

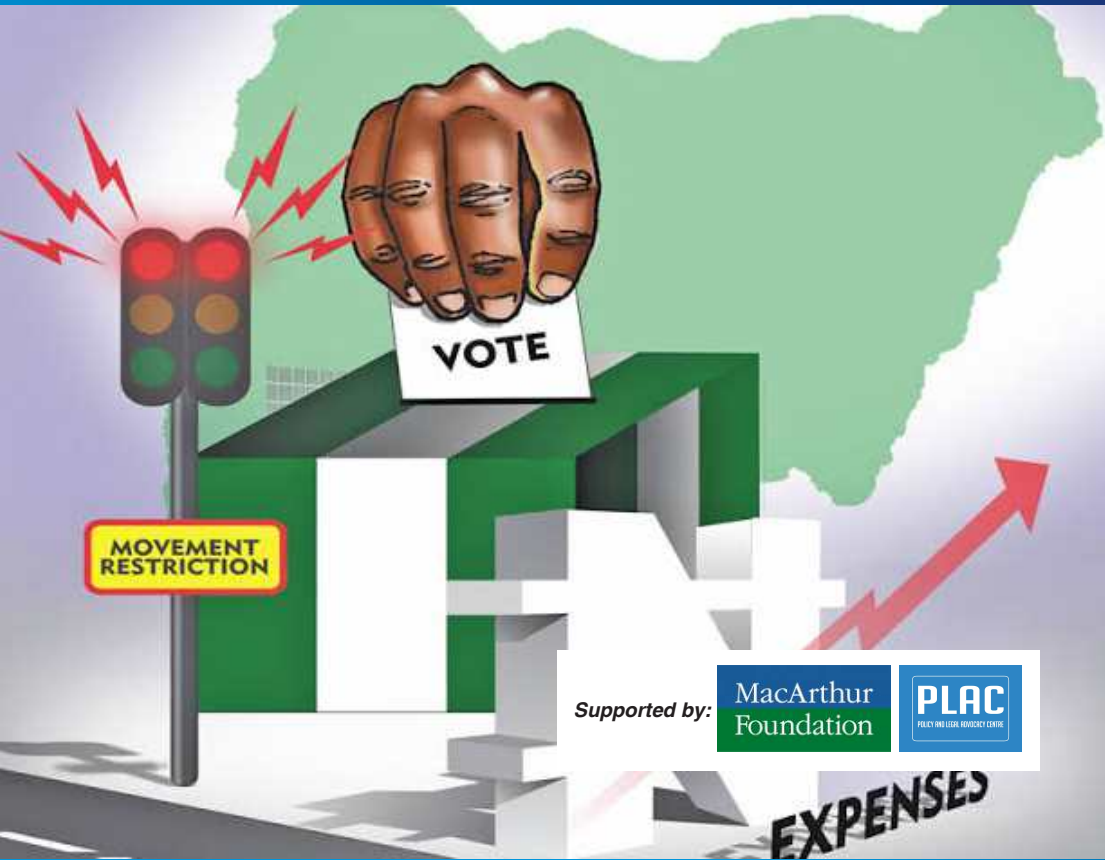


SCDDD
SAVANNAH CENTRE
FOR DIPLOMACY DEMOCRACY & DEVELOPMENT

Leadership Effectiveness and Accountability Dialogue (LEAD)

A Desk Review on

ELECTORAL REFORM



Supported by:

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Foundation

PLAC
POLICY AND LEGAL ANALYSIS CENTRE

EXPENSES

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**LEAD EFFECTIVENESS AND ACCOUNTABILITY DIALOGUE (LEAD):
A DESK REVIEW on ELECTORAL REFORM**



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Acknowledgement

It has been a huge and exhilarating task for the SCDDD to Desk Review, compile and produce the reviewed selected national documents. The review is designed to isolate sets of common grounds and recommendations that can be used to engage critical State Actors, especially the Presidency and leadership of the National Assembly, to attain genuine and sustainable national reconciliation, social inclusion, healing, cohesion and open/accountable governance that would subsequently usher in national development. This Desk Review of selected national documents would not have been materialized without the support of many people to whom we are profoundly grateful.

