Chapter 14

Contextualising youth political participation in Nigeria: An assessment of legal norms

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1 Introduction

The existence of youth rights, particularly the right to political participation, is incontestable. However, what elicits some debate is the assessment of the status of the legal recognition and protection which the national laws and electoral processes accord the youth particularly, as to whether they are included or excluded from political participation. While some states recognise the existence of youth rights, their attitude and approach to the observance of youth participation in politics remain rather sporadic.[1] Thus, despite the general human rights to political participation guaranteed by various international human rights instruments, some states continue to adopt different ages for eligibility to vote and be voted for in violation of youths' human rights to political participation. While their chronological age defines them as adults, their discrimination and marginalisation continue because they are yet to attain social markers of adulthood.[2] Ultimately, the youth remains marginalised, discriminated against on the basis of their age and largely excluded from governance and decision-making processes.[3]

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1 W Angel (ed) *The international law of youth rights* (2015) xviii. Youth rights are those general and/or specific rights that youth are meant to enjoy in any given society. Such specific rights have been enumerated in various youth-based charters such as the African Youth Charter.

2 A Honwana *Waithood, restricted futures and youth protest in Africa* (2014) 1.

3 See the UNDP 2014 Youth Strategy Report 2014-2017 'Youth, sustainable future', http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Youth/UNDP_Youth-Strategy-2014-17_Web.pdf (accessed 18 August 2018) 3; see also D Walker et al 'Partners for change: Young people and governance in post-2015'

This chapter argues that where a state denies the youth eligibility status in an election but grants them only voting rights, their right to political participation has been undermined, whittled down and violated. In Nigeria, for instance, the Constitution recognises 18 years of age as the *full age* at which one can vote but, on the other hand, provides discriminatory eligibility age criteria to contest for elective political office. Against the above background, this chapter carries out an overview of the legal provisions on youth rights to political participation and interrogates the extent to which the rights of the Nigerian youth to political participation have been promoted or derogated from under the Nigerian legal system. In this connection, the recent amendment of the 1999 Constitution to enhance youth rights to political participation is appraised.[4] Drawing inspiration from the experiences of other countries, particularly Kenya and South Africa respectively, the chapter recommends that Nigeria should comply with its obligations under the African Charter on Human and Peoples' Rights (African Charter), the African Youth Charter and other international human rights instruments on youth rights to political participation.

In conclusion, the article notes that the problems and challenges of the inclusion of the youth in governance not only is national but regional and global as well. Accordingly, the African Union (AU) should commence the process of redrafting or amending the Afican Youth Charter so that the Youth Charter should define youth as persons from the ages of 18 years to 39. The Afican Youth Charter should expressly provide for youths' right to vote and be eligible to stand for elections just as it is provided under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol). The Afican Youth Charter provisions should also include a monitoring mechanism as in the case of the African Charter on the Rights and Welfare of the Child (African Children's Charter) and the African Women's Protocol.

The chapter is divided into eight parts. The introduction part gives the general background to the whole work; the second and third parts discuss youth rights to political participation as guaranteed under relevant human rights instruments and the issue of the age of maturity and eligibility to vote and be voted for; part 3 focuses on the issue of political participation and international human rights law and discusses the place of the right to political participation under international human rights regimes; the fourth part focuses on the response of Nigeria to its international obligations regarding the political rights of the youth especially under the Afican Youth Charter; the fifth part deals with the return of Nigeria to

(2014) 5, http://restlessdevelopment.org/file/partners-for-change-young-people-and-governance-in-a-post-2015-world-pdf (accessed 18 August 2016) 2, where they assert that although youths constitute about a quarter of the world's population and almost 90% of them are in developing countries, they are 'generally excluded from decision-making and governance processes'.

4 The recent constitutional amendment referred to here deals particularly with the age of eligibility to contest for various elective political offices. This is discussed in part 6 below.

democracy and its impact on youth rights to political participation. Part 6 briefly discusses legal regimes on youth rights to political participation in the United Kingdom (UK), South Africa and Kenya and draws lessons for the advancement of youths' rights in Nigeria. The seventh part discusses the success story of the NotTooYoungtoRun struggle, leading to the recent constitutional amendment on the age of eligibility to contest elections in Nigeria and its implications; and part 8, the concluding part, gives recommendations for effective youth political participation in Nigeria.

