RESTRICTION ON POST PRIMARY CROSS CARPETING: IMPLICATIONS ON FREEDOM OF ASSOCIATION IN NIGERIA*

Abstract
The passage into law of the Electoral Act 2026 marked a departure from the manner in which political parties were regulated, party membership and nomination of candidates conducted in Nigeria. Specifically, section 77 provided that political parties shall be required to have their membership registers digitized and shall deliver same to the Independent National Electoral Commission (INEC) at least 21 days to the date of the conduct of the party's primaries, congresses or conventions. Section 77(5) and 77(6), as originally enacted, provide that no person whose name is not listed on the register to be delivered to the Independent National Electoral Commission shall take part in the party's primaries and shall only make use of the register to be delivered to INEC and no other register. Though the Act does not explicitly prohibit post-primary carpet crossing, by necessary implication the provisions substantially restrict such activities. The paper adopted the doctrinal research methodology and analysed whether such prohibitions are consistent with the constitutional right to freedom of association contained in section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), constitutional recognition of political parties under sections 221 to 229 and other relevant international legal instruments. Based on its findings, it contended that the State has the constitutional right to regulate political parties to ensure internal democracy and curb the practice of opportunism during elections. It further contended, that Section 77(5) and 77(6) of the Electoral Act 2026 did not generally prohibit post-primary carpet crossing but rather introduced a membership register scheme which may render late defection virtually impossible for an aspirant to secure valid nomination from another party. The paper concluded that the regulatory powers of the state must be limited by its constitutional powers and should not be such as to constitute a substantive restriction not authorised by the Constitution.

Keywords: Freedom of Association, Cross carpeting, Post primary cross carpeting, Nigerian Constitution

1. Introduction

Political cross carpeting very often interchangeably referred to as defection or decamping is a phenomenon which has now become common practice in Nigerian electoral democracy, with profound implications on democratic consolidation. The normalisation of defections especially by party members, especially elected officials has created the erroneous impression that Political parties, now function less as ideological platforms and more as mere vehicles for access to political power and protection. The situation is such that now defection is not necessarily viewed as betrayal, but as strategic realignment within a shifting hierarchy of power dynamics. Political defection can be due to ideological, personal, strategic or electoral reasons. However, the greatest danger of defection is the gradual weakening of the legislatures, many of which function as rubber stamps rather than independent oversight bodies, weakens the opposition and erodes democratic accountability.

Against the above background, the Constitution of the Federal Republic of Nigeria 1999 (as amended)[1] prohibits defection by legislators by providing that sitting legislator, who having been elected on the platform of one political party, decamps to another party while still in office forfeits his seat, save in the narrow circumstance of a division or merger within the original party. However, the focus of this paper is on post primary cross carpeting which happens in situation where an aspirant participates in a primary election for Party A, does not succeed in the nomination process, and then switches allegiance to Party B, with the intention of securing the Party B's nomination for the same electoral position. This practice was a common phenomenon before the Electoral Act 2026 came into force on 18 February 2026, repealing the Electoral Act 2022.

In this connection, the 2026 Electoral Act restructured significantly the legal framework governing political parties. In particular, Section 77 provides that all registered political parties must have a digital register of their members, comprising, among other information, the names, ages, addresses, polling units, NINs and photos of the members. This register must be provided to INEC not later than 21 days before the relevant primary, congress or convention.[2]

With the enactment of the Electoral Act 2026, there have been numerous amendments made to the laws governing political parties, membership of the parties and nomination of candidates in Nigeria. Most notably, Section 77, provides that political parties must keep a digital register of members and submit such registers to the Independent National Electoral Commission (INEC) not less than 21 days prior to any party primaries, congress or convention. Section 77(5) and 77(6), which were initially enacted provided that persons who would be allowed to take part in any primary must be found on the register submitted by the political party to INEC. The two sections also prohibited the use of any other list. Even though the law does not refer to "post-primary carpet crossing," in practice, the provisions have impliedly severely constrained an individual's right to switch from one political party to another with the intension of getting nomination

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[1] Hereinafter referred to as 'the Constititution'.

