

TERMS OF REFERENCE:

INDEPENDENT SOCIAL JUSTICE AND NATION-BUILDING OMBUDSMAN

(As adopted by the Board of Cricket South Africa on 1 July 2021)

1 DEFINITIONS

- 1.1 **“Ombudsman”** means the Independent Social Justice and Nation-Building Ombudsman appointed by CSA;
- 1.2 **“Board”** means the Board of Directors of CSA;
- 1.3 **“CSA”** means Cricket South Africa NPC;
- 1.4 **“Counselling Services”** means provision of professional guidance in resolving problems related to any form of discrimination;
- 1.5 **“Report”** means the Ombudsman’s comprehensive report to the Board for its consideration on the activities and findings of the Ombudsman and which contains recommendations of measures to prevent the future incidences of racial and other forms of discrimination in cricket;
- 1.6 **“Transformation Committee”** means the Transformation Committee of the Board; and
- 1.7 **“Unification”** means the merger of the South African Cricket Union and the South African Cricket Board to form the United Cricket Board of South Africa (UCB) in June 1991.



2 PRINCIPLES

- 2.1 The Ombudsman has been appointed for the purpose of contributing to truth, healing and reconciliation in the game of cricket as part of CSA's social justice and nation-building project.
- 2.2 The Ombudsman will, in addition to adhering to the Values of CSA (which are contained in Schedule 4 to the Memorandum of Incorporation of Cricket South Africa NPC, attached hereto for ease of reference as Schedule 1) apply the following principles in fulfilling his mandate in terms of these terms of reference: accessibility; victim-centeredness; confidentiality; the promotion of the health and safety of participants; representativity; transparency; accountability; an open and honourable process; comprehensiveness; inclusivity; an educational and holistic approach; justice; fairness; respect; voluntariness; and flexibility.
- 2.3 Reconciliation is an ongoing individual and collective process and will require commitment from all those affected.
- 2.4 The Ombudsman shall be guided by the following principles in dealing with victims:
- 2.4.1 victims shall be treated with compassion and respect for their dignity;
- 2.4.2 victims shall be treated equally and without discrimination of any kind, including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
- 2.4.3 procedures for dealing with submissions by victims shall be expeditious, fair, inexpensive and accessible; and
- 2.4.4 appropriate measures shall be taken in order to minimize inconvenience to victims and, when necessary, to protect their privacy and protect them from intimidation.



3 OBJECTIVES OF THE OMBUDSMAN

3.1 The objectives of the Ombudsman are to promote unity and reconciliation by:

3.1.1 promoting equality in cricket;

3.1.2 determining the causes, nature and extent of the racial discrimination and lack of transformation in 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 alleged perpetrators the opportunity to respond to allegations levelled against them;

3.1.3 establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations; and

3.1.4 compiling a comprehensive report to the Board for its consideration on the activities and findings of the Ombudsman, and which contains recommendations of measures to prevent the future incidences of racial and other forms of discrimination in cricket.

4 RESPONSIBILITY OF THE OMBUDSMAN

4.1 The Ombudsman is responsible for the following in discharging his obligations:

4.1.1 conducting evidence gathering exercises from both victims and alleged perpetrators;

4.1.2 making determinations regarding accountability in respect to past violations occurring in any cricket structure in South Africa.

4.1.3 reporting on the appropriateness and effectiveness of the CSA's Transformation policies and practices;

4.1.4 providing access to counselling services in language of a person's choice;



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- 4.1.5 reviewing and reporting on the extent to which the transformation objectives have been achieved in the cricket structures, and progress made on the implementation of CSA Development plan including, but not limited to the Affiliates; and
- 4.1.6 providing recommendations to the Transformation Committee on the involvement of former players in cricket structures, such as incorporating them in the value chain system as brand ambassadors or for job opportunities at CSA amongst others.
- 4.1.7 facilitating, and where necessary initiating or co-ordinating, inquiries into:
- 4.1.7.1 violations of human rights in the form of, *inter alia*, racial discrimination;
- 4.1.7.2 the nature, causes and extent of racial discrimination, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;
- 4.1.7.3 the identity of all persons, institutions and organisations within the cricket structures involved in such violations;
- 4.1.7.4 accountability, political or otherwise, for any such violation;
- 4.1.8 facilitating and initiating or co-ordinating the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims; and
- 4.1.9 preparing a comprehensive report to the Board for its consideration which sets out his activities and findings, based on factual and objective information and evidence collected or received by him or placed at his disposal and which contains recommendations of measures to prevent the future incidences of racial discrimination.



