Formal response of Cricket South Africa to the International Cricket Council (“ICC”) revamp proposals

“Our people have the right to hope, the right to a future, the right to life itself. No power on this earth can destroy the thirst for human dignity. Our land cries out for peace. We will only achieve it through adherence to democratic principles and respect for the rights of all”.


INTRODUCTION

1. The International Cricket Council (“ICC”) is the international governing body of cricket. It was founded as the Imperial Cricket Conference in 1909 by representatives from England, Australia and South Africa, and renamed the International Cricket Conference in 1965, and took up its current name in 1989.

2. The ICC presently has 106 members: 10 Full Members that play official Test matches, 37 Associate Members, and 59 Affiliate Members. The ICC is responsible for the organisation and governance of cricket’s major international tournaments, most notably the ICC Cricket World Cup. It also appoints the umpires and referees that officiate at all sanctioned Test matches, One Day International and Twenty20 internationals. It promulgates the ICC Code of Conduct which sets the professional standards of discipline for international cricket, and also co-ordinates action against corruption and match-fixing through its Anti-Corruption and Security Unit (“ACSU”).

3. The ICC does not control bilateral fixtures between Member countries (which include all Test matches), it does not govern domestic cricket in Member countries, and it does not make the laws of the game which remain under the control of the Marylebone Cricket Club (“MCC”).
4. South Africa is a Founder Member of the ICC(1909), membership having been confined to the governing bodies of cricket within the British Empire where Test cricket was played. West Indies, New Zealand and India were elected as Full Members in 1926, doubling the number of Test-playing nations to six. That year it was also agreed to make a change in membership, with election being for “governing bodies of cricket in countries where the Empire to which cricket teams are sent, or which send teams to England”. After the formation of Pakistan in 1947, it was given Test status in 1952, becoming the seventh Test-playing nation. South Africa lost its membership in May 1961 when it left the Commonwealth, and by then of course it was already governed by the Apartheid Regime.

5. In 1965, the Imperial Cricket Conference was renamed the International Cricket Conference and new countries were admitted from outside the Commonwealth which led to the expansion of the Conference, and the admission of Associate Members who were then entitled to one vote on ICC resolutions while the Foundation and Full Members were entitled to two votes. Foundation Members also retained a right of veto.

6. Sri Lanka was admitted as a Full Member in 1981, returning the number of Test-playing nations to seven. In 1989, the International Cricket Conference changed its name to its current name, the International Cricket Council. South Africa was re-admitted as a Full Member of the ICC in 1991 after the end of Apartheid. In 1992, Zimbabwe was admitted, as the ninth Test-playing nation, and then in 2000 Bangladesh received Test status.

7. The above historical context seeks to highlight South Africa’s cardinal role in the history of the ICC and also the sacrifices made by the people of South Africa in order to defeat a system condemned by the international community as a crime against humanity. That South Africa ‘left’ the ICC in 1961 and was only re-admitted in 1992 should not be regarded as an interruption in membership, as this represents the struggle of the South African mass democratic movement in conjunction with the
solidarity of the international community to rid our country and indeed the world of a racist system of government. We trust that CSA has not and will not be adversely impacted as a result of an injustice against humanity that necessitated suspension of its membership.

GOVERNANCE OF THE ICC AND CSA’s POSITION

8. Although characterised by internal dynamics sharpened by competing interests amongst the more powerful Full Members, the ICC remains a democratic organisation in which all Full Members are entitled to attend meetings, to participate, to put their views forward, and most importantly to vote equally. There have been attempts to change and restructure the ICC, but these attempts have been characterised by the retention of the principles of democracy. These universally-cherished principles of democracy ensure that there is no domination by one Full Member over another, and most importantly, they ensure that the right to dignity is guaranteed, and indeed respected.

9. As a director of the ICC I am very mindful of my fiduciary duties and responsibilities to all the Members of the ICC. In this response I seek to align and balance as best as possible the interests of CSA with that of other ICC Members and the international cricket community.

10. It was his love for democracy that inspired our Late President, Nelson Mandela, who served 27 years of his precious life in jail on Robben Island. His incarceration resulted from his statement from the dock at the opening of his trial on charges of sabotage in the Supreme Court of South Africa, Pretoria, on 20 April 1964:

“…It is a struggle [for a non-racial democracy] of the African people, inspired by their own suffering and their own experience. It is a struggle for the right to live. During my lifetime I have dedicated myself to this struggle of the
African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die”.

