

Party politics and the right to be critical

The remainder of this monograph will move away from election-specific democracy criteria to other factors that ensure a strong and vibrant democratic society. As mentioned in Chapter One, the regular holding of elections – even when they are conducted in a free and fair manner – is not a sufficient characteristic of a mature democracy. To put it in social science terms, free and fair elections are a necessary, but not sufficient, variable. The remainder of this review will concentrate on other necessary variables that deal with the political system as it functions between elections.

This chapter looks at the conditions for multi-party politics in the eight countries under review and asks whether, and to what degree, a country's political system allows different and differing opinions to be represented in a multi-party system. Broader questions of how the state cares for different groups and segments of society, and whether there are biases regarding who benefits from public goods and services will be discussed in Chapter Six. Chapter Six asks how inclusive or exclusive the political systems of the eight countries are.

As previously, this chapter will look at both formal arrangements and informal practices. Regarding the formal system, the chapter asks: Are (opposition) political parties allowed to form and what are the legal and administrative restrictions on their formation? Do opposition parties have avenues of obtaining funding by legal means, and are they allowed to arrange meetings and other activities free of police or other interference? Can citizens demonstrate and exercise freedom of speech, even when that freedom is used to criticise the government? If political parties are allowed to form and meet, are they also allowed to run and campaign for political office? The informal practices include: If the legal system allows multi-party politics, is this system respected in practice? Are informal barriers put in place to undermine the organisation and operation of opposition

parties? Are intimidation and fear used to hamper the activities of opposition parties? Although relevant, media coverage and access will not be discussed here, since this topic is covered in another of the AHSI monographs which looks at the level of civil society participation in politics and governance.

The progress of democratisation since the end of the Cold War is evident when looking at the existence of multi-party pluralism in the selection of countries reviewed here. While none of the eight countries allowed party plurality at the end of the 1980s, by 2004 all except one had

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introduced some version of a formal system of multi-party politics.⁶⁹ The exception is Uganda, which has rejected party politics in favour of a “Movement” system. The system in some of the other countries (Algeria and Ethiopia) is too weak and limited for these countries to be called fully-fledged multi-party democracies. This section will first describe the countries that have come far in creating institutions and laws that support multi-party pluralism; then turn to those that still have shortcomings; and finally discuss Uganda, which has rejected party pluralism altogether.

5.1 The front-runners

Ghana, Kenya, Senegal and South Africa have made great progress over the review period when it comes to institutionalising a system and practice of multi-party pluralism. All four, and South Africa in particular, have strong formal systems and laws allowing political parties to form, meet, criticise the government, and put forward candidates to stand for political office. Equally important, they do no longer have serious practical impediments to multi-party politics, although, as this section will show, the gains are very recent and some problems remain.

⁶⁹ South Africa had several political parties during apartheid but racial segregation and the exclusion of non-white parties from the elections that really counted, meant that this system could not be characterised as multi-party pluralism.

The constitutions of all four countries guarantee the right of citizens to form parties and to express their political views, including criticising the government.⁷⁰ While South Africa and Kenya allow parties to form along identity lines (except extreme ones such as overtly racist ideologies), Ghana and Senegal do not allow parties to form on the basis of ethnic, religious, regional or other divisions on the grounds of preserving national unity. This is also the case in Algeria, but as the discussion below shows, it is a significantly more critical problem in the North African state than in Ghana and Senegal due to the former's strong popular support and government repression of Islamist parties as well as the discrimination against the country's Berber minority. Another, probably unwarranted, restriction in Ghana, is the clause that prospective parties must furnish the electoral commission with proof that it is a *national* party by showing that it has at least one founding member in each district of Ghana. However, Ghana currently has nine registered political parties, seven of which competed in the 2000 elections and four of which won seats in parliament, implying that the requirement of national reach has not been too great a hinder to party formation. In South Africa, the parliamentary dominance of the ANC is not due to any malfunctioning of party pluralism but a result of its strong popular support. Senegal, which did not have a multi-party system until 1981 has had an explosion of parties since then. There were 28 parties in 1998, 41 in 1999 and around 60 at present, approximately 20 of which are significant.

