



## The frequency of political defections in Nigeria: Plugging the enabling loopholes in the Constitution

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### Abstract

Aristotle, the ancient Greek Philosopher wrote in his seminal work, Politics, the widely accepted proposition that ‘man is by nature a political animal’ This means amongst other things that politics and its offshoots are indispensable in the affairs of men, as no man is an island unto himself. According to Max Weber in his work, The Theory of Social and Economic Organization, ‘politics is the operation of the state and its institutions. Politics means striving to share power or striving to influence the distribution of power among individual and group in a state’. There thus arises the question, what vehicles can be deployed in the actualization of the process of achieving political power. It is safe to state that political parties are one veritable too/vehicle for the actualization of political power. It is through the instrumentality of this vehicle together with its ideologies or aims and objectives that persons who desire to attain, control and administer political power fulfil such ambitions. Yet, after obtaining political power on the platform of a political party are quick to defect to another political party. This research examined the legal or justifiable grounds or basis for defection, the rampancy of the phenomenon in Nigeria, the legal consequences of defection as spelt out in Sections 68 and 109 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The research found and demonstrated how despite the provisions for adverse consequences for defection of lawmakers, the trend has persisted among political actors, many of whom escape any form of adverse legal consequences. The work concluded that the leaderships of the National Assembly, who have been bestowed quasi-judicial powers to give effect to the sections of the Nigerian Constitution on defection, have failed, refused and neglected to carry out this responsibility dutifully without any consequence on such leaderships, hence the rampancy of the trend. The research recommended that there should be legal consequence in the form of deprivation either of the speakership or presidency of an affected House. The research work recommended an automatic loss of seat or office in the event of defection with a proviso for a 3 – 6 months window for the affected member or political party to seek relief from Federal High Court establishing to the satisfaction of the Court either ex parte or on notice why he/she should retain his/her seat or office despite defecting.

**Keywords:** Politics, defection/cross-carpeting, loss of legislative seat and constitutional loopholes

### Introduction

In recent years, the subject of defections among elected political office holders in Nigeria have become common place and poses a threat to the established party-based democracy system operated by Nigeria and has continued unabated as elected officials switch back and forth from one political party to another, despite the stipulated consequence for such act in the Constitution of the Federal Republic of Nigeria 1999 (CFRN) in the case of members of the National Assembly and State Houses of Assembly, respectively.

Nigeria constitutionally and legally speaking is a party-based democracy. Therefore, no person seeking election into a political office is capable of doing so without being sponsored by a political party. As a result, political parties canvass for votes from the electorate through promises of a better life and other enticing overtures, which ultimately influence one way or the other the decisions of the electorate to vote.

Given the absence of independent candidacy in Nigerian elections, it may be technically correct to state that voters vote for the preferred political parties at elections and their mandate understood to have been donated to such political parties. It can therefore be contended to be an anomaly when the mandate given by an electorate to a political party is unilaterally and lightly transmitted to another political party by the office holder without just cause. Suffice it to say, that it is the importance of party-based democracy and

elections that was intended to be protected, promoted and preserved, when parliament enacted provisions to circumscribe and limit the ability of political office holders to defect from one political party to another.

Sections 68(1)(g) and 109(1)(g) of the 1999 Constitution of the Federal Republic of Nigeria 1999 have made identical provisions on the limitations or subtle prohibition of political defection by members of parliament in Nigeria i.e. National Assembly members consisting of the Senate and the House of Representatives and members of the House of Assembly of a State. Therefore, for purposes of these sections, we shall make reference to and reproduce only the provisions of Section 68 for emphasis and clarity thus:

68(1) a member of the Senate or of the House of Representative shall vacate his seat in the House of which he is 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 expiration of the period for which that House was elected.

The section also provides conditions under which it may become permissible for an elected member of the National Assembly to defect to another party which conditions are broadly on the basis of division in the political party or by merger of the political party with another party by which he/she was not sponsored. The focus of this proviso it would seem, however, is the circumscription or restriction of defections. Sadly, it is a notorious fact in Nigeria and in

very recent times, especially, since the latest democratic dispensation, that there has been a gale of political defections which have been without legal justification or consequences, despite the restrictions imposed by the constitution.

