

CRIN's submission for OHCHR's in depth study on the implementation of human rights with regard to young people

This submission was made on behalf of the Child Rights International Network - CRIN (www.crin.org) on 12 January 2018.

All violations of the rights of children amount to a form of discrimination in themselves or are exacerbated by discrimination on the basis of children's race, sex, sexuality, religion, political opinion or other status. This submission, however, will focus on the right to vote and its role within children's civil and political rights. Children face many barriers in engaging with the political system - whether exclusion from public space¹ or denial of their access to information key to the exercise of their rights² - but their exclusion from the electorate fundamentally undermines their political engagement. As States have begun to extend the franchise to children it is time to clarify the human rights standards that underlie this debate.

The right to vote

The right to vote is a fundamental political right³ and voting is the archetypal form of political engagement. Most States set the minimum age to vote at 18 excluding all children from the electorate, though some States set an age as high as 21, also excluding many young people.⁴

The International Covenant on Civil and Political Rights sets out the key international law standard on voting. It requires that every citizen shall have the right and the opportunity to vote.⁵ In setting out the scope of the right to vote in its General Comment on the issue, the Human Rights Committee did not directly consider the issue of voting, stating only that the right to vote should be available to every adult citizen.⁶ The General Comment further sets out that conditions may be applied to the exercise of the right, but that they must be based on "objective and reasonable" criteria.⁷ It has long been tacitly assumed that age may constitute a justified limit, though it is far from clear that limits based purely on age would meet this standard.

The "objective and reasonable" standard requires States to justify the decision to exclude all children under the age of 18 from the electorate. Though it would be for individual States to justify that their voting criteria as set out in relevant law meets the standard of reasonableness and objectivity, the arguments put forward in the public and parliamentary debates around voting reform would seem to rarely, if ever, to meet this standard. The argument that children do not understand politics founders as a ground to distinguish

¹ See CRIN, *Discrimination and Disenfranchisement: A global report on status offences* (third edition), April 2016. Available at: www.crin.org/node/42559.

² See CRIN, *Access Denied: Protect rights - unblock children's access to information*, June 2014. Available at: www.crin.org/node/39752.

³ International Covenant on Civil and Political Rights, Article 25.

⁴ Singapore, for example, grants the right to vote to citizens over the age of 21. See Parliamentary Elections Act, Section 5(1)(c). Available at: <https://sso.agc.gov.sg/Act/PEA1954>.

⁵ International Covenant on Civil and Political Rights, Article 25.

⁶ Human Rights Committee, General Comment No. 25, para. 4.

⁷ Human Rights Committee, General Comment No. 25, para. 4.

between all children and all adults, when the right to vote is granted to all adults regardless of political knowledge. Similarly arguments around the maturity and capacity of children to vote could only meet the reasonableness standard if maturity and capacity were established as requirements for any individual to vote. That children might be subject to undue influence would also fall short of the standard of reasonableness, where legislation is already in place to prohibit or criminalise those who exert undue influence to affect a person's voting decision.

In contrast, an approach that eschews the automatic exclusion of children from the electorate would be aligned with relevant standards on children's right to be heard and participate in matters that affect them.

The Convention on the Rights of the Child does not specifically address voting and the Committee on the Rights of the Child has not explicitly applied its provisions to the setting of voting ages.⁸ However, the Convention provides that the child who is capable of forming his or her own views has the right to express those views in all matters affecting the child and for them to be given due weight in accordance with the age and maturity of the child.⁹ Which politicians govern is clearly a matter that affects children, as it in turn affects all forms of national law and policy. The focus of whether children are able to express their views through voting, therefore, is a matter of giving children's views due weight in accordance with the age and the maturity of the child.

Setting out the implications of the right under Article 12 of the CRC, the Committee has elaborated that States have an obligation "to assess the capacity of the child to form an autonomous opinion to the greatest extent possible", meaning that States parties "cannot begin with the assumption that a child is incapable of expressing her or his own views".¹⁰ The requirement that due weight be given in accordance with age and maturity makes it clear that age alone cannot determine the significance of a child's views.¹¹ To meet these requirements with regards to establishing rules about the voting of children, States would be required to assess the capacity of children to make voting decisions, rather than imposing strictly age-based limits.

This approach to recognising children's capacity to make decisions about politics has begun to be recognised in the laws of some States. Though no country in the world allows children under the age of 16 to vote, a small number of countries including Argentina,¹² Nicaragua¹³

⁸ The Committee on the Rights of the Child has recommended that where States lower the voting age to under 18 years, they should invest in measures to support adolescents to understand, recognise and fulfil their role as active citizens, including through citizenship and human rights education. See Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20. 6 December 2016, para. 24.

⁹ Convention on the Rights of the Child, Article 12(1).

¹⁰ Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 20.

¹¹ Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 20 July 2009, para.29.

¹² Law 27,774 on Citizenship Rights promulgated in 2012, Article 1. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/200000-204999/204176/norma.htm>.

¹³ National Election Law, Article 33.

and Brazil¹⁴ have lowered the voting age to 16. This limited extension of the franchise to children is a step towards more fully recognising children's right to be heard and for their views to be given due weight in the political process. Reflecting the Committee on the Rights of the Child's approach to the right to be heard, that it is a choice not an obligation, States where voting is generally compulsory have commonly made voting voluntary for people under the age of 18.¹⁵

It should be noted, however, that even many of these world leading laws incorporate elements of discrimination against minority groups of children and young people. Argentina's law on voting, for example, in practice sets a different voting age for children who are not born Argentine or who do not have Argentine parents. Children who gain citizenship by court order can only complete this process at the age of 18, and so are not able to vote at the same age as their peers.¹⁶

¹⁴ Constitution of Brazil, Article 14(1)(ii)(c). English translation available at: https://www.constituteproject.org/constitution/Brazil_2017?lang=en.

¹⁵ See, for example, Constitution of Brazil, Article 14(1)(ii)(c).

¹⁶ Law 27,774 on Citizenship Rights, Article 3.