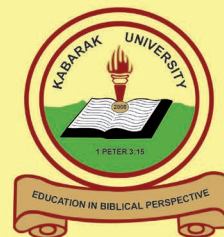


# Kabarak Journal of Law and Ethics

Volume 5, 2020

A peer-reviewed publication of the  
Centre for Jurisprudence & Constitutional Studies  
Kabarak University School of Law



# Youth Right to Political Participation under International Human Rights Law

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## Abstract

The call for an increase in youth participation in politics and governance globally is a recurring decimal in both national and global issues. Some states like Kenya have yielded to the call by constitutionally guaranteeing full political rights to all youths. Countries like Nigeria have limited full political rights to some youth while other youth' political rights are grossly limited to only the right to vote. Thus, this article interrogates the contours and the contents of the right to political participation of youths under international human rights law. It, however, focuses on the African human rights system and current development in Nigeria. It contends that youth right to political participation should not be different from that of other adults in any state. It argues that the practice of most states in Africa where they give different conditions for the exercise of political rights between youth and other adults in the society is against their obligations under international human rights law. It also amounts a flagrant violation of the right to political participation of youths. It further contends that all political rights should be treated as inseparable twins, in that, all adults citizen who are entitled to either of the rights should equally be entitled to all the other political rights. All persons within the age of majority in any country must be allowed to exercise and enjoy their full political rights without discrimination on the basis of age, disability or other status.

**Key words:** Youth, Human Rights, Nigeria, Political Participation, Elections and African Human Rights System

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## 1. Introduction

Youth and young people all over the world continue to face stiff opposition to the full realisation of their basic human rights.<sup>1</sup> They are victims of exclusion, marginalisation, and myriad of human rights abuses globally, most especially, in relation to their political rights. The continuous wholesale or partial denial of the human rights of youth globally, calls into question whether the full enjoyment of human rights is for some selected few or for all human beings.<sup>2</sup> Human rights as extrapolated from international human rights law connotes that the rights which are agreed by states are untrammelled guarantees to members of the human race without discrimination, partiality, fear or favour.<sup>3</sup> They are the entitlements that accrue to all persons who are bound by the common thread of humanity.<sup>4</sup> They accrue to a person from/before birth and inure till death. By necessary implication, it is only upon death that a person ceases to be entitled to the respect and protection of her/his human rights.<sup>5</sup> Laws *per se* do not give human rights but merely secure or guarantee their protection because with or without their guarantee under existing laws, the inalienability of the basic human rights to every member of the human race remains incontestably settled.<sup>6</sup>

Flowing from the above, this article interrogates the existence of the right to political participation of the youth under the international human rights system. It principally engages the various legal frameworks for the protection of youth rights and their right to political participation under the international human rights system.<sup>7</sup> However, it first and foremost considers the global regime on the right to political participation and also, youth right to political participation. It also considers by an assessment on the various steps that have been taking at protecting and securing the rights of youth. This is followed by a critical analysis of regional human rights regimes on the right of youth and their right to political

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<sup>1</sup> William Angel, (ed) *The International Law of Youth Rights* (2<sup>nd</sup> edn, Brill | Nijhoff 2015).

<sup>2</sup> *Ibid* 1.

<sup>3</sup> Osita Nnamani Ogbu, *Human Rights Law and Practice in Nigeria* (2<sup>nd</sup> Revised edn. Vol. 1, Snaap Press Ltd 2013).

<sup>4</sup> Olu Awolowo, 'Meaning, Nature and Evolution of Rights in Nigeria' in Olusesan & Olu Awolowo (eds), *Rights* (Throne-of-Grace Ltd2006).

<sup>5</sup> Daniel Shelton, *Advanced Introduction to International Human Rights Law* (Edward Elgar 2014).

<sup>6</sup> Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundation of International Law* (OUP 2003); Frans Viljoen, 'Disciplinary Beyondness: A Background to the Conference and Collection of Papers' in Frans Viljoen (ed) *Beyond the Law: Multi-Disciplinary Perspectives on Human Rights* (PULP 2012).

<sup>7</sup> William Angel, (ed) *International Law of Youth Rights: Source Documents and Commentary* (Brill | Nijhoff 1995).

participation in part three. In particular, the various moves that have been made towards the respect and protection of youth rights in Africa. Part four focuses on the Nigerian laws on the right of youth. It engages the Nigerian law in light of recent developments towards an increase in youth political participation. Conclusion of the work is done in the last part which is the fifth segment.

## 2. The Human Right to Political Participation under International Human Rights Law

There is no single definition of the meaning of political participation. Many scholars have viewed the phrase from various angles. These include participation in electoral processes, participation in the activities of political parties, and holding political offices to participate in activities that have impacts on laws and policies direction of the government of the day.<sup>8</sup> More often than not, when the issue of political participation is mentioned, it is usually linked to only participation in electoral processes.<sup>9</sup> Chadha has rightly argued that:

No doubt, one of the important political activities of the people is exercising voting rights during elections. However, political participation is not just casting vote rather wide range of other activities is also included in it—like membership of political party, electoral campaigning, attending party meetings, demonstrations, communication with leaders, holding party positions, contesting elections, membership in representative bodies, influencing decision making and other related activities.<sup>10</sup>

The above definition covers all facets of political participation. However, other scholars have given a different definition of the term political participation.<sup>11</sup> For example, political participation is said to be the act through which citizens influence political decisions.<sup>12</sup> Further, political participation has been seen as

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<sup>8</sup> Anuradha Chadha, 'Political Participation of Women: A Case Study in India' (2014) 7 *OIDA International Journal of Sustainable Development* 2, 92.

<sup>9</sup> Michael Steed, 'Participation through Western Democracy' in Geraint Parry *et al* (eds) *Participation in Politics* (Manchester: The University Press, 197); argues that political participation is its simplest form is the act of casting of votes in national elections.

<sup>10</sup> *Ibid* 8.

