

## WORLD RUGBY GOVERNANCE REVIEW 2020

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THE VEILOMANI REPORT: SUBMISSIONS OF PACIFIC RUGBY PLAYERS WELFARE

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## A. BACKGROUND

1. On 17 June 2020, World Rugby launched an independent-led review of its governance (the “**Review**”).<sup>1</sup> The Review is to be carried out by a working group comprising independent experts, players and representatives from emerging and established rugby nations (the “**Working Group**”) and to be chaired by Sir Hugh Robertson KCMG PC DL, Chairman of the British Olympic Association.<sup>2</sup>
2. This document comprises the submissions of Pacific Rugby Players Welfare (“**PRPW**”) to the Working Group. These submissions are made from a place of genuine concern for the governance of the sport of rugby union, and because PRPW considers its members to be particularly prejudiced by some of World Rugby’s existing practices. Yet, these submissions do not focus solely on matters of direct concern to PRPW members; they are made with the intention of comprehensively improving World Rugby’s governance, for the benefit of all of rugby’s stakeholders worldwide.
3. PRPW notes that World Rugby has identified a number of “key focus areas” for the Working Group.<sup>3</sup> However, in the spirit of rugby, the following submissions encourage the Working Group to use the full width of the field, and foresee a more expansive review that can purposefully address issues beyond those identified by World Rugby.
4. In 2005, the Council of Europe acknowledged that:

“the implementation of the principles of good governance in sport is a key to widening popularity of sport and strengthening the position of non-governmental sports organisations”<sup>4</sup>
5. It is now widely accepted that sports governing bodies should adhere to the highest standards of ethics and good governance, particularly given the threats that commercial growth may bring to sporting integrity. This adherence to ethics and good governance benefits not only sport’s participants, but governing bodies themselves.

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<sup>1</sup> ‘World Rugby launches governance review process’, World Rugby, 17 June 2020 (<https://bit.ly/3g4kp2o>).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> ‘Recommendation Rec(2005)8 of the Committee of Ministers to member states on the principles of good governance in sport’, Council of Europe, 20 April 2005 (<https://bit.ly/2YFGX3N>).

6. These ideas have been enshrined in various documents,<sup>5</sup> including the International Olympic Committee's (the "IOC"'s) 'Basic Universal Principles of Good Governance of the Olympic and Sports Movement' (the "IOC Principles")<sup>6</sup>. PRPW notes that World Rugby is bound by the IOC Principles, as an International Federation within the Olympic Movement, and that it is similarly bound by the Olympic Charter,<sup>7</sup> the Fundamental Principles of Olympism,<sup>8</sup> and the IOC Code of Ethics.<sup>9</sup> The latter states:

"The Olympic parties undertake to disseminate the culture of ethics and integrity within their respective areas of competence and to serve as role models."<sup>10</sup>

7. PRPW considers that World Rugby does not consistently meet the necessary high standards of good governance, that it is in breach of its commitments as a member of the Olympic Movement, and that it continues to act in breach of its own Bye-Laws.
8. When compared with other major international sports federations, World Rugby's governance is glaringly deficient. The following submissions will highlight these deficiencies and, where appropriate, will propose how they should be remedied.
9. Principally, PRPW is concerned by the need for equal treatment **for all**. PRPW considers it significant that World Rugby's core values – integrity, respect, solidarity, passion and discipline – do not embrace "Equality" or the related concept of "Fair Play".<sup>11</sup> The International Fair Play Committee, founded by UNESCO in 1963, and recognised by the IOC, champions Equality as an essential component of Fair Play:

"Equality – Competing on equal terms is essential in sport. Otherwise, performance cannot be measured properly."<sup>12</sup>

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<sup>5</sup> 'A Code for Sports Governance', Sport England and UK Sport (<https://bit.ly/38mUmkg>); 'The Principles of Good Governance for Sport and Recreation', Sport and Recreation Alliance (<https://bit.ly/2ZzgtjB>); 'Principles of good governance in sport', European Commission (<https://bit.ly/3iibiNo>).

<sup>6</sup> 'Basic Universal Principles of Good Governance of the Olympic and Sports Movement', the International Olympic Committee, February 2008 (<https://bit.ly/3g90TI8>).

<sup>7</sup> Olympic Charter, Rule 1.4.

<sup>8</sup> Olympic Charter, Rule 26.1; IOC Code of Ethics, Preamble.

<sup>9</sup> IOC Code of Ethics, Scope of application.

<sup>10</sup> IOC Code of Ethics, Preamble.

<sup>11</sup> 'Our Vision', World Rugby, 16 November 2014 (<https://bit.ly/2NH0gU2>).

<sup>12</sup> 'What is Fair Play?', International Fair Play Committee (<https://bit.ly/391iNUR>).

10. Indeed, the values of Equality and Fair Play are reflected in the Fundamental Principles of Olympism:
- “4. The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”<sup>13</sup>
11. They are also enshrined in Art. 1 of the IOC Code of Ethics, which requires:
- “1.1 Respect for the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play...
- 1.4 Respect for international conventions on protecting human rights insofar as they apply to the Olympic Games’ activities and which ensure in particular...
- rejection of discrimination of any kind on whatever grounds, be it race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status...”
12. World Rugby has made great strides in improving gender equality, but this is just one part of its missing commitment to Equality and Fair Play ***for all***. PRPW considers that World Rugby must make such a commitment to all Member Unions, no matter how big or small, old or new: this is the existential re-set that the Game so urgently needs.
13. In making these submissions, PRPW expands upon the concepts of Fair Play and Equality by referring to the analysis of “fairness” first proposed in 1965 by political philosopher, Professor Brian Barry. He identified two concepts – procedural fairness and background fairness:
- “Procedural fairness rules out one boxer having a piece of lead inside his gloves, but background fairness would also rule out any undue disparity in the weight of the boxers; similarly background fairness would rule out sailing boats or cars of different sizes being raced against one another unless suitably handicapped.”<sup>14</sup>
14. These submissions will tend to show that World Rugby’s governance does not and cannot produce procedural nor background fairness, by virtue of its own self-interest and inherent conflicts.

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<sup>13</sup> Fundamental Principles of Olympism, Principle 4.

<sup>14</sup> B. Barry, ‘Political Argument’, Routledge Revivals (2010), p.68.

15. PRPW hopes that the Review will be thorough and wide-ranging. A concise list of PRPW's principal requests can be found in Section N, below.
16. Any reference to the "**Regulation(s)**" and "**Bye-Law(s)**" is to the World Rugby Regulations and World Rugby Bye-Laws respectively, and the defined terms of the Regulations and Bye-Laws are adopted throughout.

## **B. THE FRANCIS KEAN AFFAIR**

17. PRPW notes that the Review follows the recent scandal surrounding Francis Kean, the former World Rugby Council (the "**Council**") Representative of Fiji. PRPW has been particularly concerned by this situation and by World Rugby's lack of meaningful response to it.
18. The Francis Kean affair can only be understood by reference to Kean's brother-in-law, Frank Bainimarama, who is married to Kean's sister. Bainimarama led a military coup in December 2006 and appointed himself Prime Minister in January 2007. He has led the country since, creating a new Constitution in 2013, giving himself, Kean and fellow coup-conspirators immunity from prosecution,<sup>15</sup> and winning elections in 2014 and 2018. Bainimarama is also president of the Fiji Rugby Union ("**FRU**"). He has been widely and consistently criticised by international human rights organisations.<sup>16</sup>
19. Kean was Commander of the Fiji Navy at the time of the 2006 coup, reporting directly to his brother-in-law, as the head of Fiji's military. Bainimarama has appointed Kean to a number of military and public offices, most recently that of the Commissioner of Corrections, a position he has held since 2016. Kean was also directly appointed by his brother-in-law as the chairman of the FRU in 2015, a position he has held ever since.

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<sup>15</sup> Fiji Constitution of 2013, Chapter 10 (<https://bit.ly/2OEDf4m>).

<sup>16</sup> See, for example 'Fiji: Paradise Lost, A Tale of Ongoing Human Rights Violations', Amnesty International, April – July 2009 (<https://bit.ly/2OA2CnR>); 'Fiji: Bainimarama must end climate of fear', Amnesty International, 6 August 2014 (<https://bit.ly/2CqMmmH>); 'Fiji: Drop politically-motivated sedition charges against The Fiji Times', Amnesty International, 27 March 2017 (<https://bit.ly/30n6wpP>); 'Fiji: End Rights Abuses', Human Rights Watch, 2 December 2011 (<https://bit.ly/2DXz3e7>); 'Fiji: Joint Letter to Commodore Bainimarama', Human Rights Watch, 2 December 2011 (<https://bit.ly/32vWrtj>); 'Fiji: Abuses Jeopardize Constitution Process', Human Rights Watch, 5 December 2012 (<https://bit.ly/2WwER4L>); 'Fiji UPR Submission', Human Rights Watch, March 2014 (<https://bit.ly/3eG2Gxg>).

20. On 14 April 2020, World Rugby announced that the FRU had seconded the Fédération Française de Rugby's (the "FFR"'s) nomination of Sir Bill Beaumont for a second term as World Rugby chairman. Separately, Francis Kean was nominated by the FRU and seconded by the FFR for one of seven positions on World Rugby's Executive Committee ("ExCo"), prior to the May 2020 elections.<sup>17</sup> It has also been widely reported that in the election itself, the FRU cast its single vote in favour of Beaumont.<sup>18</sup>
21. PRPW had first written to World Rugby about Francis Kean on 20 April 2020,<sup>19</sup> following a Sunday Times report on his nomination to ExCo that highlighted his previous manslaughter conviction and made allegations of his homophobic conduct and that he had instructed subordinates to commit assaults, in his role as Fiji's Commissioner of Corrections.<sup>20</sup>
22. In the letter and its supporting notes, addressed to the Council, PRPW shared further details of Kean's murder charge, noting the considerable reported evidence of judicial intimidation. This included an International Bar Association report that said the car belonging to Justice Gerald Winter, the judge trying Kean's case, had been tampered with by those loyal to Bainimarama and Kean to cause the vehicle to crash.<sup>21</sup>
23. The judge had ruled that Kean's "causation [of the death of John Whippy] and murderous intent are simply drawn upon these facts",<sup>22</sup> but state prosecutors subsequently allowed Kean to plead guilty to the lower charge of manslaughter. By this time, the state and its prosecutors were under the direct control of Bainimarama's military regime.
24. Kean served only three months of an 18-month sentence for manslaughter and, upon his release, was re-installed as Commander of Fiji's Navy, receiving full backpay for time spent in prison. This decision was widely criticised by many in Fiji's civic society. The Pacific Concerns Resource Centre, a non-governmental organisation, described it as:

"unethical, unjust and an extreme case of bad governance through nepotism and preferential treatment under the law."<sup>23</sup>

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<sup>17</sup> 'World Rugby confirms election nominations', World Rugby, 14 April 2020 (<https://bit.ly/3j0w2tz>).

<sup>18</sup> 'World Rugby chairman Bill Beaumont vows to deliver change after re-election', The Guardian, 2 May 2020 (<https://bit.ly/2CEq94k>).

<sup>19</sup> 'World Rugby Council: Open Letter', Pacific Rugby Players Welfare, 20 April 2020 (<https://bit.ly/2BHosCR>).

<sup>20</sup> 'Inquiry into Francis Kean, the convicted killer whose Fijian union is backing Bill Beaumont's World Rugby bid', The Times, 19 April 2020 (<https://bit.ly/3eJXWak>).

<sup>21</sup> 'Dire Straits: A report on the rule of law in Fiji', International Bar Association, March 2009, p.44 (<https://bit.ly/397bo6s>).

<sup>22</sup> State v Kean (18 October 2007).

<sup>23</sup> 'Widow Forgives Kean At Last', Fiji Sun, 19 January 2020 (<https://bit.ly/3900hwb>).

25. Award-winning human rights campaigner, Shamima Ali, of the Fiji Women’s Crisis Centre labelled Kean’s reappointment:

“a gross form of nepotism. This should never have happened. If it was someone other than Kean, who is Bainimarama’s brother-in-law, would they have been treated the same? I seriously doubt it.”<sup>24</sup>

26. PRPW’s first letter also noted the culture of violence that has developed under Kean’s watch as Fiji’s Commissioner of Corrections; the way in which Kean was appointed chairman of the Fiji Rugby Union by his brother-in-law, Fiji’s Prime Minister, after its “capture” by the state; and his bullying of Ms Julie Alexander, who ultimately took her own life in November 2015 less than a week after receiving a threatening letter from Kean about her plans to open a rugby academy.

27. On 21 April 2020, Francis Kean was stood down from the Council by the FRU, after consultation with World Rugby, and his candidature for ExCo was thus withdrawn.

28. Nonetheless, PRPW received no response from World Rugby to this first letter despite its proactive public position. On 20 April, it stated:

“World Rugby...takes the nature of these allegations extremely seriously... Rugby is a sport built on strong and inclusive values and World Rugby does not in any way condone abusive or discriminatory behaviour as enshrined within its bylaws.”<sup>25</sup>

29. Upon being re-elected as World Rugby chairman on 2 May, Sir Bill Beaumont was also at pains to communicate clearly to media via a Zoom press conference that:

“There is an investigation taking place [into Francis Kean]”<sup>26</sup>

30. On 6 May 2020, PRPW wrote to World Rugby for a second time, calling for “urgent enquiries on the status of the investigation” into Kean.<sup>27</sup>

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<sup>24</sup> ‘It’s Gross Nepotism: Ali’, Fiji Sun, 17 January 2009 (<https://bit.ly/2CzqKEG>).

<sup>25</sup> ‘World Rugby to investigate allegations of homophobia against Fiji chairman’, Irish Times, 20 April 2020 (<https://bit.ly/2B5MJ5l>).

<sup>26</sup> ‘Bill Beaumont confirms investigation underway into Fiji’s Francis Kean’, Irish Times, 3 May 2020 (<https://bit.ly/3flKeol>).

<sup>27</sup> ‘PRPW follow-up letter to World Rugby investigation into Fiji Rugby Chairman’, Pacific Rugby Players Welfare, 6 May 2020 (<https://bit.ly/2CQ5lBJ>).

31. This second letter noted that there were witnesses willing to attest to Kean’s abusive and homophobic conduct who had contacted PRPW directly, and PRPW offered to introduce these witnesses to World Rugby, as well as to share audio recordings that substantiated the original allegations and gave rise to further allegations. This letter also detailed the public positions taken by both Human Rights Watch and Amnesty International on Kean’s suitability to act as Commissioner of Corrections and chairman of the FRU,<sup>28</sup> in response to a detailed report by The Guardian on the allegations against Kean.<sup>29</sup>
32. PRPW received no response from World Rugby to this second letter.
33. On 1 June 2020, PRPW wrote a third letter to World Rugby. This followed an article in L’Equipe, which made clear that the French publication had spoken with one of the four prison officers who had claimed political asylum in Australia and whose allegations formed the basis of the Sunday Times and Guardian articles.<sup>30</sup> The L’Equipe article covered a number of new allegations, which PRPW anticipated that World Rugby would wish to investigate.
34. In particular, PRPW referred to this extract from the article:

“At the FRU, during the annual general meetings which [Kean] often organized on the naval base, a deliberate reminder of his military past, ‘[Kean] brings in soldiers to chase out those who ask troublesome questions or who are going to vote against him’, testified one of the four Fiji-based people who agreed to speak to us, all on condition of anonymity, for fear of reprisals. It is through these methods of intimidation that he directs and controls the FRU.”

