



GENS UNA SUMUS

FÉDÉRATION INTERNATIONALE DES ÉCHECS

Recognized by the International Olympic Committee (1999)

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FIDE ETHICS COMMISSION

The Ethics Commission (hereafter called the ETH), sitting in the following composition -

Chairman: Mr Francois Strydom (*by video-link*)
Members: Mr Ravindra Dongre
Ms Yolander Persaud
Mr Rajesh Hari Joshi
Ms Yuliya Levitan (non-voting)

during the meeting held in Abu Dhabi on 27th of February 2020, made the following-

DECISION

Case n. 3/2019: “Complaints by the NCF against Mr. Austin Apemiye, Mr. Ajibola Olanrewaju and Mr. Adegbayi Oluwadara”.

1. The ETH **confirms** that a quorum is established by the presence and participation of all four (4) of its voting members.
2. The ETH **notes** that the subject-matter of case no. 3/2019 concerns the complaint by the Nigerian Chess Federation (“NCF” or “the Complainant”) against Mr. Austin Apemiye and others, mainly for their participation in the 2019 Zone 4.4 individual chess championship (“the Zonal championships”) without the NCF’s consent and in violation of the NCF regulations regarding participation in international events.

3. The ETH **notes** its previous decision in case no. 3/2019 taken in Lausanne at a meeting on 23 - 24 November 2019, and published on 23 December 2019, to the effect that:
 - 3.1 the sanction imposed by the NCF on Mr. Austin Apemiye was nullified with immediate effect;
 - 3.2 the ETH assumed jurisdiction over the NCF's case against Mr. Austin Apemiye and would conduct an enquiry de novo in regard to possible violations of the FIDE Code of Ethics by him.
4. The ETH **notes** its procedural ruling announced on 30 January 2020 that the NCF's complaints against Mr. Ajibola Olanrewaju and Mr. Adegbayi Oluwadara for their participation in the Zonal championships will be joined in case no. 3/2019 and that the complaints against Messrs. Apemiye, Olanrewaju and Oluwadara ("the Respondents") be dealt with in a single proceeding.
5. The ETH **notes** the contents of the further statement received from the NCF on 17 February 2020, the answering statements received from Messrs. Olanrewaju, Oluwadara and Apemiye on 18, 19 and 25 February 2020 respectively, as well as the statement received from the President of the African Chess Confederation ("ACC") on 24 February 2020.
6. In addition, the ETH **notes** the salient facts of the matter, as summarised in its earlier decision in case no. 3/2019:
 - 6.1 The Zonal championships were scheduled to take place (and indeed took place) in Accra, Ghana during the period 20 - 29 April 2019;
 - 6.2 The championships were open to all players from federations within the Zone 4.4 region which are affiliated to FIDE, subject to a maximum of 5 players from each federation in each category. The host federation could field 8 players in each category. In addition, the African Continental President could nominate additional participants for the championship;
 - 6.3 The Respondents were not among the players nominated by their federation (the NCF) to participate in the championships, but all secured a nomination from the Continental President, subject to the Respondents in each case paying the required registration and tournament fees and covering their own

board and lodging at the official hotel and further subject to compliance “*with the relevant regulations of the Nigerian Chess Federation regarding participation in international events*”;

- 6.4 The Respondents were urged by the NCF not to make use of the nomination obtained from the ACC President. The NCF stated in a public notice addressed generally to all Nigerian chess players on 16 April 2019 that it is illegal to participate in the Zonal championships without the approval of the NCF and the Ministry of Youth and Sports;
- 6.5 The Respondents nevertheless participated in the Zonal championships utilizing the ACC President’s nomination and using their own funding;
- 6.6 Subsequently, following some disciplinary proceedings by the NCF (which were later considered inadequate by the ETH), the Respondents were all banned by the NCF for a period of two years from participating in all chess related activities at all levels for undermining the NCF by contravening its rules regarding participation in international competitions and failing to honour the invitation of the disciplinary committee (which decision was later set aside by the ETH).