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the required leadership and deploying his vast experience in which conceptualisation of this project and output standards. It is the Centre's hope that this project would contribute to a better new Nigeria of our collective dreams.

Our sincere gratitude and special appreciations goes to MacArthur Foundation for its funding support for this project as well as "Policy and Legal Advocacy Centre"(PLAC), for its technical support on "Enhancing Citizens' Engagement of Accountability and Social Inclusion Issue around Elections".

We are equally grateful to our Founder, Chairman, Board members and other respected Nigerians who have also agreed, to serve as Council Members (Council of the Wise) to extol the messages of this Project, Engagement Booklet and the outcome of the Desk Review. We are similarly grateful to our respected former Chief Justice of the Federation, His Lordship, Justice Muhammad Lawal Uwais, who remains the Centre's indefatigable Pioneer Chair of Savannah Centre's Council of the Wise. I wish to seize this opportunity to express my sincere appreciation to all staff of the SCDDD for their cooperation and support towards the success of this project. I am particularly swayed by the teamwork exhibited by all. Undoubtedly this will remain relevant to the Centre's success in all its undertakings. Thank you very much indeed

Amb. Sani S. Bala (Wamban Katsina)
Executive Director, SCDDD

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Acronyms

ERC	-	Electoral Reform Committee
CJN	-	Chief Justice of Nigeria
NP	-	Nigeria Police
NSCDC	-	Nigeria Security & Civil Defence Corps
INEC	-	Independent National Electoral Commission
ICCES	-	Inter-agency Consultative Committee on Electoral Security
NSA	-	Security Advisor
NBC	-	National Broadcasting Commission
CJC	-	National Judicial Council
NOA	-	National Orientation Agency
NJC	-	National Judicial Council
NPC	-	National Population Commission
NBC	-	National Boundary Commission
NBS	-	National Bureau of Statistics
NIMC	-	National Identity Management Commission
NCC	-	National Communication Commission
NIDCOM	-	Nigerians Diaspora Commission

Executive Summary

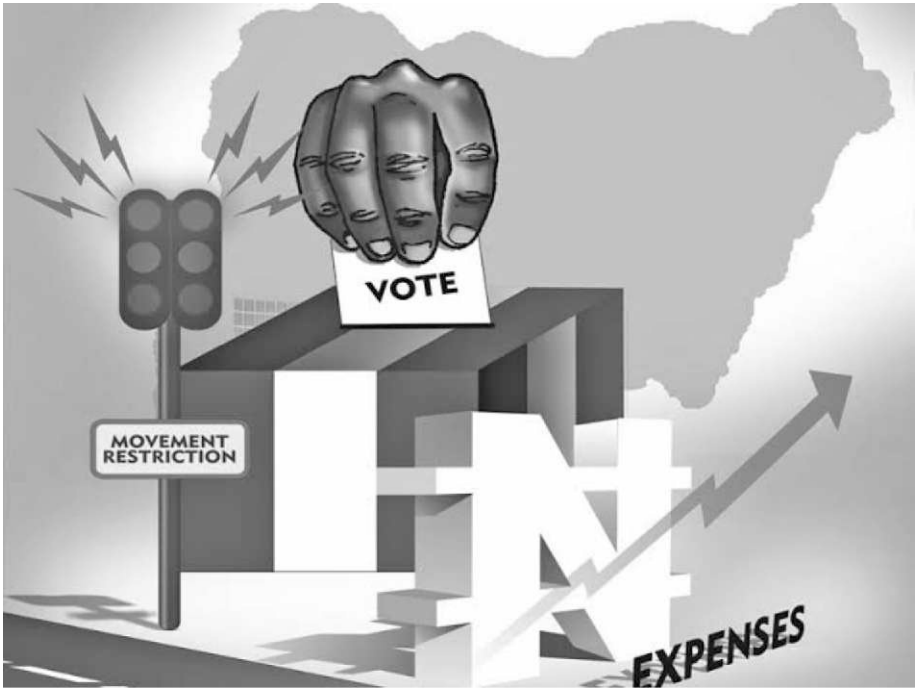
The In-depth Desk-Review on selected National Documents is one of the segments under the second edition of the Leadership Effectiveness and Accountability Dialogue (LEAD) project, currently being undertaken by Savannah Centre for Diplomacy, Democracy and Development (SCDDD) with support from MacArthur Foundation, under its **“Enhancing Citizens’ Engagement of Accountability and Social Inclusion Issues around Elections”**. The selected National Documents are (2005 National Political Conference by President Obasanjo, 2014 President Goodluck Jonathan's National Conference, 2007 Justice Mohammed Lawal Uwais Electoral Reform Report, 2002 Human Rights Violations Investigation Commission of Nigeria (Opota Panel Report) and the All Progressive Congress (APC) 2018 Report on True Federalism.

