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Paving the Way for Entrenching the Diaspora's Voting Rights under the Nigerian Laws: Legal Prospects, Challenges and Potential Solutions

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Abstract

Diaspora overseas or external voting hinges on citizen's universal right to vote and has become popular among modern democracies all over the world. Over a hundred nations have so far adopted overseas voting with varying scopes and/or restrictions. Currently, Nigerian laws do not provide for the right for Nigerians living overseas to participate in elections, unless they personally present themselves for registration and voting at designated centers in Nigeria. Since 1999, calls have persisted among Nigerians in the diaspora for law reforms to enable them to exercise their universal right to vote in elections. Since then, various administrations in the Nigerian government have yielded to those calls by setting up an dedicated independent body that is saddled with the responsibility of engaging and mobilizing Nigerians living overseas as equal allies in national development. Nigerians in the diaspora, as equal citizens, should be allowed to exercise their right to vote just like their peers. This article reviews the 1999 Nigerian Constitution and the Electoral Act of 2010 and finds that there are some legal hurdles that have to be tackled to allow diaspora overseas voting, and proffers some constitutional amendments and other legal reforms that are necessary to bring this lofty concept into fruition.

Keywords

Diaspora Voting,
External Voting,
Nigerian Elections,
Nigeria, Nigerian
Diaspora

Introduction

Diaspora voting is a legal framework that entitles citizens in the diaspora to exercise their democratic rights to vote in national elections from a foreign territory (Assistance, 2007). The demand for voter enfranchisement for citizens living abroad cannot be separated from a broader sense of the notion that, the right to vote has become universally accepted as a basic human right (Trócsányi, 2014). The right to vote is internationally accepted under the international human rights laws and constitutio-

nally protected as a fundamental human right.

From the outset, it would make sense to contextualize the term diaspora, and attempt to juxtapose it from the similar terms, such as economic emigrants, in order to identify who is to be covered under diaspora voting. Etymologically, the term diaspora can be traced to the Greek verb διασπείρω (*diaspeirō*), which means scattering seeds, or sowing across in an agricultural sense. Likewise, the modern concept of the term diaspora may mean “the uprooting and transplanting of people in a new area, their making new roots, their spreading out and cultural development” (Constant & Zimmermann, 2016, p. 2). The term diaspora, once reserved for describing Jewish, Greek, and Armenian dispersion is often used synonymous to immigrants (Trier, 1996), or used interchangeably with expatriate, refugee, guest worker, exile/overseas community, ethnic with expatriate, or transitional communities (ibid p. 1446). Most often, data from migrant stocks and remittances are used in the study of diaspora (Constant & Zimmermann, 2016). The UN’s International Organization for Migration (IOM) has defined the term diaspora as:

Migrants or descendants of migrants, whose identity and sense of belonging have been shaped by their migration experience and background. They maintain links with their homelands, and to each other, based on a shared sense of history, identity, or mutual experiences in the destination country (IOM, 2019, p. 1).

In this sense, Robin Cohen has identified some common characteristics of diasporas. These characteristics include: *Migration* (forced or voluntary; for work, trade, or on asylum), having an *idealized memory* about the ancestral home country; a *continuing connection* to the home country, a strong *group consciousness* sustained over time, and a *sense of kinship* with diaspora members in other countries (Cohen, 2008). However, he further cautioned that we should avoid a formal definition of diaspora, but rather use common features, as not all diaspora would exhibit all the features to the same degree at all times (Cohen, 2021). Another author further reduced these elements into three: *migration* (seeking greener pasture, or avoiding persecution or disaster), *dispersal* to different host countries with different socio-cultural norms, and *preservation of identities* (cultural, ethnic, or religious) that are linked to the homeland (Constant & Zimmermann, 2016). While diaspora may be considered to be a population sharing a common ancestry scattered in different parts of the world, the term emigrants refers to people moving to different areas in search of a settlement. The key distinction between the two is that, unlike emigrants, diasporas maintain a strong link to their ancestral homeland. However, contemporary shifts in immigration patterns are diluting the key difference between the two terms because of the growing number of populations in the diaspora that are linked neither to homeland nor at their places of destination (Pasura, 2010).