<sup>11</sup> Jan Teorell; Mariano Torcal and José Ramón Montero 'Political Participation: Mapping the Terrain' in Jan van Deth, José Ramón Montero & Anders Westholm (eds), *Citizenship and Involvement in European Democracies: A Comparative Perspective*. (Routledge, 2007).

<sup>12</sup> Jan W. van Deth, 'Studying Political Participation: Towards a Theory of Everything?' Introductory paper prepared for delivery at the Joint Sessions of Workshops of the European Consortium for Political Research Workshop 'Electronic Democracy: Mobilisation, Organisation and Participation via new ICTs' Grenoble, 6-11 April 2001 available at <<https://ecpr.eu/Filestore/PaperProposal/c8b57aab-51d9-4aca-b65d-4510ccfc19a3.pdf>> accessed on 18th September 2019.

the people's act of 'sharing in the framing and/or execution of public policies'.<sup>13</sup> The implication of this definition is that once a citizen participates in any of the processes in which the policies or/ and decisions of government are made, then the person has taken part in political participation.

Furthermore, it is pertinent to state from the outset that while political participation and elections are closely linked, its understanding and institutionalisation vary from one state to another.<sup>14</sup> Some scholars have even argued that there exists an indissoluble link between citizenship and political participation.<sup>15</sup> Thus, political participation is an issue that has more to do with citizens than foreigners and the various modes through which citizens can be involved in political participation are popular, contributory and contestatory.<sup>16</sup> By and large, the centrality of politics in the discourse of political participation cannot be overemphasised as Parry rightly declares that 'politics without participation is self-contradictory and democracy without participation is absurd'.<sup>17</sup> That is, political participation is the holistic involvement of a group of people in all activities which have a bearing on the political and governmental activities of a state.<sup>18</sup>

Various international human rights regimes provide for citizens' right to participate in the governance of their respective country.<sup>19</sup> Human right to political participation or political rights ought to be contained in the minutest classification of human rights because it stands tall among other rights.<sup>20</sup> The Universal Declaration of Human Rights (UDHR)<sup>21</sup> pointedly provides for the right to political participation or participation in government to everyone.<sup>22</sup> However, comprehensive detail of the right to political participation is contained in the

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<sup>13</sup> Samuel Edward Finer, 'Group and Political Participation' in Geraint Parry *et al* (eds) *Participation in Politics* (Manchester: The University Press, 197).

<sup>14</sup> Thio Li-Ann, 'The Right to Political Participation in Singapore: Tailor-making a Westminster-modelled Constitution to Fit the Imperatives of "Asian" Democracy' (2002) SJICL 6.

<sup>15</sup> Alçak Gerilim Kadioglu, 'Political Participation from Citizenship Perspective' (2009) 1MELIGJ 194.

<sup>16</sup> Peter Cane, 'Participation and Constitutionalism' (2010) 38 FLR 320.

<sup>17</sup> Geraint Parry, 'The Idea of Political Participation' in Geraint Parry *et al* (eds) *Participation in Politics* (Manchester: The University Press, 197) 15.

<sup>18</sup> William Oluchina, 'The Right to Political Participation for People with Disability in Africa' (2015) 3 *African Disability Rights Yearbook* 312.

<sup>19</sup> Michael Wambali, 'Political Participation in Tanzania' (2009) 9 AHRLJ 205.

<sup>20</sup> Steven Calabresi & Julia Rickery, 'Originalism and Sex Discrimination' (2011) 1 TLR 15.

<sup>21</sup> Adopted by General Assembly Resolution 2200A(XXI) on 16 December 1966 (UDHR).

<sup>22</sup> See article 21(1) of the UDHR which provides thus: '(e)veryone has the right to take part in the government of his country, directly or through freely chosen representatives'.

International Covenant on Civil and Political Rights (ICCPR).<sup>23</sup> It provides that the right to political participation should be enjoyed by all citizens without any of the distinction mentioned in article 2 and without unreasonable restrictions.<sup>24</sup> The right gives every citizen the opportunity to participate in public affairs whether through a chosen representative or directly.<sup>25</sup> It also includes the right to vote and to stand as a candidate in an election;<sup>26</sup> and to have access to public service on the basis of equality.<sup>27</sup>

Unlike the UDHR which confers the right to political participation on everyone, the ICCPR specifically guarantees the right to only citizens. It, therefore, implies that while a state can validly withhold it from non-citizens, it cannot generally waive it for citizens. Also, the enjoyment of the right among citizens must be enjoyed without any of the distinction mentioned in article 2 of the ICCPR. That is to say, one of the grounds listed in article 2 cannot be the sole basis of denying a citizen of the right to political participation under the Charter.<sup>28</sup> It must equally be pointed out here that while the Charter did not explicitly state what category of citizen is expected to enjoy this right, it is beyond contestation that the right(s) are/is usually applied to adult citizens.<sup>29</sup> Due to space constraints, this article would largely focus on an aspect of the right to political participation, which is the cornerstone or meat of the right, that is, the right to vote and to stand as a candidate in an election.<sup>30</sup>

If it is fairly settled that political participation is now a human right since it is one of the rights secured under international human rights law and which in its minimalist sense, connotes the right to vote and stand as candidates by all

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<sup>23</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 available at <<https://www.refworld.org/docid/3ae6b3aa0.html>> accessed on 23rd September 2019 (ICCPR).

<sup>24</sup> See article 25 of the ICCPR.

<sup>25</sup> See article 25(a) of the ICCPR.

<sup>26</sup> See article 25(b) of the ICCPR.

<sup>27</sup> See article 25(c) of the ICCPR.

<sup>28</sup> Article 2(1) of ICCPR provides as follow; '[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>29</sup> Niraja Jayal, 'Vote and Democracy, the Right to' Rhona K.M. Smith & Christien van den Anke (eds), *The Essentials of Human Rights* (Routledge, 2005).

