



March 15, 2023

World Rugby Executive Committee  
Sir Bill Beaumont  
Chairman  
World Rugby House  
8-10 Pembroke Street  
Lower Dublin, Ireland

To the Committee Members:

We are attorneys at the Louis D. Brandeis Center for Human Rights Under Law, a non-profit legal advocacy organization that works against anti-Semitic discrimination. We represent the Tel Aviv Heat in connection with the World Rugby Union's ("WRU") investigation into their discriminatory exclusion from the Mzansi Challenge in South Africa by the South African Rugby Union ("SARU").<sup>1</sup> Discriminating against competitors based on their nationality and country violates the WRU Bye-Laws.

The Mzansi Challenge begins in less than two weeks, on 24 March 2023. This is consequently a matter of the utmost urgency – the discrimination against the Heat will be irreversible thereafter. We thus respectfully request that the WRU Executive Board exercise its authority to take an emergency decision on this matter<sup>2</sup> and we urge you to promptly:

- (i) find that the Heat have been discriminated against by SARU's decision, in violation of the WRU Bye-Laws;
- (ii) direct SARU to immediately reinstate the Heat into the Mzansi Challenge; and
- (iii) impose any other sanctions the Executive Board deems appropriate under WRU Regulation 19.4.

We understand you have received communications from other stakeholders, including the Heat's previous counsel at Werksmans, and formal complaints

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<sup>1</sup> See <https://www.thesouthafrican.com/sport/rugby/world-rugby-to-investigate-sa-rugby-over-israeli-team-breaking-news-8-february-2023/>.

<sup>2</sup> World Rugby Union, Bye-Laws, Bye-Law 12.

from the Israel Rugby Union and from Ian Dunwoodie. We also understand that you have undertaken to respond to these complaints in due course following your review. We are concerned, however, that you have not yet interviewed anyone associated with the Heat or requested any evidence from the Heat. We stand ready to respond promptly to any inquiries about this matter and to provide evidence to facilitate your investigation, and we look forward to being of assistance.

In advance of your inquiries, we briefly summarize below why SARU's discriminatory exclusion of the Heat violates WRU Bye-laws and fundamental principles of international sports. Evidence indicates that the Heat were excluded as a team because they are based in Israel. The members of the team come from diverse backgrounds. They were excluded from the Mzansi Challenge, however, due to their association with Israel. As described below, SARU violated WRU Bye-Laws by discriminating against the Heat on the basis of nationality and country.

### **I. Discrimination based on nationality and/or country violates the WRU Bye-Laws.**

The World Rugby Union envisions rugby as “a global sport for all.”<sup>3</sup> Consistent with this vision, WRU's functions include “extending” the game to new markets.<sup>4</sup> To ensure that the game is “for all” and global politics does not prevent its extension, WRU's objectives include:

To prevent discrimination of any kind **against a country**, or against a private person or **groups of people including on account of** age, gender, marital status, maternity status, disability, **race (including colour, nationality, ethnic or national origin)**, religion or belief, sex or sexual orientation **or any other reason**.<sup>5</sup>

Member unions undertake to abide by WRU Bye-laws.<sup>6</sup> When joining WRU, a Member union must “Provide a declaration of opposition to any discrimination on the grounds of race, national or social origin, sex, politics, religion or creed”

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<sup>3</sup> World Rugby Union, About World Rugby, <https://www.world.rugby/organisation/about-us/overview>.

<sup>4</sup> World Rugby Union, Bye-laws, Bye-law 3(a).

<sup>5</sup> World Rugby Union, Bye-laws, Bye-law 3(f).

<sup>6</sup> World Rugby Union, Bye-laws, Bye-law 4(a).

before being accepted as an Associate Member,<sup>7</sup> and again before being accepted as a Full Member.<sup>8</sup>

Unions may be sanctioned for Misconduct, including:

acts or statements that are, or **conduct that is, discriminatory by reason of** religion, race, sex, sexual orientation, disability, colour or **national or ethnic origin**[.]<sup>9</sup>

Similarly, member unions are bound by the WRU Code of Conduct, which again prohibits discrimination, banning:

[...] anything which is likely to intimidate, offend, insult, humiliate or **discriminate against any other Person on the ground of their** religion, race, sex, sexual orientation, colour or **national or ethnic origin**.<sup>10</sup>

Finally, member unions may not take actions which “adversely affect[]” another WRU member union.<sup>11</sup> Excluding a team from another union from competition because of its nationality would have a significant negative impact on the union, and would consequently violate this rule.

