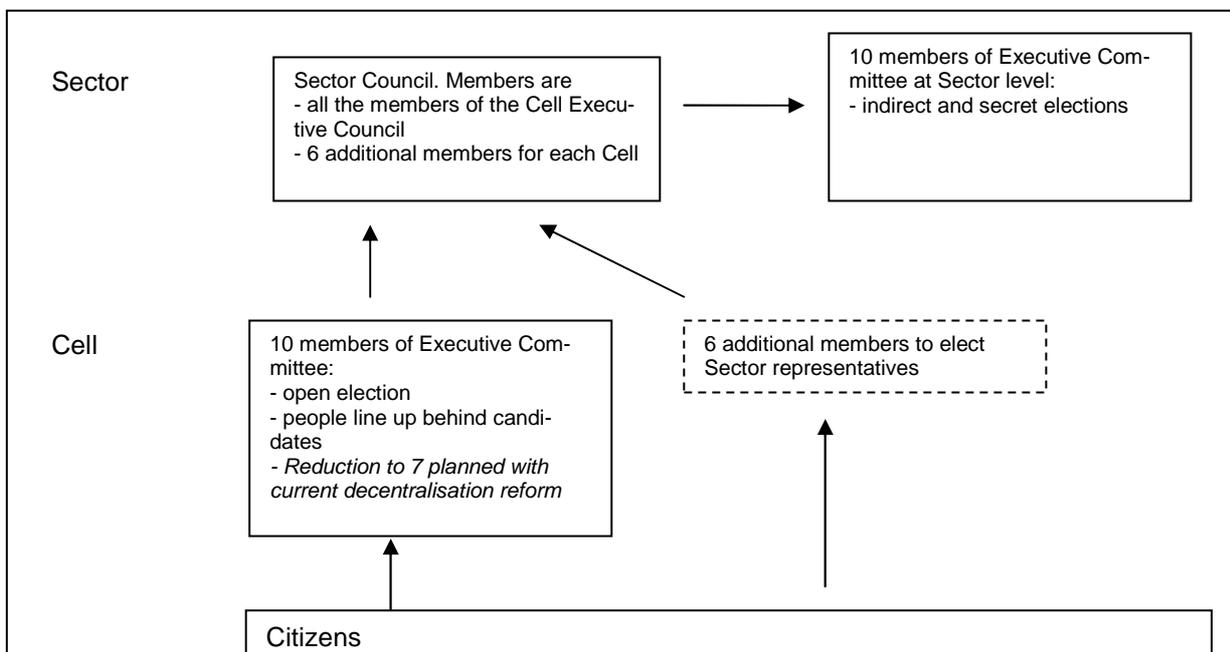


At the Cell level the voters choose 10 members of the Executive Committee for each Cell (See figure 3). The members are elected into specific functions. These elections are not secret. At voting day, candidates are asked to come forward and then voters line up behind the different candidates.

The candidate with the most people lined up behind him gets elected. This is repeated for each of the seats.

The members of the Cell Executive Committee automatically become members of the Sector Council, as well as 6 additional representatives per District as direct Cell representatives. The members of the Sector Council elect 10 members of the Sector Executive Committee among themselves.

Figure 3 Political Institutions at the Sector and Cell level



Discussion:

- Like the national system, the local electoral system is rather complex with the different forms of representation and the mix between direct and indirect elections. This weakens the important link between voters and their representatives and makes it difficult to keep elected bodies accountable. More direct elections for the different levels are therefore desirable.
- The electoral institutions have a strong majoritarian character and do not allow for large political pluralism. Theoretically the most important political force (which officially does not exist) can gain all the seats. This is strongly connected to the ban of parties at the local level. If no parties are allowed, it is difficult to guarantee representation through the electoral system¹.

¹ Although some electoral system such as the single transferable vote system allow to have some kind of representation of different groups while not needing parties to distribute seats.