<sup>30</sup> Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (OUP, 2009); Karen Czapansky & Rashida Manjoo, 'Right to Participation in Public Government' (2008) 19 DJCIL 7, where they argued that the fulcrum of the right to political participation under international human rights law entail the right to vote in an election and to stand as candidate in an election.

adult citizens, can states validly vary the right among them?<sup>31</sup> Generally speaking, besides minors who can be legitimately excluded from participating in electoral processes, the only other group that could be excluded are convicts.<sup>32</sup> Thus, most states guarantee to every adult citizen the right to vote in an election and the age of adulthood in many states is eighteen years.<sup>33</sup> States are allowed to limit the right to vote to some persons and can legitimately exclude children and those with disabilities. The obvious reason states could give for the exclusion of children is based on their lack of legal capacity or immaturity. Most countries exclude, like Nigeria, convicts serving their sentence possibly because of the belief that convicts are under some form of punishment by the state. Therefore, their political rights should be curtailed or suspended. However, it must be stated here that due to the ongoing campaign for the rights of prisoners, some states are beginning to grant partial political rights to them. Also, there is the ongoing debate to lower the age of majority eighteen to sixteen or fourteen, so as to allow children to vote.

However, when it comes to the right to stand as a candidate or contest for an election, states are given a lot of latitude in determining the various criteria for eligibility of citizens.<sup>34</sup> These latitude must, however, be exercised with great restraint and must be in accordance with the laid down procedures under the ICCPR. Whatever restriction that must be placed must meet the threshold of article 2 and must be objective and reasonable.<sup>35</sup> States, in limiting the right to stand for election, cannot do so unreasonable or arbitrary. For example, besides

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<sup>31</sup> See article 4 of the UN General Comment 25 of the Human Rights Committee which provides that right to vote belongs to every adult citizen.

<sup>32</sup> Steven Wheatley, 'Non-discrimination and Equality in the Right to Political Participation for Minorities' (2002) 1 JEMIIIE 6.

<sup>33</sup> Aoife Daly 'Free and Fair Elections for Some? The Potential for Voting Rights for Under-18s' in David Keane & Yvonne McDermott (eds) *The Challenge of Human Rights: Past, Present and Future* (2012) 278.

<sup>34</sup> Sarah Joseph 'Right to Political Participation' in D Harris & S Joseph (eds) *The International Covenant on Civil and Political Rights and United Kingdom law* (1995) 550.

<sup>35</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), (General Comment No. 25) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7 available at <<https://www.refworld.org/docid/453883fc22.html>> accessed on 23rd September 2019. In paragraph 4, it provides thus; '[a]ny conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office'.

setting the age of majority for eligibility for participation in electoral processes, using differential ages for the various elective positions would be against the provisions of the Charter.<sup>36</sup> This would be so, especially, if such a practice has the effect of excluding some eligible adults from standing as candidates for some elective positions. According to General Comments 25:<sup>37</sup>

The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote to have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from the elective office.

The above is suggestive of the fact that while reasonable limitation is permissible under article 25 of the ICCPR, unreasonable and flagrant discriminatory restriction on the right is disallowed by the Charter. Thus, where criteria for elective positions are general and applicable to all contestants, then, it may not be said to be unreasonable. However, the use of qualifying criteria for elective offices which are applicable to some adult citizens without any objective reason would be in contradistinction to the purpose and purport of the limiting power bestowed on states; by the Charter.<sup>38</sup> While age is not one of the listed grounds under article 2, it has been rightly argued it can be brought in under the "other status" category. Thus, a state cannot unreasonably discriminate against adult citizens on the basis of their age.<sup>39</sup> The Human Rights Committee (HRC)<sup>40</sup> in its jurisprudence has shown that the default rule for the state in regulating the right to political participation under the ICCPR is for the right to be enjoyed under an atmosphere of equality, fairness,

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<sup>36</sup> Wheatley (n 32 above) 16, has argued rightly that "[n]o state may discriminate as to the right of political participation between citizens'.

<sup>37</sup> See General Comment No. 25, para 15.

<sup>38</sup> Gregory H. Fox, 'The Right to Political Participation in International Law' 17 YJIL 2 (4), 554.

<sup>39</sup> Joseph Lester & Sarah Joseph, 'Obligation of Non-discrimination' David Harris & Sarah Joseph (eds), *The International Covenant on Civil and Political Rights and United Kingdom law* (OUP, 1995).

<sup>40</sup> *JG v The Netherlands* HRC Communication 306/1988.



and non-discrimination.<sup>41</sup> States are even enjoined to take targeted and concrete steps aimed at dismantling laws, policies, and agencies that are hampering the equal enjoyment of the right to political participation among their adult citizens.<sup>42</sup>

States cannot, legitimately, under the Charter exclude some otherwise eligible adults from standing as candidates in elections on the basis of real, artificial, stereotypical and imputed lack of experience or incompetence.<sup>43</sup> The electorates must be allowed to exercise their right to elect their representatives among all the eminently qualified willing adults without some of them being excluded on grounds that are not applicable to all the other candidates. That is to say, educational qualifications, age and other criteria that must be used as eligibility criteria must be the same and even for all adult citizens interested in running for a particular political office.<sup>44</sup> It is only when elections are conducted without some otherwise eligible candidates being unreasonably excluded that one can speak of truly free and fair elections.<sup>45</sup> Because elections in a practical sense cannot be said to be free where the choices of the electorates have been unreasonably and severely curtailed or limited to some sets of adults, say, only adults from forty or fifty years and above.<sup>46</sup>

In one of its recent decisions, the HRC reiterates that the right guaranteed under article 25 is an entitlement to all citizens which includes the right to vote, to stand as a candidate in elections among other rights.<sup>47</sup> In particular, it declares that ‘whatever form of constitution or government is in force, the exercise of these

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<sup>41</sup> See the Report by the Office of the UN High Commissioner for Human Rights on the ‘Summary of the Discussions held during the experts workshop on the right to participate in public affairs’, A/HRC/33/25, 15 July 2016 para 34; General Assembly Resolution A/HRC/Res/24/8 on ‘Equal political participation’ (8 October 2013) para 4; Report of the Office of the UN High Commissioner for Human Rights on ‘Promotion, protection and implementation of the right to participate in public affairs in the context of the human rights laws: Best practices, experiences, challenges and way to overcome them’ A/HRC//30/26 (23 July 2015) para 4.