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- 4.2 The provisions of the CSA Memorandum of Incorporation related to the management of dispute resolution (clause 37) shall not preclude a person making raising a matter with the Ombudsman, provided that it falls within the ambit of the Ombudsman's responsibility in terms of these Terms of Reference.
- 4.3 The Ombudsman shall have the authority, in his sole discretion, to refer a matter raised with him to the dispute resolution process referred to in the MOI of CSA and/or the respective Affiliates.
- 4.4 The Ombudsman and those assisting him shall be entitled, during the process, to engage with the media regarding the procedures being followed and the proceedings being undertaken, but shall do so mindful of the need not to comment during the process on the merits of the issues under investigation.

5 POWERS OF OMBUDSMAN WITH REGARD TO INVESTIGATIONS AND HEARINGS

- 5.1 The Ombudsman shall have the power to:
- 5.1.1 uncover and address practices that counteract equality, equal treatment and transformation;
 - 5.1.2 liaise with the Transformation Committee in contributing towards awareness raising and CSA becoming a driving force for change in attitudes and behaviour; and
 - 5.1.3 provide information, support and guidance in the work to promote equality, including but not limited to gender equality and racial equality amongst others, and combat discrimination.
- 5.2 It is in the public interest that the hearings before the Ombudsman be accessible to the broader public of South Africa. Accordingly, the Ombudsman may make arrangements for hearings before him to be livestreamed.
- 5.3 The hearings before the Ombudsman shall at all times take place in a manner that seeks to avoid the risk of contributing to the spread of Covid-19.

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- 5.4 The Ombudsman shall handle matters before him in accordance with the rules of natural justice and the Constitution of the Republic of South Africa, which shall include but not be limited to the following:
- 5.4.1 If an allegation is made against any person or organisation in an affidavit, such a person or organisation shall be notified and will be given an opportunity to respond to the said allegation on affidavit within reasonable time.
- 5.4.2 If an allegation is made against any person or organisation during a public hearings, such person or organisation shall be notified and may, after reasonable notice, respond to the allegations on a date to be arranged with the Ombudsman. The response may, at the election of the person concerned, be by way of affidavit or by way of oral evidence.
- 5.4.3 If any allegation is made against a person or organization in a private hearing, the Ombudsman will notify such person or organisation of the allegation and the person or organization will in turn have an opportunity, after reasonable notice, to respond to the allegation by way of affidavit or private hearing.
- 5.5 The Ombudsman may make findings on a balance of probabilities provided that, where a factual dispute cannot be resolved without cross-examination, the Ombudsman shall, in his sole discretion, either allow cross-examination or record the factual dispute without resolving it.
- 5.6 Subject to paragraph 5.5 above, the decision to allow cross-examination of parties who appear before him will be at the sole discretion of the Ombudsman.
- 5.7 The Ombudsman may consider materials of any nature including submissions, opinions, statements, affidavits, oral testimonies under oath, academic materials and so on, provided that allegations against any individual or organisation shall be made only on affidavit or via oral testimony under oath.
- 5.8 Oral testimonies at the hearings before the Ombudsman will be tendered under oath or affirmation.

6 THE INDEPENDENCE OF THE OMBUDSMAN

- 6.1 In determining how to conduct his investigations and hearings and in reaching his conclusions and recommendations, the Ombudsman shall be independent and is bound only by these Terms of Reference and applicable legal principles.
- 6.2 No person may interfere with how the Ombudsman conducts his investigations and hearings and reaches his conclusions and recommendations.
- 6.3 CSA shall be responsible for providing the logistical and administrative support necessary for the Ombudsman to perform his functions, including but not limited to the provisions of venues, transcription services, and so on.
- 6.4 Where the Ombudsman requires the procurement of services necessary for him to perform his functions, this shall be done through CSA's procurement office and shall be within the budget approved by the Board for the Ombudsman process.
- 6.5 The Ombudsman shall, by the end of each of July 2021 and August 2021, provide the Board with a status update regarding an overview of the proceedings and activities undertaken thus far and those still to be undertaken before 30 September 2021. Such status updates shall not include any reference to the merits of the matters that the Ombudsman is dealing with.

7 DURATION

- 7.1 The Ombudsman shall by 30 September 2021 complete his investigations and hearings and by that date present his final report to the Board for its consideration.
- 7.2 In the event that the Ombudsman is unable to deal with all issues raised with him by 30 September 2021, he must:
- 7.2.1 deal in his report to the Board with those issues he considers most critical to achieving the aims of social justice and nation-building in cricket; and
- 7.2.2 include in his report to the Board a list of issues raised with him that he was unable to deal with due to time constraints.
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