



Africa Criminal Justice Reform
 Organisation pour la Réforme de la Justice Pénale en Afrique
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The right of prisoners to vote in Africa

An update

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Introduction

Broadly speaking, universal suffrage refers to the rights conferred on adult citizens of a country to vote, however, there are always restrictions to a greater or lesser degree on who can vote in every democratic political system.¹

Children are usually excluded as are people certified to be of unsound mind. In the twentieth century universal suffrage was slowly extended to include previously excluded groups of people (i.e. black/Africans as well as women). The debate regarding the extension of the right to vote to other marginalized groups in society, such as people with mental disabilities and prisoners, is on-going. For example, US senator Bernie Sanders recently proposed extending the right to vote to all prisoners resulting in fierce criticism across the political spectrum.²

Proponents of the extension of voting rights to prisoners rely on international, regional as well as domestic human rights standards recognising political participation as a fundamental human right.³ International legal instruments, such as the International Covenant on Civil and Political Rights (ICCPR), provide for the right and opportunity of all citizens to participate in public affairs and to vote.⁴ Similarly, the African Charter on Human and Peoples' Rights makes provision for citizens to freely participate in the government of their country as provided for in law.⁵ In Africa, the right of prisoners to vote has been

argued before courts in South Africa, Botswana, Ghana, Kenya, Nigeria, Zambia, and Uganda.

These decisions are dealt with below. In Mozambique, the courts have not yet dealt with the issue, but a request was placed before the Ombudsman and the National Human Rights Commission to express an opinion on the matter and a recommendation has been made to put measures in place to allow prisoners to vote in future elections.⁶

During the course of 2019, 17 African countries held elections and in 2020, 21 countries are set to hold elections as listed in the appendix below. It is therefore important to monitor developments with regard to prisoners and elections.

South Africa

The South African Constitution guarantees the right to vote to every adult citizen.⁷ In its first democratic elections in 1994 prisoners were permitted to vote. Since the 1994 elections were of such historical significance, excluding prisoners from voting held significant security threats and there was indeed some prison unrest in the run-up to the 1994 elections.⁸

Prior to the 1999 general elections, the Constitutional Court ruled in *August and Another vs Electoral Commission and Others* regarding the right of prisoners to vote.⁹ At the time, neither the 1996 Constitution nor the Electoral Act of 1998 barred prisoners from voting. In the August case, the Applicants sought confirmation from the Court that prisoners did indeed have the right to vote in the election.¹⁰ The Applicants challenged the duty of the Independent Electoral Commission (IEC) to facilitate the registration of prisoners to vote who were unable to register to vote due to their imprisonment.¹¹ The Commission had refused to undertake this responsibility unless ordered to do so by the Constitutional Court, since prisoners were considered to be ‘authors of their own misfortunes’¹² and numerous logistical arrangements would have to be undertaken to register them. The Court relied on the provision of the Constitution that South Africa is, amongst others, founded on the value of universal adult suffrage¹³ and ruled that logistical arrangements should not disenfranchise prisoners simply because they are imprisoned. The Court consequently ordered the IEC to facilitate the registration of prisoners to vote in the 1999 elections.¹⁴

An amendment to the Electoral Law Act in 2003 intended to deprive sentenced prisoners serving sentences without the option of a fine from voting in the 2004 election.¹⁵ Unsentenced prisoners, however, would still be able to vote. The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and two sentenced prisoners filed an urgent application to declare the amendment unconstitutional and invalid given that this amendment clearly posed a limitation on prisoners’ right to vote.¹⁶ According to the government the justification for this limitation hinged on three issues. Firstly, the need to limit the category of prisoners for whom special arrangements should be made. Secondly, it was averred that law-abiding citizens who are not in a position to vote are more deserving of special logistical arrangements. Thirdly, the government pointed to the high crime rate, arguing that by allowing prisoners to vote, the wrong message would be sent to the public, i.e. that government is soft on crime.¹⁷ The Constitutional Court dismissed the two logistical arguments as they did not warrant the disenfranchisement of prisoners. On sending the ‘wrong

message’ to citizens, the Court recognized the need for government to unequivocally rebuke crime. However, the Court pointed out that the government’s main argument was centred on logistical reasons and not on the high crime rates.¹⁸ Moreover, the Court noted that “It could hardly be suggested that the government is entitled to disenfranchise prisoners in order to enhance its image; nor could it reasonably be argued that the government is entitled to deprive convicted prisoners of valuable rights that they retain in order to correct a public misconception as to its true attitude to crime and criminals.”¹⁹ The Court therefore ruled in favour of NICRO, declaring the amendment of the Electoral Law Act unconstitutional and invalid.²⁰