11. Distinguished Members of the ICC, we plead for equality and democracy. The history of the establishment of the ICC and its transition from a small clique of Full Members (of which South Africa was one) to a broader, more-inclusive, membership which today extends across the globe, is at stake today.

12. If any restructuring of the ICC is indeed considered necessary, then such a process must be transparent and inclusive of all ICC Members. Many organisations go through a period of restructuring as and when such becomes necessary. We do not contest the fact as to whether there is a need or not for the ICC to review and restructure itself, however, the original proposal would have created a very different ICC from the one that has been a democratic global cricket governing body. CSA believes that all ICC Full Members are equal and must enjoy the same rights and responsibilities. CSA further wishes to state for the entire world to know that it will resist any attempts to create a different class of Full Members within the ICC. CSA will work towards an ICC that serves its Members fairly and accords same rights to the same class of Members.

13. Today, world cricket stands at a delicate juncture. As CSA, we have two stark choices: we can either staunchly oppose the reforms or we can agree the revised transitional arrangement proposed, which in our humble view might be characterised by domination, control, and a game ruled by commercial market forces that has no respect for democratic principles, and the dignity of sovereign states. It is incumbent on all members of the ICC to work towards an inclusive ICC that promotes and advances collective decision-making.
14. After much consternation and debate, we are willing to proceed with the transitional arrangement subject to certain modifications and/or improvements. And we are willing to proceed with the revamp plans despite obvious procedural flaws.

THE ICC REVAMP PRINCIPLES

15. The original ICC Board approved principles (see ICC media release issued on 28 January 2014):

1. There will be an opportunity for all Members to play all formats of cricket on merit, with participation based on meritocracy; no immunity to any country, and no change to membership status.

2. A Test Cricket Fund paid equally on an annual basis to all Full Members (except the Board of Control for Cricket in India, Cricket Australia and the England and Wales Cricket Board) will be introduced to encourage and support Test match cricket.

3. A larger percentage from the increasing Associate Members’ surplus will be distributed to the higher performing non-Full Members.

4. Mutually agreed bi-lateral FTP Agreements which will be legally binding and bankable and will run for the same period as the ICC commercial rights cycle (2015-2023).

5. Recognition of the need for strong leadership of the ICC, involving leading Members, which will involve BCCI taking a central leadership responsibility.

6. A need to recognise the varying contribution of Full Members to the value of ICC events through the payment of ‘contribution costs’.

7. The establishment of an Executive Committee (ExCo) and Financial & Commercial Affairs Committee (F&CA) to provide leadership at an operational level, with five members, including BCCI, CA and ECB representatives. Anybody
from within the Board can be elected to Chair the Board and anybody from within ExCo and F&CA can be elected to Chair those Committees. With the ICC undergoing a transitional period that includes a new governance structure and media rights cycle, this leadership will be provided for two years from June 2014 by: a BCCI representative to Chair the ICC Board, a CA representative to Chair the ExCo and an ECB representative to Chair the F&CA.

8. A new company will be incorporated to tender future commercial rights for ICC events. There will be three major ICC events in each four-year cycle, including the ICC Champions Trophy which will replace the ICC World Test Championship.

9. ICC will utilise a more efficient operating model for all ICC events, with a simplified accounting model across ICC income and expenditure to help better manage ICC administrative and event costs.

16. After careful consideration on 1 February 2014, the CSA Board position regarding the above principles are as follows:

1) Agree principle 1

2) Agree principle 2, although we would like to further understand the mechanics of the Test Fund. We believe that the details can be worked out later once the resolution has been adopted.

3) Without the benefit of having had an opportunity for full debate, we instinctively feel that the allocations might be narrow and may not encourage growth of the game through broader rather than narrow participation and funding plans. We thus would be willing to defer to and be guided by the Associate & Affiliate Member representatives on this principle;

4) We believe there is currently a binding FTP schedule in place and we support the need for this to be supplemented by bi-lateral FTP Agreements as is presently the case, and to extend the current schedule to coincide with the ICC rights cycle (2015-2023). Furthermore, we believe that there should be basic
principles regulating/governing bi-lateral arrangements and agreements with the ICC providing the necessary co-ordination which would be informed by the bilateral agreements in place. The complete deregulation of the current FTP structure is not supported as it would not be in the best interests of international cricket and therefore ICC Members.

