

1 December 2018

The National Council of Elders,
National Democratic Congress.

Attn: HE President Jerry John Rawlings, Chairperson

PETITION

“GUIDELINES FOR THE CONDUCT OF THE ELECTION OF A PRESIDENTIAL CANDIDATE OF THE NDC PURSUANT TO ARTICLES 40 & 42 OF THE CONSTITUTION”

Your Excellency,

We, the undersigned are respectively NDC members in good standing and aspirants for the position of NDC Presidential Candidate in the 2020 elections.

On Thursday 29th November 2018 the General Secretary of the NDC held a Media conference at the Party Headquarters in Adabraka, Accra. At this event the General Secretary reported decisions of the National Executive Committee (“NEC”) concluded the previous evening relating to the guidelines for upcoming Presidential primaries. We have since had sight of a document titled “**Guidelines for The Conduct of The Election of a Presidential Candidate of The NDC Pursuant to Articles 40 & 42 of the Constitution**” (hereinafter “Guidelines”) which are consistent with the General Secretary’s presentation and which we believe to be the Guidelines purportedly approved by NEC.

We have reviewed these Guidelines and find them inimical to the interests of the NDC. We are hereby petitioning the National Council of Elders of the NDC in accordance with Article 24(4)(a) of the Party Constitution to intervene to prevent irreparable harm to the Party.

Our specific issues with the Guidelines are as follows:

- a. NEC has not met the procedural requirements set out in Article 42(1)(f) of the Party Constitution for publishing Electoral Guidelines and generally has not met standards of stakeholder consultation acceptable in a social democratic party.
- b. NEC, in publishing the Guidelines, has exceeded the authority vested in it by Article 42(1)(f) of the constitution, to wit imposed eligibility criteria not provided for in the Party Constitution. These make the Guidelines ultra vires the NDC Party Constitution and thus null and void;
- c. NEC's proposed Guidelines impose filing fees on candidates that are unreasonable and that call in question our basic commitments as social democrats;
- d. NEC's guidelines impose an unreasonable and unrealistic schedule for holding Presidential primaries; and
- e. The Guidelines do not provide adequate assurance of a level playing field for the Primaries in a context of openly displayed bias on the part of some members of NEC.

We expand on these concerns as follows.

A. NON-COMPLIANCE WITH PROCEDURAL REQUIREMENTS

As you are aware Article 42(1)(f) of the Constitution provides that:

The National Executive Committee in consultation with the National Council of Elders shall issue guidelines on the election of a Presidential Candidate based on the provisions of this Article”

We note that:

- a. The NEC meeting concluded less than 24 hours before the General Secretary's media conference. There is nothing on the face of the Guidelines to suggest that the requirement set out in Article 42(1)(f) has been met and that the Council of Elders has been consulted. The General Secretary did not in his presentation to the Media advert to compliance with this provision. We have made informal checks and are satisfied that the consultation required by the Constitution has not taken place. We are satisfied that the NEC is in

breach of the Constitution and that the Guidelines it has published are unlawful and of no effect.

- b. Though not a specific constitutional requirement, it is commonly accepted good practice to involve stakeholders in the design of processes and the development of guidelines such as these. The Electoral Commission of Ghana, for example, consults its principal stakeholders (political parties) through IPAC before it finalises decisions affecting elections. We are all experienced politicians and familiar with the processes and challenges facing the Party. Given the opportunity we are certain that we could have helped the NEC shape more acceptable and effective Guidelines for Presidential primaries.

B. ASSUMPTION OF UNCONSTITUTIONAL POWERS

We refer again to Article 42(1)(f) and the scope of authority given to NEC i.e. to “*issue guidelines on the election of a Presidential Candidate based on the provisions of this Article*”.

NEC, as a subordinate body to Congress, can only exercise authority that Congress has specifically delegated to it (except in accordance with Article 52 where there is no Constitutional provision covering a particular matter). NEC does not have the authority to impose additional eligibility criteria on candidates or aspirants. That would amount to amending the Party Constitution through the backdoor. NEC can only regulate the implementation of the eligibility criteria provided for in the Constitution itself. The provisions of Section 8(1)(a) of the Regulations that purport to impose a 10-year membership requirement on aspirants are thus unlawful, null, and void.

