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Migrants' Right to Membership of Political Parties: Reappraisal

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ABSTRACT: Absent state regulation, is it legally permissible and normatively plausible for national political parties to require persons to be citizens in order to join as members, or to admit only some non-citizens based on their foreign nationality? Whereas international human rights law, most prominently Article 25 of the International Covenant on Civil and Political Rights (ICCPR), neither requires states to nor prohibits them from granting migrants the right to vote in all elections, citizenship-based restrictions on *other* political rights, including the right to join political parties must be justified: the right to freedom of association, which Article 22 of the ICCPR requires contracting states to grant 'everyone', includes the right to join political parties *qua* associations. This article's central contention is that, doctrinally and normatively, the imposition by political parties of citizenship-based criteria for their membership is prima facie suspect. While parties may present exclusion of migrants *qua* migrants as ideologically driven, such exclusion can be democratically corrosive, by undermining migrants' ability to fully and meaningfully participate in their state of residence and impoverishing public discourse. They can also mask discriminatory intentions. Using South Africa as its case study, the article appraises its political and constitutional position in light of the Constitutional Court's jurisprudence on regulation of political parties. Critiquing the near-exclusive reliance on section 19 of the Bill of Rights, the article posits that resorting to section 18 analysis would enable the Court to reconcile South Africa's constitutional framework with international human rights law.

KEYWORDS: ICCPR, migrants, non-citizens, political parties, section 18, section 19

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I INTRODUCTION

The five political parties that received the highest shares of the votes in the South African 2024 general election have vastly divergent admission criteria to their membership: criteria range from a South African citizenship requirement (Inkatha Freedom Party (IFP)) to enabling 'any person who comes from the African continent or in the diaspora' to become a party member (Economic Freedom Fighters (EFF)). Absent state regulation, is it legally permissible and normatively plausible for national political parties to require persons to be citizens in order to join as members, to require them to be permanent residents, or to admit only some non-citizens based on their foreign nationality? This article's central contention is that, whereas reasonable residence requirements are prima facie justifiable, citizenship membership qualifications are both doctrinally and normatively suspect: while the exclusion of migrants *qua* migrants from membership may be presented as ideologically driven, its effects can be democratically corrosive, undermining migrants' ability to fully and meaningfully participate in their state of residence, and impoverishing public discourse. Selective citizenship qualifications require yet further scrutiny as they may mask discriminatory intentions.

The starting premises for this article are that states regulate various aspects of political parties' governance which may include party membership criteria; that political parties are associations; and that freedom of association accrues both to individuals and to political parties *qua* associations. Two legal scenarios follow. In the *first,* less common scenario, the state imposes citizenship or residence requirements pertaining to membership of political parties.[1] Such requirements may mimic citizenship voting qualifications that are common in national elections and which fall outside the scope of this article.[2] In such circumstances, constitutional or other legal challenges pertaining to restrictive state-imposed membership criteria could and should arguably be made against the state rather than against the political party that is implementing such legislation. Indeed, challenges could be brought both by an individual whose right to join a political party is restricted by such legislation or by political parties,

[1] For instance, of the 27 member states of the European Union (EU), only Poland and the Czech Republic had citizenship restrictions on political party membership. Applying EU law, which grants mobile EU citizens a right to vote and stand in elections to the European Parliament in their EU member state of residence under the same conditions as those imposed on citizens of their resident member states, the European Court of Justice (ECJ) held in Cases C-814/21, C-808/21 *Commission v Poland and the Czech Republic* ECLI:EU:C:2024:963 that mobile EU citizens have a right under EU law to join political parties in their member state of residence, quashing these policies. It is arguable that member states have a positive obligation to ensure equal treatment, inter alia, by preventing political parties from engaging in unequal treatment. S Peers 'EU Citizens' Right to Join Political Parties' *Verfassungsblog* (16 December 2024). See also A Gauja 'The Legal Regulation of Political Parties: Is there a Global Normative Standard?' (2016) 15(1) *Election Law Journal* 4–19 (Notes that, unlike the general conduct of elections, there are practically no international instruments that place *direct* obligations upon states with respect to the regulation of political parties).

[2] Most states impose citizenship requirements for electoral participation, at least in national elections: GlobalCIT electoral laws database, available at https://globalcit.eu/national-electoral-laws/. This article proceeds on the premise of existing citizenship voting qualifications, though elsewhere I have partially contested their desirability: R Ziegler *Voting Rights of Refugees* (2017)(Claims that recognised refugees are a special category of non-citizen residents who should not be subject to otherwise generally applicable citizenship voting qualifications). See also A Samartzis 'Nationality and Equal Political Rights: A Necessary Link?' (2021) 17(4) *European Constitutional Law Review* 636, 653 (Contends that, on a stakeholding principle, long-term residents share decisive features with citizens).

contending that state regulation restricts their right to freedom of association by dictating who may or may not be their member.

However, given that state-imposed restrictions are rare, this article's analysis centres on the *second* scenario, in which the state does not set admission criteria for political party membership. In tandem with regulatory silence, state legislation may explicitly proclaim *citizens*' right to partake in activities of political parties. Such legislative or constitutional provisions should arguably be interpreted to secure citizens' rights rather than to *mandate* the exclusion of non-citizens: in other words, they should not be deemed to implicitly apply a citizenship qualification to political party membership.[3]

South Africa offers a pertinent context: its national legislation is silent on criteria for political party *membership,* in contradistinction from office-holding in a political party,[4] notwithstanding the arguably unconstitutional 'singling out' for exclusion of refugees and asylum-seekers.[5] Whereas sections 1 and 8 of the Political Party Funding Act 6 of 2018 (PPFA), enacted following the *My Vote Counts* judgment,[6] differentiate between, on the one hand, citizens and permanent residents, who may contribute or donate to political parties, and on the other hand, other migrants who are prohibited from doing so,[7] the PPFA explicitly excludes membership fees from the definition of a 'donation',[8] thereby leaving parties to determine their membership criteria without statist restrictions.

When political parties self-regulate, they adopt their own divergent membership criteria. This article acknowledges the ongoing jurisprudential debates regarding subjection of political parties *qua* hybrid bodies to judicial review standards that are generally applied to public bodies;[9] its analysis adopts as its general premise the constitutional position in South Africa,

[3] Section 19 of the Constitution of the Republic of South Africa, 1996 (Constitution), discussed in Part IV below.

