THE RIGHT TO POLITICAL PARTICIPATION OF YOUTH IN TERMS OF THE AFRICAN YOUTH CHARTER: A CASE STUDY OF NIGERIA

by

BAMISAYE OLAWAYE OLUTOLA
Student No: u14449740

Submitted in fulfillment of the requirement for the degree

Doctor of Laws (LLD)

Faculty of Law, University of Pretoria
August 2022

Supervisor: Professor Michelo Hansungule

University of Pretoria

Declaration of originality

Full names of student:

Bamisaye Olawaye Olutola

Student number:

U14449740

Declaration

1. I understand what plagiarism is and am aware of the University's policy in this regard.
2. I declare that this thesis titled 'The Right to Political Participation of Youth in Terms of the African Youth Charter: A Case Study of Nigeria' is my own original work. Where other people's work has been used (either from a printed source, internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements.
3. I have not used work previously produced by another student or any other person to hand in as my own.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.

Signature of student:

....…….....

Signature of supervisor:

…….....…….……..

Dedication

’Mayowa, ’Korewa and Christman Olutola

Acknowledgments

The pathway that leads to the accomplishment of a great task as this only becomes not too tedious when there are people placed there by God to help one. First and foremost, I want to appreciate the God of Elijah, who is also the God of Mountain of Fire and Miracles Ministries who is my source and the alpha and omega of this work. Thank you, Jesus!

There are many people that God has used to help me through this journey, but they are too numerous to mention here. However, I want to extend my appreciation to my supervisor, Professor Michelo Hansungule, whose encouragement and priceless support caused me not to opt out of this programme. Thank you, Dad.

Also, my appreciation goes to all members of the Centre for Human Rights, particularly the Director and Assistant Director-Professor Frans Viljoen and Mr Norman Taku, Professor Magnus Killander, Mr Sydney and others. I am grateful to all staff of the University of Pretoria's OR Tambo Library for their invaluable support. I equally want to thank Dr Akinola Akintayo and Dr Rotimi Gabriel for their priceless support all throughout this journey.

My special appreciation also goes to the General Overseer, Mountain of Fire and Miracles Ministries, Dr DK Olukoya; Saint PetersBell Jigo; Dr Omo-Eboh; Pastor Festus Adetunji; Mr Isaac Komolafe; Mr Dauda Joki-Lasisi; Mr Kehinde Bamiwola; Mr Moses Olgwu; Mr Samson Ozah; Mr Sewhenu Avoseh; Pastor Kelly Osagie; Pastor Joy Giwa; Dr Damilare Oja; and all my family members, my father, Mr LF Olutola, and my siblings, Emmanuel Olutola and Eniola Olutola, among others.

Finally, I want to extend a big thank you to my helpful, supportive and very understanding heart-throb and wife, Ms 'Mayowa Olutola, as well as to my beautiful daughter and glorious son, 'Korewa Olutola and Christman Olutola.

I am grateful to you all!

Abstract

It is now beyond contestation that the rights of youths globally are under grave threat mostly by states. Due to these apparent threats, the global community through the United Nations over the years has tried to proffer solutions to the problems confronting the youth rights generally and the youths' human rights to political participation.

At the regional level, various attempts have been made to tackle the problems faced by the youths, especially regarding their marginalisation in the scheme of things in society. The most profound of the steps taken at the regional level is the codification of the human rights of youths in legally-binding documents. This has been done by both the African Union and the Ibero-American Community.

However, due to the challenge of ineffectiveness of mechanisms both at the global and regional levels, the human rights challenges facing the youths globally remain largely the same, if not worse.

Consequently, this thesis examines the human rights of the youths, in general, and their rights to political participation as guaranteed by global, regional, sub-regional and national human rights laws. Using Nigeria as a case study, this thesis establishes that despite the existence of the human rights to political participation guaranteed to the youth under various human rights regimes; there has been an ongoing trend to conflate youth and children rights in laws and policies relating to youth, usually leading to their rights to political participation being partly guaranteed, undermined or denied globally.

The thesis demonstrates that while a conflation of youth and children rights may exist in other climes, it is incontestable that in Africa children and the youths are two distinct groups of persons, and arguably the African society is basically divided into adults and children, and the youth certainly do not belong to the category of children but rather that of adults. This thesis argues that the age restriction laws in most African states that bar most youths from exercising their human rights to political participation to stand as candidates in elections violate their rights, are in contradistinction to states' human rights obligations, and antithetical to African traditions and ethos.

This thesis points out the capability inherent in the African Youth Charter in ensuring the respect, protection and promotion of youth rights and particularly their rights to political participation in countries of Africa. Apart from that, there is a need for concerted efforts towards finding lasting solutions to the challenges of the youths globally.

These efforts would take the forms of agreeing on the 'start-up' age for youths; the proposition of a legally-binding definition of a youth; the codification of a global treaty on youth rights; and the establishment of a reporting or monitoring mechanism on youth rights. The existence of these reforms would have significant beneficial effects at both the national and regional levels.

At the African Union, there is an urgent need for the African Youth Charter to be redrafted to reflect the reality of the African people and to be able deliver on its various promises. The redrafted African Youth Charter should clearly exclude children in its categorisation of youths. It should specifically grant to the youths the right to vote and to stand as candidates in elections, and provide for a specific or multiple reporting mechanisms. These steps are necessary if the rights and development of the youths are to be respected, protected, promoted and fulfilled in Africa.

Table of Contents

Chapter 3: The human right to political participation

Chapter 4: The African Youth Charter

Chapter 5: Youth rights to political participation under Nigerian law and lessons from other jurisdictions

List of Abbreviations

AU	AFRICAN UNION
ACHPR	AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
AUC	AFRICAN UNION COMMISSION
AYC	AFRICAN YOUTH CHARTER
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
CFRN	CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA
EAC	EAST AFRICAN COURT
EFF	ECONOMIC FREEDOM FIGHTERS
FRN	FEDERAL REPUBLIC OF NIGERIA
HOR	HOUSE OF REPRESENTATIVES
HOS	HOUSE OF SENATE
HOA	HOUSE OF ASSEMBLY
HRP	HUMAN RIGHTS PERSPECTIVES
IACYR	IBERO-AMERICAN CONVENTION ON YOUNG PEOPLE'S RIGHTS
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
IP	IDENTIFICATION PERSPECTIVES
IIED	INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT
MOYAS	MINISTRY OF YOUTH AFFAIRS AND SPORTS
NSC	NIGERIAN SUPREME COURT
NTYTR	NOT TOO YOUNG TO RUN
OECD	ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
PDP	PEOPLES DEMOCRATIC PARTY
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
SDP	SOCIAL DEVELOPMENT PERSPECTIVES
UN	UNITED NATIONS

UNDP	UNITED NATIONS DEVELOPMENT PROGRAMME
WPAY	WORLD PROGRAMME OF ACTION FOR YOUTH

Chapter One

Introduction

1 Background

We need to acknowledge that we have a significant problem when so many young people are effectively denied citizenship status. There is no reasonable basis for excluding young people from what is an otherwise widely available set of political and civil rights. Tackling this issue involves deepening and extending the current rhetoric about youth participation … the burden of proof for why certain groups of young people should be excluded rests with those who would sustain this disenfranchisement.[1]

When federalism began to deteriorate, which was from the sixteenth to the nineteenth century, youth rights in general and their political rights were discussed.[2] The recognition of youth rights is largely motivated by the fact that all adults have the same rights regardless of their age, abilities, sex, and other characteristics.[3]

However, experience has shown that due to the vulnerability of the youths, derived from personal characteristics, economic, social or political structures, there is an urgent need for the specification of their rights in order for them to exercise their rights on an equal basis with others.[4]

Article 2 of the Universal Declaration of Human Rights (Universal Declaration) declares that everyone is entitled to all the rights set forth in the Declaration. In the same vein, article 2 of the

[1] J Bessant 'Mixed messages: Youth participation and democratic practice' (2004) 39 *Journal of Political Science* 387-404, http://s3.amazonaws.com/academia.edu.documents/33853722/Bessant..youth_participation.pdf?AWSAccessKeyId=AKIAJ56TQJRTWSMTNPEA&Expires=1471523521&Signature=kU%2FcYsKMuyjWbc1gO5f6A1X%2BuFg%3D&response-content-disposition=inline%3B%20filename%3DYouth_participation_a_New_Mode_of_Govern.pdf (accessed 18 August 2016) 15.
[2] W Angel (ed) International law of youth rights: Source documents and commentary (1995) 4.
[3] W Angel (ed) The international law of youth rights (2nd edn) (2015) xviii.
[4] As above.

African Charter on Human and Peoples' Rights (African Charter) expressly provides for the rights guaranteed under it to be enjoyed by 'every individual', which includes the youths.

Similarly, with the heightened focus on youth rights globally, the human rights instruments offer one a veritable tool for the assessment of states' obligations regarding youth rights. Such an assessment will not only enlighten states on their obligations, but will certainly pave the way for how best states could address issues that pertain to the youths through the rights-based approach.

Despite the existence of these various human rights instruments, '[a]ctions taken by states as duty bearers represent only very sporadic approach to the rights-based approach'.[5] The lackadaisical attitude of these states is in contradistinction to their obligations to respect, protect and fulfill the rights of all, including the youths.[6]

While other international human rights instruments do not use the phrase 'active and full participation', the right to inclusion of all in the scheme of things is guaranteed. For example, the Universal Declaration on Human Rights (Universal Declaration) provides for the right to political participation under article 21(1), that '[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives'.

Similarly, the International Covenant on Civil and Political Rights (ICCPR) contains expansive provisions on the human rights to political participation. Article 25 of ICCPR provides that '[e]very citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions.'

From the foregoing, it can be seen that the issues regarding the recognition of youth rights are not new on the human rights agenda. However, there is a gap as to how well states understand their obligations and to what extent they have over the years ordered their affairs in a manner that recognises and guarantees the youths their rights to full and effective political participation.

[5] Angel (n 3 above) 950.
[6] See for example art 10 Lisbon Declaration on Youth Policies and Programmes (1998)

On the global human rights stage, the issue of youth rights and affairs came to the fore for the first time at the United Nations (UN) in 1965 when the UN General Assembly adopted Resolution 2037 on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between People.[7]

This Resolution highlighted the essential contribution of the youths to peaceful development.[8] However, the legal definition of youth remained unresolved. Therefore, in order to resolve this confusion, the UN in its Resolution pegged the age of youth as between the ages of 15 and 24 years for statistical purposes.[9]

Despite the categorisation of the group of people known as 'youth', the marginalisation and exclusion of youths in governance have not ceased. In order to show its commitment to the rights of the youth worldwide, the UN in 1995 adopted the World Programme of Action for Youth lasting to the year 2000 and beyond (WPAY). The UN through the WPAY 'affirms the full and effective participation of youths in society and decision-making as one of its 10 priority areas of action'.[10] Some groups of children form part of the categorisation of youth according to the above grouping by the UN.

The WPAY of the UN ought to have concretised youth rights and served as a proper guide to states as to their obligations regarding these rights. However, this seems not to have been done since its adoption in 1995. The first dilemma in the Resolution towards realising youth rights to political participation at the global level is the issue of a lack of clarity on what constitutes a youth.

The current definition of youth by the UN has complicated the issue of youth rights rather than resolving it, as it categorises youth to include certain segments of children.[11] This will undoubtedly make assessing the obligations of states in respect of youth rights a herculean task.

---

[7] Angel (n 3above)
[8] M Mahidi 'The young and the rightless? The protection of youth rights in Europe' unpublished Master's dissertation, Åbo Akademi University, 2010 31.
[9] See para 9 of UN General Assembly Resolution A/Res/50/81, http://www.un.org/documents/ga/res/50/a50r081.htm (accessed 18 June 2018).
[10] World Youth Report 'Youth participation in decision-making' (2003) 271.
[11] Angel (n 2 above);

The second dilemma of the WPAY Resolution is the issue of it being not binding on state parties. An enquiry into states' obligations under any human rights instrument is aimed at investigating the effects of such instruments at the domestic level, which is an all-important enquiry.[12] It has been argued that one of the major barriers to realising youth rights and their rights to political participation is the lack of codification in some sort of binding instrument, as in the case of for children's and women's rights.[13]

However, it is the view of the author that the lack of clarity in the definition of who a youth is at the global level or the lack of a binding instrument on youth rights cannot absolve states from their obligations to respect, promote and fulfill these rights as nine of the core human rights instruments expressly and indirectly guarantee and protect youth rights.[14]

There have been regional responses in tackling the issue of youth marginalisation in politics; one of such is the Ibero-American Convention on Youth Rights, which was passed in 2005 by the Ibero-American Youth Organisations (OIJ) but entered into force in 2008.

The exclusion of the youths is undesirable, because any kind of exploitation and exclusion of the youths will result in them not being able to participate effectively in decision-making processes and governance.[15] By implication, the fight for the respect and protection of youth rights to participation is conversely a fight for participatory governance, which is a legitimate right of all adult citizens.[16]

[12] VO Ayeni 'Introduction and preliminary overview of findings' in VO Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 1.
[13] W Angel *International law on youth rights* (1995) 37, Angel (n 3 above) 951.
[14] Angel (n 3 above) 945. The treaties are the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC), among others.
[15] Angel (n 2 above) 131.
[16] D Walker et al 'Partners for change: Young people and governance in post-2015' (2014) 5, http://restlessdevelopment.org/file/partners-for-change-young-people-and-governance-in-a-post-2015-world-pdf (accessed 18 August 2016).

There is a need to investigate historical cultural barriers that are deeply entrenched African society in relation to youth participation in the scheme of things manifesting themselves in contemporary times.[17]

This research will focus on the right of the youth to political participation as guaranteed under the human rights instruments and as well as the obligations it places on state parties, and how they can be used to mandate states to perform their human rights obligations to the African youth.

1.1 Problem statement

The right to political participation of youths is not being respected by state parties in Africa. Most African youths are excluded from the political decision-making processes. Most African constitutions have discriminatory provisions that forbid youths from exercising their political rights in full. This practice is against the various international human rights instruments that guarantee the right to political participation of all adults; 18 is the age of adulthood in most jurisdictions.

As a result, this thesis views the fact that youths in many African states are prohibited by national law from engaging in political activities on an equal footing with other adults as one of the issues they must deal with. It then offers several solutions to this issue.

1.2 Objectives of study

The main goal of this study is to do a critical evaluation of the international human rights standards for the exercise of the right to political participation as they relate to youth.
Other objectives the study sets out to achieve are:

(i) to examine the nature of the political rights of youths in African constitutions

[17] L Camino & Z Zeldin 'From periphery to centre: Pathway for youth civic engagement in the day-to-day life of community' (2002) 6 *Applied Developmental Science* 214.

(ii) to interrogate to what extent the laws of Nigeria and other state parties in Africa are in tandem with international best practices in guaranteeing youths their right to political participation

(iii) to understudy those factors (principally legal) that are deeply entrenched in African constitutions that act as barriers to the full realisation of youth rights in Africa

(iv) to proffer practicable solutions that could lead to a better understanding of youths and the full enjoyment of their rights in Africa.

1.3 Significance of study

The findings from this research are significant in various respects. The study is relevant to Africa at this time, considering how its youth population is increasing by the day, especially due to the fact that there is little scholarship on youth rights in Africa, in spite of the existence of the African Youth Charter (AYC). This is because scholars are yet to appreciate the importance of youth rights in the struggle for the entrenchment of human rights and democracy in Africa.

Most scholars focus on children's rights and do not take the issues of youth rights seriously. This is an attitude that needs to change. After all, youth rights are no less human rights than those of children and women. This work attempts to correct this wrong perception, to instigate a robust discussion on youth rights among human rights scholars, especially African scholars, and to contribute to the body of knowledge in this neglected but significant area of human rights law.

It is therefore hoped that its findings will add to the body of knowledge on the right of youths to political participation. Similarly, its findings will be a roadmap on how to avoid incessant youth-driven conflicts in Africa, such as the Arab Spring of 2011, in the northern part of Africa. The findings will also suggest ways in which factors militating against youth rights and their rights to political participation can be dealt with by states in Africa. Most importantly, the findings of this research will serve as a guidebook for how states can best meet their obligations to some seemingly excluded or marginalized/minority groups (such as youths) in Africa and around the world. It is equally hoped that this work will contribute to efforts being made to attain a better universal standard towards the promotion and protection of youth rights globally and in Africa.

Therefore, this work comes as a timely response to the need to estimate and report on the extent to which states in Africa are living up to their obligations in relation to their protection of youth rights on the continent. This thesis is a path-finding exercise aimed at analyzing present policies and states' interventions since 2006 when the Africa Youth Charter was adopted, their profound challenges and deep-seated limitations, and the way forward. This study intends to analyse ongoing responses by the UN and the AU to youth rights and states parties' challenges in meeting their obligations across Africa in line with the provisions of the African Youth Charter, using Nigeria as a case study.

1.4 Limitation to this research

This study acknowledges that the issue of youth rights is diverse. However, the current investigation concerns youths' right to political participation under international human rights laws. The provisions of the African Youth Charter and the practice in Nigeria would be its primary consideration.

While the work will largely investigate the rights of the youths to political participation in Nigeria, it will draw lessons from other countries such as the United Kingdom (UK), South Africa, and Kenya. The choice of these African countries, among other things, is due to the fact that they have youth-friendly constitutions and effective laws on political participation. The UK was selected because of the colonial affiliations of Nigeria and most Anglophone African states.

Notwithstanding the fact that the current research is limited to Nigeria, it is hoped that its findings will be relevant to other states in Africa and the global community.

1.5 Research questions

The main research question of this work is: how can international human rights law be harnessed as a body of instruments for the protection of the right to full and effective political participation of youth rights in Africa?

Sub-research questions are the following:

(a) What global and regional normative standards exist for the rights of the youths and their rights to political participation?
(b) What are the normative standards provided by the African Youth Charter for youth rights?
(c) What are the existing frameworks for the guarantee of youth right to political participation in Nigeria?
(d) What role can the African Youth Charter play in advancing the rights of the youths to political participation in Nigeria?
(e) In what way can the African Youth Charter be used to engender the respect and protection of youth rights in Africa?

1.6 Methodology

A legal research approach is used in the study, and it is in line with the main research topic and its sub-questions. When analysing the normative and structural criteria under international human rights legislation that guarantee the right to political participation of adults in society, which is debatably to include youths, it takes a doctrinal research approach. Similar to that, the study's doctrinal approach is used to assess the numerous national and international initiatives made to address the concerns of youth rights in general and their right to political participation in particular.

It is important to note that this study is primarily be desk-based, embrace descriptive as well as exploratory approaches in the identification and analysis of its core arguments, and is guided by the research design and doctrinal methodology. It makes an effort to evaluate both primary and secondary sources on the topic of youths' right to political participation. To fully understand the

idea of the right to political participation and the responsibilities of states in ensuring that it is enjoyed by all adults, which is debatably to include youths, extensive desk study was required.
In order to evaluate the effectiveness of domestic and international frameworks in ensuring youths' right to political participation, a thorough assessment of the legislative and institutional framework was necessary. This made it possible to identify the elements of the various existing frameworks that need to be revised in order to effectively realise the rights of youth to political participation.

In addition, a desk review of previous research on the Nigerian government's policies, regulations, and actions regarding youths' rights to political participation was carried out. In order to better support the fulfilment of youths' rights to political participation and to take into account the needs and ambitions of youths in Nigeria, a review of government policies was conducted. The research was made possible by the literature, which allowed the researcher to compare the strategies used by the Nigerian government and those of other governments to address the issue of youth political exclusion. By doing this, the gaps found were used to advance knowledge in the less-discussed topic of how to execute the right to political participation in a way that respects equality and inclusivity while taking into account international human rights standards.

In addition to the aforementioned, informal conversations were also used to determine the best models for guaranteeing that youths have access to their human rights to political participation and are treated equally with other adults in society. The best method to frame political rights in constitutions in a way that would make it easier for youths to exercise their full and effective right to political participation societies was understood through informal dialogues. The numerous laws, resolutions, and youth-related policies of Africa and other regions are also analysed and compared in this research on youth rights. A comparison of regional regimes on youth rights between the African human rights system and other international or regional human rights systems, such as the Ibero-American system, is made in particular.

1.7 Literature review

There is limited work on the rights of youths generally and their rights to political participation, in particular. Many African scholars have failed to sufficiently express young people's rights from an

African viewpoint, despite the fact that there are few works on youth rights in Europe and other areas of the world. This could largely be due to the lack of a global treaty on youth rights.
However, one of the most expansive works on youth rights is the work of Angel, titled *International law of youth rights: Source documents and commentary*. Angel discusses all the various youth rights, including their political rights.[18] He argues that due to the aristocratic tradition of the past, there is always a generational rebellion of youths against several systems of governance put in place by their adult generation.[19] He further argues that youth rights have suffered neglect due to the lack of global codification like that of women and children.[20]

While this thesis may concur with the aforementioned position, it should be emphasised that while codification may strengthen certain rights, such as those of youths, it cannot force nations that are antagonistic to human rights to uphold human rights norms. Regardless of his views on codification, Angel claims that a new global human rights document is required that explicitly outlines the rights and obligations youths.

This is necessary if practical means of youth participation in governance is to be achieved rather than remain a mere general statement.[21] He contends that conflating the definition of the human rights of children and the youth has further complicated the struggle for the recognition of youth rights.[22] In comparison, the adoption of international conventions on women and children's rights undoubtedly strengthened the acknowledgement of their rights globally.

Therefore, a global binding instrument on youth rights, which should include multiple reporting requirements, is needed to strengthen existing standards on youth rights.[23] While Angel's work on the rights of the youth is relevant to this present work, it is not adequate as it does not capture the lived reality of the African youth and is also pre-AYC.[24] This is unlike this current work, which is from an Africanist perspective, differing from that of Angel.

[18] Angel (n 2 above) 4.
[19] Angel (n 2 above) 3.
[20] Angel (n 2 above) 4.
[21] Angel (n 2 above) 22.
[22] Angel (n 2 above) 35.
[23] Angel (n 2 above) 37.
[24] It was published in 1995 while the AYC was adopted on 2 July 2006 and entered into force on 8 August 2009.

According to Durham in her work on the youth in Africa, youths, who are a historically constructed category of social actors, form an important sharp lens through which social forces are categorised in Africa and the world as well.[25] She contends that the new systems of political participation in Africa in novel ways exclude and include the youth, which is a practice of inclusion by exclusion.[26]

In spite of the youth forming an increasing proportion of the population on the African continent, attention to them has not only been secondary but sporadic.[27] She argues that the discourse on the youth is critical today across Africa.[28] While her finding is relevant to this present work, it was written from an anthropological perspective rather than a rights-based perspective.

Similarly, there is a gap in her study as it did not discuss youth rights as provided for by the African Youth Charter or states' obligations to the youth, making it limited in scope and relevance to this current study which focuses on the AYC in the light of states' obligations that the Charter delineates.

Writing on youth participation in the Mediterranean, Pacielo contends that it was the quest for youth political participation that led to the mobilisation of the 2011 Arab Spring.[29] The author further argues that a youth-oriented model for countries is a necessary precondition for tackling exclusion of the youth in North Africa. The youth are daily calling for extensive political restructuring to ensure their participation.[30]

While the work focuses on the political participation of the youth in North Africa, it does not discuss the marginalisation of the youth in the context of states' obligations under the AYC, which is the focus of this current work. The present work largely differs from this reviewed author's work

[25] D Durham 'Youth and the social imagination in Africa: Introduction to part 1 & 2' (2000) 73 *Anthropological Quarterly* 114.
[26] As above.
[27] As above.
[28] Durham (n 25 above) 118.
[29] M Pacielo 'The economy of youth exclusion in the Mediterranean: Continuity or change' *Opinion on the Mediterranean* (2012) 1, https://www.google.com/search?q=M+Pacielo+%E2%80%98The+Economy+of+Youth+Exclusion+in+the+Mediterranean%3A+Continuity+or+Change%E2%80%99&ie=utf-8&oe=utf-8&client=firefox-b-ab (accessed 24 April 2018).
[30] As above.

because it covers a case study of selected four African countries and uses the African Youth Charter as the instrument for the evaluation.

In their 2014 study which focuses on youth rights to political participation, Walker and others advocate the need for a change in the current governance structures globally, so as to allow young people to engage with governance.[31] They argue that since the sustainability of developmental efforts requires the participation, involvement and ownership both globally and nationally, there is no reasonable basis for the general exclusion of the youths from participating fully in the politics of their countries.[32]

They further contend that the youth, being citizens, deserve to be included in decision-making processes on issues that directly affect them and their communities.[33] To them, the myopic view of seeing the youths as lacking the relevant required skills in decision-making processes, can only be proved if the youth are given the opportunity to prove themselves in their participation in the affairs of governance.[34] While the work centres on the right to political participation, it lacks a critical analysis of the AYC and the rights and obligations provided for therein.

Camino and Zeldin argue that inclusive participation connotes that all adults citizens have legitimate opportunities to influence decisions.[35] They contend that one of the factors affecting collective participation is the codification of age restriction in laws.[36] The marginalisation of the youth continues globally because of their being regarded as 'others' in society.[37] The authors convincingly argue for the inclusion of the youth in mainstream governance, but do not spell out how such integration is to be carried out by states or what specific steps they are expected to take in the light of their obligations under the AYC.

In his work on the African youths, Honwana reasons that while the youth in Africa face serious challenges of exclusion, bad governance and deeply-entrenched societal problems have reduced

[31] Walker *et al* (n 16 above) 2.
[32] As above.
[33] As above 3.
[34] As above 8.
[35] Camino & Zeldin (n 17 above) 213.
[36] As above
[37] As above 215.

the ability of the youth to become fully-fledged citizens.[38] The author further argues that the recent waves of protest around the world by the youth are a struggle for the economic, social and political emancipation of the youth.

Due to the uncertainty regarding adulthood of the African youth, they can best be described as people 'living in waithood'.[39] Nothing could be further from the truth than the assertion that widespread political marginalisation is what drives youth-led protest movements around the world.[40] The need for the inclusion of the youth rather than exclusion in governance in Africa is borne out of the fact that they are better educated than their parents and are also closely connected with the rest of the world.[41]

The author recognises the existence of the barriers to the realisation of youth rights in Africa but does not discuss a critical evaluation of the intervention of the AYC and situates the youth rights crisis within the confines of the AYC with regards to how states can fulfill their obligations under it to address these challenges.

In the work edited by Forbrig on youth political participation in Europe, it is stated that youth participation in Europe is a paradox.[42] Arguing for youth participation, the work further stresses the need for the state to see political participation as an incentive for all citizens to contribute to governance, since all will be affected by governmental decisions.[43] According to Dias and Sudanshan, one of the core values of democratic governance is inclusiveness and equal participation. The participation of all people in the decisions affecting their lives is a right of all.[44]

[38] A Honwana *Waithood, restricted futures and youth protest in Africa* (2014) 1.
[39] As above.
[40] As above 2.
[41] As above 5.
[42] J Forbrig *Revisiting youth political participation: Challenges for research and democratic practice in Europe* (2014) 7.
[43] As above 10.
[44] C Dias and R Sudershan 'Inclusive governance for human development. In towards inclusive governance: promoting the participation of disadvantaged groups in Asia Pacific' (UNDP Report) 2007.

While works edited by Forbrig are relevant to the current work, as they would be relevant for a comparative analysis of youth rights in Europe and Africa, the entire body of work nevertheless is markedly different from the current work, because the entire body of work is based on the prevalent conditions in Europe and only on youth rights to political participation. However, this work is focuses on youth rights in Africa in the context of states' obligations under the AYC.

In his work on youth rights in Cameroon, Touo argues that the issue of youth marginalisation is not only a debate that portends grave danger for peace and security, but dovetails into the issue of good governance.[45] However, he fails to address the issue of obligations of states under the AYC, an existing gap this present work sets out to fill.

Similarly, in their work on youth exclusion, violence, conflict and fragile state, Hilker and Fraser maintain that the exclusion of the youth is multifaceted and entails various types of drawbacks which are not only interrelated but compound each other.[46] Also, in a 2015 study undertaken by the Organisation for Economic Co-operation and Development (OECD) on the youth in the Middle East and North Africa (MENA) region, it was equally discovered that the youth in that region face grave obstacles to their involvement and participation in the affairs of public, economic and social life.

Without enabling factors to help them, the youth will fall into the category of the 'left behind in the society'.[47] The violation of the right to political participation of the youth has 'seriously extenuated the potential of the youth as agents of social change' in Africa.[48] Both studies, while relevant to this work, were not undertaken in the context of the AYC as in the case of this study.

[45] H Touo 'African youth and globalization: The experience of the ethics club in the process of socio-political integration of the youth in Cameroon' (2010) 17 *The African Anthropologist* 3.
[46] LM Hilker & EM Fraser *Youth exclusion, violence, conflict and the fragile state* (2009) 10.
[47] 'Youth in the MENA region: How to bring them in' OECD preliminary report (2015) 16.
[48] S Uhunmwuangho & E Oghator 'Youth in political participation and development: Relevance, challenges and expectations in the 21st century' (2013) 15 *Journal of Sustainable Development in Africa* 245.

Furthermore, in a recent report on overcoming youth marginalisation, a rights-based approach to youth inequalities was suggested.[49] This is because the youth across the world experience marginalisation and exclusion due to their age.[50] These works are connected to this current work, but most of them omitted the issues analysing the rights guaranteed under the AYC and its obligations on states to achieve the goals of respecting, fulfilling and protecting the rights of youths in Africa. They also narrowly focus on youth rights to participation alone, unlike this study which encompasses various rights of the youth as guaranteed under the AYC.

The impact of the marginalisation of the youth transcends the violations of their human rights to stability and cohesion of their societies.[51] While the overemphasis on the transition period from youth to adulthood is a barrier, the absence of a binding treaty on youth rights globally has been identified as a major obstacle by the report.[52] However, it is the contention of this study that while a binding youth treaty is necessary for the realisation of youth rights, without contextualising the specific obligations of states under such a charter, its purpose may fail.

Furthermore, from a comparative perspective, Vromen and Collin, writing on the Australian youth, argue that policies on youth participation should rather tackle ways in which governments should respond to the violation of youth rights to political participation instead of suggesting ways in which the youth should participate. However, they did not point out how obligations of states are necessary in achieving it.[53] Their work challenges the current *status quo* of most youth policies in Africa, which speak of youth participation in the language of privilege rather than rights.

Farthing, who writes on youth rights to participation, contends that since the youth are full rights-bearing citizens, they have the inalienable right to participate in decision-making processes and governance.[54]

---

[49] See the Columbia University Report on 'Overcoming youth marginalization' (June 2014) https://www.un.org/youthenvoy/wp-content/uploads/2014/10/Columbia-Youth-Report-FINAL_26-July-2014.pdf (accessed 17 August 2022).
[50] Camino & Zeldin (n 17 above) 6.
[51] As above 6.
[52] As above 9.
[53] A Vromen & P Collin *Everyday youth participation* (2010) 106.
[54] R Farthing 'Why youth participation' (2012) 9 *Youth and Policy* 75.

According to Atta-Asamoah on the African youth, there is a strong case to be made out that instability and civil conflict are the result of a poorly-managed young population.[55] The author further argues that a situation where the youth in Africa has suffered political exclusion and economic marginalisation among other discriminations, just as in the case of the Arab Spring, could be a formula for revolution.

Even in times of peace, a young population that is expanding quickly like that in Africa poses significant challenges.[56] While he argued that the rapid population of the youth in Africa needs to be properly managed in order to avoid a repeat of the Arab Spring, there is nothing in his work that suggests how states can achieve this lofty goal, especially in the context of the youth rights and obligations of state parties under the AYC.

Similarly, both the recent report of the United Nations Development Programme (UNDP)[57] and that of the International Institute for Environment and Development (IIED)[58] concern youth exclusion in decision-making processes in Africa, and proffer solutions on ways in which this can be remedied, but lack a discussion of such a subject within the context of the provisions of the AYC and the obligations of states. This current study will explore how best to proffer a workable sustainable solution to youth rights issues in Africa under the AYC.

Viljoen argues that the AYC speaks to the needs of the African youth, as it provides for issues such as skills development and full and qualitative employment. However, he does not discuss the issue of obligations of state parties under the AYC; which is the principal theme of this current study[59]

Arguing for the recognition by state parties of the right of the youth to full and active participation in the affairs of their states, Ijeoma noted that '[i]t is important that young people participate at all

[55] A Atta-Asamoah *Head-to-head: Is Africa's young population a risk or an asset?* (2014) 1.
[56] As above.
[57] UNDP Report (n 44 above).
[58] J Greenhalf & R McGee (eds) 'PLA 64 Young citizens: Youth and participatory governance in Africa' (2011).
[59] F Viljoen *International human rights law in Africa* (2012) 407.

levels, bringing their perspectives and suggestions into the African development process'.[60] The learned author notes that the current state of affairs among African states can be likened to an 'unjust world' where young men and women are denied access to their fundamental rights.[61]

The author considers the exclusion of the youths from participation in the affairs of governance in Africa as a major concern and calls for the need to change this trend as '[y]oung people are our future leaders, but there are also young leaders among us',[62] and '[p]olitical transformation in Africa, like economic and social transformation, requires young people who are politically aware and active'.[63] While the work has slight connections to this present study it is different as it addresses youth rights not within the context of the AYC.

According to Ubi, the AYC in articles 10 (development) and 11 (participation) are tacit on the recognition of contribution of the youths to the development in Africa, and states are expected to create a conducive environment to actualise the political, social and cultural development of the youth. He argues that the implementation of articles 11(1) and (2) can be done in two ways, namely, the encouragement of relevant youth development initiatives undertaken by national governments and the creation of opportunities for youths to be partners in the development process.[64] This can be done by the liberalisation of access to decision-making bodies and the reintegration of the youth into the mainstream governance processes.[65]

He further asserts that '[t]ruly speaking, we have never seen a time in history where the youths in Africa are as neglected as they were in the last decades of 20th century and in the present 21st century'.[66] However, he concludes that the AYC should be seen as a legally-binding document for the protection and promotion of children's and youth rights in Africa.[67] This current study differs

[60] E Ijeoma 'Mainstreaming the youth in Africa's development: The role of NEPAD' (2009) 72 *Commonwealth Youth and Development* 2.
[61] As above 5.
[62] As above 9.
[63] As above.
[64] E Ubi 'African Youth Charter: Prospects for the development of the African youth' (2007) 5, http://www.oecd.org/swac/events/42259218.pdf (accessed 6 October 2016).
[65] As above.
[66] As above 17.
[67] As above 11.

from the author's work, as it focuses on the rights the AYC guarantees and obligations of state parties towards their realisation.

The various works that are closely related to this current research are the works of Adeola, Viljoen, Selvam, Mahidi and the latest work by Angel.

The work by Adeola focuses on the AYC and how it can be used to attain the protection of youth rights globally.[68] She points out the various innovative sections of the AYC without detailing the various rights provided for. She argues that notwithstanding the non-existence of a monitoring mechanism under the AYC, the AUC has a mandate to see to it that states make good their obligations under the AYC.

She further stresses that by virtue of the provision of article 30 of the African Charter on Human and Peoples' Rights (African Charter), the relevant oversight functions of the African Commission on Human and Peoples' Rights (African Commission) and of other human rights bodies under the AU Constitutive Act, although not specifically mentioned in the Act, African Union Commission can ensure that states carry out their obligations under the AYC.

While Adeola's work is similar to this current work, it possesses striking difference. Unlike her study, this current study focuses on the right to political participation of youth under various human rights regimes but using the AYC as the focal treaty.

Also, although the focus of this work is on the African youth, its scope goes beyond the AYC to consider various global and regional human rights regimes, unlike that of Adeola. Similarly, Adeola gave a sketchy description of the AYC in a very limited way without any discussion of states' obligations thereunder. Similarly, her work focused more on the monitoring of the AYC, unlike this present work which principally focuses on the right to political participation as guaranteed under the AYC.

[68] See R Adeola 'The African Youth Charter and the role of regional institutions in an age of Africa rising' *AfricLaw* 6 July 2015, https://africlaw.com/2015/07/06/the-african-youth-charter-and-the-role-of-regional-institutions-in-an-age-of-africa-rising/ (accessed 16 June 2018).

On the other hand, Viljoen argues that the AYC contains some distinct provisions which are not touched upon in the African Children's Charter, and encourages the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) to draw inspiration from the AYC. He further argues that since a treaty body for the monitoring of the AYC is yet to be formed, complaints can be made based on its provisions to the African Court on Human and Peoples' Rights (African Court), the African Commission and, where applicable, the African Children's Committee.[69]

While Viljoen's argument is laudable, without a proper understanding of the obligations of state parties under the AYC, guaranteeing and protecting such rights may prove difficult. More so, due to the *sui generic* nature of the Charter and the overlap of the rights of the youth with that of children, there is a need to interrogate the AYC in the context of specific rights, like the right to political participation. This current study will delve into the uncharted sea of the right of the youth to political participation under the AYC.

Selvam's work focuses on the right of the youth to political participation in three selected East African countries, namely, Kenya, Tanzania and Uganda.[70] In his extensive work on youth rights in East Africa, he asserts that, due to their transition from childhood to adulthood, there is a need for the protection of the specific rights of youths.

He contends that the youth policies of East Africa are inadequate to protect the rights of the youth. He suggests the use of the capabilities approach to protecting youth rights in Africa. Also, that there is a need for some modicum of African contextual and cultural elements to be included in the capabilities approach for it to function properly on the African continent.[71]

While the above work is closely related to this research, it is dissimilar in several respects. His work focuses on all the rights of youths in three East African countries. It also employs the

[69] Viljoen (n 59 above) 407.
[70] SG Selvam 'Capabilities approach to youth rights in East Africa' (2008) 12 *The International Journal of Human Rights* 205.
[71] As above 213.

capabilities approach. However, this work will broadly and critically examine only the right of the youth to political participation as guaranteed under human rights law rather than a sketch of all existing youth rights which the capabilities approach offers.

Second, the work intends to focus on Nigeria but draw lessons from three other countries in order to present a more robust view of the lived realities of the youth across the globe. Lastly on the dissimilarity, this work will principally be adopting the struggle approach and public action theories to youth rights rather than the capabilities approach.

The work of Mahidi is the most detailed and most comprehensive among the works discussed thus far.[72] The author did an expansive work on the rights of the youth from the perspectives of Europe. Though some parts of the study touched on the provisions of the AYC.[73] However, by and large, the study is primarily based on the various rights of the youth in Europe, using various human rights instruments.

However, this study goes a step further by examining the right to political participation as guaranteed under the human rights instruments. It also examines how a robust discussion on legal barriers to the enjoyment youth rights may be used to secure a better protection for youth rights in Africa and on the global space. It is a somewhat fresh approach to youth rights in Africa. Most youth policies are couched in the language of privilege, thereby making states to acknowledge and respect youth rights in their own terms rather than as mandated under various regional and global human rights regimes.

The most authoritative work on youth rights is the 2015 work edited by Angel, *the international law of youth rights.*[74] This is a study which conducts in-depth research into youth rights under the various human rights regimes. The work assesses whether or not youth rights can be situated within the existing human rights instruments without a youth-specific binding global human rights treaty. It argues that despite the challenges faced by the youth in realising their human rights, the

[72] M Mahidi 'The young and the rightless? The protection of youth rights in Europe' unpublished Master's dissertation, Åbo Akademi University (2010) 31.
[73] As above 45-53.
[74] Angel (n 3 above).

development of human rights law has kept the issues of youth rights off its agenda.[75] Also, at the domestic level, 'actions taken by states as duty bearers represent only very sporadic approaches to the rights-based approach'.[76]

The study further argues that it is impracticable to take away obstacles to the realisation of youth rights without first defining these barriers and their causes.[77] The work calls for an urgent need to carry out an in-depth study on the barriers to the exercise of youth rights both geographically and culturally.[78] Despite the general acceptance by states that human rights apply universally and equally to every person regardless of their age, actions taken by states in practice in relation to youth rights fall short of this principle.[79]

The study argues that young people face daunting challenges that affect their access to essential human rights standards. This is a reality accepted the world over.[80] Why has not much progress been made on the part of states as regards their obligations to protect youth rights despite the existence of the African Youth Charter and other human rights instruments which directly or indirectly guarantee their rights? While this reviewed work is closely connected to this current work, it tackles issues of youth rights more from a global perspective rather than from the Africanist perspective, which is what this study is based on.

This thesis sets out to interrogate and evaluate the outlook of youth rights to political participation as guaranteed under various international human rights instruments and particularly under the AYC; using Nigeria as a case study while drawing lessons from the UK, Kenya, and South Africa.

First and foremost, this study calls for a redrafting of the AYC because the Charter in its current form is incapable of delivering much to the African youth which it sets out to protect. Fundamentally, the placement of both children and the youth in one document such as the AYC makes it a document consisting of confusion and conflicts; among other notable defects which are

[75] Angel (n 3 above) 950.
[76] As above.
[77] Angel (n 3 above) 951.
[78] Angel (n 3 above) XXV.
[79] Angel (n 3 above) 948-949.
[80] Angel (n 3 above) 949.

discussed in the subsequent chapters, particularly chapter four. The youth are not children and children stand distinct from youth in African traditional societies. This thesis is arguably the first study that considers the human rights implications of constitutional provisions that exclude some youths from participating fully in all electoral processes.

Also, this study is carried out by going beyond the confines of legal factors into socio-cultural factors affecting youth rights. This work does not intend to assess the impact of the AYC on Nigeria, but to conduct a critical study on how far the fate of the youth has been improved since its adoption, to critically evaluate barriers to the rights guaranteed and how best states can use it to advance issues of youth rights across Africa. At the moment, there is little or no literature on rights to political participation under the African Youth Charter or any work on the critical evaluation of the rights in the light of African values and proverbs.

This thesis argues that one of the best ways of advancing the right of the youth to political participation is through African proverbs and sayings. This because they reflect the way of life of the African people, more than a thousand written history books or legal texts or statutes. While written history may be distorted, concocted and conflated, African proverbs and wise sayings have remained unchanged and are the cornerstones of the future of the African people, including the youth. The inherent values in African proverbs and wise sayings in proffering enduring solutions to African problems have over the years not been used by scholars, especially legal scholars.

Furthermore, this study argues that unlike the case in other civilisations, dignity is synonymous with participation in Africa, and to deny one his or her right to participation in the governance of society amounts to an affront on such a person's right to dignity. Invariably, the exclusion of the youth in most post-colonial African states amounts to the violation of their rights to dignity from the African perspective of dignity.

The above are the unique gaps which this current work attempts to fill and they are valuable to the struggle, emancipation and protection of youth rights and development in Africa.

1.8 Outline of chapters

Chapter one of this study is the background to the study, which covers the problem statement, research questions, literature review, research methodology, and an outline of the various chapters.

Chapter two is a discussion of the theoretical framework of this study. The work of various authors on the subject under study was critically evaluated. The African traditional world view on youth rights was considered as it pertains to the right to political participation. The place of youth in African societies and in the pre-colonial era was considered as well. This chapter is linked to the first because it clarifies and expands on the theoretical framework on youth rights and political participation.

Chapter three focused on rights to political participation under international human rights instruments. Within this context, the global human rights efforts toward the realisation of youth rights and the various regional human rights regimes on youth rights were examined. Also, the current state of affairs regarding youth rights to political participation in post-colonial Africa was considered. This chapter is connected to the previous chapter as it gives life to theories of political participation as crafted in various international human rights instruments.

Chapter four is an interrogation and a critical evaluation of the African Youth Charter and its various normative standards for youth and their rights. This chapter is connected to chapter three as it discusses post-colonial efforts in Africa to conceptualise and enforce youth rights through the African Youth Charter.

Chapter five is an analysis of youth rights to political participation in Nigeria and an assessment of Nigeria's obligations under the African Youth Charter. The various laws, regulations, and institutions that have impacted on youth rights in Nigeria were examined. In this chapter, lessons are drawn from other African countries regarding the implementation and impact of the AYC. This

chapter is linked to chapter three as it investigates the implementation of the AYC at the domestic level and tries to assess how far the adoption of the AYC has improved the outlook of youth rights to political participation and other rights in Nigeria while drawing lessons from other countries. The implications of the continuous exclusion, marginalisation, and denial of youth rights to political participation in Africa are considered both in the short and long term, principally in Nigeria but importantly in other African countries.

Chapter six focused on general recommendations and conclusions from this study. This chapter is interlinked with other chapters as it draws its general findings from the whole body of previous chapters, making general recommendations and drawing conclusions.

Chapter Two

Youth rights to political participation: Theoretical Perspectives

2 Introduction

The right to political participation entails the opportunity of all adult citizens to participate in decisions or governmental processes that affect them in one way or another. The content of the right includes the right to vote, stand as candidates in elections, appointed into governmental positions, and participating in governmental deliberation processes.

Citizens are often the beneficiaries of the right to political participation unlike some other rights which non-citizens can also enjoy.[1] The general background to this thesis has been carefully set out in chapter one. The current chapter connects with it by demonstrating the theoretical underpinnings of the whole body of work.

The kernel of this chapter is to discuss the various theories on political participation and the right to political participation. This theoretical analysis is inevitable if the issue of youth rights to political participation is to be given a firm conceptual foothold. Although the issue of youth rights to political participation is relatively new in legal texts, the concept of participation and the human rights to political participation are not.

Since this thesis is written from an African perspective, this chapter first and foremost interrogates the concept of participation from an African worldview. This is followed by analyses of the concept of political participation by various scholars. The third segment of the chapter presents a

[1] See generally, 'The Right to Participate in Society' https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-participate-in-society (accessed 18 September 2021).

panoramic view of the theories of rights, so as to underscore some salient and settled minimalist characteristics of human rights. The right to political participation including its nexus with other human rights is critically examined through the lens of various scholars. The fourth part of the chapter considers the contours and the content of youth rights to political participation. The fifth part is a conclusion.

2.1 Conceptual analysis of political participation – African perspectives

Political participation is similar to the proverbial African elephant which is viewed from various angles, largely depending on which part of the elephant is touched by the blind person who was asked to describe it. Similarly, the term 'political participation' varies from country to country, continent to continent, and even from village to village. To say the least, it sometimes is regarded as a nebulous or contentious concept.[2] The argument surrounding it has been influenced by its changing and dynamic nature as a social idea, which renders it non-static in no small way.[3]

However, the absence of a generally accepted definition among political scientists and legal scholars does not mean that most scholars do not agree with its connection with governance and politics in some limited senses. It has a link with the way in which a society is governed, administered or the way in which decisions are reached by members of various societies.

Therefore, conceptualising political participation in Africa would involve an insight into how African societies were administered, governed or ordered before the arrival of the Europeans or colonial masters. This is essential for this study, as it has been asserted elsewhere 'that traditional institutions are indispensable for political transformation in Africa, as they represent a major part of the continent's history, culture, and political and governance systems.'[4]

---

[2] S Croft & P Beresford 'The politic of participation' (1992) 12 *Critical Social Policy* 20.
[3] I Lamprianou 'Democracy in transition' in K Demetrious (ed) *Contemporary political participation research: A critical assessment* (2013) 28.
[4] See the Report of the United Nations Commission for Africa (UNECA) 'Relevance of African Traditional Institutions of Governance', (January 2007) 10, http://repository.uneca.org/bitstream/handle/10855/3086/bib.%2025702_I.pdf?sequence=1 (accessed 9 April 2018).

After all, since the literature shows the existence of political systems before the arrival of the Europeans, it makes sense to point out that the concept of political participation is neither foreign nor absent in traditional African systems. Many of the pre-colonial traditional institutions in Africa do not merely remain in existence today, but have over the years proved to be indisputably resilient.[5] However, it is instructive to state that political institutions varied from one ethnic group to another and from country to country.[6]

This above foundation is necessary because in order to determine the correctness or otherwise of the denial of the rights to political participation of youths in Africa, the consideration of African cultures as they are reflected in their traditional institutional setting becomes paramount. There is a pervasive link between culture and human rights in Africa, and '[i]t would be equally wrong, therefore, to argue that culture has no place in the human rights discourse'.[7]

Three types of African traditional systems have been identified in the literature, namely, 'the consensus-based systems, the decentralised pre-colonial systems' and the chieftaincy of the centralised political systems.[8] It has been discovered that large parts of pre-colonial African societies were decentralised political systems, which practised a type of decision-making process that was based on consensus and inclusion.

These systems allow for no gap whatsoever, be it political or social, to exist between those who govern and the governed. This is because all eligible members of society were allowed to participate in all decision-making processes and the enforcement of the rules that regulate their affairs.[9]

---

[5] L Munoz 'Traditional participation in a modern political system - The case of Western Nigeria' (1980) 18 *Journal of Modern African Studies* 468.

[6] 'Relevance of African traditional institutions of governance' 2, http://repository.uneca.org/bitstream/handle/10855/3086/bib.%2025702_I.pdf?sequence=1 (accessed 9 April 2018).

[7] See B Gawanas 'The African Union concepts and implementation mechanisms relating to human rights' in A Bösl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 141.

[8] 'Relevance of African traditional institutions of governance' (n 4 above) 2.

[9] 'Relevance of African traditional institutions of governance' (n 4 above) 3. The Ibo village assembly in Eastern Nigeria, the Eritrean village *baito* (assembly), the *gada* (age-set) system of the Oromo in Ethiopia and Kenya, as well as the Council of Elders (*kiama*) of the Kikuyu in Kenya are among well-known examples where decisions are largely made in a consensual manner of one kind or another. Other examples are the Teso and Lango of Uganda, the Tonga of Zambia, and the Nuer of Southern Sudan.

Accordingly, Wiredu has argued that although the general narratives hold that the African traditional decision-making process was a rule by consensus, this needs to be taken with a pinch of prudence. However, he agrees that 'there is considerable evidence that decision by consensus was often the order of the day in African deliberations…'[10] It thus goes to show that political participation under the African systems favours inclusion rather than exclusion.

It is founded on the value of collectivity and recognition of and respect for the rights of all to participate in making and implementation of decisions that would affect them. As regards the concept of political participation in African societies, the former President of Zambia, Kenneth Kaunda, has recounted as follows:[11]

> In our original societies we operated by consensus. An issue was talked out in solemn conclave until such time as agreement could be achieved.

In a similar vein, Asante recounted that '[t]he African conception of human rights was an essential aspect of African humanism'.[12] Furthermore, in concurring with Asante, Dustan Wai also recounted that '[i]t is not often remembered that traditional African societies supported the practice of human rights'.[13] These two quotations are suggestive of the fact that while the term human rights may not have been used in African societies, the ideologies and philosophies of human rights were held in high regard, although with some minor distinction from that of the Western conception of human rights. Donnelly, however, disagrees with this when he states that '[t]raditional African societies had concepts and practices of social justices that simply did not involve human rights.'[14] Donnelly's statement may not reflect the true position of African societies because, while the phrase "human rights" may not have been used by Africans, human rights have always enjoyed respect in African societies, even before the Europeans stepped foot on African

[10] K Wiredu 'Democracy and consensus in African traditional politics: A plea for a non-party polity' 1, https://them.polylog.org/2/fwk-en.htm (accessed 9 April 2018).
[11] As above 2.
[12] Quoted in J Donnelly *Universal human rights in theory and practice* (2013) 77.
[13] As above.
[14] As above 79.

soil. There have even been claims that examining the African legal system reveals that it featured more safeguards against procedural unfairness than its western counterpart.[15]

Wiredu, who wrote on the Ashanti Kingdom of Ghana, argues that the lineage which is the basic political unit of the Ashantis, consists of everybody in a town or village which and has a common female ancestor; which equally includes the youth age cohort. There was a leader of this unit who was never elected through a formal 'voting' process but through a process known as *abato*.[16] The need to achieve consensus under the Ashanti system was not an optional bonus but an essential part of the political process so as to ensure that everybody's voice counts. This of course was nothing short of fundamental human rights practice in modern times.[17]

The demonstration of political participation under the African traditional system was largely inclusive rather than exclusive. This was critically discussed by Aligwekwe.[18] She contends that under the Igbo traditional governance structure, all adult men and women, including the youth, were allowed to attend the village assembly where decisions were taken.[19] That is to say that the right to political participation was accorded to all including the youth, and only children were excluded.

She further argues that '[t]he Igbo traditional government at the village level was then a "direct democracy", and was very clearly defined'.[20] The composition of the general assembly included all the lineages, allowing the political participation by all adults, including the youth and women.[21]

Youth rights to political participation has observably not been absent in Africa, especially when one considers the indisputable fact that in pre-colonial African societies the protection and recognition of human rights enjoyed a central place, albeit with connotations and definitions which

[15] TW Bennett 'Human Rights and the African Cultural Tradition' (1993) 22 *Transformation* 32 file:///C:/Users/BAMISAYE/Downloads/tran022004.pdf (accessed 14 August 2022).
[16] Wiredu (n 10 above) 7.
[17] As above 29.
[18] P Aligwekwe *The continuity of traditional values in the African society (the Igbo of Nigeria)* (2009).
[19] As above 163
[20] As above 165
[21] As above

are uniquely distinct from that of the West.[22] The exclusion of the African youth from exercising their rights to political participation is non-African and at best a colonial imposition or one of the legacies of colonialism.

Welch stated:[23]

> 'Traditional' African societies recognised six major sets of rights: the right to life, the right to education, the right to freedom of movement, the right to receive justice, the right to work and *the right to participate in the benefits and decision making of the community.* All these rights existed within collective contexts, and were frequently expressed in ways unfamiliar to Europeans. Ignorance of African norms, a firm belief in the superiority of European practices, led colonial powers to abridge many rights that had been protected prior to colonialism.

It may be inferred from the above that African 'traditional' societies respect, recognise and protect youth rights to political participation on an equal footing with other adults in society and, therefore, their current exclusion is a brute abridgment of the rights they have hitherto enjoyed. The political exclusion of the youth is foreign to African political systems because the pre-colonial African societies were age-blind. The African societies believe that to deny people their rights to political participation is to call into question their inherent dignity.

Participation to an African is equal to dignity, and invariably a person denied his or her right to participation amounts to denying him or her the right to personal dignity. This position is painted with a big brush in various African proverbs and sayings, as will be discussed shortly. These proverbs reflect African wisdom but it is a pity that this conventional wisdom is being subjected to increasing attack.[24]

Marasinghe, one of the foremost scholars on African traditional societies and someone who has done extensive research on the Yoruba people of South-Western Nigeria, argues that the preservation of the notion of human rights, as recognised by each society's laws and customs, is

[22] C Welch 'Human rights as problem in contemporary Africa' in C Welch & R Meltzer (eds) *Human rights and development in Africa* (1984) 11.
[23] As above 17 (my emphasis).
[24] As above 18.

the best way of guaranteeing human rights in Africa.[25] In that, the conceptualisation of the issue of human rights remains unfruitful unless we situate it within African humanism or philosophies. These philosophies and traditions are so important to the extent that cohesion and stability in any African society depend on their preservation.[26]

Within the fabric of traditional African societies, human rights are observably so deeply rooted and are incapable of being altered or expunged except through the consensus of all members of each society.[27] Traditional conceptions of human rights are not validated by constitutional provisions, but rather 'by a set of social values ingrained as a set of basic principles espoused by at least a substantial majority of a given society'.[28] Despite the fact that they exist independently of constitutional recognition or acknowledgment; they remain in the fabric of the souls of the people.

One of the fundamental human rights in most traditional African societies is the right of 'membership' which entitles a person to be able to partake and participate in everything that affects the family, and the power to exclude any member lies in the hands of all members. The rights to membership, freedom of expression, beliefs and association are the cornerstones of social cohesion of African traditional societies.[29] The issue of exclusion is so crucial that a member cannot arbitrarily be excluded from the family. According to Marasinghe:[30]

> At the outset it must be emphasised that within the context of a traditional society, membership in an extended family is itself regarded as a fundamental human right. *Any unlawful attempt to exclude a person* from the membership of an extended family is considered in Nigeria, for example, as a violation of their human rights guaranteed under section 22 of the Federal Republican Constitution.

[25] See L Marasinghe 'Traditional conceptions of human rights in Africa' in Welch & Meltzer (n 20 above) 32.
[26] As above 32.
[27] As above.
[28] As above 33.
[29] As above.
[30] See Marasinghe (n 25 above) 34. The Nigerian Constitution referred to by the author is the defunct 1963 Federal Republican Constitution. The Constitution now in use is the 1999 Constitution of the Federal Republic of Nigeria (my emphasis).

Thus, it can be argued that if the unlawful exclusion of eligible members from an extended family under the African traditional system is considered a critical issue, equally the exclusion of anybody from political participation must certainly be considered grave. It is incontestable that under most traditional African systems 'age' has never been a central issue in determining whether power or authority should be given to any person who has attained adulthood.

Wealth, fame, popularity and being a member of a royal family would certainly be some of the factors to be considered before a person may be eligible for various traditional political offices. Achebe rightly declares that '[a]ge was respected among his people, but achievement was revered. As the elders said, if a child washed his hands he could eat with kings.'[31]

For example, in Nigeria, as recently as 2016, a 15 year-old was crowned Traditional Ruler (King) after the untimely death of his father.[32] Similarly, in 2010 the Toro Kingdom of Western Uganda crowned a 15 year-old as their new King.[33] Despite the abundance of evidence about the inclusion of the youth in most traditional African societies; youth rights to political participation have suffered a fate similar to that of other rights, such as freedom of speech, which 'in a modern society is largely controlled by a normative system which could be manipulated by a ruling elite which controls its legislative machinery'.[34]

The current outlook of youth rights to political participation in Africa which is skewed against the youth, does not have its roots in most traditional African societies, but results from elites' selfish inventions to shut out those whom they consider a real threat to their quest for political power. These threats unfortunately are the African youth.

[31] See '70 powerful Chinua Achebe quotes' https://quotes.thefamouspeople.com/chinua-achebe-1044.php (accessed 28 May 2018), a quote from C Achebe *Things fall apart* (1958).
[32] Chukwuka Noah Akaeze I, who is now the King of the Ubulu-Uku Kingdom in Delta State, Nigeria. However, he will not rule directly as he is still in high school, but is expected to start ruling at age 20 or 21, http://venturesafrica.com/obi-of-ubulu-uku-kingdom-becomes-the-youngest-monarch-in-nigeria-here-is-what-you-didnt-know/ (accessed 28 May 2018).
[33] D Mpuga 'Africa's youngest king assumes power, he is King Oyo Nyimba Kabamba Iguru Rukidi IV; see VOA online (17 April 2010), https://www.voanews.com/a/african-king-assumes-power-91405624/159852.html (accessed 28 May 2018).
[34] Marasinghe (n 25 above) 37.

One of the missing links in the proper investigation into traditional African systems in most of the literature is the prime place of proverbs in the lives of the African people. African proverbs and sayings certainly are another way in which to understand the values that underpin political participation in the African traditional systems.

For example, under the Yoruba culture of the Nigerian people, some proverbs suggest the existence of the principle of collectivity in governance. The first proverb states *omode gbon, agba gbon, lafi dale Ife*, which literarily means that it is both the wisdom of the young and the old that was instrumental to the construction of the home of origin of the Yoruba people. Also, *owo omode o to pepe, tagba o wo keregbe*, meaning that the hands of the younger one cannot get to the rooftop, that of the older ones cannot pass through the gourd. By implication everyone needs one another, the old needs the young and the young needs the old.

The third proverb is *agba jowo lafi n sanya, ajeji owo ko gberu dori,* literarally meaning that it is through togetherness that we make profitable headway and the two hands are needed to carry loads on our heads. Another African proverb of the Yoruba-speaking people of Nigeria that points to the fact that the governance system in Africa favours with the inclusion of the youth rather than their exclusion states that *aibawon sin be lai bawon dasi,* which literarally means that it is only when someone is absent that he can be excluded from taking part. This drives home the point that only those who are absent, are the ones excluded from taking part in decision making table.

Furthermore, the Tonga people of Southern Zambia put it more accurately when they say *maanu alazwa mukashuu mbwa,* literarily meaning wisdom can come from an anthill.[35] This proverb is suggestive of the fact that solutions do not reside only with older adults but can be found with the young adults (youth) too. Therefore, the leadership challenges and political problems of Africa cannot be solved by excluding the youth; they are rather potent keys to solving them. All these proverbs are coded African wisdom, values and principles that are, although unwritten, powerful investigative tools for any research into pre-colonial African societies and their human rights practices.

[35] Personal translation.

The youth in the Yoruba culture were principal stakeholders in the African governance system of pre-colonial era; they were never treated like children nor excluded from governance as it now occurs in post-colonial African states. The concept of *omoluabi*, a guiding star for every Yoruba person, abhors exclusion, discrimination, cheating or oppressing others.[36] That is to say, under African cosmology, people are not respected because they are rich or poor, neither would people be excluded from the political process based on their status, but everyone is respected and entitled to their rights to participate in government in recognition of their dignity. Excluding people such as the youth from participation on the basis of age within African systems would amount to denying them their right to dignity.

Flowing from the above related discussion on African societies' conception of the centrality of dignity as inseparable from participatory rights and entitlements which can never be lost, in South Africa the principle of *ubuntu* has equally enjoyed a popular level of acceptance, a value that cuts across various African societies. *Ubuntu*, which literarily means 'I am because we are', that is everybody in the society is relevant, irrespective of their age; it 'emphasises the virtue of mutuality, inclusiveness and acceptance'.[37] It is a society which forbids discrimination against any member on the basis of status or age.

According to Kenneth Kaunda, mutuality, acceptance and inclusiveness are the key social virtues of African humanism.[38] Murithi argues that notwithstanding the non-monolithic nature of African traditional societies, the notion of human dignity has been in existence in most African countries, if not all, before the advent of colonialism and slavery.[39]

Furthermore, Murithi states that *ubuntu* 'is an ancient African code of ethics, a cultural worldview that tries to capture the essence of what it means to be human'.[40] It stresses the essence of respect for all members of the community and the recognition of the oneness of all members of the human

[36] A Faleti 'Omoluabi – The golden attribute of a Yoruba-man: Growing or dying?' in *Omoluabi, its concept and education in Yoruba land*, who said that Omoluabi 'is to the Yoruba what the word gentleman was to the English in those days' (117).
[37] D Cornell 'Is there a difference that makes between ubuntu and dignity' in S Woolman & D Bilchitz (eds) *Is this seat taken* (2012) 231.
[38] As above 230.
[39] T Murithi 'Ubuntu and human rights' in R Smith et al *The essentials of human rights* (eds) (2005) 341.
[40] As above.

family.[41] Therefore, it presupposes that in a society guided by the spirit and value of *ubuntu*, the right to equal political participation is guaranteed to all in full and on an equal basis.

The underlying reason for conducting a brief enquiry into political participation within African systems is to confirm that African political systems in most societies favour inclusiveness and consensus in political participation, which includes everybody as well as the youth. This is reflected in their various proverbs that underscore the inseparable link between the right to political participation and the dignity of the person.

2.1.1 Western perspectives on political participation

Rawls orates that citizens' basic liberties roughly speaking are political liberties (the right to vote and to be eligible for public office) together with other incidental rights, such as freedom of assembly and speech, liberty of the conscience and freedom of thought, freedom of the person along with the right to hold (personal) property, freedom from arbitrary arrest and seizure as espoused by the rule of law concept.[42] He further argues that these basic liberties are to be exercised on an equal basis because all citizens of a just society are expected to have the same basic rights.[43]

The position of Rawls above is in consonance with the foundation of this thesis which is based on the fact that the right to political participation (at the barest minimum including the right to vote and to stand for election) should be afforded all eligible adult citizens without qualifications discrimination except in the case of a convict. This is because the right is not only indivisible but loses its quality once it is fragmented or not guaranteed in full.

Rawls argues that '[j]ustice denies that the loss of freedom for some is made right by a greater good shared by others.'[44] This is because, according to Rawls, the liberties of citizens are taken as

[41] As above.
[42] J Rawls *A theory of justice* (1971) 61.
[43] As above.
[44] As above 3.

settled in a just society and such rights are not subject to the calculus of social interest of political bargaining.[45]

Rawls declares that the first statement of the two principles of justice is that (i) each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others; (ii) social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage; and (b) attached to positions and offices open to all. These principles do not only primarily apply to the basic structures of society. In turn they are supposed to regulate the assignment of rights and duties and to govern the distribution of social and economic advantages.[46]

Flowing from Rawls's postulation of justice, the justice of political participation in any just society will demand the guarantee to everyone of participatory rights on an equal basis, and any form of shrinking of the rights will not only be arbitrary but an affront to the principle of justice. Therefore, is safe to say from Rawls's postulation that equality of all is the foundation upon which political participation is built. According to Rawls, [a]ll same adults, with certain generally recognised exceptions, have the right to take part in political affairs and the precept one elector one vote is honored as far as possible'.[47]

Rawls further contends that the one-elector-one-vote principle of participation connotes that all citizens should have equal access in the minimalistic sense to public office.[48] Similarly, all citizens who are qualified are allowed to join political parties, to contest for political offices and to hold places of authority.[49] It goes without saying that more important than the right to vote in the concept of political participation is the right to be eligible to run and hold political office. This may not be far-fetched because, while it is possible for a non-citizen to be allowed to vote in an election; most national electoral laws do not permit non-citizens to hold elective political office.

[45] As above 4.
[46] As above 61.
[47] As above 223.
[48] As above.
[49] As above 224.

The principle of political participation when perfected brings every citizen to the status of equal citizen.[50] Equal political participation of all adult citizens does not only bring stability to a society, but has the capability of strengthening citizens' sense of worth, expand their moral and intellectual sensibilities, and prepares the ground for a sense of obligation and duty on the part of citizens upon which the just institution draws stabilisation.[51]

Deth defines political participation loosely as citizens' activities aimed at influencing political decisions.[52] He argues that political activities of human beings could be defended on the ground of their inherent worth and the inevitability for their mental well-being, on the one hand, and the demand to articulate their opinions and interests in the process of decision making that aims to take those expressions into account, on the other.[53] It suffices to say that political participation, besides its impact on the decision-making process, has an indirect positive effect on the well-being of the participant.

That is to say, political participation has some sort of therapeutic effect on citizens when they are allowed political participation. Conversely, denying citizens their right to political participation negatively affects their well-being. Political participation involves people performing their roles as citizens, not necessarily as professional politicians or civil servants.[54] Deth further argues that beyond anything else, political participation involves participation in politics.[55] He nevertheless admits that due to recent social and political development in many Western countries in the last decade, political participation has lost its clear meaning.[56]

In recent times, there have been several activities labeled as political participation. More tellingly is the issue of modern technology which has invariably broadened the scope of political participation and has further blurred the line between political and non-political activities.[57]

[50] Rawls (n 40 above) 227.
[51] Rawls (n 40 above) 234.
[52] J van Deth 'Studying political participation: Towards a theory of everything?' Introductory paper prepared for delivery at the Joint Session of Workshops of the European Consortium for Political Research, Grenoble, France, 6-11 April 2001, 4.
[53] Van Deth (n 50 above) 4.
[54] Van Deth (n 50 above) 5.
[55] Van Deth (n 50 above) 8.
[56] Van Deth (n 50 above) 11.
[57] Van Deth (n 50 above) 12.

However, Teorell and *et al* see political participation as the most central topic for understanding contemporary representative democracy. They argue that it is unthinkable to conceive democracy without the free participation of citizens in the governmental process.[58] They further contend that one of the vital reasons for having political participation is because through it, the grievances of the citizens are voiced and their demands are heard by the larger public, and it has the capacity of making politicians responsive and governments accountable.[59]

According to them, various avenues exist through which political participation can be performed by citizens, but have broad components, namely, that (i) it entails action-observable behaviour undertaken by individuals; (ii) these individuals are non-elites; (iii) the action is directed by an intention to influence or to assert demands; and (iv) this 'someone else' needs not be government personnel or a state agent.[60]

That is to say, all actions which have political undertones which are not necessarily directed towards government officials are regarded as political participation. This argument is quite logical when one considers the fact that for people to be elected into political office, they have to campaign to ordinary citizens who occupy no political positions in government. However, a study carried out in 13 different societies revealed that the various activities through which citizens intend to influence political outcomes are categorised into five more generic modes of participation. These are (i) contacting; (ii) party activity; (iii) protest activity; (iv) consumer participation; and (v) voting.[61]

Finer sees political participation as the act of people 'sharing in the framing and/or execution of public policies.' He further argues that participation at the local government level would qualify as political participation; except where some of the policies that will be adopted would impact on or be administered to the entire public.[62] The implication of this definition is that where a decision

[58] J Teorell et al 'Political participation: Mapping the terrain' in J van Deth et al (eds) *Citizenship and involvement in European democracies: A comparative perspective* (2007) 334.
[59] As above.
[60] As above 336.
[61] As above 355.
[62] SE Finer 'Group and political participation' in G Parry et al (eds) *Participation in politics* (1972) 59.

or policy is to have an impact on the whole population, the exclusion of any group of the population from participating in decision making is an assault on political participation.