### **Definition of Key Concepts**

Conceptual framework consists of common or regular concepts deployed in the course of carrying out the research work for this discourse. The concepts are defined and discussed essentially for purposes of clarity, precision and perspective.

#### **Constitution**

Constitution is the fundamental and organic law of a country or State that establishes the institution and apparatus of government, defines the scope of government sovereign powers and guarantees individual civil rights and civil liberties, a set of basic laws and principles that a country, State or organization is governed by. A Constitution is an instrument of government made by the people, establishing the structure of a country, regulating the powers and functions of government, rights and duties of the individual and providing remedies for unconstitutional acts. A Constitution is incontestably a legal document and it is the fons et origo of all rights within the polity. A Constitution can also simply be defined as a collection of norms or standards according to which a country is governed. It is also a detailed written document, an elaborate document in which the organization of the government, its powers and its relations to individuals are all carefully set down.

#### **Politics**

Most contemporary political scientists have questioned the usefulness of any attempt to define politics, on the ground that, there is no final solution to a problem of definition, as reflected in the many existing definitions of politics. For William Bluhm, another leading political scientist, politics reduced to its universal elements is a social process characterized by activity involving rivalry and cooperation in the exercise of power and culminating in the making of decisions for a group. Politics has been simply defined also as involving influence and the influential. The Eastonian definition puts politics as the authoritative allocation of values. Easton argues that the authoritative allocation of values is the kind of activity experts in the field should be interested in. The first assumption being that every society desires values, that is, people have different interests or objectives and these must be allocated, or distributed by someone or something.

#### **Political Party**

Putting it simply, a political party consists of a group of persons bound in policy and opinion in support of a general political cause which essentially is the pursuit, capture and retention for as long as democratically feasible or permissible, of government and its offices. It is a group that seeks to elect candidates to public offices by supplying them with a label or identification by which they are known to the electorate. In every democracy therefore, political parties – one or more as the case may be are invariably permanent features with the goal of aggregating interests, presenting candidates for elections with the purpose of controlling governments and representing such interests in government.

It is thus a major vehicle for enhancing participation in government.

The Electoral Act 2022 defines political party thus “includes any association of persons whose activities include canvassing for votes in support of a candidate for election under the Act and registered by the Commission.

#### **Defection**

Cross-carpeting/Defection is the abandonment of allegiance or duty; the forsaking of a person or cause; desertion. The Constitution of the Federal Republic of Nigeria 1999 defines the concept of defection pragmatically and conceptually without using the word defection by simply stating that a member of the National Assembly or State House of Assembly shall vacate his or her seat if he/she being a person whose election to the House was sponsored by a political party, he or she becomes a member of another political party before the expiration of the period for which that House was elected. In the context of the above section, defection simply means moving or changing membership from one political party to another during the lifespan of the term for which a House (parliament) or a person was elected.

#### **Defection under Sections 68 (1)(g) and 109(1)(g) of the Constitution of Federal Republic of Nigeria 1999 and the Proviso Thereto**

For purposes of the examination and analysis of the relevant provisions of the constitution on cross-carpeting/defection, this paper will focus on Section 68 (1) (g) and its proviso, given that the said section is in pari materia with the other provisions relating to the same subject, although specifically directed at the House of Assembly of a State, as to do otherwise will lead to nebulous and unwieldy repetition or monotony.

#### **Section 68 (1) (g) and Its Proviso to the Constitution of Nigeria 1999**

Section 68(1)(g) of the Constitution of the Federal Republic of Nigeria 1999 together with its proviso provides thus:

Being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected.

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.

It is clear from the above that Section 68 (1) (g) regardless of the provisions of Section 40 of the same constitution have prescribed adverse consequences for an act of defection. At face value, there appears to be a definite conflict between the two distinct provisions of the Constitution. Whilst Section 40 prescribes the right of citizens (politicians in this case) to form, join and by implication leave a political party, the Constitution prescribes in adverse/negative consequences for politicians (law makers) who exercise their constitutional right to leave one political party for another.

