

10 July 2017

Ms. M Rhone

President

International Netball Federation

Albion Wharf

19 Albion Street

Manchester

England

**BY HAND**

Ms. Clare Briegel

Chief Executive Officer & Head of the Secretariat

International Netball Federation

**BY HAND**

Dear Madam President Rhone, Ms. Briegel

**FORMAL COMPLAINT: NETBALL SOUTH AFRICA / CONTRAVENTION OF REGULATIONS AND POLICIES OF THE INTERNATIONAL NETBALL FEDERATION (“INF”)**

1. This letter is directed to you in your respective capacities as President and Chief Executive Officer of the INF, respectively.

2. The purpose of this letter is to lodge a formal complaint against Netball South Africa (“NSA”) for referral to the Investigations Panel in terms of Regulation 2.1.1 of the *Disciplinary and Dispute Resolutions Regulations* of the INF. Alternatively, we lodge a dispute with NSA in terms of Regulation 3.1(c) of the Regulations. The details of the complaint 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 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, through to 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, amateur and professional netball players, parents of netball – players competing on school level and in the public interest.
7. The complainants have approached NSA and made them aware of the complaint, with no success.

### **Nature of Complaint**

8. It is the contention of the complainants that NSA, through its adoption of various practices and official policies, is in contravention of the core values, rules and regulations of INF.
9. Furthermore, apart from the practices and official policies so adopted, there exists a tangible and undue political influence that is exercised upon not only NSA, but most sporting governing bodies by the South African Government.

10. We shall refer herein, albeit in an abbreviated format, to the reminiscence of a race based quota system by NSA and the South African Government in present day South Africa.
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 only outcome of following a strict race - quota system is the: politicisation of Sport, 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 specifically stated, as it forms part and parcel of the complaint.

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

13. 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 both a domestic and an international level.
14. Many find that any critique on the "Transformation – project" of South Africa as insensitive, opportunist and from those who are nostalgic of a discriminatory past. The position in reality is however, quite different.
15. The complainants support the idea of developing Netball in all communities, broadening the base of participation to the sport, and fostering a spirit of comradeship, healthy competition, in pursuit of finding the best possible team to present our proud nation.
16. We find the development and expansion of Netball as being truly "transformative", broadening the base of participating players, honing the skill of young players to be selected based on hard work and talent.
17. It is worth noting that Transformation, as practiced by the current netball regime, is a mere euphemism for an absolutist racial quota - system.

18. Strong as the contentions may be, there are many instances of fact that can be referred to in this regard. In addition, we attach hereto a sheet that NSA delivered only after they were compelled by a court order to deliver.
19. The complainants in early 2017 issued a court application against NSA, together with other sport governing bodies, to obtain the agreements entered between NSA and Government in relation to the operation of the sport, and any “transformation” plans.
20. We attach hereto two documents of note, being the racial categorisation and future racial projections of NSA, and the notes of a meeting with the then Minister of Sport, Min. Mbalula. We refer to the following most pertinent provisions therein:
  - 20.1. The alarming position that the composite of Netball 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”. See page 3 – 5 of the ‘Meeting on Transformation’ dated 21 May 2016. This document was provided by the Office of the Minister of Sport himself.
  - 20.2. With the main purpose outlined, Netball and Government seek to achieve this in increment stages. In 2019, most levels of elite Female Netball players should reflect a 70% - 90% quota for black players. This is set out in meticulous detail, differentiating between “black” players, “generic black” players, “black African players”, and so on. The racial breakdown is to be found on page 4 of the ‘Transformation Charter Forecast’ dated 16 April 2015.
21. The documents are attached hereto.

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

22. Political influence has increased significantly over the past few years.
23. For detail, we refer to the report the ANC (the ruling party in government in South Africa) presented to the United Nation 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>1</sup> (emphasis added)

24. However, this noble position was abandoned as soon as the ANC came into power.
25. In 2007, National Sport and Recreation Amendment Act, 2007<sup>2</sup>. This is a legislative document which in our view exacerbates the political influence in national sport. By virtue of this Act, the Minister may:
  - 25.1. 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.
  - 25.2. The powers conveyed through a legislation to the Minister of Sport and to SASCOG to intervene in sport of disputes within or involving private sports federations and/or participants; and
  - 25.3. The powers conveyed to the Minister of Sport to issue binding directives to such private actors regarding the resolution of such disputes; and
  - 25.4. The establishment by the South African Government of a new supreme non-governmental macro sports body, named SASCOG.

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<sup>1</sup> African National Congress (ANC) spokesperson, Mr. Abdul Minty, in a document addressed to the United Nations Unit on Apartheid in April 1971

<sup>2</sup> See <http://www.gov.za/sites/www.gov.za/files/a18-07.pdf>

### **INF rules and regulations contravened**

26. In our view, the contents of this complaint demonstrate the transgressions of certain INF Rules and Regulations. The Rules and Regulations are unambiguous and we refer to the following provisions:

26.1. Paragraph 4 of the *Equality and Diversity Policy* provides that: i) *direct discrimination* occurs when any person is treated *less favourably* than others, and ii) *indirect Discrimination* is when a provision or criterion is applied which *on the face of it* applies equally to all and is fair but *can disadvantage individuals*.

26.1.1. The complainants are of the view that NSA and Government are in breach with paragraph 4 of the *Equality and Diversity Policy*. NSA is adopting an elaborate selection criteria, which discriminate on the basis of race and offends the values of the INF.

26.2. Paragraph 2 of the Articles of Association to sets as its fundamental purposes are to *promote, improve and develop Netball globally, at all levels, in accordance with the ideals and objects of the Olympic and Commonwealth movements, and without any discrimination on the grounds of race, gender, religion, creed, political beliefs, disability, marital status, sexual orientation or trade union activity*. Furthermore, the *independence* of the INF and its Federations must be *protected* and its members (of which NSA is part of), must *regulate and govern* the sport without *outside influence*.

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

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

### Plea of Complainants

27. First and foremost, that a finding be made to the effect that the practices and policies of NSA is indeed a contravention of the INF Rules and Regulations, and that there is undue political influence exercised upon NSA.
28. Secondly, that a directive be issued to NSA with the expressed instruction to revise its position on its team – selection policies.
29. In this regard, we refer to regulation 2 of the *Disciplinary and Dispute Resolution Regulations*, which states that:

*“Save where the Memorandum, Articles or Regulations vest such jurisdiction with another person and/or entity, the **Investigations Panel will have the full power and exclusive authority** to consider and investigate the following matters, on referral by the Disciplinary Officer Approved August 2014 2 (following a complaint by **a third party**, at the Disciplinary Officer’s own instigation or otherwise): (a) any matter that is capable of constituting a breach of the Memorandum, Articles and/or Regulations; (b) any matter that is **capable of constituting Misconduct** and (if arising at an International Event) has not been dealt with by the tournament referee or the jury of appeal; and (c) any other matter referred by the Disciplinary Officer. (Emphasis added)*
30. We are of the respectful view that the evidence presented herein demonstrate in the least a *prima facie* case against NSA, which may be investigated.
31. Should the Investigations Panel or the Disciplinary Panel be of the view that the matter be referred for adjudication to the Court for Arbitration in Sport, we shall oblige and support the referral.
32. We look forward hearing from you in due course.

Yours Sincerely,

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**On behalf of AfriForum & Solidarity**

**Per: Mr. C M Kriel**

**Chief Executive Officer**

**AfriForum**

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