The success of the NICRO case was a breakthrough in the promotion of the right to vote for prisoners. Subsequently there have been no further challenges to prisoners’ right to vote in South Africa. Courts from elsewhere have also drawn on the August and NICRO cases to ensure the participation of prisoners in elections.²¹ Yet, while prisoners can vote in national and provincial elections, they currently do not vote in local government elections.

Ghana

The right of prisoners to vote was placed before the Ghanaian Supreme Court in 2010.²² The combined cases of *Ahumah Ocansey* and the local NGO *Centre for Human Rights and Civil Liberties* challenged the refusal of the Electoral Commission of Ghana to allow remand detainees who had been in custody for more than six months to vote in elections. The case was based on the Ghanaian Constitution stipulating that ‘All citizens have the right to vote, except those below the age of eighteen years, and persons of unsound mind’.²³ Moreover, the Electoral Law states that “persons who are detained in legal custody shall not be treated as residents for purposes of voter registration and voting”.²⁴

The Respondents’ argument was that prisons did not qualify as registration and voting divisions and that the limitation on the right of prisoners to vote is necessary as prisoners have violated the laws of the land and should not have a right to vote.²⁵ The Applicants argued that

there is no legitimate reason for prisons not to be considered as places of residence and that voting and citizenship are mutually-reinforcing concepts and the denial to vote resulted in the denial of citizenship.²⁶ The Court concluded that the Constitution guarantees the right to vote for all citizens and even if they are deprived of liberty, prisoners do not lose other fundamental and constitutional rights.²⁷ The Court argued that ‘rights may only be limited if the infringement of the right achieves a constitutionally valid purpose, and the means chosen are reasonably and demonstrably justifiable’.²⁸ In this case, the Court did not find any justifiable reason for the limitation of prisoners’ rights and therefore ruled in favour of Ahumah Ocansey and the Centre for Human Rights and Civil Liberties.²⁹ This led to the registration of and voting by prisoners for the first time in the Presidential and Parliamentary elections of 2016.

Kenya

Kenya’s current Constitution replaced the Independence Constitution of 1963 as a result of a national referendum held in the country in August 2010.³⁰ In the build-up to the referendum, a petition was brought to the Kenya High Court on behalf of prisoners in Shimo la Tewa Prison in Mombasa regarding the rights of prisoners to vote in the upcoming referendum.³¹ Amongst other prayers, the petition requested the Court to make a finding that sections 32(2) and 43 of the Independence Constitution of 1963 excluded prisoners from voting in elections, but did not explicitly exclude them from voting in referenda.³² The petition further requested the Court to find the exclusion by the Interim Independent Electoral Commission of prisoners from its voter registration exercise illegal.³³ The nub of the case was whether elections and referenda are considered the same thing vis-à-vis the provisions in the Independence Constitution of 1963.³⁴

The Interim Independent Electoral Commission argued that reopening the registration process to accommodate prisoners would result in time constraints which would jeopardize the review process.³⁵ However, the Court ruled that because the purpose of the upcoming referenda was to reconstitute the Constitution, there is no reason why prisoners over the age of 18 years who are mentally fit and

have not committed any electoral offence should not be allowed to vote in referenda.³⁶ The Court held that Section 43 of the 1963 Constitution does not disqualify prisoners from voting in referenda as they are distinct from presidential and parliamentary elections.³⁷ It further ordered the Interim Independent Electoral Commission to gazette prisons as polling stations and facilitate the process of registration for prisoners who wish to vote in the referendum.³⁸

