

# Constitutional Safeguard for Preservation of Democratic Political Culture and the Legitimacy of Political Porting in Nigeria

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## Abstract

Political parties are the mainstay of democratic governance, critical to policy formulation and to sustain of political structure in modern states. They are driven by entrenched ideologies besides their focus on attaining economic and political powers. Political porting one of the trending epithets for cross-carpeting, has become too frequent a phenomenon as to be capable of torpedoing Nigeria's nascent democracy. The resurgence of this ugly tend and the near-anarchy situation in Rivers State of Nigeria has reignited the arguments around the legitimacy of this political culture. This article examines the constitutional enactments and judicial authorities as they impact on the choice of an elected political office holder to defect to another political party while still holding office. It also situates Nigeria's democracy within international norm which should interest the universal institutions to support. Adopting the doctrinal research method, the article reveals the inadequacy of the anti-defection provisions of the laws in Nigeria as well as the weakness of the judiciary to rise to the occasion. The article recommends law reforms as well as a clear-cut ideology for political parties to guarantee the survival of democracy in Nigeria.

## 1. INTRODUCTION

Democracy is not novel in Nigeria. The country has a chequered democratic history described as 'republics' following military punctuations.<sup>1</sup> The extant democratic dispensation, the longest in the series of democratic experiments,<sup>2</sup> has recorded unprecedented political defections. The

<sup>1</sup> Ibrahim Salawu and Mary Magdalene Sackflame. 'Prospects and Challenges of Democratic Consolidation in Nigeria's Fourth Republic', in *Nigeria's Democracy in the Fourth Republic*, eds. Olawari D. J. Egbe and Abdulrasheed A. Muhammed (Cambridge: Cambridge Scholars Publishing, 2024), 36.

<sup>2</sup> Wale Adebaniwi. "Democracy and Nigeria's Fourth Republic – Introduction," in *Democracy and Nigeria's Fourth Republic*, ed. Wale Adebaniwi (Boydell & Brewer, 2024), 1-3.

development has been described as political nomadism,<sup>3</sup> decampment, floor-switching, cross-carpeting, party-hopping, canoe-jumping, party-switching, party-jumping and political porting.<sup>4</sup> The term ‘porting’ is popularised by SIM CARD swapping from one network to the other by Nigeria Telecommunication Services Providers.<sup>5</sup>

In South Africa, political porting may be termed floor-crossing or political migration.<sup>6</sup> A distinction may, however, be attempted between cross-carpeting and political defection based on political experiences in Sierra Leone.<sup>7</sup> In this case, cross-carpeting only attaches to the elected legislators whereas defection pertains to the movement by non-elected politicians migrating into another party for selfish reasons.<sup>8</sup> A working definition of political porting covers all politicians generally engaged in a switch from one political party to another.<sup>9</sup>

In Nigeria, the critical status of political parties in civil governance arrangement is profound.<sup>10</sup> Section 221 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN) gives only political parties the privilege to ‘canvass for votes for any candidates at any election or sponsor any candidate at an election.’<sup>11</sup> The CFRN and Electoral Act<sup>12</sup> define a political party to include any association of persons whose activities include canvassing for vote in support of a candidate for election of the President, Vice-President, Governor, Deputy-Governor or membership of a legislative house or of a local government council.<sup>13</sup> The responsibility of one political party to sponsor a candidate in an election to the exclusion of all others

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<sup>3</sup> Adib Bencherif, “Political Nomadism and the Jihadist ‘Safe Haven’ in Northern Mali: An Entry Point Through Tuareg Relational Political Dynamics,” *The Journal of Modern African Studies* 61, no. 4 (2023): 473.

<sup>4</sup> Christopher A. Udofia and Andrew F. Uduigwoumen, “Political defections in Nigeria: Implications for Our Nascent Democracy,” *Texas Journal of Multidisciplinary Studies* 8, (2022): 32.

<sup>5</sup> Subscribers Identity Module (SIM) card is a microchip in a mobile phone that connects it to particular phone network. See Collins Online Dictionary, “Definitions, Thesaurus and Reference Materials,” <https://www.collins-dictionary.com>.

<sup>6</sup> Victor Agboga, “Testing Political Loyalties in Nigeria: What Factors Influence Support for Party Switchers?” *The Commonwealth Journal of International Affairs* 113, no. 2 (2024): 121.

<sup>7</sup> See Kortor Kamara, “The Cross-Carpeting Phenomenon: A Threat to the Sierra Leone. Multi-Party Democracy,” <https://sierra-expressmedia.com>.

<sup>8</sup> Chris Akpunonu, “Incessant Cross-Carpeting in Nigerian Politics Under the Fourth Republic and its Implications on the Development of the Nascent Democracy,” *Chukwuemeka Odimegwu Ojukwu University Law Journal* 6, no. 1 (2021): 129.

<sup>9</sup> Olu Awofeso and Paul A. Irabor, “The Game Theory and the Politics of Cross-Carpeting in Nigeria’s Fourth Republic,” *Public Policy and Administration Research* 7, no. 7 (2017): 67.

<sup>10</sup> See Izunna Isidore Ozuo, “Defection from One Political Party to Another, under the Nigerian Constitution: When the Band Begins to Play,” *Journal of Current Issues in Nigeria Law* 1, no. 1 (2015): 2.

<sup>11</sup> The 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), Sec. 221.

<sup>12</sup> CFRN, Sec. 229; The Electoral Act 2010 (as amended), Sec. 156. The Electoral Act further prescribes that a political party shall be registered by the commission.

<sup>13</sup> See the CA in *Hon. Satty Gogwin v. Hon. Zainab Abdulmalik & Ors.* [2008] LPELR – 4210.

raises a moral question when such a candidate dumps the original party for another which played no role in such a candidate's successful election. Most recently, twenty-seven out of the thirty-two members of the Rivers State House of Assembly dumped the Peoples' Democratic Party (PDP) for The All Progressives Congress (APC).<sup>14</sup> The aftermath of the defection is a near collapse of governance resulting in the weaponisation of the judiciary to settle personal and political vendettas.