Furthermore, Hersi (2021) posited that the diaspora community's size and visibility in the host country contribute in this identity formation. And they are now considered to be an important stakeholder in the development and prosperity of both their places of origin and host countries. Kaya (2021) opined that religion, too, plays an important role in the formation of social groups, e.g., migrants and refugees, citing imbedded stories in religious texts, and giving examples of Jews, Armenians, and Palestinians. Although the definition of the term diaspora has recently attracted debates, Mavroudi (2021) argued for a more flexible approach to diaspora that takes cognizance of all factors that can impact the *modus operandi* of diaspora in different settings and at different times.

Therefore, for the purpose of this discussion, we use the term diaspora to, loosely, describe those who identify with a "homeland", but live outside of it, including the first-generation emigrants and their foreign-born children, as long as they maintain some cultural, linguistic, historical, religious, or affective link to their home country (ibid p. 1446). This article focuses on populations of Nigerian people that meet this definition criterion.

Background: Diaspora Voting

While it is not within the scope of this article to deeply delve into the discussion on the merits and demerits of adopting diaspora voting, it would seem useful to provide, albeit, a scant context that might help the reader to understand and appreciate the magnitude and enormity of the prospects and challenges of adopting diaspora voting under Nigerian electoral laws. The contemporary practice of diaspora voting was first introduced in 1862 when US President Lincoln offered it to soldiers in the Union army. Despite his political motive (Lincoln was reportedly banking on the optimism that soldiers would vote for his Republican Party), this singular laudable step for the enfranchisement of soldiers had, arguably, paved way for the subsequent global demand for modern diaspora voting rights. Since then, the adoption of diaspora voting has proliferated across the world in the light of the growing attention to international migration and refugees related issues (Pogonyi, 2014).

Modern democracies adopt and introduce diaspora voting into their electoral systems for different reasons that are mainly historical and political in nature. For example, the United Kingdom introduced diaspora voting for its soldiers, as an appreciation for their role during the World Wars and the US introduced it in response to increased demand from US citizens living in the diaspora. In addition, many others adopted it with the hope that it would enhance the political fortunes of the ruling political parties (Ogbonnaya, 2013). It has been argued that the collapse of the Soviet Union along with dynamics of globalization and democratization contributed to the new trend towards

the enfranchisement of emigrants in elections across Africa and the world at large (Mohammed, 2021).

Notwithstanding the above, other explanations have been offered for the widespread adoption of diaspora voting worldwide. One of the explanations assumes that states adopt diaspora voting in order to reinforce bonds with their citizens in the diaspora (Hartmann, 2015). On the other hand, granting diaspora voting rights is portrayed to both domestic audience and international observers as a sign of democratic inclusivity and a show of loyalty, by giving an opportunity to inactive political groups in the diaspora to get involved in the dialogue for national development (Wellman, 2015).

Conversely, it has also been argued that evidence from the African context suggests that, rather, diaspora voting seems to be strategies to exploit diaspora resources to strengthen weak state resources. They warned that diaspora voting could potentially destroy the existing domestic political structures, undermine efforts to engage and mobilize citizens in diaspora for national development, and export their domestic politics to the diaspora (Iheduru, 2011).

While the debates rage on, diaspora voting has become a globally accepted concept in contemporary democracies that allow citizens overseas to vote in their domestic elections. Presently, about 115 countries across the world have established systems and structures that allow diaspora voting. This number of countries include 28 from Africa, 16 from the Americas, 41 from Europe, 10 from the Pacific, and 20 Asian countries (Ogbonnaya, 2013). And yet, Nigeria, the “Giant of Africa” and “Africa’s largest democracy” is far from adopting it, although all of its neighbors, except Cameroon, have already adopted diaspora voting. Nigeria and Liberia are the only two countries in West Africa without any legal framework for diaspora voting (Mohammed, 2021).

According to the Nigerian National Population Commission, in 2019, Nigeria maintained its position as the country with the largest population in Africa, with 198 million people (Nigerians in Diaspora Commission, 2021). And it is projected that over 17 million Nigerians are currently living in various countries across the world, while still continuing to maintain their links with Nigeria (Fidelis, 2017). After its return to democracy in 1999, Nigeria witnessed a new watershed in the government-diaspora relationship, with increased efforts of the government to engage the Nigerian Diaspora (Wapmuk et al., n.d.). This is also seen within the context of the shifting paradigm in the relations between African Diasporas and their home countries, which witnessed a change from antipathy to embracement and engagement (Iheduru, n.d.).

