

THE LEGAL/CONSTITUTION BASIS OF POLITICAL PARTY DEFECTION IN NIGERIA

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Abstract

Politicians in Nigeria have continued to lay claims to their fundamental rights to freedom of association as a means of moving in and out of political groups at will, a development, though not alien to the nation's political system, which is however gradually assuming a frivolous status, thus raising concerns in the build-up to the 2015 general elections. Provisions were made in the 2010 Electoral Act as safeguard against indiscriminate cross-carpeting from one political party to another, which spelt out conditions under which an elected officer can defect, but the inherent loopholes in the safeguards were today still being exploited by politicians. The sixth National Assembly also made attempts at stopping the distasteful practice through Constitution amendment, but the particular clause which sought to strip members of the National Assembly and House of Assembly of their seats on defection could not get the required two-third backing from the states. A similar move was made in 2012 when two members of the House of Representatives, Eddy Mbadiwe and Chairman of the Committee on Rules and Business, Albet Sam-Tsokwa, re-introduced the bill. But it did not even scale second reading on the floor. Is the trend healthy for the political development of Nigeria? Does it portend stability for a political party? Does the law regulating political parties activities allow such defection? What actually is the position of the law on the subject matter? These questions are begging for answer and this paper seeks to provide answers to them.

Keywords: Political Party Defection, Post-Colonial State Constitution and House Rules, Democracy and Governance, Electoral Laws and Politics and Politicians .

Introduction

The wave of defection from one party to another in the National Assembly has been that of different strokes for different folks. In the House of Representatives, members have been defecting from one political party to another at will and unhindered by the leadership. This has become a regular event in the house since the five PDP governors defected to All Progressives Congress (APC) at the peak of the intra-party crisis that rocked PDP last year.

Even last Tuesday, five APC members defected to PDP amidst allegation by the APC leadership that they were induced with hard currency by the PDP amidst allegation by the APC leadership that they were induced with hard currency by the PDP leadership to do so, which PDP has since dismissed, describing APC as a party suffering diminishing returns.

The House leadership has set up a committee to investigate the allegation, but many are doubtful of the outcome of the probe, considering events of the past. In the Senate, the defection move by Bukola Saraki and 10 others from PDP to APC continued to hit the wall following the refusal of the Senate leadership to read their letters on the excuse that the matter is before the court. This was despite argument by the defecting senators that the matter in court is not on defection, but on the attempt to declare their seats vacant.

On December 17, 2013, the political crisis rocking the PDP took a turn for the worse as its 37 House of Representatives members announced their defection to the rival APC. Earlier, 79 of the lawmakers (Senate and House of Representatives) had obtained an order from the Federal High Court, Abuja, restraining the then National Chairman of the PDP, Alhaji Bamanga Tukur; Senate President, David Mark; Speaker of the House of Representatives, Aminu Tambuwal and the Independent National Electoral Commission (INEC) from declaring their seats vacant when they eventually defect to another political party. The latest defector-House legislators who are from Kano, Sokoto, Rivers, Kwara, Bauchi and Katsina joined their colleagues to reduce the strength of the ruling PDP in the lower chamber. With the defection of the 37 legislators, APC now have 174 members up from 137, while the PDP lawmakers have shrunk in number from 208 to 171. The defectors transmitted their decision to the House via a letter they jointly wrote, which was read at plenary by the Speaker, Alhaji Tambuwal.

According to the legislators, who cited relevant sections of the 1999 Constitution, which empowers them to relocate from the party on which platform they gained membership, they explained that they quit the PDP because of the crisis that has rocked the party in recent times. Only recently, APC lost its short lived majority in the House of Representatives.

What can be termed a reversal of fortune was caused by the defection of one of its members to the ruling PDP. Hon. Joseph Haruna Kigbu from Nasarawa State who announced his dumping the APC, after two of his colleagues from Adamawa took the same action.

When 37 lawmakers left the PDP on December 18, APC emerged as the new majority party with 174 to PDP's 171 members in the House. But the number kept changing since the resumption of the House from recess penultimate Tuesday, January 7, 2014.

That day, four defections happened that pushed the PDP up one notch with 172 members, while APC remained where it was following a reduction of two and addition of two lawmakers in its fold. The two APC members who cross-carpeted to the PDP penultimate week were Mr. Titsi Ganama and Mr. Haske Hananiya from Adamawa State. On the same day, Benue PDP lawmaker, Emmanuel Jime and Democratic People's Party (DPP) member, Yahaya Kwande, from Plateau moved to the APC. This left APC slightly ahead with 174 to PDP's 172 members. Kigbu's defection tilted the scale to the middle. Hon. Opeyemi Bamidele announced his defection to the Labour Party (LP) but this did not affect the APC-PDP calculations, because the Ekiti lawmaker was never counted in the original 174 numbers that the APC had. At the session, Speaker Tambuwal read a letter from Hon. Kigbu in which

he announced his defection to the PDP, a decision he said he took after wide consultations with his constituents. Kigbu said his resolve to leave APC was as a result of the merger of his former party, the Congress for Progressives Change (CPC), something he said he was not comfortable with.