2 Youth rights to political participation

Among the human rights guaranteed to the youth under various international human rights regimes, the right to political participation is constantly under threat and attack. Youth rights to political participation simply entail a practice whereby youths are allowed to participate in the electoral processes and governance of their states on equal terms with other adults without any discrimination. A kind of participation that is youth-centred has been aptly defined as 'the process of sharing decisions which affect one's life and the life of the community in which one lives. It is the means by which a democracy is built and it is a standard against which democracies should be measured. Participation is the fundamental right of citizenship.[5]

Therefore, when a state denies youth eligibility status in an election but grants them only voting rights, their rights to political participation have been undermined, whittled down and violated. The existence of voting rights should not and does not translate into respect of the rights to political participation of the youth. This is particularly evident based on the fact that more often than not, elected officials pass laws and implement programmes that were neither on their political manifesto nor discussed with the voters before elections.[6]

Besides the general human rights to political participation guaranteed by various international human rights instruments, there are both soft and hard laws that have reiterated the need for states to understand that the youth's human rights to political participation are not a privilege but a right. Through its World Plan of Action for Youth (WPAY), the United Nations (UN) 'affirms the full and effective participation of youth in society and decision-making as one of its 10 priority areas of action'.[7]

Also, the UN Braga Youth Action Plan (BYAP) of 1998 calls for the full and effective political participation of the youth in all sectors of their country and particularly that they 'should participate in the decisions

5 R Hart, quoted in R Farthing 'Why youth participation? Some justifications and critiques of youth participation using new labour's youth policies as a case study' (2012) 109 *Youth and Policy* 73.

6 In Africa this is an incontestable fact.

7 World Youth Report Youth participation in decision making (2003) 271.

taken today about the resources of tomorrow'.[8] The WPAY and the BYAP require youth rights to political participation not only to be effective but full. The fullness of the right would mean that all youths who have reached the age of majority of their countries should enjoy the full benefits of the rights to political participation without any form of discrimination on the basis of their youth, perceived inability or age.

At the regional level, Ibero-American Convention on Young People's Rights (IACYR) is regarded as the first binding Youth Charter. Under article 21of the IACYR the right to political participation to all youths is guaranteed.[9] In a similar vein, the Afican Youth Charter provides for the rights to political participation to all youths. To this effect, it provides that '[e]very young person shall have the right to participate in all spheres of society'.[10]

While neither instrument specifically mentions the right to vote and to stand as candidates, it is our position that the use of the phrase 'sphere of the society' is enough to include all electoral processes and the governance of the society in general. The failure to use the word 'vote' in the text should not be construed as excluding youth electoral rights under either the Afican Youth Charter or the IACYR.

2.1 The unending search for the legal definition of youth

The UN in its earlier resolution defines youth as those persons from the age of 15 to 24. However, it states that the definition is neither a legal nor a binding definition of youth but serves a mere statistical purpose.[11] Arguably, this definition is faulty and misleading in that it categorises children and youth as the same group of people. In our view, the appropriate 'start-up' age for the definition of youth ought to be 18 years.[12]

It is unfortunate that many states, policy makers on youth and scholars alike have continued to use this definition which we consider faulty, problematic and confusing in many respects. In acknowledging the faults of its earlier definition of youth, the UN seems to have retraced its steps when in its recent resolution it defines the youth as persons from the age 18 to 29.[13]

8 See the Braga Youth Action Plan, http://www.youthpolicy.org/library/wp-content/uploads/library/1998_WYF_Braga_Eng.pdf (accessed August 2018).

9 See the report of Child Rights International Network (CRIN) 'Ibero-America: First Youth Rights Convention' 3 April 2008, https://www.crin.org/en/library/news-archive/ibero-america-first-youth-rights-convention (accessed 18 August 2018).

