

17 July 2017

Mr. Sebastian Coe

President

The International Association of Athletics Federations

6 Quai Antoine 1er

BP359 - MC 98007 Monaco

**BY E – MAIL:** [kerry.bell@iaaf.org](mailto:kerry.bell@iaaf.org)

**BY HAND**

**AND:**

The Council of the International Association of

**BY HAND**

Dear Mr. Boe,

**FORMAL COMPLAINT: ATHLETICS SOUTH AFRICA (“ASA”)/ CONTRAVENTION OF IAAF  
CONSTITUTION, RULES AND REGULATIONS**

1. This letter is directed to you by virtue of your position as the President of the International Association of Athletics Federations (“IAAF”) and the Chairperson of Council, the responsible body tasked with overseeing adherence to the Constitution of the IAAF by its members.
2. The purpose of this letter is to lodge a complaint, *alternatively* a dispute in terms of Article 15 of the Constitution of the IAAF (“the Constitution) against Athletics South Africa (“ASA”), the national

governing body of Athletics in South Africa and member of the IAAF. The details of the complaint, *alternatively* the dispute, shall be dealt with in a separate heading.

3. The complainants herein are AfriForum and Solidarity, a civil rights organisation and a labour union based in South Africa.
4. The first complainant is AfriForum, a civil rights organisation with main purpose being the advancement of civil -, minority -, - human – and – constitutional rights of the citizens of the country. AfriForum furthers its objectives through positive national campaigns, participating in public debates and discussions on current affairs, also making use of the so – called Chapter 9 institution – mechanisms (Non – Profit Organisations created by the Constitution of the Republic of South Africa to protect and advance democracy), and also being intimately involved in leading court cases in the public interest. The membership span of AfriForum is close to 200 000 members.
5. The second complainant is Solidarity Labour Union, a registered labour union, which likewise is of purpose the advancement of civil -, minority -, - human – and – constitutional rights of the citizens of the country. Solidarity has a membership base of approximately 160 000.
6. This joint complaint is lodged on behalf of the collective membership base of the complainants, registered professional and amateur athletes, parents of young athletes competing on school – level and in the public interest.
7. Many attempts have been made to address the issues raised herein with the sporting governing bodies, alas to no avail.

### **Nature of Complaint**

8. It is the contention of the complainants that ASA through its adoption of various practices and official policies, is in contravention of the Constitution as a whole, the core values of Olympism and various Rules and Regulation of the IAAF.
9. Furthermore, it is contended that there is a tangible and undue political influence that is exercised upon ASA by the South African Government.

10. We shall refer herein, albeit in an abbreviated format, to the reminiscence of a race based quota system in South Africa in the selection of national teams, which is wilfully executed by ASA and other athletic governing bodies.
11. We also attach hereto a detailed report compiled by the complainants. The report touches on the following themes:
  - 11.1. An exposition of the current unstable and contentious political landscape in which sport in South Africa is exposed to;
  - 11.2. The sole outcome of a strict race - quota system is the: politicisation of Olympism and Athletics in South Africa, re – racializing of South African Sport and advancing tokenism, which undermines ability and skill.
12. The report itself is self-explanatory and it is our request that it be incorporated herein as if specifically stated, as it forms part and parcel of the complaint.
13. It is furthermore the outright contention of the complainants that the instances referred to herein involves the international community of Athletics and, given the nature of the transgressions, cannot be deemed to be an insignificant domestic issue. The issues raised herein compromise the integrity of Athletics on an international scale and therefore, in our respectful view, warrant the attention of the IAAF as the international athletic governing body.

#### **A return to the past: ASA's Quota system explained**

14. Transformation runs central and sits at the core of South African life in many respects. The increasing presence and influence that politics have on South African sport, have been well reported on, on both a domestic and an international level.
15. Many find that any critique on the "Transformation – project" of South Africa as being insensitive, opportunist and stems from those who are nostalgic of a discriminatory past. The position in reality however, is quite different.
16. The complainants support the idea of developing Athletics in all communities, broadening the base of participation to the various sports, the fostering of a spirit of comradery and healthy competition, in pursuit of finding the best possible team to represent our proud nation.