- *The electoral system at the cell level has been subject of criticism because the elections are not secret. From a cost and simplicity point of view the system is very effective because there are currently more than 10'000 cells in which 10 representatives need to be elected which adds up to more than 100'000 posts to be filled. Organising secret elections would be an enormous task for the electoral commission responsible for organizing elections at the grass root level. However there are some severe disadvantages: The secrecy of an election is a major achievement of democratic elections to guarantee each voter's independence and it is impossible to guarantee the full independence with such an electoral system.*
- *The cell electoral system is important for other reasons too: Because the cell representatives automatically become member of the sector council, the cell elections have an importance beyond the cell level. For example currently 12 of 26 members of the senate are elected through a joint electoral assembly consisting of executive committees of sectors, districts, municipalities, towns and the city of Kigali. By far the largest number of members of this electoral assembly therefore comes from sector executive committee members who are elected by the sector council whose members are the members of the cell executive committee. Should it not be possible to organize secret elections for cell representatives for practical reasons in the near future, it would be desirable that the cell representatives do not automatically have a function for other levels of government.*
- *Having the cells and sectors as an important unit for various higher level elections can raise concerns regarding the principle of one person one vote because the cells and sectors can be very different in size. This principle requires that everybody should have one vote and this vote shall be equal. If for example 1 cell has 500 inhabitants and another cell has 1000 inhabitants, the representative of each cell represents a very different number of people. However, to guarantee the equal influence of each voter electoral districts should be of the same size. This principle is not fulfilled in many cases around the world. Many second chambers like in the US or in Switzerland represent provinces (or states or cantons) of equal size giving a vote of a person in a small province more influence than the person living in a large province. Nevertheless for bodies, that claim to be representative, like the chamber of deputies or the sector council, the difference in size can cause problems.*

3.3 The ongoing reform of the decentralised system

There is currently (November 2005 when this report was written) a large reform of the decentralised structure on the way. It is planned to reduce the number of provinces from 12 to 5, the number of districts from 106 to around 30 and the number of sectors from 1500 to 400. Only the number of cells shall remain about the same (ca. 10'000). Should this reform go ahead as planned it will have various consequences.

For the national level the composition of the Chamber of Deputies and the Senate has to be changed. Currently 24 women, 2 per province have to be elected (see above) as the women representatives in the Chamber of deputies. The same is true for the 12 senators representing each of the provinces. If the number of provinces is reduced, this means that either the number of “provincial” seats has to be reduced to 10 or 5 respectively. This in any case requires a revision of the constitution (Article 76 for the Chamber of deputies and Art. 82 for the senate). However it is unclear whether this change becomes effective now. It is likely that the new regulations become effective with the next elections for the two Chambers (which is 2008 for the Chamber of deputies and 2010 for the Senate). This leaves the problem of possibly necessary replacements to solve: If a women representative or a senator resigns, she/he needs to be replaced however with the decentralisation reform the province she/he represents does not exist anymore).

For the local level there are a number of changes too. First of all the constituencies and the electoral bodies for all districts and sectors change completely and all the positions have to be refilled. From an electoral perspective this is a very severe change, because the ties between representatives and represented are completely renewed. Voters do not have the same representatives anymore and representatives do not have the same voters anymore. There are a number of other reforms planned as well: The number of Executive committee member at the cell and sector level shall be reduced from 10 to 7 (according to the National Electoral Commission).

Discussion:

The ongoing reform of the decentralised system has very many consequences for the overall political system. In the existing unities elections have been held only once. Decentralisation and local elections have the function on strengthening the link between voters and representatives making decision on their behalf at the local level. For a viable political sphere to develop at the local level there is a need for a longer period of time. Elections are not only about giving representatives a mandate for governing but they should give voters an opportunity to get rid of representatives that perform badly. Changing and restructuring local institutions and territories reshapes the marketplace for local democracy and for some of the intention why one would have local elections of decentralised bodies at all – accountability and responsiveness – one finds itself again at the very beginning of a decentralisation process. Therefore in all cases the possible positive effect on increased administrative efficiency has to be assessed carefully against the many negative effects of such a reform.

