

EXTERNAL CITIZENSHIP, DIASPORA VOTING AND NATIONAL DEVELOPMENT IN NIGERIA*

Abstract

Nigeria, is one of the countries with a large emigrant population. The Nigerian diaspora community has contributed significantly to the Nigerian economy over the years. However, unlike other emigrant nations, Nigerians in the diaspora are unable to enjoy the right to vote due to gaps in the legislative framework governing elections. This paper argues that unlike other countries with large emigrant populations, Nigerians in diaspora contribute too much to be ignored in the electoral process. Thus, this paper undertakes an analysis of the legal and institutional stop-gaps to diaspora voting. It argues that diaspora voting is long overdue within the Nigerian context and recommends steps that may be taken to ensure that the diaspora community which continue to contribute immeasurably to the development of the Nigerian state exercise their constitutional duty to vote and impact governance in Nigeria.

Keywords: External Citizenship, Diaspora Voting, National Development, Nigeria

1. Introduction

Diaspora¹ remittances form a substantial part of the Gross Domestic Product (GDP) of major countries around the world, and their socio-economic development. As at 2024, Nigeria (\$19bn) was ranked among the top 10 remittances receiving countries alongside India (\$120bn), Mexico (\$68bn), China (\$48bn), Philippines (\$40bn), and Pakistan(\$33bn).² Remittances alone, totaling around \$20 billion annually, represent approximately 4% of Nigeria's GDP, outstripping net inflows from Official Development Assistance (ODA), Foreign Direct Investment (FDI), and Foreign Portfolio Investment (FPI) combined. This underscores the diaspora's crucial role in Nigeria's economic landscape. However, international migration is not a recent phenomenon. Historically, international migrations have been prominent features of socio-cultural change on the African continent for more than three quarters of a century.³ One such memorable instance of the massive migration of Nigerians is the recent 'japa syndrome' where Nigerians are voting by foot to escape the dwindling economic fortunes of Nigeria over the past decade by mass-migration overseas. Nigerian migrants in diaspora are scattered throughout the Economic Community of West African States (ECOWAS) region in countries such as Ghana, Niger, Chad and Ivory Coast. They are also found in other African countries, including South Africa, Cameroon and Gabon. Outside Africa, they are found in the United States, the United Kingdom, Ireland, Canada, Saudi Arabia, Japan, China, South Korea, Brazil, among other places.⁴ As at 2024, the International Organisation for Migration (IOM) puts the number of Nigerians in the diaspora at 17million.⁵ With such a large diaspora contingent, Nigeria accounts for over a third of migrant remittance flows to sub-Saharan Africa. Diaspora remittances in the past four years have raked in US\$25.5 billion in 2021, US\$29.8billion in 2022, US\$34.8billion in 2023, and US\$19 billion in 2024 respectively. Thus, the Nigerian diaspora has emerged as a pivotal force for sustainable development, contributing expertise, remittances and investments. Their knowledge, networks, and tailored solutions significantly impact local development and national growth. Remittances alone, totalling around \$20 billion annually, represent approximately 4% of Nigeria's GDP, outstripping net inflows from Official Development Assistance (ODA), Foreign Direct Investment (FDI), and Foreign Portfolio Investment (FPI) combined. This underscores the diaspora's crucial role in Nigeria's economic landscape.⁶

In acknowledgment of the centrality of diaspora remittances to overall development of Nigeria, the Federal Government enacted the Nigerians in Diaspora Commission Act⁷. The Act established the Nigeria Diaspora Commission (NIDCOM)⁸, to among other things provide for the engagement of Nigerians in diaspora in the policies, projects and participation in the development of Nigeria and to utilize their human capital and material resources of towards the overall socio-economic, cultural and political development of Nigeria and for related matters. Furthermore, the Nigerian government is laying out a welcome mat for Nigerians in diaspora through other structured mechanisms designed to foster investment at home. Initiatives such as the Diaspora National Housing Fund (NHF) Mortgage Scheme,⁹ the Diaspora Trust Fund, and the prospective issuance of Diaspora Bonds are being formalised to pave the way for Nigerians in the diaspora to channel their resources into developmental ventures

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¹ The root word diaspora is derived from an ancient Greek word 'diaspeiro' meaning 'to scatter out'. Thus, a diaspora is a population that is scattered across regions which are separate from its geographic place of origin. See, N. Aja, F C Nnaji & I. Okorie, 'Diaspora Remittances Inflows and Nigeria's Socio-economic Development in the 21st Century', (2024) 17(1) *African Journal of Politics and Administrative Studies*, 173, 175.