In short, international sport is an inclusive, peacebuilding project: the International Olympic Committee’s mission is “to unite the entire world in peaceful competition.”<sup>12</sup> Rejecting competitors solely because of their nationality and country undermines this project.

The Heat embody this inclusive spirit. Many of the team’s players originally hail from places like Africa and Fiji. Today, they are a diverse club team based in Israel with supporters that “bridge multiple cultures, races, nationalities, and religions.”<sup>13</sup> They are extending rugby to a new area. And they are successful:

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<sup>7</sup> World Rugby Union, World Rugby Membership Pathway and Criteria, Art. 1.2.

<sup>8</sup> World Rugby Union, World Rugby Membership Pathway and Criteria, Art. 2.3.

<sup>9</sup> World Rugby Union, Regulations, Regulation 18.4(c) (emphasis added).

<sup>10</sup> WRU Code of Conduct, Article 1.12 (emphasis added).

<sup>11</sup> WRU Code of Conduct, Article 1.13.

<sup>12</sup> International Olympic Committee, Statement – War in Ukraine – One Year On, <https://olympics.com/ioc/news/statement-war-in-ukraine-one-year-on>.

<sup>13</sup> Tel Aviv Heat Introduces the Bridges Through Rugby Program, 19 February 2023, <https://www.telavivheat.com/post/tel-aviv-heat-introduces-the-bridges-through-rugby-program>.

just a year after their establishment, they qualified for the 2022 European Rugby Super Cup final.<sup>14</sup>

**II. Evidence indicates that the Heat were excluded from the Mzansi Challenge based on their nationality and association with one country – Israel.**

The process of SARU’s invitation – and then exclusion – of the Heat indicates that the Heat were excluded based on their Israeli nationality and connection to Israel, in violation of the Bye-laws.

On 2 February at 12:40 PM, SARU requested the Heat send their brand logo for Mzansi Challenge marketing.<sup>15</sup> On 3 February at 12:21 PM, a SARU representative contacted the Heat to confirm logistics for their games.<sup>16</sup> On 3 February at 3:35 PM, a SARU representative asked the Heat to “contact me urgently...”<sup>17</sup> After a phone call, on 3 February at 4:30 PM, SARU notified the Heat that “Further to our telephone conversation ... SA Rugby has withdrawn an invitation to the Tel Aviv Heat to play in the Mzansi Challenge, following representations from multiple stakeholders.”<sup>18</sup> In just three hours on February 3 (between 12:21 PM and 3:35 PM), SARU abruptly reversed course, stopped discussing logistics with the team, and instead suddenly excluded the Heat from the competition.

SARU claimed that the exclusion of the Heat was “not due to shortcomings from the Tel Aviv’s side”.<sup>19</sup> Instead, it provided two reasons for the exclusion: “the threat to the security of all people participating”, and a fear that disruption of the Challenge would threaten the principle “that rugby must always be ‘stronger together.’”<sup>20</sup> On information and belief, the decision to exclude the Heat – made within a very short period on 3 February – was not taken by SARU’s General Meeting, as the typical procedure for selecting or amending the teams scheduled to compete in the Mzansi Challenge would require.<sup>21</sup>

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<sup>14</sup> <https://www.telavivheat.com/post/the-super-cup-final-tel-aviv-heat-vs-black-lion-game-day-information>.

<sup>15</sup> [REDACTED]

<sup>16</sup> [REDACTED]

<sup>17</sup> [REDACTED]

<sup>18</sup> [REDACTED]

<sup>19</sup> [REDACTED]

<sup>20</sup> [REDACTED]

<sup>21</sup> See South African Rugby Union Constitution, Article 8.2.

Evidence indicates that this swift decision to exclude the Heat was made for discriminatory reasons. By way of background, this matter arises in the context of an international movement to “boycott, divest [from], and sanction” the state of Israel. As part of this “BDS” movement, its supporters seek to discriminate against and exclude Israeli individuals, companies, athletes, and teams, from otherwise universally open international forums like sporting competition. BDS has consequently been condemned and deemed anti-Semitic by governments including Austria<sup>22</sup>, Canada<sup>23</sup>, France<sup>24</sup>, Germany<sup>25</sup>, Spain<sup>26</sup>, the United Kingdom<sup>27</sup>, and the United States<sup>28</sup>, because it calls for discriminating against individuals solely because of their nationality in or connection to Israel.