7. The ETH **notes** the arguments of the NCF which, in essence, amount to the following:

- 7.1 The NCF points out that the Respondents were not amongst the NCF selection of the Nigerian representation in the open section at the Zonal championships, consisting of 5 originally selected Nigerian players as allowed by the regulations plus a further 5 Nigerian selected players graciously permitted by the Zonal President and the ACC President.
- 7.2 The NCF regards the nomination of the Respondents by the ACC President (being three of 12 such external nominations of Nigerian players) as an inappropriate interference. It maintains that as long as a player is playing under the Nigerian flag, the NCF must be aware and approve of who is representing it at any competition.
- 7.3 The NCF contends that the Respondents, in participating in the Zonal championships without the NCF’s clearance, disobeyed its express

instructions to all players that it is illegal to participate in international championships without the approval of the NCF and the Ministry of Youth and Sports. The NCF learnt about the fact that some players intended to participate in the Zonal championships, even if they did not enjoy the support of the federation, only shortly before the commencement of the tournament on 20 April 2019 and sent out the public notice of 16 April 2019.

- 7.4 With regard to the relevant NCF regulations or policy concerning international participation by its players, the NCF relies expressly on sections 8.1, 12.1 and 12.2 of the National Sports Federations Code of Governance 2017 (“Code of Governance”).
- 7.5 The NCF submits that the Zonal championship is not an open tournament, but a closed tournament. According to the regulations, only federations are eligible to register participants, so players are not allowed to participate in their individual capacity. All players are thus representatives of their respective federation.
- 7.6 In the present case, the Respondents participated in the Zonal championships as representatives of Nigeria without the NCF’s knowledge and consent. Furthermore, inviting players arbitrarily, operates to discredit the NCF selection process which takes place according to rating.
- 7.7 A similar situation happened during the 2017 African Junior Chess Championship in Egypt where Nigerian players were nominated by the ACC President to participate without the knowledge and consent of the NCF. FIDE apparently ruled on that occasion that the players may not participate under the Nigerian flag without the NCF’s approval. The players concerned were nevertheless allowed to participate under the ACC flag. This precedent is offered as proof that FIDE does not support the participation of any player in Zonal and Continental closed championships outside the nominations of the affiliated federations.
- 7.8 There is nowhere in the ACC Statutes provision for the ACC President to nominate players to participate in closed continental championships without the consent and knowledge of the affiliated Federations.

7.9 The NCF submits further that its complaint should not just be restricted to the Respondents' participation in the Zonal Championships alone. The NCF's complaint also includes the fact that the Respondents brought the Federation into disrepute by defamation, making false statements on social media platforms thereby misleading junior players and the general public, a flagrant disobedience to the NCF Code of Governance and disregarding directives of the NCF.

8. The ETH **notes** the arguments of the Respondents which, in essence, amount to the following:

8.1 The Respondents received a nomination from the ACC President. Their understanding was and continues to be that the ACC President has the right to nominate additional participants to Zonal events.

8.2 It is alleged that the NCF initiated the disciplinary proceedings against the Respondents, as a personal vendetta against the beneficiaries of the Continental President's nominations and because of political differences between the NCF President and the ACC President.

8.3 It is further submitted that the NCF should not sanction a player who acted in accordance with the nomination of the Continental President as this would amount to a major setback in the development of chess in Africa.

8.4 It is submitted that the disciplinary steps taken by the NCF against the Respondents and other players in a similar position amount to a form of intimidation and oppression of chess players. The Respondents were all signatories to a petition of Chess Players Association of Nigeria (CPAN) to FIDE against the governance of the NCF, dated 3 June 2019. Thereafter the Respondents were summoned to disciplinary proceedings and banned on 27 June 2019.

8.5 The Respondents claim that they are not aware of any existing rule that they have contravened because there are no known laws enacted by the Nigeria legislature on this issue. They are advised by lawyers that there is nothing in

the Code of Governance stopping a player from taking part in a Zonal chess event with the nomination of the Continental President. They submit that the NCF was misinterpreting a law that applies to participating as a representative of Nigeria under government funding. Those rules do not apply to an individual who is funding himself and he is participating under the nomination of ACC President.

