CRIN's submission on the Forum on Human Rights, Democracy and the Rule of Law on parliaments as promoters of human rights democracy and the rule of law

This submission was made on behalf of the Child Rights International Network - CRIN (www.crin.org) on 4 May 2018.

The exclusion of all children from the electorate in parliamentary elections fundamentally undermines parliament's democratic credentials and their interest in realising the human rights of children. As States have begun to extend the franchise to children it is time to challenge the attitudes that have excluded them from electing their political representatives and clarify the human rights standards that underlie this debate. Parliaments can lead the way in promoting children's rights and democracy by extending the franchise to allow children who have the capacity to elect parliamentarians.

CRIN urges the Human Rights Council to use the Forum on Human Rights, Democracy and the Rule of Law and its focus on parliaments as promoters of human rights, democracy and the rule of law to address children's right to vote.

The right to vote

International human rights law and standards

The right to vote is a fundamental political right[1] and voting for one's political representatives is the archetypal expression of democracy. 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.[2]

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.[3] 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.[4] 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.[5] 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 meet the standard of reasonableness and objectivity, the arguments put forward in the public and parliamentary debates around

[1] International Covenant on Civil and Political Rights, Article 25.
[2] 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.
[3] International Covenant on Civil and Political Rights, Article 25.
[4] Human Rights Committee, General Comment No. 25, para. 4.
[5] Human Rights Committee, General Comment No. 25, para. 4.

voting reform would seem rarely, if ever, to meet this standard. The argument that children do not understand politics founders as a ground to distinguish 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.[6] 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.[7] 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".[8] 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.[9] 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.

<u>Emerging State practice</u>

[6] 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.
[7] Convention on the Rights of the Child, Article 12(1).
[8] 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.
[9] 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.

An approach recognising that children have capacity to make decisions about politics has begun to be recognised in national elections. Though no country in the world allows children under the age of 16 to vote, an increasing number of States have lowered the age below 18.

Globally, 19 States allow people under the age of 18 to vote in some form of election. Of these, six allow children to vote in all forms of election from the age of 16.[10] A further eight States allow children to either vote in local elections from the age of 16, to vote from this age if they are employed or married, or a combination of these qualifications.
A further five permit children to vote from the age of 17, with or without restrictions.[11]

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.[12]

[10] Argentina, Austria, Brazil, Cuba, Ecuador and Nicaragua.
[11] Full references for each of these countries are available online at: www.crin.org/node/23662.
[12] See, for example, Constitution of Brazil, Article 14(1)(ii)(c).