For example, excluding the youth from the decision-making table or from parliament where decisions that would affect them are being taken is a denial of their right to political participation. On the other hand, Steed differs from Finer on his elaborate definition of political participation. According to Steed, political participation in its simplest form is taking part in the casting of votes in national elections.[63] The premise upon which his argument is based is the fact that the right to vote belongs to the entire adult population with understandable exceptions (such as aliens or certain criminals).

It is the position of this thesis that while Steed's definition is partly correct as to the meaning of political participation, its narrowness does not add much value to this thesis as the thesis adopts a much more expansive definition of political participation beyond the traditional right to vote in periodic elections.

The above assertion follows the argument of Li-Ann who gives an expansive definition of the meaning of political participation.[64] He argues that the term political participation is not self-evident and its understanding and institutionalisation vary. This may involve activities of professional politicians or ordinary citizens such as lobbying, fund-raising or objective actions of citizens in influencing government's decision-making affairs. Political participation extends beyond episodic elections or activities taking place between elections.[65]

By implication, while elections or voting may be part of political participation, its guarantees do not satisfy the holistic definition of political participation. In a similar vein, Huntington and Nelson were recounted to define political participation as an 'activity by private citizens designed to influence government decision-making'[66]

[63] M Steed 'Participation through Western democracy' in Parry et al (n 60 above) 80.
[64] T Li-Ann 'The right to political participation in Singapore: Tailor-making a Westminster-modelled constitution to fit the imperatives of "Asian" democracy' (2002) *Singapore Journal of international and Comparative Law* 6.
[65] As above 186.
[66] I Lamprianou 'Democracy in transition' in KN Demetrious (ed) *Contemporary political participation research: A critical assessment* (2013) 23.

Grace and Mooney, who write on political participation from the angle of internally-displaced persons (IDPs), argue that the various attributes underpinning the right to political participation, particularly the right to vote and the right to be elected, are the principles of universal and equal suffrage. They see the right to political participation from a twin angle, which is the right to vote and to be elected, in that the two are inseparable, or an attempt to separate one from the other will do damage to the other.[67] The is very instructive to this thesis, because the right to full and effective political participation of the youth in most cases, as in the case of Nigeria, does not involve merely their right to vote but largely their right to be elected or appointed to political office.

In a similar vein, Smith is of the view that since among the various modes of participation, uneven participation has been a persistent concern, inclusiveness is manifestly a paramount good of democratic institutions.[68] This implies the rights of citizens to participate in collective decisions on an equal basis.[69]

Kadioglu argues that in most countries, there is an interconnection between political participation and citizenships.[70] It goes without saying that to deny one the right to political participation or to exclude someone from the decision-making process is to take off his or her citizen's garb. This is because political rights, being important rights, are enjoyed on the basis of being a citizen or member of a nation state.[71] However, Kadioglu argues that the meaning of political participation in modern times has moved from voting in elections held within a national territory to participation in local, national, regional, and transnational organisations.[72]

Oluchina views political participation as an act which may be manifested in various ways. These include, participation in elections by voting or being voted for; holding office at an administrative or executive branch of government at various levels, whether local, regional or national. They as

[67] J Grace & E Mooney 'Political participation, in particular the right to vote' (2010) 41 *Studies in Transnational Legal Policy* 509.
[68] G Smith *Democratic innovation: Designing institutions for citizen participation* (2009) 20.
[69] As above 22.
[70] A Kadioglu 'Political participation from citizenship perspebgdctive' (2009) 1 *Middle East Law and Interdisciplinary Government Journal* 94.
[71] As above 97.
[72] As above 115.

well entail forming or joining political parties, unions or associations; and participation in the formulation of policy or decision-making processes.[73]

However, he argues that notwithstanding the various ways of activating the right to political participation, 'active involvement in elections is both a "means" and an "end" of minimising marginalisation'.[74] The 'active involvement' in the statement is suggestive of full and effective participation in elections; that is, not only the right to cast one's vote but an opportunity to present oneself for elective positions without any hindrance. This of course the kind of political participation the Nigerian youths demand from their government. Most Nigerian youths are largely being denied their rights to political participation by the fragmentation of their political rights.

Cane sees participation generally as a complex concept, but identifies three modes of citizen participation in public decision making. These are popular, contributory and contestatory.[75] Voting in elections or referenda is what he considers popular participation. Activities that occur before or during the time decisions are made are the contributory aspects of political participation, and contributory participation can be either be competitive or deliberative.[76] Contestatory participation entails the challenging of a decision which is done through either appeal to a tribunal or complaints to an ombudsman.[77]

The logical deductions that can be drawn from the above postulation of Cane on political participation are that political participation is multi-dimensional. Also, that it goes beyond voting in an election but extends to the challenge of governmental decisions in court. This position of course nullifies the backward minimalist argument that political participation starts and ends with voting in periodic elections. Involvement in the outcomes of political decisions through

[73] W Oluchina 'The right to political participation for people with disability in Africa' (2015) 3 *African Disability Rights Yearbook* 312.
[74] As above.
[75] P Cane 'Participation and constitutionalism' (2010) 38 *Federal Law Review* 320.
[76] Competitive contributory participation is analogous to similar to adversarial litigation, which involves the presentation of 'proofs and reasoned argument' to a body of officials empowered to make decisions, while deliberative contributory participation entails an interactive discussion of issues which are of importance to the decision to be taken, where the decision maker acts as a participant or facilitator.
[77] As above 320.

participation in the decision-making process is more closely connected to citizens' political participation than the mere granting of the right to vote.

Brady *et al*, who propounded the Resource Model to political participation, conducted an investigation based on the United States of America on the factors that affect the level of political participation of people.[78] According to their investigation, time, money and civic skills (those communications and organisational capacities that are essential to political activities) are the basic determinants in political participation.[79] However, among these three factors, the two prime resources for investment in political participation are money and time.[80] They further argue that individuals' differences in political participation are substantially determined by the presence or absence of these resources.[81]

While the question may be raised that voting, which is an aspect of political participation, may not necessarily require these resources; they contend that the least demanding form of political activity is voting.[82] In furtherance of their argument, they posit that motivations such as interest in politics are not sufficient to explain participation as demonstrated in the Resource Model, in that, in analysing political participation in America, the resources of time, money and skills are not mere factors but powerful predictors.[83]

According to the Resource Model of political participation, no matter the depth of one's interest in American politics, once he or she does not have these resources his or her participation will certainly be limited to the least of political participation, which is voting. The three resources as highlighted in the Resource Model may not be cumulative in every election. While money may be the prime factor in one election, time or civil skills could determine the outcome of another election.

[78] H Brady et al 'Beyond SES: A resource model of political participation' (1995) 89 *American Political Science Review* 271.
[79] As above.
[80] As above 273.
[81] As above 274.
[82] As above 283.
[83] As above 285.

For example, while the youth may not be able to withstand other older contenders in terms of money, they may have goodwill among the people which may lead to their victory in elections. Most especially, where the older candidates have bad reputations or have previously performed abysmally. This point is relevant in the context of elections in Africa, where a good name or reputation may be a greater priority in determining the outcome of an election than the monetary worth of a candidate.

Parry posits that there is no problem with the definition or meaning of 'participation'. Participation, according to him, simply denotes an act of taking part or having a share with others in some or other actions. However, he asserts that when it comes to political participation, this connotes taking part in political actions.[84] When it comes to the issue of political participation, major difficulties lie in the fact that what amounts to political action varies from one author to another, leading to a multiplicity in what amounts to political action.[85] Accordingly, political action ranges from voting to having a key influence as a cabinet minister upon the implementation of governmental policy or on the policy itself.

Similarly, he further notes that there are some scholars who hold the view that in modern representative government the connection of voting to political participation is remote and destitute of any political value.[86] This group of scholars consider voting as no political participation because, for an act to be regarded as political participation, there must be a direct nexus between the act and the outcome.

The political participant must have a realistic expectation of impelling the policy decision or, at the barest minimum, of making his or her voice heard in the deliberation leading up to it.[87] While the contention by these scholars that voting in the modern times may not be considered political participation may be said to be extreme, it is a valid contention in the case of emerging democracies around the world, particularly in Africa, where elected officials carry out their own agenda rather than their electoral promises before being elected. They often break their electoral promises,

[84] G Parry 'The idea of political participation' in Parry (n 60 above) 3.
[85] As above.
[86] As above.
[87] As above.

thereby rendering the votes of the electorates worthless in terms of governmental decisions and policies.

According to Parry, for the issue of political participation to be completely understood, it should be considered under a number of headings. The three primary headings which he identifies are (a) mode; (b) intensity; and (c) quality. These three grouping are interrelated according to him.[88]

Mode

Various modes of taking part in politics exist and these differ according to the opportunities, institution, the interest and resources available to the participant and the attitudes prevalent in the particular society, among other things.[89] Since participation involves actions that are more positive than mere social existence, more people may take part in politics by voting to choose other activists or joining political parties.

They can as well choose to be active in pressure groups seeking to impact governmental policies.[90] By necessary implication, the mode of political participation involves a host of different institutional structures, which in turn requires a range of various skills and attitudes.[91] This implies that some modes of participation would require less specialist skills than others.[92]

Intensity of participation

Since political participation denotes some kinds of actions, intensity of participation refers to the numbers of the entire population of a society that are involve in political activity. This can be measured in depth and width. The political intensity is said to be deep but narrow where a large proportion of a population are confined to a particular aspect of politics, say for example, party

[88] As above 5.
[89] As above 6.
[90] As above
[91] As above 9.
[92] As above.

politics. In some cases, few elites may be involved in politics but who at the same time playing various roles.

Where the elites are the people intensively involved in politics, while the majority of the population is confined to voting in periodic elections, the elites would unlikely foster more intense participation among the general population. They would consider such an act as inimical to the stabilisation of the society or the political system.[93]
The above illustration depicts the current outlook of the Nigerian youth, as the larger percent of them are by law excluded from standing as candidate for various elective offices but only permitted to vote.

Quality of participation

The two questions to be answered to determine the level of quality of political participation in any society are: (a) to what extent is participation effective or ineffective; (b) to what extent is the participation 'real' and how far it is a 'façade'. When the policy outcomes are those intended by the participants and they are the direct results of their actions, one has effective political participation.[94] Voting in an election is considered qualitatively an inferior mode of participation because the act of voting is regrettably distanced from the legislative outcome.

The tragedy of the fate of the 'only-vote-participants' is that they are most often no further part in the decision-making process and governmental decisions may be unconnected to the wishes of the electors.[95] Invariably, voting can scarcely qualify as political participation because it leads to an abdication of the elector's will to his representatives, which in most cases effectively bring an end to political participation.[96]

[93] As above 11.
[94] As above 12.
[95] As above 13.
[96] As above 14.

Political participation is central to politics as it has been stated that 'politics without participation is self-contradictory and democracy without participation is absurd'.[97] In the same vein, 'unreal' participation is said to be more than 'ineffective' participation. Unreal participation is a façade. Unreal participation usually nosedives into ineffective participation and there is a difficulty in ascertaining the boundary.

When such a state of affairs exists, the vote has no effect on policies but only on the politicians. Where only two parties contend for office on almost identical platforms, participation is said to be unreal. This is because in the real sense, it offers 'no choice' to the electors other than to throw one set of rascals out and put another in.[98]

Parry proceeds to identify two theories of participation.

Theories of Political Participation

According to Parry, most theories of political participation can be grouped into either the instrumental theories or the developmental theories.[99] According to him, the instrumental theorists treat political participation as a means to some more restricted end which could be to the betterment of individual or group interests;[100] while the developmental theorists see political participation as an essential part of the development of human capacities.

For the developmental theorists, political participation is not an end in itself because political participation is in part a means to this development, as well as part of the process of development.[101] Needless to say, the distinction between the two theories may not be

[97] As above 15.
[98] As above 16.
[99] As above 18.
[100] As above 18-19.
[101] As above 19.

straightforward and it is possible to find elements of both approaches in an individual writer, but it does demonstrate the two styles of thinking about participation.[102]

This thesis strongly adopts the developmental approach to political participation in advocating youth rights to political participation. However, that does not mean that necessary insights from the instrumental theories would not be drawn in the course of this research. This is because, as stated by Parry, the distinctions between the two theories are blurred and most writers often combine the two.

Developmental theories are important in youth rights research because, to put it succinctly, youth rights to political involvement benefit both the youth and society as a whole. This is because when youths participate fully and effectively in politics, their political abilities are polished and improved, which benefits their societies as a whole. However, when teenagers are denied or only partially granted the opportunity to participate in politics, their political development is stunted, which is detrimental to society as a whole.

Instrumental Theories

In order to achieve a number of purposes in any society, there would be a need to broaden the participatory rights of citizens, which is the main argument of the instrumental theories of political participation. They mainly argue that the most effective defence against tyranny or to counter bureaucracy and centralisation is the political participation of the entire population. Only through participation can the interests of human beings be promoted and defended accordingly.[103] This method to political involvement is based on four principles:

(1) An individual is perceived as the best judge of his own interests. This is because the individual is considered a rational being capable of making rational choices and should be given such an opportunity without any form of coercion.[104]

[102] As above.
[103] As above.
[104] As above 19-20.

(2) All parties who are affected by governmental decisions ought to be part of the government. This would enable the government to obtain better information as regards feelings and conditions in the country.[105]

(3) All human beings have the right to political participation in order to defend their interests. This aspect has not only been regarded as a 'birth right' but as also a natural right of humans, from the viewpoint that human being is a rational being that is capable of deciding his own fate.[106]

(4) The fourth principle of the instrumental theories of political participation which is derived from the third principles stipulates that any government which does not acknowledge and respect the natural right of political participation is nothing but an illegitimate government. Locke is recounted to have declared that absolute governments which denied such rights and arrogated all powers to themselves were 'inconsistent with civil society and so can be no form of civil government at all'. Such a claim was recurring all over the eighteenth century.[107]

The instrumental theories are of great relevance to youth right to political participation, more so in a country such as Nigeria where the majority of those in both the National Assembly and in various appointive positions of government are largely people above the youth age cohort. It goes without saying that where such a practice exists, we would not be able to appreciate various issues bedeviling the youth. And their interests in the decision-making process would be left unprotected.

However, it is worth noting here that the instrumental theorists of political participation confine themselves mainly to the conventional political institutions such as the central and local councils. A major drawback of these theories is that while they advocate political participation in order to gain legitimacy and to satisfy various existing interests, mere voting in a periodic election satisfies political participation.

[105] As above 20.
[106] As above 21.
[107] As above 22.

Voting alone in periodic elections is inadequate and grossly insufficient to address certain interests in the case of the youth. This is due to the fact that, as is the situation in Nigeria, a constitutional ban on elected positions for youth would have an impact on their interests in governmental decision-making. The only group best suited to handle issues that trouble them is youth.

Developmental Theories of Political Participation

The developmental theorists argue that political participation does not exist solely for the purpose of promoting and defending interests or for the prevention of tyranny. But it is a part of the process of political and moral education. However, the former may be incidental to the latter's main goal.[108] According to developmental theories, political participation is a special kind of education, which is an education in responsibility. The theories assumed that it is only by wielding it that responsibility can be developed. Flowing from this fact, it is only by practical experiences in decision making that an individual and society can manage their own affairs when it comes to the issues of politics.[109]

That is to say, there is no separation between politics and participation. People are incapable of effectively learning about politics without their direct involvement. This is true for the youth. Therefore, excluding people such as the youth from participating in political decision making goes beyond violating their rights, but extends to denying them political development.

This is because, according to the developmental theories, political participation forces the individual to develop his latent qualities by stretching him or her.[110] The developmental theories are connected to the theory of classical democracy as may be extracted from Aristotle's works. In the ancient Greek city state, extensive participation was a *sine qua non* for their direct democracy.

[108] As above 26.
[109] As above.
[110] As above.

All citizens had the right to participate in the assembly and the law court in Athens, although, it is impossible to know how many of the citizens of Athens played an active part in politics.[111] In the ancient Greek city state, political participation was more than a human right; the politically-active citizen is considered as a more distinctive man.

Aristotle did not consider citizens in terms of their parentage or place of birth but in terms of his or her political participation. Thus, the popular Aristotle quote that 'man by nature is a political animal' does not simply mean that all men are political activists but that it is only through a political context that man could realise his capacities.

Developing these capacities, according to Aristotle, can only be developed in the polis because it is only the avenue through which one can participate in decision making.[112] It is evident that Aristotle did not only regard those who were excluded from participation as lesser citizens, but have their inherent capacities that would make them live a worthwhile life being stunted by such an exclusion. Accordingly, Mill buttresses this point as follows:[113]

> That the only government which can fully satisfy all the exigencies of the social state is one in which the whole people participate, any participation even in the smallest public function is useful, the participation should everywhere be assigned as the general degree of improvement of the community will; and that nothing less can be ultimately desirable than the admission of all to share in the sovereign power of the state.

From the above assertion, it is evident that Mill had various interconnected objectives in mind. One of these objectives is that besides liberty being the supreme good, its requirement is so sacrosanct in the life of a human being, if his or her various capacities are to be developed to the fullest. This would lead to a differentiated and rich society.[114] That is to say, the capacities that enable man to function optimally in society would be suppressed, annihilated and disrupted in the absence of the liberty to participate in politics or decision-making processes of any society.

[111] As above 26-27.
[112] As above 27.
[113] As above 27.
[114] As above.

Political apathy consequently becomes the result of the exclusion of people such as the youths from the political space whether partially or fully. This is because where there is no opportunity for a person to contribute to the decision-making processes of his or her country; there may be no personal attempt to do so. Therefore, a viable panacea for political apathy by a certain group of people in the society is the rearrangement of both political and social institutions to maximise the opportunities available to individuals to decide the conditions wherein they live.

A society that is to be rearranged in this manner would bring forth persons of indisputable intellect and energy.[115] Similarly, participation has the ability of stimulating individuals through the numerous challenges it presents, and this would lead to the development of potentials that were buried and unknown to the individuals. These capacities would be as varying as the various opportunities for participation. The greatest beneficiary would be the society, due to the many interests and intelligence that would emerge.[116]

However, several criticisms have been leveled against the need for expansive political participation of all qualified citizens. The first argument is that freedom is a state of affairs in which some people may choose to be active or inactive. And it is not synonymous with a life full of action; some people desire a quiet life rather than a life in politics.[117] While this assertion may be right, it is desirable for the state not to put stumbling blocks in the way to full and effective participation of those who are interested in politics such as all the youths.

While some people are certainly uninterested and unconcerned about political actions, there are some, such as the youths who have enough energy for political actions. Another argument against widening the political participation space is that most people do not consider politics as something significant. Such group of persons even consider the freedom to political participation as an activity which may interfere with or obstruct other aspect of their activities which they prefer above politics.

[115] As above 28.
[116] As above.
[117] As above 31.

While there may be merit in the above claim, it may nevertheless be said that politics may be seen as a hindrance where society has not maximised the opportunities for participation. Thus, where there are intended goals to deepen political participation in any society, many people would want to participate because 'participant culture' will nurture participation.[118] What this simply means is that where there is no inherent goal to deepen participation of all adults in a particular society, many would not be interested and several other would-be victims of political exclusion. Political participation of all adult citizens is not only imperative for good governance; it is the cornerstone of any democracy.[119]

The developmental approach to political participation has some undeniable connection with the capabilities approach to human rights.

According to Nussbaum, there are two intuitive ideas behind the capabilities approach. The first is that certain functions exist, that are particularly central to human life in the sense that their presence or absence is usually seen as a mark of the presence or absence of human life. The second aspect of the approach is that there is a need for this function to be carried out in a truly human way and not merely in an animalistic way.[120] It entails the ability to recognise the human being as a passively-dignified free being who has his or her life, rather being passively shaped or pushed around in a manner akin to a flock or herd of animals.

The effect of the absence of capability in the extreme case, renders the person a non-human being. Nussbaum further lists ten central human functional capabilities. One of them is the control over one's environment, which entails being able to participate effectively in political choices that govern one's life and having the right to political participation, among other incidental rights.[121] She argues that the political arena is the basic intuition from which the capability approach begins.

[118] As above.
[119] N Roberts 'Public deliberation in an age of direct citizen participation' (2004) 34 *American Review of Public Administration* 315.
[120] M Nussbaum 'Women and equality: The capabilities approach' (1999) 227 *International Labour Review* 234.
[121] As above 235.

The deprivation of nourishment of these capabilities which are supposed to be transformed into higher capabilities would make them fruitless, cut-off in some way and make them a shadow of themselves.[122] It suffices to say that excluding the youth from political participation in the decision-making process is a blow to the development of their capabilities and a great loss to the society.

This is because since the youths are the inevitable drivers of the future, it is to the advantage of society and the youths to be included in political processes, if the society's brighter future is to be guaranteed. To accentuate this point further, Nussbaum argues that '[w]hen a human being is given a life that blights powers of human action and expression that does give us a sense of waste and tragedy'.[123]

Therefore, it is necessary for the Nigerian state to consider how best to ensure the full and effective political participation of its youths, in order for it to attain true development in all facets of life in the nearest future.

2.2 Comparing Developmental and Instrumental Theories of Political Participation and Youth Participation

Simply put, youth participation refers to youth taking part in all facets of politics and various decision-making processes. It is an act that allows young people to participate in politics and government on an equal basis with adults. In view of the expansion of youth engagement, it is important to examine and contrast these two theories. This thesis, it has been argued, is mainly based on these theories. The balance of this argument, on the other hand, favours the developmental theory above the instrumental theory.

The instrumental theory that claims that all people have the right to participate in order to oppose tyranny may not be entirely useful for the purpose of youth involvement. This is due to the fact that the state may believe the youth are not required for such a reason. They can instead look for

[122] As above 236.
[123] As above.

other adults who are better fit for the job. Without fear of being contradicted, this author believes that most states believe in this principle yet do not fully welcome adolescent engagement.

Many African states, for example, that have a constitutional ban on youth participation, consider elections as a way for bad, authoritarian, or corrupt political leaders to gain power.[124] However, they have not always recognized the importance of fully integrating adolescents into such a process. In most parts of Africa, these kids are more often than not employed as political pawns rather than legitimate or lawful participants in the process. This implies that, while the majority of young people are granted the right to vote, they are rarely given the opportunity to run for office. In many government organisations, youths are also not given access to important portfolios. Because of this, the instrumental theory will only have a limited impact on how we approach the problem of youths' participation.

The application of developmental theory to participation is still a feasible option for increasing youth engagement. The notion basically asserts that political engagement should be viewed as a tool for progress as well as a tool against tyranny. That is, in addition to the exterior manifestations of political participation's impact, it has a priceless inside impact on individuals. It does necessitate a shift in perspective from seeing political power as the main goal of involvement to focusing on it.

Arguably many states that exclude youth from some aspects of governance or politics fail to see that they are fighting against young development. Any war waged against the youth is inevitably a fight waged against the nation's future. As a result, states would or should be motivated to offer political spaces for young people in order to help them develop. The current author believes that if states consider the issue of adolescent full and effective involvement through the lens of developmental theory, it will make more sense. It necessitates that they approach political engagement from two inextricably linked perspectives: internal (development) and external (power).

[124] See the respective Constitutions of Angola, Botswana, Algeria, Mauritius, Cape Verde, Comoros, Cameroon, Congo, the Democratic Republic of the Congo, Djibouti, The Gambia, Ghana, Guinea, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Seychelles, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia, Uganda, Nigeria, Zambia and Zimbabwe

2.3 The theories of rights: An overview

The human rights project in contemporary times has been said to be at a major crossroads.[125] Human rights are entitlements that are due to one by being a member of the human family; they involve the 'rights' a person possesses as a 'human'.[126] In relation to the meaning of rights, Shelton states that '[a] 'right' may be defined in relation to a duty of another, an immunity from having a legal status altered, a privilege to do something or a power to create or alter a legal relationship'.[127]

Shelton further argues that the above claim originates from a metaphysical concept such as the nature of humanity, or from beliefs based on religion such as a divine spark intrinsic in each person. This may be dependent on particular interests such as the common good which is obtained from such a contract, which requires a determination of the common good, along with the need to counterbalance it against societal interests.[128] It logically flows that rights are entitlements one carries along with his or her humanity and can only be lost when he or she ceases to be a human. Thus, all human rights are lost only at death.

According to Sen, '[i]t is possible to argue that human rights are best seen as rights to certain specific freedoms, and that the correlate obligation to consider the associated duties must also be centred around what others can do to safeguard and expand these freedoms.'[129] The language of right has a moral resonance that makes it inescapable in contemporary political discourse.[130]

That is to say, it is impracticable to discuss the issue of political participation without first looking at it from a rights-based angle, and this necessitates the need to look at the contours and contents of human rights. Rights are not merely entitlements that are due to one because of his or her humanity, but are equally regarded as 'especially urgent interests of human beings that deserve protection regardless of where people are situated'.[131] That is why rights are usually seen by most

[125] M Goodale 'Human rights after the post-Cold War' in M Goodale *Human rights at the crossroads* (2013) 25.
[126] D Shelton *Advanced introduction to international human rights law* (2014) 1.
[127] As above.
[128] As above 2.
[129] A Sen 'Human rights and capabilities' (2005) 6 *Journal of Human Development* 152.
[130] M Nussbaum 'Capabilities and human rights' (1997) 66 *Fordham Law Review* 273.
[131] As above.

scholars as 'Good Things'.[132] According to Viljoen, '[b]ecause the concept of "human rights" presupposes the existence of "human beings", its finds application in human interaction; it is thus relational in nature'.[133]

Buchanan posits that human rights are moral rights and exist irrespective of whether or not they are enshrined in legal rules. He states that it is this quality of existing independently of laws that enables them to serve as a 'critical touchstone for reforming laws.'[134] Human rights are most generally moral rights that can be ascribed to humans and carry correlative general obligations.[135] They are claim rights with two elements, namely, the existence of a liberty or permission, and an existing obligation that is correlatively owed to all rights holders.[136]

Notwithstanding the limited dispute about the existence of rights or whether human beings have some rights, there are endless disputes about the foundational theories or origin of human rights. It is only by situating an argument about the existence or non-existence of a right through the precinct of a right theory or theories that these fundamental questions can be answered.[137] It would be pertinent to state from the outset that human rights do not have a single philosophical or religious foundation, and several theories or approaches to human rights exist.[138]

For examples, Shelton traces the foundation of human rights to religion. Some philosophies exist in these various religions that inspire the evolution of human rights. Religions such as Christianity, Islam and Buddhism contain some traditions that are human rights-inclined. Similarly, philosophical traditions, both moral and political philosophies, developed theories of good governance and a just society.[139] More recently one of the approaches to human rights is the science-based approach, because biological, sociological and psychological bases of human rights are now emerging.[140]

---

[132] M Tustnet 'An essay on rights' (1984) 62 *Texas Law Review* 1363.
[133] F Viljoen *International human rights law in Africa* (2012) 3.
[134]A Buchanan *Justice, legitimacy and self-determination: Moral foundation of international law* (2003) 119.
[135] As above 122.
[136] As above 123.
[137] Nussbaum (n130 above) 275.
[138] Donnelly (n 12 above) 58.
[139] Shelton (n 126 above) 2.
[140] As above 3.

While sociologists have argued for the sociological foundation of human rights based on some assumptions regarding the vulnerability of human beings, and the resulting dependency on each other; psychologists have begun to focus on human capacity to identify and respond to the concepts of duties and rights.[141]

Kalin and Kunzli consider the historical foundation of human rights adopting various approaches. They first use the universal approach to human rights, which according to them arises when states are unable to agree on the specific content of human rights.[142] The natural theory of human rights has offered and continues to offer solid propositions to the effect that human rights are valid for all human beings, irrespective of the legal order concerned and it equally places a limit on an unlawful claim to power.

To the natural theory proponents, human rights claims do not derive validity from existing legal regimes but are entitlements that are inherently human.[143] Similarly, there is the relative theory of human rights, which is based largely on the cultural relativism of human rights. The argument of the cultural theory of human rights is the challenge of the Western image of the human being as an autonomous individual. It argues that concept of "autonomous individual' is in contradiction with many non-European traditions where human beings are seen as primarily members of their families, clans or ethnic groups. Thus, according to the cultural approach, human beings as social beings, first and foremost have duties to their communities and which in return supply them with protection.[144]

One of the greatest proponents of the universal approach to human rights is Donnelly, who argues that human rights are the rights a person has because he or she is a human being.[145] While rights can in themselves be trumped by other weighty considerations, they are nevertheless *prima facie* trumps.[146] According to Donnelly, rights are incapable of being reduced to the correlative duties

[141] As above 6.
[142] W Kalin & J Kunzli *The law of international human rights protection* (2009) 21.
[143] As above 22.
[144] As above 25.
[145] Donnelly (n 12 above) 7.
[146] As above.

of those against whom they are held. The cogent importance of rights is that they are not only beneficial to those who hold them, but also empower them.[147]

The empowerment power of rights lies in the fact that holders of human rights are able to measure up to others in the society, as well as play the various roles demanded of them by the society. This is highly instructive in relation to the right to political participation. The exclusion of some groups of people from access to the decision-making process does not only violates their rights, but also disempower them in the scheme of things. This is because it is through politics or through the decision-making process that the scarce resources in society are allocated, and where the resources are limited, only those groups that are present would have a fair share in such resources.

Therefore, the continuous exclusion of the youths from full and effective participation in Nigeria renders them powerless and incapable of effectively participating in other areas of the society, such as economic, social and development areas.

Donnelly posits that human rights have some special features which are central to its idea and concept. The first of these qualities is that human rights are equal rights, in that they are to be enjoyed by all equally, because one is either a human being or not. They are also inalienable and universal rights. The inalienability of human rights suggests that no matter how badly one behaves, does not disqualify him or her from being a human. The universality nature of human rights presupposes that all members of the species of *homo sapiens* (human beings) are the holders of all human rights.[148]

Human rights are not abstract in value and are clearly distinguishable from needs. They are traditionally believed to be in the highest order of moral claims; and are international, regional and national in nature.[149] Accordingly, human rights, although similar to legal rights but are not in the strictest of sense. In fact, '[h]uman rights grant "higher" supra-legal claims (which often seek to strengthen or add to existing legal entitlement)'.[150]

[147] Donnelly (n 12 above) 8.
[148] As above 10.
[149] As above) 11.
[150] As above.

This is based on the fact that while the law is the source of legal rights, humanity or 'human nature' is the source of human rights.[151] Therefore, it is expected that human rights, which should be guaranteed by any state (legal rights), must be in tandem with those rights that are manifest in the human nature (moral rights).

That is to say, such human rights must not only reinforce the universality and equality nature of human rights but demonstrate the value of dignity which is fundamental to the notion of human rights.[152] By necessary implication, since it is morally incomprehensible for some adult citizens to be shut out from the decision-making table in matters that would affect their lives and future; it is morally absurd and contrary to human rights to partially deny the youths their right to political participation on the grounds of arbitrary age limitations or other illegitimate considerations. This is because the end result of human rights is not just for a mere life but a life that is worthy of a human being which is a life of dignity.[153]

Donnelly argues that the Universal Declaration of Human Rights (Universal Declaration) model, which is based on the recognition of the centrality of the role of the Universal Declaration as laying the foundation of the contents of the contemporary internationally recognised human rights.[154] He asserts that notwithstanding the fact that most of Africa, parts of the Americas and a large part of Asia were still under colonial rule, the Universal Declaration undoubtedly has an endorsement that is global. The Universal Declaration received the votes of 14 European and other Western states, 19 states from Latin America and 15 African states.

Therefore, just less than a third of the votes for the Universal Declaration were obtained from African and Asian states. Despite this glaring reality, countries that subsequently attained independence were least enthusiastic in their embrace of the Declaration. In 1948 there was no

[151] As above 13.
[152] As above 14.
[153] As above 15.
[154] As above 24.

north-south divide. It is therefore beyond contestation that the Universal Declaration is the foundational document of international human rights law.[155]

Therefore, the Universal Declaration approach to human rights proposes five structural features. They are those rights which are rooted in a conception of human dignity. (Universal) rights entitlements are the mechanism for implementing values such as non-discrimination and an adequate standard of living. Also, that except for the right of people to self-determination, all rights in the Universal Declaration and covenants are the rights of individuals; that internationally-recognised human rights are indivisible, whole and inter-dependent, and not a menu from which one may select (or choose not to select). And but not the least, these universal rights held equally by all human beings in all places, imposes a near exclusive obligation on states to implement them for their nationals.[156]

The Universal Declaration approach could certainly be used as a veritable tool for the youths to press for the recognition and respect for their rights to full and effective participation in the decision-making processes of their respective states. It therefore is a flagrant attack on the universality of human rights to deny the youths their full rights to political participation, as is currently the case in Nigeria.[157]

The Universal Declaration approach to human rights treats all internationally-recognised rights holistically. They are an indivisible structure of rights and the value of a right is vehemently strengthened by the presence of many other rights.[158] The Universal Declaration has created 'a common standard of achievement' for all nations and all people and the states that represent them. However, notwithstanding the internationalisation of human rights, their implementation lies largely with states.[159]

---

[155] As above 26. The International Covenant on Civil and Political Rights (ICCPRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) give the force of treaty law to the Universal Declaration.
[156] As above 27.
[157] While the laws allow all adult citizens the right to vote, the right to stand for elective office is riddled with several arbitrary age limits that largely exclude the majority of those within the youth age cohort. This act is considered by this thesis a violation of their right to full and effective political participation.
[158] Donnelly (n 12 above) 31.
[159] As above 32.

Paradoxically, experience over the years has shown that states in modern times have appeared to be both the essential vehicles for the effective implementation and enforcement of human rights and the prime threat to the enjoyment of human rights.[160] The Universal Declaration approach to human rights recognises that while human rights are universal, their implementation may vary from place to place. This of course does not diminish the universal nature of human rights, but rather make them 'relatively universal' in the contemporary world, according to Donnelly.[161] According to Donnelly:[162]

> Human rights empower free people to build for themselves lives of dignity, value and meaning. To build such lives anywhere in the contemporary world requires internationally recognised rights. One of the central purposes of universal human rights; however, is to protect the free decisions of free people to justify and implement those rights in ways rooted in their own histories, experiences and cultures.

The implication of the above statement is that while states are reasonably expected to implement these universal rights relative to their own histories and culture, such implementation should not be relative to the extent of diminishing the core content of the rights. This is because while human rights are 'relatively universal', they nevertheless remain universal at the level of concept.[163]

The conception of the right to political participation remains universal irrespective of the place of its implementation. Therefore, the adoption of a form of political participation which arbitrarily excludes some eligible adults can neither be sustained on the basis of the relativity of human rights nor would it be in consonance with the universal conception of human rights.

Heyns's 'struggle' approach to human rights appears to be a key to the call for the recognition of the right to full and effective political participation of the youths.[164] Heyns argues that legitimate resistance, which could also be demonstration, is the flipside of the human rights coin.[165] He further argues that people across the world have shown their readiness to fight and take matters into their

[160] As above 33.
[161] As above 93.
[162] As above 100.
[163] As above 105.
[164] CH Heyns 'A "struggle approach" to human rights' in A Soeteman (ed) *Law and pluralism* (2001) 171-190.
[165] As above 180.

own hands when their core interests are not respected or protected,[166] Also, the right to resist the state is not to assume that they are enemies of the state, but presupposes that the people are ready to hold the state accountable to requisite standards in relations to its duty to protect human rights[167]

The struggle approach underscores the fact that rights in many cases are not free but must be demanded and fought or struggled for before they can be obtained. The success of human rights movements which have acted as an attack against tyrannical institutions is underpinned by historical struggles.[168] Therefore, the struggle for the recognition of the full and effective right to political participation of the Nigerian youths which is ongoing is not anathema to the realisation of the rights, but a viable path to them.[169]

Another proponent of the 'struggle' approach to human rights is Goodhart, who argues that human rights are far from being propositions of moral truth. He asserts that to perceive human rights as moral claims would lead to a misapprehension of what people do in claiming these rights and to mistake the struggles that these claims for dispute are about morality. Similarly, to treat human rights as moral claims would make it difficult for their global appeals to be understood, their socio-cultural 'origin' and to grasp the different ways in which they are being (mis)used as tools of domination.[170]

From the struggle approach to human rights perspective, Goodhart sees human rights as 'political demands, specifically demanded for emancipation, for an end to domination and oppression'.[171] This definition captures the centrality of this thesis as the struggle for the recognition of the right to full and effective political participation of the youths in the decision-making process is both a political demand and a demand to cease the oppression and domination of the youths by the adult elites.

---

[166] As above 185.
[167] As above.
[168] Buchanan (n 134 above) 130.
[169] For example, there is an ongoing campaign by the Nigerian youth for equal rights to political participation known as the 'NotTooYoungToRun' campaign. The campaign is challenging the morality of the Nigerian Constitution in excluding the majority of those within the youth age cohort from running for elective office.
[170] M Goodhart *Human rights and the politics of contestation in human rights at the crossroads (*2013) 31.
[171] As above.

The struggle approach recognises the fact that such emancipatory struggles are ideological and highly partisan in nature. They ae partisan because not everyone who believes in human rights would believe in them. This of course brings to fore the politics of contestation that usually follow the struggle for human rights.[172] The struggles that human rights claims provoke are inherently political and highly politicised, implying that they concern power and privilege, domination and oppression.[173]

Furthermore, claims for human rights such as the right to political participation are in the broadest sense political demands as well as normative claims, because they are claims based on how things should be done in a society but are not about moral truth. They are not moral truths because they are not to be acceptable to all, although they carry the conviction that all people should be treated as moral equals who are entitled to essential freedoms. Invoking human rights at a given time is to challenge the order of things; it amounts to confronting structures of power and privilege, 'natural' or arbitrary hierarchy, with an unshakeable belief in equality, freedom and equality of all.[174]

Therefore, x-raying human rights from the perspective of the struggle approach does not only make it ideological but also partisan; because such a struggle takes a particular side and reflect a particular perspective – that of the weak, the abused, the marginalised, and the downtrodden.[175] This of course would certainly be true for the struggle of the youths for rights to full political participation. Those who are favoured by the current system would see no merit in the need for the further inclusion of the youths in decision-making processes and would even attempt to frustrate such a struggle. Donnelly aptly captures the struggle approach to human rights when he states thus:[176]

> Human rights claims characteristically seek to challenge or change existing institutions, practices, or norms – especially legal practices. Most often they seek to establish (or bring about more effective enforcement of) a parallel 'lower right'.

[172] As above.
[173] As above 32.
[174] As above33.
[175] As above.
[176] Donnelly (n 12 above) 12.

The struggle for normative changes or the establishment of a new way of doing things is a tough and herculean process, which takes a lot of time before reaching a point of maturation. However, without the start of a struggle there would be no realisation of certain claims. Therefore, the acceptance of the need for the recognition of full and effective political participation would only be realised when the flame of its struggle is ignited by those who are tired of their state of oppression, exclusion, isolation and marginalisation.

The struggle would nevertheless be confronted by potent opponents who seek to retain their hierarchy, privilege, hereditary rule, dominance and property. This is because '[r]uling elites aimed and still aim to maintain power and invoke cultural traditions subordinating, inter alia, women, children, [youth], minorities and workers.'[177]

The struggle for human rights is a fight indeed. After all, the rights of women, children and persons with disabilities were not freely given but were fought for and won at the altar of struggle. Youth rights cannot be an exception. The human rights struggle is a continuous one because '[t]hose struggles against discrimination that have been largely successful, at least in theory are noted explicitly and "other status" point toward future struggle by other excluded groups.'[178]

This thesis does not pretend not to be aware of the potential contrary argument. These are to the effect that the youths are not being excluded from decision-making processes or denied their rights to full and effective participation, since in most African countries and most parts of the world they are given the right to vote. It is the position of this thesis that the right to vote alone does not satisfy the requirements of full and effective political participation.

Also, a cursory check on the ages of African leaders reveals an incontestable conclusion that indeed the African youth are excluded, short-changed and denied their rights to full and effective political

[177] Shelton (n 126 above) 15.
[178] Donnelly (n 12 above) 93.

participation.[179] The exclusion of youths has been sustained through traditional, legal and institutional barriers serviced by modern African states national constitutions.[180]

One of the fundamental reasons why the struggle for the recognition of rights comes naturally is because rights are interests shared by all and preconditions for a decent human life.[181] Also, their violation pose the most serious threat to anyone who crave for a decent human life.[182] Steiner contends that though 'the practice of participation may be severely suppressed in a given state, the norm stands as an invitation to the disenfranchised or repressed to draw on the example of other societies where it is better appreciated'.[183]

Therefore, in pursuit of the need to accord African youths, particularly Nigerian youths, their rightful place at the decision-making table, this thesis uses the struggle approach to human rights theory as a springboard.

It is necessary to determine whether or not political participation has attained the status of human rights under international human rights law because, as was argued above, human rights are entitlements that accrue to everyone by virtue of their personhood, placing inherent obligations on states to respect, protect, and uphold them.

---

[179] For example, the following are some African leaders and their ages as at 2016: Isaias Afwerki (Eritrea, 70 years); Ismail Omar Guelleh (Djibouti, 70 years); Ibrahim Boubacaar Keita (Mali, 71 years); Omar al-Bashir (Sudan, 72 years); Pakalitha Mosisili (Lesotho, 72); Yoweri Museveni (Ugandan, 72); Akufo Addo (Ghana, 72 years); Denis Ngueso (Congo, 73 years); Muhammadu Buhari (Nigeria, 73 years); Jacob Zuma (South Africa, 74 years); Allassane Quattara (Côte d'Ivoire, 74 years); Jose Eduardo dos Santos (Angola, 74 years); Teodoro Obiang Mbasogo (Equatorial Guinea, 74 years); Hage Geingob (Namibia, 75 years); Peter Mutharika (Malawi, 76 years); Alpha Conde (Guinea, 78 years); Ellen Johnson Sirleaf (Liberia, 78 years); Abselaziz Bouteflika (Algeria, 79 years); Paul Biya (Cameroon, 83 years); Beji Caid Essebsi (Tunisia, 90 years); and Robert Mugabe (Zimbabwe, 92 years); http://www.informationng.com/2017/05/list-african-presidents-ages-2016.html (accessed 20 April 2018).

[180] See the relevant provisions of the respective Constitutions of Angola, Botswana, Algeria, Mauritius, Cape Verde, Comoros, Cameroon, Congo, the Democratic Republic of the Congo, Djibouti, The Gambia, Ghana, Guinea, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Seychelles, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia, Uganda, Nigeria, Zambia and Zimbabwe. For example, in Rwanda, one of the criteria for eligibility for the post of president is that the person must have attained the age of 35 and, for a position in the senate, the eligibility age is 40 (Articles 99(7) and 83(5) of the Rwandan Constitution of 2003, the Namibian Constitution similarly adopts 35 years as the age of eligibility for the post of president (Article 28(3) of Namibia's 2010 Constitution), also, both Mozambique and Uganda adopt the age of 35 as the eligibility age for the post of president, respectively (see art. 147(14)(2)(b) of the 2005 Constitution of Mozambique and art. 102(b) of the 1995 Ugandan Constitution).

[181] Buchanan (n 134 above) 128.

[182] As above 129.

[183] H Steiner 'Political participation as a human right' (1988) 1 *Harvard Human Rights Year Book* 133.

2.4 Right to political participation and international human rights law

I have laid a firm foundation for the importance of political participation of both the youths and generality of adult population at large in the preceding sub-paragraphs. We are however yet to explicitly locate its existence under international human rights law as demonstrated in the body of literature. Once a particular right is within the international corpus of rights, advocating and the struggle for its recognition, guarantee and realisation become stronger.

However, stating that the concept of human rights inevitably has political capacity would be a good place to start, in that they 'were originally conceived as being addressed to governments and hence the correlative obligations were thought to be obligations of governments'.[184] They are therefore in their broader senses, political demands.[185] It follows logically that the right to political participation would fall under what is popularly known as civil and political rights or, at best, first generation rights under international human rights law.[186] According to Fox,[187]

> [t]he right to participate in government is guaranteed in all comprehensive human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American, European and African Conventions on Human Rights and, most recently, the various documents of the Conference on Security and Co-operation in Europe (CSCE), which are the most comprehensive.

The above quotation demonstrates that the right to participate in government or the right to political participation is far from being an orphan in the family of human rights and, most importantly, that it is guaranteed in all comprehensive human rights instruments. This of course makes it crystal clear that participating in government or political participation in the decision-making processes

[184] Buchanan (n 134 above) 123.
[185] Goodhart (n 170 above) 33.
[186] For a detailed discussion on the various categorisations of rights, see Viljoen (n 129 above) 5.
[187] G Fox 'The right to political participation in international law' (1992) 86 *American Society International Law Procedure* 249.

of a society is a human right. It as well as drive home the point that the right to political participation imposes similar obligations on states to respect, protect and fulfill.

However, despite its being a human right, in many instances, states try to fractionalise, fragment or sometimes diminish it. This is disturbing but not surprising, since human rights law has traditionally been seen by states as a challenge to the notion of state sovereignty.[188] The rights to political participation do not only concern limiting states' sovereignty in particular areas, but raises the more fundamental question of who is the holder of sovereign authority within a state. The 'sovereign' in recent history has been referred to as those wielding political power. However, the right to political participation maintains that sovereignty lies in the bosom of the mass citizens and rejects in entirety this *de facto* control test.[189]

Steiner argues that the concept of the right to political participation has been the indispensable foundation stone in the post-war construction of human rights law.[190] He further argues that apart from the fact that the right to political participation is prominently featured in the full range of international instruments, it is so fundamental to the extent that '[i]n its absence, it is said, all other fall to a perilous existence'.[191] That is to say, the right to political participation holds some sort of key to the survival, meaning and enjoyment of all other human rights.

According to Steiner, international human rights norm expresses citizens' right to political participation principally in two ways. These are the abstract and relatively vague right to take part in the conduct of public affairs or government, and the much more specific relative right to vote in elections.[192]

The human right to political participation under international human rights law as a specie of rights is considered first, immediate and effective rights. Is as well considered first among its equals, among the categories of rights. This is because the realisation of many other rights remains a pipe

[188] As above 544.
[189] As above.
[190] Steiner (n 183 above) 77.
[191] As above.
[192] As above 78.

dream in the absence of the right to political participation.[193] However, it is a programmatic right which shares similar characteristics with many socio-economic rights but with a distinct characteristic that distinguishes it from socio-economic rights. Similarly, the right to political participation serves various important purposes and nourishes the vital ideals of any society.[194]

There are two reasons why participatory rights were excluded from international law. These are factors that are generic to all human rights norms and those that are specific to the right. The first factor is based on fact that international human rights law came into being following World War II, the founding of the United Nations (UN) and the adoption of the Universal Declaration in 1948.[195] Second, the other specific factor that contributed to the late acceptance of the right to political participation is two-fold.

The first factor is that until the mid-nineteenth century, national elections were never a common place. Furthermore, full adult suffrage in many European countries was less than a generation old as at the time of the adoption of the Universal Declaration. The second specific cause of the late arrival of participatory rights on the international law scene was in relation to the way the international community treats an unelected government. Governments that assume power through the violation of participatory rights (by not holding proper elections) act illegally.[196] Therefore, those governments presumably consider themselves illegal.[197]

Peter argues that while the right to political participation is part of the original human rights agreement, its human rights status remains riddled with many controversies both in political philosophies and in international law. The centrality of the litany of controversies trailing the human right status of the right to political participation is whether there should a right to democracy. While there may exist an undeniable linkage between participatory rights and democracy, the right 'need not imply the right to democracy'.[198]

[193] As above 131.
[194] As above 132.
[195] Fox (n 187 above) 545.
[196] As above 546.
[197] As above 546-547.
[198] F Peter 'The human right to political participation' (2013) 7 *Journal of Ethics and Social Philosophy* 11.

However, Peter asserts that two parts to the right to participation exist, which are an 'election clause' and a 'take part' clause. The participation in deliberative political processes would satisfy the take part clause which is vague and does not require a particular political system. The requirements for the election clause, which is more specific, could be met through other political systems than the democratic self-government modeled after the Western democracies.[199]

The programmatic implementation of the right to political participation does not necessarily imply the existence of democratic institutions and need not mandatorily be imposed where they are not in existence.[200] While Li-Ann concurs with the argument that the right to political participation does not presuppose a form of government or ideology, it nevertheless contends that it excludes some forms of government such as totalitarianism. He further argues that although political participation is closely associated with contested democratic ideology and democratic core values inform the right to political participation in value and nature.[201]

The various postulations above raise the question as to what is the content of the right to political participation as a human right in international human rights law. In other words, what are the international standards that should be met for a state to be said to have fulfilled its obligations under international human rights law as regard the right.

It is of course a challenge to determine the scope and content of the right to political participation as there is no agreement on this point among scholars. More so, political participation is a right which is in a continuous process. The institutions, processes and the culture of any particular context are the determinants of its vitality.[202] Fox asserts that the right to political participation places a binding obligation on signatories to various treaties and conventions containing the right.[203]

[199] As above.
[200] As above.
[201] Li-Ann (n 64 above) 181.
[202] As above 242.
[203] Fox (n 187 above) 552.

This preceding statement above simply means that state parties are expected to ensure that citizens enjoy the right without any illegitimate restraint. The minimum requirements these treaties impose in relation to the right to political participation is that there must be free and fair elections. Additionally, these elections must be held on a secret ballot, with universal adult suffrage, and at regular intervals. Additionally, there must be no indication of prejudice toward voters or candidates.[204]

The various requirements mentioned above are suggestive of being cumulative, the absence of one of the requirements could render the right to political participation nugatory. For instance, in Nigeria, while elections are periodically held every four years in the case of national elections, usually conducted through a secret ballot, there is however an absence of universal adult suffrage and patent evidence of discrimination against some adults. The non-existence of universal adult suffrage is based on the fact that while some adults (largely those within the youth age cohort) are allowed to vote, they are constitutionally excluded from being able to stand as candidates in elections.[205]

Kalin and Kunzli, demonstrating what may be referred to as the content of the right to political participation, state thus;[206]

> Political rights in a narrow sense (section v) guarantee citizens both the right to vote under equal conditions and at regular intervals in free election and the right to stand for elections.

From the above statement, it is evident that the right to political participation confers on all adults the right to vote and to be voted for in regular elections.

---

[204] Fox (n 187 above) 552.
[205] Sec 65(1)(a) of the 1999 Nigerian Constitution pegs the qualification age to be eligible as a candidate for a member of the Senate at 35 years; sec 61(1)(b) pegs the age of eligibility for the House of Representative at 30 years; sec 106(1)(b) pegs the eligibility age for the State House of Assembly at 30; sec 131(b) pegs the age of eligibility of becoming President at 40 years; and sec 177(1)(b) pegs the eligibility age of becoming the governor of a state at 35 years.
[206] W Kalin & J Kunzli *The law of international human rights protection* (2009) 466.

Wheatley argues that the right to political participation entails the determining of the political question of the day and it belongs to all citizens.[207] No citizen should be unreasonably excluded from the electoral process. The limited grounds for exclusion from the right to vote or to stand as a candidate in an election under international human law are on the grounds of being a minor or a convict.[208]

This right is granted only to all adult citizens,[209] and states are prohibited under international human rights laws from discriminating between them.[210] That is, states are prohibited by their international obligations from enacting laws or putting in place policies that exclude or discriminate against some groups of adult citizens. Except for those youths who are still within the age bracket of minors or those who have been convicted of crimes, any other ground of exclusion from full and effective participation as currently practiced in Nigeria is discriminatory, unreasonable and a violation of their rights to political participation under the international human rights law. Such a state is in breach of its international human rights obligations as far as such youths' rights are concerned.

In similar vein, Czapanskly and Manjoo argue that the undeniable content of the right to political participation as contained in relevant international human rights instruments consists of two elements. These are the right to vote or to stand for election, and the right to participate in the conduct of public affairs.[211] In other words, they consider the right to vote and to stand for election as an indivisible whole which forms the first leg of the right to political participation.

Thus, it would be correct to argue that attempting to give half of the right is a violation and denial of it. Therefore, the awkward practice, as it is currently observed in Nigeria, where all adult youths are allowed to vote but some of them are denied the right to stand as candidates in elections, is a mockery of this right and not in consonance with international human rights standards.

---

[207] S Wheatley 'Non-discrimination and equality in the right to political participation for minorities' (2002) 1 *Journal of Ethnopolitics and Minority Issues in Europe* 5.
[208] As above 6.
[209] As above 7.
[210] As above 16.
[211] K Czapanskly & R Manjoo 'Right to participation in public government' (2008) 19 *Duke Journal of Comparative and International Law* 7.

Kawashima argues that the human right to effective political participation, as articulated under international human rights law, is both an individual and a collective right.[212] Donnelly differs from Kawashima on this point because to him all rights are individual rights except for the right to self-determination.[213] Irrespective of the prism from which the right to political participation is viewed, it is beyond contestation that it empowers, improves and awakens citizenship and patriotism consciousness in the people once it is fully guaranteed and respected.

This above assertion is based on the fact that the survival and progression of humanity is based on the protection and promotion of human rights.[214] The right to political participation offers the government an opportunity to learn about people's wishes and the preferences of citizens.[215]

Similarly, Rawls describes the content of political participation as political liberty; which according to him are the basic liberties. Rawls argues that political liberty, which embodies the right to vote and to be eligible for public office and other incidental liberties, is to be equal, because, equality of basic rights by all citizens is the hallmark of any just society.[216] Accordingly, the underlying of the right to political participation is the need for all adult citizens to be allowed the right to vote and to stand for elections.

Therefore, except for the general exceptions of convicts and minors, all adult citizens have a legitimate and legal right to take part in the political affairs of their society; doing otherwise would amount to an affront of this right and a violation of states' sacred obligations under international human rights law.[217] This fundamental human right should be applied in an equitable representation manner for all citizens, including the minorities.[218]

[212] S Kawashima 'The right to effective participation and the Ainu people' (2004) 11 *International Journal on Minority and Group Rights* 23.
[213] Donnelly (n 12 above) 29.
[214] J Ouko 'Africa: The reality of human rights in the essential of human rights' in Smith et al (n 66 above) 1.
[215] Kawashima (n 212 above) 24.
[216] J Rawls *A theory of justice* (1971) 61.
[217] As above 222.
[218] B Dessaleng 'The right of minorities to political participation under the Ethiopian electoral system' (2013) 7 *Mizan Law Review* 68.

By necessary implication, states that provide placatory measures of only giving their youths the right to vote without more are nevertheless in breach of their sacrosanct duties to respect the right to full and effective political participation of the youths. These adult youths are considered adults legally (generally from the age of 18 years and above) in their respective states. This is based on the fact that the existence of an obligation owed to the right holder is germane to the human rights as claim rights.[219]

Another indisputable feature of the content of the right to political participation is that it is not a stand-alone right, it is connected to other human rights. This feature reflects the indivisibility argument of human rights, that is, all human rights are interconnected, indivisible and interdependent.[220] It therefore suffices to say that since the right to political participation is connected to other human rights, the denial of the right to political participation of the youths does not only violate a single right but, broadly speaking, other incidental rights which stimulate or find expression through the right to political participation. The implication of violation of rights has caused a scholar to declare it as 'a particular kind of injustice with distinctive force and remedial logic'.[221]

Wambali posits that the enjoyment of the right to political participation is never done in isolation but in partnership with other rights, such as the rights to political association. He further argues that these two rights, the right to political participation and association, are keys to enjoying all other principal human rights because the precondition for any type of life is political practice.[222]

The interconnectivity between the right to political participation and the right to freedom of association as it were, lies in the fact that politics are incapable of being engaged by a person alone; he or she needs the involvement of others before political participation can be meaningful. For example, one of the major vehicles for political participation is political association or party. This

[219] Buchanan (n 134 above) 123.
[220] See the Vienna Declaration.
[221] Donnelly (n 12 above) 8.
[222] M Wambali 'The practice on the right to freedom of political participation in Tanzania' (2009) 9 *African Human Rights Law Journal* 204.

however, does not mean that in the absence of a political party, the right to political participation cannot be exercised. It can.[223]

The other international human rights that are implicit in the exercise of the right to political participation are the right to freedom of expression; freedom of thought and conscience; as well as the right to equality; freedom from discrimination; and the right to dignity of the human person.[224] The right to political participation is connected to the right to freedom of expression in the sense that freedom of expression covers every act though which belief, emotion or grievances are expressed.[225] It follows that the act of voting for a candidate during an election is a demonstration of belief in the capability or ability of the said candidate.

Conversely, where a voter in an election is excluded or denied the right to contest for elective positions, such voter's belief has been injured, thereby limiting his or her right to freedom of expression. Similarly, a would-be candidate unreasonably excluded is denied both his or her right to political participation and the right to freedom of expression.

The freedom of thought and conscience presupposes man to be a rational being with the ability to think and to decide what is best at any material time. This rationality is heavily activated in exercising the right to political participation. Since political participation is minimally limited to voting, standing for elective office and taking part in the deliberation at the decision-making table, a person would have to consider which is the best group he or she should join; the best candidate to vote for, and so forth.

However, where a state has either through laws or policies excluded some eminently-qualified candidates from fully participating in all the political processes, it is placing a bar on the ability of citizens to think and to decide on the best choices for them.

[223] For example, some countries allow for independent candidacy in running for elective positions in an election.
[224] For a detailed discussion on this point, see generally Rawls (n 216 above) 61.
[225] I Currie & J de Waal *The Bill of Rights handbook* (2013) 341.

To say the least, it is an assault on the thought and conscience of citizens. Citizens should be trusted to be able to decide for themselves what is best for them without any form of limitation to their choices in terms of political activities.

The right to political participation as alluded to above is exercisable by all (adult) citizens on an equal basis. Therefore, the right cannot be enjoyed to the full extent in an atmosphere of inequality of any kind. The nexus between the right to political participation manifests in the various activities through which political participation is expressed, for example, equality of vote (one man, one vote) in an election; equality of citizens to access public or political office during elections; and also, at the decision-making table. This is because all human beings have importance and worth and accordingly deserve equal respect, concern and recognition.[226] Where these principles are not adhered to in any political arrangement, the right to political participation is violated as well as the right to equality of all citizens.

Freedom from discrimination and respect for the inherent dignity of the human persons could be inadvertently violated where the right to full and effective political participation is not guaranteed as it ought to be. At the heart of international human rights law is the need for everyone to enjoy all human rights 'without distinction'.[227] It has equally been argued that most of the human rights developments and struggles have been fueled by the principles of non-discrimination and equality that flowed from the Universal Declaration.

The multiplying effect of discrimination on various and intersecting grounds is that it is at the root of largely all human rights abuses.[228] It suffices to say that the exclusion of most youths in Africa, and particularly in Nigeria, from exercising their rights to full and effective political participation on the basis of an arbitrary age qualification is a violation of their right to freedom from discrimination and right to equality.

[226] J Baker 'Equality and human rights' in R Smith & C van den Anker (eds) *The essentials of human rights* (2005) 108.
[227] D Otto 'Discrimination, freedom from' in Smith & Van den Anker (n 218 above) 97.
[228] As above) 97.

The need to respect, protect and fulfill the right to full and effective political participation of the African youths is based on the fact that the continuous violation of this right impliedly violates other fundamental human rights. This act is injurious to the development of the youths and antithetical to the growth of the society. Any exclusion or marginalisation on the ground of age will amount to a violation of their right to political participation.[229].

The contents of political participations, according to the numerous analyses above, include the right of all adult citizens to vote, to run for office in elections, to be eligible for government appointments, and to participate in governmental deliberative processes. Any aspect of the right's content that is violated is a violation of the full right to political participation.

Another question is whether political involvement is a right or a privilege. Though the terms freedom and right are frequently used interchangeably in international law. However, one of the distinctions made between the two terms is that while a breach of rights has legal ramifications, a violation of freedom does not. In addition, society owes it to individuals to protect their rights.[230]

2.5 Youth rights to political participation

The term 'youth', which is both a legal term and social construct just like other legal terms, suffers from ambiguity. The definition varies from culture to culture, and from place to place. It is devoid of a single or precise definition. For example, youth have also been referred to as a 'historically constructed social category'.[231] Cardona defines youth as 'a time of transition from children to adulthood, from dependence to independence, but opinion differs on when this happens'[232]

[229] Wheatley (n 200 above) 7
[230] See generally, 'Difference Between Rights and Freedom (With Table)' https://askanydifference.com/difference-between-rights-and-freedom/ accessed 18 September 2021.
[231] D Durham 'Youth and the social imagination in Africa: Introduction to Part 1 and 2' (2000) 73 *Anthropological Quarterly* 114.
[232] J Cardona 'Introduction' in W Angel (ed) *The international law of youth rights* (2015) xv-xvi.

The *Oxford students' dictionary* defines youth as 'the period between childhood and adult age'.[233] Going by the last definition of youth, youths are neither children nor adults; they are just in an indeterminate age group. The youths have been described as a 'transitory category' without a universal and stable category, and throughout the twentieth century have had changing roles.[234] Notwithstanding its apparent ambiguity, there seems to be some level of consensus in various regions as to what categories or age brackets of people are to be regarded as the youths.[235]

When it comes to the right to political participation under international human rights law, children are one of those who are exempted. This research argues for those youth who are adults; that is those youths that are within the age of majority. The age of majority across the world generally speaking is 18. On the other hand, young people are persons who have already passed childhood but have not reached adulthood.[236]

Therefore, youth rights to political participation would be the rights of the youth to full and effective participation in all governmental or political process of their country without any illegitimate restraint, whether legal or extra-legal. Political process here refers to the right to vote and to stand for elective positions in elections.

The governmental aspect of the definition hinges on governments' policies or decisions. Illegitimate restraints refer to restrains that are not in consonance with international human rights standards or against the obligations of states. It has been stated above that the two limitations on the right to political participation under international human rights law are children and convicts.

In similar vein, the 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

[233] R Allen (ed) *Oxford students dictionary* (2012) 1224-1225.
[234] G Lukuslu 'Constructor and constructed: Youth as a political actor in modernising Turkey' in J Forbrig (ed) *Revisiting youth political participation: Challenges for research and democratic practice in Europe* (2005) 29.
[235] For example, the UN in Resolutions A/Res/50/81 and A/Res/56/117 pegs the age of youth as those between the ages of 15 to 24 years; the African Youth Charter defines youth as those within the ages of 15 to 35; while the Ibero-Ameriacn Youth Charter defines youth as those within the ages of 15 to 24.
[236] J Cardona 'Introduction' in Angel (n 223 above) xv.

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.[237]

From the above postulation, it can be seen that the main thrust of the right to political participation of the youths, is taking part in decisions that affect their lives and that of their communities. They are entitled to this right because they are adult citizens and to deny them the right is to question their citizenship. Nevertheless, the reality in recent times is that most state governance structures display a situation where '[old] [a]dults frequently make decisions on behalf of children and youth [young-adults] without seeking input from the very audience they presume to serve'.[238]

It is not out of place to ask whether the youths as an age cohort or group have rights before arguing for the recognition and respect of their rights to full and effective political participation. That is to say in order for the argument about respect of youth rights to political participation to be more compelling, there is a great need to first unpack the existence of youth rights under the architecture of the international human rights law.

Angel in his masterpiece on international human rights law of youth rights sets the records straight when he asserts that as at early as the sixteenth to nineteenth centuries, youth rights, which include their right to political participation, have been elaborated as feudalism declines.[239] He, however, argues that notwithstanding the earliest elaboration of these rights, they suffered neglect due to the lack of global codification, as we currently have in relation to the rights of women and children.[240]

Furthermore, due to the aristocratic traditions of the past, there is always a generational rebellion of the youths against several systems of governance put in place by the adult generation.[241] It therefore suffices to say that youth rights to political participation exists within the international human rights frameworks.

---

[237] 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.
[238] M Rasmussen 'Adult attitudes about youth participation in community organizations', http://www.joe.org/joe/2003october/rb5.php (accessed 18 April 2018).
[239] W Angel *International law of youth rights: Source documents and commentary* (1995) 4.
[240] As above.
[241] As above 3.

Cardona opines that when we talk of youth rights to political participation, we are referring to their rights to vote and to stand for elective positions. He argues that it is now rampant to hear that youth lack of interest in public affairs and their political participation is scarce. He however disagrees with the proposition that the youths lack interest in public affairs but such lack of interest is due to barriers that impede their right to full and effective participation.[242] He further asserts that one of the ways in dealing with the barriers to the right to participation of the youths is for their empowerment in the exercise of these rights.[243]

While the right to political participation of the youths is well grounded under international human rights law; exercising the right remains an unattained task due to the existing barriers. Despite these barriers, the youths have continued to demand the recognition and protection of their rights.

Vromen and Collin on their study of the Australian youths, argue that policies on youth participation should rather tackle ways in which governments should respond to the violation of youth rights to political participation instead of suggesting ways in which the youth should participate.[244] Their work challenge the current *status quo* in most youth policies in Africa, which speak of youth participation in the language of privilege rather than that of rights. The crux of their argument is that the violation of the right to youth political participation is not unconnected to the fact that states have approached the issue from a policy-based approach rather than from a rights-based approach.

The existence of the right to youth political participation in their societies has been viewed from the perspective of rights accorded to citizens. Farthing argues that since the youths are full rights-bearing citizens, they have an inalienable right to participate in decision-making processes and governance.[245]

[242] J Cardona 'Introduction' in Angel (n 239 above) xx.
[243] Cardona (n above 239) xxiii.
[244] A Vromen & P Collin 'Everyday youth participation? Contrasting views from Australian policymakers and young people' (2010) 18 *Young: Nordic Journal of Youth Research* 106.
[245] Farthing (n 237 above) 75.

It is therefore incumbent on states, based on their international human rights obligations, to respect and protect this right. Camino and Zeldin contend that inclusive participation opens the doorway for all citizens to have legitimate opportunities to influence decisions. They contend that one of the factors affecting collective participation is the codification of age qualifications in laws.[246] These age restrictions laws are antithetical to the full and effective exercise of youth rights to political participation.

Notwithstanding the near consensus on the need to respect and protect the youths' right to political participation, scholars continue to decry the continuous violation of the right both regionally and globally.

Forbrig in his edited study on youth political participation in Europe, asserts that youth participation in Europe is a paradox.[247] Arguing for youth participation, he further stresses the need for the state to see political participation as an incentive for all citizens to contribute to governance, since governmental decision will be affected by all.[248] This simply implies that respecting the right to political participation of the youths who are part of society.

Pacielo study on youth participation in the Mediterranean, contends that it was the quest for youth political participation that led to the mobilisation of the 2011 Arab Spring.[249] The author further argues that a youth-oriented model for countries is a necessary precondition for tackling the exclusion of the youth in North Africa. Youths are daily calling for an extensive political restructuring to ensure their participation.[250]

[246] L Camino & Z Zeldin 'From periphery to centre: Pathway for youth civic engagement in the day-to-day life of community' (2002) 6 *Applied Developmental Science* 213.
[247] J Forbrig *Revisiting youth political participation: Challenges for research and democratic practice in Europe* (2014) 7.
[248] As above 10.
[249] M Pacielo 'The economy of youth exclusion in the Mediterranean: Continuity or change' *Opinion on the Mediterranean* (2012) 1, https://www.google.com/search?q=M+Pacielo+%E2%80%98The+Economy+of+Youth+Exclusion+in+the+Mediterranean%3A+Continuity+or+Change%E2%80%99&ie=utf-8&oe=utf-8&client=firefox-b-ab (accessed 24 April 2018).
[250] Pacielo (n 240 above) 2.