[2] Electoral Act 2026, s 77(2)–(4).

from the new party after a primary. Hence by Section 77(5) only members whose names appeared on the register presented by the political party could participate in voting or being voted for at party primaries, congresses, and conventions. On the other hand, Section 77(7) states that no political party will be eligible to present its candidate if it fails to submit its membership register within the specified time.

The above provisions raise the question as to whether the Parliament can create rules of elections that will prevent a citizen from moving from one political party to another which is a right guaranteed the individual, that is, freedom of association under Section 40 of the Constitution. Secondly, it raises the question as to the extent of the recognition and regulation of political parties in Sections 221-229 of the constitution, that is, whether electoral laws that seek to achieve party discipline and election certainty can limit individual freedom of association. The paper therefore argues, that Section 77(5) and 77(6) of the Electoral Act 2026 did not generally prohibit post-primary carpet crossing but rather introduced a membership register scheme which may render late defection virtually impossible for an aspirant to secure valid nomination from another party. It however concluded that the regulatory powers of the state must be limited to its constitutional powers and should not be such as to constitute a substantive restriction not authorised by the Constitution.

2. Conceptual Clarifications

Freedom of Association

Freedom of association is recognised as a fundamental human right under both domestic and international law. Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. [1] The provision protects both the positive freedom to join associations and the negative freedom not to belong to any association. Political party membership falls squarely within this constitutional guarantee. Internationally, Article 20 of the Universal Declaration of Human Rights guarantees freedom of peaceful assembly and association.[3] Likewise, Article 22 of the International Covenant on Civil and Political Rights (ICCPR) protects freedom of association subject only to restrictions that are prescribed by law and necessary in a democratic society.[4] Similarly, Article 10 of the African Charter on Human and Peoples' Rights provides that every individual shall have the right to free association provided he abides by the law.[5] Since the African Charter has been domesticated in Nigeria, its provisions possess statutory force and complement constitutional guarantees.[6] Freedom of association necessarily has two dimensions: the right to join an association and the right to leave it. Therefore, a constitutional guarantee that protects only the initial act of joining but permits the State to prevent an individual from leaving would provide incomplete protection for associational autonomy. The importance of freedom of association extends beyond individual liberty. It facilitates democratic participation, political pluralism, accountability, and representative governance. According to the Supreme Court, political parties constitute indispensable institutions in constitutional democracy because they provide the framework through which electoral mandates are obtained.[7] Accordingly this right entitles politicians to freely associate with any political party of his choice or move from one party to the other in order to actualize his political interest.

Primary Elections

Primary elections or primaries refer to elections held by political parties to select or determine which candidates will run as the party's candidate or flag bearer in a forthcoming general election. Primary elections are intended to make the candidate-selection process more democratic and to give voters a direct role in determining who will represent a political party in the general election. Each country determines its mode of primaries. Some countries adopt open primaries, where all registered voters are eligible to vote during primary elections, while others adopt closed primary which restricts participation to voters who are officially registered members of the political party conducting the primary. Nigeria, adopts closed primaries, where only party members are eligible to vote during primary elections. These closed primaries may be either direct or indirect (consensus). The various political parties in Nigeria have constitutions that stipulate the mode of primaries they adopt. This is where internal democracy comes in requiring that the political parties comply with their own processes in line with the electoral Act, their own constitutions and guidelines.

