

*Election Dispute Adjudication Committee Report
May 2017*

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Ghana Journalists Association Election Dispute Adjudication Committee

(EDAC 2017)

Yaw Boadu-Ayeboafoh Committee

1 Introduction

1.1 We were appointed in March 2017, per a letter signed¹ by the Vice President of the Ghana Journalists Association (GJA), Mr. Mathias Tibu to serve as the **Election Dispute Adjudication Committee, (EDAC), (hereafter called Committee)** in pursuant to **Article (44) (b) (i)**. The following people were appointed as members:

1. Mr. Yaw Boadu-Ayeboafoh in pursuant to Article 44(b) (i)²

2. Mr. Eric Dzakpasu in pursuant to Article (44) (b) (ii) ³

3. And Mr. Zakaria Tanko Musah in pursuant to Article (44) (b) (iii)⁴

1.2 After Mr. Dzakpasu have been absent for two consecutive meetings of the EDAC, he was replaced with Mr. Michael Boadu⁵.

1.3 Per **Article (44) (a)** of the GJA Constitution, the terms of reference of the committee are as follows:

2.0 Terms of Reference

- (i) *To sit on appeals from the decisions of the Elections Committee*
- (ii) *And adjudicate on post-election disputes*

¹ See Appendix A

² Director, Newspapers, Graphic Communications Group Limited

³ Head of Communication, Electoral Commission

⁴ Head of Print Journalism Department, Lecturer at Ghana Institute of Journalism and a Lawyer

⁵ Michael Boadu, Deputy Director, Electoral Services Department, Electoral Commission

2.1 At the very beginning of this Report, it is appropriate to record the unqualified commitment of members to the work of the committee and the effort that has been put into ensuring that it proceeded smoothly as well as to commend all the petitioners and the GJA Executives for their co-operation.

3.0 *The Approach*

3.1 As indicated by **Article (44) (d)**, the Committee developed its own rules of procedure. It is also very important to state that the Committee was not subjected to the direction of any person (s) both within and outside the GJA. The Committee adhered to the protocols enshrined in the GJA constitution as best as the Committee could.

3.2 The Committee received petitions directly related to the decision of the Elections Committee, (***hereinafter called EC***) from the following people:

- (i) *Lloyd Evans***⁶
- (ii) *Mathew Mac-Kwame***⁷
- (iii) *Charles Benoni Okine and Enoch Darfah Frimpong***⁸
- (iv) *Maxwell Kudekor***⁹
- (v) *A petition by some concerned members of the GJA***
- (vi) *Petition by some Regional Chairmen of the GJA***
- (vii) *Petition by the campaign team of a contestant against the list of members***

⁶ Disqualified for failing to meet the requirement under Article 47 (b) (iii). See Appendix B

⁷ Disqualified for failing to meet the requirements under Article 47 (b) (iii). See Appendix C

⁸ They jointly petitioned to dispute the mandate of the Executives of GJA and the legality of the GJA Elections. See Appendix D

⁹ Disputing the mandate of the GJA Executives and the Legality of the GJA Elections. See Appendix E

- (viii) The Committee also participated in a meeting called at the instance of some former GJA Executives and veteran journalists with the EC and GJA Executives**

3.3 Due to the fact that some of the petitions were seeking to achieve the same results, the Committee decided to only invite the following petitioners:

- (i) Lloyd Evans¹⁰**
(ii) Mathew Mac-Kwame¹¹
(iii) Charles Benoni Okine and Enoch Darfah Frimpong¹²
(iv) Current GJA Executives¹³

3.4 The Committee met and decided to study the GJA constitution to inform the Committee of how to proceed. Based on the Committees understanding and appreciation of **Article 11 (f)¹⁴**, and the fact that per **Article 55 (v)**, the decision of the **EDAC is final**, the Committee resolved to give the parties adequate time, such that the Committees decision will be fair, just and reasonable.

3.5 In view of the delay in putting together the EDAC and in receiving the petitions, it appeared to the Committee that the requirements imposed on the EDAC by Article 53 (iv), could not be met. It states that:

“The elections Dispute Adjudication Committee shall consider the appeal and announce its decisions to the parties involved with a copy to the National Executive not more than four (4) working days after receiving the appeal”.

