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Legality of Defection and Implications for Democratic Consolidation in Nigeria

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In recent months the Nigeria polity has witnessed massive incidents of political party defections both in the legislative and executive arms of government¹. Party defection here refers to the movement of political appointees, legislators and persons in executive offices appointed or elected under a political party platform from the party on whose platform they are appointed or elected to a different party². The recent surge of defections in Nigeria has led to several commentators and scholars arguing for or against defection with the majority/vocal minority opinion seemingly against party defection³. In this discordance, very little appraisal of the phenomenon as a symptom rather than a cause for failure of good governance structures, has been done.

On the backdrop of these arguments, this issue brief attempts to examine some of the

issues raised on political party defection: its constitutionality and whether it creates dangers to democracy or desirability as a catalyst for democratic growth. This is done in the context of best practices of constitutionalism and democratic principles.

Legality of Defections

Under the Nigerian Constitution political party defection is controlled rather than prohibited. The Constitution however only makes provision on defection of legislators and is silent on members of the executive branch. **Section 68 (1)** of the Constitution of the Federal Republic of Nigeria *CFRN 1999*⁴, “*A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if - (g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the*

¹ See John Alechenu “Anxiety as defection fever grips political camps, parties” Punch Newspapers, 5th August 2018. Available online at: <https://punchng.com/anxiety-as-defection-fever-grips-political-camps-parties/> (accessed 29th August 2018);

² See **Section 68. (1) CFRN 1999**, this section however defines defection to only relate to legislators. The Constitution does not contemplate or control defection of the executive or political appointees.

³ See Tabia Princewill “Will defections be the beginning of party politics reform in Nigeria”, Vanguard Newspapers, August 1st 2018. Available online at: <https://www.vanguardngr.com/2018/08/will-defections-be-the-beginning-of-party-politics-reform-in-nigeria/> (accessed 29th August 2018); Vanguard Newspapers “Still on political party defections” Vanguard Newspapers, 16th August 2018. Available online at: <https://www.vanguardngr.com/2018/08/still-on-political-party-defections/> (accessed 29th August 2018);

⁴ Constitution of the Federal Republic of Nigeria 1999 as amended.

expiration of the period for which that House was elected;”

The first impression created by the above provision is one of prohibition. However, this is qualified by the requirement in the proviso stating when vacation of the seat will only occur: *“Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.”* In other words, when there is a division in the original political party, there is no defection, or a defection is not fatal to continuous membership of the legislature.

To further demonstrate the “control” as against prohibitive nature of the provision, the constitution makes vacation from office conditional on the decision President of the Senate or Speaker of the House based on evidence received by them. In essence, the Senate president or Speaker is the only person so authorised to bring to effect **section 68(1)**. It can only be done (a) if evidence is adduced and (b) the President or Speaker finds the evidence satisfactory. This is provided in the constitution in **section 68 (2)** *The President of the Senate or the Speaker of the House of Representatives, as the case may be, shall give effect to the provisions of subsection (1) of this section, so however that the President of the Senate or the Speaker of the House of Representatives or a member shall first present evidence satisfactory to the House concerned that any of the provisions*

of that subsection has become applicable in respect of that member.

From the forgoing therefore, the provision of the Constitution is thus clear, political party defection is constitutional. The next issue to be addressed is less legal and more concerned with policy of democratic strengthening.

Defection and Democratic Consolidation

An independent 2009 research⁵ using a 2007 data on party defection in 41 out of 193 countries throws a great deal of light on this issue. Findings from the research shows that several countries have provisions aimed at either controlling or prohibiting party defection. An interesting finding is that the more politically advanced a democracy is, the less anti-defection laws.