The question therefore is, is this a conundrum? This research shall make an attempt to answer this question in due course after the examination/analysis of Section 68 (1) (g) has been concluded.

It is clear, from the provision of Section 68 (1) (g), that a parliamentarian, in this case a member of the National Assembly, Section 109 (1) (g) is applicable with same tenor and force to a member of the House of Assembly of a State, who defects from the party that sponsored him or her into the Senate or the House of Representatives during the life of such a House to another political party loses his or her seat. This is the general rule. To escape this consequence, that is, loss of seat for defection, the burden is on the defector to show that his or her defection is permissible by virtue of the proviso to Section 68(1)(g). That is to say, the lawmaker's amenability to the full weight of expulsion from the National Assembly by virtue of Section 68(1)(g) is obviated or excused by the existence of the circumstances stipulated for as justification for defection, and as such, an insulation or immunity from expulsion or loss of seat.

Section 68(1)(g) clearly recognizes only two circumstances under which a political defection might be excused or where defection would not lead to the consequence of loss of seat namely:

1. Defection as a result of a division in the political party he was previously a member.
2. Defection as a result of a merger of two or more political parties or factions by one of which he was previously sponsored.

It would appear from the above provisions that no other circumstances no matter how weighty, morally persuasive or serious can justify or excuse political defection by a lawmaker in Nigeria. Sadly, this section of the Constitution has been observed more in disobedience.

It is common knowledge that the rampant excuse of lawmakers in Nigeria upon defecting is to make reference to a seeming division in the political party that sponsored them. It is for this reason that the concepts of division in the sponsoring party and merger of the sponsoring party with another beyond their literal meanings and connotation are worthy of a closer examination for a further appreciation of their legal ramifications and implication.

### **Division**

Beyond the grammatical meaning of the word "division" being the separating of something into two or more different parts, there is need to consider its legal context as it relates to a political party, such that will amount to a justifiable ground or basis for defection, as contemplated by the Constitution. In the Abegunde case, the Supreme Court had this to say about division, thus:

Only such factionalization, fragmentation, splintering or "division" that makes it impossible or impracticable for a political party to function as such, will by virtue of the proviso to Section 68 (1) (g) of the 1999 constitution justify a person's defection to another party and the retention of his seat for the unexpired term in the house in spite of the defection. The division must affect the entire structure of the political party of the centre, that is to say, national leadership. Otherwise, as rightly held by the trial court and the court of Appeal in this case, the defector automatically loses his seat.

It follows from the above explanation of the Supreme Court that to pass as a defence or excuse of division, it is not sufficient to allege any kind of division or factionalization that does not disrupt the national leadership structure in the party. A claim of division, crisis or fractionalization at the

state chapter or level of the party is insufficient. To succeed at this defence or excuse therefore, a member or defector must prove or show to the House or the Court, as the case may be, through cogent and credible evidence of such division to put in abeyance the operation of the section.

### **Merger**

This happens when the political party of the member comes together in a coalition that results in the extinction of the party of the member that sponsored him in the election. Merger as a defence or an excuse to the consequence of defection under section 68(1)(g) of the Constitution operates to justify a member's decision to defect by becoming a member of the new party that results from the merger and not necessarily by leaving the sponsoring party to another existing party. This happens also where there is a faction and the member of the House belongs to one of the factions which entered into a merger, thereby becoming a new political party different from the one that sponsored the member to the House; an apt example being the cross-carpeting in Abegunde's case.

### **Defection and the Constitutional Implications as Espoused in Abegunde v Ondo State House of Assembly**

Political defection in Nigeria, from the data available is rampant or prevalent. Defections reach high pitch in the periods immediately leading to or preceding an election or elections in Nigeria, and it is characterized by a pervading craze and desperation by politicians for the nomination of political parties in primaries conducted to choose candidates to contest in elections to occupy legislative and executive offices. Political defection also commonly known as carpet-crossing or cross-carpeting is a global phenomenon known to virtually all democracies of the world including the famed United States democracy which has seen Democrats become Republicans and vice versa. However, such action if done without any legal justification is not without adverse legal consequences.