17. We find that the development and expansion of Athletics and other sports as being truly “transformative”; by broadening the base of participating athletes, honing the skill of young athletes to be selected based only on hard work and talent.
18. It is worth mentioning that Transformation, as practiced by the current sport regime in South Africa, is a mere euphemism for an absolutist racial quota - system.
19. Strong as the contentions may be, there are many instances of fact that can be referred to in this regard. We specifically refer to information obtained from a court order against the Minister of Sport and Recreation in 2017.
20. In November 2016, the complainants filed an application to a High Court in South Africa, following the controversial directive of the erstwhile Minister of Sport. The directive entailed that South Africa shall not host any major sporting events unless the “transformation targets<sup>1</sup>” are met<sup>2</sup>. This moratorium was lifted almost a year after the successor of Minister Mbalula rescinded the directive in April 2017.
21. The information obtained through the court order revealed that ASA has committed to stringent and rigid racial quotas in the selection of athletes to represent South Africa. It is immediately noticeable that quotas are projected well into the future, with no consideration of factors such as the availability of athletes, the talent pool for individual track and field items and other factors of the sort. In other words, athletes that do not fall in this reserved class, are excluded before competing in a single event for qualification.
22. Out of the document under the heading “Selected Charter Dimension Forecast” dated March 2015, the race based quota system of athletics in South Africa can conclusively be shown. We refer to the following most pertinent provisions as illustration:
  - 22.1. At the onset, it is clear the composite of Athletic teams should be reflective of the exact racial composite of the country. This means that the team selection should be engineered in such a manner, that at all levels reflect the so – called, - 80 /9 / 9 /2 principle. That is 80% black, 9% white, 9% coloured, 2 % “other”.

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<sup>1</sup> See paragraph 16 above

<sup>2</sup> <http://www.sport24.co.za/OtherSport/South-Africa/mbalula-bans-sa-from-bidding-for-major-rugby-cricket-events-20160425>

- 22.2. With the main purpose outlined, Government seeks to achieve this in increment stages. In 2018, most levels of Athletics should reflect an 80% quota for black athletes. This is set out in meticulous detail, differentiating between “generic black” athletes and “black African” athletes, and so on.
- 22.3. According to the report, “Black African Male” athletes represent 40% of the team selection at present. The race – goal is set at 84% in December 2018.
- 22.4. Notably, employed staff members and board members of ASA are currently 100% “Black African”, and in 2019 the race – goal is to maintain the 100% “Black African” status. Thus, abandoning their own 80/9/9/2 principle.
- 22.5. Accredited Coaches are a specific target of the collective sporting administration, where the number currently stands at 80% “Black African” accredited coaches. The race – goal is set at 100% “Black African” by 2019.
- 22.6. Importantly, athletic governing bodies should submit reports whether or not the quotas outlined were met or not. Sanctions and penalties will follow should the race – goals not be met.
- 22.7. As stated before, the race – based system not only involves Athletics, but includes Rugby, Cricket and Netball.
23. We hold that these race quotas are in direct conflict with the principles of Olympism, the Constitution of the IAAF and its subservient rules and regulations.

### **Powers of Government expanding to Sport**

24. Political influence has increased significantly over the past few years.
25. For detail, we refer to a report the ANC (the ruling government in South Africa) presented to the United Nations in 1971. In it, they made a case for a merit – alone system in South Africa. We quote an excerpt of the presentation:

*The **moral position** is absolutely clear. Human beings should not be willing partners in perpetuating a system of racial discrimination. Sportsmen have a special duty in this regard in that*

they should be first to **insist that merit, and merit alone**, be the criterion for selecting teams for representative sport. Indeed, non-discrimination is such an essential part of true sportsmanship that many clubs and international bodies have expressed provisions to this effect. For example, the first fundamental principle of the Olympic Charter states: **no discrimination is allowed against country or person on the grounds of race, religion or political affiliation ... All links with racist bodies should be abolished until sport inside South Africa is conducted on the basis of merit alone and not of colour.**<sup>13</sup> (emphasis added)

26. However, this noble position was abandoned as soon as the ANC came into power.
27. SASCOC (the South African Sports Confederation and Olympic Committee), as the supreme macro – sports body, has been given a surge of power with the promulgation of the National Sport and Recreation Amendment Act, 2007<sup>4</sup>. This is a legislative document which in our view exacerbates the political influence in national sport as it merges Government and the sport governing bodies, particularly ASA. By virtue of this Act, the Minister may:
  - 27.1. Issue binding directives to private actors in sport regarding transformation in sport along the racial lines, and the provision of punitive sanctions in should these policies not being adhered to.
  - 27.2. The powers conveyed through a legislation to the Minister of Sport and SASCOC to intervene in sport of disputes within or involving private sports federations and/or participants; and
  - 27.3. The powers conveyed to the Minister of Sport to issue binding directives to such private actors regarding the resolution of such disputes; and
  - 27.4. The establishment by the South African Government of a new supreme non-governmental macro sports body, named SASCOC;

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<sup>3</sup> African National Congress (ANC) spokesperson, Mr. Abdul Minty, in a document addressed to the United Nations Unit on Apartheid in April 1971

