

20 July 2017

Hon Michael Beloff QC

Mr. Shashank Manohar

Chairperson

Chairperson

Dispute Resolution Committee

The International Cricket Council Limited

International Cricket Council Limited

BY HAND

Street 69

Dubai Sports City

Sheikh Mohammed Bin Zayed Road

PO Box 500070

Dubai

United Arab Emirates

BY HAND

AND:

AND:

Mr David Richardson

The Board of Directors of the ICC

Chief Executive Officer

BY HAND

The International Cricket Council Limited

BY E – MAIL: david.richardson@icc-cricket.com

BY HAND

Dear Hon. Beloff QC, Mr. Manohar, Mr. Richardson

FORMAL COMPLAINT: CRICKET SOUTH AFRICA (“CSA”) / CONTRAVENTION OF INTERNATIONAL CRICKET COUNCIL (“ICC”) MEMORANDUM & ARTICLES OF ASSOCIATION / POLICIES

1. This letter is directed to:
 - 1.1. Hon Beloff QC, as the Chairperson of the Dispute Resolutions Committee.
 - 1.2. The Chairperson of the ICC, Mr. Manohar, as the elected officer of the ICC to, amongst others, represent the interests of the ICC and to initiate or respond to matters in the interest of the ICC.
 - 1.3. Mr. David Richardson as the Chief Executive Officer assigned with the executive functions as set out in the Articles of Association.
 - 1.4. The Board of Directors of the ICC, as the legislative authority of the ICC.
2. The purpose of this letter is to lodge a dispute in terms of paragraph 6 of the Dispute Resolution Committee Terms of Reference (“DRCTR”), *alternatively* a complaint based on various violations of the Memorandum of Association (“MOA”) and the Articles of Association (“AOA”) of the ICC.
3. Should the Dispute Resolution Committee (“DRC”) find that the declaration of the dispute is not competent, which we contend it is, we appeal to the Chairperson and the Board to act on the basis of the violations that shall be shown herein.
4. The complainants herein are AfriForum and Solidarity, a civil rights organisation and a labour union based in South Africa.
5. 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.

6. 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.
7. This joint complaint is lodged on behalf of the collective membership base of the complainants, professional and amateur cricket players, parents of young athletes competing on school – level and in the public interest.
8. The respondent is Cricket South Africa (“CSA”), the governing body of Cricket in South Africa and full member of the ICC.
9. The complainants have noted a written dispute with CSA, however, the complainants were denied an audience with the CSA.

Nature of Dispute / Complaint

10. It is the contention of the complainants that CSA has adopted practices and policies that contravene the MOA and AOA and the universal values of Olympism and the DRCTR.
11. It is contended by the complainants that CSA adopted a team selection criteria based on race and furthermore, that there exists a tangible and undue political influence that is exercised upon CSA by the South African Government. Both of the said elements form the core of the dispute/complaint of the complainants.
12. 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 CSA and other athletic governing bodies.
13. We also attach hereto a detailed report compiled by the complainants. The report touches on the following themes:
 - 13.1. An exposition of the current unstable and contentious political landscape in which sport in South Africa is exposed to;

- 13.2. The sole outcome of a strict race - quota system is the: politicisation of South African Sport, particularly Cricket, re – racializing of South African Sport and advancing tokenism, which undermines ability and skill.
14. 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.
15. It is furthermore the outright contention of the complainants that the instances referred to herein involves the international community of Cricket and, given the nature of the transgressions, cannot be deemed to be an insignificant domestic issue. The issues raised herein compromise the integrity of Cricket on an international scale and therefore, in our respectful view, warrant the attention of the ICC as the international cricket governing body.

A return to the past: CSA's Quota system explained

16. 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. Most recently, the cricket great and South African legend, Graeme Pollock, lamented CSA for adopting a racial quota criterion to select the National Team.
17. Mr. Pollock stated outright that the “bad standard” of South African Cricket of late is causal to “politics and interference in selection [of teams]”¹.
18. Many find that any critique on the “Transformation – project” of South Africa as being insensitive, opportunistic, which stems from those who are nostalgic of a discriminatory past. The position in reality however, is quite different.
19. The complainants support the idea of developing Cricket in all communities, broadening the base of participation in 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.

¹ See <http://m.sport24.co.za/sport24/Cricket/Proteas/graeme-pollock-slams-political-meddling-in-sa-cricket-20170714>

20. We find that the development and expansion of Cricket and other sports shall achieve true “transformation”; by broadening the base of participating players, honing the skill of young athletes to be selected based only on hard work and talent.
21. 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.
22. 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.
23. 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 targets²” are met³. This moratorium was lifted almost a year after the successor of Minister Mbalula rescinded the directive in April 2017.
24. In relation to Cricket the South African Government and CSA did not mince its words when stating that Transformation shall be pursued “aggressively” and that the Board shall ensure that the decisions are “implemented”⁴
25. The information obtained through the court order revealed that CSA 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 players, the talent pool of players and other factors of the sort. In other words, players that do not fall in this reserved class, are excluded before playing in a single event for qualification.
26. Out of the document under the heading “Selected Charter Dimension Forecast” dated October 2016, the race based quota system of cricket in South Africa can conclusively be shown. We refer to the following most pertinent provisions as illustration:

² See paragraph 18 above

³ <http://www.sport24.co.za/OtherSport/South-Africa/mbalula-bans-sa-from-bidding-for-major-rugby-cricket-events-20160425>