Institutions affiliated with the BDS movement took credit for SARU’s decision. Among several examples:

- The South African BDS Coalition – which had called on SARU to rescind the Heat’s invitation earlier on 3 February<sup>29</sup> – posted on Twitter, “BDS works!”, above text referring to SARU’s discriminatory decision;<sup>30</sup>
- The Palestinian Campaign for the Academic and Cultural Boycott of Israel thanked South Africans “for standing up for Palestinian rights and taking swift action to compel SARU to reverse the misguided decision” to invite the Heat;<sup>31</sup>
- South African newspaper Al-Qalam titled its coverage of the Heat’s discriminatory exclusion, “Victory for SA BDS Coalition and Palestine Solidarity”;<sup>32</sup> and

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<sup>22</sup> <https://www.worldjewishcongress.org/en/news/austrian-parliament-unanimously-condemns-bds-movement-3-2-2020>.

<sup>23</sup> <https://www.haaretz.com/jewish/2016-02-23/ty-article/bipartisan-support-for-anti-bds-motion-in-canada/0000017f-db48-db22-a17f-fff948bb0000>.

<sup>24</sup> <https://www.jta.org/2015/10/23/global/frances-highest-court-confirms-bds-activists-discrimination-convictions>.

<sup>25</sup> <https://www.jpost.com/Israel-News/German-Bundestag-rules-BDS-is-antisemitic-589999>.

<sup>26</sup> <https://www.timesofisrael.com/in-landmark-ruling-top-spanish-court-says-bds-movement-infringes-on-basic-rights/>.

<sup>27</sup> <https://www.jpost.com/bds-threat/article-707088>.

<sup>28</sup> <https://2017-2021.state.gov/identifying-organizations-engaged-in-anti-semitic-bds-activities/index.html>.

<sup>29</sup> <https://twitter.com/sabdscoalition/status/1621491223402881027>.

<sup>30</sup> <https://twitter.com/sabdscoalition/status/1621880086814248963>.

<sup>31</sup> <https://bdsmovement.net/news/palestinians-welcome-south-african-rugby-union’s-decision-rescind-invitation-team-representing>.

<sup>32</sup> <https://alqalam.co.za/victory-for-sa-bds-coalition-and-palestine-solidarity/>.

- The South African National Union of Metalworkers declared, “The decision was reversed because of pressure, particularly from progressive organisations like the BDS Coalition who launched a public campaign rejecting” the Heat’s invitation.<sup>33</sup>

On information and belief, the Heat were never contacted or asked to make representations before they were excluded. Instead, the “representations from multiple stakeholders” SARU referred to were the same as the “pressure” and “swift action” that BDS advocates credited with prompting the Heat’s exclusion.

Neither of SARU’s attempted justifications undermines the inference of discrimination. Instead, on the available evidence these arguments appear to be mere pretexts. First, on information and belief, the alleged security threats were not conveyed to those who would have been most directly endangered: we are aware of no Tel Aviv Heat player or representative – including those who live in South Africa – who have been advised of any danger to them. The chronology is also suggestive here: at 12:21 on 3 February, SARU was moving forward with marketing the Heat, suggesting that it did not consider that it was unsafe to do so; just a few hours later, however, they claimed that security required rescinding the invitation.

Second, SARU’s reliance on their claim that rugby must be ‘stronger together’ appears to be coded language meaning ‘stronger without Israelis’. Of course, discriminating against some competitors on the basis of their country or nationality may make some remaining participants more comfortable, but the competitors will no longer be “together” in the sense of uniting “the entire world in peaceful competition” – as international sports aim to do. Instead, some will be excluded, solely because of their nationality, in violation of the Bye-laws.

### **III. SARU may not make unilateral exceptions to the nondiscrimination rules.**

We are aware of only three instances where WRU has excluded competitors based on their nationality: a ban on apartheid-era South Africa and bans on Russia and Belarus after the escalated invasion of Ukraine in 2022. As set forth below, even those exceptionally rare cases are significantly different than this one in both process and substance. We are aware of no cases where WRU has permitted member Unions like SARU to discriminate on their own initiative.

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<sup>33</sup> <https://www.polity.org.za/article/the-boycott-campaigns-against-apartheid-israel-must-be-intensified-2023-02-07>.

