



Arbitration CAS 2020/A/6907 South African Football Association (SAFA) v. Confédération Africaine de Football (CAF) & Disciplinary Committee of the CAF & Appeal Board of the CAF & General Secretary of the CAF, award of 26 February 2021

Panel: Mr Mark Hovell (United Kingdom), President; Mr André Brantjes (The Netherlands); Mr Rui Botica Santos (Portugal)

Football (futsal)

Disciplinary sanctions against a national federation for withdrawing from a competition

Standing to be sued

Force majeure

1. **Article 75 of the Swiss Civil Code makes it clear that it is the association that has the capacity to be sued, as opposed to its organs of justice (a disciplinary committee or an appeal board) or one of its employees, i.e. the secretary general.**
2. **The bar for an event of force majeure is set high. There must be some extraordinary circumstance beyond a party's control (typically a war, strike, epidemic or the like) that would prevent it from doing something. This is sometimes referred to as an “*irresistible force*” or unforeseen event. Further, if a party could do something to remove such circumstance, then it should take those steps.**

I. PARTIES

1. South African Football Association (“SAFA” or the “Appellant”) is a member association of the Confédération Africaine de Football. It is the national federation in charge of football in South Africa and is responsible for, *inter alia*, the administration, promotion, organisation, regulation and governance of all aspects of football in South Africa.
2. The Confédération Africaine de Football (the “CAF” or the “First Respondent”) is the governing body of African football, with its headquarters in Giza, Egypt. The CAF is the organising authority of all CAF football competitions for member associations on the African continent. It is one of the six continental confederations of FIFA.
3. The Disciplinary Board of the CAF (the “Second Respondent”) is one of the two legal bodies of the CAF.
4. The Appeal Board of the CAF (the “Third Respondent”) is the second legal body of CAF.

5. The General Secretary of the CAF (the “Fourth Respondent”) is appointed by the CAF Executive Committee. He directs the work of the CAF Secretariat, which, in turn, is in charge of all administrative duties for the CAF.

II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this award (the “Award”) only to the submissions and evidence it considers necessary to explain its reasoning.

A. What is this case about?

7. Essentially, this appeal is against the sanctions handed down by the CAF through its Appeal Board, resulting from SAFA’s decision to withdraw its national futsal team from the CAF National Futsal 2020 final tournament which was due to start 15 days later.

B. The Decision of the CAF Disciplinary Board

8. On or around July 2018, the Fédération Royale Marocaine de Football applied to the CAF to host the final stage of Coupe d’Afrique des Nations Futsal 2020 (“AFCON 2020”).
9. On 2 December 2019, the CAF invited the teams which had qualified for AFCON 2020 to attend the draw ceremony in the city of Laâyoune, Morocco on 7 December 2019. As SAFA’s team was one of the eight qualified teams for the final tournament of AFCON 2020, it was invited to the draw ceremony. SAFA, like any other qualifying team, was given the option to attend the draw ceremony via a member of its respective Embassy in Morocco.
10. On 6 December 2019, SAFA received correspondence from Ambassador Dayanand Naidoo, through the Department of International Relations and Cooperation (“DIRCO”) advising that because the CAF had decided to stage the final tournament in the city of Laâyoune, the capital of the occupied Western Sahara, the South African Embassy could not attend the draw on behalf of SAFA.
11. On 7 December 2019, as scheduled, the draw ceremony took place. SAFA did not attend the ceremony, but was still officially part of the competition at this time, and so was drawn into Group A. Its National Executive Committee met on that day.
12. On 9 December 2019, SAFA wrote to the CAF to request, *inter alia*, that the tournament and related events be hosted outside of the territory of Western Sahara:

“...Unfortunately, the Embassy could not attend due to the Republic of South Africa’s Government policy of not travelling and/or visiting the territory of West Sahara for meetings, conferences and sporting events.

During the National Executive Committee (NEC) Meeting of the 7 December 2019, the NEC deliberated the matter and it expressed keen interest to participate in the tournament. The NEC further resolved to make a submission to you to persuade and encourage Morocco to stage the tournament and related events outside of the territory of Western Sahara. This arrangement will enable us to participate in the tournament freely. The alternative, which is not desirable at all, is that would reconsider our participation in the tournament”.

13. SAFA shared DIRCO’s position paper with the CAF which stated, *inter alia*, that Morocco’s illegal occupation of Western Sahara remained a matter of international concern, and that this runs in contradiction to South Africa’s foreign policy on Western Sahara. As such, the position paper stated:

“...while South Africa does not object to official participation in recognised multilateral conferences and sports events hosted in Morocco, the level of participation must be carefully considered...”

...It is therefore recommended that the South African team should not participate at the forthcoming Total AFCON Futsal in Morocco for as long as it is taking place in the disputed territory of Laâyoune, West Sahara”.

14. On 5 January 2020, the CAF sent all participating member associations, including SAFA, the circular for AFCON 2020 detailing the fixtures of the final tournament.

15. On 13 January 2020, SAFA decided to withdraw its team from the AFCON 2020 by way of letter stating:

“Due to the fact that Morocco Organizing Committee has decided to stage the AFCON 2020 in the capital city of the disputed territory, it is with regret that we have to advise you that we have to withdraw our Futsal National Team from the Tournament. The South African Government Policy and Regulation....does not allow us to participate in the territory...

...we humbly invite submit that you should kindly consider waiving the provisions of Article 73 and 74 of the Rules and Regulations of the Futsal AFCON...we would like to motivate for a force majeure invoking”.

16. On 14 January 2020, the CAF General Secretary addressed a letter to the Members of the Development Committee for Futsal and Beach Soccer informing them of SAFA’s withdrawal and requesting them to *“decide on the team to replace South Africa or to proceed with having a group of three teams”*.
17. The final tournament of AFCON 2020 took place as scheduled on 28 January 2020 until 7 February 2020, and SAFA did not participate in the tournament. Its place was taken by Mauritius.
18. On 30 January 2020, the CAF Disciplinary Board rendered a decision regarding SAFA’s withdrawal from AFCON 2020. It decided that SAFA was in violation of Article 74 of the

Futsal Africa Cup of Nations Regulations (the “Regulations”), and accordingly it issued a fine of USD 75,000 and a suspension from any participation in the next two editions of the Futsal African Cup of Nations (the “First Instance Decision”). Article 74 of the Regulations states:

“A forfeit declared less than twenty days before the start of the final competition or during it, shall entail in addition to the loss of the entry fee, also causes the loss of the right of entry, a fine of seventy five thousand (75,000) U.S. dollars as well as the suspension of the relevant association for the next two editions of the FUTSAL AFCON except in cases of force majeure as defined by the Organising Committee of CAF”.