3.4 The electoral organisation

Responsible for the organisation of the elections at the different levels is an “independent national electoral commission responsible for the preparation and the organization of local, legislative,

presidential and referendum or such elections in the responsibility for the organizations of which the law may vest in the Commission” (Art. 189 of the Constitution).

A law further determines its structure (Law No. 39/2000 of 28/11/2000 for the setting up of the national electoral commission). The electoral commission consist of 6 members and is elected by the National Assembly out of 12 candidates presented by the government. Commissioners are elected for three month before an election and two month after the election and they get some compensation during that time. Members must be Rwandan nationals, have a university degree and be a person of integrity. During non-election time, the executive secretary is responsible for the functioning of the electoral commission. In addition to all the tasks related to the organization of elections, the electoral commission is responsible for civic education on election.

Discussion:

- *Independence of an electoral organisation in a new democracy is important to guarantee transparency of the electoral process. Politically the independence is guaranteed through the separate electoral commission. It is desirable too, that an electoral commission can organize elections as independent from the other parts of the administration as possible. However there may be high administrative costs related to the independence: having an entire separate administration for elections that only take place every so often may not always be very cost efficient. Therefore in many countries the electoral administration is closely linked with the existing administration. This link is desirable when the existing administration is free from political influence and is functioning well. If not, a difficult balance between independence and cost efficiency – which means making use of existing structures – has to be found.*
- *The right to nominate all the candidates for the electoral commission to the president gives the president a great power over the composition of the electoral commission. Further the electoral procedure for the members of the electoral commission is not clear: is there a one by one election and is an absolute majority needed? What happens if members fail to get a majority?*

3.5 The law on parties

The regulation of political organization would require another in-depth study. However a few issues may nevertheless be mentioned, since one of the main goals of parties is to run – and win – elections and therefore existing regulations are important within the electoral context. The constitution allows a multi-party government as long as parties do not destabilise national unity, territorial integrity and security of the nation (Art. 52). However political organizations are not allowed to base themselves on “race, ethnic group, tribe, clan, region, sex or any other division which may give rise to discrimination”. (Art. 53). Political organizations have to be recognized and they have to organize themselves in the forum of parties (Art. 56 constitution). This forum discusses key political is-

sues as well as it can send four representatives to the Senate. According to the Law governing political organizations and politicians (further referred to as LPOP) Art. 3 parties are only allowed to have offices at the national and provincial level. In order to be registered, a group submits its application to the responsible minister, which then has 30 days to register a political organization. A number of documents has to be included in the application: copies of the political organizations statutes, copies of the minutes of the constituent assembly, copies of its internal rules and organizations and 120 signatures, of which at least 5 have to come from each province (Art. 9 and 10 LPOP). There are restrictions who is allowed to be a member of a leadership organ of a political organization (Art. 11 LPOP): Rwandan nationality, 21 years old, not having been deprived of his or her civil rights by the court of law, reside in Rwanda, not having been sentenced to more than 5 years of imprisonment for the last 10 years of an offence, having irreproachable morals and probity and not having committed crimes of genocide. There are a number of further regulations for parties too:

- Parties have to notify the local authorities when they want to organize a public assembly or demonstration (Art. 17 LPOP).
- Political organizations “causing trouble or carrying out divisive acts shall face sanctions“ (Art. 18 LPOP)
- Parties can receive donations. However, parties have to declare donations exceeding 1 Mio Rwandan francs to the responsible ministry and donations are not allowed from foreigners or any company or other institution where foreigners are involved (Art. 22 LPOP).
- Political parties receive grants in the election year if they obtain more than 5% of the electoral vote. Political organization that qualify for grants receive all the equal amount (Art. 27 LPOP).
- There is an extensive code of conduct for political organizations and politicians (Art. 36-41 LPOP) with a large list of what political organizations should do or not.
- Sanctions against organisations violating these principles of the code of conduct can be taken by the High Court of the Republic based on a complaint lodged by the Senate (Art. 42). Sanctions can include formal warning, suspension of the activities or dissolution.

