**Annexure ‘B’**

**Study on the Right to Equal Participation in Political and Public Affairs in Africa**

**The African Charter system and the right to political participation**

**African Commission on Human and Peoples’ Rights and African Court on Human and Peoples’ Rights**

Both bodies monitor compliance with the African Charter on Human and Peoples’ Rights

Relevant provisions of the African Charter:

In addition to article 13, the following provisions are also relevant:

Article 10(1):

*Every individual shall have the right to free association provided that he abides by the law.*

Article 20:

*1. All people shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.*

*2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.*

Article 21(1):

*All people shall freely dispose of their wealth and natural resources. The right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.*

Article 22:

*1. All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*

*2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*

Cases

**Prohibition to stand for political office**

Botswana: *Modise v Botswana[[1]](#footnote-1)*

The complainant claimed the right to Botswana citizenship and nationality by ancestry. After founding an opposition party, the complainant was declared an “undesirable immigrant” and arrested and deported without trial a number of times. When Botswana did provide the complainant with nationality it barred him from being elected and becoming President of Botswana.

This restriction violated the right to political participation (art 13(1)) and the right to access public services (art 13(2)).

The Gambia: *Jawara v The Gambia[[2]](#footnote-2)*

The peoples’ right to self-determination (art 20 (1)) was violated when the new Government of the country deposed the duly elected Government in a *coup d’etat*. Banning ministers of the former civilian government from taking part in any political activity violated both the right to freedom of association (art 10(1)) and participation in the government of the country (art 13(1)).

Zambia: *Legal Resource Foundation v Zambia[[3]](#footnote-3)*

The requirement that anyone who wanted to contest the Office of the President had to prove that both parents were of Zambian birth or descent, violated the right to equality (art 3(1)), and political participation (art 13).

Côte d’Ivoire: *Mouvement Ivoirien des Droits Humains (MIDH) v Côte d’Ivoire[[4]](#footnote-4)*

While placing restrictions on eligibility for the office of President and (Deputy) Speaker of the National Assembly is in itself not a violation of human rights, the requirement that an individual can only exercise the right to stand for the above posts if both her parents were born in Côte d’Ivoire, is unreasonable and unjustifiable, and an unnecessary restriction on the right to participate in government (art 13).

Tanzania: *Tanganyika Law Society & The Legal and Human Rights Centre v The United Republic of Tanzania*[[5]](#footnote-5)

Nullifying the right of independent candidates (who are not members of a political party) to contest Presidential, Parliamentary and Local Government Elections violated the rights to political participation (13(1)) and freedom of association (art 10).

**Prohibition and dissolution of political parties**

Swaziland: *Lawyers for Human Rights v Swaziland[[6]](#footnote-6)*

The King’s Proclamation, which vested him with legislative, executive and judicial power, and outlawed the formation of political parties or any similar structure, violated the rights to freedom of assembly (art 10(1)) and political participation (art 13).

**Elections and electoral bodies**

Nigeria: *Constitutional Rights Project v Nigeria[[7]](#footnote-7)*

The annulment of election results, which were declared by both foreign and local election monitoring groups as free and fair, violated the right to political participation (art 13) and the right of a people to determine their ‘political status’ (art 20(1)).

Côte d’Ivoire: *Actions Pour la Protection des Droits de L’homme v The Republic of Côte d’Ivoire[[8]](#footnote-8)*

A political imbalance amongst the members of the Ivorian electoral body constituted a violation of the state’s commitment to establish an independent and impartial electoral body (art 17 African Charter on Democracy and art 3 ECOWAS Democracy Protocol), and a violation of the peoples’ right to political participation (art 13).

**Voter registration**

The Gambia: *Peoples’ Democratic Organisation for Independence and Socialism v The Gambia[[9]](#footnote-9)*

The requirement to provide an address and identification when casting a vote was an integral part of ensuring free and fair elections (art 13(1)).

The Gambia: *Purohit & Moore v The Gambia[[10]](#footnote-10)*

A denial of the right to participate in government can only be justified by reason of legal incapacity, which is different from mental incapacity, or that the individual is not a citizen of a particular state (art 13(1)). The exclusion of mentally disabled persons from political participation constitutes a violation of article 13(1).

**Conduct of party-supporters**

Zimbabwe: *Zimbabwe Human Rights NGO Forum v Zimbabwe[[11]](#footnote-11)*

In this matter, the conduct of supporters of the ruling party constituted a violation of the rights to freedom of expression (art 9), association and assembly (art 10; art 11), and participation in government (art 13). For the state to be held responsible, such conduct must be directly connected to the state and not merely the direct *consequence* of state actions.