C. Proceedings before the CAF Appeal Board

19. On 7 February 2020, SAFA appealed the First Instance Decision before the CAF Appeal Board.

20. In its appeal, SAFA requested the following prayers for relief:

“3.2 The Appellant in its appeal under Article 53 of the CAG Disciplinary Code seeks an order setting aside the decision passed by CAG Disciplinary Board issued on the 30 January 2020.

3.3 ... Appellant requests the appeal board to...issue a new decision replacing the decision appealed against with immediate effect as follows:

3.3.1 The Appellant be reinstated into the forthcoming or any future Futsal African Nations Cup with immediate effect and that the Third Respondent be directed to take the necessary steps to facilitate the inclusion of the Appellant into the forthcoming or any future Futsal African Nations Cup.

3.3.2 Confirmation that the fine of 75 000 USD is null and void and of no force and effect”.

21. On 20 February 2020, a hearing took place which SAFA attended with its legal representatives.

22. On 16 March 2020, the CAF Appeal Board handed down its decision to SAFA, essentially deciding to confirm the First Instance Decision passed by CAF Disciplinary Board (the “Appealed Decision”):

“SAFA’s representatives were reminded by the Appeal Board that political reasons are in no way a valid reason that would justify a withdrawal from a CAF competition; for there should never be political interferences regarding football associated and their decisions, CAF is a district neutral body that is not influenced by political ideologies.

The Appeal Board members agreed following the appellant’s argumentation that SAFA’s decision regarding the withdrawal of their national team from the African Cup of Nations FUTSAL 2020 was purely political as it is arising out of solidarity to a political agenda.

Finally, the Appeal Board noted that the determination of a force majeure in the case of article 74 of the African Cup Nations FUSAL does not fall under their competence, as it had to be determined by the Organizing Committee who never pronounced said force majeure. In view of the foregoing conclusion, the Board considered there is no force majeure concerning SAFA's withdrawal.

The Appeal Board decided as follows:

- 1. The appeal lodged by the South African Football Association is admissible;*
- 2. The appeal lodged by the South African Football Association lacks merit for the above-mentioned reasons;*
- 3. The decision no 001-CAI-30.01.2020 is confirmed;*
- 4. All requests of relief are dismissed”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORTS

23. On 26 March 2020, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), SAFA filed a Statement of Appeal at the Court of Arbitration for Sport (the “CAS”) against the Respondents, challenging the Appealed Decision. In its Statement of Appeal, SAFA requested the appointment of a panel of three appeal arbitrators appointed by the President of the Appeal Arbitration Division, pursuant to Article R54 of the CAS Code.
24. On 27 March 2020, the CAS Court Office wrote to the parties to acknowledge receipt of the Statement of Appeal and noted the Appeal was not complete. The CAS Court Office provided a deadline of 31 March 2020 for SAFA to file its completed Appeal.
25. On 1 April 2020, the CAS Court Office wrote to the parties again noting SAFA had not supplied a copy of the proof of payment of the CAS fee of CHF 1,000 advising that if this was not supplied in the next two days, the Appeal before the CAS would not proceed.
26. On 3 April 2020, having received the required documentation and information from SAFA, the CAS Court Office wrote to the parties to acknowledge receipt of the Statement of Appeal and provided a deadline by which the Appeal Brief was due by SAFA. In the same correspondence the CAS Court Office also acknowledged that SAFA had requested this matter to be expedited in accordance with Article R52 of the CAS Code and subsequently asked the CAF to confirm whether it accepted this request. The CAF was also provided with 10 days in order to nominate an arbitrator. SAFA had already put forward its nominee, Mr. André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands, as arbitrator.
27. On 5 April 2020, pursuant to Article R51 of the CAS Code, SAFA filed its Appeal Brief with the CAS Court Office.

28. On 7 April 2020, the CAS Court Office wrote to the parties to confirm that given the CAF had disagreed with SAFA's request for an expedited procedure, this would not be implemented in these proceedings.
29. On 14 April 2020, the CAF requested an extension of time until 17 April 2020 to jointly nominate an arbitrator, in accordance with Article R32 of the CAS Code, in conjunction with the CAS Emergency Guidelines. The CAS Court Office confirmed in its letter dated 15 April 2020 that this extension was granted.
30. On 17 April 2020, the CAF appointed Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal as arbitrator.
31. On 14 May 2020, in accordance with Articles R33, R52, R53 and R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom

Arbitrators: Mr. André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands

Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
32. On 18 May 2020, in accordance with Article R55 of the CAS Code, the Respondents filed their joint Answer with the CAS Court Office.
33. On 24 August 2020, all parties submitted a signed copy of the Order of Procedure.
34. The hearing was held on 27 August 2020 by video-conference. The parties did not raise any objection as to the composition of the Panel. The Panel was assisted by Brent J. Nowicki, Managing Counsel to the CAS. The following persons attended the hearing:

For SAFA: Messrs Choudree SC, Govindasamy, Marikam, Soni and Terumal, all counsel; Mr Mokoena, the former SAFA CEO and Ambassador Naidoo, both witnesses; and

For the Respondents Mr Cavaliero and Ms Etter, both counsel; Ms Mahamat, CAF Director of Legal Affairs and Mr Magdy from the CAF Legal Team.
35. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The parties and the Panel had the opportunity to examine and cross-examine the witnesses. Unfortunately, before the parties were able to present their cases and to make their submissions and arguments, SAFA's legal team were the subject of an incident in their offices, whereby there was a break-in, and their papers and equipment was stolen.
36. Mr Choudree SC managed to call into the hearing on a borrowed phone and while he was prepared to proceed, upon the suggestion of Mr Cavaliero, the parties agreed that they would

commit these to written post-hearing briefs. The Panel agreed that this was the most appropriate way to proceed.

37. The hearing was then closed and the Panel reserved its detailed decision to this written Award, once it had received and considered the post-hearings briefs. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.
38. On 11 September 2020, all parties submitted their respective post hearing submissions to the CAS Court Office.
39. On 18 September 2020, all parties submitted their respective replies to the post hearing submissions.