Primary Election is an intra-party election by which political parties nominate their candidates for the General Election.[8]Under the Electoral Act, primaries is defined as "an intra-party election by voters of a given political party to nominate candidates for elective offices in accordance with a political party's constitution and the law".[9] Holding of

[3] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)) art 20.
[4] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 22.
[5] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 10.
[6] *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228.
[7] *Peoples Democratic Party v INEC* (2014) 17 NWLR (Pt 1437) 525.
[8] https://www.storycountyiowa.gov/DocumentCenter/View/5827/Primary-Election-FAQs (accessed 20 November 2021).
[9] See the Interpretation Section, in Section 156 of the Electoral Act 2010 (as amended).
[9] https://aceproject.org/ace-en/topics/pc/pca/pca01/pca01a/mobile_browsing/onePag

primaries is obligatory for a political party seeking to nominate candidates for elections under the Act to all elective positions.[10]Primary election is conducted intra-party preparatory to a general election which is inter-party and involves all the accredited voters in a particular constituency irrespective of party affiliation. There are three major methods of primary election. These are direct primary, indirect primary or consensus. However, the Electoral Act 2010 (as amended) recognizes only direct and indirect primaries.[11] Direct primary is the method by which all the registered members of a political party participate in the election and vote for the candidate of their choice. It is defined in the Electoral Act as "an election at which candidates for an elective office are chosen by direct vote of political party members instead of by delegates at the convention or congress".[12] Whichever option a political party adopts requires it to conform with the democratic method prescribed by the Act.[13]The candidate who receives the highest number of votes cast at the election stands elected and ordinarily wins the party's nomination and may be fielded by the party as its nominee and he carries the party's flag as its candidate in the general election.

Indirect primary election is the method which allows the accredited party representatives to vote for the qualified aspirants of their choice at the election for the nomination of the party's candidate. The Electoral Act defines it as "an intra-party election where a political party's delegates to a party convention or congress elect the party's candidates".[14] The contestant that secures the highest number of votes cast at the election stands elected and ordinarily wins the party's nomination and may be fielded by the party as its nominee who will carry the party's flag as its candidate in the general election. In the case of consensus, this is the method of primary election in which the party decides on its nominee for the general election by general agreement, acceptance or popular opinion. In other words, the choice of the candidate is made without any dispute or contest by members of the party. Normally, the party constitution *ab-initio* provides for the type of primary open to it and the election is conducted in line with the option chosen by the party and in line with approved procedures and guidelines. It is instructive to note, that under the 2026 Electoral Act, the option available to political parties in the conduct of their primaries is limited to either by direct primaries or consensus.[15]

Post-Primary Cross Carpeting

Cross carpeting generally refers to the movement of a politician from one political party to another. In the context considered in this paper, "post-primary carpet crossing" means the movement of an aspirant from one political party to another after participating unsuccessfully in the first party's nomination process, with the intention of seeking the nomination of the receiving party. It is necessary to distinguish three different circumstances of cross carpeting. First, an individual may leave Party A and join Party B without seeking immediate nomination. Such conduct ordinarily concerns the individual's freedom of political association. Second, an individual may leave Party A after losing its primary and join Party B before Party B has concluded its own nomination process. This raises the more difficult question whether the individual should be permitted to participate in Party B's primary. Thirdly, an elected public officer may defect from the party on whose platform he or she was elected while retaining legislative office. The Constitution contains specific provisions dealing with this category, including sections 68(1)(g) and 109(1)(g). The discussion in this paper focuses particularly on the first two categories as may be distinguished from the third category concerning the elected legislator who constitutionally forfeits his seat following defection.

3. Analysis of Post-Primary Carpet Crossing *vis-a-vis* the Right to freedom of Association

The analysis of post primary carpet crossing in this paper is anchored on the recognition that an electoral law or regulation may be constitutionally authorized and designed to protect the integrity of party primaries in order to pursue a legitimate objective. However, problem arises where the restriction is perceived as broader than is necessary to achieve that objective. More particularly, where it deprives an individual of his right to freedom of association guaranteed under Section 40 of the Constitution. For example, preventing a party from altering its membership register on the eve of a primary may be justified by the need to prevent fraud and manipulation. But permanently preventing an individual from changing political allegiance merely because he or she lost another party's primary would be a considerably greater interference with political association.

