

Rethinking Voting Age in Elections in Nigeria Under the Electoral Act, 2022: A Comparative Analysis

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Abstract

Globally, electing political leaders into various offices in a country is seen as a very serious business and one that should be participated in by those citizens and inhabitants who are legally qualified to do so. This paper, adopting the doctrinal and comparative research methods or approaches, appraises the current voting age in Nigeria which is statutorily pegged at 18 by the Electoral Act, 2022 and the positions in such jurisdictions like Argentina, Austria, Germany, Brazil, Cuba, Scotland, Wales, Ecuador, etc. This paper finds that in many of the other jurisdictions examined, the voting age has been reduced to either 16 or 17, and in some, voting has been made mandatory with regard to specific elections and specific posts. It is the contention and conclusion of this paper that Nigeria has lessons to learn from the countries examined herein with regard to voting age and voting cum electioneering policies. On the whole, the paper advocates a reduction in the current age of 18 to 16 years as practised in the jurisdictions examined. It further recommends the possibility of extending franchise to all students of tertiary institutions of learning even though they may be less than the statutory voting age herein canvassed, all persons who are gainfully and legitimately employed in the private or public sector, and all those artisans who are now masters in their various trades.

Keywords: Voting age, Elections, Nigeria, Electoral Act.

Introduction

The right to participate in elections by any person, who has attained the requisite age and requirements, is one of the basic rights he enjoys as a bona fide citizen of a country.² By international standard, both men and

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² F. C. Uwakwe and T. W. Nwoke, 'An Appraisal of the Rights of Women to Participate in

women, old and young, have equal rights in the eyes of the law to everything including participating fully in elections.³ They equally have right to freedom of association and can belong to any party of their choice.⁴ The right to assemble and associate peacefully is guaranteed to every citizen of Nigeria by the Constitution of the Federal Republic of Nigeria, 1999 (as amended).⁵ Electoral participation by eligible Nigerians begins with the biometric data capturing and registration of voters during Continuous Voter Registration (CVR) exercise conducted by INEC⁶ (Independent National Electoral Commission) established by both the 1999 Constitution⁷ and the Electoral Act, 2022.⁸

It is hereby submitted in line with the wordings of section 1 (2)⁹ of the Constitution of the Federal Republic of Nigeria (as amended) that voting and elections have since become veritable tools and legally accepted means used in engendering constitutional change of governments in modern democracies globally. Elections are a means of making popular voices heard and of putting practical effect to the description of that political form as government of the people, by the people and for the people.¹⁰ In liberal democratic theory, an election is a viable mechanism for consummating representative government and voting is the main form of political participation in democratic societies.¹¹ Elections in democracies help to promote representation of popular will and to secure legitimacy

an Election under the Nigerian Electoral Laws' [2022] (6) (1) *African Journal of Law and Human Rights (AJLHR)*; 168.

³ *Ibid.*

⁴ *Ibid.*

⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 40.

⁶ O. E. Olubusoye, O. J. Akintande and E. A. Vance, 'Transforming Evidence to Action: The Case of Election Participation in Nigeria' <https://pdf.usaid.gov/pdf_docs/PA00Z332.pdf> Accessed May 16, 2023.

⁷ Constitution of the Federal of Nigeria, 1999 (as amended) s 153(1)(f).

⁸ Electoral Act, 2022, s 1.

⁹ It provides that: 'The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.'

¹⁰ B. Ugochukwu, 'Ballot or Bullet: Protecting the Right to Vote in Nigeria' *African Human Rights Journal* <http://www.scielo.org.za/pdf/ahrlj/v12n2/10.pdf> Accessed 11 May 2023.

¹¹ E. F. Obani and B. H. Oдалonu, 'Election and Voting Behaviour in Nigeria' [2019] (5)(1) *South-East COEASU Journal of Teacher Education*; 122.

of the political system.¹² Because of the primacy of voting and elections in birthing legitimacy in political governance, a discussion of the capacity and age for participating in the electoral process of deciding who leads or occupies political offices becomes imperative.

Prior to the Second World War of 1939-1945, the voting age in almost all countries was 21 years or higher. In 1946, Czechoslovakia became the first state to reduce the voting age to 18 years¹³ and by 1968, a total of 17 countries had lowered their voting age, of which 8 were in Latin America, and 8 were communist countries.¹⁴ Many countries, particularly in Western Europe and North America, reduced their voting ages to 18 years during the 1970s, starting with the United Kingdom (Representation of People Act, 1969), Canada, Western Germany (1970), the United States (26th Amendment, 1971), Australia (1974), France (1974), Sweden (1975) and others.¹⁵ It was argued that if young men could be drafted to go to war at 18, they should be able to vote at the age of 18.¹⁶ By the end of the 20th century, 18 had become by far the most common voting age. However, a few countries maintain a voting age of 20 years or higher, and a few countries have a lower voting age of 16 or 17.¹⁷