Discussion:

- *Overall control over political organisations seems very tight. Some of the criteria seem rather vague and not clearly applicable especially some in the code of conduct for political organizations in the Law on political organization (Art. 36-41). Although it is comprehensible from the background of Rwanda’s recent history to have a tight control over political organisation, such control can be abused to get rid of undesirable competition.*
- *Any role of a Minister regarding parties in registering and supervising parties can create conflict because the corresponding minister is a member of a party too and may therefore not be seen as acting fully independently by everybody. To leave those regulations to a more inde-*

pendent body, such as a parliamentary committee or the Forum of political organization seems desirable.

- *It is not possible to assess in this report how these regulations work in practice. The requirement for parties to register and the variety of restriction and regulations can be seen as constraints of the freedom of association and expression¹.*
- *The logic why parties are not allowed to organize at the local but only at the national and provincial level is unclear (see for further discussions 4.2).*
- *For a discussion about the requirements for members of leadership organs of political organization in Art. 11 of the law on political organizations see 3.6.2.*

3.6 Electoral procedures step by step

3.6.1 Suffrage rights

The constitution only states that the suffrage is “equal for all citizens”, “direct or indirect and secret, unless the Constitution or another law provides otherwise. To be allowed to vote one has to be Rwandan citizen. Law governing presidential and parliamentary elections (further referred to as LPPE) states that all Rwandans who are at least 18 years old at the date of elections and registered on electoral lists are entitled to vote (LPPE Art. 5). Prohibited from registering on voter lists are the following groups:

- ¹ Persons who have been deprived from their right to vote by courts of law and not been rehabilitated or granted amnesty
- ² Persons who have been convicted of genocide or crimes against humanity in all three categories
- ³ Persons who have confessed to the crime of genocide in all three categories
- ⁴ Persons who have been convicted of murder and manslaughter
- ⁵ Refugees
- ⁶ Prisoners

Registration is mandatory, except for persons physically not able to register (LPPE 11).

For the local elections the law further specifies (Law on Grass Root elections Art. 9) further excludes: those who have committed sexual violations on children and those who have spread divisive ideas.

¹ See for a critical review of human rights issues connected to political organisation and the electoral process: Front Line (2005: 12-19). However, most of the issues raised in that report are not directly related to the application of the Law on Political organizations.

Discussion:

- *Restrictions from the right to vote are severe restriction of political freedom and therefore it is desirable that such restrictions are defined in a constitution.*
- *The exclusion from registering because of various committed crimes leaves some question marks. Is the exclusion from the voting right only while being in prison or is it for ever or for a certain time? Are there differences between the different categories of conviction? Are people sitting in a prison prohibited from registering even when they have not been convicted?*
- *Why are refugees mentioned? Refugees from other countries do not have Rwandan citizenship and therefore are not entitled to vote anyway.*

3.6.2 Candidacy

To become a candidate one usually has to hand in his candidacy to the Electoral Commission at the corresponding level. For the chamber of deputies political organizations or coalitions of political organizations are allowed to submit a list of candidates. Independent candidates are allowed: they need to bring in 600 signatures, at least 30 from each province. The Submission has to be made at least 35 days prior to the election (LPPE 23/24). The CNE then approves candidacies (LPPE 29/30). For the Senate there need to be a personal declaration or a candidate submitted to the CNE. For presidential elections candidates can be nominated by existing and registered parties. Independent candidates must provide 600 signatures of which at least 30 from each province for their candidacy.

For local elections, anybody who wishes to be a candidate has to write to the Electoral Commission of the corresponding level of his or her candidacy the latest 45 days before an election. However to become a candidate at different election there are a number of further restrictions and requirements regarding age, education etc.

Age requirements are very common: 21 for the Chamber of deputies and for Members of any local body; 40 for the Senate; 35 for becoming president; The new law for local elections further demands 25 for becoming mayor of a District or a City and 35 for the Mayor of Kigali.

