|  |  |  |
| --- | --- | --- |
| AFRICAN UNION |  | UNION AFRICAINE |
|  | UNIÃO AFRICANA |
| **AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS****COUR AFRICAINE DES DROITS DE L’HOMME ET DES PEUPLES**   |

**RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS**

Following your letter dated 23rd March 2017, the Registry of African Court on Human and Peoples’ Rights would like to propose the following points to be considered.

1. **Independent Candidacy and the Right to Participate in Public Affairs**

Article 13 of the African Charter on Human and Peoples’ Rights states:

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.

In interpreting Article 13 of the Charter in a case involving Tanzania, the African Court found that the requirement that an individual must belong to a political party in order to vie for political office is a violation of the right to freely participate in government.[[1]](#footnote-1)

As such, the Draft Guidelines should recommend measures to **promote independent candidacy** as a means to encourage wide participation in political affairs.

1. **Discrimination of Youth Participation in Political Affairs**

It is estimated that half of the global population is under 30. However, 73% of countries restrict young people from running for office, even though they can vote.

Young people deserve the same rights to run for office and age discrimination is a hindrance to full participation in political affairs.

As such, the Draft Guidelines should recommend measures to promote the rights of young people running for public office by seeking to lower the legal age of candidacy, and bring it in line with the age at which individuals can vote.

1. **Organization of regular fair and transparent elections (Article 3 and 13.1 et 2) of the Charter on Human Rights and Articles 10(3) and 17(1) of the African Charter on Democracy.**

In many countries, particularly in Africa, having regular, democratic and transparent elections is a serious challenge with a high risk of political instability, even violence and war. It is our view that the right to participate in public affairs depends also on organization of regular elections and how they are organized.

The African Charter on Human Rights and the African Charter on Democracy Governance and Elections are the main instruments dealing with organization of elections and the equal protection before the law on the continent.

Article 17 (1) of the African Charter on Democracy, Governance and Elections provides that: “State parties affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principle Governing Democratic elections in Africa”.

Article 10 (3) of the African Charter on Democracy states; “States parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society”

Article 3 of the Charter on Human and Peoples’ Rights provide that 1. Every individual shall be equal before the law; 2. Every individual shall be entitled to equal protection of the law

In a recent judgement in the matter *APDH v. Republic of Côte d’Ivoire*[[2]](#footnote-2), the African Court held that *“The composition of the Ivoirian electoral body is imbalanced in favour of the Government and that this imbalance affects the independence and impartiality of that body.”*

The Court also found that, “by not placing all the potential candidates on the same footing the impugned law violates the right to equal protection of the law as enshrined in the several international human rights instruments mentioned …..especially Article 10(3) of the African Charter and Democracy and Article 3(2) of the Charter on Human Rights”.

Regular, free, transparent elections encourages people to participate in government if they believe that their participation through voting can make a difference. However, where people perceive elections as unfree and unfair, it discourages participations and led to voter apathy.

1. **DISCRIMINATION AGANST MINORITIES**

The participation in public affairs for minorities groups like **indigenous peoples** has always been a challenge on the African continent. The national governments and the members of civil society are trying to improve the situation by promoting the schooling of the children in particular the girls. The **right to education** is an important tool to reach the participation in public Affairs.

In many African countries, minorities are still vulnerable as they are victims of many kinds of discrimination: marginalization, rights to participation in public affairs, right to culture, access to land, right to education etc.

1. **Women’s Rights**

Despite the efforts from different countries, in Africa, women are still facing challenges to participate in public Affairs. The Maputo Protocol has been put in place to end discrimination and promote women’s rights. For example, for an equal participation in public affairs it is recommended to have a **quota for women** on all lists of political parties for each election.

1. **Freedom of expression, right to information, association and assembly**

The role and place of the **Civil Society as a main actor** for the promotion and protection of Human Rights is very important. In many African countries, members of civil society, in particular youth, have played an important role for the improvement of political environment and the participation of youth in public affairs.

Freedom of express is possible only when there is an independent and professional press. Journalists have to be protected and be able to freely do their work without fear to be arrested and/or killed. The African Court has delivered a landmark Judgement in the matter Lohé Issa Konaté v. Burkina Faso[[3]](#footnote-3). The Court unanimously found that *“the Respondent State has violated international law in four different ways: (1) the existence of custodial sentence on defamation in its laws; (2) the conviction and sentence of the Applicant to a term of imprisonment for defamation; (3) the conviction of the Applicant to pay an excessive fine, damages and procedural costs; and (4) the suspension of his newspaper for six (6) months.”*

Another example is the Court Judgement in the Beneficiaries of Norbert Zongo and others v. Burkina-Faso. Mr. Norbert Zongo was a journalist killed while investigating on issues related to bad governance and corruption in Burkina-Faso.[[4]](#footnote-4) The Court ruled that the Respondent State has violated articles 1, 7 9(2) of the Charter and 66 (2) (c) of the Revised ECOWAS Treaty, by not investigating the matter and bringing to justice those who committed the crimes.

The right to participate in public Affairs can be guarantee only if the different actors of the civil society including journalist are free to work and promote human rights.

1. **Review or repeal some laws**

In many countries some laws are not encouraging the promotion of public participation and they should either be reviewed or repealed. For example, the **colonial laws** such as public Order Acts and the **terrorism laws** put in place recently in many countries. Those different laws are sometime, taken as justification for suppressing many human rights.

1. See App. Nos. 009&011/2011 – Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. United Republic of Tanzania at para 111 available at <http://en.african-court.org/images/Cases/Judgment/Judgment%20Application%20009-011-2011%20Rev%20Christopher%20Mtikila%20v.%20Tanzania.pdf> [↑](#footnote-ref-1)
2. Application 001/2014 Association pour la Protection des Droits de l’Homme (APDH) v. Côte D’Ivoire, available at http://en.african-court.org/images/Cases/Judgment/Judgment [↑](#footnote-ref-2)
3. Application 004/2013 Lohé Issa Konaté v Burkina-Faso, available at http://en.african-court.org/images/Cases/Judgment [↑](#footnote-ref-3)
4. Application 013/2011 Beneficiaries of Norbert Zongo and others, available at http://en.african-court.org/images/Cases/Judgment [↑](#footnote-ref-4)