The 2010 Constitution completely removed the ban on the right of prisoners to vote in any elections (including presidential and parliamentary elections).³⁹ In the 2013 presidential elections, delays on the part of the Independent Electoral and Boundaries Commission resulted in the exclusion of prisoners in the registration process.⁴⁰ However, in the 2017 elections, arrangements were made to register all prisoners with Kenyan citizenship over the age of 18 years and in possession of identity documents. Prisoners voted for the first time in the Presidential and Parliamentary elections, but did not vote in local elections due to the fact that prisoners were registered in prison and not within their normal residences.⁴¹

Mozambique

In February 2019 a group of civil society organisations submitted a request to the Mozambican Ombudsman and the National Human Rights Commission to request that prisoners be allowed to vote in the upcoming October 2019 elections.⁴² This request was premised on the argument that denying prisoners the right to vote is in direct violation of the Universal Declaration of Human Rights and the ICCPR. While Mozambique’s Constitution⁴³ and Electoral Law⁴⁴ do not place restrictions on the right of prisoners to vote, prisoners have not been provided with the opportunity to exercise this right.⁴⁵

In June 2019, the Ombudsman made a recommendation stating that since it was not possible for measures to be put in place in time to allow prisoners to vote in the presidential elections that took place on 15 October 2019, it would therefore be important that all necessary measures be taken to repair the above-mentioned

illegality, and to this end, set up the mechanisms with the government and other authorities in order to include prisoners in future voting processes.⁴⁶

Botswana

As a result of not being afforded the opportunity to register to vote in the local government and parliamentary elections, a case was brought before the Botswana High Court in 2009 by a prisoner serving a ten-year sentence for robbery and burglary.⁴⁷ The prisoner sought judgement on whether the provisions of the Electoral Act⁴⁸ excluding prisoners serving sentences of longer than six months from voting in parliamentary elections is incompatible with the Botswana Constitution.⁴⁹ The Court noted that the Electoral Act is re-enforced by the Constitution which recognises the right to vote.⁵⁰ However, the Constitution clearly states that people in lawful custody on the date of the election are disqualified from voting.⁵¹ The Applicant averred that he was discriminated against as a result of this disenfranchisement and his constitutional rights to equal protection under the law and his freedom of expression, assembly and association had been violated.⁵²

The Court dismissed the claim as the Applicant could not prove that he had been discriminated against based on these sections of the Constitution. In the view of the Court, it was difficult to imply that his disenfranchisement is tantamount to a violation of the right to freedom of expression, assembly and association.⁵³ Unlike the August decision, the Botswana Constitution does not recognize a general right to political participation for all citizens. Instead, the Constitution makes clear reference to the disqualification of those in lawful custody from voting in elections.⁵⁴ In this case, the Applicant was serving a sentence longer than six months. The Court ruled against the Applicant and since the ruling in 2009, there has not been other notable cases as neither the Constitution nor the Electoral Act has been amended to favour the enfranchisement of prisoners.⁵⁵

Nigeria

In 2014 a Federal High Court in Benin (Edo State) made the ruling that Nigerian prisoners have the right to vote.⁵⁶ This was the result of an application brought by five prisoners

representing all prisoners in Nigeria. The Applicants challenged the Court on three counts.⁵⁷ Firstly, they have a right to be registered as voters by the Independent National Electoral Commission (INEC).⁵⁸ Secondly, they have a right to vote in all elections in the country.⁵⁹ Thirdly, the failure of INEC to facilitate registration and voting arrangements for Nigerian prisoners is an infringement on their rights as citizens.⁶⁰

The High Court ruled that the INEC does not have the mandate to deny the Applicants the right to vote as this is “unconstitutional, illegal, irregular, unlawful, null and void and of no effect whatsoever”.⁶¹ In 2019 an Appeal Court ruled in favour of the same five prisoners seeking an order directing INEC to include all prisoners on the voters’ roll.⁶² The INEC subsequently made arrangements with the Nigeria Prisons Service to enable the country’s 72 000 prisoners to vote in the February 2019 general elections.⁶³