There a number of education requirements for different positions: Holder of at least a first university degree or its equivalent for Senators; Councillors at district level: at least Secondary school certificate; Counsellor at local level: six years of primary education; Cell level: literacy (“able to read and write”).

Restriction related to the criminal law: being convicted it is a common reason not to be allowed to become a candidate for various positions. For the Chamber of deputy the candidates shall be “a person of integrity” which means that there should not be any criminal record. Members of the

Senate should not having been deprived of civil and political rights, not having been sentenced to court of last instance to a term of imprisonment of six month or more in respect of which there has been no amnesty or rehabilitation. Becoming a candidate for the Senate is not allowed for: Persons who have been placed under protection of the justice, persons who have judged to be responsible for insolvency or bankruptcy of corporate bodies under their management and who have not been rehabilitated. For presidential candidates should not have been convicted and sentenced to a term of imprisonment of six month or more and not have been deprived of his or her civil and political rights.

In addition there are a number of *other* different requirements:

- Candidate for the Chamber of Deputy cannot be a “persons suffering from mental incapacity certified by a medical doctor”.
- Members of the Senate shall be: “Citizens of impeccable character”; “qualities of inararibonye”; “on basis of individual merit, without regard to political affiliation”; “highly skilled in the fields of science, law, politics, sociology, culture,;”; “or persons who have held senior positions in the public or private sector” and they must further fulfil: being an “inararibonye”; having irreproachable morals and probity.
- A candidate for presidency further shall: be of Rwandan nationality by origin, not hold any other nationality, have at least one parent of the Rwandan nationality by origin, have irreproachable morals and probity.

Discussion:

- *Exclusion from the right to become elected are severe restriction of political freedom and therefore it is desirable that such restrictions are defined in a constitution as well as restrictions from the right to vote (see above).*
- *The exclusion from becoming a candidate because of various committed crimes leaves question marks here again and the various rules are not fully comprehensible in their consequences. How many people are in fact excluded from the right to vote through such regulations for the different posts? Is the exclusion from the voting right only while being in prison or is it for ever or for a certain time? Are there differences between the different categories of conviction? Are people sitting in a prison prohibited from registering even when they have not been convicted? Simpler and clearer definition is desirable and some of the regulation seem unnecessary. A simple solution could be: anybody sentenced to prison for more than x month is not allowed to vote during the time of the sentence and for x month after the prison sentence has ended. Because having lost the right to vote any such person would then automatically be excluded to become a candidate too and there is no need for any further regulation.*

- *Why are refugees mentioned? Refugees from other countries do not have Rwandan citizenship and therefore are not entitled to vote anyway.*
- *Age requirements for candidates have become more and more unusual around the world and they often seem arbitrary. Why should somebody with 34 not be competent to become president but with 35? Why not leave it to the voters to decide if they find somebody young candidates suitable for a certain position or not.*
- *Education: Although it is understandable that education is important for certain functions, the different levels of education needed for different positions seems arbitrary too and it is not clear how many people are actually excluded from becoming a candidate for some posts. Furthermore it is unclear how some of the criteria are enforced: for example how does somebody prove whether she/he can write if this rule is enforced at all. The question here is the same as with additional age requirements: why not leave it to the voters to decide whether somebody is suitable for a position or not?*
- *There are a number of "other" criteria that need to be fulfilled for some positions and it is very unclear how they are applied. How can one prove whether a candidate for the senate has "impeccable character" or whether a presidential candidate has "irreproachable morals and probity"? It is desirable in my view that criteria and restriction are clearly measurable such as age and education or valid convictions by a recognised court. Vague and unclear criteria should not be in a law.*