The second edition of the LEAD Project is tailored to complement the first edition in terms of context, reach and impact. LEAD-2 is fashioned to be action-driven through sets of activities that include; in-depth desk-review on selected national documents, national online forum/policy discussions on the state of the nation, critical stakeholders buy-in engagements, regional consultative forums and weekly radio show on a national frontline radio station in Abuja. The reconstituted Savannah Centre's Council of the Wise are the major drivers of this project for impact

and effectiveness.

The major purpose of the LEAD II in-depth desk review segment is to amongst other things; Isolate sets of common grounds and recommendations that can be used to engage critical state actors, especially the Presidency and leadership of the National Assembly to attain open/accountable governance, genuine and sustainable national reconciliation, social inclusion, healing, cohesion and revival that would subsequently usher-in national development.

ELECTORAL REFORM



INTRODUCTION

Nigeria, no doubt is richly endowed in both human and material resources which should ordinarily position the country for effective and efficient leadership to its citizens and the African continent. The interplay of politics, ethnicity, religion and other vices have over time increased the challenges of good governance and development in the country, especially since the return of democratic rule in 1999.

In the bid to address these challenges, previous governments and administrations in the fourth republic have constituted different national conferences and dialogues to discuss national challenges and proffer solutions. Among these conferences and reports were; "Justice Oputa Panel, 2005, President Obasanjo Political Conference, 2007 Mohammed Uwais Electoral Reform, 2014 Jonathan National Conference and 2018, All Progressive Congress (APC) Document on True Federalism". The recommendations from these documents which focus on five thematic areas such as National Security; Electoral Reforms; the Fight Against Corruption; Restructuring and National Development, have been desk-reviewed to identify common grounds and relate them to current realities in the country. These five thematic points encapsulated into the aims and objectives of the (LEAD II PROJECT).

The main justification for electoral reform in Nigeria is rooted in the historiography of Nigerian elections, which some have

characterized as a history of competitive rigging (Ibrahim 2007, pp 2-3). Indeed, throughout the various epochs of the country's political development (pre-and post-independence), electoral issues have remained, arguably, among the most influential factors in the political cycle of the country.

Justice Mohammed Uwais Electoral Reform Committee (ERC) 2007, in its report covered the field, recommending precise measures that would improve the electoral process and environment; strengthen the legal frameworks and enhance the independence of the electoral body. The Committee has also made recommendations to improve the performance of various institutions and stakeholders in the electoral process. These include the Legislature, Judiciary, Executive, Political Parties, Security Agencies, Civil Society Organizations, Media and Nigerian citizens.