35. Access to these military resources is possible because Kean retains his naval rank and his brother-in-law, Frank Bainimarama, president of the FRU, is the country’s Prime Minister.
36. PRPW further notes that L’Equipe alleged:

“Negotiations intended to ensure Fiji's vote for the Beaumont-Laporte ticket...sees the FFR having committed...to host a match against Fiji each year as well as national team and under-20 camps (at the Marcoussis National Centre of Rugby, with the French under-20s).”

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<sup>28</sup> ‘Rights groups call for Fiji to investigate alleged prison beatings and culture of intimidation’, The Guardian, 18 May 2020 (<https://bit.ly/3j5LDYL>).

<sup>29</sup> ‘Take him down’: ex-officers accuse Fiji’s prison commissioner of ordering staff to beat inmates’, The Guardian, 16 May 2020 (<https://bit.ly/30gwuem>).

<sup>30</sup> ‘World Rugby: Francis Kean, un ami embarrassant pour le ticket Beaumont-Laporte’, L’Equipe, 20 May 2020 (<https://bit.ly/2CA6ToI>).

37. This is a most serious allegation and merits more detailed examination below, in Section C.
38. Furthermore, in PRPW's own discussions with the prison officers, a number of additional, detailed allegations emerged which were also highlighted to World Rugby as being worthy of investigation, including:
- (i) The degrading and humiliating punishment runs meted out to teams that Kean is in control of, namely the Prisons/Warden teams that play in Fiji provincial club competitions, and previously the Navy and Fire teams when he was Naval Commander and chairman of the National Fire Authority respectively; and
  - (ii) the humiliating punishment run forced on the FRU Chief Executive Officer, John O'Connor, who, in 2017, was forced to run from Rugby House in Fiji to Kean's office at Corrections House, through a busy Suva street. Kean's former executive secretary alleges that he witnessed this run after the CEO displeased Kean.
39. PRPW received no response from World Rugby to this third letter.
40. On 3 June 2020, PRPW wrote a fourth letter to World Rugby.<sup>31</sup>
41. This fourth letter sought to draw World Rugby's attention to a radio interview given by Fiji's head coach from 2014 to 2020, John McKee. McKee told Radio Australia that Francis Kean had unduly interfered in World Rugby-funded programmes in Fiji and that the interference had the direct effect of denying young players the benefit of World Rugby development programmes, simply because they had refused to register and play for teams associated with Kean.
42. The purpose of this interference was to ensure players who were talent-spotted into the World Rugby development programmes were fast-tracked into joining the teams which Kean headed as Commissioner of Corrections. There are 13 correctional units in Fiji and many of them run at least one side in local club competitions. The teams are known as 'Prisons' or 'Wardens'. McKee said that he knew of young players who declined to join Wardens (and enrol as a prison officer) and were therefore removed from World Rugby-funded development programme as a consequence:

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<sup>31</sup> 'New: Open Letter to World Rugby', Pacific Rugby Players Welfare, 3 June 2020 (<https://bit.ly/3iaeQ4s>).

“There was certainly interference at the [U]20s level, ‘Drua’/NRC level...Because there is a lot of employment there through the Wardens, because they want their teams to play well they’d employ a lot of rugby players. And I know 18-year-olds who were offered to join the Wardens, didn’t want to, they never applied to join the Wardens until they get a letter to say report for your induction. There were a few players who said, ‘No, I don’t want to do that’ and they were certainly ostracised and pushed out of Academy programmes, pushed out of U20, pushed out of the ‘Drua’ so it affected their career and their progress.”<sup>32</sup>

43. McKee’s intervention is significant because much of his career was spent working in those same player pathway programmes. Prior to moving to Fiji, McKee worked at the Australian Rugby Union High Performance Unit, where his role was developing and delivering rugby programmes for 18 to 22-year-old players within the Australian Rugby Union’s National Academy Programme.
44. In November 2013 McKee was appointed as the General Manager for High Performance in Fiji by World Rugby itself and was then vetted and approved by World Rugby for his appointment as national team coach the following year. McKee does not have a high media profile, is a man of few words, and is clearly trusted by World Rugby. The PRPW letter of 3 June stressed that, given McKee’s self-evident credibility, his allegations should be taken most seriously.
45. The letter also noted that World Rugby had not yet appointed a disciplinary officer to deal with the allegations against Kean dating back to April and asked for action to be taken.
46. PRPW received no response from World Rugby to this fourth letter.
47. At the time of writing, no update has been given on the status of any investigation into Francis Kean.
48. The Francis Kean affair thus gives PRPW three distinct causes for concern:
  - (i) how it was possible for Francis Kean to be appointed to the Council;
  - (ii) the conduct of Francis Kean; and
  - (iii) World Rugby’s (lack of) investigative and disciplinary process.

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<sup>32</sup> ‘Pressure mounting on World Rugby to deliver findings of investigations into Fiji Rugby Union chair Francis Kean’, Pacific Beat, 3 June 2020 (<https://ab.co/2OtLa4s>).

*(i) Kean's Appointment to the Council and Nomination to ExCo*

49. That a convicted killer, let alone someone like Kean, who has been criticised by prominent human rights organisations,<sup>33</sup> could be appointed as a Representative to the Council is a damning indictment of World Rugby's governance. Its response to the outcry over Kean's presence on the Council was that:

"World Rugby does not make the decision as to who stands. It is a matter for the Union."<sup>34</sup>

50. For an international sports federation, PRPW considers such a laissez-faire approach towards integrity to be woefully insufficient. Indeed, the IOC Principles require the "highest level of...integrity and ethical standards".<sup>35</sup> The lack of any form of eligibility check for Council Representatives or ExCo members is a significant deficiency in this regard. The question of eligibility is addressed in greater detail below, at paragraphs 185 to 198.

51. Kean's nomination to ExCo was seconded by the FFR. World Rugby vice-chairman and FFR president Bernard Laporte's admission to L'Equipe of how little consideration he gave to nominating Kean shows the superficial standards of integrity and ethics tolerated by World Rugby. Laporte explained:

"Francis Kean? I did not know his reputation. I only met him two or three times and found him delightful, with his big smile..."<sup>36</sup>

*(ii) Francis Kean's Conduct*

52. Francis Kean's conduct, both historic and more recent, is entirely at odds with World Rugby's core values of "integrity, respect, solidarity...and discipline".<sup>37</sup> It is thus incredibly troubling to PRPW, and to anyone who loves the game, to see his involvement in the sport at the highest level both in Fiji and internationally.

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<sup>33</sup> For example, 'Beating Justice, How Fiji's Security Forces Get Away With Torture', Amnesty International, 2016 (<https://bit.ly/3ezQspV>).

<sup>34</sup> 'Fijian rugby boss and convicted killer forced to resign amid allegations of 'violent homophobia'', Pink News, 21 April 2020 (<https://bit.ly/3i8uHjV>).

<sup>35</sup> Principle 3, IOC Principles.

<sup>36</sup> 'World Rugby: Francis Kean, un ami embarrassant pour le ticket Beaumont-Laporte', L'Equipe, 20 May 2020 (<https://bit.ly/2CA6ToJ>).

<sup>37</sup> 'Our Vision', World Rugby, 16 November 2014 (<https://bit.ly/2NH0gU2>).

53. Human Rights Watch and Amnesty International have already publicly called for a full and independent investigation into multiple allegations against Kean in his role as Commissioner Corrections.<sup>38</sup> Elaine Pearson, Australia director at Human Rights Watch said:

“If Kean committed these crimes he should be held accountable, because those events described involve cruel and inhumane treatment”<sup>39</sup>

54. In addition to the allegations set out in PRPW’s four letters, discussed above, as Commissioner of Corrections, Francis Kean has also been directly implicated in the controversy around jailed Fiji 7s player Amenoni Nasilasila. In September 2019, Nasilasila was convicted of rape and given an eight-year jail sentence with a six-year no-parole period. Only five days after starting his jail term, Nasilasila was released to play for Kean’s Wardens team in a session with a national team preparing for the Oceania Rugby 7s. Oceania Rugby condemned the decision by Kean and his Corrections colleagues:

“In the strongest terms possible Oceania Rugby condemns violence against women and girls and reaffirm our long-term commitment to promoting improved gender equality in rugby... we are extremely disappointed that Nasilasila has been connected with unofficial scrimmage sessions, as we strongly advocate action to reject all forms of abuse and violence against women and girls across all our member unions.”<sup>40</sup>

55. Fiji Women’s Crisis Centre Co-ordinator, Shamima Ali, said:

“It is sending out a very bad and wrong message to other rapists who can be glorified in this manner. You can rape women and be convicted and a few days, you are in this glorified position, so therefore it is not a punishment.”<sup>41</sup>

56. In July 2020, Nasilasila was pictured training with the provincial union Namosi as part of preparations for the restart of the local provincial cup competition, which had been delayed by the Covid-19 pandemic. The Namosi union is closely linked to the Corrections Service, as Fiji’s largest prison is located in the province and is the area’s main source of employment. The chairman of the Namosi union is a former military officer who preceded Kean as Commissioner of Corrections.<sup>42</sup>

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<sup>38</sup> ‘Rights groups call for Fiji to investigate alleged prison beatings and culture of intimidation’, The Guardian, 18 May 2020 (<https://bit.ly/3j5LDYL>).

<sup>39</sup> ‘Rights groups urge Fiji to probe prison allegations’, Taipei Times, 19 May 2020 (<https://bit.ly/30j6Dm3>).

<sup>40</sup> ‘Oceania Rugby ‘Not Happy’, ‘Unaware’ Of Nasilasila Incident’, Fiji Sun, 31 October 2019 (<https://bit.ly/2OExNhS>).

<sup>41</sup> Ibid.

<sup>42</sup> ‘Namosi’, Fiji Rugby (<https://bit.ly/30mK5kK>).

57. Similarly, Kean has recruited former Fiji 7s player, Nacanieli Labalaba, into his Wardens team. Labalaba was convicted in October 2019 for his part in a six-man gang rape of a young woman while she slept. He was jailed for 11 years and nine-and-a-half months.<sup>43</sup> Within three months of starting his sentence, Labalaba was pictured playing for Kean’s Wardens 7s team in a local competition.<sup>44</sup>

58. Again, Shamima Ali said the Corrections Service and FRU were sending out the wrong message by giving special treatment to Labalaba and Nasilasila:

“What is it saying to people? It is saying, ‘You Rape and you Get the Golden Treatment’. We are saying, ‘It’s Okay’. But rape is a serious crime. It is a terrible crime committed on women’s bodies.”<sup>45</sup>

59. PRPW submits, without wishing to prejudice any World Rugby investigation, that Kean’s recent alleged conduct amounts to “Misconduct” under World Rugby Regulation 20, and that his conduct, both historically and recently, may make him an “Unsuitable Person” under World Rugby Regulation 6.4.

60. Under Regulation 6.4.1, World Rugby’s Anti-Corruption Officer may:

“make an application to a Judicial Officer to deem any person who is and/or is seeking to become a Connected Person to be an Unsuitable Person where the Anti-Corruption Officer has reasonable grounds to believe that the person may be and/or may have been involved in any Unsuitable Conduct.”

61. Francis Kean is a “Connected Person” by virtue of being an administrator within the FRU (Regulation 6.2).

62. Unsuitable Conduct is defined in Regulation 6.2 as “Corruption and/or conduct involving dishonesty and/or fraud”. It is assumed that “Corruption” is intended to have its ordinary meaning of dishonest or illegal behaviour by individuals in positions of power,<sup>46</sup> as it is not otherwise defined.

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<sup>43</sup> ‘Former Fiji 7s Rep Among Six Men Jailed For Rape’, Fiji Sun, 17 October 2019 (<https://bit.ly/30iDMhQ>).

<sup>44</sup> ‘Tabadamu 7s: Wardens Gold ousts Coastline Roos’, The Fiji Times, 10 January 2020 (<https://bit.ly/3fMFVZX>).

<sup>45</sup> ‘Fiji Women’s Crisis Centre calls for sports stars serving jail term to be treated as the other serving inmates’, Fiji Village, 12 July 2020 (<https://bit.ly/2OtSyNi>).

<sup>46</sup> ‘Definition of ‘corruption’’, Collins Dictionary (<https://bit.ly/38drTO0>).

63. In the explanatory notes to its letter dated 20 April,<sup>47</sup> PRPW explained how Kean’s early release from prison and his receipt of governmental backpay for his time in prison was due to the involvement of his brother-in-law, Fiji’s Prime Minister, Mr Bainimarama. It also detailed how his appointment to the position of FRU chairman came about as a result of the forced “state capture” of the FRU and further nepotism.
64. The PRPW letter of 1 June noted L’Equipe’s allegation that the FRU’s Council vote for the World Rugby chairman was secured by the offer of a Benefit, as defined in Regulation 6.2.
65. The PRPW letter dated 3 June 2020 additionally explained the allegations of his manipulation of World Rugby-funded programmes. Any of these events could be described as “Corruption”.
66. It is therefore arguable that Mr Kean is eligible to be declared an “Unsuitable Person” in the terms of Regulation 6, by virtue of his alleged wrongdoing, that would prevent him from being associated with the sport of rugby union.
67. In relation to the more recent allegations of violence, homophobia and the selection/release of jailed rapists, PRPW considers it likely that Mr Kean has committed an act of “Misconduct” and is thus liable to be subject to a disciplinary process under Regulation 20. Regulation 20.3 states that:

““Misconduct” shall mean any conduct, behaviour, statements and/or practices on or off the playing enclosure during or in connection with a Match or otherwise...that brings or has the potential to bring the Game and/or any of its constituent bodies, [or] World Rugby...into disrepute.”

68. More specifically, Regulation 20.4(c) states that “Misconduct” includes:

“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”

69. PRPW submits that the various allegations recently made against Mr Kean have already brought the Game, the FRU and World Rugby into disrepute. Further, the recordings obtained by both the Sunday Times and PRPW record Mr Kean making statements that were discriminatory by reason of sexual orientation.

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<sup>47</sup> ‘World Rugby Council: Open Letter’, Pacific Rugby Players Welfare, 20 April 2020 (<https://bit.ly/2BHosCR>).

70. PRPW thus submits that, under either Regulation 20.3 or 20.4(c), Mr Kean has likely committed an act of Misconduct.

*(iii) World Rugby's Investigation*

71. Having leapt swiftly at the opportunity to promise an investigation into the Kean allegations with less than 72 hours to go before the election for the World Rugby chairman, it is both incredibly disappointing and troubling that, since then, World Rugby appears to have made no progress with any such investigation, or disciplinary process. Indeed, it appears that there is no such investigation at all.