Also and, 11 se most recently, senators from the PDP said they had sent their letters of notification on their defection to the Senate President. Although the letter is yet to be read on the floor of the Senate. The senators that defected to the APC in a letter sent to Mark are: Senator Bukola Saraki-Kwara Central; Senator Umaru Dahiru- Sokoto South; Senator Magnus Ngei Abe -Rivers; Senator Wilson Asinobi Ake- Rivers West; Sen. Bindawa Muhammed Jibrilla-Adamawa North; Sen. Mohammed Danjuma Goje-Gombe central; Sen. Aisha Jummai Alhassan-Taraba North; Sen. Mohammed Ali Ndume-Borno South; Senator Mohammed Shaba Lafiaji-Kwara North; Sen. Abdulahi Adamu-Nasarawa West and Senator Ibrahim Abdullahi Gobir-Sokoto East. The 11 senators communicated their decision to decamp to the APC in a letter addressed to the Senate President, David Mark. The two page letter, which also listed the senators and their signatures, reads:

We the undersigned senators of the Federal Republic of Nigeria elected under the Peoples Democratic Party (PDP) wish to notify you that we have severally and jointly joined the All Progressives Congress (APC). This action and decision is as a result of the division and factionalisation in the Peoples Democratic Party that sponsored our election into the Senate. In view of the above, we write to inform you that following the division and factionlisation in the PDP, we have formally joined the All Progressives Congress (APC). This communication is made pursuant to Section 68 (1) (g) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) for your information, guidance and record purposes (Daily Post Editorial, 2014).

Mr. Saraki submitted the letter to Mr. Mark during the plenary session. The Senate President, however, did not openly acknowledge receipt of the letter; neither did he read it before the Senate rose from its plenary session. Even with the defection of the 11 senators, the PDP is still to have a majority in the upper legislative chamber with over 60 senators; while the APC has about 43. The All Progressives Grand Alliance, APGA, has only one senator, Chris Anyanwu, who represents Imo East Senatorial District otherwise called Owerri Zone. The Labour Party is believed to have 2 senators.

Is the trend healthy for the political development of Nigeria? Does it portend stability for a political party? Does the law regulating political parties activities allow such defection? What actually is the position of the law on the subject matter? These questions are begging for answer. To achieve these objectives, the next section conceptualizes political party defection. The theory of post-colonial state is to be used to serve as our framework of analysis in the next segment. Following the theoretical framework of analysis is the contextualization of the legal and constitutional basis that support political party defection. The next section discusses the implications of political party defection on the polity. The final section offers recommendations and concludes the paper.

Conceptualizing Party Defection

In politics, a defector is a person who gives up allegiance to one state in exchange for allegiance to another, in a way which is considered illegitimate by the first state. More broadly, it involves abandoning a person, cause or doctrine to which one is bound by some tie, as of allegiance or duty. This term is also applied, often pejoratively, to anyone who switches loyalty to another religion, sports team, political party, or other rival faction. In that sense, the defector is often considered a traitor by their original side.

In domestic politics, a defector is a person who gives up allegiance to one state or political entity in exchange for allegiance to another. The term is sometimes used as a synonym for traitor, especially if the defector brings with him secrets or confidential information. More broadly, it involves abandoning a person, cause or doctrine to whom or to which one is bound by some tie, as of allegiance or duty. It is also the state of having rejected one's political beliefs or your political party or a cause and often in favor of opposing political beliefs or causes.

The term political party defection is also used to refer to the departure of a member from a political party to join another political party, typically because of discontent in his existing party. Depending on position of the person, it may be given a different name, such as party switching or crossing the floor. One famous political "defector" was Winston Churchill, who first entered Parliament as a Conservative in 1901, defected to the Liberals in 1904, and defected back to the Conservatives in 1925 (Wikipedia, the free encyclopedia, 2014).

Political party defectors are usually regarded as political prostitutes without political principle, morality, conscience and lacking in political ideology to champion the cause of leadership for the well being of the society and political development of the country.

Malthora, (2005), Aziken, (2009) Mba (2011) and Aleyomi (2013) adduce reason(s) for cross carpeting or defection of politicians, saying the trend result from personality clash, power tussles, divergent views on the operations of a political party's philosophy, crisis or division within a given political party, disagreement on party's position on an issue, realisation of one's personal political ambition and party leaders reneging on agreed issues of the political party probably on power sharing formula.

From the above thesis, politics defection refers to one's abandonment of his/her previous position or association, offers to join an opposition or ruling group or party over the issue of political ideology, manifesto or program and party management. However, from 1999 to date many politicians at the local government, state and federal levels had consistently defected from one political party to the other. Some did so abandoning the parties on whose platform they were elected, while others after losing elections found it the best option for them to cross carpet to another political party. Meanwhile, some past and serving senators, Governors, House of Representatives members, State legislators, council chairmen and councilors have abandoned their elected political party platform for another on the excuse of factional crisis or division within their political party.

Expanding this thesis, Balarabe Musa, National Chairman, Conference of Nigeria Political Parties (CNPP) while speaking recently to the News Agency of Nigeria said that defection of politicians from one party to another undermined the political development of Nigeria. While describing as "mindless" the manner in which politicians defect to other political parties, he said there was the need to check the trend for stability within the polity. The defection by members of political parties is mindless. This is because there is a lot of loose money in the country and anybody with sufficient money can go to any other party to achieve his ambition.