Walker *et al* advocate for the need to change current governance structures globally, so as to allow young people to engage with governance.[251] They argue that since the sustainability of any developmental efforts requires the participation, involvement and ownership the youths both globally and nationally, there is no reasonable basis for the general exclusion faced by the youths.[252]

The right to youth participation in Africa and Nigeria in particular is not fully guaranteed as required under international human rights law. This of course has a multiplicity of implications for Africa. Kofi Anan could have had Africa in mind when he declared thus;[253]

> No one is born a good citizen; no nation is born a good democracy. Rather both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts itself off from its youth severs its lifeline; it is condemned to bleed to death.

Nothing captures the need for youth rights to political participation to be respected and protected by states more than the above submission. It paints the picture of a tragic consequence should the youth be excluded, cut off or denied their rights to full and effective political participation as full rights-bearing citizens.

Durham in her work on the African youths argues that the youths, as a historically constructed category, are a group of actors that form an important sharp lens through which social forces are based in Africa as well as the world.[254] She contends that the new systems of political participation in Africa in novel ways exclude and include the youth. She refers to this practice as, one of inclusion by exclusion.[255] In spite of the youths forming an increasing proportion of the African continent, attention to them has not only been secondary but sporadic.[256]

---

[251] See D Walker et al 'Partners for change: Young people and governance in post-2015' (2014) 5, http://restlessdevelopment.org/file/partners-for-change-young-people-and-governance-in-a-post-2015-world-pdf (accessed 18 April 2016),
[252] Walker (n 242 above) 2.
[253] K Annan, Former UN Secretary-General, quoted in *World Youth Report* (2003) 271.
[254] Durham (n 222 above) 114.
[255] Durham (n 222 above) 14.
[256] As above.

The narrative of inclusion by exclusion could mean a system which is a commonplace in many African countries where, although the political system pretends to include the youth, on a close scrutiny of it, reflects an anti-youth edifice. It cannot be said that the youths in Africa have the right to full political participation because most African constitutions still apply age qualifications that shut out a large part of the youths from the political space. It is obviously a process of inclusion by exclusion.

Honwana in his work on the African youths contends that while the youths in Africa face serious challenges of exclusion, bad governance and deeply-entrenched societal problems have reduced their ability to become fully-fledged citizens.[257] The author further contends that the recent waves of protest around the world by the youths are struggles for economic, social and political emancipation. Due to the uncertainty of the adulthood of the African youths, they can best be described as people 'living in waithood'.[258] It has been argued by other authors that the pervasive political marginalisation of the youths is the root cause of protest movements led by them globally.[259]

This calls for the need to urgently pay attention to the issue of youth rights to political participation in Africa. Touo posits that in Cameroon, the issue of youth marginalisation is a debate that portends grave danger for peace and security and dovetails into the issue of good governance.[260]

Therefore, without enabling factors to help them, the youths will fall into the category of the 'left behind' in society.[261] The violation of the right to political participation of the youths has 'seriously extenuated the potentials of the youths as agents of social change' in Africa.[262] In his extensive work on youth rights in East Africa, Selvam asserts that the youth, due to their transit from childhood to adulthood, there is a need for the protection of their specific rights.

---

[257] A Honwana *Waithood, restricted futures and youth protest in Africa* (2014) 1.
[258] As above.
[259] above 2.
[260] H Touo 'African youth and globalization: The experience of the ethics club in the process of socio-political integration of the youth in Cameroon' (2010) 17 *The African Anthropologist* 3.
[261] 'Youth in the MENA region: How to bring them in' OECD Preliminary Report (2015) 16.
[262] S Uhunmwuangho & E Oghator 'Youth in political participation and development: Relevance, challenges and expectations in the 21st century' (2013) 15 *Journal of Sustainable Development in Africa* 245.

He contends that the youth policies in East Africa are inadequate to protect the rights of the youths. He suggests the use of the capabilities approach to protect youth rights in Africa. However, there is a need for some modicum of the African contextual and cultural elements to be included in the capabilities approach for it proper well on the African continent.[263] The fact that the youths are in transit to full adulthood does not preclude them from the full enjoyment of their rights to full and effective political participation as accorded to other adult citizens.

Nigerian youths have recently achieved a milestone in the struggle for the recognition of their rights to full political participation. The vehicle of the struggle is known as the 'NotTooYoungToRun' campaign which was a challenge to the arbitrary age qualifications in the Constitution that bars most youths from standing for elective positions in the national elections. While the National Assembly has amended the Constitution by reducing some of the ages, the Bill has just been assented to by the President. The UN has launched a similar campaign in support of the full right of the youth to political participation globally.[264]

The restive state of the Nigerian youth in relation to the continued denial of their full rights to political participation is captured thus;[265]

> In today's Nigerian society, many young people are disillusioned with the quality of political leadership. They are becoming impatient with authority and are venting their frustrations against the system. When you look at many of the young people who are at the forefront of social change today, you are seeing combustible materials for social explosion. The many pockets of social restiveness, from the north to the south and from the east to the west, go to show how deep the cynicism and cognitive dissonance is between the leaders of our nation and the youth.

From the foregoing, it is evident that the continuous denial of the right to full political participation is linked with social restiveness across the country. This is despite the fact that Nigeria has ratified

[263] S Selvam 'Capabilities approach to youth rights in East Africa' (2008) 12 *International Journal of Human Rights* 213.
[264] #NotTooYoungToRun: UN launches global campaign,
[264] #NotTooYoungToRun: UN launches global campaign, http://venturesafrica.com/nottooyoungtorun/ (accessed 24 April 2018).
[265] E Ojeifo 'Young people, social activism and democratic governance' *The Guardian* 25 August 2016 17.

major international human rights instruments that confer general human rights on the youths, and particularly the African Youth Charter which it ratified on 21 April 2009.

This demonstrates that the Nigerian state would continue to be in breach of its obligations without taking targeted steps to recognise, respect and protect the right to full and effective participation of its youths. This is highly sacrosanct and necessary since it has been argued above that the right to political participation is connected with other rights and its denial will negatively affects the youths and the development of the society.[266]

2.6 Original contributions of this thesis

The original contribution of this thesis is principally reinforced by the responses of the various views gotten from informal discussions held with several people in this course of this research. Those interacted with include Youths, Law makers, Members of the Civil Society, Community leaders, Policy makers and other persons working on the field of youth rights.

Most of them agreed that youth are not categorised as children in traditional Africa Societies, youths are discriminated against in modern day Africa, there should be equal rights for all adults in exercising their political rights including youth. Also, 18 is the most appropriate start-up age for youth in Africa, and fixing different rather than same age for various elective positions does hamper youth right to political participation in Africa.

Therefore, based on information from my informal discussions with several stakeholders working on issues of youths, the thesis proposes the "adultqualisation" approach/model to political participation in Africa. The word 'adultqualisation' is a combination of 'adult' and 'equality'. This model argues that all adults (everyone who has attained the age of majority) in a society must enjoy equal right to political participation; this will serve as impetus for groups which have hitherto been marginalised or discriminated against like the youths. It equally presupposes the clearing off of all legal barriers or impediments that prevent all adults from having equal right to political

[266] A Atta-Asamoah *Head-to-head: Is Africa's young population a risk or an asset?* (2014) 1.

participation and equal access to political offices. This model is the hallmark of the right to political participation as a human right.

In addition to the above, while various authors have interrogated the political participation and its rights from various perspectives, including some African scholars, they have nevertheless omitted one of the main sources of African philosophies or laws; which is African proverbs and wise sayings. They failed to recognise the fact that pre-colonial societies generally, and history of Africa in particular, can be researched through proverbs.

Thus, the second contribution to the existing body knowledge this thesis makes is the fact that in addressing African challenges, such as the issue of youth exclusion or marginalisation from the decision-making process, an authentic tool of enquiry could be the proverbs or wise sayings of the African people. This argument is based on the fact that many scholars before now have drawn their arguments from historical or legal texts which often were either written by foreigners or are grossly biased, distorted and manipulated by the authors. These faulty enquiries have led to laws not reflecting the true wishes, aspirations or philosophies of the African people.

Therefore, it is near impossible to really be able to capture the authentic traditions and practices from only documented works, especially when one considers the stark reality that oral tradition is fundamental to the African people. Just as human rights cannot exist by law alone, an investigation into African people practices towards proffering solutions cannot be by documented works only but must be supplemented and fortified with oral traditions in the form of proverbs and wise sayings of the African people. Therefore, legal and other discipline scholars must look beyond the written works in their quest to resolve the many challenges bedeviling the African people.

The golden place of proverbs and wise saying among the African people was captured by Achebe when he says that '[a]mong the Igbo the art of conversation is regarded very highly, and proverbs are the palm-oil with which words are eaten'[267] Proverbs are not only the palm-oil with which words are eaten in Africa, but the lubricants necessary for the seamless rolling of the wheels of

[267] See '70 powerful Chinua Achebe quotes' https://quotes.thefamouspeople.com/chinua-achebe-1044.php (accessed 28 May 2018), a quote from C Achebe *Things fall apart* (1958).

African societies. They are the cornerstones of the values that are most valuable to the African people.

This thesis postulates that through the various proverbs and wise sayings of the African people, it has been discovered that the problem of youth exclusion from political participation largely did not exist in African societies but is a creation born out selfishness and greed for political power by the elites in post-colonial African states. The absence of peace in many African states today is not unconnected with the neglect, exclusion and frustration of many African youths unlike in the traditional African societies.

It was noted earlier on that an author has rightly argued in relation to African cultures and values, that any argument that denies the existence of a place for culture in human rights discourse is manifestly wrong.[268] It is beyond controversy and contestation that proverbs are one of the eternal verities of life for the African people and their cultures. Proverbs are the lowest common denominators of the culture of the African people because they capture and address every situation in a human being's life. When people are confused or have forgotten the pathway to solutions in Africa, they turn to these ageless proverbs and wise sayings for guidance, direction and light.

Therefore, African proverbs should be the cornerstone of human rights discourses in Africa; they should not and cannot be ignored in any fruitful writing on the human rights of the African people. They are keys to unlocking the histories and mysteries of the past, the solutions of the present and the salvation of the future of the African people.

The necessity for scholars to view human dignity and the right to participate in society as Siemen twins in the African idea of human rights is the third contribution of this thesis. In this regard, respect for human dignity serves as the cornerstone around which the entire African idea of human rights is built. It is this recognition of inherent dignity in all people that makes it unthinkable for Africans to exclude the youth from participating in decisions that affect their lives in African societies.

[268] See B Gawanas 'The African Union concepts and implementation mechanisms relating to human rights' in A Bösl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 141.

In Africa, dignity is equal to participation, and participation is equal to dignity. Therefore, from an African perspective, to deny the youth their political rights in whatever form, is an assault on their dignity. Many scholars have missed this point by trying to separate these two seemingly inseparable rights.

While participation may be markedly different from dignity in other parts of the world, as seen from the above analysis, a person's right to political participation cannot be violated without invariably violating their inherent right to dignity in Africa. By necessary implication, youth exclusion in Africa from exercising their right to full and effective political participation is a violent assault and violation of their rights to dignity.

The fourth contribution of this work is that, it is the first study to critically examine all the provisions of the African Youth Charter and the first extensive work of the right of the youths to political participation in Africa. While there are several works that have focused on political participation of other groups in Africa, this study is the first that specifically focus on the youths in Africa.

This work equally proposes a new African Youth Charter (AYC). This contribution is very important as it is aimed at correcting the avoidable mistakes existing in the current AYC, and proposing a new one that would ensure the full protection of the rights of the African youths and their development. The current AYC lacks the capacity to deliver the bright future it pretends to promise the African youths. It is a charter that promises much but delivers little in its current form.

Last but the not the least, this thesis for the first time proposes the appropriate legal definition for youths in Africa. This legal definition is borne out of the feedback gotten from the field on the youths and their right to political participation in Africa. Thus, the legal definition for the youths for the purpose of policies, laws and programme for youths in Africa as proposed by this thesis should be 18 to 39 years. The start-up age 18 is chosen because most Africans consider [269]18 years

[269] See the relevant provisions of most African constitutions.

to be the age of adulthood or majority in Africa. While age 39 is picked as the cut-off age for youth because it is believed that advanced adult life begins at that age.

2.7 Conclusion

In concluding this chapter, it would be pertinent to state that the right to political participation serves as the *terra firma* upon which various fundamental rights are built, especially when human rights are considered as the 'entitlements that individuals have, or should have, *qua* humans'.[270] It is therefore safe to argue that the recognition and the protection of the right to political participation is an acknowledgment of the youths being members of the human family, and a denial of such a right impliedly treats them as incomplete or lesser adults in the society.

Similarly, from the chapter, it may also be concluded that while there is no uniformity in the African traditional system, the majority of the African traditional societies favour a practice that presupposes inclusivity of all, including youths, in their governance structures rather than their exclusion. This is based on several African proverbs and concepts that point to the recognition of the equal worth of all adults in society.

It therefore behooves on African states to look backwards in order for us to move forward on the issue of the realisation of full and effective political participation for the African youths. This is of utmost importance when one considers the fact that the African population is the youngest in the whole world, the youth being the main drivers of its economies.[271]

Furthermore, for African leaders to see political participation as not a mere political act but a fundamental right under international human rights law which serves as a gateway to the

[270] N Jayal 'Vote and democracy: The right to' in Smith & Van den Anker (n 218 above) 363.
[271] M Tagoe & Y Ohenoba-Sakyi 'Harnessing the power of the youth through national youth policies in Ghana: Challenges to the notion of empowerment' (2015) 3 *Contemporary Journal of African Studies* 70.

realisation of other human rights. Also, based on its status as a fundamental human right under international human rights architectures, states are expected to act in relation to the right within their unimpeachable obligations to respect, protect, fulfill and promote it. In the minimalist list of human rights, the right to political participation cannot be omitted.[272]

The next chapter is connected to this chapter because it recasts how the issue of youth marginalisation has been addressed at the global level and other regions other than the African regions.

[272] F Peter 'The human right to political participation' (2013) 7 *Journal of Ethics and Social Philosophy* 1.

Chapter Three

The human right to political participation under international law

3 Introduction

In the previous chapter the various body of literature and theories on the right to political participation were considered.

The issues discussed in this chapter cover the legal encapsulations of the human right to political participation and youth rights; that is, a consideration of the sources of the rights to political participation under international law at the global level.[1] This analysis is crucial for various reasons. First and foremost, it would serve as a screen for the exposition of how the human right to political participation has been crafted, interpreted and expounded through the lens of global human rights instruments. Second, it would display the character and skeletal structure of the right to political participation as penciled down at both the global level.

The chapter begins with the analysis of the right to political participation at the global plane, which largely focuses on the United Nations (UN) human rights system. The second part of the chapter underscores the regional systems on the rights to political participation. Three systems are analysed, namely; the European, the Inter-American and the African systems. The efforts of the global human rights body (UN) regarding the recognition of youths' rights are discussed under the third part of the chapter, while the fourth segment of the chapter focuses on the recognition of youths' rights at the regional level. The African experience under the African charter is investigated in relation to the place of youth rights to political participation under the fifth part. The preliminary conclusion to the chapter forms the sixth part.

[1] A d'Amato 'human rights as part of customary international law: A plea for change of paradigms' (1995) 25 *Georgia Journal of International and Comparative Law*, where he posits that '[I] submit that the only logically satisfying and empirically validating position to take on the source of human rights norms is that they derive from provisions in treaties.'

3.1 Right to political participation at the global level

At the beginning of the codification of human rights at the global level, the right to political participation was never absent among the human rights that were considered vital and essential to the human spirit. Its listing under the Universal Declaration on Human Rights (Universal Declaration)[2] as one of the rights that states are expected to secure is reflective of the fact that it is a fundamental human right.[3] It is a right to be respected and protected by states, not by only providing for it under a constitution, but coupled with positive actions on the their parts towards its enjoyment.[4] The right to political participation ought to secure a place even in the minimalist list of human rights.[5] Calabresi and Rickery put it aptly when they declare that 'political rights exist at the apex of a rights hierarchy'[6]

The provision of the right to political participation at the global level is contained mainly in the Universal Declaration and the International Covenant on Civil and Political Rights (ICCPR).[7] Therefore, for the purpose of analysing the content of the right to political participation at the global level, these two instruments are used as a guide.

3.1.1 The right to political participation under the Universal Declaration

The Charter of the United Nations of 26 June 1945 recognises the existence and the protection of human rights and its presence like a golden thread, runs through its nooks and crannies.[8] For instance, it states in article 1(3) as follows; '[t]o achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion'[9] Similarly, various articles of the Charter expressly touch on

[2] Adopted by General Assembly Resolution 217 A(III) of 10 December 1948.
[3] B Dessaleng 'The right of minorities to political participation under the Ethiopian electoral system' (2013) 7 *Mizan Law Review* 67
[4] M Wambali 'Political participation in Tanzania' (2009) 9 *African Human Rights Law Journal* 205.
[5] F Peter 'The human right to political participation' (2013) 7 *Journal of Ethics and Sociological Philosophy* 1.
[6] S Calabresi & J Rickery 'Originalism and sex discrimination' (2011) 1 *Texas Law Review* 15.
[7] Adopted by General Assembly Resolution 2200A(XXI) on 16 December 1966.
[8] J Humphrey 'The International Bill of Rights: Scope and implementation' (1976) 17 *William and Mary Law Review* 527.
[9]United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, http://www.refworld.org/docid/3ae6b3930.html (accessed 3 May 2018).

human rights.[10] Notwithstanding the reference to human rights in the UN Charter, there was a push for the codification of a bill of rights as was done in the American Constitution.[11] It is therefore not surprising that it has been said that the birth of international human rights was heralded by the UN Charter.[12]

After going back and forth by the UN, on 10 December 1948 the first part of the Bill of Rights known as the Universal Declaration was adopted by the UN General Assembly.[13] The Universal Declaration is a document that provides for the list of rights and freedoms that was agreed upon by the world at the time of its adoption.[14] The broad list of rights and freedoms goes beyond those that are traditionally guaranteed in national constitutions regarding economic, social and cultural rights.[15] Despite being the foundation stone for many human rights treaties and instruments, the Declaration was adopted as a non-binding resolution.[16] That is, it places no obligation on states as per its provisions, what is referred to as soft law in international law. The argument that the Universal Declaration places no obligation on state parties was vehemently countered by Sohn when he states as follows;[17]

> Today the Declaration not only constitutes an authoritative interpretation of the Charter obligations but also a binding instrument in its own right, representing the consensus of the international community on the human rights which each of its members must respect, promote and observe.

It may be observed from the above statement that while the Universal Declaration was truly adopted as a non-binding international human rights instrument, the pivotal role it has played as a fountain from which most, if not all, human rights instruments draw their legal current, certainly places it on the same pedestal as other binding international treaties.[18] It has a standard of worldwide application according to its design and over the years has enjoys a universal appeal in

[10] See arts 13, 62 & 68 of the UN Charter.
[11] Humphrey (n 8 above) 527.
[12] L Henkin 'Human rights and state sovereignty' (1995) 25 *Georgia Journal of International and Comparative Law* 34.
[13] Humphrey (n 8 above) 528.
[14] L Sohn 'The human rights law of the Charter' (1977) 12 *Texas International Law Journal* 132.
[15] As above.
[16] T Cheng 'The Universal Declaration of Human Rights at sixty: Is it still right for the United States' (2008) 41 *Cornell International Law Journal* 252.
[17] Sohn (n 14 above 133.
[18] G Gori 'Compliance' in D Shelton (ed) The Oxford handbook of international human rights law (2013) 894.

spite of the fact that as at the time of its adoption, only three African countries[19] and 11 Asian countries[20] were involved in the negotiation process.[21]

The Universal Declaration has been accused of failing to set a common standard for human rights achievement of all nations[22] and for being an imperfect document because of its failure to guarantee the fundamental rights of citizens to petition either their national authorities or the UN.[23] By and large, the Universal Declaration remains the prime source of international human rights law. It is one of the UN's greatest achievements as '[i]t provides the framework for the international recognition of those human rights and fundamental freedoms that were left undefined by the Charter'[24] These rights and freedoms provided for by the Universal Declaration fortunately include the right to political participation. The right to political participation or participation in government is provided for in article 21.

The Universal Declaration without any conjecture declares that taking part in the government of one's country is the right of everyone. This right could be expressed either directly or through representatives that are freely chosen.[25] Although the Universal Declaration uses the word 'everyone', which may be argued to include children, this claim may not be sustainable because children and convicts have always been those excluded from exercising to the right.[26] Also, only adult citizens are universally assumed as politically competent to exercise such a right.[27] Beyond the entitlement of all adult citizens to participate in the political affairs of their countries as contemplated by the Universal Declaration, the principle of 'one elector, one vote' is incontrovertibly embedded in it.[28] Furthermore, 'in his country', as contained in article 21,

[19] The African countries are Egypt, Ethiopia and Liberia.
[20] Afghanistan, Burma, China, India, Iran, Iraq, Lebanon, Pakistan, The Philippines, Syria and Thailand.
[21] C Tomuschat *Human rights: Between idealism and realism* (2014) 51. There were only 56 countries in the world as at the time of its adoption as opposed to 193 countries in the world at present.
[22] Cheng (n 16 above) 255.
[23] Humphrey (n 8 above) 228.
[24] Humphrey (n 8 above) 529.
[25] See art 21(1) of the Universal Declaration.
[26] S Wheatley 'Non-discrimination and equality in the right to political for minorities' (2002) 1 *Journal of Ethnopolitics and Minority Issues in Europe* 6.
[27] N Jayal 'Vote and democracy, the right to' in R Smith & C van den Anker (eds) *The essentials of human rights* (2005) 364.
[28] J Rawls *A theory of justice*' (1971) 221.

fundamentally limits and is suggestive of the rights being an entitlement of people of a particular political place, that is citizens rather than non-citizens.[29]

Another point which is pivotal to the right to take part in one's government as provided by the Universal Declaration is the way in which this right can be exercised, which is either directly or indirectly. The word 'or' introduces another possibility.[30] It implicitly means that a person has the option to select one out of the two available. Relating it to the right to take part as provided for in the Universal Declaration would mean that those entitled to exercise this right have at their disposal two options from which to pick.

Certainly, the conjunction 'or' used in the Universal Declaration does not presuppose an imposition on those entitled to the right by the state concerned but rather a choice left to the individual to determine how he or she would like to exercise same. That is why any attempt of a state to impose on adult citizens how they should participate would be in contradistinction to the spirit and letter of the Universal Declaration. The act of choosing leaders or the act of taking part in the government resides in the bosom of the adult citizen and it is not for the state to interfere with it indiscriminately. States are barred from discriminating between adult citizens in exercising this right.[31]

The other part of the general right to participation in government as provided in article 21 of the Universal Declaration is the right to equal access to public service given to everyone in his or her country.[32] However, this aspect is not of much relevance to this thesis, as it points to the centrality of the principle of equality to the right in general. Equality of access of everyone to public service imposes a negative obligation on states not to obstruct the right of way to public service to every eligible member of society. It may be argued that such a public service may equally include civil service, appointed and elective public officers in a country. Therefore, an unequal right to access the public service structure in any country violates the provisions of the Universal Declaration.

---

[29] See A Rosas 'Article 21' in G Alfredsson & A Eide (eds) *The Universal Declaration of Human Rights: A common standard of achievement* (1999) 431.
[30] L Hey & S Holloway (eds) *Oxford Advanced Learner's Dictionary of current English* (2015) 1051.
[31] Wheatley (n 26 above) 16.
[32] Art 21(2) Universal Declaration.

The last leg of the right to participation in government under the Universal Declaration focuses on the source of the governmental authority of a country. This authority resides with the people and the transfer of this authority to the government is to be done through genuine and periodic elections based on the principle of universal and equal suffrage which is exercised through secret ballot or its equivalent.[33]

The logical deductions from the above provision are to the effect that while the will of the people remains the basis of the authority of any government, securing the will of the people can only be done through a methodological process. These processes involve the recognition of all eligible citizens' rights to universal and equal suffrage; the existence of genuine and periodic elections; and, lastly, that such right is expressed through secret ballot or its equivalent. It is the position of the thesis that these requirements are cumulative rather than disjunctive for it to be said to be an adherence to the provision.

The Universal Declaration, with the above provision on the right to political participation or participation in government, lacks the force of a treaty because, as its name implies, it was meant to be a declaration and not a binding treaty. We therefore need to turn to binding treaties to be able to drive home our point on the human right to political participation and states' obligations that flow from such treaties.

3.1.2 Right to political participation under the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) could be said to give an obligatory garb to the Universal Declaration because unlike the Declaration, ICCPR is a binding treaty on state parties that are signatories thereto.[34] Its acceptability is an evidence from the fact

[33] Art 21(3) Universal Declaration.
[34] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, Vol 999 171, http://www.refworld.org/docid/3ae6b3aa0.html (accessed 7 May 2018).

that it has been widely ratified.[35] As at 7 May 2018, ICCPR has 170 state parties and 70 signatories.[36] Out of the 27 states that are yet to be party to ICCPR, only one of them is from Africa[37] and six of these states have signed but are yet to ratify it.[38] It is this near-universal acceptability of the ICCPR that has caused it to be regarded as arguably the most pivotal human rights treaty in the world. To a large extent, ICCPR covers all the fields of human rights issues unlike other instruments that are subject-specific, group-based or regional-based.[39]

ICCPR, unlike the International Covenant on Economic, Social and Cultural Rights (ICESCR),[40] has been the generator of various jurisprudence and has been transposed into many national constitutions across the world. It is crafted to protect civil and political rights, divided into five parts[41] and is seen as 'the most comprehensive and well-established UN treaty on civil and political rights; it has yielded the lion's share of UN jurisprudence in this area'.[42] Among the list of substantive human rights contained in the ICCPR is the right to participation in government. The right to participation in government or the right to political participation is guaranteed in article 25 of the ICCPR.

Article 25 of the ICCPR is more expansive, elaborate and has a palpably better explanation on the contents and the contours of the right to participation in government than the Universal Declaration. For example, it contains a wide proviso before enumerating activities that fall under the proviso. It provides thus: 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions.' The three activities encapsulating the right guaranteed in article 25 are:

---

[35] L Henkin 'Human rights and state sovereignty' (1995) 25 *Georgia Journal of International and Comparative Law* 36.
[36] See the status of ratification of ICCPR, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en (accessed 7 May 2018). Although several states have ratified ICCPR with multiple reservations, a good example of such a state is the United States of America.
[37] Republic of South Sudan.
[38] See ICCPR ratification status, https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights (accessed 7 May 2018).
[39] S Joseph & M Castan *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (2013) 3.
[40] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, Vol 993 3, http://www.refworld.org/docid/3ae6b36c0.html (accessed 7 May 2018).
[41] Joseph & Castan (n 39 above) 4.
[42] As above 8.

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) to vote and to be elected at genuine periodic elections this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) to have access, on general terms of equality, to public service in the country.

The general inferences that may be drawn from the contents of article 25 of ICCPR are that the right is not guaranteed to everybody but only citizens; that the right forbids any kind of distinction in terms of article 2 of ICCPR or unreasonable restrictions. It also confers on citizens the right to directly or indirectly through their chosen representative participate in the conduct of public affairs. Similarly, under this right, eligible citizens are allowed to vote and be voted for in periodic elections which are not only genuine but conducted on the basis of universal and equal suffrage via secret ballot so as to ensure that the expression of the will of the people is free. Last but not least, the right demands access to public service by citizens based on the principle of equality. Basically, article 25 of the ICCPR consists of two elements, namely, the right to vote or to stand for election, and the right to participate in the conduct of public affairs.[43]

Rosas, who wrote on the rights to political participation as provided for under both the Universal Declaration and the ICCPR, argues that article 25 of the ICCPR expressly limits political rights to only citizens, unlike the Universal Declaration, which only limits the right by using the words 'in his country'.[44] During the drafting stages, attention was paid principally to national elections, other than elections such as regional or local elections.[45]

[43] K Czapanskly & R Manjoo 'Right to participation in public government' (2008) 19 *Duke Journal of Comparative and International Law* 7.
[44] Rosas (n 29 above) 438.
[45] Rosas (n 29 above) 439.

In a nutshell, the right to participation in government is one right with several branches. An in-depth analysis will now be conducted in terms of the various branches of the right, but more attention will be given to the right to *vote and to be elected*,[46] which are vital to this thesis.

Right to take part in the conduct of public affairs

The term 'public affairs' as conceived by the ICCPR in article 25(a), is a broad concept that involves the exercise of political power, which includes legislative, executive and administrative powers.[47] The entire purview of public administration is covered by the concept and this extends to both the formulation and implementation of public policies at the global, regional and national levels.[48] Constitutions or enabling laws of state parties in terms of article 25 are expected to stipulate the allocation of the power and the means through which citizens are exercising this right to participate in the conduct of public affairs. The means by which this right has been secured by a state party must be capable of being pointed at in a law. To do otherwise obviously runs contrary to article 25(a) of the ICCPR.

The various paths which direct participation in the conduct of public affairs may take include instances where citizens as members of legislative bodies or executive offices exercise either legislative or executive powers. It also includes when citizens participate in referendums or electoral processes for the purpose of deciding on any public issue or when they participate in a change to their constitution. In a similar vein, direct participation in public affairs by citizens may take the form of citizens' involvement in popular assemblies which have the authority to make decisions on issues or affairs of their community, and such assemblies are established to represent the citizens in consultation with the government. [49]

[46] My emphasis.
[47] See UN Human Rights Committee (HRC), CCPR General Comment 25: Article 25 (Participation in Public Affairs and the Right to Vote), 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 para 5, http://www.refworld.org/docid/453883fc22.html (accessed 7 May 2018) (General Comment 25).
[48] General Comment 25 para 5.
[49] See General Comment 25 para 6.

However, unreasonable restrictions on or distinction among citizens as per article 2(1) of the ICCPR is not allowed once a citizen's right to participation in government has been established.[50] It suffices to say that state parties are barred from further eliminating some classes of citizens from enjoying the right based on arbitrary, frivolous or unreasonable grounds that are not permitted by the ICCPR. Therefore, excluding the youths who are adults in their own right (those of 18 years and above) would be violative of article 25(a) of the ICCPR.

On the other hand, when citizens participate in public affairs through their chosen representatives, such representatives should indeed exercise governmental powers and they should be accountable to the citizens. The process of choosing these representatives is done through voting in elections as contained in article 25(b) and the chosen representative must only exercise powers as permitted by their constitutional provisions.[51]

Another positive element of citizens' participation in public affairs is the influence exerted through debate and dialogue with their various representatives or their ability to organize themselves. However, the guarantee of the right to freedom of expression, assembly and association are keys to giving a breath to the right of participation by citizens.[52]

Article 25(a) of the ICCPR shows that the right to take part in the government of one's country, however, includes elections but is not limited to it.[53] It suggests that state parties must not stop at merely fulfilling the election part, but must go a step further by implementing the full content of the right. Similarly, while article 25(a) of the ICCPR is not suggestive of any form of political ideology, it nevertheless stresses the primacy of accountability of state governments to their electors, and this has been argued to envisage a kind of democratic government.[54] It further manifestly suggests that totalitarian governments that give no room for ordinary citizens' political

[50] As above.
[51] General Comment 25 para 7.
[52] General Comment 25 para 8.
[53] M Couzens 'Exploring Public Participation as a vehicle for child participation in government: A view from South Africa' (2012) 20 *International Journal of Children's Rights* 682.
[54] S Joseph 'Right to political participation' in D Harris & S Joseph (eds) *The International Covenant on Civil and Political Rights and United Kingdom law (*1995) 537.

participation but wield all political powers by themselves would successfully failed to have met the conditions of article 25(a) of the ICCPR.[55]

Right to vote and to be elected at genuine periodic elections

Article 25(b) of the ICCPR gives every citizen the right to vote and to stand as candidate in an election. The use of the word 'and', which is a conjunction in the English language. It presupposes the right to be conjunctive rather than disjunctive, in that guaranteeing either of them and denying the other to an adult citizen in most cases would be unreasonable, unjustifiable and arbitrary. Such an ineluctable conclusion would be reached when one takes cognizant of the fact that the two groups of persons that are generally not entitled to this right are children and convicts.[56]

However, in recent times there have been calls for the need to allow children the right to vote by lowering the general voting age from 18 to as low as 12 years. This is based on the fact that there is empirical evidence, principally from psychology, that shows that the thought process of children reaches a sophisticated point between the ages of 11 and 12.[57]

Although the article of the ICCPR does not explicitly state that the human right to vote belongs to only adult citizens, it has been argued that over the years only adults are assumed to be politically competent and it is implicitly and mandatorily available only to adult citizens universally.[58] Significantly, the whole adult population, including those youths that have reached the age of majority, are possessors and beneficiaries of the right to the exclusion of aliens and convicts.[59]

Therefore, a rights-based approach to securing this right ought to be an outright refusal by states to fix separate criteria for the enjoyment of either of the rights. The right to vote ought to include the right to stand for election. Giving state parties the latitude to vary this over the years has caused a grave injustice to minorities or those at the margin of society. An example of this proposition is

[55] As above.
[56] Wheatley (n 26 above) 6.
[57] A Daly 'Free and fair elections for some? The potential for voting rights for under-18s' in D Keane & Y McDermott (eds) *The challenge of human rights: Past, present and future* (2012) 277.
[58] Jayal (n 27 above) 364.
[59] M Steed 'Participation through Western democratic institutions' in G Parry (ed) *Participation in politics* (1972) 80.

demonstrated in the Constitution of Moldova which provides that '[t]he right to be elected is guaranteed to Moldovan citizens who enjoy the right to vote, within the conditions of the law'.[60] That is to say, all adult citizens enjoy both rights on same footing with others without any illegitimate restrictions.

The right to vote

Paragraph 9 of ICCPR General Comment 25 on article 25 (Participation in public affairs and the right to vote) states thus:[61]

Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

It may be deduced from the above extracts that the right to vote or to stand for elections as a candidate is another way in which citizens take part in the public affairs of his or her country. It is an essential tool for ensuring the accountability of those who are vested with either legislative or executive powers. It could be correct to say that where citizens or a group of citizens (for example the youths) are denied their right to participate either as a voter or candidate in an election, real accountability may be absent. For example, it is doubtful that, where some groups of persons are illegitimately favoured by the exclusion of others, they would really see the need to be accountable.

The General Comment requires elections not to be unreasonably lengthy and that such rights and obligations should be guaranteed by law. The necessity for rights and obligations to be clearly

[60]See the 1994 Constitution of the Republic of Moldova, art 38 (3) http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf (accessed 14 May 2018).
[61] General Comment 25 (n 47 above) para 9.

stipulated by law is so as to forestall a situation where elected officials are unwilling to relinquish power after the expiration of their legitimate term in office.

State parties, when guaranteeing the right to vote to their citizens, beyond establishing same in law, are allowed to only subject the right to reasonable restrictions such as stipulating the minimum age limit for the right to vote. While setting a minimum age limit for the right to vote is considered reasonable under article 25(b) of the ICCPR, other criteria, such as disability, literacy, property or party membership, would be unreasonable should these constitute a bar to the exercising of citizens' right to vote.[62]

Besides the negative duties of states not to interfere with the right of their citizens to vote, they are required to make provision to ensure that eligible citizens are able to vote.[63] They are to do this this by enacting and enforcing penal laws on unwarranted interference, intimidation or coercion of their citizens when exercising the rights, and also by educating voters on the elections.[64] States would be in breach of their obligation under article 25(b) when they refuse or are unwilling to protect voters from preventable attacks while they are attempting to exercise their rights to vote.

It has been said that the ICCPR and the Universal Declaration allow state parties to an extent to specifically limit the political rights. In the case of the right to vote, they can limit the right by excluding some persons below a certain age (in most cases children) and those who are mentally ill.[65] There is an ongoing debate by advocates of the rights of persons with disabilities and are challenging the legitimacy of state parties to exclude persons with mental or other disabilities.

The voting right is a right that is valuable to every eligible citizen because it has been said to be a sacrosanct citizenship beacon in a democratic state.[66] The granting of the right to vote may be one of the singular distinguishing factors between those who are considered citizens and aliens in a

[62] General Comment 25 para 10.
[63] See the HRC Concluding Observation on Colombia 2004, where the HRC raises concerns over the inability of internally-displaced persons to exercise their various civil and political rights, which includes their right to vote; (2004) UN Doc CCPR/CO/80/COL para 1.
[64] General Comment 25 para 11.
[65] Rosas (n 29 above) 442.
[66] Daly (n 57 above) 268.

particular territory. Unlike other rights in the ICCPR, the right to vote, which is one of the rights under the article, is guaranteed only to citizens.[67] As correctly argued by Daly, '[e]ven where its factual value is arguable, it is a symbolic confirmation of one's status as citizen'.[68] While Daly's argument might be right from a very broad perspective, it must be regarded with caution as the denial of the right to vote may not imply the denial of citizenship, especially when one considers the fact that article 25 allows a state to reasonably restrict the right to vote.

Therefore, restricting the right to vote only to those within the majority of citizens (excluding children) or to those who are not in conflict with the law (excluding convicted persons) may in no way mean a denial of citizenship, restrictively. This line of argument is strengthened by the provision of article 4 of the Human Rights Committee (HRC) General Comment 25, which declares that the right to vote belongs to every adult citizen.

In addition to the above, the right to vote, just as most political rights, nonetheless is not an absolute right. It can be limited by a state, but such limitation must be neither discriminatory nor unreasonable.[69] Discrimination may arise where those who belong to the same group are denied equal benefits to which others in that group are entitled. It also implies a situation in which one group (such as youths) is denied the benefits of other entitlements that other groups (such as adults) enjoy. On the other hand, unreasonableness in the denial of the right to vote may arise if the distinction is based on criteria that are illogical, baseless, and unsupportive of empirical facts.

Arguably, denying children the right to vote based on the fact that they are considered minors in society with their capabilities undergoing maturation may not be discriminatory or unreasonable. The reverse would be the case for youths (those 18 years old and above). Because in most countries, the age of 18 is the age of majority or maturation, and there should be no distinction in rights and benefits that accrue to all persons falling within that age group.[70]

[67] See Joseph & Castan (n 39 above) 728.
[68] Daly (n 57 above) 268.
[69] *Yevdokimov and Rezano v Russia* (1410/2005).
[70] Daly (n 57 above) 278.

The right to vote, just as like other political rights, is incapable of its full expression without the guarantee of some other rights that are inextricably linked to it.[71] Among these interlinked rights are the rights to freedom of expression, assembly and association, which must be fully protected if states are to secure the rights of citizens to vote.[72] States are equally expected to take targeted steps towards removing impediments to the enjoyment of the right; they must be able to have an electoral system that is inclusive and accommodative of all, especially the illiterate, in their states.[73]

The above simply means that any state where these connecting rights are not guaranteed or where the electoral system is designed in a way too complex for a segment of the citizens of that state, would impliedly and expressly be violating the right to vote. This argument underscores the position of article 25 of the ICCPR, which not only obligates states to provide the right to vote, but must equally give their citizens the opportunity to enjoy such a right. The provision of a right without the opportunity to enjoy it would be synonymous to a pyrrhic victory to the beneficiaries of the right.[74]

Furthermore, the right to vote must equally be exercised on the basis of universal and equal suffrage. Equality of suffrage simply means the equality of vote, that is 'the vote of one elector should be equal to the vote of another.'[75] State parties definitely would be in breach of their obligation under article 25(b) should they operate an electoral system that places a higher premium on one vote than another. Also, the requirement of the equality of votes as envisaged by the General Comment does not necessarily mean that votes should have equal 'effect'; 'this would be an impossible requirement in constituency-based electoral systems where the effect of votes in marginal seats is always greater than the effect of votes in 'safe' seat.'[76] The expectation of the General Comment regarding the equality of votes is fulfilled by state parties where each vote carries an equal numerical value, albeit with a varied impact.[77]

[71] See General Comment 25 para 12.
[72] Some of these rights are freedom of assembly, association and expression as indicated in General Comment 25.
[73] General Comments 25 para 12.
[74] See General Comment 25 para 11.
[75] See General Comment 25 para 21.
[76] Joseph & Castan (n 39 above) 744.
[77] As above.

The right to stand in an election

Nowak has argued that while states are allowed less flexibility in relation to the right to vote, they are nevertheless given far-reaching magnitudes of discretion as regards the right to stand as a candidate or to be elected into political office, in that the age of voting capability is often lower than the age of eligibility as a candidate in an election.[78] While this assertion may be correct by way of general practice in the twentieth century and still relatively practiced in the twenty-first century, this does not make it legally right or morally justified.

The wrongfulness of such a practice has led to constitutional or legal changes in several countries that used to operate in that way.[79] Many countries are beginning to see the unfairness, wickedness and discrimination embedded in the practice of excluding the youths from exercising their right of eligibility in spite of the fact that they are eligible and full-fledged citizens in their own right. They have gone so far as to change these laws that have no place in the circumference of the rights-based approach to political participation.

Wheatley has added his voice to the unacceptability of setting different criteria for the age of voting capability and eligibility by states when he asserts that '[n]o state may discriminate as to the right of political participation between citizens'.[80] Therefore, it may be argued that while states are at liberty to fix the age of majority or capacity in terms of political maturity of their citizens, a further distinction as to the extent to which some mature citizens can enjoy these rights, would not only violate article 25(b), but would also be a violation of their right to freedom from discrimination.

In similar vein, while article 25 allows for the possibility of limiting any right, such restriction must be reasonable. It has been argued that sweeping exclusions more often than not would constitute a violation.[81] That is, it would be almost impossible to prove how state parties arrive at the criteria which they use in excluding say, for example, youths from the ages of 18 to 35 years

[78] Joseph (n 54 above) 550.
[79] Two good examples of such countries are the United Kingdom and the Republic of Kenya.
[80] Wheatley (n 26 above) 16.
[81] Rosas (n 29 above) 442.

from the right to stand in an election or be eligible for appointment in any political office. Such an arbitrary restriction would be grossly unreasonable.

Although HRC General Comment 25 states that 'it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote', it nevertheless requires such limitations to be objective and reasonable.[82] It may be convincingly argued that whenever the word "*may*"[83] is used in texts, it connotes a possibility rather than finality, as opposed to the word "*shall*",[84] which is suggestive of compulsion. Therefore, for state parties to exclude the youths from the right to stand for election as guaranteed under article 25 of the ICCPR on the basis of their age, they must show the objective and reasonable proofs that warrant such denial of this fundamental right.

However, as indicated in pervious chapters, young people, especially those under the age of 30, are marginalized from the political arena and there are no fundamental and objective bases for their exclusion or denial.[85] Also, beside the restriction of the right to stand for election on the basis of age, another ground is mental incapacity. Advocates for persons with disabilities (PWDs) are equally querying the rightness of disenfranchising PWDs on the basis of their disabilities; in the same way as this thesis is faulting discrimination against the youths on the basis of their age.[86] Where the state party concerned in the act of discrimination can neither justify nor explain reasons for the exclusion of eligible adult citizens such as the youths, the HRC would declare such exclusion to be in breach of article 25, as was held in case of *Bwalya v Zambia.*[87]

Therefore, the thesis adopts the view that the right to stand for elections flows from the right to vote and both rights should be enjoyed based on the same criteria. Putting different criteria for their enjoyment would run contrary to several rights in ICCPR, including the right to vote and be

[82] General Comment 25, para 4.
[83] See A Hornby *Oxford advanced learner's dictionary of current English* (2015) 933, where 'may' is defined as a word used to say that something is possible.
[84] Hornby (n 83 above) 1376.
[85] Daly (n 57 above) 287.
[86] J Grace & E Money 'Political participation rights in particular the right to vote' (2010) 14 S*tudies in Transitional Legal Policy* 509, where they argue that the principle of universal and equal suffrage that underpins the right to vote and to be voted abhors discriminating against PWDs due to their disabilities (this obviously includes PWDs with mental disabilities).
[87] 318/88 para 6.6.

voted for as guaranteed in article 25(b). This argument is seemingly faultless when one considers the fact that article 25 prohibits unreasonable restrictions on the right in relation to prohibitive grounds under article 2 of ICCPR.

HRC General Comment 25 explicitly states that the wisdom in implementing the right of eligible adults to stand for elective positions serves to allow for the availability of a free choice of candidates to voters. It states further that '[a]ny restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria'.[88] It seems that the default position of the article is a prohibition on restricting the right, but in event that states attempt to limit same, they must show that it is justified by displaying criteria that are objective and reasonable. In similar vein, the right to stand for election disallows states from creating artificial barriers to its enjoyment, as;

[n]o 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 elective office.[89]

The above quotation from HRC General Comment 25 reflects the stern position of the HRC on the need for states to implement and facilitate the right rather than limit or demean it. Any exclusion of any group of persons must not only be stated in a legislative framework but must be followed by a reasonable explanation. For example, in Nigeria, where the majority of the youths are excluded from the right to stand for election, in order for Nigeria to claim not to be in breach of its treaty obligation, it must provide a justifiable explanation based on objectivity and reasonability.

The HRC in the decision of *Altersor v Uruguay*,[90] where the applicant was among a particular group of persons excluded from standing as candidates in elections for a period of 15 years, declared such a restriction to be unreasonable and a violation of the right protected under article 25 of ICCPR. Similarly, in the case of *Dissanayake v Sri Lanka*,[91] the applicant was unreasonably

[88] General Comment 25 para 15.
[89] As above.
[90] Communication R2/10 (29 March 1982) para 14.
[91] Communication CCPR/C/93/D/1373/2005 (4 August 2008)

barred from standing as a candidate for seven years after leaving prison, having been found guilty of contempt of court. The HRC found that his right to vote and stand for election under article 25(b) of ICCPR had been violated.

The HRC, finding an express violation of article 25(b), stated that '[t]he committee recalls that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds, established by law, which are objective and reasonable'.[92] The HRC would readily declare the exclusion of any group of persons where the reasons are based on an unfounded proposition or when such is grossly disproportionate to the legitimate goals to be achieved.

The right guaranteed by article 25(b) protects citizens from their names being removed from the voters' registers,[93] and groups cannot be denied registration because they are anti-government or belong to the opposition group.[94] In the case of *Rolandas Pakas v Lithuania* the HRC found a lifelong bar from contesting in an election of a former impeached president which was done through a law as a violation of the right guaranteed under article 25(b) of ICCPR and stated thus:[95]

Whatever form of constitution or government is in force, the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law, which are objective and reasonable, and incorporating fair procedures.

The HRC would not allow states to hide under the enactment of law to justify the unreasonable exclusion of a group of people from exercising their right to vote and to stand for election. For such a law to be legitimate in accordance with article 25(b), it must be reasonable and justifiable and contain fair procedure. When a law requires a candidate to resign from a position that is likely to conflict with the potential elective position he intends to run for, the HRC does not consider this a violation of article 25(b),[96] but refusing to register a candidate because the document he submits "did not correspond to reality" without specifying what specific data was challenged is a

[92] n 91 above para 8.5.
[93] See *Gorji-Dinka v Cameroon* Communication 1134/2002, CCPR/C/83/D/1134/2002 (10 May 2005) para 5.6.
[94] *Lukyanchik v Belarus* Communication 1392/2005, CCPR/C/97/D/1392/2005 para 8.5.
[95] Communication 2155/2012, CCPR/C/110/D/2/55/2012 (3 April 2014) para 8.3.
[96] *Debreczeny v The Netherlands* Communication 500/1992, CCPR/C/53/D/500/1992 (1995) para 9.2

violation.[97] In relation to the principle of the existence of fair procedures, the HRC in the case of *Sinitsin v Belarus* found a violation of article 25(b) due to the absence of an impartial and independent body to review the refusal of the registration by the electoral body of the applicant in an election.[98]

In light of the above, it may be stated that the adoption of an arbitrary age criteria, which excludes many youths from exercising their right would be against the stringent test of objectivity and reasonability as espoused in the jurisprudence of the HRC. Similarly, Fox followed this line of reasoning when he argues that the minimum requirement of article 25 of the ICCPR among other things is that an electoral system in operation must not 'evidence discrimination against voters or candidates'[99] All voters and candidates must bear an equal burden and benefits in the electoral system.

Thus, to deny the youths the opportunity of standing for elections is to interfere with the free expression of the will of the electors as envisaged in article 25(b) of the ICCPR. The most suitable candidate for an elective position is for the elector to decide. It is not for the states to do otherwise by excluding some groups of people such as the youths who may be eligible candidates. This is most especially important when one considers the fact that it is impossible for political rights to thrive in the absence of the principle of equality.[100]

Over the years many countries have guaranteed the right to vote to all youths but have equally denied many of them the right to stand for elections. This is a common place among most African states.[101] The possible or conceivable reason for the violation of their right under article 25(b) of the ICCPR could be erroneous and unfounded belief that youths are unworthy of political power as they are largely inexperienced, inadequate and incompetent. Such reasoning is a clear-cut violation of article 25(b) of ICCPR because, as correctly observed by Joseph, a '[p]otential lack of ability should not be a bar to candidates; incompetents would hopefully not be elected or re-

[97] *Sudalenko v Belarus* Communication 1354/2005, CCPR/C/100/D/1354/2005 (1 November 2010) para 6.7.
[98] Communication 1047/2002, CCPR/C/88/D/104/2002 (20 October 2006) para 7.3.
[99] G Fox 'The right to political participation in international law' (1992) 17 *Yale Journal of International Law* 552.
[100] See Rosas (n 29 above) 431.
[101] Among all 53 African constitutions, only those of South Africa and Kenya guarantee an equal right to participation to the youth on the same footing as other adult citizens.

elected'[102] This is very germane when considers the fact that there are emerging empirical facts that point to the inherent capabilities of children from 11 to 12 years old,[103] which is why there is a need to further reduce the age of majority from 18 to at least 12.[104]

Right to stand for election and the right to freedom from discrimination

The right guaranteed under article 25, generally, and article 25(b), in particular, requires states to implement the right without unreasonable restrictions in line with article 2 of the ICCPR. It is the position of this thesis that excluding the youths from the right to stand for election on the basis of their experience and age constitutes an unreasonable restriction and is discriminatory according to article 2 of the ICCPR.

Article 2 of the ICCPR places an obligation on state parties to ensure that all persons within its boundaries enjoy all the rights contained in the Charter without distinction of any kind based on race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth or other status. States are further required to 'adopt such laws or other measures as may be necessary to give effect to the rights recognised in the Covenant'.[105]

Connecting the provisions of article 2 to article 25(b) in relation to the right to vote, whereas excluded youths may not be able to claim a violation on any of the listed grounds because age is not one of them. The youths can, however, and undoubtedly, claim a violation based on their other status. The exclusion of groups of youth from the right to stand for elective positions equally amounts to discrimination under the ICCPR. Although the ICCPR does not define discrimination, General Comment 18 on non-discrimination provides:[106]

> While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term 'discrimination' as used in the Covenant should be understood to imply any distinction,

[102] Joseph (n 54 above) 550.
[103] Daly (n 57 above) 277.
[104] Daly (n 57 above) 271.
[105] See art 2(2) of ICCPR.
[106] UN Human Rights Committee (HRC), CCPR General Comment 18: Non-discrimination, 10 November 1989 para 7, http://www.refworld.org/docid/453883fa8.html (accessed 9 May 2018).

> exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

The expansive definition on the meaning of discrimination includes an act of distinction that leads to a nullification or impairment in the enjoyment of the rights on an equal footing with others in society. Obviously, the exclusion of the youths from enjoying the right to stand for election on an equal footing with other adults in society is discriminatory, although it amounts to a kind of indirect discrimination. Indirect discrimination has an effect that is disproportionate at particular a group but with a condition that is neutral superficially.[107] Article 3 of the ICCPR similarly enjoins state parties to ensure that the rights set out in it are enjoyed equally, which also means without discrimination.

It has been rightly argued that despite the fact that discrimination on the basis of age is not expressly covered by the ICCPR, the other protected 'statuses' includes 'age'. This was evident in the case of *JG v The Netherlands* which, however, failed due to a lack of exhaustion of local remedies.[108] On the basis of this argument, the thesis contends that denying youths the right to vote in elections violates both Articles 2 and 25(b) of the ICCPR.

Another reason why discrimination on the basis of age in securing the right to stand for election is violative of article 25 of the ICCPR relates to the requirement of genuine periodic elections which should guarantee the free expression of the will of electors. State parties are to allow voters to determine the best candidates for the prospective elective positions 'without undue influence to inhibit the free expression the elector's will'. Voters should be able 'to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind'.[109]

[107] L Lester & S Joseph 'Obligation of non-discrimination' in Harris and Joseph (n 54 above) 575.
[108] Lester & Joseph (n 107 above) 568; Communication 306/1988.
[109] See General Comment 25 para 19.

The exclusion of youths who are adults and eligible for elective positions from being eligible in an election by state parties would certainly put a big question mark on the freeness, fairness and genuineness of such an election. This is because the free will of the people is being illegitimately interfered with and their choice limited to voting for candidates who are outside the youth age cohort. The rise of some of the world's youngest political leaders would have been inconceivable if such a terrible, archaic, and foolish electoral procedure had been practiced on a global scale.[110] The swearing-in of Sebastian Kurz as Austria's new chancellor in December 2017 at the age of 31 makes a glaring case against the unreasonable exclusion of youths in exercising their right to stand for elections under article 25 of the ICCPR.[111]

From the above, the rights to political participation can be said to be rights granted to (adult) citizens of a country to be eligible to participate fully in all electoral processes equally with other adults and governmental decision-making processes.[112] What this simply means is that the criteria for participation in electoral processes and decision-making processes must be the same for all eligible adult citizens. The state should not in any way put in place some criteria that unreasonably and unjustifiably make distinction among eligible adult citizens. Every adult citizen must be free to exercise this right without any form of eligibility criteria that are applied to some adult citizens but not all.

Thus, the right to political participation under international human rights law point of view enjoins state to allow all their adult citizen to vote, stand as candidates in elections and be given equal opportunity to participate in the decision-making processes of their country without any form of discrimination. This position does not in any way suggest that the right is absolute, it only presupposes that the limitation to the right must be a general one that applies to all adult citizens rather than some categories of adults. The right to participation allows for reasonable and general

[110] See C Mmnuojeke 'Meet the 6 world youngest presidents and leaders right now', Saleh Ali al-Sammad (President of the Supreme Political Council of Yemen, 39 years old); Emil Dimitriev (Acting Prime Minister of the Republic of Macedonia, 39 years old); Jigme Khesar Namgyel Wangchuck,(King of the Kingdom of Bhutan, 38 years old); Tamin bin Hamad al Thani (Emir of Qatar, 38 years old); Kim Jong Un (Supreme Leader of North Korea, 35 years old); and Vanessa D'Ambrosio (Captain of An Marino, 30 years old), https://buzznigeria.com/youngest-presidents-leaders-world/ (accessed 12 May 2018).

[111] Austria swears in Europe's youngest leader, Sebastian Kurz' *Hindustan Times* 18 December 2017, https://www.hindustantimes.com/world-news/austria-swears-in-europe-s-youngest-leader-sebastian-kurz/story-xFqsZAG3enlkxr1bjES6CL.html (accessed 12 May 2018).

[112] See generally, I Currie and J de Waal *The Bill of Rights Handbook* (6th edn.) (2013) 420.

limitation but frowns at limitation that are targeted at a particular group of adult citizens. Such selected limitation may amount to discrimination against those affected adults. It has been reiterated in this thesis that, the two group of citizens that could be legitimately excluded from political participation, are those adults who are in conflict with the law and children.

3.1.3 Obligation of state parties under article 25 of the ICCPR

There is a need to consider the parameters of state parties' obligations under article 25 of the ICCPR because, despite the global recognition of youth rights to political participation, which includes both direct and indirect participation, the continuous violation of their rights by states is unacceptable. The UN Office of the High Commissioner for Human Rights, it its latest publication on 'Equal Participation in Political and Public Affairs' raised concerns about the continuous violation of human rights to political participation globally.[113] The report further noted that political participation rights, whether directly or indirectly, are essential for the empowerment of individuals and groups, and 'it is one of the core elements of human rights-based approaches aimed at eliminating marginalisation and discrimination'.[114] Similarly, the UN Human Rights Council in its latest report of 2016 asserted that 'discrimination and exclusion remain major challenges for the implementation of the right to participate'.[115] It recommended the systematic inclusion of the right to participation in the assessment of states during the Universal Periodic Review. [116]

Furthermore, the UN recommended to all states to allow the full and effective participation of all citizens on an equal basis.[117] This is based on the fact that 'participation is the hallmark of democracy'.[118] Therefore, states are expected to take all necessary measures to abrogate laws, regulations and practices that promote discrimination against their citizens in their enjoyment of

[113] http://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx (accessed 19 May 2018); see also the UN General Assembly Resolution on 'Equal Participation in Political and Public Affairs', A/HRC/RES/27/24 (3 October 2014) 1.
[114] As above.
[115] 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.
[116] A/HRC/33/25 (n 114 above) para 43.
[117] General Assembly Resolution A/HRC/Res/24/8 on 'Equal political participation' (8 October 2013) para 4.
[118] 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.

their right to participation, whether directly or indirectly.[119] States will therefore be in violation of their obligations under international law should they encourage and allow laws that discriminate against some sets of adult citizens such as the youths from exercising their human right to political participation fully on an equal footing with other adults, as it is currently observed in several states globally.[120]

International human rights law, beyond granting rights to individuals and collectives, places unimpeachable obligations on states to implement it or to secure the various rights contained therein. However, it is lamentable that the promises of human rights remain unmet in the lives of many people all over the world since many states fall short of upholding their human rights commitments.[121] The pivotal role of states in securing guaranteed rights was appropriately put by Pillay when she stated that '[i]t is for the states, regardless of their political, economic, and cultural systems, to promote and protect human rights and fundamental freedoms.'[122]

The underpinning of modern-day human rights is the existence of the internationally guaranteed rights to everyone as an independent being and not by virtue of being a national of a state.[123] These rights are the possessions of everyone, whether or not the state concerned guaranteed them or because they are guaranteed and protected internationally in various international human rights treaties. These human rights treaties, which include the ICCPR, impose a tripartite obligation on all state parties, namely, the obligation to respect, protect, and to fulfill all rights contained in them. The obligation on states to respect requires a state to abstain from unlawfully interfering with rights. Obligation to protect implies that states should ensure that third parties do not interfere with the enjoyment of these rights. The obligation to fulfill rights enjoins state parties to put in place or take active step by putting in place various amenities that would facilitate rather than limit the enjoyment of the guaranteed rights.[124]

---

[119] General Assembly Resolution on 'Equal participation in political and public affairs' A/HRC/RES/30/9 (1 October 2015) para 7(d).
[120] UN General Assembly Resolution on 'Equal participation in political and public affairs' A/HRC/RES/27/24 (3 October 2014) para 3.
[121] N Pillay 'What are human rights for?' in D Moeckli et al (eds) *International human rights law* (2010) 5.
[122] Pillay (n 120 above) 7.
[123] T Buergenthal et al *International human rights in a nutshell* (2009) 25.
[124] W Cole 'Mind the gap: State capacity and the implementation of human rights treaties' (Spring 2015) 69 *International Organisation* 412.

The human rights obligations which ICCPR enjoins state parties to dutifully implement are incapable of being evaded by the doctrine of sovereignty because they have a special status under international law and are different from other obligations under international law.[125] This is because the essence of human rights is the proclamation and the enforcement of these guaranteed rights of every person against the state. It flows logically that strict compliance with the doctrine of sovereignty runs contrary to the principles and philosophies of international human rights law. The prime focus of human rights obligations is individuals who are its beneficiaries.[126] Human rights obligations are required from states for the benefit of human rights' beneficiaries which are all human beings.

Obligation to respect

Respecting the right to participation for states as contained in article 25, read in conjunction with article 2, would require state parties to put in place laws that clearly stipulate the various rights guaranteed in the ICCPR for their citizens. The obligation to respect primarily places a negative obligation on states not to interfere with the enjoyment of the rights guaranteed.[127] Similarly, such law that guarantees the right must not be discriminatory based on the listed grounds under article 2 and must contain no unreasonable restrictions. It suffices to say that states that enact laws that are discriminatory or contain unreasonable restrictions would be in breach of their obligations under the ICCPR, because 'every human right contains a core with the equality of a rule'.[128] Article 25 has a tonality which prohibits state parties from denying right to political participation to youths that are politically active citizens through arbitrary or unreasonable laws.[129]

The obligation to respect in relation to rights guaranteed under article 25 covers paragraphs (a), (b) and (c). A state cannot claim not to be in breach of its obligation under the ICCPR by partially guaranteeing one of the paragraphs and denying the other paragraphs. There is no partial

[125] F Mėgret 'Nature of obligations' in Harris & Joseph (n 54 above) 124.
[126] As above.
[127] D Harris & S Joseph 'An introduction' in Harris & Joseph (n 54 above) 3.
[128] M Scheinin 'Core rights and obligations' in Shelton (n 18 above) 535.
[129] H Davis *Human rights and civil liberties* (2003) 235.

fulfillment of human rights obligations; a state is either in breach or not in breach of its human rights obligations. For example, not placing unreasonable restrictions on the exercise of the right to vote but arbitrarily curtailing the right to stand for election is a violation of article 25, as seen from the jurisprudence of the HRC, as discussed above.[130]

The HRC has equally stated that the interpretation of the ICCPR should be in accordance with article 33(4) of the Vienna Convention on the Law of Treaties (VCLT).[131] Unlike the jurisprudence of the European Court of Human Rights, the HRC does not invoke the doctrine of margin of appreciation which invariably limits the extent to which states can go in excluding or limiting the enjoyment of these rights.[132]

Obligation to protect

On the other hand, the obligation to protect in relation to the right guaranteed in article 25 of the ICCPR would require states to ensure that citizens exercise their right to participation without any illegitimate and unreasonable interference by third parties. In a practical context, for example, the right to vote or to stand for election would mean that the state must ensure that citizens, in trying to vote or participate in electoral activities, are not attacked by thugs. Therefore, there would be a clear-cut case of a breach of a state's obligation to protect where it cannot prevent attacks on citizens while exercising their political rights without doing enough to prevent such attacks.

After all, '[h]uman rights bodies have long deemed both acts and omissions to be sources of state liability for breach of human rights obligations'[133] A state would not be excused from its obligation to protect merely because the violation complained of was carried out by third parties, because their obligations under the ICCPR require strict compliance as opposed to the promotional

[130] *Sudalenko v Belarus* (n 97 above)*; Sinitsin v Belarus* (n 98 above)*; Rolandas Pakas v Lithuania* (n 95 above).
[131] United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, Vol 1155 331, http://www.refworld.org/docid/3ae6b3a10.html (accessed 10 May 2018); see the case of *JB v Canada* cited in Harris & Joseph (n 54 above) 11.
[132] Harris & Joseph (n 54 above) 13.
[133] D Shelton & A Gould 'Positive and negative obligations' in Shelton (n 18 above) 565.

obligation contained in the International Covenant on Economic, Social and Cultural Rights (CESCR).[134]

Obligation to Fulfill

The responsibility to fulfill these rights has been said to entail their 'formal legal protection under national law'.[135] However, Viljoen has argued that formal domestic enactment of rights does not translate into their realisation,[136] but it is also true that accountability and redress become problematic without their legal formalisation. Tomuschat correctly observes that 'if the numerous rights listed in the treaties for the protection of human rights are excluded from the domestic legal order concerned, they cannot fully produce their intended legal effect'[137]
The obligation on state parties to fulfill in relation to civil and political rights, such as the right to political participation, may be seen as a given by states. However, the unwholesome attitudes of some states to this right may lead one to the erroneous conclusion that 'the duty to fulfill is primarily in focus when dealing with economic, social, and cultural rights'.[138] For people such as the youths who are being deprived of their right to political participation by various states globally, the obligation on states parties to fulfill human rights is very much needed and relevant in civil and political rights discourses.

Besides the issue of legal formalisation of the right to political participation as one of the various acts of state parties towards fulfilling their obligations under article 25 of the ICCPR, the establishment of various mechanisms through which rights violations can be ventilated in light of articles 2(3)(a), (b) and (c) is also part of the obligation.[139] The use of the word 'ensure' is suggestive of the fact that it is not sufficient for state parties to merely provide for the rights, but that they must take further steps to ensure the enjoyment of the guaranteed rights. Interpreting the act of state parties to 'ensure' in terms of the right to political participation would mean, among

[134] C Tomuschat *Human rights: Between idealism and realism* (2014) 141.
[135] A Byrnes & C Renshaw 'Within the state' in Harris & Joseph (n 54 above) 499.
[136] F Viljoen 'Introduction' in F Viljoen (ed) *Beyond the law: A multi-disciplinary perspective on human rights* (2012) xiv.
[137] Tomuschat (n 134 above) 167.
[138] Scheinin (n 127 above) 536.
[139] D Shelton & A Gould 'Positive and negative obligations' in Shelton (n 18 above) 564.

other things, that those who have been unlawfully denied the enjoyment of the right have the opportunity of challenging same in regular courts or tribunals.[140]

Furthermore, putting in place enforcement machineries for ensuring adequate remedies for victims of human rights violations would demonstrate their seriousness. Human rights would certainly be doomed where the enforcement machinery is lacking or inadequate.[141] Would human rights violators pay any meaningful regard to the respect for human rights where avenues for redress are non-existent? The answer is no. Therefore, for state parties, as the principal duty bearers of human rights obligations, not to be labeled duty 'breakers', they must ensure that the rights are fulfilled beyond their mere articulation in statute books.

State parties are expected to go beyond merely respecting the rights to political participation by doing more, in terms of uprooting those barriers that impede the rights and putting in place those machineries that facilitate their enjoyment. This is because 'one way of looking at the right of political participation is to see it, partly at least, as "programmatic rights", setting aspirations and new demands as societies change'.[142] State parties must continue to work to ensure that political rights are not in any way undermined by either laws or institutions.

3.2 Right to political participation at the regional level

The reason for considering the stipulation of the right to political participation at the regional levels lies in the fact that sometimes most human rights present at the global level are available at the regional levels but sometimes with minor or major differences that affect the nature of the right in view. Therefore, while the right to political participation would be considered under the European, Inter-American, and African human rights systems, however, much attention would be given to the African human rights system because the need for the recognition of the full and effective right to political participation of youths is argued and advanced from an African perspective.

[140] See for example the case of *Sinitsin v Belarus* (1047/102), where the HRC found the absence of an independent body to review the denial of candidacy a violation of art 25(b) of ICCPR.
[141] Tomuschat (n 137 above) 13.
[142] Rosas (n 29 above) 450.

3.2.1 Rights to political participation under the European human rights system

The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) [143] does not explicitly mention the right to political participation.[144] However, this seemingly fundamental omission was remedied by article 3 of the First Protocol (First Protocol) to the European Convention, which provides that '[t]he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'[145]

Unlike the ICCPR, which expressly guarantees the right to political participation to 'citizens', the First Protocol did not mention categories of persons entitled to the right. This would mean leaving it at the discretion of each state to determine who is to enjoy the right, whether or not to include aliens, but certainly citizens are the main targeted groups. One of the controlling authorities of rights guaranteed under article 3 of the First Protocol is the decision of the European Court of Human Rights (European Court) in *Mathieu-Mohin and Clerfayt v Belgium*,[146] where the applicants claimed a violation of article 3 of the First Protocol due to an act of exclusion by their state.[147]

In the above case, the European Court held that in the circumstances, the act complained of did not constitute a violation of article 3 of the First Protocol. As the Belgium government was afforded a wide margin of appreciation and adopted electoral system which is built to protect minorities and therefore, it did not amount to an unreasonable limitation on 'the free expression of the opinion of the people in the choice of the legislature'[148]

[143] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols 11 and 14, 4 November 1950, ETS 5, http://www.refworld.org/docid/3ae6b3b04.html (accessed 14 May 2018).
[144] M Schmidt 'The complementarity of the Covenant (ICCPR) and the European Convention on Human Rights (ECHR) – Recent developments' in Harris & Joseph (n 54 above) 639.
[145] Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9, http://www.refworld.org/docid/3ae6b38317.html (accessed 14 May 2018).
[146] ECtHR 9267/81.
[147] *Mathieu-Mohin and Clerfayt* (n 146 above) para 44.
[148] As above para 54.