IV. THE PARTIES' SUBMISSIONS

40. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. SAFA's Submissions

41. In its Statement of Appeal, SAFA submitted the following prayers for relief:
 - "5.1. *The Appellant requests that its appeal in terms of Rule 47 of the CAS Code proceeds in an expedited manner as contemplated and provided for in Rule 52 of the CAS Code;*
 - 5.2 *The Appellant seeks that the President of the Appeal panel direct the First, Second, Third and Fourth Respondents to produce the entire and complete record of the hearing of the Second and Third Respondent before reviewing the facts and the law.*
 - 5.3. *The Appellant in its Appeal under Rule 47 of the CAS Code seeks an order reviewing the facts and the law setting aside the [Appealed Decision].*
 - 5.4. *Subsequent to the setting aside of the [Appealed Decision], the Appellant requests that the Appeal Tribunal of CAS exercise its discretion as contemplated in Rule 57 to issue a new decision thus replacing the [Appealed Decision] as follows:*
 - 5.4.1 *Annuling the final tournament of the Futsal African Nations Cup Morocco 2020;*

- 5.4.2 *Directing the First Respondent to immediately reschedule the final tournament of the Futsal African Nations Cup Morocco 2020 in a venue of Morocco (not in the disputed territory of Western Sahara);*
- 5.4.3 *Reinstate the Appellant into the rescheduled final tournament of the Futsal African Nations Cup Morocco 2020 with immediate effect;*
- 5.4.4. *Declaring the fine of 75,000 USD imposed by the Third Respondent against the Appellant null and void and of no force and effect”.*

- 42. SAFA did not submit any prayers for relief in its Appeal Brief.
- 43. In summary, SAFA submitted the following in support of its Appeal:
- 44. SAFA submitted that it was left with no option other than to comply with its government’s policy on Western Sahara, the decision to withdraw therefore was out of its control. SAFA further strengthened this point by referring to DIRCO’s correspondence whereby it recommended SAFA not to participate in the Futsal National Team in 2020 and the fact that it received no response from the CAF in relation to the request it made to move/change the venue in Morocco.
- 45. It was SAFA’s view that a change of venue was within the CAF’s gift and powers. In putting this position forward, SAFA referred to Article 4 of the Regulations:

“4.2. Qualifying and final phases:

- 4.2.1. *Ensuring that the sanctions taken by any CAF body are implemented;*
- 4.2.2. *Replacing, in conformity with the present regulations, the associations declaring their withdrawals;*
- 4.2.3. *Taking decisions relative to any complaint. Its decisions shall be based on the written reports of the referee, the assistant referees and/or the commissioner, and any other official designated by CAF;*
- 4.2.4. *Taking decisions in cases of force majeure;*
- 4.2.5. *Designating commissioners;*
- 4.2.6. *Homologating the results of the matches. In the absence of protests or claims, the matches are automatically homologated 10 days after the match in the qualification phase and 48 hours after the match in the final phase. All homologation decisions are binding and final;*
- 4.2.7. *In emergency cases, the Organising Committee may take decisions by correspondence or by fax or email.*

4.3. Final Phase:

- 4.3.1. *Ensuring, with the collaboration of the organising association, the preparatory work of the Final Tournament;*
- 4.3.2. *Proceeding to the drawing of lots;*
- 4.3.3. *Fixing, after consulting the organising associations, the dates, the venues and the time of the kick-off of the matches;*
- 4.3.4. *Taking all the necessary decisions for the good organisation of the competition in compliance with the provisions of the present regulations;*
- 4.3.5. *Creating Sub-Committees having the rights and prerogatives of the Organising Committee”.*

- 46. In particular, SAFA went further to say that it was not until 2 December 2019, when it received an invitation to attend the draw, did it become aware that the venue for the matches of the final tournament would take place in Western Sahara. At that point it took a pro-active approach in liaising with the CAF.
- 47. As such, there was no doubt that the principle of *force majeure* was well established by SAFA given the choice of venue was outside of its control and it could not be expected that it goes against the recommendations of its own government policy and breach its own laws to participate.
- 48. It was SAFA’s argument that the Organising Committee in Morocco (which was responsible for organising the final phase of the futsal tournament) which was appointed for the 2019/2021 cycle lacked integrity and legitimacy and as such, was not the appropriate body to choose the location and venue of the final futsal tournament.
- 49. In particular, SAFA pointed to a letter submitted by the Mauritius futsal team to CAF withdrawing its futsal team from the final tournament on similar grounds:

“Having sketched the background herein and having regard to the fact the duly appointed Organising Committee for Futsal AFCON 2020 failing to hold any meetings after 26 March 2018, I am at a loss to understand where and when the decision to organise the tournament in the city, of Laâyoune, Western Sahara was taken by the Organising Committee as should have been the case in accordance with Article 4.33 of Chapter 2 of the Regulation for Futsal AFCON”.
- 50. In SAFA’s view, by failing to invite certain members to be involved with the organising and supervision of the tournament, the Organising Committee lacked proper standing to make the decisions which led to the final tournament being held in Western Sahara:

“Clearly the de jure organising committee, the validity appointed standing committee of the First Respondent was not involved in the development, organisation and supervision of the final tournament in terms of the First Respondent’s statutes, regulations and in particular the regulations of the Futsal AFCON Cup of Nations”.

51. Further, SAFA submitted that the CAF failed to even respond to the request of a change in venue, and as such, by failing to neglect this request, the CAF was in breach of its own regulations, namely Article 4.3 of the Regulations.
52. Accordingly, and in light of the above, SAFA submitted that the Organising Committee was not legally and validly appointed and as a result the final tournament should be nullified and any decisions by the Organising Committee should not have any force or effect.
53. SAFA went further to say that the CAF Disciplinary Board (i.e. the Second Respondent) was not properly constituted, and its composition was irregular and invalid, therefore any orders/decisions made by it against SAFA lack jurisdiction.
54. To strengthen this proposition, SAFA stated that during the appeal hearing conducted by the Appeal Board, the First and Fourth Respondents failed to produce a record of the proceedings which took place between SAFA and the Second Respondent and therefore, SAFA was not able to properly understand and deliberate how the Second Respondent rendered its decision against SAFA.
55. Notwithstanding the above, it was SAFA's view that it was not given a fair hearing given that none of the Respondents even confirmed that any disciplinary action was going to be taken against it and as such, the decision of the CAF Disciplinary Board was handed down without SAFA even being present.
56. SAFA provided further that at the final hearing conducted by the Appeal Board, although SAFA was present and able to represent itself, the Appeal Board failed to fully consider all the evidence it was presented with. SAFA pointed to the fact that it was given 10 minutes to present its arguments to strengthen this submission.
57. SAFA asserted that by failing to properly consider and determine that *force majeure* was established, the Third Respondent showed its true colours of bias against it and this was prejudicial.
58. SAFA put forward that its political reasons were valid and justified its withdrawal from the final tournament. SAFA pleaded with the CAF and stated that the sports industry had a history of protecting and defending human rights and dignity of people all over the world, and to decide that political reasons are not a valid reason not to do something was inconsistent with this ethos.
59. Finally, SAFA stated that the sanctions imposed by the Third Respondent were harsh and disproportionate

B. SAFA's Second Submissions

60. In its second submissions, SAFA justified the position of the Second, Third and Fourth Respondents' standing to be sued.

61. To support its submission, SAFA stated Article 48.1 of the CAF Statutes:

“Only CAS shall be empowered to adjudicate on the appeals against any decisions or disciplinary sanctions taken in the last instance by any legal body of the CAF or FIFA ...”.

