



11-Oct-16

The Chairperson
Electoral Commission
P. O. Box M214
Accra

Dear Madam,

We are the lawyers for the National Democratic Party ("Party"), its Presidential Candidate, Mrs. Nana Konadu Agyeman-Rawlings, and her running mate, Mr. Kodjo Mensah Sosuh.

Our clients instruct that on 29th September 2016, they duly submitted or caused to be duly submitted to you, their relevant completed nomination forms with respect to the 2016 Presidential Elections. However on 10th October 2016, you issued a Press Statement titled "Receipt of Nominations for 2016 Presidential Elections," in which you announced that you are unable to accept the said nominations, thereby effectively purporting to disqualify the Party and its candidates from contesting the said elections.

In paragraph 9 of the said Press Statement, you stated as follows:

9. Mrs. Nana Konadu Agyeman-Rawlings – National Democratic Party

The Commission is unable to accept Mrs. Rawlings' nomination because the number of subscribers to her forms did not meet the requirements of Regulation 7(2) (b) of CI 94.

- *One subscriber on page 89 of her nomination forms is not a validly registered voter and illegally registered twice and so is on the Exclusion list of multiple voters. Details are*

➤ *Salifu Abdulai*

District: Nanumba South

Voter ID no: 6617004814 (28.3.2012)

Voter ID no: 2126900022 (04.8.2014)

Our clients disagree with you and state that you have no power to proceed in this manner. This is because although section 27 of the Representation of the People Act, 1992 (PNDCL 284) provides that a person who registers twice may be disqualified from voting, there must have been a conviction for the offence, and then a term of imprisonment imposed before a disqualification can take effect. The relevant parts of section 27 provide specifically as follows:

27. Registration offences

*A person who... having applied to have that person's name included in a divisional register, without withdrawing the application, applies to have the name included in another divisional register... commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or both the fine and the imprisonment, and is **disqualified for a period of five years from the date of the expiration of the term of imprisonment**, from being registered as a voter or voting at an election. [Emphasis added.]*

Thus, clearly, a disqualification cannot precede or even run concurrently with a trial, conviction and imprisonment for the offence. Indeed under section 44(3) of the Interpretation Act, 2009 (Act 792), not even the date of release from prison should count towards counting the period of the disqualification.

Further, section 43 of the Representation of the People Act, which requires that your office maintains a record of persons “disqualified from being registered as voters [or] voting at an election,” also requires, separately, that where the person properly disqualified is already a registered voter, you are required to “delete that person’s name from the register.” The section provides specifically as follows:

43. Record of disqualified persons and removal from register

(1) The Commission shall keep a record of persons who by the operation of sections 27, 28, 29 or 41, are disqualified from being registered as voters, voting at an election or becoming members of Parliament.

(2) Where a person whose name is included in the register of a constituency is by the operation of sections 27, 28, 29 or 41, disqualified from being registered as a voter, the Commission shall delete that person’s name from the register.

Thus, before a person’s name is either entered unto the record under section 43(1) or deleted from the register under section 43(2), your office must have

evidence of the conviction and sentence required under section 27. Therefore, and contrary to paragraph 9 of your Press Statement, a person cannot be “not a validly registered voter and illegally registered twice and so is on the Exclusion list of multiple voters,” all at the same time.

Further, our clients instruct that they are not aware that the said Salifu Abdulai has indeed been tried and convicted for the offence, and then sentenced to any term of imprisonment for it. Since section 27 instates a conviction and prison term (not even a fine) as the conditions precedent to voter disqualification, we are instructed to request that you provide to us any evidence of a conviction and sentence of the said person, or an entry in your records of such particulars. Our clients request this information in the exercise of their right to information under Article 21(1)(f) of the Constitution.

Your Press Statement under reference also claimed that Salifu Abdulai’s name is on your ‘Exclusion List,’ which we assume to be the record required to be compiled under section 43(1). However, assuming that he even registered for a second time in 2014 in circumstances that breach of the law (which is denied), his status as a pre-existing voter from 2012, would mean that his name could not to be on the “Exclusion List” as you claimed, but would have been completely deleted from the voters’ register. This deletion, we reasonably expect, would be done with the supporting relevant entries, showing at the very least, the particulars of the conviction and sentence, the date of release from prison, and then the commencement and conclusion dates of the 5-year disqualification period. Indeed, we would argue that such a person is entitled to notice, as of right, of all the relevant entries in your register.

Further, regulation 9 of the Public Elections Regulations, 2016 (CI 94) provides that even where “the particulars of the candidate or the persons subscribing to the nomination are not as required by law or the nomination paper is not subscribed as required by law,” a nomination is not automatically considered as “invalid”. The regulation demands that you “shall” give an affected candidate an opportunity to make amendments and any alterations necessary, “within the stipulated nomination period.” Clearly, you are mandatorily required by your own regulation to, first, inform our clients about this development and then give them an opportunity to make any required changes before nominations closed. Respectfully, you cannot wait for several days after statutory period for making the necessary changes has expired, before announcing that you are unable to accept nominations forms presented to and received by you. Also, your decision was required to have been taken

(and obviously communicated to affected persons) within seven (7) days. Yet you waited for ten (10) days after nominations closed before issuing the Press Statement under reference.

The discretion entrusted to you by law requires that you direct yourself properly in law, calling your own attention to matters that you are bound to consider, and excluding from your consideration matters that are irrelevant to what you have to consider. Our clients are convinced that you have not obeyed those rules, and may truly be said to have acted illegally and unreasonably.

It is in the light of these that we write, first to demand the information that our clients are entitled to under the Constitution and by law. Our clients also demand that you rescind your purported disqualification, and then instate the names of the Party's Presidential Candidate and her running mate on the list of candidates for the 2016 Presidential Elections.

Please note that if these demands are not met forthwith and in any event within twenty-four (24) hours of this letter, we have our clients' further instructions to institute legal proceedings against you to compel you to meet the aforesaid demands without further notice or recourse to you.

Please do not doubt the resolve of our clients to pursue this matter to ends afforded them by law.

Yours faithfully,



Ace Anan Ankomah

Bentsi-Enchill, Letsa & Ankomah

cc. The Chair
National Democratic Party
Accra

Mrs. Nana Konadu Agyeman-Rawlings
Accra

Mr. Kodjo Mensa Sosuh
Accra