[4] CCT 334/23 *South African Municipal Workers' Union v Minister of Cooperative Government and Traditional Affairs* (9 April 2025)(Mathopo J)('*SAMWU*')(Confirms that the inclusion of the phrase 'staff member' in s 71B of the Local Government: Municipal Systems Act 32 of 2000, which prohibited their 'hold[ing of] political office in a political party, whether in a permanent, temporary or acting capacity' is unconstitutional and invalid; consequently ordering that this phrase refer instead to a 'municipal manager or manager directly accountable to a municipal manager'). South African law also draws a distinction between office-holding and membership of a political party in respect of police servicepersons: see s 46(1)(b) and 46(2) of the South African Police Act 68 of 1995.

[5] Pursuant to the Refugees Amendment Act 11 of 2017 reg 4(2), refugees and asylum seekers are enjoined from participating 'in any political activity or campaign in furtherance of any political party or political interests in the Republic' activities'. See R Ziegler, 'Access to Effective Refugee Protection in South Africa: Legislative Commitment, Policy Realities, Judicial Rectifications?' (2020) 10 *Constitutional Court Review* 65–106 (Argues that the regulation and its enabling provision breach the Constitution, inter alia, due to breaches of International Human Rights Law and International Refugee Law).

[6] *My Vote Counts NPC v Minister of Justice and Correctional Services & Another* (CCT249/17) [2018] ZACC 17, 2018 (8) BCLR 893 (CC), 2018 (5) SA 380 (CC)('*My Vote Counts*').

[7] PPFA s 8(1) stipulates that political parties may not accept a donation from any of the following sources: '(b) … foreign persons or entities'; and a 'foreign person' is 'a person or entity that is not a citizen or permanent resident of South Africa or a company or trust not registered in South Africa'.

[8] PPFA s 1 defines a 'donation' as including an in-kind donation, but excluding 'a membership fee or other fees imposed by a political party on its elected representatives'. See also I Porat 'Buying Democracy: The Regulation of Private Funding of Political Parties and the Press after *My Vote Counts*' (2021) 11 *Constitutional Court Review* 503 (Notes that membership fees ceased to be a substantial source of funding for parties).

[9] This is in addition to private law remedies for contractual breaches that may apply in the relations between members and their party. See e.g. L Trueblood 'Public Functions of Political Parties' (2025) *Modern Law*

which requires political parties' practices to be rights-compatible.[10] The article's central query is therefore whether, absent state regulation, political parties may apply a citizenship membership qualification, residence requirements, or distinguish between non-citizens purely based on their foreign citizenship. It is recognised that requiring political parties to admit as members persons they wish to exclude impinges on their freedom of association, and that requiring them to admit persons who reject their underlying ideological principles could undermine their *raison d'être*. Yet, if one accepts that political parties must adopt rights-compatible membership criteria, then discrimination in admission on grounds such as race should be prohibited. The question this article addresses is whether citizenship or onerous residence requirements mandate similar prohibitions.

Part II considers the international human rights law (IHRL) position in respect of political party membership criteria. Part III appraises membership of political parties in light of their dual purpose: their indispensable role in representative democracies and their associational manifestation of ideologies. Against this background, Part IV evaluates the political and constitutional position in South Africa in light of its Constitutional Court's jurisprudence. Notwithstanding the fact that every national constitutional framework has its unique context, not least South Africa, the article's IHRL framework and normative claims are applicable *mutatis mutandis* to other rights-respecting multi-party democracies. Part V concludes.

II VOTE AND VOICE: THE DISTINCTION BETWEEN ELECTORAL AND OTHER POLITICAL RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW

Within the cluster of 'political' rights, one should recognise a normative spectrum between 'voice' rights, namely freedom of expression and speech (which, in IHRL, the state must respect, protect and fulfil in respect of *all individuals* subject to its jurisdiction[11]) and 'vote' rights (to which states, if they so choose, *may* apply a citizenship qualification, at least in respect of national/general elections). 'Voice' rights are exercised both by decision-makers (voters) and by those seeking to influence them (non-voters). It is contended that an individual's right to freedom of association sits on this spectrum alongside other 'voice' rights; and that while for voters, 'vote' and 'voice' rights are often mutually reinforcing, exercise of the latter rights must

Review (online)(Critiques the judgment of the High Court of England and Wales in *Tortoise Media v The Conservative Party* [2023] EWHC 3088, which found no judicial review grounds for challenging the procedures for electing the leader of the Conservative party; for Trueblood, certain functions that political parties exercise should be considered public and thus subject to judicial review, whereas parties' private functions include 'the substance of membership and exclusion decisions' which are nevertheless subject, like all entities, to anti-discrimination legislation).

[10] In South Africa, per s 8(2) of the Constitution, a constitutional provision applies 'horizontally' to a natural or juristic person to the extent that it is applicable, taking into account the nature of the right and the duty imposed by the right. Notably, s 16(1)(c) of the Electoral Act 73 of 1998 provides that the Chief Electoral Officer 'may not register a party if the proposed name, symbols or the constitution or deed of foundation of the party contains anything … which indicates that persons will not be admitted to membership or welcomed as supporters on the grounds of their race, ethnic origin or colour'. The provision indicates that the state enforces the prohibition on discrimination on certain protected grounds.

[11] See e.g. Constitution s 7 requiring the state to 'respect, protect, promote and fulfil the rights in the Bill of Rights'.

not be made contingent on enjoyment of the former rights.[12] The right to join associations, including political associations, is an important component of the cluster of political rights as it enables meaningful participation in society. Members' activities can include paying membership fees, donating, attending meetings, voting on resolutions, campaigning, standing for office internally, and standing for a publicly elected position. While some of these activities are generally common to associations, others are unique to political parties.

It is posited that, absent a vote, and given the vulnerability that ensues from being a migrant, especially prior to obtaining security of residence, migrants have a strong(er) interest in having a meaningful political voice in the society in which they reside, whose laws they are subject to, and to which they contribute.[13] Moreover, migrants' interest in seeking to use their voice to persuade those who have a vote has an important corollary, the right of voters to hear all voices in order to effectively exercise their right to vote, which must also be protected. Therefore, the adverse effects of partially or fully denying migrants access to political spaces has wider detrimental effects on their host societies.