10 African Youth Charter, 2 July 2006.

11 J Cardona 'Introductory note' in *Angel* (n 1) xv.

12 This is based on the fact that both the CRC and the African Children's Charter define children as persons under 18 years of age.

13 See para 4 of the Preamble to Resolution 2250 (2015), adopted by the Security Council at its 73rd meeting, 9 December 2015, https://undocs.org/S/RES/2250 (2015) (accessed 11 November 2018).

The faults in the statistical definition by the UN is based on the fact that children and youths are not the same. Since the UN Convention of the Rights of Child (CRC) defines children as persons under the age of 18, the appropriate 'start-up' age for any meaningful categorisation of youth ought to be 18 years and not 14 or 15 years. In most countries of the world, 18 years is the age of majority and those who are within this age and above are regarded as adults and not as children.

The IACYR and the Afican Youth Charter attempted to improve on the UN's definition by providing the appropriate age or categorisation of youth. However, it is unfortunate that both documents failed in their attempt to resolve the definitional challenges of youth but rather compounded it. This is because both documents failed to capture the obvious distinction between children and youths.

The IACYR in article 1 defines the youth as comprising of persons from the age of 15 to 24, while the Afican Youth Charter defines the youth as persons from the ages of 14 to 35 years.[14] The Afican Youth Charter missed the fundamental point of setting the records straight on the appropriate legal age for youth. The drafters of the Afican Youth Charter would not have included children in their categorisation of youth, if they had taken into account African philosophies and traditional values.[15]

3 Political participation and international human rights law

Legal scholars and political analysts have not devoted too much attention to the study of the issues around the rights of the youth to political participation and the extent to which these rights are either provided for or respected. Accordingly, there is a paucity of literature on this subject compared to other human rights issues. In fact, it is possible to ask whether there really is a human right to political participation that is capable of being claimed by the youth or other adults *per se*. To address this question some relevant international human rights legal frame works aimed at according protection to the rights of youth to political participation, judicial decisions as well as comments of scholars are examined.

In its determination to cascade the rights of the youth to the front burner of international human rights discourses, the AU took a bold and commendable step by adopting the first ever legally-binding human rights instrument on youth, with the adoption of the Afican Youth Charter.[16] The Universal Declaration of Human Rights (Universal Declaration), the International Covenant on Civil and Political Rights (ICCPR) and the

14 See the definition section of the Afican Youth Charter.

15 See M Muthee 'Victim or villains: The search for identity by youth in Kenya' in P Iribemwangi et al (eds) *Human rights, African values and traditions: An inter-disciplinary approach* (2011) 132.

16 Adopted in Banjul, The Gambia on 2 July 2006 and entered into force on 8 August 2009. It has been ratified by 40 AU member states.

African Charter on Human and Peoples' Rights (African Charter) provide for the right to political participation in articles 21, 25 and 13 respectively. It is thus beyond conjecture that the right to political participation is a fundamental right that should be accorded its rightful place as other human rights.[17] While the concept of political participation remains an indispensable building block in the post-war construction of human rights; its absence makes other rights to 'fall to a perilous existence'.[18] Commenting on the tangential position of the human rights to political participation in the hierarchy of rights, Steiner is of the view that '[p]olitical participation falls within the first immediate effective category of international human rights. It figures in the International Covenant as a right is so fundamental that all the realisation of many other depends upon it.'[19]

From the above it can safely be argued that the any purported guarantee of other rights by states without the guarantee of political rights renders the effective enjoyment of other rights a mirage. This is simply because the guarantee of the right to political participation to people is in recognition of humanity and dignity. It therefore is pointless to claim other rights where one is treated as less in worth and dignity among other adults on arbitrary, illegitimate and illogical ground such as age.[20] This is because all adult citizens have the inalienable right to equal participation in all political tournaments of their countries.[21] Therefore, it may be argued that since the right to political participation is a human right, any other argument which suggests that it can be manipulated by states indiscriminately should be rejected vehemently.

