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# The Legal Regime and Trend of Political Defections in Africa: A Doldrums

Oluwafemi Emmanuel Olowononi, Mohammed Ndarani Mohammed

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SCAN ARTICLE

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# The Legal Regime and Trend of Political Defections in Africa: A Doldrums

Oluwafemi Emmanuel Olowononi*
and
Mohammed Ndarani Mohammed**

## Abstract

*The paper is an investigation into the practice of party defections and political instability, which is one of the major challenges to democracy in Nigeria and Africa in general. Politicians in Africa 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 political system, which is however gradually assuming a frivolous status, thus raising concerns in the build-up to general elections of Africa's countries.The gale of defection in Nigeria and other countries is one that demands critical attention to preserve both the legal, political and even the moral sanctity of leadership in Africa. Election periods have always been the periods when politicians move from one party to the other looking for a ticket. This article therefore examines this political trend and its incidental issues in the light of the Constitutional provisions of selected countries in Africa as well as case laws on the matter.Is the trend healthy for the political leadership development in the continent? The paper examines the existing regulatory frameworks and clearly articulates on the lack of effective implementation of internal democracy within political parties in redressing this problem. The paper calls for concerted efforts of all stakeholders and proper implementation of the existing rules governing internal democracy within political groups*.

**Keywords: Trend, Political Defection, Doldrum**

## Introduction

The subject of political defection is a contemporary and controversial issue within the fields ofPolitical Science and Public Law. The wave of political defection from one party to another in many countries in Africa has been that of different strokes for different folks. Historically, in Nigeria and Cameroon, for instance, political defection started as far back as 1951 when several members of the pre-independence party National Council of Nigeria and Cameroon (NCNC) defect to the Action Group (AG) in order to stop Dr. NnamdiAzikiwe and his party (NCNC) from having the majority in the Western Regional House of Assembly, which the party required to form the government in the Western Region Within the Action Group (AG), LadokeAkintola, a deputy leader of AG, left the party as a result of ideological difference between him and the AG leader, Chief ObafemiAwolowo, to form United Democratic Party (UNDP). UNDP then



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entered into alliance with Northern People's Congress (NPC) to put a stop to AG dominance of the Western Region.[1]

Also, the defection of Chief Akin Omoboriowo, the Deputy Governor[2] of Ondo State under the Unity Party of Nigeria (UPN) to become the Ondo State gubernatorial candidate of NPN in 1983[3] was seen to have been part of the remote causes of the then post-election crisis in Ondo State.[4] In the same vein, many politicians defected to form and register new political parties on the slightest incongruity possible. A perfect example of this was the incidence of AlhajiAbubakarRimi, who defected from his Peoples' Redemption Party (PRP) and sought re-election under the Nigeria People's Party (NPP),[5] and that of AlhajiWaziri Ibrahim, who founded the Great Nigeria Peoples Party (GNPP) to abandon his original party, the NPP on a disagreement over the 'post of the Party Chairman and Presidential candidate' between them can be brought to the fore. It has been argued that defection has become not only a custom but a progressively permanent feature in the Nigerians democratic culture. Party defections and political instability has been one of the greatest challenges threatening the Nigeria's democracy.[6]

The common practice is politicians defecting to other political parties if they are aggrieved based on perceived lack of fair treatment, failure to secure party nominations during own party's

*(PhD, LL.M, BL) is a Barrister, Solicitor, Notary Public of the Supreme Court of Nigeria and Senior Lecturer, Nigerian Law School, Headquarters, Abuja, FCT where he teaches Nigerian Constitutional Law at the Bar Part One programme, immafemi@yahoo.com +234803639697.
**(PhD, LL.M, BL) is a Senior Advocate of Nigeria and founder of Solace Law Firm (Ndarani& Co, Abuja, Nigeria)

[1]A Adejuwon, 'The History and Law of Political Carpet Crossing in Nigeria' [2009] (11) *Squib Guest*<http://squibguest.blogspot.com/2009/11/history-and-law-of-political-carpet.html>accessed 1 June 2022

[2]O Awofeso and P Irabor, 'Party Cross-Carpeting in Nigeria's Fourth Republic: Cases and Causes' [2016] (6) (9)*Journal of Public Administration and Governance,* 34.