OVERVIEW

Over the years, elections in Nigeria have lost their democratic content and relevance, due largely to the failure to honor the social contract between the governed and the government that elections ordinarily symbolize (Kew 2010, pp 499-521). These problems reached a crescendo in the aftermath of the 2007 'garrisoned' election. Allegations of massive irregularities marring the 2007 elections are supported by some verifiable indices. First, the results were bitterly disputed and contested in an unprecedented manner, though largely non-violently. There were 1,250 petitions relating to the conduct of the elections alone: 8 relating to the presidential election, 105 to the gubernatorial election, 150 to the Senate, 331 to the House of Representatives and 656 to the State House of Assembly. President Umaru Musa Yar'Adua admitted the elections that produced him as president "had shortcomings" and promised electoral reforms to correct the system. The elections were widely criticized by local and foreign observers as flawed.

Thus, on August 28, 2007, three months after President Umaru Musa Yar'Adua was sworn in, he set up a 22-member Electoral Reform Committee to "examine the entire electoral process to ensure that we raise the quality and standard of our general elections and thereby deepen our democracy." The committee, headed by former Chief Justice of Nigeria (CJN), Justice Muhammadu Lawal Uwais, was given 12 months to complete its assignment.

Members of the committee are composed of a highly intellectual and erudite class including the best brains from the academic, Civil Society Organizations, professional groups & the public service. As attested, it was as a result of the thoroughness and comprehensiveness of the outcome (the report) that the Yar'adua's administration accepted over 90% of its recommendations and took immediate steps to implement some of them. The Committee found that election mindsets are one of the critical elements that determine the success of electoral practices, and the election mindsets of Nigerians are not only largely negative; they are also largely irrational. Appropriate recommendations have therefore been made to change the election mindsets of Nigerians to minimize the spate of violence and rigging in elections and build lasting democratic institutions and culture (**Chigozirim Okoro & Esther Mabadeje, CLEEN Foundation**).

Savannah Centre for Diplomacy, Democracy and Development (SCDDD) reviewed the Electoral Reform report of Justice Mohammed Lawal Uwais (Rtd) Electoral Reform Committee (ERC) 2007 resolutions and its recommendations, which many believed to be the archetype of genuine electoral reform towards finding common actionable recommendations in attaining a genuine national reconciliation, healing, cohesion and renewal for improved, credible free and fair electoral process and elections. The Centre recommendation also ascertained some common grounds with Justice Oputa panel

(The Human Rights Violations Investigation Commission of Nigeria), 2005 Obasanjo political conference, 2014 Jonathan national conference and 2018 APC document on true federalism recommendations.

After a thorough review of the Electoral Reform Committee (ERC) report recommendations and other conferences and committees, SCDDD came up with the following actionable recommendations that the President (Presidency) could implement via executive powers without legislative approvals or authorizations, as well as The National Assembly should do (legislate on) to enable the Executive arms to implement without running foul of the law, especially the 1999 constitution (as amended) and the Electoral Act 2022:

1. The neutrality of security services/agencies (The Nigeria Police, NSCDC etc)
2. Curb the menace of votes trading (vote-buying and selling).
3. Sufficient and timely/early release of election funds for The Independent National Electoral Commission (INEC).
4. Equity of Coverage for all Political Parties and Adequate Voter Education.
5. Gender Equality and Inclusion of Person with Disability in the Electoral Process.
6. The Independence of the Independent National Electoral Commission (INEC).
7. Autonomous and Constitutionally Recognized Electoral

Offences Commission.

8. Setting up of Political Parties Registration and Regulatory Commission.
9. Creation of Constituency Delineation/Demarcation Commission.
10. Independent Candidacy.
11. Diaspora Voting.

These recommendations targeted instituting a strong election management body with substantial administrative and financial autonomy and promoting democratic political culture within parties and the populace. Drawing concrete insights from the 2007, 2011, 2015 and 2019 Nigeria's general elections, which provided the litmus test of the possible impact of the reform on the democratisation process.

ACTIONABLE RECOMMENDATIONS THAT PRESIDENT (PRESIDENCY) COULD IMPLEMENT VIA EXECUTIVE POWERS WITHOUT LEGISLATIVE APPROVALS OR AUTHORIZATIONS.