The IHRL framework arguably recognises the abovementioned normative distinction between eligibility for 'vote' and 'voice' rights. The distinction is encapsulated in the language of two provisions of the widely ratified International Covenant on Civil and Political Rights (ICCPR).[14] Article 25 concerns, inter alia, the right to vote. It provides that '[e]very citizen shall have the right and the opportunity … (a) To take part in the conduct of public affairs, directly or through freely chosen representatives'. The provision neither requires states to nor prohibits them from granting non-citizen residents the right to vote in all elections. The Human Rights Committee (HRC) opines that '[i]n contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) article 25 protects the rights of "every citizen".'[15] Explicitly referencing '[t]he right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs', the HRC notes that it is 'an essential adjunct to the rights protected by article 25' and that 'political parties and

[12] R Ziegler 'Freedom of Expression, Assembly, and Association and Aliens' Restrictions on Their Political Activity (Arts. 10, 11, 16, Art. 3 Prot. 1 ECHR)' in D Moya & G Milios (eds) *Aliens before the European Court of Human Rights: Ensuring Minimum Standards of Human Rights Protection* (2021) 172. Cf United States jurisprudence, which upheld federal bans on contributions to political parties by non-citizens other than permanent residents on the ground that certain activities which include not just the right to vote and the (duty) to serve on a jury but also the right to work as a teacher in a publicly funded school were 'intimately relate[d] to the process of democratic self-government'. See *Bluman v FEC*, 565 US 1104 (2012), analysed by ED Mazo 'Our Campaign Finance Nationalism' (2019) 46 *Pepperdine Law Review* 759; cf *Sugarman v Dougall*, 413 US 634 (1973)(Holds that the wholesale exclusion of non-citizens from permanent positions in the New York State civil service violates the equal protection clause of the Fourteenth amendment which protects non-citizens; and that while the state has an interest in defining its political community, and a corresponding interest in establishing the qualifications for persons holding state elective or important nonelective executive, legislative and judicial positions, the broad citizenship requirement cannot be justified on that basis).

[13] Ziegler (note 12 above).

[14] Adopted 16 December 1966, entered into force 23 March 1976. South Africa ratified the ICCPR on 10 December 1998.

[15] HRC, General Comment No. 25 (27 August 1996) at para 3 (Also notes that 'State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions'.)

membership in parties play a significant role in the conduct of public affairs and the election process'.[16]

Nevertheless, the fact that, for citizens, exercising their right to freedom of association contributes to meaningful political participation does not render the right to freedom of association *exclusive* to citizens. Article 22(1) of the ICCPR requires contracting states to ensure to 'everyone' the right to freedom of association with others. The only persons which the provision explicitly singles out for potential 'imposition of lawful restrictions' on their freedom of association are members of the armed forces and of the police: no reference is made to citizenship.[17] Indeed, in its General Comment No. 15 entitled 'The Position of Aliens under the Covenant', the HRC states that

> the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens [and that] aliens receive the benefit of the right of peaceful assembly and of freedom of association … There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.[18]

States may seek to justify limitations imposed on the exercise of Article 22 rights by invoking one or more of the listed aims — national security, public safety, or public order (*ordre public*) and, less plausibly, in order to protect 'public health or morals'. It is hardly inconceivable, for instance, that worries about external actors' attempts to influence national elections will be relied upon to prevent foreign nationals *qua* migrants from membership of political parties. However, as the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association noted in their thematic report, an identified threat to national security must be 'real, not hypothetical', and state authorities must demonstrate that the measure can be effective in pursuing the legitimate aim and is the least intrusive means among those which might achieve the desired objective.[19] Nevertheless, this article appraises restrictions imposed by political parties *absent* state regulation. It seems implausible that a single political party would be able to claim that, nationally, its admission criteria are sought in order to further any of the above-listed aims: rather a party may more plausibly seek to invoke the final aim that is listed in the provision, namely 'the protection of the rights and freedoms of others' — in this case, the rights of some or all of its existing members. Part III will consider divergent admission criteria that parties may seek to implement in view of their effects on existing members.

It is notable that a similar distinction to the ICCRP's between eligibility for 'vote' and 'voice' rights is drawn by regional instruments applicable on the African continent[20] and in

[16] Ibid at para 26. Elsewhere, the HRC referred to political parties as 'a form of association essential to the proper functioning of democracy'. *Farah v Djibouti*, UN Doc. CCPR/C/130/D/3593/2019, Views of 4 November 2020, para 7.2.

[17] See e.g. Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (Notes that 'legislation that does not set any specific limitation on individuals, including … foreign nationals … complies with international standards'), available at: UN Human Rights Council, First Thematic Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 55.

[18] HRC, General Comment No. 15 (11 April 1986) at para 7.

[19] UN Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, UN Doc. A/HRC/50/23, 10 May 2022, para. 14.

[20] The African Charter on Human and Peoples Rights, adopted 1 June 1981, entered into force 21 October 1986 (ACHPR) Arts 13(1) and 11, respectively. See also African Charter on Democracy, Elections and Governance,

the Americas.[21] Only one regional instrument is outstanding: the European Convention on Human Rights (ECHR),[22] an early instrument which predates the ICCPR and the other regional instruments. While the ECHR similarly proclaims in Article 11 the right of 'everyone' to freedom of association, Article 16 thereof allows state parties to restrict 'the political activities of aliens'. Yet according to the European Court of Human Rights (ECtHR), Article 16 has fallen into desuetude and cannot be relied on;[23] moreover, most member states of the Council of Europe are also EU member states, and the EU Charter of Fundamental Rights proclaims the right of 'everyone … to freedom of association at all levels, in particular in political, trade union and civic matters'.[24]

The doctrinal position in IHRL and regionally is therefore clear: whereas the right to vote may be legitimately restricted to citizens, at least on the national level, the starting premise is that political party membership as a component of the right to freedom of association accrues to 'everyone'; restrictions on the exercise of this right on grounds of citizenship (general or selective) and onerous residence requirements prima facie infringe the excluded persons' rights and must be justified. That this is also a desirable position is demonstrated by the dual role which political parties perform.

III THE DUAL ROLE OF POLITICAL PARTIES AND PROTOTYPES OF MEMBERSHIP CRITERIA

Political parties are different from many other associations: their activities are directed at participating, influencing, and shaping the *public* sphere. The Organisation for Security and Co-operation in Europe (OSCE) defines a political party as 'a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections'.[25] This definition reflects the *first* of their dual roles, as outlined below.

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adopted 30 January 2007, entered into force 15 February 2012 (ratified by South Africa on 24 December 2010) Art 27(1) whereby states parties commit to '[s]trengthening the capacity of parliaments and legally recognised political parties to perform their core functions'.