Furthermore, although article 3 of the First Protocol does not expressly guarantee the right to vote or to stand for elections, the European Convention declares that it does include the 'institutional' right to 'the holding of free elections'; the right of 'universal suffrage'; 'the right to vote'; and the 'right to stand for election to the legislature'.[149] States have a wide margin of appreciation and the rights are not absolute, and states can widely curtail the rights. However, when limiting the right states must ensure that the limitation does not destroy the very essence of the rights. Such a limitation must be imposed to pursue a legitimate aim; the limitation imposed must not be disproportionate and must not lead to the thwarting of free expression of the choice of legislature.[150] The term 'legislature' used in the First Protocol is to be interpreted in light of the political evolution of each state.[151]

Despite the fact that article 3 of the First Protocol grants states a wide discretion when limiting the right, they still cannot exercise such discretion indiscriminately or arbitrarily, but it must be proportionate to the legitimate aim pursued by the state. The ineluctable conclusion will be that where any state excludes young people from exercising any of the rights under article 3 of the First Protocol on the basis of their age, it must show that the exclusion is not arbitrary or disproportionate; otherwise, the state would be found to be in violation of its obligations. This point was adumbrated by the European Court when it stated that 'while the Court reiterates that the margin of appreciation is wide, it is not all-embracing.'[152]

The Court would not allow a state to use a blanket restriction that excludes a large percentage of the youths based on any indiscriminate criteria such as age. This is because 'a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with article 3 of Protocol No 1'. [153]

[149] As above 51.
[150] As above 52.
[151] As above
[152] See the case of *Hirst v The United Kingdom* (No 2) 06/10/2005, where the Court declared the general denial of prisoners' rights to vote, irrespective of their status, indiscriminate and against the provision of article 3 of P1; para 82.
[153] As above para 82.

Furthermore, in any European state where youth rights to political participation are excluded on the basis of age, the youths in such a state should summon the courage to go to court. This is because the wide margin of appreciation granted to the state in limiting the rights is not in itself an authoritative finality, the Court is the last resort when it comes to determining whether the respective states have reasonably exercised their discretion.[154] For instance, in the case of *Tănase v Moldova*[155] the state of Moldova enacted a law that prohibits persons with dual citizenship from standing for elections. The applicant challenged the law as being 'disproportionate, arbitrary and anti-democratic' and further argued that the 'Convention had to be interpreted in a manner which rendered the rights contained therein practical and effective'.

The Court stated that interference such as that complained of by the applicant would amount to a violation unless it met the three-fold test of lawfulness, that it pursued a legitimate aim and was proportionate.[156] According to the Court, 'any restriction on electoral rights should not be such as to exclude some persons or groups of persons from participating in the political life of the country'[157] Therefore, the Court found a violation of the right under article 3 of the First Protocol of the applicant.[158]

From the above cases, it may be argued that the exclusion of the youths from the political life of their country solely because they are young, although adults in their own right, may be unsustainable by states. This is because of the arbitrariness and unreasonableness embedded in the way the exclusion is being carried out from one state to another. Such an act would distort the free will of the people to choose their representatives and render the right ineffectual and meaningless.

While article 3 of the First Protocol does not impose on states a specific obligation on the type of electoral system to adopt, whatever system is adopted must not be discriminatory or exclude some groups of people such as the youths on the basis of their age. By 'youth', we mean those who are within the age of majority in a state (in most cases from 18 years and above).[159] The European

[154] See the case of *Matthews v The United Kingdom* (18/02/1999) para 63.
[155] *Tănase v Moldova* (Application 7/08) (27 April 2010) para 145.
[156] As above para 162.
[157] As above para 178.
[158] As above.
[159] Schmidt (n 144 above) 640.

Court has interpreted the First Protocol to be pivotal in securing 'effective political democracy',[160] and article 3 of the First Protocol places a positive obligation on states to hold elections.[161]

3.2.2 Right to political participation under the Inter-American system

The American Convention on Human Rights (American Convention) in article 23 provides for the right and opportunity to participate in government in a language similar to that of the ICCPR.[162] Article 23 of the American Convention, captioned 'Right to participate in government', contains broad elements of political rights.

The first identifiable characteristic of the right to political participation in the American Convention is that the right and opportunities are to be enjoyed by every citizen.[163] Also, they include the right to take part in the conduct of public affairs, directly or through chosen representatives;[164]to vote and to be elected in genuine periodic elections which among other things guarantee the free expression of the will of the voters;[165] and under the condition of equality to have access to the public service of his or her country.[166] However, a unique feature peculiar to the American Convention is the listing of the various grounds of limitations of the rights. Article 23(2) provides:

The law may regulate the exercise the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

The above provision may be said to give state parties too wide a discretion on how to limit the rights to political participation. While it provides for equality as one of the bases for the rights, the absence of a qualifying phrase of the need for the exclusion or limitation not to be unreasonable

[160] *Mathieu-Mohin and Clerfayt v Belgium* (n 146 above) para 47.
[161] *Tănase* (n 155 above) para 50.
[162] Organization of American States (OAS), American Convention on Human Rights, Pact of San Jose, Costa Rica, 22 November 1969, http://www.refworld.org/docid/3ae6b36510.html (accessed 14 May 2018).
[163] See art 23(1) of the American Convention.
[164] See art 23(1)(a).
[165] See art 23(1)(b).
[166] See art 23(1)(c).

leaves much to be desired. Interestingly, some of the grounds for the limitations of political rights under the American Convention are age and mental capacity.

Therefore, it is necessary to consider the jurisprudence of the American human rights system and to examine some of underpinnings of the rights to political participation under the American Convention. This is required to ascertain whether state parties bound by it can validly exclude those youths that are within the age of majority from any of the political rights.

Among the various interpretative approaches of the American human rights system on the various human rights treaties is the approach that human rights treaties should be applied and interpreted in a the way that is most protective of human rights, which is known as the *pro homine* interpretation.[167] This interpretative approach is not unconnected with article 29 of the American Convention which is in consonance with the provision of article 31(1) of the Vienna Convention on the Laws of Treaties (VCLT). [168] The purport and purpose of article 29 of the American Convention is an interpretative guide or restriction on how far a state party can go in restricting the rights contained in it.

Article 29 forbids state parties from restricting or suppressing the rights guaranteed under it beyond the permissible limits provided for,[169] or restricting rights that are contained in other conventions to which the state party concerned is a party.[170] Similarly, state parties cannot preclude 'other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government'[171] Furthermore, article 30 has a general restriction clause in relation to the right in the American Convention, and states thus:

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights of freedoms recognised herein may not be applied except in accordance with laws

[167] L Lixinski 'Treaty interpretation by the Inter-American Court of Human Rights: Expansionism at the service of the Unity of International Law' (2010) 21 *The European Journal of International Law* 588.
[168] As above.
[169] See art 29(a) of the American Convention.
[170] Art 29(b) American Convention.
[171] Art 29(c) American Convention.

enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

A community reading of articles 23, 29, 30, 2 (right to equality) and 24 (freedom from discrimination) of the American Convention supports the full enjoyment of all political rights of all adult youths (from the age of majority) and never in any way contemplates their exclusion. This argument receives strength from the jurisprudence of the Court which supports the view that the enjoyment of human rights underlies the effective exercise of representative democracy.[172] From the accounts of the history of democracy as practiced in Athens, all adults are allowed to participate in the governance of society, and thus it would be anti-democratic to exclude youths who are adults but young, from the full enjoyment of their political rights as other adults. This argument is valid notwithstanding the margin of appreciation which states enjoy in implementing the rights in the American Convention.[173]

Furthermore, despite the fact that one of the listed grounds for limiting political rights is age, it is contended that children are those in the mind of the drafter and not the youths, because youths are among the adults. Thus, to exclude youths who are in the age of majority from either exercising their right to vote or to be elected, just as other adults would amount to discrimination which is impermissible under the American Convention. It must be pointed out that the Court has reasoned that not all instances of unequal treatment of citizens amount to discrimination, but that a clear-cut case of discrimination would be established once it lacks reasonable justification or is not based on objectivity.[174] It has been argued earlier that the denial of youths who are adults from their rights to vote and to stand as candidates for elections is unreasonable, disproportionate and arbitrary.

The Inter-American Commission on Human Rights (Inter-American Commission) has correctly stated that the right to political participation must be secured 'in accordance with the purposes of the applicable human rights instruments and the principle of efficacy, these rights may not be

[172] J Pasqualucci *The practice and procedure of the Inter-American Court of Human Rights* (2013) 49.
[173] As above 51.
[174] As above.

maintained as mere formalities – they must be translated into material guarantees'.[175] Translating the rights into living reality or material guarantee would include ensuring that they are enjoyed equally and without discrimination of any kind. This is based on the fact that the principle of non-discrimination stands as a pillar of any democratic system, and is the foundation stone of the Organisation of American States (OAS) system.[176]

The prohibition of discrimination against adult citizens' political rights cannot be said to exclude the youths. The rights are to be applied and interpreted so as to give 'meaningful effect to exercise of representative democracy in this hemisphere.'[177]

One of the main areas where youth rights to political participation is brazenly limited, curtailed or even diminished by state parties is in the area of the right of eligibility or the right to stand as a candidate in elections.

Flowing from the above discussion, the right to vote and the right to stand for election should be enjoyed based on the same criteria. The American Convention abhors inequality and unreasonable and unjustifiable discrimination in the enjoyment of the guaranteed rights. Everyone who has legal capacity should be able to enjoy the rights equally with others, and to shut out some youths from the right to stand for election because they are young would amount to a breach of article 23 of the American Convention.[178]

In the case of *López Mendoza v Venezuela*, which centered on the disqualification of a person from standing as a candidate in an election based on administrative sanction, the Inter-American Court held that there was a violation of article 23 of the American Convention.[179] In coming to its

[175] See the Inter-American Commission on Human Rights Report on 'Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination' (Affirmative Action Report) ch VI para 1, https://www.cidh.oas.org/annualrep/99eng/Chapter6.htm (accessed 15 May 2018).
[176] Affirmative Action Report (n 174 above) para 2.
[177] *Statehood Solidarity Committee v United States,* Case 11.204 Inter-AmCHR, Report 98/03, OEA/Ser.L/V/II.118, Doc. 5 rev. 2 (2003) 87.
[178] See generally Inter-American Commission on Human Rights (IACHR) 'The road to substantive democracy: Women's political participation in the Americas, 18 April 2011, OEA/Ser.L/V/II paras 21 & 22, http://www.refworld.org/docid/51ff6f594.html (accessed 15 May 2018).
[179] *López Mendoza v Venezuela* Judgment of 1 September 2011, paras 91-94.

decision, the Court was of the view that political rights are an end in themselves and gateways to enjoying other rights guaranteed by the American Conventions and, as such, there should be opportunities to enjoy them. The term 'opportunities' according to the Court; 'implies the obligation to guarantee with positive measures that anyone who holds formal political rights has a real opportunity to exercise them'.[180]

In the opinion of the Court, while some of the applicant's political rights were guaranteed, his right to stand for election as a candidate, known as passive suffrage, was denied by the state party.[181] The Court found a violation of articles 23(1)(b) and (2) in conjunction with article 1(1) of the American Convention.[182] This case goes to show that it is not sufficient for a state party to guarantee the right to vote to youths, and that the failure to grant them their right to stand as candidate (passive suffrage) amounted to a violation of their political rights.

In addition to the above, the Inter-American Court has always emphasised that equality and non-discrimination are twin principles that must be adhered to in trying to guarantee or curtail the political rights of citizens as guaranteed in article 23 of the American Convention.[183]

The Court further notes that '[t]he exercise of the rights to be elected and to vote, which are closely related to each other, is the expression of the individual and social dimension of political participation'[184] This connotes that both rights are seemingly inseparable in that the denial of either of them renders the rights ineffective and impractical. The Court further noted that '[p]articipation through the exercise of the right to be elected assumes that citizens can stand as candidates in conditions of equality and can occupy elected public office, if they obtain the necessary number of votes'[185] That is to say that every adult citizen; which includes the youths within the age of majority, should be able to stand as candidate just like other adults based on same criteria.

[180] As above para 108.
[181] As above.
[182] *López Mendoza* (n 178 above) para 109.
[183] See the case of *Yatama v Nicaragua*, Judgment of 23 June 2005, para 195.
[184] *López Mendoza* (n 179 above) para 197.
[185] As above para 199.

The Court has equally not allowed state parties to be ignorant of their treaty obligations when it comes to the political rights of their citizens. Accordingly, the Court declared thus:[186]

The Court understands that, in accordance with articles 23, 241(1) and 2 of the Convention, the State has the obligation to guarantee the enjoyment of political rights, which implies that the regulation of the exercise of such rights and its application shall be in keeping with the principle of equality and non-discrimination, and it should adopt the necessary measures to ensure their full exercise. This obligation to guarantee is not fulfilled merely by issuing laws and regulations that formally recognise these rights, but requires the State to adopt the necessary measures to guarantee their full exercise considering the weakness or helplessness of the members of certain social groups or sectors.

It is clear from the pronouncement of the Court above that the effective implementation of the right to political participation in the light and spirit of the American Convention enjoins all state parties to first and foremost secure the rights in a manner that is devoid of discrimination or inequality. They are also expected to take targeted steps to ensure the political rights of all eligible adult citizens. Therefore, excluding the youths from exercising any of their political rights would amount to a clear breach of the relevant provisions of the Convention.

3.2.3 Right to political participation under the African human rights system

While there are several documents that provide for the protection of human rights in Africa, the cornerstone remains the African Charter on Human and Peoples' Rights (African Charter).[187] The African Charter is the *terra firma* of all human rights laws in Africa, based on its status in contemporary African human rights discourses, and is also considered as one of two progressive human rights instruments adopted by the defunct Organisation of Africa Unity (OAU).[188] It has been stated that the African Charter is now a 'pivotal element of a common African culture of

[186] As above para 201.
[187] Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), http://www.refworld.org/docid/3ae6b38c18.html (accessed 16 May 2018) (African Children's Charter).
[188] F Viljoen *International human rights law in Africa* (2012) 162; the second instrument is the African Children's Charter.

human rights, combining traditional strands of thought with modern concepts that have their origins in the norm-setting activity of the United Nations'.[189]

The acceptability of the African Charter as the main generator of human rights in Africa is reflected in the fact that all 53 members of the African Union (AU) have ratified the Charter.[190] Accordingly, Jallow has opined that the elaboration, adoption and entry to force of the African Charter surely would be one of the highest points on the score sheet of Africa.[191]

A unique feature of the African Charter, that makes it to stand out among all other human rights instruments, is the combination of the traditional civil and political rights, and the economic, social and cultural rights in a single document with equal valence of protection and remedies. However, despite the existence of the African Charter and other international human rights documents, the implementation of international human rights standards remains one of the main human rights challenges in Africa.[192]

Unlike the European and American Conventions, the African Charter is a unique document that relies heavily on those values and 'principles primarily African in nature'[193] It equally draws inspiration from African traditions and documents principally rather than from UN covenants and declarations.[194] Therefore, the African Charter could arguably be referred to as a traditional, legal and political document of the African people. It is traditional because it is based on Africa's traditional conception of human rights, and legal as it contains laws (human rights laws) which are meant to be obeyed or acted upon, and, finally, it is a political document as it originates from political leaders in Africa.

Among the listed rights provided for in the African Charter is the right to political participation, which is the paramount interest of this thesis. Article 13(1) of the African Charter provides that

[189] Tomuschat (n 164 above) 39.
[190] C Heyns & M Killander 'Africa' in D Moeckli et al (eds) *International human rights law* (2010) 483.
[191] See generally H Jallow *The law of the African (Banjul) Charter on Human and Peoples' Rights* (1988-2006) (2007) 19.
[192] Heyns & Killander (n 190 above) 496.
[193] R Gittleman 'The Banjul Charter on Human and Peoples' Rights: A legal analysis' in C Welch & R Meltzer (eds) *Human rights and development in Africa* (1984) 154.
[194] As above 155.

'[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representative in accordance with the provision of the law'. Apart from guaranteeing this right to every citizen, it provides for only one qualification to this right, which is 'in accordance to the provision of law'. This qualification has been interpreted by the African Commission on Human and Peoples' Rights (African Commission) to mean 'in accordance with international law and standards rather than domestic law'[195]

Similarly, while the right to vote or to stand in elections is not expressly mentioned in the provision, these rights are nevertheless in contemplation of the provision. This is because it is basically through voting that representatives can be chosen, and through standing for elections that one can attempt to directly participate in government.

Also, article 2 of the African Charter is necessary when discussing the right to political participation under the Charter because it guarantees the enjoyment of the rights and freedoms without distinction of any kind. Although distinction on the basis of age is not expressly mentioned, it is argued that the unjustified and arbitrary distinction on the basis of age can be read into it or argued to be part of the 'other statuses' envisaged by the provision.[196]

The African Commission has given life to the above line of argument when it held that the list contained in article 2 of the African Charter is neither conclusive nor absolute but a mere indication.[197] Similarly, article 3 of the African Charter guarantees the right to equality and equal protection under the law. This connotes the guarantee of respect of all human beings in the enjoyment of human rights on an equal footing with others.[198]

---

[195] See for example the African Commission case of *Media Rights Agenda & Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 66, where it was held that '[a]ccording to article 9(2) of the Charter, dissemination of opinion may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinion; that would make the protection of the right to express one's opinion ineffective. To allow national law to have precedent over international law of the Charter would defeat the purpose of the rights and freedom enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the right on the Charter must be in conformity with the provisions of the Charter.'

[196] See S Keetharuth 'Major African legal instruments' in A Bösl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 169. According to the author, '[t]he inclusion of "other status" renders the list non-exhaustive, for example, discrimination on the basis of age, disability or sexual orientation could be read into it'.

[197] See Communication 318/06, *Open Society Justice Initiative v Côte d'Ivoire* (2016) para 145.

[198] *Open Society Justice Initiative* (n 196 above) para 152.

Flowing from the above, it could be argued from the standpoint of the right to equality, dignity and non-discrimination, that excluding the youths from enjoying their rights to political participation as provided for under article 13(1) would be inconsistent with the provisions and obligations of state parties under the African Charter. This is position of the law when one examines the jurisprudence of the African human rights system. This argument is based on the fact that a violation of the right to political participation of the youths impliedly is a violation of their rights to dignity, equality and freedom from discrimination.

The African Commission had had cause to interpret the meaning of the human right to political participation and the phrase 'in accordance with law' in several decisions. In the case of *Constitutional Rights Project & Another v Nigeria*,[199] the Commission declared that the annulment of a credible election by the Nigerian government amounted to a violation of article 13. It further stated that to participate freely means that a person has the right to vote for the representative of his choice and the state has an obligation to respect this right.[200] Similarly, in the case of *Lawyers for Human Rights v. Swaziland*,[201] where the King of Swaziland's proclamation repealed the Constitution of Swaziland, which contained the Bill of Rights, the said proclamation led to the restriction of citizens' participation in governance to only within the structure of *Tinkhundla*.[202]

In the above case, the Commission found a violation of article 13 of the African Charter because the proclamation outlawed political parties or similar structures, since political parties are one of the ways by which citizens can participate in governance either directly or indirectly.[203] While the two cases principally revolve around the issues of the state placing a ban on political parties and taking decisions that undermine the collective human rights to political participation, they are of little assistance to this thesis.

[199] (2000) AHRLR 191 (ACHPR 1998).
[200] *Constitutional Rights Project* (n 198 above) para 50.
[201] (2005) AHRLR 66 (ACHPR 2005).
[202] *Lawyers for Human Rights v Swaziland* (n 200 above) para 62.
[203] *Lawyers for Human Rights v Swaziland* (n 200 above) para 63.

This work attempts to assess, in light of the jurisprudence of the Commission, whether or not youths are within the ambit of article 13; put differently, whether states can validly exclude a segment of adult citizens, such as the youths, from enjoying the right.

In addition to the above, the people are the ones to determine who the most competent contestants are. It is not within the prerogative of a state to illegitimately exclude some groups of adults, such as youths, because it erroneously believes they lack the capabilities, experience, and fortitude to bear the burdens that accompany political offices.[204] The freeness of any election lies in the fact that the choices of the electorates are limited among the eligible adults who wish to run for office. The electorate must be allowed to freely express themselves through the ballot without undue interference by the state in their act of expression. That is the meaning of free and fair elections. However, where youths who are qualified and eligible, and wish to run for office but have been stopped by the elites through arbitrary and anti-democratic laws, the election in question loses the quality of being free and fair. The African Commission in its decision in *Constitutional Rights Project & Another v Nigeria* declared that '[t]o participate freely in government entails, among other things, the right to vote for the representatives of *one's choice'*.[205]

The case of *Purohit & Another v The Gambia*[206] is a clue to our current inquiry. The case principally centers on a complaint against the government of The Gambia on its Mental Health Act, as violating the rights of persons with mental disabilities in its state. Also, part of the complaint was the fact that those persons with mental disabilities detained in a place called Campama were not allowed to vote.[207] The African Commission, declaring whether article 13 of the African Charter had been violated, stated thus:[208]

The 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.

[204] Joseph (n 54 above) 550.
[205] (2000) AHRLR 191 (ACHPR 1998) para 50 (my emphasis).
[206] (2003) AHRLR 96 (ACHPR 2003).
[207] As above para 74.
[208] As above para 75.

From the above declaration by the African Commission, it is evident that the only two grounds on which the right under article 13(1) can be denied are legal incapacity, usually in connection with children and prisoners, the other ground being the issue of citizenship. It suffices to say here that the exclusion or marginalisation of any group, whether the youths or women, from decision-making and governance processes will run against the spirit and purpose of the article. That is, an indiscriminate age limit not based on legal incapacity which is being used to shut out a segment of society such as the youths from decision-making processes will equally be a violation the article. As highlighted earlier, under international human rights law only convicts serving their sentence and children can be legitimately and validly excluded from any electoral process.[209]

The African Commission's opinion in its latest decision on the right to political participation under article 13(1) in *Open Society Justice Initiative v Côte d'Ivoire*, which is on the exclusion of the *Dioulas* from exercising several of their rights under the African Charter, equally requires consideration.[210] The African Commission, in interpreting article 13, did not only regard respect for the right to vote and be voted for as the bedrocks of democratic regimes, but also reiterated the need for the right to be exercised based on the principle of equality and non-discrimination in the following words:[211]

On the right to vote and to be voted for, the Commission considers that it is the bedrock of modern democratic systems which the member states of the African Union have committed themselves to build. It is noteworthy that the African Union makes the promotion of democratic principles and institutions one of the fundamental objectives which govern its actions. Furthermore, under several of its provisions, the African Charter on Democracy, Elections and Governance obliges state parties to ensure transparency and justice in the management of public affairs. The same Charter makes popular participation through universal suffrage an inalienable right of the peoples and prescribes the respect of ethnic, cultural and religious diversity which contributes to the strengthening of the participation of citizens. Through its Resolution ACHPR/Res.164 (XLVII)

[209] See generally Peter (n 5 above) 6.
[210] Communication 318/06 (2016).
[211] As above para 164.

2010 on Elections in Africa, the Commission urges the state parties to the African Charter to introduce impartial and non-discriminatory procedures for all the electoral processes.

The above opinion of the African Commission leaves one in no doubt to the fact that the right to participate in government is the same thing as the right to vote and be voted for in elections. Thus, governments when regulating the right must adhere strictly to the principle of equality and non-discrimination. What is required for a law to be discriminatory is when it produces the effects of an unjustified distinction though it may appear neutral.[212] It logically follows that where any state party to the African Charter adopts a law that excludes a group of citizens such as the youths, based on improper and unreasonable permissible grounds; such a state is in breach of its obligations under the African Charter.

In the same vein, the African Court on Human and Peoples' Rights (African Court) in the case of *Mtikila v Tanzania*[213] had cause to interpret article 13 of the African Charter. The gravamen of this case is on the Tanzanian law which provides that for someone to be eligible to stand for election; he or she must belong to a political party. The Court found such requirement to be a derogation of the right to participate in governance under article 13(1) of the African Charter; notwithstanding the fact that the right must be exercised in accordance with the law.[214] The Court further stated that articles 27(2) and 29(4) of the African Charter were limitations to the enjoyment of this right.[215]

In construing article 27(2) of the African Charter, which is the general limitation clause, the Court held that the law that must limit rights and freedoms guaranteed under the Charter must be a 'law of general application and these must be proportionate with and absolutely necessary for the advantages which are to be obtained'.[216]

The Court assessed the validity of limitations of this right by states, by asking whether such limitations or differentiations are reasonable and legitimate.[217] The implication of this decision is

[212] As above para 144.
[213] Application 9/2011& 11/2011.
[214] *Open Society Justice Initiative* (n 210 above) para 99.
[215] As above para100.
[216] *Open Society Justice Initiative* (n 210 above) para 107.1.
[217] As above para 119.

that states that are parties to the African Charter can only derogate or limit the right to participation in accordance with the principles underlying article 27(2). The state parties may not be allowed to discriminate or exclude some adult citizens from both electoral and non-electoral participation by merely pointing to constitutional provisions for such a justification.[218] In 'accordance with the law', which the African Charter contemplates for the exercise of the rights provided for, for example under article 13(1), is not domestic law but international law, as discussed above.

This is because state parties are bound by their obligations under the African Charter based on one of the foundational stones of international law, which is the principle of *pacta sunt servanda*.[219] They are forbidden under international law to breach their principal three-fold obligations to respect, protect and *fulfil* the rights contained in the Charter, due to the inadequacies contained in their domestic laws. They are expected to ensure that their domestic laws are at par with the provisions of the African Charter, so as not to render the rights and freedom contained therein illusory.[220]

Right to political participation of the youths under the African Charter nexus: Dignity, equality and non-discrimination

The interdependence, interrelatedness and interconnectedness of human rights arguably have firmly taken root in the international human rights law soil. This simply means that all rights belong to one big family, in that the violation or protection of one invariably affects the other. It is based on this well-cemented principle that this thesis would go to show that the denial of full and effective political participation of the youths anywhere in Africa is a violation of their three other fundamental rights, namely, the right to dignity, equality and freedom from discrimination. It is now beyond conjecture that the African Charter and African human rights system adopt an atomistic approach that views the part as a part of the whole and largely completing it.

[218] As above.
[219] J Dugard *International law: A South African perspective* (2011) 414.
[220] See art 1 of the African Charter.

Right to dignity

Dignity of the human person is a very tangential right among other rights, as it is central to achieving the legitimate aspiration of the African people.[221] It is such a pivotal right that it has been described as the soul of the African human rights system.[222] It is the respect given to a person in recognition of him being a legitimate member of the human family. Therefore, from the Africanist perspective, '[i]f a being has dignity, then one morally must treat it neither as though it has a merely instrumental value, ie, merely as a means, nor as though it has less value than another such thing'[223] This is suggestive of a need for the recognition of inherent capabilities and capacities of all members of the human family. Therefore, the articulation of the exclusion of the youths from the right to political participation as an equal violation of their right to dignity is valid because '[h]uman dignity, in any case, is the core value against which the exercise of any human right must be tested'[224]

One of the periphery reasons that could be presumably given for the exclusion of many African youths is the parochial view that they are neither mature enough nor have the capabilities of piloting the affairs of their various countries. This is an affront to and assault on their human worth and dignity as responsible member of their respective societies. This practice is in contradistinction with article 5 of the African Charter which recognises that all persons shall have the 'respect of the dignity inherent in a human being and to the recognition of the legal status'. The denial of the right to political participation to the youths on an equal footing with other adults is a denial of their inherent dignity. The simple logic is that the youths are regarded as less worthy of respect and recognition as adults and, therefore, are unfit to be trusted with the governance of their countries. This is rather unfortunate.

There is no more degrading treatment and brute assault on one's dignity than to be labelled as incompetent, a misfit and unworthy to be trusted with political powers as currently experienced by

[221] See Communication 318/06, *Open Society Justice Initiative v Côte d'Ivoire* (2016) 139.
[222] As above.
[223] T Metz 'Dignity in the ubuntu tradition' in M Düwell et al (eds) *The Cambridge handbook of human dignity, interdisciplinary perspectives* (2014) 312.
[224] B Fortman 'Equal dignity in international human rights' in Düwell (n 223 above) 358.

most youths. This is even more disturbing and crude when the basis for the denial of dignity is baseless, arbitrary and empirically unfounded. The idea that the youths are unworthy or cannot be trusted with political offices has been faulted in several countries, as has been highlighted above, in countries such as North Korea, France, Austria, Qatar and other progressive countries. Youth right to political participation as guaranteed under the African Charter intrinsically are tied to their right to dignity, and once dignity is lost, all is lost because, according to the African Commission:[225]

Under the Preamble of the African Charter quoting the Charter of the Organisation of African Unity, dignity is one of the 'essential objectives for the achievement of the legitimate aspirations of the African peoples.' Dignity is, therefore, the soul of the African human rights system and which it shares with both the other systems and all civilised human societies. Dignity is consubstantial, intrinsic and inherent to the human person. In other words, when the individual loses his dignity, it is his human nature itself which is called into question, to the extent that it is likely to interrogate the validity of continuing to belong to human society. Thus, a rape victim can decide to go as far as taking her life so that she does not have to confront her dehumanisation and the accusing and degrading look of society. When dignity is lost, everything is lost. In short, when dignity is violated, it is not worth the while to guarantee most of the other rights.

Therefore, looking at the violation of youth rights to political participation as a violation of the right to dignity would drive home the gravity of such violation and accord it the weight it deserves. This is most especially when it is beyond controversy that the rights guaranteed by the African Charter are supremely and independently linked to the almighty right to dignity.[226]

Right to freedom from discrimination

Another right to which a violation of youth rights to political participation under the African Charter could possibly be linked is the right to freedom from discrimination guaranteed under article 3. The exclusion of the youths from exercising their right to stand for election, though

[225] *Open Society Justice Initiative* (n 221 above) para 139.
[226] As above para 140.

subtle, amounts to unjustified discrimination under the African Charter. The only way in which the right to political participation can be practical and effective for the youths is to regard any act which excludes them on the basis of their age as amounting to discrimination.

The above argument is further fortified when one considers the fact that the only grounds for the exclusion from exercising the full political rights are legal incapacity and a criminal sentence. Therefore, to further deny or exclude any group on any other basis would amount to discrimination, and international human rights law forbids states from making a distinction between citizens in the enjoyment of all political rights.[227] The exclusion of the youths from exercising their rights to full and effective political participation is an act of indirect discrimination and a breach of articles 1 and 3 of the African Charter. The continued exclusion of the youths puts them in a bad light among other adult citizens in society. This amounts to discrimination.

Right to equality

At the heart of this thesis is the call for the exercise of political rights among all adult citizens to be done equally. To do otherwise would offend international human rights best practices and violate the right to equality. While respect for the equal right to political participation of all adult citizens implies respect for the right to equality; not honouring the right to equal political participation conversely violates the right to equality. Therefore, there is a pervasive link between the violation of the right to political participation of the youths and their right to equality under international human rights law.

Article 3 of the African Charter demands that state parties ensure that every individual is equal before the law and entitled to equal protection under the law. It suffices to state here that where a state party's electoral law makes an unjustified distinction among adult citizens, by denying some of them of their political rights, such a law promotes inequality and constitutes a violation of the African Charter. Thus, the exclusion of the youths from their right to vote or be voted for in elections falls outside the permissible grounds of limitations under the African Charter and amounts to a flagrant breach of states' obligations.

[227] See generally Peter (n 5 above) 16.

3.2.4 The nature of state parties' obligations and limitation of rights under the African Charter

The nature of the obligations of state parties under the African Charter, although similar to that of other international human rights instruments, gives no room for derogations or suspension of the various rights it guarantees.[228] This uniqueness found primarily in the African Charter has been affirmed through various decisions of the African Commission.[229] Viljoen has argued that the rights of Africans have been elevated to the status of regional *jus cogens* under international law due to the non-derogability status conferred on them by the African Commission. However, he pointed out that there is nonetheless an allowable derogation in terms of article 27(2) of the African Charter, which he refers to as 'derogation -limitation'. [230] In essence, derogation (limitation) would still amount to being Charter-compliant if it is done within the letter and spirit of the Charter, that is by not going outside the stated grounds of limitation under article 27(2) of the African Charter.[231]

The general provision of obligations of state parties to the African Charter is article 1 which requires them, in securing the various rights, freedoms and duties, to 'undertake to adopt legislative or other measures to give effect to them'. The obligation to take legislative measures is suggestive of making its laws to reflects the normative standards set by the Charter. While other measures are indicative of the fact that state parties' obligations under the Charter do not start and end with the promulgation or enactment of human rights laws that are of international standards. They must go a step further by ensuring the rights guaranteed in the laws are living realities in the everyday lives of everyone within their domains. That is to say, every good law on paper must be backed by good actions on the part of the states concerned so as not to render them worthless.

---

[228] Viljoen (n 188 above) 333.
[229] For example, in *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995) para 21, the African Commission held that '[t]he African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situation. Thus, even a civil war in Chad cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter.'
[230] Viljoen (n 188 above) 334.
[231] Art 27(2) of the African Charter provides that '[t]he rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective's security, morality and common interest'. See also *Media Rights Agenda* (n 195 above) paras 67 & 68.

In its recommendation in the case of *Social and Economic Rights Action Centre (SERAC) v. Nigeria (SERAC)*, the African Commission held that there are four levels of obligations that states have agreed to uphold based on generally accepted notions of human rights obligations in relation to all categories of rights. They are the duty to respect, protect, promote and to fulfil these rights. These obligations do not only apply to all rights but combine both negative and positive duties on the part of state parties.[232] The obligation to respect simply imposes on state parties the duty to refrain from acts that stand in the way of the enjoyment of the guaranteed rights. They should accord deference to all fundamental rights and should not be a clog in the wheel of progress to their enjoyment.[233]

On the other hand, the state parties are required to ensure that in the course of other and/or citizens' enjoyment of the rights that nobody or agencies unlawfully interfere with them. This is what the obligation to protect requires. The obligation is like a dual-carriage way that requires the provision of legislation and the availability of remedies for rights' victims. This is somewhat connected to the third obligation, which is to promote. Promotional states' obligation under the Africa Charter entails the creation of an atmosphere of tolerance through the education and awareness of the existence of the rights and even by building infrastructures to facilitate the awareness.[234]

There is a brute interconnectivity between the obligation to protect and to promote, in that third parties would deliberately violate rights where they know the victims are not aware of the existence of such rights. However, where the awareness and knowledge of human rights is rife, potential rights abusers would be reluctant to violate them because they know that if they are caught, they would be reported and punished by the state.

Last but not least, is the obligation to *fulfil*, which principally focuses on the positive expectations on the part of states. This requires states to put in place all necessary machinery that would engender the realisation of the various fundamental rights to which they have undertaken to abide by.[235] For instance, the obligation to *fulfil* in relation to citizens' rights to political participation

[232] (2001) AHRLR 60 (ACHPR 2001) para 44.
[233] As above para 45.
[234] As above para 46.
[235] As above para 47.

would entail putting in place an impartial electoral umpire and electoral courts or tribunals. This would enable citizens to participate in the electoral activities, and where someone is aggrieved by the process, they have a place to turn to for ventilating their electoral grievances.

Therefore, state parties are expected to dutifully carry out all their obligations under the African Charter without let or hindrance. Similarly, since the obligations in themselves are not human rights, they are incapable of being violated unless the violation relates to any provision of the Charter.[236] Invariably, as held by the African Commission, '[i]f a state party fails to respect, protect, promote or fulfil any of the rights guaranteed in the Charter, this constitutes a violation of article 1 of African Charter'[237] It suffices to say that the obligations are cumulative rather than disjunctive. They must all be satisfied by a state in relation to a right before the state can be exonerated from being in breach of its sacred and sacrosanct human rights obligations. Therefore, where a state respects rights but does not protect these rights, it would still be in breach of its human rights obligations.

Limitation of rights under the African Charter

In the previous parts of this chapter, it was shown that the rights to participate in government according to the ICCPR and other regional human rights instruments are not absolute but can legitimately be limited. In the same vein, the rights do not enjoy an absolute status under the African Charter but can be limited reasonably, objectively and proportionately within the permissible limits under the Charter. Generally speaking, the African Charter permits rights to be limited in three ways, namely, 'the right-specific "claw-back" clauses, right-specific norm-based limitations reminiscent of the European Convention, and a general limitations clause (article 27(2))'[238]

The claw-back clauses in the African Charter have been seen as not to affording individuals adequate protection as in the case of the derogation clauses in other covenants and conventions.[239]

[236] See *The Nubian Community in Kenya v The Republic of Kenya*, Communication 317/06 (2015) para 169.
[237] As above para 170.
[238] Viljoen (n 188 above) 329.
[239] See Gittleman (n 193 above) 157.

They have been said to be crafted in rather broad terms in the African Charter.[240] However, as will be seen shortly, the African Commission through its decisions has ameliorated the potential negative effects they could have on the enjoyment of rights.

'Claw-back' clauses in the African Charter limit those rights that are qualified with statements such as 'within the law';[241] 'subject to law and order';[242] 'for reasons ... previously laid down by law';[243] and 'provided he abides by law.[244] Such rights include the right to freedom of conscience;[245] the right to liberty and security;[246] freedom of expression;[247] freedom of movement;[248] and freedom of association.[249] A superficial meaning of the term "law" contained in the various rights may mean that states can illegitimately limit these rights provided there is existing legislation backing such restrictions. However, the African Commission has declared that the law contemplated by the African Charter is not just any law or national legislation but laws that uphold, solidify and complement the various rights in the Charter, namely, international law.[250]

The African Commission relies on articles 60 and 61 of the African Charter by applying a very restrictive interpretation of claw-back clauses.[251] This is the litmus test that must be passed by national legislation for it to satisfy the requirements of 'law' as envisaged by the African Charter. Such limitation must be in consonance with 'international human rights standards'.[252] For example, in the decision of *Interights & Others v Mauritania*, where the complainants' rights to freedom of expression were wrongfully curtailed by the respondent through domestic legislation, the African Commission held that while a state has the power to regulate the said right through

[240] Keetharuth (n 196 above) 169.
[241] Art 9 African Charter.
[242] Art 8.
[243] Art 6.
[244] Arts 10(1) & 12(1).
[245] Art 8.
[246] Art 6.
[247] Art 9.
[248] Art 12.
[249] Art 10.
[250] See *Media Rights Agenda* (n 195 above) para 66
[251] Viljoen (n 188 above) 329; *Amnesty International v Zambia* (2000) AHRLR 325 (ACHPR 1999) para 50.
[252] See *Civil Liberties Organisation v Nigeria* (2000) AHRLR 188 (ACHPR 1995) para 15.

national legislation, such legislation must be compatible with its obligations under the African Charter.[253] That is;

… the right of states to restrain, through national legislation, the expression of opinions did not mean that national legislation could push aside entirely the right to expression and the right to express one's opinion. This in the Commission's view, would make the protection of this right inoperable.[254]

Furthermore, state parties are not expected to limit a right under the African Charter just for the sake of limiting it. Such act of limitation must be based on an objective goal which is the second leg of limitation, namely, 'norm-based limitations', which limits states' interference with the Charter's rights.[255] For example, the African Charter permits the right to freedom of movement to leave one's country to be limited on the grounds of protecting national security, law and order, public health or morality.[256] Similarly, other justificatory grounds of limitations include 'national security, health, ethics and rights and freedoms of others'.[257] However, '[t]he usefulness of these norm-based limitations is limited by their apparent haphazard inclusion in respect of some rights and not others, and by their variable standard of review (with 'necessity' being required in one provision and not in others)'[258]

Nonetheless, any fruitful inquiry on the limitation of rights under the African Charter must principally involve article 27(2), because it is now settled that, it can be used to limit all rights under the Charter. It provides that all the rights in the African Charter must be exercised with due regard to 'the rights of others, collective security, morality, and common interest'. Therefore, for a limitation to be valid, the state party concerned must show that such limitation meets the article 27(2) proportionality test.

[253] (2004) AHRLR 87 (ACHPR 2004) para 76.
[254] *Interights* (n 260 above) para 77.
[255] Viljoen (n 188 above) 330.
[256] See art 12(2).
[257] Arts 11 & 8.
[258] Viljoen (n 188 above) 330.

For a limitation to be valid under article 27(2), it must not be discriminatory, in that it is applied to a person or group of persons. The African Commission in the case of *Constitutional Rights Project & Others v Nigeria,* where the then military government of Nigeria proscribed some newspapers by name, declared such law disproportionate and unnecessary because '[l]aws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lack of equal treatment before the law, guaranteed by article 3'[259] It can be argued that a law that is applicable to those within the youth age cohort would be unable to pass this discriminatory test requirement.

Apart from the need for the limitation not to be discriminatory, it must equally satisfy the strict proportionality test. That is, the state concerned must show that the limitation is strictly proportionate with and absolutely necessary for the advantages to be obtained.[260] Where the reasons for the limitation are incomparable to the value of losing the right or where no explanation is offered, that would amount to a violation under the African Charter.[261] Also, states are barred from limiting the rights in a way that would render them illusory.[262]

Furthermore, state parties, on the grounds of 'morality and common interests' under article 27(2), cannot unreasonably limit any right or those rights previously enjoyed just because it is an act that is popular or generally accepted. According to the African Commission; '[j]ustification, therefore, cannot be derived solely from popular will, as such cannot be used to limit the responsibilities of state parties in terms of the Charter'[263] It suffices to say that irrespective of the faulty perception the majority of people may have about the ability or capability of the youths in any state, it is not sufficient to limit or deny them their rights under the African Charter in light of article 27(2).

[259] *Constitutional Rights Project & Others v Nigeria* (2000) AHRLR 227 (ACHPR 1999) para 44. It therefore cannot be said to be 'within the law'.
[260] *Media Rights Agenda* (n 195 above) para 69.
[261] As above para 73.
[262] As above para 70.
[263] *See Legal Resources Foundation v Zambia* (2001) AHRLR 51 (ACHPR 2001) para 70. The respondent state had argued that the act of excluding some Zambians from exercising their rights to political participation was 'justifiable by popular will'; para 69.

3.3 Efforts on the recognition of youth rights at the global level

There have been various commendable efforts at the global level towards the recognition of youth rights prior to the establishment of the United Nations (UN). While the current work focuses on the work of the UN thus far on the articulation and strengthening of youth rights globally, it is prudent to state from the outset that the issue of youth rights precedes the UN and did not begin with it.[264]

The term 'youth', which is both a legal term and social construct just as other legal terms, suffers from ambiguity. Its definition varies from culture to culture, and from place to place. It is devoid of a single or precise definition. For example, the youth has also been referred to as a 'historically constructed social category'.[265] The *Oxford Advanced Learner's Dictionary* defines youth as 'the time of life when a person is young, especially the time of life before a child becomes an adult' or 'the quality or state of being young'.[266] Going by the last definition of youth, youths are neither children nor adults, but merely in an indeterminate age group.

Youths have been described as a 'transitory category' without a universal and stable category, and throughout the twentieth century have played changing roles.[267] There is so much contestation about its categorisation, and a learned author stated that 'there is no other stage in the life cycle of a human being that provokes as much controversy as the period between childhood and adulthood'[268] However, notwithstanding its apparent ambiguity, there seems to be some level of consensus in various regions as to what categories or age bracket of people are to be regarded as the youths.[269]

---

[264] See generally W Angel *The international law of youth rights: Source documents and commentary* (1995); W Angel (ed) *The international law of youth rights* (2015).
[265] D Durham 'Youth and the social imagination in Africa: Introduction to Part 1 and 2' (2000) 73 *Anthropological Quarterly* 114.
[266] Hornby (n 83 above 1751.
[267] G Lukuslu 'Constructor and constructed: Youth as a political actor in modernising Turkey' in J Forbrig (ed) *Revisiting youth political participation, challenges for research and democratic practice in Europe* (2005) 29.
[268] M Muthee 'Victims or villains: The search for identity by youth in Kenya' in P Iribemwangi et al (eds) *Human rights, African values and traditions: Inter-disciplinary approach* (2011) 131.
[269] See the definition of youth under the Ibero-American Convention on Youth Rights and the African Youth Charter which peg it at 15 to 24, and 15 to 35 years respectively.

The issue of youth came to the front burner for the first time in the UN in 1965, when the General Assembly adopted Resolution 2037 on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between People. This resolution highlighted the essential contribution of the youths to peaceful development.[270] However, the legal definition of youth remained unresolved. Therefore, in other to resolve it, the UN in its resolution put the age of youths as those between the ages of 15 and 24 for statistical purposes.[271]

Despite the categorisation of the group of people known as youths, their marginalisation and exclusion in governance has continued. In 1995 the UN, in order to show its commitment to the rights of youths worldwide, adopted the World Plan of Action for Youths to the year 2000 and beyond (WPAY). The UN through the WPAY 'affirms the full and effective participation of youths in society and decision-making as one of its 10 priority areas of action'.[272] According to the above grouping by the UN, children form part of the categorisation of the youths.

One of the UN efforts towards promoting and empowering the youths and their rights was the Braga Youth Action Plan (BYAP) which was approved at the Third World Youth Forum in Braga, Portugal, in 1998. It was declared that the youths should be an integral part of the solution to the problem of the world because;

[e]verywhere, young people and youth organisations show that they are not obstacles, but invaluable resources for development. Youth are building democratic leadership, civil society and social capital for the 21st century.[273]

The BYAP further demands the full and effective political participation of the youths in all sectors of their country and, particularly, they 'should participate in the decisions taken today about the resources of tomorrow'.[274]

---

[270] M Mahidi 'The young and the rightless? The protection of youth rights in Europe' unpublished Master's dissertation, Åbo Akademi University, 2010 31.
[271] See UN General Assembly Resolution A/Res/50/81 and Resolution A/Res/56/117.
[272] World Youth Report 'Youth participation in decision-making' (2003) 271.
[273] See the Braga Youth Action Plan (BYAP), http://www.youthpolicy.org/library/wp-content/uploads/library/1998_WYF_Braga_Eng.pdf (accessed 17 May 2018).
[274] BYAP (n 272 above) 271.

Flowing from the above, in the year 2009 the UN General Assembly through a resolution proclaimed the year 2010 as the International Year of Youth: Dialogue and Mutual Understanding.[275] The Resolution opines among other things that the way in which the challenges and potentials of the youths are addressed today would have a significant impact on the current economic, social conditions and future generations' wellbeing and livelihood.[276]

Also, on 25 August 2011, the UN General Assembly adopted another resolution that is connected to the rights of the youths, where it called on member states to take definite action toward the promotion of issues that touch on the best interests of the youths.[277] It equally calls on member states to accelerate 'further efforts to promote the interests of youths, including the full enjoyment of their human rights, inter alia, by supporting young people in developing their potential and talents and tackling obstacles facing youth'.[278] It is only through these targeted steps that the rights of the youths, and particularly their right to full and effective participation, can become a living reality globally.

Notwithstanding the above commendable efforts by the UN, it has been argued that the UN still has no legal definition for the term 'young person' within its framework. However, the age bracket of 15 to 24 years, when used to refer to the 'youth', is for data gathering and statistical purposes.[279] This is based on the fact that the term 'youth' as described by age is absent in laws designed for the protection of children.[280] There ought not to be any controversy about who are the youths, since it is now established that those who are regarded as children under international human rights law are persons of 17 years and below. It is therefore simple and logical to start the youths' categorisation from those who are 18 years and above. As Cardona rightly observed,

[275] See United Nations A/RES/64/134 adopted on 18 December 2009, https://undocs.org/en/A/RES/64/134 (accessed 17 May 2018).
[276] A/RES/64/134 (n 274 above).
[277] United Nations A/RES/65/312 'Outcome document of the high-level meeting of the General Assembly on Youth: Dialogue and mutual understanding' para 4.
[278] A/RES/65/312 (n 277 above) para 7.
[279] J Cardona 'Introductory note' in Angel (2015) (n 263 above) xv.
[280] Muthee (n 268 above) 132.

'[u]ndoubtedly, "youth" is a time of transition from children to adulthood, from dependency to independence, but opinions differ on when this happens'[281]

However, the recent UN Security Council (UNSC) Resolution of 2015 categorises youths to mean those in the age bracket of 18 to 29. By this act, one can safely say that the UN is attempting to correct the main issue which in recent times has made youth rights to political participation illusory.[282] The resolution calls on member states to 'consider ways to increase inclusive representation of youth in decision-making at all levels in local, national, regional and international institutions'[283] This goes to show that the youths globally are largely excluded rather than included in decision-making processes.

Due to the needles conflation of youths and children, most articles on the issues of marginalisation of the youths from decision-making processes focus both on the youth and children.[284] In arguing for the right of children to participation, the UN Convention of the Rights of the Child (CRC) provides in article 12 for the rights of children to participation in matters affecting them. However, the crux of this work basically focuses on youths that do not fall in the categorisation of children. Since article 1 of the CRC defines children as those below the age of 18, therefore, this work focuses on youth from the age of 18 and above.[285]

Despite the efforts of the UN and its other human rights agencies to proffer a workable and enduring solution to the issue of youth's marginalisation and exclusion in decision-making and governance processes, such efforts have produced little results. According to the UN World Youth

[281] Cardona (n 279 above) xv-xvi.
[282] See para 4 of the Preamble to Resolution 2250 (2015), adopted by the Security Council at its 7573rd meeting, 9 December 2015, which, while not failing to acknowledge the multiple definitions of youth, states that 'Noting that the term youth is defined in the context of this resolution as persons of the age of 18-29 years old, and further noting the variations of definition of the term that may exist on the national and international levels, including the Definition of youth in the General Assembly resolutions A/RES/50/81 and A/RES/56/117', available at https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2250%282015%29 S/RES/2250(9 December 2015) (accessed 27 September 2019); see also Security Council Resolution 2419 (S/RES/2419) (6 June2018) available at https://undocs.org/en/S/RES/2419(2018) (accessed 27 September 2019)
[283] UNSC Resolution 2250 (n 222 above) para 1.
[284] See M Couzens 'Exploring public participation as a vehicle for child participation in government: A view from South Africa' (2012) 20 *International Journal of Children's Rights* 674.
[285] The age of 18 is selected as this is the age of majority in most countries in the world. I am of the firm view that by using this as the cut-off point for youth categorisation that youth rights and their challenges can be effectively tackled globally. See Dally (n 57 above) 270-271. See further Joseph & Castan (n 39 above) 707.

Report of 2016, in spite of the fact that the youths globally are interested in politics, only around 5 per cent of parliamentarians are under the age of 35.[286] This is a disturbing state of affairs, as it simply means that the youths globally are heavily and illegitimately underrepresented at the decision table in matters related mostly to their present and future lives.

3.3.1 Resolving the jigsaw of youth rights under the UN system

The conclusion that may be drawn from the current analysis of youth rights and their rights to political participation is that the UN human rights system has been failing to successfully achieve the maximum protection of youth rights globally. Despite the various efforts at the global level in advocating for the rights of youth, the journey can be likened to that of a tale of so much motion but little movement, and that of so many tonalities devoid of good rhythm. The popular African saying that old brooms sweep better could readily illuminate our path here on the most insightful actions that could resolve this seemingly deadlocked situation.
What then are the factors that have thus far globally made youth rights to participation in decision-making processes unrealisable? Are there better ways or better language to use in order to realise these rights? Are there approaches that should be emphasised more?

Cardona is of the view that there are two basic approaches in resolving the dilemma around youth rights globally. These are the Social Development Perspectives (SDP) and the Human Rights Perspectives (HRP). According to him, those that belong to the SDP group are of the view that tackling the problems and challenges of youths and their rights can be done through the development of social policies and the implementation of best practices without the needless discussion of the specification of their rights. While the HRP categories are of the opinion that a process of specification of the rights of youths and their empowerment are the surest paths to the garden city of the realisation of youth rights.[287]

[286] J Sloam 'Youth electoral politics' in World Youth Report 2016 72, http://www.unworldyouthreport.org/images/docs/un_world_youth_report_youth_civic_engagement.pdf (accessed 17 May 2018).
[287] Cardona (n 279 above) xvii.

The line of argument of the SDPs is that there are enough arrays of human rights instruments that capture youth rights globally, and the only existing barrier between theory and reality of these rights is the absence of measures in terms of social and public policies that should push for their implementation. In opposition to this position, the HRPs argue that since it appears that existing rules have proven to be too weak and insufficient in combating and clearing off strongholds on the path of the realisation of youth rights; it therefore calls for the incontestable need for the specification of these rights through a legal framework in order to deepen issues around these rights.[288]

While both arguments have their advantages and disadvantages in articulating the way forward for youth rights, there are however fundamental issues that need to be addressed by the two approaches. Without addressing this issue, any such effort would amount to a pyrrhic victory for the youths globally. There is the need to look for an agreeable age of when the life cycle of youth begins just as it has been done for children. The UN must regard this as the first step in dealing with the issues of youth rights, although it is a daunting but achievable task. The cause for the arbitrariness and lack of uniformity globally on the age of those within the youth age cohort is the absence of specificity of the age at which youth begins. Therefore, without first addressing the fundamental issue of lumping youths and children together in one box, any attempt to examine either the SDP or the HRP on youth issues would result in a massive failure. Without first and foremost addressing this germane issue, it would make all efforts towards the specification, development and realisation of youth rights fall like a pack of cards.

The main idea of this thesis is that the identification problem must be solved before tackling the youth human rights problem on a worldwide scale. Therefore, resolving the issue of the particular age at which youth begins, which is markedly different from the age of children, would make more sense in using either the SDP or HRP model as the case may be. How do we develop policies on a group of persons that are regarded as neither children nor adults, or how do we effectively develop a human rights document for a group whose ages are jumbled with that of children? This would amount to a senseless and fruitless enterprise.

[288] As above.

Flowing from the above this thesis, rather than subscribing to either the SDP or HRP approaches to resolving issues on youth rights, would call for the combination of both approaches in addition to what it calls the Identification Perspectives (IP) which has been developed here. It has been rightly argued that the specification of youth rights in a single document, as has been done in regard to children's and women's rights, would lead to easy location of the rights. It would also give all stakeholders the opportunity to look at the barriers and the best way of removing them in the articulation of a new human rights instrument.[289]

As good as the above argument may sound, human rights treaties do not implement themselves; they need the political will of state parties to make them a living reality, and that is why the SDP is also necessary. Similarly, as earlier articulated, the best age for pegging of the start of an individual's youth as recognised by law should be 18. The age of 18 arguably has come to be accepted as the age of majority or adulthood in most UN instruments. Therefore, putting the beginning of youth at 18 with an option for states to lower it where maturity is attained earlier would be a highly decisive step towards the true respect, protection and promotion of youth rights globally.[290] On the other hand, the most appropriate age bracket would be ages 18 to 39, because the age of 40 is mostly perceived as the time when a person should be giving back to society. It is pertinent to add here that the age problem confronting issues on youth rights has more to do with at what age youth begins than at what age it ends.

The argument above hinges on the fact that one of the main barriers to realising youth rights at the global level is the issue of a lack of clarity on who is regarded as a youth. The current definition of youth by the UN has complicated the issue of youth rights rather than resolving it, as it categorises youth to include children.[291] There is an apparent defect in this categorisation, because in the real sense of it, children cannot be youths and youths cannot be children. While their needs may be similar, they are seldom the same. Such a categorisation makes it problematic for

[289] Cardona (n 279 above) xxvii.
[290] See for example art 1 of CRC and art 3(1) of the UN International Labour Organization (ILO), Minimum Age Convention, C138, 26 June 1973, C138 , http://www.refworld.org/docid/421216a34.html (accessed 18 May 2018), which provides that '[t]he minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardies the health, safety or morals of young persons shall not be less than 18 years'.
[291] Angel (1995) (n 264 above) 35.

policymakers and governments alike. The implication will, of course, lead to violations of the fundamental human rights of the youth.[292]

Since article 1 of the CRC defines children as those below the age of 18, the continuous maintenance by the UN of the age bracket 15 to 24 as the youths is a great disservice to the struggle for the realisation of youth rights globally. This thesis will go to show that unlike children, youths, properly so called, those from 18 years and above, are adults and not children.[293] This thesis will call them 'young adults' and refer to those above the youth age bracket as 'older adults'.[294] Similarly, while various UN declarations on children and women's rights have been followed by specific binding conventions; there is no globally-binding human rights instrument that specifically states the rights of the youths with binding obligations for states.[295]

There is really no need for the current confusion in the definition of the youths, based on the fact that the rights of children are already well articulated in CRC and other international human rights instruments. It was highlighted earlier that the marginalisation of youths from decision-making processes principally violates their human rights to political participation.[296]

In a nutshell, at the global level there is a need for the establishment of an international law of youth rights with a distinct age group outside the age bracket of ages 0 to 17. The term law of youth rights has been described as 'the possible existence of (or the eventual need for) a process of specification of the universal human rights of youth'.[297] The development of an international law of youth rights with a clear identification of the age at which youth begins (18) would certainly

[292] Cardona (n 278 above) xvi-xvii.
[293] Daly (n 58 above) 270, where the author highlights the fact that there is widespread consensus for the voting (majority) age at 18 years. Therefore, 18 years ought to be the dividing line between children and youth. CRC and the African Children's Charter define children as those below the ages of 18; see art 1 of CRC and art 2 of the African Children's Charter for the definition of child.
[294] In most countries of the world and most international human rights instruments, the age of 18 is synonymous with maturity/majority and adulthood. For example, Muthee argues that '[t]he age of majority in many countries is 18 and when a person passes the age, they are considered adults'; Muthee (n 268 above) 132.
[295] Angel (n 264 above) 37.
[296] See UN General Assembly Resolutiom/50/81 World Programme of Action for Youth to the Year 2000 and Beyond, para 9, where according to the UN 'the world youth population – defined by the United Nations as the age cohort 15-24 – is estimated to be 1,03 billion, or 18 per cent of the total world population. The majority of the world youth population …'
[297] Cardona (n 279 above) xviii.

drive developmental policies across the world on human rights of the youths and their rights to political participation. This identification and specification of youth rights is timely and necessary as it has the potential of turning around the way in which states would approach issues on youth rights. The conflation of youths and children over the years has worked in favour of children (those within the ages 0 to 17) but against the youths properly so called (those within the ages of 18 but below 40). The urgency of this matter has been aptly captured by Cardona:[298]

It is good that the international law of human rights accompanies the person in the process of transition from childhood and then to old age, and that it tries to specify the exercise of rights to the different situations with the aim of eliminating the barriers that can be found in the course of life.

It suffices to say from the above that it is now time for the UN to move from its motionless movement on youth rights by engaging stakeholders on the need to fashion a specific human rights document that would holistically deal with youth rights in the same way as it has been achieved in the case of children's rights. Without this paramount decision taken by the UN, the endless and fruitless rights-talks on youth rights will continue.

3.4 Efforts on the recognition of youth rights at the regional level

Surprisingly and commendably, the need for the articulation of youth rights in a treaty document has dramatically received a nod at the regional level. Due to the concretisation of youth rights into enforceable documents at the regional level, it is a paramount source of international law regarding youth rights.[299] There are two regional treaties on youth rights, namely, the African Youth Charter (AYC), which was adopted by the member states of the African Union (AU),[300] and the Ibero-American Convention on Young People's Rights (IACYR), adopted by the Ibero-American

[298] Cardona (n 279 above) xxviii- xxix.
[299] See 'Editorial: International law of youth rights sources and challenges' in Angel (2015) (n 263 above) 945.
[300] African Union, African Youth Charter, 2 July 2006, http://www.refworld.org/docid/493fe0b72.html (accessed 18 May 2018).

Organisation of Youth.[301] Interestingly, both documents fall under the circle of legal human rights instruments explicitly addressing youth rights.[302]

These two documents represent the boldest step taken so far on the recognition and realisation of the full and effective protection of youth rights globally. The crucial reason for this assertion is that they are not only binding on their signatories but are 'presented in the context of implementing the commitment of their signatories under the core human rights treaties', with a wide range of rights ranging from civil and political to economic, social and cultural rights.[303] Their existence lends credence to the argument made earlier in this chapter that the adoption of a rights-based treaty is even possible under the UN human rights architecture.

However, in this chapter, only the IACYR is dealt with, as the previous chapter has been set aside for a thorough discussion on the AYC and its surrounding issues.

3.4.1 The Ibero-American Convention on Young People's Rights: New rights?

The Ibero-American Convention on Young People's Rights (IACYR), which came into force on 1 March 2008, made history by becoming the first ever internationally-binding treaty on youth rights.[304] The Convention, consisting of 44 articles and five chapters, focuses on sexual and reproductive rights, political participation, and the right to be a conscientious objector, among other rights.[305] However, a guide for its implementation was elaborated as far back as 2007.[306] It realisation did not come on a platter of gold due to some conservatives' resistance. It took seven years for its negotiation and only became a reality due to the unflinching efforts of civil society.[307]

[301] Regional treaties, agreements, declarations and related, Ibero-American Convention on Young People's Rights, October 2005, http://www.refworld.org/docid/4b28eefe2.html (accessed 18 May 2018).
[302] Angel (n 264 above) 946.
[303] As above.
[304] 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 May 2018).
[305] As above.
[306] See GTZ 'International commitments' 9, http://www2.giz.de/wbf/4tDx9kw63gma/Commitments.pdf (accessed 18 May 2018).
[307] R Guevara 'Ibero-American countries set progressive youth rights agenda: First convention of its kind defends rights of teenagers and young adults, but its passage has not been smooth' in CRIN Report, Measuring Maturity:

The IACYR has been argued elsewhere that it has a binding effect on the European soil due to the fact that two European countries have ratified it, namely, Spain and Portugal.[308]

One of the major reasons for the adoption of the IACYR was to underscore the fact that the youth forms a social sector and encounter challenges in a myriad of areas in life and, therefore, there was a need to specify the scope and content of their international human rights in an instrument.[309] The Convention does not contain a new set of rights differing from those in various international human rights instruments, save for its provision on the banning of the use of the death sentence under article 9 for all persons covered by the instrument. This is significant as it makes it the first binding international human rights banning the death sentence globally.[310]

The IACYR in article 21 guarantees the right to political participation to persons between the ages of 15 and 24.[311] It expressly declares that the youths have the right to participate in politics,[312] which is suggestive of the fact that those protected under the instrument cannot be denied their right to participation in politics.[313] State parties commit themselves to ensuring that young people are included in all sectors of the society.[314] They are particularly expected to 'promote measures which in conformity with the internal law of each country, promote and encourage that youths exercise their rights to register in political association, to elect and be elected'.[315] Similarly, they undertake to ensure that the youth participates in both governmental and legislative institutions, especially regarding issues affecting the youth.[316]

Understanding children's evolving capacities, No 23, October 2009 15, https://www.crin.org/en/docs/CRIN_review_23_final.pdf (accessed 18 May 2018).

[308] See generally Mahidi (n 269 above) 48. Other countries that have ratified the IAYRC are Costa Rica, Ecuador, The Dominican Republic and Honduras.

[309] Mahidi (n 269 above) 49.

[310] As above. Interestingly, four of its signatories have accepted this particular provision (Dominican Republic, Cuba, Guatemala and Peru).

[311] See art 1 of the IACYR.

[312] See art 21(1) of the IACYR.

[313] A major query here is whether those who are minors under it can be allowed to vote and be voted for, since they have a right to participation in politics.

[314] See art 21(2) of the IACYR.

[315] See art 21(3) of the IACYR.

[316] See art 21(4) of the IACYR.

The general obligations of state parties are to be found in the Preamble to the IACYR, where it is stated that there is a need for progress in the recognition of youth rights, and also, the necessity for states to adopt measures for the full and effective realisation of these rights.[317] State parties, therefore, undertake to *fulfil* and take measures in ensuring that all the rights in the Convention are rendered effective.[318]

However, article 8 specifically places an obligation on states to adopt any legal, administrative or other measures that would ensure that the rights in the Convention are respected, protected and fulfilled accordingly. States are expected to assign resources, if need be, for the implementation of its provisions. Equally, state parties undertake to see to the promotion of the principles of the Convention in their respective states.[319]

Article 36(1) empowers the Secretary-General of the Ibero-American Youth Organisation (OIJ) to request from state parties' information regarding youth public policies and also considering reports from them on efforts made thus far towards the implementation of the standards of the Convention.

Furthermore, the Secretary-General is required to forward the information obtained from the report to the Ibero-American Conference of Youth Ministers.[320] The rule governing the power of the Secretary-General is regulated by the Conference of Ministers.[321] All parties to the Convention under article 37 undertake to ensure that the principles of the Convention are widely known by the entire society and the youths.

[317] Preamble to the IACRY, para 7.
[318] Preamble to the IACYR, para 11.
[319] See art 37 of the IACYR.
[320] See art 31(2) of the IACYR.
[321] As above.

3.4.2 The Ibero-American Convention on Young People's Rights: Adequate but not sufficient

The IACYR has been commended for being the first binding international human rights instrument on youth rights. However, in many respects it remains a fundamentally flawed document in tackling the issues of youth rights, particularly their rights to political participation.

First and foremost, this involves both its name and categorisation, in that it is a Charter for the 'young' and not the 'youth' and puts the ages of those covered by it from 15 to 24 years.[322] The quest for the codification of the international law of youth rights is not the same as that of children's rights, as children are well protected in both specific and general international human rights instruments.[323] The needless jumbling of children and youth in the Convention in its categorisation renders it a grossly inadequate document to tackle the issues of youth marginalization. This should be what any law on youth rights should primarily tackle.

Since persons from ages 0 to 17 are already classified as children and well protected internationally, the start-up age for a youth rights-based convention ought to be 18. To do otherwise would continue the discrimination of regarding them as children, which they are not. It has been stated in previous chapters that 18 years is the age of majority in most countries and those from 18 years and above are adults and not children. They could also be referred to as 'young adults' but not children.[324]

Another visible drawback of the IACYR is that it contains no monitoring mechanism, although it empowers the Secretary-General of the Ibero-American Youth Organisation (OIJ) to get reports from state parties as to its implementation. This is a serious omission, especially when one considers that the success or failure of international treaties often depends on the existence of a monitoring or supervisory mechanism.[325] The drafters would have followed the examples found

[322] See art 1 of the IACYR.
[323] For example, the African Children's Charter, CRC and also see art 24 of ICCPR on the rights of children.
[324] Muthee (n 268 above) 132.
[325] Mahidi (n 270 above) 52.

in both CRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[326]

The IACYR at first grants a general right to political participation by declaring that the '[y]outh have the right to participation in politics',[327] but subsequently seems to have limited their rights to political participation to issues around youth.[328] However, a reading of article 21(3) appears to ameliorate this limitation when it provides that '[t]he state parties shall promote measures which, in conformity with the inner law of each country, promote and encourage that youth exercise their right to register in political associations, to elect and be elected'.

The above provision guarantees the youths the rights 'to elect and to be elected' but is unclear on whether these rights are to be exercised in relation to governmental elections or youth association elections. The latter suggestion may be the intention of the drafters, because in many countries, children are neither allowed to vote nor can they be voted for in general elections. This interpretation is further fortified when one considers article 21(2) which mentions participation of the youth in organisations that support that their inclusion. Therefore, from a literary perspective, the guaranteed right to political participation is rather clumsy, unclear and confusing. One cannot but agree with Mahidi that the right to political participation is considerably limited when compared to that of the AYC.[329]

[326] See arts 45 of CRC and 17 of CEDAW respectively on their monitoring mechanisms.
[327] See art 21(1) of the IACYR.
[328] See art 21(4) of the IACYR.
[329] Mahidi (n 270 above) 50.

Therefore, the IACYR, while commendably being the first binding international law on youth rights, regrettably provides for much but offers little. It guarantees no adequate protection of youth rights globally, principally by falling into the avoidable pit of conflating youth and children in a single rights document. It also fails due to the absence of a specific and distinct commencement age (that do not include children) for a person that could be regarded as a youth.