<sup>4</sup> See <http://www.gov.za/sites/www.gov.za/files/a18-07.pdf>

### **The Constitution and Rules of the IAAF contravened**

28. The IAAF is committed to the promotion of athletics, the furthering of its *ethical values as an educational subject* and, importantly, to encourage participation in Athletics regardless of *age, gender or race*.
29. The complainants herein subscribe to the values and principles of the IAAF and it is in defence thereof, that we approach the IAAF.
30. On the alleged transgressions of ASA, we hold that the values and Rules of the Constitution are unambiguous and unqualified. The thrust of the complainants' complaint, is the selection of athletes on the basis of race, and political influence which offend the independent nature of sport governing bodies. The following provisions are of relevance, though we may at a later stage elaborate on same:
  - 30.1. Article 3 of the Constitution states, as part of the objects of the IAAF, that:
    - 30.1.1. Participation to Athletics should be encouraged regardless of age, gender or race.
    - 30.1.2. That the IAAF, in taking a pro – active stance combating any form of discrimination or political influence, shall endeavour to ensure that no discrimination in Athletics may exist, or even develop in any form, and *that all may participate in Athletics regardless of their gender, race, religious or political views or any other irrelevant factor*.
    - 30.1.3. That compliance to the abovementioned objectives are to be monitored and enforced.
    - 30.1.4. That the *authenticity and integrity of Athletics* should be safeguarded against *corrupt conduct which might place the authenticity or integrity of Athletics at risk*. This we hold speaks to the continued independence of ASA.

30.2. The enactment of the National Sport and Recreation Act, 2007<sup>5</sup>, is cause for concern as it threatens the independence of ASA, amongst other sport governing bodies:

30.2.1. The National Sport and Recreation Act, 2007, clearly usurps many functions which fall in the auspices of sport governing bodies alone.

30.2.2. This creates a dilemma as ASA and its elected officials is inherently compromised, since its continued existence is based on the premise of obedience to the dictations of Government.

30.2.3. The decision – making power in matters such as team selections, tilts towards the Government, thereby compromising the ability of sport associations to function independently. The selection of SA teams in athletics are somewhat of a complicated affair. The Minister by virtue of the Sport and Recreation Act may prescribe policies to ASA. ASA is in turn bound by the policies of the Minister and SASCOC (the statutory body), and selects teams in conjunction with SASCOC.

30.2.4. This is all indicative of an undue political influence persisting in South African Athletics and South African Sport, and it is ever increasing.

### **Plea of Complainants**

31. First and foremost, that an inquiry be held and a finding be made to the effect that the practices and policies of ASA is indeed in contravention of the IAAF Constitution and Rules and that there exists undue political influence that is exercised on associations of South African Athletics.

32. Secondly, that a directive be issued to ASA with the expressed instruction to revise its position on its team – selection policies.

33. The Selection Policy<sup>6</sup> of ASA provides for 2 components in the selection of SA teams. An excellence – component and the *balancing of demographics* – component. The *excellence* –

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<sup>5</sup> See footnote 4

<sup>6</sup> <http://athletics.org.za/asa-selection-policy/>



*component* is for athletes of whom, regardless of race, are medal – contenders at major events. The *balancing of demographics* – component, focus on *selecting athletes **until** the Athletics South African Team **reflects the correct representation of the South African Population:***

- 33.1. It is alarming that an official policy of a national sport association, adopted a position of a *correct* and *incorrect* racial composition of teams.
  - 33.2. A South African team consisting of 84% black athletes (according to the report), will be deemed to be the *correct* racial representation (for 2018 only), and anything less would be the *incorrect* racial representation.
  - 33.3. By extension, and the complainants state this with caution, being a white member of the national team is *incorrect*, and being black member of the national team is deemed as being *correct*.
  - 33.4. This official policy is of purpose to ostracise and demonise athletes who ASA categorised as “white”.
34. Article 14 of the Constitution gives the Council the necessary authority to act in the interest of Athletics and impose any appropriate sanctions to address any breaches thereof. We request that our complaint be pursued and we also declare ourselves willing to provide a more detailed outlay of our complaint and, with the consent of individual athletes, elaborate on instances where they have been discriminated against on the basis of race.
35. In the alternative, we declare a dispute in terms of Article 15 of the Constitution. Should the Council be of the opinion that the issues raised herein would be better ventilated in a forum like CAS, the complainants shall support such a referral to the CAS.
36. We are of the respectful opinion that it is within the scope of powers of the IAAF to intervene in the alleged violations contained herein due to the international nature and interest of the complaint. Should an inquiry be initiated the complainants shall gladly supplement its complaint and be of assistance in any manner that may be required.
37. We look forward to our future correspondence.

Yours Truly,

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**On behalf of AfriForum & Solidarity**

**Per: Mr. C M Kriel**

**CEO AfriForum**