Porting is inevitable in every liberal democracy.<sup>15</sup> Beyond being propelled by a new ideology that is irreconcilable with that of the original party, elected representatives' political porting may be rationalised on personality clashes, power tussles, divergent opinions on the interpretation of a political party's philosophy, internal party crises or divisions, actualisation of individual's selfish political ambition, inconsistency of party leadership on agreed critical issues such as power sharing or rotation formula, and so on.<sup>16</sup> In the light of the foregoing, this article interrogates the legal framework for legitimate political porting which strengthens rather than depletes democratic values in Nigeria.

The prevalence of the political culture of defection has engaged scholastic energies. Udofia and Uduigwomen (2022) described the trend as cancerous to the survival of democracy in Nigeria.<sup>17</sup> While the learned authors agree that defection could be a democratic culture, the abuse of the liberties in Nigerian experience suffices to justify more stringent approaches. Nuhu (2021) gives a historical account of political porting in Nigeria which he describes as 'party-hopping'.<sup>18</sup> Countenancing the argument that the practice aligns with the constitutional liberties of the decamped politician to join any association for the protection of his interests, the author argues that such constitutional liberties cannot rubber-stamp fraud as to allow a political party which did not sow to reap the privileges attaching victory at the polls made possible by another party's sponsorship.

On their own part, Opadere and Agbana (2015) examine the political culture of defection from the moral angle.<sup>19</sup> They fault the morality of a process that permits inconsistency and engenders mistrust in the polity. According to the authors, a successful party candidate is voted for because of the manifesto he or she presents. It would be a betrayal of public trust, tantamount to moral depravity to foist the manifesto rejected by the electorate on them by the act of defecting to a party that was rejected at the polls, particularly without consultation with the electorate.

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<sup>14</sup> Ayodele Oluwafemi (Reporter), "Falana: Rivers Lawmakers Who Defected to APC Are No Longer Assembly Members," <https://www.thecable.ng/falana-rivers-lawmakers-who-defected-to-apc-are-no-longer-assembly-members/>.

<sup>15</sup> Michael B. Aleyomi, "Election and Politics of Party Defection in Nigeria: A Clue from Kogi State," *Covenant University Journal of Politics and International Affairs* 1, no. 1 (2013): 72-73.

<sup>16</sup> Olaolu S. Opadare and Julius O. Agbana, "Cross-Carpeting in Nigerian Politics: Some Legal and Moral Issues Generated," *Frontiers of Legal Research* 3, no. 2 (2015): 23.

<sup>17</sup> Udofia and Uduigwoumen, *op.cit.*, 34.

<sup>18</sup> Khalid Idris Nuhu, "The Legal Implication of Political Defection on Nigeria's Democracy," *Sriwijaya Law Review* 5, no. 2 (2021): 247, 251.

<sup>19</sup> Opadare and Agbana, *op.cit.*, 33-34.

Political culture, like other aspects of culture, must reflect societal ideals. Hence, Adom (2024) suggests that dynamism being the hallmark of every culture, actions within domestic spheres should comply with international legal frameworks.<sup>20</sup> This research has become exigent given the on-going political quagmire in Rivers State, one of the oil-rich component states of the Nigerian federation.

This article employs the doctrinal method of research. Accordingly, primary and secondary sources such as statutes, case law, textbooks, journal articles, papers, newspaper publications, internet materials are relied upon. Being a library-based research, analysis of issues is based on available library sources which offer in-depth and confirmable legal positions on the discourse

## **2. RESULT AND ANALYSIS**

### **2.1 Democracy as an International Norm**

Hug and Ginsburg (2018) define democracy simply as a system of electoral contest, underpinned by fundamental liberties of speech, association, and other rights closely knitted to elections.<sup>21</sup> Thus, a country is deemed to be democratic if it allows its citizens the freedom to choose their own government through seasonal secret ballot, multiple-party elections, on the terms of universal and equal adult franchise. Democracy may be identified based on three fundamental elements, that is, government characterised by competitive elections; existence of minimal set of fundamental rights to speech, association and right to vote and be voted for in elections; and observation of the rule of law and due process in governance.<sup>22</sup>

International law is conceived as a mechanism by which multiple set of societies interact, despite their differences in political ideologies, cultures and systems of governance.<sup>23</sup> Norms consist in the identity of actors, to pattern their behaviour in desired directions, and altogether, to evolve the normative basis of international system.<sup>24</sup> Democratic governance has evolved from moral prescriptions into an international norm. This implicates those democratic values approved as elements of modern state governance around the world.<sup>25</sup> The emergent right to democracy on the transnational

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<sup>20</sup> Dickson Adom, "Boekpayoo Customary Ceremony of Ga-Dangme in Nungua: Culture Versus Law in Ghana's Fight Against Child Marriages," *Udayana Journal of Law and Culture* 8, no. 2 (2024): 145-146.

<sup>21</sup> Tom Ginsburg and Aziz Z. Hug. *How to Save a Constitutional Democracy* (Chicago: University of Chicago Press, 2018), 10.

<sup>22</sup> Tom Ginsburg. *Democracies and International Law* (Cambridge: Cambridge University Press, 2021): 24.

<sup>23</sup> Tom Ginsburg, "Democracies and International Law: An Update," *Chicago Journal of International Law* 23, no. 1 (2022): 3.

<sup>24</sup> Elvira Rosert, "Effects of International Norms: A Typology," *Journal of International Political Theory* 20, no. 1 (2023): 1.

<sup>25</sup> Tore Nyhamar, "How Do Norms Work? A Theoretical and Empirical Analysis of African International Relations," *The International Journal of Peace Studies* 5, no. 2 (2000): 32-33.

stage is demonstrated by the United Nations General Assembly Resolution of October 11, 1991.<sup>26</sup>

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) gives every citizen the right to take part in the conduct of public affairs, directly or through freely chosen representatives.<sup>27</sup> This right has been enacted in most regional bills of right and articles of faith.<sup>28</sup> Thus, democracy became a universal culture strengthened by the 'Agenda for Democratization' submitted to the United Nations General Assembly (UNGA) for development of the right to democracy as customary international norm.<sup>29</sup>