3.5 Youth rights to political participation in Africa: Exclusion or inclusion?

It has been argued in previous chapters that Africans in their natural habitat favour political inclusion rather than exclusion. It has equally been stated that one of the best ways of determining the practices of Africans, including their political behaviours, is through their proverbs which have been passed down from generation to generation. Therefore, locating a perfect political arrangement that would represent the African people would most probably be revealed by their proverbs. This is one of the principal contributions to the knowledge of this thesis. It has been revealed from various African proverbs, wise sayings, and philosophies that youth rights to political participation are guaranteed on an equal footing with adults in African societies and during the colonial era. It would be instructive now to consider whether youths are still included in decision-making processes in post-colonial Africa.

The youths in post-colonial Africa are objects of marginalisation, manipulation and exclusion. They are treated as those unworthy of political power and a group who are either too violent or inexperienced to be entrusted with the management of political affairs. Notwithstanding the fact that they constitute the largest percentage of Africa's population,[330] they experience 'social exclusion, joblessness and restricted future'.[331] The continuous exclusion of the youths from full and effective political participation, besides it being un-African, would result in the undemocratic

[330] A Atta-Asamoah *Head-to-head: Is Africa's young population a risk or an asset?* (2014), where it is stated that people under the age of 20 years are found in Africa more than anywhere else.
[331] A Honwana 'Waithood, restricted futures and youth protest in Africa' (2014) 1.

exclusion of the majority of Africa's population from the decision-making table. This is a potential threat to stability and the future development of Africa.[332] Africa is said to have a young population.

In recent research conducted by the Afrobarometer on the youths in Africa, it was discovered that the youths currently comprise 70 per cent of the African population and, unlike in Europe, where the median age is 42, the median age in Africa is 19.[333] This of course makes Africa one of the youngest continents, if not the youngest in terms of its population grouping. This is because, based on demographic trends, in African countries, a larger percentage of their population are between the ages of 15 and 25.[334]

The above findings become clearer and more convincing when one considers the population grouping in any given African country. For example, the Nigerian population is said to be principally young, as one-third of its population are young people.[335] By necessary implication, the population of Nigeria, which stands at 170 million, is made up of approximately 57 million youths.[336] Similarly, it is said that about 73 per cent of the population of Sierra Leone are under 35 years, and more than half of the persons who registered to vote in 2012 were people under the ages of 18 to 35 years.[337]

African post-colonial states have continued to stifle youth rights to political participation and this has led to the current generational gap that exists between those in government and the African

[332] M Sigudhla *SADC perspective on youth and governance in Africa* (2005) 2.
[333] D Resnick & D Casate (eds) 'The political participation of Africa's youth: Turnout, partisanship and protest' Working Paper 136 (November 2011) 1, http://afrobarometer.org/sites/default/files/publications/Working%20paper/AfropaperNo136.pdf (accessed 19 May 2018).
[334] As above 3.
[335] See the Second National Youth Policy Document of the Federal Republic of Nigeria (2009) 2, http://www.youth-policy.com/Policies/Nigeria%20National%20Youth%20Policy%20&% 20Plan%20of%20Action.pdf (accessed 18 May 2018); S Uhunmwuangho and E Oghator 'Youth in political participation and development: Relevance, challenges and expectations in the 21st century' (2013) 15 *Journal of Sustainable Development in Africa* 245.
[336] See Afrobarometer on Nigeria's population.
[337] See D Walker et al 'Partners for change: Young people and governance in post-2015' (2014) 5, http://restlessdevelopment.org/file/partners-for-change-young-people-and-governance-in-a-post-2015-world-pdf (accessed 18 May 2018).

youths.[338] The African youths, in spite of them constituting a significant electoral constituency, are being denied their rights to political participation by various states in Africa.[339] Most African states have put in place machineries that systematically violate the rights to political participation of the youths.[340] While the right to vote is guaranteed to the youths in all African states, the right to stand for elections is arbitrarily limited in most African constitutions.[341] This has been done through the use of age limitation in laws regulating elections, with a resultant effect of excluding a large section of the youth age cohort. This amounts to a system of political participation that excludes and includes the youth, which is a practice of inclusion by exclusion.[342]

The fact that the bar on the political rights of the youths described above is concretised in legislation and often in constitutions makes it highly problematic for the meaningful realisation of their rights to political participation. This is simply because a 'constitution embodies the basic features of a society's idea about 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'[343] While the constitutionalisation of rights does not translate into their realisation, accountability and redress becomes problematic without it.[344]

Investigative findings on the constitutions of several African countries reveal that youths are either totally[345] or partially[346] excluded from access to power, both executive and/or legislative power. Notwithstanding this fact, the principle of universal equal suffrage underpins the right to political

[338] C Dias & R Sudanshan 'Towards inclusive governance' (2007) 1, who argue that all people have a right to participate in decisions affecting their lives.
[339] Resnick and Casate (n 332 above) 1.
[340] MK Mbondenyi & JO Ambani *The new constitutional law of Kenya: Principles, government and human rights* (2012) 183, who argue that it is unfortunate that despite the paramount importance of citizens' rights to political participation in nation building, many African states violate this right.
[341] See the respective Constitutions of Angola, Botswana, Algeria, Mauritius, Cape Verde, Comoros, Cameroon, Congo, the Democratic Republic of the Congo, Djibouti, The Gambia, Ghana, Guinea, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Seychelles, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia, Uganda, Nigeria, Zambia and Zimbabwe.
[342] Durham (n 264 above) 114.
[343] P Cane 'Participation and constitutionalism' (2010) 38 *Federal Law Review* 319.
[344] Viljoen (n 136 above) xiv.
[345] Nigeria, Algeria, Cameroon, Republic of Congo, Ghana and Zimbabwe (these are countries whose constitutions provide for rights to stand for national elections above the age of 35 years, but some youths are eligible to stand for a few legislative offices).
[346] Angola, Botswana, Algeria, Mauritius, Cape Verde, Comoros, Democratic Republic of the Congo, Djibouti, The Gambia, Guinea, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia and Uganda.

participation.[347] The principle of non-discrimination is germane to the concept of universal and equal suffrage.[348]

Only the Constitutions of South Africa, Seychelles and Kenya, among the constitutions examined, guarantee full participation to their youths under their respective laws. Such constitutionalised exclusion and marginalisation are against principles governing rights to political participation, as discussed above. Constitutionalised discrimination against the youths in Africa is a negative regulation of the right to political participation rather than a positive regulation which entails the protection and promotion of the right.[349]

The continued exclusion of the youths from decision-making processes by way of age limitations in laws has multiple effects. Apart from access to political power, it results in them being labelled as incomplete and unfit citizens, causing society to deny them rightful positions in both governments and industries. Their entire lives are affected by this singular act that may appear infinitesimal. Why would anyone trust a group of persons (the youths) with other leadership responsibilities that have a constitutional stigma attached to them as unfit, immature and inexperienced in the business of governance?

However, the act of exclusion of the youths in electoral politics in Africa has no basis in international human rights law, logic or reasoning. It is an act that is disproportionate, unreasonable and unpardonably arbitrary.

3.6 Conclusion

The preliminary conclusion that may be drawn from this chapter is the fact that the rights to political participation are firmly established in international human rights law, both at the global and regional levels. Although the rights are not absolute, they can only be limited by state parties within the limitation parameters of the human rights instrument concerned. One of the common

[347] J Grace & E Mooney 'Political participation in particular the right to vote' (2010) 41 *Studies in International Policy* 509.
[348] Grace & Mooney (n 346 above) 511.
[349] These constitutions stipulate 18 years as the age at which to vote and be voted for.

denominators among the various instruments is that such limitation must be reasonable, justifiable and not be disproportionate or arbitrary. Similarly, the various attempts toward the specification or development of youth rights were equally considered, and it was discovered that while currently there is no binding global human rights document on youth rights, there are global soft laws on the rights and two existing binding regional human rights instruments.

Surprisingly, despite the existence of the rights to political participation in international human rights law, evidence remains that African youths suffer indiscriminate exclusion and a denial of their full and effective rights to political participation. The instrument of exclusion or discrimination is law and/or constitutions of most African states.

The following chapter discusses related topics and possible African responses to the problem of youth exclusion, including the establishment of the African Youth Charter. This chapter is related to the next chapter because it highlights in specific terms the legal action that has been done at the regional level and globally to address the issue of young political exclusion that has been discussed in the previous chapter from a global perspective.

Chapter Four

The African Youth Charter

4 Introduction

In the previous chapter the various body of literature and theories on the right to political participation were considered. This chapter connects with it by examining the regional response in addressing the issue of youth political marginalisation and their human rights in general. Therefore, the chapter links the immediate past chapter by considering the human rights instruments which the African Union (AU) has put in place to ensure respect for youth rights, and particularly their rights to political participation.

In light of the above, this chapter starts by looking at the foundation stone of youth rights to political participation, which is human rights. It examines the idea of a human being and how it served as a model for the creation of texts outlining the rights of youths to participate in politics. Part two delves deep into the past in order to uncover various events that led to the adoption of the African Youth Charter (AYC). The third part focuses on the various rights guaranteed under the AYC. The fourth part discusses the obligations of state parties, while the fifth part centres on enforcement mechanisms provided under it. An assessment of the AYC is provided in the sixth section. The seventh segment discusses the arbitrary age discrimination against African youths. The eighth section is where the prospects for youth rights litigation in Africa are discussed, and the ninth section wraps off the chapter.

4.1 Human Rights as Precursor for Youth Right to Political Participation

Human rights are claims that belongs to all humans irrespective of their culture, age, religion or nationality.[1] That is they are entitlements which every member of the human family should be entitled to ordinarily. Thus, they are 'rights which all human beings everywhere and at all times equally have or ought to have by virtue of being human beings.'[2] The definition presupposes that guarantee or enjoyment of the largesse of human rights should not only be for all human beings but it should be done equally. It is important to note that some groups within

[1] *B Smith Good Governance and Development (2007) 45.*
[2] *O Ogbu Human Rights Law and Practice in Nigeria (2nd Revised edn. Vol. 1) (2013) 5.*

the human family are underserved or generally ignored, which makes the aim or desire for everyone to have access to human rights rather elusive.

As a matter of fact, Douzinas contends that [h]uman rights become defences against cruelty, brutality and the atrocities of public and private power.'[3] Despite this evident truth regarding the application of human rights, impacted groups or concerned individuals have persisted in their efforts to have these rights codified universally. The main goal of this is to better defend the rights of underrepresented groups.

The push for the recognition by codification of the rights of these groups reinforces the original goal of human rights as a formidable tool of liberation from any form of oppression or domination.[4] The agitation for adequate protection of some groups rights has brought about the adoption of human rights instruments on the rights of children, women, migrants, persons with disabilities among others. Similar movements helped secure youths' rights generally and their right to political participation through the ratification of particular human rights instruments.

While the agitation for adoption of a global treaty for youth rights has not materialised as that of women, children and other groups; it however brought about adoption of such at the regional level. One of the major regional treaties on youth right is the African Youth Charter (AYC). The adoption of specific human rights instrument for a group is derives from the fact that if human rights belong to all human beings, there is no basis for denying same to some group of people. Such human rights instruments set out restate the entitlements of rights to all human beings and proclamation of the group entitlement to them. The rights guaranteed by such instruments are both general rights and those that pertain to the peculiarity of the group they set out to protect.

[3] *C Douzinas The Radical Philosophy of Rights (2019) 65.*
[4] *C Douzinas The End of Human Rights (2000) 1.*

4.2 Historical background: Looking back to move forward

Although the African Youth Charter (AYC) is the first treaty in Africa that specifically deals with the rights of the African youth, other documents and declarations touch on the human rights of the youths, generally, and their rights to political participation, in particular.[5] Thus, for the agenda and the purpose of the AYC to be put in a better perspective, looking back on factors that engineered its birth would be a paramount consideration. This is because it an indisputable fact that the past could sometimes be a guiding light for both the present and the future, even in matters concerning human rights, such as youth rights.

In 1990 the Organisation of Africa Unity (OAU) through the African Charter for Popular Participation in Development and Transformation (ACPP)[6] affirmed in article 7 that '[n]ations cannot be built without the popular support and full participation of the people', which reinforces the need for African states to allow every citizen (including the youths) to exercise their political right to the fullest. Despite the existence of the ACPP, youth rights to full political participation remain a pipe dream. Although the ACPP focused on popular participation in terms of development, it can nevertheless be expanded to include political development or participation.

The Constitutive Act of the African Union (AU) recognises the right to participation.[7] In addition, the African Union Commission (AUC) 2004-2007 Strategic Plan, which consisted of three volumes, makes the empowerment of the African youths their goal. Volume one of the Strategic Plan declares that besides the fact that the youths should be the primary target of the investment initiative, they could become assets and not a future liability when their concerns and cares are in the forefront in Africa.[8] It further states that the transfiguration of the OAU to

[5] African Union, African Youth Charter, 2 July 2006, adopted by the 7th ordinary session of the Assembly, held in Banjul, The Gambia, 2 July 2006 and entered into force on 8 August 2009, http://www.refworld.org/docid/493fe0b72.html (accessed 6 June 2018).

[6] United Nations Economic Commission for Africa (1990-02) African Charter for Popular Participation in Development and Transformation, UN ECA International Conference on Popular Participation in the Recovery and Development Process in Africa, 1990, Arusha, Tanzania, http://hdl.handle.net/10855/5673 (accessed 6 June 2018).

[7] Sec 1(g).

[8] See Volume 1 of the AUC Africa Strategic Plan of the AU 12, http://www.foresightfordevelopment.org/sobipro/download-file/46-731/54 (accessed 5 June 2018).

the AU is underpinned by eight key ideas as extrapolated from the constitutive Act of the AU.[9] The issues of youth rights and their empowerment feature among these key ideas.

Idea six of one of the eight key ideas of the Strategic Plan calls for the urgent and immediate mobilisation of the African youths for the purpose of the integration of Africa. Since the youths constitute the largest sector of the African people, the need for them 'participating increasingly actively in *political and democratic processes* at national level, the youth could serve as a driving force both in the political advancement of the continent and in the attainment of the objectives and goals enshrined in the Constitutive Act of the African Union'.[10]

In addition to the above, volume three of the AUC Strategic Plan calls for the need to create a conducive environment for the participation of the African youths. It equally states that there is a need for the African youths to be endued with the fundamental capacities that are necessary for confronting future challenges, which are necessary for the realisation of their full potential.[11] As will be shown later, all these calls were the preparatory actions and foundation stones of the AYC. They provoked and improved the issues of youth rights that have hitherto not been given the required attention.

Apart from the AUC, the New Partnership for African Development (NEPAD) is a body to be reckoned with in tracing the emergence of the AYC. NEPAD, through its Strategic Framework for a NEPAD Youth Programme, equally accelerated debates on youth rights and their protection in Africa.[12] The centrality of NEPAD's Youth Programme is the prime importance of the youth in the development of Africa.[13] It advocates the need for the African youths to be given every opportunity to participate in decision making in their home states and also in the activities of both NEPAD and the AU.[14] This call suggests that the African youths are unreasonably excluded from the decision-making process and also their participation and involvement in the activities of AU and NEPAD is almost absent. However, although very instructive regarding youth rights, the strategic framework unfortunately indicates that it is not

[9] As above 22.
[10] As above 25 (my emphasis).
[11] AUC Strategic Plan of Action Vol 3 8, https://repositories.lib.utexas.edu/bitstream/handle/2152/4763/3851.pdf;sequence=1 (accessed 4 June 2018).
[12] See the NEPAD Strategic Plan which is known as 'A Strategic Framework for a NEPAD Youth Programme: Toward the African Youth Decades 2005-2015', http://au.nepad.org/publication/strategic-framework-nepad-youth-programme (accessed 5 June 2018).
[13] As above 8.
[14] As above.

meant to be a prescriptive document but merely an awareness-creating tool towards the need for a renewed focus on the issues of the African youths.[15]

Furthermore, the document emphasised the principal issue of the thesis where it states that '[y]oung people are often excluded from participating in high-level structures because of their age and perceived inexperience'.[16] This anomaly can be adequately remedied by building the right institutions that ensure the participation of the youths at all levels of society.[17] In order to ensure that the goals in this document are achieved, it declares that the decade of the youths in Africa runs from 2005 to 2015[18] and also called for the formation of the African Youth Forum.[19]

The roles of the UN, its subsidiaries such as the United Nations Education and Scientific Organisation (UNESCO) and its regional commissions are inescapable in any detailed account of the history of the AYC. For instance, it has been rightly stated that the growth and adoption of youth rights standards regionally are centrally connected to the major initiatives taken by UNESCO (from1974 to 1983); the UN Regional Commission (from 1983 to 1984); the UN World Health Organisation (WHO) (from 1984 to 1989); and the initiative of the regional commission of intergovernmental meetings of ministers responsible for youths (from 1983 to 1993).[20] Thus, collective reviews of the legal instruments and standards that have been adopted by these bodies have deepened the international law of youth rights at the regional level.[21]

In specific terms, it was through the UN Economic Commission for Africa Regional Plan for youth in Africa in 1983 that the call was made for a need to have a 'Youth Charter' which serves to, among other things, define the place and the role of youth in society, their rights and their responsibilities of society towards youth, the expectations of society regarding the contribution of youth to the country's unity, independence, peace and development and regarding the responsibility of youth to preserve, reinforce and transmit essential cultural values and traditions in their community.[22]

---

[15] As above 9.
[16] As above 25.
[17] As above 26.
[18] As above 30.
[19] As above 38.
[20] See generally W Angel (ed) *The international law of youth rights* (2015) 31.
[21] As above.
[22] Angel (n 20 above) 33.

These regional plans of action specifically address the issues of youth rights and their actions cascade into the adoption of a youth rights treaty in Africa and other parts of the world.

Despite the call for the adoption of a treaty on youth rights in Africa since 1983, this vision did not materialise for over two decades. However, the African Youth Charter was adopted on 2 July 2006 by the African Union Assembly of Heads of State and Government in Banjul, The Gambia, and the same place where the African Charter on Human and Peoples' Rights (African Charter) was adopted in 1981. It has been argued that it was the unanimous call of member states of the AU at their Algiers summit in 1999, that there was a need for the development of the AYC.[23] Also, the 2005 Africa Youth Report remains one of the prime determining factors that led to the adoption of the AYC.[24]

Since we have considered some of the possible events and actions that would have propelled the drafting and adoption of the AYC, it is pertinent to now briefly consider its drafting history.

4.2.1 The drafting history of the African Youth Charter

The drafting process of the AYC lasted approximately eight months before reaching its maturation point of adoption. There was a period of eight months span between September 2005 and May 2006, through a robust collaborative style which involves the engagement of youth leaders in Africa, experts on youth issues, youth affairs ministers, and partners and stakeholders interested in the youths and their rights.[25] The first draft of the AYC was drawn up in January 2006 after the summit and subsequent deliberation. Thereafter the draft Charter was sent to the AU member states in order for them to consult with the youths and their organisations on the content of the draft for any additions or subtractions in it.[26] This process

[23] D Mac-Ikemenjima 'Beyond Banjul: It's time to implement the African Youth Charter' August 2009 1, https://dossierghana.files.wordpress.com/2010/03/afrimap-ayc-macikemenjima-en.pdf (accessed 9 June 2018).
[24] As above. According to the author, '[t]his report showed that the "youth bulge" in African populations could be a significant opportunity for Africa to make real progress but this would require a deliberate effort and investment in youth development across the continent'.
[25] See the interview granted by Dr Raymonde Agossou, the former Head of the Division, Human Resources and Youth Development of the African Union Commission; 'The African Youth Charter is the first legal framework in favour of youth development', http://www.unesco.org/new/en/member-states/single-view/news/the_african_youth_charter_is_the_first_legal_framework_in_f/ (accessed 6 June 2018).
[26] See 'African Youth Charter' (Youth Policy.org), http://www.youthpolicy.org/library/documents/african-youth-charter/ (accessed 4 June 2018).

was necessary if the Charter was to be a home-grown document such as other treaties of the AU.

Flowing from the above, it should be pointed out that the AYC apparently is an offshoot of parts of the efforts of the AUC to make available pathways for the effective participation of the youths in the developmental processes of their societies. This is one of its numerous efforts toward the implementation of its Strategic Planning 2004-2007 which was discussed earlier.[27] Similarly, the need for the adoption of the AYC was borne out of extensive research carried out by the AUC on the state of affairs of the African youths, which had gone through various stages.[28] That is to say, it is a reflection of the poor situation of the African youths, particularly in relation to their suffering, neglect and obvious exclusion, which must have been revealed by the AUC that necessitated the adoption of the AYC.

However, a meeting was held from 22 to 28 May 2006 at the AU headquarters in Addis Ababa, Ethiopia, involving youth organisations and Ministers for the purpose of discussing the final draft of the Charter, and making final amendments before its eventual adoption.[29] Due to the overwhelming roles played by youth organisations throughout its drafting process and its eventual adoption, a scholar has touted the AYC to be a document prepared by youth organisations of the AU member states.[30] While the pivotal roles of youth organisations toward making the AYC a reality cannot be ignored, it would be still incorrect to underestimate the essential roles played by other actors such as youth ministers of AU member states and the AUC.

The AYC is both a legal and political documents which provides strategy and direction for the emancipation and empowerment of the African youths at the regional and national level.[31] More importantly, among other things it 'provides an avenue for *effective youth participation* in the development processes'.[32] It is an institutional and legal response to the issues of youth

[27] See 'The African Youth Charter' by CARMMA, http://www.carmma.org/resource/african-youth-charter (accessed 4 June 2018).
[28] As above.
[29] As above.
[30] E Ubi 'African Youth Charter: Prospects for the development of the African youth' (2007) 3, http://www.oecd.org/swac/events/42259218.pdf (accessed 6 June 2018).
[31] CARMMA (n 27 above).
[32] Youth Policy.org (n 26 above) (my emphasis).

development, their advancement and interests in Africa with a three-pronged role or mandate.[33] According to the African Union Youth Division, '[t]he AYC aims to strengthen, reinforce and consolidate efforts to empower young people through *meaningful youth participation* and equal partnership in driving Africa's development agenda'[34] The issue of youth participation is indisputably central to the AYC as most commentators continue to stress participation as its core.

In the drafting of the AYC, considerable attention was paid to previous efforts, successes and provisions of the AU declarations and other international organisations on the empowerment and development of the youths. In particular, special attention was given to the provisions of the African Charter on the Rights and Welfare of the Child (African Children's Charter); the UN World Programme Action for Youth (WPAY); the NEPAD Strategic Framework for Youth; the AU Plan of Action; and the UN Millennium Development Goals (MDGs), among others.[35] These documents in no little way influenced many of the provisions of the AYC both negatively and positively, as later discussed in the critique section of this chapter.

After the entire drafting process was completed, the final version of the AYC was adopted at the AU headquarters in Addis Ababa, Ethiopia, on May 2006 but was ultimately endorsed on 2 July 2006 by the AU Assembly of Heads of State and Government[36] at its 7th ordinary session in Banjul, The Gambia.[37] However, it did not become operational immediately until 8 August 2009 when the required 15-member states of the AU had ratified it.[38] The entry into force of the AYC is a welcome development for the youths and all supporters of their rights as it sets out to address seven areas for major change and concrete action for the youths.[39] The AYC

[33] According to Agossou, the AYC has three unmistakable roles which are that (a) it facilitates the institutionalisation of youth participation in political debates, decision making and development processes at national, regional and continental levels, on a regular and legal basis, for positive and constructive contribution; (b) it contributes to the strengthening of the capacity-building programmes for young leaders in Africa; and (c) it opens the possibility of dialogue and more opportunity for exchange on youth development issues and facilitates relevant actions for improvement through education, training and skills development (n 21 above).
[34] See the African Union Youth Division on the African Youth Charter, https://www.africa-youth.org/frameworks/african-youth-charter/ (accessed 6 June 2018) (my emphasis).
[35] See YouthPolicy.org (n 22 above).
[36] As above.
[37] See Ubi (n 30 above) 3.
[38] See art 30(2) which provides that '[t]he present Charter shall come into force thirty (30) days after the deposit with the Chairperson of the Commission of the instruments of ratification of fifteen (15) member states.'
[39] According to Agossou, the seven areas are (i) education, skills and competence development; (ii) employment and sustainable livelihoods; (iii) youth leadership and participation; (iv) health and welfare; (v) peace and security; (vi) environment protection; and (vii) cultural and moral values.

undoubtedly is 'a unique opportunity to unite youth movement in Africa to speak same language and move along same strategic programming lines'.[40] It sets out to galvanise various efforts toward the recognition, realisation and advancement of the youths, their rights, welfare and development in Africa.

The AYC could thus be regarded as a programmatic document borne out of the deepest desires of African leaders, the youths and their supporters to put a stop to the lackadaisical attitude to youth rights and issues by post-colonial African states. It is a tool for the redirection of the developmental vehicle of Africa's development which is incapable of going far without giving the youths a crucial place not only as passengers but as co-drivers. It is a call to move from the policy-based approaches to youth rights to rights-based approaches which are the only solution to the failed policy-based approaches that have not yielded the desired results for the African youths.

The AYC thus highlights the reality that youth issues, concerns, and challenges are human rights issues rather than policy issues, just as those facing women and children. These issues are to be tackled and addressed through the specification and codification of their rights and duties in a human rights treaty and not mere policy-based documents as practiced in most post-colonial African states.[41] It is a document that seemingly reminds Africa of the place and the role of the youths in pre-colonial Africa, which was not a place of neglect, exclusion and disdain, but a place of pride, acknowledgment and appreciation.[42]

In African communities, youths were never treated as pushovers but rather as major players since frequently, their presence or absence might determine whether a society succeeds or fails. Arguably, African societies were age-blind in that leadership capability or capacity was never

[40] See CARMMA (n 27 above).

[41] See generally Mac-Ikemenjima (n 23 above).

[42] See Report by the African Development Bank (AFDB Report on the AYC) 'The African Youth Charter as a booster to economic, political and social integration of Africa' 2, https://www.afdb.org/uploads/tx_llafdbpapers/The_African_Youth_Charter_as_a_Booster_to_Economic__Political_and_Social_Integration_of_Africa.pdf (accessed 9 June 2018), where it was stated that '[u]nlike before, the youths were not appropriately accorded their position and consideration as stakeholders during deliberations and policy-making processes geared towards national development and regional integration by most African governments and their leaders'.

based on age but rather royalty, status, wealth, or name, as argued in the previous chapter.[43] The most visible distinctions were between children and adults, and women and men.

In total, the AYC consists of 31 articles. 18 articles[44] are on the rights and duties of the youth; nine are on the obligations of state parties;[45] one is on the duties of the African Union Commission (AUC). The remaining three, the final provisions, cover the saving clause,[46] signature, ratification or adherence,[47] and a provision on the amendment and revision of the Charter.[48]

As at 28 June 2019, 43 of the 55 AU member states have signed the AYC, while only 39-member states have ratified it.[49] This simply means that the AYC has thus far been signed by 80 per cent and ratified by 69 per cent of the AU member states. If this calculation is anything to go by, this means that the AYC has received a nod from the majority of African states; which presupposes its general acceptability and receptiveness.

4.2.2 Preamble and conceptualisation of youth under the AYC

The preamble to the AYC leaves no one in doubt as to what informed its birth because it reasserts the long overdue need for a human rights instrument that protects the priceless jewels of the African people, namely, the youths. Paragraph 1 of the preamble declares that the AYC is guided by the Constitutive Act of the AU. It further proclaims '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'.[50] The phrase 'full and active participation' as used in the Preamble is suggestive not of the absence of participation, but the existence of partial or half-participation of the African youths in the scheme of things.

---

[43] See G Chirenje 'The changing concept of youth in Africa: From "children" to harnessing them as a demographic dividend', where Ncube is said that have argued that '[i]n Africa, it is not age that is of paramount importance, but "inter‐generational obligations of support and reciprocity"', 5 March 2018, http://www.osisa.org/buwa/changing-concept-youth-africa-%E2%80%9Cchildren%E2%80%9D-harnessing-them-demographic-dividend (accessed 9 June 2018).
[44] Arts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 22, 24 and 26.
[45] Art 1, 12, 17, 19, 20, 23, 25 and 27.
[46] Art 29.
[47] Art 30.
[48] Art 31.
[49] See the ratification list of the African Youth Charter, https://au.int/sites/default/files/treaties/7789-sl-AFRICAN%20YOUTH%20CHARTER.pdf (accessed 25 June 2022).
[50] See para 6 of the Preamble of the AYC (my emphasis).

The AYC in its preamble calls for additional and appropriate measures toward respect for and protection of the rights of children as contained in both the African Children's Charter and the UN Convention on the Rights of the Child (CRC).[51] It equally calls on member states to rededicate their commitment toward the well-being of the youths, at the same time acknowledging the commitments already made in relation to the development of the UN Millennium Development Goals (MDGs).[52] On the plights of youths in Africa, the Preamble declares:[53]

Noting with concern the situation of African youth, many of whom are marginalised from mainstream society through inequalities in income, wealth and power, unemployment and underemployment, infected and affected by the HIV/AIDS pandemic, living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engaging in armed conflicts and experiencing various forms of discrimination.

The above quotation describes the appalling plights of the African youths, and not much has changed in the lived reality of the African youths for over a decade after the adoption of the AYC. Without sounding pessimistic, it appears that many member states of the AU ratified the AYC and afterwards threw it into the dustbin of forgetfulness. For many African youths, the slogan and song remain the same, namely, that 'the struggle continues'.

Furthermore, the AYC in its preamble notes that the African youths have a unique contribution to make towards the peace, prosperity and development of Africa both in the present and the future. They are not only principal partners and assets but are indisputable and undeniable catalysts for Africa's sustainable development.[54] They have over the years shown that they remain the guiding star for the future of Africa, especially when one considers their roles in the decolonisation of Africa, the termination of apartheid in South Africa and their commendable roles in deepening democracy and democratisation processes in Africa in recent times.[55]

[51] Para 8.
[52] Para 11.
[53] Para 13.
[54] Para 15.
[55] Para 16.

Flowing from the above, the preamble points out that the AYC came into being based on the repeated calls for the youths to take part at local, national and international level, so as to determine their own development and advancement and, by extension that of their society.[56] This is important, when one considers 'the inter-relatedness of the challenges facing youth and the need for cross-sectoral policies and programmes that attend to the needs of youth in a holistic manner'.[57]

That is to say, the AYC was adopted so as to holistically tackle the various challenges bedeviling the youths in Africa once and for all. However, the preamble, just as that of the African Charter, makes it explicit that the recognition and guarantee of youth rights carry with it the unimpeachable performance of duties by both the youths and other actors in society.[58] Thus, it implies that while the youths can claim all the various rights which accrue to them by virtue of the AYC, they must equally not lose sight of their concomitant duties. Similarly, other actors are also expected to perform their duties under the AYC.

Conceptualisation of the youth under the African Youth Charter

The term 'youth' has continued to be a source of controversy to various scholars across various disciplines. This is due to the fact that issues of youth do not reside solely in the field of law but cut across other fields, such as political science, psychology, sociology, anthropology, philosophy and theology, among others. In acknowledgment of the difficulty in defining the term youth, Efem Ubi states that '[t]he term "youth" has no luxury of definition, is embedded with semantics, it gives rise to confusion and conflicting images'[59]

Despite his recognition of the confusion surrounding the definition of youth, he nevertheless agrees with the position of this thesis that in Africa, just as in other countries, a line is usually drawn to determine those who are youths from the age of majority, which in most cases is 18 years. Persons from the age of 18 years are considered adults in most societies.[60] Surprisingly, having agreed that youths are adults, he further notes that youths are neither children nor adults,

[56] Para 19.
[57] Para 21.
[58] Para 22.
[59] Ubi (n 30 above) 3.
[60] As above.

but 'somewhere in between the early period of existence, growth or development'.[61] His last position is confusing, to say the least.

According to Chirenje, examining practices across Africa would reveal that the youths are traditionally and widely regarded as 'children' under African traditional culture.[62] This position is grossly faulty and irredeemably unfounded across many African societies. It has been discussed earlier in chapter two, when looking at the traditional African governance system, that in Africa children are not the same as the youths. This position is further fortified when one considers the African traditional systems as revealed through various proverbs and the fact that who are called children is different from what the youths are called.

For example, under the Yoruba people of South-Western part of Nigeria, as discussed in chapter two, while children are called *omode*, youths are referred to as *odo* or *odo langba*. Even among the Sotho people of the South Africa, children are called *bana* while youths are called *batsha*. Therefore, youths can never be children and children can never be youths. Also, under African traditional society youths and children were never classified as one group. The most appropriate label for the youths under the African traditional system is adults rather than children.

The AYC has been praised to have put an end to the age-long debates about what is the most appropriate age for the African youths in terms of Africa's development and the lived realities.[63] This thesis differs greatly with this allusion and holds that the adoption rather than settling the appropriate youth-age-debate has rather confounded it and betrayed the youths' struggle to a large extent, by failing to appropriately define the term youth and by conflating youth and children in a single document. According to the AYC, the two groups of people who are covered by it are 'minors' and the youth.[64]

Minors are those young people who are between the ages of 15 and 17 years, subject to each country's laws. The issue of 'subject to each country's law' indicates that a country can either increase or decrease the ages of those which it wishes to be regarded as minors.

[61] As above.
[62] Chirenje (n 43 above).
[63] See Summary of the African Youth Charter, http://www.youthpolicy.org/wp-content/uploads/library/2006_Summary_Of_African_Youth_Charter_Eng.pdf (accessed 4 June 2019).
[64] See the definition section of the AYC.

Youths, according to the AYC, are those young people or youths between the ages of 15 to 35 years. The clear and unambiguous implication of this categorisation is that while all minors are youths, all youths are not minor. A person can be a minor and a youth at the same time, but some youths can never be regarded as minors, that is, those youths who are 18 to 35 years. This is a definition that is fraught with needless confusion and with a concrete aim of conflating children (15 to 17) with youths, who are adults in their own right (18-35 years).[65] More so, the confusion serves no useful purpose as some of the rights provided for under the AYC, as will be discussed shortly, can neither be exercised by those within the ages of 15-17 nor guaranteed to children under both the African Children's Charter and CRC.[66]

The above avoidable mistake by the drafters of the AYC on the appropriate age categorisation for people to be covered by a human rights document for the protection of the youths must have been informed by the faulty categorisation of youth by the UN under the United Nations World Programme of Action for Youth (WPAY) declaration. This is because the WPAY was one of the documents that inspired the Charter.[67] The earlier African Children's Charter of the AU, which established 17 as the minimum age for children, should have provided more guidance to the drafters, as should the recommendation that 18 be the starting age for youths.[68] The protection of individuals (youths) who fall outside the age range of those who have not yet received a specific guarantee of protection under any existing human rights charter should have been a goal of the proposed new treaty for youth.[69]

---

[65] 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, where she opines that '[t]he age of majority in many countries is 18 and when a person passes [reaches] the age, they are considered adults'.

[66] For example, the right to political participation as provided for in art 11 of the AYC is neither contained in the African Children's Charter nor in CRC. Those covered by the two instruments are children between the ages of 0 and 17; see arts 2 and 1 of both Charters respectively.

[67] See para 12 of Preamble to the AYC. According to WPAY, youths are categorised as persons between the ages of 15 and 24 in para 9 of UN A/RES/50/81 'World Programme of Action for Youth to the Year 2000 and Beyond', http://www.un.org/documents/ga/res/50/a50r081.htm (accessed 11 June 2018). However, the UN Security Council (UNSC) in its recent Resolution 2250 S/RES/2250 (2015) pegs the age of youth as those persons between the ages of 18 and 29; see para 4 of its Preamble, https://undocs.org/S/RES/2250(2015) (accessed 11 June 2018).

[68] The African Children's Charter was adopted on 11 July 1990 and entered into force on 29 November 1999 and provides in art 2: 'For the purposes of this Charter, a child means every human being below the age of 18 years.'

[69] See for instance S Joseph & M Castan *International Covenant on Civil and Political Rights: Cases, materials and commentary* (2013) 707, where they posit that '[t]he age of majority is not set out by article 24 of the ICCPR. In contrast, the age of majority specified in article 1 of CRC is 18, unless under the law applicable to the child, majority is attained earlier.'

Similarly, the drafter of the AYC failed to take into cognisance the adequate guidance by the WPAY Resolution which states that [a]part from the *statistical definition* of the term 'youth' mentioned above, the meaning of the term 'youth' varies in different societies around the world. Definitions of youths have changed continuously in response to fluctuating political, economic and *socio-cultural circumstances*. [70]

The youth categorisation by the UN was not meant to be a legal but statistical definition of youth, acknowledging the differences in the meaning of youth in all societies, and therefore expecting societies to adopt the definition that suits them best based on their socio-cultural experiences. It was never envisaged that the drafters of the AYC would just 'copy and paste' the definition which is totally apposite to the understanding of youth in Africa. While youths and children may mean the same thing in other societies, they are two totally different categories with distinct rights, duties and responsibilities in traditional African societies.

Thus, this faulty categorisation is arguably one of the major set-backs in the struggle for the implementation and proper monitoring of the AYC. This is because states policies on youth are different from that of children, and so a state party could be vindicated if it can show that its programme protects children from ages 0 to 17, which includes some youths. By and large, the drafters of the AYC missed a golden opportunity in providing a very fine definition of youth which others would have been able to learn from.

4.3 Rights guaranteed under the African Youth Charter

The rights guaranteed to the youths under the AYC largely followed the style of the African Charter by combining both traditional civil and political rights with socio-economic rights in a single document. It contains numerous rights that if implemented would please the African youths and mean collective prosperity for Africa. The document, in spite of its commendable and bold steps, remains a flawed and imperfect document coloured with avoidable errors in its provisions.

[70] See para 10 of the WPAY Resolution (n 63 above) (my emphasis).

Right to non-discrimination (article 2)

In recognition of the arbitrary discrimination which youths across Africa are facing, the AYC made the prohibition of discrimination against youths the first among the various rights guaranteed. However, the AYC failed to specifically mention one of the major grounds of discrimination against the youths, which is age.[71]

While it is expected that the specification of rights that exist in other instruments may be repeated in a new instrument for the purpose of emphasis. The new instrument ought to have studied various barriers to the full enjoyment of the rights by the people it sought to protect; by introducing a new dimension in the new instrument. Thus, among the prohibitive grounds of discrimination provided for by the AYC, age ought to have been explicitly mentioned rather than burying it in 'other status' categories just as previous human rights instruments have done.[72] For example, it certainly would be unthinkable for an instrument on women's rights to omit 'gender' as one of the prohibitive grounds of discrimination.[73] Because of their age, African youth are frequently ostracised, subjected to discrimination, and treated with contempt.[74]

The listed grounds are not novel and, therefore, send no new message about the violation of youth rights and, therefore, are of little or no value to the African youths. That is to say, the youths may not need to refer to the AYC when litigating their rights to freedom from discrimination because what they need already exists in other international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter.[75]

[71] See art 2(1). The listed grounds are race; ethnic group; colour; sex; language; religion; political or other opinion; national and social origin; fortune; birth or other status.
[72] Although it has been argued in ch 4 that 'other status' has been interpreted to include age, and that the African Commission has specifically stated that its use is indicative of the fact that the prohibitive grounds under the African Charter are not closed. On the other hand, art 25(b) of the AYC obligates state parties to eliminate harmful social and cultural practices which are 'discriminatory to youth on the basis of gender, age or other status'.
[73] For example, see art 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).
[74] According to NEPAD, '[y]oung people are often excluded from participating in high-level structures because of their age and perceived inexperience'; see NEPAD 'A strategic framework for A NEPAD Youth Programme: Toward the African Youth Decade 2005-2015 25, http://au.nepad.org/publication/strategic-framework-nepad-youth-programme (accessed 4 June 2018).
[75] See art 26 of ICCPR and art 2 of the African Charter.

The AYC ought to have adopted a very forceful tone, by stating that youths are adults in their own right and should be treated equally just as other adult citizens. It ought to have brought to fore the introduction of affirmative action in countries where the youths have for a long time suffered discrimination. Such a provision would have been far more effective than the current one, which is far too ineffective to help African youths in their quest for equality and the elimination of discrimination.[76]

Right to movement (article 3)

The right to movement guaranteed to the African youths under the AYC is sufficient but inadequate, in that beyond guaranteeing them the traditional right of ingress and egress, it offers nothing more. It would not have been too ambitious to have guaranteed them the right to move to other African countries where they desire to settle, provided they remain peaceful and law abiding. This position would of course fasten the AU's vision of the integration of Africa than limiting the right to movement in relation to only their own country.

Freedom of expression (article 4)

The right to freedom of expression guaranteed to every young person by the AYC is watered down by the 'claw-back' clauses, as the right is expected to be exercised 'subject to the restrictions as are prescribed by laws'.[77] The laws this article contemplate should be international laws and not an opportunity for member states to arbitrarily curtail the right to freedom of expression of young people in their territory.[78] Therefore, the practice of some African states of shutting down social media, among the fundamental tools of expression for youths globally, would certainly be violating the AYC.[79] Freedom of expression is one of the most important rights of the youths because without it, other rights may be meaningless and of

[76] I draw inspiration for this argument from the way in which the non-discrimination clause in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is couched; see art 15 of CEDAW.
[77] See arts 4(1) & (2) of the AYC. 'Claw-back' clauses were discussed in ch 3 when the limitation of rights under the African Charter was discussed. For further discussion, see generally F Viljoen *International human rights law in Africa* (2012) 329.
[78] See the case of *Media Rights Agenda & Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 66, where the African Commission declared that the law contemplated by the African Charter in relation to the limitation of rights was international and not domestic law.
[79] For example, in 2016, following the run-up to The Gambia's general elections, the government shut down social media. 'Gambia elections: Twitter anger as government "shuts down" internet' 1 December 2016, https://www.news24.com/Africa/News/gambia-elections-twitter-anger-as-govt-shuts-down-internet-20161201 (accessed 11 June 2018).

no concrete value to them. Thus, it must not be curtailed arbitrarily or limited in a way that renders it illusory by parties to the AYC.

Right to association (article 5)

The youths in Africa have right to association and peaceful assembly, but this must be exercised in conformity with the law. Similarly, they cannot be forced to join an association, that is, in countries where there are armed struggles. Attempts to compel the youths to join an association for the purpose of engaging in hostilities, is prohibited under the AYC.[80]

Rights to freedom of thought, conscience and religion (article 6)

The AYC guarantees to all young persons in Africa the above rights. These rights are of particular relevance to the youths, especially in the context of religious extremism in many parts of Africa, where the youths constitute major elements. The provision has the potential of reversing the evil of religious extremism in Africa, but its gains can be enjoyed only if the youths in Africa are aware of their rights to religion. The provision speaks truth to power on the principle of voluntariness in religion and worship.

Protection of private life (article 7)

The right to privacy under the AYC is very expansive as it extends to the protection against unlawful interference with one's reputation, honour, residence and correspondence. Therefore, member states cannot on the basis of the age of the youths attack their privacy.[81]

Right to family (article 8)

The right to marry, although not expressly provided for in the AYC, only stipulates those men and woman of full age who enter into marriage shall do so with their full consent and shall have equal rights and responsibilities.[82] While there is no definition of what amounts to full

[80] See art 5(2).
[81] See art 7.
[82] Art 8(2).

age in the AYC, this would mean those from the age of 18 years and above based on the provision in the African Women's Protocol.[83]

Right to property (article 9)

The right to own property is guaranteed to every young person and this right extends to the right to inherit property.[84] It further provides those young women and men should enjoy right to own property equally. Therefore, cultural practices that exclude young women from property inheritance in some African states would be against the letter and spirit of the AYC.[85] However, while state parties may lawfully regulate the right to own property by the youths, they are prohibited from arbitrarily limiting the right.[86] Thus, it would amount to the arbitrary limitation of the right of the youths to own or inherit property if they are denied the right solely on the basis of their age.

Right to development (article 10)

Article 10 of the AYC is synonymous with article 22 of the African Charter which is on the right to development; the right to development is largely peculiar to the African Charter.[87] State parties to the AYC are required to encourage youth organisations to lead programmes that engender the enjoyment of the right to development.[88] The right to development as envisaged by the AYC is holistic in nature, traversing economic, political, cultural, social rights, and even the right to access to information and training for the youths.[89] This provision is so wide that the violation of any provision of the AYC would arguably indirectly amount to its violation.

Right to participation (article 11)

[83] Art 6 states that 'the minimum age of marriage for women shall be 18 years'.
[84] Art 9(1).
[85] Art 9(2).
[86] Art 9(3).
[87] Art 22 provides that '[a]ll people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind'.
[88] See art 10(2).
[89] See generally arts 3(a), (b), (c) & (d) of the AYC.

The right to participation is arguably the heartbeat of the AYC, in that it was as a result of the exclusion of the youths to effectively participate in society that gave birth to the right.[90] This was extensively discussed when the historical background and the drafting history of the AYC were considered earlier in this chapter. More importantly, this right is the core of this thesis.[91] Article 11(1) & (2) provide as follow:

1. Every young person shall have the right to participate in all spheres of society.
2. States parties shall take the following measures to promote active youth participation in the society:
   (a) Guarantee the participation of youth in parliament and other decisionmaking bodies in accordance with the prescribed laws;
   (b) Facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental level of governance;
   (c) Ensure equal access to young men and young women to participate in decision-making and in fulfilling civic duties; …

The right to participation as provided for under the AYC mentions 'in all spheres' of society.[92] In all spheres, as used in the AYC, is broad enough to cover all aspects of participation from political, social, economic and other types of participation. Curiously, the AYC in spelling out how state parties are to guarantee the right, use the word 'youth' as opposed to 'young person' as used in the general right to participation.[93] The use of the two words is deliberate and certainly does not mean the same thing although it is not stated anywhere in the Charter. According to this author, whenever the AYC uses the term "young person," it refers to both youths and children (15 to 35 years of age), but when it uses the term "youth" (or "young men and women," it refers to those who are 18 years of age or more) (18 to 35).

Therefore, while those children who are referred to as 'minors' by the AYC (15 to 17) are covered by article 11(1), they are not within the ambit or contemplation of article 11(2) for

[90] T Ntsabane & C Ntau 'The African Youth Charter and youth participation in decision making: Opportunities and challenges' (2016) 10 *IUP Journal of International Relations* 55.
[91] See generally Mac-Ikemenjima (n 19 above).
[92] See art 11(1) of the AYC.
[93] See art 2 of the AYC, which states that '[s]tates parties shall take the following measures to promote active *youth* (not young persons) in society' (my emphasis).

clear and obvious reasons. For example, in many African countries and in most parts of the world, those below the age of majority (age 0 to 17) only participate through what is called 'children parliament' and not in the national parliaments where the youths (18 years and above) are allowed to vote for its members and even become members in many African states.[94]

The AYC obligates state parties to guarantee the right to political participation of the youths in parliament and other decision-making fora.[95] Specifically, it requires them to create for the youths (where none exist) or strengthen existing platforms for political participation in decision-makings processes at 'local, national, regional, and continental levels of governance'.[96] The lack of specificity on what kind of participation is envisaged and in what capacity they should participate in decision-making processes is a grave omission.

The preceding assertion is based on the fact that the youths may be invited for deliberation on the floor of national parliaments but not as elected representatives, would they have been said to have participated in the decision-making process? Or when they are appointed into political offices, would that have satisfied the provision of article 11? Yes, and no. Yes, because the AYC lacks specificity on the form or status of the youth, whether as invited guests or elected members. No, because what the African youths are asking for is political participation on same pedestal as other adults in society, that is, they should be allowed to vote and to stand for political offices even up to the highest office of their country.[97]

Flowing from above, article 11(2)(c) explicitly provides that state parties should see to it that there exists 'equal access to young men and young women participation in decision-making and in fulfilling civic duties.' Equal access indicates that there is an inequality in access to political participation for most youths in Africa and calls for a paradigm shift. The reason why these youths (18-35) need to be given equal access just like other adults is because they are not children but men and women. Despite this, youths should be granted all the rights and

[94] For example, in South Africa and Kenya, where 18 is the age of majority, those who have reached the age of 18 can vote and stand for election as members of the national parliaments; those who are below 18 (children) can neither vote nor become members of parliament.
[95] Art 11(2)(a); they must exercise this right 'in accordance with the prescribed laws.'
[96] Art 11(2)(b).
[97] As indicated in the previous chapters, many African constitutions retain arbitrary and draconian age requirements for elective offices which largely exclude most of the African youth, thereby shutting them out of decision-making processes and political space. They are tired of being given political hand-outs; they want their rights to full and effective participation as other adults in society guaranteed, respected and protected as currently practiced in South Africa, Kenya and the United Kingdom.

privileges enjoyed by adults, including their complete rights to political involvement, which in the strictest sense only refers to the ability to vote and to be voted for.[98]

While the above provision brings the point home on equality of the rights to political participation for the African youths, it ought to have specifically stated that the youths have equal rights to political participation and in decision-making processes as other adults; this would have made the message clearer, unambiguous and more forceful.[99] The current provisions appear to be more of a plea to state parties rather than an obligation, and it has tonalities of privileges rather than rights.

The youths are supposed to be part of the team of member states' representatives in relevant AU meetings and, particularly, its ordinary sessions. This would enable them to be able to argue and communicate effectively on matters affecting their rights and development.[100] Even though the right to political participation was one of the key considerations for the drafters of this particular article, it is cowardly not to expressly acknowledge it.

Right to education (article 13)

The provision on the right to education is one of the most innovative and well-encompassing provisions in the AYC. It extends the right beyond the general guarantee of the regular right to education as found in the African Charter.[101] It provides for additional typologies of education that are of paramount importance to the youths and the entire Africa. Besides requiring that education should be of good quality,[102] it requires state parties to place a value on multiple forms of education, and in particular this should include 'formal, non-formal, informal, distance learning and *life-long learning*'.[103]

[98] The African Children's Charter considers all persons from the age of 18 as adults and not children; see art 2 on the definition of a child. Unlike CRC, maturity can never be attained before the age of 18; see also art (6)(b) of the African Women's Protocol that pegs the minimum age for marriage for women at 18 years (the age of adults or majority in most parts of Africa).
[99] For example, see art 9 of the African Women's Protocol on the right to participation in political and decision-making processes.
[100] See art 11(2)(j).
[101] Art 17 of the African Charter.
[102] Art 13(1) of the AYC.
[103] Art 13(2) of the AYC (my emphasis).

The life-long learning obviously would impose an obligation on state parties to put in place facilities that would enable the youths or young persons to continue to update themselves on relevant innovations in knowledge throughout their youth life cycle. The AYC arguably is the first human rights instrument to capture this peculiar and all-time necessary type of education as a right. State parties are required to make basic education free[104] and ensure that secondary education is readily available and accessible to all youths, but to make it progressively free.[105]

The AYC encourages state parties to invest in the youths in the area of science and technology. They are required to empower them in the conduct of research and calls for the establishment of an 'African Discoveries Day, so as to award prizes to the youths at the continental level.[106] This approach is geared towards the realisation of Africa's dream of 'Africa's solutions for Africa's problems.' That is, the need to find the solution to Africa's problems within Africa rather than perpetually looking elsewhere, especially in the area of science and technology.

Right to freedom from hunger and social security (article 14)

The AYC recognises the fact that an adequate standard of living is necessary for the all-round development of the African youths and therefore, state parties are expected to guarantee same.[107] It further recognises the right of young persons to be free from hunger.[108] The AYC, in recognition of this Herculean task involved in achieving this goal of eradicating hunger among the youths, urges state parties to encourage the youths to engage in modernised farming and production;[109] to provide grants to lands for the youths and their organisations;[110] to facilitate access to credit for the promotion of youth participation in agricultural and sustainable livelihood;[111] and, most importantly, to ensure the participation of the youths in the 'design, implementation, monitoring, and evaluation of national development plans, policies and poverty reduction strategies'.[112]

[104] Art 13(4)(a); they are further obligated to take steps to reduce indirect costs of education.
[105] Art 13(4)(b).
[106] Art 13(6) (my emphasis).
[107] Art 14(1).
[108] Art 14(2).
[109] Art 14(2)(b).
[110] Art 14(2)(c).
[111] Art 14(2)(d).
[112] Art 14(2)(e).

In order for state parties to achieve these lofty goals, setting aside a budgetary allocation for these purposes could be one of the most viable ways of implementing this provision. Most fascinating about this particular provision is the recognition of the right of young persons in social security and social insurance. These provisions are to be achieved by state parties in accordance with their national laws and their security of food tenure, clothing, housing and other basic needs.[113]

Right to sustainable livelihood and gainful employment (article 15)

A major problem confronting the African youth is unemployment, and the AYC is one of the numerous attempts by the AU to break this evil cycle that has become prevalent across African states.[114] The connection between gainful employment and livelihood is beyond controversy because where a youth is not gainfully employed; there no way for such a person to access a sustainable livelihood. Therefore, for the goal of sustainable livelihood to be attained for the African youths, providing them with employment has become sacrosanct by state parties.[115] There is even a causal link between unemployment and political participation, because only well-fed or employed youths can really effectively participate in politics. Those who are not employed are often used as instruments of violence and electoral manipulation.[116]

The AYC obligates state parties to have accurate data on employed, unemployed and underemployed youths so as to be able to adequately tackle the issue of unemployment among African youths.[117] Furthermore, the AYC emphasises the creation of a job-creating mindset rather than a job-seeking mindset among the African youths through the inculcation of entrepreneurial skills. This is to be done through the introduction into various school curricula, entrepreneurship training, business development skills and better information on market

[113] See art 14(3).
[114] See NEPAD A Strategic Framework for a NEPAD Youth Programme: Toward the African Youth Decade 2005-2015 13, http://au.nepad.org/publication/strategic-framework-nepad-youth-programme (accessed 4 June 2018); see art 15(1) of the AYC.
[115] According to a recent report, The African Youth Charter as a Booster to Economic, Political and Social Integration of Africa (AYC as a Booster), it was noted that '[t]he issue of youth unemployment amongst other challenges constitutes a major stumbling block to recent efforts towards enhancing regional integration in Africa' 2, https://www.afdb.org/uploads/tx_llafdbpapers/The_African_Youth_Charter_as_a_Booster_to_Economic__Political_and_Social_Integration_of_Africa.pdf (accessed 9 June 2018).
[116] See generally S Baglioni & M Theiss 'Political participation of unemployed youth: The moderator effect of associational membership' (2015) 8 *Open Journal of Sociopolitical Studies* 774.
[117] See art 15(3).

opportunities.[118] Dutiful and faithful adherence to and implementation by state parties of this provision would certainly reduce unemployment among African youths and terminate same in the long run.

Right to health (article 16)

The right to health under the AYC provides for those health needs that are of critical importance to the African youths. Besides the general right to health as provided for in other international human rights instruments,[119] state parties are expected to ensure that the youths participate fully in designing programmes on their reproductive and health needs, and they are to pay special attention to the health needs of the disadvantaged and vulnerable youths.[120] This provision equally highlights those major areas of health concerns of the youths in Africa, which includes access to contraceptives;[121] programmes for the fight against HIV/AIDS;[122] unsafe abortion;[123] controlling drug abuse and the consumption of tobacco, among others.[124] This provision adopts a holistic approach to youth rights to health, and its implementation is the cornerstone to attaining a sound health in a sound body that guarantees fruitful and fulfilled lives for all African youths.

Right to be treated with humanity (article 18)

Article 18 of the AYC, which deals with how law enforcement treats youths who have broken the law, seems to make up for the lack of an unambiguous guarantee of the right to dignity. It states that those young persons that are accused or found guilty of whatsoever offence have an unimpeachable right 'to be treated with humanity and with respect for the inherent dignity of the human person'.[125] The right to be treated with dignity ought to be guaranteed not only to youths that are in conflict with the law, but to all youths and at all times because the right to dignity is a 'claim-right' in all major international human rights instruments.[126] Thus, the restriction of the right to dignity to only those young persons in conflict with the law is rather

[118] See generally art 15(4)(a)-(h).
[119] Art 16(1).
[120] Art 16(2)(b).
[121] Art 16(2)(c).
[122] Arts 16(2)(e)-(h).
[123] Art 16(2)(i).
[124] Art 16(2)(j)-(n).
[125] Art 18(1).
[126] See for example art 5 of the African Charter and art 1 of the Universal Declaration.

misplaced and this should not be taken to mean denial of it to youths in other circumstances.[127] The youth right to inherent dignity cannot be taken away just because the AYC does not provide for it.

Right to leisure (article 22)

The provision of the right to rest and leisure for young people as part of the rights in the AYC does not presuppose that the lives of youths are synonymous with sporting activities as is currently being done in most African states.[128] State parties are expected to facilitate means that would ensure the effective participation of the youths in sports, music, drama and other forms of cultural life that are necessary for their rest and leisure.[129] The AYC requires state parties to pay adequate attention to other issues that are incidental to the rest and leisure of youths as they have done in the area of sports. Sports are not the only source of leisure and rest for the youths, and it is high time that state parties started focusing on areas other than sports.

-Rights of youths with disabilities (article 24)

In recognition of the discrimination against and the suffering and special needs of many youths with disabilities in Africa, the AYC compels state parties to recognize their right to special need and care. State are expected to ensure that they have access to education, employment, recreational activities and other benefits that are necessary in respect of their special status.[130] More importantly, state parties are expected to remove obstacles to the full integration of youths with disabilities in society, especially in relation to their mobility.[131] In implementing this provision, states must take targeted steps in relation to the various facilities that are traditionally inaccessible and that are not 'friendly' to persons with disabilities and correct

[127] It was discussed in previous chapters that the right to dignity is the centerpiece of the gospel of human rights and to exclude or underplay it significantly in any human rights discourse or instrument is an affront to the entirety of the human rights project; see generally B Fortman 'Equal dignity in international human rights' in M Düwell et al (eds) *The Cambridge handbook of human dignity: Interdisciplinary perspectives* (2014) 356.
[128] It is the observation of the author that most ministries or departments in charge of youth affairs are called ministries or departments of youth and sports, putting the youth in a bad light as it makes people think of the African youth in terms of sports rather than other developmental issues which are of more critical value to the youth than sports.
[129] Arts 22(1)(a)-(b).
[130] Art 24(1).
[131] Art 24(2).

these accordingly. That is, to ensure that youths with disabilities are reasonably accommodated in society.[132]

Duties and responsibilities of the youth (article 26)

The inclusion of duties and responsibilities along with the provisions of rights in human rights instruments arguably is of African origin because the African Charter was the first human rights instrument to do it.[133] The AYC followed in the footsteps of the African Charter by not only providing for rights but also corresponding duties or obligations on the part of beneficiaries of the rights. However, the fulfilment of these responsibilities is not a precondition for the enjoyment of rights, but they are moral obligations that society expects from those who lay claim to the guaranteed rights. The AYC provides that the youths have general responsibilities to their families, states and the international community.[134] They generally have the duty to own and become custodians of their development;[135] to protect and work for the life and cohesion of the family.[136] They are to show respect for both their parents and elders within the parameters of African values which are positive;[137] and to engage in citizenship duties, *voting, decision making and governance* fully.[138]

It is interesting to note that the AYC makes voting and participation in decision-making processes part of the duties and responsibilities of the youths. However, notwithstanding that this responsibility applies to every young person, it does not amount to granting the right to vote to those young persons below the age of majority, which is 18 years. Why did it not mention the other twin right, which is the right to be voted for, but preferred to use decision making and governance? This could be due to the 'claw-back' clauses; the provisions of the AYC are to be implemented in accordance to the laws of the respective countries.

Thus, where those within the ages of 15 to 17 years are not eligible to vote, the AYC would be presumed not to have conferred such a duty on them. On the other hand, the possible answer

[132] See for example art 9 of the UN Convention on the Rights of Persons with Disabilities.
[133] F Viljoen *International human rights law in Africa* (2012) 239; further see arts 27-29 of the African Charter on duties.
[134] Art 26.
[135] Art 26(a).
[136] Art 26(b).
[137] Art 26(c).
[138] Art 26(d) (my emphasis).

to the second question could be argued from two directions, the first being that the right to stand for elections could not have been included due to the erroneous conflation of children and youth in the same document, thereby regarding some youths not as adults but as 'youth-children'; and the second possible reason being the mistaken notion that while the right to vote can be granted to all 'adult-youths' (18-35), the right to stand for elections lies within the discretion of each member state. The right ought to have been granted expressly for state parties to show why these adult-youths who are adults in their own right should be excluded from standing for elections.[139]

The AYC places additional responsibilities on the youths apart from those discussed above,[140] particularly that they are expected to '[d]efend democracy, the rule of law and all human rights and fundamental freedoms.'[141] Bad leadership has been the bane to fertilisation, germination and growth of the democratic trees in Africa, and the only way to tackle and treat the evil of bad leadership is to replace it. Thus, since one of the obligations or responsibilities of the youths under the AYC is to defend democracy, their wish and desire to replace the various 'old men' currently ruling Africa is one of the surest ways to defend democracy as contemplated by the AYC. This argument is logical, straightforward and simple because no matter how passengers in a vehicle shout and cry about the carelessness of the driver, until the driver is exchanged, the vehicle would continue in the wrong direction it is headed and eventually run aground.

Therefore, the youths in Africa cannot continue in the 'talk-shop' exercises that have brought little or no results in Africa's democratic experimentation. They must be allowed to take the driver's seat, if Africa's democratic vehicle is to experience a visionary and purposeful redirection in no distant time.[142] Giving them the right to vote or inviting them to the decision-making table is inadequate, ineffective and outdated; they must now be allowed the right to stand for even the highest political offices in their various counties in fulfilment of their responsibility to defend democracy in Africa.[143]

---

[139] In previous chapters it was stated that although various international human rights instruments permit states to limit the right to stand for elections as candidate in a reasonable and non-arbitrary manner, the two main groups that could generally be legitimately excluded are children and convicted persons.
[140] See arts 26(e)-(o).
[141] Art 26(j).
[142] See for example Ntsabane & Ntau (n 86 above) 60, where they posit that '[t]he Charter has emphasised the need to ensure the youth's full and active participation in all decision-making processes of their societies if the African continent is to realise its full potential'.
[143] For example, art 31(1) of the African Charter on Democracy, Elections and Governance, adopted on 30 January 2007 and entered into force on 15 February 2012 (AU Democracy Charter), provides that '[s]tate parties shall

4.4 Obligations of states under the African Youth Charter

It is now beyond contestation that the human rights internationally recognised do not only place an obligation on state parties but they could be exercised against them (states).[144] This simply means that states are the chief actors in any issue in relation to the respect, protection and promotion of human rights.[145] As noted by Donnelly, '[a]lthough human rights norms have been largely internationalised, their implementation remains almost exclusively national'.[146] By and large, when the issue of obligations of state parties is being considered under a particular human rights charter, it is the issue of its implementation at domestic or national level that is being considered.

The drafters of the AYC in recognition of the indispensable roles of state parties in bringing to fruition the ideals, goals and visions contained in it, incidentally and specifically crafted out their obligations in seemingly unambiguous terms.[147] It has been stated above that there are roughly nine articles that touch on the obligations of states under the AYC.[148] The first obligation of state parties to the AYC is their recognition of the rights, freedoms and duties contained in the Charter.[149] They are required to 'undertake the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures that may be necessary to give effect to the provisions of the Charter'.[150]

While it is commendable that this provision of the AYC shares some semblance with that of the African Charter; the addition of being based on 'constitutional processes' may send the wrong signal to some unwilling state parties. In that they may claim that their own

promote participation of social groups with special needs, including *the youth* and people with disabilities, in the governance process' (my emphasis).
[144] J Donnelly *Universal human rights in theory and practice* (2013) 32.
[145] See A Byrnes & C Renshaw 'Within the states' in D Moeckli et al (eds) *International human rights law (*2010) 498, where they opine that '[t]he primacy of the state in the protection and fulfilment of internationally guaranteed human rights is the fundamental starting point of international human rights law'.
[146] Donnelly (n 140 above) 32.
[147] Incidental obligations refer to those that accompany some of the rights in the Charter, while the specific obligations are those contained in separate provisions independently of rights or duties.
[148] Arts 1, 12, 17, 19, 20, 21, 23, 25 & 27 of the AYC.
[149] See art 1(1) of the AYC.
[150] Art 1(2) of the AYC.

constitutional process gives them the latitude of implementing it based on what their constitutions state, even if such processes are against the letter and spirit of the AYC.[151]

Its inclusion ought to have been avoided, especially based on the fact that many state parties often cite constitutional provisions as an excuse for their non-implementation of international human rights treaties. The inclusion of 'constitutional processes' in reality is a missed point, as it appears to accord some sort of 'glorified statuses' to domestic constitutions, a practice which is largely foreign to international treaties. The issue of constitutional processes is for state parties to raise, in relation to their obligations and not for international human rights treaties to capture.

Furthermore, developing a rights-based youth policy is one of the obligations of state parties to the AYC.[152] The policy, which should be cross-sectoral in nature,[153] should be geared towards the active participation of the youths in decision-making processes at the level of governance on matters involving the youths and society at large.[154] Also, include the appointment of youths;[155] putting in place mechanisms to address youth challenges in the country's national developmental framework;[156] resolving the age controversy around the youth for the purpose of their development.[157] And in particular, adequate and sustained budgetary allocation is to accompany programmes targeted at the development of the youth.[158] The provision of a budgetary allocation in the AYC is highly commendable because it is one of the signs of seriousness on the part of state parties in the implementation of their obligations under international human rights treaties.

In recognition of the youths in maintaining and keeping the peace in Africa, state parties are obligated to strengthen their capacity toward the goal of peaceful coexistence in Africa.[159] They are expected to '[i]nstitute education to promote a culture of peace and dialogue in all schools

[151] Compare art 1(2) of the AYC and art 1 of the African Charter. There is no mention of constitutional processes in the latter as in the former.
[152] Art 12(1) AYC.
[153] Art 12(1)(a).
[154] Art 12(1)(b).
[155] Art 12(1)(c).
[156] Art 12(1)(d).
[157] Art 12(1)(e).
[158] Art 12(1)(k).
[159] See generally arts 17(a)-(g).

and training centres at all levels'.[160] This obligation is connected to the successful implementation of other obligations because in the absence of peace; human rights, democracy and development would be impossible to achieve in any state. In a similar vein, they are bound by the principles of sustainable development, which call for them to employ strategies that enhance juvenile welfare without jeopardizing the interests of future generations.[161]

The other obligation of state parties under the AYC include the elimination of traditional practices that are detrimental to the physical integrity and dignity of women.[162] Also, the recognition and promotion of the rights of the African youth in diaspora.[163] In addition, the elimination of discrimination against girls and young women in accordance with the obligations under international human rights instruments that protect them,[164] in particular young women's rights to maternity leave;[165] and that state parties are required to 'take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth'.[166]

Harmful social and cultural practices that readily come to mind are the treatment of youths as children based on their age in some African countries and the label of incompetence, incompleteness and being ill-equipped to take up leadership roles in society. State parties are not expected to entrench these practices through laws but to eliminate them. Thus, the introduction of age discrimination in many African constitutions that exclude the youths is in clear violation of state parties' obligations under the AYC.[167]

Flowing from the above, because of the uniqueness, peculiarity and *sui generis* status of the AYC, state parties are required to popularise it. This is part of their obligation to *fulfil* the provisions of the Charter.[168]

---

[160] Art 17(c).
[161] See generally art 19 which equally touches on the protection of the environment.
[162] Art 20(1)(a).
[163] Art 21.
[164] See generally art 23(1).
[165] Art 23(1)(n).
[166] Art 25.
[167] Most African countries have constitutions that use an age limit for eligibility to political offices and most ages exclude a large percentage of youths in these countries, as has been indicated in the previous chapter, and will be further discussed shortly.
[168] See art 27.

The obligations placed on state parties to the AYC cut across the obligations to respect, protect, *fulfil* and promote the rights in the Charter; they arguably include both negative and positive obligations on their part as well.[169] Thus, the rights of the youth could be adequately secured if state parties could strictly adhere to their obligations under the AYC.