In the late 20th and early 21st centuries voting ages were lowered to 18 in Japan, India, Switzerland, Austria, the Maldives, and Morocco. The vast majority of countries and territories have a minimum voting age of 18-years-old as of October 2020.¹⁸ According to data from the ACE Electoral Knowledge Network, 205 countries and territories have a minimum voting age of 18 for national elections out of 237 countries and territories the organisation has data on as of October 2020.¹⁹ As of the aforementioned date, 12 countries or territories have a minimum voting age of less than 18, with 3 countries or territories at 17-years-old, and 9 countries or territories at 16-years-old.²⁰ 16-years-old is the lowest minimum age globally for national elections; while the highest is 25-years-old which is

¹² *Ibid.*

¹³ <https://en.wikipedia.org/wiki/Voting_age> Accessed 11 May 2023.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

only the case in the United Arab Emirates (UAE). This age of 25 was also the case in Italy for Senate (upper house) elections until it was lowered to 18 in 2021. Italy's lower house of Parliament, the Chamber of Deputies, has had a minimum voting age of 18 since 1975, when it was lowered from 21.²¹

Since modern democratic transitions in any political system strive on elections and voting, an appraisal of the voting age in the 21st century Nigeria becomes pertinent.

Historical Overview of Elections and Voting in Nigeria

Generally, elections in Nigeria started in 1923 following the direction of a British colonial administrator (Hugh Clifford) through a legislative Act known as the Clifford Constitution.²² However, considering the diversity of people, groups and different cultures confined within the Nigerian borders, the different tribes and tongues as well as the colonial authorities that dominated the Western, Eastern and Northern regions of Nigeria, the people were offered vastly different suffrage qualifications.²³ For instance, it was only adult males who accumulated a minimum income of £100 in the year preceding the election, who were residents of Lagos or Calabar for at least one year, who were above the age of 21 and who were British subjects or natives of the Nigerian protectorate that were granted suffrage under the Clifford Constitution.²⁴ In 1923 when election was introduced via the Clifford Constitution of 1922 to 1953, no woman had the right to participate in election in Nigeria. It was only in 1954 that women of the Eastern and Southern regions were also granted the right to participate in election under the Lyttleton Constitution.²⁵

In 1979 however, the women of the Northern region were granted the suffrage under the Constitution of the Federal Republic of Nigeria (1979).²⁶

²¹ *Ibid.*

²² T. Takana 'Governor Clifford and Representative Government' [1967] (4) *Journal of the Historical Society of Nigeria*; 117-124

²³ E. Ezinge 'The Right to Vote in Nigeria: A Critical Commentary on the Open Ballot System' (1994) (38) (2) *Journal of African Law*; 173-180.

²⁴ J. A. A. Ayoade, 'Electoral Laws and National Unity in Nigeria' [1980] (23) (2) *African Studies Review*; 39.

²⁵ L. Oke, 'Democracy, Women's Political Participation and the Policy Environment in Nigeria' [2015] *Developing Country Studies*; 5.

²⁶ E. Azinge, *op. cit.*

The voting age more so, was lowered to 18 and the citizens of Nigeria were included in presidential elections. Being under serious pressure from parties such as the Women's Movement of Nigeria (WN) and the Women Wing of the Action Group (AG), Nigeria and the British colonial government passed through series of constitutional Conferences in order to ascertain the methods through which elections would be framed post-British colonialization.²⁷

The Lyttleton Constitution of 1954 afforded tax- paying Southern Nigeria women the right to participate in elections.²⁸ However, owing to the fact that many women did not pay taxes, the female electoral base was abysmally curtailed.²⁹ The Women Movement, notably including its president (Elizabeth Adekogbe), argued for universal suffrage excluding the tax requirement in order to expand the electoral process by voting or running for office.³⁰ It was, however, only after the military coups of 1966-1978 that true universal suffrage was granted under the 1979 Constitution of Nigeria. Since the return to democracy in 1999, Women have been participating in elections in Nigeria. The 1999 Constitution of Nigeria guarantees gender equality and no one is discriminated upon by reason of sex, tongue, tribe, etc.³¹

From the foregoing historical accounts, and as submitted by one writer,³² colonialism affected Nigerian women adversely as they were denied the franchise. It was also only in the 1950s that women in Southern Nigeria were given the franchise.³³ Three women were appointed into the House of Chiefs, namely Chief (Mrs.) Olufunmilayo Ransome Kuti (appointed into the Western Nigeria House of Chiefs); Chiefs (Mrs.) Margaret Ekpo and Janet Mokelu (both appointed into the Eastern Nigeria House of

²⁷ S. Panata, 'Campaigning for Political Rights in Nigeria: The Women Movement in the 1950s' [2016] *Women, Gender, History*; 175-185.

²⁸ L. Oke, *op. cit.*

²⁹ J. A. A. Ayoade, *op. cit.*

³⁰ S. Panata, *op. cit.*

³¹ See Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 42 (1) (a) (2).

