



The Technical Working Group, Citizens' Led
Engagement on Judicial Accountability in Post-Election
Justice Delivery in Nigeria:

7
POINTS
RECOMMENDATION
FOR POST-ELECTORAL JUSTICE
DELIVERY AND REFORMS.

ACRONYMS

AAN	Action Aid Nigeria
CJN	Chief Justice of Nigeria
CLEAP	Citizens' Led Engagements on Judicial Accountability in Post-Election Justice Delivery in Nigeria
COA	Court of Appeal
CSO	Civil Society Organisation
EA	Electoral Act, 2022
EFCC	Economic and Financial Crimes Commission
EPT	Election Petition Tribunal
ICPC	Independent Corrupt Practices Commission
INEC	Independent National Electoral Commission
LTHM	Live Town Hall Meeting
MOI	Ministry of Interior
NBA	Nigeria Bar Association
NJC	National Judicial Council
NLC	Nigeria Labour Congress
NLRC	Nigerian Law Reform Commission
SEC	State Electoral Commission
SSS	State Security Service
TUC	Trade Union Congress
TWG	Technical working Group

INTRODUCTION

The CLEAP Justice project aims to address post-election justice and citizens' engagement during Elections. Presently, there is growing interest from citizens in post-election processes, including tribunal judgments. This is as a result of controversies over election results, the role of the courts, and tribunals in election petitions and concerns over the neutrality of election management agencies, including INEC. The project objectives are as follows:

1. Building citizens' awareness of the judiciary's role in electoral justice;
2. Supporting citizen actions to hold judges and lawyers accountable; and
3. Reinforcing systems for judicial independence in electoral processes.

One of the strategies of implementation of the project is the establishment of a Technical Working Group (TWG). The TWG consists of experts drawn from different fields and its role is to provide in-depth review and analysis of judicial aspects of electoral processes in order to enhance accountability in election justice delivery.

Following extensive deliberations, consultations, and reviews in which the TWG identified and examined several challenges in the Election Litigation Processes, it came up with several recommendations summarised under seven key areas.

These recommendations are addressed to different stakeholders, and it is hoped that these will enhance citizens' engagement and electoral justice reform.

RECOMMENDATIONS

KEY AREAS	RECOMMENDATIONS
<p>A. PRE-ELECTION AND ELECTION MATTERS</p>	<p>1. Pre-election matters should be determined before the election to ensure fairness, prevent multiplicity of actions and enhance election administration.</p>
	<p>2. The levels of redress for pre-election matters should be reviewed as follows: House of Representatives, Senate, and Governorship elections should have two steps/levels ending at the Court of Appeal, while Presidential pre-election matters should start from Court of Appeal and end at the Supreme Court.</p>
	<p>3. Primaries not conducted in adherence to INEC regulations & guidelines should be invalidated. Stringent rules and sanctions should determine elevated electoral crimes, and parties should be prohibited from holding public office for five years in case of disqualification.</p>
	<p>4. INEC Regulations should be separated from the guidelines and gazetted.</p>
	<p>5. The punishment for electoral offences in the Electoral Act, 2022 (Electoral Act) should be revised to elevate serious offences to a level that disqualifies the political parties and/or candidates from elections.</p>
	<p>6. Identify retired and serving judges/justices to collaborate with on electoral reforms.</p>

<p>B. LEGAL TECHNICALITIES, EX PARTE ORDERS, THE BURDEN OF PROOF, AND SUBSTANTIAL COMPLIANCE</p>	<p>1. NJI should include in its curriculum for the training of Judges, the use of ex parte orders and legal technicalities.</p>
	<p>2. NJC should be more proactive in the discipline of judges who misuse the application of ex-parte orders. Also, such judges should not be appointed to election tribunals. Making disciplinary reports public would deter judges from compromised actions, as they would be aware of the potential public scrutiny.</p>
	<p>3. INEC should develop more detailed guidelines for using the seven-day window to review the declaration, and return, as provided in Section 65 (1) of the Electoral Act and Clause 99 of the INEC Regulations and Guidelines for the Conduct of Elections 2022 to ensure transparency in such a review process.</p>
	<p>4. The Electoral Act (Section 123) should be amended to the effect that INEC ceases to be a Statutory Respondent in Election Petitions. Its role should be limited to tendering all relevant documents and providing clear explanations of their purpose and origin.</p>
<p>C.NATURE OF CONSTITUTION OF EPTs</p>	<p>1. The Constitution should be amended to the effect that Election litigations for HOR, Senate, and Governorship elections should be two levels, ending at the Court of Appeal, with three-member panel at the lower court and five at the Court of Appeal.</p>
	<p>2. The EPTs should utilise their inherent powers to seek independent experts’ opinion on election matters.</p>
	<p>3. The timelines for determining election petitions should be reduced from 180 days to a maximum of 120 days in order to ensure the completion of election petitions before swearing-in.</p>