It should be noted that among those residing abroad, we can find different citizens having a different view of their home country. While we could find a lot to whom their country of origin does not mean anything anymore, a lot of others still have emotio-

nal ties and are interested in its current events (Trócsányi, 2014). For the most part, Nigerians living in the diaspora, despite their prolonged sojourn outside the country, have continued to maintain their national, ethnic, cultural, and religious link to, and connections with Nigeria, as a state and as a people. These links may result from the sense patriotism to love of the home state or, biological factors, common ancestry, shared traditions, joint historical experience, and a deep sense of communal solidarity (Sheffer, 2003, p. 222). Other factors involved may be decisions to maintain such links and may include calculations about possible gains and losses resulting from such decision (ibid p. 224).

Like their fellow Nigerians at home, they remain interested in what happens in Nigeria. It should be noted that Nigerians in the diaspora do partake in the socio-economic development of Nigeria in many different ways. Their substantial remittances, for instance \$25 billion (6% of the GDP) in 2019 (Agbakwuru, 2020), make Nigeria the second highest in remittance receipts in Africa, and first in sub-Saharan Africa. Additionally, Nigerians in the diaspora constitute a large chunk of highly educated professionals and skilled labor spread across the world that have potential influence different sectors and organizations across the world, thereby using their global exposure to positively impact Nigerian national development.

It is not surprising, that the government has started exploiting the diaspora as one of the real catalysts and assets for the economic development of the country, and is, therefore, committed to engaging them accordingly. Federal government dedicated bodies¹ encourage and sustain productive engagements with the diaspora and respond to their challenges and needs required for unhindered participation in national development (Nigerians in Diaspora Commission, 2021).

The diaspora in developing countries do not only contribute to national development through remittances, but more importantly, they also partake in the promotion of trade, investment, knowledge, and technology transfers (Plaza & Ratha, 2011). Nigeria has one of the largest African Diasporas scattered globally and continentally. The Nigerian Diaspora has developed dense transnational networks that engage with the government and Nigerians in complex and sophisticated ways (Ogen, 2017). Section 28 (1) of the 1999 Constitution (as amended) provides for dual citizenship that allows Nigerian citizens by birth to enjoy the benefits of citizenship while living abroad.

Nigerians in the diaspora are notably involved in national development in different ways. Diaspora remittances are the most remarkable part of their contributions to Nigeria's national development. This has a positive impact on poverty alleviation.

¹ Established the Nigerians in the Diaspora Organization (NIDO) in 2001 which later became Nigerians in Diaspora Commission by the enactment of the Nigerians in Diaspora Commission (Establishment) Act, 2017.

Just like Ethiopia, over 16% of Nigeria's total inflows from exports are from diaspora remittances (Funmilayo Modupe, 2018). Remittances are used for services like health (medical bills), housing, business start-ups, and education (school fees). Nigerians in the diaspora have also made investments in shares, stocks, and bonds. They are equally involved in health insurance, mortgages, and credit purchase schemes.

Nigerians in the diaspora also organize themselves as political pressure groups, e.g., Nigerian Association for Democratic Coalition Overseas (NADECO), that campaign for democratic reforms in Nigeria, especially during the military regimes. Nigerians in the diaspora are attached to their native culture. They organize Nigerian art exhibitions, dance performances, and musical concerts. And lastly, the Nigerian Diaspora often mobilize medical teams and offer free medical and surgical services to Nigerian patients in need (Modupe, 2018). Therefore, legalizing diaspora voting is not only rewarding, but would also further promote political inclusivity and encourage far-reaching contributions to Nigeria's political and socio-economic development. That would, in turn, increase voter participation, boost electoral integrity and credibility, and hence strengthen democratic legitimacy in Nigeria (Ogbonnaya, 2013). Granting diaspora voting can thus promote Nigeria's international ratings (Bibi-Farouk et al., 2019).