Kenya, a *de facto* one-party state since 1969 and a *de jure* one from 1982, reverted to multi-party politics in 1991. However, the system remained flawed until a compromise on reform was reached by the Inter-Parties Parliamentary Group (IPPG) in 1997. Before then, the governing party ensured an uneven playing field in several ways. First, it allowed the registrar discretionary powers not to register, or to deregister, parties. Registration of opposition parties would be delayed until shortly before elections. The IPPG agreed that a backlog of registration applications should be cleared, resulting in the number of political parties rising from 8 to 27 before the 1997 election. In 2002 there were a total of 51 registered

⁷⁰ See, for example, South Africa's Constitution (1996), Act 108, section 19(1).

parties. The new draft constitution suggests that registration of parties should be left to the electoral commission.

Second, opposition candidates were prevented from handing in nomination papers in government party strongholds. Some areas of the country were made no-go areas for opposition candidates. The police obstructed opposition rallies across the country by refusing to grant licences or withdrawing them at the last minute. This practice was changed in 1997 when the licensing requirement was abolished. Now parties only have to notify the police. Although there is still some repression by authorities of unwanted gatherings, the rights of opposition parties, trade unions and civil society groups to mobilise have never before been better respected or enjoyed in Kenya.⁷¹

Third, public finances were used extensively to support government party election campaigns. While still a problem, this has improved and may improve further if the present government's promise to fight corruption stays on course.

Similar improvements on all counts have taken place in the three other countries. Ghana, South Africa and Senegal now only require notification of the police to hold rallies, and demonstrations are seldom disrupted.⁷² The discretionary power of the police to ban a planned gathering on grounds of public security is seldom exercised. While people's right to demonstrate was vastly improved in South Africa with the democratic transition in 1994, the changes in Ghana and Senegal are more recent. In Senegal, the police can only ban demonstrations on grounds of "public order". Since this term leaves considerable room for interpretation, it was used regularly under the Parti Socialiste regime to ban marches and meetings by the opposition. During the 1980s and 1990s, rallies and meetings by the opposition often led to violent clashes with the police and demonstrations would regularly result in opposition figures facing short jail terms. But such instances have grown rare with progressive democratisation in Senegal.

In Ghana, likewise, the environment for citizens' political expression has improved dramatically over the last four years, and particularly since

71 Ng'ethe *et al.*, *op cit*, p 17.

72 See, for example, South Africa's Regulation of Gatherings Act, section 1(vi).

the peaceful change of government in 2001. Before then, political rallies were often broken up using violence. For instance, in 1996 pro-government forces countered a massive demonstration by a coalition of opposition forces, resulting in the death of five persons. Critics of the government would often be harassed by the security agencies. In contrast, mass opposition demonstrations (dubbed “Kafo Didi”) in Accra and Kumasi were held in 2003 without much difficulty. Criticism of the government is rife and opposition newspapers are often extremely critical without suffering government retribution.

Political parties in Ghana and Kenya do not receive state funding.⁷³ In Ghana, only citizens can make contributions in cash or kind to a political party. Most parties have not provided public accounts of how they fund their activities, but it is believed that personal donations by a few wealthy individuals are the main sources for funding election campaigns in Ghana. It is also suspected that ruling parties fund themselves through kickbacks from public contracts awarded to party loyalists and other corrupt practices. In short, managing political party funds is problematic in Ghana. Kenya also suffers from opaque arrangements for the financing of parties and, to deal with this, the new draft constitution suggests that the parties should receive state funding and be subject to public scrutiny. South Africa allows both public and private funding of political parties and donations by foreign nationals. In Senegal, no media advertisement is allowed and access is opened to the state media in an attempt to reduce campaign costs and hence reduce the impact of inequalities in resources between political parties.

