

# MEMORANDUM TO THE NIGERIAN BAR ASSOCIATION (NBA) CONSTITUTION REVIEW COMMITTEE

**BY**

**JOE-KYARI GADZAMA**, OFR, MFR, SAN, FNIALS, FICMC, FCIArb, Chartered Arbitrator.  
Chairman, Mentorship Committee of the Body of Benchers  
Formerly: Pioneer Chairman, NBA – SPIDEL; Vice Chairman, NBA – SLP; Council Member, NBA –  
SBL & Chairman, NBA Abuja Branch.

## **1.0 INTRODUCTION:**

1.1 This memorandum is in response to the call by the NBA Constitution Review Committee for submission of memoranda on further amendments to the provisions of the NBA Constitution 2015 (as amended). As a major stakeholder in the process, having contested the 2016 NBA National Officers' election, this memorandum is my modest contribution to this genuine reform process. In the light of the foregoing; I hereby recommend some Constitutional amendments and other proposed reforms outlined hereunder for consideration by the Committee in line with your terms of reference.

## **2.0 YOUNG LAWYERS' REPRESENTATION AT NEC:**

2.1 It is my view that young lawyers ought to have constitutional representatives at the NEC meetings in order for them to feel a sense of responsibility and belonging in this noble profession and for them to realize that their interests are being protected. **Section 7 (1)** only provides for National Officers, All past Presidents and General secretaries, all chairmen and secretaries or registered branches, one other representative of each branch, chairmen and secretaries of sections and other deserving members of the Association which include Senior Advocates of Nigeria, senior members who are over 25 years post-call and special interest groups/active members who are over 10 years post-call.

2.2 It is my humble recommendation that the affairs of young lawyers can be statutorily represented at the NEC meetings by amendment of **Section 7 (1)** by the introduction of a new **Section 7 (1) (f)** to specifically list at least the Chairman of Young Lawyers' Forum as statutory member of NEC. The current 7 (1) (f) can now be the new **Section 7 (1) (g)**.

### **3.0 YOUNG LAWYERS' MEMBERSHIPS AT STANDING COMMITTEES**

- 3.1 By the interpretation of **Section 12 (3) (b)** under the membership of standing committees and **Section 10 (10)** of the third schedule of the Constitution, it states that the Chairman of each committee shall be a member of not less than 10 years post-call while the Secretary shall be a member of not less than 5 years post-call. There is no explicit involvement of young lawyers in the make-up and representation of the members in the standing committees.
- 3.2 It is my view that Young Lawyers can be statutorily represented in these committees by drafting them in various committees and thereby making sure that they are actively involved in the affairs of the NBA. Therefore there can be new **Sections 12 (3) (c) & Section 10 (10) (c)** of the third schedule of the Constitution which explicitly mention the involvement/representation of young lawyers from 0- 7 years post call in various standing committees. The current Sections 12 (3) (d) can now be 12 (3) (e) and Section 10 (10) (f) of the third schedule of the Constitution be changed to Section 10 (10) (g).

### **4.0 VOTING METHOD UNDER THE NBA CONSTITUTION:**

- 4.1 It is my humble but firm personal view that the electronic voting envisaged in the Nigerian Bar Association (NBA) Constitution is voting without the use of internet. Indeed, the universal suffrage stipulated by NBA Constitution is a welcome development and can be achieved transparently with strict adherence to electronic voting. This view is fortified by the express provision of section 9(4) of the Nigerian Bar Association Constitution which states thus:

***“Section 9(4) - Election into National Offices shall be by universal suffrage and electronic voting as set out in Second Schedule.”(Emphasis ours)***

**Paragraph 2.4(a)** of the said Second Schedule of the NBA Constitution provides that;

***“Voting at the election shall be by electronic means (E-voting).”(Emphasis mine)***

- 4.2 The true intention of the Constitution, I humbly submit, for conduct of elections electronically without the use of the internet can further be discerned from paragraph 2.4 (c) of the second schedule which provides for verification of voters, place, time and platform to be utilized for electronic voting for each particular election year taking into consideration the state of available technology and information technology infrastructure of the branches in order to afford all registered voters the opportunity to vote.
- 4.3 Voting over the internet has proven to be non-transparent and problematic which has led to the challenge in Court of the outcome of the 2016 and 2018 NBA elections conducted using internet voting. The system of voting over the internet is highly susceptible to manipulations and experience has also shown that genuine cases of disenfranchisement of eligible voters keep recurring. Recall that the NBA President, Mr. Olumide Akpata, expressed initial concerns over the 2020 electoral process shortly before the election while Mr. Dele Adesina, SAN who was a Presidential contestant at the said election rejected the outcome of the election which rejection almost tore the Bar apart but for the intervention of eminent members of our noble profession. This dissatisfaction was a result of some of the inevitable challenges associated with internet voting.
- 4.4 As stated earlier, the electronic voting envisaged under the NBA Constitution is different from internet voting which was used to conduct the 2016, 2018 and 2020 NBA National Officers' election as a result of the misinterpretation of the relevant sections. Internet by definition is a global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardized communication protocols. Electronic, on the other hand, can be said to be a device having or operating with components such as microchips and transistors that control and direct electric currents.
- 4.5 It is clear that while internet voting requires the use of electronics, electronic voting does not require the use of internet. I-voting (which has been used over time by NBA at the National level) relies totally on the use of the internet, whereas E-voting, envisaged under the NBA Constitution, does not require