The government should aim at engaging, encouraging, and empowering Nigerians in the diaspora to enhance the implementation of the diaspora's rights to vote, through the provision of the required legal framework and necessary infrastructure. It is hereby argued that government partnership in development intervention has laid a good foundation and should be further exploited to yield good results. Perhaps, granting diaspora voting rights could potentially encourage them to become more engaged in dealing with conflict resolution and peace-building in Nigeria, in light of the current volatile political, security, and economic state of the nation (Modupe, 2018). The Diaspora Commission is already working with the National Assembly and other stakeholders, like the National Diaspora Voting Council, to hopefully, make this a reality in Nigeria through an amendment to the country's Electoral Act and the 1999 Constitution (Balogun, 2021). If the necessary legal framework is put in place, the outcome could help empower the millions of Nigerians overseas to vote during general elections (Ogbonnaya, 2013).

Legal Prospects of Diaspora Voting: Diaspora Vote as a Universal Human Right

The citizen's right to vote is a fundamental human right that is not only constitutionally protected but also universally acclaimed by international human rights conventions that Nigeria is a signatory to.² Those international declarations, conventions, and charters have all provided for the universal right of individuals to participate in the government of his country, either directly or through freely chosen representatives.

Article 21 of the Universal Declaration on Human Right (UDHR) provides as thus:

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. (UN, 1948, Art. 21 para 2)

Article 13 of the African Charter on Human and Peoples' Rights (ACHPR) provides:

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. Every citizen shall have the right of equal access to the public service of the country (Organization of African Unity, 1981, Art.13 para 1)

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(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 which 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 his country (UN, 1966, Art. 25)

Interestingly, the International Convention on the Protection of the Rights of All Migrant Workers (ICRMW) 1990, explicitly provides for the right of the migrant wor-

² See for example, Article 21 of the Universal Declaration of Human Rights, Article 13 of the African Charter on Human and Peoples' Rights, and Article 25 of The International Covenant on Civil and Political Rights.

ker and their family members:

Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights. (United Nations, 1990, Art. 41 para 1&2)

Often, diaspora voting is regulated by constitutions, electoral laws, and administrative regulations (Ogbonnaya, 2013). Some of the countries where the constitutions define such right include Portugal (Article 172), Spain (Article 68/5), and Nigeria (under section 77(2), 117(2) of the 1999 Constitution). These laws, variously or in combination, provide the legal framework for the eligibility of citizens in the diaspora to vote at local elections, where and how to vote at the host country, and also how election results are counted and transmitted to the elections authorities in Nigeria.

Legal Prospects of Diaspora Voting: The Current Status of Legal Protection for the Right to Vote Under Nigerian Laws

Constitutional Protection Against Discrimination

The Nigerian Constitution guarantees the protection of Nigerians against all forms of discrimination and from being subjected to any form of disability based on any grounds. That is to say, all Nigerians have equal rights before the law, and in particular, to participate in their governance according to the law. For instance, Section 15 (2) of the Constitution of the Federal Republic of Nigeria (1999, as amended) provides that “discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.” Furthermore, the 1999 Constitution of Nigeria in section 17 (3) (a) guarantees that all citizens have equal opportunity to secure employment and other social services, without discrimination. Finally, for the purpose of this argument, Section 42 (1) provides as follows:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-(a) be subjected to disabilities or restrictions or (b) be accorded any privilege or advantage (Constitution of the Federal Republic of Nigeria, 1999) .

However, as we can see in the next section, despite these proclaimed protections against discrimination, both the 1999 Constitution (as amended) and the Electoral Act of 2010 clearly discriminate against the diaspora’s right to vote in elections. And this is the focus of this article.

The Current Laws on the Right to Vote

As stated earlier on, the citizen's right to vote is defined and protected under the Constitution and the Electoral Act. Under the Constitution, we put forward some of the relevant sections as follows. The cumulative combined effect of the Constitutional and Electoral Act provisions clearly disenfranchise Nigerian citizens in the diaspora. For example, Sections 77 (2) (National Assembly) and 117 (2) (State Assemblies) of the (Constitution of the Federal Republic of Nigeria, 1999) as amended provides thus:

Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria [emphasis added] 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.

Similar provisions in respect to the presidential and governorship elections can be found, respectively, under Sections 132 (5) and 178 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) with the effect that, anyone who is eligible under Sections 77 (2), 117 (2) and 7 (4) also qualifies to, respectively, vote in national assembly, state assembly, and local government elections. Therefore, the eligibility for voting in any election hinges on eligibility under sections 77 (2) and 117 (2) of the Constitution, which clearly requires that a voter must be resident in an electoral constituency to enable them register for, and vote in a national election (1999 Constitution of the Federal Republic of Nigeria, 1999).