² D Ratha et al, 'In 2024, Remittance Flows to low- and middle-income countries are expected to reach \$685 billion, larger than FDI and ODA', World Bank, available at <<https://blogs.worldbank.org/en/peoplemove/in-2024--remittance-flows-to-low--and-middle-income-countries-ar>> last accessed 24 March,2025.

³ SU Aham-Okoro, *Igbo Women in the Diaspora and Community Development in Southeastern Nigeria*, (USA: Lexington Books, 2017), 20.

⁴ Above n 1.

⁵ See, S Ekanem, '10 Foreign Countries with the Largest Nigerian Population' Business Insider, 25 August, 2024 available at <<https://africa.businessinsider.com/local/lifestyle/foreign-countries-with-the-largest-nigerian-population/wk10z2g> - :~:text=stadiums in Africa-,Data from the International Organisation for Migration (IOM) puts the,with the biggest diaspora presence.> last accessed 24 March, 2025.

⁶ Above n 2.

⁷ Nigerians in Diaspora Commission (Establishment) Act, 2017.

⁸ See website at <<https://nidcom.gov.ng/>>

⁹ See <<https://nidcom.gov.ng/diaspora-housing-mortgage/>>

back home. These efforts may create tangible opportunities for diaspora investors to substantially contribute to Nigeria's economic growth and development in the long term.

While the economic contribution of Nigeria's diaspora contingent is apparent, its contribution to the electoral process remains limited due to lack of legal and institutional structures that prioritize their participation. The right to vote is a cornerstone of citizenship, and diaspora dwelling citizens should be granted access to vote irrespective of their location. Globalization and modern technology make diaspora voting a possibility. Political citizenship-the right to vote and hold office-is a cornerstone of democratic theory and practice.¹⁰ Thus, for a demographic that contributes immensely to the socio-economic development of Nigeria, diaspora citizens ought to enjoy guarantees of legal and political protection from raw coercive power by determining the political leadership of the country as citizens.¹¹ This paper examines the role of the Nigerian diaspora in national development of the country and their right to vote. At its core, it analyses the legal and institutional framework for the potential inclusion of diaspora Nigerians in the electoral process. Adopting a comparative methodology in its analysis, the paper juxtaposes the constitutional rights of diaspora Nigerians to vote and the extant framework within the electoral system. The first part of the paper examines the history of diaspora participation in electoral process in Nigeria. The second part analyses the provisions of the Electoral Act 2022 vis-a-vis diaspora participation. The third part draws lessons from other jurisdictions. The fourth part attempts to make an argument on the way forward, while the final part is the conclusion.

2. History of Diaspora Participation in the Electoral Process in Nigeria

Diaspora voting¹² dates back to the period of the Roman Emperor Augustus, who is said to have invented a new kind of suffrage under which the members of the local senate in 28 newly established colonies cast votes for candidates for the city offices of Rome and sent them under seal to Rome for the day of the elections.¹³ The practice has since spread across the world in various forms. In 1862, Wisconsin became the first of a number of US states to enact a legislation to allow absentee voting by soldiers fighting in the Union army during the American Civil War.¹⁴ By 1968, the absentee voting system through legislations applied to all US citizens (military and civilians) abroad and in 1975, registration provisions for overseas voting became mandatory for States in the US. Also, in New Zealand, absentee voting was introduced for seafarers in 1890 and it also applied to all military personnel in New Zealand irrespective of age.¹⁵ In Canada, absentee voting was introduced principally for military personnel between 1915, when it was first debated at the federal level, and 1917, when the federal elections took place.¹⁶ Diaspora Voting started in Africa in the 1970s and 1980s.¹⁷ At first, former colonies that gained independence in Africa did not initially allow diaspora voting.¹⁸ They focused more on internal political stability, nation-building, and decolonization. The lack of advanced infrastructure, reliable postal services, and concerns over external influence also contributed to the exclusion of Africans in diaspora from voting.¹⁹ However, the early 1990s witnessed an increase in the number of African countries that adopted measures to enable citizens residing abroad to take part in elections concerning their home countries.²⁰ Example of such countries include South Africa, Mozambique, Liberia, Ethiopia, Senegal, Algeria, and many more.²¹ The participation of the Nigerian diaspora in the nation's electoral process has been a subject of ongoing debate and gradual evolution. Historically, Nigerian citizens residing abroad have been excluded from voting in national elections, primarily due to constitutional and legislative constraints.²² The history of diaspora participation in Nigeria's electoral process dates back to the post-independence era and has been evolving up to the present day.