The provision of Section 77 (5) of the Electoral Act 2026 raises three controversial questions. The first question is its effect on the individual freedom of association guaranteed under Section 40 of the Constitution. The second is its effect on the constitutional autonomy of political parties. The third question is the extent of the constitutional powers of the legislature to regulate internal democracy. On the first issue, it is instructive to state categorically that Section 40 of the Constitution guarantees the individual the right to freedom of association which ordinarily includes the rights of ingress

[9] Underlining is mine. This is an authority for the assertion that Nigeria operates a multi-party system.
[10] *Ibid*. Section 87 (1) of the Electoral Act 2010 (repealed).
[11] *Ibid*. Section 87 (2)).
[12] *Ibid* Section156.
[12]https://aceproject.org/ace-en/topics/pc/pca/pca01/pca01a/mobile_browsing/onePag
[12]Underlining is mine. This is an authority for the assertion that Nigeria operates a multi-party system.
[13] Section 87 (3) & (4) of the Electoral Act 2010 (repealed).
[14]*Ibid*.
[15] Section 84(2) of the 2026 Electoral Act.

and egress from political parties at any point in time. However, it must be stated also freedom of association does not automatically confer a right to be given nomination but to participate in the process, subject to constitutionally authorized statutory regulations. Thus, Section 40 of the Constitution is subject to the authority granted to the National Assembly to restrict certain fundamental rights including the right provided under Section 40 of the Constitution provided that such restrictions are reasonably justifiable in a democratic society in the interest of public safety, public order, public morality, or the rights and freedom of others. However, it is argued that Section 40 protects political association, including membership of political parties. Accordingly, a law that practically prevents an individual from changing party affiliation at a critical period it is needed to actualize his aim of joining the party directly affects his right to political association. On the second issue, it must be emphasized, that a political party is a voluntary political association with its constitution, laws and procedures regulating its internal affairs. When a person decides to belong to a political party, he/she should abide by the constitutional party laws about membership, nomination and internal elections. The constitutional right thus is not that of winning or being given a ticket by the party, but that of participating in political association without undue state intervention. Arguably, it should be ordinarily within the right of the political party to decide on who is a legitimate member and who should be nominated to carry its flag in a general election. This means that a political party under its constitution should provide that only members who have belonged to it for a specified period may contest its primary and may even grant waver to that effect, subject however to the constitutional provisions on qualifications. On the third issue which concerns the extent of the constitutional powers of the legislature to regulate internal democracy, it is contended that this will depend on whether such law is authorized by the Constitution and whether it serves legitimate electoral objectives. In this connection, section 228 of the Constitution no doubt expressly contemplates legislative intervention to promote internal democracy. Thus, Section 221 provides that only political parties may canvass for votes for candidates at elections. Section 222 lays down requirements for political parties, while section 223 requires internal democratic structures. Section 228 gives the National Assembly legislative power to regulate internal democracy, including primaries.[16]

Therefore, it will be too broad to argue that section 40 creates an unrestricted constitutional right to contest the primary of any political party at any time. Therefore, where the State imposes such a condition by statute and thereby determines the internal membership or nomination structure of political parties without sufficient constitutional authority, the autonomy of the political parties could be said to have been violated by way of legislative overreach. The distinction is important because the Electoral Act 2026 did not establish a general offence of defection. Contemporary legal analysis of section 77 likewise recognised that the Act did not expressly prohibit an aspirant from leaving one political party after losing a primary; rather, it created procedural barriers that could prevent the person from subsequently participating in another party's primary.[17] Apparently, Section 77 was designed to address the longstanding problems associated with unverifiable party membership, which enabled the manipulation of number of delegates who participate in internal party elections and the usual last-minute alterations to the party membership lists to cover the manipulated result figure. The 2026 Electoral Act was intended to address the problem by transforming the membership register into a more formalised, digital and identity-based database made available in advance of elections and which can be referenced as the authentic membership record for the time being.[18] The provision requires a political party to submit its membership register to INEC at least 21 days before its primary such that it is only persons on that register that could vote or be voted for. The implication is that the party could not subsequently substitute another register for the purpose of the primary.[19]