The basic obstacle to global evolution of full-blown right to democracy is the traditional concept of sovereignty. This status of co-ordination proscribes external interventions in the municipal issues of member states.<sup>30</sup> In *Nicaragua v U.S.*,<sup>31</sup> the International Court of Justice (ICJ) rejected the US' defence that there was a right of intervention to support political or moral values of an internal opposition in Nicaragua. The court found that Nicaragua's adherence to a particular system of government does not translate to a breach of customary international law because there exists no right of any state against another on the excuse that the latter adheres to some ideology or political system at variance with the preferences of the former.<sup>32</sup> As valid as the judgment of the ICJ might be in the circumstances, a threat to democracy anywhere diminishes the very reasons upon which the United Nations were founded. Sadly, emboldened by the judgment, Nicaragua has descended into full blown dictatorship.<sup>33</sup>

Democratic values are impossible of expression under any model of governance other than democracy. To this end, Desierto (2023) posits that international law has saved and preserved democracies with a mix of carrots and sticks largely based on the efficacy of collective action within the global system.<sup>34</sup> It provides structures that may support or undermine democratic values at the national level.<sup>35</sup> Wiebusch et al (2015) argue that democratic values have been elevated to a normative commitment in Africa following the

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<sup>26</sup> See also, Same Varayudej, "A Right to Democracy in International Law: Its Implications for Asia," *Annual Survey of International and Comparative Law* 12, no. 1 (2006): 7.

<sup>27</sup> Nigeria is a State party to the ICCPR.

<sup>28</sup> The European Convention on Human Rights (ECHR), Art. 3.

<sup>29</sup> Boutros B. Ghali, 'An Agenda for Democratization'. Supplement to the Reports A/50/332 and A/51/512 on Democratization, 17 December 1996, 4. See also, Jan Wouters, Bart De Meester and Cedric Ryngaert, 'Democracy and International Law' LIRG/AD. Working Paper No. 5 – June 2004: 9.

<sup>30</sup> Charter of the United Nations, Art. 2 (7).

<sup>31</sup> International Court of Justice, *Nicaragua v U.S* (Merits) [1986] ICJ Reports, 14.

<sup>32</sup> *Ibid*, 108, 133.

<sup>33</sup> Yubelka Mendoza and Natalic Kitroeff, "Nicaragua Descends into Autocratic Rule as Ortega Crushes Dissent," <https://www.nytimes.com/2021/11/07/world/americas/nicaragua-election-ortega.html>. See also, Keith Mines and Mary Speck, "Is Nicaragua's Descent into Dictatorship Irreversible?" <https://www.usip.org/publications/2021/11/nicaraguas-descent-dictatorship-irreversible>.

<sup>34</sup> Diane A. Desierto, "Review of Tom Ginsburg's Democracies and International Law," *European Journal of International Law* 34, (2023): 724.

<sup>35</sup> Ginsburg, "Democracies and International Law," *op.cit.*, 28.



coming into force of the African Charter on Democracy, Elections and Governance (ACDEG) in 2012.<sup>36</sup> This informs the role of ACDEG in dealing with unconstitutional changes of government,<sup>37</sup> particularly military incursions into politics. Accordingly, democracy assumes a topical status in most discussions and negotiations of bilateral and sundry treaties in contemporary times, particularly with the Global South.<sup>38</sup> The SAMOA Agreement,<sup>39</sup> a broad legal framework between the European Union (EU) and several other countries including Nigeria prioritises democracy as one of its six main concerns.<sup>40</sup>

It is on the foregoing premise that the activation of regional democratic enforcement machinery by the African Union (AU) and Economic Community of West African States (ECOWAS) against military incursions into governance resulting in suspensions, border closures and other diplomatic approaches against the concerned state party is welcome.<sup>41</sup> Concerns over the erosion of political freedoms and democratic values in Hungary have also justified the European Commission's intention to withdraw financial assistance to the country.<sup>42</sup> Hungary's case has been described as democratic backsliding.<sup>43</sup> It therefore stands to reason that any political act, including political porting, done to undermine democracy at any level is not only an affront to international norm but a deliberate violence on the collective rights of citizens, no matter how well intended.

### **2.1.1. Concept of Political Culture**

The concept of political culture defies specific definition and may be expanded to include every aspect of human values that defines the rationality for political actions.<sup>44</sup> Political culture implicates the means and methodologies of politics that are associated with a given people, their

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<sup>36</sup> Micha Wiebusch, Chika C. Aniekwe, Lutz Oette and Stef Vandeginste, "The African Charter on Democracy and Elections and Governance: Past, Present and Future," *Journal of African Law* 63, no. s1 (2019): 11-12.

<sup>37</sup> Pacifique Manirakiza, "Towards a Right to Resist Gross Undemocratic Practices in Africa," *Journal of African Law* 63, no. s1 (2019): 82.

<sup>38</sup> The term 'Global South' is synonymous with developing countries. See Claudius Grabner Radkowitzsch and Birte Strunk, "Degrowth and the Global South: The Twin Problem of Global Dependencies," *Ecological Economics* 213, (2023): 1-7.

<sup>39</sup> See Neta Nwosu, "Samoa Agreement: Catholic Bishops to FG: Exempt Nigeria from Obligation to Sexual Orientation," *The Catholic Herald Weekly* (22 July, 2024), <https://catholicherald.org/samoa-agreement-catholic-bishops-to-fg-exempt-nigeria-from-obligation-to-sexual-orientation/>, 1.

<sup>40</sup> Eric Pichon, "The Samoa Agreement with African Caribbean and Pacific States," [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757563/EPRS\\_BRI\(2023\)757563\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757563/EPRS_BRI(2023)757563_EN.pdf), 1-2.

<sup>41</sup> See Ruth Maclean, "Five African Countries, Six Coups, Why Now?" <https://www.realclearworld.com/article/burkina-faso-africa-coup.html>.

<sup>42</sup> See "Laws, Norms and Democratic Backsliding in CFR Education Global Matters. Council on Foreign Relations," <https://education.cfr.org>.

<sup>43</sup> Gabor Halmai. "A Coup Against Constitutional Democracy: The Case of Hungary." In *Constitutional Democracy in Crisis?* eds. Mark Graber, Sanford Levinson & Mark Tushnet (Oxford University Press, 2018).