C. IMPOSITION OF UNREASONABLE FILING FEES

Section 9 of the proposed Guidelines imposes the following filing fees on aspirants:

- a. 400,000.00 Cedis for male aspirants;
- b. 200,000.00 Cedis for female aspirants; and
- c. 150,000.00 Cedis for Persons with Disabilities

We oppose these fees on the grounds that they call the Party's fundamental commitment to social democracy into question. Their mere publication has brought the Party into negative controversy. As a social democratic Party NDC must always be committed to breaking down class and social barriers and building a more inclusive politics and society. Our mission is to empower those currently marginalised by our elitist social institutions and bring them into public life in ways that strengthen productivity and solidarity, thereby increasing wealth for all. The imposition by NEC of filing fees that would exclude the vast majority of Party members from offering themselves for office is unacceptable to us and (from the public outrage exhibited over the last 24 hours) to Party activists and citizens in general.

As regards precedent we observe that these fees are entirely out of line with the Party's own historical practice. For example, in the NEC elections held just 2 weeks ago the fees for contestants for the position of Chairman were GHS 10,000.00 and that of General Secretary, GHS 8,000.00. We note further that in 2012 and 2016 filing fees for the Presidential Primaries were pegged at GHS 60,000 and GHS 100,000.00 respectively.

We are deeply concerned that the efforts of the General Secretary, and other spokespersons to justify these fees have if anything deepened the reputational damage to the Party. For example, in his interaction with the Media on Thursday 29 November the General Secretary offered a number of justifications for the NEC decision which we review below.

- a. The General Secretary argued that there is no objective way to set filing fees or determine what is excessive or not. He then proceeded to put out the claim that the proposed fees are lower than the GHS 500,000.00 charged by NPP in their last presidential primaries. NPP (and various media houses) have discredited this claim. This false claim has provided NPP with an opportunity to grandstand and question NDC's claim to social democracy.*

Our response is that NPP's "property-owning" democratic practice is not and should never be NDC's benchmark in such matters. Secondly, there is indeed comparative practice around the world that NDC could benefit from if the NEC or the FEC conducted a little bit of research before rushing to publish Guidelines. For example, filing fees could reflect:

- i. the administrative cost of the filing process (in the context of the indicative budget for the 2020 campaign and other Party obligations);
 - ii. the membership base across which those costs should be spread; and
 - iii. the emoluments attached to the office aspired to (to ensure that the successful candidate can recoup these without having to resort to corruption or the mortgaging of Party and country to special interests); and
 - iv. precedent.
- b. *The General Secretary stated further that ability to raise funds is an important eligibility criterion for the position of Party Leader. He says that the successful candidate will be required to raise money for his or her campaign and that he should not rely on the Party for this. He tells us that "... social democracy is not about poverty"! He says that social democracy does not aspire to interfere with market forces and that all it seeks to do is to tax "winners" to support "losers" (his words). He argued that the proposed fees are akin to a tax that the Party (in line with Social Democratic principles) has levied on the wealthy "winners" in the social lottery to subsidise the "losers" (being the ordinary impoverished party members) who would otherwise have to bear the costs of funding the Party's 2020 campaign.*

Of course, this position is a complete distortion of the principles of social democracy. NDC must not see candidates as aspiring "concessionaires" whom the Party should milk up-front for the benefits available. The corollary to this is of course the position that, having paid the Party for the position, once elected an office bearer is entitled to use his or her office to amass wealth for himself or herself. We should not treat aspirants as offenders who must be penalized for vaulting personal ambition. We must see leadership as an opportunity to serve – with fairness and accountability and arrange our processes accordingly.

None of the justifications offered by NEC for the proposed high fees hold water. It is difficult in these circumstances to accept that NEC has been truthful to the Party or the public about its motivations.

D. IMPOSITION OF AN UNREASONABLE SCHEDULE

NEC proposes that the entire electoral process be completed within 45 days from 5 December to 19 January. We object to this as unreasonable.

- a. This is less than half the period that Congress in its wisdom allowed for this process just 2 weeks ago.
- b. Within this period NEC proposes that collection of nomination forms is done between 3 – 5 December. This is an unreasonably short period given that Party has only now commenced the formal process towards primaries and purported to provide eligibility criteria for candidates. It is now that Party members who have been considering a run for the Presidency can make a final determination of whether or not to stand. As anybody who has participated in these processes before knows, no individual makes this decision without considerable consultation with political advisors and personal stakeholders. It is not a decision that is finalized in one or two working days.
- c. NEC proposes that the Candidates secure 3 proposers, 5 seconders, and 550 endorsers from all 275 constituencies and raise the filing fees of GHS 420,000 within a period of 10 days. By contrast contestants for NEC elections at the recent Party Congress were given a period of 6 weeks for similar processes.
- d. By the end of the proposed endorsement period on 15 December the country will be shutting down for the Christmas and end-of-year festivities and reflections – a period in which campaigning is very difficult. Campaigning will be further complicated by the upcoming referenda on the creation of new regions. In practice political life will resume fully in early January 2019 leaving effectively only about 10 days to campaign and set up polling day operations (for which relevant information has not yet been provided).