62. Simply put, it was the SAFA’s view that as the Second and Third Respondents were legal bodies of the CAF, and that it sought relief from the sanctions and decisions as rendered by the Second and Third Respondent, and as such they had standing to be sued.

63. Further, SAFA argued that as the Fourth Respondent was called upon to produce a record of the proceedings conducted by the Second Respondent, and failed to do so, it was correctly being sued by SAFA.

64. The Panel was reminded of its *de novo* powers to determine these proceedings, and that pursuant to Article R57 of the CAS Code, the Panel could render a new decision if necessary.

65. SAFA went further to say that the prayers of relief sought were within the legal framework of the CAF statutes, noting in particular, Article 45(2) of the CAF Statutes:

“CAF may impose the following disciplinary measures:

2.3 Against legal entities:

(a) Ban on registering new players in CAF competitions

(...)

(d) Ban on playing in particular stadium;

(e) Annulment of results of a match;

(...)”.

C. SAFA’s Post Hearing Submissions

66. SAFA argued that its compliance with DIRCO’s recommendation was not ‘political interference in sports’, it was compliance with international law.

67. SAFA went further to say that CAF Statutes cannot, as a matter of law, contradict with human rights objectives. Therefore, CAF Statutes must comply with international law relating to Morocco’s illegal occupation of Western Sahara and not compel SAFA to participate in a tournament held there.

68. It was SAFA’s view that it was compelled to obey the law of the land as set out by DIRCO. Although DIRCO’s letter referred to a “recommendation”, it was SAFA’s understanding that

diplomatic language was used, and indeed, SAFA would be expected to act rationally in respect of South African foreign policy.

69. In light of the above, SAFA put forward the notion of *vis majeure* in that it did not know the venue was going to be Western Sahara when it first entered the tournament, and it had no choice but to withdraw given not doing so would be a breach of UN resolutions.
70. Further SAFA argued that Article 64.3 of the Regulations requires that a final tournament be played in the territory of the organizing association, and as Laayoune cannot be considered as Morocco's territory, holding a tournament there would be a breach of the Regulations. Thus, SAFA was justified in its withdrawal.
71. Finally, SAFA stated that Articles 59, 76 and 80 of the Regulations should apply in this instance and not Article 74. The former deals with withdrawal from tournaments specifically and include sanctions which are less harsh. Whereas the latter (i.e. Article 74) deals with withdrawals, sanctions for refusal to play and replacement.
72. In support of its submission that Article 74 of the Regulations has no application, SAFA stated that CAF's letter dated 30 January 2020 referring to Mauritius's withdrawal from the tournament made no reference to Article 74, and as such, as it was not mentioned or applicable in that instance, it should not be applied against SAFA.
73. In relation to a fair hearing, SAFA stated that Article 29 of the CAF Statutes stated that a party has a right to be heard, and as SAFA was denied this right because it simply received the CAF Disciplinary Board's decision without being provided with an opportunity to represent itself, this led to procedural injustice.
74. On this point, SAFA rebutted any decision the Disciplinary Board made on the basis that the CAF Organisation Committee (which submitted its complaint to the Disciplinary Board of SAFA's withdrawal from the tournament) was not lawfully arranged. It was SAFA's view that four members of the Organisation Committee were side-lined/excluded from meetings relating to the supervision and choosing of the venue, including SAFA, and in turn the choice to hold the tournament in Western Sahara was improper.
75. SAFA also addressed the sanctions imposed, noting in particular that a suspension from 2 editions of the African Cup meant 12 years of no participation. This would discourage sponsorship of futsal in South Africa, cause disillusionment among players and result in a lull in this sport generally. SAFA urged the Panel to consider the hindrance the sanctions would have on the development of futsal in South Africa.

D. CAF's Submissions

76. In its Answer, the CAF submitted the following requests for relief:

"1. The Appeal shall be declared partially inadmissible

2. *To the extent it is admissible, the Appeal shall be rejected and the decision of the CAF Appeal Board shall be confirmed in its entirety.*
 3. *The South African Football Association shall be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by the Respondent at an amount of CHF 20,000”.*
77. The CAF argued in the first instance that the Second, Third and Fourth Respondents did not have standing to be sued by SAFA. The CAF pointed to the fact that neither the CAS Code nor the CAF Statutes contain any specific rule regarding the standing to be sued. Therefore, the question of whether or not the Second, Third and Fourth Respondents have standing to be sued must be derived from Swiss law, which was applicable on a subsidiary basis pursuant Article 48(2) of the CAF Statutes.
78. In light of the above, the CAF referred to Article 74 of Swiss Civil Code which states that associations have capacity to be sued, therefore the appeal cannot be directed against the members of the respective organ that has passed the decision or the members of the association. Thus, any appeal against the disciplinary decision passed by CAF judicial bodies should be brought against the association only, namely the CAF.
79. Having clarified its position in relation to legal standing to be sued, the CAF averred that SAFA's prayers for relief (in particular 5.4.1, 5.4.2 and 5.4.3) fell outside of the scope of the disciplinary proceedings before the CAF judicial bodies, and consequently of the proceedings before the CAS.
80. To affirm its view, the CAF referred to Article R57 of the CAS Code, and reminded the Panel that the CAS's powers of review is limited by the object of the dispute that was before the previous instance. As such, it cannot be construed that the CAS had wider powers than the power of the body that issued the decision appealed against.
81. The CAF pointed to previous CAS case law (*TAS 2018/A/5792*) to strengthen its position:
- “An arbitral panel of the CAS may rule de novo on the subject matter of the appealed decision. It is not limited to a simple review of the legality of this decision, but may issue a new decision on the basis of the applicable regulatory or legal provisions. However, the full power of review of the arbitral panel is limited to the issues that were addressed in the contested decision”.*
82. Given SAFA presented different unrelated prayers for relief, namely 5.4.1 to 5.4.3, which fall outside of the jurisdiction of the CAF and consequently the CAS, the Appeal is partially inadmissible.
83. The CAF averred that SAFA's request to change venues and withdrawal from AFCON 2020 ignored all the consequences and effects on the host venue, the fans and qualified teams.