<sup>44</sup> Joel B. Grossman and Austin Sarat, "Political Culture and Judicial Research," *Washington University Law Review* (1971): 179-180.

common attitudes to partisan politics and political institutions.<sup>45</sup> The growing awareness for political nuances which forms part of the political culture of a society may be rated high or low depending on how much the system is in sync with constitutionalism, which is integral to western political culture from the Middle Ages.<sup>46</sup> Consequently, while political culture pervades the larger society, political ideology identifies with individual benchmarks for political decisions.<sup>47</sup> The individual may be natural or corporate and may translate to political parties.<sup>48</sup>

The operations of the CFRN, therefore, situates within Nigeria's political culture. This explains the nexus between law and politics in this discourse while showcasing democracy as a ventilation of political culture. According to Walker and Goldoni (2023), law is culture, or at least an important domain of culture with its own peculiar worldview.<sup>49</sup> Politics and law are twin pillars of the bureaucratic enterprise. The Acts of Parliament do not only mirror constitutional law and arrangements but the entire political culture of a state.<sup>50</sup>

### **2.1.2 Reflecting Political Culture in Nigeria**

The prevalent political culture in a constitutional democracy justifies the variations with which democratic values are defined by individual countries. Junji and Rousso (2002) suggest that the Japanese political culture defines the emperor's powers as divine and such as should not countenance interrogation.<sup>51</sup> There is, however, a mechanism whereby law may be used to check absolute state powers. Constitutionalism which embodies the extant political culture in Nigeria sustaining the nascent democracy has evolved through the colonial experience with Britain. However, unlike Europe, Nigeria's political culture is a reflex of the attitude of the political class and the philosophy of judges of the jurisprudence. The impunity with which political defections are announced in the tabloids as well as its condonation by the ruling class in whose favour it is has questioned the ability of the CFRN to preserve democratic values in Nigeria. The familiar pact between the executive, the National Assembly and a willing judiciary to weaponise political porting against Nigeria's democracy has become disturbing.

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<sup>45</sup> Remi Chukwudi Okeke, "Political Culture, Democracy and Development in Nigeria," *Specialty Journal of Politics and Law* 2, no. 4 (2017): 2.

<sup>46</sup> Annen Junji and Lee H. Rousso, "Constitutionalism as a Political Culture," *Washington International Law Journal* 11, no. 3 (2002): 653.

<sup>47</sup> Victoria N. Azu and Uchechukwu Onyeukwu, "Political Culture and Public Participation in Governance in Nigeria," *European Modern Studies Journal* 6, no. 1 (2022): 309.

<sup>48</sup> See Ahamefula Uka Mba Charity Ahamefula Mba, "Nigeria: A Nation in Search of Sustainable Political Culture Built on Sound Ideology," *International Journal of Socio-Cultural Research* 1, no. 2 (2023): 10.

<sup>49</sup> Neil Walker and Marco Goldoni, "Law and Political Imagination: The Perspective of Paul Kahn," *German Law Journal* 24, (2023): 620.

<sup>50</sup> Michelle Gordon, "The Integrity of Courts: Political Culture and a Culture of Politics," *Melbourne University Law Review* 44, no. 3 (2021): 874.

<sup>51</sup> Junji and Rousso, *op.cit.*, 565.

## 2.2 Historical Trajectory of Political Porting in Nigeria

Political porting developed from cross-carpeting which Nigeria inherited from Britain.<sup>52</sup> British Parliamentary culture permits a member who holds an opinion at variance with his party's stance on an issue to cross the red carpet to the other side for the purpose of the extant debate.<sup>53</sup> Okolie (2021) demonstrates that only twenty switches occurred in the US congress from 1940s to 1990s, a record which Nigeria surpasses in one election year.<sup>54</sup>

Nigeria's experience of political porting began in 1951 at the Western Regional House of Assembly when the leader of the Action Congress (AG) at the House deployed mechanics of political xenophobia against the leadership of the National Convention of Nigerian Citizens (NCNC), causing massive exodus of elected representatives from NCNC to AG.<sup>55</sup> The ethnic animosity engaged to torpedo the inauguration of Azikiwe as the Premier of the Western Region has continued to hang over Nigeria's political landscape like the proverbial *Sword of Damocles*, engendering strife and eroding political ideologies.<sup>56</sup> Between 1960 – 1966 when democracy collapsed, Akintola had irreconcilable differences with Awolowo, the leader of the AG upon which platform Akintola was elected the Premier of the Western Region. Consequently, he decamped from the AG to form an alliance with the NCNC to morph into the Nigeria National Democratic Party (NNDP). Mbadiwe in like manner left the NCNC with his supporters to AG when his differences with his erstwhile party leadership could not be resolved.<sup>57</sup>

Nigeria's second democratic experiment also had its flurry of political porting for political aggrandisement. However, the Fourth Republic which commenced from 1999 appears to have ridiculed the whole idea of political defection as a democratic norm.<sup>58</sup> The most prominent porting in the Fourth Republic began with Enwerem, a gubernatorial aspirant under the All

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<sup>52</sup> See Moses M. Adagbabiri and Philips O. Okolo, "Cross Carpeting and the Challenges to Democratic Culture and Political Stability in Nigeria's Fourth Republic," *EBSU Journal of Social Sciences and Humanities* 9, no. 1 (2022): 56.

<sup>53</sup> Alex C. H. Chang. *Re-election Incentives and Defection: Party Switching in the Japanese Liberal Democratic Party* (Japan: Institute of Political Science, 2009), 5.

<sup>54</sup> Ugo Chuks Okolie, "Cross Carpeting and The Challenges to Democratic Culture and Political Stability in Nigeria's Fourth Republic," *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (2021): 309.

<sup>55</sup> It has however been argued that the phenomenon started ten years earlier with the victory of Ernest Ikoli of the Nigerian Youth Movement. See Moses O. Agudiegwe and Emefiena Ezeani, "Party Defections and Survival of Democracy in Nigeria," *International Journal of Humanities* 4, no. 6 (2015): 104.

<sup>56</sup> Ethnic and regional rivalry has led to the escalation of Zoning, which sacrifices competence on the altar of ethnic considerations and has been entrenched in the CFRN as Federal Character. See the CFRN, Sec. 14(3) and (4). See also, Federal Character Commission (Establishment Act) Act Cap F7 Laws of the Federation of Nigeria (LFN) 2004, sec. 4.

<sup>57</sup> Godwin I. Udeuhele, "Political Nomadism and its Implications on Political Development in Nigeria: A Critical Analysis," *International Journal of African and Asian Studies* 9, no. 1 (2015): 75-76.