NEC has offered no explanation for this indecent haste to conclude this process. We submit that there is no benefit to the Party in such a rushed procedure. Elections are a political process affecting millions of Party members. They are not a matter of administrative convenience of the Party bureaucracy. Party members around the country must be given adequate time to meet with, hear from and evaluate the different candidates and what they have to offer to Party and Nation before making a choice.

E. BIAS

There is ample reason to believe that key players in NEC are biased in favour of a particular aspirant and are intervening unlawfully in the Primaries campaign to achieve a favourable outcome for that candidate.

- a. The Party Chairman and the General Secretary amongst others have made public statements to the effect that they prefer the same individual to lead the Party into the 2020 elections. (We are happy to present you video recordings of such statements made by third parties at the appropriate time). Neither the previous NEC nor the present NEC have called these officers to order.
- b. At the recently ended Congress there was a deliberate effort to project the same aspirant as the choice of Congress by affording him an opportunity to give closing remarks to Congress accompanied by his personal campaign theme played on the public address system of the Congress.
- c. In several regions we have been informed that Regional Chairpersons have summoned Constituency Chairpersons and other officers and instructed them (in some cases with implied threats) to convert their constituency executive committees into the local chapters of a particular candidate's campaign machinery.
- d. The Guidelines themselves and particularly the provisions relating to filing fees and scheduling of the Primaries appear to have been designed to favour of that same aspirant.

In these circumstances we do not believe that the NEC can be trusted to administer the Primaries fairly. We have resolved not to proceed under the proposed unlawful Guidelines. Accordingly, none of us will pick up nomination forms or otherwise comply with the unlawful Guidelines until our petition is heard and the issues set out are fully resolved.

Reliefs

We humbly request that:

- a. the Council of Elders investigates the matters set out in this Petition and requests NEC to institute a process for preparing Primaries Electoral Guidelines in consultation with Council of Elders, Aspirants and other stakeholders that include:
 - i. fees for collection of forms of GHS 5,000;
 - ii. filing fees of GHS100,000; and
 - iii. an endorsement period of 6 weeks; and
 - iv. a polling date in the first week of March 2019.
- b. the Council of Elders procures the immediate official suspension of the Guidelines;
- c. the Council of Elders demand that the Party Chairman, General Secretary and any other members of NEC or the Party Secretariat that have demonstrated bias in favour of a particular candidate recuse themselves from the Primaries process forthwith;
- d. the Council of Elders procures the publication by the NEC of a definitive register of the Electoral College for the Party's Primaries for inspection and use by all aspirants; and
- e. the Council of Elders procures (in consultation with Aspirants and other stakeholders) the immediate involvement of the Electoral Commission to conduct (not just supervise) the Primaries on the basis of the revised Guidelines to ensure free, fair, and credible elections.

We appreciate the need to act quickly. We are all available to meet with the Council or its representatives at short notice to further this discussion and move the Party forward.

Sincerely yours

Distribution

1. H.E. Jerry John Rawlings.
2. H.E. John Dramani Mahama.
3. H.E. Capt., Kojo Tsikata.
4. H.E. Anna Ennin.
5. Hon. Okaidja Adamafio.
6. Alhaji Huudu Yahaya.
7. Rt. Hon. Doe Adjaho.
8. Hon. Dr. Yao Obed Asamoah.
9. Hon. Dr. Kwabena Adjei.
10. Amb. James Victor Gbeho.
11. Amb. Ohene-Agyekum.
12. Amb. Margaret Clarke Kwesie.
13. Hon Cecilia Johnson.
14. Nana Akuoku Sarpong.
15. Alhaji Mahama Iddrissu.
16. Hon. Alhaji Issifu Ali.
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24. Hon Dr. Debora Cubagee.
25. Rev. Prof Lawson.
26. Hon. Theresa Baffoe.
27. Hon. Kojo Atta Krah.
28. Hon. Hajia Fati Seidu.
29. Hon. Fred Ohene Kena
30. Hon Christine Amoako-Nuamah
31. Hon Akoamoah Ofori-Boateng
32. Hon. Johnson Asiedu-Nketiah, General Secretary.
33. Hon Haruna Iddrisu, Minority Leader.