3.6.3 Campaign regulations

Allowing different parties and candidates to campaign and making their views known to the voters prior to an election are essential for any functioning democracy. In Rwanda there are several regulations related to the campaign. For all the elections the time for campaign is limited. For the last legislative and presidential elections in 2003 the period of campaign was defined by presidential order and started at least 20 days before election and closed 24 hours before the election. Limits exist for the campaigns for local elections too (the start was 15 days before and the end 24 hours before the last local elections). Written notice must be given to the Mayor of the District, Town or Municipality 24 hours before a meeting when any political party or any candidate wanted to have a campaign meeting. No two or more campaign meetings are allowed at the same time in the same Cell or in any one sector of a District, Town or Municipality. Priority in such cases was given to the first applicant. Campaign activities based on commerce, donations of money or in kind intended to influence or attempting to influence the voter are prohibited. The use of property owned by the State or its institutions for the same purposes is prohibited. It is prohibited to abuse or defame in any manner whatsoever any one or more election candidates or list of candidates during election campaigns. Campaign material can be placed only on special areas reserved by decentralised

organs, Candidates and parties are given equal space. Outside these areas the display of campaign material is prohibited.

For the last local elections the “candidate must avoid all disparaging and deceptive words or speech that would encourage sectarianism. He/Se cannot campaign in the name of ethnicity, regional, political party or religions belonging.

Discussion:

- *Comprehensible in the light of Rwanda’s recent history, the control over the campaign is very tight. In its current form it limits partly the right of association (through prohibiting parties to become involved in local elections) and the right of freedom of speech (through restricting the campaigns in various ways). It would be a sign of political normalisation that some of those restrictions would be lifted.*
- *Furthermore it is not very clear how some of the regulations are applied in practice. What does it mean to “abuse or defame” another candidate? How is it defined that a speech encourages sectarianism and who defines it? How is it defined that a campaign is in the name of ethnicity or religion and who defines it? Given that the political contest is in its nature about the difference of one candidate to another in any relevant aspect, it seems very difficult to find clear criteria and they are not given in the law itself.*
- *Because these regulations restrict fundamental rights, there should clear definitions and clear and strict procedures how they are applied. Preferably sanctions should be taken by the judicial system.*

3.6.4 The voting and counting process

For the presidential and parliamentary elections there were very clear regulations how the voting shall take place in every ballot station. Polling stations were open between 7 am and 3.30 pm for the last local elections (it is planned to close a bit earlier, at 3 at the local elections in 2006 according to the draft law) for the national elections polling stations were open between 6 am and 3 pm and extended if not all voters cuing were able to cast their vote after the deadline. There are a number of regulations to ensure that voting takes place secretly and that there are no attempts to influence a voter’s decision in the polling station. Further there are clear instructions how the voting ends and how to proceed after the voting has ended. While the counting at the last local elections took place the day after the vote, for the presidential and legislative elections the counting followed immediately after the voting ended. For the next local elections counting should take place immediately after the closing of the polling station too.

Discussion:

The regulations of the voting and counting procedure seem clear however it is of course decisive how well these rules are applied. Some question marks are related to access to the voting and counting procedures by independent observers which should be guaranteed unconditionally at all stages of the voting and counting process. Further it is not fully clear how the validation of votes is conducted after the counting has been done at each polling station. It should be also clearer how and when the results are published. It is of course desirable that the results of all the polling stations are published and the protocols are accessible.

4. Concluding remarks

4.1 Balancing different criteria and principles

Chapter 2 of this report has listed several democratic principles and electoral criteria which are relevant for a functioning democracy. It is impossible to fulfil all the criteria simultaneously, because some of the criteria are contradictory. For example governability and inclusiveness can not be maximised at the same time. If there are too many political groups and those groups are very small it becomes difficult in every country to form an effective government.

One has to acknowledge the very specific historical, social and political context of a country, which in the case of Rwanda is strongly related to the very recent history and the genocide that took place only little more than 10 years ago. The political institutions and many aspects of the electoral framework strongly reflect this history. While trying to include the different political forces through mechanisms of power sharing and checks and balances, there is at the same time a restriction of competition and tight control over the electoral process. Unfortunately, however, the same mechanisms of control to prevent genocide may be used to repress any political force in a country. Therefore safeguards against any influence and limitations of the electoral process are desirable.