- 8.6 The Respondents deny that they wilfully disobeyed the directives of the federation. Both Messrs. Olanrewaju and Oluwadara state that they learnt unofficially, when they were already in Ghana to participate in the event, that the NCF was forbidding their participation and threatening to ban them if they did. They did not understand the rationale behind the threat from the NCF. They had already travelled and made payments for the event at that point. Therefore they continued to play.
- 8.7 The Respondents reject the charge that they brought the federation into disrepute by defamation and making false statements on social media. Although they made constructive criticism on the private WhatsApp group of the chess players association, agitating for good governance, transparency and fairness in the administration of the federation, they have never resorted to a strategy of defamation.
- 8.8 Regarding the punishment imposed by the NCF, the Respondents consider this to be extremely harsh and disproportionate even if their conduct is to be found wanting.
- 8.9 In addition to the 2 year bans imposed, they were denied their norms and title recommendations for which they qualified based upon their successes in the Zonal championships and non-invitation to All African Games trials by the NCF even though they qualified to be part of the trials. They strongly believe these are extremely vindictive measures and an abuse of office.

9. The ETH notes the submissions of the ACC President which, in essence, amount to the following:

- 9.1 The request for additional players was made by the FIDE Zone 4.2 President. Whilst the circulated regulations make provision for the right of nomination by the ACC President, this is always done in consultation with the relevant Zonal President.
- 9.2 All this is in line with various provisions of the FIDE Tournament Regulations as provided for in the FIDE Handbook. Article 7.1.2 of the FIDE Handbook Part D.01.02 (Zonal tournaments) , which states that in exceptional cases the Zonal President may, with the approval of the FIDE Continental President for his continent, make adjustments in the allocation of players to the Zonal tournaments.
- 9.3 The nomination of players by the Continental President is covered under the Continental Championship Regulations as approved by the FIDE General Assembly. This feature is not only provided for in African Continental regulations but in some regulations of the other Continents. The use of this regulation is obviously designed to cater for provisions such as the situation prevailing in Nigeria and other federations where some players may need protection against some federation leaders who choose to victimise players who may not agree with their political or other views. The second consideration is a more positive one where a federation might have a large number of strong/qualified players who are deserving of participation but where there is a restriction in the number of players a federation may register. In this case the Federation President would then contact the Continental President to ask for consideration of additional players under this provision.
- 9.4 The incident at the 2017 African Youth Chess Championships involved minors whose participation nomination had been requested by one of the parents. Despite that fact that the NCF did not send any players, these two nominated players were requested to pay for their own accommodation; though they have been eligible for free board and lodging if they had been designated as official players. When the NCF President insisted that they be barred from the event beyond the fourth round, in consultation with the then FIDE Executive Director, it was decided to allow them play under the ACC flag.

10. The ETH **confirms** that, according to Chapter 8 of the FIDE Statutes, in cases where the ETH finds that the national federation has failed to prosecute disciplinary cases in compliance with fundamental justice, the ETH shall be entitled to assume jurisdiction itself over the national case and conduct an enquiry *de novo* in regard to the alleged violation(s). The ETH **refers** to ETH case no. 4/2015 as a precedent.
11. Upon due consideration of the documents submitted and arguments advanced by the parties, the ETH **finds** the following:
 - 11.1 It is indisputable that the Regulations for the Zonal Championships permitted, apart from the entry of participants by the relevant federations (reg. 2(ii)), for nomination of additional participants by the ACC President (reg. 2(iv)). The Zonal championships were open, in accordance with FIDE regulations, to all players from FIDE affiliated federations within the Zone 4.4 region.
 - 11.2 In terms of reg. 12(iv) only federations can “register” players which, on the face thereof, may seem to be in conflict with reg. 2(iv). However, these regulations can probably be reconciled on the basis that registration of all players representing a participating federation is required to be done by the federation and not by the individual players themselves. On this interpretation, reg. 12(iv) does not apply to players nominated by the ACC President.
 - 11.3 The ACC President used his alleged prerogative to nominate the Respondents with express reliance on reg. 2(iv) of the tournament regulations. At the same time, in the letters of nomination it was made clear that the Respondents are required to comply with the relevant regulations of the NCF regarding participation in international events.
 - 11.4 None of sections 8.1, 12.1 and 12.2 of the Code of Governance, on which the NCF relies, expressly or unequivocally prohibits international participation of Nigerian players without the NCF’s consent. These sections rather deal with certain responsibilities resting on the national sports federation and do not concern the responsibilities of the players.