He posited equally that the root of defection is money politics. According to the CNPP chairman, another reason why politicians decamp is due to lack of internal democracy within political parties. This lack of internal democracy is what results to

this threatening level of defection in the country. Musa however said that defection on its own was not wrong as it was even democratic. Normally there is nothing wrong with defection, it is democratic, it is the utilisation of the constitutional provision for freedom of association and choice. Musa said the phenomenon happened in all countries of the world adding that in advanced countries defection happened rarely and if it happened, there must be honourable reasons for it.

Speaking recently on Channels Television's breakfast programme, Sunrise Daily, Esemey Eyiboh complained that the main issues, including internal democracy and party management, had been abandoned for other matters. He said that neglecting key issues of the management of political parties and internal democracy of the parties would lead to a poor leadership recruitment process where you have wrong people in right places. He averred that the trend of defection was good for both the ruling and opposition parties but insisted that the trend was based on selfish interests and not the welfare of the people or on any ideological conviction. He posited that it is not all about the issue of the people. It is about your heart being where your mouth is stressing that none of these defectors is doing it either out of ideological conviction or because of the mandate of that people.

On the possibility of the opposition party, APC, being a better party than the ruling PDP, Eyiboh said APC, as a matter of fact is not a solution because APC is unable to provide an alternative to what they believe is wrong with the PDP controlled government. He further stated that the APC shot itself in the foot by allowing PDP to reinvent itself through the new party chairman, a businessman who stoops low to conquer. Speaking on controversy and issues surrounding the defection of 11 senators to the APC, which the PDP opposed, although it had benefited from similar defections in the past, Eyiboh said the scenario is different in the sense that some members of the APC went to court (to stop their seats from being declared vacant) and PDP also went to court saying they should not defect from PDP. He argued that we can not deny the fact that there are other subsisting issues before the court of law and because it is so, it becomes unnecessary for you to begin to talk about it because the matter will be sub judice. In previous cases, there has never been such circumstance.

On the Senators' insistence that their letter of defection be acknowledged and read on the floor of the House, Eyiboh said the Senate President was not under obligation to do it by their prompting. He continued by saying, "it is a communication, it will definitely be done but he has to look at all the exigencies. In this case, he has to look at the matter before the court and other matters bordering on the roles of the Senate. He further argued that we must have a clear difference between politics and governance.

Theoretical Framework

The theoretical framework of analysis adopted in this article is the Marxist theory of Post-Colonial State. We shall elaborate on this by looking into the nature, and character of the Nigeria State and its mode of capital accumulation in the economy in general and the failure of anti-graft war in particular.

The State in the post-colonial periphery is a capitalist type of state, even though to some extent it is different from the state in advanced capitalist formations. According to the Marxist theory, the state is the product and a manifestation of the irreconcilability of class antagonisms (Lenin, 1984:10-11). This state, which arose from the conflict between and among classes, is as a rule, the state of the most powerful, economically dominant class, which by this means also becomes the politically dominant class and thus acquires new means of holding down and exploiting the oppressed (Jakubowski, 1973:41) Thus, according to Marx and Engels (1971:38) "the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie".

Therefore, contrary to the claim of Western liberal or bourgeois scholars, the state is not class neutral, rather, it is immersed in constant class struggle within and between the various institutional groups that make it a reality (Ezeani 2008).

The classical Marxist theory of the state has been further developed to take into consideration the peculiarities of the neo-colonial state (see Alavi, 1972, Saul, 1974 and Ekekwe, 1986).

The main attributes of a neo-colonial state as seen by the Marxist theory include:

- The state as an instrument of class domination.
- The centrality of the state and its apparatuses as the main instruments for primitive accumulation especially by the dominant class and their foreign collaborators.
- The renter or extractive nature of the state.
- The unifying function of the post-colonial state (Alavi, 1972, Saul, 1974, Collins, 1976 and Ezeani, 2008).

As Ekekwe (1986:12) rightly noted;

The difference between the two forms of capitalist state is thus: that whereas the state in the advanced capitalist formations functions to maintain the economic and social relations under which bourgeois accumulation takes place in the periphery of capitalism; factors which have to do with the level of development of the productive forces make the state, through its several institutions and apparatuses, a direct instrument for accumulation for the dominant class or its element.

This peculiar attribute of the neo-colonial state can be traced to the colonial epoch. The Colonial Governments in their bid to achieve their economic interests discouraged the emergence of a strong indigenous capitalist class. This they achieved by discriminating against African businessmen in the disbursement of bank loans, award of contracts and other business incentives. In the absence of indigenous capitalist class strong enough to establish hegemony over the state at independence, the neo-colonial state such as Nigeria became the main instrument of economic investment and economic development. Beside, the new indigenous bourgeoisie that inherited control over the neo-colonial state and its apparatuses had a very weak economic base, and hence relied on this control for its own capitalist accumulation (Ezeani 2008:4).

Critical to understanding this, is an appreciation of the nature and character of the Post-Colonial Nigeria. Many scholars such as Graf (1988), Diamond (1986) and Joseph (1996) have identified capitalist rent seeking, patrimonialism and prebendalism as the major characteristics of Post-Colonial Nigeria State. Some have even fancifully referred to the Nigerian State as a “rogue state” (Joseph, 1996). These characteristics have combined with one another, and with many others, in complex dynamics, to undermine the Nigerian State’s capacity to discharge those fundamental obligations of modern state to its citizens, such as socio-economic provisioning, guarantee of fundamental human rights and freedoms, ensuring law and order and facilitating peace and stability as pre conditions for growth and development (Jega, 2002:36).