Zambia

The rights of prisoners to vote was brought before the Constitutional Court of Zambia in 2016.⁶⁴ In April of that year representatives of the Executive Director of the Prisons Care and Counselling Association (PRISCCA) (petitioner) sent a letter to the Attorney General and the Electoral Commission of Zambia (Respondents) requesting the Attorney General to instruct the Ministry of Home Affairs to facilitate the process of issuing national registration cards to eligible persons awaiting trial in prisons and convicted persons who had appealed their convictions but were not on bail to allow them to vote in the impending election.⁶⁵

The Electoral Commission was further requested to register eligible pre-trial remandees.⁶⁶ In response, the Electoral Commission highlighted that the voter registration process had already closed and could not be re-opened to register voters.⁶⁷ The petitioner sent a subsequent letter to the Respondents to confirm whether the above stated persons could be legible to vote in future elections since the process for registration had already closed for the 2016 elections.⁶⁸ In response to this, the Electoral Commission pointed out that according to section 9 (1)(e) and 19 (c) of the Electoral Act, persons awaiting trial and convicted persons who have appealed

their convictions but were still in prison are not eligible to vote and could therefore not be registered as voters in future elections.⁶⁹

PRISCCA subsequently filed a petition to the Constitutional Court seeking relief on a number of points; of which four are highlighted. Firstly, that the Court declares the above-stated sections of the Electoral Act in contravention with Article 45 and 46 of the amended 2016 Constitution⁷⁰, and as a result should be expunged from the statute book.⁷¹ Secondly, the petition requested that a declaration be made that all remandees and convicts whose cases are on appeal and therefore be allowed to vote.⁷² Thirdly, that all prisons in Zambia be made polling centres for the purpose of allowing pre-trial remandees the right to exercise their vote.⁷³ Fourthly, that a declaration be made that the continued denial of pre-trial remandees and convicts on appeal of their convictions and sentences to vote offends their constitutional rights.⁷⁴

In its judgement, the Court granted the first petition as it found that the amended Article 46 of the Constitution does not disqualify anyone to vote except that it sets the age of entitlement to be registered as a voter and to vote by secret ballot to eighteen years and above.⁷⁵ This is contrary to the repealed Article 75 of the Constitution which included a provision allowing for disqualifications from registration as a voter and from voting to be prescribed by Act of Parliament.⁷⁶ Due to the fact that Article 75 was repealed and replaced by Article 46, the voting franchise is only restricted to age and not to the fact that a person is in lawful custody or has their freedom of movement restricted.⁷⁷ As such, the Court found that Section 9 (1)(e) of the Electoral Act violates the constitutional right of persons in custody to vote and should therefore be expunged from the statute book.⁷⁸ The Court also granted the second petition and made a declaration that persons in lawful custody and those whose freedom of movement is restricted under a written law are entitled to vote in future elections.⁷⁹

However, with regards to the third petition, the Court did not agree to make all prisons in Zambia polling centres as this decision lies within the mandate of the Electoral

Commission who should take all necessary measures to enable persons in lawful custody to vote.⁸⁰ Finally, the last petition was also dismissed on the grounds that the Constitutional Court is not the right court to enforce the provisions of Part III of the Constitution under which the fourth petition falls.⁸¹ Ultimately, PRISCCA was successful in its petition that sections 9(1)(e) and 47 of the Electoral Process Act contravene Article 46 of the Constitution,⁸² thereby giving prisoners and all remandees in Zambia the right to vote in future elections.