³² O. Oluyemi, 'Monitoring Participation of Women in Politics in Nigeria' https://unstats.un.org/unsd/gender/Finland_Oct2016/Documents/Nigeria_paper.pdf > Accessed 16 May 2023.

³³ *Ibid.*

Chiefs).³⁴ The women's wings of political parties possessed very little functional relevance.³⁵

Conceptualization of Election

As opined, by one writer,³⁶ the founding pillars of any democratic political system, whether considered fragile or established, remain undoubtedly elections which can simply be taken as the most critical and visible means through which all citizens can peacefully choose or remove their leaders, and which are evidently costly affairs.³⁷ In other words, elections are the principal instruments that 'compel or encourage the policy-makers to pay attention to citizens.'³⁸ Indeed, the winning political party of the elections, or ruling party, is conceived as holding temporarily the mandate of the entire citizenry, only in so far as it continues to win elections.³⁹

Elections are the central institution of democratic representative governments.⁴⁰ Because in a democracy, the authority of the government derives solely from the consent of the governed.⁴¹ The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.⁴² All modern democracies hold elections.⁴³ Jeane Kirkpatrick, scholar and former U.S. ambassador to the United Nations, has offered this definition:

Democratic elections are not merely symbolic . . . They are competitive, periodic, inclusive, definitive elections in which the chief decision-makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their criticism and to present alternatives.⁴⁴

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ B. Mesfin, 'Democracy, Elections & Political Parties: A Conceptual Overview with Special Emphasis on Africa' <<https://www.files.ethz.ch/isn/98951/PAPER166.pdf>> Accessed 31 May 2023.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ See <<https://usa.usembassy.de/etexts/gov/democracy-elections.htm>> accessed 23, May, 2023.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

According to Nwagboso Chris Iwejuo,⁴⁵ 'Election is the process of choosing a person or a group of people for a political position through the instrumentality of voting.'⁴⁶ It is an indispensable attribute of democracy in every well-intentioned society.⁴⁷ Most social and political groups like Nigeria often times adopt election as a means of selecting their leaders and policy makers.⁴⁸ Elections, therefore, are central institutions of democratic representative governments. Election in most democratic states is usually conducted by an institution set up by law.⁴⁹ Quoting the Vanguard of 13 February, 2009, a learned writer has posited that 'Free and fair elections are the cornerstone of every democracy and primary mechanism for exercising the principles of sovereignty of the people. Through such elections, citizens participate in the governance of their country, by choosing those who govern in the quest for development.'⁵⁰

On his part, Ayoade defines elections as the means by which the general public determines the people who govern them and the policies under which they are governed.⁵¹ There is a strong link between elections and democracy.⁵² We view elections as the legally and statutorily backed and recognised means of periodically choosing aspirants and candidates for political offices in a democracy. They are a means through which the qualified electorates register their likes and dislikes over candidates vying for elective positions in countries and societies governed by democratic tenets.

The word 'election' has equally been conceptualized by the Nigerian judiciary. The term as used in section 137(1) (b) of the Constitution of

⁴⁵ Nwagboso Chris Iwejuo, 'Elections and Electoral Tribunal in Nigeria' [2011](5)(2) *African Research Review: An International Multi-Disciplinary Journal, Ethiopia*, 43.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ C. E. Ibe and U. H. Onyekachi, 'Proving Substantial Non-Compliance in Election Petition Under the Nigerian Electoral Act: A Mirage or a Reality?' <https://www.nigerianjournalonline.com/index.php/ACARELAR/article/download/1702/1664?cf_chl_tk=hoDJFdPm_FZk.wJiWr4HR3QheyIQuTkfiXcJitZDVRA-1684858960-0-gaNycGzNC7s> Accessed 23 May, 2023.

⁴⁹ *Ibid.*

⁵⁰ Nwagboso Chris Iwejuo, *op. cit.*

⁵¹ M. A. Ayoade, 'The Legal Framework for E-voting System in Nigeria' [2009] (1)(1) *Ambrose Alli University Law Journal*, 1.

⁵² *Ibid.*

the Federal Republic of Nigeria 1999 (as amended) has been broadly interpreted by the Court of Appeal in *Progressive People Alliance (APP) v. Sariki*⁵³ to mean the “process of choosing by popular votes a candidate for a political office in a democratic system of government.”