1. **The neutrality of Security Services/Agencies:** The interference in the election process by security forces perceived or otherwise, undermined confidence in the electoral process. Under Section 29 of the 2010 Electoral Act (as amended), INEC has the authority to request for the deployment and assignment of security personnel for elections under "The Inter-agency Consultative Committee on Electoral Security (ICCES), which is co-chaired by the National Security Advisor (NSA) and the INEC Chairman. To improve coordination and information sharing, we recommend the presidency via executive power make the INEC Chairman the only Head/chairman of the ICCES avoid circumvention of INEC's legal authority for sufficient operationalization of the committee – appropriate and swift response to or investigation of cases or incidence of electoral violence.
2. **Votes Trading (Vote Buying and Selling):** Vote buying has become a disturbing feature in election in Nigeria. According to Olusegun Agbabje "vote buying and selling were some of the electoral offences frowned at by the Electoral Act. Despite that, the unlawful practice had continued because

security agents had failed to make arrest and prosecute the offender". The Independent Corrupt Practices and Other Related Offences Commission (ICPC) has already declared vote trading (vote-buying and selling) a form of corruption and launched a campaign to combat the practice. We recommend The Presidency, via executive order direct the commission to set up a special committee with other relevant agencies and stakeholders like the National Orientation Agency (NOA), Nigeria Police Force and Independent National Electoral Commission (INEC) to educate, prevent and prosecute offenders to curb this negative practice which have compromised the integrity of elections and undermined Nigeria's democracy.

- 3. Sufficient and Timely/Early Release of Election Funds to The Independent National Electoral Commission (INEC):** The proposed Electoral Act (Amendment) Bill 2021 clause 3 (3) strengthens the financial independence of the INEC by ensuring that all funding required for a general election is released not later than one year before the next general elections. The Independent National Electoral Commission (INEC) preparations were hampered by the late disbursement of necessary election funds for the 2019 general election and the potential impact on INEC's ability to procure all materials and equipment in time. We recommend the Presidency makes it a policy to include INEC's budget a year before the election year and release same via the consolidated revenue

fund of the federation to enable INEC make necessary logistics and operational preparations.

4. **Equity of Coverage for all Political Party and Adequate Voter Education:** The federal government (presidency) can demonstrate a genuine commitment to promoting press freedom during the election period through her regulatory agency, the National Broadcasting Commission (NBC). The National Broadcasting Commission (NBC) via executive power should ensure all publicly funded media houses allocate airtime to all political parties and candidates contesting in an election and promote politics of ideas and issues, not name-calling, hate speech or invectives. For adequate voter education, the National Broadcasting Commission (NBC) with other stakeholders like The Nigeria Union of Journalists should adequately train media practitioners in the provisions of the electoral law so that they can be guided to appropriately enlighten the public.
5. **Gender Equality and Inclusion of Person with Disability in the Electoral Process:** we recommend that the presidency should adopt and apply measures via executive powers to achieve the 35 percent affirmative action for women in both elective and appointive positions. The Presidency should also ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling places by provision of suitable means of communication, such as Braille,

Large embossed print or electronic devices or sign languages interpretations, or off-site voting in appropriate cases, as envisioned in several gender equality laws like the 2006 National Gender Policy and clause 54 (2) of Electoral Act (Amendment) Bill 2021 respectively.

ACTIONABLE RECOMMENDATIONS THAT THE NATIONAL ASSEMBLY SHOULD DO (LEGISLATE ON) TO ENABLE THE EXECUTIVE ARM TO IMPLEMENT WITHOUT RUNNING FOUL OF THE LAW, ESPECIALLY THE 1999 CONSTITUTION (AS AMENDED).