Table 1: Nations with Laws against Parliamentary Party Defections

Type of democracy, 2007	No. of Nation	Those with floor crossing laws	Nations with floor-crossing laws
Older democracies	36	5 (14%)	India, Israel, Portugal, Trinidad & Tobago
Newer democracies	54	13 (24%)	Belize, Bulgaria, Ghana, Guyana, Hungary,

⁵ Kenneth Janda (2009) “Laws Against Party Switching, Defecting, or Floor Crossing in National Parliaments” The Legal Regulation of Political Parties, working paper 02/09. Available online at:

<http://www.partylaw.leidenuniv.nl/uploads/wp0209.pdf> (accessed 27th August 2018)

			Lesotho, Mexico, Namibia, Romania, Samoa, Senegal, Suriname, Ukraine
Semi-democracies	58	19 (33%)	Armenia, Bangladesh, Fiji, Gabon, Kenya, Macedonia, Malawi, Mozambique, Nepal, Niger, Nigeria, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Sri Lanka, Tanzania, Uganda, Zambia
Non democratic	45 (Note that many do not even	4 (9%)	Congo (Democratic Republic), Pakistan,

	allow political parties, rendering moot this statistic ⁶⁾		Thailand, Zimbabwe
TOTAL	193	41	

Source: Kenneth Janda (2009) “Laws against Party Switching, Defecting, or Floor Crossing in National Parliaments” The Legal Regulation of Political Parties, working paper 02/09. p.5

The above data shows that anti-defection law is not exactly a popular practice in most advanced democracies. The data shows that none of the countries that are regarded as great democracy have laws against defections. These include the United Kingdom, Belgium, USA, Canada, Germany etc. This position is supported by research that indicates that anti-defection laws are rather symptoms of poor democracy than ideals of good democracy. This is demonstrated in the words used to describe countries with defection laws as newer democracies, semi democracies and non-democracies⁷.

Another interesting fact that seems to support this findings and interpretation of anti-defection laws in some countries is the practice of political grouping as against

⁶ Kenneth Janda (2009) “Laws Against Party Switching, Defecting, or Floor Crossing in National Parliaments” The Legal Regulation

of Political Parties, working paper 02/09. Available online at: (accessed 27th August 2018) p.5.

⁷ Ibid p.5

political parties in the European Union Parliament. In the EU Parliament, members of Parliament must be elected under national political platforms. However, after the election members shed their political party identity in their dealings in parliament and go into “conditional” allegiance with other members from other political parties but with similar interest⁸. An interesting aspect of this system is that each Member of Parliament is free to shift allegiance between political groups depending on the interest being pursued.⁹

Thus a member that starts life in Parliament as a member of the Green Group may complete the session as a member of the Human Rights Group. Also, members may choose NOT to pay allegiance to any group and only vote based on interests at each point in time. One of the advantages of this system is that parochial party interests are made to take back burner to common and national interests. Another key argument in support of this practice is that Legislators are meant to represent the interest of the entire nation as well as relevant constituencies. Also, perhaps aside for very drastic changes in society, most members irrespective of their home country find that most of their key electoral promises or home party manifestoes are already being promoted by one or more of the political groups. Members are thus

encouraged to shift their allegiance to different groupings depending on the issue under vote. What this demonstrate is that while political party may be necessary for gaining power it is not indispensable for good governance – in this instance positive representation, promotion and protection of the welfare and security of the citizens is more important.

Challenges and Reasons for Defection

The resurgence of party defection raises challenges with particular reference to party politics, as parties help individuals and governments to articulate their electoral promises and manifestoes; represent interests of citizens and provide policy choices¹⁰. This helps in educating and informing the public for purposes of informed voting. Therefore, seemingly giving members unrestrained room to switch parties may compromise the value political structure bring to democratic governance¹¹. This however should neither justify disregarding the key reasons for party defections nor encourage prohibition of party defections.

As several research has demonstrated, causes of party defections are mainly due to failure in Party governance. It is argued that this is why anti-defection laws are found mainly in dictatorships and fragile democracies.¹² Features of such states which contribute to

⁸ Cecile Kashetu Kyenge- MEP and David Harley “The EP “inter-party” political culture in the legislative process - practices for consensus building on policies/files (role of rapporteurs/shadows) - practices for coalition building between political groups to ensure voting majorities (including informal structures to facilitate inter-party consensus-building) being paper presented at the 2-Day Annual National Summit on Inter-Governmental/Inter-Party Relations and the Budget Reform Process for Sustainable Development in Nigeria, Abuja, 17-18 October 2017.