⁴ <http://www.espnricinfo.com/southafrica/content/story/1053999.html>

- 26.1. At the onset, it is clear the composite of Cricket 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”.
 - 26.2. With the main purpose outlined, Government seeks to achieve this in increment stages. In 2020, most levels of Cricket should reflect a vast majority quota for black players. The 2020 projection is also not meant to be final, but a phase to reach the said principle. This is set out in meticulous detail, differentiating between “generic black” players and “black African” players, and so on.
 - 26.3. According to the report, “Black African Male” players represent 18% of the team selection at present. The race – goal for “Black African Males” is set at 27% by December 2020.
 - 26.4. According to the report, “Generic Black” players represent 54% of the team selection at present. The race – goal for “Generic Black Males” is set at 60% by December 2020.
 - 26.5. Accredited Coaches are a specific target of the collective sporting administration, where the number currently stands at 19% “Black African” accredited coaches. The race – goal is set at 55% “Black African” by 2020. “Generic Black” accredited coaches are currently at 38% with the race – goal set at 80% by December 2020.
 - 26.6. Importantly, sport 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.
 - 26.7. As stated before, the race – based system not only involves Cricket, but includes Rugby, Athletics and Netball.
27. The document entitled the “Selected Charter Dimension Forecast” is attached hereto for your kind attention.

Powers of Government expanding to Sport

28. Political influence has increased significantly over the past few years.
29. 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.**⁵ (emphasis added)*

30. However, this noble position was abandoned as soon as the ANC came into power.
31. 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, 2007⁶. 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 CSA. By virtue of this Act, the Minister may:
- 31.1. Issue binding directives to private actors in sport regarding transformation in sport along the racial lines, and the provision of punitive sanctions should these policies not being adhered to.
- 31.2. The powers conveyed through legislation to the Minister of Sport and SASCOC to intervene in disputes within or involving private sports federations and/or participants; and

⁵ African National Congress (ANC) spokesperson, Mr. Abdul Minty, in a document addressed to the United Nations Unit on Apartheid in April 1971

⁶ See <http://www.gov.za/sites/www.gov.za/files/a18-07.pdf>

- 31.3. The powers conveyed to the Minister of Sport to issue binding directives to such private actors regarding the resolution of such disputes; and
- 31.4. The establishment by the South African Government of a new supreme non-governmental macro sports body, named SASCOC;

The ICC MOA , AOA and Policies contravened

32. The ICC, as part of its commitment to the promotion of Cricket, to *protect the independence and autonomy of the ICC and its Members to govern and regulate Cricket.*
33. The complainants herein subscribe to the values and principles of ICC and it is in defence thereof, that we approach the Board and the DRC.
34. On the alleged transgressions of the ICC Constitution and policies, we hold that the said documents are unambiguous and unqualified. The thrust of the complainants' complaint, is the selection of players on the basis of race, and that the political influence offends the independent nature of sport governing bodies. The following provisions are of relevance, though we may at a later stage elaborate on same:
 - 34.1. Paragraph 5 C and D of the MOA states that it is the purpose of the ICC to *uphold, respect and advance the unique culture, ethic and spirit of Cricket; and to protect the independence and autonomy of the ICC.*
 - 34.2. Paragraph 2.4 A require Members to *respect and further the objects of the ICC*, also paragrag 2.4 D demands that domestic affairs be managed *autonomously* and to ensure *that there is no government interference in its governance.*
 - 34.3. In particular, paragraph 12 of the AOA which states that:

Neither the ICC nor any of its Members shall at any time offend, insult, humiliate, threaten, disparage, vilify or unlawfully discriminate against persons based on their race, religion, culture, colour, descent, gender, and/or national or ethnic origin.

35. CSA contravenes the MOA and AOA by:

35.1. Adopting a race – based quota system in the selecting of players, in the form of the “Selected Charter Dimension Forecast”⁷ and other practices.

35.2. Compromising the requisite of independency in sport governing bodies with the enactment of the National Sport and Recreation Act, 2007⁸, as it threatens the independence of CSA, amongst other sport governing bodies:

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

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

35.2.3. The decision – making power in matters such as team selections, tilts towards the Government, thereby compromising the ability of sport associations to function independently.

35.2.4. 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

36. First and foremost, that an inquiry be held and a finding be made to the effect that the practices and policies of CSA is indeed in contravention of the ICC MOA and AOA, and that there exists undue political influence that is exercised upon CSA.

37. Secondly, that a directive be issued to CSA with the expressed instruction to revise its position on its team – selection policies and criteria.

⁷ See paragraph 26

⁸ See footnote 6

38. CSA, as a member of the ICC, has the expressed obligation in terms of paragraph 2.8 read with paragraph 2.10 of the AOA to uphold and further the objectives of the ICC. If any breach is to be found, the ICC may act in an appropriate manner as provided for in the MOA and AOA.
39. Paragraph 6 of the DRCTR allows for a dispute to be lodged and a subsequent formal procedure to be followed in an attempt to resolve the dispute.
40. As stated at the onset of this letter, it is the view of the complainants that the DRC is the appropriate body to adjudicate the dispute. Alternatively, we lodge this formal complaint for consideration of the Board of Directors, who may act when made aware of transgressions of the MOA and AOA of any member, regardless of the class of the membership.
41. Should an inquiry be held the complainants shall gladly supplement its complaint and be of assistance in any manner that may be required, including discovering instances of fact involving professional cricket players.
42. Although no expressed provision exist that involves the services of the Court for Arbitration in Sport ("CAS"), the complainants would support any referral to the CAS for the adjudication of the complaint.
43. We look forward to our future correspondence.

Yours Truly,

On behalf of AfriForum & Solidarity

Per: Mr. C M Kriel

CEO AfriForum