4 Nigeria's response to its obligations under the African Youth Charter

Nigeria is a party to various international human rights instruments, including ICCPR, the African Charter and the African Youth Charter.[22] Upon the ratification of a treaty, it automatically creates an obligation on the part of parties to it. The expectation from the parties is for them to 'adapt its national laws and policies to square with its obligation under the treaty'.[23] However, the attitudes of states to their obligation under

17 B Dessaleng 'The right of minorities to political participation under the Ethiopian electoral system' (2013) 7 *Mizan Law Review* 68.
18 J Steiner 'Political participation as a human right' (1988) 1 *Harvard Human Rights Year Book* 77.
19 Steiner (n 18) 131.
20 See, generally, G Fox 'The right to political participation in international law' (1992) 17 *Yale Journal of International Law* 544.
21 W Oluchina 'The right to political participation for people with disability in Africa' (2015) 3 *African Disability Rights Year Book* 312.
22 Nigeria signed and ratified the African Youth Charter on 2 July 2007 and 21 August 2007 respectively; see the African Youth Charter ratification table, https://au.int/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf (accessed 4 June 2018).
23 F Viljoen 'The African Charter on the Rights and Welfare of the Child' in CJ Davel

international instruments differ depending on the provisions of their respective constitutional laws.

For instance, in Nigeria, being a dualist state, the ratification of a treaty does not make it automatically enforceable in Nigeria until it is passed into law in accordance with section 12 of the 1999 Constitution. That is to say, the Afican Youth Charter and other similar international human treaties that have been ratified by Nigeria but are yet to be domesticated cannot *prima facie* be invoked or used to pursue any claim in Nigerian courts and they are not binding in Nigeria.[24] This position received a judicial approval in the case of *Abacha & Others v Fawehinmi*.[25]

Notwithstanding the above, it is arguable that the Nigerian state may not be allowed to raise domestic law as an excuse from its international human rights obligations because human rights treaties, once ratified, are binding on state parties, based on the international law principle of *pacta sunt servanda*, which is the foundation stone of international law.[26] In this connection, the African Commission on Human and Peoples' Rights (African Commission) has cautioned states that '[i]nternational obligations should always have precedence over national legislation, and any restriction of the rights guaranteed by the Charter should be in conformity with provisions of the latter'.[27] Also, the new Fundamental Enforcement Procedure Rules (FREP Rules) of 2009 enjoin the Nigerian courts in their decisions to respect (take into consideration) various regional human rights instruments.[28]

At this juncture, it must be noted that there are four obligations on states under international human rights law, namely, (i) the obligation to respect the rights (which entails the state refraining from interfering with the enjoyment of the rights); (ii) the obligation to fulfil the rights (this requires the state to put mechanisms in place to facilitate the enjoyment of the rights); (iii) the obligation to protect the rights (the state is required to ensure that third parties do not interfere with the enjoyment of the rights); and (iv) the obligation to promote the rights (the state must ensure that the various human rights documents are known, and it must make conscious efforts to educate the people on these rights).[29] Thus, it is argued that despite the fact that Nigeria has not domesticated the Afican Youth Charter as required by its domestic law, it cannot be excused from its

(ed) *Introduction to child law in South Africa* (2000) 215.

24 See sec 12(1) of the CFRN which provides that '[n]o treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly'.

25 (2001) AHRLR 172 (NgSC 2000) para 12.

26 J Dugard *International law: A South African perspective* (2011) 414; art 26 Vienna Convention on the Law of Treaties (VCLT) (1969).

27 *Interights & Others v Mauritania* (2004) AHRLR 87 (ACHPR 2004) para 77.

28 See para 3(b) of FREP Rules, http://www.refworld.org/pdfid/54f97e064.pdf (accessed 26 June 2018).

29 F Viljoen *International human rights law in Africa* (2012) 6; *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) paras 45-47.

international human rights obligations.