84. The CAF put forward that to improvise the celebration of a continental tournament within a month was impossible, especially given the various stakeholders involved who it had contracted with.
85. It was the CAF's view that SAFA's withdrawal from AFCON 2020 as a result of political interference did not constitute a *force majeure* event. SAFA was not prohibited by DIRCO to take part in AFCON 2020, it was simply recommended not to partake. Further, during SAFA's initial correspondence with CAF, in December 2019, it did not state that it would be withdrawing from AFCON 2020, despite knowing the location of the tournament would be Western Sahara.
86. To reaffirm its position, the CAF cited CAS jurisprudence on what constitutes a *force majeure* event, citing *CAS 2018/A/5779*, in which that CAS panel stated:

"... force majeure implies an objective (rather than a personal) impediment, beyond the control of the "obliged party", that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible".
87. In light of the above, it was the CAF's position that none of the above criteria was met and as such, a recommendation by the government not to partake in an event cannot be seen as *force majeure*.
88. The CAF stated that as SAFA was unable to demonstrate the existence of any prohibition to participate in the AFCON 2020, it was therefore unable to discharge the burden of proof that it was precluded to take part in the AFCON 2020 by a governmental binding decision, and as such, the CAF correctly applied Article 74 of the Regulations in rendering its decision.
89. The CAF noted that notwithstanding the clear application of Article 74 of the Regulation, SAFA's withdrawal as a result of its government's political views was in breach of the CAF Statutes, namely Article 7(1)(g), which states that member associated should *"manage their affairs independently and free of instructions and interferences of any kind by any person or body"*.
90. Further the CAF noted that SAFA's decision was also in breach of Article 7(1)(b) of the CAF Statutes:

"7.1 Members of CAG shall have the following obligations:

[...]

(b) To take part in competitions organised by CAF".
91. The CAF, therefore, argued that even if one was to consider that the DIRCO's correspondence to SAFA could be viewed as prohibiting it to participate in a given competition, *quod non*, any corresponding decision of SAFA to withdraw from a competition would remain in breach of CAF Statutes.

92. The CAF also rebutted SAFA's submissions in relation to the Organising Committee on the basis that this had no bearing on the issues at hand given the scope of the CAS proceedings revolve around the disciplinary sanctions imposed by CAF judicial bodies following SAFA's withdrawal from the competition, and not the selection processes of the venue itself.
93. Notwithstanding the above, the CAF stated that it was the responsibility of the host association to conclude the necessary contractual relationships with third parties, and as such, the Organising Committee had the powers to do just that.
94. The CAF also rebutted SAFA's assertions that its Disciplinary Board was improperly constituted and had no authority to hear the dispute by referring to Article 45 of the CAF Statutes which provided for the CAF's disciplinary powers clearly to render the First Instance Decision.
95. Further, the CAF noted that given Article 74 of the Regulations clearly applied (as SAFA withdrew from AFCON 2020 less than 20 days before the start of the final competition), there was no margin of discretion and as such, proportionality of the sanctions should not even be a question.
96. Finally, the CAF addressed SAFA's argument in relation to its rights to a fair hearing. The CAF referred to the CAS's *de novo* powers and noted how any procedural unfairness can be cured by a *de novo* CAS proceedings. Accordingly, any infringements of the parties' right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same powers to review the facts and the law as the tribunal in the first instance.
97. The CAF put forward that, *in casu*, any violation of the right to be heard that would have occurred in the first instance, *quod non*, would have been cured before the CAF Appeal Board. Thus, any allegations made by SAFA in this regard should be disregarded in full.

E. CAF's Second Submissions

98. In its second submissions, the CAF further elaborated on its initial submissions and in particular, noted that SAFA's prayers for relief would undoubtedly affect third parties who have not been named as additional respondents in these proceedings and ought to be if SAFA's prayers were admitted by the CAS.
99. It was the CAF's view that awarding prayers 5.4.1 to 5.4.3 would have very wide ranging consequences, not least because the host associated would have to re-organise a world tournament and all participants of AFCON 2020 would need to be ordered to call up their players gain, train and play the tournament again, affecting the winners of Futsal AFCON 2020 as it currently stands.
100. In light of the above, it was CAF's position that it would be possible for the Panel to grant any requests that would affect third parties without giving them their rights to be heard.

F. The CAF's Post Hearing Submissions

101. It was the CAF's view that none of the reasons cited by SAFA showed it was prohibited from participating in the Futsal AFCON 2020. In fact, it showed the level of interference by political views and regulations into its own affairs.
102. The CAF clarified that although it abides by UN policies and resolutions, it does not however imply that it adopts any politic stance the UN adopts. In any event, the UN resolution in relation to Morocco's occupation of the Western Sahara is a recommendation and not legally binding.
103. Additionally, the CAF submitted that SAFA's assertions in relation to applicability of Article 74 of the Regulations are belated, and were not included in its Statement of Appeal and as such, should be disregarded.
104. In any event, the CAF noted that any literal systematic interpretation of the Regulations would point that Article 74 which relates specifically to refusal to participate in a competition prior to the start of said competition (as is the case here) would apply. There can be no doubt about this, especially as this Article was even referred to in SAFA's own letter withdrawing from the competition dated 13 January 2020.
105. The CAF rebutted any submissions made by SAFA regarding the development of futsal in South Africa, by stating that it had not made any arguments referencing legal considerations as to the legality of the sanctions or any possible lack of proportionality.
106. Further, the CAF argued that SAFA had not even mentioned this point in its prayers for relief, and therefore, the Panel is prevented from assessing any alleged repercussions of the suspension of SAFA for the next two editions of futsal AFCON, and the effects this would have on the development of futsal in South Africa.
107. The CAF also put forward that Mauritius Football Federation received the identical sanction to that of SAFA when it withdrew from Futsal AFCON 2020, therefore any submissions made by SAFA in respect to the principles of equal treatment were rebutted.
108. Finally, the CAF clarified the role of the Organising Committee. It stated that SAFA was confusing the term 'venue' with 'host city'. The latter being the exclusive prerogative of the Host Association and as such the references made to the Organising Committee were irrelevant.

V. JURISDICTION

109. Article R47 of the CAS Code provides as follows:

"An appeal against a decision of a federation, association or sports related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement

and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the Statutes or regulations of that body”.

110. The jurisdiction of the CAS was further confirmed Article 48.1 of CAF Statutes.
111. The Panel notes the jurisdiction of the CAS was not contested by the parties, who all signed the Order of Procedure in this matter. It therefore follows that the CAS has jurisdiction to decide on the present dispute.

VI. APPLICABLE LAW

112. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

113. Article 48.2 of the CAF Statutes makes the Regulations of CAF and FIFA applicable to appeal proceedings at the CAS, with Swiss law applying as “*a last resort*”.
114. The Panel, having regard for the issues at stake, considers that the CAF Regulations and CAF Statutes shall be the applicable law, with Swiss law applying on a subsidiary basis.

VII. ADMISSIBILITY

115. The Statement of Appeal and Appeal Brief, which were filed on 26 March 2020 and 5 April 2020 respectively, complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.
116. The Respondents have not objected to the admissibility of this procedure.
117. It follows that the Appeal is admissible.

VIII. MERITS

A. The Main Issues

118. The Panel observes that the main issues to be resolved are:
- I. The scope of the Appellant’s Appeal;
 - II. The standing of the Respondents;

- III. The admissibility of the Appellant's prayers for relief;
- IV. The procedural complaints made by the Appellant;
- V. Whether the Appellant had grounds to withdrawal its futsal team from AFCON 2020;
- VI. If not, what should the sanction be?