Uganda

The High Court of Kampala ruled on 17 June 2020 that Ugandans over the age of 18 years who are prisoners or are living in the diaspora are allowed to vote.⁸³ The application brought against the Electoral Commission and Attorney General was supported by affidavits of the Applicant, Mr Stevens Kalali and two Ugandan prisoners.⁸⁴ The Applicant argued that the Electoral Commission has unfairly excluded Ugandan prisoners and those living in the diaspora who are 18 years and above from the electoral process in five presidential and parliamentary elections.⁸⁵ The application was premised on the fact that according to the Constitution, all Ugandan citizens are to enjoy equal rights under the law; as such, being convicted, imprisoned, remanded or living in the diaspora does not disqualify a citizen who is of majority age from voting.⁸⁶ The Applicant further asserted that by denying prisoners the right to vote, the Electoral Commission makes them adjudged criminals for life which is unrealistic and illegal.⁸⁷ In response, the Electoral Commission argued that the application is incompetent, frivolous, vexatious, defective, bad in and barred by law based on the current legal framework which they argued does not encompass the intricacies associated with being incarcerated or living in the diaspora.⁸⁸

The Court found the argument regarding the intricacies of the law of weak significance vis-à-vis the provisions of article 59 of the Constitution which requires the state to take all necessary steps to ensure that all qualified citizens are registered and exercise their vote.⁸⁹ The Court pointed out that as the government entity vested with the voting mandate, the Electoral Commission should have vouched for reforms of the law a long time ago.⁹⁰

The Court's judgement relied on provisions in the Constitution, the International Covenant on Civil and Political Rights⁹¹ and the African Charter,⁹² as well as examples from other jurisdictions in Africa such as Kenya, South Africa, Ghana, Kenya and Zambia which have allowed prisoners and those in the diaspora to vote.⁹³ The Court ruled that Ugandan citizens of 18 years and above who are in prison or in the diaspora have the right to vote in public elections and referenda under article 59 of the Constitution.⁹⁴ The Court further found that the Electoral Commission's conduct of depriving prisoners and those living in the diaspora of this right is illegal as it infringes and violates articles 1, 21 and 59 of the Ugandan Constitution.⁹⁵ The Court subsequently ordered the Electoral Commission to take all necessary steps to ensure that prisoners and citizens in the diaspora are registered and that they be able to exercise their right to vote.⁹⁶ The High Court ruling is timely as the Ugandan general elections (presidential and parliamentary) are scheduled to take place between January and February 2021;⁹⁷ wherein for the first time, Ugandan prisoners and citizens over the age of 18 living in the diaspora will be allowed to vote.⁹⁸

Conclusion

This fact-sheet provided a brief description on the right of prisoners to vote in Africa. It is evident that there have been substantive advances and breakthroughs in the promotion of this right in Africa with prisoners in South Africa, Ghana, Kenya, Nigeria, Zambia and Uganda being able to vote. However, other countries on the continent have still not granted this right to prisoners. The recent successful petition brought by civil society organisations in Mozambique is a positive step in advancing this enfranchisement but more needs to be done by many other countries that are lagging behind.

Notable is that when prisoners can vote, the principle appears to be that they remain excluded from participation in local government elections. Three arguments appear to support this. The first is that prisons are not places of normal residence,⁹⁹ therefore prisoners have little interest in what happens in their local areas as they do not relate with the socio-economic and political

issues of the area. Secondly, should they be able to vote in local government elections, this can have a disproportionate impact on the results, especially if it is a large prison. Thirdly, the administration of prisoners is in general the responsibility of national government and local government therefore has little influence over the issues that affect prisoners. The issues affecting prisoners (e.g. conditions of detention and treatment) do not fall within the competency of local government.

The right to vote for prisoners has not been placed before the African Commission on Human and Peoples' Rights or the African Court and it is perhaps high time that these fora be approached on the issue.

APPENDIX: AFRICAN ELECTIONS 2019

Country	Type of Election	Election Date
Algeria	Presidential Election	12 December 2019
Benin	Parliamentary Election	28 April 2019
Botswana	General Election	23 October 2019
Comoros	Presidential Election	24 March 2019
Egypt	Constitutional Referendum	20 to 22 April 2019
Ghana	District and Referendum on Metropolitan, Municipal and District Chief Executive Election	17 December 2019
Guinea-Bissau	General Election	24 November 2019
Madagascar	General Election	27 May 2019
Malawi	General Election	21 May 2019
Mali	General Assembly Election	29 March 2019
Mauritania	Presidential Election	22 June 2019