- 11.5 As pointed out in the ETH's earlier decision in case no. 3/2019, the principle of legality requires that liability and punishment should be based only upon a prior enactment of a prohibition that is expressed with adequate precision and clarity.
- 11.6 In any event, even if there is an enforceable prohibition in Nigeria against foreign participation by players without their federation's consent (which has not been shown to the satisfaction of the ETH), then it would appear that this prohibition was brought indirectly to the notice of the Respondents and at too a late stage where some or all of them had already travelled and incurred the costs associated with participation in the Zonal championships.
- 11.7 Although the NCF's argument - that each participant in the Zonal championship is a representative of his national federation - finds some support in Art 8.2 of Zonal Tournament Regulations, FIDE Handbook chapter D.01.02, these regulations do not necessarily take into account the players nominated by the ACC President.
- 11.8 The alleged precedent from the 2017 African Junior Chess Championship does not assist the NCF as it demonstrates rather that FIDE would permit participation in a continental event of players nominated by the ACC President, but that these players are not allowed to participate under their country's flag, i.e. as a representative of their country.
- 11.9 At best for the NCF, there exists a controversy between the NCF and ACC in regard to the ACC President's right to nominate players for continental or zonal championships and this issue must be dealt with as a matter of policy at the ACC General Assembly by all African federations, or by way of amendment of the relevant tournament regulations. In the meantime, the players should not be victimized or sanctioned for relying on the tournament regulations and their letters of nomination issued by the ACC President, the ACC being a higher body than the NCF in the FIDE hierarchy.
- 11.10 At the same time, the ETH expresses its doubt about the appropriateness of the ACC President using his alleged prerogative by nominating as many as

15 additional players. It seems to the ETH that such a right to nominate should be used sparingly, despite the laudable objectives of the exercise of such right, as it interferes with the principle of proportionality in the representation by participating federations.

11.11 It follows that the ETH is not persuaded, on the requisite standard of comfortable satisfaction that the Respondents are guilty of knowingly committing any violation of the FIDE Code of Ethics by playing in the Zonal Championships, either without the NCF's approval, or in disregard of the Code of Governance and/or the NCF's lawful directives.

11.12 The ETH is not prepared to make any findings regarding the NCF's allegations that the Respondents had brought the Federation into disrepute by defamatory allegations in the social media as this issue was not sufficiently canvassed in the proceedings before the ETH. In any event, it is now apparent that the NCF, without good grounds, sanctioned the Respondents who had to endure their bans from 27 June until 23 December 2019 (a period of about 6 months) without the opportunity of an appeal. Even if the ETH had found the Respondents guilty of bringing the NCF into disrepute, the ETH would not have imposed a ban of longer than 6 months in all of the peculiar circumstances of this matter.

11.13 By making its remarks in the previous sub-paragraph, and whilst recognizing the right to free speech, the ETH does not want to be understood that it condones in any way defamatory remarks or groundless criticism by players against their federation.

12. Upon due consideration of all the circumstances of the matter, the ETH by unanimity **decides** that:

12.1 Mr Austin Apemiye, Mr Ajibola Olanrewaju and Mr Adegbayi Oluwadara are all found "not guilty" and acquitted on the complaint that they participated in the 2019 Zone 4.4 individual championship, as nominees of the ACC President, in non-compliance with the NCF's regulations regarding participation in international events.

- 12.2 It is **noted** that the NCF undertook to apply the same outcome to all other players who were banned by the NCF for participation in the 2019 Zone 4.4 individual championship.
13. The ETH **requests** the FIDE Secretariat to communicate forthwith the decision to the Mr. Austin Apemiye, Mr. Ajibola Olanrewaju, Mr. Adegbayi Oluwadara, the Nigerian Chess Federation, as well as the African Chess Confederation, and to publish in due course the decision on the FIDE website.

DATED ON THIS THE 23rd DAY OF APRIL 2020.

F P Strydom

CHAIRMAN
FIDE ETHICS COMMISSION