4.0 Postponement of GJA Elections

¹⁰ Disqualified for failing to meet the requirement under Article 47 (b) (iii)

¹¹ Disqualified for failing to meet the requirements under Article 47 (b) (iii)

¹² They jointly petitioned to dispute the mandate of the Executives of GJA and the legality of the GJA Elections

¹³ Roland Affail Monney, (President), Mathias Tibu, (Vice-President) and Dave Agbenu (General Secretary)

¹⁴ It required members: “To exhaust internal alternative dispute resolution mechanisms before resorting to other adjudicating fora”.

4.1 The Committee invited the (EC) and suggested to them that in view of the constraints that the Committee has in meeting the requirements of **Article 53 (iv)**, the Committee wish to invoke **Article 53 (v)**, which states that:

“In any situation where strict adherence to the time for lodging an objection, or an appeal may cause manifest injustice, the Elections Committee may postpone the elections until the dispute has been finally resolved”.

4.2 The EC having no objection to that suggestion duly announced the postponement of the GJA elections indefinitely. Thereafter, the Committee wrote to the petitioners inviting them to meet the Committee; the date; time and venue of the meeting were indicated in the said letter. The Committee also advised them of their right to be accompanied by a Counsel if they so wish and some of them appeared before us with their Counsels.

5.0 Documents Required

5.1 To assist the Committee in its work, the Committee requested for the following documents to serve as a guide to the Committee.

- (i) *The Notice of the 2016 Emergency General Meeting (EGM)*¹⁵**
- (ii) *Minutes of the 2016 EGM*¹⁶**
- (iii) *Decision of Elections Committee*¹⁷**
- (iv) *List of GJA Members in Good Standing*¹⁸**

¹⁵ See Appendix F

¹⁶ See Appendix G

¹⁷ See Appendix H

¹⁸ See Appendix I

5.2 The Committee was also provided with documents to support the purported convention that the **Emergency General Meeting (EGM) of the GJA is not usually chaired by the President of the GJA**¹⁹.

6.0 The Gathering And Presentation Of Evidence

6.1 The Committee started its first hearing on **6th April 2017**, before that, the Committee deliberated on one of the reliefs being sought by Charles Benoni Okine and Enoch Darfah Frimpong, that the Chairman of the Committee should recuse himself because of the following reasons²⁰:

- (i) That the Chairman prior to the hearing had tried to express “some bias views with Charles Benoni Okine during a conversation in the Chairman’s office at Graphic Communications Group Limited on 22nd March 2017.**
- (ii) That on 23rd March 2017, the Chairman had a telephone conversation with Enoch Darfah Frimpong, during which the Chairman sought to reprimand him for signing the petition challenging the legitimacy of the current GJA Executives.**

6.2 After the Committees deliberations, the Committee rejected the issues raised by the petitioners with regards to the Chairman recusing himself. The Committee duly wrote to the Petitioners specifying its reasons for arriving at that conclusion.

¹⁹ See Appendix J & K

²⁰ See Appendix L

6.3 The Committee also deliberated on whether or not it has the capacity to deal with the reliefs sought by some of the Petitioners regarding the mandate of the **GJA Executives and the Legality of the 2017 Elections**. The Committee concluded that **Article 53 (a)** does not provide the Committee with the authority to make a declaration on the mandate of the GJA Executives.

6.4 With regards to the legality of the Elections, the Committee averted its mind to **Article 53 (b)**, which arguably makes provision for a declaration on the GJA Elections-albeit that provision only kicks in after the Election has been conducted.

6.5 The above notwithstanding, the Committee agreed to consider the issues in the interest of ensuring that the GJA as an Association does not suffer any avoidable legal challenges which could have an unfortunate effect on its image and activities.

6.6 Before the first sitting proceeded, members were asked to declare any conflict of interest in the matter at hand. There being no such conflict, the Committee proceeded with the hearing, starting with, Mathew Mac- Kwame.

7.0 The Facts

Mathew Mac-Kwame

7.1 Mathew Mac-Kwame who was contesting for the position of Vice-President was disqualified by the **EC** on the grounds that he failed to meet the requirements under **Article 47 (b) (iii)** of the GJA Constitution. According to the **EC**, the records available to them indicate that by **20th February 2017**,

Mathew Mac-Kwame **had not paid his membership dues for two years**. In view of which, he failed to satisfy the **90- day rule**²¹. Mathew Mac-Kwame argued before the committee that as far as he was aware, he is a member in good standing and he tendered in a **Wednesday March 1, 2017, publication of Daily Graphic, from pages 72-75**²², in which his name was published as a member in good standing to buttress his point.