Country	Type of Election	Election Date
Mozambique	General Election	15 October 2019
Namibia	General Election	27 November 2019
Nigeria	General Election	23 February 2019
Senegal	Presidential Election	24 February 2019
South Africa	General Election	8 May 2019
Tunisia	Parliamentary Election	6 October 2019
	Presidential Election	15 September 2019

AFRICAN ELECTIONS 2020

Country	Type of Election	Election Date
Burkina Faso	Presidential & National Assembly Election	22 November 2020
Burundi	Presidential Election	20 May 2020
Cameroon	National Assembly, Senate & Local Election	9 February 2020
Central African Republic	Presidential Election	27 December 2020
Chad	National Assembly & Local Election	13 December 2020
Comoros	Parliamentary Election	19 January 2020
Egypt	House of Representatives Election	November 2020
Gabon	Senate Election	Date not confirmed 2020
Ghana	Presidential & National Assembly Election	7 December 2020
Guinea	National Assembly Election	22 March 2020
	Presidential Election	October 2020

Country	Type of Election	Election Date
Ivory Coast	Presidential Election	31 October 2020
Mali	National Assembly Election	29 March 2020
Malawi	Presidential Election (re-run)	23 June 2020
Namibia	Regional Councils & Local Election	November 2020
Niger	Local Election	1 November 2020
	Presidential & National Assembly Election	27 December 2020
Tanzania	General Election	25 October 2020
Senegal	Local Election	Date not confirmed 2020
Somalia	House of the People Election	December 2020
Somaliland (autonomous region)	House of Representatives & Senate Election	Date not confirmed 2020
Seychelles	Presidential Election	22 October 2020
Togo	Presidential Election	22 February 2020

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¹ Beckman, L. (2008) “Who Should Vote? Conceptualizing Universal Suffrage in Studies of Democracy” *Democratisation*, Vol. 15 No.1, p. 30.

² “75% of Americans disagree with Bernie Sanders' plan to let every US prisoner vote”, *Business Insider*, 30 April 2019, <https://www.businessinsider.com/majority-oppose-berniesanders-inmate-prisoner-voting-plan-insider-poll-2019-4?IR=T> Accessed 7 May 2019.

³ Abebe, A.K. (2013) “In pursuit of universal suffrage: the right of prisoners in Africa to vote” *The Comparative and International Law Journal of Southern Africa*. Vol. 46 No. 3, p.410.

⁴ Article 25 (a)(b), International Covenant on Civil and Political Rights (ICCPR).

⁵ Article 13(1), African Charter on Human and Peoples’ Rights.

⁶ ACJR (2019) *Mozambique civil society campaigns for prisoners' right to vote*, <https://acjr.org.za/news/mozambiquecivil-society-campaigns-for-prisoners-right-to-vote> Accessed: 6 April 2019.

⁷ Section 19(3), Constitution of the Republic of South Africa, 1996 states that: Every adult citizen has the right – To vote in elections for any legislative body established in terms of the Constitution, and to do so in secret.

⁸ Muntingh, L and Sloth-Nielsen, J. (2009), “The Ballot as a Bulwark: Prisoners’ Right to Vote in South Africa”. In *Criminal disenfranchisement in an international perspective*. Ewald, A. and Rottinghaus, B. (Eds). Cambridge University Press. p. 230.

⁹ *August and Another v Electoral Commission and Others*, (CCT8/99) (1999).

¹⁰ Muntingh, L and Sloth-Nielsen, J. (2009), p.232.

¹¹ Paragraph 1, *August and Another v Electoral Commission and Others* (CCT8/99) (1999).

¹² Abebe, A.K. (2013) p.427.

¹³ Section 1(d). Constitution of the Republic of South Africa, 1996.

¹⁴ Paragraph 38, *August and Another v Electoral Commission and Others*, (1999).

¹⁵ De Vos, P. (2004) “South African prisoner’s right to vote” Bellville: Community Law Centre, CSPRI Research Paper No.3A, p.3.

¹⁶ Paragraph 2, *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others* (2004).

¹⁷ Muntingh, L and Sloth-Nielsen, J. (2009) p.236.