<sup>42</sup> General Assembly Resolution on ‘Equal participation in political and public affairs’ A/HRC/RES/30/9 (1 October 2015) para 7(d); UN General Assembly Resolution on ‘Equal participation in political and public affairs’ A/HRC/RES/27/24 (3 October 2014) para 3.

<sup>43</sup> Sarah Joseph, ‘Right to Political Participation’ in David Harris & Sarah Joseph (eds) *The International Covenant on Civil and Political Rights and United Kingdom law* (OUP,1995), where she vehemently and rightly argues that a “[p]otential lack of ability should not be a bar to candidates; incompetents would hopefully not be elected or re-elected’.

<sup>44</sup> See General Comment No. 25 at para 19.

<sup>45</sup> Ibid 39, where Fox posits that the least that required from any electoral system under article 25 of the ICCPR is that such a system must be one that does not “evidence discrimination against voters or candidates’.

<sup>46</sup> Ibid 40.

<sup>47</sup> *Mohamed Rasheed v Maldives* CCPR/C/122/D/2851/2016 (4 April 2018) para 8.6.

rights by citizens may not be suspended or excluded except on grounds which are established by laws that are objective and reasonable. Persons who are otherwise eligible to stand for election should not be excluded...<sup>48</sup> Similarly, where some persons were prohibited from standing as candidates in elections for fifteen years, the HRC held it to be unreasonable and a violation of the provision on the right to political participation under the Charter.<sup>49</sup> A similar position was followed by the HRC in the case of *Dissanayake v Sri Lanka*.<sup>50</sup>

Citizens' right to political participation under various regional human rights systems are not markedly different from the position under the ICCPR.<sup>51</sup> The African Charter provides for the right of every citizen to directly or indirectly participate in the government of his or her country in accordance with the law.<sup>52</sup> One word which features prominently in article 13(1) of the Charter is "freely". This connotes that the right must be enjoyed without any form of coercion or manipulation.<sup>53</sup> Similarly, the right is to be expressed in accordance with the law, that is, activities that are contrary to the legal regimes in place are discouraged by this provision. However, the laws contemplated here must be laws which are in consonance with the letter and spirit of the Charter or international human rights standards.<sup>54</sup> The right must equally be exercised with due regard to the right to equality and this means that the provision abhors any form of discrimination in applying the right to eligible citizens.<sup>55</sup>

The African Commission on Human and Peoples' Rights (the Commission) has had the opportunity of interpreting the right guaranteed under article 13 in several of its decisions. In the case of *Purohit & Another v The Gambia*<sup>56</sup> where

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<sup>48</sup> Ibid.

<sup>49</sup> *Altersor v Uruguay* Communication R2/10 (29 March 1982) para 14.

<sup>50</sup> Communication 2155/2012, CCPR/C/110/D/2/55/2012 (3 April 2014) para 8.3.

<sup>51</sup> For example see article 3 of the Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9 available at <<https://www.refworld.org/docid/3ae6b38317.html>> accessed on 24th September 2019; article 23 of the Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969 available at <<https://www.refworld.org/docid/3ae6b36510.html>> accessed on 24th September 2019.

<sup>52</sup> See article 13(1) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <<https://www.refworld.org/docid/3ae6b3630.html>> accessed on 24th September 2019 (African Charter).

<sup>53</sup> *Constitutional Rights Project & Another v Nigeria* (2000) AHRLR 191 (ACHPR 1998, para 50.

<sup>54</sup> See for example, the African Commission case of *Media Rights Agenda & Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 66.

<sup>55</sup> Article 2 of the African Charter provides for the right to freedom from discrimination.

<sup>56</sup> (2003) AHRLR 96 (ACHPR 2003).

the respondent excluded some persons from voting based on the fact that they had mental disability, the Commission held the act of the respondent state to be in violation of the right to political participation guaranteed under article 13 of the African Charter. Furthermore, the Commission held that the only ground for which a citizen can be denied the right is based on legal incapacity or non-citizenship.<sup>57</sup> By this decision, state parties under the African Charter are barred from excluding eligible citizens from enjoying the right to political participation other than on grounds of legal incapacity and non-citizenship.<sup>58</sup> Where any law or proclamation has the effect of rendering the right to political participation non-existence, the Commission has declared the same to be a violation of article 13 of the Charter.<sup>59</sup>

The African Charter does not permit the derogation of any of the rights contained therein. It only allows their limitation.<sup>60</sup> However, such limitation must be done in accordance with article 27(2) of the Charter. Thus, a state party cannot hide under the pretence of limiting the right to political participation and go to the extent of violating the extant provisions of the Charter.<sup>61</sup> For example, a state party cannot guarantee the right to political participation for some adult citizens but not for others without any reasonable justification. That would obviously run contrary to article 27(2) and provisions of the Charter on equality, non-discrimination, dignity, and other rights in the Charter. The Commission in one of its recent decisions declared the act of excluding a group of people in the Ivory Coast known as the *Dioulas* from political participation, as a violation of article 13(1) of the African Charter.<sup>62</sup> It held that a law which appears neutral but generates the effects of unjustified distinctions is, nevertheless, discriminatory.<sup>63</sup> Thus, ‘...the Commission urges the state parties to the African Charter to introduce impartial and non-discriminatory procedures for all the electoral processes’.<sup>64</sup> It, therefore, means that for an electoral law to be in contravention of article 13(1) of the Charter,

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<sup>57</sup> The Commission at para 75 declares thus; ‘[t]he right provided for under article 13(1) of the African Charter is extended to ‘every citizen’ and its denial can only be justified by reason of legal incapacity or that the individual is not a citizen of a particular state. Legal incapacity may not necessarily mean mental incapacity’.