It cannot refer exclusively to the polls. The casting of votes by the electorates on the day of the polls is just part of the electoral process.⁵⁴

There is no doubt, from the foregoing definitions, that free, fair, credible and periodic elections conducted and monitored by fearless and independent electoral institution are the hallmarks of true democracy. As rightly noted, free and fair elections are the keystone of any democracy.⁵⁵ They are essential for the peaceful transfer of power.⁵⁶ When voters elect representatives, they elect the leaders who will shape the future of their society. This is why elections empower ordinary citizens: they allow them to influence the future policies of their government, and thus, their own future.⁵⁷

The Concept of Voting

Although it is true that voting is not a sufficient condition for democratic governance, it is certainly a necessary condition thereof.⁵⁸

Indeed, along with bargaining it belongs to the most important ways of reaching collectively binding decisions.⁵⁹ Voting is resorted in a wide variety of contexts: political elections, decision making in multi-member bodies, electing best entries in song contests, determining the winners in figure-skating, issuing verdicts in juries, electing officers to various positions in public organizations etc.⁶⁰ Voting is sometimes used in purely informal and ad hoc settings, such as when a group of people is deciding how to spend an evening together or a family is deciding on the name of

⁵³ [2007]17 NWLR (pt. 1064) 456.

⁵⁴ *Ibid.*

⁵⁵ https://americancenterjapan.com/wp/wp-content/uploads/2015/10/elections_brief.pdf > Accessed 31 May 2023.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ H. Nurmi, *Voting Theory* https://www.researchgate.net/publication/226664299_Voting_Theory > Accessed 31 May, 2023.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

a just acquired pet.⁶¹ From Nurmi's conceptualization, voting permeates all collective decision-makings. According to M. P. Fiorina,⁶² in his conceptualization, of all possible political actions the voting decision has received the most attention from behavioral political scientists.⁶³ The voting act is the fundamental political act in a democracy.⁶⁴ It is the most widespread political act.⁶⁵ Furthermore, on the surface, at least, the voting act would appear to be one of the simplest (and therefore, most understandable) political acts.⁶⁶ The term 'vote' refers to 'a valid mark on an official ballot indicating the voter's preference for a particular candidate or ballot question.'⁶⁷ The voting process concerns an entire array of procedures, people, resources, equipment and locations associated with conducting elections.⁶⁸ From the foregoing conceptualisations, it is beyond doubt in our humble view, that the terms 'election' and 'voting' are inseparable.

Legal and Institutional Frameworks for Elections and Voting in Nigeria

Elections and voting being so important to Nigeria's democracy and the entire polity have legal backing and regulatory regime.

(a) The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria⁶⁹ 1999 (as amended) being the supreme legal document of the country by virtue of section 1(1) (3) of the Constitution itself, is one of the legal basis of elections and voting in Nigeria. The CFRN has by section 153(1) (f) established the Independent National Electoral Commission (INEC) among other federal commissions and councils. The composition and powers of INEC

⁶¹ *Ibid.*

⁶² M. P. Fiorina, 'The Voting Decision: Instrumental and Expressive Aspects' [1976] (38) *The Journal of Politics*, 391 < <https://core.ac.uk/download/pdf/211370371.pdf> > Accessed 31 May 2023.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ https://www.eac.gov/sites/default/files/glossary_files/Glossary_of_Election_Terms_EAC.pdf > Accessed 31 May 2023.

⁶⁸ *Ibid.*

⁶⁹ Hereinafter referred to as the CFRN, 1999.

are respectively provided for under items 14 and 15 of Part I of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). According to Item 15, Part I, Third Schedule, the Independent National Electoral Commission⁷⁰ shall inter alia have power to:

- Organize, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a state, and to the membership of the Senate, the House of Representatives and the House of Assembly of each state of the Federation;
- Register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly;
- Monitor the organisation and operation of the political parties, including their finances; conventions, congresses and party primaries;
- Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
- Arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution; and
- Monitor political campaigns and provide rules and regulations which shall govern political parties.

That elections and voting are backed by the Constitution could be gleaned from the wordings of sections 221-222. Section 221 precludes any association other than a political, from canvassing for votes for any candidate at any election.

(b) The Electoral Act, 2022

The Electoral Act, 2022, which repealed the Electoral Act, 2010⁷¹ became effective and operational from 25th day of February, 2022 having been duly passed or enacted by the National Assembly⁷² of the Federal Republic

⁷⁰ Herein called 'the Commission'.

⁷¹ No. 6, 2010.

⁷² The phrase is the umbrella term for both the Senate (the Upper House) and the House of Representatives (the Lower House) in Nigeria.

of Nigeria. Electoral Act, 2022, is the principal legislation which has been specifically enacted in line with the constitutional provisions to regulate the conduct of Federal, State and Area Councils in the Federal Capital Territory elections; and for related matters.⁷³ It is the main statute which takes care of all election and voting procedures and processes including the qualification and disqualification of voters,⁷⁴ political parties and their candidates.