¹⁸ Muntingh, L and Sloth-Nielsen, J. (2009) p.236.

¹⁹ Paragraph 56, *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others*, (2004).

²⁰ Paragraph 80, *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others*, (2004).

²¹ Paragraph 71, *Ahumah Ocansey v The Electoral Commission, and Centre for Human Rights and Civil Liberties (CHRCIL) v Attorney General and the Electoral Commission*, Supreme Court of Ghana (2010).

²² *Ahumah Ocansey v The Electoral Commission and Another*, (2010).

²³ Section 42, Republic of Ghana Constitution.

²⁴ Section 7(5), Republic of Ghana Electoral Law.

²⁵ Abebe, A.K. (2013). “In pursuit of universal suffrage: the right of prisoners in Africa to vote” *The Comparative and International Law Journal of Southern Africa*, Vol. 46 No. 3, p.434.

²⁶ Paragraphs 14, 15 and 24, *Ahumah Ocansey v The Electoral Commission and Another*.

²⁷ Paragraphs 73 and 80, *Ahumah Ocansey v The Electoral Commission and Another*.

²⁸ Paragraph 78, *Ahumah Ocansey v The Electoral Commission and Another*.

²⁹ Paragraph 80, *Ahumah Ocansey v The Electoral Commission and Another*.

³⁰ Kenya Constitution (2010) <http://www.president.go.ke/theconstitution/> Accessed 29 April 2019.

³¹ *Priscilla Nyokabi Kanyua v Attorney General & Another* (2010).

³² Paragraph 1, *Priscilla Nyokabi Kanyua v Attorney General & Another* (2010).

³³ Paragraph 2, *Priscilla Nyokabi Kanyua v Attorney General & Another* (2010).

³⁴ Abebe, A.K. (2013), p.436.

³⁵ *Priscilla Nyokabi Kanyua v Attorney General & Another* (2010), p.4.

³⁶ *Priscilla Nyokabi Kanyua v Attorney General & Another* (2010), p.24.

³⁷ Abebe, AK. (2013), p.436.

³⁸ *Priscilla Nyokabi Kanyua v Attorney General & Another* (2010), p.25.

³⁹ Abebe, A.K. (2013), p.437.

⁴⁰ “In Kenya this month, prisoners voted for president for the first time ever” *PRI's The World*, 22 August 2017 <https://www.pri.org/stories/2017-08-22/kenya->

[monthprisoners-voted-president-first-time-ever](#) Accessed: 8 April 2019.

⁴¹ Prisoners vote for the first time in Kenya’s elections, *Capital News*, 8 August 2017

<https://www.capitalfm.co.ke/news/2017/08/prisoners-votefirst-time-kenyas-elections/> Accessed: 7 April 2019.

⁴² ACJR (2019), Mozambique civil society campaigns for prisoners' right to vote.

<https://acjr.org.za/news/mozambiquecivil-society-campaigns-for-prisoners-right-to-vote> Accessed: 6 April 2019.

⁴³ Articles 61(3) and 73, Republic of Mozambique Constitution.

⁴⁴ Law no. 12/2014, Law no. 11/2014 and Law no. 7/2018, Republic of Mozambique Electoral Law.

⁴⁵ ACJR (2019) Mozambique civil society campaigns for prisoners' right to vote.

<https://acjr.org.za/news/mozambiquecivil-society-campaigns-for-prisoners-right-to-vote> Accessed: 6 April 2019.

⁴⁶ “Mozambique: Depriving prisoners of voting rights is illegal – Ombudsman” *Club of Mozambique*, 11 July 2019, <https://clubofmozambique.com/news/mozambique-depriving-prisoners-of-voting-rights-is-illegal-ombudsman-136533/> Accessed 15 May 2020.

⁴⁷ *Thomas Sibanda v The Attorney General of Botswana & Secretary of the Independent Electoral Commission*, case no MAHLB-00347-09, High Court of Botswana (2009).

⁴⁸ Section 6(1)(b) and Section 6(2), Republic of Botswana Electoral Act.