<sup>58</sup> See Margaret Apine and Sophia Balogun, "Party Politics and Political Parties Under Presidential and Parliamentary Democracy in Nigeria," in *Nigerian Politics*. eds. Rotimi Ajayi and Joseph Yinka Fashagba (Springer 2023), 233-235.



People's Party (APP) and formal governor of Imo State in the preceding republic. Enwerem left the APP for the Peoples' Democratic Party (PDP) where he was welcome with a sensational ticket and he eventually became Nigeria's Senate President.<sup>59</sup> Another high-profile case of cross-carpeting in Nigeria is the case of Atiku Abubakar. The same may be said of former President Muhammadu Buhari.<sup>60</sup>

At the National Assembly, cross-carpeting has been weaponised against democracy rather than against unpopular party policies. The controversial cross-carpeting by Saraki, Senate President of the 8th Assembly and his counterpart, Tambuwal who was Speaker of the lower chambers, were the most spectacular.<sup>61</sup> Both actors left the PDP to APC and then back to PDP as presiding officers of the National Assembly in 2018. In 2020, there was tension in Imo State as the Speaker of the House of Assembly defected to APC with his deputy and fifteen others.<sup>62</sup> The most recent cross-carpeting in Nigeria is the current decampment of twenty-five (25) legislators at the Rivers State House of Assembly from PDP to APC shortly after their inaugurations.<sup>63</sup>

Political Porting is a necessary democratic licence where politics is played on ideological parameters. Ronald Reagan defected from Democratic Party to Republican Party from where he aspired and became the President of the United States of America.<sup>64</sup> In Britain, Winston Churchill defected from a Liberal Democrat to become the leader of the Conservative Party on which platform he became two-time Prime Minister of Great Britain.<sup>65</sup> In the case of Reagan and Churchill, they remained in their latest parties and stuck with the ideologies unlike in Nigeria where politicians stick with political parties like the ball would stick with a player in a lawn tennis tournament.

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<sup>59</sup> Peter Mbah, "Party Defection and Democratic Consolidation in Nigeria, 1999 – 2009," *Afro-Asian Journal of Social Sciences* 2, no. 2 (2011): 1-3.

<sup>60</sup> See Ifenyinwa Arum and Babatola A. Marcus, "President Muhammadu Buhari's Administration & Change Mantra in Nigeria," *African Journal of Politics and Administrative Studies* 16, no. 2 (2023): 498.

<sup>61</sup> See Oluseyi Awojulugbe, "Tinubu: Saraki, Tambuwal Defected Because They Can't Face Buhari in APC," (2018). <https://www.thecable.ng/tinubu-saraki-tambuwal-left-apc-because-they-wanted-automatic-tickets/>.

<sup>62</sup> Mayowa J. Oluro and Johnson O. Bamigbose, "Legislative Cross-Carpeting, Multi-Party System and the Challenges of Democratic Governance, Good Governance in Nigeria," *Journal of Public Administration and Governance* 11, no. 1 (2021): 28.

<sup>63</sup> Saviour Imukudo, "Rivers Political Crises Get Messier as 27 PDP Lawmakers Defect to APC," <https://www.premiumtimesng.com/regional/south-south-regional/650586-rivers-political-crisis-get-messier-as-27-pdp-lawmakers-defect-to-apc.html?tztc=1>.

<sup>64</sup> Time Magazine, "Roland Reagan, 1962, 1962 – The Crist Switch: Top 10 Political Defections," [https://content.time.com/time/specials/packages/article/0,28804,1894529\\_1894528\\_1894518,00.html](https://content.time.com/time/specials/packages/article/0,28804,1894529_1894528_1894518,00.html); Robert Mason. *Conclusion - The Republican Party and American Politics from Hoover to Reagan* (Cambridge: Cambridge University Press, 2011), 282-288.

<sup>65</sup> See Richard M. Langworth. *An Annotated Bibliography of Works about Churchill* (The Churchill Project Hillsdale College, 2021), 4.

### 2.3 Causes of Political Porting in Nigeria

Obvious political and economic imbalances which exist among and between the constituent states and ethnic nationalities in Nigeria predispose politicians to evoke *port de port* in the context of political nomadism.<sup>66</sup> Nigerian politicians are known to switch allegiance for reasons such as, to have better access to power and spoils of office, to escape political oppression and persecution; as a result of fracture in the original aims and objectives of the party; as a technical strike for the launch of new political agenda; and for ideological reasons. Other reasons have been identified to include a lack of internal democracy and a lack of national interest.<sup>67</sup> A three-pattern movement has evolved as *modus operandi* of political porters in Nigeria's democratic trajectory. The first movement reveals an exodus into the ruling party prior to primaries in preparation for general elections; the second movement is from the ruling party into 'opposition parties' or 'New Parties' after unsuccessful outings at the ruling party's primaries; and the third is the return of the gladiators to the winning party after the general elections.

Ideologies drive party loyalties in advanced democracies such as Britain, Germany, and the US.<sup>68</sup> Nigerian political parties are mere vehicles for the attainment of desired political office.<sup>69</sup> Politicians switch to any platform to fulfill the constitutional prescription for sponsorship in elections even where such platforms are bereft of sound ideologies. This is the cause of the intractable feud that naturally puts defectors on constant move and has stifled the culture of robust political opposition in Nigeria. Conversely, in Pakistan, Zambia, Bangladesh and Malawi, political porting is construed as veritable threat to political stability.<sup>70</sup> The democratically elected government of Lesotho crumbled in 1997 following such defections from the ruling party.<sup>71</sup>

### 2.4 Legal Implications of Political Porting in Nigeria

Oluro and Bamigbose (2021) contend that the grave implications of political porting which is fast evolving as a political norm include: diminished representation; diminished quality of legislative enterprise; diminished relevance of real democratic terms; and stunted democratic growth.<sup>72</sup> Constructive opposition are spontaneously drained into the ruling

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<sup>66</sup> Okolie, *op.cit.*, 304.

<sup>67</sup> Politicians claim of National interest to justify defection and sundry actions obviously reflect the interest of the ruling class. See Dahiru H. Attah, "Foreign Policy Decisions and National Interest: Reflection on the Experiment of the Greentree Agreement," *Jalingo Economic and Business Review* 3, no. 3 (2019): 148.