- 1. The Independence of The Independent National Electoral Commission (INEC):** We recommend that section 153 of the 1999 constitution (as amended) should be amended to remove INEC from the list of Federal Executive Bodies. These amendments will insulate the Independent National Electoral Commission (INEC) from the political influences of the executive arm of government in terms of its composition (The Chairman, Board members and Residents Electoral Commissioner (REC)) and funding. The power to appoint INEC board should be transferred from the president to the National Judicial Council (NJC). The financial autonomy granted INEC in the first amendment to the 1999 Constitution and the electoral reforms embedded in the Electoral Act 2010 as amended as well as the little known Electoral Act 2015 accented to by President Jonathan on the eve of the general elections were all based on the committee's report.

The legal provision for financial independence is grossly inadequate; however, according to Section 3(3) of the Electoral Act 2022, the election funds due to the Commission for any general elections are to be released to the

Commission not later than one year before the next general election. Once a fair process of constituting the commission is instituted (The power to appoint INEC board should be transferred from the president to the National Judicial Council (NJC)), RECs should be appointed by, and responsible to the national commissioners. It is absurd to suggest that the commission could be listed among federal executive bodies and yet remain independent of the federal executive. It should be detached in addition to whatever mode of appointment may be.

2. Autonomous and Constitutionally Recognized Electoral

Offences Commission: The unbundling of the INEC will enable it to function efficiently because some of its functions currently performed are impeding on its core functions of elections administrations. Thus, the establishment of the Electoral Offences Commission is imperative/necessary. The composition and functions of the Electoral Offences Commission should be strictly adhered to as encapsulated by the 2007 Justice Mohammed Lawal Uwais Electoral Reform report via constitution alterations by the National Assembly.

3. Political Parties Registration and Regulatory Commission:

to enhance the accountability of political parties with regards to the funding of campaigns and other activities, a Political Parties Registration and Regulatory Commission should be established and empowered to register political parties under

the provision of the 1999 constitution (as amended) and the Electoral Act 2010. We recommend the National Assembly should strictly adhere to all the six recommendations proffered by the 2007 Justice Mohammed Lawal Uwais Electoral Reform report with regards to the composition and functions of the commission.

- 4. The Constituency Delineation/Demarcation Commission:** we recommend that The National Assembly should establish The Constituency Delineation/Demarcation Commission with Institutional representatives from INEC, National Population Commission (NPC), National Boundary Commission, Office of the Surveyor-General of the Federation, National Bureau of Statistics, National Identity Management Commission and National Communication Commission as encapsulated in the 2007 Justice Mohammed Lawal Uwais Electoral Reform report.
- 5. Independent Candidacy:** virtually all reports of the 120 domestic and 36 foreign observers for the 2019 general election agreed that Nigeria's political parties are the weakest link in Nigeria's electoral processes and democracy. Thus, we recommend the National Assembly should amend the provision of the constitution to allow for independent candidacy not sponsored by any political party to contest for electives offices in line strictly with the recommendation summarized by 2007 Justice Mohammed Lawal Uwais

Electoral Reform report. The present electoral system as defined by section 131 (c) of the 1999 constitution (as amended) stipulated that one can only contest for elective office if he or she is a member of a political party and sponsored by a political party.

There is a growing demand for independent candidacy due to the high level of lack of internal democracy amongst our political parties. Even though this is a novel proposition that has hitherto not been provided for in any of our existing laws, given the growing support for the same, we recommend that it should be provided for by the Constitution by the National Assembly.

Accordingly, Sections 65 (2), 106 (d), 131 (c), 142 (1), 176 (c) and 187 of the Constitution will be amended to provide for independent candidacy. Also, the Electoral Act, 2010 will be amended particularly Section 87 thereof to provide for strong eligibility criteria which must be met by persons wishing to contest as independent candidates. These criteria shall include but are not limited to the following:

- a. Any person desiring to stand for an elective post as an independent candidate shall not be a registered member of a political party at least six (6) months before the date set for the elections in which he intends to contest.
- b. Constituency based nomination by verifiable signatures of 20 registered voters in each of the

wards in the constituency.