72. As Kean and the FRU were such prominent supporters of Sir Bill Beaumont in his chairman re-election bid, this is a matter which has the potential to leave, if it has not already left, a significant stain on the reputation of the Game, and the reputation of World Rugby. It is a serious issue of integrity and should be treated as such.

73. If an investigation has been started privately, it is disappointing that no public statement has been made to that effect, given the public interest in the matter. "Transparency" is another key principle of good governance.<sup>48</sup>

74. Moreover, if an investigation has been instigated, it is disappointing that World Rugby has made no attempt to contact PRPW, since it offered to aid the investigation with credible evidence of Kean's wrongdoing.

75. PRPW submits that a failure to act expeditiously in this matter amounts to a breach of Bye-Law 3. Bye-Law 3(f) states that one of the "objectives and functions of World Rugby" is:

"To prevent discrimination of any kind...against a private person or groups of people including on account of...sexual orientation..."

76. This amounts to a positive obligation to prevent discrimination. The allegations surrounding Francis Kean include allegations of the use of homophobic language, and homophobic abuse. Given its obligation in Bye-Law 3(f), this is a matter World Rugby should be actively pursuing.

77. That World Rugby has not done so amounts to a breach of the obligation in Bye-Law 3(f).

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<sup>48</sup> Principle 4, IOC Principles.

78. Under Regulation 20.15.1, World Rugby has the power to investigate acts of potential misconduct:

“Where World Rugby reasonably determines that circumstances exist or could arise where it is in the overall interests of the Game to intercede, World Rugby shall be entitled to appoint a designated disciplinary officer to undertake an investigation into incidents that constitute or may be capable of constituting Misconduct on the part of a Player, Person or other party.”  
(Emphasis Added)

79. Regulation 20.6.5 provides that World Rugby’s investigative power shall:

“apply equally to situations where no action or insufficient action has been taken by the Union, Association or Tournament Organiser”

80. Though this does not impose a duty to act, World Rugby is obliged to enforce the Regulations under Bye-Law 3(b). Given the strong allegations of misconduct and lack of integrity within the FRU, it is clearly “in the overall interests of the Game” for World Rugby to intercede. Thus, the power to investigate is engaged.

81. PRPW submits that the failure of World Rugby to exercise this power amounts to a failure to properly enforce the Regulations, as it is allowing (probable) misconduct of which it has been made aware to go unchecked, in breach of Bye-Law 3(b).

82. PRPW therefore submits that World Rugby’s governance of the Francis Kean affair has been wholly unsatisfactory. That Kean was able to be nominated to ExCo and that World Rugby has not made every effort to investigate the allegations strongly suggests that the “highest level of...integrity and ethical standards” have not been complied with, nor promoted. Indeed, PRPW considers World Rugby to have breached its own Bye-Laws in failing to adequately respond to the scandal.

83. PRPW considers this to be an example of poor governance by World Rugby and insists that lessons must be learned from it.

### C. THE 2020 WORLD RUGBY ELECTION

84. PRPW is deeply concerned by the allegations surrounding the World Rugby Chair/Vice-Chair election of May 2020.

85. As noted above, it has been alleged by L'Equipe that:

“Negotiations intended to ensure Fiji's vote for the Beaumont-Laporte ticket (when logic would suggest Fiji's vote went to their rival Agustin Pichot, the champion of smaller nations), sees the FFR having committed, according to our information, to host a match against Fiji each year as well as national team and under-20 camps (at the Marcoussis National Centre of Rugby, with the French under-20s).”<sup>49</sup>

86. PRPW submits that this alleged agreement may amount to bribery and that it suggests that the election was deliberately manipulated. Certainly, the FFR's offering satisfies the definition of “Benefit” in Regulation 6.2:

“Any direct and/or indirect monetary and/or non-monetary bribe(s), gain(s), benefit(s), gift(s) and/or advantage(s)...and/or sporting gain/advantage which brings or has the potential to bring the Game into disrepute.”

87. If true, this alleged ‘quid pro quo’ would undermine the impartiality of the election and would severely undermine public confidence in the governance of World Rugby. It thus has the potential to bring the Game into disrepute.

88. Indeed, it would also amount to “Misconduct” under Regulation 20.3.

89. Under Regulation 20.15.1, World Rugby has the power to investigate acts of potential misconduct, as set out at paragraph 78, above.

90. Given the gravity of the allegation and its potential to fundamentally undermine World Rugby's integrity, PRPW submits that World Rugby should appoint a disciplinary officer to investigate the allegation, as it would be in the “overall interests” of the Game to do so. This ought to be done as a matter of utmost priority.

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<sup>49</sup> ‘World Rugby: Francis Kean, un ami embarrassant pour le ticket Beaumont-Laporte’, L'Equipe, 20 May 2020 (<https://bit.ly/2CA6ToJ>).

#### D. WORLD RUGBY'S COMPLICITY IN THE POOR GOVERNANCE OF THE PACIFIC ISLAND UNIONS

91. PRPW submits that World Rugby has been complicit in the poor governance of the Pacific Island Unions. In doing so, it has breached its own Bye-Laws and has failed to meet the highest standards of integrity and ethical conduct, in breach of its Olympic commitments.
92. PRPW's has specific concerns in relation to:
- (i) the FRU;
  - (ii) the Samoa Rugby Union ("SRU"); and
  - (iii) the Tonga Rugby Union ("TRU").

##### *(i) Fiji Rugby Union*

93. In relation to the FRU, PRPW has two primary concerns. First, it is troubled by World Rugby's lack of action over, and its complicity in, the state capture of the FRU. Second, it is concerned by World Rugby's total failure to enforce Regulation 4 with regard to the academies operated in Fiji by French Clubs.
94. Firstly, Bye-Law 3(b) makes "enforcing the Bye-Laws [and] the Regulations" an objective and function of World Rugby. Hence, World Rugby has an obligation to enforce the Bye-Laws and Regulations.
95. Further, Bye-Laws 6(e) and 6(h) state that:

"(e) Member Unions must ensure that elections to their governing body(ies) take place pursuant to a free and independent democratic process...

(h) A Member Union may be suspended or expelled from World Rugby membership pursuant ...if state authorities interfere in its affairs in such a manner that:

(i) it may no longer be considered as fully responsible for the organisation of rugby related matters in its territory; or

(ii) in the opinion of Council or the Executive Committee it is no longer in a position to perform its constitutional and regulatory tasks in an appropriate manner."

96. There is strong evidence that the FRU is not compliant with either provision of Bye-Law 6. The supporting notes to the PRPW letter of 20 April 2020 explained:

“17. Bainimarama and Kean’s determination to vanquish the FRU and own the popularity of rugby in Fiji was ultimately realised in early 2011. Bainimarama forced the elected and constitutionally mandated board of directors to step down and [Keni] Dakuidreketi, the board-appointed CEO, to resign, as the price for the FRU receiving FJD3m in promised taxpayer funds for 2011 RWC preparations.

18. Since then Bainimarama has directly controlled all the affairs of the FRU. The first FRU chairman [2011-2013] was Bainimarama’s land force commander and direct subordinate, and the second chairman [2013-2015], who he appointed directly to the board and chairmanship [ie without election], was his permanent secretary Finance. Since 2015 Bainimarama has controlled the FRU through Kean who he also directly appointed to the board and chairmanship. The running of Fiji rugby has now become a distinctly family affair. The FRU chief executive is a close cousin of Bainimarama and Kean’s; and high-paying roles within the FRU have been found for Bainimarama’s son-in-law and nephew.”<sup>50</sup>

97. There thus appears to be no “free and independent democratic process” for electing FRU officials, contrary to Bye-Law 6(e), and significant interference by state authorities, arguably contrary to Bye-Law 6(h). Given its obligation to enforce the Bye-Laws,<sup>51</sup> World Rugby should be ensuring that the FRU is compliant and, if it is found not to be, should take enforcement action.

98. That World Rugby does not appear to have done so suggests that it is in breach of Bye-Law 3(b).

99. Furthermore, this degree of state interference is inconsistent with the Fundamental Principles of Olympism:

“5. Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall apply political neutrality...”

100. This is all the more concerning given Bainimarama’s record on human rights, as noted at paragraph 18.

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<sup>50</sup> ‘World Rugby Council: Open Letter’, Pacific Rugby Players Welfare, 20 April 2020 (<https://bit.ly/2BHosCR>).

<sup>51</sup> Bye-Law 3(b).

101. Worse still, World Rugby has tacitly, if not explicitly, accepted and facilitated the state of affairs in Fiji by brokering a compromise arrangement between the FRU and the Fijian government in 2011.<sup>52</sup> An examination of the FRU's audited accounts for 2011 and 2012 shows that the FJD3m was never received from the Fiji Government, as promised to the-then CEO of the International Rugby Board (now World Rugby). It is hard to draw any conclusion but that, for the promise of a few dollars – that were never paid out – World Rugby sold its soul and acted as enablers of Bainimarama and Kean's state capture of the FRU, in contravention of the Bye-Laws.

102. Its complicity was furthered by the acceptance of Kean onto the Council. Indeed, World Rugby has also continued to target the majority of its funding of the Pacific Islands region to Fiji.<sup>53</sup>

103. Such complicity arguably places World Rugby in breach of Art. 1.2 of the IOC Code of Ethics, requiring:

“Respect of the principle of the universality and political neutrality of the Olympic Movement”

104. World Rugby must already be aware of the issues surrounding the interference of state authorities in Fijian rugby, given the Fiji Government's decision to force World Rugby's broadcasting rights-holder in Fiji to share coverage with the country's state broadcaster, the Fiji Broadcasting Corporation, of the Gold Coast 7s in the 2014/2015 HSBC Sevens World Series.<sup>54</sup> This was achieved by the Government passing by decree the Television (Cross-Carriage of Designated Events) Decree 2014.<sup>55</sup>

105. World Rugby wrote to Fiji's Attorney-General (also the minister responsible for broadcasting) on 4 December 2014 explaining that the Government's decree and subsequent actions amounted to:

“contractual interference and we are within our rights (and indeed our obligation to the whole of the global rugby family and supporters) to withhold the provision of the Feed to the Series from Fiji TV pending satisfactory engagement and clarifications from the Fiji Government – none of which have been provided to date.”<sup>56</sup>

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<sup>52</sup> 'IRB broker new deal with Fiji rugby and their Government', Rugby World, 19 February 2011 (<https://bit.ly/2OQ5cGN>).

<sup>53</sup> 'Fiji pose World Cup threat but Pacific Islands need a much fairer deal', The Guardian, 13 September 2019 (<https://bit.ly/2OxmYym>).

<sup>54</sup> 'We did not give consent to share 7s TV feed – World Rugby', Fiji Village, 3 December 2014 (<https://bit.ly/399uqcs>).

<sup>55</sup> 'Government expands coverage of important televised events with new decree', The Fijian Government, 30 May 2014 (<https://bit.ly/32pbvc4>).

<sup>56</sup> 'The World Rugby letter that Aiyaz Khaiyum hid from the people of Fiji', Fiji Leaks, 4 January 2015 (<https://bit.ly/2Ck8lf3>).

106. As a result of the Fiji Government’s attempted intervention, coverage of the 2014 Dubai 7s was denied to all broadcasters in Fiji and was only available via World Rugby’s online stream. Broadcast coverage of the World Series resumed only once a more equitable deal had been negotiated by all parties.
107. Secondly, PRPW submits that World Rugby is in breach of Bye-Law 3(b) by failing to address the operation of rugby academies in Fiji by French clubs.
108. That such academies exist has been common knowledge for some time – no secret has been made of them.<sup>57</sup> Yet their existence is plainly in breach of Regulation 4.
109. Section 1, Part C of Regulation 4, entitled “Guidelines for unions on the development of young players”, states:
- “Rugby Bodies or Clubs may only operate or arrange to have operated Licensed Training Centres and/or conduct any other development, training or playing programme within the geographical boundaries of the Union to which the Rugby Body or Club is affiliated.”
110. The operation of and/or the arrangement of the operation of academies by French Clubs in Fiji breaches this provision.
111. Regulation 4 is flagrantly being ignored. Media coverage of French academies operating in Fiji is extensive both domestically and in major newspapers, rugby magazines and websites around the world. A Rugby World report in 2018 detailed the seven-year relationship between the provincial union Nadroga and TOP14 club, ASM Clermont. The article even quotes World Rugby’s General Manager High Performance, Peter Horne, who complained that:
- “the Nadroga arrangement undermines World Rugby’s investment and the Fiji Rugby Union’s academy structures”<sup>58</sup>
112. Yet, no action has been taken by Horne or by World Rugby, and no explanation has been offered as to why France, a Tier 1 Union, is being exempted from the Regulations.

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<sup>57</sup> ‘Rugby uncovered: ‘Despicable’ abuse of young Pacific talent is huge stain on game’, The Telegraph, 9 September 2015 (<https://bit.ly/3idEEMZ>); ‘Brive set up academy in Fiji’, Planet Rugby, 16 July 2014 (<https://bit.ly/38b6Efz>); ‘The opportunities and the obstacles for Pacific Islands rugby – a special report’, Rugby World, 3 September 2018 (<https://bit.ly/2BI9qms>); ‘Nadroga, Clermont Renew Deal’, Fiji Sun, 8 May 2018.

<sup>58</sup> ‘The opportunities and the obstacles for Pacific Islands rugby – a special report’, Rugby World, 3 September 2018 (<https://bit.ly/2BI9qms>).

113. In addition to breaching the Regulations, these academies pose a threat to the integrity of international rugby and to the welfare of young players. PRPW is particularly concerned by the latter.<sup>59</sup>
114. PRPW notes that World Rugby has done nothing to prevent these academies from operating and, thus, has failed to properly enforce Regulation 4.
115. PRPW submits that this is a breach of Bye-Law 3(b) and requests that World Rugby takes enforcement action against the Clubs in question.
116. PRPW also notes the potential conflict of interests for World Rugby's vice-chairman, Bernard Laporte, president of the Fédération Française de Rugby, on this matter.
117. By way of contrast, the FRU took steps to prevent the establishment of the International Rugby Academy of Fiji, a new rugby academy proposed by Fiji-born New Zealand citizen, Julie Alexander, in 2015. Alexander had previously helped create other initiatives, including a charitable foundation in honour of Fiji's 2012 Paralympic gold medal high jumper, Iliesa Delana.<sup>60</sup>
118. While the FRU had made no attempt to close the academies operated by French clubs in breach of Regulation 4 and World Rugby looked in the other direction, FRU chairman, Francis Kean, took decisive action against the academy proposed by Alexander. This gross hypocrisy culminated in a terse letter sent by Kean on 24 November 2015, copied to World Rugby and Oceania Rugby officials. The letter quoted Regulation 4, alleging that Alexander was being "misleading and potentially fraudulent" and demanded that she immediately cease her academy plans.
119. Alexander replied to Kean on 27 November 2015. She raised multiple allegations against him and the FRU, including that Kean was a murderer whose family connections had helped him escape justice. On Facebook that same day, after complaining that the Fiji Government was manipulating her internet connection speed, her final words were: "Am off to bed now, see you tomorrow, if I am not murdered in my sleep!"<sup>61</sup>
120. In the early hours of November 28 Alexander attempted suicide and died the next day.<sup>62</sup>

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<sup>59</sup> 'The rugby pros from the Pacific Islands who united to help vulnerable players', The Guardian, 11 October 2017 (<https://bit.ly/2BxQhOp>).

