

14 July 2017

Mr. Thomas Bach

President

The International Olympic Committee (IOC)

Olympic House

Route de Vidy

1007 Lausanne

Switzerland

**BY E – MAIL:** [thomas.bach@olympic.org](mailto:thomas.bach@olympic.org)

**BY HAND**

**AND TO:** The Vice Presidents of the IOC  
The Executive Board of the IOC

**BY HAND**

Dear Mr. Bach,

**FORMAL COMPLAINT: NATIONAL OLYMPIC COMMITTEE SOUTH AFRICA (“NOCSA”) /  
CONTRAVENTION OF OLYMPIC CHARTER**

1. This letter is directed to you by virtue of your position as the President of the International Olympic Committee (“IOC”); to the Vice – Presidents of the IOC and lastly the members of the Executive Board of the IOC. The latter being the legislative authority in all affairs of the Olympic Movement.

2. The purpose of this letter is to lodge a complaint against the NOCSA. 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 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, 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, 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, but to no avail.

### **Nature of Complaint**

8. It is the contention of the complainants that NOCSA, ASA (Athletics South Africa) and SASCOC (South African Sports Confederation and Olympic Committee) through its adoption of various practices and official policies, is in contravention of the Olympic Charter as a whole, the core values of Olympism and various bye – laws of the Olympic Charter.
9. As SASCOC is the designated NOC of South Africa, it too shall be referred to as “NOCSA”.
10. Furthermore, it is contended that there is a tangible and undue political influence that is exercised not only upon NOCSA, but most sporting governing bodies by the South African Government.

11. 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 NOCSA and other athletic governing bodies.
12. We also attach hereto a detailed report compiled by the complainants. The report touches on the following themes:
  - 12.1. An exposition of the current unstable and contentious political landscape in which sport in South Africa is exposed to;
  - 12.2. The only outcome of following a strict race - quota system is the: politicisation of Olympism in South Africa, re – racializing of South African Sport and advancing tokenism, which undermines ability and skill.
13. 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: NOCSA'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 from 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 Olympic sport in all communities, broadening the base of participation to the various sports, and fostering a spirit of comradery, healthy competition, in pursuit of finding the best possible team to present our proud nation.
17. We find the development and expansion of Olympics and other sport as truly "transformative", 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 (an associate - member of IAAF) 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 of 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”.
  - 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

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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>

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 the 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 coached. 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 conventional Olympic sport, but includes Rugby, Cricket and Netball.
23. The report, including the Rugby, Cricket and Netball excerpts, are attached hereto for your information.

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

24. Political influence has increased significantly over the past few years.
25. For detail, we refer to a of the 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>3</sup> (emphasis added)

26. However, this noble position was abandoned as soon as the ANC came into power.
27. SASCOC/NOCSA, 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 Association Regulator (SASCOC/NOCSA). 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 to NOCSA 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;

### **The Bye – Laws of the Olympic Charter contravened**

28. The IOC prides itself as the custodian of Olympism, *promoting a peaceful society concerned with the preservation of human dignity*, to be at *service of the development of humankind* and

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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>

importantly, that every *individual must have the possibility of practising sport, without discrimination...with a spirit of friendship, solidarity and fair play.*

29. In 1962<sup>5</sup>, the then President of the IOC, Mr. Avery Brundage, addressed the cancellation of a World Championship event after political interference had resulted in the exclusion of certain teams at a World Championship event. He stated that:

*“The fundamental basis of the Olympic code is that **no discrimination** because of race, religion or political affiliation is permitted. Participants are welcomed on their **merits...**”* (emphasis added)

*And*

*“The International Olympic Committee stands unequivocally against the use of sport as a political instrument or weapon...”*

30. The complainants herein subscribe to the values and principles of the IOC and it is in defence thereof, that we approach the IOC.
31. On the transgressions by NOCSA and ASA we allege have been committed, we hold that the values and Bye – Laws of the Olympic Charter are unambiguous and unqualified. The following provisions are of relevance:
- 31.1. Paragraph 4 of the Olympic Charter provides as follows: *To prevent discrimination of any kind against the country, private person or groups of people on account of ethnic origin, gender, language, religion, politics or any other reason:*
- 31.1.1. ASA and NOCSA are in breach of this provision by the adopting programmes that pre - select teams on the basis of race.
- 31.1.2. We submit that this is discriminative on the basis of race and offends the values of the Olympic Charter.
- 31.2. Paragraph 5 of the Olympic Charter provides that a state may not interfere with Olympic organisations, of which must perform its functions independently and without political interference.

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<sup>5</sup> See <http://library.la84.org/OlympicInformationCenter/OlympicReview/1962/BDCE79/BDCE79g.pdf>

- 31.2.1. The National Sport and Recreation Act, 2007, clearly usurps many functions which fall in the auspices of sport governing bodies alone.
- 31.2.2. This creates a dilemma as NOCSA is inherently compromised, since its existence is based on the premise of obedience to the dictations of Government.
- 31.2.3. 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 athletic associations SASCOC/NOCSA in particular is assigned functions in terms of the act of which we hold is in contravention of the Olympic Charter. ASA, bound by the policies of the Minister and SASCOC, selects teams in conjunction with SASCOC.
- 31.2.4. This is all indicative of an undue political influence persisting South African Athletics and South African Sport, and it is ever increasing.

### **Plea of Complainants**

32. First and foremost, that an inquiry (in terms of paragraph 59 of the Olympic Charter) be held and a finding be made to the effect that the practices and policies of NOCSA is indeed in contravention of the Olympic Charter and that there exists undue political influence that is exercised on associations of South African Athletics.
33. Secondly, that a directive be issued to NOCSA with the expressed instruction to revise its position on its team – selection policies.
34. Paragraph and Bye – Law 59 of the Olympic Charter determines, in relation to NOC's, the sanctions possibly to be handed down should an NOC be in breach of the Olympic Charter, is: the *withdrawal of full recognition of the NOC and the withdrawal of the right to organise an Olympic Session*.
35. Paragraph 61 establishes the finality of the decisions of the IOC. It provided further that disputes relating to the interpretation of rules may be referred to the Court of Arbitration for Sport (CAS).



Should the Board of the IOC be of the opinion that the issues raised in this complaint would be ventilated in the 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 IOC to intervene in the alleged violations contained herein. 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**