the internet. E-voting envisages a situation where all the branches of the NBA at their respective election centers and in the presence of the monitoring agents of the various candidates, will use dedicated computers or electronic voting machines to cast their votes.

- 4.6 Electronic voting will entail voting at all the branches of the NBA at their respective election centers and in the presence of the agents of the various candidates, through the use of dedicated computers or electronic voting machines for members to cast their votes. Upon casting of votes, there could be a paper backup to enhance the accountability, transparency and auditability of the election. Significantly, all these are not obtainable with internet voting. This electronic system has been adopted and used in the past by the NBA Abuja branch for its branch elections.

## **5.0 POSSIBLE AMENDMENT OF NBA CONSTITUTION:**

- 5.1 Although it is my interpretation that the NBA Constitution envisages electronic voting (without use of internet), we can still continue with internet voting considering that it is more convenient and in line with the global trend. For these reasons, I will also be inclined towards internet voting provided that the vote of each voter is revealed instantly to show who the voter casts his ballot for. After all, we are all members of the same professional family of lawyers. Indeed, this will make the system more transparent and any result that it produces will be generally acceptable by the majority. In that case, it would be ideal to amend section 9(4) of the NBA Constitution and paragraph 2.4 of the schedule to eliminate any ambiguity and to bring it in line with the adopted electronic voting system.

## **6.0 OPEN BALLOT SYSTEM:**

- 6.1 As stated earlier, if internet voting is to be adopted for future elections which appears to be the preference due to convenience and the fact that it is in line with the global trend, it will therefore be my strong recommendation that there should be full real-time disclosure of the names of voters and who they cast their votes for. This is akin to the Option A4 voting system in conventional elections. Display of the votes as they are being cast, showing the choice of voters, will indeed enhance accountability and transparency of the process.

6.2 I understand that some persons may prefer that their votes remain anonymous, if this is the position adopted by the NBA, then the choice of the voters may be kept hidden whilst the real-time tally is revealed to everyone. Furthermore, there should be a hidden trail to show who a voter opted for which would only be revealed in the instance of a dispute as to the result or credibility of the election.

## **7.0 EARLY SET-UP OF ELECTORAL COMMITTEE:**

7.1 The responsibility of conducting the Nigerian Bar Association (NBA) National Officers' election rests squarely with the Electoral Committee of the Nigerian Bar Association (ECNBA). It is my fervent recommendation that this important committee should be set up early enough to begin preparations for the election in every election year in good time. Since the deadline for payment of Bar Practicing Fees is end of March in every given year, we should consider setting up the ECNBA in April so that they can commence work in good time and possibly release guidelines in May of the election year. This will go a long way in ensuring that adequate preparations are made in advance for every NBA elections.

## **8.0 INVOLVEMENT OF SITTING NBA PRESIDENT IN THE PROCESS:**

8.1 Another issue that has to be addressed frontally is the involvement of the sitting NBA President and indeed the sitting NBA EXCO in the election process which sometimes confers an undue advantage on any candidate 'anointed' by the incumbent NBA President. In 2016, the then incumbent President was openly partisan and he engaged in open campaigns and endorsements of my opponent at that time and these contributed to the absence of a level playing field for all candidates in that election. Another worrisome trend is the appointment of all ECNBA Chairmen from the zone of the sitting President. In 2016, Mr. Ken Mozia, SAN who is from the same zone with the then sitting President – Mr. Augustine Alegeh, SAN was the ECNBA Chairman. In 2018, Prof. Auwalu Yadudu was the ECNBA Chairman and was from the same zone as the then NBA President, Mr. A. B. Mahmoud, SAN. In 2020, Mr. Tawo Tawo, SAN from the same zone with the then NBA President, Mr. Paul Usoro, SAN, was appointed as the ECNBA Chairman. No

doubt, all three former NBA Presidents did their best to uplift the Bar during their tenure and all the ECNBA Chairmen appointed during their respective regimes are respectable and reputable senior members of the Bar, but that is not the issue. The issue here is the perception of the majority of members of the Bar. Could this be a coincidence or a deliberate ploy, as assumed by many, to ensure that only those supposedly very close to the NBA President are appointed as ECNBA Chairman? I believe that deliberate efforts should be made to discourage a pattern whereby only someone from the same zone with the sitting NBA President is appointed as ECNBA Chairman. No doubt, this will go a long way in building confidence in the process. By all means, the ECNBA should be able to maintain sufficient independence from the NBA leadership, particularly the President.