<sup>68</sup> Lawrence Edet, "Politics of Defection and Its Implications on Nigeria's Democracy," *International Journal of Human-Social Science* 3, no. 5 (2017): 379.

<sup>69</sup> CFRN, sec. 131 (1) & 65 (1) (b).

<sup>70</sup> Celestine Uchechukwu Udeogu and Kingsle Maduka Onwuanabile, "Political Nomadism as an Antithesis of Democratic Consolidation in Nigeria: Reflections on the 2015 and 2019 General Elections," *Socialscientia: Journal of Social Sciences and Humanities* 7, no. 1 (2022): 1.

<sup>71</sup> Oluro & Bamigbose, *op.cit.*, 34-35.

<sup>72</sup> *Ibid.*

party in a manner that frustrates competitive democracy.<sup>73</sup> The result is the ruling party's monopoly of all political and governance structures devoid of robust criticisms.<sup>74</sup> This contrasts with entrenched western democracies like Britain and the USA where the strength of the opposition is not whittled down by the ruling party owing to the existence of strong institutions as against strong politicians.

The unbridled movement of elected legislators in and out of diverse political parties frustrates the electorates and denies the voters of a robust assessment of political parties' ideologies and force the inference that political parties are populated by opportunists from top to bottom.<sup>75</sup> Consequently, the erosion of confidence in the democratic process occasioned by unguarded defections may result in the disintegration of democratic values if allowed to fester with impunity – hence the utility of interrogating the legal framework for political defections in Nigeria.

## 2.5 Legal Framework for Political Porting in Nigeria

The safest take-off point on the legal framework for political porting in Nigeria is the CFRN.<sup>76</sup> The Nigerian Supreme Court (SC) has made fundamental finding on the constitutionality or otherwise of porting by elected members of the executive and legislative arms of government. In *Attorney-General of the Federation v Atiku Abubakar*,<sup>77</sup> the suit was brought to compel the Vice President to vacate office for jumping boat. The SC remarked that political porting by elected executives who dump the party on which platform they were elected is painful, unconscionable and immoral but however, not illegal.<sup>78</sup>

The focal point in determining the constitutionality of cross-carpeting in Nigeria is Section 68(1)(g).<sup>79</sup> The literal interpretation of the foregoing statutory provision is to obviate the notorious phenomenon of cross-carpeting with the resultant effect of such defectors' seat becoming automatically vacant.<sup>80</sup> In *Abegunde v Ondo State House of Assembly &*

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<sup>73</sup> Nwanegbo et al, *op.cit.*, 3-7.

<sup>74</sup> Yahaya Yakubu and Muhammad Jibrin Bamalli, "Footloose Legislators: Implications of Legislative Cross-Carpeting on Multi-Party Politics in Nigeria's Fourth Republic," *International Journal of Recent Innovations in Academic Research* 3, no. 2 (2019): 5.

<sup>75</sup> Nuhu, *op.cit.*, 255.

<sup>76</sup> CFRN, sec. 68(1)(g) & 109(1)(g).

<sup>77</sup> The Nigerian Supreme Court (SC) in *Attorney-General of the Federation v Atiku Abubakar* [2007] 4 SC (Pt. 11), 62.

<sup>78</sup> *Ibid*, 211.

<sup>79</sup> CFRN, sec. 68 (1) (g) applies to the National Assembly with equal alacrity as CFRN, sec. 109(1)(g) applies to the House of Assembly of States of the Federation *Ipsima verba*. The section provides as follows: A member of the Senate or House of Representative 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 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.

<sup>80</sup> The literal rule of interpretation portends the assignment of primary meaning to words. See The Nigerian Supreme Court in *Ifezue v Mbadugha* [1984] 1 SCNLR 427, 32.

Ors,<sup>81</sup> the Nigeria Court of Appeal (CA) construed Section 109(1)(g) which is on all fours with Section 68(1)(g) of the CFRN to implicate: (i) A member of the House of Representatives is sponsored by a political party to that legislative House; (ii) A decampee legislator who is so sponsored, automatically vacates his seat if he becomes a member of another political party before the expiration of his tenure as an elected member of the House; (iii) A decampee legislator escapes the consequences in (ii) (above), if his defection resulted from division in the sponsored party or merger of the sponsoring political party or a faction of it with another.

The tenor of the law in automatically divesting a law-maker of his official status and privileges at the point of defection is not ambiguous. It is predicated on the proviso.<sup>82</sup> It is posited that the proviso provided a bolt hole for defectors to remain as legislators under the statute. This more so as the two key words which provide the template for defectors to take advantage of the proviso are ‘division’ and ‘merger,’ which though may not co-exist, are readily attainable in Nigeria. Consequently, where the merger of the Action Congress of Nigeria (ACN), the CPC and the All Progressives’ Grand Alliance (APGA) perfectly gave birth to the Ruling APC in 2014, the elected legislators on the platform of the merging parties may choose to be absorbed in the ‘new’ party or join another party altogether without negative consequences under the proviso.

The ‘division’ as a key word in the proviso is fraught with much more complexity. The CFRN did not define ‘division’ with particularity thereby leaving the courts to grapple with determining the intention of the Parliament.<sup>83</sup> In *Delta State House of Assembly & Anor v Democratic Peoples’ Party & Ors*,<sup>84</sup> the CA construed ‘division’ as contained in the Constitution in relation to the State House of Assembly to mean that the party must be so polarised as to have two chairmen, two or three different Boards of Trustees, each claiming to be the authentic one and each still bearing the same party name. The CFRN envisages extreme division in the circumstances. Similarly, in *Abegunde’s case*,<sup>85</sup> the appellant sought to justify his defection from the Labour Party (LP) to the ACN on the crisis rocking the LP state chapter in Ondo State. The SC held that the nature of division envisaged by the CFRN to entitle a defector to escape punishment is such that afflicts the party’s central structure, that is, the national leadership of the party. A case in point is the PDP’s experience at the

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<sup>81</sup> SC in *Hon. Sunday Ifedayo Abegunde v Ondo State House of Assembly & Ors* [2015] LPELR – 24588 (SC).