<sup>60</sup> 'International Rugby Academy of Fiji founder Julie Alexander found dead', Fiji Leaks, 29 November 2015 (<https://bit.ly/392AhQL>).

<sup>61</sup> Ibid.

<sup>62</sup> 'Fiji police classify mystery death as attempted suicide', Radio New Zealand, 30 November 2015 (<https://bit.ly/3eEUUUD>).

121. As PRPW noted in its first letter to World Rugby on 20 April 2020:

"A source close to the family has since informed me that her state of mind was affected deeply by Kean's stand-over tactics and reputation for violence ... [Kean's] time in office has become a byword for intimidation, vindictiveness, corruption and self-dealing, nepotism, and the threat and realisation of violence. This is all conducted in plain sight."

*(ii) Samoa Rugby Union*

122. PRPW's concerns in relation to the SRU are not dissimilar to its concerns over the FRU.

123. In 2004, the Samoan government forcibly assumed control of the SRU from Fay Richwhite – the Swiss-based New Zealand merchant bankers Sir Michael Fay and David Richwhite – who had successfully funded and guided the team through the professional era since 1995.<sup>63</sup>

124. The chairman of the SRU is Samoa's Prime Minister, Tuilaepa Lufesoliai Neioti Aiono Sailele Malielegao, who has led the Samoan government since 1998. This suggests a degree of state interference which is likely not compatible with Bye-Law 6(h), nor the Fundamental Principles of Olympism.

125. Indeed, former Samoan international players have criticised the SRU under Malielegao's leadership for "playing politics" and for "making decisions without any business acumen or professional rugby nous...because they are powerful politicians".<sup>64</sup>

126. Yet, Malielegao is a Representative on the Council. World Rugby thus accepts state interference in the SRU. PRPW submits that this amounts to a breach of Bye-Law 3(b) and Art. 1.2 of the IOC Code of Ethics.

127. There are also significant questions over the Malielegao's integrity, with allegations of corruption having been consistent throughout his time as SRU chairman.

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<sup>63</sup> 'Off-field battles have undermined proud Samoa's Rugby World Cup ambitions', ESPN, 9 October 2015 (<https://es.pn/2DQa8sl>).

<sup>64</sup> 'Samoa Rugby Union hates the players and the game', The Spinoff, 9 November 2017 (<https://bit.ly/3f3i0Fb>).

128. After being eliminated from the 2011 Rugby World Cup, Samoan international players accused the SRU of misusing funds<sup>65</sup> and alleged that team management had hoarded team kit and sold it for personal gain.<sup>66</sup> It was also suggested that it was not the first time this had happened.<sup>67</sup>
129. In 2014, Samoa's players threatened to strike, having seen evidence of corruption within the SRU.<sup>68</sup>
130. In 2017, Malielegao declared the SRU bankrupt and asked the Samoan public for donations. World Rugby swiftly refuted the bankruptcy claim.<sup>69</sup> Malielegao had made a gross misrepresentation and used it as the basis for his request for public money. Ultimately, he attempted to deceive the public.
131. In 2019, a Samoan Member of Parliament alleged that corruption was one of the biggest problem for Malielegao's government and, in particular, alleged a misuse of funds.<sup>70</sup>
132. Moreover, the LGBT research organisation, Human Dignity Trust, has highlighted the Samoan government's discriminatory practices towards homosexuals. Sexual activity between men is criminalised, same-sex marriage is not legally recognised and it has even banned films like 'Rocketman' and 'Milk', which involve gay role models. Many of the most strident interventions on these subjects have come from Malielegao himself, including his description of same-sex marriage as an abomination and a "Sodom and Gomorrah practice."<sup>71</sup>
133. PRPW notes that such beliefs are inconsistent with World Rugby's obligation to eliminate discrimination under Bye-Law 3(f). Indeed, Malielegao's actions and statements in this regard may also amount to Misconduct under Regulation 20.3 and/or Regulation 20.4(c). PRPW submits that World Rugby should appoint a disciplinary officer to investigate these concerns.
134. World Rugby's acceptance of Malielegao onto the Council, and its failure to take action to address the associated issues of integrity makes it complicit in the SRU's poor governance and, PRPW submits, places it in breach of the Bye-Laws.

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<sup>65</sup> 'Manu Samoa and the missing millions', 3 News, November 2011 (<https://bit.ly/2Wx2SbS>).

<sup>66</sup> 'Corruption claims rock Samoa', Stuff, 30 October 2011 (<https://bit.ly/2OASlrH>).

<sup>67</sup> 'Rugby World Cup: Fresh allegations against Samoa', New Zealand Herald, 28 October 2011 (<https://bit.ly/2WYkOCL>).

<sup>68</sup> 'The future of Pacific Islands rugby', The Rugby Journal, 29 August 2019 (<https://bit.ly/3fTwO9T>).

<sup>69</sup> 'Autumn Tests: Samoa rugby is bankrupt, says country's prime minister', BBC Sport, 8 November 2017 (<https://bbc.in/39aBhCn>). 'Autumn Test: Samoa rugby not bankrupt, says World Rugby', BBC Sport, 20 November 2017 (<https://bbc.in/3h6Rprc>).

<sup>70</sup> "'What corruption?'"', Samoa Observer, 23 January 2019 (<https://bit.ly/3jhh96k>).

<sup>71</sup> 'Samoa', Human Dignity Trust (<https://bit.ly/3fJMPiy>).

*(iii) Tonga Rugby Union*

135. Political interference is, again, a principal concern of PRPW in relation to the TRU.
136. Until his death in August 2019, Tonga's Prime Minister, 'Akilisi Pohiva, was also the president of the TRU. He had been elected to the role in 2017 at a Special General Meeting ordered by the Supreme Court of Tonga, after the TRU had attempted to vary its constitution unlawfully. He was elected with Fe'ao Vunipola as his vice-president, a high-profile member of Pohiva's political party (PTOA), who he promptly (re)appointed as interim CEO.<sup>72</sup> Vunipola had already been serving as the interim CEO since 2015, when he had been appointed on a one-month basis – despite a total lack of business and/or administrative experience.
137. Vunipola became the sole point of contact between the TRU and World Rugby and, despite an agreement to find a suitable CEO by November 2019, Vunipola continued in his role, with the backing of his country's Prime Minister.
138. After 'Akilisi Pohiva died, an Annual General Meeting was held in late 2019 to elect a new president. Siaso Pohiva, son of 'Akilisi and a politician in the PTOA party, won and is now TRU president.
139. However, the process is being challenged in court after Vunipola allegedly manipulated the election to procure Pohiva junior's victory. It has been alleged that he barred a large group of TRU members, including the national 15s coach, Toutai Kefu, and those with voting rights, from entering the AGM, with security guards on the door, to ensure that Siaso Pohiva would be successfully elected – in breach of the TRU Constitution.<sup>73</sup> PRPW submits that this is likely to have been politically motivated, given Vunipola and Pohiva's association with the PTOA party which was, until very recently, the country's governing party.
140. There is thus credible evidence to suggest that there has, historically, been significant interference in the TRU by state authorities and that the TRU's elections have not taken place via a free and independent democratic process. PRPW therefore submits that the TRU has breached Bye-Laws 6(e) and (h).
141. PRPW notes that World Rugby has not effectively enforced these Bye-Laws at any time over the last four years and, therefore, that World Rugby has breached its obligation under Bye-Law 3(b).

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<sup>72</sup> 'Pohiva elected Tonga Rugby Union president', Loop Pacific, 6 December 2017 (<https://bit.ly/3eb24iY>).

<sup>73</sup> 'Sport: Tonga Rugby Union member claims he was locked out of AGM', Radio New Zealand, 7 January 2020 (<https://bit.ly/3gy49Hi>).

142. PRPW submits that this places World Rugby in breach of Art. 1.2 of the IOC Code of Ethics and the Fundamental Principles of Olympism.
143. PRPW further submits that Vunipola's alleged conduct in this regard would amount to Misconduct under Regulation 20.3, and that World Rugby ought to exercise its power to intercede under Regulation 20.15.1, as it would be in the overall interests of the Game for it to do so.
144. Of further concern, the TRU did not hold an Annual General Meeting from 2016 until 2019 and no TRU accounts have been audited since December 2015. No board minutes have been made available since 2016 and it is unclear how many board meetings have taken place in the period since.
145. Bye-Law 6(f) states that:
- “...Member Unions or Member Associations that do not meet membership criteria and/or other conditions governing their membership of World Rugby may have their membership provisionally suspended or be reverted to associate membership status...”
146. This effectively places an obligation on all Member Unions to continually comply with the World Rugby Membership Criteria.
147. Those criteria require the minutes of the last two Annual General Meetings and the last two Financial Statements to be provided.<sup>74</sup> PRPW notes that the TRU are unable to comply with those criteria as they have not had Annual General Meetings, nor provided Financial Statements, over the past two years.
148. PRPW, again, notes that World Rugby has not effectively enforced Bye-Law 6(f) by allowing the lack of proper governance of the TRU to continue unchecked, potentially breaching Bye-Law 3(b).
149. From a less legal perspective, PRPW points out that Tonga has competed in all but one of the Rugby World Cup tournaments to date and has provided a huge number of players to the professional game worldwide, yet does not have a seat on the Council. PRPW accepts that this is because the TRU does not fulfil the requirements of Bye-Law 9.2 but is nonetheless incredibly disappointed that this is so, and that it has been allowed to happen. For a Union that has played such a significant role in the Game's past and present to be unable to meet basic governance standards is not just a failure of that Union, but of World Rugby itself.

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<sup>74</sup> World Rugby Membership Criteria 7.1 and 7.3.

150. Offering a Council seat as an incentive for good governance is a laudable approach to take but, by failing to hold the TRU to account and by failing to bring it up to standard, World Rugby is contributing to the consolidation of power among the Tier 1 Unions and is leaving Tonga behind.
151. PRPW does not ask that the FRU, SRU or TRU's membership of World Rugby is suspended or removed, but that World Rugby engages with them constructively to reform their governance, and that it implements higher governance standards of its own with which all Member Unions must comply.
152. That World Rugby has been complicit in the poor governance of the Pacific Island Unions is about more than merely breaching the Bye-Laws or its Olympic commitments. By allowing these Unions to be so poorly managed, World Rugby is prejudicing their ability to compete in the modern professional game – in the sporting and commercial sense. In this regard, World Rugby fails to ensure background fairness.
153. Poor governance is a bar to the development of the Pacific Island Unions as international rugby powers in the modern era. In the absence of integrity, other Unions and potential commercial partners will inevitably be sceptical about engaging with them in sporting and commercial ventures and, thus, they will continue to be left behind. As other Unions develop and benefit from an increasingly commercialised Game, the gap between the Pacific Island Unions and the rest will only grow, perpetuating the cycle of under-funding and sub-standard governance.
154. World Rugby has thus allowed the essential value of Fair Play to be eroded within international rugby by accepting the significant inequality in governance between Member Unions.
155. If these Unions were better governed, they would be able to generate more funds for themselves, ensuring that they could afford to properly implement modern governance structures and rely less on public funding, thus minimising the interference of state authorities and enhancing their integrity.
156. Whilst PRPW is conscious of the cultural differences of the Pacific Islands, it is also aware of the need for universal standards to be complied with for these Unions to retain a prominent place in modern day rugby union. PRPW considers that good governance would go a long way to breaking the cycle of negative outcomes and would create the opportunity for greater success on and off the field.
157. PRPW submits that a key mechanism for achieving such high standards is the introduction and enforcement of a new code of ethics – see Section I, below. It also submits that a fairer and more equitable programme of matches would significantly aid this objective.

## E. AN UNFAIR AND INEQUITABLE PROGRAMME OF MATCHES

158. Bye-Law 3(d) states that it is an objective and function of World Rugby:

“To regulate and co-ordinate arrangements to ensure that there is a fair and equitable programme of matches, tours and tournaments for senior National Representative Teams of all Member Unions.” (Emphasis Added)

159. World Rugby is thus under a duty to ensure that there is a “fair and equitable” programme of matches/tours for all Unions that are members of World Rugby.

160. Though efforts have been made to increase the number of fixtures played between Tier 1 and Tier 2 Unions,<sup>75</sup> PRPW submits that the programme of matches is still not “fair and equitable”. Though the San Francisco Agreement commits England and France to touring the Pacific Islands by 2032,<sup>76</sup> not a single international fixture was scheduled to be played in the Pacific Islands in 2020. Between 2015 and 2020, only four fixtures against Tier 1 opposition were hosted in the Pacific Islands, none of which involved Tonga. Indeed, during the scheduled July 2020 test window, the only fixture involving a Pacific Islands team was to be Australia vs Fiji in Townsville, Australia.

161. A fair and equitable programme of matches should afford Tier 2 Unions the opportunity to better themselves by playing better opposition, and to generate revenue by doing so. The existing calendar does not afford them this opportunity. PRPW thus submits that World Rugby should do more to ensure a “fair and equitable” programme of matches for Tier 2 Unions across all international windows.

162. Nonetheless, PRPW does recognise the challenges of hosting Tier 1 international fixtures in the Pacific Islands. Their geographic and socioeconomic positions make such fixtures difficult to stage in a commercially attractive way. PRPW hopes that more Tier 1 fixtures will be staged on the islands in the years to come but accepts that the majority of Tier 1 fixtures for the Pacific Island unions are likely to take place abroad, regardless of on-field performance.

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<sup>75</sup> The San Francisco Agreement guarantees a 39% increase in Tier 1 v Tier 2 fixtures - ‘World Rugby announces historic agreement on long-term calendar harmony’, World Rugby, 16 March 2017 (<https://bit.ly/3if0T52>).

<sup>76</sup> Ibid.

