

Input for report requested by HRC RES 39/11

Submission by members of the Children's Voting Colloquium

Date: September 15th, 2021

1. The Children's Voting Colloquium (hereafter referred to as CVC) is a global collaboration of researchers, activists, child-led and adult-led organizers, policy-makers, and others dedicated to various strategies for bringing us closer globally to the ideal and principle of universal suffrage guaranteed in various international human rights legal instruments.¹ It opposes simply equating 'adult' to 'universal' suffrage as a contradiction in terms.

2. In this submission the focus is on the international human rights law rationale for lowering the age eligibility for the vote in elections and in non-electoral contexts, such as referendums, to not more than 16 in those States where it is currently set at 18 or more. The submission addresses (i) the failure to explicitly address the issue of age eligibility to vote in both the OHCHR's "Guidelines for States on the effective implementation of the right to participate in public affairs" (hereafter referred to as "the Guidelines") and in the OHCHR's "CCPR General Comment No. 18: Non-Discrimination" of November 10, 1989. The latter omission in the OHCHR aforementioned documents arises, on our respectful view, due to the failure to consider the need and urgency *to reduce age eligibility to not higher than 16* to allow for meaningful political participation by youth through the vote in electoral and non-electoral contexts.

3. A vote at an age eligibility of not higher than 16 would be perceived as a vote for youth in most States. Youth could then, having the vote, effectively put their priorities and interests on the political agenda. The global movement to reduce the age eligibility for the vote has focused on and been in part child-led; mostly by 16- and 17-year-olds through the Courts and through civil action with some positive results. There are now approximately 20 countries with national voting ages of 16. Countries with an age eligibility of not higher than 16 are employing a less restrictive implementation of the universal suffrage international law guarantee than are countries with a higher minimum voting age. Hence those States with age eligibility of not higher than 16 demonstrate a greater respect for the non-derogable inherent right to the vote for all citizens (and also in some cases permanent residents) who are subject to a State's laws.

4. Given the success of age eligibility for the vote at 16 in numerous States, the CVC contends that a voting age eligibility of 18 or more is, even as a practical matter, an unreasonable restriction on voting rights that is inconsistent with the international human rights law (i.e. the 1976 Covenant on Civil and Political Rights [CCPR]) guarantee of universal suffrage, which guarantee was never intended to be simply a discretionary State policy matter.

5. The CCPR at article 25 stipulates that "Every citizen *shall* have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: ... (b) To vote ... [in] periodic elections which *shall be by universal and equal suffrage* and shall be

¹ See Children's Voting Colloquium at <https://www.childrenvoting.org/>.

held by secret ballot, guaranteeing the free expression of the will of the electors (emphasis added).” The CCPR General Comment No. 18 states in this regard that “...article 25 [of the CCPR] provides for the *equal participation in public life of all citizens, without any of the distinctions mentioned in article 2* (emphasis added).”

6. In addition, Article 2(1) of the CCPR sets out that “Each State Party to the ... Covenant undertakes to respect and to ensure to *all individuals* within its territory and subject to its jurisdiction the rights recognized in the ... Covenant, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status*” (emphasis added). Restricting the vote to 18-year-olds or those even older denies the vote to under-18-year-olds, including 16- and 17-year-olds, on the basis of ‘another status,’ namely that of being a child or youth, and does so in violation of Article 2(1) and 25(b) of the CCPR. The CCPR in using the word “shall” at Article 25 (b) (“Every citizen *shall* have *the right and the opportunity*, without any of the distinctions mentioned in article 2... to vote”) makes it clear that there must be *no distinctions in law* creating categories of citizen persons excluded from *entitlement* to the right to vote or the exercise of it. Status distinctions such as those based on age that preclude access to the vote are thus contemplated as “unreasonable restrictions” under the CCPR. Unreasonable restrictions might further include those, for instance, which hamper the right to vote in a practical sense such as having few drop off ballot boxes that require long travel to access for some of those eligible voters living in particular remote locales within the State; barriers to voter registration to those in law eligible to vote; etc.

7. Article 2(2) of the CCPR sets out that “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” Clearly electoral laws that set the minimum voting age at 18 or older, as exist in many States Parties to the CCPR, are not consistent with Article 2 or Article 25 (b) of the CCPR. This is that the laws in those States discriminate against youth including those of age 16 and 17 in denying them the vote and hence bar them from a core aspect of meaningful participation in public life. Such electoral laws hence need to be revised consistent with the obligation articulated at CCPR Article 2(2) and Article 25(b) to allow for greater access to the vote.