Furthermore, state parties must not be unmindful of article 29 which does not in any way allow them to limit the standards of rights previously enjoyed by the youths. This may apply in a situation where the AYC appears to provide for lower standards other than those contained in other international human rights instruments to which they are parties.[170] It is therefore suggested that the AYC is there to complement state parties' general human rights obligations to the youths in Africa and is not an instrument for the restriction of their existing human rights obligations. That is to say, it would be in stark contrast to state parties' obligations under the AYC to deny the youths the enjoyment of some rights which they have hitherto enjoyed just because such rights are not provided for under it.[171]

4.5 Enforcement, implementation, monitoring and treaty body

Because international human rights instruments are not national laws, they undoubtedly require imbued implementation or monitoring mechanisms to avoid becoming "printed futility" or a toothless bulldog that can bark but not bite. It is due to the fundamental importance of a monitoring mechanism in an international rights treaty that caused Tomuschat to submit that '[l]egal rules and principles lacking and enforcement machinery will easily be doomed'.[172]

It has been the practice of the AU to include a monitoring mechanism in any treaty it is creating or at best specifically designate a particular body empowered to interpret the said treaty. For example, while the African Women's Protocol does not contain an independent monitoring mechanism because of its being a protocol, it is an addendum to the African Charter,[173] and the

[169] See generally C Tomuschat *Human rights: Between idealism and realism* (2014) 136.
[170] Art 29 is the saving clause of the AYC.
[171] A classic example are the rights to dignity and equality, which are guaranteed in arts 5 and 3 of the African Charter respectively.
[172] See Tomuschat (n 169 above) 13.
[173] The African Women's Protocol in its Preamble states that it is made pursuant to art 66 of the African Charter and as a supplement to it; it provides specifically in art 27 in relation to its implementation and interpretation that '[t]he African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol'. Whether this particular provision excludes the African Commission from entertaining matters on the Protocol is within the brief of this thesis.

African Children's Charter contains an inbuilt monitoring mechanism.[174] Thus, while other/previous human rights treaties and protocols of the AU have express or/and incidental vehicles for their implementation and monitoring, the AYC unfortunately lacks any monitoring mechanism properly so-called.[175] The omission of the proper/adequate monitoring mechanism would to a large extent leave the potency and efficacy of the rights and provisions of the AYC at the mercy of state parties or at the domestic level.[176]

Notwithstanding the above gloomy picture on the fate of the implementation and monitoring of the provisions of the AYC, there appear to be a silver lining in article 28 of the Charter which gives some powers to the African Union Commission (AUC) in this regard. It states that '[t]he African Union Commission shall ensure that states parties respect the commitments made and fulfil the duties outlined in the present Charter'.[177]

The AUC is to discharge its paramount but onerous responsibilities through collaboration with state parties on the best approaches to the adaption and implementation of the Charter.[178] AUC is to mandate them to include the youths among their representatives to the AU's ordinary sessions and its other meetings;[179] by creating awareness of its activities and making them accessible to the youths.[180] Also, the AUC mandates states to ensure collaboration among youth organisations among African nations for the purpose of igniting political consciousness of youths and their participation in democracy while collaborating with development partners.[181]

The above powers given to the AUC, despite their formidability, are grossly inadequate, unreliable and palpably weak for the regional protection of a group of people who since the independence of most African states have been perpetual victims of exclusion, discrimination

[174] See art 32 of the African Children's Charter on the creation of the African Committee of Experts on the Rights and Welfare of the Child; art 42(a) states its main function which is '[t]o promote and protect the rights enshrined in the Charter'. See further generally Viljoen (n 73 above) 397-405.
[175] See R Adeola 'The African Youth Charter and the role of regional institutions in an age of Africa rising' *AfricLaw* 6 July 2015, https://africlaw.com/2015/07/06/the-african-youth-charter-and-the-role-of-regional-institutions-in-an-age-of-africa-rising/ (accessed 16 June 2018), where she states that '[t]he Youth Charter does not provide adequate enforcement mechanisms at the regional level'.
[176] M Mahidi 'The young and the rightless? The protection of youth rights in Europe' unpublished Master's thesis, Åbo Akademi University, July 2010 52, https://www.youthforum.org/sites/default/files/publication-pdfs/Young%20and%20the%20rightless.pdf (accessed 16 June 2018).
[177] Art 28 AYC.
[178] Art 28(a).
[179] Art 28(b).
[180] Art 28(c).
[181] Art 28(d).

and relegation especially in terms of their rights to political participation and other areas of life. The issue of the neglect of youth rights in Africa is not to any extent different from the fate which has befallen women and children in Africa until the AU intervened decisively. They indeed deserve better protection than this sort of 'persuasive and collaborative' arrangement introduced under the AYC.[182] The violation of youth rights in Africa ought to have been given more purposeful and effective protection similar to those given to both women's and children's rights.

While agreeing that the AYC does not provide adequate regional protection, Adeola contends that in addition to the AUC, other AU organs with unique responsibilities under its Constitutive Act or other regional treaties, such as the African Charter, play peculiar roles in ensuring that the obligations set forth in the AYC are met by the state parties, even though they are not specifically mentioned in the document. On the possibility of the African Commission to extend its protective mandate to include the AYC, Adeola argues thus:[183]

Within this space, the role of the African Commission on Human and Peoples' Rights (African Commission) resonates. Article 30 of the ACHPR establishes the African Commission for the protection and promotion of human rights in Africa. Article 60 and 61 of the ACHPR permits and obligates the African Commission to take into account other international and regional human rights treaties. Specifically, Article 61 of the ACHPR mandates the African Commission to 'take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by member states of the Organisation of African Unity'. Read with article 45 of the ACHPR (which provides for the function of the African Commission), the African Commission may formulate standards and consider individual communications relating to the protection of human rights in Africa falling within the purview of the Youth Charter.

The above argument is compelling, but it is still a 'face-saving' approach to an apparent defect in the AYC. First and foremost, article 30 of the African Charter involves the promotional rather than the protective mandate of the African Commission. Second, articles 60 and 61 can only be invoked when a substantive matter regarding violations of the African Charter comes

[182] See Adeola (n 175 above).
[183] As above.

before the African Commission. Third, article 45(2) of the African Charter, which declares the protective mandate of the African Commission, specifically limits its powers to the African Charter.[184] This is because a similar argument could equally be canvassed in relation to women's rights, but it never made the protocol to be left 'naked' or be an orphan in seeking for those organs that their mandates could be widened or read expansively to cover it.[185] Following this line argument, Viljoen has correctly argued that the *protective* mandate of the African Commission does not cover matters on a violation of the African Children's Charter and by necessary implication would certainly not cover that of the AYC.[186]

Therefore, the AYC as it stands lacks specific, effective and adequate monitoring mechanisms such as in the African Women's Protocol and the African Children's Charter.[187] The truth be told, the youths in Africa and their rights and development deserve a 'full' rights-based approach and not this current 'rights-privileges-based' approach which the drafters of the AYC seem to have adopted.[188]

4.6 African Youth Charter: A critique

In many ways, the adoption AYC by the AU on July 2, 2006 at the Gambia, is commendable. First, it lay to rest the argument that the specification or adoption of an enforceable human rights treaty on youth rights is impracticable.[189] Second, it brings the issues of youth rights and development to the front burner in the international human rights arena.[190] And third, it serves as a veritable tool for the further interrogation on youth rights in Africa and beyond, most especially in terms of their respect, protection and promotion globally.[191]

---

[184] See art 45(2) which provides '[e]nsure the protection of human and peoples' rights under conditions laid down by the present [African] Charter'.
[185] Accordingly, Adeola, in partial recognition of this grave lacuna, submits that '[i]f the Youth Charter is to become a beacon of African youth rising, specific regional institutions such as the African Commission, the Pan-African Parliament, and the African Peace and Security Architecture must assist states to live up to the obligations contained in the Youth Charter through the exercise of oversight functions (at the regional level) over provisions of the Youth Charter falling within their specific mandates'.
[186] Viljoen (n 133 above) 312 (my emphasis).
[187] See Mahidi (n 176 above) 52.
[188] I use the "rights-privileges-based" approach here to mean the coinage of rights in human rights documents in the language of privileges, that is, by creating rights expressly but without the corresponding assertiveness on the need for state parties to respect and protect them, so as not to make them rethink about signing and/or ratifying them. One of the obvious characteristics of an instrument that adopts this approach is the absence of genuine monitoring mechanisms, which are sacrosanct to the effectiveness of international human rights instruments.
[189] See generally Angel (n 16 above) xviii-xix.
[190] Ntsabane & Ntau (n 86 above) 60.
[191] Mac-Ikemenjima (n 19 above).

Despite the commendable intention of the drafters of the AYC, the Charter is defective in some fundamental ways, causing this author to call for the redrafting of a new Charter.[192]

The first notable query this author has with the current African Youth Charter is concerning its definition of 'youth'. The AYC needlessly followed the wrong pattern of the UN WPAY[193] and the Ibero-American Youth Convention (IAYC) by conflating children and youths in a single document.[194] The drafters of the AYC failed to recognise that the UN's age definition for youths is not a legal definition but serves merely for statistical purposes.[195] Similarly, if drafters have taken into account Freeman's counsel that '[h]uman rights can be implemented "close to home" only if local cultures are understood and taken into account',[196] they would have paid attention to the incontrovertible distinction existing between 'children' and 'youths' under the African world view.

As a representation of the African conception of youth and children, the AYC thus horribly failed. It has been noted in previous chapters and above in this particular chapter that in Africa, children are not same as youths, and can never be put in the same group. A renowned scholar on the African human rights system has even declared that in his tribe it is an insult to refer to a youth as a child.[197]

It is the argument of this thesis that since the African Children's Charter defines children as those between ages 0-17, the AYC ought to have put the start-up age for youths at 18.[198] Eighteen years is closer to home than the 15 years currently used by the AYC, especially when one considers the fact that in Africa, if you are not a child, then you are an adult, albeit a young-adult. That is putting the youths in a distinct document as vulnerable 'young adults' that deserve

[192] See the proposed draft of the new African Youth Charter as an annexure to this thesis; further see art 31 of the AYC on the amendment and revision of the Charter.
[193] See para 9 of the UN WPAY Resolution (n 63 above), which defines youth as those from the ages of 15-24 years for statistical purposes.
[194] Art 1(1) of the IAYC defines youths as those between the ages of 15-24.
[195] See Angel (n 16 above) xv.
[196] See M Freeman 'Universalism of human rights and cultural relativism' in S Sheeran & N Rodley (eds) *Routledge handbook of international human rights law* (2013) 60.
[197] M Hansungule (Tonga tribe of Southern Zambia) during one of our discussions on the African conception of youth on 8 June 2018.
[198] Similarly, although art 1 of CRC defines a child as those *below* the age of 18 years, a learned author has erroneously interpreted this to mean that 'childhood ends at 18 years'; see Viljoen (n 133 above) 393 (my emphasis).

special protection due to their peculiar status as adults who are still trying to integrate fully into the adult world.[199] It is this unnecessary conflation of children and youths that made the Charter adopt the 'rights-privileges' approach rather than the rights-based approaches. The very obvious explanation for this is that most AYC rights cannot be exercised by children between the ages of 0 and 17. For instance, these groups of people do not have the right to vote or to run for office in elections held in any African nation.[200] It submitted that the appropriate grouping or legal definition for the youths in Africa is ages 18 to 39.

This definition can equally be adopted as the legal definition for youth globally as it is less confusing, straightforward and distinct from other existing categorisations/groupings under various international human rights instruments.

The AYC is also defective in terms of the list of rights it provides for. In particular, it does not provide for the right to the dignity of youths.[201] This is a fatal omission because one of the key weapons in the fight against discrimination in its various forms is arguably the right to dignity. It is the surest pathway to asserting and arguing for the recognition of the inherent moral value or worth of all members of the human family on equal terms.[202] The AYC should have indicated that youths, properly so called (ages 18 to 39), are equal in dignity to other adults in society.

In addition to the above, the AYC provides for the right to freedom from discrimination but equally fails to mention the most pervasive ground for discrimination against youth, which is age. Without fear of contradiction, it can be stated unequivocally that if most post-colonial African states had not used age discrimination to silence and suppress African youths, they would have become better leaders and actors than they are today. Therefore, the AYC does a great disservice to the struggle for emancipation for the right to equality of youths in society by failing to specifically mention age as one of the listed prohibitive grounds of discrimination.[203]

---

[199] Muthee (n 61 above) 129-132; where she argues among other things that when people reach the age of 18, they are considered adults in most societies.
[200] This is a fruitless and useless categorisation in all respects.
[201] As discussed above, it only provides for the right to dignity for those in conflict with the law; see art 18(1).
[202] See generally P Carozza 'Human dignity' in D Shelton (ed) *The Oxford handbook of international human rights law* (2013) 345-346.
[203] However, in art 25(b) on the elimination of harmful social and cultural practices, age is listed among the prohibitive grounds.

Furthermore, the right to political participation guaranteed under the AYC is too weak as it stands. It provides for youth rights to participate in decision-making processes without expressly stating the content of the right in the most minimalist sense, which is the right to vote and to stand as candidates in elections. The failure to expressly provide for the electoral rights of youths is incurably and abysmally fatal to the purport and purpose of the Charter. Since the right to political participation could mean various things to different people, the specification of the indisputably minimum core of it would have put to rest major controversies surrounding it and would not further complicate interpretation of what it guarantees.[204]

The 'rights-privileges-based' approaches in relation to the right to political participation adopted by the drafters of the AYC could not be unconnected to the fact of the erroneous categorisation of youth, which includes 'minors' or children (ages 15 to 17). Despite its erroneous categorisation, the AYC would have made a distinction between "minors" and "youths" in relation to electoral rights, in that it would have specifically excluded "minors" (15 to 17) from electoral rights rather than the wholesale exclusion of all the youths it currently adopts.[205]

While other aspects of the right to political participation may be left to the realms of speculation, it is inappropriate not to expressly mention the political rights to vote and to stand for elective office in a human rights document that sets out to principally tackle the political exclusion of a particular group, such as youths.[206]

The above argument for the specification of the rights to vote and to stand for elective positions for youths is crucial and necessary because participation in decision making can take several forms. More importantly, the African youths are requesting respect for and protection of their full and effective rights to political participation as envisaged by the WPAY, not simply an invitation to the decision-making tables.Full and effective rights to political participation, among other things, would mean the right to vote and be able to stand as a candidate for all

[204] See J Rawls *A theory of justice* (1971) 61, where he asserts that '[t]he basic liberties of citizens are roughly speaking political liberty (the right to vote and to be eligible for public office)'.
[205] See Joseph & Castan (n 65 above) 707. According to them, '[t]he age of majority is not set out by article 24 of the International Covenant on Civil and Political Rights. In contrast, the age of majority specified in article 1 of Convention on the Rights of the Child is 18, unless under the law applicable to the child majority is attained earlier. The Human Rights Committee leaves the question of when a child becomes an adult for legal purpose to be determined by each state party.' Thus, youths from 18 years old are part of the majority and this makes them adults; see further Mahidi (n 176 above) 278.
[206] Mahidi (n 176 above) 52.

elective positions as other adults, and other incidental activities within the meaning or circle of political participation.[207]

It is simply untrue to say that youths' complete and effective rights to participate in politics are protected if they continue to face discrimination when exercising their rights relative to other adults. Thus, the first indicator to determine whether the rights to political participation of youths or any other marginalised group in any society are fully respected is whether they are entitled to vote and eligible to stand as candidates in all positions of authority, up to the highest political office in the land. Thus, realistically speaking, the rights to political participation in the AYC as they stand may be passed off as mere paper rights.[208]

The final criticism to be highlighted here is in relation to the absence of a monitoring mechanism in the AYC. The concretisation and specification of rights in a human rights instrument could never be the ultimate goal or the end result of any human rights struggle, but rather how such an instrument brings real transformation to the day-to-day living reality of those whom it seeks to protect. For the goals of such instruments not to be eventually doomed, the necessity of enforcement or monitoring mechanisms cannot be overemphasised, especially in the case of a human rights instrument such as the AYC.[209]

It is the position of this thesis that due to the persistent and formidable challenges which youths in Africa are facing in their quest for the full and effective realisation of their political rights and their general human rights, they deserve strong institutions or mechanisms to see to the fruition of the dreams, visions, and ideals encapsulated in the AYC, just as the AU has previously done in relation to women's and children's rights in Africa.[210] This is not to mean that the establishment or existence of an enforcement monitoring mechanism is a magic wand that would make the rights in the AYC an immediate living reality in the lives of youths. However, it would enable its progress to be systematically monitored so as to identify challenges being faced by state parties towards its implementation.[211]

---

[207] See Rawls (n 204 above) 22 who, concurring with this argument, posits that '[a]ll same adults, with certain generally recognised exceptions, have the right to take part in political affairs, and the precept one elector one vote is honoured as far as possible'.
[208] See N Jayal 'Vote and democracy, the right to' in H Arnold et al (eds) *The essentials of human rights* (2005) 364-365.
[209] See generally Tomuschat (n 164 above) 13.
[210] See arts 26 of the African Women's Protocol and arts 32-45 of the African Children's Charter respectively.
[211] Mahidi (n 176 above) 52.

While the AYC empowers the AUC to ensure that state parties respect their commitments to it, the means through which it would carry out this power are largely too weak to really change their attitudes, save for the inclusion of youths as representatives at AU meetings.[212] Although the Ibero-American Youth Convention (IAYC) equally lacks a specific monitoring mechanism like the AYC but provides for a kind of reporting system, that makes it better than the AYC. It mandates state parties to submit reports on the implementation of the IAYC in their respective states upon request by the Secretary-General of the Ibero Youth Organisation (OIJ); the reports would then be submitted to the committee of Youth Ministers.[213] Therefore, the approach adopted by the IAYC, although not adequate for the protection of youth rights, nevertheless is more tolerable and commendable than the AYC's approach.[214]

4.7 Arbitrary age discrimination against youths in Africa and its validity under the African Youth Charter

There is nothing more obstructing to the enjoyment of youth rights than the tool of age discrimination, which is firmly entrenched in African constitutions and laws and which has stood as a barrier to the realisation of the full and effective rights to political participation of youths in Africa.[215] Despite the existence of other uninformed socio-cultural biases, presumptions and prejudices about the political and leadership capabilities of youths in post-colonial Africa, the manifestations of these through the instrumentality of constitutions and laws have further fortified them and turned them into strongholds debarring youths from enjoying their political rights on an equal footing with other adults in society.[216]

It has been indicated in previous chapters that African constitutions can be divided into three categories when discussing the extent to which the youths are guaranteed their political rights in Africa. The first category includes those that totally exclude all youths from national

[212] See generally art 28 of the AYC.
[213] See art 36 of the IAYC; further see Mahidi (n 176 above) 50.
[214] Mahidi (n 176 above) 50.
[215] See NEPAD (n 8 above) 25.
[216] See the Constitutions of Angola, Botswana, Algeria, Mauritius, Cape Verde, Comoros, Cameroon, Republic of the Congo, Democratic Republic of the Congo, Djibouti, The Gambia, Ghana, Guinea, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Seychelles, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia, Uganda, Nigeria, Zambia and Zimbabwe.

executive political offices;[217] second, those constitutions that partially exclude them;[218] and, third, those that fully and effectively guarantee their rights to political participation as reflected in their constitutions and electoral laws.[219] The essence of this discussion is to assess their validity in terms of the relevant provisions of the AYC.

In chapter three, while discussing the rights to political participation under articles 25 and 13 of ICCPR and the African Charter respectively. It was noted that while state parties are allowed to limit them, such limitation must be in accordance with article 2 of ICCPR and must not be unreasonable. We have equally stated that although neither the ICCPR nor the African Charter specifically lists 'age' as one of the grounds of discrimination, the phrase 'other status' as used in both instruments has been interpreted to include 'age'.[220] Specifically, the African Commission has held that the grounds of discrimination listed in the African Charter are neither conclusive nor absolute but a mere indication.[221] Thus, this thesis submits that 'age' should be read into the grounds of discrimination under international human rights instruments.

The other consideration that state parties must comply with in making a distinction in the enjoyment of the right to political participation is that such distinction must be reasonable. A practice can be said to be reasonable if it is 'fair, practical and sensible'.[222] That is to say, fairness is one of the main indicators for determining a distinction that is just. On the other hand, a practice or rule is said to be arbitrary if such is not fair or not based on cogent reasons.[223] By necessary implication, a political participation system that is arbitrary is unreasonable and therefore would be against the provisions of articles 25 and 13 of ICCPR and the African Charter respectively.

---

[217] Nigeria, Algeria, Cameroon, Republic of the Congo, Ghana and Zimbabwe (countries with constitutions that provide for rights to stand for national elections above the age of 35 years; although some youths are eligible to stand for a few legislative offices).
[218] Angola, Botswana, Algeria, Mauritius, Cape Verde, Comoros, Democratic Republic of the Congo, Djibouti, The Gambia, Guinea, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, South Sudan, Sudan, Tanzania, Tunisia and Uganda.
[219] The Constitutions of South Africa, Seychelles and Kenya.
[220] See L Lester & S Joseph 'Obligation of non-discrimination' in D Harris & S Joseph (eds) *The International Covenant on Civil and Political Rights and United Kingdom law* (1995) 568; see S Keetharuth 'Major African legal instruments' in A Bösl & J Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 169. According to the author, '[t]he inclusion of "other status" renders the list non-exhaustive, for example, discrimination on the basis of age, disability or sexual-orientation could be read into it'.
[221] See *Open Society Justice Initiative v Côte d'Ivoire* Communication 318/06 (2016) para 145.
[222] A Hornby (ed) *Oxford advanced learner's dictionary of current English* (2015) 1243.
[223] As above 63.

The existence of the different ages which are tilted in favour of those adults outside the youth age bracket for national political offices in almost all African constitutions is both arbitrary and unreasonable. The ages are unsystematic, erratic and grossly uneven among the various African countries but with a similar pattern of excluding the majority of 'adult-youth' (ages 18 to 35) from accessing political offices at the national level, most especially the highest political office, which is the position of president.

For example, in Rwanda one of the criteria for eligibility for the post of president is that the person must have attained the age of 35[224] and, for a position in the senate, the eligibility age is 40.[225] The Namibian Constitution similarly adopts 35 years as the age of eligibility for the post of president.[226] Such practices violently target the youth age cohort, so as to keep them perpetually excluded, oppressed and alienated politically. Also, both Mozambique[227] and Uganda adopt the age of 35 as the eligibility age for the post of president respectively,[228] while Tanzania adopts the age of 40 as the eligibility age for those who wish to become president of the country.[229]

Furthermore, Sudan,[230] Sierra Leone,[231] Mauritius,[232] Comoros,[233] Algeria,[234] Ghana[235] and Nigeria in their respective Constitutions peg the age of eligibility for the post of president at 40.[236] On the other hand, Cape Verde,[237] The Gambia[238] and Angola put the eligibility age for the position of president at 35 years[239] and Botswana at 30 years.[240]

[224] See the 2003 Rwandan Constitution, art 99(7).
[225] Art 83(5) of the Rwandan Constitution.
[226] Art 28(3) of the 2010 Namibian Constitution.
[227] See art 147(14)(2)(b) of the 2005 Constitution of Mozambique.
[228] See art 102(b) of the 1995 Ugandan Constitution.
[229] See the 1997 Constitution of the Republic of Tanzania, art 39(1)(b).
[230] See the 2005 Constitution of Sudan, art 53(c).
[231] See the 1991 Constitution of Sierra Leone, art 99(7).
[232] See the Constitution of Mauritius, art 28(3).
[233] See the 1996 Constitution of Comoros, art 7.
[234] See the Constitution of Algeria, art 73.
[235] See the Constitution of Ghana, art 62(b).
[236] See art 131(b) of the 1999 Constitution of Nigeria.
[237] See art 118 of the 1999 Constitution of Cape Verde.
[238] See art 61(1) of the 1997 Constitution of The Gambia.
[239] See the 2010 Constitution of Angola, art 110(1).
[240] See art 33(1)(b) of the Constitution of Botswana.

The above eligibility ages in African constitutions show a systematic constitutional-based discrimination against most African youths.[241] The ground for discriminating against youth is solely based on their age and perceived inexperience or immaturity as adults in society. The discrimination is not only unreasonable but ineluctably unwarranted because it is not based on any traceable empirical research; that points to the fact that those adults under the ages of 35 are incompetent for leadership positions while those above the ages of 35 are competent.

If there is any statement that would be hard to contradict, is that the leadership of the 'older-adults' (those adults who outside the youth age bracket) have not really brought the desired change, results and aspirations that the majority of Africans wish for. Thus, calling for a reconsideration of this arbitrary and unreasonable age discrimination against the youth in most African constitutions is not merely timely but highly overdue.[242] Arguably, age-based discriminatory constitutions and legislation are the greatest threat to and source of human rights violations against youths in Africa.

While the issue of age-based discrimination (ageism) may be said to be an emerging issue, it is equally true that 'cognisance of the negative impacts of age discrimination is increasing and its corresponding legal protection spreading. For example, there is burgeoning activism at the national level to improve on or introduce legislation prohibiting age discrimination and the calls to adopt an international treaty.'[243] It is high time for the AU and other regional human rights organisations to focused their attention on the many constitutions that have outdated, oppressive, and arbitrary age-based discrimination against youth, particularly in relation to their exercising their right to political participation on an equal footing with other adults in society.[244]

That is, there should be a clear prohibition against age-based discrimination against the youth in Africa, so as to allow them to enjoy their rights to full and effective political participation

[241] While only the eligibility ages for the office of President were highlighted, similar arbitrary discrimination can also be found in relation to eligibility for members of national parliaments.
[242] As indicated above, only the Constitutions of South Africa (art 19(3)), Kenya (art 38(3)) and Seychelles (art 24(1)) provide for equal rights to political participation to all adult citizens, that is those from the age of 18.
[243] See R Allen 'Putting age discrimination on the map' (2013) 11 *The Equal Rights Review* 123.
[244] Mahidi (n 176 above) 57. 'The argument that young persons are not mature or experienced enough to stand for election misses the point, as age in itself does not seem to "guarantee" those two characteristics. In any case, the decision whether a person fulfils them should be taken by the voters and not on the basis of an arbitrary age limit.'

and other human rights.[245] This call is in tune with the recent call by the African Commission on the need for youth rights to political participation to be respected by African states.[246]

Despite the fact that age is not one of the listed grounds of discrimination under the African Charter or the AYC, the continuous discrimination against the youth in most African constitutions can never be validated in the eyes of either instruments or other international human rights instruments. This is because, as it was noted in the previous chapter, the two categories of persons that can be lawfully exempted from the rights to political participation (the right to vote and to stand for elections) are children and convicted criminals serving their prison terms.

Therefore, to exclude the youth from exercising their political rights fully like other adults in society is an attempt to treat them as either children or criminals. Thus, state parties to the ICCPR, the African Charter and the AYC are in clear violation of their obligations should they exclude the youth (ages 18 to 35) from fully exercising their political rights because such an act is unreasonable, arbitrary and legally reprehensible.

4.8 Litigating youth rights in Africa: Finding possibilities in the midst of impossibilities?

Since it has been discovered that despite the existence of the AYC, the fortunes of the African youth in terms of their rights to political participation is yet to be improved; it would not be out of place to interrogate the possibility of litigating their rights within the existing architectures of the AU.

Besides litigating violations of youth rights at the global level (UN), three possibilities exist in the litigation of youth rights in Africa. The first is to go through the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee). The Children's Committee which was created under the African Children's Charter, although mandated to determine issues on the violation of the Charter, can entertain human rights

[245] Mahidi (n 176 above) 60: 'While young persons often are the victims of ageism, no comprehensive protection against discrimination on the grounds of age exists.'
[246] See African Commission on Human and Peoples' Rights Resolution 347: Resolution on the Human Rights Issues Affecting the African Youth ACHPR/Res 347(LVIII) 2016 (20 April 2016) i and ii.

violations relating to all children in Africa.[247] The Children's Charter defines children as persons below the age of 18. Therefore, since the AYC declares some youths as falling within the age bracket of children, namely, those youths between the ages of 15 and 17, aggrieved persons would be able to bring their cases using both the AYC and the African Children's Charter to argue their cases. However, the African Children's Charter would be the main instrument of violation, while the AYC would be used as a supplementary instrument, to fortify the arguments being canvassed.[248]

The second route is the African Commission, which one of its general promotional mandate is the protection of human rights in Africa.[249] Although it protective mandate is largely limited to the African Charter,[250] it is encouraged to draw inspiration from other international human rights instruments, and particularly to '*various African instruments on human and peoples' rights*'.[251] Therefore, since the AYC is one of the instruments of the AU, litigants; which include non-governmental organisations (NGOs) would be eligible to bring matters that are based on its violation. However, for the matter not to be thrown out by the African Commission, the violation should not be based *solely* on the AYC but as *supplementary* instrument, in that since most of the rights contained in the AYC are provided for in the African Charter.

Thus, the African Charter or any of its protocols should be the main instrument that is purported to have been violated.[252] That is, aggrieved youths and relevant NGOs can approach the African Commission to challenge the age-based discrimination in laws and constitutions of any African state, that such legislation violates youth rights to political participation under the African Charter and other relevant international human rights instruments, particularly the AYC.

The third possible route is through the African Court on Human and Peoples' Rights (African Court).[253] The African Court has very wide and expansive jurisdictional powers, as its powers

[247] See art 42 of the African Children's Charter.
[248] See generally Viljoen (n 133 above) 407, who encourages that the 'Children's Rights Committee should draw inspiration from the Youth Charter'.
[249] See art 30 of the African Charter; see further M Hansungule 'African courts and the African Commission on Human and Peoples' Rights' in Bösl & Diescho (n 216 above) 233.
[250] See art 45(2) of the African Charter.
[251] See art 60 of the African Charter (my emphasis).
[252] For example, the rights to political participation in art 11 can be found in arts 13 and 9 of the African Charter and the African Women's Protocol respectively.
[253] See generally Viljoen (n 133 above) 400-444.

extend to all relevant human rights instruments ratified by the state party concerned.[254] Therefore, competent parties before the African Court could *solely* on the violations of the of the AYC provisions submit a matter to the African Court without citing violations of other international human rights instruments, provided the state party concerned has ratified it.[255]

For victims/youths (NGOs) of member states that have made a declaration pursuant to article 34(6) of the Protocol to the African Court, they could bring the case directly to the African Court,[256] while victims from state parties that are yet to make the declaration under article 34(6) would have to submit it to the African Commission for possible referral to the African Court.[257]

In addition to the three major routes enlisted above, sub-regional institutions with human rights mandates could be approached on violations of the AYC. Examples of such institutions are the Economic Community of West African States (ECOWAS);[258] the East African Community (EAC);[259] and the Southern African Development Community (SADC).[260]

It can be submitted that in the absence of a monitoring mechanism under the current AYC, the most appropriate body to litigate matters on youth rights, principally, would be the African Court, because it is empowered to adjudicate on matters involving human rights of all instruments that have been ratified by the state parties concerned. The nearest thing to it would most likely be the sub-regional courts. However, there would be no harm in combining a violation of the AYC with other human rights instruments for the purpose of widening the scope of the available avenues for litigating youth rights in Africa.

---

[254] Art 3(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), adopted on 10 June 1998 and entered into force on 25 January 2004, provides: 'The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and *any other relevant human rights instruments ratified* by the states concerned' (my emphasis).
[255] See art 5 of the Protocol of the African Court on Access to the Court; see also Viljoen (n 73 above) 426.
[256] Art 34(6) allows for direct access to the Court by NGOs with observer status before the African Commission and individuals; see art 5(3) for a better understanding.
[257] See art 5(1) of the African Court Protocol; see also Viljoen (n 133 above) 426.
[258] For example, see the Protocol on the Community Court of Justice, amended by the Supplementary Protocol Amending the Protocol Relating to the Community Court of Justice, ECOWAS Doc A/SP.1/01/05, 19 January 2005, specifically arts 9(4) & 10(d); see generally Viljoen (n 133 above) 490.
[259] The EAC has what is known as the East African Court of Justice which has handed down some decisions with human rights implications.
[260] See SADC Tribunal Protocol (although at the time of writing the Tribunal is comatose).

4.9 Conclusion

The AU has made a modest and commendable effort towards the actualisation of the rights and development of the youth in Africa by its adoption of the African Youth Charter. However, the reality on the ground shows that there is a great distance between the rights guaranteed in the Charter and the lived reality of African youth. It has been pointed out above that, beyond the absence of manifest and real political will on the part of state parties to implement the Charter, some latent and manifest defects in it remain the major roadblocks to the full enjoyment of the various rights, duties, and responsibilities it guarantees. The failure to provide a more appropriate legal definition of youth and a monitoring mechanism, in particular, undermines the current 'rights-privileges-based' approach.

Similarly, the retention of laws and constitutions that promote age-based discrimination against the youth in Africa in most post-colonial African states remains an obstacle on the road to the full and effective rights to political participation and the development of the youth in Africa. It was indicated in chapter two that political participation empowers people and to deny people their rights to political participation is to disempower and disenchant them and by extension stunt their developmental growth.[261] Unless and until these surmountable challenges are confronted, challenged and dismantled, the road to achieving youth rights in Africa is still very rough and long.

The African Youth Charter's normative requirements and general state policies on youth's rights to political engagement and development are therefore the main topics of this chapter. The following chapter examines a specific case study, namely the instance of Nigeria, on youth rights generally and their rights to political participation, as well as drawing comparisons from three other nations, namely the United Kingdom (UK), Republic of South Africa, and the Republic of Kenya.

The connection between this chapter and the following one is that while this chapter focuses on the normative standard of youth right to political participation established by the African

[261] See generally A Rosas 'Article 21' in G Alfredsson & A Eide (eds) *The Universal Declaration of Human Rights: A common standard of achievement* (1999) 442.

Union as a whole, the following chapter focuses on the analysis of a specific state in order to use it as a case study for the domestic implementation of the AYC and as a springboard for other African states.

Chapter Five

Youth rights to political participation under Nigerian law and Lessons from other jurisdictions

5 Introduction

I emphasised the numerous normative criteria that the African Youth Charter (AYC) offers in the preceding chapter as well as the associated responsibilities of parties under it. As a result, the chapter takes into account both the right of youth to political engagement in the Nigerian context as well as significant lessons from other legal systems. As opposed to the previous chapter, which examined the broad normative standards of the AYC as they apply to all parties to it, this chapter examines the operationalisation of the AYC in reference to a particular country.

The struggle for the recognition of the political rights of the youth is a common phenomenon across most post-colonial African states. Youth in Europe and other parts of the world are facing similar challenges. The peculiarity of those of the African youth is that beyond the societal prejudices against their worthiness; most constitutions in these countries, exempts a section of youth from politics in one way or another.

This current state of affairs is unsatisfactory on two principal fronts: First, it depicts the youth as unfit, unprepared and inexperienced, and this is why they have been excluded from access to prime leadership positions. Second, the youth are largely incapable of debunking these erroneous and unfounded claims. Because they would never have the opportunity to prove their traducers wrong.

This is because the gate to leadership positions have been shut against them through the instrumentality of laws and in most cases through the constitution. The youth have continued to suffer arbitrary discrimination on the basis of their age in spite of their role in the independence struggles of the African states.

The previous chapter analysed the human right to political participation and its permissible limitations under various global human rights instruments. Therefore, linking the chapter to previous chapters, particularly the last chapter, is the use of an African state as a case study. This is necessary in order to emphasise the predicaments of the African youth in relation to the exercise of their equal rights to political participation as other adults in society.

The particular country to be considered, discussing its laws regarding youth rights to political participation, is Nigeria. The choice of Nigeria is based on the fact that it is one of many African countries that operates the arbitrary age-based discrimination against the youth in its Constitution. It also, has one of the largest concentrations of youth in Africa. However, while Nigeria will be the main focus, comparative lessons would be drawn from other countries, such as the United Kingdom (UK), Republic South Africa and the Republic Kenya.

These three countries have been chosen for significant reasons. The UK is picked because besides it being Nigeria's colonial master, most of Nigerian laws are largely influenced by it, if not replicas of those of the UK. South Africa has been selected because of the innovativeness in its Constitution and because it has a very vibrant and politically active youth political party and organisations. Kenya is selected because it shares similar colonial experience with Nigeria and for the 'youth-friendly' provisions of its new Constitution.

The chapter, besides the introduction, is divided into six segments. The focus of the first section is on an examination of the rights to political participation of the youth during the colonial era. The second part focuses on Nigeria's general human rights obligations and specifically under the AYC. This is followed by the youth right to political participation under the Nigerian 1999 Constitution. The fourth section considers the implications of the success of the 'NotTooYoungToRun' struggle for Nigerian and African youths. A comparative analysis of youth rights to political participation forms the kernel of part five. The six section concludes the chapter.

5.1 Youth political rights during pre-colonial and colonial era

The current country or political entity known as Nigeria had not existed before the amalgamation of the Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria on 1 January 1914.

What is meant by not being in existence before that time is that before that year there was no place called Nigeria or anybody called Nigerian. What existed were nations and tribes with various names other than Nigeria or Nigerians.[1] Before the invasion by the colonial masters in present-day Nigeria, just as in other parts of Africa, the people of modern-day Nigeria organised themselves in a most orderly manner. They had formidable institutions in place to regulate the lives and affairs of their societies.

They operated institutions of governance which, despite the 'assaults' of colonialism, have not been totally wiped out but extremely weakened to a large extent. However, they exist in seemingly skeletal forms, which are markedly different from the way they used to operate or function.

These institutions were considered by the colonial 'invaders' as 'uncivilised', and, in extreme cases, 'repugnant and barbaric'. While African governance systems, like other systems around the world, are in an evolutionary stage, they cannot be described as perfect. They were responsible and responsive institutions that were able to monitor the excesses of both the rulers and the ruled. They equally guaranteed the respect for and protection of the rights of every member of society.
According to Umozurike:[2]

> African history is replete with great empires – Ghana, Benin, Buganda, the Zulus, to take only a few. There were myriad of small societies- in all these, the knitting fibre was that the rights of persons within them were respected and protected. The extent varied according to the size of the polity. It is incontrovertible that a group of people bent on destroying one another, on denying themselves the right to life, of free movement, speech, fair hearing etc would have succeeded in wiping themselves out. They

[1] See A Obilade *The Nigerian legal system* (1979) 28.
[2] U Umozurike 'Human rights and democracy in the 21st century: The African challenges' in M Ladan (ed) *Law, human rights and the administration of justice in Nigeria. Essays in honour of Honourable Justice Muhammed Lawal Uwais (Chief Justice of Nigeria)* (2001) 36.

> could not have existed as a society. The existence of society presupposes the respect of certain basic rights. This was and is true of a family, a lineage, a village, a clan, land and empire.

The above assertions underscore the fact that no matter what angle and perspective the story of Africa would be narrated from, the denial of the existence of institutions which were instrumental to the survival, organisation and peaceful co-existence of everyone in society is impossible or misconceived. Thus, Africa and Africans operated well-oiled rights and governance systems before colonialism.[3]

In the case of Nigeria, with the first arrival of the British, it has been said that the only kinds of administrations that were established were the Emirates systems of the north of the Hausa-Fulani people. The clannish systems of the Yoruba people in the west and the Igbo people in the east, both of which had a structure resembling 'city states,'.[4] The various societies had their own distinct ways of regulating themselves with adequate judicial mechanisms in place for people to ventilate their grievances.

As discussed in the previous chapters, these societies to a large extent were age-blind. Allocating responsibilities, rights and duties, age was one of the least considerations among other crucial considerations. The primary considerations in traditional African societies arguably were status, capability, nativity and, in extreme cases gender. By and large, the clear-cut distinction that existed in almost if not all traditional African societies, including that of Nigeria, were between children and adults, males and females, natives and non-natives and, lastly free-born and slaves.

Among the three traditional systems in Nigeria indicated above, the Yoruba system could be described as the most sophisticated. The Hausa-Fulani's system has been described as 'the most elaborate and modern in the sense of having established patterns of a developed system of public administration'.[5] The essence of this thesis is not to belabour the issues of the best

[3] See generally C Welch & R Meltzer 'Root and implications of human rights in Africa' in C Welch & R Meltzer (eds) *Human rights and development in Africa* (1984) 8, where they posit as follows: 'Traditional African societies were by no means devoid of practices intended to protect human rights; on the other hand, such practices could not be separated from their various social milieu, notably their ethnic groups. Colonialism introduced legal definitions of human rights.'
[4] See E Joye & K Igweike *Introduction to the 1979 Nigerian Constitution* (1982) 16.
[5] As above 16.

traditional institutions that existed in Africa before the invasion. However, to emphasise the existence of human rights respect and protection for all "members" of various societies.[6]

The main argument of the thesis is that African traditions do not support the arbitrary age-based discrimination against young people present in most post-African constitutions. Its historical significance and worth are infinite, especially when viewed through the lens of traditional African proverbs and wise sayings.[7]

The above position, as will soon be revealed, is clearly evidenced from both the struggles and negotiations for Africa's independence. These struggles were dominated majorly by those within the youth age cohort. Furthermore, one principal characteristic of the blood that runs in the veins of African people is the abhorrence of cheating, oppression and indiscriminate differentiation.

In other words, the twin principle of equality and dignity are sacrosanct across most African societies. In that it would be incomprehensible to deny an adult member of a society a right which other adult are enjoying or entitled to.[8] The Igbo people's proverb says, '*Me-em kawa me ibem*.' This literally means' treat me like others in the same class or group to which I belong'. This resonates with the principles of equality and dignity that underlie almost all traditional African societies.[9]

In a nutshell, as discussed extensively in chapter two of this work, the rights to general participation and political participation under the traditional African is well-rested and founded on the principle of equality and dignity of all adults in society regardless of a person's age. As a matter of fact, chieftaincy titles, leadership positions and even public recognition would be

[6] According to Umozurike (n 2 above) 53, who identified two group of pre-colonial African societies, '[i]n both types, the rights of members were respected and people outside might be given privileges but had no rights. What would have been their rights could be denied or granted at will. Aliens were particularly imperiled.'
[7] See generally L Marasinghe 'Traditional Conceptions of Human Rights in Africa' in Welch & Meltzer (n 3 above) 32. The learned author, who conducted a study on the traditional Yoruba society where besides his recognition of the existence of human rights protection in such society, declares thus: 'The best guarantees of human rights in Africa are to be found by preserving conceptions of human rights recognised by each society's law and custom. Such conceptions of human rights are so closely associated with traditions of an African society that their strict observance becomes a basic concern for its members.'
[8] As above 34.
[9] N Otakpor 'Justice in Igbo culture (2009) 2 *Uniben Studies in Philosophy* 54.

given rather to a youth who has brought more laurels and fame to his or her community than older adults that have made no positive impact in society.

That is, respect for the elderly remains one of the sacred 'cowries' in the 'calabash' of the basic norms. However, competence, worthiness, status and capability, and not age are the unassailable criteria for leadership roles and positions in traditional African societies.[10] This is because, to appoint a drunkard, idler or an incorrigible adult into a position of authority will be fatal and costly to bear for any society.

Not even the traditional oracle which was the main vehicle of selection has ever failed to select the finest as those worthy of leadership positions in society. Such a person can be a youth or not.

In African societies, they use the tool of selection rather than election. The rules of selection were adhered to, and those who are eligible for such positions are allowed to compete without arbitrary restriction on the basis of age. And if anyone is selected by the oracle, he or she assumes the position without any let or hindrance.[11]

Despite the rules of selection being largely unwritten, they are nevertheless respected and adhered to by all and sundry. An author rightly captures this by saying that '[t]here were no equivalents for the modern constitutions that could be overthrown by an ambitious soldier [ruler]'.[12]

Thus, it can be said that while election was not a process of choosing leaders, traditional African societies instead used selection. Also, the Nigerian youth were included in the leadership selection process in the pre-colonial days. They were never excluded as prevalent in the twilight of independence and post-independent Nigerian Constitutions.

5.1.1 Colonial governance structures and elections: Youth excluded?

[10] See generally C Welch 'Human rights as a problem in contemporary Africa' in Welch & Meltzer (n 3 above) 11-27; see further, Marasinghe (n 7 above) 37.
[11] Otakpor (n 9 above) 16.
[12] See Umozurike (n 2 above) 53.

One of the pervasive features of colonialism across Africa and other colonised territories was the destruction or distortion of existing governance structures by the colonisers. They replaced them with their own systems. These new systems were not only different to those of Africans, but often in contradistinction to African philosophy.

They differed in their views on how societies should be governed or ordered based on culture and value systems. This is not to say that colonialism was entirely "evil", but it caused grave distortions and wounds in Africans' way of life which are yet to be totally corrected or healed in present-day Africa.[13]

For the purposes of effective governance and control of the colonial territories, various systems and laws were enacted.[14] However, our concern in this work is not a discussion of the various laws enacted during the time of colonialism in Nigeria but an extrapolation of the laws that regulate political activities or political rights. Thus, those laws and constitutions that are of no relevance to this work would be disregarded.

That is, only relevant provisions will be considered. Several works exist on laws and constitutional developments in Nigeria, which is not the focus of this thesis.[15] It would be pertinent to state from the outset that despite the differences in approaches in governance between the traditional African society and that of colonial 'invaders', age was never a criterion for electing or appointing adults to positions of authority but other criteria.[16]While age could be said to exist as an undertone, it is not a tool of disqualification of qualified adults for leadership positions.

The first time Nigerians were given the opportunity to exercise their true rights to political participation or their electoral rights occurred under the 1922 Clifford Constitution.[17] Although Nigerians were not consulted in its drafting process, it has been described as Nigeria's earliest attempt at a constitutional government. Largely because it created a Legislative Council

[13] According to Umozurike, '[c]olonialism desecrated all that was sacred in the life of the people, the fountain of their strength and solidarity as sovereign people. Umozurike (n 2 above 2) 53.
[14] The 'Divide and rule' system was adopted by the British while the system of 'Assimilation' was used by the French government for its colonies.
[15] For a detailed account, see generally K Ezeara *Constitutional development in Nigeria* (1964); C Okonkwo (ed) *Introduction to Nigerian law* (1980); Joye & Igweike (n 4 above); K Mowoe *Constitutional law in Nigeria* (2008); and F Soyeju *Rudiments of Nigerian law* (2005).
[16] These include literacy, leadership influence, tax-compliance and others.
[17] Named after the then Governor-General of Nigeria.

empowered to make laws for the area within the jurisdiction of the Council of which a governor was in charge. The Governor in turn is expected to act in line with the advice and consent of the Council and not on his sole discretion.[18]

The composition of the Legislative Council was the Governor, who is the President, 26 official members (23 *ex officio* and three nominated), four elected unofficial members (three from Lagos and one from Calabar), with at least an additional 15 unofficial members. The foremost criterion for eligibility for election both as voters and candidates was being *an adult* British subject or protected persons. The other criteria are that such persons must be registered voters in Lagos or Calabar. they must meet the residency requirement of 12 months and the financial capability requirement, which stipulates that they must possess a gross income amounting to not less than £100 (British pounds).[19]

Therefore, the following are the deductible grounds for eligibility under the 1922 Constitution of Nigeria: adulthood/citizenship; residency; and financial capability or creditworthiness. The absence of the arbitrary age discrimination among adults emphasises an attempt on the part of the colonial administrators to respect the practices they met in terms of the selection of leaders. And also, the unreasonableness in differentiating between eminently-qualified and eligible adults.

Flowing from the above, since the elective principle was introduced in the 1922 Constitution, Nigerians have continued to elect a fraction of their leaders in subsequent constitutions with minimal modification to the criteria identified above. For instance, under the 1946 Constitution, the only distinguishing feature is the reduction of the financial capability requirement from £100 to £50 gross annual income.

This had the implication of widening the franchise of persons eligible to participate in the electoral processes.[20] An additional trend that could be noted from the outset of the Nigerian elective process is that there was no distinction between the criteria for the right to vote and the right to be voted for. Which implies that all adults that are eligible as voters were automatically eligible to stand as candidates in elections.

[18] See Soyeju (n 15 above) 271-272.
[19] See Joye & Igweike (n 4 above) (my emphasis).
[20] Joye & Igweike (n 4 above) 23.

Furthermore, as Nigeria progresses on electoral experimentation and Nigerians start being involved in the constitutional process, the tonalities of the eligibility criteria were being expanded. Some mundane and inexpedient criteria were added, such as the principle of the nativity of the voter or candidate, as the case may be. The first colonial Nigerian Constitution where Nigerians were consulted before its enactment was the 1951 McPherson Constitution. This was because the harbinger of the Constitution, Sir John McPherson, carried out wide consultations among Nigerians from one province to another and from village to village.[21] The eligibility criteria were similar to those of previous constitutions, but the 'person must be an adult taxpayer and either must have been born in the native authority area in which he wishes *to vote or be voted* for or resident in any area for at least 12 months, if a non-native'.[22]

The last colonial Nigerian Constitution to be considered under the sub-heading is the Littleton Constitution of 1954. Under this Constitution, there was no uniformity in the eligibility criteria across the whole country such as in previous constitutions.[23] In the western region of Nigeria, the tax suffrage was adopted where only male adult taxpayers were eligible to vote and be voted for through secret ballot.

Similarly, in the northern region of Nigeria, only male adults were eligible to exercise their electoral rights through an indirect electoral system. However, in the eastern region of Nigeria, both sexes were eligible to vote and be voted for. Except that such an adult should have reached the age of 21 pursuant to the then newly-enacted regional universal adult suffrage law.[24]

From the above it may be submitted that all adults who met the principal financial capability, adulthood/citizenship and residency criteria were eligible to exercise their right to participation under the various colonial constitutions. Except for some minute different eligibility criteria that existed in some regions.

Most importantly, gender-based discrimination was rifer than age-based discrimination. Age-based discrimination is nothing but a selfish elitist creation for the sole purpose of excluding

[21] Soyeju (n 15 above) 272.
[22] Joye & Igweike (n 4 above) 27 (my emphasis).
[23] See generally Ezeara (n 15 above) 207.
[24] Ezeara (n 15 above) 208.

those which they consider as potential threat to their stake in political leadership. It will be discovered in the next sub-heading that, based on the fact that most of those who struggled for Nigeria's independence were youths, they would have resisted any age-based discrimination. Such a discrimination would have purportedly excluded most of them from the electoral processes.

5.1.2 The struggle for Nigeria's independence and the role of the youth

The history of the decolonisation of Africa without a prime place accorded to the African youth would be one of the greatest disservices to them and a fundamental distortion of history. This assertion is based on the fact that the independence of most post-colonial African states was not achieved by solely the elderly. But was championed by, struggled for and principally gained by the African youth at that time.[25]

Even after independence, the youth have continued to play active roles towards the deepening of democratic culture. Over the years they have been on the forefront of championing causes that concern the development and advancement of Africa and its people. However, many successive governments in most post-colonial African states have mischievously used the instrumentality of law to exclude, silence and suppress them from fully and actively participating in various aspects of society.

Most especially in the area of electoral politics and decision-making processes; thereby denying Africa the substantial and fruitful contributions by its youth.[26] The arguable negative impacts and implications of this have been wars, underdevelopment and leadership deficits among most African states since independence.

In Nigeria, the independence struggles were not dissimilar from those in other African states. The youth were at the forefront of the liberation struggles. Many of the founding fathers of the present Nigerian state were in their youth when they formed the various organisations that saw to the exit of the colonialism and its eventual independence on 1 October 1960. For instance,

[25] See the Preamble to the African Youth Charter, which states among things as follows: 'Considering that youth have played in the process of decolonisation ...'
[26] In underscoring this position, the Preamble to the African Youth Charter declares: 'Convinced 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' (my emphasis).

out of the five prominent founding fathers, Pa Anthony Enahoro (popularly referred to as the father of the 'Nigerian State') was only 30 years of age when he first moved a motion for Nigeria's independence in 1953.[27]

Flowing from above, the Lagos Youth Movement (LYM), was formed in 1934 initially as a body which was opposed to the educational policy of the colonial government as regards the perceived flaws of the Yaba Higher College (Now Yaba College of Technology).

However, because of a redefinition of purpose, in 1936 changed its name to Nigerian Youth Movement (NYM), which has now been touted as the first genuine 'nationalist' organisation.[28] The NYM and other youth-led organisations metamorphosed into political parties that served as generators of the political consciousness among the Nigerian people and led to the eventual termination of colonial rule.

After the formation of the NYM, it immediately won the Lagos Town Council and the seats allocated to Lagos in the Legislative Council in both elections. However, the life span of the NYM was short-lived due to an internal leadership crisis that led to its collapse in1941.[29] The demise of the NYM brought about the emergence of various political parties properly so called. These parties were mainly formed by Nigerians that were youth and some elderly persons but there were none of them that was above 50 years.[30]

One of the foremost Nationalist political parties, is the National Council of Nigeria and Cameroon, which was later called the National Council of Nigerian Citizens (NCNC). The NCNC came into being as a result of a visit by a group of youth composed of students and former students in August 1944 to Dr Nnamdi Azikiwe They asked him to 'call out and lead them towards the attainment of Nigeria's self-government'.[31]

---

[27] See 'Five Nigerians that fought for Nigeria's independence', http://www.informationng.com/2017/03/5-nigerians-fought-nigerias-independence.html (accessed 24 June 2018); further see 'Founding fathers of Nigeria: Their biographies, achievements and life history' (17 December 2011), https://naijagists.com/founders-of-nigeria-their-biographies-achievements-life-history/ (accessed 24 June 2018).
[28] See Ezeara (n 15 above) 55. The names of the four founders of this group are Ernest Ikoli, Dr JC Vaughan, Samuel Akinsanya and HOD Davies.
[29] Ezeara (n 15 above) 55.
[30] See generally R Sklar 'Nigerian political parties: Power in an emergent African nation' (2015) 228 *Princeton Legacy Library*.
[31] Ezeara (n 15 above) 62.

The Action Group (AG), whose major proponent was Obafemi Awolowo, who was 41 years old when he formed the group, after several years of initial participation in Nigeria's independence struggles. In comparison to other political parties before independence, this party has been described as the most organised, best financed and the most efficiently run. The most fascinating thing about the AG is in relation to its youth friendliness approach in the admission of members. It has been said of the AG that '[t]he right of membership is extended to all Nigerians and all persons resident in Nigeria of 16 years or more of age (the age of liability to taxation in all regions)'.[32] This approach resonates the fact that persons within the youth age cohort's political rights were recognised and respected at the outset of party politics in Nigeria.

The third political party to be discussed here in order to highlight the role of the youth in Nigeria's independence is the Northern Peoples' Congress (NPC).[33] The NPC was also an offshoot of a youth movement before its transformation into a political party. This is based on the fact that its founder or leader, Sardauna of Sokoto Sir Ahmadu Bello, started a youth movement known as the Youth Social Circle (YSC) in Sokoto in 1945 when he was 36 years old.

It was the existence of YSC that gave birth to the then NPC. NPC was a party which originally set out to be a cultural organisation but eventually became one of the most formidable parties as Nigeria progressed towards independence.[34] The NPC, although not in a hurry for Nigeria's independence, was nevertheless a party fighting for the liberation of the Nigerian people from the oppression, domination and control of the British government. This is due to the fact that its main objective was 'the attainment of self-government of Nigeria and the introduction of a permanent federal constitution'.[35]

The above picture which demonstrates that the Nigerian youth have always been part and parcel of the Nigerian political experimentation. They were given their rights to full and effective participation on equal terms as other eligible adults in the societies. However, a contrary view has been alluded to elsewhere that '[o]ne reason for drawing attention to this "historical fact"

[32] See Sklar (n 30 above) 422.
[33] See generally B Dudley *Parties and politics in Northern Nigeria* (2013).
[34] See 'Alhaji Sir Ahmadu Bello Facts', available at http://biography.yourdictionary.com/alhaji-sir-ahmadu-bello (accessed 25 June 2018). He was born in 1909 and died in 1966. See further 'History: Northern Peoples' Congress' (29 July 2017), https://www.arewaaffairs.com.ng/2017/07/history-northern-peoples-congress.html (accessed 25 June 2018).
[35] See 'History: Northern Peoples' Congress' (n 34 above); see further Sklar (n 30 above).

is not only to show that the marginalisation of West African youths has been part and parcel of history, only that their situation has further raised the bars of social disorder in the recent times'.[36]

While there may be some merit in above assertion. It is nevertheless flawed to the extent that in as much there was no specific constitutional or legal bar on the participation of the youth during colonial era made the difference. Also, the fact that the political arena was largely dominated by those outside the youth age cohort is not a sufficient indicator of youth discrimination.

Similarly, the author failed to recognise the fact that many of those he cited as examples started off their pseudo-political career as youth. The fact that at the time they became prominent or well established as political gladiators they were well-advanced in ages still does not deny the fact that they took off as youth. Except he is proposing that they ought to remain youth for life.

Thus, it is the position of this thesis that for a better understanding of youth's political participation during the colonial period, such a study is to be approached from the angle of the ages of those freedom fighters as at when they started small nucleus groups and not at the ages when they went into full-scale political participation.

To go through the later route is to miss the fundamental point that the main drivers of the struggles for decolonisation in Africa were largely those within the age bracket of the youth. It is therefore submitted that youth rights to political participation were guaranteed under the colonial era in Nigeria. And there was no discrimination on the basis of age which was skewed against the Nigerian youth as it were.

5.1.3 Age-based discrimination laws: The beginning of youths' exclusion on the basis of age in Nigeria

Youth right to political participation came under grave attack as the Nigerian state gravitated towards independence. The reason for this anomaly in the Nigerian electoral process could not

[36] See T Olaiya 'Youth and ethnic movements and their impacts on party politics in ECOWAS member states' (2014) *SAGE Open* 4, http://journals.sagepub.com/doi/pdf/10.1177/2158244014522072 (accessed 25 June 2018).

be unconnected with the fact that many of those who were in the struggle for independence have long passed the age of youth.

It is debatable if this is due to the needless imitation of adult age discrimination laws and practices in other nations that have recently incorporated such laws into their constitutions.[37] It would be a fundamental omission in the thesis if we fail to trace the history of the current age-based discrimination in Nigerian electoral practices and processes.

The first practice of 'age-based discrimination' among adults in the Nigerian electoral process was in the year 1960, under the 1960 Constitution in the wake of Nigeria's independence. The 1960 Nigerian Constitution provides for prime issues such as fundamental human rights, a basic federal framework for the country, and the electoral commission, among others.[38]

The genesis of this 'evil' trend has been accurately captured as follows:[39]

> Each region continued to be represented in the Senate by 12 persons elected at a joint sitting of the Legislative Houses of that region from among those nominated by the Governor, *not being below 40 years of age*, and being citizens of Nigeria.

From the above, the adoption of the minimum of age of 40 years for those to be elected into the Senate did not end with the Senate. It led to the adoption of various arbitrary, unreasonable and discriminatory ages for various political elected offices in Nigeria from independence up to the time of writing as would be revealed in the subsequent part of this chapter.

The reasons for this 'age 40' or other indiscriminate age for elective positions is yet to be specifically addressed in any writings known to this author. It could be that they followed the popular saying that 'a fool at 40 is a fool forever', which means that the age of 40 presupposes wisdom, experience and full maturity.

[37] The differentiation in the age criterion for the right to vote and the right to be voted for was in practice in the UK, some other European countries and is even still in practice in the United States of America (US). A detailed discussion of the practice of the UK is discussed in the latter part of this chapter under the section on comparative lessons from other countries.
[38] See Joye & Igweike (n 4 above) 36.
[39] As above 37 (my emphasis).

However, the recognition of the possibility of a person being 'a fool at 40' casts a great aspersion on this possible reason. This is because, as discussed in previous chapters, particularly in chapter two, that various African proverbs reveal that wisdom or leadership qualities are usually not conferred on a person by virtue of his or her age.[40]

For the purpose of reiteration, two proverbs of the Yoruba people of South-Western Nigeria echoed the above position. The first is *omode gbon agba gbon lafi de Ile-Ife*, which literarily means that it is in the recognition of wisdom in children and adults that made the building of the historical home of the Yoruba people 'Ile-Ife' possible. That is, wisdom is all that is necessary for the building of a sustainable, formidable and progressive state and not age.

The second also emanates from the Yoruba people and says *owo omode o to pepe, tagba o wo keregbe,* meaning that the hands of a child do not reach a heightened stand but that of the older people are incapable of being dipped into a gourd. This underscores the fact that in every society the older ones need the younger ones and *vice versa*. Thus, no one should be excluded on the presumption of an inherent lack of wisdom or capacity on the basis of their age. Most especially when such people have reached the age of majority or attained adulthood status in society.[41]

The 1960 Nigerian Constitution further adopts the age criterion for persons wishing to contest as members of the House of Representative and House of Assembly in the various regions. For a person to be eligible to contest for the House of Representative and House of Assembly, he or she must have attained the age of 21 years.[42]

One major reason that would have influenced the adoption of the age of 21 for eligibility rather than the same criteria as was the case of previous constitutions; could be the British influence.

---

[40] See Olaiya (n 36 above) 4, who rightly dispels the fact that age is a key factor in African society: 'Not only this, the notion of "youth" is alien to early politics in West Africa just as there is a nuanced understanding of the term "youth" – in comparison with adult-hood – in the context of Africa that is based on an individual's ability to meet socially defined family, clan, and civic responsibilities than the dominant Western conception of youth in terms of chronological age.'

[41] It earlier pointed out that traditional African societies, including those of Nigeria, generally draw a distinction between adults and children, and at the extreme between male and female; also, that nativity/lineage, status, possession and influence in the society are major factors that are determinant on the conferment of leadership positions/titles and not age. The societies were to a great extent age-blind towards all adults.

[42] See Joye & Igweike (n 4 above) 37.

This is because until lately the age of 21 has been the eligibility age of candidates for elective positions in the UK.[43]

Africa's renaissance, progress, and advantage in the global marketplace would continue to be harmed by the wholesale transplantation of the practice of electoral rights from the UK or other nations with a completely different historical experience, philosophy, and worldview to leadership and governance there. But this is simply because the concepts of human rights in Africa were fundamentally different from those that were common in the West. Also, colonial rule has caused many African leaders to lose touch with the way in which many of these rights are defined and controlled. Therefore, they created a political environment where 'the "authentic" African personality could not flower.'[44]

It is time for African leaders to sticked to their culture's positive traditional values, ideas, and philosophies, which are best studied through proverbs. Instead of turning to the proverbial "copy cats," who mimic everything about the West but ignore anything from Africa due to the narrow-minded notion that they are either backward or "evil".[45]

After the floodgate of arbitrary age-based discrimination which is constitutionally entrenched was opened by the 1960 Constitutions of Nigeria. The 1963 Constitution continued with this anomaly without anyone challenging the validity of the arbitrary age-based discrimination against adult citizens that were hitherto eligible until 1960.

However, the 1963 Constitution did not exist for long due to the military intervention in 1966 which terminated the first republic. The Federal Republic of Nigeria was ruled by military decree between 1966 and 1978 as a result of successive military *coups*.

However, in 1979 a new Nigerian Constitution was introduced and delivered to Nigeria, which is popularly known as the 1979 Constitution. The 1979 Constitution has been described as one of the most participatory post-independence constitutions of Nigeria. This is due to the fact that

[43] See generally G Utter *Youth and political participation: A reference handbook* (2011) 86-87; it was just recently in 2006 through the Electoral Administration Act that the UK reduced the age of eligibility for elective political office from age 21 to 18.
[44] Welch (n 10 above) 11.
[45] See Umozurike (n 2 above) 61, where he declares that '[W]estern forms of government may not be entirely suitable for Africa'. So also, their electoral practices could not be equally suitable for Africans.

the military government or the Supreme Military Council (SMC) that handed the Constitution to Nigerians had set up Constituent Assembly where the proposed Constitutions were deliberated upon by elected members of the various states of the federation.

The recommendations by the Constituent Assembly were submitted to the Constitutional Drafting Committee (CDC). At the end of their drafting process the draft Constitution was submitted to the then SMC which, after it had made 22 amendments to the original draft, decreed the 1979 Constitution into being.[46]

The 1979 Constitution has been praised for making a complete detour from all the constitutional experiences Nigeria had ever had. Some of the fundamental reasons for these accolades are because it was the first Nigerian constitution to introduce the current presidential system in practice in Nigeria to date. It contained well-entrenched fundamental human rights provisions, introduced the provisions on Fundamental Objectives and Directive Principles of State Policy (FODPSP). It also contained provisions on key constitutional principles such as the separation of powers, checks and balances and others.[47]

Considering the fact that it is due to its various innovativeness that has made several learned authors shower praise on the 1979 Nigerian Constitution, it was to be expected that the drafters would have taken stock of the African conception of adults' rights to political participation and also of its understanding as espoused in various international human rights instruments and jurisprudence.

But unfortunately, it retained the regrettable mistakes of some past Nigerian constitutions by adopting different criteria for exercising the two electoral rights. It was an attempted wholesale transplantation and adaptation of the American Constitution without any principal modification to suit Nigeria's peculiar traditional, historical and philosophical underpinnings.[48]

This above is one of the obvious drawbacks of the 1979 Constitution which many constitutional experts and writers on the constitutional history of Nigeria have paid little or no attention to. It has been stated in pervious chapters that under international human rights law, the only two

[46] See generally Joye & Igweike (n 4 above) 40-269.
[47] Soyeju (n 15 above) 274.
[48] See Soyeju (n 15 above) 236.

categories of persons allowed to be excluded are children and convicted persons. Any other grounds for excluding adults, amount to a violation of their rights to political participation as they are arbitrary and unreasonable.[49]

Principally, the criteria for eligibility under the 1979 Constitution range from citizenship and age, to residency and others. For example, section 61 stipulates that for a person to be eligible to stand as a candidate of the House of Representatives, he or she must have attained the age of 21.

Candidates for the House of Senate must be 30 years old to be eligible. Although the age of eligibility for the House of Senate was 35 as suggested by the CDC, this was rejected by the Constituent Assembly and they put it at age 30.[50] The Constitution further introduced uniformity in franchise across the federation and stipulates direct voting for elective office in Nigeria. However, it adopted 18 as the eligibility age for the right to vote across the country.[51]

In a similar vein, the eligibility age for candidates for the House of Assembly by virtue of section 100 is 21 just as that of the House of Representatives and similar grounds for disqualifications for both offices.[52] The age qualification for the office of President is provided for in section 123 and requires a would-be candidate for the position of President to have reached the age of 35 years.[53]

The adoption of the various ages of eligibility of 30, 21 and 35 years connotes nothing more than arbitrariness in a constitution. It is arbitrary in the following respects. First, these ages have not remained static but have continued to change upward in subsequent constitutions. Second, the haphazard variations in the ages show that they are not well thought out but ill-conceived against a particular group in society (the youth).

Third, the apparent disagreement between the CDC and the Constituent Assembly underscores the bad faith inherent in their adoption. The fourth reason is based on the fact that no veritable reasons exist to validate the claim that persons who have reached the age of 18 have the

[49] See chapter three on the rights to political participation under various international human rights instruments.
[50] Joye & Igweike (n 4 above) 146.
[51] As above 148.
[52] As above 168.
[53] As above 186.

capacity to vote but are incapable of holding leadership positions until they reach the age of 21, 30 or 35 years as provided for under the 1979 Constitution. On the other hand, questions remain unanswered, such as why the eligibility age was not set at 50 years old, and why an age bracket was chosen that excludes almost all Nigerian youths.

It is the view of this author that the reasons for the continuous retention of 'age-based discrimination' for election purposes among adults within the age of majority in the Nigerian Constitutions from 1960 to date are multifaceted. Arguably, the chief reason is the exclusion of the youth, which the political elites consider a threat to their political grip on power.
The second reason, arguably, is a willingness to copy everything from the West. Last but not least, the selfishness and lack of deep understanding and insight into African best practices of political participation and other progressive practices globally.

However, before considering the current practice under the 1999 Constitution, it is necessary to consider Nigeria's general international human rights obligations and specifically its obligations under the African Youth Charter. This is for the purpose of assessing whether such age-based discriminatory practices as presently contained in its Constitution are consistent with its various obligations under international human rights law.

5.2 The international human rights obligations of the Nigerian state and the African Youth Charter

Nigeria is a party to various international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR); the African Charter on Human and Peoples' Rights (African Charter); and the African Youth Charter (AYC). The ratification of international human rights treaties or other treaties is a signal and readiness on the part of the ratifying party to be bound by its provisions and organise its future affairs in accordance with the tenor of the treaty.