[21] American Convention on Human Rights, adopted 22 November 1969, entered into force 18 July 1978: Art 16 'Freedom of Association' uses the language of 'everyone', whereas Art 23 'Right to Participate in Government' uses the language of '[e]very citizen'.

[22] Adopted 3 November 1950, entered into force 3 September 1953 (ECHR).

[23] In *Pernicek v Switzerland,* App No 27510/08 (15 October 2015), the Swiss government sought to justify the interference with the applicant's freedom of expression based on their 'alien' status; the European Court of Human Rights (ECtHR) noted that the provision 'has never been applied by the former Commission or the Court, and unbridled reliance on it to restrain the possibility for aliens to exercise their right to freedom of expression would run counter to the Court's rulings in cases in which aliens have been found entitled to exercise this right without any suggestion that it could be curtailed by reference to Article 16' at para 121. The court further held that 'Article 16 should be construed as only capable of authorising restrictions on "activities" that directly affect the political process.' Ibid at para 122. This judgment is cited approvingly by the Venice Commission, *Guidelines on Political Party Regulations* (2nd Ed OSCE/ODIHR 2020), which takes the view that 'only the possibility of aliens to establish political parties can be restricted under Article 16' and that the provision 'should not be applied in order to restrict the membership of aliens in political parties'. Ibid at para 149.

[24] Charter of Fundamental Rights, OJ 2000/C 364/01, 18 December 2000, Art 12. Notably, the right to vote appears in the citizens' rights section of the Charter. Ibid Art 39.

[25] Venice Commission guidelines (note 23 above) at para 9.

In this role, political parties serve as a key conduit for selecting candidates for elections in representative democracies. The United States Supreme Court has referred to political parties as 'groups of like-minded individual voters'[26] that are 'organized for the purpose of winning elections and influencing public policy'.[27] Even in jurisdictions like South Africa where individuals can stand and be elected to the national assembly as independent candidates, the critical role that parties play in representative democracy is undeniable: 'a likeminded group of individuals — with their collective insight, effort and resources — is far more likely to make itself heard'.[28] The extent to which party members determine their party's candidates varies: the more meaningful and direct an individual's participation in a party's candidate selection processes, the stronger the influence their 'voice' may have on the choices that voters make. Equally, meaningful party membership means that exclusion therefrom has even greater adverse effects both for those excluded and for decision-makers (voters).

The *second* role that political parties perform is to serve as platforms for advancement of political ideologies both inside and outside representative political institutions. Political parties are associations established for pursuing common causes whose members subscribe to such causes. Some political parties may never obtain public representation, or may take a long time to do so, especially in constituency-based electoral systems that follow first-past-the-post processes; yet they may nevertheless influence the public discourse through manifestation of their ideology in different public arenas, cross-fertilisation of ideas, and by providing a space for persons to engage meaningfully. As Haysom J posited in *New Nation Movement,* political party membership satisfies 'the need to associate in order to realise fully one's humanity — to interact, combine, make common purpose and enjoy life with other persons sharing one's cultural, personal, political or economic interests'.[29]

Importantly, the right to associate with those who share one's values includes the freedom to not associate with those who do not share them. This is no less the case for political associations than it is for other associations. To force a political party to accept *everyone* as members, including persons who do not share its values or policies, would undermine its ability to effectively pursue those values and would detrimentally affect existing members' freedom of association.

Writing generally about associations, Marshall claimed they should have the power to regulate their membership 'in order to ensure that the association remains true to its founding tenets'.[30] In a case concerning trade union membership, the ECtHR held that 'where associations are formed by people, who, espousing particular values or ideals, intend to pursue

[26] *Morse v Republican Party of Va.*, 517 US 186, 241 (1996).

[27] *Timmons v Twin Cities Area New Party*, 520 US 351, 357 (1997).

[28] S Woolman 'Freedom of Association' in S Woolman, T Roux & M Bishop (eds) *Constitutional Law of South Africa* (2nd Ed, 2013) ch 44, 7. See also MR Dimino 'It's My Party and I'll Do What I Want To: Political Parties, Unconstitutional Conditions, and the Freedom of Association' (2013) 12 *First Amendment Law Review* 65, 73 (Suggests that 'political parties … should have the right to control their messages by limiting the people who can influence those messages' and should thus be able 'to distinguish between potential members on the basis of ideology, sex, race, sexual orientation, and any other basis even if such discrimination would be unconstitutional when undertaken by the government').

[29] *New Nation Movement NPC & Others* [2020] ZACC 11.

[30] W Marshall 'Discrimination and the Right of Association' (1986) 81 *Northwestern University Law Review* 68.

common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership'.[31]

Writing about political parties, Woolman went further: contending that 'control over entrance, voice, and exit' are essential for the protection of associational rights, he argued that 'in cases where the discrimination and exclusion actually serves the expressive ends of the association — and where state intervention would alter those expressive ends — then we may wish to permit expression to trump the state's interest in representativity and equality'.[32] Woolman posited that parties should even be permitted to be racially exclusive, so long as all citizens can still participate meaningfully in the affairs of state in other means, though not if racially exclusive parties impair democratic deliberation and participation.[33]

Contra Woolman, this article argues that permitting political associations to deny admission based on protected characteristics such as race is harmful both for the individuals concerned and for wider society: such toleration provides credence to an objectionable agenda that would be an unacceptable basis for public policy. It was suggested above that any exclusion from political party membership adversely affects those excluded, including in respect of their sense of belonging, and impoverishes public discourse, thereby affecting voters' genuine choices: exclusion on objectionable grounds additionally has a corrosive effect on the proper functioning of democratic politics.[34] Conversely, prohibiting discriminatory treatment by private associations helps to reduce the adverse effects of associations that promote 'negative social capital'.[35]

How then does one resolve the tension between respecting the freedom not to associate and the desirability of inclusive membership? There is a qualitative difference between a political party requiring prospective members to subscribe to its permissible ideological tenets and a political party requiring members to possess an immutable characteristic or a characteristic that is fundamental to their dignity and identity, and which has no bearing on the pursual of

[31] *Associated Society of Locomotive Engineers and Firemen (ASLEF) v the UK*, App no. 11002/05, 27 February 2007 para 39.

[32] Woolman (note 28 above) at 49–50. See also N Persily & BE Cain 'The Legal Status of Political Parties: A Reassessment of Competing Paradigms' (2000) 100 *Columbia Law Review* 775, 782–785 (Outlines three paradigms for political party management: libertarian, managerial and progressive).