<p>D. PRESSURE ON JUDGES & CORRUPTION IN THE JUDICIARY</p>	<p>1. Enhanced objectivity and transparency should be introduced in the appointment of judges and throughout the judicial system. The process applied by NJC should include citizens' scrutiny of proposed appointees.</p>
	<p>2. Review upwards the remuneration, other allowances and retirement packages under the scheme of service for Judges.</p>
	<p>3. The establishment of an online platform for citizens to report judicial misconduct or blow the whistle on judges and court proceedings.</p>
	<p>4. The position of the CJN should be unbundled to reduce the concentration of power and promote transparency under the CFRN. There should be provisions for deputies to all heads of courts, with their roles and responsibilities clearly defined.</p>
	<p>5. Extend the application of the Code of Conduct Bureau Act for Public Officers to post-tenure accountability of judges.</p>
	<p>6. Where there are allegations against the CJN and other Supreme Court justices, Justices of the Supreme Court level from other Commonwealth jurisdictions should be involved in the disciplinary process.</p>
	<p>7. S.156(1) (a) CFRN 1999, S. 1 should be amended to include that persons who have worked with INEC should be restricted from engaging in partisan politics for at least five years after leaving the Commission.</p>
	<p>8. Establish an exchange programme for judicial officers to visit countries with progressive legal systems for knowledge, and experience-sharing.</p>
	<p>9. The quality of judicial staff should be improved through meticulous recruitment process and continuous training.v</p>

	<p>10. Improve the transparency of the process of constituting Election Petition Tribunals with/by the inclusion of citizens’ scrutiny in the process of appointments.</p>
	<p>11. Advocacy should be conducted for the expeditious passage of a Whistleblowing Bill to facilitate the reporting of judicial misconduct.</p>
<p>E. INCONSISTENCIES AND CONTRADICTIONS IN JUDICIAL PRONOUNCEMENTS</p>	<p>1. A digest should be produced summarising contradictory judgments in election matters and made available to all critical stakeholders, including the NJC.</p>
	<p>2. Stakeholders should provide NJC with the necessary information about the performance of judges and to enable it to do its work efficiently.</p>
	<p>3. The NJC should be proactive and not limit itself to controlling negative judicial behaviour through complaints and petitions.</p>
<p>F. POOR CULTURE OF ACCEPTING ELECTORAL OUTCOMES</p>	<p>1. Efforts should be made to nurture public trust in election processes and outcomes.</p>
	<p>2. Implement penalties/costs for frivolous election petitions.</p>
	<p>3. Consider the adoption of proportionality of parties in executive appointments as a form of domestication of the presidential system.</p>
	<p>4. Concession to the election outcomes and abiding by pre-election Peace Accords should be promoted.</p>
<p>G. ROLE OF CITIZENS</p>	<p>1. Produce a simplified and citizen-friendly digest of contradictory judgments and judgments of high public visibility.</p>

	2. Civic education on the election adjudication processes should be vigorously pursued.
	3. Collaborate with investigative journalists to profile EPT judges to show their suitability or otherwise.
	4. Identify and collaborate with international bodies and civil society that can collectively mount appropriate pressure on the government to push for electoral and judicial reforms.