⁴⁹ “Court turns down prisoner’s request to be allowed to vote” *Sunday Standard*, 19 September 2009, <http://www.sundaystandard.info/court-turns-downprisoner%E2%80%99s-request-be-allowed-vote> Accessed: 6 April 2019.

⁵⁰ Section 67(5), Republic of Botswana Constitution.

⁵¹ Section 67(5), Republic of Botswana Constitution.

⁵² Sections 3, 12, 13 and 15, Republic of Botswana Constitution.

⁵³ Abebe, A.K. (2013). p.439.

⁵⁴ Section 67, Republic of Botswana Constitution.

⁵⁵ “Court turns down prisoner’s request to be allowed to vote” *Sunday Standard*, 19 September 2009, <http://www.sundaystandard.info/court-turns-downprisoner%E2%80%99s-request-be-allowed-vote> Accessed: 6 April 2019.

⁵⁶ “Nigeria Court backs prisoners’ vote” *BBC News*, 19 December 2014, <https://www.bbc.com/news/world-africa30552146> Accessed: 8 March 2019.

⁵⁷ “Court grants prisoners right to vote” *The Nation*, 18 December 2014, <https://thenationonlineng.net/court-grantsprisoners-right-vote/> Accessed: 8 April 2019.

⁵⁸ Section 25, Republic of Nigeria Constitution, as amended in 2011; Section 12 (1) of the Electoral Act 2010.

⁵⁹ Section 77 (2), Republic of Nigeria Constitution and Section 12 (1) of the Electoral Act, 2010.

⁶⁰ Section 14(1)(2)(a)(b), Section 17(2)(a), Section 24(b), (c), Section 39. Republic of Nigeria Constitution.

⁶¹ “Nigeria Court backs prisoners’ vote” *BBC News*, 19 December 2014, <https://www.bbc.com/news/world-africa30552146> Accessed: 8 March 2019.

⁶² “Nigeria Prisoners to Vote in 2019 Elections” *All Africa*. 23 February 2018, <https://allafrica.com/stories/201802230794.html> Accessed: 8 April 2019.

⁶³ “Nigeria Prisoners to Vote in 2019 Elections” *All Africa*. 23 February 2018, <https://allafrica.com/stories/201802230794.html> Accessed: 8 April 2019.

⁶⁴ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.6.

⁶⁵ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.6.

⁶⁶ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.6.

⁶⁷ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.6.

⁶⁸ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.7.

⁶⁹ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.7.

⁷⁰ Article 46, Zambia Constitution “A citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote in an election by secret ballot.’

⁷¹ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.3.

⁷² *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.3.

⁷³ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.4.

⁷⁴ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.4.

⁷⁵ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.23.

⁷⁶ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.23.

⁷⁷ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.26.

⁷⁸ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.29.

⁷⁹ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.31.

⁸⁰ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.32.

⁸¹ *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.34.

⁸² *Malembeka v Attorney General and Electoral Commission of Zambia (2016/CC/0013)*, p.38.

⁸³ *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*

⁸⁴ Paragraph 4, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁸⁵ Paragraph 4, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁸⁶ Paragraph 4, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁸⁷ Paragraph 5, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁸⁸ Paragraph 6, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁸⁹ Paragraph 13, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁹⁰ Paragraph 16, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁹¹ Article 25 of the ICCPR: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”

⁹² Article 13, African Charter: “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.”

⁹³ Paragraph 30, *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁹⁴ Paragraph 31(i), *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁹⁵ Paragraph 31(ii), *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁹⁶ Paragraph 31(iii), *Kalali Steven v Attorney General and Electoral Commission (MISC. CAUSE NO. 35 OF 2018)*.

⁹⁷ “Revised roadmap for 2020/21 General Elections”, *Uganda Electoral Commission*,

https://www.ec.or.ug/sites/default/files/2020-2021-general-elections/Revised%20Roadmap%20for%202020-2021%20General%20Elections_0.pdf

⁹⁸ “Uganda: Citizens in jail and abroad to vote in 2021 poll”, *All Africa*, 21 June 2020

<https://allafrica.com/stories/202006220239.html>

⁹⁹ Muntingh, L and Sloth-Nielsen, J. (2009), p. 222.