<sup>58</sup> Legal incapacity in this context, should ordinary apply to citizens who are below the age of majority (children) and those who are serving one form of punishment or another under the law.

<sup>59</sup> See the case *Lawyers for Human Rights v Swaziland* (2005) AHRLR 66 (ACHPR 2005)63.

<sup>60</sup> Frans Viljoen, *International Human Rights Law in Africa* (2<sup>nd</sup> edn OUP, 2012).

<sup>61</sup> *Ibid.*

<sup>62</sup> *Open Society Justice Initiative v Côte d’Ivoire* Communication 318/06 (2016).

<sup>63</sup> *Open Society Justice Initiative case* (n above) 144.

<sup>64</sup> *Open Society Justice Initiative case* (n above) 164.

it does not need to expressly discriminate against a person or group as long as it has a discriminatory effect in practice.

Therefore, it can be safely argued that under the African human rights system and other international human rights regimes, the right to political participation is founded on the twin principles of equality and non-discrimination among eligible adult citizens.<sup>65</sup> The system doesn't seem to permit state parties to arbitrarily provide for criteria in the laws that would lead to the disenfranchisement of some eligible adult citizens. It equally frowns at criteria that make the right non-existent or that would lead to unreasonable distinction in the enjoyment of the right.<sup>66</sup> All adult citizens are expected to enjoy political right freely and on an equal footing with other adult citizens. The two groups of people that could be legitimately excluded under the African Charter are non-citizens and those who are legally incapacitated. These are, largely, children and persons in conflict with the law.<sup>67</sup>

### 3. Youth Right to Political Participation under International Human Rights Law

At the global level, there is no treaty that specifically codifies the rights of youth or their right to political participation.<sup>68</sup> However, this is not to mean that youth rights are unknown to the international human rights community. As a matter of fact, their rights have been said to be on the front burner of international human rights discourse since the 15<sup>th</sup>.<sup>69</sup> Nevertheless, due to a lack of concretisation of their rights in form of a treaty as it has been done in the case of women and children, youth globally have continued to suffer one form of human rights violation or another, most especially, when it comes to the right to political participation.

The recent history of youth right at the United Nations' (UN) level can be traced to its 1995 adoption of a declaration on youth known as 'The World

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<sup>65</sup> *Purohit v The Gambia* (n above).

<sup>66</sup> *Constitutional Rights Project and Others v Nigeria* (2000) AHRLR 227 (ACHPR 1999) paras 42-44.

<sup>67</sup> Steven Wheatley, 'Non-Discrimination and Equality in the Right to Political for Minorities' (2002) 1JEMIIIE 6.

<sup>68</sup> There have been various resolutions of the UN that have direct or indirect impacts on the youth; for example, see Resolution 2037 (XX) (1965) Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples; Resolution 34/151 further planning and suitable follow-up in the field of youth; Resolution 45/103 (14 December 1990) concerning the involvement of youth and non-governmental youth organisations in the formulation of the Programme of Action.

<sup>69</sup> William D. Angel, (ed), *International Law of Youth Rights: Source Documents and Commentary* (Dordrecht; Boston: M. Nijhoff, 1995).

Programme of Action for Youth to the Year 2000 and Beyond' (WPAY).<sup>70</sup> The UN General Assembly later passed a resolution in the following year on the WPAY declaration.<sup>71</sup> The WPAY put forward the germane issues confronting youth globally and highlighted some of the targeted steps expected on the part of members of the UN on the ten (10) specific priority areas.<sup>72</sup>

The UN WPAY resolution is very critical to discourse on youth because through it, the UN interrogated several issues affecting youth and the youth cohort was for the first time defined. Youth are defined as persons within the age cohort of 15-24 years.<sup>73</sup> This definition was not supposed to be a legal definition of youth properly so-called but a statistical definition. That is, it was supposed to be used only for statistical purposes because the UN admits that the term youth '... varies in different societies around the world. Definitions of youth have changed continuously in response to fluctuating political, economic and socio-cultural circumstances'.<sup>74</sup>

Notwithstanding the fact that the above was meant to be a statistical definition, most countries have continued to use it as the standard definition for youth, thereby, unfortunately regarding youth as children.<sup>75</sup> This usually leads to non-recognition of youth as adults and thereby denying them those human rights which they are entitled to as adults, mainly their right to full and effective political participation. It is contended that it is erroneous for states to use this mere statistical definition as a sword to cut-off youth from enjoying all their human rights.

It is contended that the above statistical definition of youth by the UN is faulty, erroneous and highly misleading in many respects.<sup>76</sup> First, it is almost impossible to see any society where youth and children are considered as one cohort. Youth are

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<sup>70</sup> See The World Programme of Action for Youth, paras i, ii & iii available at <<https://www.un.org/esa/socdev/unyin/documents/wpay2010.pdf>> accessed on 27th September 2019.

<sup>71</sup> See the UN General Assembly Resolution 50/81 on the World Programme of Action for Youth to the Year 2000 and Beyond (13 March 1996) available at <<https://undocs.org/A/RES/50/81>> accessed on 27th September 2019.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Most of youth policies reviewed should that preponderance of states follow the UN statistical definition of youth, which is 15- 24 years.

<sup>76</sup> The erroneous definition seems to have been corrected by the UN in its recent Security Council Resolution 2250 where it defined youth as persons between 18-29 years, S/RES/2250 9 December 2015 available at <[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2250%282015%29](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2250%282015%29)> accessed on 27th September 2019; see also Security Council Resolution 2419 (S/RES/2419) (6 June 2018) available at <[https://undocs.org/en/S/RES/2419\(2018\)](https://undocs.org/en/S/RES/2419(2018))> accessed on 27th September 2019.

youth and children are children. They are two distinct groups.<sup>77</sup> Second, since the UN Convention on the Rights of the Child (CRC) had earlier grouped children as the age cohort of 0-17, there was no useful need to put children in defining the youth age cohort whether for statistical purposes or not.<sup>78</sup> Last but not the least, since the CRC pegged the age cohort of children as 0-17, the appropriate start-up age for any definition for youth ought to be eighteen (18) rather than fourteen (14) as erroneously adopted by the UN.<sup>79</sup> This is to ensure that there is no confusion between children and youth in terms of planning and making of laws and policies affecting them.