OTHER RECOMMENDATIONS

1. It was recommended that live coverage or electronic recording of court proceedings should be implemented for the entire court process to ensure transparency and public scrutiny.
2. A comprehensive study on the unbundling of the Independent National Electoral Commission (INEC) was suggested to contribute to improved electoral processes and transparency.
3. CSOs should lead campaigns to effectively communicate the specific timeline of the 180-day period, starting from the constitution of the Tribunal, enhancing transparency and public understanding of the electoral process.
4. The judiciary should play an active role in communicating and sharing information with the public to enhance transparency and strengthen public trust in the electoral and justice system.
5. There should be a transparent process for nominating the INEC chairman, including publishing the names of nominees and allowing a 21-day period for public objections before legislative screening.
6. The inclusion of independent candidacy in the constitution should be encouraged to eliminate godfatherism and promote more inclusive participation in the electoral process.
7. The establishment of a system to determine the qualification of party candidates and set criteria for ballot eligibility was advocated to enhance the selection of qualified candidates for public office.
8. Instead of decentralising State Electoral Commissions (SECs), it is recommended that nationally established bodies oversee and conduct all state elections, with INEC serving as the supervisory authority and collating final results, promoting healthy competition and ensuring quality elections.
9. CSOs should maintain a balanced and unbiased engagement with opposition parties when interacting with various political entities.

OFFENCES

The TWG also extensively reviewed the existing offenses outlined in the Electoral Act and recommended a subset for disqualification.

RECOMMENDED OFFENCES FOR DISQUALIFICATION

Out of the 43 offenses extracted from the EA, the TWG meticulously narrowed down the list to 16 specific offenses that warrant further disqualification in subsequent elections. A conviction for any of these identified offenses will result in additional penalties, specifically disqualification from holding or running for public office for a period of 10 years. This approach aimed to uphold the integrity of the electoral process and deter individuals with a history of certain offenses from participating in public office.

S/N	SECTIONS	PROVISION	RECOMMENDATION
1	SECTION 16 (2), (3) VOTERS CARD	(2) No voter shall hold more than one valid voters' card. (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction, to a fine not more than N500,000 or imprisonment for a term not more than one year or both.	Include for disqualification
2	SECTION 22 BUYING AND SELLING VOTERS CARD	22. Any person who— (a) is in unlawful possession of any voter's card whether issued in the name of any voter or not ; or (b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not ; or buys or offers to buy any voters' card whether on his own behalf or on behalf of any other person, commits an offence and is liable on conviction to a fine not more than N500,000 or imprisonment not more than two years or both.	A conviction for any of this offence shall in addition to any other punishment should attract disqualification from holding or running for public office for period of 10 years
3	SECTION 23 (1) (D) AND 2 (A) and (B) REGISTRATION OF VOTERS	(2) No voter shall hold more than one valid voters' card. (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction, to a fine not more than N500,000 or imprisonment for a term not more than one year or both.	Include for disqualification
4	SECTION 29 (8) SUBMISSION OF LIST OF CANDIDATES	(8) A political party which presents to the Commission the name of a candidate who does not meet the qualification stipulated in this section, commits an offence and is liable on conviction to a fine of N10,000,000.	In addition, such political party shall be disqualified from participating in that election
5	SECTION 78 (1) AND (2)	(1) Any political party or association, which contravenes the provisions of section 227 of the Constitution, commits an offence and is liable on conviction to a fine of —	The political party/association and individual will be disqualified

S/N	SECTIONS	PROVISION	RECOMMENDATION
		<p>(a) N5,000,000 for the first offence ; (b) N7,000,000 for any subsequent offence ; and (c) N500,000 for every day that the offence continues.</p> <p>(2) Any person or group of persons who aids or abets a political party in contravening the provisions of section 227 of the Constitution commits an offence and is liable on conviction to a fine of N5,000,000 or imprisonment for a term of five years or both.</p> <p>SECTION 227 OF CONSTITUTION PROVIDES No association shall retain, organise, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or in such manner as to arouse reasonable apprehension that they are organised and trained or equipped for that purpose.</p>	
6	SECTION 88 (9), 10 (11) (ELECTION EXPENSES)	<p>(9) A candidate who knowingly acts in contravention of this section, commits an offence and is liable on conviction to a fine of 1% of the amount permitted as the limit of campaign expenditure under this Act or imprisonment for a term not more than 12 months or both.</p> <p>(10) Any individual who knowingly acts in contravention of subsection (9) is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of nine months or both.</p> <p>(11) An accountant who falsifies, or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the contravention of the provisions of this section commits an offence and is liable on conviction to a fine of N3,000,000 or imprisonment for a term of three years or both.</p>	Include for disqualification from next election – Insert provision that candidate and party should each render account/return