[3]EM Akpambang and OAOniyinde, 'Political Party Defections by Elected Officers in Nigeria: Nuisance or Catalyst for Democratic Reforms?' [2020] (7) (2) *International Journal of Research in Humanities and Social Studies,*12.

[4]Adejuwon (n1).

[5]Akpambang and Oniyinde(n3).

[6]J Nwanegbo and Others, 'Party defection and sustenance of Nigerian democracy' [2014] (14) (6) *Global Journal of Human-Social Science*, 1-8.



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primaries, while some who felt disillusioned, cheated or denied free and fair primaries, defect to other parties so as to participate in the elections, with the intention of going back to their parties hitherto after such elections. This has been the practice before, during and after election periods in Nigeria since democratic renaissance in Nigeria in 1999, ever since then there has never been a time Nigeria went into elections without recording cases of defection to the perceived winning party. It is obviously the result of politicking devoid of political ideology. Thus, the impression about Nigerianpolitics is that moving from one political party to another is common and seen to gain an advantage over other political parties.[7]

One of the problems that keep bewildering the Nigeria democracy has always been lack of internal democracy within political parties. In Nigeria, recognition of candidates for nomination and selection for primary elections depends on the strength and popularity of the candidate in area of economic and political power, without any due consideration of the integrity and leadership capability of the candidate involved.[8]These acts have led to political crises leading to individuals defecting to other parties and/or forming new parties as a result of dissatisfaction with party operation and general voter's apathy in the democratic process. The perfect example of this in the recent time is the defection of Peter Obi a presidential aspirant under the People's Democratic Party who defected ahead of 2023 General Election from the PDP to the Labour Party few weeks to the Primaries of the party on the ground of consistency in character and integrity.[9]

[7]S Barnes, 'Defections, 'Decamping and Cross-Carpeting: The Challenges Facing Nigerian Political Parties Ahead of the 2019 General Elections' *Democracy Speaks*(2018)<https://www.democracyspeaks.org/blog/defections-decamping-and-cross-carpeting-challenges-facing-nigerian-political-parties-ahead>accessed 1 June 2024.

[8]A Jinadu, 'Political Parties and Democracy in Nigeria' in OluObafemi and Others (eds), *Political Parties and Democracy in Nigeria* (Kuru, 2014).

[9] A Abiodun, 'Why I joined Labour Party' *The Nation*(May 28, 2022) <https://thenationonlineng.net/why-i-joined-labour-party-by-peter-obi/>accessed 1 June 2024.



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It is pertinent to say that in other climes where politics of ideology reigns, politicians defect only based on the change in their belief and remain in the new platform for as long as their beliefs in the new ideologies existed. Unlike the case with Nigerian politicians, Winston Churchill of the Liberal Democrats defected to the Conservative Party and never changed his party again till his death[10]Likewise, Ronald Reagan[11] of the Democratic Party defected to and died with the belief of the Republican Party. This political trend persisted in the country without adequate redress under the law despite the existence of anti-defection law in Nigeria.

**Conceptual Examination of Defection and Political Party**

Defection has been defined by the Black's Law Dictionary[12] as abandonment of allegiance or duty, forsaking of a person or cause.Defection is an act of swapping political parties.Defection has also been used interchangeably with the following terms: 'decamping', 'cross-carpeting', 'party hopping', 'party switching' and canoe jumping.[13]On the other hand, Political parties are usually referred to as political prostitutes without political principle, morality, conscience, and lacking in political ideology to champion the cause of leadership for the wellbeing of the society and political development of the country.[14]Political parties has also been defined as an organization of voters formed to influence the government's conduct and policies by nurturing and electing candidates to public office.[15]