Post-Independence Era (1960s – 1980s)

At independence in 1960, Nigerians living abroad were not legally excluded from participating in elections. However, the electoral laws required citizens to be physically present in the country to register and vote. This effectively disenfranchised

¹⁰ J Cohen, 'Procedure and Substance in Deliberative Democracy' in S. Benhabib (ed), *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton, NJ: Princeton University Press, 1996), 95.

¹¹ Citizenship addresses issues relating to social justice, human rights, community cohesion and global independence, and encourages the challenging of injustice, inequality and discrimination. See, OO Fayomi & GT Adebayo, 'Political Participation and Political Citizenship' in SO Olorunfoba & T Falola (eds), *The Palgrave Handbook of African Politics, Governance and Development* (Palgrave Macmillan, 2017), 537.

¹² Constitutional provisions granting citizens abroad the right to take part in home country elections taken various nomenclature, including external voting, emigrant voting, expatriate voting, diaspora voting, absentee voting, absent voting, out-of-country voting, extraterritorial voting, distance voting, and remote voting. However, these do not always mean the same thing as there can be contextual variations depending on the state usage.

¹³ CO Ngara and GL Ejalonibu, 'A Case for Diaspora Voting Rights in Nigeria' <https://www.academia.edu/107483467/A_Case_for_Diaspora_Voting_Rights_in_Nigeria> accessed 3rd February, 2025.

¹⁴ Ibid.

¹⁵ BF Ibrahim, I Dele, & H Ukeaja, 'Diaspora Voting in Nigeria's Elections: An Analysis of the Abike Dabiri-Erewa Bill of 2012 and the Effectiveness of it's Possible Inclusion into the 2019 General Elections' [2019] (4)(7) *International Journal of Arts Humanities and Social Sciences Studies*, 36.

¹⁶ Ngara & Ejalonibu, above n 13, 4.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ T Jaulin & E Smith, 'Diffusion and Practice of external voting in North and West Africa' <https://www.researchgate.net/publication/344819529_Diffusion_and_practice_of_external_voting_in_North_and_West_Africa> accessed 3rd February, 2025.

²¹ Ibid.

²² The Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act 2022, mandates that citizens be physically present in Nigeria to exercise their voting right.

most members of the diaspora. In this era, the diaspora Nigerians were more focused on advocacy and activism.²³ Many supported movements for democracy and human rights, thereby, playing a vital role in exposing military abuses and advocating for democratic governance.

The Military Era

During the military era of 1980 to 1990, the Nigerian diaspora became more politically active, lobbying foreign governments and international organizations to pressure military leaders toward democratic reforms.²⁴ Despite their political engagement, members of the diaspora were still excluded from participating in elections due to the absence of legal frameworks permitting absentee or diaspora voting.²⁵ In this period, diaspora groups such as the National Democratic Coalition (NADECO) and other pro-democracy organizations in the United States, United Kingdom, and Canada, were instrumental in advocating for return to democratic rule.²⁶

Fourth Republic

After Nigeria's return to democratic rule in 1999, the clamour for Diaspora participation in elections gained momentum as Nigerians abroad began advocating for the establishment of legal and institutional frameworks that would enable them to vote from outside the country.²⁷ They noted that their contributions to the economy through remittances and investments entitled them to a say in the country's governance.²⁸ However, Nigeria's Constitution²⁹ and the Electoral Act³⁰ continued to require voters to register and cast their ballots in person within Nigeria. These requirements made it difficult for persons in diaspora to cast their vote for their preferred candidate unless they travel back to Nigeria to vote.³¹ In 2005, the then ruling party, 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. Although, 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 2007.³² In 2010, the Electoral Reform Committee, led by Justice Mohammed Uwais, recommended the inclusion of diaspora voting.³³ However, this recommendation was not implemented. Also, in 2012, the House of Representatives under the National Assembly and led by Abike Dabiri-Erewa, sponsored a Bill that sought to amend the Electoral Act 2010 in order to grant Nigerians in the diaspora the right to vote during general elections in Nigeria.³⁴ The Bill sought to grant voting rights for Nigerians abroad by amending the Electoral Act 2010, to provide offices of the Independent Electoral Commission (INEC), abroad, and extend section 12(1)(c) of the Electoral Act 2010 abroad, and amend the provision of the Act to extend the right to vote to Nigerians in diaspora.³⁵ The Bill was not enacted into law but it remains a reference point for the advocacy effort to introduce diaspora voting in Nigeria.³⁶ Furthermore, in 2021, the House of Representatives considered a Bill to amend the Constitution to allow Diaspora voting.³⁷ However, it failed to gain the necessary support during the constitutional amendment process.³⁸ In line with the efforts from organizations and the diaspora, INEC has repeatedly expressed willingness to explore Diaspora voting. However, the Commission noted that there were challenges such as funding, logistics, and the need for constitutional amendments.³⁹ Also, in 2022, the INEC Chairman, Mahmood Yakubu, reaffirmed the Commission's commitment to Diaspora voting, stating that it could be implemented once the legal frameworks are in place.⁴⁰