One of the ten priority areas of concern by the WPAY was youth's right to full and effective participation in the life of society and decision-making.<sup>80</sup> The call for the full and effective participation of youth is suggestive of the fact that many youth globally enjoy some fractions of participation but such participation is both partial and ineffective. Similarly, the participation contemplated here has two footings: the first is the participation of youth in general activities of the society while the other which speaks of decision-making borders on the youth's right to political participation. Youth participation must be full and effective in all facets of society including politics.<sup>81</sup> Therefore, an electoral law or procedure that excludes youth from the age of eighteen (adults) from fully participating in all the electoral processes would be a violation of the right of youth to full and effective political participation as required under the WPAY resolution.

Apart from the above WPAY resolution, the UN has continued to call for states to see the need to permit the full enjoyment of youth to their right to political participation, most especially, those who have reached the age of majority.<sup>82</sup>

It is contented that all citizens from the age of eighteen or age of majority as the case may be are adults and they should be allowed to enjoy all rights and

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<sup>77</sup> Maina Muthee, 'Victims or Villains: The Search for Identity by Youth in Kenya' P Iribemwangi *et al* (eds), *Human Rights, African Values and Traditions: Inter-disciplinary Approach* (2011) 131.

<sup>78</sup> See the article 1 of the UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 available at <<https://www.refworld.org/docid/3ae6b38f0.html>> accessed on 27th September 2019.

<sup>79</sup> This is because eighteen years is the age of majority in most countries of the world and persons who have attained eighteen years are considered as adults rather than children.

<sup>80</sup> See paragraph 104 of Resolution 50/81.

<sup>81</sup> See paragraph 105 of Resolution 50/81 (n above).

<sup>82</sup> See for example, article 10 of the UN Lisbon Declaration on Youth Policies and Programmes (12 August 1998) available at <[https://www.youthpolicy.org/library/wp-content/uploads/library/1998\\_Lisbon\\_Declaration\\_Eng.pdf](https://www.youthpolicy.org/library/wp-content/uploads/library/1998_Lisbon_Declaration_Eng.pdf)> accessed on 28th September 2019.

privileges that come with adulthood on the same footing with other adults. The state cannot legitimately, under human rights law, exclude some persons who have reached the age of majority from exercising their political rights in full based on perceived inexperience or immaturity. The electorate must be allowed to sink or swim with their electoral choice.<sup>83</sup>

#### 4. Youth Rights under Regional Human Rights Systems

There are two regional treaties that boarder on youth rights in specific terms. These are the Ibero-American Convention on Young People's Rights (IACYR)<sup>84</sup> and the African Youth Charter (AYC).<sup>85</sup> However, the AYC shall be the main focus of this work while the (IACYR) would only be considered in brief. The AYC is more relevant to the case study being considered in this work, which is Nigeria and Nigeria is not only a member of the African Union (AU) but has also ratified the AYC.<sup>86</sup>

The IACYR is popularly considered as the first regional binding treaty on youth right. This is because, unlike the AYC which became operational on 8 August 2009, it came into force on 1 March 2008.<sup>87</sup> The IACYR largely has effect on those countries which have ratified it in the Americas but it somewhat has an effect on the European soil because some European member states have ratified it.<sup>88</sup> It, however, erroneously defined youth as persons between the ages of 15 and 24 years.<sup>89</sup> The drafters missed the golden opportunity to provide for a youth categorisation that does not include children. Despite its defective definition on what category of persons constitute youth, it provides for them their right to political participation in very elaborate terms.<sup>90</sup> It places an unimpeachable obligation on state parties to the treaty to guarantee the right to political participation of all eligible youth

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<sup>83</sup> Ibid 44.

<sup>84</sup> Regional treaties, agreements, declarations and related, Ibero-American Convention on Young People's Rights, which was adopted by the Ibero-American Organisation of Youth in October 2005, available at <<http://www.refworld.org/docid/4b28eefe2.html>> accessed on 27th September 2019.

<sup>85</sup> African Union, African Youth Charter, 2 July 2006 available at <<http://www.refworld.org/docid/493fe0b72.html>> accessed on 27th September 2019.

<sup>86</sup> Nigeria ratified the AYC on 21 April 2009.

<sup>87</sup> See the report of Child Rights International Network (CRIN) 'Ibero-America: First Youth Rights Convention' 3 April 2008, available at <<https://www.crin.org/en/library/news-archive/ibero-america-first-youth-rights-convention>> accessed on 27th September 2019.

<sup>88</sup> These are Spain and Portugal.

<sup>89</sup> See art 1 of the IACYR.

<sup>90</sup> See article 21 of the IACYR.

within their domain. Such youth are to be allowed to vote and stand as candidates in elections.

The AYC arguably came principally to tackle the issue of the absence of full and effective participation of youth in Africa. It declares in its preamble that '[c]onvinced that Africa's greatest resource is its youthful population and that through their active and full participation Africans can surmount the difficulties that lie ahead'.<sup>91</sup> The call for the active and full participation of youth by the AYC is similar to full and effective participation as required by the WPAY resolution but stronger and more compelling. The drafters of the AYC seem to have understood the fact that it is possible for there to be guaranteed rights but which are grossly inactive due to some of the barriers militating against their enjoyment.<sup>92</sup> This position encapsulates the lived reality of many youth in Africa because most of their human rights are grossly inactive. They do not enjoy some of the rights many states claim they are entitled to because of their unequal bargaining power with other adults in society.<sup>93</sup>

The AYC provides for a catalogue of rights to address most of the problems bedevilling youth in Africa. It defines youth as persons between the ages of 14 and 35. The drafters of AYC, by this singular act, failed many African youth who were hoping for a treaty that reflects their proper categorisation amongst Africans. In Africa and many other parts of the world, youth and children are not the same. For example, among the Yoruba people of South-Western Nigeria, youth are called *odo* while children are called *omode*. Their responsibility in the family, community, and society differ in varying respects. The drafters, unlike the drafters of the African Charter, unfortunately, did not bring to bear the African distinction between youth and children but grouped children and youth in the same age cohort. This is one of the major drawbacks of the AYC. The AYC makes a distinction between youth and 'minors' in its definition segment.<sup>94</sup>

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<sup>91</sup> See the preamble to the AYC. Emphasis added.