[10]A British Statesman, Orator and an Author. A two times Prime Minister of Great Britain Between 1940-1945 and 1951-1955 <https://en.wikipedia.org/wiki/Winston_Churchill> accessed 1June 2024.
[11]Ronald Reagan <https://en.wikipedia.org/wiki/Ronald_Reagan> accessed 1 June 2024.
[12] BA Garner, *Black's Law Dictionary* (10thedn, Thompson West, 2014).
[13] GC Malhotra, *Law in India Anti- defection and Commonwealth*(Metropolitan Books Co, 2005).
[14] MB. Aleyomi, 'Election and Politics of Party Defection in Nigeria: A Clue Kogi State' [2013] (1)(1) *Covenant University Journal of Politics and International Affairs* (CUJPIA), 72-84; P Mbah, 'Party Defection and Democratic Consolidation in Nigeria, 1999-2009' [2011] (2) (23) *Afro-Asian Journal of Social Science*, 1.
[15]Garner (n12)



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In *NCP v National Assembly, FRN,*[16]the court defined a political party as 'Any association whose activities including canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy-Governor or Member of a Legislative House or a Local Government Council.'It must be noted that political defection in Nigeria is not restricted to a particular party as the majority of the members of the different political parties can defect at will. Due to the incessant political defection in Nigeria, it is on this premise that we shall look into the following germane questions:

a. What are the factors responsible for political defection in Nigeria?
b. What is the position of law on political defections in Nigeria?
c. What are the Arguments for and against political Defection?

**Factors Responsible for Political Defection in Africa**

Lack of Ideologies

Ideology constitutes the hallmark of social political identification as well as mobilization and unifying factor. Ideology as a set of beliefs has the influence of unifying people of different cultures, ethnic groups, religion, gender and orientation.[17]In the African context, it is a shame that political parties were formed only to satisfy the constitutional[18] requirement of membership and sponsorship[19]for elections, but utterly bereft of political ideologies. A carefulstudy of Nigerian politics would reveal that 'political parties in Nigeria are composed of persons with different ideologies who do not only misunderstand themselves but are regularly clashing.'[20]This

[16] [2016] 1 NWLR (Pt. 1492), 1 at 23.
[17] SOmotola, 'Nigerian Parties and Political Ideology' [2009] (1) (3) *Journal of Alternative Perspectives in Social Sciences*; 612.
[18] CFRN 1999 (as amended).
[19]*Ibid*, ss65 (1) (b), 131 (1).
[20]Awofeso and Irabor(n2).



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finding, among others, have accounted for the party's ideological scantiness and the prevailing cases of Party-Hopping[21] in Nigeria.

Tribal, Religious and Geographical Divide

It is apt to state here that just like we have different tribes, different religion and geographical divide so also, there are different political parties however, there are still political parties in many countries in Africa that still has ethnic inclination, and some appear as a party having inter-religious members but in the real sense of it a particular religion still dictates the direction of the party.

Political Interest

The fundamental aim of political parties is to produce leaders that will lead the government and in turn better the lives of the masses. This interest is what makes individuals with political interest, against this backdrop that men of like minds decided to lock horns, in order to fulfill their desired interest or goal as a whole. For example, where a politician joins a political party to clinch the governorship ticket of the party and for some reasons, he fails the primary election, he might be aggrieved, and may likely defect just as we have seen in time past.

**The Position of Law on Political Defection in Nigeria and Other Jurisdictions.**

For every action of a man there comes with its consequence, and so it is with political defections. The continuous cross-carpeting by politicians from one political party to another has become a constant in our nation, thus, the need to examine the law bordering on the issue of political defection.It is rather surprising to say that, political defection is not only legitimate but is provided for in the Nigerian Constitution, although with exceptions. The legality of political defections in Nigeria is derived from the right to freedom of association enshrined in the

[21] *Ibid.*



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Constitution, particularly in Section 40 CFRN 1999,[22] which 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 association for the protection of his interests.

Notwithstanding the provisions of the above section, it is imperative to note that the right to freedom of association is not absolute for politicians. In Malawi, section 65 of the Constitution prohibits defections by MPs without seeking fresh electoral mandate. In Namibia, Section 48 provides for vacation of seats if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such political party. In Sierra Leone, Article 77 provides for tenure of seat of members of Parliament and that a member shall vacate his seat in the parliament if he or she 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.