5) Leadership in any organisation is essential and we support a democratic process whereby the BCCI accepts a leading and effective role in the leadership of the ICC.

6) Before CSA agrees to the proposed scorecard (and therefore differentiated funding), it requires a full and detailed understanding of the criteria/inputs and mechanism that would drive funding allocations. This will provide the basic transparency necessary for all Members to understand and be able to advance their position. That would be just and fair for all ICC Members. CSA vehemently opposes any criteria that would penalise South Africa for its interrupted membership of the ICC during the Apartheid era. This would serve only to discount the struggle for freedom led by none other than Nelson Mandela and it would in fact harm the majority of our cricketers (mostly black African) by prejudicing our transformation projects.

7) CSA believes that the role of EXCO is going to be very important within the ICC and therefore its composition should be increased from the proposed five to six members. Furthermore, CSA strongly believes that, apart from being a Founding Member of the ICC, it is also a major cricket nation and deserves status on the ICC EXCO and F&CA committees during this transitional period. Secondly, CSA believes that the transitional period should be 12 months as that would be sufficient to ensure the successful sale of ICC media rights.

Thirdly, CSA believes that before these committees can come into existence, the Terms of Reference must be approved as part of the revamp proposals and, importantly, these committees cannot be greater in its powers than the
ICC Board. In other words, like any and all Board committees, they must be accountable and report to the Board.

Fourthly, CSA does not support the ICC Chairman remaining as the Chairman of the Member Board. This is clearly not in the best interest of the global ICC family as it will lead to real perceptions of conflict of interest.

8) We agree the principles 8 and 9. We believe that the directors of ICC cannot abrogate their fiduciary responsibilities.

ADDITIONAL ISSUES FOR CONSIDERATION

17. We are still distressed by the lack of an ICC major Event being hosted in South Africa during the next ICC cycle (2016-2023). As a proud and vibrant cricket nation that had suffered enough due to Apartheid, we believe that it is patently unacceptable and unjustifiable for there to be no major ICC global Event allocated to South Africa. Accordingly, we would like to enter into immediate discussion with a view to securing a future ICC Event in South Africa during the next cycle and the ICC CWC 2027. There is no doubting the suitability of South Africa as a location to host major events.

18. CSA wishes for the current investigation into its CEO to be concluded as quickly as possible and is not willing for the case to be dropped. Needless to say, it is impacting on the efficient functioning of the organisation (and the CEO) and it is also incurring unnecessary costs. Accordingly, CSA would like the ICC to expedite the matter and, secondly, since the ICC (and BCCI) has elected neither to provide any evidence nor to be party to the investigation after having called for the investigation, CSA believes that it should not be burdened with costs it can ill afford to pay.
CONCLUSION

19. To put it mildly, the original Proposal was extremely disappointing and indeed hurtful when originating from three great cricketing nations, and three great democracies from which South Africa (and our Past President Nelson Mandela) learnt many wonderful lessons. The groundswell and global rejection of the proposals that followed cannot be ignored and we as the current guardians of the game will be judged by history.

20. We have always prided ourselves in the special relationship we have with the BCCI, the Indian government and the Indian people. We have learnt so much from English institutions like the Westminster system of government, the judiciary, and other many fine English traditions which our country has embraced over the years, notwithstanding its colonial past. Australia has made enormous strides in asserting its independence, and growing its economy to the extent that it has become a true global player. Our own Constitutional Court has drawn so much from the Australian jurisprudence, especially with regard to equality, freedom, and security of people.

21. Notwithstanding the procedural flaws and ensuring that this would not become precedent, CSA is committed to engage in discussions on the stance and posture that we have adopted on the various proposals. We hope that at the end of the day the process will lead to a more vibrant, credible, transparent, democratic ICC that champions good governance for the benefit of the game of cricket. We are willing to engage meaningfully to find consensus and we present our position as articulated in this paper.

22. Finally, once agreement is reached, we would require a binding Agreement to be signed by all the Full Members.

CHRIS NENZANI (President, CSA)
For and on behalf of all the stakeholders in CRICKET SOUTH AFRICA
1 February 2014