119. Taking the issues in turn, the Panel notes that the Appealed Decision concerned the sanctions handed out by the CAF, through its Appeal Committee, resulting from SAFA's decision to pull its futsal team out of AFCON 2020. SAFA has appealed against that decision before the CAS. However, this is not a challenge against the inaction of the CAF Organising Committee to consider SAFA's request to move AFCON 2020 from Laâyonne and whether the CAF by sanctioning AFCON 2020 in disputed territory were in breach of UN Resolutions and the like. The matter at hand is an appeal against a disciplinary decision.
120. Had SAFA wanted to challenge the decision of the CAF to maintain the tournament in Morocco once it became aware of the chosen venue within Morocco/Western Sahara, or any refusal of the CAF to order Morocco to relocate AFCON 2020, then SAFA should have brought a claim against the CAF directly for that decision. It could have insisted on a decision on the request made in its letter of 9 December 2019 (whereas SAFA appeared to allow it to go unanswered), then appealed that decision or complained that its request was not dealt with. Article 26 of the CAF Statutes, would appear to have been an option for SAFA:
- "National associations, leagues, clubs or members of clubs shall not be permitted to bring before a court of law disputes with CAF or other Associations, clubs or members of clubs. They shall submit any such disputes to an arbitrator appointed by mutual agreement and fully comply with his decisions".*
121. Instead, it brought no such claim or took no such action, but instead withdrew its team from AFCON 2020. It was then sanctioned for that decision. It cannot attempt to utilise the CAS to now bring the claim it didn't bring against the CAF through the back door. Likewise claims on whether the Organising Committee was properly constituted or not, the arguments as to whether the Organising Committee had breached Article 64.3 of the Regulations, etc. are irrelevant to the case at hand (it is the behaviour of SAFA that is in question, not the CAF).
122. Further, the CAS, as confirmed by Article R65 of the CAS Code, designated this matter as a disciplinary matter on 3 April 2020 when opened the procedure. Also, SAFA appended the Appealed Decision to its Statement of Appeal, as opposed to any other decision taken by the CAF.
123. The Panel has received a lot of information regarding the history of the disputed territory in Western Sahara, but this is only relevant so far as it assists the Panel in deciding the issue of SAFA's withdrawal from AFCON 2020.
124. The Panel notes the CAF's position is that the Second, Third and Fourth Respondents have no standing to be sued. The CAF submitted that as its Statutes are silent as to who has such

standing, the Panel should turn to Swiss law on a subsidiary basis. The CAF directed the Panel to Article 75 of the Swiss Civil Code, from which it is clear that it is the Association that has the capacity to be sued, as opposed to its organs of justice (the CAF Disciplinary Committee and the CAF Appeal Board) or one of its employees, the Secretary General.

125. The Panel notes the authorities referred to by the CAF, including *CAS 2015/A/4335*, and agrees with the submissions of the CAF. It is often sensible to add many respondents, but in the case at hand the respondent with standing to be sued is solely the First Respondent. The Panel, therefore, dismisses the Appeal so far as it concerns the other Respondents.
126. The Panel notes that the CAF additionally submitted that SAFA should have called additional respondents, such as the other members of the CAF (i.e. the national Football Associations or Federations in Africa that could be affected by any decision of CAS resulting in rescheduling AFCON 2020). The Panel considers this below, when considering the admissibility of some of SAFA's prayers for relief.
127. The Panel notes the CAF's position is that only the 4th prayer for relief is admissible, and then only in part. As a reminder, SAFA's primary prayers for relief were as follows:

"5.4.1 Annuling the final tournament of the Futsal African Nations Cup Morocco 2020;

5.4.2 Directing the First Respondent to immediately reschedule the final tournament of the Futsal African Nations Cup Morocco 2020 in a venue of Morocco (not in the disputed territory of Western Sahara);

5.4.3 Reinstating the Appellant into the rescheduled final tournament of the Futsal African Nations Cup Morocco 2020 with immediate effect;

5.4.4 Declaring the fine of 75,000 USD imposed by the Third Respondent against the Appellant null and void and of no force and effect".

128. The CAF's position was that the Panel's power to review the Appealed Decision cannot go beyond the task of the previous instance body, i.e. the CAF Appeal Board. Article 74 of the Regulations and Article 45 of the CAF Statutes sets out the sanctions available to that body and the Panel is confined to these too:

"ARTICLE 45 - DISCIPLINARY MEASURES

1. In case of violation of CAF Statutes & Regulations and the decisions of the competent bodies, or in the case of non-sporting or indecent conduct, disciplinary sanctions may be imposed against National Associations, clubs, officials, and players; in accordance with the provisions set forth in the current Statutes, in the marketing and competitions regulations as well as in CAF Disciplinary Code and CAF Code of Ethics.

2. CAF may impose the following disciplinary measures:

- 2.1. Against natural persons and legal entities:

- a) Warning;
- b) Reprimand;
- c) Fine;
- d) Return of prizes;
- e) Suspension

...

- 2.3. Against legal entities:

- a) Ban on registering new players in CAF competitions;
- b) Obligation to play a match behind closed doors;
- c) Obligation to play a match on neutral territory;
- d) Ban on playing in a particular stadium;
- e) Annulment of the result of a match;
- f) Expulsion;
- g) Awarding of a match by default;
- h) Deduction of points;
- i) Relegation to a lower division;
- j) Fine;
- k) Suspension.

3. These sanctions are to be imposed by the Disciplinary and Appeal Boards”.

129. On the other hand, SAFA points to Article 45 (2.3)(e). The Panel can annul the results of matches; additionally Article 45 (2.3)(c), would allow the Panel to order AFCON 2020 should take place elsewhere in Morocco, at neutral territory. Likewise, there were similar sanctions in Article 88 of Disciplinary Code.
130. The CAF noted, as mentioned above, that this would affect the interests of the other national Association or Federations, none of which had been called as respondents and could not, therefore, be heard.
131. The Panel reminds itself of the scope of these proceedings. It is the withdrawal of SAFA of its team that is of relevance and the Appealed Decision which is based on that. A judging authority may consider annulling matches that should not have taken place or moving the venue, but the case at hand does not concern anything the CAF has done in organising AFCON 2020, rather it is concerned with SAFA’s actions, in pulling its team out of AFCON 2020 shortly before it commenced. This would attract sanctions such as warnings, fines,

suspensions and the like, but not an annulment of a match or an event that it chose not to participate in.