It is apparently in line with this constitutional requirement that the Electoral Act has attached the residency requirement to the right to vote. Under Section 9 (1) (Nigeria Electoral Act, 2010) (pursuant to S. 78 Constitution), the Independent Electoral Commission is required to maintain a register of which shall include the names of all persons entitled to vote in any federal, state, local government, or area council elections. Even more specifically, Section 12 (1) (Nigeria Electoral Act, 2010) provides that:

A person shall be qualified to be registered as a voter if such a person:

(a) is a citizen of Nigeria;(b) has attained the age of eighteen years;(c) is ordinarily resident, works in, originates from the Local Government/Area Council or Ward covered by the registration centre; (d) presents himself to the registration officers of the Commission for registration as a voter; and (e) is not subject to any legal incapacity to vote under any law, rule or regulations in force in Nigeria.

The common denominator to both the Constitution and the Electoral Act, as cited above, is that eligibility is contingent on local residency in the relevant electoral constituency at the time of registration and voting. And that is the crux of the matter:

the main legal challenge to diaspora voting rights under the Nigerian laws. The next section considers and examines this legal challenge and others bordering on politics, costs, and logistics.

Legal Prospects of Diaspora Voting: Some Challenges to Diaspora Voting Rights

Residency Requirement

The notion of diaspora voting as part of universal suffrage is neither self-evident nor unproblematic. As it can be clearly seen in the 1999 Constitution (as amended) under sections 77(2), and 117(2), as well as section 12(1) of the Electoral Act (2010), residency inside the Nigerian territory is a prerequisite for being registered as a voter or vote in elections (Assistance, 2007). That is to say that, any Nigerian in the diaspora, who is not physically present at an officially designated registration or voting location, shall not be eligible to register as a voter or vote on an election day. This completely disenfranchises Nigerians living in the diaspora. This, it is argued, does not conform to the constitutional protection of all Nigerians against all forms of discriminations as alluded to *supra*.

Cost/Benefit versus Politics

Although the notion of diaspora voting is overwhelmingly recognized and accepted worldwide, a push for law reform to enable its implementation in Nigeria is not without political pushback. It could be because it is viewed from the perspective of “what happens if it is not granted?” i.e., not providing diaspora voting will not stop citizens in the diaspora from sending remittances to their families, and it does not attract the same degree of potential international criticism as compared to denying access to international election monitors (Wellman, 2015).

Understandably, diaspora voting could be disproportionately expensive but whether or not its benefit outweighs the cost would seem to depend on the ruling government’s perception of the diaspora’s right to vote. While some governments apprise emigrants as a source of economic growth, others vilify them as state enemies or traitors for forsaking their countries. For instance, in 1992, Ghana’s Jerry Rawlings administration granted diaspora voting to selected categories of Ghanaian citizens abroad but explicitly excluded those who chose to emigrate on any other terms (Mohammed, 2021). Therefore, the view of the ruling party of the day in the political capital on diaspora voting could have an impact on its eventual outcome. Hence, the success, or otherwise, of diaspora vote implementation could largely depend on the current government’s view of the diaspora (Wellman, 2015). It is likely to succeed where the ruling party assumes that allowing diaspora voting will give it a political advantage,

whereas the chances are slim where they assume that the citizens have deserted their countries because of disenchantment with the countries' political or economic circumstances. However, in the Nigerian context, due to its ethnic, religious, and even economic diversity and the lack of accurate data on the diaspora, it is difficult to predict their political leanings (Mohammed, 2021).

Furthermore, it has been argued that the implementation of the diaspora vote also raises several logistical and financial challenges because rallying potential supporters from the diaspora is far more expensive than rallying support domestically. Therefore, political parties weigh the cost against potential electoral gains, and will only want to enfranchise diasporas if they are confident that it will provide them with an electoral advantage over their competitors. The exclusion built into this law was the focus of 2006's ROPA amendment, which eliminated the role of government appointment in expatriate enfranchisement (Wellman, 2015).