In Ghana, all parties have been able to campaign freely and safely across the country, although there is often tension when a party “invades” the strongholds of opponents. In South Africa, the environment is generally safe, although in both the 1994 and 1999 elections there were some no-go areas for most, if not all, political parties. This was particularly the case in areas of KwaZulu-Natal where, depending on the particular group allegiances in the area, it was too unsafe for either the ANC or the

73 Ghana’s Constitution, art. 55, section 15; Ghana’s Political Parties Act (2000), Part III, sections 23–24.

Inkhata Freedom Party to enter.⁷⁴ In Senegal, access for campaigners has only been a problem in one are of the country – in Casamance, the separatist Mouvement des Forces Démocratiques de Casamance has tried to impose a ban on all political activities in the area. A number of electoral convoys (a Parti Socialiste convoy in April 2001 and a Democratic Party of Senegal [PDS] convoy in April 2002) have been attacked. Nevertheless, some level of campaigning has taken place in Casamance throughout the years, and elections have been organised through discrete negotiations. Sometimes influential marabouts have forbidden party activities. This happened in Médina Gounass (Upper Casamance) during the presidential (2000) and legislative elections (2001).

5.2 The less pluralist systems

Algeria, Ethiopia and Nigeria are categorised as somewhat short of multi-party systems. Singling out these three countries does not mean that everything is perfect in the four previous ones. However, the problems experienced in Algeria, Ethiopia and Nigeria are at a more profound level.

Algeria cannot be described as a fully party-pluralist democracy. After being introduced in 1989, the multi-party system was quickly restricted again. The Algerian constitution of 1989 guaranteed freedom of association to all Algerian citizens, opening up for the free formation of political parties. Almost 50 secular and Islamic-orientated political parties contested the first-ever multi-party municipal elections in 1990 and the first-ever multi-party general elections in 1991. The FIS won more than 50 per cent of the vote, which prompted the military powers to cancel the second round of legislative elections in January 1992. Parliament was disbanded, and only functioned again after the 1997 parliamentary elections. This time, the revised 1996 constitution explicitly prohibited the formation of political parties based on ethnic, language, regional, corporatist (trade union) or religious identity, thus legalising the ban on FIS and other Islamic parties.

The Interior Minister dissolved 30 political parties before the 1997 elections based on their failure to comply with restrictive constitutional and administrative criteria for registration. In 2002, many candidates were

74 D Kadima, *South African elections observer mission report*, Electoral Commissions Forum of SADC Countries, 1999, p 18.

disqualified from contesting national elections for belonging to or being considered too “close” to the FIS.⁷⁵ In Kabylie, home to about two million Berbers, most residents boycotted the 2002 elections. The restrictions on party formations meant that members of this significant Algerian minority were not allowed to create political parties to represent their interests. In 2004, the situation improved, including in Kabylie. While several presidential candidates were disallowed this time too, the participation of a Berber candidate as well as a moderate Islamist helped ensure an election more broadly reflective of Algerian public opinion.

Algerian parties that have been approved by the Minister of the Interior are entitled to state funding. However, during the 1997 local, provincial and municipal elections, there were widespread allegations that the newly formed RND party, supported by the military, received more funding from state coffers than other parties.

An added obstacle to multi-party politics is the state of emergency operating intermittently in many parts of Algeria. Although the constitution guarantees “legal” political parties the freedom to campaign for elections, violent protests hampered election campaigning in the Berber-dominated Kabylie province during the 2002 elections. The sweeping powers given to security forces, the Minister of the Interior and local governors (*walis*) under state of emergency legislation also hinder political activism and campaigning. In regions such as Kabylie, anti-government protesters are routinely rounded up, arrested and kept in detention.⁷⁶ While several cases of unlawful arrest led to the conviction of individual perpetrators, most cases of abuse by the security forces in their low-scale “war” against militant Islamism have not been heard by the courts, or have been dismissed. The security forces continue to act with impunity, even in cases of legitimate or non-violent protests. Their targets are usually supporters and leaders of assumed radical Islamist groupings.