132. The Panel agrees with the CAF that the first three prayers for relief are inadmissible, as they go beyond the task of the CAF Appeal Board.
133. That leaves the fourth and final prayer for relief, which is accepted by the Respondents. However, they have correctly pointed out that it only challenges the quantum of the fine and does not touch upon the ban for the next 2 tournaments. The Panel is again confined here. It is not possible to go beyond a party's prayers for relief, to do so the Panel would infringe the principle of *ultra petita*. As such, the Panel is only able to consider if SAFA's decision to pull its team from AFCON 2020 was deserved of the fine handed out by the CAF Appeal Board or should it be annulled or changed.
134. The Panel notes that SAFA raised a number of alleged procedural breaches by the CAF, which SAFA submitted should result in an annulment of the sanction. SAFA cited not being invited to the hearing before the CAF Disciplinary Board; queried whether the CAF Disciplinary Board was properly constituted/quorate; submitted that the CAF Disciplinary Board lacked the authority/jurisdiction to hear the matter; challenged whether the sanctions within the CAF Disciplinary Board's power and whether there was a lawful basis to issue the sanctions; and raised a number of other procedural issues, such as the lack of a fair hearing, a failure to provide copies of transcripts, and the like. In particular, SAFA referred to Article 28 of the Disciplinary Code and noted its right to present its defence, with Article 29 providing a right be heard, when SAFA only then received 10 minutes to present its case before the CAF Appeal Board:

"Article 28

1. *The parties can defend themselves before any decision is passed.*
2. *They may, in particular:*
 - a) *refer to the file;*
 - b) *present their argument in fact and in law;*
 - c) *request production of proof;*
 - d) *be involved in the production of proof;*
 - e) *obtain a final decision.*

Article 29

1. *The right to be heard may be restricted in exceptional circumstances, such as when confidential matters need to be safeguarded or the proceedings to be conducted properly.*

2. *In certain circumstances, special procedures may apply”.*

135. However, even if these were substantiated (the Panel faced a series of allegations, with little or no evidence), as is the constant jurisprudence of the CAS, these are cured by the *de novo* procedure at CAS. Following Article R57 of the CAS Code, the Panel deals with the matter at hand afresh and is able to render its own decision. The Panel noted that the parties confirmed that their respective rights to be treated equally and to be heard had been respected by the Panel.
136. The Panel noted that there was some dispute as to what rule or regulation SAFA might have breached when it pulled its team out of AFCON 2020 on 13 January 2019.
137. The Appealed Decision relied upon Article 74 of the Regulations, which sits with Chapter 34, which is titled “Withdrawals, sanctions for refusal to play and replacement” along with 2 similar Regulations, depending on the time of any “forfeit”:

“Article 72

A forfeit declared from the qualification to the drawing of lots, shall entail further to the loss of entry fees, a fine of twenty five thousand (25,000) US dollars as well as the suspension of the relevant Association for next edition of the FUTSAL AFCON, except in cases of force majeure as defined by the Organising Committee of CAF.

Article 73

A forfeit declared after the drawing of lots and up to twenty days before the start of the final competition results, in addition to the loss of entry fees, in a fine of fifty thousand (50,000) U.S. dollars as well as the suspension of the association for the following two editions of the FUTSAL AFCON, except in cases of force majeure as defined by the Organising Committee of CAF.

Article 74

A forfeit declared less than twenty days before the start of the final competition or during it, shall entail in addition to the loss of the entry fee, also causes the loss of the right of entry, a fine of seventy five thousand (75,000) U.S. dollars as well as the suspension of the relevant association for the next two editions of the FUTSAL AFCON except in cases of force majeure as defined by the Organising Committee of CAF”.

138. However, SAFA referred to Articles 59, 76 and 80 of the Regulations as opposed to Article 74, during the Hearing and in its post-Hearing briefs:

“Article 59

If, for any reason whatsoever, a team withdraws from the competition or does not report for a match, except in cases of force majeure accepted by the Organising Commission, or refuses to play or leaves the ground before the regular end of the match without the authorisation of the referee, it shall be considered loser and shall be eliminated for good from the current competition.

...

Chapter 35 - Withdrawals

...

Article 76

If, for any reason whatsoever, a team withdraws from the competition or does not report for a match, or refuses to play or leaves the ground before the regular end of the match without the authorisation of the referee, it shall be considered loser and shall be eliminated for good from the current competition. The same shall apply for the teams previously disqualified by decision of CAF.

Article 77

A team that shall not be present on the ground, dressed to play at the time fixed for kick-off or at most 15 minutes later, shall forfeit the match. The referee shall register the absence of the team and shall write it in his report. The Organising Committee shall take the final decision in this respect.

Article 78

The guilty team under the terms of articles 76 and 77 shall be eliminated for good from the competition. This team will lose its matches by 3- 0 unless the opponent has scored a more advantageous result at the moment when the match was interrupted, in this case this score will be maintained. The Organising Committee may adopt further measures.

...

Article 80

If a team withdraws after its qualification in the Final Tournament, but before its actual start, it shall be replaced by the team classified next in the group of the team in question. In default, the group to which belongs the forfeiting team shall be composed of three teams”.

139. The Panel notes the new line of argumentation by SAFA, effectively arguing that Article 74 only covers “forfeiture” not “withdrawal”, so Articles 59, 76 and 80 of the Regulations should apply, with their lesser sanctions. However, the Panel also notes that this line of argumentation was only advanced at the Hearing and reaffirmed after, in contravention of Article R56 of the CAS Code. Further, it seemed to fly in the face of SAFA’s own letter to the CAF of 13 January

2020, when it communicated the decision to pull its team out of AFCON 2020, which specifically acknowledged that Articles 73 and 74 were applicable (emphasis added by the Panel):

“...

Due to the fact that the Morocco Organizing Committee has decided to stage the AFCON Futsal 2020 in Laayoune, the capital city of the disputed territory, it is with regret that we have to advise you that we have to withdraw our Futsal National Team from the tournament. The South African Government Policy and Regulation in respect of the disputed territory of Western Sahara between Morocco and the Saharawi Arab Democratic Republic (SADR) does not allow us to participate in the territory. We enclose herewith a copy of the South African Government Policy and Regulation which is self-explanatory. We deeply regret the inconvenience that this will cause to the organization of the Tournament.

In light of the country environment that we find ourselves in and the fact that the policy in question is an external factor that is imposed by the legal environment in which our Association operates, we humbly submit that you should kindly consider waiving the provisions of Article 73 or 74 of the Rules and Regulations of the FUTSAL AFCON. We are prepared to make further submissions that you may require. We are also prepared to make representations to any relevant Committee that you could refer us to. In short, we would like to motivate for a force majeure invoking.

We would like to reassure you of our commitment, support and keen interest in partaking in CAF Programmes and Activities. Unfortunately, we are facing circumstances which are beyond our control at this instance. We would also like to assure you that we treasure our healthy relationship with The Royal Moroccan Football Federation, especially the President, Mr. Fouzi Lekjaa who, together with our President, Dr Danny Jordaan, serve CAF as Vice Presidents. We will continue to build and strengthen our relationship with the Federation for the development of football.