**Peoples’ right to self-determination and development**

Democratic Republic of the Congo: *Katangese Peoples’ Congress v Zaire[[12]](#footnote-12)*

In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called into question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by art 13(1), Katanga was ordered to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.

Rwanda & others: *DRC v Burundi, Rwanda, Uganda[[13]](#footnote-13)*

The deprivation of a peoples’ right to freely dispose of their wealth and natural resources in terms of article 21, also occasions a violation of the right to economic, social and cultural development and of the general duty of states to individually or collectively ensure the exercise of the right to development (art 22).

Cameroon: *Gunme & others v Cameroon[[14]](#footnote-14)*

Party representation of a people in the National Assembly is sufficient to meet the requirements of free participation in government in terms of art 13(1). Further, the right to self-determination cannot be exercised in the absence of proof of massive violations of human rights. The invocation of article 20 requires that the two conditions under article 20(2), namely oppression and domination, are met.

Angola: *Front for the Liberation of the State of Cabinda v Republic of Angola[[15]](#footnote-15)*

The right to pursue economic and social development (art 20) is deemed attainable within the framework of an existing state’s laws only if different groups and communities are represented in the decision-making institutions of the given state.

**The rights of indigenous people to be consulted in their development**

Kenya: *Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of Endorois Welfare Council v Kenya[[16]](#footnote-16)*

Any development or investment projects that would have a major impact within an indigenous peoples’ territory, the state has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions (art 22).

Kenya: *African Commission on Human and Peoples’ Rights v Kenya[[17]](#footnote-17)*

The state expelled the Ogiek, and indigenous group, from their ancestral land against their will, without prior consultation or compensation. Evicting the Ogiek without engaging in effective consultation and without involving them in the development of health, housing and social programs affecting them, violated their right to economic, social and cultural development (art 22).

1. ***Modise v Botswana*** (2000) AHRLR 25 (ACHPR 1997). [↑](#footnote-ref-1)
2. ***Jawara v The Gambia*** (2000) AHRLR 107 (ACHPR 2000). [↑](#footnote-ref-2)
3. *L****egal Resources Foundation v Zambia*** (2001) AHRLR 84 (ACHPR 2001). [↑](#footnote-ref-3)
4. ***Mouvement Ivoirien des Droits Humains (MIDH) v Côte d’Ivoire* (2008) AHRLR 75 (ACHPR 2008).** [↑](#footnote-ref-4)
5. *Tanganyika Law Society and The Legal and Human Rights Law Centre v The United Republic of Tanzania* (App. 009/2011). [↑](#footnote-ref-5)
6. ***Lawyers for Human Rights v Swaziland*** (2005) AHRLR 66 (ACHPR 2005). [↑](#footnote-ref-6)
7. ***Constitutional Rights Project and Others v Nigeria*** (2000) AHRLR 191 (ACHPR 1998) [↑](#footnote-ref-7)
8. *Actions Pour la Protection des Droits de L’homme v The Republic of Côte d’Ivoire* (App. 001/2014). [↑](#footnote-ref-8)
9. ***Peoples' Democratic Organisation for Independence and Socialism v The Gambia*** (2000) AHRLR 104 (ACHPR 1996). [↑](#footnote-ref-9)
10. ***Purohit and Another v The Gambia*** (2003) AHRLR 96 (ACHPR 2003). [↑](#footnote-ref-10)
11. ***Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006).** [↑](#footnote-ref-11)
12. ***Katangese Peoples' Congress v Zaire*** (2000) AHRLR 72 (ACHPR 1995). [↑](#footnote-ref-12)
13. ***Democratic Republic of the Congo v Burundi, Rwanda and Uganda*** (2004) AHRLR 19 (ACHPR 2003). [↑](#footnote-ref-13)
14. *Gunme & others v Cameroon* (2009) AHRLR 9 (ACHPR 2009). [↑](#footnote-ref-14)
15. *Front for the Liberation of the State of Cabinda v. Republic of Angola* (Communication No. 328/06, 54th Ordinary Session). [↑](#footnote-ref-15)
16. *Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Communication No.276/03, 46th Ordinary Session). [↑](#footnote-ref-16)
17. *African Commission on Human and Peoples’ Rights v Kenya* (App. 006/2012). [↑](#footnote-ref-17)