

**EXPLANATORY
MEMORANDUM
TO THE
PROPOSED AMENDMENTS
TO THE
NBA CONSTITUTION 2015
(AS AMENDED IN 2019)**

28TH SEPTEMBER 2021



TABLE OF CONTENTS

Introduction.....	3
Methodology.....	5
Underlying Philosophy	7
Highlights of the proposed amendments.....	8
Conclusion	14

Introduction

1. On 15 December 2020, at the quarterly meeting of the National Executive Committee of the Nigerian Bar Association (“NBA-NEC”) in Abuja, the NBA-NEC took a number of critical decisions, including, the ratification of the Standing Committees for the Association in accordance with the provisions of Section 12 of the Constitution of the Nigerian Bar Association 2015 (amended).
2. Further to the above, the President of the Nigerian Bar Association (“NBA”), Mr. Olumide Akpata on 28 February 2021, released the names of the members recommended for appointment into the various NBA Standing Committees including the members of the NBA Constitution Review Committee (“the Committee”) pursuant to his powers under Section 12(3) and Section 20(1) of the Constitution of the Nigerian Bar Association 2015 (amended) (“the Constitution”). On 18 March 2021, the NBA-NEC at its quarterly meeting at Uyo, Akwa Ibom State, approved the appointment.
3. The composition of the Committee is, as follows:
 - I. Yusuf Asamah Kadiri SAN – Chairman
 - II. Afam Osigwe SAN – Co-Chairman
 - III. Prof. George Izevbuwa – Member
 - IV. David Oluwagbami – Member
 - V. Nnamdi Eze – Member
 - VI. Ben Oji – Member
 - VII. Emmanuel Jewo – Member
 - VIII. Chibueze Oguchienti – Member
 - IX. Lucky Ekarume – Member
 - X. Ahmad Abdul-Gaffar – Member

XI.	Orji Agwu Uka	–	Secretary
XII.	Baffa Alhassan	–	Member
XIII.	Agbada Stephen Agbada	–	Member
XIV.	Uchenna Mbaeke	–	Member
XV.	Saheed Oludare Kareem	–	Member
XVI.	Joshua Ovie Moses	–	Member
XVII.	Joyce Oduah (General Secretary)	–	Ex-Officio Member

4. In the letter of appointment, the President conveyed the instruction of the NBA National Executive Committee (NBA-NEC) to the Committee to undertake a comprehensive review of the extant Constitution in order to generally ensure that it is fit for purpose considering recent developments within the NBA and challenges that have militated against efficient and smooth operations of the NBA.
5. The Committee was also issued with terms of reference which set out the purpose of the establishment of the Committee and the need to have a workable and sustainable Constitution which allows for the efficient operation of the Branches, Sections, Fora, and other critical organs of the Association; and which will facilitate a streamlining of the administrative structure at the National Secretariat for effective service delivery. The Committee focused on doing a thorough work to ensure that the emergent Constitution will remain in place and be useful for an extended period of time and reduce the frequency of amendments of the NBA Constitution.
6. The Committee was thus entrusted with the responsibility of coming up with a draft Constitution ready for presentation to the members of the Association at the forthcoming Annual General Meeting.
7. This Report highlights the work done by the Committee and specifically covers the modus operandi adopted, the Committee's findings, analyses, and recommendations.

Methodology

8. To ensure that the Committee produces a valid Constitution that complies with the amendment procedure outlined in Section 20 of the extant NBA Constitution, the Committee held its inaugural meeting on 23 March 2021 and thereafter on 29 March 2021 issued a call for memoranda from the members of the Association.
9. The Committee received 15 (fifteen) Memoranda from different members of, and interest groups in, the Association, including Sections and Fora, within the deadline stipulated in the call for memoranda. The Committee deeply appreciates the members and groups who sent in Memoranda which the Committee found very insightful and beneficial to its deliberations. The Memoranda Analysis and the Memoranda received will be appended as a schedule to the Final Report to be submitted at the Annual General Meeting in October 2021.
10. It is instructive to note that after the deadline, the Committee received a few other Memoranda. To ensure that we imbibe or encourage the culture of respecting deadlines the Committee elected not to officially countenance the late submissions but nevertheless considered them in its deliberations.
11. The Committee also comprehensively considered the Report of the NBA Electoral Audit and Reform Committee submitted to NBA-NEC in March 2021 and approved by the NBA-NEC at its meeting on 18 March 2021. The Committee uses this opportunity to once again acknowledge and commend the industry and hard work put in by the NBA Electoral Audit and Reform Committee ably chaired by Mr. Ayotunde Akintunde, SAN. The Committee also considered the interim report and proposal submitted by the NBA Secretariat Reform Committee headed by Dr. Joe Abah. The Committee found the NBA Secretariat Reform Committee's report and proposal extremely beneficial especially in the area of fulfilment of the Committee's mandate

of professionalizing the NBA Secretariat with a view to building an administrative structure that preserves the institutional memory of the Association beyond respective two-year term administrations, ensures operational efficiency of the Association, enables effective branch and member liaison and achieves an efficient delivery of the programmes and projects undertaken by the NBA.