- c. The payment of a financial deposit will be subject to refund if the independent candidate scores at least 20% of the total votes cast in that election in the constituency. The rate of deposit should be equal to 20% of the approved election expenses for the various offices as provided in section 93 of the Electoral Act 2010.
- d. In addition to items (b) and (c) above, the candidates must meet all other conditions for eligibility stipulated in the 1999 Constitution (as amended), Electoral Act 2010 and any other law.

6. Diaspora Voting: Nigeria's Electoral umpire, INEC, Chairman Professor Mahmood Yakubu addressed the press in November after the commission budget defence at the senate, 2020 that INEC is ready for diaspora voting. However, he said it will require an amendment of the 2010 Electoral Act by the National Assembly. He also said " we have already worked out the document, once the law is amended today, we can roll it out. We are ready. We have had several meetings with the Nigerians Diaspora Commission (NIDCOM), but we can't go beyond what the law provides," he said. Therefore, we recommend the National Assembly to support and insert a new part (bill – section 117, 118 and 119 added to the principal Act) – Procedure for Diaspora Voting in Presidential elections: Power of Commission for diaspora

Voting sponsored by Hon. Azodo Eucharia.

7. Vote Trading Criminalization (vote buying and selling)

Vote buying is a global problem and is evident in places such as United States, the United Kingdom, Nicaragua, China, Kenya, Uganda, Zimbabwe, Malawi. In Nigeria, the electoral act defines inducement as anything to either vote or refrain from voting is an offence. It is a punishable offence under the Nigerian law. It is against Section 124 (1) (a) to (c) of the Electoral Act as amended.

Upon conviction an electoral offence convict can be liable for a fine or to a prison term. According to the electoral Act According to Section 130 of the Electoral Act, 2010,

“A person who— (a) corruptly by himself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays money to or for any person for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election; or (b) being a voter, corruptly accepts or takes money or any other inducement during any of the period stated in paragraph (a) of this section, commits an offence and is liable on conviction to a fine of N100,000 or 12 months imprisonment or both.” While vote buying is subject to punishment, the attainment of compliance to this legal

provision remains a challenge. Although, section 150 (2) of the 2010 Act put the responsibility of prosecution on INEC shoulder. We recommend that, The National Assembly should amend section 130 (b) by increasing the penalty to 5 years (minimum) imprisonment (correctional center) and 5 million naira fine or both upon conviction.

CONCLUSION

The legal framework for election in Nigeria is the 1999 constitution (as amended) and the Electoral Act of 2022. The 2023 general elections will mark the 24th anniversary of Nigeria's unbroken transition to civilian democratic democracy. However, previous elections outcomes highlighted for many Nigerians for electoral reforms and national conversations about the progress made thus far, and the vulnerabilities that must be overcome to make electoral processes more credible and Nigeria's democracy more resilient. All the recommendations are geared towards improving the electoral process; increasing citizen participation, particularly of marginalized groups including women, youth and people with disabilities to enhance confidence in the elections and minimize the risk of electoral violence. It is also important to note that the proposed unbundling of the electoral umpire (INEC) is critical to its efficiency and accountability.

It must, however, be pointed out that the most important input is ensuring a reorientation by politicians who have a penchant for suborning whatever structure or process is in place. Unless this is done, it will be difficult to obtain credible polls and Nigeria will remain a laughing stock among nations, even in Africa.

ABOUT SAVANNAH CENTRE

Savannah Centre for Diplomacy, Democracy and Development (SCDDD) is a non-governmental organization committed to research, advocacy training and policy analysis in the areas of conflict prevention, management, democracy and sustainable development in Nigeria and Africa. The SCDDD is leading strategic discussions on inclusive governance for sustainable development, in order to promote human security, sustainable peace, good governance, rule of law and human rights in Nigeria and Africa, shaping public policy through research and knowledge sharing. We are committed to improving the democratic and governance space through advocacy and the provision of context-specific training and solutions to governments, policy makers and some non-state actors.