Logistical Challenges

There is a paucity of reliable data on diaspora populations in each country where Nigerians reside in the diaspora. Accurate hard data, rather than subjective assumptions, is necessary for analyzing the impact of citizens in home country politics. This is largely because official data on how many citizens have left is non-existent, and most often, Nigerians in the diaspora are neither required nor incentivized to register with embassies, especially among those with illegal or undocumented migrations. If available, this data could be used to determine, for instance, the number of registration/polling units required to be assigned in each foreign country and the number of ballot papers required. Therefore, this could potentially lend some level of credence to the argument that the implementation of diaspora voting can result in an undue burden on the resources of INEC, and bring financial pressure on the Nigerian economy (Ogbonnaya, 2013).

Furthermore, implementing diaspora voting can further result in some technical and administrative challenges that could adversely affect the ultimate objective of a free and fair election (Assistance, 2007). For instance, this would require INEC to create a polling unit in each embassy, commission, consulate and/or other approved designated places globally for use during elections. Political parties have to draw election agents and observers from their members among the Nigerians in the diaspora (Bibi-Farouk et al., 2019). Other factors that can constitute hindrances to the efforts towards the success of diaspora voting include systemic corruption, the lack of infrastructure, lack of good governance, and challenges facing democratic sustenance that seem to be endemic to Nigeria. There is the need to create the necessary conducive environment for the trust needed by diasporas to place their hard-earned funds for assistance in development (Kunle et al., 2019).

Additionally, limitations in the coordination of efforts and the lack of accurate data on the diaspora can hamper engagement efforts. Diaspora memberships are not fully harmonized into a homogenous union as there are multiple different organizations based on diaspora locations, professional lineage, ethnicity or even religion, and business interests. More so, a substantial number of Nigerians overseas have either failed or refused to register with the central Diaspora Commission. On the other hand, even from the government's side, a lack of effective coordination among government sectors because of the murky description of powers and responsibilities, duplication of responsibilities, and inter-agency competitiveness could hinder the current initiatives to efficiently realize and improve diaspora engagement.

In spite of all the challenges above, this paper argues that diaspora voting rights are ripe in Nigeria, in complete agreement with the INEC's chairman when he said, thus:

INEC believes that Nigerians living outside the country should have the right to vote for a variety of reasons: they are citizens of Nigeria interested in the affairs of their own country; they make considerable contribution to the economy through huge financial inflow to the country; there is a sizable amount of Nigerian citizens living outside the country; and Diaspora voting is consistent with global best practices (INEC, 2021).

Legislative Moves Toward Legitimizing the Diaspora Vote: The Electoral Act Amendment Bill

The initial move to enfranchise diaspora voting was started in 2009, well ahead of the 2011 general elections, following a Federal High Court order to INEC to "facilitate the diaspora enfranchisement in the 2011 elections" (VOA, 2009). However, the first bill to amend the Electoral Act of 2010 was rejected by the House of Representatives for contravening "the terms of Nigeria's 1999 Constitution, which explicitly limits the right to vote to Nigerian citizens physically present in the country at the time of registration and elections" (Mohammed, 2021). Although the House members were reportedly opposed to the bill on the mistaken belief that it was the Diaspora Voting Bill (Commission, n.d.), this author completely agrees with House of Representatives on the question of the constitutionality of this bill despite the strong argument to the contrary from its proposers (Ogbonnaya, 2013). Notwithstanding the above, the bill itself has been further criticized, for instance, it does not provide for the specifications of the election (presidential, legislative etc.), the type of voting (person, mail-in, and/or online), and diaspora preconditions (time, residency, and pre-registration with embassy) to be allowed (Ogbonnaya, 2013).

Again, the 2012 bill to amend the Electoral Act of 2010 failed to gather sufficient

legislative support (for its inconsistency with constitution) (Mohammed, 2021) because, it only sought to amend the Electoral Act itself without amending sections 77 (2) and 117 (2) of the constitution, which clearly required voters to be resident in Nigeria to qualify for registration and voting in election. Under Section 1(3) of the 1999 Constitution (as amended), the Constitution itself has made it clear that if any law is inconsistent with it, shall be void to the extent of the inconsistency. During the build up to 2016, the INEC assured Nigerians of its “readiness” for diaspora voting in the 2019 elections (INEC, 2016) but only to quickly change its story in 2017 (Erunke, 2017) ruling out that possibility. The current stand of the INEC seems to be that it is ready to implement diaspora voting, provided that the legislature has, among other things, amended the Electoral Act and the relevant sections of the constitution (Iroanusi, 2020). The INEC has reiterated and re-echoed that at every opportunity (INEC, 2021).