²³ O Akinkuotu, S Wampuk, & V Ibuonye, 'The Nigerian Diaspora and National Development: Contributions, Challenges, and Lessons from other Countries' < https://www.academia.edu/28103495/The_Nigerian_Diaspora_and_National_Development_Contributions_Challenges_and_Lessons_from_Other_Countries> accessed 27 January, 2025.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibrahim et al above n 14, 37.

²⁸ Ibid.

²⁹ Constitution of the Federal Republic of Nigeria, CAP C. 23, LFN 2004.

³⁰ Electoral Act No. 13 of 2022.

³¹ Ibid.

³² A Ubani, 'Diaspora Voting in Nigeria: A Technical Paper' < <https://diaspora.fixpolitics.org/wp-content/uploads/2023/07/Technical-Paper-on-Diaspora-Voting.pdf>> accessed 27 January, 2025.

³³ M.O.A. Alabi, 'Uwais Report, Electoral Act, 2010, and the Future of Democratic Elections in Nigeria' <https://www.researchgate.net/publication/354640978_Uwais_Report_Electoral_Act_2010_and_the_Future_of_Democratic_Elections_in_Nigeria> accessed 27 January, 2025.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ F Nwaneri, 'Diaspora Voting: History Beckons Ahead 2027 Hope for Diaspora Voting as 10th NASS Aims to Break Jinx' <https://newtelegraphing.com/diaspora-voting-history-beckons-ahead-2027-hope-for-diaspora-voting-as-10th-nass-aims-to-break-jinx/#google_vignette> accessed 3rd February, 2025.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

3. The Electoral Act and Universal Suffrage of Nigerians in Diaspora

Universal suffrage refers to the right of all adult citizens to vote in elections, regardless of their location, gender, ethnicity, or socio-economic status.⁴¹ Universal suffrage is a cornerstone of democracy all around the world. Unfortunately, for Nigerians living in diaspora, the reality of participating in the electoral process has remained elusive due to legal, logistical, and institutional challenges.⁴² The clamour for diaspora voting is linked to the belief that the right to vote has become universally accepted as a basic human right.⁴³ 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.⁴⁴ Generally, diaspora voting is provided for and regulated by constitutions, electoral laws, and administrative regulations. In Nigeria, the legal frameworks regulating elections and the right to vote are the Constitution of the Federal Republic of Nigeria (CFRN) 1999, the Electoral Act 2022, and guidelines issued by the Independent National Electoral Commission (INEC).⁴⁵ The Constitution does not specifically prohibit Nigerians in diaspora from voting for candidates from their homeland. However, it contains provisions which makes it difficult for Nigerians in the diaspora to vote. Section 77(2) of the Constitution provides: 'Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria 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'. This is repeated in section 117(2) of the Constitution which provides for voting of candidates into State Houses of Assembly, and section 132(5) of the Constitution provides: 'Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of President.' Again, this is repeated in section 178(5) of the Constitution which provides for the right to vote at a governorship election. Furthermore, Section 7(4) of the Constitution provides: 'The Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to House of Assembly shall have the right to vote or be voted for at an election to a local government council.' In the same vein, Section 12(1)(c) of the Electoral Act, 2022 provides: 'A person shall be qualified to be registered as a voter if such a person...: c) is ordinarily resident, works in, originates from the Local Government/Area Council or Ward covered by the registration....'