⁹ *ibid.*

¹⁰ Ifeanyi Okowa “Towards sustainable democracy in Nigeria: The role of political parties”, being Excerpts from a public lecture to

mark retired Brig-Gen. Samuel Ogbemudia’s 83rd birthday at Bishop Kelly Pastoral Centre, Benin City, Edo State on Saturday September 19, 2015. Available online at: <http://www.ngrguardiannews.com/2015/09/towards-sustainable-democracy-in-nigeria-the-role-of-political-parties/> (accessed 29th August 2018)

¹¹ Mbah P. (2011) Party Defection and Democratic Consolidation in Nigeria, 1999-2009. Afro-Asian Journal of Social Sciences Volume 2, No. 2.3 Quarter III.

¹² Miskin, Sarah. 2003. “Politicians Overboard: Jumping the Party Ship”, Research Paper No. 4. Department of the Parliamentary Library, Australia, p. 23.

party defections include: Lack of viable party ideology; the lack of adoption of, and unfaithfulness to the philosophy behind party objectives; the opportunistic behaviour of both parties and politicians; and lack of party internal democracy.¹³ Also authoritarian regimes use anti-defection laws to limit opposition¹⁴ particularly when the anti-defection laws are statutory laws. Party defections also occur because candidates self-interest, albeit political. Examples are loss of popularity of political party, desire of constituents and shift in party ideology. This is why some developed democracies use internal party regulations as control over party switching¹⁵. Such regulations are meant to control and not to prohibit defections. Their success is an indication of the maturity of the political party and less about state interference or sanctions.

Conclusion and Recommendation

The Constitution in section 40 provides thus: *“Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests”* This provision has three important elements and it must be observed that in this provision an individual’s right is the independent variable while “political party” and “interest” are dependent variables. Put another way, the right of the individual to belong to a political

party remains constant, however the political party may change so is the individual’s interest. This means that it is the welfare of the citizen and not the political party that takes priority in assessing democratic maturity. Thus the question is whether a political party is able to protect the interest of a party members. Where it so fails the members may choose to change party. International IDEAS¹⁶ puts it this way, in assessing democratic growth, the question is whether the political party system assists an individual to exercise his/her political right. Anti-defection laws and single party system does not answer this question in the affirmative. To eliminate this controversy and hopefully reduce the option of defection, the following recommendations are suggested:

Anti-defection laws particularly statutory (including constitutional control or prohibition) are not good features of mature democracy and should not be promoted.

1. Generally speaking, particularly in the contest of section 40 of the CFRN 1999, the law should for now be left the way it is while parameters are set for its eventual repeal.
2. Individual parties’ should come up with effective ways of maintaining party allegiance amongst members

¹³ See Michael B. Aleyomi (2013) “Election and Politics of Party Defection in Nigeria: A Clue from Kogi State” *Covenant University Journal of Politics and International Affairs (CUJPIA) Vol. 1, No. 1 (Maiden Edition), June, pp. 118 -121.*

¹⁴ Csaba Nikolenyi Constitutional Sources of Party Cohesion: Anti-Defection Laws Around the World Paper Prepared for delivery at the Oslo--Rome Workshop on Democracy, November 7--9, 2011, p. 6.

¹⁵ Janda, Kenneth. 2005. “Adopting Party Law’, in *Political Parties and Democracy in Theoretical and Practical Perspectives.*

Washington D.C.: National Democratic Institute for International Affairs.

¹⁶ David Beetham Edzia Carvalho Todd Landman Stuart Weir, “Assessing the Quality of Democracy: A Practical Guide” International Institute for Democracy and Electoral Assistance 2008, SE -103 34 Stockholm Sweden. Digital copy available online at: <https://www.idea.int/sites/default/files/publications/assessing-the-quality-of-democracy-a-practical-guide.pdf> (accessed 28th August 2018)

3. Parties should all promote internal party democracy and rule of law. Thus the Electoral Act should be amended to make it a requirement for recognition of any elective position conducted within a party, whether primaries or election of party officials.
4. Political parties should introduce the concept of maturity time for vying for positions on the Party platform. Individuals, depending on their credentials should be required to vie for position under the party platform upon reaching the minimum maturity age in the party.