The provision of sections 68 (1) (g) and 109 (1) (g), The Constitution of the Federal Republic of Nigeria 1999 (as amended) these two sections are *in pari-materia*as they provide for the vacation of seat by a member of the National Assembly and State House Assembly when he changes his Political Partyunder which platform he was elected and before the expiration of his term of office. Section 68(1)(g) where it states regarding members of the national assembly that:

Section 68(1) –

> *(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; 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.*

[22]CFRN 1999.



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From the above provision, it is crystal clear that a politician who is a member of the National Assembly can only defect under exceptional circumstances. One of them is a division in the political party that the intending defector belongs to. This position has been elucidated in *Abegunde v Ondo State House Assembly,*[23] as follows;

> *…is to the effect that 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 despite the defection. The division must affect the entire structure of the political party at 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…*

The other condition is that a member of the National Assembly can only defect when a faction of a political party that he previously belonged to merges with another. However, the paucity of the law on the nature and degree of the division or factions in a party to qualify the justification offered in the proviso to the law constituted an effective escape route to defecting elected members. This has practically been the case with our decamping legislators, who habitually hinged on the flimsiest ground that could even be rehearsed with a willing partner to cross over. The implication is that no member in the recent past ever vacated his seat, even with the unfounded excuses bereft of substance offered by the defectors.[24]

Thus, the lamentation of the immediate past Senate President BukolaOlusolaSaraki when defecting back to PDP as part of his reason stated that:

> *I will like to emphasize that it is a decision that has beeninescapably imposed on me by certain elements and forces within the APC; allgovernment*

[23](2015) 8 NWLR 314.
[24] OS Apadere and JOAgbana, 'Cross Carpeting in Nigerian Politics: Some Legal and Moral Issues Generated' [2015] (3)(2)*Frontiers of Legal Research*, 33.



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*principles which were required for a healthy functioning of the party and the government were deliberately violated or undermined.*[25]

The inefficiency of the law was further exposed when it vests the power to declare vacant the seat of any defecting member on the Principal Officers of the respective chambers.[26] These officers might ceremoniously proclaim the law on any defecting member, especially when leaving the officer's party. However, it is reckless to expect our crafty politicians to do the same on them-selves. In other words, the principal officers, as were the case with Saraki, and Tambuwa (the Senate President and the Speaker of the House of Representative respectively) would not be expected to declare their personal seats vacant when they defected.

More so, they would clearly decline to operate the law on any ordinary member who either crosses along with them or into their political party. Most often the basis for this defections are selfish political interest and the need to keep amassing wealth and where this is checked it could lead to a situation where there is no credible opposition party. In the long run, the law can be said to be deficient in as much as it fails to achieve the desired social control as an element of coercion and by putting an end to incessant political defection.[27]

Also, the wording of the two Constitutional provision 'shall vacate his seat' does not only call for legal tussles towards the construction of the word *"shall"* which has at variously time been held by the Court as capable of bearing many meanings[28] as either *directory*[29] or *obligatory,*[30]this has led to plethora of litigation on each case of defection for the operation of the law.

[25]Channels Television, 'Why I Defected from APC to PDP'*Channels* (2018) <https://www.channelstv.com/2018/07/31/why-i-defected-from-apc-to-pdp-saraki.> accessed 1 June 2024.
[26]CFRN 1999, ss.68 (2) and 109 (2).
[27] AO Sanni, *Introduction to Nigerian Legal Method* (Kuntel Publishing House, 1999).
[28]*Vibelko (Nig.) Ltd v N.D.I.C.* [2006] 12 NWLR (Pt. 994) 280.
[29]*AT Ltd v ADH* [2007] 15 NWLR (Pt. 1056) 118.
[30]*Olowokere v African Newspaper* [1993] 5 NWLR (Pt. 295) 583.



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By way of contrast, the Tenth Schedule of the Constitution of India, 1949 provides that *"A member of a House belonging to any political party shall be disqualified for being a member of the house if he has voluntarily given up his membership of such political party".* The Indian Court interpreting this provision in *Ravi S. Naik v Union of India,*[31] giving effect to the phrase "Voluntarily given up his membership of such Political Party" to include formal resignation by the defecting member.