<sup>82</sup> SC in *NDIC v O’Silvaax International* [2006] 7 NWLR (Pt 980), 611.

<sup>83</sup> SC in *Aguo Allied Ent. Ltd. v MV Northern Reefer & 2 Ors* [2009] 5 – 6, SC (Pt. 1) 110, 122; See also Izoukumor A. Noah, “Analysing the Application of the Lex Specialis derogate legi generali Principle in Peter Obi v INEC (2023): A focus on Issue Two; Electronic Result Transmission,” *African Journal of Law and Justice System* 3, no. 1 (2024): 94.

<sup>84</sup> Court of Appeal (CA) in *Delta State House of Assembly & Anor v Democratic Peoples’ Party & Ors* [2014] LPELR – 22808.

<sup>85</sup> *Hon. Sunday Ifedayo Abegunde v Ondo State House of Assembly & Ors* [2015] LPELR – 24588 (SC).



emergence of a splinter group known as the New PDP (nPDP).<sup>86</sup> The SC's decision in Abegunde's case is unimpeachable and obviates a situation where a defector would organise his loyalists to simulate crises at the local level where he wields much influence, preparatory to launching a defection bid.

The wordings of Sections 68(1)(g) and 109(1)(g) of the CFRN empower the head of the legislative House to declare the seat of the decamped legislator vacant after presenting satisfactory evidence on the floor of the House in that respect. Regrettably, the provisions obligate the persons who have very high proclivity of violating the law with the right to enforce it. A query may be raised as to what becomes the fate of Section 109(1)(g) where the entire House abandons their party for another party with executive collaboration? What is the way out for enforcement of s. 109(1)(g) where the Speaker defects with a majority of the House membership?

Nigeria experienced some complexities during the build-up to the 2023 elections. Sixteen out of twenty-four lawmakers, including the Speaker followed the State Governor into a new party in Ebonyi State.<sup>87</sup> The timing of the defections under review were strategic and the court decisions came after the winding down of the tenure of the legislative session with appeals lingering several years thereafter. However, in all cases of defections by lawmakers, the courts have consistently declared their seats vacant upon defection.

Unlike the Nigerian jurisprudence, which has created room for interpretation of the clause 'shall vacate his seat' in ss. 68 (1) (g) and 109 (1) (g) which may either be construed as obligatory<sup>88</sup> or 'directory',<sup>89</sup> the Indian anti-defection provision is unambiguous. The Indian Constitution provides for the disqualification of the house member who voluntarily divests himself of membership of the political party that sponsored his election.<sup>90</sup> In *Rain Naik V Union of India*,<sup>91</sup> the Indian Supreme Court construed 'voluntarily giving up his membership of his political party in the circumstances' to implicate that the defecting member tenders his/her resignation letter formally, and upon failure to do so, the Head of the House invokes the power to excommunicate such erring member from House activities.<sup>92</sup> It is only when the Head of the House declines to detach the defector from the House upon receiving such letter of resignation that his discretion may be challenged in court.<sup>93</sup> The Indian provision has shown a better desire to preserve democratic values than the identical Nigerian statute which tends towards a laborious, litigious outcome.<sup>94</sup>

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<sup>86</sup> Henry Umoru, "Crisis: Baraje's nPDP Appeals Court Ruling, Seeks Stay of Execution," <https://www.vanguardngr.com>.

<sup>87</sup> Bolanle Olabintan, "Court Sacks 16 Ebonyi Lawmakers Over Defection to APC," <https://www.thecable.ng>.

<sup>88</sup> SC in *Olowokere v African Newspaper* [1993] 5 NWLR (Pt. 295), 583.

<sup>89</sup> SC in *A. T. Limited v ADH* [2007] 15 NWLR (Pt. 1056), 118.

<sup>90</sup> The 1949 Constitution of India, Tenth Schedule.

<sup>91</sup> Indian Supreme Court in *Ravi Neik v Union of India* [1994] AIR,1572.

<sup>92</sup> 1949 Indian Constitution, Art. 190(3).

<sup>93</sup> Indian Supreme Court in *Kihoto Hollohan v Zachillin & Ors* [1992] 1 SCR, 686.

<sup>94</sup> Shri G. C. Malhotra. *Anti-Defection Law in India and the Commonwealth* (New Delhi: Lok Sabha Secretariat 2005), 68.

Conversely, the legal effect of cross-carpeting in South Africa is not settled as the courts appear to take an ambivalent posture on the issue. In *United Democratic Movement v President of the Republic of South Africa & Ors II*,<sup>95</sup> the court stated that the frustration of the political rights of the electorates through floor-crossing by elected officials does not undermine multi-party democracy because electorates have no control over elected Representatives in-between elections. Once elected, members of the House are free to take decisions without liabilities.<sup>96</sup> However, in *Exparte Chairperson of the Constitution Assembly, in re-certification of the Constitution of the Republic of South Africa*,<sup>97</sup> the court held that the anti-defection clause which prohibited floor crossing in Schedule 6 of the Interim Constitution is not a contravention of the democratic ideals of the constitution.

The CFRN provides for one third of all the members of the House of Assembly as quorum.<sup>98</sup> Given the SC's decision that defection in the manner under review implicates automatic vacation of the legislative seat, the attempts by the 27 defectors in Rivers State to intimidate the government is of no moment. Although the parliament may not have envisaged the situation in Rivers State where 27 out of 32 House Members would defect, it is suggested that in order to arrest the mischief of unconstitutional porting<sup>99</sup> and rescue Nigeria's nascent democracy,<sup>100</sup> one third of all members of the House should be interpreted to mean one third of the lawful and valid House members which in the circumstances excludes the 27 members, for the purpose of forming a quorum. In the light of these manner of defections involving Heads of the House, the CFRN should be amended to remove the power of enforcement from the 'Head of the House' and confer it on the interested political party. This would compel a compromised 'Head of the House' to enforce or comply with the relevant legislation or have the judgment of court enforced by independent state machineries in order not to render the anti-defection provisions rather academic. Any law which fails to arrest the targeted mischief to achieve the intended social control with some element of coercion is deficient.