5 The return of Nigeria to democracy and youth rights to political participation

After approximately three decades of military rule Nigeria returned to civil rule on 29 May 1999. Since the return to democracy, Nigeria has held five general elections.[30] However, despite the priceless roles of the youth in ending the military rule, they have been largely excluded from leadership and decision-making processes. The 1999 Constitution of the Federal Republic of Nigeria (CFRN), which is the supreme law of the land, provides for how the country is to be governed and the various criteria for occupying political offices in Nigeria. Therefore, any enquiry as to whether any particular group is excluded from the electoral process, the 'supreme calabash' from which other 'calabashes' proceed, that is, the Constitution, should be the first place to check.[31]

The CFRN, unlike the South African and the Kenyan Constitutions, does not guarantee the right to political participation but rather provides for the various political offices with the age eligibility criteria that is largely tilted against the youth, that is, those within the age bracket of 18 to 35 years. Youths as defined by the Second Nigerian National Youth Policy (2009) are persons from the ages of 18 to 35 years.

In all the five elections held so far, the Nigerian youth have been excluded from being eligible to contest for the post of the President because the CFRN provides for an obnoxious eligibility age for the office to be 40 years.[32] The eligibility age for the office of the governor of a state is pegged at 35 years.[33] Similarly, youths are equally discriminated against in contesting for the legislative arm of government in Nigeria, as the eligibility ages for the National Assembly, the House of Senate (HoS) and the House of Representatives (HoR) are 35[34] and 30 years respectively.[35] The legislative arm at the state level, also known as the State House of Assembly (ShA), requires a person to have attained the age of 30 years before he or she can be eligible for the office.[36] The implications of the continuous exclusion of the Nigerian youth from full political participation are possible social explosion, youth restiveness, cynicism and cognitive dissonance between the leaders of our nation and the youth.[37]

30 The 1999, 2003, 2007, 2011 and 2015 general elections.
31 P Cane 'Participation and constitutionalism' (2010) 38 *Federal Law Review* 319. According to the author, 'constitution embodies the basic features of a society's idea about how and how it should be run, and it is the place to look to assess the depth of its commitment to participation by its citizens in the governance in its affairs'.
32 See sec 131(b) of the CFRN.
33 See sec 177(a) of the CFRN.
34 See sec 65(1)(a) of the CFRN.
35 As above.
36 See sec 106(b) of the CFRN.
37 E Ojeifo 'Young people, social activism and democratic governance' *The Guardian* 25 August 2016 17.

This chapter argues that the adoption of different ages for eligibility to vote and be voted for as highlighted above is a violation of the youth's human rights to political participation. This is particularly the case as in our view the determination of such age is baseless, indiscriminate, targeted at a particular group and not based on any objective reasons. Therefore, it is argued that best practice across the world is the adoption of the same voting and eligibility ages for elections.

In Nigeria the CFRN recognises 18 years of age as the *full age*.[38] Full age should ordinarily come with the full responsibilities that come with adulthood, and to recognise 18 as full age and thereafter deny a person of full age his political rights, by discriminatory eligibility age criteria to contest for political office in our view is illogical and hypocritical. Since the youth are full rights-bearing citizens, they should also have the inalienable right to participate in decision-making process and governance.[39] Arguably, the obnoxious eligibility criteria which are different from the voting criteria are there to serve elitist purposes; to shut the door of power against the youth and to continually short-change the electorates during elections.

Since 1999 the youth have continued to constitute a large sector of the voting population but equally constitute the larger percentage of the group denied access to political offices based on their age. For example, the Independent Electoral Commission of Nigeria (INEC) has been reported to state that the Nigerian youth constitute 63 per cent of the Nigerian eligible voting population.[40] Nigeria has continued to violate the rights of youths to political participation despite the fact that it signed and ratified the Afican Youth Charter on 2 July 2007 and 21 August 2007 respectively.[41] Although by virtue of section 12(1) of the CFRN the Afican Youth Charter is not yet domestically enforceable in Nigeria, Nigeria nevertheless is bound by the provisions under the principles of *pacta sunt servanda,*[42] and its obligations under the African Charter which is now part of Nigerian law.[43]

6 Youth rights to political participation: Lessons from other states

Under the above heading, the chapter examines the law and practice of youth political participation in the United Kingdom (UK), South Africa

