

07 July 2017

Mr. Bernard Lapasset

Chairperson of the Council of World Rugby

Chairperson of the Executive Committee of World Rugby

World Rugby Chairman

World Rugby House

8-10 Pembroke Street Lower

Dublin 2

Ireland

BY E – MAIL: myra.mcglynn@worldrugby.org

BY HAND

AND TO: Mr. Brett Gosper

World Rugby CEO

BY HAND

Dear Mr. Lapasset, Mr. Gosper

FORMAL COMPLAINT: SOUTH AFRICAN RUGBY UNION (SARU) / CONTRAVENTION OF WORLD RUGBY BYE - LAWS AND REGULATIONS

1. This letter is directed to you by virtue of your position as both the chairperson of Council and the Executive Committee of World Rugby, - the Council being the legislative authority in all affairs of World Rugby.
2. The purpose of this letter is to lodge a complaint against the South African Rugby Union ("SARU"). 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, rugby players employed by SARU or Rugby Federations affiliated with SARU, parents of schoolboy rugby players and in the public interest.
7. The complainants have approached SARU and made them aware of the complaint, with no success.

Nature of Complaint

8. It is the contention of the complainants that SARU, through its adoption of various practices and official policies, is in contravention of the core values, bye – laws and regulations of World Rugby.

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 SARU, 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 SARU 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 ineffectiveness, unfairness and other practices of SARU, and how even these radical counter – productive measures are manifestly insufficient in its implementation.
 - 11.3. The only outcome of following a strict race - quota system is the: politicisation of Rugby, 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: SARU'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, particularly Rugby, 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 Rugby 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 Rugby as 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 rugby 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 in this regard.. In addition, we would refer to a report authored by the SARU named, the *South African Rugby Strategic Transformation Plan*.
19. In 2014 SARU drafted and issued an elaborate transformation strategic plan, which places little to no emphasis on merit and much effort on a quota – system. An honest reflection of the report would show that the quota system is the main and sole theme in the report. We refer to the following most pertinent provisions as illustration:
 - 19.1. The alarming position that the composite of South African Rugby 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 7 of the report.
 - 19.2. With the main purpose outlined, SARU and Government seek to achieve this in increment stages. In 2019, most levels of Rugby should reflect a 50% 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 pages 68 – 84 of the strategic plan.
 - 19.3. Importantly, rugby federations should submit reports whether or not the quotas outlined were met or not. Sanctions and penalties will follow for any federation in SARU who does not comply.
20. This comprehensive report can be traced at <https://images.supersport.com/content/SARUSTP.pdf>.

Powers of Government expanding to Sport

21. Political influence has increased significantly over the past few years.
22. 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**.¹ (emphasis added)*

23. However, this noble position was abandoned as soon as the ANC came into power.
24. In 2007, National Sport and Recreation Amendment Act, 2007². This is a legislative document which in our view exacerbates the political influence in national sport. By virtue of this Act, the Minister may:
 - 24.1. 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.

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

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

- 24.2. 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
- 24.3. The powers conveyed to the Minister of Sport to issue binding directives to such private actors regarding the resolution of such disputes; and
- 24.4. The establishment by the South African Government of a new supreme non-governmental macro sports body, named SASCOG;
- 24.5. South African Rugby's right to make a decision regarding the Springbok's emblem is expropriated by the provision of regulation 7 of the Act, that provides that the rights in all national colours in emblem shall vest in that statutory body called SASCOG. In the light of calls made by some politicians, the Springbok emblem should be abolished, this section is particularly worrying and emblem to the sport itself.

The World Rugby rules and regulations contravened

25. In our view, the contents of this complaint demonstrate the transgressions of certain World Rugby Bye – Laws and Regulations. The Bye – Laws and Regulations are unambiguous and we refer to the following provisions:
 - 25.1. Bye - law 3(f) 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:*
 - 25.1.1. The complainants are of the view that SARU and Government is in breach with Bylaw 3(f) of the World Rugby rules and regulations. SARU in adopting elaborate selection criteria, which discriminate on the basis of race and offends the values of World Rugby.
 - 25.2. Bye – Law 14 provides that a state may not interfere with the affairs of union member, which would affect the member union in its ability to perform its functions and remain independent.

- 25.2.1. The National Sport and Recreation Act, 2007, clearly usurps many functions which fall in the auspices of sport governing bodies alone.
- 25.2.2. 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

26. First and foremost, that a finding be made to the effect that the practices and policies of SARU is indeed a contravention of World Rugby Bye – Laws and Regulations, and secondly, that there is undue political influence exercised upon SARU.
27. Secondly, that a directive be issued to SARU with the expressed instruction to revise its position on its team – selection policies.
28. In this regard, we refer to Bye – law 7, Bye – law 9.4(q) read with regulation 18, provides that:

*“**Any breach** of this agreement or any conduct which may be **prejudicial to the interests** of World Rugby or of the Game shall render such Union or Association liable to disciplinary action in accordance with Regulation 18 of the Regulations Relating to the Game...”*

And

*“Without prejudice to the generality of these Bye-Laws, the Council may expel or suspend from membership of World Rugby or impose such other punishment or penalty, including a fine, **as it considers fit** on a Union or Association for any infringement of the Bye-Laws or the Regulations or for any conduct which in the opinion of the Council is prejudicial to the interests of World Rugby or of the Game or which may bring World Rugby or the Game or any Persons, Administrators or Officials into disrepute...”*

And

“A Union or Association shall be subject to sanction by a Judicial Officer or

Judicial Committee if it is found to have breached the Bye-Laws or Regulations or to have:

- (a) brought World Rugby or the Game or any Person **into disrepute**;*
- (b) engaged in conduct, behaviour or practice(s) which may be **prejudicial to the interests of World Rugby or of the Game**;*
- (c) disclosed any confidential information obtained through connection with the Game;*
- (d) breached the Code of Conduct; or*
- (e) breached the Wagering Regulations (Regulation 6). (emphasis added)*

- 29. We are of the respectful opinion that it is within the scope of powers of World Rugby to intervene in the alleged violations contained herein.
- 30. Should World Rugby be of the view that the matter should rather be referred to for proper adjudication before the Court for Arbitration in Sport, we shall oblige and support the referral.
- 31. We look forward hearing from you in due course.

Your truly,

On behalf of AfriForum & Solidarity

Per: Mr. C M Kriel

Chief Executive Officer

AfriForum

(served electronically without signature)