The Institutional Framework for Elections and Voting in Nigeria The key institution responsible for the conduct of national election in Nigeria is the Independent National Electoral Commission (INEC). It is a body corporate with perpetual succession and may sue and be sued in its corporate name.⁷⁵ INEC is the main regulatory and statutory body which constitutionally and statutorily empowered to among other things, Organize, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a state, and to the membership of the Senate, the House of Representatives and the House of Assembly of each state of the Federation;⁷⁶ register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly;⁷⁷ conduct voter and civic education;⁷⁸ promote knowledge of sound democratic election processes;⁷⁹ and conduct any referendum required to be conducted under the provisions of the Constitution or an Act of the National Assembly.⁸⁰

Qualification for Voting in Nigeria: A Comparative Perspective The voting age in Nigeria has been statutorily pegged at 18 years by the Electoral Act, 2022.⁸¹ Age is not the only qualification for exercising franchise in Nigeria. apart from the age qualification, for a person to be eligible to be registered as a voter in Nigeria, such a person must be a citizen of Nigeria,⁸²

⁷³ See the Explanatory Memorandum to the Electoral Act, 2022.

⁷⁴ See the Electoral Act, 2022, s 12.

⁷⁵ See the Electoral Act, 2022, s1(1) (a) (b).

⁷⁶ Constitution of the Federal Republic of Nigeria, 1999 (as amended), item 15 (a) prt I, Third Schedule.

⁷⁷ *Ibid.* item 15 (b) prt I, Third Schedule.

⁷⁸ The Electoral Act, 2022, s 2 (a).

⁷⁹ *Ibid.* s 2 (b).

⁸⁰ *Ibid.* s 2 (c).

⁸¹ *Ibid.* s 12(1)(b).

⁸² *Ibid.* s12(1) (a).

that he or she is ordinarily resident, works in, originates from the Local Government Area Council or Ward covered by the registration centre,⁸³ that such a person presents himself to the registration officers of the Commission for registration as a voter,⁸⁴ that the person is not subject to any legal incapacity to vote under any law, rule, or regulations in Nigeria.⁸⁵

It is an offence punishable with a fine of not more than #100,000 (one hundred thousand naira) or imprisonment for a term not more than one year or both for any person to intentionally procure the inclusion in the Register of Voters of his or herself or any other person with the knowledge that he or she or that other person ought not to have been registered.⁸⁶ It is submitted with respect that anyone who procures his or her registration as a voter in clear violation of section 12 (1) (b) of the Electoral Act, 2022 may be punished in accordance with the provisions of section 23 (1) (e) of the same Act.

It is decipherable from the Electoral Act itself that age alone is not the only qualification for registration as a voter in Nigeria. Nigerian citizenship is one of them.

Age of Voting Compared with Age of Criminal Liability in Nigeria

In the same Nigeria where a person who is less than 18 years old is disqualified from exercising his or franchise and not allowed to be registered as a voter under the Electoral Act, 2022, such a person may be deemed to be knowledgeable enough to differentiate between right and wrong.

For instance, by section 30 of the Criminal Code Act,⁸⁷ it seems that a person who is 12 years and above, but less than even 17 or 18 years of age, can be criminally responsible for some act or omission. By the wordings of the section, also, it appears that a person from 8 years to 11 years old may be criminally liable if there is proof that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

⁸³ *Ibid.* s 12(1) (c).

⁸⁴ *Ibid* s 12 (1) (d).

⁸⁵ *Ibid* s 12 (1) (e).

⁸⁶ *Ibid* s 23 (1) (d)-(e).

⁸⁷ Cap C38 LFN 2004.

Section 30 of the Criminal Code Act seems to be saying that a male person who is not under 12 years, but may be less than 17 or 18 years old is capable of having carnal knowledge. For the avoidance of doubt, the third paragraph of section 30, Criminal Code Act reads and provides: 'A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.'

Worthy of our appraisal is the age of criminal liability for the offence of murder under the same Criminal Code.⁸⁸ By section 319 of the Criminal Code, 'where an offender who in the opinion of the court had not attained the age of seventeen years at the time the offence was committed, has been found guilty of murder, such offender shall not be sentenced to death but shall be ordered to be detained during the pleasure of the President and upon such an order being made, the provisions of Part 44 of the Criminal Procedure Act⁸⁹ shall apply.' From the quoted section of the Criminal Code, a person who is precluded (as a result of not being 18 years old) from taking part in the electioneering process leading to his being led and presided over by another is presumed to be knowledgeable enough at 17 years to differentiate between what is right and wrong. In our humble view, the approach of the Criminal Code and of course similar statutes, in punishing for murder those under the age of 18 years as well as other non-age criteria should be followed and adopted during elections.

Voting Capacity in Selected Jurisdictions

An attempt is made in this part to examine the voting ages in some countries and jurisdictions outside Nigeria.

(a) Argentina

In Argentina, the voting age is now 16 years by virtue of Article 1, Law 27,774 on Citizenship Rights promulgated in 2012.⁹⁰ Equally, in Argentina,

⁸⁸ See the Criminal Code Act, Cap C38 LFN 2004 s 319(2).

⁸⁹ Before the enactment of the Administration of Criminal Justice Act (ACJA) 2015, and the Administration of Criminal Justice Laws of the various States of the Federation, the Criminal Procedure Act used to be procedural statute for criminal trials in the southern part of Nigeria, except Lagos State whose Administration of Criminal Justice Law existed before the ACJA, 2015.