Furthermore, through section 24(1) and section 47(1) of the Electoral Act 2022, which provides for postponement of elections in certain polling units due to emergencies, and accreditation of voters at polling units, it can be concluded that the Act mandates in-person voting. It can be gathered from the above provisions that any person who is not physically present in Nigeria to cast their vote is automatically disenfranchised. Consequently, if any Nigerian in diaspora intends to vote for any candidate in the Nigerian election, such a person has to go to Nigeria to cast his vote. This basically excludes millions of Nigerians abroad from participating in elections. Taking the above provisions of the Constitution and the Electoral Act into consideration, it becomes evident that an individual being of age, a citizen, and resident outside of Nigeria at the time of registration disqualifies such individual from voting in an election. This inevitably puts the duty to be in Nigeria at the time of registration on the citizen. By effect, all citizens in diaspora at the time of registration of election and who fails to register cannot vote.⁴⁶ Furthermore, the question also remains as to the potential scenario where a Nigerian in diaspora is able to enter Nigeria, register and return to his or her resident outside Nigeria. On the basis of extant law, the person is not saved by the act of physical registration in Nigeria. Such person continues to lose the right to vote unless such a person visits Nigeria for the purpose of casting his or her vote. Section 12 of the Electoral Act highlighted above clearly makes residency a requirement for registration and consequently voting. The combined provisions of the constitution and the Electoral Act have been said to provide logistical impossibility and legal restriction. Logistical incompatibility arises because, the electoral registers are localized which implies that a voter cannot find his/her name in the electoral register of a constituency other than in the locale where they registered.⁴⁷ Legal registration on the other hand implies that even if the individual insists on voting anyway, the vote will amount to a nullity, and then the voter will not be accredited to vote.⁴⁸

Some arguments in favour of diaspora voting believe that not allowing Nigerians in diaspora to vote in general elections amount to a denial of their right to vote and be voted for as provided under the international human rights conventions that Nigeria is a signatory to.⁴⁹ It is also posited that Nigerians in diaspora make significant contributions to the socio-economic development of the country through investments, remittances, and attraction of foreign investors.⁵⁰ PWC noted that the remittances to Nigeria by Nigerians abroad in 2018 was about 23.63 billion dollars and estimated that by 2023, the figure could grow to 34.8 billion

⁴¹M Jikia, 'The Significance of Universal Suffrage and its Restrictions' <https://www.researchgate.net/publication/345500520_The_Significance_of_Universal_Suffrage_and_its_Restrictions> accessed 3rd February, 2025.

⁴² AA Elgujja, 'Paving Way for Entrenching the Diaspora's Voting Rights under the Nigerian Laws: Legal Prospects, Challenges, and Potential Solutions' [2021] (1)(2) *Turkish Journal of Diaspora Studies*, 79

⁴³ Ibid.

⁴⁴ See for example, Article 21 of the Universal Declaration of Human Rights, Article 13 of the African Charter on Human and People's Rights, and Article 25 of the International Covenant on Civil and Political Rights.

⁴⁵ I Hassan and S Yusuf, 'Nigeria as a Case Study' <<https://www.eisa.org/pdf/nigcasestudy.pdf>> accessed 4th February, 2025.

⁴⁶ B.U Ihugba, 'Examining the Law on Voting Rights in Nigeria: The Unintended Consequences of the Exclusion of Nigerian in Diaspora' (2018) 9(11) *Kogi State University Law Journal*, 256, 264.

⁴⁷ Electoral Act, ss 12, (2) and 13 (4) (a).

⁴⁸ Ibid., ss 12 (2), 18 (1&2), 19(2), and 24(1) (e).

⁴⁹ Example, Article 13 of the African Charter on Human and Peoples Right 1986, Article 25 of the International Covenant on Civil and Political Rights 1966.

⁵⁰ Ubani, above n 32, 8.

dollars.⁵¹ Also, it has been estimated that there are about 17 million Nigerians of voting age who live abroad.⁵² This is a huge voting population which can make a significant impact in determining the outcomes of elections in Nigeria. It is also believed by advocates of diaspora voting, that enabling Nigerians overseas to vote would enhance democratic participation, ensure greater inclusiveness of Nigerians of voting age in the electoral and democratic process, and strengthen national development through increased civic engagement.⁵³

Conversely, opponents of diaspora voting cite concerns about the reliability of Nigeria's electoral system as it is believed that even within Nigeria, the electoral process is not yet properly and efficiently managed. Also, there are concerns on the feasibility of securing votes cast from overseas due to the multiplicity, distance and geography of the diaspora locations.⁵⁴ There is also lack of accurate data of diaspora populations in each country where Nigerians in diaspora reside.⁵⁵ The lack of accurate data might make it difficult to implement diaspora voting as the financial pressure might be too much for Nigeria government to bear. Opponents of diaspora voting also posit that the integrity of diaspora votes will be in issue, as remote voting systems can be vulnerable to fraud, cyberattacks, or other forms of manipulation.⁵⁶