This entails that a legislator is required to formally tender his/her resignation in default of which the presiding officer will invoke his power to excommunicate the erring member.[32] The procedure in India is for defector to respectably resign, and the presiding officer will consider the resignation letter and remove him as a member if satisfied with the content or decline, which is open to be challenged in court.[33]In Juxtaposing the provision of the Nigeria Law on legislative public office holders defection to that of India, though the provisions are *in parimateria* however, the Indian law seems to be broader in terms of connotation, more effective, more accessible and faster unlike in Nigeria where there are always litigious cases on defection.

Having looked at legal position of law as regards the defection of legislative political office holder, it is pertinent to look into the executive arm of government on matter relating to defection to another political party. It is pertinent to state here that unlike express constitutional provision providing for implication of defection of any legislative member, the constitution is rather silent on the issue relating to the implication of the President or Vice President or Governor or Deputy Governor defection. The question therefore is, what is the implication of defection on any of the above political office holders, can they also be removed on the ground

[31](1994) AIR 1558.
[32]The Indian Constitution 1949, art. 190 (3).
[33]*KihotoHollohan v Zachillin and Ors* (1992) SCR (1) 686.



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political defection taking into considerationthe vital role of this arm of government in realizing the set goals of a party through policy making and execution? The Local classicus case is *Abubakar v AG Federation,*[34] the apex court declared constitutional the act of cross carpeting when it held that:

> *It was not the intention of the makers of the Constitution of the Federal Republic of Nigeria, 1999 that if the President or Vice President resigns from the Political Party on whose platform he was elected into and embraced a rival Political Party his office becomes vacant because if that was the intention of the makers of the Constitution, they would have so stated expressly.*[35]

From the above this decision of the court, it can be pointed out that an elected public office holder cannot be removed from office on ground of political defection, but there is also this argument that vote won at an election by a political party belongs to the party and that only a political party can canvass vote base on the provision of section 221 which provides: No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

The issue of who owns the votes is recondite, it is our candid contentions that whenever it is finally resolve we opine that if votes belong to party as held in *Ndayako v Dantoro & Ors,*[36]*Faleke v INEC,*[37]then defection should be a ground for vacation of office across legislative and executive.The decisions above have lost their efficacy in view of recent Supreme Court that elections are won by individuals and not political parties.[38]Votes scored during the election has since been departed from and issues relating to the Governor and Deputy Governor were

[34] [2007] 3 NWLR (Pt.1022) 618.
[35]*Ibid.*
[36] [2004] LPELR 1968 (SC) at 24.
[37] [2016] 18 NWLR (Pt1543) 61.
[38]*Ozomgbachi v Amadi&Ors* (2018) LPELR- 45152 (SC) at 48-49.



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concluded having been returned as duly elected Governor and deputy Governor, thereafter their mandate expanded beyond political party which sponsored them for the election to the entire state.[39]Where the court also with finality agree that votes belong to candidate as held in *Ozomgbachi v Amadi & Ors*,[40]then defection is of no consequence.

It should be noted that section 180, 188 and 189,[41]expressly mention the only grounds for which the Governor can be removed. It is trite in law that express mentioning one thing, is the exclusion of others. Following these Constitutional provisions, the court does not have jurisdictional power to entertain any ground for removal of governor outside those points mentioned. We hold therefore that an action for removal of governor on ground of defection is an academic question which even proved cannot grant the consequential relief of removal. On whether the Judiciary is empowered to declare the offices of the Governor /Deputy Governor vacant, the Court of Appeal in *OgbuojiOrs v Umahi & Ors,*[42]Per Joseph Olubunmi kayoed Oyewole JCA, stated that 'It needs be said that removal of elected members of the executive arm of Government is substantially that of the legislature and where impeachment is contemplated, the role of the judiciary is limited to setting up the investigative panel.'

In summary, based on the authority in *Ozomgbachi v Amadi & Ors*,[43]the Governor and Deputy Governor were concluded and having been returned as duly elected Governor and deputy Governor, thereafter their mandate expanded beyond political party which sponsored them for the election to the entire state. As a result they did not defect to another party as a candidatebut

[39] *PDM and Anor v INEC* and 2 Ors [2020] 17 NWLR (Pt 1753) 303 SC.
[40](2018) LPELR- 45152 (SC) at 48-49; *PDM AND Anor v INEC* and 2 Ors [2020] 17 NWLR (Pt 1753) 303 SC.
[41] CFRN 1999.
[42] (2022) LPELR-57166(CA).
[43]LPELR- 45152 (SC) at 48-49.