⁹⁰ <https://archive.crin.org/sites/default/files/crin_voting_ages_compiled_0.pdf> Accessed 2 June 2023.

voting during elections is compulsory and failure or refusal to so vote attracts a small fine if no legitimate reason is given.⁹¹

Research on Argentina shows that compulsory voting has a greater effect on unskilled citizens than on skilled citizens, suggesting that compulsory voting lessens the inequality in turnout.⁹² It is worthy of note that in Argentina, legal devices for voting from abroad were added in 1991 while implementation began in 1993.⁹³

(b) Austria

In Austria, the voting age at all electoral levels was lowered from 18 to 16 years of age in 2007.⁹⁴ At the same time the minimum age for running as a candidate was reduced from 19 to 18 years of age.⁹⁵ The required age is 35 years only when running for president.⁹⁶ Voting restrictions for people with mental disabilities have also ceased to exist.⁹⁷ Until 1987, citizens under legal guardianship were automatically disenfranchised from all elections. The Austrian Constitutional Court found this unconstitutional since the law did not differentiate between the reasons for and the degree of guardianship.⁹⁸

The right to vote for Austrian citizens has been significantly extended over the last 25 years concerning minimum age, the inclusion of people with disabilities and the inclusion of prisoners and convicts. Non-resident citizens have been granted the right to postal voting alongside Austrians

⁹¹ https://www.argentinaelections.com/Compulsory%20voting%20around%20the%20world_UK%20Commission.pdf > Accessed 2 June 2023.

⁹² See Y. Gonzalez and S. A. Snell '¿Qui en Vota? Compulsory Voting and the Persistence of Class Bias in Latin America < https://scholar.harvard.edu/files/yanilda/files/gonzalezsnell_quien_vota.pdf > Accessed 2 June 2023.

⁹³ Carlos Navarro Fierro and others, 'Electoral Studies in Compared International Perspective: Voting from Abroad in 18 Latin American Countries' < <https://aceproject.org/about-en/voting-from-abroad-in-18-latin-american-countries> > Accessed 2 June 2023.

⁹⁴ See Gerd Valchars, 'Report on Political Participation of Mobile EU Citizens: Austria <https://cadmus.eui.eu/bitstream/handle/1814/72560/RSCAS_GLOBALCIT_PP_2021_6.pdf?sequence=1> Accessed 2 June 2023.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

temporarily abroad and (general) postal voting from inside the country by absentee ballot cards has been made possible for national and regional elections.⁹⁹

It should be noted that in 2007, Austria became the first European country to lower its legal voting age to 16 in all national, regional and local elections.¹⁰⁰ Importantly, turnout in national parliamentary elections had dropped by almost 6 percentage points in Austria's 2006 parliamentary elections, which prompted the two members of the ruling coalition, the Social Democrats (SPÖ) and the People's Party (ÖVP) to discuss strategies to reinvigorate electoral participation.¹⁰¹

(c) *Germany*

In Germany, eleven of sixteen states have lowered the voting age for municipal elections or state and municipal elections from 18 to 16.¹⁰² Following the German federal elections in 2021, the new coalition government committed to lowering the voting age to 16 at the federal level and for European Parliament elections.¹⁰³ In doing so, Germany joined other EU countries in making commitments to earlier enfranchisement such as Belgium, which has lowered the voting age for the upcoming European Parliament elections.¹⁰⁴ While the opposition Christian Democrats have opposed the move, new evidence from the elections suggests that earlier enfranchisement may indeed be a good idea.¹⁰⁵ A comparison of the turnout rates of young people who previously could vote in lower-level elections at the age of 16 to those who could not add to the increasing evidence from various countries that a lower voting age may provide opportunities for youth political engagement.¹⁰⁶

⁹⁹ *Ibid.*

¹⁰⁰ Laura Bronner and David Ifkovits, 'Voting at 16: Intended and Unintended Consequences of Austria's Electoral Reforms'[2019] (61) *Electoral Studies* <https://www.sciencedirect.com/science/article/abs/pii/S0261379419300551> Accessed 2 June 2023.

¹⁰¹ *Ibid.*

¹⁰² See Arndt Leininger and Thorsten Faas, 'Votes at 16 in Germany: Examining Subnational Variation' <https://www.researchgate.net/publication/337605491_Votes_at_16_in_Germany_Examining_Subnational_Variation > Accessed 3 June 2023.

¹⁰³ Jan Eichhorn and Christine Huebner, 'Evidence from Germany: Does Reducing the Voting Age to 16 Lead to Higher Turnout at Elections?'