163. However, the problem that this creates is one of financial inequity. Under the World Rugby Tours Agreement, the host union for international matches is entitled to keep all match-day revenue.<sup>77</sup> Given that Tier 2 Unions and, particularly, the Pacific Island Unions, play the majority of their Tier 1 fixtures abroad, this disproportionately prejudices their ability to generate revenue from high-profile fixtures.
164. PRPW submits that this situation is *unfair* and *inequitable*.
165. PRPW recognises that Tier 2 Unions receive funding from World Rugby, but this funding only goes so far and does little to close the gap between Tier 1 and Tier 2 Unions. In any event, for several Tier 2 Unions, these sums ought to be seen as payment or a dividend for participating in the Rugby World Cup, rather than handouts.
166. Not only does this inability to generate revenue prejudice the on-field development of Tier 2 Unions, but it also prejudices off-field development and increases the risk of state interference in Union affairs. This has been seen consistently in the Pacific Islands, as highlighted extensively in Section D, above. Their reliance on public funding inevitably increases state involvement in the administration of the sport, which tends to undermine good governance. Poor governance and a lack of integrity then further prejudices these Unions' ability to develop commercially.
167. PRPW thus considers the financial inequalities in rugby, perpetuated by the unfair schedule of international matches, to be inextricably linked to many of the governance and integrity issues faced by certain Tier 2 Unions, particularly the Pacific Island Unions.
168. PRPW submits that World Rugby's scheduling of international matches creates both procedural and background unfairness, and that it undermines Fair Play by failing to ensure Equality.
169. PRPW therefore advocates for the introduction of a revenue-sharing model for international fixtures hosted by Tier 1 Unions, against Tier 2 Unions. PRPW has previously suggested that a 10% share for the Tier 2 Union would be appropriate. This could be achieved through an amendment to the World Rugby Tours Agreement. Such an amendment would go a long way to making World Rugby's programme of matches *fairer* and *more equitable*, and thus would go a long way to ensuring that World Rugby complies with the obligation in Bye-Law 3(d).
170. By contrast, PRPW strongly opposes the recent "Nations Championship" proposal.

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<sup>77</sup> 'Tours Agreement', World Rugby, 21 April 2016 (<https://bit.ly/31zdWly>).

171. The most recent proposal was for a tiered league system, with promotion and relegation between each tier.<sup>78</sup> The Six Nations and Rugby Championship Unions, plus Japan and Fiji (the next highest ranked nations) were to form the first tier, with the next tier being filled by the next 12-highest ranked nations. In each league, every nation would play each other nation once.
172. Though this proposal was formally abandoned by World Rugby in 2019,<sup>79</sup> World Rugby chairman, Bill Beaumont, recently expressed an intention to revive it.<sup>80</sup> PRPW opposes such a course of action.
173. The proposal claimed to increase the number of fixtures between Tier 1 and Tier 2 Unions, but this would only be the case for those two Tier 2 Unions in the top league each year. The others would play no fixtures against Tier 1 opposition. If the same team was consistently promoted then relegated in and out of the top tier, as is foreseeable, only three Tier 2 Unions would play any Tier 1 fixtures outside of World Cups. This would severely jeopardise the ability of Tier 2 Unions to better themselves on and off the field.
174. Although a revenue-sharing model between the tiers could be created to offset the financial inequity, PRPW considers that the proposal would not allow for a fair and equitable programme of matches for all Member Unions.
175. In any event, the 2019 proposal stalled largely because Tier 1 Unions did not want to accept the risk of relegation. Any amended proposal without promotion or relegation would have even more severe consequences for Tier 2 Unions and may even be challengeable under EU Competition law.
176. PRPW therefore submits that World Rugby should comprehensively reconsider its proposal for a “Nations Championship” before making any attempt to revive it, and that any such proposal, or any proposal for a reformed “global calendar”,<sup>81</sup> should provide for greater fairness and equity between Tier 1 and Tier 2 Unions.

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<sup>78</sup> ‘World Rugby outlines Nations Championship concept’, World Rugby, 6 March 2019 (<https://bit.ly/2BbVMlK>).

<sup>79</sup> ‘World Rugby discontinues Nations Championship plans’, World Rugby, 19 June 2019 (<https://bit.ly/3dlrDHU>).

<sup>80</sup> ‘Sir Bill Beaumont confident of revised Nations Championship and says coronavirus is a ‘reality check’’, BBC Sport, 18 April 2020 (<https://bbc.in/2AjnLPW>).

<sup>81</sup> ‘World Rugby welcomes commitment to further ‘global dialogue’’, World Rugby, 15 June 2020 (<https://bit.ly/3dMD5C6>).

## F. THE WORLD RUGBY COUNCIL

177. With regard to the Council, PRPW has three particular concerns:

- (i) the Council membership criteria;
- (ii) the lack of integrity checks for representatives; and
- (iii) the inequality of voting rights.

### *(i) Council Membership Criteria*

178. First, PRPW requests that World Rugby publish in full the criteria for “Eligibility for Consideration of Membership to Council”, referred to in Bye-Law 9.2(b). This is vital for transparency, an important principle of good governance.<sup>82</sup>

179. Second, PRPW submits that the requirements for membership in Bye-Law 9.2(c) be extended to explicitly include compliance with a new code of ethics (see Section H, below). This will incentivise good governance at all levels of the Game and will ensure that the Council achieves the highest level of ethical standards.

180. Third, PRPW draws the Working Group’s attention to Bye-Laws 6(e) and (h), cited in full at paragraph 95, above. These governance requirements apply to membership of World Rugby and also membership of the Council, by virtue of Bye-Law 9(c)(vii).

181. As noted in Section D, above, there is evidence to suggest that the FRU is not compliant with either requirement, owing to the way in which Francis Kean and others have been undemocratically appointed, and the involvement of Fiji’s Prime Minister Mr Bainimarama. The SRU, similarly, appears to suffer from state interference, in breach of Bye-Law 9(c).

182. Though PRPW is by no means advocating for the withdrawal of Council membership from the FRU or SRU, it does advocate for the enforcement of higher governance standards, for the good of the Game. As noted at paragraphs 152 to 155, such interference is linked to the weak commercial position of these Unions, which is perpetuated by an inequitable programme of matches.

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<sup>82</sup> Principle 2, IOC Principles.

183. Lastly, PRPW notes that one of the criteria for Council membership is compliance with World Rugby Membership Criteria.<sup>83</sup> These criteria include compliance with the requirements of the “Common Association Constitution”.<sup>84</sup> However, this document is unavailable on the World Rugby website.
184. PRPW requests that the Common Association Constitution be made publicly available in the interests of transparency and accessible development.

*(ii) Integrity Checks for Representatives*

185. As noted at paragraphs 49 and 50, above, Francis Kean’s appointment to the Council demonstrates World Rugby’s lack of control over the identity of Council Representatives. The appointment of unscrupulous individuals to the Council – the World Rugby legislature – tends to undermine World Rugby’s integrity and, certainly, does not reflect the highest level of ethical standards.
186. The importance of such high standards of integrity was noted by the Court of Arbitration for Sport in *Adamu v FIFA*.<sup>85</sup> At paragraph 129 of its decision, the panel held that a high-ranking sports official must:

“under any circumstance appear as completely honest and beyond any suspicion. In the absence of such clean and transparent appearance by top...officials, there would be serious doubts in the mind of the...stakeholders and of the public at large as to the rectitude and integrity of [sports] organizations as a whole. This public distrust would rapidly extend to the general perception of the authenticity of the sporting results and would destroy the essence of the sport.”<sup>86</sup>

187. When compared with other major international sports federations, it is clear that World Rugby’s governance integrity checks are totally deficient.<sup>87</sup> For example, the international federations of football, athletics and cricket, as well as the IOC, have extensive policies in place. World Rugby has nothing.
188. PRPW thus welcomes World Rugby’s intention to consider the “criteria for appointment of Council members and the fit and proper person test for elected members” as part of the Review.<sup>88</sup>

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<sup>83</sup> Bye-Law 9.2(c)(iii).

<sup>84</sup> Bye-Law 6(e).

<sup>85</sup> CAS 2011/A/2426 (<https://bit.ly/2C39c3y>).

<sup>86</sup> *Ibid.*, para 129.

<sup>87</sup> ‘Creating an Eligibility Test for the World Rugby Council’, Rugby and the Law, 27 April 2020 (<https://bit.ly/3ioJTtj>).

<sup>88</sup> ‘World Rugby launches governance review process’, World Rugby, 17 June 2020 (<https://bit.ly/2ZA4OAU>).

189. However, PRPW submits that World Rugby should go further and have the authority to reject the appointment of a Representative who does not pass an eligibility test. If World Rugby is to meet the highest level of integrity and ethical standards, as it is required to by the IOC, it must be able to effectively enforce those standards within every part of its organisation and not only on ExCo.
190. PRPW therefore advocates for the adoption of an eligibility test akin to that used by World Athletics. It ought to be applied at least to all General Assembly Delegates, Council Representatives, ExCo Members, the members of all Council Committees, the World Rugby judiciary, the board of Rugby World Cup Limited, the World Rugby CEO, Chief Financial Officer and Chief Commercial Officer.
191. Art. 65 of the World Athletics Constitution sets out the rules on the eligibility of World Athletics Officials,<sup>89</sup> which are particularly clear and comprehensive, incorporating both objective and subjective elements. Such an approach seems most appropriate, as it reflects that there are certain core values on which the organisation is not willing to compromise whilst recognising that there will always be some grey areas in which value judgments will be necessary.
192. At World Athletics, every applicant and existing official must be approved by the “Vetting Panel” to have satisfied an “Integrity Check” and “not be Ineligible”.<sup>90</sup> The Vetting Panel is an independent panel of three persons, at least one of whom must be a lawyer.
193. According to the World Athletics Vetting Rules,<sup>91</sup> an Integrity Check is an assessment by the Vetting Panel of all available “relevant information concerning the person”, including disclosures on a Vetting Disclosure Form or disclosures made by existing officials in compliance with their duties in the Integrity Code of Conduct. According to Vetting Rule 8.2, to satisfy an Integrity Check, the Vetting Panel must decide, on the balance of probabilities, that the person:

“8.2.1 is able to meet the high standards of conduct and integrity required of an Official or Specified Staff Member; and

8.2.2 is of good character and reputation; and

8.2.3 is physically and mentally fit to perform the position being sought or the position they hold; and

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<sup>89</sup> Available here: <https://bit.ly/3eWaRpX>.

<sup>90</sup> Art.65.2 World Athletics Constitution.

<sup>91</sup> Available here: <https://bit.ly/2YR9GT2>.

8.2.4 has fully disclosed all Significant Interests; and

8.2.5 is free of any actual Conflict of Interest”

194. As regards Rules 8.2.1 and 8.2.2, the Vetting Panel will, under Rule 8.3, take into account whether the person:

“8.3.1 is, or has been, the subject of an investigation or disciplinary action...resulting in adverse findings being made about the person’s credibility, integrity, honesty or reputation;  
or

8.3.2 has at any time not complied with the law; or

8.3.3 is or has been the subject of any public controversy, which has so undermined that person’s credibility, integrity, honesty or reputation or has brought the person into such disrepute, that their association, or continued association, with World Athletics has or is likely to adversely affect the reputation or interests of the sport of Athletics or World Athletics; or

8.3.4 is unwilling or unable to deal with any potential actual Conflict of Interest.”

195. This element of the process is somewhat subjective, as the Vetting Panel is entitled to find that an individual satisfied the Integrity Check even though one or more of the matters specified in Rule 8.3 exists.<sup>92</sup>

196. However, under Art.65.4 of the Constitution, individuals will be automatically ineligible for an official position in various circumstances, including where the individual is bankrupt, serving a suspension for breaches of the Integrity Code of Conduct, has committed an anti-doping rule violation (at any time) or has been legally disqualified from being a director of a company. Art.65.4(c) also provides that a person will be ineligible if:

“the person has been convicted by a Relevant Authority of any offence punishable by a term of imprisonment of two (2) or more years (whether or not a term of imprisonment is imposed) unless that person has obtained a pardon or has served the sentence imposed on them”

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<sup>92</sup> World Athletics Vetting Rule 8.4.

197. This suggests that convicted criminals will not automatically be ineligible if they have served their sentence, which is somewhat surprising; though, of course, the individual might still fail the Integrity Check on this basis. PRPW would recommend that World Rugby amends this element of the test to automatically disqualify any individual who has served any such sentence.

198. The procedures by which they are administered are clearly set out in the Vetting Rules, and decisions finding an individual ineligible can be appealed to the Court of Arbitration for Sport.<sup>93</sup> PRPW submits that World Rugby should materially adopt these procedures and thus advocates the introduction of World Rugby Vetting Rules and a World Rugby Vetting Panel.

*(iii) Voting Rights*

199. PRPW considers the distribution of voting rights on the Council to be unfair, inequitable and, potentially, unlawful.

200. Under Bye-Law 9.4, the Council voting distribution is as follows:

| <b>Unions</b>   | <b>Number of Votes</b> |
|---|------------------------|
| The Member Unions which have qualified for the two most recent Rugby World Cup Finals prior to the date of the vote (Bye-Law 9.4(a))                      | 1                      |
| The Six Nations & Rugby Championship Unions which have qualified for the past two Rugby World Cups (Bye-Law 9.4(b))                                       | 1                      |
| The Member Associations (Bye-Law 9.4(c))  | 2                      |
| The Unions on the Council which have qualified for the two most recent Rugby World Cup Finals and which meet certain commercial criteria (Bye-Law 9.4(d)) | 1                      |

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<sup>93</sup> World Athletics Vetting Rule 4.4.

201. In practical terms, this means that the Council voting distribution is as follows:

| Unions  | Number of Votes |
|---|-----------------|
| England, Scotland, Ireland, Wales, Australia, New Zealand, South Africa, France, Argentina and Italy                      | 3               |
| Asia Rugby, Rugby Africa, Rugby Europe, Oceania Rugby, Sudamericana Rugby (Rugby Americas South) and Rugby Americas North | 2               |
| Canada, Georgia, Fiji, Samoa, Romania, United States of America and Uruguay   | 1               |
| Japan   | 2               |

202. PRPW considers any voting system that gives more votes to some members than others to be inequitable and thus unacceptable. It is an inherently imbalanced system.

203. However, what makes the Council voting system particularly unfair is that the voting is weighted in favour of the Six Nations and Rugby Championship Unions, by giving them an additional vote under Bye-Law 9.4(b).<sup>94</sup> Given that the most significant decisions of the Council require a three-quarter majority,<sup>95</sup> it is effectively impossible for the Tier 2 Unions to table a motion and expect it to pass. The Six Nations and Rugby Championship Unions (the Tier 1 Unions) collectively hold 58.8% of the voting power and thus have the strongest voice.

204. Moreover, the election of the World Rugby Chair and Vice-Chair only requires a simple majority.<sup>96</sup> Given that the Tier 1 Unions hold over 50% of the voting power, they are able to control World Rugby's most senior elected offices.

205. It is possible to justify the second vote given to the Member Association on the grounds that they represent a wider body of stakeholders. Indeed, it may be justifiable to give a second vote to the more commercially powerful Unions, as it they who drive the Game financially – though this is not an equitable approach and is not supported by PRPW.

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<sup>94</sup> Bye-Law 9.4(b)(i) also requires that they have qualified for the two most recent Rugby World Cup Finals but, given that neither the Six Nations nor Rugby Championship Unions participate in the qualification process for the Rugby World Cup, this can be ignored.

<sup>95</sup> See, for example, Bye-Law 9.11.

<sup>96</sup> Bye-Law 9.8.1.