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as public office holders whose removal from office must be in accordance with the provisions of the constitution.

From the above, freedom of members of the executive arm to "cross-over" with impunity may render the hope of the electorates awaiting the realization of their political manifestoes through policymaking dependent on the similarity or otherwise of that of the favoured party. More so, the hope of these electorates may become shattered if it were in an Advanced Democratic setting or even when a political association in Nigeria is based on entrenched ideologies.

**What are the Arguments for and against Political Defection?**

**Argument for Political Defection**

Freedom of Association

The Constitution of the Federal Republic of Nigeria in section 40 guarantee the freedom of association which also include joining any political party of their choice regardless of numbers of times they defect or decamp as an omnibus ground for their action.

Realization of Political Ambition

One of the justifications given by political holders for defecting is that their former party could not meet up with their political ambition therefore, the need to move to a party where this could be realized.

Defection as a Result of Faction and Intra-party Rivalry

Some politicians hinge their defection on division and factional leadership, crisis in the party as a reason for moving from one party to another.



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Lack of Internal Democracy

Impunity within the party because of lack of respect for the rule of law and the failure to adhere to the party constitution has been adduced to justify political defection.

**Argument Against Political Defection**

It encourages competition – allowing political office holders to freely defect as they desire without putting in place or amending the requisite provision of the constitution to provide for anti-defection, defection will continue to threaten the survival of democratic governance as politicians are bound to turn political parties to auction market where they can enrich themselves through embezzling public fund when they come into power.

Allowing political gladiators to defect whenever they choose to will rob citizenry of knowing the party to vote or not to vote into power because of lack of political ideals and values. For instance, where party in power has failed to meet the yearning of the citizens the only option available to the citizens is to change the Government in the next general election. But where you have individuals in the government defecting to another party which should have been the alternative to the party in power, then there is a problem as this could lead to political apathy.

It breeds godfatherism–majority of the parties have graduated to the point where there is no internal democracy in choosing those that will fly the flag of the party in a general election instead what is in vogue is anointed candidates by the godfathers who are in the government at the pleasure of the godfather, so wherever the godfather defect to, the loyalist must follow in order to remain politically relevant or risk being kicked out politically.



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It is not for the good of democracy – it weakens the opposition party which could ultimately degenerate to a single political system where the citizens could not make choice on the party to vote into power. None of the countries regarded as 'great democracies' like the US, UK, Belgium, Canada, Germany which has a great political culture allow their political office holders defect like the way it is in Nigeria.

**Conclusion and Recommendations**

Defection is an anomaly in the field of politics. Many countries in Africa, in the attempt to eradicate this unhealthy attitude found among politicians, have enshrined anti-defection provisions in their constitutions. Unfortunately, those provisions have done little or nothing to curb the rate of defection, especially in Nigeria. The anti-defection law as it is in Nigeria only applies when the person in question has been elected to the legislative offices. Thus, if a politician loses the ticket of a particular political party, nothing stops him or her from leaving the party to another one. If he or she eventually secures the ticket of another party, nothing can stop him or her from becoming a legislator except the electorates at the polling units.

This has always been the case in Nigeria. People vying for executive offices were not even contemplated by the anti-defection provisions in the 1999 constitution.It has been established that the anti-defection provisions contained in the constitution do not offend the fundamental right to freedom of association as the right is not absolute. The constitution permits derogation in the interest of defence, public safety, public order, public morality or public health.The political development of this country can only be enhanced when things are done in the right way.

This paper recommends the strengthening and amendment of the constitution and electoral laws to regulate the alarming rate of defection of politicians in Nigeria. The defection provisions in



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the constitution should be expanded to include the executive officers in the country. In the alternative, the provisions of sections 128(1)(a) and166(1)(a) of the 1979 Constitution should be restored so as to restrict defectors wishingto contest the seats of the President and the Governor. No doubt, social reorientation, consistent political education and mobilization based on democratic culture directed towards inculcation of new values in the political system will curb this menace.



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