7.2 He further argued that it is his employer, **Ghana Institute of Journalism, (GIJ)** that pays his **GJA** dues through deductions at source. He tendered his pay slip as evidence²³. He told the Committee that he went on retirement on **31st August 2016**. He further stated that even though he was supposed to have been taken off the payroll after his retirement, because of some outstanding payments, he advised the **GIJ Accountant** to use part of his arrears to pay his dues to **GJA**. He said the **GIJ Accountant** advised him thereafter that he has paid the outstanding **September to December 2016 GJA** dues. The **GIJ Accountant** was called in as a witness and he corroborated what Mathew Mac-Kwame said.

Charles Benoni Okine and Enoch Darfah Frimpong

8.0 Charles Benoni Okine and Enoch Darfah Frimpong were represented by their Counsel. The issue regarding the Chairman of the **EDAC** recusing himself was revisited. The Committee affirmed the position it communicated to the petitioners.

²¹ All members aspiring for Executive positions at the National and Regional levels must be members in good standing at least ninety (90) days before the elections

²² See Appendix I

²³ Pay slip not attached to report for privacy reasons

The Counsel stated that they want it to be on record that they objected to the Chair being part of the hearing.

8.1 They argued that the current GJA Executives cannot continue to hold themselves as such, as **Article 15 (c) (i)** of the GJA Constitution states that their term is for 3 years for which reason after 3 years they have no Constitutional mandate to continue in office.

8.2 They also raised issues about the procedure for putting together the **EC**, **EDAC** and the **Independence** of the **EDAC**. Their Counsel further argued that the requirements stated in **Articles, 43²⁴, 44²⁵ and 45²⁶** were not adhered to.

8.3 They also argued that the **Emergency General Meeting (EGM)** was not properly called and questioned the purported extension of the mandate of the current GJA Executives at the said **EGM**.

8.4 The petitioner's however admitted that they were not at the **EGM**.

8.5 They argued that in light of the many breaches of the GJA Constitutional provision with regards to the Elections, it will amount to 'picking and choosing' which aspect of the Constitution needs to be adhered to if some candidates are disqualified on the basis of some Constitutional breaches.

Lloyd Evans

9.0 Lloyd Evans who was contesting for the position of President was also disqualified on the same basis as Mathew Mac-Kwame. According to the **EC**, records available

²⁴ It talks about the GJA Elections Committee; its establishment, appointment of the elections committee, qualifications and the functions of the elections committee

²⁵ It talks about the Elections Dispute Adjudication Committee, its establishment, composition, appointment and tenure and rules of procedure

²⁶ It talks about the independence of the Elections and election dispute adjudication committees

to them indicate that Lloyd Evans paid his membership dues covering **2015 on 5th December 2016 and the 2016 dues on 14th February, 2017**. In view of which he failed to satisfy the **90-day rule**.

9.1 He argued that the decision to disqualify him on the **90- day rule** is wrong because **2017**, is not an Election year per the GJA constitution. He quoted **Article 15 (c) (i)**²⁷ to support his argument.

9.2 He further argued that he has since 2014 been paying **20 Ghana cedis as dues while others pay 5 Ghana cedis**.

9.3 He questioned the legitimacy of the Elections and the current GJA Executives. He admitted that by agreeing to contest the Elections and subjecting himself to the process, he has invariably legitimized the process.

9.4 Nevertheless, he argues that the fact that the GJA Executives have not strictly followed the requirements of the Constitution with regards to the conduct of the Elections, it is unfair that he should be punished for a purported breach of the Constitution.

Current GJA Executives

10.0 The Committee asked the Executives about payment of dues which per **Article 8 (a), (ii) and (v)** should be paid yearly; in advance and published.

10.1 The Committee also pointed out the requirements of **Article 12 (b)** of the GJA Constitution which states that:

²⁷ All members of the National Executive shall hold office for a term of three (3) years and shall be eligible for re-election.