Ethiopia never set out as optimistically as Algeria, but the country changed from a Marxist-Leninist authoritarian and centralist state to (at least formally) a federal multi-party democracy in 1991. Ethiopia's

75 Human Rights Watch, Algeria in *World Report 2003*, Human Rights Watch, New York, 2003.

76 S-E Sidhoum and Algeria Watch, Algeria: Guerre, émentes, état de non-droit et destruction sociale: Situation des droits humains en Algérie année 2002, *Algeria Watch*, March 2003, www.algeria-watch.de/fr/mrv/2002/rapport_2002/rapport_2002.htm (accessed 9 March 2004).

restrictions on multi-party politics are of the exact opposite nature to those of Algeria. Ethiopia's political system since 1991 is based on ethnic federalism (after Stalin's theory of nationalities) in which each nationality has the right to self-government and secession as the ultimate resort. In this ethnic federal system, people can participate in political activities only as members of ethnic parties and organisations; there are no such things as national political parties, and the ruling coalition, the EPRDF, is a conglomerate of ethnically-based parties claiming to represent the nationalities of their respective regions.

There are a large number of opposition parties in Ethiopia, indicating that there is no significant constraint on their formation. However, due to the ethnic federal system, parties are registered within specific regional states and can only present candidates for election within these regions. The great majority of opposition parties are therefore restricted to particular regions. Any would-be national opposition party would have to demonstrate support across different regions in order to be registered there. This places a considerable obstacle in the way of nationwide opposition parties. Opposition parties also struggle financially and do not get state funding.⁷⁷

In practice, even regionally-based opposition parties face a hard time. Their meetings are often subject to considerable harassment by the authorities. At the rural level, opposition candidates are often discriminated against when seeking to stand for election. Candidates are required to secure the signatures of a certain number of voters within the constituency in order to stand for election, and the signatures for opposition candidates are liable to be scrutinised and rejected on flimsy grounds. The right to assemble is guaranteed by the constitution but demonstrations and rallies are in practice controlled, often by violence. In one of the worst incidents, peaceful demonstrators in the city of Awassa in March 2002 (who were opposed to a planned change in the legal status of the city) were machine-gunned by government forces, causing numerous deaths. There is little judicial redress from excesses by government or police as the police operate as an arm of the government. The courts, though nominally independent, are too slow to provide real redress, and are also liable to varying levels of government interference.

⁷⁷ Pausewang *et al.*, *op cit*, p 12.

Despite significant improvements in recent years, Nigeria should also be classified as a partly rather than fully party-pluralist polity. This is mainly due to subversive actions taken by the police, government and even the electoral commission, rather than the country's constitution and legal system.

The constitution grants every Nigerian the right to freedom of expression and freedom to associate with other persons as well as to form or belong to political parties. It confers the power to recognise and register political parties to the electoral commission.⁷⁸ The commission has not performed this duty well. Its decision to impose costly registration fees and strict criteria, including that a party must have offices in at least two-thirds of the provinces, has hampered the formation of new parties. Only three parties were registered in 1998. In the build up to the 2003 elections, about 40 new political parties seeking registration argued that these conditions were unconstitutional, and 27 of the parties took the matter to court. Several court rulings during 2002 concluded that the electoral commission had indeed acted unconstitutionally and that the only requirements political parties needed to meet for their registration was to provide their logo and constitution, along with the addresses of its offices and principal officials.⁷⁹ All 27 parties were subsequently registered, bringing the total number of parties registered for the 2003 elections to 31. In early 2003, the courts also ruled that the electoral commission's "processing fees" were illegal.⁸⁰