The provision therefore created a temporal barrier which can be understood using the following scenario: Suppose an aspirant contests Party A's primary on 1 June and loses. He then joins Party B on 5 June. If Party B's membership register had already been submitted to INEC 21 days before its primary, the aspirant's name would ordinarily not appear on the register. Section 77(5) would consequently prevent him from being voted for at Party B's primary. If Party B's register had not yet been submitted, however, the situation could be different, since the party might still have an opportunity to include the new member in its register. Thus, Party B may legitimately decide, under its constitution, that only members who have been registered members for a specified period or granted waver may contest its primary. The constitutional difficulty arises where that decision comes from the regulatory authority of the state.

Based on the above scenario, it can be argued, that the provisions of Section 77 do not amount to an absolute prohibition on post-primary defection. It can rather be more correctly described as a procedural restriction which could nevertheless ultimately produce a de facto prohibition on late post-primary movement for nomination purposes in the current election circle. The point is of great constitutional import in distinguishing substantive prohibition from procedural restriction can be explained thus: the law stating "a citizen cannot leave Party A once he loses in the primary elections" is a regulation of that touches on political association which is guaranteed by Section 40 of the Constitution. On the other hand, a law

[16] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 221–228.
[17]Lawal Ayobami, 'Legality of An Aspirant Decamping After Losing a Primary Election with a Political Party' (15 June 2026). The analysis correctly distinguishes an express prohibition from the practical restrictions produced by the membership-register regime.
[18]Policy and Legal Advocacy Centre (PLAC), 'Membership Register, Regulation and Internal Party Democracy: A Comparative Analysis of Section 77 (Electoral Act 2022 and 2026)' (March 2026).
[19] Electoral Act 2026, s 77(4)– (6).

stating that "only individuals listed in a particular party register can contest in the primary elections" is regulation of the conduct of party nominations. While the latter may seem like an election-related matter, its constitutional validity will have to be judged according to its substance.

For the avoidance of doubt, Section 40 of the Constitution provides that: "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…" This provision clearly protects political-party membership and therefore makes freedom of political association a constitutionally protected right which an ordinary statute cannot override without constitutional authority. However, as earlier stated in this paper, the right is not absolute by virtue of the derogation provided for in Section 45 of the Constitution. Furthermore, Section 40 contains a proviso recognising constitutional powers conferred on INEC concerning political parties that it does not recognize and more importantly, political parties are subject to a comprehensive constitutional framework under sections 221–229 of the Constitution.

It must be reiterated that Section 222 establishes conditions for political parties, including registration of national officers, openness of membership and registration of party constitutions. Section 223 requires party constitutions and rules to provide for periodic democratic elections of principal officers and governing bodies. Section 228 expressly empowers the National Assembly to make laws providing guidelines for internal democracy, including the conduct of party primaries, congresses and conventions. The foregoing clearly demonstrates that freedom of association does not mean that political parties are immune from regulation. Therefore, the critical issue for determination is the extent and source of that regulatory power and not whether the state has it. Simply put, the question is, is there a constitutional basis for the legislative restriction? If the answer is yes, then the next question is whether the law so made falls squarely within the scope of that constitutional power?

Thus, in the leading authority of the case of *Independent National Electoral Commission v Musa*,[20] The Supreme Court recognised that section 40 protects the right to form or belong to a political party, but also accepted that political parties may be regulated by the State. The crucial principle is that regulation must be founded either directly upon the Constitution or upon legislative authority permitted by the Constitution. This means that an attempt to regulate political parties without constitutional authority is invalid. The court stressed on the constitutional supremacy under section 1(3) of the Constitution which provides that the Constitution prevails over an inconsistent legislation therewith and therefore void to the extent of the inconsistency. However, the Supreme Court held that political parties may be regulated by the State only pursuant to constitutional authority. In this connection, Section 228 is especially significant because it authorizes laws relating to party democracy and primaries. This means Parliament has very wide legislative competence in this regard. But the legislative competence can never be interpreted as absolute authority to prescribe all qualifications or disqualifications relating to party memberships and candidate eligibility where the Constitution itself has laid down the necessary qualifications.