In Abegunde v Ondo State House of Assembly, the full bench of the apex Court analyzing the provisions of Section 68 (1) (g) of the 1999 Constitution, led by M. D. Muhammed JSC held inter alia that the principle of the Court enunciated in the cases of FEDECO v Goni and A. G. Federation v Abubakar is relevant. The principle is to the effect that that any such factionalization, fragmentation, splintering or division that makes it impossible or impracticable for a political party to function as such will by virtue of the proviso Section 68 (1) (g) justify a person's defection to another party and the retention of his seat for the unexpired term in the house despite his defection. The Supreme Court was of the view that anything short of the impossibility of the party as a corporate whole functioning normally as it would or ought by meeting the condition of association by virtue of section 221 and 222 of the 1999 Nigerian Constitution would warrant a loss of seat. The apex Court upholding the concurrent findings of the two Courts below was of the view that Labour Party – the party, that sponsored the appellant's election, from the evidence, had continued to function as a political party by meeting the conditions of associations by virtue of Sections 221 and 222 of the 1999 Constitution and therefore cannot be said to have been so factionalized, fragmented, split or divided to justify the movement of the appellant to another party (ACN) and retention of his seat in spite of the defection.

Ultimately in resolving the fundamental question of whether the appellant could still retain his seat as member of the House of Representatives, the Supreme Court itself posed the following questions of its own thus:

1. Can a disagreement in a branch of a company be classified as a division in that company, when the board of directors of the company is still intact?
2. Can the local branch of a company be wound up or merged with another company?

The Supreme Court expectedly answered the above questions in the negative and accordingly dismissed the appeal.

### **Who can declare the Seat of a Defecting House Member Vacant?**

It is not clear from the provisions of the Constitution – S 68 (1) (g) who has the duty to declare vacant the seat of a defecting member or a member to whom the section or subsection has become applicable. This is because there is no phrase or clause in the provision of Section 68 (1) (g), which expressly imposes the duty on the presiding officer of such a house or the clerk or anyone for that matter. However, the situation of Section 68 (1) (g) is salvaged by the subsequent provision of the same section which mandates the President of the Senate or the Speaker of the House of Representatives to give effect to all the provisions of Section 68 (1) which of course includes paragraph (g). For clarity, Section 68 (2) is reproduced thus:

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 Representative 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.

It would appear that whilst Section 68 (1) (g) has given leverage to the affected House member to do the honourable thing and vacate his or her seat upon defecting from the sponsoring party to another in the life of the term, Section 68 (2) had prepared for the probable event of failure to comply with the requirement or expectation of voluntary vacation of seat. Unfortunately, the presiding lawmakers in Nigeria have continually failed to carry out this constitutional obligation without a corresponding sanction on them. This ought not to be so.

### **A Comparative Study of the Position of the Constitution of Sierra Leone of 1991 (as amended in 1996)**

Under the Sierra Leonean Constitution as with the Nigerian Constitution, there are consequences for defection or cross-carpeting. By the Constitution of Sierra Leone of 1991, a member of parliament who defects from the party on whose platform he or she was elected shall cease to be a member of parliament. The Constitution provides expressly in this regard thus:

A member of parliament shall vacate his seat in the parliament –

If he ceases to be a member of the political party of which he was a member at the time of his election to parliament and he so informs the speaker or the speaker is so informed by the leader of that political party.

By the same Constitution, a member of parliament shall vacate his or her seat if being elected to parliament as an independent candidate; he joins a political party in parliament. In summary, the Sierra Leone legal framework with respect to political defection, particularly cross-carpeting in parliament is similar to that of Nigeria on the subject. There is however one notable departure or difference between the provisions in the Sierra Leonean Constitution on the one hand and the Nigerian and Ghanaian Constitutions on the other hand, which is that whilst the former has not left any room for scenarios that could permit defection or cross-carpeting, the latter both have provisions which create exceptions that permit defection or cross-carpeting, the convergence of course being that all three jurisdictions frown against political defections and have made provisions in their respective laws to discourage it.