38 See sec 29(4) of the CFRN (our emphasis).
39 R Farthing 'Why youth participation? Some justifications and critiques of youth participation using New Labour's youth policies as a case study' (2012) 109 *Youth and Policy* 75.
40 See B Dada 'Elections and the Nigerian youth, through the eyes of a tech journalist' 16 February 2018, https://www.techcityng.com/youths-election-vote-nigeria/ (accessed 30 August 2018).
41 See the African Youth Charter ratification table, https://au.int/sites/default/files/treaties/7789-sl african_youth_charter_1.pdf (accessed 4 August 2018).
42 Dugard (n 26) 414; art 26 VCLT.
43 See the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of Federation of Nigeria 1990, enacted in1983.

and Kenya. The choice of these three countries is based on the fact that they have one thing or another in common with Nigeria. For example, the UK is the colonial administrator of Nigeria and the major source of most Nigerian laws. On the other hand, South Africa and Kenya do not only have legal systems similar to that of Nigeria but were also colonised by the UK. However, it must be stated that the comparative analysis in this part is based largely on the legal regimes of these countries and partly how these laws have played out in reality.

The UK, just as Nigeria, had over the years operated an electoral process with different voting and eligibility criteria to contest for elective political office. However, it has lately realised the unfairness, injustice and unreasonableness in such a practice and through the Electoral Administration Act (EAA) in 2006, reduced the eligibility age for all elective offices from 21 to 18.[44] The adoption of the EAA makes it possible for the youth the UK to compete with other adults on equal terms politically.

In Africa, among the countries that have done away with age restriction laws on eligibility among those who have attained the age of majority in their political processes are South Africa and Kenya. The Constitution of the Republic of South Africa, 1996 allows the youth and every eligible person from the age of 18 to vote and be competent to stand as candidate for all elective offices in the country.[45] Unlike the 1999 CFRN, the South African Constitution provides expressly for the political rights of all adult citizens.[46] Despite the fact that this Constitution gives room for youth full participation, it is rather unfortunate that there is only 6 per cent of youths in the parliament, with the average age of the parliamentarians being 56.[47]

The above is a progressive development which is recommended for Nigeria where the Constitution still sanctions discrimination against the youth in terms of their eligibility in contesting for political offices. Thus, the practice in Nigeria of establishing youth wings of political parties and confining their political participation to that level is undemocratic and therefore unacceptable. Rather, the youth should be encouraged to emulate the bold steps taken by the South African youth in establishing a youth-based political party such as the Economic Freedom Fighters (EFF).[48]

Under the new Kenyan Constitution of 2010, the right to political participation is guaranteed to every adult citizen in that all adult citizens have the right to vote and to be eligible for all elective political offices.[49]

44 See, generally, G Utter *Youth and political participation: A reference handbook* (2011) 87.
45 K Mokolobate 'Youth month reflections: Where have all the voters gone?' *Mail and Guardian* 22-28 June 2018 42.
46 See, generally, I Currie & J de Waal *The Bill of Rights handbook* (2013) 420; art 19 RSAC.
47 H Tamukamoyo 'Unlock youth power' *Mail and Guardian* 22-28 June 2018 30.
48 See 'The founding of the Economic Freedom Fighters (EFF)', http://www.sahistory.org.za/article/founding-economic-freedom-fighters-eff (accessed 29 August 2018).
49 See sec 38(3) of the 2010 Constitution of Kenya.

Furthermore, anyone who has reached 18 years is of the age of majority in Kenya and he or she is seen as not being under any form of disability but of full age have the right to vote and to eligible for all elective political offices.[50] The most innovative approach by the 2010 Kenyan Constitution on the rights of youth is in relation to the provision of both the rights of youth and an affirmative action for the purpose of ensuring their full participation in the governance of the society.[51]

Although the removal of the legal impediments to youth political participation may not immediately translate into an increased number of youths voted into political office, it no doubt will make advocacy for youth rights worthwhile and not a futile exercise.[52]