Upon the ratification of a treaty, it automatically becomes a source of obligations on the part of parties to it.[54] The expectations on a ratifying party is for it to 'adapt its national laws and policies to square with its obligation under the treaty'.[55]

There are four obligations of states under international human rights law. (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 or its agencies 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).[56]

These obligations are expected to be carried out in good faith by state parties. Ratification of a treaty becomes a useless exercise for state parties to go ahead and conduct their affairs in a way that constitutes a violation of the treaty concerned.

States' obligations under international human rights instruments are markedly different from their obligations under other treaties because citizens or persons are the beneficiaries of human rights obligations rather than fellow states. They are obligations imposed on, and are exercised against sovereign territorial states.[57]

Thus, state parties have an unimpeachable and unwavering obligation to give effect to the provisions at the domestic level. They are expected to upgrade their domestic standards to be on par with international human rights standards.[58] This is as a result of the fact that one of the most fundamental aspects of ensuring that rights provided for are respected at the domestic level is through their formal legal protection under domestic law.[59]

---

[54] D Harris *Cases and materials on international law* (2004) 42.
[55] F Viljoen 'The African Charter on the Rights and Welfare of the Child' in CJ Davel (ed) *Introduction to child law in South Africa* (2000) 215.
[56] 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.
[57] See generally J Donnelly *Universal human rights in theory and practice* (2013) 32.
[58] See D Harris & S Joseph 'Introduction' in D Harris & S Joseph (eds) *The International Covenant on Civil and Political Rights and the United Kingdom law* (1995) 5.
[59] A Byrnes & C Renshaw 'Within the state' in D Moeeckli et al (eds) *International human rights law* (2010) 499.

The UN has noted that '[t]he responsibility to respect, protect and *fulfil* human rights lies with states. They ratify international human rights instruments and are required to create mechanisms to safeguard human rights.'[60] Similarly, the Human Rights Committee has noted in General Comment 31 that states are expected to carry out their obligations under ICCPR in good faith.[61]

Similarly, General Comment 24 provides that ICCPR creates binding obligations on all state parties that have ratified it.[62] This implies that upon ratification of ICCPR by states, irrespective of whether such a state is a dualist or a monist state, it has an obligation to act in accordance with the provisions of the treaty rather than against it.

States' obligations under both under the African Charter and the AYC were discussed in the previous chapters. Article 1 of the African Charter and the AYC respectively provide for the obligations of states under it. The African Commission on Human Rights (African Commission) reiterates this point in one of its decisions that state parties to the African Charter are expected to take all necessary and concrete steps to bring their laws in conformity with the Charter.[63]

Therefore, Nigeria, as a state party to ICCPR, the African Charter and the AYC, is expected to guarantee all adults their full right to political participation without unreasonable and arbitrary exclusion of some adults such as the youth.

Similarly, 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.[64] In similar vein, the African Commission has cautioned states that '[i]nternational obligations should always have precedence over national legislation,

[60] UN Publication on *National human rights institutions history, principles, roles and responsibilities* (2010) 1; also, the General Guidelines of the UN Nairobi Declaration on the Administration of Justice (2008).
[61] Human Rights Committee (HRC), General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) 3 4.
[62] HRC General Comment 24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc CCPR/C/21/Rev.1/Add.6 (1994) 7.
[63] *Lawyers for Human Rights v Swaziland* (2005) AHRLR 66 (ACHPR 2005) para 47.
[64] J Dugard *International law: A South African perspective* (2011) 414; art 26 Vienna Convention on the Law of Treaties (VCLT) (1969).

and any restriction of the rights guaranteed by the Charter should be in conformity with provisions of the latter'.[65]

However, despite the obligations that flow from the ratification of human rights treaties by states, some states are unwilling to and have not adequately implemented their obligations domestically based on provisions of their constitutions or laws. It is now imperative to look at the relationship between international human rights treaties and Nigerian laws.

5.2.1 Nigerian law and international law: The relationship and the battle for supremacy

The main source of the operation of international law in any country is the constitution. This is because a country's constitution, besides being the *terra firma* upon which other laws stand, also spells out the relationship of the state with other states and stipulates the scope and extent of international law at the domestic sphere.

> According to a former justice of the Nigerian Supreme Court, '[t]he constitution of any nation is to all intents and purposes the pre-eminent law of the land; its dictates are sacrosanct.'[66] Thus, since the world is now a global village, all countries are connected to one another in one way or the other.

The applicability of international treaties *vis-à-vis* a state's domestic laws or institutions would undoubtedly have a prime place in states constitution. The constitution of a country is the 'legal' *Bible* crafted and designed to regulate both the internal and external affairs of a sovereign state or people.

The supreme law or the constitution in force in Nigeria is the 1999 Constitution of the Federal Republic of Nigeria (CFRN). The CFRN did not put anyone in doubt as regards it status and place among other laws in Nigeria. Its supremacy clause is contained in article 1(1) which provides that '[t]his Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria'.

---

[65] *Interights & Others v Mauritania* (2004) AHRLR 87 (ACHPR 2004) para 77.
[66] N Tobi 'Judicial enforcement of environmental law in Nigeria' in Ladan (n 2 above) 312.

It further states that Nigeria shall only be governed in accordance with its provisions.[67] The CFRN declares that when any other law (which includes international law) is inconsistent with its provisions, the CFRN shall prevail and the said law, to the extent of its inconsistency, shall be null and void.[68]

The practical implication of this 'inconsistency' provision is that whenever a conflict exists between a provision of the CFRN and that of any other law, whether international law or domestic enactments, the inconsistency provisions of the latter law would be void at the instance of the provisions of the CFRN.[69]

However, it should be pointed out here that this section of the CFRN may not render the entire provisions of the said law void, but the relevant 'inconsistency' provisions. Other provisions which are not inconsistent with the CFRN would be in operation, valid and enforceable. Thus, any argument that suggests that the declaration of a particular provision of a law as being inconsistent with the CFRN, thereby rendering the entire law void, should be rejected accordingly.[70]

The operative phrase is 'to the extent of the inconsistency'. That is, where for example an international treaty ratified by Nigeria contains some provisions that are inconsistent with the provisions of the CFRN, a court should not be quick to declare the entire treaty null and void but should limit its declaration to the infirm provisions.

The above is the most purposeful, liberal and fruitful way to approach this provision, if the intents and purposes of its drafters are not to be slaughtered at the 'altar' faulty interpretation.[71] If the drafters of the CFRN had intended to render an entire law void on the basis of the

[67] See sec 1(2) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN).
[68] See sec 1(3) of the CFRN.
[69] See generally K Mowoe *Constitutional law in Nigeria* (2008) 34.
[70] See generally B Nwabueze *Federalism in Nigeria under the Presidential Constitution* (1983) 317, where he argues among other things that the 'interpretation of statutes should be guided not as much by what the law makers may or may not have intended as purpose by which the provision in question is designed to serve. The words should be interpreted in the light of the underlining purpose and rationale of the provision … It should be guided and informed by the purpose of the provision being interpreted.'
[71] See the Nigerian Supreme Court (NSC) decision of *Nafiu Rabius v Kano State* (1980) 8-11 SC 130, particularly the opinion of Honourable Justice Sir Udo Udoma (JSC) paras 148-149; *Ukaegbu v Attorney-General, Imo State* (1982) 1 SCNLR, 212.

existence of some provisions that are inconsistent with that of the CFRN, they would have expressly declared so.[72]

Flowing from the above, the interrelationship between Nigerian law and, in particular, the CFRN and international human rights treaties would be approached in line with the above propositions in mind. It will be pertinent to state here that the main decision on how a sovereign state should apply or implement international human rights treaties is determined by whether such a state is a monist, dualist, or nihilist state.

A monist state approaches international law and domestic law as one, that is a single part of the general body of law. However, it recognises the supremacy of the former over the latter even at the domestic level. Thus, in a true monist state, where there is a contradiction between the provisions of international law and domestic law which the state is a party to, the provisions of the former prevail.[73]

On the other hand, the perception that international law and domestic law are two distinct bodies of law although being connected in some way; is the approach of a dualist state. In a typical dualist state, treaties ratified do not have direct application domestically or a force of law at the local court of the ratifying state.

They must undergo the laid-down procedures for incorporation of international laws before their guarantees, principles and provisions can become operational in the domestic sphere.[74] Nihilist states approach international law as being totally inferior to their domestic laws.[75]

From the above analysis, the Nigerian state falls under the dualist category in terms of the relationship between international treaties and its domestic laws. The CFRN makes no pretense about this when it provides in section 12(1) 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'. The clear and unambiguous meaning of this provision is

[72] The NSC position on this point is discussed in the latter part of the chapter.
[73] A classic example of a monist state is the Republic of Benin.
[74] Most African states are dualist; a classic example of a dualist state is Nigeria.
[75] See C Okeke 'International law' in C Okonkwo (ed) *Introduction to Nigerian law* (1980) 311; the nihilism 'theory appeared under the favourable conditions created by German militarism and was called to serve its predatory intent'.

that no matter the willingness of the government is in implementing the provisions of a ratified international human rights treaty, unless it passes through the transformative process, its provisions remain a 'printed futility' at the domestic sphere.[76]

While the above position of a non-transformed treaty not having the force of law in Nigeria is correct, the difficulty here relates to what happens when a ratified and duly-transformed human rights treaty contains some provisions that are inconsistent with the provisions of the CFRN.

Does the transformation of an international treaty raise it above other laws or are its provisions subject to the supremacy clause of the CFRN and even inferior to other domestic laws? This was the thrust of the foremost controlling judicial authority on the supremacy battle between international law and Nigerian law in the case of *Abacha & Others v Fawehinmi*.[77] Nigeria has not only ratified the African Charter but has transformed it and it is now part of its domestic laws.[78]

The facts of the above case in brief revolves around the arrest of the respondent (cross-appellant) by officers of the Department of State Security Service (DSS) without a warrant, and who was subsequently detained in 1996. However, he challenged his arrest and detention as a violation of relevant provisions of the 1979 Nigerian Constitution and the African Charter.[79]

The case progressed from the Federal High Court (FHC) to the Nigerian Supreme Court (NSC). Some of the arguments before the Court involved the status of the African Charter in Nigeria, how its rights could be enforced and whether it can be abrogated locally through a military decree or an Act of Parliament. The NSC declared that the provisions of international treaties ratified by the Nigerian government were not binding in Nigeria until they had been incorporated into national law through an Act of Parliament.[80]

[76] As above 311.
[77] (2001) AHRLR 172 (NgSC 2000).
[78] See the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of Federation of Nigeria 1990 (African Charter on Human and Peoples' Rights Act, enacted in1983).
[79] *Abacha v Fawehinmi* (n 77 above) para 1.
[80] *Abacha v Fawehinmi* (n 77 above) para 12.

Furthermore, the Nigerian Supreme Court held that courts are expected to give effect to the rights and provisions of an international human rights instrument which has been incorporated into Nigerian law, such as the African Charter, because its provisions are binding in Nigeria.[81]

Nevertheless, according to the Court, this did not mean that the said international treaty cannot be repealed through the same process by which it was enacted. Also, while its enactment may put it above other laws, the CFRN provisions are superior to any other law including an international treaty. In the words of the Court:[82]

> No doubt Cap 10 is a statute with international flavour. Being so, therefore, *I would think that if there is a conflict between it and another statute, its provision will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation*. To this extent I agree with their lordships of the Court below that the Charter possesses a greater vigour and strength than any other domestic statute. *But that is not to say that the Charter is superior to the Constitution as erroneously, with respect*, was submitted by Mr Adegboruwa, learned counsel for the respondent. Nor can its international flavour prevent the National Assembly or the Federal Military Government from removing it from our body of municipal laws by simply repealing Cap 10. Nor also is the validity of another statute necessarily affected by the mere fact that it violates the African Charter or any other treaty. For that matter see *Chae Chan Ping v United States* 130 US 581 where it was held that treaties are of no higher dignity than Acts of Congress, and may be modified or repealed by Congress in like manner, and whether such modification or repeal is wise or just is not a judicial question.

From the above *dicta* of the Court, it suffices to say that from the Nigerian law perspective, international treaties are inferior to the CFRN whether or not they have been incorporated into local laws. Their effects can be rendered void by the National Parliament of Nigeria through an abrogation of the Act. For those treaties that have been transformed, they are nevertheless superior to other laws of the land.

This above point is still the position of the law in Nigeria. Because the NSC is the highest court of the land and this decision is yet to be overturned by a subsequent decision of the court, its decisions are binding on all other courts in Nigeria.[83]

---

[81] *Abacha v Fawehinmi* (n 77 above) para 14; according to NSC '[t]he Charter gives to citizens of member states of the Organisation of African Unity rights and obligations, which rights and obligations are to be enforced by our courts, if they must have any meaning. It is interesting to note that the rights and obligations contained in the Charter are not new to Nigeria as most of these rights and obligations are already enshrined in our Constitution.'
[82] *Abacha v Fawehinmi* (n 77 above) para 15 (my emphasis).
[83] See A Obilade *The Nigerian legal system* (1979) 123.

The above position of the NSC, though commendable, to a lesser extent has grave implications for human rights protection, litigation and enforcement in Nigeria. First, the declaration that the National Parliament can abrogate the said Act that gave life to the African Charter was respectfully needless and an 'anti-rights' approach. Second, rather than merely declaring that the CFRN is superior to the African Charter, it ought to have stated that the Nigerian state has an inherent obligation to bring its existing laws to be at par with the provisions of the African Charter.

Third, rather than declaring that international human rights instruments ratified by the government of Nigeria do not have the force of law, which is expected in a dualist state, the court would have gone an inch further to include that the court can draw inspiration from such an instrument. Such an interpretation would have been more forward-looking, innovative, creative and highly progressive in the light of Nigeria's international human rights obligations.[84]

The above position is based on the general obligation of state parties to the African Charter, as contained in article 1, and Nigeria's general human rights obligations under the various international human rights treaties it has freely entered into. This position has been supported by a learned author who asserts that the above decision, as it relates to the superiority of the CFRN over the African Charter, is in contradistinction to Nigeria's human rights obligations under the African Charter.[85]

On the contrary, Durojaye, while agreeing with the Nigerian Supreme Court posits that '[t]he mere fact that an international treaty has been incorporated into domestic law does not necessarily elevate the treaty above the constitution. This is particularly true of a dualist state like Nigeria.'[86] Thus, until the decision is upturned, all international treaties, including the African Charter, are subordinate to the CFRN in all Nigerian courts. However, this position

[84] See art 26 of the African Charter.
[85] A Ali 'Derogation from constitutional rights and its implication under the African Charter on Human and Peoples' Rights' (2013) 17 *Law Democracy and Development* 98.
[86] E Durojaye 'Litigating the right to health in Nigeria: Challenges and prospects' in M Killander (ed) *International law and domestic human rights litigation in Africa* (2010) 160.

would be outrightly rejected in other international tribunals, because Nigeria would not be allowed to cite domestic law as a barrier for not carrying out its international obligations.[87]

Therefore, the battle for supremacy that exists between international human rights law and Nigerian law could arguably be said to be in favour of Nigerian law at the domestic level (courts) but not at the international level (international tribunals).

Notwithstanding the above decision of the NSC; which was decided under the old Fundamental Enforcement Procedure Rules (FREP Rules) of 1979. A contrary position might be reached by the Court if a similar case comes before it under the 'human rights-friendly' new FREP Rules of 2009, which is discussed under the next sub-heading.

5.2.2 The status of the African Youth Charter in the Nigerian court: Justiciable?

Nigeria is among various African states that have signed and ratified the African Youth Charter (AYC) after it was adopted on 2 July 2006, and came into force on 8 August 2009.[88] However, over a decade after it both signed and ratified the AYC, it is yet to incorporate its provisions into its national law.

It was noted above that, by virtue of section 12(1) of the CFRN, a ratified treaty lacks the force of law until it has been made part of Nigeria's domestic law. Therefore, in order to not repeat what was stated above, the status of the AYC under Nigerian law is that it is an inoperative treaty. It may indirectly influence or assist policymakers, but it cannot be used as the sole basis for a right claim in any Nigerian court.

Moving the argument further is whether or not the rights contained in the AYC may be justiciable in Nigerian courts. The obvious answer would be in the negative, but such an answer may not be totally correct. It has been alluded to in the previous chapter on the normative standards of the AYC that most of its provisions are not dissimilar to those in other international human rights instruments. They could be used alongside other treaties to persuade the relevant

[87] A classic example is the *Bakassi Peninsula* case, where Nigeria obeyed the International Court of Justice's judgment to cede the Peninsula to the Republic of Cameroon, notwithstanding Bakassi being one of the listed local governments areas in its Constitution; see Part 1 to the first schedule of the CFRN (under Cross Rivers State).
[88] Nigeria signed and ratified the AYC on 2 July 2007 and 21 August 2007 respectively; see the AYC ratification table, https://au.int/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf (accessed 4 June 2018).

courts to find a violation of rights. For example, the right to political participation under the African Charter and ICCPR could be argued alongside a similar right provided for under the AYC.

Thus, while the provisions of the AYC are not 'directly' justiciable in Nigeria, to large extent they are 'indirectly justiciable'.[89] The provisions are not directly justiciable because the operative section on the enforcement of rights under the CFRN appears to have limited scope as it provides that '[a]ny person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress'.[90]

The above provision is sometimes erroneously interpreted to mean that any right not contained in the mentioned chapter (Chapter IV) are non-justiciable before Nigerian courts. This position is not totally correct, especially when read together with the current Fundamental Enforcement Procedure Rules (FREP Rules) of 2009.[91] The FREP Rules laid down procedures for the enforcement of fundamental human rights in Nigerian courts.

The 2009 FREP rules were in many respects watershed and revolutionary in the struggle for human rights protection and enforcement in Nigeria.[92] The FREP Rules were made pursuant to section 46(3) of the CFRN, thereby making it part of the Constitution and have a similar force and supremacy status which it has above all other laws.[93]

Most importantly, the 2009 FREP Rules empower Nigerian courts to take cognisance of various international human rights instruments, whether they are global, regional or sub-regional instruments.[94] The chance of litigating rights under the AYC is heightened by the FREP Rules.

---

[89] See a detailed discussion in chapter4.
[90] Sec 46(1) CFRN; see I Ciroma 'Critical appraisal of the effectiveness of international and regional human rights enforcement mechanisms in Nigeria' in Ladan (n 2 above) 143.
[91] See the FREP Rules, http://www.refworld.org/pdfid/54f97e064.pdf (accessed 26 June 2018). The current FREP Rules were signed on 11 November 2009 by the former Chief Justice of Nigeria, Justice Idris Legbo Kutigi, and entered into force with immediate effect.
[92] See generally O Duru 'An overview of the fundamental rights enforcement procedure rules, 2009' (4 October 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2156750 (accessed 26 June 2018).
[93] Duru (n 92 above) 3.
[94] See the Preamble to the FREP Rules, which provides in paragraph 3(b): 'For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and

The new FREP Rules, contrary to the old ones, specifically expanded the scope of protection to cover rights contained in the African Charter when it states that "[f]undamental right" means any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act'.[95] In its substantive provisions, the fundamental rights envisaged under it include the African Charter.[96]

Although the FREP Rules did not mention the AYC, it is submitted that since it is impossible for all human rights instruments ratified by Nigeria to have been listed in the Rules, the AYC may be said to be within its reach. Most especially based on paragraph 3(b) of the Preamble to the Rules, as highlighted above. Thus, advocates of youth rights could litigate for their rights arguably relying solely on the AYC.

But the most likely result-oriented approach would be to use the African Charter's provisions as the main articles violated but supplemented with the relevant provisions of the AYC. This approach would not lead to an outright striking out of the suit on the basis of article 12 of CFRN but would elicit pronouncements from the courts on both the African Charter and AYC. This would in the long term highlight the human rights violations under the AYC.

The approach suggested here can be applied to any African country that has a legal system similar to that of Nigeria. Therefore, arguably, the rights under the AYC are justiciable in Nigeria and before Nigerian courts.

5.2.3 Definition of youth under Nigerian law

The different definitions of youth at the international and regional levels, particularly as they relate to the two current youth charters, have been noted in earlier chapters. This section will,

international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions.'

[95] See Order 1 Rule 2 of the FREP Rules 2009.

[96] See Order II Rule 1 of the FREP Rules, which provides on the commencement of action under it that '[a]ny person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress'.

however, briefly discuss how Nigerian law defines youth. simply because it might not have the same definition as the ones covered in earlier chapters.

The 1999 Constitution of the Federal Republic of Nigeria does not contain any provision specifically dedicated to youth. It would therefore be an effort in futility to search for the definition there. However, the Second National Youth Policy Document of the Federal Republic of Nigeria 2009 defines youth as males and females between the ages of 18 and 35 years.[97] This definition differs from the definition of youth under the AYC and is closely in accordance with the definition this thesis adopts.

The above definition is arguably the most appropriate definition for youth to a large extent. Unlike other definitions, it falls within the age bracket which is markedly different from other definitions of youth that usually conflates youth with children. The Nigerian National Youth Service Corp Act (NYSC Act) provides that persons above the age of 30 would not be eligible to participate in the scheme.

The above provision has caused one author to erroneously argue that youth are those persons under the age of 30, without stating at what age the youth cycle commenced. The problem with the definition of youth has to do with the point the youth circle starts rather than at what age it ends. The under age 30 definition is of no real value or help in resolving the real issue plaguing the youth of Nigeria and Africa.[98]

Therefore, for purposes of the discussion of Nigerian law, the age bracket of 18 to 35 years is the age for Nigerian youth.

5.3 Youth right to political participation under the Nigerian 1999 Constitution

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) in Chapter four provides for catalogues of rights which are principally traditional civil and political rights.[99] Other rights, popularly known as socio-economic rights, are contained in Chapter two, under the heading

[97] See the 2009 Nigerian Youth Policy 6, http://www.youthpolicy.org/national/Nigeria_2009_National_Youth_Policy.pdf (accessed 26 June 2018).
[98] See sec 2(2) of the NYSC Act, Cap 84, Laws of the Federation of Nigeria (2004); Olaiya (n 36 above) 3.
[99] For a discussion of these rights, see generally M Ladan 'Should all categories of human rights be justiciable' in Ladan (n 2 above) 67-73.

Fundamental Objectives and Directives Principles of State Policy (FODPSP). These later rights are not justiciable under the CFRN.[100]

Among the list of rights guaranteed in the CFRN, there is no right known as the right to political participation, unlike many other African constitutions. The implication of the absence of a specific right to political participation is that on face of it, a person cannot claim a violation of his or her right to political participation. The CFRN as its currently stands contains a grossly defective list of rights.[101]

A discussion of the background of the 1999 CFRN could shed light on the reason for the poor crafting of rights because it is impossible for a constitution that is drafted in questionable circumstances to provide for rich and well-thought-out fundamental rights. Only a constitution which is crafted by the people themselves can truly reflect the wishes of the people it is meant to serve and whose interests and rights are meant to be protected. This is the sad reality of most post-colonial African constitutions.[102]

5.3.1 Background to the 1999 Constitution

The corporate existence and democratic governance system of the Federal Republic of Nigeria (FRN) was attacked and usurped by the 'military 'boys' through a *coup* in 1983, thereby returning the FRN to the dark days of military rule. However, the 'military boys' promised to return the country to the path of civil rule in 1989, which prompted the drafting of another constitution.

The process of drafting the new constitution began with the setting up of a political bureau in 1986 with the sole purpose of recommending the most befitting constitution for the FRN. However, through the Transition to Civil Rule (Political Programme) Decree of 1987, there was an established committee known as the Constitution Review Committee. which was empowered to do a review of the 1979 CFRN in accordance with the political bureau's accepted recommendations.[103]

---

[100] See Ch 2 of the CFRN.
[101] See Ladan (n 99 above) 90.
[102] See generally C Fombad (ed) *The implementation of modern African constitutions: Challenges and prospects* (2016).
[103] See generally K Mowoe *Constitutional law in Nigeria* (2008) li.

Furthermore, in 1988, for the purpose of deliberating on the draft constitution of the Constitution Review Committee, a constituent assembly comprising 450 elected members, while the others were nominated, was set up. After consideration of various memoranda by the public and their considerations, the drafting process of the 1989 CFRN was finalised.

This was followed by the submission of the draft constitution to the then highest military authority, the Armed Forces Ruling Council (AFRC), which, after having made less far-reaching modifications, unlike in the case of 1979 CFRN, decreed it into law as the 1989 CFRN. However, 'life' was sniffed out of the Constitution before it went into full operation by the treacherous act of General Ibrahim Babangida's government annulment of the freest, fairest and most credible pool the FRN has ever had, held on 12 June 1993.[104]

Due to the crisis of incalculable magnitude that greeted the annulment of the 12 June 1993 presidential elections, General Babangida handed over power to an interim President, Chief Shonekan. He governed only for 82 days before his government was toppled by General Sanni Abacha.[105] On 8 June 1998, General Abacha died and a new military head of state in the person of General Abdulsalami Abubakar assumed the position of the head of the FRN.

General Abubakar almost immediately when he assumed power started the process of returning the country to democratic rule, which he did by setting up a Constitution Debate Coordinating

[104] As above. The pool was popularly believed to have been won by the then presidential candidate of the Social Democratic Party (SDP), Chief MKO Abiola. The Federal Government of Nigeria under the leadership of President Muhammadu Buhari recently, in recognition of the fact that Chief MKO Abiola and his running mate, Babagana Kingibe, were the winners of the annulled 12 June 1993 election, conferred the highest honour in Nigeria on Chief MKO Abiola posthumously, the title of the Grand Commander of the Federal Republic (GCFR – a title which is conferred only on Nigerian Presidents); President Buhari equally declared that henceforth the FRN would marks its annual 'Democracy Day' on 12 June rather than 29 May which has been in operation since Nigeria returned to civil rule in 1999. In the words of President Buhari in a signed statement: 'For the past 18 years, Nigerians have been celebrating May 29 as Democracy Day. That was the date when, for the second time in our history, an elected civilian administration took over from a military government. The first time this happened was on October 21, 1979. But in the view of Nigerians, as shared by this administration, June 12, 1993 was far more symbolic of democracy in the Nigerian context than May 29 or even October 1. June 12, 1993 was the day when Nigerians in millions expressed their democratic will in what was undisputedly, the freest, fairest and most peaceful elections since our Independence.' The fact that the outcome of that election was not upheld by the then military Government does not detract from the democratic credentials of that process. 'Accordingly, after due consultations, the Federal Government has decided that henceforth, June 12 will be celebrated as Democracy Day.' See the report of President Buhari's statement, O Adetayo 'UPDATED: Buhari declares June 12 Democracy Day, honours MKO Abiola with GCFR' *The Punch Newspaper* 6 June 2018, http://punchng.com/breaking-buhari-declares-june-12-democracy-day-honours-abiola-with-gcfr/ (accessed 27 June 2018).

[105] N Inegbedion 'Constitutional implementation: The Nigerian experience' in Fombad (n 102 above) 26.

Committee.[106] Another author has pointed out that it was not a committee *per se* but a '15-man panel to review past constitutions of Nigeria and recommend a suitable constitution'.[107]

The Committee/Panel, after it received memoranda from approximately 450 people from the political class, came up with a new draft constitution within two months and submitted it to the Provisional Ruling Council (PRC), which later decreed it into law as the 1999 Constitution of the FRN. The whole process was carried out in great haste without adequate and robust consultation with the people. This made its legitimacy and authenticity as a document of the Nigerian people, as declared in its Preamble, a true lie.[108]

It would be highly wishful to expect a constitution drafted by '15 wise men' in only two months to fully and effectively deliver the expectations of a true people's constitution. The 'wishy-washy' process through which the 1999 CFRN was foisted on Nigerians is reflected in the defective and backward guarantee of rights. Among many manifest and latent flaws are the lopsidedness of the power-sharing formula among the federating units and the overconcentration of power on the Nigerian President.

Many Nigerians have continuously expressed their displeasure and dissatisfaction with both the process and provisions of the 1999 Constitution.[109] Since its adoption, the 1999 CFRN has been amended three times and the fourth amendment (of 2018) is being carried out at the time of writing.[110] Apart from the legislative 'panel-beating' of the apparently defective provisions

[106] Inegbedion (n 105 above) 27.
[107] See Mowoe (n 103 above) li.
[108] The Preamble of the 1999 CFRN reads as follows: 'We the people of the Federal Republic of Nigeria; Having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people; Do hereby make, enact and give to ourselves the following Constitution'; see further Inegbedion (n 105 above) 27.
[109] For example, see A Oyebobe The integrity of law (Sixth Professor Alfred Bamidele Kansumu Annual Lecture of the Law Students Society of the Faculty of Law, University of Lagos) (15 September 2016) 7 where, according to the learned professor, '[b]eginning with Decree 24 1999 which is paraded as the Constitution of the Federal Republic of Nigeria and is inherently illegitimate having been dictatorially foisted on the country, many Nigeria's laws fail the test of acceptability by the population as well as the other desiderata of King Rex as outlined by Lon Fuller' (on file with author).
[110] The current amendments are largely on electoral matters ranging from powers of the Independent National Electoral Commission, the reduction of eligibility age for various elective offices and others (this is discussed in detail later); for a discussion on the three previous amendments, see Inegbedion (n 105 above) 25.

of the 1999 CFRN, successive governments have 'successfully' failed to design an autochthonous constitution for the Nigerian people.[111]

It therefore is not surprising from the above accounts on the background to the 1999 CFRN that it continued the constitutional-sanctioned discrimination against the Nigerian youth as contained more elaborately in its 'twin', the 1979 CFRN.[112] The 1999 CFRN is by and large a 'photocopy' of the 1979 CFRN save for the 43 new amendments inserted in the former.[113] The rights guaranteed remain largely unchanged despite the repeated criticisms against it since it was introduced under the 1960 CFRN.[114]

5.3.2 Arbitrary age qualification for elective office under the 1999 Constitution and the age of majority in Nigeria

While the struggle for the actualisation of the 12 June 1993 Presidential elections was ongoing, the youth, largely students of various Nigerian universities, formed part of it. Many of them were arrested and some killed in the process, but they were persistent and doggedly fought the military to a stand-still, until the return to democracy on 29 May 1999.

Upon returning to democratic rule, their expectations, hopes and political aspirations were dashed as the eligibility criteria for various elective political offices contained in the new 1999 CFRN excluded a large section of them.[115]

Before considering the various arbitrary age-based discriminations against the Nigerian youth as they pertain to the exercise of their full rights to political participation, it is expedient to first and foremost ascertain the age of majority and voting age in Nigeria.

The current age of majority, which coincides with the voting age in Nigeria, is 18. This means that those who are 18 years and above are considered adults. The Nigerian juvenile justice system draws a distinction between a young person and a child. While the former are persons

[111] Inegbedion (n 105 above) 25.
[112] See Soyeju (n 15 above) 274.
[113] See generally C Mwalimu 'The Nigerian legal system' (2005) 1 *Public Law* 207.
[114] See Soyeju (n 15 above) 309.
[115] The minimum eligibility age under the 1999 CFRN is 30 years before the age reduction in 2018, which is the age of eligibility of persons who wish to contest for members of both the State Houses of Assembly and the Federal House of Representatives; see secs 106(b) and 65(1)(b) respectively.

who have reached 17 years, the latter are those persons below the age of 14.[116] The 1999 CFRN in section 77(2) on the election of members of the National Assembly provides that every Nigerian citizen from 18 and above is eligible to be registered as a voter for the purposes of election.[117] The age of 18 has been applied as the voting age for citizens since the return to democracy on 29 May 1999.

However, does being an 18-year-old mean that a person is fully grown or an adult under the 1999 CFRN or that such a person can legitimately and validly be denied some of the rights and benefits that accrue to other adult citizens under Nigerian law?

There is a concept of 'full age' contained in the 1999 CFRN under Chapter III under 'Citizenship' and, according to section 29(4)(a); 'full age' means the age of eighteen years and above'.

Thus, from the above provision, which qualifies every citizen from age 18 as being of 'full age', It would be totally out of place to treat such a person as being of 'half age' when it comes to the issues of political leadership and eligibility for electoral office. It simply does not make sense and is highly illogical. A person who has reached full age should be capable of being trusted with everything pertaining to life, including political leadership, except that the adoption of the word 'full' is used mischievously and erroneously.[118] I doubt it greatly.

Therefore, does the 1999 CFRN fully adhere to its concept of 'full age' by giving every adult citizen the equal right to participate in all processes of election? The answer is in the negative. It rather sanctions arbitrary age-based discrimination against the majority of adult citizens who are the youth.

[116] See generally Mwalimu (n 113 above) 599.
[117] It provides expressly that '[e]very citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election'.
[118] See A Hornby (ed) *Oxford Advanced Learner's Dictionary of current English* (2015) 616; where the word 'full' is defined as 'complete; with nothing missing'.

Eligibility age criteria for post of President

The office of the President is provided for generally in Chapter IV of the 1999 CFRN.[119] Unlike the 1979 CFRN that provides for the eligibility age for the position of President to be 35, as discussed above.[120] The 1999 CFRN adopts the age of 40 as the eligibility age for persons who wish to run for the position of the President of the FRN.[121]

The reason for the upward review of the eligibility age from 35 to 40 years is yet to be answered by anyone known by this present author. It is therefore submitted that there is no reason other than to serve the parochial interests of the political elites who obviously are above the age of 35 and to further limit the accessibility of the Nigerian youth to political power. So as to make them perpetually disempowered, sidelined and forever available as tools of political violence and manipulation during election periods.[122]

The obvious 'evil' in the adoption of the age of 40 as the eligibility age for the position of President of the FRN is that, while the 1979 CFRN limits the possibility of a youth becoming the Nigerian President, the 1999 CFRN extinguishes such possibility. This position motivated by the fact that the Nigerian Youth Policy of 2009, defines youth as persons between the ages of 18 and 35.

There is no wisdom in excluding the largest percentage of a country's population from being eligible to vie for the highest office in the land.[123] It violates the rights to political participation contained in various international human rights instruments. It is also not reflective of Nigeria's history and political experience.

The Nigerian youth could not have been properly represented in the drafting process of a constitution that would entirely exclude them from the opportunity to vie for the highest political office. Leadership incompetence or competence has not been proven by any empirical research known to this author to end or begin at the age of 40 respectively. The use of age 40

[119] Its starts from sec 130(1).
[120] See sec 123 of the 1979 CFRN; see further Joye & Igweike (n 4 above) 186.
[121] See sec 131(b) of the 1999 CFRN.
[122] Many youths in Nigeria are the major tools and victims of electoral violence since the return to democracy in Nigeria on 29 May 1999.
[123] See Olaiya (n 36 above) 3; the youth constitute the largest percentage of Nigeria's population.

as the eligibility age is reckless, arbitrary and stupefying assaults on the leadership worthiness, competence and intelligence of all the Nigerian youth. The total exclusion of all Nigerian youth has not proven the drafters right, as evidenced in the apparent leadership deficit that the FRN has experienced since 1999 at the presidency.

Eligibility age for members of the legislative arm

In the same way as the eligibility age for the position of President of the FRN went through an upward review under the 1999 CFRN, it occurred in the case for members of Parliament at both federal and state levels. For example, under the 1979 CFRN, the eligibility age for the House of Senate and House of Representatives was pegged at 30 years; while age 21 was the eligibility age for members of Houses of Assembly of various states.[124]

By virtue of section 65(1)(a) of the 1999 CFRN, a person is barred from standing as a candidate for the purpose of becoming a member of the House of Senate (HoS) except if he or she has reached the age of 35. Similarly, a person cannot contest for the position of member of the House of Representatives (HoR)[125] and the state Houses of Assembly (HoA) except if he or she has attained the age of 30.[126]

With the above picture, should the age bracket of 18 to 35 be used to calculate in terms of percentage, the number of the Nigerian youth excluded between the ages 18 and 29 from access to both the HoR and HoA. That would amount to about 66.6 per cent of the youth denied full rights to political participation to the HoR, while 94.4 per cent of them are denied access as elected members to the HoS in Nigeria.

Thus, the majority of youth in Nigeria are denied from being part of making laws that would have a grave impact on their present and future development. This is an unacceptable state of affairs that can never be justified on any grounds and is against best practices of electoral democracy globally.

[124] See Joye & Igweike (n 4 above) 146.
[125] See sec 65(1)(b) of the 1999 CFRN.
[126] See sec 106(b) of the 1999 CFRN.

5.3.3 The unreasonableness and arbitrariness of age discrimination against Nigerian youth

Under the 1999 CFRN, age is not one of the prohibited grounds of discrimination, and no provision is made for an express right to equality.[127] However, a learned author has rightly argued that despite the fact that the prohibited grounds for discrimination are limited, the word 'status' as used in section 15(2) can be read into it to include other grounds not covered by section 42 of the 1999 CFRN and, for the purpose of the research 'age'.[128]

Regarding their rights to full and meaningful political participation, the Nigerian Constitution's ongoing preservation of arbitrary age-based discrimination against youth is unjustified and arbitrary on the following grounds:

First, the arbitrary differentiation in voting and eligibility criteria is unsupported by any empirical research or evidence. Neither is it based on any well-established cultural practice of the African people, as discussed above. Second, it is a practice that goes to the root of the human rights of those discriminated against, most especially their rights to equality, freedom from discrimination and dignity.

It paints them as incomplete, incompetent and irresponsible which is an assault on their sense of worth as a member of the human family. Third, the practice is against international human rights standards, as discussed in previous chapters.

While the various human rights instruments allow state parties to restrict or limit the various rights or the rights to political participation, such limitation must be reasonable and not arbitrary.[129] Principally, it must not target a particular group of people, in this case, those groups of people that fall in the age bracket of 18 to 35 years.[130]

Apart from the above, the myriad benefits of allowing youths who are adults in their own right to exercise their political rights on equal terms with other adults in the society in previous

[127] Both the South African and Kenya Constitutions declare age one the prohibited grounds of discrimination.
[128] Mowoe (n 103 above) 501.
[129] See generally J Rawls *A theory of justice* (1971) 364-365.
[130] See generally Donnelly (n 57 above) 62-63, where he opines that '[t]he state must treat all persons as moral and political equal'.

chapters were extensively discussed. This instills in them a sense of responsibility rather than being unconcerned, and equally empowers them to be more active and committed members of society. That is, a society that excludes the youth from access to elective offices stunts the developmental growth of its youth and endangers its future.

Finally, it is unreasonable and anti-democratic to decide for the electorates the candidates that are competent and incompetent among the adult citizens before they come forth as candidates. The electorates ought to be allowed to choose freely without constitutionally limiting their choices among the eligible adults that may contest.[131]

A constitution ought to be an instrument that furthers the rights of all in the society and not an instrument of illegitimate intrusion on the enjoyment of rights as the current provisions of the1999 CFRN appear to be. The Nigerian youth have continued to fight against this age discrimination against them, which amounts to constitutionally-sanctioned discrimination.

5.4 The success of the 'NotTooYoungToRun' struggle in Nigeria: Solving or highlighting the problem in Africa?

During the time that Nigeria was approaching the election in 2019, the validity and legitimacy of the retention of the age discrimination eligibility criteria among adult citizens in Nigeria gained momentum which eventually led to some modest results in 2018.

On 31 May 2018, history was made in Nigeria when the 'NotTooYoungToRun' (NTYTR) Bill received President Muhammadu Buhari's assent, thereby bringing about an amendment to the CFRN as it relates to age eligibility for various elective offices in Nigeria.[132] This was after the President had earlier promised on 29 May 2018 Democracy day's broadcast that he would give his assent to the bill because without the President's assent, a bill of the National Assembly cannot become an Act or operative in Nigeria.[133]

[131] Only convicted adults and children are those excluded from political participation.
[132] The long title of the Bill, now Act, reads: '[a]n Act to alter the provisions of the Constitution of the Federal Republic of Nigeria, 1999 to reduce the age qualification for the offices of the President and Governor and membership of the Senate, House of Representatives and the State House of Assembly; and for other related matters.'
[133] See 'Buhari's signing of #NotTooYoungToRun Bill is another promise kept – APC', *Kwara Daily*, https://kwaradaily.com/buharis-signing-of-nottooyoungtorun-bill-is-another-promise-kept-apc/ (accessed 4 June 2018).

The NTYTR Movement was initiated in May 2016 by one of the foremost youth organisations in Africa which is based in Nigeria, known as YIAGA Africa.[134] The main essence of the campaign was towards a 'constitutional amendment bill to remove age restrictions for running for office'.[135] The NTYTR Bill was eventually sponsored on the floor of the House of Representatives (HoR) by Honourable Tony Nwulu who was a member of the HoR representing the Oshodi/Isolo constituency (of Lagos State) in the Federal House of Representatives on the platform of the People's Democratic Party (PDP).

According to him, 'the Not Too Young to Run Bill seeks to reduce the age limit for those running for elected offices in Nigeria, and I initiated the Bill in the House of Representatives to encourage more youth participation in governance'.[136]

The NTYTR Bill was eventually passed by the Nigerian National Assembly in July 2017. However, the 1999 CFRN requires that for such an amendment to come into effect, it must be passed or supported by no less than two-thirds of all the State Houses of Assembly (HoA).[137] The NTYTR movement was able to mobilise across the 36 states of the federation for their various HoA to support the Bill.

As at 15 February 2018, 24 states' HoA had passed the Bill and by 1 March 2018, this number has increased to 34.[138] Since the majority of states' HoA had passed the Bill, all that was required was the President's assent in order for it to be operational. To hasten the President's assent to the Bill, the NTYR movement had a peaceful rally on 14 March 2018 where a position paper was presented to President Muhammadu Buhari to give his assent to the Bill.[139] The NTYR movement comprises over 100 youth organisations across Nigeria.

The effect of the amendment reduces the age eligibility criteria for office of President from 40 to 35 years, and both the HoR and HoA eligibility age from 30 to 25 years of age. The

[134] See YIAGA AFRICA, http://yiaga.org/about/ (accessed 27 June 2018).
[135] See the 'Not Too Young To Run Movement Brief', April 2018 1 (on file with author).
June 2018).
[137] See sec 9(2) of the CFRN.
[138] See generally Not Too Young To Run Movement Brief (n 135 above).
[139] See Prompt News Online 'Action as Nigerian youths seek Buhari's assent to #NotTooYoungToRun Bill' (15 March 2018), http://www.promptnewsonline.com/action-nigerian-youths-seek-buharis-assent-nottooyoungtorun-bill/ (accessed 27 June 2018).

actualisation of the age reduction is commendable; especially for all the youth organisations and people that worked on it from its grassroots to greatness. This thesis has some reservations about the way many Nigerians have welcomed the amendment on age-reduction with high hopes.

First and foremost, it must be made clear right away and without any room for question that the thesis's intent is not to launch a campaign to arbitrarily lower the age at which someone is eligible. However, all adults must utilize their political and voting rights on an equal footing.[140] This is supported by the thesis' assertion that people between the ages of 18 and 39 are considered to be adults and shouldn't be denied the right to vote or the opportunity to run for office based only on their age.

That is, once a state has adopted an age of majority, which in most cases is 18 years, all persons from 18 years and above should be allowed to vote and be able contest for elective positions in their respective states. The age criteria for voters should be same for eligibility to stand as candidates. This position is in tandem with international best practices, the traditional African world view and a rights-based approach to the rights to political participation.

Similarly, while this thesis uses Nigeria as a case study, it nevertheless fundamentally focuses on the challenges the youth face in actualising their rights to full and effective participation in Africa. Thus, the reduction of the eligibility age in Nigeria did not entirely solve the problem of exclusion of youth in political spheres in Africa but merely highlights it.

The reduction is a deceitful way of revealing that the age-based discrimination clauses that are found in almost all African constitutions were not founded on real, justifiable causes. However, in that they can be increased or decreased at will depending on who is in power and whose interests he or she intends to preserve, they were put in place to serve the narrow interests of the elites. This is the height of unreasonableness and arbitrariness.
It is nothing but a constitutional sanctioned discrimination against some groups of adults (the youth) which some elites consider a potential threat to them.

[140] See Rawls (n 129 above) 61, who opines that '[t]he basic liberties of citizens are roughly speaking political liberty (the right to vote and to be eligible for public office)'.

The above position is revealed by the statement of President Muhammadu Buhari after assenting to the Bill when he said:[141]

> 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 cohort 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' model. The best way to end slave trade is not by turning former slaves into slave masters but rather by the total abolition of this practice. Therefore, the method of increasing the eligibility chances of persons under the age bracket (18 to 35 years) by reducing the eligibility age fails the test of justice and fairness.

The implication of the new eligibility criteria which peg the eligibility age for both the HoS and the President at 35 years; and for HoR and HoA at 25, is that still 94.4 per cent of the Nigerian youth are still excluded from access to the office of the President and HoS, while 38,8 per cent of them are excluded from access to HoR and HoA.

This author is quite uncomfortable with this 'rights-privileges approach' which the Nigerian state is adopting in terms of the exercise of the rights to political participation. Youth right to political participation is a human right that should be accorded its respect, protection and implementation on equal terms with other adults.

[141] See Channels Television '#NotTooYoungTooRun: 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 June 2018).

Since the CFRN, as indicated above, considers everyone from the age of 18 (the age of majority) as being of 'full age',[142] full age should not only mean the entitlement to a driver's licence only, but should translate into the enjoyment of the rights to full and effective political participation in all spheres of the Nigerian state.[143]

Full 'adulthood' should come with the full enjoyment of all rights which accrue to all adults all over the world. This includes the right to vote and to be eligible to contest for any political office.[144] In respecting citizens' rights to political participation by any state, equality of suffrage is a fundamental key.[145] After all, the '[p]otential lack of ability should not be a bar to candidature; incompetents would hopefully not be elected or re-elected'.[146]

From the above, it is submitted that the reduction in eligibility ages in Nigeria is a wake-up call to other African countries that are retaining such backward, anti-rights and discriminatory provisions in their statute books to follow suit. However, it not yet *uhuru* for all African youth until they are able to exercise their right to full and effective political participation on equal terms with other adults in their respective states. There are best practices on youth rights to political participation both within and outside Africa, and that is the thrust of the next segment of this chapter.

5.5 Youth right to political participation from a comparative perspective: United Kingdom, South Africa and Kenya

Africa is not the only continent that exists; likewise, Nigeria is not the only country in the world. The interconnectivity of the modern world makes it imperative to compare practices and draw lessons from elsewhere so as to make the world a better place. The reality of the assertion is more apparent when one considers that there is nothing new under the heavens and that a problem confronting a particular continent or state might have been solved elsewhere.

[142] See sec 29(4)(a) of the CFRN.
[143] See generally Mwalimu (n 113 above) 599.
[144] See generally W Kalin & J Künzli *The law of international human rights protection* (2009) 466. According to them, '[p]olitical rights in a narrow sense … guarantee citizens both the rights to vote under equal conditions and at regular intervals in pre-election and the right to stand for elections.'
[145] Kalin & Künzli (n 144 above) 481.
[146] S Joseph 'Right to political participation' in Harris & Joseph (n 58 above) 550.

Therefore, comparative investigative research would appear to be the proverbial light at the end of the tunnel for most problems befalling continents and states globally. That is the essence of this part of this thesis.

5.5.1 Youth rights to political participation under United Kingdom law

The problem of youth exclusion or discrimination in terms of the exercise of their rights to political participation is not an African phenomenon but rather a global one, existing in some parts of Europe and America. The present and future destiny of nations are placed on the shoulders of the youth and if they are not properly managed, the future of nations may be doomed.[147]

Historians have continued to maintain that the current minimum voting age of 21 in most countries of the world can be traced to the British tradition which is rooted in the eligibility age for knighthood.[148] The history of the right to vote globally has been traced to the signing of the Magna Carta in 1915; the voting age of 21 coupled with the limitation based on gender and property spread across the British Commonwealth.[149]

Similarly, the mention of property ownership and residency as qualifications for voting was contained in the Reform Act of 1832. While the Act had no age qualification, it required a qualified voter to be a male 'of full age' and who had attained suffrage rights. Despite the absence of an age qualification for voting in the Act, the age of 21 was applied until the express provision of voters' qualification age of 21 years and six months' residency granted to all men under the Reform Act of 1918.

However, the Act allowed men who had fought in World War 1 to be eligible to vote from the age of 19. British women only achieved full suffrage rights in 1928.[150]

Furthermore, pursuant to the approval of the provisions of the Representation of the People Act 1949 by the British Parliament, All British subjects who had attained the age of 21 were

[147] See generally, G Utter *Youth and political participation: A reference handbook (*2011) 1.
[148] Utter (n 147 above) 86.
[149]As above. The Federal Republic of Nigeria later became a member of the British Commonwealth after becoming a republic on 1 October 1963.
[150] Utter (n 147 above) 87.

qualified to vote, but the need for the reduction of the voting age to 18 commenced in 1958. A committee of enquiry on investigation on the appropriate age for marriage and contract, in its report released in July 1967, recommended the reduction of the general 'age of majority' from 21 to 18. The appropriate voting age of 20 was suggested by the Speaker of a conference called by the then Prime Minister.

The Representative of the People Act entered into effect on 1 January 1970, and the British government since then has always used 18 years as the age of majority. Besides having the right to vote from 18 years, youth could then participate in all activities like other adults, for example, they could marry without parental consent, borrow money, buy property and enter into contracts.[151]

While the youth from age 18 had the right to vote, they did not have the right to stand as candidates in elections. They could not be elected as members of the House of Commons until they reached the age of 21. This could be based on the erroneous belief that persons who are under the age of 21 lack the ability or capability to make a meaningful contribution on the floor of the house or are not able to offer a better representation to those who would want to vote for them.[152]

The practice continued unabated and unchallenged because both other adults and 'adult-youth' alike had come to accept the abnormality as norm. However, youth right advocates globally were calling on the need for the youth to enjoy their rights on equal terms with other adults. Some are even calling for the need to bring the voting or age of majority, which is 18 years globally to 16 years, as currently practiced in Austria.[153]

In 2006, the British took a very youth-friendly and most progressive step towards the full respect and protection of youth rights to full and effective political participation in the United Kingdom (UK). This was based on the adoption of the Electoral Administration Act (EAA) in 2006, which reduced the eligibility age for all elective offices from 21 to 18 years.[154] The adoption of the EAA is a good omen for youth rights globally.

---

[151] As above.
[152] Joseph (n 146 above) 551.
[153] See generally A Daly 'Free and fair elections for some? The potential for voting rights for under-18s' in D Keane & Y McDermott (eds) *The challenge of human rights: Past, present and future* (2012) 287.
[154] See Utter (n 147 above) 87.

This could serve as a catalyst for British Commonwealth members to abandon the antiquated, outdated, and age-discriminatory norms that they may have picked up from their former colonial ruler (Britain). Additionally, like the UK, they should guarantee that their youth can use their political rights on an equal basis with other adults.[155]

5.5.2 Youth participatory rights in South Africa

One of the few African countries and constitutions that expressly guarantee the rights to full and effective political participation is that of the 1996 Constitution Republic of South Africa.[156] The South African Constitution, which is the chief law of the new South Africa, allows the youth and everyone from the age of 18 years to vote and be eligible to stand as candidate for all elective offices in the country.[157]

Unlike the 1999 CFRN, the South African Constitution expressly guarantees the political rights of all adult citizens.[158] Particularly, article 47(1) provides that '[e]very citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly'. The eligibility right given to all adult citizens is not limited to Members of Parliament but extends to the highest position of the land, which is position of the President of the Republic.[159]

Despite the fact that the constitutional provision of the right to youth eligibility or equal political participation does not translate into equal representation in Parliament, the author is aware of this fact. The fulfilment of their rights to political engagement is nevertheless encouraged by it.

For example, in South Africa, there are only 6 per cent of youth in the parliament, and the average age of parliamentarian is 56 years.[160] In a country such as Nigeria where there exists constitutionally-sanctioned discrimination against the youth in terms of political eligibility status, they would forever remain in the youth wings of political parties. They would not be

[155] Nigeria, being a former colony of the British government, might have inadvertently copied the statutory sanctioned age-based discrimination from it.
[156] Constitution of the Republic of South Africa, 1996.
[157] See K Mokolobate 'Youth month reflections: Where have all the voters gone?' *Mail and Guardian (*22-28 June 2018) 42.
[158] See generally I Currie & J de Waal *The Bill of Rights handbook* (2013) 420; art 19 South African Constitution.
[159] See generally M Cheadle et al *South African constitutional law: The Bill of Rights* (2002) 281.
[160] H Tamukamoyo 'Unlock youth power' *Mail and Guardian* (22-28 June 2018) 30.

able to take the bold step as the South African youth of establishing an active youth-based political party such as the Economic Freedom Fighters (EFF) of South Africa.[161]

The political activities of members of the EFF since it was formed in 2013 has proved wrong the faulty notion that African youth are incapable of purposeful representation or valuable leadership.[162] The leadership and members of the EFF have continued to shape politics and governance issues in South Africa.

For example, members of the EFF in Parliament put forth the motion for the recall of the former President of South Africa, Jacob Zuma, which eventually led to his resignation.[163] Similarly, in 2018 members of the EFF in Parliament proposed a motion for the amendment of section 25 of the South African Constitution to provide for expropriation without compensation, which motion was supported by 241 against 83 members.[164]

It goes without saying that the aforementioned narratives are reflections of the invaluable work being done by the youth to bring about democratisation and social and economic development in South Africa and, by extension, in Africa. These accomplishments, however, would not have been possible if the South African Constitution had not allowed for the exercise of political rights by all youths on an equal footing with other adults in the community.[165]

5.5.3 Kenya's youth rights to political participation under the 2010 Constitution

The previous Kenyan Constitution, just as most post-colonial African constitutions, contained the age-based discriminatory provisions which excluded most youth. It equally did not make mention of youth or their rights in the entire document. However, the new 2010 Kenyan

[161] I Rautenbach-Malherbe *Constitutional law* (2012) 381-384; P de Vos & W Freedman (eds) *South African constitutional law in context* (2014) 562-577.
[162] See 'The founding of the Economic Freedom Fighters (EFF)', http://www.sahistory.org.za/article/founding-economic-freedom-fighters-eff (accessed 29 June 2018).
[163] C Presence 'EFF says it is in talks with ANC caucus over Zuma recall' *The Citizen* (27 February 2018), https://citizen.co.za/news/1838271/anc-supports-principle-of-effs-motion/ (accessed 29 June 2018).
[164] M Zulu 'Parliament votes "yes" on expropriation of land without compensation' *The Citizen* (27 February 2018), https://citizen.co.za/news/1838271/anc-supports-principle-of-effs-motion/ (accessed 29 June 2018); sec 25 of the South African Constitution provides for the right to property and forbids the arbitrary deprivation of property.
[165] See details of the EFF on its website, https://www.effonline.org/ (accessed 29 June 2018).

Constitution appears to have undone the various weaknesses that existed in previous constitutions, especially those relating to youth rights to political participation.[166]

The Kenyan Ministry of Youth Affairs and Sports (MOYAS) defines youth as young men and women between the ages of 15 and 30 years.[167]

The 2010 Kenyan Constitution, just as the 1996 South African Constitution, provides for the right to political participation to every adult citizen; in that all adult citizens have the right to vote and to be eligible to stand as candidates for all elective political offices.[168]

Also, anyone who has attained 18 years which is the age of majority in Kenya, is seen as not being under any form of disability but of full age.[169] Thus, while the youth are grouped as persons from 15 to 30 years according to MOYAS, some youth may need to have to wait till the age 18 before they are able to enjoy some core rights of youth, such as the rights to vote or be eligible as candidates in elections.

The most innovative approach by the 2010 Kenyan Constitution on the rights of the youth is in relation to the provision of both the rights of youth and affirmative action for the purpose of ensuring their full participation in society. It provides that '[t]he state shall take measures, including *affirmative action* programmes, to ensure that the youth ... have opportunities to associate, be represented and participate in political, social, economic and other spheres of life.'[170]

The provision of affirmative action is pivotal for the protection and reaslisation of the rights of the youth. This is as a result of the fact that youth are often incapable of competing favourably in various aspects of society, such as politics, businesses and so forth, with other older adults. Such a provision, if properly implemented, would go a long way in closing the existing gap between the youth and other adults in society and would enable them to participate more effectively and responsively in society.

---

[166] See generally J Kangu *Constitutional law of Kenya on devolution* (2015).
[167] M Muthee 'Victims or villains: The search for identity by youth in Kenya' in P Iribemwangi et al (eds) *Human rights, African values and traditions and inter-disciplinary approach* (2011) 132.
[168] See sec 38(3) of the 2010 Constitution of Kenya.
[169] See sec 2 of the Kenyan Age of Majority Act Cap 33 of 2012.
[170] See sec 55 (b) of the 2010 Kenyan Constitution (my emphasis).

The above provision makes the Kenyan Constitution one of the most innovative and progressive in terms of the respect, protection and guarantee of youth rights and their development in Africa, if not globally. It is high time that Nigeria and other African countries copied this experience from their fellow African country so as to tighten available protections for youth rights in their respective states.

5.6 Conclusion

The inescapable claim that Nigerian legislation, particularly its existing Constitution, is seriously deficient in regards to the general right to political participation and young rights, in particular, may be inferred as a preliminary conclusion from this chapter. This is due to the fact that the Nigerian Constitution has no specific provisions for guaranteeing the rights to political participation save for specific provisions that provide for eligibility criteria for various elective offices.

These provisions discriminate against the majority of Nigerian youth. Furthermore, the recent step by the Nigerian government to reduce the eligibility ages did not solve the problem of the arbitrariness in discriminating among adults in the exercise of their rights to political participation, but merely highlights it.

The fulcrum of this thesis is not a plea to state parties to various international human rights instruments to reduce the eligibility age so as to accommodate the youth, which would amount to a 'rights-privileges-based' approach to youth rights. But it is for youth to enjoy their full rights to political participation on equal terms with other adults in society. Although Nigeria is used as a case study, the problem of constitutional and state-sanctioned discrimination on the basis of age is a common problem across Africa.

Despite the bad practices in Nigeria, the practices in the UK, South Africa, and Kenya on youth rights are valuable and a viable window from which Nigeria and other African states could draw inspiration on how best to confront the challenges facing the youth and their exclusion from political participation.

The next chapter is the last chapter of this work and it connects with this particular chapter and previous chapters by making general recommendations and putting forward some concluding remarks on the findings of the work.

Chapter Six

Recommendations and Conclusion

6 Introduction

The central focus of this study is the interrogation of the rights to political participation of the youth as guaranteed in the African Youth Charter using the Federal Republic of Nigeria as a case in point. It specifically queries the adoption of the statutory age-based discrimination eligibility criteria in most post-colonial African constitutions, which exclude a large percentage of African youth from accessing political offices.

The destiny of Africa as a continent is doomed by this tendency, which unquestionably breaches the youth's rights to political engagement under numerous international human rights agreements. This is so because the guarantee or denial of a very significant group's right to political participation, like youth, has a variety of consequences on other facets of life, like economic, social, cultural, and other rights.

Thus, as submitted in the previous chapters, constitutionally-sanctioned age-based discrimination against the youth in most African countries is antithesis to African traditional value systems, especially when studied through the lens of African proverbs. It is unreasonable and arbitrary, and against international human rights best practices or the rights-based approaches.

This last chapter attempts to extract the various insights that may be drawn from the previous chapters as bedrocks for the various recommendations and conclusion to the work. However, before outlining the various recommendations of this work, I would like to briefly restate the contents of the earlier chapters

The statement of problem is included in chapter one, which also serves as the overall background for this study. The chapter summaries, research methodology, research objectives, and research questions are all included.

The various literature and theories on the concept of the right to political participation and youth rights generally were considered in chapter two. The struggle approach to human rights

and the developmental theory to political participation were adopted as the approach and theory used in this work.

The primary factors in chapter three were the normative norms supported by the African Youth Charter (AYC). A review of the AYC's provisions revealed that, despite the many promises made by its many sections, the AYC as it is inadequately and regrettably provides little guarantees.

This is due to mainly the conflation of youth and children in its definition of youth, the absence of a monitoring mechanism and its adoption of the 'rights-privileges approaches' to the issues of youth rights and development.

The rights to political participation under the various international instruments were considered in chapter four. It specifically considers whether 'age' constitutes a valid ground to exclude an adult from participating in electoral processes. It was discovered that while age is not specifically listed among the grounds of discrimination, it can nevertheless be read into the group of 'other status'.

This is as a result of the fact that the use of the phrase 'other status' presupposes that the listed grounds are not exhaustive but capable of including other grounds, such as age, sexual orientation and related categories. The chapter equally considers efforts made at both global and regional levels towards the recognition of youth rights and their rights to political participation on equal terms with other adults in society.

The Nigerian law on youth rights and their rights to political participation were the main consideration in chapter five. The chapter reveals that there is no express provision for the rights to political participation under the 1999 Constitution of the Federal Republic of Nigeria among the list of rights guaranteed under chapter four.

It only contains age-based discriminatory provisions on the eligibility of candidates for political offices which are lopsided against the majority of the youth. Similarly, as discussed in the chapter, as a result of the success of the 'NotTooYoungToRun' campaign there was an amendment to the eligibility criteria. This resulted in the reduction of the eligibility ages for

the posts of President and members of both the House of Representatives and State Houses of Assembly by five years, respectively. Notwithstanding this modest but major leap for Nigerian youth in the fight for the exercise of their rights to full and effective political participation, it is not yet uhuru for them until all existing barriers are removed.

Nigerian laws still lag behind in respect of the rights to political participation as guaranteed under international human rights instruments. When they are compared in the light of international best practices and laws of other countries, such as the United Kingdom (UK), South Africa, and Kenya, they fall behind in many respects.

The retention of constitutionally-sanctioned age-based discrimination in Nigerian law against the youth in the exercise of their political rights is un-African, backward, arbitrary, unreasonable and anti-human rights.

This is the last chapter that provides the various recommendations and ends with a general conclusion.

6.1 Recommendations

The recommendations have been divided into segments for easy identification and proper guidance to those persons and institutions concerned.

6.1.1 To the global community

It has been argued in the previous chapter that while many scholars have continued to call for the specification of youth rights in a single human rights document, as in the case of women and children, the real challenge of youth rights at the global level involves the identification of their "start-up" age, which is not convoluted with that of any category of children.

In other words, passing laws addressing youths' rights won't have any real impact on how youths around the world live their daily lives until the age of youth is universally acknowledged. Thus, the following suggestions are given to the global community.

These recommendations are based on various extrapolations and findings from chapters two, three, and four of this thesis. The various areas of these chapters that touch on youth's right to political participation under the UN system and other regional human rights systems.

1 The United Nations (UN) should adopt a new resolution wherein the legal definition of the youth age bracket would be pegged as covering persons from the ages of 18 to 39 years. This would correct the current statistical definition of youth by the UN, which covers persons from the ages of 14 to 25 years.

The reason for the recommendation of 18 years as the 'start-up' age for the legal definition of youth is that, it would assist many countries that have not been able to find the appropriate legal definition of youth or that have mistaken the UN statistical definition for a legal definition.

Furthermore, age of 18 is chosen as it is the age of majority globally except for a few countries. Also, since the UN Convention of the Rights of the Child (CRC) defines children as those persons from age 0 to 17, it is logical and sound wisdom to start the definition of the youth from 18 years.

In a similar vein, since children are already well protected on a worldwide scale by international law, reclassifying them as youths is pointless. This is especially true when one considers that the main goal of rights protection is to safeguard an individual throughout their whole life cycle.

The special group of persons that exist without any distinct global protection are people from the age of 18 and above, not 18 and below. Therefore, 18 years and above should be identified globally as the legal definition for the youth.

2 Flowing from above, the UN should follow the good example of the African Union (AU) by adopting a global treaty on youth. The discrimination, assaults and utter disregard for youth rights globally notwithstanding their 'adulthood' status demands that a new treaty specifically on youth rights be urgently adopted.

The adoption of a youth treaty would go a long way towards holding states accountable for the violations of youth rights globally. Also, it would enable the youth globally and activists on youth rights to be able to forcefully advocate the respect, protection and promotion of their rights by states globally.

While the existence of a youth treaty may not result in an immediate positive change for the world's youth, its absence has continued to undermine effective advocacy on issues surrounding youth rights and development globally. If women and children could be specifically protected through the adoption of human rights treaties globally, youth rights equally deserve such global intervention.

3 The UN should as a short-term measure encourage member states to include the issues of youth rights in their reports and it should also comment on youth rights in its concluding observations on member states.

The more the UN debates about the issues of youth, their rights, and development, the more member states will pay close attention to these issues in their respective states. However, with little or no mention of these issues, the abnormality of violating youth rights, which is fast becoming a norm in many states, would be entrenched.

The youth and their issues must now be in the forefront of all activities of the UN if these current global trends of youth exclusion, discrimination and subjugation are to be timeously terminated.

6.1.2 To the regional community

It was stated from the outset of this thesis that it is written from an African perspective and primarily focuses on the African Youth Charter. Therefore, these recommendations would be directed to the African Union (AU) mainly but could be readily adopted with little or no modifications by other regional or sub-regional bodies.

These recommendations are principally based on the findings from chapter four of this thesis. However, some of the recommendations are drawn from findings from other chapters such as chapters three and two.

1 There is a need for a holistic review of the current African Youth Charter (AYC). While the Charter contains some wide and innovative provisions on youth rights, it unfortunately fails in many respects. Due to the weakness of the current AYC, this author has proposed a draft AYC that would be able to adequately address the current challenges to the rights and development of the youth in Africa.

The AU should among other things adopt the age of 18 and above as the appropriate legal definition of youth as opposed to the 15 to 35 years it currently adopts.

2 The AU should adopt a Resolution or a General Comment on the rights to political participation in Africa. It should expressly condemn the arbitrary age-eligibility criteria in most African constitutions that violate the full and effective rights to political participation of the African youth.

This would have a far-reaching effect on the exercise of rights to political participation by the youth on equal terms with other adults in their respective states. Such a Resolution or General Comment would equally strengthen the provisions of the AYC. It could also serve as a veritable tool for lobbying states to rethink the retention of the age-based discriminatory provisions on eligibility among adults.

3 The AU should encourage its various organs to make youth issues and their rights a top priority in their various activities. This approach becomes expedient when one considers the fact that in most documents of the AU, there is usually little or no mention of youth or the AYC.

For example, the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court) in finding the existence of various violations should endeavour to mention the provisions of the AYC among the violated provisions, whether the AYC is mentioned or not in the petition.

The mere mentioning of the provisions of the AYC in such decisions would encourage litigants to cite it in future matters before either the African Commission or Court.

6.1.3 To other African states

These recommendations are based on findings from mainly chapter two, three and four of thesis. All these chapters underscore the point that youth ought to enjoy the right to political participation just as other adults.

1 African states that are still using the arbitrary age discrimination on electoral eligibility among adults in their constitutions should amend these constitutions so as to reflect international best practices. These best practices involve the using of the same criteria for both the right to vote and the right to stand as candidate in every election.

2 African states in recognising the stark reality that their populations are dominated by the youth, must put in place measures and even affirmative action to address the political exclusion and marginalisation experienced by the youth in most African states. Since the future belongs to the youth, it is unreasonable to continue to exclude them from the decision-making table in Africa.

3 Furthermore, African states should create a distinct ministry in charge of the youth in their respective states which is different from the ministry in charge of sports or children. The use of 'Ministry of youth and sports' in many African countries creates the wrong impression that the youth exclusively stand for sports and not leadership or other life endeavours.

Therefore, a better or more appropriate title for the ministry responsible for the youth could be 'Ministry of Youth Development and Leadership'; 'Ministry of Youth Rights and Leadership Development'; or 'Ministry of Youth Affairs'. Separating youth affairs from those of sports and children would create a new and positive mindset in all members of society towards the youth across Africa.

The creation of youth wings within political parties and the exclusion of youths from mainstream political leadership will continue in the majority of African states until this is realised. Youths and other adults take part in sports activities equally. Making sports participation the foundation of youth is so cunning, misguided, and deceitful.