12. The Committee held very extensive deliberations sometimes lasting 6 hours a day in the course of about 12 Virtual meetings between 23 March 2021 and 1 June 2021. Subsequently, the Committee held a physical retreat on 4 – 6 June 2021 in Victoria Island, Lagos. The Committee held further Virtual meetings thereafter in July and August 2021. The Committee is pleased to report that it has produced a Draft Constitution of the Nigerian Bar Association 2021 which the Association and its members can hopefully be proud of.
13. In accordance with the amendment procedure outlined in section 20 of the extant NBA Constitution, the Committee issued sixty (60) days' notice of the proposed amendment to the Distinguished General Secretary on 28 August 2021 and the General Secretary in turn circulated the draft Constitution to the members of the Association on 28 September 2021, i.e., at least thirty (30) days to the day that the proposed amendment is to be tabled for discussion at the Annual General Meeting.
14. We urge all members to dispassionately consider the proposed amendments with a view to potentially approving the same at the Annual General Meeting coming up on 28 October 2021.

Underlying Philosophy

15. In its deliberations, the Committee took note of the fact that previous NBA Constitution review exercises have been guided by different philosophies. For instance, while the 2015 NBA Constitution introduced universal suffrage and for the

first time, electronic voting in the election of National officers of the NBA, the 2019 amendments were primarily aimed at streamlining some of the national offices and also to introduce prudent financial management provisions.

16. In putting together the Draft Constitution of the Nigerian Bar Association 2021, the Committee adopted an underlying philosophy of ensuring inclusiveness in the affairs of the Association and introducing provisions that will ensure that the Association works for the benefit of the majority of its members, including the need to give a voice to such varying constituencies in the Association such as Women, Young Lawyers, Law Officers, Lawyers in Salaried Employment and Lawyers with Disabilities, etc.
17. It is in this light and against this background that the Committee urges esteemed members of the Association to consider the recommendations that have been made in the draft NBA Constitution 2021.

Highlights of the proposed amendments

Membership

18. Considering the spirit of inclusiveness, the Committee has proposed the creation of an additional classes of membership of the NBA to give the Association a modern international outlook and create additional sources of funding for the Association. In this regard, the Committee has proposed some new provisions, to wit:
 - (i) to provide Diaspora membership to Nigerian citizens who are enrolled at the Supreme Court of Nigeria as Legal Practitioners but reside and work in foreign jurisdictions outside Nigeria, and are nevertheless interested in taking part in the Bar activities of their home country; and
 - (ii) to provide International Membership to interested persons who are called to the bar or qualified to practice as lawyers in any jurisdiction other than Nigeria.

- (iii) In addition, the provisions on Honourary Membership have been enhanced to have an international outlook.

The NBA-NEC

- (iv) The Committee has proposed the renaming of NBA-NEC as **National Executive Council**, to recognize its primary position as the highest decision-making body in the Association after the General Meeting, and to distinguish it from the Executive Committee which comprises only the elected National Officers of the Association.
- (v) The Committee has proposed the expansion of the scope of membership of the NBA-NEC to recognize the different components of the Association which were hitherto unrepresented. For instance, the proposed Constitution, for the first time, recognizes the right of appointment of a limited number of legal practitioners with less than 10 years post-qualification experience as Co-opted members of NBA-NEC; expressly streamlines the different categories of members and recognizes special interest groups. In the event of doubt, '*travaux preparatoires*' to the NBA Constitution 2021 such as this document will reveal that reference to such interest groups refers to such varying constituencies in the Association, such as Women, Young Lawyers, Law Officers, Lawyers in Salaried Employment and Lawyers with Disabilities, etc.

Qualifications for holding national office in the NBA

- (vi) In further recognition of the inclusivity agenda of the current administration, the Committee recommended that other legal practitioners apart from those in active practice should be eligible to contest for election into national offices. For obvious reasons however, this does not include the offices of President, 1st Vice President and General Secretary.