<sup>92</sup> Alcinda Honwana, 'Waithood, restricted futures and youth protest in Africa' (12 August 2013) 1, available at <<https://africanarguments.org/2013/08/12/youth-waithood-and-protest-movements-in-africa-by-alcinda-honwana/>> accessed on 29th September 2019.

<sup>93</sup> Muzwakhe Sigudhla, 'SADC perspective on youth and governance in Africa' (10 October 2004) available at <[https://www.uneca.org/sites/default/files/uploaded-documents/ADF/ADF4/sadc\\_-\\_perspective\\_on\\_youth\\_and\\_governance.pdf](https://www.uneca.org/sites/default/files/uploaded-documents/ADF/ADF4/sadc_-_perspective_on_youth_and_governance.pdf)> accessed on 29th September 2019.

<sup>94</sup> It provides that '[m]inors' shall mean young person age 15 to 17 years subject to each country's laws'; and defines youth thus; '[f]or the purposes of this Charter, youth or young people shall refer to every person between the ages of 15 and 35 years'.



Among the rights provided for in the treaty is the right to political participation of youth.<sup>95</sup> State parties are mandated to ensure youth participation in Parliament and other decision-making bodies in accordance with laid down law.<sup>96</sup> State parties are to ensure equal access for young men and women to decision-making bodies.<sup>97</sup> While the right to vote and to stand as candidate in elections are not explicitly provided for under the AYC as it has been done in other treaties, it is argued that African youth can use the relevant provision to advocate for their right to full and effective political participation on equal terms with other adults in the society.<sup>98</sup> Youth in the context refers to those who have attained the age of majority or adulthood as the case may be, which is eighteen years in most, if not all AU member states.<sup>99</sup>

The only possible barrier which youth that want to secure their right to political participation under the AYC may face is which is the right to forum pursue their claim in the event of a violation. The reason for this apparent problem is because of the obvious absence of machinery where ventilation of disputes that arise from rights guaranteed under the Charter can be pursued. The absence of such machinery may have the effect of rendering the rights meaningless, ineffective and illusory.<sup>100</sup> The value of such an institution in a human rights treaty cannot be overemphasised.<sup>101</sup> Though, Adeola has argued that by virtue of the relevant provisions of the African Charter, rights under the AYC can be brought under the African Commission.<sup>102</sup> While the current author partially agrees with Adeola, he still insists that the absence of a monitoring mechanism in the AYC is a big blow on the AYC.

The most viable option for claimants under the AYC is applying to the African Commission through the use of specific provisions of the African Charter

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<sup>95</sup> See article 11(1) of the AYC which provides thus; '[e]very young person shall have the right to participate in all spheres of society.

<sup>96</sup> See article 11(2) (a) of the AYC.

<sup>97</sup> See article 11(2) (c) of the AYC.

<sup>98</sup> See for example article 9 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

<sup>99</sup> Efem Ubi, 'African Youth Charter: Prospects for the Development of the African Youth' (2007) 3, available at <<http://www.oecd.org/swac/events/42259218.pdf>> accessed on 28th September 2019.

<sup>100</sup> See generally Christian Tomuschat *Human Rights: Between Idealism and Realism* (2014) 13.

<sup>101</sup> *Ibid.*

<sup>102</sup> See Romola Adeola, 'The African Youth Charter and the Role of Regional Institutions in an Age of Africa Rising' *AfricLaw* 6 July 2015 available at <<https://africlaw.com/2015/07/06/the-african-youth-charter-and-the-role-of-regional-institutions-in-an-age-of-africa-rising/>> accessed on 28th September 2019.

coupled with the violated provisions of the AYC. This option is viable because most of the rights contained in the AYC are contained in the African Charter and other international human rights treaties as well.<sup>103</sup> The second option is to use the African Court on Human People's rights.

## 5. Youth Right to Political Participation in Nigeria

On 29 May 1999, the Federal Republic of Nigeria broke away from its dark past of military rule to the new dawn of democratic rule.<sup>104</sup> The supreme law which is the 1999 Constitution of the Federal Republic of Nigeria (CFRN) specifically forbids the governing of the country against the grains of its provisions.<sup>105</sup> Since 1999, Nigerians have participated in general elections for six times.<sup>106</sup> It is, however, sad to note that despite the fact that Nigeria is a democratic state, there is no human right to political participation guaranteed under the CFRN.<sup>107</sup> It is curiously absent among the enumerated guaranteed fundamental rights unlike Constitutions of other African countries.<sup>108</sup> Thus, what the CFRN provides for are provisions for eligibility criteria for various political or elective offices in Nigeria.<sup>109</sup>

While there are varying ages of qualification for various things in Nigeria, the CFRN declares that all persons who have attained the age of eighteen are adults and of full age.<sup>110</sup> This simply means that such persons are adults and should ordinarily enjoy all the burdens and benefits that come with adulthood. It is unfortunate to note that in Nigeria all adults are not equal in terms of the exercise of their political rights. This is because the CFRN specifically uses obnoxious and unreasonable age limits to make some adults more eminently qualified to run for political offices while other adults are labelled as being incomplete, incompetent and unworthy for elective office. It is equally sad to note that all the persons affected by this illegitimate and discriminatory exclusion are the Nigerian youth.

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<sup>103</sup> For example the right to political participation under article 11 of the AYC is provided under article 13 of the African Charter.

<sup>104</sup> Ademola Oluborode Jegede, 'From Military Rule to Constitutional Government: The Case of Nigeria' Morris Kiwinda Mbondenyi & Tom Ojienda (eds) *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (PULP, 2013).