6.2 To civil society, human rights scholars and activists

Youth rights have not received the prime attention they deserve globally because civil society, many human rights scholars and activists alike until recently have not focused on youth rights or regard the youth as a distinct group whose rights are worthy of advocacy. These trends have not changed in Africa, despite the existence of the African Youth Charter. In reversing these unfortunate trends, it is recommended as follows.

These recommendations are based on extrapolations from chapters two, three and four. Some parts of these chapters show many struggles for the recognition and protection of youth rights. They remind everyone of the fact that the fight for youth is no-where close to the finished line.

1 The above groups of people under consideration should stop the conflation of children and youth in their advocacy and policy documents. This would enable readers and policymakers to make a distinction between these two groups of people who have, over the years, erroneously been categorised as one and the same group.

2 They should adopt 18 years as the start-up age for youth and 35 or 39 as the cut-off age for youth. This would undoubtedly deepen and bring to the fore the issues of youth rights and development which have over the years been buried inside issues relating to children's rights.

Thus, members of civil society organisations (CSOs), human rights activists and scholars should redefine their approach to youth rights, in that they must guide the public to look at youth and children's issues and rights from a distinct lens.

3 Furthermore, human rights scholars especially should direct their focus and writings to issues on youth rights. This would entrench discourses on youth rights. The ferocious attention given to issues of the rights of children by scholars and commentators globally

is one of most potent weapons that caused the world to give the deserved attention to matters relating to the rights of children and their welfare.

Therefore, the unjustified attention given to youth rights globally would instantly disappear if similar or equal vigor and energy were applied toward youth rights and their growth. When discussing general human rights concerns, they should make an effort to highlight the AYC, the Ibero-American Youth Charter (IAYC), and other human rights documents that address youth rights as most scholars hardly ever write or comment on these matters.

6.2.1 To youths worldwide

The history of human rights is a history of struggle. The oppressed, the victimised and the marginalised cannot claim their rights through any route other than through struggle. Thus, the surest pathway to the actualisation and realisation of youth rights is struggle. It has been indicated in chapter two that one of the approaches which this current work adopts is the 'struggle approach' to human rights. In light of this approach, it is recommended to the youth globally as follows.

These recommendations are based on the findings from chapters two, three, four and five. More importantly these recommendations speak loudly to making of the AYC as discussed in chapter three and recent NTYR movement as discussed in chapter five.

1 They must approach the struggle for the respect and protection of their rights from a rights-based approach rather than a 'privilege-based' approach.

This approach would enable 'others' to come to the ineluctable conclusion that youth rights are not privileges but human rights. Similarly, this would bring an end to discriminatory practices against the youth globally in the enjoyment of their rights on equal terms with other adults in society.

Furthermore, this approach would dissuade governments, policy makers and the global community from 'cherry-picking' when it comes to the rights which the youth are

entitled to. Youth should be given the full menu of human rights and not given some while others are illegitimately withheld.

2 Also, the youth must understand that while other actors may be needed in the struggle for their rights; they must not forget to own the process because, since they are the primary beneficiaries of the struggle, they are expected to be at the forefront of the struggle.

The reason for this is based on the indisputable fact that those who are not directly affected by the oppression of the youth are likely to become weary along the line and when this happens, it may lead to the failure of the struggle unless and except the youth are there to rekindle its flame.

For instance, the struggle for the recognition and protection of women's human rights was vigorously pursued by women principally, and the struggle for youth rights cannot be an exception.

3 The youth must equally appreciate the fact that one of the cornerstones of a successful human rights struggle globally is collaboration. Therefore, in their struggle they must collaborate with bodies that could be helpful in the struggle. For instance, at the domestic level, the youth must seek the collaboration of CSOs that are working on human rights issues, generally, and youth rights, specifically.

Also, the youth must collaborate with CSOs, the media and influential persons in their home states as this would strengthen their voice and give them the visibility and attention they deserve. It was this collaboration that led to the recent success recorded in Nigeria in relation to the 'NotTooYoungToRun' struggle.

6.2.2 To Nigerian government

The constitution of a country is the first document to consider in determining the extent to which youth rights are guaranteed or respected. The current 1999 Constitution of the Federal Republic of Nigeria (CFRN) is not favourably disposed to youth rights.

The anti-youth rights posture it adopts is based on various apparent defects, chiefly the age-based discrimination against the youth on eligibility criteria for electoral offices and the absence of an express guarantee of the rights to political participation. Based on these and other issues, as discussed in previous chapters, the following recommendations are suggested.

These recommendations are largely based on findings from chapter five of thesis. They nevertheless draw inspiration from other chapters, such as chapters two, three and four.

1 There should be an express guarantee of political rights in its Constitution as obtained in the Constitutions of Kenya, South Africa, Seychelles and other African countries. The absence of an express guarantee of the rights to political participation in the CFRN would make it near impossible for the youth to litigate on them where illegitimate age-discriminatory provisions exist.

Since political rights are usually guaranteed to persons from the age of majority, which in most cases is 18. It would have been illogical to discriminate against some groups of adults such as the youth elsewhere in the constitution.

The explicit provision of political rights may serve as a foundation for contesting laws that discriminate against youth in Nigeria based on their age. The presence of such a right might have convinced the CFRN's drafters to abandon the idea that adults should be treated differently while exercising their political rights if they had devoted their minds to the necessity to establish particular rights for people who had reached the age of majority.

2 Second, there should be an express provision on the age of majority as 18 years in the CFRN and other electoral laws and it should explicitly forbid any form of discrimination against persons of 18 years and above.

3 Third, a separate ministry should be created for the youth, which is different from the ministry in charge of sports. The current ministry in charge of youth issues in Nigeria is the Federal Ministry of Youth and Sports Development. The new ministry should be called the Federal Ministry of Youth and Leadership Development.

This would disabuse the minds of most people who associate the youth with nothing other than sports. The functions of this ministry should be on developing plans and policies on how youth rights and their development can be advanced in the country. More importantly, how their leadership potential can be harnessed.

In addition to the above, the Nigerian state should take targeted steps towards eliminating discriminatory laws and practices against youths and providing an enabling environment for their full and effective participation in all aspects of society.

4 Fourth, the Nigerian state should adopt affirmative action in respect of political participation by the youth in national elections and appointments at the national level as contained in the 2010 Kenyan Constitution. A minimum of 10 per cent of seats and appointments should be reserved for the youth across the country.

Affirmative action would be an authentic tool for righting the wrongs suffered by the youth for a long time and would enable the youth to catch up with other adults in society.

5 Finally, the Nigerian state should carry out a review of all its discriminatory laws that violate the rights of the youth, urgently domesticate the African Youth Charter (AYC) and continue to act within the parameters of its international human rights obligations to the youth and other Nigerians.

This would go a long way towards addressing the many challenges which the Nigerian youth currently face in exercising their rights on equal terms with other adults in society.

6.3 Specific contributions to existing body of knowledge

(i) the drafting of a new African Youth Charter;

(ii) the realisation that proverbs and wise sayings can be used to explore all concerns, legal or human rights history, and governance systems of the African people, a tool that prior researchers were unable to connect with present challenges impacting the African people;

(iii) the rights to political participation are equivalent to the right to dignity, in that their violation amounts to a violation of the right to dignity. That is, participation is equivalent to dignity and both rights are inseparable in African traditional societies;

(iv) the appropriate 'start-up' age for the legal definition of youth should be 18 years; this would possibly lead to the end of the confusion in determining the appropriate legal definition for youth globally. This would help researchers on youth rights issues to end the needless categorisation of youth with children and start treating the youth as a group separate from children.

6.4 Conclusion

While the above recommendations cannot possibly address all of the issues confronting youth around the world, they are nevertheless capable of rolling back the frontiers of violations of the human rights of youth.

The recommendations are not only relevant but practical steps towards respect for and the protection of the right to full and effective political participation of the youth and other issues affecting them. They are the roadmaps to ending the erroneous confusion between youth and children, and bringing youth rights to the front burner of global affairs and international human rights discourses.

The recommendations attempt to confront the most potent barrier to youth rights in Nigeria and globally, which is the adoption of constitutionally sanctioned age-based discrimination against the youth. Because modern society is governed by laws, rights that are denied by existing laws are rendered meaningless in terms of domestic protection and enforcement. Thus, if these recommendations, which primarily concern legal reforms, are implemented, the lived reality of the youth will undoubtedly improve.

Therefore, this calls for a rethink and redefinition of who youths really are in society. Whether they are children or adults, or an indeterminate group of people, however, this thesis takes the position that youths are people whose age begins at 18 and ends at 39.

By definition, they are adults in their own right and should be treated as such in all facets of society. Just as among the categories of children one finds those who are referred to as adolescents, so it is for the adults. One category of the adult group is the youth; this does not make them less than adults but adults that deserve special protection in society.

It therefore is imperative for societies to begin to treat the youth as adults and accord them all the rights and privileges that other adults are entitled to. This would lead to the empowerment of the youth and a bright and sustainable future for all and sundry. To exclude the youth is to give a fatal blow to the future of the world because both today and the future belong to the youth.

BIBLIOGRAPHY

LIST OF CASES

National level

Nafiu Rabius v Kano State (1980) 8-11 SC

Ukaegbu v Attorney-General, Imo State (1982) 1 SCNLR

Abacha & Others v Fawehinmi (2001) AHRLR 172 (NgSC 2000)

Regional

Amnesty International v Zambia (2000) AHRLR 325 (ACHPR 1999)

Civil Liberties Organisation (in respect of Bar Association v Nigeria (2000) AHRLR 186 (ACHPR 1995)

Commission Nationale des Droits de l'Homme et des Libertés v Chad (2000) AHRLR 66 (ACHPR 1995)

Communication1373/2005 (4 August 2008)

Constitutional Rights Projects & Another v Nigeria (2000) AHRLR 191 (ACHPR 1998)

Constitutional Rights Project & Others v Nigeria (2000) AHRLR 227 (ACHPR 1999)

Gorji-Dinka v Cameroon Communication 1134/2002

Interights & Others v Mauritania (2004) AHRLR 87 (ACHPR 2004)

Lukyanchik v Belarus Communication 1392/2005

Lawyers for Human Rights v Swaziland (2005) AHRLR 66 (ACHPR 2005)

Legal Resources Foundation v Zambia (2001) AHRLR 84 (ACHPR 2001)

López Mendoza v Venezuela Judgment of 1 September 2011

Media Rights Agenda & Others v Nigeria (2000) AHRLR 200 (ACHPR 1998)

Mathieu-Mohin and Clerfayt v Belgium ECtHR 9267/81

Mtikila v Tanzania (Applications 9/2011 & 11/2011)

Open Society Justice Initiative v Côte d'Ivoire Communication 318/06 (2016)

Purohit & Another v The Gambia (2003) AHRLR 96 (ACHPR 2003)

Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)

Statehood Solidarity Committee v United States Case 11.204 Inter-AmCHR

The Nubian Community in Kenya v The Republic of Kenya Communication 317/06 (2015)

Tănase v Moldova (Application 7/08) (27 April 2010)

Yevdokimov and Rezano v Russia (1410/2005)

Global

Altersor v Uruguay Communication R 2/10 (29 March 1982)

Bwalya v Zambia CCPR/318/88

CCPR/C/97/D/1392/2005 Communication 2155/2012

CCPR/C/83/D/1134/2002 (10 May 2005)

Debreczeny v The Netherlands Communication 500/1992, CCPR/C/53/D/500/1992 (1995)

Dissanayake v Sri Lanka Communication CCPR/C/93/D/1373/2005 (4 August 2008)

Hirst v The United Kingdom (No 2) 06/10/200

JB v Canada

JG v The Netherlands Communication 306/1988

Matthews v The United Kingdom (18/02/1999)

Rolandas Pakas v Lithuania CCPR/C/110/D/2/55/2012 (3 April 2014)

Sinitsin v Belarus Communication 1047/2002, CCPR/C/88/D/104/2002 (20 October 2006)

Sudalenko v Belarus Communication 1354/2005, CCPR/C/100/D/1354/2005 (1 November 2010)

YATAMA v Nicaragua, judgment of 23 June 23 2005

LIST OF STATUTES, TREATIES AND INSTRUMENTS

National

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of Federation of Nigeria 1990 (African Charter on Human and Peoples' Rights Act, enacted in 1983)

Constitution of Angola

Constitution of Botswana

Constitution of Algeria

Constitution of Mauritius

Constitution of Cape Verde

Constitution of Comoros

Constitution of Cameroon

Constitution of Republic of Congo

Constitution of Democratic Republic of the Congo

Constitution of Djibouti

Constitution of The Gambia

Constitution of Ghana

Constitution of Guinea

Constitution of Lesotho

Constitution of Malawi

Constitution of Mozambique

Constitution of Namibia

Constitution of Rwanda

Constitution of Seychelles

Constitution of Sierra Leone

Constitution of South Africa

Constitution of South Sudan

Constitution of Sudan

Constitution of Tanzania

Constitution of Tunisia

Constitution of Uganda

Constitution of Nigeria

Constitution of Zambia

Constitution of Zimbabwe

Kenyan Age of Majority Act Cap 33 of 2012

National Youth Service Corps Act, Cap 84, Laws of the Federation of Nigeria (2004)

Regional

African Charter on Human and Peoples' Rights, adopted on 27 June 1981

African Charter on the Rights and Welfare of the Child, adopted on 11 July 1990

African Charter on Democracy, Elections and Governance, adopted on 30 January 2007

African Youth Charter, adopted on 2 July 2006

African Commission on Human and Peoples' Rights' Resolution 347: Resolution on the Human Rights Issues Affecting the African Youth – ACHPR/Res. 347(LVIII) 2016 (20 April 2016)

Ibero-American Convention on Young People's Rights

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), adopted on 10 June 1998

Protocol on the Community Court of Justice, amended by the Supplementary Protocol Amending the Protocol relating to the Community Court of Justice, ECOWAS Doc A/SP.1/01/05, 19 January 2005

Global level

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the Rights of the Child (CRC)

General Assembly Resolution A/HRC/Res/24/8 on 'Equal Political Participation' (8 October 2013)

General Assembly Resolution on 'Equal Participation in Political and Public Affairs' A/HRC/RES/30/9 (1 October 2015) UN GA Resolution on 'Equal Participation in Political and Public Affairs' A/HRC/RES/27/24 (3 October 2014)

General Assembly Resolution 217 A (III) of 10 December 1948

HRC Concluding Observations on Colombia 2004

General Assembly Resolution 2200A(XXI) of 16 December 1966

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Lisbon Declaration on Youth Policies and Programmes (1998)

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

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 Ways to Overcome Them' A/HRC//30/26 (23 July 2015)

United Nations Resolution A/Res/50/81

United Nation Resolution A/Res/56/117

UN General Assembly Resolution A/Res/50/81

UN Human Rights Committee (HRC), CPR Committee General Comment 25: Article 25 (Participation in Public Affairs and the Right to Vote), 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

UN Human Rights Committee (HRC), CPR Committee General Comment 18: Non-discrimination, 10 November 1989

UN General Assembly Resolution on 'Equal Participation in Political and Public Affairs', A/HRC/RES/27/24 (3 October 2014) 1

UN General Assembly Resolution A/Res/50/81

UN General Assembly Resolution A/Res/56/117

UN General Assembly Resolution A/RES/64/134

UN General Assembly Resolution A/RES/65/312

UN Security Council Resolution 2250 (2015)

UN General Assembly Resolution A/RES/50/81

UN General Assembly Resolution A/RES/56/117

UN Convention on the Rights of Persons with Disabilities

UN Publication on 'National Human Rights Institutions History, Principles, Roles and Responsibilities' (2010)

General Guidelines of the UN Nairobi Declaration on the Administration of Justice (2008)

Human Rights Committee (HRC) GC 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004)

HRC, GC 24 (52) General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc CCPR/C/21/Rev.1/Add.6 (1994)

Vienna Convention on the Law of Treaties (VCLT) (1969)

POLICIES IN NIGERIA

Nigerian National Youth Policy Document of the Federal Republic of Nigeria (2009)

Books

Allen, R (ed) *Oxford students dictionary* (Oxford University Press 2012)

Aligwekwe, P *The continuity of traditional values in the African society (the Igbo of Nigeria)* (Delta Publications Limited 2009)

Angel, W (ed) *International law of youth rights: Source documents and commentary* (Brill Nijhoff 1995)

Angel, W (ed) *The international law of youth rights* (Brill Nijhoff 2015)

Atta-Asamoah, A *'Head-to-head: Is Africa's young population a risk or an asset?*

Buergenthal, T et al *International human rights in a nutshell* (West Publishing 2009)

Buchanan, A *Justice, legitimacy and self-determination: Moral foundation of international law* (Oxford University Press 2003)

Cheadle, M et al *South African constitutional law: The Bill of Rights* (LexisNexis 2002)

Currie, I & De Waal, J *The Bill of Rights handbook* (JUTA 2013)

Davis, H *Human rights and civil liberties* (Oxford University Press 2003)

De Vos, P & Freedman, W (eds) *South African constitutional law in context* (Oxford University Press 2014)

Dias, C & Sudarshan, R *Toward inclusive governance: Promoting the participation of disadvantaged groups in Asia-Pacific* (UNDP 2007)

Donnelly, J *Universal human rights in theory and practice* (Cornell University Press 2013)

Douzinas, C *The Radical Philosophy of Rights* (Routledge Press 2019)

Douzinas, C *The End of Human Rights* (Hart Publishing 2000)

Dudley, B *Parties and politics in Northern Nigeria* (Routledge Publishers 2013)

Dugard, J *International law: A South African perspective* (JUTA 2009)

Ezeara, K *Constitutional development in Nigeria* (Cambridge University Press 1964)

Fombad, C (ed) *The implementation of modern African constitutions: Challenges and prospects* (Pretoria University Law Press 2016)

Forbrig, J (ed) *Revisiting youth political participation: Challenges for research and democratic practice in Europe* (Council of Europe 2005)

Goodhart, M *Human rights and the politics of contestation in human rights at the crossroads* (Oxford University Press 2013)

Harris, D *Cases and materials on international law* (Oxford University Press 2004)

Hey, L & Holloway, S (eds) *Oxford advanced learner's dictionary of current English* (Oxford University Press 2015)

Hornby, A (ed) *Oxford advanced learner's dictionary of current English* (Oxford University Press 2015)

Honwana, A *Waithood, restricted futures and youth protest in Africa* (Centro de Estudos Internacionais do Instituto Universitário de Lisboa (ISCTE-IUL) 2014)

Jallow, H *The law of the African (Banjul) Charter on Human and Peoples' Rights (1988-2006)* (Trafford Publishing 2007)

Joseph, S & Castan, M *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (Oxford University Press 2013)

Joye, E & Igweike, K *Introduction to the 1979 Nigerian Constitution* (Macmillan Press Ltd 1982)

Kangu, J *Constitutional law of Kenya on devolution* (Strathmore University Press 2015)

Kalin, W & Kunzli, J *The law of international human rights protection* (Oxford University Press 2009)

Mbondenyi, M & Ambani, J *The new constitutional law of Kenya: Principles, government and human rights* (Pretoria University Law Press 2012)

Mowoe, K *Constitutional law in Nigeria* (Malthouse Press Ltd 2008)

Mwalimu, C *The Nigerian legal system* (Peter Lang Publishing 2005)

Nwabueze, B *Federalism in Nigeria under the Presidential Constitution* (Sweet and Maxwell 1983)

Obilade, A *The Nigerian legal system* (Sweet and Maxwell 1979)

Otakpor, N *Justice in Igbo culture* (Malthouse Press Ltd 2009)

Okonkwo, C (ed) *Introduction to Nigerian law* (Sweet and Maxwell 1980)

Pasqualucci, J *The Practice and procedure of the Inter-American Court of Human Rights* (Cambridge University Press 2014)

Parry, G (ed) *Participation in politics* (Manchester University Press 1972)

Rautenbach, I *Rautenbach-Malherbe constitutional law* (LexisNexis 2012)

Rawls, J *A theory of justice* (Harvard University Press 1971)

Shelton, D *Advanced introduction to international human rights law* (Edward Elgar Publishing 2014)

Smith, G *Democratic innovation: Designing institutions for citizen participation* (Cambridge University Press 2009)

Soyeju, O *Rudiments of Nigerian law* (Goshen Publishing and Publications Ltd 2005)

Sklar, R *Nigerian political parties: Power in an emergent African nation* (Princeton University Press 2015)

Tomuschat, C *Human rights: Between idealism and realism* (Oxford University Press 2014)

Utter, G *Youth and political participation: A reference handbook* (ABC-CLIO 2011)

Viljoen, F *International human rights law in Africa* (Oxford University Press 2012)

Chapters in books

Ayeni, V 'Introduction and preliminary overview of findings' in Ayeni, V (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (Pretoria University Law Press 2016)

Baker, J 'Equality and human rights' in Smith, R et al (eds) *The essentials of human rights* (Hodder Arnold 2005)

Byrnes, A & Renshaw, C 'Within the state' in Moeckli, D et al (eds) *International human rights law* (Oxford University Press 2010)

Cardona, J 'Introduction' in Angel, W (ed) *The international law of youth rights* (Brill Nijhoff 2015)

Carozza, P 'Human dignity' in Shelton, D (ed) *The Oxford handbook of international human rights law* (Oxford University Press 2013)

Cornell, D 'Is there a difference that makes a difference between ubuntu and dignity?' in Woolman, S & Bilchitz, D (eds) *Is this seat taken* (Pretoria University Law Press 2012)

Ciroma, I 'Critical appraisal of the effectiveness of international and regional human rights enforcement mechanisms in Nigeria' in M Ladan (ed) *Law, human rights and the administration of justice in Nigeria (Essays in honour of Honourable Justice Muhammed Law Uwais, CJN)* (Ahmadu Bello University Press 2001)

Daly, A 'Free and fair elections for some? The potential for voting for under-18s' in Keane, D & McDermott, Y (eds) *The challenge of human rights: Past, present and future* (Edward Elgar 2012)

Durojaye, E 'Litigating the right to health in Nigeria: Challenges and prospects' in Killander, M (ed) *International law and domestic human rights litigation in Africa* (Pretoria University Law Press 2010)

Faleti, A 'Omoluabi- the golden attribute of a Yoruba-man: Growing or dying?' in Fakeye, M (2009) *Omoluabi, its Concept and Education in Yoruba land*:

Finer, S 'Group and political participation' in Parry, G (ed) *Participation politics* (Manchester University Press 1972)

Fortman, B 'Equal dignity in international human rights' in Düwell, M et al (eds) *The Cambridge handbook of human dignity: Interdisciplinary perspectives* (Cambridge University Press 2014)

Freeman, M 'Universalism of human rights and cultural relativism' in Sheeran, S & Rodley, N (eds) *Routledge handbook of international human rights law* (Routledge Taylor and Francis Group 2013)

Gori, G 'Compliance' in Shelton, D (ed) *The Oxford handbook of international human rights law* (Oxford University Press 2013)

Goodale, M 'Human rights after the post-Cold War' in Goodale, M *Human rights at the crossroads* (Oxford University Press 2013)

Gawanas, B 'The African Union concepts and implementation mechanisms relating to human rights' in Bösl, A & Diescho, J (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (Macmillan Education 2009)

Gittleman, R 'The Banjul Charter on Human and Peoples' Rights: A legal analysis' in Welch, C & Meltzer, R (eds) *Human rights and development in Africa* (State University of New York Press 1984)

Harris, D & Joseph, S 'Introduction' in Harris, D & Joseph, S (eds) *The International Covenant on Civil and Political Rights and the United Kingdom law* (Clarendon Press 1995)

Hansungule, M 'African courts and the African Commission on Human and Peoples' Rights' in Bösl, A & Diescho, J (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (Macmillan Education 2009)

Heyns, C 'A 'struggle approach' to human rights' in Soeteman, A (ed) *Law and pluralism* (Springer 2001)

Heyns, C & Killander, M 'Africa' in Moeckli, D et al (eds) *International human rights law* (Oxford University Press 2010)

Inegbedion, N 'Constitutional implementation: The Nigerian experience' in Fombad, C (ed) *The implementation of modern African constitutions: Challenges and prospects* (Pretoria University Law Press 2016)

Jayal, N 'Vote and democracy, the right to' in Smith, R & Anker, C (eds) *The essentials of human rights* (Hodder Arnold 2005)

Joseph, S 'Right to political participation' in Harris, D & Joseph, S (eds) *The International Covenant on Civil and Political Rights and United Kingdom law* (Clarendon Press 1995)

Keetharuth, S 'Major African legal instruments' in Bösl, A & Diescho, J (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (Macmillan Education 2009)

Ladan, M 'Should all categories of human rights be justiciable' in M Ladan (ed) *Law, human rights and the administration of justice in Nigeria (Essays in honour of Honourable Justice Muhammed Law Uwais, CJN)* (Ahmadu Bello University Press 2001)

Lamprianou, I 'Democracy in transition' in Demetrious, K (ed) *Contemporary political participation research: A critical assessment* (Springer-Verlag 2013)

Lester, L & Joseph, S 'Obligation of non-discrimination' in D Harris & S Joseph (eds) *The International Covenant on Civil and Political Rights and United Kingdom law* (Clarendon Press 1995)

Lukuslu, G 'Constructor and constructed: Youth as a political actor in modernising Turkey' in Forbrig, J (ed) *Revisiting youth political participation: Challenges for research and democratic practice in Europe* (Council of Europe 2005)

Marasinghe, L 'Traditional conceptions of human rights in Africa' in Welch, C & Meltzer, R (eds) *Human rights and development in Africa* (State University of New York Press 1984)

Mégret, F 'Nature of obligations' in Moeckli, D et al (eds) *International human rights law* (Oxford University Press 2010)

Metz, T 'Dignity in the ubuntu tradition' in Düwell, M et al (eds) *The Cambridge handbook of human dignity, interdisciplinary perspectives* (Cambridge University Press 2014)

Muthee, M 'Victims or villains: The search for identity by youth in Kenya' in Iribemwangi, P et al (eds) *Human rights, African values and traditions: Inter-disciplinary approach* (Focus Publishers Ltd 2011)

Murithi, T 'Ubuntu and human rights' in Smith, R et al (eds) *The essentials of human rights* (Hodder Arnold 2005)

Okeke, C 'International law' in Okonkwo, C (ed) *Introduction to Nigerian law* (Sweet and Maxwell 1980)

Otto, D 'Discrimination, freedom from' in Smith, R et al (eds) *The essentials of human rights* (Hodder Arnold 2005)

Ouko, J 'Africa: The reality of human rights' in Smith, R et al (eds) *The essentials of human rights* (Hodder Arnold 2005)

Parry, G 'The idea of political participation' in Parry, G (ed) *Participation in politics* (Manchester University Press 1972)

Pearce, J (ed) 'Introduction' in Pearce, J (ed) *Participation and democracy in the twenty-first century city* (Palgrave Macmillan 2010)

Pillay, N 'What are human rights for?' in Moeckli, D et al (eds) *International human rights law* (Oxford University Press 2010)

Rosas, A 'Article 21' in Alfredsson, G & Eide, A (eds) *The Universal Declaration of Human Rights: A common standard of achievement* (Martinus Nijhoff 1999)

Scheinin, M 'Core rights and obligations' in Shelton, D (ed) *The Oxford handbook of international human rights law* (Oxford University Press 2013)

Schmidt, M 'The complementarity of the Covenant and the European Convention on Human Rights: Recent developments' in Harris, D & Joseph, S (eds) *The International Covenant on Civil and Political Rights and United Kingdom law* (Clarendon Press 1995)

Shelton, D & Gould, A 'Positive and negative obligations' in Shelton, D (ed) *The Oxford handbook of international human rights law* (Oxford University Press 2013)

Steed, M 'Participation through Western democratic institutions' in Parry, G (ed) *Participation in politics* (Manchester University Press 1972)

Teorell, J et al 'Political participation: Mapping the terrain' in J van Deth et al (eds) *Citizenship and involvement in European democracies: A comparative perspective* (Routledge 2007) 334

Tobi, N 'Judicial enforcement of environmental law in Nigeria' in Ladan, M (ed) *Law, human rights and the administration of justice in Nigeria (Essays in honour of Honourable Justice Muhammed Lawal Uwais, Chief Justice of Nigeria)* (Ahmadu Bello University Press 2001)

Umozurike, U 'Human rights and democracy in the 21st century: The African challenges' in Ladan, M (ed) *Law, human rights and the administration of justice in Nigeria: Essays in honour of Honourable Justice Muhammed Lawal Uwais (Chief Justice of Nigeria)* (Ahmadu Bello University Press 2001)

Welch, C & Meltzer, R 'Root and implications of human rights in Africa' in Welch, C & Meltzer, R (eds) *Human rights and development in Africa* (State University of New York Press 1984)

Welch, C 'Human rights as a problem in contemporary Africa' in Welch, C & Meltzer, R (eds) *Human rights and development in Africa* (State University of New York Press 1984)

Viljoen, F 'Introduction' in Viljoen, F (ed) *Beyond the law: A multi-disciplinary perspective on human rights* (Pretoria University Law Press 2012)

Viljoen, F 'The African Charter on the Rights and Welfare of the Child' in Davel, CJ (ed) *Introduction to child law in South Africa* (JUTA 2000)

Journal Articles

Allen, R 'Putting age discrimination on the map' (2013) 11 *The Equal Rights Review* 20

Ali, A 'Derogation from constitutional rights and its implications under the African Charter on Human and Peoples' Rights' (2013) 17 *Law Democracy and Development* 200

Atta-Asamoah, A 'Head-to-head: Is Africa's young population a risk or an asset? (2014)

Baglioni, S & Theiss, M 'Political participation of unemployed youth: The moderator effect of associational membership' (2015) 8 *The Open Journal of Sociopolitical Studies* PACO 50

Brady, H et al 'Beyond SES: A resource model of political participation' (1995) 89 *American Political Science Review* 90

Calabriesi, S & Rickery, J 'Originalism and sex discrimination' (2011) 1 *Texas Law Review* 15

Cane, P 'Participation and constitutionalism' (2010) 38 *Federal Law Review* 319

Camino, L & Zeldin, Z 'From periphery to centre: Pathway for youth civic engagement in the day-to-day life of the community' (2002) 6 *Applied Developmental Science* 214

Cheng, T 'The Universal Declaration of Human Rights at sixty: Is it still right for the United States' (2008) 41 *Cornell International Law Journal* 252

Croft, S & Beresford, P 'The politics of participation' (1992) 12 *Critical Social Policy* 20

Couzens, M 'Exploring public participation as a vehicle for child participation in government: A view from South Africa' (2012) 20 *International Journal of Children's Rights* 682

Czapanskly, K & Manjoo, R 'Right to participation in public government' (2008) 19 *Duke Journal of Comparative and International Law* 7

D'Amato, A 'Human rights as part of customary international law: A plea for change of paradigms' (1995) 25 *Georgia Journal of International and Comparative Law* 98

Dias, C & Sudarshan, R 'Toward inclusive governance' (2007)

Dessaleng, B 'The right of minorities to political participation under the Ethiopian electoral system' (2013) 7 *Mizan Law Review* 68

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

Farthing, R 'Why youth participation' (2012) *Youth and Policy* 75

Farthing, R '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

Fox, G 'The right to political participation in international law' (1992) 86 *American Society International Law Procedure* 249

Fredericks, R 'The old man is dead': Hip hop and the arts of citizenship of Senegalese youth' (2014) 46 *Antipode* 131

Grace, J & Mooney, E 'Political participation, in particular the right to vote' (2010) 41 *Studies in Transnational Legal Policy* 509

Henkin, L 'Human rights and state sovereignty' (1995) 25 *Georgia Journal of International and Comparative Law* 34

Humphrey, J 'The International Bill of Rights: Scope and implementation' (1976) 17 *William and Mary Law Review* 527

Henkin, L 'Human rights and state sovereignty' (1995) 25 *Georgia Journal International and Comparative Law* 36

Honwana, A 'Waithood, restricted futures and youth protest in Africa' (2014) 1

Ijeoma, E 'Mainstreaming the youth in Africa's development: The role of NEPAD' (2009) 72 *Commonwealth Youth and Development* 2

Kadioglu, A 'Political participation from a citizenship perspective' (2009) 1 *Middle East Law and Interdisciplinary Government Journal* 94

Kawashima, S 'The right to effective participation and the Ainu people' (2004) 11 *International Journal on Minority and Group Rights* 23

Li-Ann, T 'The right to political participation in Singapore: Tailor-making a Westminster modelled constitution to fit the imperatives of "Asian" democracy' (2002) 6 *Singapore Journal of International and Comparative Law* 200

Lixinski, L 'Treaty interpretation by the Inter-American Court of Human Rights: Expansionism at the service of the unity of international law' (2010) 21 *The European Journal of International Law* 588

Munoz, L 'Traditional participation in a modern political system: The case of Western Nigeria' (1980) (18) *Journal of Modern African Studies* 468

Ntsabane, T & Ntau, C 'The African Youth Charter and youth participation in decision making: Opportunities and challenges' (2016) 10 *IUP Journal of International Relations* 4

Nussbaum, M 'Capabilities and human rights' (1997) 66 *Fordham Law Review* 273

Nussbaum, M 'Women and equality: The capabilities approach' (1999) *International Labour Review* 227

Oluchina, W 'The right to political participation for people with disability in Africa' (2015) 3 *Africa Disability Rights Yearbook* 312

Peter, F 'The Human right to political participation' (2013) 7 *Journal of Ethics and Sociological Philosophy* 1

Roberts, N 'Public deliberation in an age of direct citizen participation' (2004) 34 *American Review of Public Administration* 315

Sen, A 'Human rights and capabilities' (2005) 6 *Journal of Human Development* 152

Steiner, H 'Political participation as a human right' (1988) 1 *Harvard Human Rights Year Book* 133

Selvam, S 'Capabilities approach to youth rights in East Africa' (2008) 12 *International Journal of Human Rights* 213

Sohn, L 'The human rights law of the Charter' (1977) 12 *Texas International Law Journal* 132

Tagoe, M & Ohenoba-Sakyi, Y 'Harnessing the power of the youth through national youth policies in Ghana: Challenges to notion of empowerment' (2015) 1 *Contemporary Journal of African Studies* 370

Tustnet, M 'An essay on rights' (1984) 62 *Texas Law Review* 1363

Touo, H 'African youth and globalisation: The experience of the Ethics Club in the process of socio-political integration of the youth in Cameroon' (2010) 17 *The African Anthropologist* 3

Uhunmwuangho, S & Oghator, E 'Youth in political participation and development: Relevance, challenges and expectations in the 21st century' (2013) 15 *Journal of Sustainable Development in Africa* 245

Vromen, A & Collin, P 'Everyday youth participation? Contrasting views from Australian policymakers and young people' (2010) 18 *Young: Nordic Journal of youth Research* 106

Wambali, M 'The practice on the right to freedom of political participation in Tanzania' (2009) 9 *African Human Rights Law Journal* 204

Wheatley, S 'Non-discrimination and equality in the right to political participation for minorities' (2002) 1 *Journal of Ethnopolitics and Minority Issues in Europe* 5

Wearing, M 'Strengthening youth citizenship and social inclusion practice – The Australian case: Towards rights-based and inclusive practice in services for marginalised young people' (2011) 33 *Children and Youth Services Review* 535

Theses and dissertations

Mahidi, M 'The young and the rightless? The protection of youth rights in Europe' unpublished Master's dissertation, Åbo Akademi University, 2010

COMMENTS, OBSERVATIONS AND RECOMMENDATIONS

Newspaper articles

Mokolobate, K 'Youth month reflections: Where have all the voters gone?' *Mail and Guardian* 22-28 June 2018

Ojeifo, E 'Young people, social activism and democratic governance' *The Guardian* 25 August 2016

Tamukamoyo, H 'Unlock youth power' *Mail and Guardian* 22-28 June 2018

REPORTS AND CONFERENCE PAPERS

Oyebobe, A 'The integrity of law' Sixth Professor Alfred Bamidele Kansumu Annual Lecture of the Law Students Society of the Faculty of Law, University of Lagos, 15 September 2016 (on file with author)

Report 98/03, OEA/Ser.L/V/II.118, Doc 5 Rev 2 (2003) 87

The Not Too Young To Run Movement Brief, April 2018 (on file with the author)

UNDP Youth Strategy 2014-2017: Empowered Youth, Sustainable Future (2014)

Van Deth, J 'Studying political participation: Towards a theory of everything? An introductory paper prepared for delivery at the Joint Session of Workshops of the European Consortium for Political Research, Grenoble, 6-11 April 2001 4

World Youth Report (2003)

Youth in the MENA Region: How to bring them in, OECD preliminary report (2015) 16

Online sources

Adeola, R 'The African Youth Charter and the role of regional institutions in an age of Africa rising' AfricLaw 6 July 2015; see the list of countries which have either signed or ratified the AYC, https://au.int/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf (accessed 6 March 2018)

Adetayo, O 'Updated: Buhari declares June 12 Democracy Day, honours MKO Abiola with GCFR' *The Punch Newspaper* 6 June 2018, http://punchng.com/breaking-buhari-declares-june-12-democracy-day-honours-abiola-with-gcfr/ (accessed 27 June 2018)

AYC Ratification Table, https://au.int/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf (accessed 4 June 2018)

African Youth Charter (Youth Policy.org), http://www.youthpolicy.org/library/documents/african-youth-charter/ (accessed 4 June 2018)

African Union Youth Division on the African Youth Charter, https://www.africa-youth.org/frameworks/african-youth-charter/ (accessed 6 June 2018)

'Alhaji Sir Ahmadu Bello Facts' available at http://biography.yourdictionary.com/alhaji-sir-ahmadu-bello (accessed 25 June 2018)

Channels Television '#NotTooYoungTooRun: 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 June 2018)

Chirenje, G 'The changing concept of the youth in Africa: From "children" to harnessing them as a demographic dividend' 5 March 2018, http://www.osisa.org/buwa/changing-concept-youth-africa-%E2%80%9Cchildren%E2%80%9D-harnessing-them-demographic-dividend (accessed 9 June 2018)

Duru, O 'An overview of the Fundamental Rights Enforcement Procedure Rules, 2009' 4 October 2012, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2156750 (accessed 26 June 2018)

FREP Rules, http://www.refworld.org/pdfid/54f97e064.pdf (accessed 26 June 2018)

'Founding fathers of Nigeria: Their biographies, achievements and life history' 17 December 2011, https://naijagists.com/founders-of-nigeria-their-biographies-achievements-life-history/ (accessed 24 June 2018)

'History: Northern Peoples' Congress' 29 July 2017, https://www.arewaaffairs.com.ng/2017/07/history-northern-peoples-congress.html (accessed 25 June 2018)

Sigudhla, M SADC perspective on youth and governance in Africa (2005)

Kwara Daily 'Buhari's Signing of #NotTooYoungToRun Bill Is An

ANNEXURE

PROPOSED DRAFT AMENDMENT TO THE AFRICAN YOUTH CHARTER (The portions of the old AYC highlighted in yellow in the proposed new AYC are to be deleted. The new appropriate words or phrases have been inserted before or after the old words or phrases in various instances and are highlighted in green.)

PREAMBLE

GUIDED by the Constitutive Act of the African Union, the States Parties to the present African Youth Charter;

GUIDED by the vision, hopes and aspirations of the African Union, inclusive of Africa's integration, the inherent dignity and inalienable rights afforded to all members of the human family as set out in the United Nations Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976) and the International Covenant on Economic, Social and Cultural Rights (1976), and articulated for the African peoples through the African Charter on Human and Peoples' Rights (1986);

RECALLING the resolution of the Heads of State and Government during the 1999 Algiers Summit for the development of the Pan-African Charter;

FULLY ATTACHED to the virtues and values of African historical tradition and civilisation which form the foundation for our concept of people's rights;

RECALLING the historic injustices imposed on Africa such as slavery, colonisation, depletion of natural resources and taking into account the firm will of African peoples for self-determination and the economic integration of Africa;

CONVINCED 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;

BEARING IN MIND the International Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa (2003) and the progress achieved in eliminating gender discrimination, but ever cognisant of the obstacles that still prevent girls and women from fully participating in African society;

REAFFIRMING the need to take appropriate measures to promote and protect the rights and welfare of children as outlined in the Convention on the Rights of the Child (1989) and through the African Charter on the Rights and Welfare of the Child (1999);

ACKNOWLEDGING the commitments already made towards the United Nations Millennium Development Goals (MDGs) and inviting the partners to reaffirm their support to advance the wellbeing of youth;

RECOGNISING the efforts made by States Parties and civil societies to address the economic, social, educational, cultural and spiritual needs of youth;

NOTING with concern the situation of the African youth, many of whom are marginalised from mainstream society through inequalities in income, wealth and power, unemployment and underemployment, infected and affected by the HIV/AIDS pandemic, living in situations of poverty and hunger, experiencing illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engaging in armed conflicts and experiencing various forms of discrimination;

RECALLING the United Nations World Programme of Action for Youth to the Year 2000 and beyond and the ten priority areas identified for youth (education, employment, hunger and poverty, health, environment, drug abuse, juvenile delinquency, leisure-time activities, girls and young women and youth participating in decision-making), and the five additional areas (HIV/AIDS, ICT, inter-generational dialogue) adopted at the 2005 UN General Assembly;

RECOGNISING that the youth are partners, assets and a prerequisite for sustainable development and for the peace and prosperity of Africa with a unique contribution to make to the present and to future development;

CONSIDERING the role that the youth have played in the process of decolonisation, the struggle against apartheid and more recently in its efforts to encourage the development and to promote the democratic processes on the African continent;

REAFFIRMING that the continuous cultural development of Africa rests with its youth and therefore requires their active and enlightened participation as espoused in the Cultural Charter for Africa;

GUIDED by the New Partnership for Africa's Development Strategic Framework for Youth Programme of 2004 that is working towards youth empowerment and development;

ACKNOWLEDGING the increasing calls and the enthusiasm of the youth to actively participate at local, national, regional and international levels to determine their own development and the advancement of society at large;

ACKNOWLEDGING ALSO the call in Bamako (2005) by youth organisations across Africa to empower the youth by building their capacity, leadership, responsibilities and provide access to information such that they can take up their rightful place as active agents in decision-making and governance;

TAKING INTO CONSIDERATION the inter-relatedness of the challenges facing the youth and the need for cross-sectoral policies and programmes that attend to the needs of youth in a holistic manner;

CONSIDERING that the promotion and protection of the rights of youth also imply the performance of duties by youth as by all other actors in society;

TAKING INTO CONSIDERATION the needs and aspirations of young displaced persons, refugees and youths with special needs;

TAKING INTO CONSIDERATION the need to make a clear distinction between children and youths based on African conceptions and historical antecedents;

TAKING INTO CONSIDERATION the need to recognise youths as adults who need special protection because they are at the earliest stage of adulthood and not children;

TAKING INTO CONSIDERATION the need for the distinct protection of the youth as it has been previously done for children and women;

HAVE AGREED AS FOLLOWS:

DEFINITIONS

‘Chairperson’ shall mean the Chairperson of the African Union Commission;

‘Charter’ shall mean the African Youth Charter;

‘Commission’ shall mean the Commission of African Union;

‘Diaspora’ shall mean peoples of African descent and heritage living outside the continent, irrespective of their citizenship and who remain committed to contribute to the development of the continent and the building of the African Union (DOC.EX.CL/164(VII));

‘Member States’ shall mean Member States of the African Union;

‘Minors’ shall mean young people aged 15 to 17 years subject to each country’s laws;

‘State Parties’ shall mean Member States, which have ratified or acceded to the present Charter;

‘Union’ shall mean the African Union;

‘Youth’: for the purposes of this Charter, youth or young people shall refer to every person between the ages of 15 and 35 years. (18-39 years).

PART 1: RIGHTSAND DUTIES

Article 1: Obligations of State Parties

1 State Parties of the African Union to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter.

2 State Parties shall undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures that may be necessary to give effect to the provisions of the Charter.

Article 2: Non-discrimination

1 Every young person (youth) shall be entitled to the enjoyments of the rights and freedoms recognised and guaranteed in this Charter irrespective of their age, race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

2 State Parties shall take appropriate measures to ensure that youth are protected against all forms of discrimination on the basis of status, activities, expressed opinions or beliefs.

3 State Parties shall recognise the rights of Young people from ethnic, religious and linguistic marginalised groups or youth of indigenous origin, to enjoy their own culture, freely practise their own religion or to use their own language in community with other members of their group.

Article 3: Freedom of Movement

Every young person (youth) has the right to leave any country, including his/her own, and to return to his/her country.

Every youth shall have the right to move freely across Africa in accordance with the law.

Article 4: Freedom of expression

1 Every (youth) young person shall be assured the right to express his or her ideas and opinions freely in all matters and to disseminate his or her ideas and opinions subject to the restrictions as are prescribed by laws.

2 Every (youth) young person shall have the freedom to seek, receive and disseminate information and ideas of all kinds, either orally, in writing, in print, in the form of art or through any media of the young person's choice subject to the restrictions as are prescribed by laws.

Article 5: Freedom of association

1 Every (youth) young person shall have the right to free association, and freedom of peaceful assembly and demonstrate in conformity with the law.

2 (Youth) Young people shall not be compelled to belong to an association.

Article 6: Freedom of thought, conscience and religion

Every (youth) young person shall have the right to freedom of thought, conscience and religion.

Article 7: Protection of private life

No (youth) young person shall be subject to the arbitrary or unlawful interference with his/her privacy, residence or correspondence, or to attacks upon his/her honour or reputation.

Article 8: Protection of the family

1 The family, as the most basic social institution, shall enjoy the full protection and support of State Parties for its establishment and development noting that the structure and form of families vary in different social and cultural contexts.

2 (Youth) Young men and women of full age who enter into marriage shall do so based on their free consent and shall enjoy equal rights and responsibilities.

Article 9: Property

1 Every (youth) young person shall have the right to own and to inherit property.

2 State Parties shall ensure that young men and young women (youth) enjoy equal rights to own property.

3 State Parties shall ensure that youth are not arbitrarily deprived of their property including inherited property.

Article 10: Development

1 Every (youth) young person shall have the right to social, economic, political and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.

2 State Parties shall encourage youth organisations to lead youth programmes and to ensure the exercise of the right to development.

3 State Parties shall:

(a) encourage the media to disseminate information that will be of economic, political, social and cultural benefit to youth;

(b) promote the development of youth media for the dissemination of information to young people;

(c) encourage international co-operation in the production, exchange and dissemination of information from both national and international sources that are of economic, social and cultural value to youth;

(d) provide access to information and education and training for young people to learn their rights and responsibilities, to be schooled in democratic processes,

citizenship, decision-making, governance and leadership such that they develop the technical skills and confidence to participate in these processes;

Article 11: Youth participation

1 Every (youth) young person shall have the right to participate in all spheres of society; particularly the right to vote and the right to stand as candidate in all elections in their respective states on equal terms as other adults.

2 State Parties shall take the following measures to promote active youth participation in society: They shall:

(a) guarantee the participation of the youth in parliament and other decision-making bodies in accordance with the prescribed laws;

(b) facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance;

(c) ensure equal access to (youth) young men and young women to participate in decision-making and in fulfilling civic duties;

(d) give priority to policies and programmes including youth advocacy and peer-to-peer programmes for marginalised youth, such as out-of-school and out-of-work youths, to offer them the opportunity and motivation to re-integrate into mainstream society;

(e) provide access to information such that young people become aware of their rights and of opportunities to participate in decision-making and civic life;

(f) institute measures to professionalise youth work and introduce relevant training programmes in higher education and other such training institutions;

(g) provide technical and financial support to build the institutional capacity of youth organisations;

(h) institute policies and programmes of youth voluntarism at local, national, regional and international levels as an important form of youth participation and as a means of peer-to-peer training;

(i) provide access to information and services that will empower the youth to become aware of their rights and responsibilities,

(j) include youth representatives as part of delegations to ordinary sessions and other relevant meetings to broaden channels of communication and enhance the discussion of youth related issues.

Article 12: National Youth Policy

Every State Party shall develop a comprehensive and coherent national youth policy.

(a) The policy shall be cross-sectoral in nature considering the inter-relatedness of the challenges facing young people.

(b) The development of a national youth policy shall be informed by extensive consultation with young people and cater for their active participation in decision-making at all levels of governance in issues concerning youth and society as a whole.

(c) A youth perspective shall be integrated and mainstreamed into all planning and decision-making as well as programme development. The appointment of youth focal points in government structures shall enable this process;

(d) Mechanisms to address these youth challenges shall be framed within the national development framework of the country.

(e) The policy shall provide guidelines on the definition of youth adopted and specify subgroups that shall be targeted for development.

(f) The policy shall advocate equal opportunities for young men and for young women.

(g) A baseline evaluation or situation analysis shall inform the policy on the priority issues for youth development.

(h) The policy shall be adopted by Parliament and enacted into law.

(i) A national youth coordinating mechanism shall be set up and shall provide a platform as well as serve as a linking agent for youth organisations to participate in youth policy development as well as the implementation, monitoring and evaluation of related programmes.

(j) National programmes of action shall be developed that are time bound and that are connected to an implementation and evaluation strategy for which indicators shall be outlined.

(k) Such programme of action shall be accompanied by adequate and sustained budgetary allocation.

Article 13: Education and skills development

1 Every (youth) young person shall have the right to education of good quality.

2 The value of multiple forms of education, including formal, non-formal, informal, distance learning and life-long learning, to meet the diverse needs of (youth) young people shall be embraced.

3 The education of (youth) young people shall be directed to:

(a) the promotion and holistic development of the young person (youth's) cognitive and creative and emotional abilities to their full potential;

(b) fostering respect for human rights and fundamental freedoms as set out in the provisions of the various African human and peoples' rights and international human rights declarations and conventions;

(c) preparing young people for responsible lives in free societies that promote peace, understanding, tolerance, dialogue, mutual respect and friendship among all nations and across all groupings of people;

(d) the preservation and strengthening of positive African morals, traditional values and cultures and the development of national and African identity and pride;

(e) the development of respect for the environment and natural resources;

(f) the development of life skills to function effectively in society and include issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women as part of the education curricula.

4 State Parties shall take all appropriate measures with a view to achieving full realisation of this right and shall, in particular:

(a) provide free and compulsory basic education and take steps to minimise the indirect costs of education;

(b) make all forms of secondary education more readily available and accessible by all possible means including progressively free;

(c) take steps to encourage regular school attendance and reduce drop-out rates;

(d) strengthen participation in and the quality of training in science and technology;

(e) revitalise vocational education and training relevant to current and prospective employment opportunities and expand access by developing centres in rural and remote areas;

(f) make higher education equally accessible to all including establishing distance learning centres of excellence;

(g) avail multiple access points for education and skills development including opportunities outside of mainstream educational institutions, eg workplace skills development, distance learning, adult literacy and national youth service programmes;

(h) Ensure, where applicable, that girls and young women who become pregnant or married before completing their education shall have the opportunity to continue their education;

(i) allocate resources to upgrade the quality of education delivered and ensure that it is relevant to the needs of contemporary society and engenders critical thinking rather than rote learning;

(j) adopt pedagogy that incorporates the benefits of and trains young people in the use of modern information and communication technology such that youth are better prepared for the world of work;

(k) encourage youth participation in community work as part of education to build a sense of civic duty;

(l) introduce scholarship and bursary programmes to encourage entry into post-primary school education and into higher education outstanding youth from disadvantaged communities, especially young girls;

(m) establish and encourage participation of all young men and young women in sport, cultural and recreational activities as part of holistic development;

(n) promote culturally appropriate, age specific sexuality and responsible parenthood education;

(o) promote the equivalence of degrees between African educational institutions to enable the youth to study and work in State Parties;

(p) adopt preferential recruitment policies for African youth with specialised skills among State Parties.

5 The youth are determined to transform the continent in the fields of science and technology. Therefore, they are committed to:

(a) promoting and using science and technology in Africa;

(b) conducting research towards science and technology.

6 State Parties should encourage the youth to conduct research. In this regard, an African Discoveries Day should be established along with mechanism of awarding prizes at the continental level.

7 Enterprises that are located in Africa should establish partnerships with training institutions to contribute to technology transfer for the benefit of African students and researchers.

Article 14: Poverty eradication and socio-economic integration of youth

State Parties shall

1 recognise the right of young people to a standard of living adequate for their holistic development;

2 recognise the right of young people to be free from hunger and shall take individual or collective measures to:

(a) enhance the attractiveness of rural areas to young people by improving access to services and facilities such as educational and cultural services;

(b) train young people to take up agricultural, mineral, commercial and industrial production using contemporary systems and promote the benefits of modern information and communication technology to gain access to existing and new markets;

(c) provide grants of land to youth and youth organisations for socio-economic development purposes;

(d) facilitate access to credit to promote youth participation in agricultural and other sustainable livelihood projects;

(e) facilitate the participation of young people in the design, implementation, monitoring and evaluation of national development plans, policies and poverty reduction strategies.

3 recognise the right of every young person to benefit from social security, including social insurance.

In this regard, State Parties shall take the necessary measures to achieve the full realisation of these rights in accordance with their national law especially when the security of food tenure, clothing, housing and other basic needs are compromised.

Article 15: Sustainable livelihoods and youth

Employment

1 Every (youth) young person shall have the right to gainful employment.

2 Every (youth) young person shall have the right to be protected from economic exploitation and from performing work that is likely to be hazardous to or interfere with the young person's education, or to be harmful to the young person's health or holistic development.

3 State Parties shall address and ensure the availability of accurate data on youth employment, unemployment and underemployment so as to facilitate the prioritisation of the issue in national development programmes complemented by clear programmes to address unemployment.

4 State Parties shall take all appropriate measures with a view to achieving full realisation of this right to gainful employment and shall in particular:

(a) ensure equal access to employment and equal pay for equal work or equal value of work and offer protection against discrimination regardless of ethnicity, race, gender, disability, religion, political, social, cultural or economic background;

(b) develop macro-economic policies that focus on job creation particularly for youth and for young women;

(c) develop measures to regulate the informal economy to prevent unfair labour practices where the majority of youth work;

(d) foster greater linkages between the labour market and the education and training system to ensure that curricula are aligned to the needs of the labour market and that youth are being trained in fields where employment opportunities are available or are growing;

(e) implement appropriately-timed career guidance for youth as part of the schooling and post-schooling education system;

(f) promote youth entrepreneurship by including entrepreneurship training in the school curricula, providing access to credit, business development skills training, mentorship opportunities and better information on market opportunities;

(g) institute incentive schemes for employers to invest in the skills development of employed and unemployed youth;

(h) institute national youth service programmes to engender community participation and skills development for entry into the labour market.

Article 16: Health

1 Every (youth) young person shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2 State Parties shall undertake to pursue the full implementation of this right and in particular shall take measures to:

(a) make available equitable and ready access to medical assistance and health care especially in rural and poor urban areas with an emphasis on the development of primary health care;

(b) secure the full involvement of youth in identifying their reproductive and health needs and designing programmes that respond to these needs with special attention to vulnerable and disadvantaged youth;

(c) provide access to youth-friendly reproductive health services including contraceptives, ante-natal and post-natal services;

(d) institute programmes to address health pandemics in Africa such as HIV/AIDS, tuberculosis and malaria;

(e) institute comprehensive programmes to prevent the transmission of sexually-transmitted infections and HIV/AIDS by providing education, information, communication and awareness creation as well as making protective measures and reproductive health services available;

(f) expand the availability and encourage the uptake of voluntary counselling and confidential testing for HIV/ AIDS;

(g) provide timely access to treatment for young people infected with HIV/AIDS including prevention of mother-to-child transmission, post-rape prophylaxis, and antiretroviral therapy and creation of health services specific for young people;

(h) provide food security for people living with HIV/AIDS;

(i) institute comprehensive programmes including legislative steps to prevent unsafe abortions;

(j) take legislative steps such as banning advertising and increasing price in addition to instituting comprehensive preventative and curative programmes to control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse;

(k) raise awareness amongst youth on the dangers of drug abuse through partnerships with youth, youth organisations and the community;

(l) strengthen local, national, regional and international partnerships to eradicate the demand, supply and trafficking of drugs including using youth to traffic drugs;

(m) provide rehabilitation for young people abusing drugs such that they can be re-integrated into social and economic life;

(n) provide technical and financial support to build the institutional capacity of youth organisations to address public health concerns including issues concerning youths with disabilities and young people married at an early age.

Article 17: Peace and security

1 In view of the important role of the youth in promoting peace and non-violence and the lasting physical and psychological scars that result from involvement in violence, armed conflict and war, State Parties shall:

(a) strengthen the capacity of young people and youth organisations in peace building, conflict prevention and conflict resolution through the promotion of intercultural learning, civic education, tolerance, human rights education and democracy, mutual respect for cultural, ethnic and religious diversity, the importance of dialogue and cooperation, responsibility, solidarity and international cooperation;

(b) institute mechanisms to promote a culture of peace and tolerance amongst young people that discourages their participation in acts of violence, terrorism, xenophobia, racial discrimination, gender- based discrimination, foreign occupation and trafficking in arms and drugs;

(c) institute education to promote a culture of peace and dialogue in all schools and training centres at all levels;

(d) condemn armed conflict and prevent the participation, involvement, recruitment and sexual slavery of young people in armed conflict;

(e) take all feasible measures to protect the civilian population, including youth, who are affected and displaced by armed conflict;

(f) mobilise youth for the reconstruction of areas devastated by war, bringing help to refugees and war victims and promoting peace, reconciliation and rehabilitation activities;

(g) take appropriate measures to promote physical and psychological recovery and social reintegration of young victims of armed conflict and war by providing access to education and skills development such as vocational training to resume social and economic life.

2 States parties shall ensure the protection of the youth against the ideology of genocide.

Article 18: Law enforcement

1 Every (youth) young person accused or found guilty of having infringed the penal law shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

2 State Parties shall in particular:

(a) ensure that youth who are detained or imprisoned or in rehabilitation centres are not subjected to torture, inhumane or degrading treatment or punishment;

(b) ensure that accused minors shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status;

(c) build rehabilitation facilities for accused and imprisoned youth who are still minors and house them separately from adults;

(d) provide induction programmes for imprisoned youth that are based on reformation, social rehabilitation and re-integration into family life;

(e) make provisions for the continued education and skills development of imprisoned young people as part of the restorative justice process;

(f) ensure that accused and convicted young people are entitled to a lawyer.

Article 19: Sustainable development and protection of the environment

1 State Parties shall ensure the use of sustainable methods to improve the lives of (youth) young people such that measures instituted do not jeopardise opportunities for future generations.

2 State Parties shall recognise the vested interest of (youth) young people in protecting the natural environment as the inheritors of the environment. In this regard, they shall:

(a) encourage the media, youth organisations, in partnership with national and international organisations, to produce, exchange and disseminate information on environmental preservation and best practices to protect the environment;

(b) train youth in the use of technologies that protect and conserve the environment;

(c) support youth organisations in instituting programmes that encourage environmental preservation such as waste reduction, recycling and tree planting programmes;

(d) facilitate youth participation in the design, implementation and evaluation of environmental policies including the conservation of African natural resources at local, national, regional and international levels;

(e) develop realistic and flexible strategies for the regeneration of forests;

(f) initiate intensive actions to prevent the expansion of deserts.

Article 20: Youth and culture

1 State Parties shall take the following steps to promote and protect the morals and traditional values recognised by the community:

(a) eliminate all traditional practices that undermine the physical integrity and dignity of women;

(b) recognise and value beliefs and traditional practices that contribute to development;

(c) establish institutions and programmes for the development, documentation, preservation and dissemination of culture;

(d) work with educational institutions, youth organisations, the media and other partners to raise awareness of and teach and inform young people about African culture, values and indigenous knowledge;

(e) harness the creativity of youth to promote local cultural values and traditions by representing them in a format acceptable to youth and in a language and in forms to which youth are able to relate;

(f) introduce and intensify teaching in African languages in all forms of education as a means to accelerate economic, social, political and cultural development;

(g) promote inter-cultural awareness by organising exchange programmes between young people and youth organisations within and across State Parties.

2 State Parties recognise that the shift towards a knowledge-based economy is dependent on information and communication technology, which in turn has contributed towards a dynamic youth culture and global consciousness. In this regard, they shall:

(a) promote widespread access to information and communication technology as a means for education, employment creation, interacting effectively with the world and building understanding, tolerance and appreciation of other youth cultures;

(b) encourage the local production of and access to information and communication technology content;

(c) engage young people and youth organisations to understand the nexus between contemporary youth culture and traditional African culture, and enable them to express this fusion through drama, art, writing, music and other cultural and artistic forms;

(d) help young people to use positive elements of globalisation such as science and technology and information and communication technology to promote new cultural forms that link the past to the future.

Article 21: Youth in the diaspora

State Parties shall recognise the right of young people to live anywhere in the world. In this regard, they shall:

(a) promote the equivalence of degrees between African educational institutions to enable the youth to study and work in State Parties;

(b) promote the recruitment of African youth with specialised skills, in the spirit of African solutions for African problems, according to national policies and priorities;

(c) facilitate youth organisations to liaise and collaborate with the African youth diaspora;

(d) establish structures that encourage and assist the youth in the diaspora to return to and fully re-integrate into the social and economic life in Africa;

(e) promote and protect the rights of young people living in the diaspora;

(f) encourage young people in the diaspora to engage themselves in development activities in their country of origin.

Article 22: Leisure, recreation, sportive and cultural activities

1 Young people shall have the right to rest and leisure and to engage in play and recreational activities that are part of a healthy lifestyle as well as to participate freely in sport, physical education drama, the arts, music and other forms of cultural life. In this regard, State Parties shall:

(a) make provision for equal access for young men and young women to sport, physical education, cultural, artistic, recreational and leisure activities;

(b) put in place adequate infrastructure and services in rural and urban areas for youth to participate in sport, physical education, cultural, artistic, recreational and leisure activities.

Article 23: Girls and young women

State Parties acknowledge the need to eliminate discrimination against girls and young women according to obligations stipulated in various international, regional and national human rights conventions and instruments designed to protect and promote women's rights. In this regard, they shall:

(a) introduce legislative measures that eliminate all forms of discrimination against girls and young women and ensure their human rights and fundamental freedoms;

(b) ensure that girls and young women are able to participate actively, equally and effectively with boys at all levels of social, educational, economic, political, cultural, civic life and leadership as well as scientific endeavours;

(c) institute programmes to make girls and young women aware of their rights and of opportunities to participate as equal members of society;

(d) guarantee universal and equal access to and completion of a minimum of nine years of formal education;

(e) guarantee equal access to and completion of vocational, secondary and higher education in order to effectively address the existing imbalance between young men and women in certain professions;

(f) ensure that education material and teaching practices are gender sensitive and encourage youth who are girls and young (women) to undertake studies in the sciences;

(g) provide educational systems that do not impede girls and young women, including married and/or pregnant (youth) young women, from attending;

(h) take steps to provide equal access to health care services and nutrition for (youth) girls and young women;

(i) protect girls and youth who are young women from economic exploitation and from performing work that is hazardous, takes them away from education or that is harmful to their mental or physical health;

(j) offer equal access to young women to employment and promote their participation in all sectors of employment;

(k) introduce special legislation and programmes of action that make available opportunities to youth who are girls and young (women) including access to education as a prerequisite and a priority for rapid social and economic development;

(l) enact and enforce legislation that protect (youth) girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography;

(m) develop programmes of action that provide legal, physical and psychological support to girls and young (youth) who are women who have been subjected to violence and abuse such that they can fully re-integrate into social and economic life;

(n) secure the right for (youth) young women to maternity leave.

Article 24: Mentally and physically challenged youth

1 State Parties recognise the right of mentally and physically challenged youth to special care and shall ensure that they have equal and effective access to education, training, health care services, employment, sport, physical education and cultural and recreational activities.

2 State Parties shall work towards eliminating any obstacles that may have negative implications for the full integration of mentally and physically challenged youth into society including the provision of appropriate infrastructure and services to facilitate easy mobility.

Article 25: Elimination of harmful social and cultural practices

State Parties shall take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth, in particular;

(a) customs and practices that harm the health, life or dignity of the youth;

(b) customs and practices discriminatory to the youth on the basis of gender, age or other status.

Article 26: Responsibilities of youth

Every (youth) young person shall have responsibilities towards his family and society, the state, and the international community. Youth shall have the duty to:

(a) become the custodians of their own development;

(b) protect and work for family life and cohesion;

(c) have full respect for parents and elders and assist them any time in cases of need in the context of positive African values;

(d) partake fully in citizenship duties including voting, standing as candidates in elections, decision making and governance;

(e) engage in peer-to-peer education to promote youth development in areas such as literacy, use of information and communication technology, HIV/AIDS prevention, violence prevention and peace building;

(f) contribute to the promotion of the economic development of State Parties and Africa by placing their physical and intellectual abilities at its service;

(g) espouse an honest work ethic and reject and expose corruption;

(h) work towards a society free from substance abuse, violence, coercion, crime, degradation, exploitation and intimidation;

(i) promote tolerance, understanding, dialogue, consultation and respect for others regardless of age, race, ethnicity, colour, gender, ability, religion, status or political affiliation;

(j) defend democracy, the rule of law and all human rights and fundamental freedoms;

(k) encourage a culture of voluntarism and human rights protection as well as participation in civil society activities;

(l) promote patriotism towards and unity and cohesion of Africa;

(m) promote, preserve and respect African traditions and cultural heritage and pass on this legacy to future generations;

(n) become the vanguard of representing cultural heritage in languages and in forms to which the youth are able to relate;

(o) protect the environment and conserve nature.

Article 27: Popularisation of the Charter

State Parties shall have the duty to promote and ensure through teaching, education and publication, the respect of rights, responsibilities and freedoms contained in the present Charter and to see to it that these freedoms, rights and responsibilities as well as corresponding obligations and duties are understood.

Article 28: Duties of the African Union Commission

The African Union Commission shall ensure that State Parties respect the commitments made and fulfil the duties outlined in the present Charter by:

(a) collaborating with governmental, non-governmental institutions and developmental partners to identify best practices on youth policy formulation and implementation and encouraging the adaptation of principles and experiences among States Parties;

(b) inviting States Parties to include youth representatives as part of their delegations to the ordinary sessions of the African Union and other relevant meetings of the policy organs to broaden the channels of communication and enhance the discussion of youth-related issues;

(c) instituting measures to create awareness of its activities and make information on its activities more readily available and accessible to the youth;

(d) facilitating exchange and co-operation between youth organisations across national borders in order to develop regional youth solidarity, political consciousness and democratic participation in collaboration with development partners.

PART 2: FINAL PROVISIONS

Article 29: Savings clause

Nothing in this Charter shall be taken as minimising higher standards and values contained in other relevant human rights instruments ratified by states concerned or rational law or policies.

Article 30: Signature, ratification or adherence

1 The present Charter shall be open to signature by all the member states. The present Charter shall be subject to ratification or accession by member states. The instrument of ratification or accession to the present Charter shall be deposited with the Chairperson of the Commission.

2 The present Charter shall come into force thirty (30) days after the deposit with the Chairperson of the Commission of the instruments of ratification of fifteen (15) member states.

Article 31: Amendment and revision of the Charter

1 The present Charter may be amended or revised if any State Party makes a written request to that effect to the Chairperson of the Commission, provided that the proposed amendment is not submitted to the Assembly of the Union for consideration until all State Parties have been duly notified of it.

2 An amendment shall be approved by a simple majority of the State Parties. Such amendment shall come into force for each member states that has ratified or acceded to it on the date of the deposit of its instrument of ratification.

Adopted during the Seventh Ordinary Session of the Conference of Heads of State and Government held on July 2, 2006 in Banjul, The Gambia

NEW ARTICLES

1 YOUTH RIGHTS TO DIGNITY

All youths shall have their right to the inherent dignity of all members of the humankind respected on equal terms as other adults in society. All forms of exclusion, discrimination and exploitation on the basis of their age or status shall be prohibited.

2 YOUTH RIGHTS TO EQUALITY

All youths are equal in worth, status and in law with all adults in society.

All youths shall be entitled to equal protection of the law just as other adults in society.

3 MONITORING MECHANISM

The African Commission or the African Court is hereby empowered to entertain disputes arising from the violation, interpretation and other issues contained in this Charter (African Youth Charter).