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

Germany is similar to the UK in its non-uniform approach to the voting age. While voting at general elections is restricted to those aged 18 years or older, whether you can vote at 16 in other elections depends on where you live.¹⁰⁷ There are some states in Germany in which the voting age is lowered for municipal elections, but not those at the state-level, resulting in a three-tier system of enfranchisement.¹⁰⁸

(d) *Scotland*

Scotland has lowered the voting age to 16 for local and devolved elections.¹⁰⁹ This followed the extension of the vote to 16- and 17-year-olds to allow them to take part in the 2014 referendum on Scottish independence.¹¹⁰ The law was subsequently changed in Scotland to lower the voting age to 16. This applies to elections to the Scottish Parliament and local government elections in Scotland.¹¹¹

(e) *Wales*

The Wales Act, 2017¹¹² gave the National Assembly for Wales and the Welsh Government legislative competence for the administration of Assembly and local government elections in Wales, including the franchise for those elections.¹¹³ The National Assembly for Wales passed the Senedd and Elections (Wales) Act, 2020 at the end of 2019 and it received Royal Assent on 15 January 2020.¹¹⁴

It amended the law to allow 16- and 17-year-olds to register to vote at Senedd Cymru/Welsh Parliament elections held on or after 5 April 2021.¹¹⁵

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ See Neil Johnston and Elise Uberoi, 'Voting Age' [2020] (1747) *Briefing Paper*, <<https://researchbriefings.files.parliament.uk/documents/SN01747/SN01747.pdf>> Accessed 5 June 2023.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Available at < <https://www.legislation.gov.uk/ukpga/2017/4/contents/enacted> > Accessed 5 June, 2023.

¹¹³ Neil Johnston and Elise Uberoi, *op. cit.*

¹¹⁴ The Senedd and Elections (Wales) Act 2019 became law in Wales on 15 January 2020. See < <https://business.senedd.wales/mgIssueHistoryHome.aspx?Iid=23754>> Accessed 5 June, 2023.

¹¹⁵ See Neil Johnston and Elise Uberoi, *op. cit.*

The Act also renames the National Assembly for Wales the Senedd Cymru or Welsh Parliament. The new names took effect on 6 May 2020. A Bill to allow 16- and 17-year-olds to vote in local government elections in Wales has now also been passed. The Local Government and Elections (Wales) Bill was introduced to the Senedd on 18 November 2019 and included provisions to lower the voting age for local government elections in Wales. The Bill passed its final stage in a year later, on 18 November 2020.¹¹⁶ Police and Crime Commissioner Elections are a reserved matter and the voting age remains at 18 for PCC elections in Wales.¹¹⁷

(f) *Brazil*

In Brazil, as noted by T. J. Power,¹¹⁸ voting is compulsory for all literate citizens between the ages of 18 and 69; it is voluntary for illiterates and for those aged 16-17 and 70 and over.¹¹⁹ This means that citizens in the compulsory category must seek out the electoral justice and apply for a título eleitoral (voter registration card), but citizens in the voluntary category are not required to register.¹²⁰

In the words of Raphael Bruce,¹²¹ Brazil's current compulsory voting legislation started with the promulgation of the Brazilian Constitution of 1988.¹²² It states that every literate citizen older than 18 and younger than 70 years old must attend the ballots on Election Day or justify its absence in a special court. Citizens older than 16 and younger than 18 are allowed to register to vote, but it is not compulsory. If an individual

¹¹⁶ Royal Assent to the said Bill was given on 20 January 2021. See <<https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=26688>> Accessed 5 June, 2023.

¹¹⁷ The Wales Act, 2017, s 8 (8) (1C) (a). Available at <https://www.legislation.gov.uk/ukpga/2017/4/part/1/crossheading/elections/enacted> > Accessed 5 June 4, 2023.

¹¹⁸ T. J. Power, 'Compulsory for Whom/ Mandatory Voting and Electoral Participation in Brazil, 1986-2006'[2009] (1) (1) *Journal of Politics in Latin America*, 97-122. <<https://d-nb.info/996074813/34>> Accessed 5 June, 2023.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Raphael Bruce, 'Mandatory Voting and Political Interest in Brazil' [2015] *Preliminary Draft for the Harvard Political Economy Workshop*, https://web.lists.fas.harvard.edu/archive/list/gov3007-1@lists.fas.harvard.edu/message/C2C7ZHX5OHPYU_GHCZYCEG64GEFSJZUDM/attachment/4/02-09-2015_Gov30_07_Bruce.pdf> Accessed 5 June, 2023.

¹²² *Ibid.*

fails to justify his absence, he or she must pay a small fine of R\$ 3.00 (roughly 1.15 dollars), which can be multiplied tenfold according to the decision of the judge handling the case. Those who fail to justify three times are also subject to a number of sanctions, such as not being allowed to issue a new ID or a new passport, being ineligible for cash transfer programs, credit by financial institutions maintained by the government, public jobs and public education.¹²³

Apart from the jurisdictions examined above, others such as Cuba, Ecuador, Malta and Nicaragua, have lowered voting age to 16 years.¹²⁴ According to the ACE Electoral Knowledge Network,¹²⁵ the age of voting is 17 years in countries such as Indonesia, Democratic People's Republic of Korea and Timor-Leste.¹²⁶

The Utility of Lowering the Voting Age in Nigeria

Periodic and regular elections are a *sine qua non* to the sustenance of democracy. As noted, democracy is inconceivable without elections held in accordance with certain principles that lend them their democratic status, i.e. to implement people's rule.¹²⁷ There is a general agreement about the centrality of elections as the means by which the people expresses its will, and through which it lays down the constitutional basis for the authority of government.¹²⁸

¹²³ *Ibid.*

¹²⁴ The ACE Electoral Knowledge Network, *Youth and Elections* <<https://aceproject.org/ace-en/topics/yt/yt20/lowering-the-voting-age> > Accessed 5 June, 2023.