The unique nature of the Neo-Colonial State such as Nigeria therefore, has primarily on the fact that it combines that function of serving as a major instrument of capital accumulation with that being a direct instrument of class formation and domination. As Milliband (1977:109) puts it, “*The state is here the source of economic power as well as an instrument of it; state is a major means of production*”.

The Marxist theory of state is very significant to understanding and explaining the defection crisis in Nigeria. Applying the theory, it is argued that those who have presided over the state have tended to personalize power and privatize collective national resources, while being excessively reckless in managing the affairs of the nation. Indeed, the state has become the prime mover of capitalist development and class formation, with all the associated contradictions that this is wont to spew up.

It was the inimitable Professor Claude Ake (1939-1996) who came forward with the thesis clearly explaining how politics in the post-colonial state in Africa stands in the way of development. (Ake, 1983) argued that because the colonial economy largely shut out the indigenous elite from engaging in productive activities, politics became the only arena where relevance and influence could be gained at independence. The consequence was the chaotic and often bloody struggle for political power, the only means of material advancement. Politics naturally took the shape of a zero-sum game, in which fair and foul means ensured the winner took all, albeit temporarily. It was a game in which the modicum of decorum and reflection that would have allowed for some developmental inclination became absent.

Since Nigeria's transition to civil rule in 1999, the relevance of Ake's postulation on politics as an agency for instability has been consistently validated. Within the turbulent context of the Nigerian polity, the current gale of defections sweeping across the country generally reflects that chaotic struggle for political power, which Ake had identified to be the bane of development.

This is the light in which Nigerians should view the real estate of time and space that has been devoted to the catfights between the All Progressive Congress (APC) and the Peoples Democratic Party (PDP) over the flurry of movement of members between either parties. The latest turf for the battle is the National Assembly, where the APC is doing all within its power to harvest as many members as possible from the PDP. The resultant talks about the declaration of the seats of defecting senators vacant, as well as the allegations of financial inducement in the house of representatives are reflection of the self-portrait of the Nigerian politician as a character in a perpetual search for morsels, rather than ideas.

What would have amounted to some kind of deterrence was if the political system had frowned at the practice of jumping ship at the slightest pretext right from the beginning of civil rule 1999. defection or "cross carpeting" became an incongruous part of Nigerian political reality during the reelection bid of former President Olusegun Obasanjo in 2003. it was one of the political stratagems, which the ruling party used to weaken and demoralize the opposition AD just before it overran the southwest. That was the point at which senators, Dr Wahab Dosunmu, Musillu Obanikora and Adeseye Ogunlewe who ere elected on the platform of the Alliance for Democracy (AD) defected to the PDP. The records also show that Chief Arthur Nzeribe (Imo), Senator John Nwanunu (Abia) Dr Usman Kadir (Kogi) all defected from the All Nigeria People Party (ANPP) to join the PDP. But because the actions of these politicians resonated well with the ruling party all calls for their seat to be declared vacant fell on deaf ears. Similarly, as Vice President, Atiku Abubakar was harassed by Obasanjo out of the PDP. The former VP immediately sought solace in the Action Congress. His seat was subsequently declared vacant by the presidency, but the courts ruled the act a nullity. The lack of repercussion for defections early on in this dispensation has made it very attractive for politicians turn defection into an art.

For instance, a third term senator Patrick Osakwe that represented Delta North between 1999-2011 defected from the Peoples Democratic Party (PDP) for Accord Party. Not long enough, the elected senator also abandoned AP and defected to the Peoples Democratic Party again alleging division within the party. But the National Legal Adviser of the Accord Party, Barrister Sikiru Oke said, Senator Osakwe by his action disregarded the party's constitution and laid down procedure and rules of doing things in an organised society. The

senator was accused of instigating, sponsoring crisis within party as justification for his despicable act.

In his own reaction to the wave of defection by Nigerian political office holders, an Onitsha based legal practitioner, Chief Iloegbune Okoye said that politicians have the right to defect to other political parties of their right as enshrined in the nation's constitution, but argued that the right was being abused by politicians in a bid to actualize their selfish political ambitions.

Chief Okoye maintained that the present crop of Nigeria's elected public officers were suffering from greed and inordinate ambition for political offices because of the gains attached to such positions than to offer themselves for service.

He warned that if not properly checked, gale of defection might adversely affect the country's democracy. He described politicians who jump from one political party to another as political prostitutes driven by profit attached to their products, attributing it to lack of ideologies among political parties. Chief Okoye see our politicians as prostitutes and traders and not people with Ideologies, but are driven by profits by the highest bidder. He warned politicians who defect to two or more parties within the shortest specific period to desist from such action (DailyPost, 2014).

Legal Basis of Political Defection: The Constitution Vs House Rules

Senate President David Mark, yesterday, saved 11 Peoples Democratic Party, PDP, senators, who recently defected to the All Progressives Congress, APC, from losing their seats by rebuffing moves to declare their seats vacant as the defection drama continued in the Senate. He also halted further debates on the matter until the courts rule on the issue. PDP senators led by Senator Ita Enag had sought for the declaration of the seats of the former PDP members that dumped the party for APC vacant on the premise that when a senator leaves the party platform that gave him the seat unless that party is factionalized, his seat will become vacant. Senator Enang who came through Order 14 of the Senate Standing Rule and relying on section 8 subsection (1g) of the 1999 Constitution (as amended) said the defectors having dumped the party that brought them to the senate had automatically lost their membership.