[33] Cf T Khaitan 'Political Parties in Constitutional Theory' (2002) 73 *Current Legal Problems* 89, 112 (Endorses subjecting political parties to anti-discrimination norms notwithstanding his general scepticism about interventions in internal party affairs).

[34] D Bilchitz 'Should Religious Associations Be Allowed to Discriminate' (2011) 27 *South African Journal on Human Rights* 219, 239–240 (Considering the exclusion of queer religious clergy from membership of churches, Bilchitz claims 'the very quality of the interactions between individuals in the society is … affected by religious doctrines that promote such notions of inferiority').

[35] Ibid at 242 (borrowing the term from Fukuyama). See also G Orr 'Legal Conceptions of Political Parties through the Lens of Anti-Discrimination Law' in J-C Tham, B Costar & G Orr (eds) *Electoral Democracy: Australian Prospects* (2011) 120 (Notes the risk that 'if the culture of a country's politics embraces discriminatory practices, certain minorities may find themselves locked out of most of the parties, and marginalised to ghetto parties').

a political party's *legitimate* aims.[36] That is why, as early as 1944, overly racist party primaries were judicially quashed in the United States.[37] OSCE guidelines state that

> it is justifiable for parties to withhold membership from any applicant who rejects the values they uphold, or who acts against the values and ideas of the party … carefully constructed so as not to be discriminatory in nature, and strike a careful balance between this principle of non-discrimination and the need for political associations to be based on collective beliefs.[38]

Where should we situate citizenship and/or residence admission criteria on the spectrum between (permissible) ideological bases and proxies for (impermissible) discriminatory bases? One can identify three key prototypes of potential admissions criteria, mimicking prevalent voting eligibility criteria: a generally applicable citizenship requirement which excludes all non-citizens; generally applicable residence requirements (of varying degrees) which exclude all non-citizens who do not meet those residence requirements; and a selective foreign citizenship requirement which excludes some non-citizens based solely on their foreign citizenship. The three prototypes shall be appraised in turn.

First, a generally applicable citizenship requirement. Given that most political parties contest elections only in one national jurisdiction, this type of qualification may be based on a rational connection between holding citizenship of the state in which the political party operates and membership thereof, as well as on a stakeholding principle which considers those with permanent and generally unbreakable legal ties to the polity to be most invested in its future well-being. A citizenship requirement is thus a proxy for wider ideological debates about the relations between membership, belonging and political participation. Imagine a political party that advocates reduced or no migration or toughening naturalisation rules. The party may also be ideologically opposed to the extension of the franchise to non-citizens. It may even advocate the imposition of legislative restrictions on political party membership, including, if necessary, withdrawal from IHRL treaties, given that they arguably limit that possibility. Ultimately, such a party believes migrants should have fewer *political* rights than citizens, though it may accept that migrants should enjoy other rights on an equal basis. One can also imagine a different party that does not present itself as hostile to immigration or migrants' rights, but which nevertheless adopts a small-r republican view on political self-determination centred on citizenship. Such parties may consider being forced to admit as members migrants *qua* migrants to undermine their overarching ideological stance, and their positions may be genuinely held. Nevertheless, their exclusionary stance has the adverse effects of exclusion on migrants and on wider society.

Second, a residence requirement that applies equally to all non-citizens, justified based on a strong link between jurisdiction, territory and legislation to which residents are subject, and

[36] An analogy may be drawn with a UK Supreme Court case pertaining to a bakery's refusal to sell a cake adorned with the message 'support gay marriage' to a gay customer. The judgment drew a legal distinction between (permissible) criteria pertaining to the *message* (general support for gay marriage) and impermissible criteria pertaining to the *messenger* (a gay customer). *Lee v Ashers Bakery* [2018] UKSC 49; but see US Supreme Court judgment in *Masterpiece Cakeshop v Colorado Civil Rights Commission*, 584 US 617 (2018), a case pertaining to a cake ordered by a gay couple for *their* wedding, where such line-drawing between message and messenger was rather less persuasive.

[37] *Smith v Allwright* 321 US 649 (1944)(Overturns Texas' law which allowed parties to govern their internal affairs including the holding of all-white primaries).

[38] Venice Commission guidelines (note 23 above) at para 116.

which distinguishes them from those merely visiting and from non-citizens living outside the state altogether. A reasonable residence requirement appears uncontentious. Yet residence requirements vary in length: some parties may require non-citizens to be permanent residents as a condition of membership, adopting an approach that restricts membership to those who have made a demonstrable commitment to *join* a new political community. In contrast, professedly pro-migration parties that advocate a residence-based franchise may see all migrants' membership as a welcome first step towards their full inclusion in the political community. For such parties, giving a meaningful voice to all residents in their internal processes sends a powerful message to wider society. Are both approaches equally legitimate? Cohen argues that time is 'scientific and rational' and appears to treat all subjects 'equally, identically, and impartially'.[39] For Carens, the passage of time strengths residents' moral claims to the same civil, economic and social rights as citizens.[40] Yet, time should arguably not be the only factor in determining the justifiability of permanent residence requirements: in some jurisdictions, obtaining permanent residence is near-impossible. The more onerous, expensive and critically discretionary the process of obtaining permanent residence, the more challenging it becomes to justify parties requiring such status as a condition of membership.

A *third* membership criterion distinguishes *between* non-citizens based solely on their foreign citizenship. This criterion neither relies on the link between citizenship and electoral participation nor on residence, of whichever length, as a basis for demonstrating an individual's connection and commitment to a political community. An analogy may be drawn with selective enfranchisement policies in national or supranational elections in several jurisdictions: in the UK, for instance, alongside British citizens, only residents who hold qualifying Commonwealth or Irish citizenships are eligible to vote in general elections.[41] EU law requires EU member states to secure to citizens of other EU member states residing in their territory the right to vote in municipal elections under the same conditions as their nationals.[42] While EU member states are free to extend the same rights to other non-citizens, most enfranchise *only* EU citizens in their municipal elections, distinguishing between non-citizens on the basis of their foreign citizenship. Such policies are ultimately based on an ideology according to which, in a global legal order of nation-states, closer relations between certain states and their respective citizens may entail preferential treatment. Could the same rationale apply to a political party's decision to adopt such an ideological position in respect of its own membership? Assuming that political parties may seek to implement their policies at the national level, then if national policies distinguishing between non-citizens based on their foreign citizenship in respect of political rights are permissible, it should arguably be permissible for a political party to adopt such

[39] E Cohen 'The Political Economy of Immigrant Time: Rights, Citizenship, and Temporariness in the Post-1965 Era' (2015) 47(3) *Polity* 337, 340–341 (Describes time as 'facially neutral yet embedded in very specific cultural and political contexts').