While the last few years have seen great improvements in political parties' right and ability to register and stand for elections, other aspects of party activities have not improved to the same degree. The police authorities in Nigeria have a record of viewing the public rallies by opposition parties and government critics with suspicion. For instance, a rally called by the main opposition All Nigeria People's Party in the northern city of Kano on 23 September 2003 against alleged rigging of the general elections, was dispersed by the police with tear gas and batons. The following day, the party vice-presidential candidate and former Senate

78 Nigeria's Constitution, sections 39–40.

79 IRIN, Nigeria: Supreme Court gives green light to new parties, *IRIN*, 11 November 2002.

80 IRIN, Nigeria: Court rules fees charged by electoral body illegal, *IRIN*, 7 February 2003.

president, Dr Chuba Okadigbo, died after his health was said to have deteriorated following heavy inhalation of tear gas.⁸¹ Human rights and pro-democracy activists who held peaceful demonstrations against President Obasanjo's government in Nigeria's biggest city of Lagos on 3 December 2003 were similarly dispersed.⁸²

5.3 The “no-party state”

As mentioned already, Uganda has a so-called no-party or “Movement” system and as such fails by definition in a review of multi-party pluralism. Parties are allowed to exist, but not to forward candidates for elections, hold rallies or campaign. This does not mean that Uganda's system by necessity has nothing going for it. The debate on whether the introduction of a competitive – and sometimes aggressive – multi-party system too early on in a democratisation process is desirable or dangerous is a valid and interesting one. However, it does mean that, first, Uganda's political system cannot be called a fully-fledged democracy according to generally agreed standards; and, second, that despite signing up to the AU Heads of State's many statements on the desirability of multi-party democracy,⁸³ the country's leadership has not committed itself in practice to introducing such a system.

An important question when reviewing Uganda's system is whether there are signs of any intention from the NRM leadership to gradually introduce a multi-party system. At the moment, there does not seem to be such an intention. The 1995 Constitution retained the Movement system, although it included a provision for the people to change the system at the end of the fourth year of parliament. A referendum was consequently held in June 2000, where voters were presented with the choice between the Movement and a multi-party system. Over 90 per cent voted to retain the Movement system for another five years, with a voter turnout of

81 C Okocha and Y Musa, How Okadigbo was tear-gassed – Witness, *ThisDay*, 27 September 2003.

82 IRIN, Nigeria: Police break up march by human rights protesters, *IRIN*, 3 December 2003.

83 For instance, the OAU document setting out the NEPAD goals includes among these “political pluralism, allowing for the existence of several political parties and workers' unions”.

51 per cent.⁸⁴ However, there were several problems with the referendum. The major political parties who opposed what they deemed to be the monopoly politics of the NRM government boycotted the referendum. The NRM government was accused of making the referendum into a vote of confidence for the Movement leaders and President Museveni in particular rather than a question of what political system these leaders should work under.

The Movement system is meant to be broad-based, inclusive and non-partisan. However, in practice it guarantees the monopoly of politics by the state party, the NRM – making it a one-party rather than a no-party state. All political activity is conducted within the official framework, and every citizen is a member of the NRM. A system that does not allow autonomous political activities and does not provide opportunities for the expression of dissenting viewpoints will inevitably begin to display repressive characteristics sooner or later. Indeed, Ugandan politics are tainted by the fear and intimidation experienced by citizens who would like to express other views than those of the Movement.

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5.4 Conclusion

Generally, the commitment to multi-party pluralism has strengthened considerably within this collection of eight states. However, in Algeria, Ethiopia and Uganda, gains made are overshadowed by formal and informal, legal and extra-legal mechanisms with which to ensure that opposition parties do not rise to prominence. In some, if not all, of the other countries, improvements are very recent. Sustained efforts, by government and opposition, are necessary to ensure that the positive trend continues.

⁸⁴ Republic of Uganda, *Report on the Referendum 2000 on Political Systems in Uganda*, Electoral Commission, Kampala, 2001.