



## DIASPORA VOTING IN NIGERIA: A TECHNICAL PAPER

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### **Introduction**

The rapid growth of globalization plus astonishing advancements in information technology has, in a sense reduced the world to a global village. People are now able to travel frequently, safely and efficiently from one country to another for a wide range of reasons including but not limited to: military and corporate duty; business, trade and commerce; education and development; health and tourism; emigration and political asylum.

This human migration is not only external. It is also internal. Citizens are moving from their area of birth to different parts of the country to live or do business. Internal conflicts, like the prevalent Boko Haram insurgency in the north-eastern parts of Nigeria, have turned some citizens to Internally Displaced Persons (IDPs). Conflicts are known to have also forced citizens into refugee status outside their home countries.

Put together, the huge increase in incidents of migration, externally and internally, all over the world has inevitably compelled growing and more urgent advocacy for the enfranchisement of citizens in diaspora.

### **Definition of Key Term**

Diaspora voting also known as external voting is defined as the 'provisions and procedures which enable some or all electors of a country who are temporarily or permanently outside the country to exercise their voting rights from outside the territory of the country'

### **Nigeria Country Context**

About 28 African countries currently have some form of legal or constitutional arrangement that allows their citizens resident in other

countries to participate in elections and cast their vote. Diaspora voting recognizes and accentuates the fundamental principle of enfranchisement of all citizens, particularly those living or working outside of the geographical territory of their country.

Unfortunately, beginning from the time of the first elections in Nigeria in 1923 which held via a legislative act known as the Clifford Constitution to date, Nigeria has not been able to execute the legal and constitutional framework for diaspora voting.

Following the adoption of the Representation of the People Amendment Act (ROPAA) of Ghana in 1992, many Nigerians in the diaspora and diaspora organizations began to actively campaign and advocate for diaspora voting to be adopted in Nigeria.

Back home in Nigeria in 2005, the then ruling Peoples Democratic Party (PDP) held a public hearing regarding the extension of voting rights to members of the diaspora in Houston, which is considered the home of the largest population of Nigerian immigrants in the United States of America. Albeit, the effort received huge support from Nigerians in the diaspora, the diaspora bill introduced in 2005 received lukewarm support in the National Assembly and did not progress past the first reading until 2007.

In 2012, what could easily be considered the most significant effort to institute diaspora voting in Nigeria was initiated by six members of Nigeria's Federal House of Representatives led by Abike Dabiri-Erewa, House Committee Chair on Nigerians in the Diaspora. The Abike Dabiri led group of federal legislators sponsored a Legislative Bill that sought to amend Nigeria's 2010 Electoral Act in order to grant Nigerians in the Diaspora the right to vote during general elections in Nigeria.

The Electoral Act 2010( as amended) which is the law governing conduct of elections and voting in Nigeria today comprises 9 major Parts, 158 Sections with 3 Schedules. The Act provides for the establishment and functions of the Independent National Electoral Commission (INEC); the Procedure at Elections; National Voters Register and Voters Registration; Formation, Functions and Powers of Political Parties; Electoral Offences, etc. However, the Act does not make provision for voting rights for Nigerians in the Diaspora during general elections. This is the omission the Abike Dabiri led group sought to address with their bill. Specifically, the Abike Dabiri bill sought to grant voting rights in the form of absentee voting for Nigerians abroad by:

1. Amending the Electoral Act 2010 to provide offices of the Independent Electoral Commission (INEC) abroad and
2. Extending Section 12(1) (c) to include Nigerians in Diaspora as against the current act that only includes Nigerians residing in Nigeria as eligible to vote.

Though the bill was not enacted into law, it remains a reference point for the advocacy effort to introduce diaspora voting in Nigeria.

### **Voting Procedures for Diaspora Citizens**

There are various ways to engage citizens in diaspora to participate in the electoral process. In developing procedures for diaspora voting, the key priorities are to determine how to ensure the voting is conducted in such a way as to meet the requirements of security, transparency and secrecy. It is also pertinent that the procedure adopted is structured to ensure that all electors have the same opportunity to vote. Countries can go ahead and adopt 'exceptional procedures' were necessary to bring a "wide range of facilities within the reach of all external electors in order for them to be able to exercise their right to vote from far-off or inaccessible places." However, it is important to note that there are merits and demerits to whichever procedure is adopted. The key is for each country to adopt a procedures or procedures that best suit their unique experience. There is

no one size fits all diaspora voting procedure. The following are a list of the more commonly practiced procedures globally:

- **Personal Voting:** The personal voting method allows for voters to go to an allocated voting poll either the embassy and consulate or a designated voting area. This method is widely used for diaspora voting. Countries such as South Africa, Argentina, Ghana etc., favour this method.
- **Voting by Proxy:** This is the voting style where a citizen in diaspora engages someone in proxy to carry out the voting rights on behalf of the diaspora citizen on the election day. Mauritius and Togo practice this voting style.
- **Postal Voting:** The postal voting processes allows the voter to choose a designated location to cast his ballot in the presence of other witnesses. The vote is however sent to the home country for validation of vote. Zimbabwe uses this voting procedure.
- **Electronic Voting:** The electronic voting is also called E-Voting. Although no African country is recorded to have used this voting style, France and Netherlands has offered this voting procedure to its external voters. Given the significant advances in IT globally, this voting procedure may become the most preferred voting procedure in the near future. E-voting allows the voter to vote via the internet or phones.
- **Mixed Voting:** 27 countries use a combination of two or more of the voting procedures outlined here.
- **Voting By Fax:** New Zealand and Australia are the only two countries known to have adopted this voting procedure.

## Application of Diaspora Voting

Diaspora voting can be applied in four types of elections:

- Legislative elections;
- Presidential elections;
- Referendums;
- Sub-national elections;
- Legislative elections and presidential elections;
- Legislative elections, presidential elections and referendums;
- Legislative elections, presidential elections, sub-national elections and referendum;
- Legislative elections and referendums;
- Presidential elections and referendums.

Available data on diaspora voting shows that the most common practice is to allow diaspora voting only for legislative elections. The following is a breakdown of numbers of countries allowing diaspora voting for the different types of elections:

- ❖ Legislative elections only (31)
- ❖ Presidential elections only (14)
- ❖ Legislative elections and presidential elections (20)
- ❖ Legislative elections, presidential elections and referendums (11)
- ❖ Legislative elections, presidential elections, sub-national elections and referendum (6)
- ❖ Legislative elections and referendums (7)

- ❖ Presidential elections and referendums (7)
- ❖ and other combination (19)

### **Common Restrictions Imposed on Diaspora Voting**

With the exception of the USA which allows all its citizens abroad to vote as a right, almost every other country in the world impose some form of restriction to diaspora voting. The following are examples of restrictions to external voting by different countries:

- Diaspora voting allowed for only those who are temporarily abroad. Some countries restrict diaspora voting to only citizens who are registered at home and are out of the country for only a temporary period. South Africa applies this restriction but does not have any law that provides clarity as to what being 'temporarily abroad' means.
- Restrictions regarding the length of stay abroad. There typically an upper limit to the time the voter can stay abroad before they lose their voting rights. The maximum time abroad in Guinea, for example, is 19 years, while Australia's limit is six years, although an extension can be requested in this case.
- The restriction concerning length of stay abroad works also in reverse order in some countries. In this case the voter needs to be away from his or her country for a certain period of time in order to be able to qualify to vote from abroad. "This is the case for voters from Chad, for example, who need to register in a consular registry at least six months before the election. External electors from Mozambique need to have been resident abroad for at least one year before the electoral registration process begins in there. Unless the voter has been abroad for at least six months and registered at a diplomatic mission, he or she can only vote if appointing a proxy."

- Some countries restrict diaspora voting only to members of the armed forces, students or citizens involved in other official or international work.
- In Bangladesh, Only government officers on official duty are allowed to participate in diaspora voting.
- In Fiji, diaspora voting is restricted to only citizens abroad who are carrying out an official or military function, working for an international organization to which the country belongs, studying, or working for a company that is registered in Fiji.
- Ghana only allows diplomats, employees of the United Nations and other international organizations, police and military personnel on peacekeeping missions, and students on government scholarships to vote in the diaspora.
- Guyana restricts diaspora voting only to employees of the government or any public corporation on duty abroad and students engaged in full-time courses in any foreign educational institution.
- India restricts diaspora voting to only members of the armed forces and government servants deployed abroad.
- Ireland allows only citizens carrying out official missions abroad of a diplomatic or military nature to vote in the diaspora.
- Israel only allows citizens carrying out official missions abroad of a diplomatic nature to vote in the diaspora.

### **Countries with Diaspora Voting**

According to International Institute for Democracy and Electoral Assistance (IDEA Handbook: Voting from Abroad 2007.), 115 countries and territories allow external voting as of 2007.

Africa (28),  
Americas (16),  
Asia (20),  
Western, Central and Eastern Europe (41)  
Pacific (10)

### **The Case For Diaspora Voting**

First, not allowing Nigerians in the Diaspora to vote in general elections amounts to a denial of their right to vote and be voted for( Note: Not “fundamental”) as provided for in the 1999 Constitution of the Federal Republic.