The above reasoning was confirmed in later electoral jurisprudence in *Shinkafi v Yari*, where the Supreme Court made a distinction between internal nomination within a political party and constitutional qualification to stand for a general election. According to the Supreme Court, the Electoral Act of 2010 could not alter the constitutional qualifications or disqualifications for a general election laid down in the Constitution.[21] Thus, the Supreme Court distinguished constitutional qualification from statutory rules governing party nomination and held that statutory nomination provisions could not simply create additional constitutional disqualifications.

The paper argues that the above reasoning has high relevance to section 77 of the 2026 Act. If the requirement of register is intended only to regulate the internal primary, then it would be relatively easy to justify. But if it intends to add another substantive qualification, that is, that of being a member of a certain political party prior to a certain date as a requisite to contesting nomination by the political party, then it would become more problematic constitutionally analysed. On the other hand, a carefully drafted regulation aimed at preventing manipulation of party primaries may survive constitutional scrutiny rather than a blanket statutory prohibition on political association or movement which tends to cause constitutional imbalance. In this connection, the Court of Appeal Decision in *Zenith Party v INEC*[22] is of direct judicial significance to the post-primary carpet crossing question because sections 77(5) and 77(6) constituted the principal statutory mechanism through which a late entrant into another political party could be prevented from participating in its primary. In that case, the Court of Appeal in Abuja declared sections 77(5), 77(6), 77(7) and 84(2) of the Electoral Act 2026 unconstitutional, holding that the disputed provisions were inconsistent with sections 221 and 222 of the Constitution and that the National Assembly could not impose restrictions that conflicted with constitutional powers vested in political parties. The Court also relied on the constitutional provisions governing qualification and

[20] *Independent National Electoral Commission and another v Musa and 4 others* (SC 228/2002) [2003] NGSC 17, (2003) 3 NWLR (Pt 806) 72.
[21] *Shinkafi and another v Yari and others* (SC 907/2015) [2016] NGSC 66.
[22] *Zenith Party v INEC*, Appeal No CA/ABJ/CV/750/2026.

disqualification of candidates. This decision as of today strengthens the proposition that the Electoral Act 2026 does not create a continuing statutory prohibition against post-primary carpet crossing.

4. Arguments for and against Restriction

The above proposition notwithstanding, legitimate objectives behind section 77 are identifiable. These include: preventing manipulation of party membership registers; preventing "political tourists" from moving between parties merely to secure nomination; ensuring certainty as to who is entitled to participate in a primary; preventing fraudulent or last-minute changes to delegate or membership lists; and strengthening internal party democracy. It is suggested, that even where a restriction has a legitimate electoral purpose, the question of proportionality remains important, so as not to undermine constitutional and fundamental rights.

Moreover, there are compelling reasons why such a policy should be encouraged by the 2026 legislation. Firstly, unlimited movement after the primary elections may lead to opportunistic politics. The candidate may run in the Party A's primary election, fail and then instantly switch to Party B since Party B presents a better option for him. Secondly, unlimited movement may weaken party discipline and unity in terms of ideology. Thirdly, allowing late entries to participate in the primaries will be unfair to the existing members of the party who have been working hard for the party for a long time. Fourthly, failure to specify a deadline for membership may lead to the rigging of the primary elections through the sudden entry of aspirants and sympathizers into the party. Fifthly, Section 228 specifically allows for the enactment of any law that seeks to promote party democracy.

Nevertheless, there are equally plausible arguments against these restrictions: First, Section 40 safeguards political association, which includes the membership of political parties. A provision that makes it impossible for a person to change his political affiliation during an important period clearly affects his political association. Second, Section 40 guarantees the rights of the individual, while Sections 221 to 229 deal with the institutional status of political parties. A statutory provision need not always override the fundamental right of the individual simply because it is regulating political parties. Third, Section 77(5) may add one more condition to join politics which is not mentioned anywhere in the Constitution. Fourthly, Section 77(7) imposed a particularly harsh penalty. Any party which had failed to submit the register before the stipulated period would not have been allowed to contest the elections. This is an example of the administrative requirement that might affect the constitutional right of political parties to sponsor candidates. Fifthly, these provisions may lead to very harsh results in that a small administrative technicality may prevent an entire political party from contesting elections.