8. Age eligibility for the vote of 18 means youth are being denied the ability to use the vote to self-advocate for their interests. The denial of the vote to persons under 18, including 16- and 17-year-olds, disempowers young people and renders them second class citizens.

9. While the CVC agrees that “enjoyment of rights and freedoms on an equal footing...does not mean identical treatment in every instance” (CCPR General Comment No. 18, point 8), any differentiation in that regard with respect to children and youth should be in the best interests of the children and youth affected. The bar to the vote for under 18s, including 16- and 17-year-olds, is *not* in their best interests as it silences their voices and decreases their opportunity for accessing one of the most powerful forms of political self-advocacy and participation.

10. An age eligibility of age 18 in electoral law violates article 26 of the CCPR which sets out the State obligation “that all persons are equal before the law and are entitled to equal protection of the law without discrimination” (CCPR General Comment No. 18, point 12). Though State constitutions do *not* bar the vote to persons under age of majority but merely affirm the right to vote for citizens of age of majority (e.g. as with the 26th Amendment of the US Constitution), electoral laws do impose such discrimination in the vote upon youth in the majority of States Parties to the CCPR.

11. Giving access to the vote to at least 16- and 17-year-olds is consistent also with the rights articulated in the *Convention on the Rights of the Child* (CRC) Article 13, Freedom of Expression, which is to be restricted only “as ... provided by law *and ...necessary*: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order ... or of public health or morals (emphasis added).” Voting is a key vehicle of free expression in a democracy and if practiced by youth would *not* trigger any of the necessary restrictions set out in CRC Article 13. On the contrary, in societies where the vote has been lowered to 16 the evidence is that democratic principles, values and functioning has been strengthened rather than eroded.

12. The Guidelines at point 31(a) set out that “States should take proactive measures to strengthen the ...equal participation of ... groups that are discriminated against in electoral processes.” However point 31(a) of the Guidelines does not mention youth as one of those key groups precluded from the vote and amongst the most politically disempowered of all societal groups.

13. The Guidelines at point 38 recommend that “States should amend their national legal provisions that limit the right to vote on grounds of legal capacity and adopt the legal measures necessary to ensure that all persons with disabilities, especially those with intellectual or psychosocial disabilities, may exercise their right to vote.” Given the foregoing recommendation, there is no rationale based on *presumed* lack of legal capacity of youth such as 16- and 17-year-olds for the vote to bar them from the vote based in effect only on young age.

14. The CVC contests the recommendation that “States should consider aligning the minimum voting age and the minimum age of eligibility to stand for elections” in that such an approach is likely to lead to further inflation of the minimum voting age eligibility. Every youth of at least 16 or 17 should have the right and opportunity to vote as an exercise of their inherent free expression fundamental right unhindered by other considerations pertaining to other political rights.

15. The CVC is in accord with the Guidelines at point 32 that negative stereotypes against youth should be combatted and contends that being barred from voting is both based upon, and further promulgates, precisely such negative stereotypes.

16. The same rationale as articulated by the CVC in respect of youth voting rights, including of 16- and 17-year-olds, in elections applies, the CVC holds, also to their vote in non-electoral contexts such as referendums.

17. The CVC is in accord with the Guidelines point at 20(c) that “The adverse impact of discrimination, including multiple and intersecting forms of discrimination, on the effective exercise of the right to participate in public affairs should be recognized, in particular for ...young people.” The CVC urges the OHCHR to take that point a step further and recommend a universal minimum electoral voting age eligibility of not higher than 16 and an age eligibility to vote in non-electoral contexts such as referendums also of not higher than 16 on the rationale that (i) such a step leads closer to the international human rights guarantee of universal suffrage, and (ii) is more than justified as illustrated by those States Parties to the CCPR benefitting their societies in lowering their State voting age to 16 in elections and in non-electoral contexts. A higher age eligibility for the vote is an illegitimate differentiation in the recognition and implementation of the fundamental right to vote.

Respectfully Submitted by Dr. Sonja Grover and Dr. John Wall on behalf of members of the Children’s Voting Colloquium