As stated previously, attempts to amend the legal framework to provide for diaspora voting has been shut down several times due to the above fears by the opponents of diaspora voting. However, the fears are needless. There are several countries in Africa that have incorporated diaspora voting into their law. Currently, about 28 African States practice diaspora voting at the moment.⁵⁷ This can become 29 African State if Nigeria is willing to put down its fears and concentrate on furthering democracy by institutionalizing diaspora voting. Countries utilize different forms of diaspora voting based on the form they believe will suit their country the best. Some of these forms include, personal voting which allows voters to go to an allocated voting poll like an embassy or consulate.⁵⁸ There is also proxy voting whereby, a citizen in diaspora engages someone in proxy to carry out the voting rights on behalf of the diaspora citizen on the election day.⁵⁹ Additionally, there is postal voting, electronic voting, mixed voting, voting by fax, and many more.⁶⁰ This shows that Nigeria has so many options to choose from when it comes to diaspora voting. The government can simply settle for personal voting whereby, Nigerians in diaspora will register in the embassy or consulate with their passport numbers and on the election day, they will simply go to the embassy or consulate to vote.

In 2022, in *Chikwe Nkemnacho & anor v INEC and 3 ors*⁶¹ the plaintiffs instituted a law suit against INEC, its chairman, Professor Mahmood Yakubu, President Muhammadu Buhari, and the Federal Republic of Nigeria to nullify the Electoral Act 2022. The law suit raised significant questions about the exclusion of Nigerians in diaspora from participating in elections under the Electoral Act 2022 and the CFRN. The plaintiffs, who are Nigerians residing abroad, argued that the Electoral Act 2022, and the action of INEC violated their constitutional rights by excluding them from voting in Nigeria elections. They also posited that INEC and the Federal government had failed to take necessary steps to enable diaspora voting, such as, establishing mechanisms for Nigerians in diaspora to participate in elections and they sought a declaration from the court that INEC and the Federal government were obligated to make provisions for diaspora voting.

The Court ruled that the exclusion of Nigerians in diaspora from voting in elections did not violate their fundamental rights as there was no provision in the Constitution or the Electoral Act that mandated the inclusion of diaspora voting. The court also noted that INEC could only operate within the confines of the law. Consequently, since neither the Constitution nor the Electoral Act 2022 provides for diaspora voting, INEC cannot be compelled to act beyond its statutory powers. Furthermore, the court stated that there is need for amendment to both the Constitution and the Electoral Act 2022 so enable diaspora voting. Although the law suit was dismissed, the case highlighted the absence of clear provisions for diaspora voting in both the Constitution and the Electoral Act 2022. It also brought attention to the demand for diaspora voting among Nigerians living in diaspora, and though, no Bill relating to diaspora voting has been passed in the National Assembly, through the rising clamour for reforms on the issue of diaspora voting, there is hope that the Constitution and the Electoral Act 2022 will be amended to ensure inclusivity of Nigerians in diaspora in the electoral process. This will strengthen Nigeria's democracy, promote inclusivity, and ensure that no Nigerian is left behind in the electoral process.

4. Lessons from Selected jurisdictions

As highlighted earlier in this paper, sending states are increasingly responding to the transnational activities of their migrants because they now recognize that it lies in their interests to foster their allegiances. To achieve this, they develop inclusive

⁵¹ PWC, 'Strength from Abroad: The Economic Power of Nigeria's Diaspora' <<https://www.pwc.com/ng/en/pdf/the-economic-power-of-nigerias-diaspora.pdf#:~:text=In%20this%20paper%2C%20we%20take%20a%20close%20look,economy%2C%20and%20tries%20to%20answer%20the%20following%20questions%3A>> accessed 4th February, 2025.

⁵² Ubani, above n 32, 9.

⁵³ Ibid.

⁵⁴ Elgujja, above n 42, 12.

⁵⁵ Ibid.

⁵⁶ Punch (2025), 'Diaspora Voting: NASS is Anti-Progress' < <https://punchng.com/diaspora-voting-nass-is-anti-progress/>> accessed 4th February, 2025.

⁵⁷ Above n 52.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ *Chikwe Nkemnacho & anor v INEC and 3 ors* [FHC/ABJ/CS/2119/2022].