[40] J Carens *The Ethics of Immigration* (2013) 103–104. Intriguingly, pursuant to the Convention relating to the Status of Refugees, adopted 28 July 1951, entered into force 22 April 1954, refugees' entitlements to rights differ depending on their degree of attachment to their state of asylum. See generally J Hathaway *The Rights of Refugees under International Law* (2dn edn, 2021) ch 3. Cf M Sharpe 'The 1951 Refugee Convention's Contingent Rights Framework and Article 26 of the ICCPR: A Fundamental Incompatibility?' (2014) 30(2) *Refuge* (Contends that the Refugee Convention's scheme must be interpreted in light of the ICCPR).

[41] Representation of the People Act 1983 c 2 s 1(1)(c).

[42] Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012, Art 22.

a policy in its internal processes with a view to future national implementation. Yet, it is contended that selective enfranchisement policies are normatively suspect: distinctions *between* residents based on their foreign citizenship are prima facie discriminatory precisely because they follow neither a citizenship nor a residence rationale; therefore, their relatively rare existence should not be relied upon to justify the adoption by parties of similar policies.

Having set out three prototypes of admission criteria which link political party membership to citizenship and/or residence, the article appraises the political reality and constitutional position in South Africa.

IV SOUTH AFRICA: DIVERGENT POLITICAL PARTIES' MEMBERSHIP CRITERIA IN LIGHT OF ITS CONSTITUTIONAL FRAMEWORK

The South African political landscape offers a poignant illustration of membership criteria absent state regulation. The five leading parties pursuant to the results of the May 2024 general election apply divergent membership criteria.[43] Both uMkhonto weSizwe's (MK) and the IFP require their members to be South African citizens. Section 5 (membership) of the MK constitution states that 'Membership of uMkhonto weSizwe party is open to all South Africans who are registered to vote and are above the age of 16 years'.[44] In the same vein, Chapter 2 (membership), section 1 of the IFP constitution states that membership is 'open to all South African citizens who fully subscribe to the Preamble, Statement of Belief and accept the aims and objectives and rules of the Party'.[45] Hence, both parties adopt the first membership prototype (citizenship).

In contradistinction, section 3.1.1.2 of the Democratic Alliance's (DA) constitution states that membership is open to a person who is a 'citizen or a permanent resident' of South Africa.[46] The African National Congress (ANC)'s constitution states in section 4 (membership) that, alongside 'all South Africans … irrespective of race, colour and creed, who accept its principles, policies and programmes and are prepared to abide by its Constitution and rules', it is possible for both 'spouses or children of South Africans who have manifested a clear identification with the South African people and its struggle' (section 4.2) and for '[a]ll other persons who have manifested a clear identification with the South African people and their

[43] An interesting contrast can be drawn with the five leading national political parties in Great Britain (GB) (these parties do not stand in Northern Ireland, hence the reference to GB and not the United Kingdom). Four parties (The Conservative and Unionist Party, Reform UK, The Liberal Democrats, and the Green Party) impose *neither* residence *nor* citizenship membership criteria. The Labour Party requires individuals to be British subjects (aka British citizens), Irish citizens, *or* residents in the UK for at least one year. Rule Book 2024, ch 2: Membership Rules, Clause 1(3), available at https://labour.org.uk/resources/labour-party-rulebook/.
The (now defunct) British National Party infamously restricted its membership to 'Indigenous Caucasians': BNP Constitution (11th Ed, August 2009) s 2. The provision was challenged by the Equality and Human Rights Commission, claiming that it constituted direct discrimination on grounds of 'race' as per the Equality Act 2006 (c. 3). The BNP Constitution was subsequently redrafted to allow 'non-indigenous Britons' to become members under certain conditions which were arguably still indirectly discriminatory (see the contempt case against BNP officials: *Commission for Equality and Human Rights v Griffin & Others* [2011] EWHC 675 (Admin) (21 March 2011).

[44] Available at https://mkparty.org.za/wp-content/uploads/2024/10/MK-Booklet_.pdf.

[45] Available at https://ifp.org.za/wp-content/uploads/2015/03/Our-Constitution.pdf.

[46] Available at https://cdn.da.org.za/wp-content/uploads/2023/04/19132045/DA-Constitution-As-Adopted-on-1-April-2023.pdf.

struggle and are resident in South Africa' (section 4.3) to apply for membership.[47] Both parties adopt variants of the second prototype (residence).

The only leading South African national party to admit non-citizens as members based on a regional designation is the EFF, whose constitution states in section 7.1 that '[a]ny South African citizen … or any person who comes from the African continent or in the diaspora can become a member'.[48] The EFF's policy adopts the third prototype (selective citizenship).

Part III considered such policies in general. In the South African context, are they constitutional? The natural starting point is the Bill of Rights, which proclaims that *everyone* has the right to freedom of expression, including the 'freedom to receive or impart information or ideas'[49] as well as the right to 'freedom of association'.[50] Pursuant to section 36 thereof, the exercise of such rights can be subject to permissible limitations. Given that political parties are associations, the right to freedom of association which the Constitution grants to 'everyone' prima facie encompasses a right to political party membership.[51] However, the constitutional position is unhelpfully complicated by the provision's reference to rights (a) to form a political party, (b) to participate in the activities of, or recruit members for, a political party, and (c) to campaign for a political party as part of the cluster of 'political rights' which section 19 guarantees to 'every citizen'.

The decision to explicitly list rights pertaining to formation and activities of political parties should be viewed in light of South Africa's unique historical context of the abuse of citizenship by the apartheid regime. Elsewhere, Bilchitz and I posited that this unique historical context explains why the post-apartheid constitutional right to citizenship in section 3 was framed in unequivocal terms with no qualification.[52] It may similarly explain why it was deemed important to ensure that *all* citizens enjoy access to meaningful constitutional rights, including those pertaining to political parties. Nevertheless, applying a purposive interpretation, it can be argued that section 19 advances the first, 'representation' role of political parties which, as discussed, is intimately related to the right to vote: it thereby gives effect to the section 3 constitutional right to *equal* citizenship. However, the effective realisation of political parties' second role, providing an ideological platform, is substantively advanced by the more inclusive nature of freedom of association pursuant to section 18.