According to him section 68 (1)g of the 1999 Constitution of the Federal Republic states: 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 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 (1999 Constitution of the Federal Republic of Nigeria).

As if it was a decision reached after the Senate PDP caucus meeting at the residence of the Senate leader, Victor Ndoma-Egba later that evening, the PDP senators chorused as Senator Enang was making his presentation and unanimously urged the Senate President to declare the seats of the affected Senators vacant. However, Senate President Mark apart from ruling Senator Enang out of order also stopped further debate on the matter until the court delivers final judgment on it.

Mark, who relied on the pending suit at the Federal High Court, said further comments on the matter was sub-judicial. He told Enang: "You were in the chamber here, yesterday, (Tuesday) and I did explain that the matter is in a court of competent jurisdiction. We all agreed that no reference should be made in a matter before a competent court of law. My ruling is that I am not going to be different because it is a constitutional matter. I shall not make any more pronouncements on it. The decision that you ask me to make is not possible."

The Senate President's ruling did not stop the PDP senators, who appeared ready to battle the defection issue with the APC. Senator Thomson Sekibo, who came also under

Order 14 of the Senate Standing Order and Sections 1 and 2 of the constitution said that Order 53 (5) of the Senate Standing Rule upon which the Senate President based his refusal to declare the seats of the affected senators vacant was inconsistent with section 1 of the constitution.

Contending that the Constitution of the country should be superior to any other law, Senator Sekibo cited Section 1 (3) of the 1999 Constitution as amended which states: *"If any other law is inconsistent with the provisions of this constitution, the constitution shall prevail, and that other law shall to the extent of the inconsistency be voided"* (1999 Constitution of the Federal Republic of Nigeria).

Arguing that in the matter, Order 53 of the Senate Standing Rule was inconsistent with the section of the constitution, he urged the Senate president to discard the order and follow the constitution by declaring the seats of the affected defectors vacant.

Senator Sekibo maintained that having defected, the affected Senators lacked the locus standi to continue to seat in the Chamber. But Sekibo's position did not move mark, him: "Senator Sekibo, the subject matter in which you spoke vigorously is before a court of competent jurisdiction." Mark also ignored efforts by Senator Anthony Omoware to revisit the issue and prevent the Senate President from adhering to the PDP senators' plea as he said that he was not going to comment on the matter. Throughout the debate, the affected senators were cold. Section 68(1) (g) of the 1999 constitution (as amended) guides post election cross-carpeting between political parties amongst legislators. But the Senate Standing Rule is standing between eleven senators and this constitutional provision. Which one is supreme? Asks law editor, Adam Adedimeji.

The 2010 constitutional amendment guides post election cross-carpeting between political parties amongst legislators. Section 68(1)(g) of the constitution provides that "A member of the Senate or House of Representatives shall vacate his seat in the House if 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 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."

This section is designed to discourage party switching otherwise known as "Party Hoping" or "Floor Crossing" by members of the legislature. This section serves a dual purpose in that it seeks not only to emphasize the supremacy of political parties but also to ensure that the interests of citizens are not ignored by opportunistic politicians who switch political parties for selfish reasons. The Nigerian constitution implicitly recognizes two kinds of party switching: (a) Opportunistic party switching aimed at conferring benefits or advantages on the switching candidate; and (b) Party switching as a result of division in the switching candidate's political party. The first kind — opportunistic party switching — is prohibited and could lead to disqualification. The second — leaving a party following a division— is permitted by law and ordinarily does not affect the standing of the party switching legislator.

The constitution recognises a division in the party as a ground for switching parties without vacating one's seat in the legislature. The term "division in the party" has not // been expressly defined by either the legislature or the courts. There are no bright lines or litmus-paper test for determining when a division exists in a political party. It is up to the courts to give the provision its operational text. The court must evaluate the nature and character of the matter or issues raised by the parties to support a claim of a division in the party and decide whether or not a division exists. What is the kind or nature of division contemplated by the law? Is it organizational or ideological? Two scenarios are likely to arise from the phrase division in the party.

The first is where members are unable to reconcile their differences or process them through channels and procedures contained in the party's constitution. Disgruntled party members break into several factions led by different members. The second scenario is where a person joins a party because the party's position on issues is consistent with his view points. Six months later, the party reverses itself and adopts a different platform that espouses views inconsistent with his beliefs. A pertinent question likely to arise is whether a member who disagrees with the party's ideology or stand on key issues can leave the party without losing his seat.

The plain meaning of the phrase "division in the party" includes the first scenario. It also does not and should not exclude the second scenario. Division in the party must be interpreted to encompass ideological differences. Ideological difference should be proof or even support for a claim of a division in the party. Excluding ideological differences as evidence of division in the party would be an improper and unacceptably narrow reading of the language and policy of the anti-party switching legislation. Such a narrow interpretation would only make a difficult problem more problematic.