Second, Nigerians in the Diaspora make significant contributions to the socio-economic development of the country through investments, remittances and attraction of foreign investors. In a white paper published by PwC, titled: *Strength From Abroad: The economic Power of Nigeria's Diaspora*, PwC states that the remittances to Nigeria by Nigerians in the diaspora in 2018 stood at 23.63 billion dollars. It estimates that that figure could grow to US\$25.5bn, US\$29.8bn and US\$34.8bn in 2019, 2021 and 2023 respectively. Over a 15-year period, PwC expects total remittance flows to Nigeria to grow by almost double in size from US\$18.37 billion in 2009 to US\$34.89 billion in 2023. To put it graphically, PwC posits that the remittances of Nigerians in diaspora to Nigeria translate to:

- ✓ 83% of the Federal Government budget in 2018
- ✓ 11 times the Foreign Direct Investment Flows within the same period
- ✓ 7.4 times larger than the net official development assistance (foreign aid) received in 2017
- ✓ Official remittances have exceeded Nigeria's oil revenues for four consecutive years, 2014 – 2018,.
- ✓ Nigerians' remittances stand at about 6% of Nigeria's GDP



In recognition of the strategic importance of the Nigerian diaspora, the Federal Government signed the Nigerians in Diaspora Commission Establishment Bill into law in July 2017. The Law established the Nigerians in Diaspora Commission (NiDCOM), which was set up to engage and utilise the human, capital and material resources of this demography. Two years later, in 2019, the Federal Government went a step further by recognising July 25 of every year as National diaspora day.

Clearly, the Federal Government of Nigeria is fully aware of the enormous importance and contributions to national development by f Nigerians in the diaspora. Haven taken the first two commendable steps, it is now time for government to go a final step further and accord Nigerians in the diaspora the right to vote. There can be no legitimate excuse to deny such a significant demographic block the right to vote.

Third, a 2019 report from PwC estimates that there are about 15million Nigerians in the diaspora. Currently, that estimate has risen to about 17 million Nigerians of voting age who live and work outside Nigeria. This is a huge voting population to ignore, particularly when it is considered that the total votes cast in the last presidential election in Nigeria is approximately 26.6 million with the winning candidate garnering 15,191,847 votes. Mathematically, it is clear that the diaspora vote of about 17 million will make a significant impact in determining the outcome of elections in Nigeria and in conferring credibility to the entire electoral process and the outcomes of elections.

Fourth, INEC and the National Assembly moved with remarkable speed and commitment before the 2015 general elections to amend the Electoral Act. A move which gave rise to Section 26(1) of the 2015 Electoral Act (as amended). The section provides that; “In the event of an emergency affecting an election, the Commission shall, as far as possible, ensure that persons displaced as a result of the emergency are not disenfranchised.” The INEC chairman followed up by producing the ‘Framework for Voting by Internally Displaced Persons IDPs’, a policy document proposed to

guide the conduct of IDP voting operations and bring the IDP communities into the voting net. If the act could be speedily amended to enfranchise IDP's, the same could also be done for Nigerians in diaspora.

Fifth, Nigeria stands to benefit huge political goodwill from the introduction of diaspora voting because not only is diaspora voting in line with current global trend and leading practice, it will enhance the credibility of Nigeria's elections, ensure greater inclusiveness of Nigerians of voting age in the electoral and democratic process and bring Nigeria into the comity of democratic nations who already have laws granting their citizens in the diaspora the right to vote.

### **Challenges to Diaspora Voting**

**Lack of Reliable Data.** Inability to determine the numbers of citizens that have emigrated remains a challenge.. The challenge is further complicated because most emigrants do not register with embassies, especially in contexts of mixed migration and high levels of undocumented mobility.

**Political Parties Are Not Ready.** The reality is that Political parties as presently constituted do not have the resource infrastructure and capacity to identify the eligible numbers of voters in the diaspora; assess their policy preferences and determine how many emigrants want to vote from abroad.

**Lack of Reliable Information on Ideological Dispositions of the Diaspora Population.** In the absence of any research driven information, any narrative on the political leanings and interests of Nigerians in the diaspora may be driven more mostly by perceptions than facts.

**Far Flung Locations.** The multiplicity, distance and geography of the diaspora locations raises serious challenges. For the vote to be legitimate, all eligible voters need to be given equal access. This will prove a huge logistical challenge to resolve.

**Ballot Paper Security.** Given the wide distribution area across countries and across continents, how to secure the ballot papers in the course of

transporting them to the different voting centers in the different countries also poses a huge logistic challenge.

**Huge Financial Cost.** The high financial cost of executing diaspora voting and the associated administrative issues are major challenges to diaspora voting.