Procedurally, those situations are different from this one because WRU took global action.<sup>34</sup> Nothing in the Bye-laws gives national unions authorization to discriminate on their own initiative.

Those situations were also highly unusual. In 2022, WRU banned Russian and Belarussian teams. Russia and Belarus had, at the time, recently invaded the territory of another State which supports a WRU member union (Ukraine). The sanctions were imposed “in line with recommendations by the International Olympic Committee,”<sup>35</sup> which referred to its own sanctions on Russia and Belarus as “unprecedented”.<sup>36</sup> Indeed, we are aware of no example of WRU sanctioning teams from a particular member union that was *not* preceded by IOC sanctions on the State of that member union.

There is no IOC precedent to rely on in this case – far from it. Instead, in discussing its sanctions on Russia and Belarus, the IOC reaffirmed the principle of universal peaceful competition and cited peaceful competition between athletes from both sides of several international conflicts, including Israel and Palestine, as laudable examples of the Olympic spirit:

The most recent examples of such peaceful competition include athletes from South and North Korea, **from Israel and Palestine**, from Armenia and Azerbaijan and many others. During the Olympic Games, athletes from 206 different National Olympic Committees live together in peace in the Olympic Village. Peace-building efforts need dialogue. A competition with athletes who respect the Olympic Charter can serve as a catalyst for dialogue, which is always a first step to achieving peace.<sup>37</sup>

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<sup>34</sup> *E.g.* World Rugby Union, World Rugby Confirms Sporting Sanctions for Russia and Belarus, <https://www.world.rugby/news/693011/world-rugby-confirms-sporting-sanctions-for-russia> (“The World Rugby Executive Committee has today decided” to impose sanctions).

<sup>35</sup> World Rugby Union, World Rugby Confirms Sporting Sanctions for Russia and Belarus, <https://www.world.rugby/news/693011/world-rugby-confirms-sporting-sanctions-for-russia>.

<sup>36</sup> International Olympic Committee, Statement – War in Ukraine – One Year On, <https://olympics.com/ioc/news/statement-war-in-ukraine-one-year-on>.

<sup>37</sup> *Id.*

#### **IV. International sports have rejected discrimination against Israeli teams and athletes**

Following the nondiscrimination rule, international sporting events include athletes from all states on an equal footing under the rules of their game. Attempts by event organizers or national sporting organizations to deviate from this rule have been rejected. To take just a few examples, the World Paralympic Committee relocated its 2019 Swimming Championships out of Malaysia to the United Kingdom because Malaysia had not agreed to permit Israeli athletes to compete.<sup>38</sup> Judo events scheduled to be held in Tunisia and the United Arab Emirates have been cancelled because the host countries would not allow the Israeli flag to be raised.<sup>39</sup> The 2019 World Schools Chess Championship, scheduled to be held in Tunisia, was eventually held in Turkey instead after Tunisian authorities refused to grant a visa to an Israeli competitor.<sup>40</sup> And competitors who refuse to compete against Israelis when scheduled to do so are disqualified.<sup>41</sup>

To the extent that those “stakeholders” who pushed SARU to exclude the Heat rely on allegations of human rights violations by Israeli nationals other than the Heat or by the Israeli government to justify discriminating against the Heat, WRU’s practice rejects their approach. Indeed, while in a tiny number of cases WRU has imposed sanctions on national Unions, those are rare exceptions; competitors from almost all States compete, on an equal footing, consistent with principles of international sport. Deviating from this rule could seriously destabilize international rugby: the States of nationality of approximately 15% of World Rugby Union member unions have been the subject of recent investigations into alleged human rights violations, including Australia,<sup>42</sup>

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<sup>38</sup> <https://www.bbc.com/sport/disability-sport/47020257>.

<sup>39</sup> <https://www.jpost.com/israel-news/regev-gets-israeli-flag-less-tunis-abu-dhabi-judo-events-cancelled-563034>.

<sup>40</sup> <https://www.jpost.com/arab-israeli-conflict/tunisia-could-lose-chance-to-host-world-chess-meet-after-banning-israelis-563689>; <http://old.fide.com/component/content/article/1-fide-news/11553-turkey-welcomes-participants-of-world-schools-championships-2019.html>.