¹²⁵ The ACE Electoral Knowledge Network is a web portal with information on elections designed to meet the needs of people working in the electoral field. It was launched on 1 October 1998 < <https://aceproject.org/> > Accessed 5 June, 2023.

¹²⁶ East Timor, also known as Timor-Leste officially the Democratic Republic of Timor-Leste, is a country in Southeast Asia. It comprises the eastern half of the island of Timor, of which the western half is administered by Indonesia, the exclave of Oecusse on the islands north-western half, and the minor islands of Atauro and Jaco Australia is the country's southern neighbour, separated by the Timor Sea. The country's size is 14,874 square kilometres Dili is its capital and largest city. https://en.wikipedia.org/wiki/East_Timor > Accessed 5 June 2023.

¹²⁷ Congress of Local and Regional Authorities of the Council of Europe, *Voting at 16: Consequences on Youth Participation at Local and Regional Level* < <https://rm.coe.int/en-vote-at-16-a6-web-collection-elections-democratiques/1680a8781c> > Accessed 5 June, 2023.

¹²⁸ *Ibid.*

According to Barrett and Pachi,¹²⁹ 'Allowing 16- and 17-year-olds to vote has the additional benefit of enabling them to seek political representation on matters that can deeply affect their lives. This will not only reinforce their levels of political internal efficacy but will also have an effect on the candidates who are elected, their political priorities and the extent to which the policies that they put forward take into account the concerns and views of youth.'

It has been argued that giving young people the chance to vote earlier in life will also give them a habit of voting that over time will have a positive effect on turnout levels.¹³⁰ Allowing 16 and 17-year-olds to vote empowers them to engage with the political system.¹³¹ Young people voting would lead to a fairer and more inclusive youth policy.¹³²

Furthermore, there is the argument that young people should not be expected to contribute to society through taxation as members of the armed forces, or by parenting children, without having a say in how that society is governed. Another persuasive argument is that the low turnout of younger people at elections might be dealt with by engaging them earlier in the political process. Taken individually, each of those arguments is forceful, but collectively they make a robust case for reform.¹³³

It is an opportunity to invigorate a new generation of politically active and engaged citizens, and that would create a more open and fair political system. Due to new technologies, young people are more informed than ever before, and more able to seek out information and to campaign on issues that affect them.¹³⁴

¹²⁹ Quoted in Norberto Ribeiro Carla Malafaia and Teresa Ferreira, 'Lowering the Voting Age to 16: Young People making a Case for Political Education in Fostering Voting Competencies' [2022] *Education, Citizenship and Social Justice*, 1-17.

¹³⁰ S. Champion, 'Votes at 16 will not solve the problem of youth disengagement overnight, but it will help us to address the issue' [2014] *Democratic Audit* < <https://www.democraticaudit.com/2014/05/14/votes-at-16-will-not-solve-the-problem-of-youth-disengagement-overnight-but-it-will-help-us-to-address-the-issue/>> Accessed 5 June 2023.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

Conclusion and Recommendations

This paper has found out that in many of the other jurisdictions examined, the voting age has been reduced to either 16 or 17, and in some, voting has been made mandatory with regard to specific elections and specific positions. We recommend that Nigeria should emulate the other jurisdictions examined herein by not only reducing the voting age from 18 to 16, but also by making voting compulsory as well.

The paper finds as a contradiction in terms in Nigeria for a person who is precluded or disqualified (for being less than 18 years old under the Electoral Act, 2022¹³⁵) from taking part in the electioneering process leading to his being led by another, is presumed to be knowledgeable enough at age 17 to differentiate between right and wrong with regard to the offence of murder.¹³⁶

In this wise, an amendment to the Electoral Act, 2022 is recommended and proposed so as to extend franchise to all students of tertiary institutions of learning,¹³⁷ even though they may be less than age 16 herein canvassed, all persons who are gainfully and legitimately employed in the private or public sector, and all those artisans who are now masters in their various trades.

¹³⁵ S 12(1)(b).

¹³⁶ See the Criminal Code Act, ss 30, 319(2).

¹³⁷ This should be so because very many young ones have passed out of secondary school before even age 16 and would have been taught subjects such as social studies, civic education, government and history which would adequately equip him or her with the knowledge to appreciate the essence of voting during elections.