One of the major selling points of political parties in a democracy is that they espouse and advance viewpoints that are different from those advocated by other parties. Citizens join a political party chiefly because they agree with the party's ideology or viewpoint on important issues. For example, most citizens in the United States find the Republican Party's view point on abortion very appealing. Some citizens join the Democratic Party because of its liberal views on issues like affirmative action and same sex marriage. Any change in the major platform of a political party is enough to cause significant unease among members and may lead to a division in the party. The scheme to protect legislators who switch parties because of a division in their party would be more effective if it extends similar protection to legislators who switch parties because of ideological differences with their party.

It would be unfair under the circumstances to say that a division does not exist in the party when a legislator has ideological differences with his or her party. Legislators are supposedly insightful and principled representatives deeply committed to their view points. In fact, some of them joined a particular party principally because of the party's ideology. Any changes in the party's ideology that run contrary to what they believe in will cause them to rethink their membership of the party. If ideological difference does not count as a division, legislators would have a binary moral choice to make, a choice eloquently stated by former British Prime, Minister Winston Churchill: "Many people change their minds in politics. Some change their minds to avoid changing their party. Some people change their party to avoid changing their mind."

Whenever a party changes its position on major issues, legislators have a moral obligation to take a principled stand and demand changes. If the party refuses to change, a division exists in the party and a legislator who so chooses can switch parties without vacating his or her seat. If ideological differences do not count as a division in the party, standing up for what one believes in could lead to career-ending terminal disaster for legislators who prefer to change their parties rather than change their views. Penalizing a legislator who leaves a party because of changes in the party's ideology or platform could lead to an unfair outcome.

Legislators must have the freedom to take and maintain principled stand on issues of concern to the society. Constitutional democracy and the welfare of constituents are more adequately and better served when legislators show courageous commitment to principle. Moreover, legislators garner public respect and support when they continually resolved to stand up for what they believe to be right and to defend and push their ideas and ideals with conviction and consistency. Failure to treat ideological differences as a division will deprive legislators the sense of safety and protection they need to stand up for what they believe in.

Such a narrow reading of the law will provide perverse incentives for legislators to emphasize compliance at the expense of principles or even sacrifice principles and convictions to expediency. Legislators haunted by the gnawing fear that taking principled positions on issues will expose them to the wrath of their party leaders are hardly candidates for robust debate and deliberations in the legislature. Political parties advance their views and beliefs through their elected officials. Elected officials advance and defend the party's position chiefly because they agree with their party. An elected official whose views are out of sync with his party's stand can hardly be an effective advocate for his party. In such a case, allowing him to leave the party seems to be the best option for both the party and the dissatisfied member.

The issue of merger and cross carpeting is not new to Nigerians especially those who are familiar with political happenings among them. What is new however is a deliberate system by which parties to a merger are disallowed to merge are systematically precluded from doing, so. The distinction between a merger and cross carpeting lies in the meaning and obvious implication of the two. By a merger two bodies (we are talking of two political parties here) unite to form one, usually bigger, stronger and bird; but by cross carpeting an individual leaves a particular body and joins another, subscribing to and under that other. Usually, there are no pacts/agreement in cross-carpeting unlike as it were in merger cases. The 1999 Constitution (as amended) guides post election cross-carpeting between political parties amongst legislators. Section 68 (1) (g) of the constitution provides thus A member of the senate or House of Representatives shall vacate his seat in the House if being a person whose election to the House 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 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.

What is however playing out in the upper chambers of the National assembly is akin to a contravention of the above provision. In essence, eleven Senators. Who signify their intention to leave the peoples democratic party PDP to the opposition's all progressives party APC through a letter written and jointly signed by them are been disallowed to carry out their aim. The January 29 letter by eleven senators reads. We the undersigned senators of the Federal republic of Nigeria elected under the peoples democratic party (PDP) wish to notify you that we have severally and jointly joined the all progressives congress APC.

This action and decision is as a result of the division and factionalisation in the peoples democratic party that sponsored our election into the senate. In view of the above, we write to inform you that flowing the division and factionalisation in the PDP, we have formally joined the all progressives congress (APC). This communication is made pursuant to section 68 (1) (g) of the constitution of the federal Republic of Nigeria 1999 (as amended) for your information guidance and record purposes. Signatories to the letter includes, Bukola Saraki and Shaba Lafiagi Kwara Central and North), Mohammed Ndume Borno South, Danjuma Goje Gombe Central, Abdullahi Adamu Nasarawa West, Magnus Abe River South East and Wilson Ake Rivers West. Others are Bindo Jubrilla Adamawa North, Abdullahi Gobir Sokoto east and Alhassan Aisha Jummai Taraba North, the only woman among them.

Citing Order 53 (5) of senate standing rules, the senate president, David Mark on many occasions refused to read the letter. According to him reading the letter is a violation of the senate rule which he vowed not to defy. Other 53 (5) of the senate standing rules states, Reference shall not be made to any matter on which a judicial made to any matter on which a judicial decision is pending in such a way as might in the opinion of the president of the senate prejudice the interest of parties thereto.

In debunking ark excuse in not reading the letter, Monday Ubani a Constitutional lawyer and Chairman, Nigerian Bar association (NBA) Ikeja Branch said that Mark ought to stand on the side of constitutionalism as against dirty party politics. Ubani said ark was playing out a script and that it was, unfortunately, that of his political party. The rules he quoted does not apply ere. His hands are not tied as alleged, on the contrary, is political party has tied his hands, his mouth and legs, he said Ubani advised the defecting senators to register with their new party as it is in line with equity. He maintained that the defecting senators are already, in spirit and in truth, members of the APC, only which the senate president is bowing to his political party's pressure in refusing to do the needful.