- (vii) The Committee has proposed in the draft NBA Constitution to lower the threshold in respect of the post-call qualification to contest for some national offices to allow for a wider pool of candidates and to ensure an increase in the participation of young lawyers, who are undoubtedly the future of the profession in the running of their Association.
- (viii) Additionally, and to further make the Branches, Sections and Fora attractive to the generality of the members, the draft NBA Constitution has included previous experiences garnered from holding offices in the Executive Committees of Branches, Sections and Fora as a contributing factor to be considered in determining who is qualified for holding national office. Prior to this time, only prior membership of NBA-NEC counted. The Committee is of the firm view that a past Branch Vice Chairperson for example should not be less qualified to hold a national office simply because he or she did not have the privilege of being a member of NBA-NEC.
- (ix) The Committee has however suggested the further trimming of the proposed National Executive Council by collapsing some national offices and streamlining the membership of the NBA-NEC to save cost for the Association and make the meetings more manageable.

Elections

- (x) Building on the strong work done by the NBA Electoral Audit and Reform Committee ably chaired by Mr. Ayotunde Akintunde SAN, the Committee has made extensive recommendations that have far reaching implications but which are all aimed towards ensuring that our Association holds national elections that are less rancorous.

- (xi) The Committee has recommended that during the national elections, there shall also be election of NBA Representatives to the General Council of the Bar as provided by the Legal Practitioners Act. It is a well-known fact that, for years, NBA Representatives to the General Council of the Bar have been nominated contrary to the provisions of the Legal Practitioners Act, in less than transparent circumstances and sometimes with indefinite mandates.
- (xii) The Committee has recommended a truly independent ECNBA with zero or very minimal involvement of the NBA National Secretariat. Indeed, the proposal of the Committee is that the ECNBA be inaugurated not later than in the month of December of the year preceding the election year. The Committee has also recommended that upon the appointment of the ECNBA, the Committee (ECNBA) shall remain in office until a new ECNBA is appointed in accordance with the provisions of the Constitution. This is to allow for continuity and to ensure that there is an ECNBA in place in cases of By-Elections (*if any*).
- (xiii) The Committee has proposed and indeed suggested a draft Code of Conduct and Operational Guidelines for the ECNBA to ensure that the members of the ECNBA conduct themselves appropriately and effectively carry out their duties in accordance with extant laws, rules, and guidelines of the NBA.
- (xiv) The Committee has also recommended the establishment of Election Appeal Committees both at the Branches and at the National levels to avoid the less-than-ideal situation that currently prevails whereby the same electoral committees serve as appellate bodies over their own decisions.

The NBA National Secretariat

- (xv) One major proposal that the Committee has made and which the members of the Association are respectfully urged to dispassionately consider is the fulfilment of the longtime clamour for a professional NBA National Secretariat with a view to building an administrative structure that preserves the institutional memory of the Association beyond respective two-year term administrations, ensures operational efficiency of the Association, enables effective branch and member liaison and achieves an efficient delivery of the programmes and projects undertaken by the NBA.

- (xvi) The Committee views the current situation whereby the President and General Secretary who are distinguished legal practitioners in their own rights, with thriving full time law practices, who are elected with a single term of two years and who must ultimately hand over to another administration, have to pilot the affairs of the Secretariat at their own whims and caprices, as less than ideal and incompatible with the need to preserve the institutional memory of the Association and to run the National Secretariat in an efficient and effective manner. The Committee compared the scenario with those of public office holders, such as Ministers and Commissioners who “come and go” only because they are supported by a more permanent professional civil service headed by the Permanent Secretaries.

- (xvii) Consequently, the Committee recommends the appointment of an **Executive Director** who shall be responsible for the day-to-day running of the National Secretariat in a professional manner. The Committee also recommends the establishment of departments in the National Secretariat, such as, Finance and Administration; Legal and Compliance; Bar Services; Programmes;

Conference and Events; Research and Development; Human Resources; Media and Publicity; and such other departments as may from time to time be created by the National Executive Committee, subject to the approval of the National Executive Council. These departments shall be headed by respective heads of department appointed for, and by, the Association.

(xviii) To ensure effective oversight over the actions and activities of the Executive Director and the heads of the various departments, the Committee has recommended the creation of an **Appointment and Remuneration Committee**, which shall have the power to appoint the Executive Director for the Association under such terms and conditions as may be prescribed in his or her letter of appointment. This proposed Appointment and Remuneration Committee is to comprise the President, General Secretary and three other members appointed by NBA-NEC.