206. However, PRPW sees no justification for giving an additional vote to the Six Nations and Rugby Championship Unions per se. This seems only to be based on the fact that they include World Rugby's founding Unions – indeed, they are referred to as the “Foundation Unions” (plus Unión Argentina de Rugby and the Federazione Italiana Rugby) in Bye-Law 9.1(a).
207. This serves to ensure that those Unions retain a degree of control over World Rugby, meaning that the Council is neither equitable nor fair – the system is rigged in their favour, simply because they were there first. It might be argued that these Unions invested more in World Rugby in the beginning but, after 134 years, this argument has little, if any, credibility.
208. After all, “fostering, developing, [and] extending...the Game” is an objective of World Rugby.<sup>97</sup> It is not clear how this distribution of Council voting rights complies with that objective – it serves only to entrench the historical divide between rugby's ‘haves’ and ‘have nots’. PRPW considers that it stifles development by subjugating the interests of Tier 2 Unions to those of Tier 1.
209. Principle 2.5 of the IOC Principles requires that:
- “Democratic processes...should be governed by clear, transparent and fair rules”
210. PRPW submits that Council voting system – a democratic process – is unfair and thus in breach of this basic principle.
211. This unfairness can be clearly demonstrated by comparing the treatment of Italy, Fiji and Samoa. Italy has played in all nine Rugby World Cups, and not once qualified out of the pool stage. Nonetheless, Italy has three Council votes. On the other hand, Fiji and Samoa, which have both progressed out of pool stages three times, have only one vote each. Fiji is also the Olympic 7s gold medal champion and a two-time winner of the Rugby World Cup Sevens. Italy and Fiji joined the International Rugby Board in the same year (1987), and Samoa joined a year later. Fiji alone has 50% more registered rugby players than Italy, despite Italy having a population sixty times greater,<sup>98</sup> and despite Italy having enjoyed the political, economic and sporting benefits of Six Nations membership since 2000. Yet Italy, which has a five-year Six Nations losing streak, has three times the Council voting power of Fiji or Samoa.
212. Such a position is unfair, in the procedural and background sense, and is entirely at odds with the notions of Fair Play and Equality. It is entirely unsporting.

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<sup>97</sup> Bye-Law 3(a).

<sup>98</sup> ‘Player numbers’, World Rugby, 1 January 2017 (<https://bit.ly/2DW36mo>).

213. Moreover, the Council voting system arguably infringes EU Competition law. Art.101 of the Treaty on the Functioning of the European Union (TFEU) prohibits:

“all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market”

214. The applicability of Art.101 TFEU to such sporting contexts was confirmed by the Court of Justice of the European Union in *Meca-Medina*.<sup>99</sup>

215. Bye-Law 9 can be construed either as an agreement between undertakings (the Unions) or as a decision by an association of undertakings (World Rugby).

216. The distribution of voting rights under Bye-Law 9.4 may affect trade between Member States, as it impacts upon the decision-making functions of World Rugby which may impact upon the Unions of Member States, and thus their ability to trade within the international rugby market.

217. PRPW submits that Bye-Law 9.4 has as its object or effect the restriction or distortion of competition within the internal market.

218. By giving an additional vote to the Six Nations Unions (all of which are presently subject to EU Law), the other Unions of EU Member States on the Council (Romania and many of the Unions represented by Rugby Europe) are put at a competitive disadvantage. Their interests can never carry equal weight in the decision-making process of the Council (which includes electing ExCo which, in turn, makes further crucial decisions). Their ability to compete with the Six Nations Unions is inherently restricted, either by object or effect.

219. It is not clear that there is a “legitimate aim” to this voting distribution and, thus, PRPW submits that it cannot be justified as proportionate (*Meca-Medina*).

220. To remedy this unfair, inequitable and potentially unlawful situation, PRPW advocates for a ‘1 Member = 1 Vote’ rule. This is the model operated by major international sports federations including, for example, World Athletics, the ICC, the IOC, and FIBA.

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<sup>99</sup> Case C-519/04 P *Meca-Medina* [2006] ECR I-6991.

## G. THE WORLD RUGBY EXECUTIVE COMMITTEE

221. In relation to ExCo, PRPW has identified three specific issues that are worthy of attention, in addition to the eligibility points made at paragraph 190, above:

- (i) independence;
- (ii) conflicts of interest; and
- (iii) diversity.

### *(i) Independence*

222. PRPW recognises that there is a balance to be struck between expertise, independence and knowledge within the executive branch of any sports organisation.<sup>100</sup> It also recognises that at least 25% of ExCo members are independent of any Member Union or Association.

223. However, PRPW submits that more can be done to improve the independence of ExCo without unduly prejudicing its decision-making ability.

224. First, Bye-Law 10.1.1(d) states:

“No employee or contractor of a Member Union can be elected to the Executive Committee.”

225. This provision is clearly designed to ensure ExCo has a degree of independence from the Unions.

226. Yet, of the current ExCo members, Mark Alexander is the president of the South African Rugby Union, Gareth Davies is the chairman of the Welsh Rugby Union, John Jeffrey is the interim chairman of the Scottish Rugby Union and Bernard Laporte (Vice-Chairman) is the president of the Fédération Française de Rugby.

227. Each of these individuals is an “employee or contractor” of a Member Union.

228. Therefore, PRPW submits that current members of the ExCo have been elected in breach of Bye-Law 10.1.1(d).

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<sup>100</sup> UK Code Sports Governance, 1.8.

229. Furthermore, Bye-Law 10.3.1(c) states that:

“The members of the Executive Committee, including the Vice-Chair, elected from the Representatives by the Council shall only be entitled to remain members of the Executive Committee if they remain Representatives on the Council as appointed by their respective Member Union...”

230. Given that most, if not all, Representatives will be under some form of contract with their Member Union, this provision tends to conflict with Bye-Law 10.1.1(d).

231. Second, Bye-Law 9.8.2(d) states:

“The Vice-Chair role is not independent so the elected Vice-Chair shall be one of the Representatives of their Member Union or Member Association...”

232. PRPW submits that, given the seniority of the Vice-Chair role and, in particular, given that the Vice-Chair would assume the position of the (otherwise independent) Chair in the event that the Chair ceases office under Bye-Law 9.8.2(e), the Vice-Chair role should be independent.

233. PRPW therefore submits that Bye-Law 9.8.2(d) should be amended, and that the independence of the Vice-Chair should be guaranteed in the same way as the independence of the Chair.<sup>101</sup>

234. Third, Bye-Law 9.8.3 states:

“The Chief Executive Officer shall be appointed by the Executive Committee on such terms and conditions as the Executive Committee shall from time to time determine.”

235. Though, in practice, the role of Chief Executive Officer will necessarily be independent of any Member Union, PRPW submits that the criteria for the role be fixed and published.

236. PRPW further submits that these criteria ought to include a requirement of independence, given the significance of the role in World Rugby’s day to day activities. The same ought to be formally required of World Rugby’s Chief Commercial Officer, Chief Financial Officer and of the proposed Vetting Panel.

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<sup>101</sup> Bye-Law 9.8.2(a) and (b).

*(ii) Conflicts of Interest*

237. Closely linked to the issue of independence is that of conflicts of interest. Given the lack of independence of several ExCo members, there are clearly potential conflicts of interest within the executive branch of World Rugby. These individuals owe duties to both their Union and to World Rugby. In many situations, these interests will pull in opposite directions – they will be in conflict. Such conflicts are prejudicial to good decision-making.

238. Indeed, there are likely other potential conflicts of interest on ExCo. Khaled Babbou is the president of Rugby Africa, Bob Latham is involved with Rugby Americas North, John Jeffrey is the chairman of the Six Nations council, and Bart Campbell is the chairman of NRL team Melbourne Storm. Each of these individuals is conflicted to some extent. This is an inevitable consequence of Bye-Law 10.3.1(c).

239. Principle 2.8 of the IOC Principles on “Conflicts of interests” states:

“As a general principle, members of any decision-making body should be independent in their decisions. No-one with a personal or business interest in the issue under discussion should be involved in the decision.

Adequate procedures should be established in order to avoid any conflicts of interests.”

240. Owing to the above analysis, PRPW submits that World Rugby is not fully compliant with this principle.

241. Some conflicts of interest are clearly more tolerable than others. For example, it is desirable that typically under-represented rugby nations can have their voices heard via Babbou and Latham. By contrast, Jeffrey’s involvement with the Six Nations is liable to compromise World Rugby decision-making, given the conflicts between the powerful, historic tournament and World Rugby.<sup>102</sup>

242. Nonetheless, Bye-Law 10.1.2 does state:

“Members of the Executive Committee shall, for the avoidance of doubt, recuse themselves from any decision in which they have a conflict of interest.”

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<sup>102</sup> For example of actual conflicts: ‘Nations Championship: World Rugby abandons plans for new world league’, BBC Sport, 19 June 2019 (<https://bbc.in/2ZE79uK>); ‘RFU unwilling to move Six Nations to globally align rugby season’, 26 July 2016 (<https://bit.ly/3iC8rz6>).

243. This limits the ability of potential conflicts of interest to directly affect World Rugby decision-making, but the number of conflicts within the current ExCo means that, if the Bye-Laws are properly applied, many members would likely have to recuse themselves from many decisions. This, in itself, is liable to impact upon the quality of World Rugby decision-making.
244. PRPW therefore submits that World Rugby should do more to avoid actual or potential conflicts of interest on ExCo. This will partially be achieved by the reforms proposed in paragraphs 222 to 236 and 190 to 198 (independence and the vetting process), by introducing a formal disclosure process, and by ensuring the enforcement of Bye-Law 10.1.2. The formal disclosure process should include the disclosure of conflicting interests prior to the ExCo elections.
245. PRPW suggests the IOC's 'Rules Concerning Conflict of Interest Affecting the Behaviour of Olympic Parties' as a useful starting point, given World Rugby's Olympic status.
246. As with PRPW's concerns about independence, increased avoidance of conflicts of interest should not be confined to ExCo. Certainly, there is evidence of potential conflicts of interest within Council Committees.<sup>103</sup> This may best be administered by a code of ethics – see Section I, below – and ought also to apply to all those involved in World Rugby's finance department, the Audit & Risk Committee, the Regulations Committee, the board of Rugby World Cup Limited, the Judicial Panel, Appeals Panel, and the proposed Vetting Panel and Ethics Committee (see paragraphs 198 and 304 respectively) as the areas in which integrity must most be prioritised.

*(iii) Diversity*

247. PRPW notes that there are more men with the name "Brett" on ExCo than there are women, or people from a Black and minority ethnic (BAME) background.
248. This suggests that there is more to be done to ensure that World Rugby's governance structures reflect the diversity of those who play the Game, and society.
249. In light of the recent Black Lives Matter movement, PRPW calls on World Rugby to consider whether it is doing enough to eliminate racial discrimination, both overt and covert, within its organisation and the Game as a whole, as is its duty under Bye-Law 3(f).

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<sup>103</sup> See, for example, the members of the Regulations Committee and the Audit & Risk Committee.

250. PRPW welcomes World Rugby’s commitment to reviewing its practices in this regard.<sup>104</sup>
251. PRPW also notes the governance reforms and resources introduced by World Rugby in 2017 to promote gender equity and representation within the organisation.<sup>105</sup> It is hoped that a similar approach will be adopted in relation to racial inequity. Perhaps diversity targets similar to that of aiming for one-third of Council representatives to be women could be extended to ExCo.

## H. THE RUGBY WORLD CUP

252. The Rugby World Cup is World Rugby’s premier tournament and ranks as the world’s third largest sporting event. It is the Game’s showpiece event. Rugby World Cup 2019 broke records in relation to fan engagement<sup>106</sup> and was the most economically successful Rugby World Cup ever.<sup>107</sup>
253. Given its sporting and commercial significance, the good governance of the Rugby World Cup is of utmost importance and ought to be a priority of World Rugby. PRPW requests that the governance of the tournament is included within the scope of the Review.
254. PRPW notes that Rugby World Cup Limited (“**RWCL**”), a wholly owned subsidiary of World Rugby, is the ultimate controlling and organising body of the Rugby World Cup. Given the powerful position it holds in relation to rugby’s largest tournament, it, too, must be specifically included within the scope of the Review.
255. Many of the concerns outlined above apply with equal force to the governance of the Rugby World Cup. However, PRPW makes three specific points in relation to:
- (i) the transparency of RWCL;
  - (ii) conflicts of interest within RWCL; and
  - (iii) match scheduling.

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<sup>104</sup> ‘Rugby unified in solidarity against racism’, World Rugby, 12 June 2016 (<https://bit.ly/3dMCPD8>).

<sup>105</sup> ‘Beaumont hails historic governance reform to further gender balance in rugby’, World Rugby, 23 November 2017 (<https://bit.ly/3i9VWdQ>).

<sup>106</sup> ‘Game-Changing Rugby World Cup 2019 is a Record-Breaker’, Rugby World Cup, 3 November 2019 (<https://bit.ly/31YYHc6>).

<sup>107</sup> ‘Report confirms record economic impact of Rugby World Cup 2019’, Kyodo News, 24 June 2020 (<https://bit.ly/2VRgwX2>).

*(i) Transparency of RWCL*

256. In spite of its dominant position, RWCL largely operates out of public view. An up-to-date list of its board of directors is not readily available online.<sup>108</sup> RWCL's constitution or equivalent rules do not appear to be available either.
257. PRPW submits that this raises significant questions over the integrity of the tournament, and thus World Rugby. If World Rugby is to meet the highest standards of ethics and integrity, PRPW submits that there ought to be greater transparency over its subsidiary and the Rugby World Cup's presiding body.
258. RWCL is responsible for decisions which may significantly impact upon the tournament's sporting integrity, upon participating Unions and upon all wider stakeholders. The decision on the cancellation of fixtures during Rugby World Cup 2019 as a result of Typhoon Hagibis is but one example. Match scheduling is another.
259. If RWCL operates out of public view, and there is no awareness of who comprises RWCL, accountability is greatly hampered.
260. PRPW thus requests that World Rugby acts to make RWCL more transparent. Publishing details about RWCL's board of directors and its constitution would, it submits, be a good place to start.

*(ii) Conflicts of Interest within RWCL*

261. Related to the question of transparency is that of conflicts of interest, and ethical standards more generally. PRPW submits that the proposed eligibility checks (discussed at paragraphs 190 to 198) and the proposed provisions on conflicts of interests (discussed at paragraphs 237 to 246) be extended to apply to the board of RWCL.
262. As the organising body of World Rugby's showpiece tournament, and as a subsidiary of World Rugby, PRPW considers it vital that the high standards of good governance expected of World Rugby are extended to RWCL.

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<sup>108</sup> A 2018 press release is the closest thing to a published list of directors (<https://bit.ly/3isYO5U>).