## **9.0 REAL TIME MONITORING OF VOTES & AUTOMATIC COLLATION OF RESULTS**

9.1 The votes as they are being cast should be displayed real time in a transparent manner accessible to all members of the Association. Collation of votes should also be automatic after the last ballot is cast unlike what we had in 2016 when there was a delay of over one hour and twenty minutes before releasing the results on the display screen after the close of polls at 12 midnight on Sunday, 31<sup>st</sup> July 2016.

## **10.0 DUE PROCESS FOR ENGAGEMENT OF INFORMATION TECHNOLOGY SERVICE PROVIDER**

10.1 For future elections, there should be clear yardsticks, objective basis and/or set parameters for engagement of any IT service provider that will provide any IT infrastructure and/or support for the NBA elections. Mechanisms must be put in place to ensure that only qualified, experienced and competent IT Companies without interest in the outcome of the election are engaged. Due diligence must be conducted on any prospective IT Company before engagement. As I stated earlier in an interview, it should be a Company that has no real interest in who emerges as winners of the election other than a reflection of the wishes of the majority of members of the Bar. Importantly, the selection and/or appointment of IT Company should not be done or influenced by the NBA President; rather it should be done independently by

the ECNBA with the active involvement of the candidates (especially the Presidential candidates). Candidates should also be allowed to audit the infrastructures of the IT Company before it deploys its facilities.

## **11.0 SEAMLESS VOTER REGISTRATION PROCESS**

11.1 Voter registration is an integral aspect of any election. It is a pre-condition for voting in NBA election as stipulated in paragraph 2.2(f) of the second schedule to the NBA Constitution. The NBA electoral process should be configured in such a way that all eligible voters, who have paid their Bar Practicing Fees (BPF) by 31<sup>st</sup> March of every given year, are allowed and given the opportunity to vote seamlessly for candidates of their choice. The list of financially up-to-date members should be automatically collated and made public shortly after the deadline for payment of BPF. In the past, there have been genuine and verified complaints of the inability of some of our eligible members to register for the voting process. To my mind, the registration process should be stress-free and transparent without any impediments.

11.2 Another pre-condition for voting in the NBA election as stipulated in paragraph 2.3 (d) of the second schedule to the NBA Constitution is that the full list of all legal practitioners qualified to vote shall be published at least 28 days before the date of the election. This provision can be reviewed and the time frame changed to at least 60 days to enable those whose names may have been inadvertently left out of the register to have ample time for same to be rectified. This would solve the issue of eligible voters claiming that they have been disenfranchised. It would be ideal to create a longer time between publication of the names and the date of the election given what had transpired in the past elections.

## **12.0 INVOLVEMENT OF NBA SECRETARIAT IN THE PROCESS**

12.1 The NBA Constitution currently vests the responsibility of conducting National Officers' elections on the ECNBA. However, there is still some level of involvement of the NBA National Secretariat in the process and since the secretariat is also manned by NBA Staff (some of whom are lawyers), the issue of partisanship cannot be overruled. See paragraph 2.3 (d) of the second

schedule to the Constitution which gives the National Secretariat the responsibility, in conjunction with the ECNBA, to publish the full list of all eligible legal practitioners. This committee should consider a mechanism or system that will result in reduced involvement of the NBA Secretariat in the system. Currently, paragraph 2.1 (d) of the second schedule to the NBA Constitution provides that completed forms received in respect of the elections shall be forwarded to the NBA Secretariat and thereafter referred to the Electoral Committee. To reduce and/or check any possible interference by the NBA Secretariat, it is desirable to amend the referenced provision to constitutionally allow completed forms to be submitted directly to the ECNBA. Furthermore, the feasibility of the ECNBA liaising directly with the NBA Branches for data should also be looked into. In conclusion, there must be a level playing field in any NBA elections and all candidates must be given access to interrogate every stage of the electoral process. It should be a fair contest.

### **13.0 CONCLUSION**

13.1 The urgent need for the reform of the NBA electoral system cannot be overemphasized. It is indeed a collective responsibility of all of us to meaningfully & timely contribute to this electoral reform process in our little way. It is my fervent hope, genuine desire and humble prayer that these proposals will be duly considered in the overall interest of the entire Bar and towards minimizing the spate of disputes arising from future NBA elections so that together we can earn our deserved respect in the eyes of Nigerian politicians and Nigerians generally.

Thank you.

Dated 19<sup>th</sup> April, 2021.