The case in court will either be thrown out or will be resolved in favour of the defecting senators. We have several decided cases in favour of the defecting senators. It is only a matter of time. PDP is embroiled in crisis, they know it the whole world knows it. They are just wasting their time. The president was in Sokoto to receive a defected former govern of the state, Attahiru Bafarawa with fanfare. What is good for the goose, is equally good for the gander, Ubani submitted.

But the question on the lips of many is, what is unconstitutional in this? There is nothing in the Nigerian Constitution 1999 (as amended) that forbid a member of the National assembly from moving from one party to another in so far one of the reason justifying the movement is satisfied. Much to the contrary there is enshrined in the Constitution a fundamental right to freedom of association. Therefore, the choice of the eleven legislators of the former PDP, to change party to the all progressive congress (APC) can be construed as an exercise of their constitutionally guaranteed right to freedom of assembly and association under section 40 of the 1999 Constitution of the Federal Republic of Nigeria 1999 as amended. That is to say in other words if the defection is in keeping with the exercise of a constitutionally guaranteed right, it can only be legal because anything done constitutionally is done in accordance and in accordance with the law.

Simply addressed in legal perspective, the constitution of the federal Republic of Nigeria is Supreme over any other law enactment and subsidiary legislation this is in accordance to section 1 (1) of the 1999 Constitution. If therefore, there exists any provision in the senate rules or any other enactments which is inconsistent with the provision of the 1999 Constitution of Nigeria, such an inconsistent provision shall to the extent of its inconsistency be null and void and of no effect. Section 1 (3) of the 1999 Constitution (as amended) captures this thesis.

Implications of Political Defection on the Polity

With the recent litigation filed by the Peoples Democratic Party (PDP) against the 11 defecting senators, the Independent National Electoral Commission (INEC), and the senate president, David Mark, the suffocating haze foisted over the legislative ecology of the national assembly since December 2013 has taken yet another twist.

This politics of defection holds critical implications for the national assembly as the co-locus of the sovereignty of the nation state and guardian of the most populous democracy in Africa. Political analysts and the informed Nigerian public, are already worried that the corrosive chemistry of the political defections in both chambers of the national assembly is not only diverting attention from its core mandate, but already brewing bad blood and entrenching avoidable intra-parliamentary crisis, which could jeopardize our democracy.

Meanwhile, whereas there has been a free flow of defection in the House of Representatives it has not been so in the senate. This has led to hot plenary sessions in the red chamber as proponents and opponents of defection are locked in intrigues and points of order. The defectors in the senate and their protagonists anchor their defence on their inalienable right to freedom of association as guaranteed under section 40 of the 1999 Constitution. They also point at the previous cases of hitch-free defections in the senate from the opposition

parties to the PDP as well as the defection jamboree in the House of Representatives. This situation has put the senate leadership, especially senator David Mark in the eye of the storm, with some of the affected senators and the APC accusing him of double standard.

However, it needs to be pointed out that the circumstances of the previous defections are not exactly the same with what we have on our hands in the senate to day. Whereas previous defectors did not go to court, the present crop of defecting senators shot themselves in foot by first going to court.

The 1999 Constitution is clear on what constitutional grounds a serving lawmaker could switch political party without loosing his or her seat. Section 68 (1)(g) of the constitution (as amended) provides, that “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; 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; (but) 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 faction by one of which he was previously sponsored.”

While the defecting lawmakers hinge their defection on division/crises within the PDP, it is to be recalled that an Abuja Federal High Court presided over by Justice E. Chukwu had ruled on October 18, 2013 that there was no division in the PDP. This was while adjudicating on the issue of the formation of PDP under the Chairmanship of Alhaji Kawu Baraje, following the walkout staged by some disgruntled PDP leaders and the G7 Governors during the party's mini convention held last year. Of course, the defecting senators could not have hinged case on a merger because the PDP is not a party to any merger, which the lawmakers could claim they do not want to be part of.

Therefore, aware that enormous constitutional pressure could be brought on the Senate President, Senator David Mark to declare their seats vacant, the defecting PDP senators and reps had filed a suit at an Abuja High Court presided over by Justice Ahmed Mohammed on December 17, 2013 to wrest an injunction restraining both the Senate President and the Speaker of the house of reps from declaring their seats vacant in event of their defection. Also included in their plea was that, the court restrains INEC from accepting nominations of candidates and conducting bye elections to fill their seats in event that they were declared vacant. That matter is still being battled in court.

It did not also end there, the defecting senators and their prospective colleagues in the opposition all numbering 52 at the time (the number has reduced drastically as many of the intending defectors have backed out), had written to the senate leadership on January 20, 2014 drawing its attention to the pending legal matter at the Federal High Court in Abuja on the same subject matter. They pointed out that it is the practice of the senate that where a matter is pending in a law court, their defection could not be a subject of discussion or debate on the floor of Senate. They also state: “We wish to note that this is not the first experience in the senate where some Senators have move to political parties of their choice as a result of one reason or the other, whereas, such has not caused any political tension or intimidation... it is our resolve that the Senate should maintain and sustain this principle and precedence.”