“Any member who does not pay membership dues by the end of the financial year, and fails to pay after 30 days notice by the General Secretary shall lose his/her membership, subject to re-application”.

10.2 The issue of the payment of **20 and 5 Ghana cedis** dues was raised. The Executives indicated that for those who pay the **20 Ghana cedis**, it is their desire or intention to credit them on the basis of **5 Ghana cedis payment as it is unfair for some to pay 5 Ghana cedis while others pay 20 Ghana cedis.**

10.3 The tenure of office was also a subject for discussion. The Executives confirmed that they took office from **3rd May 2013** and per the GJA constitution they were supposed to end their tenure on **2nd May 2016**. They argued that they followed a convention whereby the tenure of the Executives is extended in every General Election year.

10.4 As 2016 was an Election year, they argued that they called an **EGM** to extend their mandate as per the convention.

10.5 They could not confirm whether or not they ought to extend their mandate before it expires or after it has expired.

10.6 The notice period for the **EGM** and whether or not it was an **AGM or EGM** was also discussed.

10.7 Why the **President of GJA did not Chair the EGM** was put to the Executives. They provided some documentation that suggests the **2010 and 2014 EGM's** were not chaired by the GJA President.

10.8 Another issue that came up was *whether or not there was any resolution to extend the mandate of the Executives; if there was, who moved the motion, who seconded it and whether or not it was put to vote. The minutes of the EGM that was provided to the Committee did not answer any of these questions.*

11.0 Committees Observations

11.1 Mathew Mac-Kwame

11.2 The Committee noted that Mathew Mac-Kwame belonged to the category of those members whose dues are deducted at source by their employers and remitted to GJA. As per **Article 8 (iii)**, *the responsibility of ensuring the deductions and payment of the dues and levies of people in that category, rest with the GJA Executive.*

11.3 While it could be argued that after Mathew Mac- Kwame retired from GIJ, he moves to the individual category specified in **Article 8 (b) (ii)**, it was confirmed by the **GIJ Accountant and the December pay slip of Mathew Mac-Kwame that he was owed some arrears which was paid in December 2016-out of which GIJ was supposed to pay his outstanding dues.**

11.4 The Committee further established that for **two (2) years, GIJ has not remitted GJA for the dues it deducted on behalf of its workers and the GJA has not served any demand notice as required by the Constitution²⁸.**

²⁸ Article 12 (b)

11.5 The Committee also noted that being *a member in good standing as per any publication does not automatically qualify a candidate to contest Executive positions as there are additional qualifications criteria for Candidates*²⁹.

Lloyd Evans

11.6 The Committee noted that Lloyd Evans had been paying *20 Ghana cedis since 2014 while others are/were paying 5 Ghana cedis.*

11.7 The Committee also took notice of *the statement of the current GJA Executives about the manifest unfairness in the anomaly of the dues amount and the fact that they said they intend or intended to credit those who make 20 Ghana cedis payment using the 5 Ghana cedis as the benchmark.*

11.8 On the issue of the legitimacy of the Election process, the Committee took note of the fact that *Lloyd Evans did not subject himself to a process he considers as 'illegitimate' under protest. It was also quite profound that he admitted that he invariably acquiesced to the process.*

12.0 Charles Benoni Okine and Enoch Darfah Frimpong

12.1 It was remarkable that *they did not participate in the said EGM and therefore they were relying on hearsay.*

12.2 *Nevertheless the issue about equity that they raised was well noted as a convincing proposition.*

²⁹ Articles 47 (a) and (b) clearly spells out the distinction

13.0 GJA Executives

13.1 *The Committee observed that the current GJA Executives relied on a convention to extend their mandate. The procedures required by the GJA Constitution were not strictly adhered to though.*

14.0 Committees Decision

14.1 Election Committees Decision, (EC)

14.2 *The Committee is of the considered opinion that on a **literal interpretation of the GJA Constitution**, the **EC could not be faulted for arriving at the decision to disqualify the candidates for failing to meet the requirements outlined in the constitution regarding the 90-days rule³⁰, late payment³¹, not a member³², membership under 3 years³³ and not a paid up member³⁴.***

15.0 Executives Mandate

15.1 *The Committee is **convinced that there is a convention by the GJA whereby the mandate of the Executives is extended usually during an Election year albeit the procedure of doing so is flawed and not informed by the constitutional provisions.***