Regrettably, the Constitutional Court's political parties jurisprudence has hitherto been dominated by the section 19 formulation. Indeed, some judgments adopted an IHRL-incompatible interpretation, construing section 19 rights as *exclusively* guaranteed to

[47] Available at https://www.anc1912.org.za/anc-constitution-2017-2/.

[48] Available at https://effonline.org/eff-amended-constiution-document/.

[49] Constitution s 16(1)(b).

[50] Ibid s 18.

[51] For discussion of the relevance of s 18 to the operation of political parties see e.g. *One Movement South Africa NPC v President* [2023] ZACC 42.

[52] D Bilchitz & R Ziegler 'Is Automatic Loss of South African Citizenship for Those Acquiring Other Citizenships Constitutional?' (2023) 39(1) *South African Journal of Human Rights* 97, 106.

citizens.[53] In turn, section 18 analysis is virtually absent from the jurisprudence[54] and there are only passing references to the effects of restrictions on human dignity.[55] The judgments discussed below do not generally engage relevant IHRL provisions, notably Articles 22 and 25 of the ICCPR, and do not seek to render the constitutional adjudication IHRL-compatible.

In *Democratic Alliance*,[56] the Constitutional Court confirmed the unconstitutionality of section 6(1)(a) of the South African Citizenship Act 88 of 1995. The provision stipulated that South African citizens are automatically deprived of their South African citizenship if they acquire a citizenship of another state without obtaining prior permission for its retention from the Minister of Home Affairs. The court reasoned, inter alia, that such deprivation detrimentally 'occasions loss of these other constitutional rights embodied in sections 19, 21 and 22',[57] thereby assuming without discussion that those rights are *lost* as a consequence of deprivation of citizenship.

In *Ramakatsa*,[58] the Constitutional Court stated that 'political parties occupy the centre stage and play a vital part in facilitating the exercise of political rights'. Yet, missing an opportunity to marry the interpretations of sections 19 and 18, the court opted instead to state that 'political parties may not adopt constitutions which are inconsistent with section 19'.[59]

In *One Movement*[60] Kollapen J did refer to the section 18 freedom of association as part of a cluster of political rights, alongside section 19(1) and 19(3), but has not sought to consider the added value that it brings to the legal analysis.[61]

The judgment in *My Vote Counts,*[62] demanding transparency regarding sources of funding of political parties, focused on the need for *citizens* 'to be truly free to make a political choice, including which party to join and which not to vote for or which political cause to campaign for or support' in the context of access to 'relevant or empowering information'; and on the ensuing obligation for the state to 'respect, protect, fulfil and promote the right to vote by ensuring that it is exercised meaningfully or with understanding'.[63]

In *SAMWU*, the Constitutional Court's most recent political parties judgment, the majority (per Mathopo J) expressed concern that ineligibility for office-holding in political parties 'could

[53] J Klaren 'Citizenship' in S Woolman, T Roux & M Bishop (eds) *Constitutional Law of South Africa* (2nd Ed, 2013) ch 60, 5 (Argues that 'the constitutional baseline is not a grant of rights to citizens as opposed to other lawful members' but, rather, that 'the grant of rights to citizens is done as a special reservation from the other operating baseline of rights granted to "everyone"').

[54] See J Brickhill & R Babiuch 'Political Rights' in S Woolman, T Roux & M Bishop (eds) *Constitutional Law of South Africa* (2nd Ed, 2013) ch 45 (Argues that s 18 is 'likely to form a more fertile constitutional basis for the review of admissions policies and expulsion proceedings'). Cf *Pilane v Pilane* [2013] ZACC 3 at para 69 (Holds in relation to s 16 freedom of expression and s 18 freedom of association that 'the exercise of the right to freedom of expression can be enhanced by group association …. These rights are interconnected and complementary').

[55] See e.g. *SAMWU* (note 4 above) at para 19 (Notes without discussion the SAMWU claim pertaining to intersectionality between political rights and the right to human dignity).

[56] CCT 184/23 *Democratic Alliance v Minister of Home Affairs* [2025] ZACC 8.

[57] Ibid at para 39. The impugned provision: Citizenship Act 88 of 1995 s 6(1)(a).

[58] *Ramakatsa v Magashule* [2012] ZACC 31 at para 65 (Moseneke and Jafta JJ).

[59] Ibid at para 74.

[60] *One Movement South Africa* (note 51 above).

[61] Ibid at para 269 (Kollapen J).

[62] *My Vote Counts NPC* (note 6 above).

[63] Ibid at paras 34, 8 respectively (Mogoeng J).

very well dissuade citizens from participating in political party activities'.[64] The minority judgment (per Kollapen J) noted that 'many people make political choices, participate in political party activities and vote, without any desire to run for political office', adding that '[i]f the limitation did have the consequence suggested in the first judgment, it would naturally be a cause for concern'.[65] Indeed, for Kollapen J, the fact that only one facet of political rights was directly restricted played a role in the constitutional analysis. It follows that, when some or all resident migrants *qua* non-citizens face a blanket ban on joining (a) political party, the concerns that both the majority and minority judgments express may materialise.

For potential litigants, a legal challenge to restrictive membership criteria would have to rest on a reverse Groucho Marx maxim: one would need to seek to become a member of a club that would not admit them. Faced with such a future challenge, what must the Constitutional Court do? It is noteworthy that section 19 does not refer explicitly to 'membership' of political parties but to their formation, activities, and campaigns. The Constitution instructs courts to consider international law in the interpretation of the Bill of Rights,[66] and 'when interpreting any legislation' to 'prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law'.[67] Indeed, in *Glenister*[68] the Court reiterated that South Africa is bound to give effect to its treaty obligations in good faith[69] and that it may not use its own internal law to justify failing to give effect to its international obligations.[70] Given that, in IHRL, freedom of association is afforded to 'everyone', in order to interpret the Constitution compatibly with South Africa's international obligations, restrictions on membership must arguably be scrutinised *also* through a section 18 lens. This means that any citizenship or permanent residence-based restriction on membership of political parties, regardless of whether it is imposed by the state or by a political party through its admission criteria, prima facie infringes migrants' section 18 rights and would therefore need to meet the section 36 limitation clause.

Furthermore, contra the jurisprudential positions referenced above in respect of section 19, constitutional jurisprudence has previously held in respect of other 'citizens' rights' that they *can* be extended to non-citizens.[71] Indeed, citizenship has generally been considered an analogous ground to the listed grounds in section 9(3) (the equality provision).[72] Citizenship

[64] *SAMWU* (note 4 above) at para 56.