The SC found in *David Umahi* that a Governor can defect without consequences as the provisions were silent on the executive office holders. The logic of the court was echoed in *Attorney-General of the Federation v Atiku Abubakar*.<sup>101</sup> The statutory position on political 'porting by elected executives, particularly the President, Vice-President, Governor and Deputy

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<sup>95</sup> Constitutional Court of South Africa (CC) in *United Democratic Movement v President of the Republic of South Africa & Ors II* [2002] 11 BCLR, 1179.

<sup>96</sup> *Ibid*, 1191.

<sup>97</sup> CC in *Exparte Chairperson of the Constitution Assembly* [1996] 10 BCLR 1253, paras 184-187.

<sup>98</sup> CFRN, sec. 92 (1).

<sup>99</sup> Ese Malemi. *The Nigerian Legal System: Text and Cases* (3rd edn. Lagos: Princeton Publishing Co. Ltd, 2009), 140.

<sup>100</sup> See Tony Iredia, "Nigeria's Obsession with Doctrine of Necessity," <https://www.vanguardngr.com/2023/12/nigerias-obsession-with-doctrine-of-necessity-by-tonnie-iredia/>.

<sup>101</sup> *A.G. Fed v Atiku Abubakar, op.cit.*, 71.

Governor varies with the lawmakers. In *FEDECO v Goni*,<sup>102</sup> the incumbent governor of Borno State abandoned the GNPP that brought him to office and sought re-election under the platform of the UPN. The GNPP brought an action to declare his seat vacant. The SC found no legal basis to order the seat of the governor vacant. It is, however, argued that the decision is discriminatory against the legislators who themselves belong to these political parties with the executives and were jointly and severally sponsored by the sponsoring political parties.

## 2.6 Political Porting and the Freedom of Association in Nigeria

One of the justifications for defection by defecting legislators is the right to freedom of association. CFRN recognises the Freedom of Association as fundamental.<sup>103</sup> This right encapsulates the freedom to join and withdraw from joining any political party as encapsulated in Section 40 of the CFRN.<sup>104</sup>

Put differently, the CFRN states that nobody may be disallowed from joining any lawful association nor be coerced to remain in such association against his will. The watchword is ‘the protection of his interests’. Once one’s interest is no longer protected in a particular political party or association, one is at liberty to migrate. The proviso to Section 40 of the CFRN implicates that the freedom of association with regards to political parties must not derogate from the powers of the National Electoral Commission to recognise political parties. Simply put, freedom of association is circumscribed by some complexities when it involves freedom to join political parties.

There exists a *lacuna* in the proviso to Section 40 under review when given a community reading with Section 68(1) of the CFRN. The Section should be amended to insert “and political activities” after political parties to now properly read ‘... with respect to political parties and political activities to which that commission does not accord recognition’. This amendment would make the right to freedom of association in respect of political parties to include activities of such political parties which are not endorsed by the electoral body.<sup>105</sup> In the light of Section 68(1)(g) and a plethora of decided cases, it is believed that political porting after the manner of Rivers State under review would be caught in the web of ‘political activities’ which the electoral body would not endorse because of its illegality.

It has, however, been argued that the right to associate freely and the prohibition on party defection by legislators are distinct and unrelated. It is argued that Section 68(1)(g) places no limitations on a legislator’s rights to freely enlist with a political party of his or her choice. The section does not debar the enjoyment of the liberties enshrined in Section 40 since the lawmaker has the unlimited right to dump his or her party and join another

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<sup>102</sup> Ameh Ejekwonyilo, “UPDATED: Court Sacks Ebonyi Governor Umahi, Deputy, 15 Lawmakers over Defection,” <https://www.premiumtimesng.com>.

<sup>103</sup> CFRN, sec. 40; African Charter on Human and People’s Rights (Ratification and Enforcement) Act Cap. A10 2004, Art 10.

<sup>104</sup> SC in *Mbanefo v Molokwu & Ors* [2014] LPELR – 22257. See also, CFRN, sec 40.

<sup>105</sup> Afe Babalola, “Nigeria’s Political Cross Carpeting: Danger to Democracy (3),” <https://www.abuad.edu.ng/nigeria-political-cross-carpeting-danger-democracy-3-2/>.

in the pursuit of his or her interests. However, the CFRN forbids a situation where one dumps his or her party and continues to retain and trade with the benefits and privileges accruing to the party he or she had dumped while in another party. The votes which clothe the legislator with the privileges he or she enjoys belongs to the sponsoring political party and not his or her person.<sup>106</sup> The right to freedom of association in this respect is grossly qualified.<sup>107</sup> From the foregoing, it is clear that assuming, but without conceding, that anti-porting provisions of the CFRN violate Section 40 of the CFRN, such derogation is justifiable in democratic Nigeria for the preservation of Nigeria's democratic moral values.<sup>108</sup>

Defection as a political strategy has been disruptive and unproductive. A conscious prohibition or more stringent measures to discourage such manifestations is instead a hallmark of a progressive and dynamic political culture.<sup>109</sup> The Rivers State scenario is a clinical example of a culture disruptive of public order; it is certainly an impunity against public morality. It is a rape on public morality that a legislator sponsored by the Green Party in the evening wakes up the next morning with the identity of the Yellow Party and the propensity of transforming into the Red Party a few hours later. Political porting is corrosive and tends towards democratic backsliding.

### 3. CONCLUSION

The idea of political porting is as ancient as the democratic enterprise. It has evolved over the years from a necessary political exigency to an entrenched political culture in Nigeria which defines the rules of political engagements with consequences on democracy. Consequently, it has become a right which a legislator might exercise at some point, within constitutional boundaries. The culture of impunity associated with trending political porting in Nigeria may signal a drift into dictatorship and disruption of the legal order. To this end, the CFRN should be amended to cater for the current exigencies and future occurrences. The anti-defection provisions should be expanded to cover elected executives, particularly the President, Vice President, Governor and Deputy Governor. The amendment would align with the SC's decisions stipulating that the votes in elections belong to the political parties, not the party flag bearers. It would likewise restore hope in the entire democratic process. Nigeria should borrow a leaf from India in this respect.

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<sup>106</sup> CA in *Haruna v APC & Ors* [2019] LPELR-47777.

<sup>107</sup> SC in *Onyioha v IGP* [2019] 3 NWLR (Pt. 1128), 342.

<sup>108</sup> CFRN, sec 45 (1).

<sup>109</sup> Adom, *op.cit.*, 145.



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