The function of such a report is to stimulate discussion about the current framework. Therefore some thought about the overall framework may be added at this point.

- The principles of simplicity and accountability may be strengthened in future. Indirect elections weaken accountability and decrease simplicity. While it is comprehensible that the representation of women, youth or the handicapped shall be guaranteed, the regulations that ensure this inclusion can be different. For example a quote system could replace the current system of indirect elections. With closed lists and a legal threshold of 5%, effective representation of women would be comparatively easy.
- Reforms may be necessary and they are about to bring insecurity into any political system and they tend to have unintended side effects. Therefore there must be good reasons for such a reform. The ongoing decentralisation reform has severe consequences for the local electoral

framework – as well as some for the national electoral framework – and it is not subject of this report to assess whether there are sufficient reasons for such a reform. The consequences of the reforms are that they completely reshape the political market at the local level and the desirable process of local democratisation one associates with local elections has to start from scratch again. Therefore it is desirable that the newly formed structures will survive for longer than the previous structure.

4.2 The overall electoral framework

While the overall institutional framework and the electoral regulation meet democratic standards in general, some adaptation in the future may be desirable:

- There are a number of regulations affecting basic individual political rights, such as the freedom of speech and freedom of association and the freedom to exercise political rights through restricting the right to vote and especially restricting candidacies for various groups. There exist special age and education requirements for some positions, and there are some other, sometimes rather vague criteria that somebody has to fulfil in order to become a candidate. Restricting basic rights are severe restrictions and they should be used in a very reluctant way. Because of its importance, regulations restricting such freedoms should not be defined in a law or decree but should be mentioned in the constitution. Furthermore they should be clear and objectively applicable.
- Currently there are separate electoral laws for every single election. An electoral code governing all elections however seems desirable for at least two reasons. First, some of the regulations e.g. concerning the registration process, candidacy, campaigns and the counting process do not vary between the elections. Second, having a permanent law governing elections makes it more difficult to change everything, which is desirable for institutional stability.
- The current open elections with lining up behind candidates at the cell level reduce administrative costs massively. The non-secrecy of the vote at these elections are undesirable especially because the elected representatives at the cell level have further representative functions. For example the members of the cell executive committees become members of the sector council, which then elects the sector executive committee. The sector executive committee members have a voting right for the provincial senate seats. Should the cell level representatives still be elected through the current non-secret procedure, those elections should ideally not have any consequences for the elections of other authorities. Since the number of sectors and districts are likely to be reduced to a great extent with the ongoing reform, it should be easily possible to increase the number of direct elections at the different levels.
- Political parties are currently not allowed to campaign in local elections. The official explanation for that is that the people do not want parties, given the role parties played during the geno-

cide. However, why is then necessary to ban parties at the local level? First, all local elections are majoritarian elections where formally parties do not play a role anyway because individual candidates are elected and not parties. Second, if people really do not want parties at the local level they will not vote for candidates representing any party. Wise candidates will not make reference to parties in this case and they will stay independent. Logically follows when formally parties do not play a role at local elections anyway and if the argument is true that people do not like parties at the local level there should not be a need for any restriction regarding party organisation at the local level at all.

4.3 Electoral procedures

It is of course not possible to assess how the electoral institutions in Rwanda work in practice. In order to do so one needs to monitor the political process over a long time and the electoral process very closely at election time. Nevertheless I would like to add some general observation.

The organisational capacity and the expertise of the permanent members of the national electoral commission was very impressive for me, especially taking into account that Rwanda and the team of the electoral commission have only an electoral experience of very few years.

In previous elections the electoral process has been subject of criticism in several reports.¹ The electoral commission has been accused of lacking independence and of extensive control in favour of the ruling party. A main criticism has been that the electoral commission used its power to hamper opposition parties and candidate when they wanted to become candidates, during the campaign period and at the counting process. The national electoral commission has regularly refused these accusations as being inappropriate.