7 The NotTooYoungtoRun success story and constitutional amendment on eligibility age

The NotTooYoungtoRun (NTYTR) movement was started in May 2016 by one of the foremost youth organisations in Africa which is based in Nigeria, naely, YIAGA Africa.[53] The main essence of the campaign was towards a 'constitutional amendment bill to remove age restrictions for running for office'.[54] The Not Too Young to Run Bill seeks to reduce the age limit for those running for elected offices in Nigeria to encourage more youth participation in governance.[55]

While the essence of the struggle of the NTYTR movement was the 'elimination' of the draconian and arbitrary eligibility age for political offices in the CFRN in that the voting age 18 should be the eligibility age, the National Assembly converted it into an 'age reduction' struggle. After, various advocacy works and mobilisation the National Assembly passed an Act of Parliament amending the eligibility sections of the CFRN and thereby reducing the eligibility age for the office of the President of Nigeria from 40 years to 35 years. The HoR and HoA eligibility age is reduced from 30 to 25 years of age, while the eligibility age of HoS remains unchanged and at 35 years of age.

On 31 May 2018 the NTYTR Bill received Presidential assent, thereby amending the CFRN as it relates to age eligibility for various elective offices in Nigeria.[56] The reduction is a glaring revelation that

50 See sec 2 the Kenyan Age of Majority Act Cap 33 of 2012.
51 See sec 55 of the 2010 Kenya Constitution (our emphasis).
52 F Viljoen 'Introduction' in F Viljoen (ed) *Beyond the law: A multi-disciplinary perspective on human rights* (2012) xiv.
53 See Yiaga Africa, http://yiaga.org/about/ (accessed 27 August 2018).
54 See the *Not Too Young to Run Movement Brief*, April 2018 (on file with authors) 1.
55 C Obogo 'Why I sponsored Not Too Young to Run Bill – Nwulu, PDP Reps member', http://sunnewsonline.com/sponsored-not-too-young-run-bill%E2%80%A8-nwulu-pdp-reps-member/ (accessed 27 June 2018).
56 See *Kwara Daily* 'Buhari's signing of #NotTooYoungToRun Bill is another promise kept – APC', https://kwaradaily.com/buharis-signing-of-nottooyoungtorun-bill-is-another-promise-kept-apc/ (accessed 4 June 2018).

these age-based discrimination provisions contained in almost all African constitutions were not borne out of genuine and objective reasons but were put in place to serve the parochial interests of the elites. This means that the eligibility age can be increased or reduced at will depending on who is in power and whose interests he or she seeks to protect. This is the height of arbitrariness and unreasonableness. It is nothing but a statutory-sanctioned discrimination against some groups of adults (the youth) which some elites consider potential threats.

The above position is revealed by the statement of President Muhammadu Buhari after assenting to the Bill when he said:[57]

> I am confident each one of you will transform Nigeria in your own way – whether through media, agricultural enterprise, economists, engineers, or as lawmakers in your states or at federal levels, or as state governors – and even someday as President. Why not? 'But please, can I ask you to postpone your campaigns till after the 2019 elections.

The above assertion by the Nigerian President reveals the deep-seated fears that those adults who are not of the youth age have against the youth. It invariably underscores the possible underlying reasons why the arbitrary and abnormal constitutional sanctioned age discriminations provisions in post-independent Nigerian Constitutions have become a reoccurring decimal albeit a normal precedent. The approach which the Nigerian state has adopted by reducing the eligibility age is what can be referred to as 'an inclusion by exclusion'.[58]

The implication of this amendment on the 2019 and subsequent general elections in Nigeria is that more youths would be able to vie for elective positions which otherwise they would be unable to. That is to say, the amendment should increase the number of youths vying for more elective offices in Nigeria. For example, by virtue of the amendment, youths that have reached the age of 35 can contest for the position of the Nigerian President in the 2019 election. Similarly, Nigerian youths from the age of 25 would now be able to vie as members of either the HoR or the HoA. One should expect more youths dominating or having an increased representation in both the state and national parliaments in the next parliamentary session.