[65] Ibid at para 144.

[66] Constitution s 39(1)(b).

[67] Ibid s 233.

[68] *Glenister v President of the Republic of South Africa* [2011] ZACC 6 at para 177.

[69] Vienna Convention on the Law of Treaties, adopted 22 May 1969, entered into force 27 January 1980, Art 26.

[70] Ibid Art 27.

[71] See e.g. *Khosa v Minister of Social Development* [2004] ZACC 11 ('*Khosa*'). Cf JY Mokgoro 'Ubuntu, the Constitution and the Rights of Non-Citizens' (2010) 21(2) *Stellenbosch Law Review* 221, 221 (Suggests that 'certain rights in the Bill of Rights … are reserved for citizens. The remainder of the rights, subject to the limitation clause in section 36 of the Constitution, may be enjoyed by citizens and foreign nationals alike').

[72] See e.g. *Larbi-Odam v Member of the Executive Council for Education (North-West Province*) [1997] ZACC 16 ('*Larbi-Odam*'), Mogkoro J noting in para 19 that 'objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner'; *Khosa* (note 71 above) noting in para 71 that '[a] differentiation on the grounds of citizenship is clearly on a ground analogous to those listed in section 9(3) and therefore amounts to discrimination.'

can thus form the basis of a discrimination claim, including when discrimination occurs against only some *non-citizens*.

In South Africa's constitutional context, that citizenship is an analogous rather than a listed ground means that 'there is no presumption in favour of unfairness and the unfairness first has to be established'. Nevertheless, as the Constitutional Court held in *Larbi-Odam*, '[t]he fact that the differentiation between citizens and non-citizens may have a rational basis does not mean that it is not an unfairly discriminatory criterion to use in the allocation of benefits'.[73] Famously, the *Harksen*[74] test for unfair discrimination requires that, upon a finding of differentiation, a rational connection to a legitimate government purpose is identified. When the alleged discrimination is premised on an analogous or unspecified ground, the query is 'whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner'.[75] Should a legal challenge be brought against exclusion from membership, South African courts would need to consider both the purpose served by partial or full exclusion from political party membership based on citizenship (IFP, MK), permanent residence (DA), or regionality (EFF), and the adverse effects on those excluded and on wider society.

Finally, it is arguable that, distinctions on grounds of citizenship or permanent residence would need to meet the tests in section 14 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. A key legal question would be whether, as per section 14(2)(c) thereof, 'the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned'. Parties seeking to justify (selective or general) citizenship or permanent residence admission criteria would need to demonstrate that such restrictions are 'intrinsic' to the party's functioning. Given the reality in which practices diverge across political parties, it would be challenging to argue that such criteria are 'intrinsic' to a party's functioning.

South African courts have not yet been called upon to consider the constitutionality of political parties' membership criteria. It is suggested that, despite the unhelpful juxtaposition in section 19 of the Bill of Rights of 'vote' rights with some 'voice' rights, IHRL-compatible normative foundations pertaining to political parties *qua* associations lie in adopting a purposive interpretation of section 18 thereof; and that it is within this normative framework that the balancing of rights of excluded individuals and existing members of political parties as well as the parties themselves must take place, bearing in mind the dual role that political parties play in democratic politics.

But see *Rafoneke v Minister of Justice and Correctional Services* [2022] ZACC 29 ('*Rafoneke*'), where the Constitutional Court 'assume[d] without deciding that the differentiation amounts to discrimination' based on the 'sentiments expressed by this Court in Larbi-Odam'. Ibid at para 95. For critique, see P de Vos & N Ramalekana 'Erasure, Xenophobic Discrimination and Non-Citizens' Rights to Equality and Work in South Africa: A Commentary on *Rafoneke v Minister of Justice*' (2024) 14 *Constitutional Court Review* 1, 26, 32 (Notes the Constitutional Court's equivocation and its failing to recognise the vulnerability of the claimants *qua* non-citizens who are excluded from voting, leaving little political incentive for the government to protect their interests).

[73] *Larbi-Odam* (note 72 above) at para 68 (Mogkoro J).

[74] *Harksen v Lane NO* [1997] ZACC 12.

[75] *Rafoneke* (note 72 above) at para 70 (citing the tests).

V CONCLUDING THOUGHTS

The legality and plausibility of (general or selective) citizenship or permanent residence admission criteria for membership of national political parties lies at the intersection of associational freedom, democratic participation, and migration governance. Absent state regulations, political parties in many jurisdictions, including South Africa, have adopted divergent eligibility criteria, potentially reflecting their ideological stances. Situating the doctrinal discussion within an IHRL framework, this article posited that, even if one accepts citizenship-based restrictions on the right to partake in decision-making ('vote'), applying such restrictions to other political rights ('voice') is prima facie suspect: migrants' IHRL-recognised right to have a meaningful voice in their state of residence needs to be upheld. This is due, inter alia, to the dual role of political parties, serving not just as a conduit to public representation, but also as a platform for ideological engagement and societal cross-fertilisation.

The article acknowledged that freedom of association accrues both to prospective party members and to their existing members, as well as to the political parties. Hence, contra state-imposed restrictions, admission criteria set by political parties entail balancing the party and its existing members' interest in advancing desired ideological objectives with the adverse effects of exclusion on prospective members and, given parties' public-facing roles, on the wider public sphere. Against this background, the article's taxonomy considered three prototypes of citizenship or residence-based restrictions: a general citizenship qualification, a general residence qualification (of varying degrees), and a selective citizenship qualification. Pertaining to the latter, the analysis focused on the tension between ideology and discrimination, suggesting in line with IHRL that such restrictions are prima facie suspect, and that the onus lies with the party to demonstrate that its criteria do not serve as a guise for objectionable criteria.

The article then appraised the constitutional position in South Africa, where a historically contingent constitutional formulation has led the Constitutional Court to review political rights pertaining to regulation of political parties through a section 19 citizen's rights lens rather than a section 18 freedom of association lens, and where the political terrain exhibits divergent membership criteria on citizenship or residence grounds. Nevertheless, South Africa's constitutional framework ought to be and can be reconciled with the position in IHRL, to which the republic is constitutionally committed. It is thus both normatively desirable and constitutionally appropriate for future jurisprudence to adopt an IHRL-compatible interpretation to party membership admission criteria.