5. Conclusion and Recommendations

It may be argued that political parties are private organizations in one aspect and in another, they play public constitutional roles. They pick candidates seeking elective positions, and thus can never work in isolation from legal regulation. Nonetheless, the legislature's power to legislate on internal democracy should always be consistent with the Constitution, including the right accorded under Section 40, within its constitutional mandate. In this regard, it cannot be over-emphasized that the State is indeed a stakeholder in the regulation of political parties; making sure that there is legitimacy in the primary nominations, and reducing the opportunities for the abuse of the system. For this reason, Sections 221 to 229 deal with the constitutional regulation of political parties. In particular, Section 228 of the Constitution provides the National Assembly the powers to legislate on internal democracy in political parties with special emphasis to primary nominations.

The main point to note is that in order to be eligible to contest in the primary election of a political party, one must be a *bonafide* member of such political party under the constitution of the political party, the Constitution and relevant electoral law. This means that simply because someone participated in the primary of one political party does not mean he cannot switch parties in pursuit of nomination from another political party. Nonetheless, a recent development has seen Section 77 of the Electoral Act 2026 provide that the membership registers of political parties must be filed at INEC not later than 21 days before the primaries, congresses or conventions. It means that anyone joining the receiving political party after submission of membership register would not be able to contest in the primary of that party since he would not be on the membership register filed at INEC.

The major implications are: prior to the filing of the receiving party's register: post-primary defection may still be possible, subject to the facts; after the filing of the register, the aspirant in question will no longer be able to run for the receiving party's primary since his name is not on the register filed with the INEC; after losing Party A's primary but before Party B's register/primary, the issue becomes fact-specific and upon compliance with the Electoral Act and Party B's constitution. The bottom line is that there is no general constitutional principle which states that a candidate, who loses his party's primary election, is precluded forever from crossing the carpet to another political party. What is crucial for his cross-carpeting to be legal, however, is that he should comply with all requirements of membership of that receiving party. What has now drastically affected the above scenario is the new 2026 Electoral Act. Thus, Section 77(5) and 77(6) of the Electoral Act 2026 instituted the membership register scheme which though did not prohibit post-primary carpet crossing could make it very difficult to defect and have a valid nomination from another party. It may be argued

that the above regulation is not inherently unconstitutional because the issue is not about the object of the regulation but how Parliament has turned a membership administration register into an obstacle to participation.

Against this background, the decision by the Court of Appeal in July 2026 in *Zenith Party v INEC* striking down sections 77(5), (6), (7) and 84(2) is an important one since it shows that in enacting any law relating to political parties, the constitutional independence of parties must be taken into consideration, and such law does not permit absolute statutory limitation which has the effect of altering constitutional political rights. Consequently, any general prohibition of carpet crossing after primary election cannot but contradict the provisions of section 40 of the Constitution unless the Constitution provides so in line with the principles of democracy.

The legal regime will gain clarity from a better delineation of the difference between defection and nomination eligibility. First, future law should avoid any wording that implies that citizens are banned from joining different political parties. Second, Parliament should concentrate on the proper conduct of the internal party primary process rather than managing citizens' political affiliation. Third, political parties should be allowed to set reasonable membership cutoff dates in their constitutions and regulations, provided that this is transparent and pre-publicized. Fourth, INEC should have enough supervision to avoid any fraudulent manipulation of membership registers without turning itself into the de-facto administrator of party membership. Finally, any statutory limitation must be proportional to the electoral abuse that it tries to curb. Failure in administrative matters should not lead to automatic forfeiture of a political party's constitutional right to nominate candidates.