S/N	SECTIONS	PROVISION	RECOMMENDATION
10	SECTION 97 (1) (a) and (b)	<p>93. —(1) A candidate, person or association that engages in campaigning or broadcasting based on religious, tribal, or sectional reason for the purpose of promoting or opposing a particular political party or the election of a particular candidate, commits an offence under this Act and is liable on conviction—</p> <p>(a) to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both ; and</p> <p>(b) in the case of a political party, to a maximum fine of N10,000,000.</p>	Include for disqualification
11	SECTION 114 (h) OFFENCES IN RELATION TO REGISTRATION	<p>A person who—</p> <p>(a) without authority, destroys, mutilates, defaces or remove or makes any alteration in any notice or document required for the purpose of registration under this Act ;</p> <p>(b) presents his or herself to be or does any act whereby he or she is by whatever name or description howsoever, included in the register of voters for a constituency in which he or she is not entitled to be registered or causes his or herself to be registered in more than one registration or revision centre ;</p> <p>c) publishes any statement or report which he or she knows to be false or does not believe to be true so as to prevent persons who are qualified to register from registering as voters ;</p> <p>d) makes in any record, register or document</p>	Include for disqualification

S/N	SECTIONS	PROVISION	RECOMMENDATION
		<p>which he or she is required to prepare, publish or keep for the purpose of registration, any entry or statement which he or she knows to be false or does not believe to be true ;</p> <p>E) impedes or obstructs a registration officer or a revision officer in the performance of his or her duties ;</p> <p>(f) without proper authority, wears the identification of a registration officer or assistant registration officer or wears any other identification purporting to be the identification of a registration officer or assistant registration officer ;</p> <p>(g) forges a registration card ; or</p> <p>(h) carries out registration or revision of voters at a centre or place not designated by the Commission, commits an offence and is liable on conviction to a maximum fine of N1,000,000 or to imprisonment for a term of 12 months or both.</p>	
12	SECTION 116 DISORDERLY BEHAVIOR AT POLITICAL MEETINGS	<p>Any person who, at a political meeting —</p> <p>(a) acts or incites another to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was convened, or</p> <p>(b) has in his possession an offensive weapon or missiles, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.</p>	Include for disqualification
13	SECTION 117 IMPROPER USE OF VOTERS CARDS	<p>(d) buys, sells, procures or deals, with a voters card otherwise than as provided in this Act, commits an offence and is liable on conviction to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both.</p>	Include for disqualification

S/N	SECTIONS	PROVISION	RECOMMENDATION
14	SECTION 118 IMPROPER USE OF VEHICLES	<p>(1) No person shall provide for the purpose of conveying any other person to a registration office or to a polling unit any government vehicle or boat, or any vehicle or boat belonging to a public corporation except in respect of a person who is ordinarily entitled to use such vehicle or boat and in emergency in respect of an electoral officer.</p> <p>(2) Any person who contravenes the provisions of this section, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of six months or both.</p>	Include for disqualification
15	SECTION 121 BRIBERY AND CONSPIRACY	<p>Any person who does any of the following— (a) directly or indirectly, by his or herself or by any other person on his or her behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement to or for any person, in order to induce such person to procure or to endeavour to procure the return of any person as a member of a legislative house or to an elective office or the vote of any voter at any election ; (b) upon or in consequence of any gift, loan, offer, promise, procurement or agreement corruptly procures, or engages or promises or endeavours to procure, the return of any person as a member of a legislative house or to an elective office or the vote of any voter at any election ; (c) advances or pays or causes to be paid any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election ; (d) after any election directly, or indirectly, by his or herself, or by any other person on his or her behalf receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting or having induced any candidate to refrain from canvassing for votes for his or herself at any such election, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.</p>	Include for disqualification

S/N	SECTIONS	PROVISION	RECOMMENDATION
16	SECTION 122 (3) AND (4) SECRECY IN VOTING	<p>(2) No person shall—</p> <p>(a) interfere with a voter casting his or her vote, or by any other means obtain or attempt to obtain in a polling unit, information as to the candidate for whom a voter in that place is about to vote for or has voted for ; or</p> <p>(b) communicate at any time to any other person information obtained in a polling unit as to the candidate to whom a voter is about to vote or has voted for.</p> <p>(4) Any person acting contrary to the provisions of this section commits an offence and is liable on conviction to a maximum fine of N100,000 or imprisonment for a term of three months or both.</p>	Include for disqualification
17	SECTION 127 (a) and (b) UNDUE INFLUENCE	<p>A person who—</p> <p>(a) corruptly by his or herself 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</p>	Include for disqualification to 127 (a)

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