Evidently taking from this cue, a new bill³, which among other things, also seeks to amend sections 77 (2) and 117 (2) of the Constitution (as amended) was raised and, as of December 15, 2020, it has passed through the second reading in the House of Representatives (Nwabughio, 2020). Furthermore, the Chairman of NiDCOM, Honorable Abike Dabiri of the Nigeria Diaspora Voting Council (Lashem, 2021), and members of the various Nigerian diasporaic organizations and associations from across the world further emphasized the need for this constitutional amendment during their submissions on diaspora voting to the Senate Constitutional Review Committee’s Public Hearing (Lassa, 2021). This bill proposes to amend the Sections 77 (2) and 117 (2) as follows:

Every citizen of Nigeria, who has attained the age of eighteen years residing within or outside Nigeria at the time of registration of voters for purposes of election [emphasis added] to a Legislative house (or president under S 117 (2)), shall be entitled to be registered as a voter for that election.

It further introduced a new subsection (3) to modify qualifications for registration as a voter:

(3) To be eligible to vote in accordance with Subsection 2 above, the citizen of Nigeria must fulfill the following conditions:

Be at least 18 years old and hold a valid Nigerian International Passport.

Must have also lived in Nigeria for a period of at least 5 years from a minimum age of 10 years old, and

³ Sponsored by the Chairperson of the House Committee on Diaspora Affairs, Rep. Tolulope Akande-Sadipe, and 15 other lawmakers also seeks to alter the Constitution of the Federal Republic of Nigeria, 1999, Cap. 23 Laws of the Federation of Nigeria 2004.

Be legally resident in the Country of residence for at least 12 months

This amendment is expected to cure eligibility issues related to the election of the President S.132 (5), Governors S.179 (5) and in Local Government Elections S. 4 (7). And, for the first time, this new approach appears to address the major constitutional hurdles which can legitimize any other/further legislative steps with regards to a Nigerian diaspora vote. It also attempts to address some of the questions raised with regard to the requirement of residency in Nigeria at some time before the election dates, and a minimum length of residency in diaspora. That is, the prospective citizen in the diaspora must have lived in Nigeria for at least 5 years from the age of 10 years old before going overseas, and must be a legally resident in the diaspora for a full one year (12 months).

However, this bill would effectively exclude Nigerians who emigrate illegally, illegal residents in foreign countries, and those that did not maintain residency in Nigeria for minimum period as stipulated. It is unclear if these periods of residency in Nigeria and in the diaspora are to be calculated as a continuous period or cumulative period. Another striking point is with regard to the requirement for having a valid Nigerian international passport. Does this apply to second generation citizens, Nigerian citizens by registration and naturalization, or does it only applies to first generation Nigerian citizens (by birth)?

This proposed constitutional amendment does not also explicitly define what elections the diaspora could participate in (presidential, national assemblies, governorship, state assemblies, local government elections, etc.), how diaspora votes would be cast, counted, tallied, and the results relayed (physically, proxy, mail-in, or e-voting), and which courts have jurisdiction over disputes arising in the diaspora. Such questions and several others would have to be addressed in subsequent review of the Electoral Act of 2010 (as amended).

Recommendations for a Broader Legal Framework for Diaspora Voting: A Review of the Electoral Act of (2010)

Establishing the required legal framework that is favorable for diaspora engagement is a critical first, but not the only, step necessary. The government should put in place all necessary mechanisms to implement it to the letter. Often, the objectives proposed on paper to be achieved are not always implemented on the ground (Agunias & Newland, n.d.). A proper legal framework should be instituted/contained in the Electoral Act to minimize potential litigations from election losers. The availability of IT requirements e.g., adequate networks, steady electricity supply, as well as other environmental issues should be taken into account (Nnamani, 2020).

Although the proposed amendment to the Constitution has partly addressed the question of who (which Nigerians in the diaspora) is eligible to vote, length of residence in the diaspora, the requirement for residency in Nigeria during a length of time preceding the election, and still some other questions that are begging for resolution. As stated earlier, those include the eligibility of dual citizens, the choice of the appropriate type of voting (in person, mail-in, e-voting/online voting, and proxy voting), and the category of elections (presidential/governorship, legislative, local government elections, and referenda) that diasporas are eligible to participate in (Trócsányi, 2014).