### **Conclusion**

It would appear from the evidence that politicians in Nigeria are inclined to engage in cross-carpeting/defection activities and it is especially highlighted during periods that are close to a general election and sometimes off-season elections. Cross-carpeting or defections at this point could happen for the flimsiest of reasons or excuses but ultimately culminates in the defector ending up seeking and securing the sponsorship of another party to contest an upcoming election thereby eroding ideology in politics, which often result in policy flip-flop and inconsistencies and ultimately engendering political apathy among the citizenry.

Securing nomination of their various political parties is ultimately the deciding factors for whether politicians remain in a political party or they defect to another. In other words, the decision to either remain in a particular political party or to defect to another depends on the chances of a politician in getting the nomination ticket of another party to be able to contest for the same office or another office in an impending election or one to come later. The consequence of loss of seat imposed on defecting house members by its tenor ought to be automatic with the offending legislator ceasing to hold office or vacating his/her seat upon defecting from the sponsoring party to another party in the life or currency of his term or the tenure of the House, hence deleting the role of presiding officers as contained in subsection 2 of the respective sections which have been consistently abused for reasons of partisanship. Surprisingly, there is no known legal consequence in the Constitution or elsewhere in any other law for the failure, neglect or refusal of these delegates of the Constitution vested with the power and duty to give effect to the constitutional provisions on the matter of defection of members of the National Assembly and House of Assembly of a State, respectively hence the impunity rampant cross-carpeting without justifiable, legal and constitutional cause. Indeed, these presiding lawmakers have turned a constitutional duty to an issue of discretion and favouritism, without any penalty. The Constitution ought to be amended to penalize erring presiding lawmakers, who fail to declare the seat of a defected lawmaker vacant within a stipulated time.

The point must be made that although political defection by itself is not a crime and is in fact intricately, if not inextricably tied to the right to freely assemble and to associate or disassociate as a person or a citizen chooses, which is an inalienable right of human beings all over the

world and it is promoted and protected by all known international civil charters including the United Nations Declaration of Human Rights (UNDHR), African Charter on Human & People's Rights and all known national constitutions whether written or unwritten. Yet, if no sanctions were imposed, the political culture will be eroded. Political culture, party system and party identification, etc are the basis upon which a lot of voters exercise their franchise. Rampant defections have the potential for the truncation of policy formulation and implementation occasioned by the loss of a majority or requisite numbers for passage of bills, legitimacy and influence over the administration of a political system and indeed the government of a country or a State in a country. This relatively chaotic and besetting state of affairs in terms of unmitigated cross-carpeting is not likely to change any time soon, unless drastic targeted legislative steps are taken to change it. These drastic steps are however not to be taken in isolation but in tandem with efforts such as advocacy, mobilization, and legal challenges, amongst others.

### Recommendations

Flowing from the findings in the penultimate section of this paper, the research makes the following recommendations:

1. Amendment of sections 68 (1) (g) and 109 (1) (g) of the Constitution to introduce a subsection (3) which shall stipulate a penalty for failure to give effect to the section as mandated by Section 68 (2) within a stipulated time. The National Assembly should immediately take up in its ongoing review of the Constitution or initiate a new review process to impose a penalty of suspension from the House for a period not exceeding six months, but not less than three months and loss of the office of President of the Senate or Speaker of the House of Representative or Speaker of the House of Assembly of a State and their clerks for failure to give effect to the provisions of the Constitution on declaring vacant the seat of a member to whom the subsection have become applicable.
2. As an alternative to (i) above, the Sierra Leone approach stipulated for in the Sierra Leone Constitution of 1991 (Reinstated in 1996, amended through to 2013) in Chapter VI by virtue of Article 77 (1) (k) which mandates that a member of parliament shall automatically vacate his seat in parliament if he ceases to be a member of the political party of which he was a member at the time of his election to parliament and he so informs the speaker, or the speaker is so informed by the leader of that political party.
3. Upon an automatic loss of seat or office in the event of defection the burden of proving entitlement to retention of seat shall be on the affected member or political party to seek relief from a Federal High Court establishing to the satisfaction of the Court by motion on notice why he/she should retain his/her seat or office despite defecting.

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