<sup>41</sup> Of course, the antidiscrimination principle protects athletes from all countries: in 2022 Wimbledon – one of Tennis’s Grand Slam events – was excluded from international tennis rankings because it had refused to permit Russian and Belarussian athletes to compete. *E.g.* <https://www.nytimes.com/2022/05/20/sports/tennis/wimbledon-russia-ukraine-atp.html>.

<sup>42</sup> <https://www.bbc.com/news/world-australia-54996581>.



Azerbaijan,<sup>43</sup> Burundi,<sup>44</sup> Colombia,<sup>45</sup> Cote d'Ivoire,<sup>46</sup> the Democratic Republic of Congo,<sup>47</sup> Iran,<sup>48</sup> Kenya,<sup>49</sup> Lebanon,<sup>50</sup> Mali,<sup>51</sup> Nigeria,<sup>52</sup> the Philippines,<sup>53</sup> Sri Lanka,<sup>54</sup> Syria,<sup>55</sup> Uganda,<sup>56</sup> the United States,<sup>57</sup> Venezuela,<sup>58</sup> and Yemen,<sup>59</sup> among others. Of course, allegations are not facts: while some of these allegations have been proven, some have not. Some are still being investigated. But none have justified discrimination against rugby teams or Unions simply because they were nationals of a State against which allegations had been made. If individual member Unions were permitted to pick and choose when to use such allegations as a basis to discriminate against other teams and take measures that “adversely affect”<sup>60</sup> other Unions, this would undermine the unifying, peacebuilding mission of international rugby and of international sports in general.

## V. Conclusion

As of this writing, the Mzansi Challenge is less than two weeks away. We respectfully call on WRU to promptly exercise its Emergency Decision power and correct the discrimination against the Heat by:

- (i) finding that SARU’s discriminatory decision violated the WRU Bye-Laws;
- (ii) directing SARU to apologize for its discriminatory act and restore the Heat to their original place in this year’s Mzansi Challenge; and

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<sup>43</sup> <https://www.icj-cij.org/sites/default/files/case-related/180/180-20230222-SUM-01-00-EN.pdf>.

<sup>44</sup> <https://www.icc-cpi.int/burundi>.

<sup>45</sup> <https://www.icc-cpi.int/colombia>.

<sup>46</sup> <https://www.icc-cpi.int/cdi>.

<sup>47</sup> <https://www.icc-cpi.int/drc>.

<sup>48</sup> <https://www.ohchr.org/en/hr-bodies/hrc/ffm-iran/index>.

<sup>49</sup> <https://www.icc-cpi.int/kenya>.

<sup>50</sup> <https://www.stl-tsl.org/en/about-the-stl>.

<sup>51</sup> <https://www.icc-cpi.int/mali>.

<sup>52</sup> <https://www.icc-cpi.int/nigeria>.

<sup>53</sup> <https://www.icc-cpi.int/philippines>.

<sup>54</sup> <https://www.ohchr.org/en/hr-bodies/hrc/sri-lanka-accountability/index>.

<sup>55</sup> <https://iiim.un.org>.

<sup>56</sup> <https://www.icc-cpi.int/uganda>.

<sup>57</sup> <https://www.icc-cpi.int/afghanistan>.

<sup>58</sup> <https://www.ohchr.org/en/hr-bodies/hrc/ffmv/index>.

<sup>59</sup> <https://www.ohchr.org/en/hr-bodies/hrc/yemen-gee/index>.

<sup>60</sup> See WRU Code of Conduct, Article 1.13.

- (iii) imposing any other sanctions it deems appropriate under Regulation 19.4.

In the event WRU is unable to fully address this violation by restoring the Heat to this year's Challenge, we ask that WRU properly include the victims here – the Heat – in its investigative process<sup>61</sup>; that it conclude that process by finding the Bye-Laws have been violated; that it direct SARU to apologize to the Heat and to offer them a place in the 2024 Mzansi Challenge; and that it impose any other sanctions it deems appropriate under Regulation 19.4.

Sincerely,



Kenneth L. Marcus  
*Founder & Chairman*



Alyza D. Lewin  
*President*



Arthur Traldi  
*Senior Counsel*

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<sup>61</sup> At a minimum, as the victim of discrimination who have raised the issue on multiple occasions with the WRU, the Heat should be considered a Party to the investigation whose representations must be obtained. *See* WRU Regulation 19.2.4. And they should be represented and heard in any hearing on the matter. *See* WRU Regulation 20.