16.0 Power to Constitute Interim Executive

16.1 *The **EDAC** has no such power and no provision in the GJA constitution to that effect.*

³⁰ Mathew Mac-Kwame and Lloyd Evans

³¹ Amponsah Moses Ohene, (Tema) and Zambaga Rufai Samini, (Western Region)

³² Ampem Darko-Koranteng (Eastern Region), Anthony Goode Jnr, (Brong Ahafo) and Kingsley Nana A. Buadu, (Central Region)

³³ Jones Anlima, (Volta Region)

³⁴ Mc-Anthony Dayyenga, (Eastern Region)

17.0 Summary of Committees Decision

17.1 In the light of the manifest constitutional breaches that have characterized the elections; the Committee concluded that it will not be fair, just and reasonable to ‘punish’ or disqualified some of the candidates for breaching or not meeting some aspects of the constitution.

17.2 The maxim of equity that “he who comes to equity must come with clean hands” is quite relevant in these matters.

17.3 The Committee concluded that in the circumstances both Mac-Kwame and Lloyd Evans did not breach the 90-day rule and even if they did, they and all other candidates who were disqualified just on the 90-day rule must be given the opportunity to satisfy the requirements that they breached (if they have not already satisfied it or them) to enable the said candidates to contest the elections; with the exception of those who were disqualified on the basis of:

- i) Not being members**
- ii) Whose membership was below three (3) years.**

17.4 For those who were disqualified because they were not members and those whose membership is below three (3), the Committee was of the opinion that it is not unfair, unjust and unreasonable not to allow them to contest Executive positions. This is because contesting Executive positions of an organization requires that the aspirant must

be a member and should have been a member for a reasonable period of time.

18.0 Recommendations

18.1 It was quite clear that GJA could not continue doing things the way it does if it is or was to avoid any protracted and distracting litigation in the future. To assist the GJA in achieving these or to mitigate some of these occurrences, the Committee makes the following recommendations:

- i) Dues should be paid annually and in advance in line with Article 8 (a), (ii)***
- ii) Desist from relying on the convention of extending Executives mandate and stick to constitutional provisions- where there are exceptional circumstances that make this impossible, the mandate should be extended before the tenure expires***
- iii) AGMs and EGMs must be properly called; minutes taken and circulated to members; motions moved and seconded and where possible voting patterns documented and chaired by the President or Vice-President as the constitution requires.***
- iv) Keep proper documentation and records of all meetings***
- v) The responsibility of paying dues should be shifted to individuals in the light of the overbearing responsibility on***

Executives having to 'chase' organizations for their employees dues

- vi) Publication of members in good standing must be in April of every year and possibly a supplementary one thereafter. This will be in accord with Article 8(a) (v) of the Constitution.***
- vii) Follow Elections time-table as strictly provided for by the Constitution***
- viii) Members who are dissatisfied with the action or inaction of Executives, must cultivate the habit of using an EGM or resort to the provisions under Articles 24 and 25 of the Constitution through the Ethics and Disciplinary Committee to express or demonstrate whatever resolution (s) they may wish to pass, instead of trying to use procedures that are not supported by the GJA Constitution***
- ix) GJA constitution should be reviewed to deal with certain practical and evolving trends***

19.0 Conclusion

19.1 The Committee considers that the unity of the GJA is paramount and all members must continue to be committed to that effect.

19.2 That said, the petition has exposed some short-comings in the way things are done by the GJA and the Committee hopes that active steps will be taken by the next GJA Executives to reverse those worrying trends.

19.3 The Committee has been able to raise concerns about the conduct of certain key players in the scheme of affairs. As a result of which it has come out with some recommendations, which the Committee believes will go a long way to assist the GJA in its endeavours.

19.4 If this report of ours helps in changing things for the better for the GJA, we will forever remain privileged for being part of that journey.

Election Dispute Adjudication Committee Report

May 2017

Mr. Yaw Boadu-Ayeboafah

(Chairman)

Director, Newspapers, Graphic Communications Group Limited

Mr. Michael Boadu

(Member)

Deputy Director, Electoral Services Department, Electoral Commission

Mr. Zakaria Tanko Musah

(Member)

HOD, Print Journalism Department/Lecturer/ Legal Practitioner