**Registration of Diaspora Voters.** The registration process to determine who is eligible to vote is critical. This may require a special registration scheme designed for Nigerians in diaspora who are eligible to exercise their voting right.

**Election Category for Diaspora Voting.** Determining which election(s) diaspora voting will be applicable is another critical challenge. From the list comprising Local Government election, Governorship election, National and State Assembly election and the Presidential election, which should Nigerians in diaspora be include as voters. What will determine the election category open for diaspora voting? How will the state and local government of origin be determined?

**Identification of Who Qualifies as a Nigerian in Diaspora.** We also have to determine who constitutes the diaspora. A difficult problem arises in cases of long-standing residency abroad. Is the diaspora vote going to encompass Nigerians in all the seven continents? There are speculations that the population of Nigerians in Sudan, Niger, and Chad alone runs into millions. We also have Nigerians residing in other African countries. So, will all those millions of Nigerians there be allowed to vote under the diaspora voting? Another issue to determine is that, is it only those who genuinely emigrate and legitimately living in those country that would be regarded as diaspora? Are we talking about the documented and non - documented Nigerians that are living abroad? These are structural questions that are yet to be answered.

**Diaspora Voting and Electoral Dispute Resolution.** The practicalities of electoral dispute resolution resulting from the diaspora vote may involve organizational problems similar to those that can be seen in the practical aspects of organizing external voting elsewhere. When

irregularities are alleged, documents may not be readily available. There may be physical problems in holding hearings and summoning witnesses. As a result, the quality of judicial decisions may be more contentious and their implementation more difficult.

The 1999 Constitution of Nigeria poses two unique challenges to the institution of diaspora voting:

1. Sections 77 (2) and 117 (2) of the 1999 constitution limits the right to vote to only citizens domiciled in Nigeria;
2. The right to vote albeit captured in sections 77 (2) and 117 (2) of the 1999 constitution is not included in Chapter IV (Fundamental Rights). This means that the right to vote does not have an ironclad protection. This makes it cumbersome if not totally impossible for citizens to legally enforce their right to vote.

The Electoral Act 2010. In addition to the amendment of the 1999 constitution, there is also the need to amend the electoral act 2010 to allow for diaspora voting.

Possibility of Interference by the Ruling Party. The argument has been made that emigrant enfranchisement—or their exclusion from electoral politics— will depend largely on the ruling party's perception of the diaspora. Thus, shifting political coalitions, or a change of ruling party, may also open (or close) opportunities for diaspora participation.

Factional and Geopolitical Suspensions. These remains a legitimate concern in Nigeria's political context. Some members of the political class view diaspora voting not just with suspicion but also with fear that it may bring their political career to an end.

Financial Cost. The perceived huge financial and material cost of executing diaspora voting in Nigeria remains a huge concern.

Political will. There is a general public perception that members of the political class are only paying lip service to the diaspora debate. The belief is that if they wanted it to happen, they will move expeditiously to get it done.

## **Recommendations and Conclusion**

To move the process forward, Fix Politics makes the following recommendations:

1. The National Assembly should working with civil society, Nigerians in Diaspora Commission and other critical stakeholders should work collaboratively and expeditiously to amend the 1999 constitution and the electoral act 2010 to allow for diaspora voting;
2. The right to vote should be included in Chapter IV (Fundamental Rights) of the 1999 constitution when amended. This is vital because the right to vote derives from the social contract theory and lies at the heart of democracy. The right to vote is arguably the most important right of a citizen. It should therefore be accorded the right level of importance it deserves in the constitution;
3. The National Assembly should pass a supplementary appropriation bill for 2021 to support the legislative process of enacting an appropriate diaspora bill into law and commence the execution process.
4. Civil society groups, the business community and community groups should work collaboratively with the media to intensify advocacy for diaspora voting and pressure on members of the National Assembly to pass legislation allowing for diaspora voting.
5. #FixPolitics should consider working collaboratively with Nigerians in diaspora to establish a pressure group solely dedicated to working strategically to accentuate the realization of diaspora voting.

Diaspora voting is now a global best practice. The inability of INEC, the National Assembly and civil society to work collaboratively to come up with a framework for the amendment of the electoral Act 2012 with a view to giving voting rights to Nigerians in the Diaspora is becoming an embarrassment to Nigeria, particularly in the light of the fact that a number of African countries have since availed their citizens in diaspora the right to vote.

Just recently the INEC Chairman, Professor Mahmood Yakubu stated that the commission is ready to “roll out” diaspora voting to enable more eligible Nigerian citizens working in diplomatic missions and those permanently living abroad to vote. Adding that “The Commission is desirous of giving Nigerians living abroad the right to vote, after all, all our neighbouring countries do so.”

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