Despite the above constitutional amendment which pegs the eligibility age for both the HoS and the President at 35 years; and 25 for HoR and HoA, 94,4 per cent of Nigerian youths are still excluded from access to the office of the President and HoS, while 38,8 per cent are still excluded from access to HoR and HoA. Youth right to political participation should

57 See *Channels Television* '#NotTooYoungToRun: Postpone your campaigns till after 2019, Buhari jokes with youths' 31 May 2018, https://www.channelstv.com/2018/05/31/postpone-your-campaigns-till-after-2019-buhari-tells-youths/ (accessed 27 November 2018).

58 D Durham 'Youth and the social imagination in Africa: Introduction to part 1 and 2' (2000) 73 *Anthropological Quarterly* 114.

be seen as part of human rights of the citizens that should be accorded its respect, protection and implementation on equal terms with all adults.

Since the CFRN, as indicated above, considers everyone from the age of 18 (the age of majority) as of 'full age',[59] full age should not only mean the entitlement to a driver's licence only, but should translate into their enjoyment of the rights to full and effective political participation in all spheres of the Nigerian state.[60] Full 'adulthood' should come with the full enjoyment of all rights that accrue to all adults all over the world, which includes the right to vote and to be eligible to contest for any political office. In respecting citizens' rights to political participation by any state, equality of suffrage is a fundamental key.[61] After all, the '[p]otential lack of ability should not be a bar to candidature; incompetents would hopefully not be elected or re-elected'.[62]

Flowing from the above, it may be argued that there is no justification for the Nigerian elites to continue to increase or decrease the eligibility ages at will. Rather, the electorates should determine who should be their leaders. In other words, the age criteria for voters should be the same for eligibility and this is the only way the full and effective political participation of the Nigerian youth can be guaranteed, respected and protected. The current amendment, although a step forward, has not really achieved enough in terms of youth rights to political participation but further entrenched the principle of inclusion by exclusion, whereby some youth are included while others are excluded from the decision making table.[63]

8 Recommendations and conclusion

The chapter recommends that Nigeria should comply with its obligations to youth rights under the African Charter, the Afican Youth Charter and other international human rights instruments by removing from its statute book all age restrictions against the youth in the course of exercising their human rights to political participation. Accordingly, the South African and the Kenyan laws in this regard, which are non-discriminatory and affirmative, are recommended for adoption by Nigeria. In this way, the Nigerian democracy can be seen to be truly participatory, inclusive and youth-friendly.

Noting that the problem of the participation of the youth in governance not only is national but regional and global as well, for any proposed solution to have far-reaching effects, the global community must wake up to its responsibility by adopting a generally-acceptable legal framework stipulating clearly what the age of maturity and eligibility criteria should

59 See sec 29(4)(a) of the CFRN.
60 See generally C Mwalimu 'The Nigerian legal system' (2005) 1 *Public Law* 599.
61 W Kalin & J Künzli *The law of international human rights protection* (2009) 481.
62 S Joseph 'Right to political participation' in D Harris & S Joseph (eds) *The International Covenant on Civil and Political Rights and the United Kingdom law* (1995) 550.
63 Durham (n 58) 114.

be. It is further recommended that the international community begins the process of drafting a global youth charter which contains a monitoring mechanism, just as it has done in the cases of children's and women's rights. In the short term, the UN should adopt a resolution declaring 18 years as the age of maturity and what the youth age bracket should be.

Similarly, the AU should commence the process of redrafting or amending the Afican Youth Charter to correct its inherent defects in relation to the issues of the definition of youth; the lack of an express provision of electoral rights; and an absence of a specific monitoring mechanism to ensure implementation. Furthermore, the Afican Youth Charter should define youths as persons from the ages of 18 to 39 and expressly provide for youths' right to vote and be eligible to stand for elections without discrimination on grounds of age as provided for under the African Women's Protocol.[64] The Afican Youth Charter provisions should also include a monitoring and implementation mechanism as provided for in the African Children's Charter and the African Women's Protocol.

64 Art 9(1)(a) specifically provides that state parties should ensure that 'women participate without any discrimination in all elections'.