discourses with their populations abroad and set up various sorts of incentives such as easy access to nationality as well as remittances and investment programmes.⁶² The numerous programmes initiated by the Nigerian government under the auspices of NIDCOM⁶³ as a separate vehicle from the Ministry of Foreign Affairs demonstrates the strategy by modern states to court their diaspora population by creating dedicated agencies, administrations and consultative bodies to help increase the emigrants' representation and participation in the home country. While external voting is given little attention in democracies in the global south, it is a practice that has existed in a number of countries since the early twentieth century as a way of allowing certain citizens to cast their votes from abroad. Thus, it is an exception to the more traditional forms of casting votes reserved for citizens residing in the national territory.⁶⁴ In its early days, external voting as a diasporic policy was formulated as new ground for political rights, implemented primarily to allow specific categories of citizens (mainly diplomats and soldiers) to cast their votes while serving the national interest abroad. The status of emigrants residing outside the national territory is now seen as compatible with 'polity membership'. Based on this reason, external voting now applies to active and passive voting rights of qualified individuals, irrespective of their professional status. As a current trend, external voting now encompasses participation in the national territory from overseas and includes voting over referenda and supranational, national, subnational and primary elections held in the countries of which they hold citizenship, where they permanently or temporarily do not reside.⁶⁵

Gamlen makes reference to the concept of the 'global nation' which extends beyond the traditional borders of the nation-state to encompass the diaspora.⁶⁶ Clearly, the idea behind external voting as prioritised by sending nations with large emigrant populations is understanding that the Westphalian connotation of citizenship exists side-by-side with 'external citizenship'. Thus, creating systems for diaspora participation in decision-making within municipal law cannot be denied for any progressive state. External citizenship as a legal concept connotes the capacity to hold a legal status and to exercise the citizenship rights attached to it outside of the territorially bounded nation-state. Barry aptly defines external citizenship thus:

[T]he ongoing relationship between emigration states and their citizens who have moved temporarily or permanently to immigration states. It involves emigrants' and emigration states' efforts to preserve links to one another. External citizenship also encompasses emigrants' efforts to remain a part of the societies they left behind, independent of the state, that is, their ongoing engagement with the national community not limited to the national polity.⁶⁷

Consequently, states recognize the efforts of emigrants to continue to participate and contribute to their home countries. This enables states to engender policies aimed at encouraging continued interaction with emigrants to develop their home states at various levels include the subnational or local levels. To achieve the desired cohesion between home and abroad sending states device policies that address issues that emigrants face when dealing with their home states such as tax, access to consular services, investment etc. These policies also extent to constitutional provisions on dual citizenship, language courses, cultural programs abroad which can strengthen emigrants' feelings of belonging to the home country.⁶⁸ Despite its broad application in voting on serious issues of national importance, diaspora voting continues to be identified as one very critical mechanism for involving citizens resident outside their primary or indigenous Westphalian origins in domestic matters. For instance, large emigration states such as Italy and Mexico have introduced diaspora voting with mixed outcomes. In 2006, both states allowed their large emigrant population to vote from abroad for the first time. These experiences, however, had different impacts on home-country politics. In Italy, over a million emigrants participated in a process that gave birth to serious accusations of fraud but that, at the same time, led to the election of emigrant parliamentarians who gave decisive support to Romano Prodi's governing coalition. In Mexico, on the contrary, legislators put in place an extremely bureaucratic external voting mechanism, resulting in a very limited number of emigrants who took part in the presidential election.⁶⁹

Diaspora voting is often determined by the complexity of the constitutional provisions undergirding such rights in each state. From the turn of the 20th century to World War II, external voting legislation was implemented in different parts of the world. They all shared the characteristic of restricting the possibility to vote from abroad to specific professional categories of citizens. For instance, New Zealand (1890) and Australia (1902), restricted external voting rights to seafarers in the first pieces of legislation they adopted. Most of the restrictions, however, limited the exercise of this right to citizens serving the home country from abroad. Military and diplomatic personnel stationed abroad were traditionally the citizens who had most rapidly been allowed to vote from outside the national territory.⁷⁰ Under international law, diplomats are not considered to reside outside their national territory. Military personnel were included mainly due to their service to country, it made no sense to exclude them from exercising their voting rights from anywhere.

⁶² J.M Lafleur, 'Why do States Enfranchise Citizens Abroad? Comparative Insights from Mexico, Italy, and Belgium' (2011) 4 *Global Networks*, 481.

⁶³ Examples above include the Diaspora National Housing Fund (NHF) Mortgage Scheme, the Diaspora Trust Fund, and the issuance of diaspora Bonds. The National Assembly has also introduced a bill for an investment fund for the diaspora.

⁶⁴ Lafleur above n 62, 482.

⁶⁵ Ibid.

⁶⁶ A Gamlen, 'Diaspora Engagement Policies: What Are They, and What Kinds of States Use them?' *COMPAS Working paper*, no. 32 (2006), <http://www.compas.ox.ac.uk/publications/Working%20papers/WP0632-Gamlen.pdf> (accessed June 10, 2025).