(xix) Further, the Committee has recommended the creation of a **Secretariat Management Board** which shall consist of the President, the General Secretary, and the Treasurer, to whom the Executive Director shall present a monthly report on the activities of the Secretariat. Put differently, the Appointment and Remuneration Committee and the Secretariat Management Board comprise the same persons, the President, the General Secretary, and the Treasurer, save that while acting for the purpose of appointment, the three other members appointed by NBA-NEC shall be part of the process.

Branches

(xx) As directed by NBA-NEC at its quarterly meeting in Uyo, Akwa Ibom State in March 2021, the Committee has recommended that it be expressly provided in the Constitution that the 10 (Ten) percent of Bar Practicing Fees paid by

members of each Branch shall be remitted to the Branch in the months of **April** and **December** of each year.

- (xxi) The Uniform Bye-Laws for Branches have also been significantly amended.
- (xxii) The Committee has noted the rising spate of crisis and allegations of mismanagement in some Branches and acknowledged the limitations in the extant NBA Constitution on the powers of the NBA-NEC to supervise the activities of Branches and take remedial steps, and has, therefore strengthened the powers of the NBA-NEC in this regard.
- (xxiii) The Committee has also recommended the collapse of some of the Branch offices into one office to allow for more efficient running of the Branches and to accord with the current trends especially in the areas where the continuing utility of those offices have become of doubtful value. A similar trimming exercise has been undertaken for the Committees of the Branches.
- (xxiv) The Committee has however noted the significant cost that the Association bears in maintaining the Branches, e.g., for attendance of the quarterly meetings of the NBA-NEC. Consequently, the Committee has recommended that only viable Branches should be allowed to remain in existence. In this regard, it is recommended that the National Executive Committee shall withdraw the recognition of any Branch where the membership falls below 50 (fifty) members. This is different from the provisions of the extant Constitution which is expressed in a permissive rather than a peremptory language.

Sections

- (xxv) Substantive provisions have now been included in the body of the proposed draft NBA Constitution to correctly recognize the Sections, Institutes and Fora of the NBA.

This is hopefully a favourable departure from the current situation where the Sections, Institutes and Fora are recognized only in the schedule to the Constitution.

(xxvi) For the first time, the draft Constitution has proposed the compulsory membership of at least one Section for all members of the Association.

(xxvii) Further, the Committee has made recommendations that will hopefully improve the operations of the Sections. In this regard, the Committee has proposed that the cabinet of Sections be changed from Council to Executive Committee. Also, the Committee has made provisions that empower the Executive Committee of a Section to appoint into the Executive Committee, where necessary, three Zonal Representatives in accordance with the Zones recognized by the NBA Constitution. This is designed to ensure that the activities of the Sections have more national outlook.

(xxviii) The Committee has also made novel provisions in the Uniform Bye-Laws for Sections which provide for transparent and free and fair elections into the Executive Committees of the various Sections.

Miscellaneous

(xxix) The Committee has recommended that for the first time the NBA Constitution should define who a **‘Young Lawyer’** is and what is meant by post call qualification, to avoid the unending controversy over that issue.

(xxx) Additional Fora have been recommended to the Association for creation, as follows: NBA Corporate Counsel Forum; NBA Law Officers Forum; NBA Lawyers in the Military Forum; NBA Lawyers Living with Disability Forum; and NBA Lawyers in Diaspora Forum. The recommendation for the creation of these Fora accords with the

overall objective of inclusivity and to ensure that the different components of the Bar, who have for long felt treated as outsiders, gain, or regain their voices in the affairs of the Association, as the case may be.

Conclusion

(xxxix) The foregoing constitutes only highlights of what are certainly very comprehensive recommendations from the Committee for the amendment of the NBA Constitution.

(xxxix)The Committee is grateful to the NBA President, Mr. Olumide Akpata, and the NBA-NEC, for the confidence reposed in members of the Committee to carry out this significant assignment. We hope that the members of NBA-NEC who attend the Annual General Meeting scheduled for 28 October 2021 will favourably consider these recommendations and others when the Draft Constitution is table for possible adoption at the Annual General Meeting.

(xxxixiii) We thank the NBA for the opportunity to be of service.

Signed on behalf of the Committee:



Yusuf Asamah Kadiri, SAN
Chairman



Mazi Afam Osigwe, SAN
Co-Chairman



Orji Agwu Uka
Secretary