

RULES OF PROCEDURE FOR THE SOCIAL JUSTICE AND NATION- BUILDING (SZN) HEARINGS

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1. Background

- 1.1 The Office of the Transformation Ombudsman has been tasked with determining the causes, nature and extent of the racial discrimination and lack of transformation in all cricket structures since Unification, including the antecedents, circumstances, factors and context of such discrimination, as well as the perspectives of the victims and the motives and perspectives of the alleged perpetrators, by conducting investigations and holding hearings and affording the perpetrators the opportunity to respond to allegations levelled against them (Social Justice and Nation Building (SJN) Hearings).
- 1.2 In order to define the ambit of the SJN Hearings and to guide the Office of the Transformation Ombudsman in its work, CSA drafted and published terms of reference (The Terms of Reference).

2. Purpose of the Rules of Procedure

- 2.1. The purpose of the Rules of Procedure is to:
 - 2.1.1. Inform persons, institutions and organizations participating in the SJN Hearings (the participants) about the processes that will be followed.
 - 2.1.2. Guide the Transformation Ombudsman in order to ensure that activities relating to the inquiry are conducted in a procedurally fair manner, thoroughly, objectively and effectively, in accordance with professional standards and best practice.

3. Legal Authority

- 3.1. The SJN Hearings will be conducted in accordance with the Constitution of the Republic of South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“**the Equality Act**”), the Terms of Reference, and the rules of natural justice.

4. The Nature and Objective of the SJN Hearings

- 3.2. The SJN Hearings will be inquisitorial in nature and the Ombudsman will make findings and recommendations to CSA as envisaged in the Terms of Reference.
- 4.2. Participants will be given an opportunity to cross-examine only at the absolute discretion of the Ombudsman.

5. The Standard of Proof and Treatment of Evidence

- 5.1. The Ombudsman will observe the principles of natural and open justice. This means that the Ombudsman will give a fair hearing to the participants. For the purpose of clarity, the Ombudsman will allow participants to make written submissions by means of sworn statements and affidavits; give participants who have been invited to make oral representations before the Ombudsman an adequate opportunity to make their representations; give adequate notice to each participant invited to make oral representations and afford the perpetrators an opportunity to respond to allegations levelled against them after notifying them.
- 5.2. The inquiry into the causes, nature and extent of the racial discrimination and lack of transformation in all cricket structures since Unification that the Ombudsman will be undertaking is not a criminal inquiry as a result the Ombudsman will use the civil standard of proof in making his findings.
- 5.3. Consistent with the inquisitorial nature of the SJN Hearings, the progression of the investigation will depend upon the facts that are gathered in the course of the hearings.
- 5.4. Evidence that is presented during the SJN Hearings will be attested to by affidavit or sworn statement and an oral oath/affirmation. Should a person

choose to submit evidence by way of affidavit, then the Ombudsman may question such person.

5.5 The Ombudsman will conduct its investigation through public hearings. However, the Ombudsman may allow participants to give evidence anonymously, so that such participant's identity is not revealed to the public.

5.6 All interviews and public hearings will be recorded so that there is a full record of the proceedings. Bilateral interviews shall be transcribed where necessary and the anonymity of the person who was interviewed will be preserved if the Ombudsman deems it proper to do so. Electronic recordings will be saved in a secure location as determined by the Ombudsman.

6.Rights and Obligations of Participants in the Investigation

Rights

6.1 Persons against whom written allegations or complaints are made will be afforded an opportunity to respond to such allegations or complaints. They may do so by way of affidavit or oral evidence.

6.2 If an allegation is made against any person in the form of an affidavit, statement or written submission, such a person will be given an opportunity to respond to the said allegation within reasonable time.

6.3 If an allegation is made against any person during the public hearings, such person may respond to the allegations on a date to be arranged with the Ombudsman. The response may be by way of affidavit or by way of oral evidence.

6.4 If any allegation is made against a person or organization in a private hearing the Ombudsman will notify such implicated party of the allegation and the person or

organization will in turn have an opportunity to respond to the allegation by way of affidavit or private bilateral hearing.

6.5 Any person appearing before the Ombudsman may be assisted by an attorney or an advocate, but evidence will be presented through questions by the Ombudsman and/or Evidence Leaders.

Obligations

6.6 Perpetrators and participants shall not interfere with the investigation and shall abstain from withholding, destroying or tampering with evidence, and from influencing, coaching or intimidating the complainant and/or witnesses. Any such action will be investigated by the Ombudsman and appropriate action will be taken, which may include a recommendation for referral to national prosecuting authorities for criminal investigation.

7. Technical Support and Information

7.1 The Ombudsman may:

7.1.1 engage experts to assist the Ombudsman in performing its functions;

7.1.2. request further information from any relevant person or organization that may assist the Transformation Ombudsman in fulfilling its mandate. Such information may include documents, correspondence and data which will inform a better understanding of the issues raised by complainants and those implicated;

7.1.3. Upon receipt of written submissions, require any person to appear before the Ombudsman to be interviewed on specified aspects of his or her written submission

or any aspect of the Terms of Reference. The Ombudsman may issue directions regarding such oral evidence.

7.2 The Ombudsman will be assisted by evidence leaders and a secretariat. Any person assisting the Ombudsman will be required to make a declaration in order to give effect to paragraph 8.

8. Confidentiality

Any person assisting the Ombudsman shall preserve the confidentiality of information that comes to the knowledge of such person in the performance of his or her duties relating to the function of the Ombudsman, except in so far as the publication of such information is necessary in order to further the functions of the Ombudsman.