It is not possible to judge on any of criticism mentioned in those reports. Nevertheless it should be in the interest of everybody to further strengthen the independence and the organizational capacity of the National Electoral Commission. There are a number of possibilities how this can be achieved:

- The regulations regarding suffrage rights and candidacy could be unburdened from unspecific and unclear regulations. Citizenship, age, education are clearly defined and applicable. It is applicable too, that convicted people for severe crimes should not be allowed to vote or to become a candidate during the prison sentence and/or for some time after the sentence. How-

¹ Report of the International Crisis Group on the local elections of 2001, a report of the EU + Switzerland and a report of the Norwegian Institute of Human Rights regarding the legislative and presidential elections of 2003.

ever this makes some other regulation unnecessary. For example, if “divisionism” is a crime that leads to a prison sentence, there is no need to specifically mention this.

- Therefore, in my view, the judgment of whether a candidacy is refused other than because of objective and measurable criteria such as age, level of education should be left to the judicial system and not to the electoral commission. Should somebody be excluded for any other than objective criteria, it should be connected to a legal process outside the electoral commission.
- The same is true for some of the campaign regulations. Some of the regulations seem very difficult to apply and partially even against the nature of politics. For example the law on national elections says that “it is prohibited to abuse or defame in any manner whatsoever any one or more election candidates or list of candidates during election campaigns”. How does one judge what “defame” or “abuse” means? This regulation could be interpreted in way that it is not allowed to criticise any other candidate during a campaign. However, criticising an incumbent party or candidate is the essence of an electoral campaign and not allowing criticism seems rather strange. The same is true for local elections. How does one define whether somebody campaigned “in the name of ethnicity, regional, political party or religions belonging” which is not allowed. The solution to that would again be to leave the judgment of divisionism to the judicial system and erase corresponding regulations from the electoral laws. Having a clear separation between judicial regulations and the criteria the electoral commission has to apply would in my view heavily facilitate the work of the electoral commission and would make the commission less subject to undesirable and unnecessary criticism.
- In any case the electoral commission may consider a further improvement of the reporting about the different measures taken by the electoral commission at the various steps of the elections. Because some of the regulations restrict basic political rights, every case when somebody has been excluded from running as candidate or when the commission intervened at an election should be reported.
- Regarding the voting and counting process it is undesirable that there are any restrictions about monitoring and observing the electoral process. It is of course common that anybody who hinders or tries to influence an independent voting and counting process can be removed from a ballot station or a counting location, however there should not be any other restriction.
- While there are very clear rules how counting takes place at the ballot station, it is unclear to what follows afterwards. It is in my view essential that the results at the level of every ballot station are published or at least accessible to anybody. The original minutes each of the ballot stations should be accessible too.

4.4 The forthcoming local elections

The next elections ahead are the local elections scheduled for March 2006. Because of the large ongoing decentralisation reform, these elections take place in completely new institutional environment. Nevertheless there is experience with previous elections and there is little doubt that the forthcoming elections will be organized as efficiently as the previous elections. For forthcoming elections some development would be seen as encouraging for the process of democratic consolidation in Rwanda:

- The control over the electoral process should become less tight. Allowing candidates and parties to compete with as little restriction as possible would be a sign of maturing political elites and voters committed to peaceful democratic processes. Should it not be possible to erase some of the regulations, having to intervene less often could be another thing of increasing political stability.
- Regulations regarding candidacy and party registration should become clearer and less subject of interpretation by the electoral commission.
- A stronger reporting is desirable. It might be helpful for everybody when at the end of the election a report is produced that lists all the results at the lowest possible level and specifies the measures taken by the electoral commission in correspondence with the electoral law.
- For the local elections themselves it will be the task of the various political forces, the media as well as independent national and international observers to closely monitor the local electoral process from the beginning to the end.
- It would be further interesting to analyse further the electoral results at the local level and to have data available about the different candidates and their results. This could be a way to gain some insights about the electoral process and the behaviour of the voters in Rwanda's elections.

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