This court move and the subsequent letter by the Senators are exactly where the defecting Senators shot themselves in the foot. I think that it is an irony that Senator Bukola Saraki and 10 others, knowing that Order 5(5) of the Senate Standing Rule provides that “Reference shall not be made to any matter on which a judicial decision is pending in such a way as might in the opinion of the president of senate prejudice the interest of the parties thereto”, go to court over the matter, call the attention of the leader ship to the matter pending in court, and still expect the Senate President or his Deputy, Senator Ekweremadu to read their letter of defection.

How do we explain a situation where lawmakers defect from one party to another and then defect back to their original party in the space of only one month and under circumstances that celebrate disregard for principles? Party leaders in Party A suddenly move to Party B and begin to contradict everything they had done in Party A. How do we explain the claim that political office holders are paid to remain in their party? How do we explain that negotiations for party allegiance is premised on automatic ticket and pre-determined political posts? In all these types of horse-trading and deal-making, nobody is talking about the people or securing obligations or commitments on infrastructural development. Nobody is raising the issue of free education or healthcare, let alone anything remotely representative of the needs of the people. What manner of politics in Nigeria are we playing exactly?

The failure of political parties has dire consequences for the quality of governance in Nigeria. In last year's Anambra state governorship elections, the fact that political parties could not rally their members to review the voter's register disenfranchised many people. Their inability to even mobilize citizens to vote produced a record low turn-out in governorship elections. If political parties cannot even rally their own members or provide them with basic political and civic education, how do they expect to run a country? Interestingly, the current disenchantment with political parties also provides huge opportunities for parties to remake themselves. It cannot be business as usual. Moving towards the 2015 elections, the PDP and APC need to prove to Nigerians that there are differences between them, aside from name. Simply being known as the opposition party does not guarantee votes, unless you can actually distinguish yourself from the ruling party via through the party's manifesto. Internal party politics – especially going forward to the primaries – must be taken seriously, and democracy must begin from intra-party levels. Nigerian' voices and votes must count.

The implication, therefore, is that the current wave of indiscriminate defections, rather than promoting genuine competition, would reduce the political landscape to a mere field for all-comers with no focus or objective beyond self interests. Observers are warning that if this continues, the right people would be forced to become apathetic, leaving the electorate without credible options to choose from.

The Way Forward

Aggressive citizen's mobilization, based on discernible political promises must be pursued. Parties cannot promise free education and health in 2015, as examples, when governors from such parties are not currently pursuing such policies. We need to be clear on the policy direction of each political party – not just as election propaganda, but actually seen to be at the centre of their currently-pursued activities. If political parties focus their energy on policy issues and spend less energy on hurling abuses at each other, our governance narrative will undergo seismic change. The APC's current membership registration has shown how progressive mobilization can improve the fortunes of a political party. Other political parties are watching and a response is no doubt in the works. This is the kind of competition Nigerians want and need to see come 2015.

However, Nigerians cannot wait forever for our failed political elites and class to remake themselves. Increasingly, the populace will have to pursue a new wave of political consciousness that unites them to build a political union that is built on the values of accountability, transparency and responsiveness to people's needs, and a clear strategy on changing the political fortunes of Nigeria. It does not have to be a political party, but it must be a political movement and must be one that commands attention and defines issues. They exist in our schools and churches. They even exist in our political parties. But we need to provide a different avenue to ventilate these values and draw out these progressives. Nigeria is too precious to be left in the hands of men without honor or leaders without principles.

Politicians should exercise patience and show maturity in the way they play politics. Defection to a ruling party may lead to one party system which is not healthy for the political

development of the nation. Related to the former, there is great need for political parties to have ideologies, programme, policies which will serve as a compass to their members and discourage them from defecting to another party.

The gale of defection of political office holders in Nigeria has assumed a worrisome proportion, as defectors throw caution to the winds. To stem the tide of defection, and usher in decency it is important to identify and deal with the factors creating enabling environment for it, which are – decadence in societal values, lapses in the 1999 Constitution and lack of clear ideologies by political parties. Members of the National Assembly should amend the 1999 Constitution which the paper noted was defective and allowed unchecked defection. To correct these lapses, we urge the National Assembly to amend section 68 of the 1999 Constitution to make resignation from office to be a prerequisite for defecting to another party, because defecting while retaining the office amounts to being unjust to their erstwhile political parties and the electorate.

Conclusion

The recent wave of defections in the National Assembly is product of cash and carry politics, as none of the two rival parties of Peoples Democratic Party (PDP) and the All Progressives Congress (APC) is immune from the business. The perennial defections of politicians was not informed by the resolve to fight and protect the interest of the general public, but for their own personal interests.

The golden days of politicians who politic on politics based on issues, ideology and principles no longer exist in the present democratic dispensation in Nigeria. The driving force is how to capture state power for private gains. In search of this is the great movement of politicians from one party to the other. This trend of cross carpeting shows that Nigerian politicians possess no democratic values, credentials and our political system is awash with professional politicians and “entrepreneurs” who are devoid of modern political ideology and issue driven politics. It is our candid opinion that for the purposes of deepening the practice of democracy in Nigeria, any elected politician that defects to another party should be made to stand down and seek reelection. The loopholes within our electoral system and constitution that allow this to happen must be amended to cage political party defections.

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