263. In particular, PRPW is concerned about potential and actual conflicts of interest and the way in which they may undermine integrity.
264. In a 2018 press release, it was announced that then-CEO of the Rugby Football Union, Steve Brown, and then-CEO of the New Zealand Rugby Union, Steve Tew, were to join the RWCL board.<sup>109</sup> There were clear potential conflicts of interest arising from their appointment. PRPW does not *necessarily* suggest that these individuals should not have been appointed, but that there needs to be a mechanism in place to limit the effect of these potential conflicts.
265. More worryingly was the report of an actual conflict of interest in 2015 in relation to the scheduling of Pool A fixtures. The 2015 tournament was hosted in England, but three Pool A matches were played in Cardiff. Pool A consisted of England, Wales, Australia, Fiji and Uruguay. Fiji and Uruguay both played their matches against Wales at the Millennium Stadium in Cardiff – Wales’ home stadium. They also played hosts England at their home grounds. Australia, by contrast, played Wales at Twickenham, thus avoiding the prospect of playing two matches at two of their opponents’ home grounds.
266. When organisers shared their proposed original schedule with RWCL, Australia were to play Wales in Cardiff. According to a report by The Times,<sup>110</sup> RWCL board member and then-Rugby Australia CEO, John O’Neill, was able to directly intervene in the scheduling process, forcing the Wales v Australia fixture to be moved from Cardiff to Twickenham – in Australia’s best interests.
267. O’Neill was quoted by Rugby World as saying that all teams at the Rugby World Cup submitted to playing the host nation in the host nation’s stadium of choice because:

“the only team with home-ground advantage is the hosts. After that, every other team has to be on a level playing field in terms of facilities, training and rest etc.”<sup>111</sup>

268. O’Neill’s statement is self-evidently correct but the fact that he only acted to remedy the situation his own Union faced, and not that faced by Fiji and Uruguay, highlights an actual conflict of interest. It also underscores a worrying lack of independent decision-making and a lack of representation of Tier 2 interests.

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<sup>109</sup> Ibid.

<sup>110</sup> ‘Fiji denied telling voice in Group of Death’, The Times, 13 August 2015 (<https://bit.ly/2NQyEf2>).

<sup>111</sup> ‘Rugby Statistics: How fair is the 2015 Rugby World Cup Schedule?’, Rugby World, 2 September 2015 (<https://bit.ly/3j8fzn2>).

269. That a Tier 1 Union like Australia was willing and able to act in concert with RWCL, out of self-interest, produced a Rugby World Cup outcome that manifestly fails Professor Barry's test of procedural and background fairness. Australia's path to the quarterfinals was improved by playing their fixture against Wales at a neutral venue, but their chances were further enhanced by allowing RWCL to handicap their pool rivals, Fiji and Uruguay, by scheduling their matches against Wales in Cardiff.
270. Fiji and Uruguay remain the only Unions in Rugby World Cup history to have played two 'host' nations in front of two 'home' crowds in a single tournament. It comes as no surprise to PRPW that these records were set by two Tier 2 Unions, neither of which were, at that time, represented on the Council.
271. PRPW thus questions the integrity of the RWCL board, its commitment to the sporting values of Equality and Fair Play, and the standards of governance it is held to.
272. PRPW thus requests that RWCL is included in the scope of the Review and is subject to PRPW's proposed governance reforms, including the proposed code of ethics (see Section I, below) and vetting procedures. It also submits that the RWCL board should be made more independent, going forward.

*(iii) Match Scheduling*

273. Thirdly, PRPW submits that the scheduling of pool matches at the Rugby World Cup is unfair and inequitable for Tier 2 Unions.
274. Historically, Tier 2 Unions have been disadvantaged by short turnarounds between their fixtures, particularly their fixtures against dominant Tier 1 Unions.<sup>112</sup>
275. An analysis conducted by Rugby World in 2015 showed that the number of days that teams had to complete their four pool matches in the four Rugby World Cups from 2003 to 2015 varied between a minimum of 15 and maximum of 23 days in 2003, 17 and 24 days in 2007 and 2011, and 18 and 23 in 2015. In each of those tournaments, only two Tier 2 Unions – Uruguay in 2003 and Japan in 2015 – enjoyed the maximum number of days to complete their pool matches.

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<sup>112</sup> 'Why Rugby World Cup fixtures are not fair game on the minnows', Bleacher Report, 30 June 2015 (<https://bit.ly/3gAbyFO>); 'Is the Rugby World Cup group play unfair?', International Journal of Sport Finance Blog, 15 September 2011 (<https://bit.ly/2VTH9ui>); 'World Cup schedule is unfair on Tier 2 nations', The Times, 24 September 2015 (<https://bit.ly/2AFSyqi>); 'The controversial Rugby World Cup schedule and the truth about the number of rest days each team gets between matches', Wales Online, 26 September 2019 (<https://bit.ly/2Z5XOwH>).

276. By contrast, New Zealand and Australia in 2003, Argentina and France in 2007, New Zealand in 2011 and France, Ireland, Italy and England in 2015 – all Tier One Unions – all enjoyed the maximum number of days between their first and final pool matches. The analysis is similar if one looks at the second and even third longest turnarounds in each of those Rugby World Cups. This highlights the disparity of treatment of Tier 2 Unions across those tournaments.

277. Indeed, the unfairness of this scheduling was explicitly acknowledged in 2003 by then-IRB chairman, Syd Millar, responding to the question of whether the 2003 Rugby World Cup schedule was unfair:

"Yes (it's unfair), but that's the way it is...We try to give as much rest as possible and try to look at the travelling arrangements and so on but there's also another factor – that we have to generate money for rugby and of course TV requires top matches at certain times and we have to be aware of that."<sup>113</sup>

278. Similarly, John O'Neill, a then-director of RWCL, stated in 2013 that:

"The message is that 2011 was the last time we could tolerate tier two nations having to face an unfair schedule."<sup>114</sup> (Emphasis Added)

279. In 2013, World Rugby CEO, Brett Gosper, promised:

"We think in the next [2015] World Cup schedule that will be announced very soon there is a very strong fairness in terms of the times of rest periods. It will be the same for all teams. Completely equal...There's a very strong fairness in terms of the times of rest periods. So, it'll be the same for all teams, far more equal. Completely equal versus the last World Cup."<sup>115</sup>

280. Yet, in 2015, Canada, Tonga, Namibia, Romania and Fiji – all Tier 2 Unions – were the only sides that had to cope with two breaks of only three or four days and, of the 11 sides that benefited from at least two rest periods of six days or more, seven were Tier 1 Unions. The problem of short turnarounds before fixtures against Tier 1 Unions also persisted, and was felt particularly by Fiji, Uruguay, Japan, Tonga, Namibia, Canada and Romania.<sup>116</sup>

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<sup>113</sup> 'Cup schedule was unfair, IRB boss admits', ABC, 3 November 2003 (<https://ab.co/2OxgWh2>).

<sup>114</sup> 'Rugby Statistics: How fair is the 2015 Rugby World Cup Schedule?', Rugby World, 2 September 2015 (<https://bit.ly/3j8fzn2>).

<sup>115</sup> 'Rugby World Cup draws to be fairer to smaller nations', The Scotsman, 23 April 2013 (<https://bit.ly/3eDBRK5>).

<sup>116</sup> 'Rugby Statistics: How fair is the 2015 Rugby World Cup Schedule?', Rugby World, 2 September 2015 (<https://bit.ly/3j8fzn2>).

281. Brett Gosper’s statement was patently untrue – there was no such equality, or fairness.
282. In the five Rugby World Cups from 2003 to 2019, each of which has involved ten Tier 2 Unions and ten Tier 1 Unions, on only 17 occasions has a Tier 2 Union had 20 or more days to complete their pool stage fixtures. Tier 1 Unions have had that privilege 44 times. Tier 1 Unions have thus had 20 or more days to complete their fixtures 88% of the time. For Tier 2 Unions, that figure is 34%.
283. Figure 1, below, illustrates the disparity.

| Team         | 2019 | Team         | 2015 | Team         | 2011 | Team         | 2007 | Team         | 2003 |
|--------------|------|--------------|------|--------------|------|--------------|------|--------------|------|
| Japan        | 24   | France       | 23   | New Zealand  | 24   | Argentina    | 24   | Australia    | 23   |
| Tonga        | 22   | Ireland      | 23   | Argentina    | 23   | France       | 24   | Uruguay      | 23   |
| New Zealand  | 22   | Italy        | 23   | Tonga        | 23   | USA          | 23   | New Zealand  | 23   |
| Namibia      | 22   | England      | 23   | France       | 22   | Ireland      | 22   | Ireland      | 22   |
| Scotland     | 22   | Japan        | 23   | Ireland      | 22   | Italy        | 22   | Fiji         | 22   |
| France       | 22   | Argentina    | 22   | Italy        | 22   | New Zealand  | 22   | Scotland     | 22   |
| Ireland      | 21   | USA          | 22   | England      | 22   | Australia    | 22   | England      | 22   |
| Italy        | 21   | Wales        | 21   | Wales        | 22   | South Africa | 22   | Wales        | 22   |
| England      | 21   | Tonga        | 21   | Scotland     | 22   | England      | 21   | France       | 21   |
| Wales        | 21   | Samoa        | 21   | Australia    | 21   | Wales        | 21   | South Africa | 21   |
| Australia    | 21   | Uruguay      | 21   | Fiji         | 21   | Scotland     | 21   | Romania      | 20   |
| Argentina    | 20   | New Zealand  | 20   | South Africa | 20   | Canada       | 21   | Italy        | 18   |
| Russia       | 20   | South Africa | 19   | Georgia      | 19   | Georgia      | 20   | Canada       | 18   |
| Samoa        | 19   | Fiji         | 19   | Canada       | 19   | Japan        | 18   | Namibia      | 17   |
| Fiji         | 19   | Georgia      | 19   | Romania      | 19   | Fiji         | 18   | Argentina    | 17   |
| Georgia      | 19   | Romania      | 19   | Japan        | 18   | Samoa        | 18   | USA          | 17   |
| Uruguay      | 19   | Australia    | 18   | USA          | 17   | Romania      | 18   | Japan        | 17   |
| USA          | 18   | Scotland     | 18   | Samoa        | 17   | Namibia      | 18   | Samoa        | 17   |
| South Africa | 18   | Canada       | 18   | Namibia      | 17   | Tonga        | 17   | Georgia      | 17   |
| Canada       | 18   | Namibia      | 18   | Russia       | 17   | Portugal     | 17   | Tonga        | 15   |

Figure 1, Number days to complete pool matches the Rugby World Cup, Source: Russ Petty

284. The 2019 tournament saw little improvement in the scheduling of fixtures. Though there may have been fewer very short turnarounds before fixtures against Tier 1 Unions, there were more short turnarounds for Tier 2 Unions before their most winnable matches, hindering their chances of progressing in the tournament or automatically qualifying for the next edition of the tournament. For example, Fiji’s tournament was effectively over after losing to Uruguay, having had just three days’ rest after playing Australia – one of which was spent relocating from Sapporo to Kamaishi – while Canada never had more than five days’ rest between fixtures.
285. Moreover, the short turnarounds given to Tier 1 Unions almost exclusively fell between two fixtures against Tier 2 Unions, with the exception of Argentina’s three days’ rest after playing England. As Figure 1 shows, Tier 2 Unions still had disproportionately fewer rest days in 2019.
286. Therefore, PRPW submits that the pool stage match scheduling process remains unfair and inequitable.

287. The Unions that have the least political representation, the least commercial support and, consequentially, the squads with the least depth of talent have been prejudiced consistently by tournament organisers. This is an extraordinary state of affairs for any sport: the weakest are handicapped against the strongest. Not only is there is a lack of procedural fairness by virtue of the Tier 2 Unions' lack of representation in the decision-making process, but there is also a total dearth of background fairness. This is entirely at odds with the values of Equality and Fair Play, and is, certainly, inequitable.
288. PRPW's concerns in this regard are furthered by the inevitable impact of such scheduling on player welfare. Short turnarounds of fewer than five days have been condemned by leading rugby medic, Dr James Robson,<sup>117</sup> but these have a disproportionate impact on Tier 2 Unions, as they have less depth of talent in their squads.
289. PRPW notes that, at the 2019 Rugby World Cup, Japan – a Tier 2 Union – reached the quarter-final stage for the first time. Whilst PRPW does not suggest it was the only reason for their success, the fact that Japan had at least seven days' rest between each of its pool stage matches is telling.
290. In addition, it is clear that the schedule is not created randomly, nor blindly. The pool match schedule is created to suit TV broadcasters, with the biggest matches taking place in 'prime' slots around the weekend. Invariably, these involve the Tier 1 Unions. The other Unions are then fitted around them.
291. A truly fair scheduling process would not bow to the demands of broadcasters but would be generated blindly. That a third party can influence the schedule of a major tournament poses a threat to sporting integrity and is inconsistent with Fair Play. Invariably, it is the Tier 2 Unions who lose out. Given their lack of representation on the RWCL board, this is not surprising. Greater representation and/or independence would help remedy this inequality.
292. PRPW considers that World Rugby's obligation to ensure a fair and equitable programme of international matches in Bye-Law 3(d) extends to the Rugby World Cup. The current scheduling process, PRPW submits, is unfair and inequitable, and thus in breach of this provision.
293. Aside from randomising the scheduling process, the fairness of the pool match schedule would be improved by creating a 4-team pool format, perhaps by expanding the number of participating teams to 24. This would allow for greater rest breaks between matches and a fairer schedule for all teams.

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<sup>117</sup> 'Players Feeling the Pain From Shorter Breaks', The New York Times, 27 September 2011 (<https://nyti.ms/3jeznFn>).

294. PRPW requests that the Rugby World Cup scheduling process is reviewed and that its independence is reinforced. It hopes that the improvements seen in 2019 continue, but that World Rugby considers all options for creating a fairer and more equitable schedule from 2023 onwards.

## **I. A WORLD RUGBY CODE OF ETHICS**

295. Many of the issues identified in the foregoing submissions could be addressed, at least partially, by the introduction of a World Rugby Code of Ethics. PRPW considers that the Review provides the perfect opportunity for World Rugby to introduce such a code and thus requests it to do so.

296. More importantly, PRPW notes the “Scope of application” of the IOC Code of Ethics, which states:

“...the International Federations...undertake to adopt, for their internal activities, a code of ethics based on the principles and rules of the IOC Code of Ethics, or in a written declaration to adopt the IOC Code of Ethics.”

297. As an International Federation recognised by the IOC, World Rugby is bound by this undertaking. It is thus obliged to have a code of ethics in line with the IOC Code of Ethics.

298. PRPW notes that World Rugby does not have a code of ethics, and that its Code of Conduct fails to fully implement the principles of the IOC Code of Ethics. World Rugby is, therefore, in breach of its obligation to the IOC.

299. Nevertheless, it would be remiss not to mention the fact that, to date, rugby has had a far better record as regards corruption than some other high-profile sports and that, perhaps, World Rugby has not felt the need to implement such policies.

300. However, to take such an approach is to be reactive rather than proactive and is incredibly short-sighted. It also ignores the fact that there are parts of the rugby-playing world in which the integrity of off-field matters is far from guaranteed. Corruption in the Pacific Islands is a real problem for rugby, as highlighted in Section D, above. It is a bar to their development as international rugby powers. The introduction and enforcement of a code of ethics would be a strong step towards protecting the place of these Unions in the modern era.