⁶⁷ K Barry 'Home and Away: The Construction of Citizenship in an Emigration Context' (2006) 81(1) *New York University Law Review* 11, 26.

⁶⁸ J Lafleur, *Transnational Politics and the State: The External Voting Rights of the Diaspora* (US: Routledge, 2013), 14.

⁶⁹ Idem, 1.

⁷⁰ Lafleur (2013), above n 68, 17.

After World War II states began to turn towards voting rights as a practice. Thus, reforms were made to legislation to engender external voting. Due to the fact that the electoral participation of these categories of citizens was usually numerically limited, less politically contentious, and less logistically complex to organize, such legislation spread worldwide.⁷¹ Today, most states possess legislative provisions allowing at least some citizens abroad to take part in home-country elections. According to a 2007 study conducted by IDEA,⁷² of the 119 countries with legislative provisions that provided for external voting, 31 of them are African countries.⁷³ Therefore, it can be said that states recognize the right to external voting as a norm, and a policy matter that is central to maximizing the economic and development benefit of diaspora participation in national or local affairs. On the part of Nigeria, it is therefore a very important step to enable diaspora voting considering the critical role emigrant Nigerian play in national development. Having stated this, the steps to be taken to remedy the procedural stop-gaps to diaspora voting are mainly legislative and are enumerated in the following section.

5. Way Forward

The first step is to amend the electoral act to remove the residency requirement in the electoral act. As is, the right to vote is exercised only by persons resident in Nigeria at the time of registration. Consequently, the electoral act must be amended to include Nigerians in the diaspora. It is envisaged that such provision will clear out a huge logistical obstacle and steer the relevant institutions towards ensuring that appropriate resources are allocated for the establishment and designation of registration and polling units outside Nigeria, including utilizing the internet.⁷⁴ To this end, the Independent National Electoral Commission (INEC) will be vested with legislative authority to designate particular locations outside Nigeria e.g consular offices, embassies, other locations approved by the Nigerian government as polling and registration points. In this era where globalization is the way and information technology is indispensable to the human way of life, Nigeria may leverage electronic voting. These suggestions depend on purposeful amendment of the Electoral Act. Sections 57 and 58 may be altered to remove the necessity for a physical presence at registration center to register or a polling unit to cast votes.⁷⁵ With the above being said, it is important that these changes are examined microscopically. Decision makers will do well to undertake these changes in gradual manner and with constant stakeholder engagement.

6. Conclusion

It is imperative that the right of Nigerians in diaspora to vote from their country of residence is long overdue. Recently, the discourse over diaspora voting has taken center stage in the Nigerian polity.⁷⁶ This is testament to the recognition by most Nigerians that the right to vote is generally non-derogable. Thus, in a globalized world, the absence of the enjoyment of the right by emigrant populations becomes when it is considered that diaspora voting is an age old practice. Nigeria's electoral body INEC and the National Assembly appear to be ready to take the relevant steps to make diaspora voting a reality for emigrant Nigerians. In the words of the chairman of INEC Professor Mahmud Yakubu 'INEC is committed to providing Nigerians living outside the country the opportunity to have a say in who become our leaders at various levels'. I hope that [...] the legal and constitutional obstacles to voting by Nigerians in Diaspora will soon be removed so that Nigerians, irrespective of where they live around the world would have the opportunity to vote in future elections.'⁷⁷ This is a welcome development.

⁷¹ Along this line, some scholars argue that the number of countries allowing external voting has been underestimated along history. See for instance, M Collyer, and Z Vathi 'Patterns of Extra-Territorial Voting' *Development Research Centre on Migration, Globalisation and Poverty Working Paper*, no. 22 (2007), http://www.migrationdrc.org/publications/working_papers/WP-T6.pdf (accessed November 24 2024); IDEA and IFE (eds) *Voting from Abroad: The International IDEA Handbook on External Voting*, IFE. (Stockholm and Mexico City: IDEA and IFE, 2007).

⁷² IDEA 2007, above n 71.

⁷³ They include Algeria, Angola, Benin, Botswana, Cameroon, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Lesotho, Mali, Morocco, Mauritius, Mozambique, Namibia, Niger, Rwanda, São Tomé and Príncipe, Senegal, South Africa, Sudan, Togo, Tunisia, and Zimbabwe.

⁷⁴ Ihugba (2018) above n 46, 270.

⁷⁵ Ibid.

⁷⁶ 'INEC, NASS Make Case for Diaspora Voting' available at <<https://inecnigeria.org/news-all/inec-nass-make-case-for-diaspora-voting/>> last accessed 20 August, 2025

⁷⁷ Ibid.