**Annexure ‘C’**

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

**African Sub-regional human rights systems and the right to political participation**

* 1. **Economic Community of West African States**

The ECOWAS Court monitors compliance with the African Charter, the ECOWAS Treaty and its Protocols.

Relevant provisions of the Treaty of the Economic Community of West African States:

Article 4:

*The high contracting parties, in pursuit of the objectives stated in article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles: j) promotion and consolidation of a democratic system of governance in each Member State as envisaged by the Declaration of Political Principles…*

See also:

*Supplementary Protocol of the ECOWAS Court of Justice*

Preamble:

*…BEARING IN MIND the African Charter on Human and People's Rights and the Declaration of Political Principles of the Economic Community of West African States adopted in Abuja by the Fourteenth Ordinary Session of the Authority of Heads of State and Government on 6 July, 1991…*

Article 9(4)

*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*

*ECOWAS Protocol on Democracy and Good Governance*

Article 1(h):

*The rights set up in the African Charter on Human and Peoples’ Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; each individual or organisation shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his/her rights.*

Article 3:

*The bodies responsible for organising elections shall be independent or neutral and shall have the confidence of all the political actors. Where necessary, appropriate national consultants shall be organised to determine the nature and the structure of the bodies*

Cases:

**Invalidation of an election by a court**

Nigeria: *Jerry Ugokwe v Nigeria[[1]](#footnote-1)*

The inclusion of the African Charter in the treaty behoves on the ECOWAS Court to bring in the application of those rights catalogued in the Charter (preamble). However, the relationship between National Courts and the Community Court is not of a vertical nature and articles 9(4) and 10(d) of the ECOWAS Treaty do not empower the ECOWAS Court to appeal against the decision of the Nigerian Election Tribunal and Court of Appeal.

* 1. **East African Community**

The EACJ monitors compliance with the African Charter and the Treaty of the East African Community.

Relevant provisions of the East African Community Treaty

Article 6:

*The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner State shall include: (d) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights*

See also:

Article 5(3):

*[T]he Community shall ensure the: (g) the enhancement and strengthening of partnerships with the private sector and civil society in order to achieve sustainable socio-economic and political development…*

Article 7(2):

*The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.*

Article 29(2):

*If the Partner State concerned does not submit its observations to the Secretary General within four months…the Secretary General shall refer the matter to the Council which shall decide whether the mater should be referred by the Secretary General to the Court immediately or be resolved by the Council.*

Article 50(1):

*The National Assembly of each Partner State shall elect, not from among its members, nine members of the Assembly, who shall represent as much as it is feasible, the various political parties represented in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine.*

Cases:

**Third term of a president**

Burundi: *East African Civil Society Organization Forum v Attorney General of Burundi, Commission Electorale Nationale Independante & The Secretary General of the East African Community[[2]](#footnote-2)*

An interim order was sought to postpone the Presidential and Senatorial elections in order to prevent the President from running for a third term. As the Constitutional Court of Burundi had already accepted the President’s nomination, the EACJ held that it did not have jurisdiction to review or inquire into a decision of a National Court.

**Restrictions of the right to freedom of expression**

Burundi: *Burundian Journalists Union v the Attorney General of the Republic of Burundi[[3]](#footnote-3)*

While the freedom of expression and the freedom of the press are not absolute, restrictions of these freedoms must be reasonable and proportionate. Among the restrictions that contravene the principles of democracy include: restrictions that prohibit the dissemination of information on the stability of the currency, the publication of offensive articles or reports regarding public or private person, or information that may harm the credit of the state and national economy, and diplomacy; as well as the obligation to disclose a journalist’s source (art 6(d); art 7(2)).

**National participation in international government**

Uganda: *Honourable Sitenda Sebalu v Secretary General of the EAC, Attorney General of Uganda & others[[4]](#footnote-4)*

The Attorney General’s delay in extending the EACJ’s appellate jurisdiction envisaged by article 27(2) of the East African Community Treaty, contravened the principles of good governance (art 6). Further, the endless consultations and meetings on the content of the Draft Protocol to Operationalise the Extended Jurisdiction of the EACJ were insufficient since they did not produce any tangible results (art 29). The court stressed the importance of individual citizens holding their elected officials accountable for the way they exercise their duties.

**Amendments to treaties**

Kenya: *East African Law Society & others v Attorney General of Kenya & others[[5]](#footnote-5)*

The process of adopting amendments to the EAC Treaty must involve popular participation in the process of amendment. Although the treaty itself does not specify the exact form of public participation required for its amendment, the Court rejected an interpretation of the treaty that permits sporadic amendments at the whims of officials without any form of consultation with stakeholders (art 5(3)(g) of the East African Community Treaty).

**Meaning of ‘election’ of members**

Kenya: *Anyang’ Nyong’o & others v Attorney General of Kenya & others[[6]](#footnote-6)*

An application was brought to prevent nine Kenyan members ‘elected’ to the East African Legislative Assembly from taking office. The question was whether there was an “election” of members in terms of article 50. The Court concluded that the nomination of Kenyan members did not constitute an ‘election’ (art 6(d) of the East African Community Treaty) and took into account that ordinarily a reference to a democratic election of persons to political office is understood to mean election by voting.

1. *Jerry Ugokwe v Nigeria* ECW/CCJ/JUD/03/05. [↑](#footnote-ref-1)
2. *East African Civil Society Organization Forum v Attorney General of Burundi, Commission Electorale Nationale Independante & The Secretary General of the East African Community* (Ref no.2 of 2015) [2016] EACJ (September 2016). [↑](#footnote-ref-2)
3. *Burundian Journalists Union v the Attorney General of the Republic of Burundi* (Ref no.7 of 2013) [2013] EACJ (July 2013). [↑](#footnote-ref-3)
4. *Honourable Sitenda Sebalu v Secretary General of the EAC, Attorney General of Uganda & others* (Ref no.8 of 2012) [2013] EACJ (November 2013). [↑](#footnote-ref-4)
5. *East African Law Society and Others v Attorney General of the Republic of Kenya and Others* (Ref. No. 3 of 2007) [2008] EACJ 1 (September 2008). [↑](#footnote-ref-5)
6. *Anyang’ Nyong’o & others v Attorney General of Kenya &* others (Ref. No.1 of 2006) [2006] EACJ (November 2006). [↑](#footnote-ref-6)