301. As regards the precise content of a World Rugby Code of Ethics, the IOC Code of Ethics ought to be taken as the starting point but PRPW also submits that the ICC Code of Ethics<sup>118</sup> and World Athletics Integrity Code of Conduct<sup>119</sup> may provide useful guidance.

302. PRPW considers that the following should be areas of particular focus for a World Rugby Code of Ethics:

- (i) political neutrality;
- (ii) independence and conflicts of interest;
- (iii) fair and democratic processes;
- (iv) principles of good governance;
- (v) a commitment to fair play;
- (vi) bribery and the receipt of gifts;
- (vii) misappropriation and misuse of funds;
- (viii) match-related integrity and relationships with betting organisations;
- (ix) abuse of position;
- (x) equality;
- (xi) the protection of human rights insofar as they relate to rugby;
- (xii) respect for human dignity and physical/mental integrity;
- (xiii) good faith in commercial dealings;
- (xiv) confidentiality;
- (xv) disclosure, reporting and co-operation obligations;
- (xvi) whistle-blowing; and
- (xvii) the protection of World Rugby's reputation.

303. Overall, a World Rugby Code of Ethics should be used to promote the highest standards of integrity and ethics at all levels of the Game. Sanctions must also be available for violations of the code, which would be imposed by the World Rugby judiciary in accordance with Regulation 18.

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<sup>118</sup> Available here: <https://bit.ly/3eTvl2N>.

<sup>119</sup> Available here: <https://bit.ly/3dYdTzn>.

304. The creation of a code of ethics will likely require the creation of an “Ethics Committee”, to police the application of the code. This Committee could recommend the taking of enforcement action and provide information to the Disciplinary Officer to enable them to initiate disciplinary proceedings.
305. The code should apply to all Unions, Associations, Rugby Bodies, Clubs and Persons. It should also require all Unions to adopt an equivalent code of ethics to be applied and enforced within its own jurisdiction, in accordance with Regulation 2. Failure to do so would itself amount to a violation.
306. World Rugby should be able to intervene in the event that a Union does not take enforcement action within a reasonable period of time or takes insufficiently strong action. It should also be able to appeal any disciplinary proceedings in accordance with PRPW’s submissions at paragraph 313.
307. Given the significant implications that such disciplinary action could have on individuals, Unions and other rugby bodies, PRPW advocates the creation of a right of appeal against a World Rugby Appeals Committee decision to the Court of Arbitration for Sport, in respect of breaches of the code of ethics.

#### **J. WORLD RUGBY’S DISCIPLINARY AND JUDICIAL PROCESSES**

308. PRPW makes submissions in relation to three aspects of World Rugby’s disciplinary and judicial processes:
- (i) World Rugby’s judicial role;
  - (ii) the publication of disciplinary and judicial decisions; and
  - (iii) the creation of a right of appeal to the Court of Arbitration for Sport.

##### *(i) World Rugby’s Judicial Role*

309. Firstly, PRPW submits that World Rugby’s judicial role ought to be clarified and/or extended.
310. In relation to World Rugby’s power to investigate and charge persons with misconduct under Regulation 20, the Francis Kean affair significantly muddies the waters – as explained in Section B.
311. PRPW thus requests clarification of the circumstances in which World Rugby will initiate misconduct proceedings.

312. Likewise, PRPW requests that World Rugby clarifies the circumstances in which it will take steps to declare someone an “Unsuitable Person” under Regulation 6.4, as discussed at paragraphs 60 to 66.

313. PRPW further submits that World Rugby should consider expanding its supervisory role in the rugby disciplinary process. Under Regulation 17.22.2, World Rugby has a right of appeal against disciplinary decisions in respect of all “World Rugby Matches and Matches falling under the merit based appointment scheme”<sup>120</sup> and:

“World Rugby has a supervisory jurisdiction in respect of disciplinary matters under this Regulation. In the event the Disciplinary Officer determines it is appropriate that a particular decision should be appealed in respect of International Matches, where there is no appropriate hosting body for a Match and/or where the disciplinary regulations for a Match are clearly contrary to Regulation 17, the Disciplinary Officer...may take such steps as are reasonably necessary to review the matter and make such recommendations to World Rugby as he deems appropriate. The Disciplinary Officer...may appeal the matter”<sup>121</sup>

314. This significantly limits World Rugby’s ability to appeal disciplinary decisions it considers to be wrong.

315. Whilst understanding the desire to respect the autonomy of the Unions, PRPW submits that consistency in sanctioning would be best achieved if World Rugby had the right to appeal against all disciplinary decisions made under the authority of Member Unions and in respect of all international fixtures. Consistent and equal treatment, as noted above, is fundamental to Fair Play.

316. In the past, disciplinary decisions at various levels of the game have raised eyebrows.<sup>122</sup> Consistent decision-making is essential for rugby’s disciplinary processes to be properly respected by participants and fans alike, and such a right of appeal would be a strong step towards improving said consistency: it would enable World Rugby and its independent judiciary to set a universal standard. This is particularly important given the recent drive by World Rugby to protect player welfare through more severe sanctions for foul play. Indeed, the introduction of the decision-making framework for high tackles has added a degree of complexity that would benefit from clarity moving forward.<sup>123</sup>

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<sup>120</sup> Regulation 17.22.2(b)(iii).

<sup>121</sup> Regulation 17.22.2(c).

<sup>122</sup> ‘Toulon centre Bastareaud escapes with five-week ban for shocking striking offence’, The 42, 20 September 2018 (<https://bit.ly/3gm7CIX>); ‘Uproar after Bourgarit’s eye-gouging gets ban just two weeks worse than Addison’s badly-timed tackle’, RugbyPass, 28 November 2019 (<https://bit.ly/3ePhKJE>); ‘Shock as Castres hooker gets away with lenient ban for heinous clear-out’, RugbyPass, 7 February 2020 (<https://bit.ly/2YFWMHA>); ‘England prop Joe Marler won’t miss a game despite long ban for Six Nations grope’, The Times, 25 April 2020 (<https://bit.ly/3icN4nD>).

<sup>123</sup> ‘A detailed review of disciplinary proceedings at Rugby World Cup 2019’, LawInSport, 16 April 2020 (<https://bit.ly/2ZNNIQj>).

*(ii) Publication of Decisions*

317. Secondly, PRPW submits that World Rugby should require all Unions, Member Associations and tournament organisers (such as the Six Nations, SANZAAR, Premiership Rugby, Pro14, TOP14, and EPCR) to publish their disciplinary decisions in full. To do so would greatly enhance the transparency of the rugby disciplinary process and would enhance stakeholder trust and confidence. It would also aid the consistency of disciplinary decision-making across the world, at all levels of the Game.
318. PRPW accepts that, in some cases, there may be important considerations of confidentiality and privacy and that, where these cannot be accounted for by way of redaction or anonymisation, such decisions ought not to be published. However, in the context of foul play, there is no reason not to publish disciplinary decisions.
319. This could be achieved by way of an amendment to Regulation 17.

*(iii) Appeals to the Court of Arbitration for Sport*

320. In addition, PRPW submits that World Rugby ought to consider the creation of a right of appeal to the Court of Arbitration for Sport against decisions of the World Rugby Appeals Committee in respect of misconduct/ethics violations, corruption (Regulation 6) charges and other off-field disciplinary/judicial matters.
321. The consequences of these decisions can be hugely significant for individuals, Unions and teams. The possibility of an appeal to CAS would enhance the independence and decision-making quality of World Rugby's judiciary by providing an external means of accountability and would more strongly protect individuals' rights. This would, in turn, improve trust and confidence in the World Rugby disciplinary process.
322. Although World Rugby Appeals Committees are typically very competent, PRPW submits that the increasing perception of CAS as sport's international Supreme Court and its ever-developing body of sport-specific case law means that it is at least worthy of consideration.
323. PRPW would not suggest extending such a right to disciplinary decisions on foul play owing to the need for particular expedience in such matters and their highly specialised nature.

## **K. REGULATORY TRANSPARENCY**

324. PRPW considers that it would be in the best interests of the Game for the full tournament regulations to be published for all World Rugby tournaments, including the Rugby World Cup, and for any major international tournament such as the Six Nations and Rugby Championship.
325. Much of the uncertainty and controversy surrounding Typhoon Hagibis during the 2019 Rugby World Cup could have been avoided had the tournament regulations/participation agreement been published in full. Similarly, some of the uncertainty surrounding Covid-19 would be mitigated by greater public understanding of the various regulatory frameworks.
326. Further, as reiterated throughout these submissions, transparency is a key principle of good governance, which enables accountability and also promotes stakeholder engagement. Indeed, it is required by Principle 2.2 of the IOC Principles. Greater regulatory transparency would be in the best interests of the Game.
327. PRPW thus requests that World Rugby publishes this documentation in future and formally requires the organisers of other major international tournaments to do the same.

## **L. LAW APPLICATION GUIDELINES**

328. In relation to the Laws of the Game, PRPW submits that World Rugby should undertake not to issue Law application guidelines less than 12 months before the start of a Rugby World Cup. PRPW considers that this can create uncertainty and confusion and may be to the detriment of the quality of the showpiece event.
329. The introduction of the Decision-Making Framework for High Tackles in June 2019 was something that teams had to adapt to very quickly for the 2019 Rugby World Cup. PRPW considers that, as a consequence of the short notice of this change, the number of red cards at the tournament was higher than at any previous Rugby World Cup. This somewhat affected the quality of sport on show and, in some cases, detracted from the Game.
330. Though PRPW understands and supports the intention behind the Framework, it considers that it would have been in the interests of the Game as a whole to have introduced it at least 12 months prior to the showpiece event, to give players more time to adapt.

## M. AN INDEPENDENT AND TRANSPARENT GOVERNANCE REVIEW

331. Though PRPW is grateful that the Review is taking place and that it has been able to make the foregoing submissions, it is disappointed that the Working Group is not truly independent.
332. For a review of an organisation's governance to be most effective, it must be truly independent. That the Review is independent-led is, PRPW submits, insufficient.
333. In this context, independence means a freedom from interference by those interested in the outcome of the Review. That members of ExCo and World Rugby's other Committees may be able to determine the scope and findings of the Review is hugely objectionable and may limit the ability of the Working Group to make recommendations for the change that is needed. There are many significant potential conflicts of interest within the Working Group. It looks like World Rugby is marking its own homework.
334. Even if all members of the Working Group carry out their role in the utmost good faith and for the good of the Game as a whole, the appearance of partiality in the decision-making process is sufficient to taint the method of accountability. This will undermine the trust and confidence of stakeholders in the review process and will further limit its effectiveness.
335. If World Rugby is serious about creating the "best possible decision-making process for the global game",<sup>124</sup> PRPW submits that it should ensure that the Review benefits from the greatest possible degree of independence, albeit with the ability to consult those involved in the Game at all levels. In this regard, PRPW considers the approach taken by the 2012 ICC governance review to be the gold standard.<sup>125</sup>
336. Finally, PRPW requests that the findings of the Review be made public, in the interests of transparency, accountability and stakeholder trust and confidence.<sup>126</sup> Such an approach has been taken by, inter alia, World Athletics<sup>127</sup> and the ICC,<sup>128</sup> to good effect.

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<sup>124</sup> 'World Rugby launches governance review process', World Rugby, 17 June 2020 (<https://bit.ly/3glPM8C>).

<sup>125</sup> 'An independent governance review of the International Cricket Council', Lord Woolf and PricewaterhouseCoopers LLP, 1 February 2012 (<https://bit.ly/3inixDO>).

<sup>126</sup> Principle 4, IOC Principles.

<sup>127</sup> 'Time for Change', World Athletics, 30 September 2016 (<https://bit.ly/2BXqzCE>).

<sup>128</sup> 'An independent governance review of the International Cricket Council', Lord Woolf and PricewaterhouseCoopers LLP, 1 February 2012 (<https://bit.ly/3inixDO>).

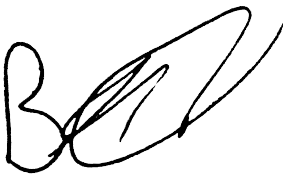
## N. SUMMARY

337. In summary, PRPW is deeply concerned about a range of governance issues at World Rugby. It submits that there is a need for wide-ranging reform in order to bring the organisation into line with modern standards of sports governance. In particular, there is a need to review the way in which Tier 2 Unions are prejudiced by World Rugby's structures and processes.

338. PRPW requests that World Rugby should:

- (i) make a commitment to Fair Play for all Member Unions;
- (ii) give a public update on the status of its investigation into Francis Kean;
- (iii) consider the governance lessons that can be learned from the Francis Kean affair;
- (iv) appoint a disciplinary officer to investigate the allegations surrounding the 2020 World Rugby election;
- (v) do more to constructively resolve the governance issues in the Pacific Islands, particularly in relation to state interference;
- (vi) enforce Regulation 4 on foreign-based academies in relation to Fiji;
- (vii) appoint a disciplinary officer to investigate the potential misconduct conduct of SRU chairman, Tuila'epa Sailele Malielegaoi;
- (viii) appoint a disciplinary officer to investigate the potential misconduct of TRU president Fe'ao Vunipola in relation to the TRU's 2019 election;
- (ix) create a fairer programme of international matches;
- (x) introduce a revenue-sharing model to make the programme of international matches more equitable;
- (xi) abandon its Nations Championship proposal;
- (xii) publish the criteria for Eligibility for Consideration of Membership to Council;
- (xiii) publish the Common Association Constitution;
- (xiv) create a vetting process for all World Rugby officials;
- (xv) create a 1 Member = 1 Vote system for the Council;

- (xvi) increase the independence of ExCo, particularly the role of Vice-Chairman;
- (xvii) do more to avoid actual or potential conflicts of interest;
- (xviii) increase efforts to improve diversity on ExCo and prevent racial discrimination;
- (xix) include the Rugby World Cup within the scope of the Review;
- (xx) improve the transparency of RWCL;
- (xxi) do more to avoid actual or potential conflicts of interest within RWCL;
- (xxii) review and reform the scheduling process for Rugby World Cup pool matches;
- (xxiii) create a meaningful code of ethics;
- (xxiv) clarify when it will initiate misconduct proceedings;
- (xxv) clarify when it will take steps to declare someone an “Unsuitable Person”;
- (xxvi) extend its ability to appeal disciplinary decisions;
- (xxvii) ensure the publication of all disciplinary decisions;
- (xxviii) consider the introduction of a right of appeal to the Court of Arbitration for Sport in appropriate cases;
- (xxix) ensure the publication of all international tournament regulations;
- (xxx) undertake not to publish Law application guidelines less than 12 months prior to the start of a Rugby World Cup;
- (xxxi) commission a fully independent governance review; and
- (xxxii) publish the findings of the Review in full.



Submissions prepared by Ben Cisneros *BA (Cantab)*, future Trainee Solicitor at Morgan Sports Law, on behalf of Pacific Rugby Players Welfare.