<sup>105</sup> See section 1(2) of the CFRN.

<sup>106</sup> 1999, 2003, 2007, 2011, 2015 & 2019.

<sup>107</sup> See Chapter IV of the CFRN.

<sup>108</sup> See article 19 of the 1996 Constitution of the Republic of South Africa.

<sup>109</sup> See, for example, sections 131 & 177.

<sup>110</sup> See section 29(4) of the CFRN.

The Second Nigerian National Policy on Youth (NNPY) which was published in the year 2009 stated that youth are not only one of the greatest assets of any nation but the greatest investment for any nation's development.<sup>111</sup> The NNPY, while acknowledging the differences in the age and definition of youth globally, pegs the age of youth as those within the age cohort of 18-35.<sup>112</sup> Therefore, any electoral law or procedure that excludes some or all members of this age cohort can be said to be discriminatory against the youth. It can, therefore, be argued that since 1999, most Nigerian youth have been denied their full and effective right to political participation. While all youth are allowed to vote, most of them are excluded from running for elective offices.<sup>113</sup> Several youth-based organisations have continued to call for a change in the political discrimination against the Nigerian youth because it is a violation of their human rights to political participation under international human rights law.

In 2017, a Bill was sponsored for the need to reduce the ages for various elective positions so as to accommodate more Nigerian youth in the political space. The main intention of the Bill was to eliminate all barriers to the full realisation of youth political rights rather than reduction which is what the bill eventually achieved. The movement which was known as the "NotTooYoungToRun" group was a coalition of several civil society groups started in 2016.<sup>114</sup> After several mobilisations, rallies and peaceful protest across the country, the CFRN was amended through the Bill and was subsequently assented to by the Nigerian president on 31 May 2018.<sup>115</sup> The constitutional amendment reduced the eligibility ages for the office of the president from 40 to 35 years, governorship positions from 35 to 30 years, for the position membership of the House of Representative, from 30 to 25, for the position of membership of House of Assembly, from 30 to 25 while the age for membership of House of Senate remains 35 years.<sup>116</sup>

The "NotTooYoungToRun" campaign partially solved the problem of youth discrimination in Nigeria. It has equally brought to fore the grain of this paper,

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<sup>111</sup> See the Second National Youth Policy Document of the Federal Republic of Nigeria 2009, available at <[http://www.youthpolicy.org/national/Nigeria\\_2009\\_National\\_Youth\\_Policy.pdf](http://www.youthpolicy.org/national/Nigeria_2009_National_Youth_Policy.pdf)> accessed on 28th September 2019 (NNPY) 2.

<sup>112</sup> NNYP (n above) 5.

<sup>113</sup> Section 77(2) of the CFRN.

<sup>114</sup> Ibid.

<sup>115</sup> See 'Buhari's Signing of #NotTooYoungToRun Bill is Another Promise Kept – APC', Kwara Daily, available at <<https://kwaradaily.com/buharis-signing-of-nottooyoungtorun-bill-is-another-promise-kept-apc/>> accessed on 28th September 2019.

<sup>116</sup> Ibid.

which is that the different age eligibility criteria that discriminate against the Nigerian youth are unreasonable, obnoxious and a mere elitist construction. It grossly violates their human right to political participation. It has highlighted the problem of discrimination against the Nigerian youth in terms of the enjoyment of their right to political participation. International human rights law as it has been indicated in this paper frowns at the further distinction among eligible adult citizens in the enjoyment of their political rights as it is currently observed in Nigeria.<sup>117</sup> The Nigerian state in keeping up with its obligations must ensure that adult citizens (including all adult-youth) enjoy their political rights on equal terms.

## 6. Conclusion

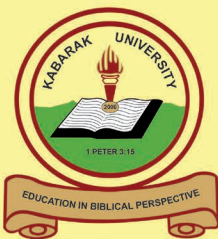
The fight for the recognition of youth as adults and the enjoyment of their rights on equal terms with other adults in society globally remains an unending one. It is beyond contestation that one of the obvious reasons for the lack of respect for the human rights of youth globally is the absence of a global treaty on youth rights. The milestone attained by the two regional bodies on youth rights is yet to be felt on the lived reality of youth in those regions. This is due to some patent defects in the treaties and the unwillingness of state parties to faithfully comply with their provisions. Therefore, in order for state parties not to be in breach of their human rights obligations, they must take targeted steps to ensure that their electoral laws do not discriminate among adult citizens in exercising their political rights. The eligibility criteria must be even for all adult citizens and the electorates must be allowed to freely choose candidates for various electoral offices. States like Nigeria that are yet to include political rights as one of enumerated fundamental rights in their Constitutions should do so. Furthermore, the two regions which have adopted treaties on youth right should carry out an evaluation on them and reconfigure them where necessary so as to make them more effective tools for respect, protection, and promotion of the rights of youth. In addition, the global community should consider drafting a specific youth treaty that does not conflate youth with children in its categorisation.

In conclusion, the current electoral law or eligibility criteria that exclude some youth from exercising their political rights in full are in violation of international

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<sup>117</sup> Despite the 2018 eligibility age reduction, all adults in Nigeria still do not have equal political rights. For example, an adult youth that is 18 years is incapable of running for the highest political office in Nigeria; this is a violation of his political right and his freedom against discrimination.

human rights and a derogation of Nigeria's human rights obligation under ICCPR, the African Charter, and the African Youth Charter. The Nigeria State must, therefore, take bold step of ensuring that all its adult citizens enjoy their political rights on equal footing. Until all these happen in Nigeria, the struggle for the human rights of youth in Nigeria, Africa and every part of the world must continue.



**Published by:**  
Centre for Jurisprudence and Constitutional Studies,  
Kabarak University, School of Law,  
Private Bag-20157, Kabarak.  
Telephone 020-2114658, 0729-223370, 051-2343234/5

ISSN 2707-1596



977-2707-1596