To designate polling stations in Nigeria and the diaspora, section 9 (6) should be amended to read as thus:

Subject to Section 12(1) of this Act or any provision of the Constitution, registration shall be at the centers that shall also include the Nigerian embassies, consulates or such other center as designated for that purpose.

Furthermore, section 12 (1) should be amended to the effect that a person shall be qualified to be registered as a voter if such a person is qualified under sections 77 (2) and 117 (2) of the 1999 constitution as amended.

For the purpose of addressing the question related to the type of voting allowed, Sections 49 & 50 of the Electoral Act (2010) should be amended to allow for electronic/online and mail-in voting, advance voting and in person voting, and Section 57 to allow for absentee voting as available options. Likewise, an amended Section 11 should allow the transfer of registered voters from/to registers in the diaspora. In the same vein, Sections 54 & 66 should be amended to accept marking done electronically as valid vote in addition to thumb print. Interpretations under Section 156 should clarify that a polling unit could include an embassy, consulate, or other officially designated building in a foreign country for that purpose. Additionally, Forms EC. 1 and EC. 2 to incorporate legal residency abroad.

Although the proposed amendment to the constitution requires that the citizen in the diaspora must be legally resident for at least 12 months, the electoral law should clarify if it would include visiting citizens, residents for academic or employment purposes, permanent residents, settlers, and dual citizens. Also, the proposed amendment makes for a mandatory residency period in Nigeria during a specific period preceding the election dates (e.g., residency in Nigeria 5 year from the age of 10 years old) (Trócsányi, 2014), so the electoral law should clarify if the 5 years is to be calculated continuously or cumulatively. It has been argued that allowing the diaspora to vote, who have not resided in Nigeria for too long, could be somewhat tricky, as they may already have lost their patriotic ties, and therefore, no longer bear the incentive to contribute to homeland political developments. On the other hand, it cannot also be

determined when exactly citizens in the diaspora lose their genuine ties to their home countries. Remarkably, the enfranchisement of the diaspora that left their countries under repressive rules may be defensible to ensure political inclusiveness and the restoration of their democratic rights (Pogonyi, 2014).

Furthermore, the law should indicate if there exists a prerequisite minimum number of registered persons with the Nigerian embassies in the foreign country to qualify for diaspora voting, and also specify the approved designated places for voting, e.g., in diplomatic missions or military bases, or other designated places (Assistance, 2007).

Policymakers in Nigeria have begun to advocate for the adoption of e-voting as a more effective system for voting in the digital age (Nnamani, 2020). E-voting or online voting would look preferable as it makes it easier for citizens all over the world to partake in domestic elections and referenda. Conversely, mail-in voting may be relatively inconvenient because there could be delays in the delivery of mail before the close of election day, thereby disenfranchising otherwise qualified voters or give rise to litany of grounds for potential litigations. Other voting channels, such as in-person voting at approved designated centers abroad could sometimes be inconvenient to the voter, since they would need to vote at a specific location during a specific time period (Binder, 2007).

However, online voting channels raise concerns about security and data breaches (fear of hacker attacks)⁴, and anxiety that voters may be unduly influenced by others during the voting process (e.g., ‘family voting’). And lastly, e-voting could be more expensive relative to a limited number of electors (Binder, 2007).


Conclusion

Despite the size and economic power of the Nigerian Diaspora, and several years of struggle for electoral enfranchisement, it is our optimism that advocacy around the diaspora vote will eventually bear a fruit. In view of the unanimity of agreements among citizens in the diaspora, the politicians, and the INEC of the desirability of granting Nigerians in the diaspora the right to vote, pushing through the necessary constitutional and other legal reforms has not only become necessary, but also timely. Not only should the legal framework be established, but should be followed up with a robust structure and system that would thrive with success.

Achieving this will not only enfranchise millions of Nigerians in the diaspora, but could also ensure political inclusivity for all Nigerian citizens no matter where they live, improve Nigeria’s image in the international arena, and include Nigeria in the current list of democracies that have adopted some form of diaspora voting.

⁴ Also see Abba Elgujja, ‘A Synopsis on Data Protection under the Nigerian Laws: Has the Universality of Right to Privacy Trickled Down to Nigeria?’ [2020] Preprint.

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