...”

140. The CAF argued that Articles 59 and 76 of the Regulations clearly apply to withdrawals during the currency of AFCON 2020, as they refer to the competition, not turning up to matches, and the like. The Articles 72 to 74, all refer to circumstances happening before AFCON 2020 has even started. Further, they sit in a Chapter called “Withdrawals, sanctions for refusal to play and replacement”. It was noted that SAFA’s team was ultimately replaced, in accordance with Article 80. Additionally, the CAF highlighted its Circular sent to all other Associations and Federations on 14 January 2020, it clearly set out that the relevant Articles were 74 and 80.
141. The Panel notes that the Regulations could have been drafted in a clearer way. There is no doubt that SAFA pulled its team out of AFCON 2020 before it started. To the layman this would be seen as a “*withdrawal*” of the team. “*Forfeiting*” is certainly less clear and a surprising choice of phrase, when the title of that set of rules is “*withdrawal*”. However, it is clear to the Panel, which pursuant to Article 18 of the Swiss Code of Obligations, is able to look beyond the choice of words used, to derive the true intention of the draftsman of the Regulations,

to determine that Articles 72 to 74 are intended to cover the situation such as in the case at hand, where an Association or Federation pulls its team out of AFCON 2020 or competition before it has started. The nearer to the start date, the harsher the sanction.

142. SAFA had a copy of the Regulations from at least 5 January 2020 from CAF and could have seen the 20-day rule and that AFCON 2020 wasn't due to start until 28 January 2020, but it waited until 13 January 2020 to send its letter, falling then within Article 74 of the Regulations.
143. The Panel, therefore, applies Article 74 of the Regulations, which sets out prescribed sanctions, unless force majeure is applicable.
144. The Panel notes that in its letter of 13 January 2020, SAFA claimed that it was compelled to withdraw its team, due to force majeure. In its post-Hearing briefs, SAFA additionally referred to *vis majeure*. The former is wider, as it covers natural and artificial unforeseen events, whereas the latter covers only natural unforeseen events. The Panel again notes that SAFA is in danger of going beyond its original submissions in breach of Article R56 of the CAS Code. It determines to consider the general position of SAFA, basically that it “*couldn't participate*” in AFCON 2020 due to its government's position on the occupied territory of Western Sahara.
145. The Panel heard evidence from the CEO of SAFA, Mr Mokoena, and from Ambassador Naidoo, from DIRCO in South Africa. CAF pointed out that the 2 other witnesses (Messrs Nair and Reddy) that were to give evidence on the repercussions of ignoring the recommendation from DIRCO did not attend the hearing.
146. The Panel also noted the said recommendation from DIRCO. This was referred to in SAFA's letter of 13 January 2020 and was the primary basis for SAFA believing that it had to withdraw its team from AFCON 2020. This document appeared to be updated as time has gone on. It sets out the legal status of the disputed territory in DIRCO's opinion over time and had recently been updated to include DIRCO's position vis-à-vis AFCON 2020. It concluded as follows:

“(…)

12. *In this regard, South Africa's policy on Western Sahara is clear, and in line with this policy, South African Members of Parliament, National and Provincial Executive, Local Government Officials, Members of the Judiciary, State Owned Enterprises, State Institutions, including Chapter 9 Institutions and National Sporting Teams are advised/encouraged not to travel to the occupied territories for meetings, conferences and sporting events*

Recommendation

13. *Morocco regularly utilises conferences and sporting events to give legitimacy to its occupation of Western Sahara. It is therefore recommended that the South African team should not participate at the forthcoming Total AFCON Futsal in Morocco for as long as it is taking place in the disputed territory of Laayoune, Western Sahara”.*

147. The CAF argued that this evidence rather pointed to a “recommendation” being just that from DIRCO, which would fall short of constituting an act of *force majeure*.
148. The Panel, however, heard from Mr Mokoena, who stated that this “recommendation” was really diplomatic language for an instruction. And, to refuse it, may well have led to unspecified ramifications from the South African government, which controls the funding to all sports in South Africa. The CEO of SAFA believed funding for his sport would dry up and as such was left with no choice.
149. The CAF noted that Mr Mokoena didn’t approach the government to see what might happen if this recommendation was ignored or even to see if the team could get some form of dispensation, rather the National Executive Committee of SAFA decided to withdraw the team. Further, it noted that the DIRCO recommendation was to another Government Department, the Department of Sports Arts & Culture, as only it could direct SAFA.
150. Ambassador Naidoo was clear that DIRCO could not sanction SAFA, nor had any sanctions been suggested by DIRCO in its recommendations.
151. The Panel notes that the bar for an event of force majeure is set high. There must be some extraordinary circumstance beyond SAFA’s control (typically a war, strike, epidemic or the like) that would prevent it from participating in AFCON 2020. This is sometimes referred to as an “*irresistible force*” or unforeseen event. Further, if a party could do something to remove such circumstance, then it should take those steps.
152. In the case at hand, the Panel felt that this “*recommendation*” would not reach the requirement of a circumstance of *force majeure*. While perhaps it could be seen as a direction from the government, and quite apart from whether SAFA should bow down to political pressure, it should have communicated the difficulties it faced to both its own government and to the CAF.
153. It is clear to the Panel that there was no attempt made by SAFA to see what consequences it might face should it participate in AFCON 2020, only the suspicions of Mr Mokoena that these would be financial. Further, SAFA was aware on 2 December 2019 that draw for AFCON 2020 was in Laâyonne and must have concluded then that AFCON 2020 would be there too, as it wrote to the CAF on 9 December 2019 asking it to move AFCON 2020 from Laâyonne. If it had the DIRCO policy document at that stage, it could have shared it with CAF. However, it only sent it to CAF on 13 January 2020 when it withdrew the team from AFCON 2020. As noted above, SAFA had the Regulations on 5 January 2020 from CAF and it could have avoided the 20-day rule and received a lesser sanction.
154. Further, the Panel queries whether this would be an unforeseen event. It was clear that the position of DIRCO has been long established. SAFA would have known when the CAF awarded AFCON 2020 to Morocco that there was a possibility that it would finally be held in the disputed territory.

155. In conclusion, the Panel determines that SAFA were in breach of Article 74 of the Regulations and there was no instance of *force majeure* in the case at hand.
156. The Panel notes that Article 74 of the Regulations already contains a prescribed sanction for a breach of this rule. Further, as noted above, due to the limited prayer for relief by SAFA, the Panel is limited to consider only the fine part of the sanctions, not the 2-tournament ban. The Panel notes that this will undoubtedly have the effect of setting the sport of futsal back in South Africa for a long period of time, as these tournaments are the most important international ones in Africa and the gateway to world events. However, this must be left as an issue for the CAF to consider in the future.
157. Turning to the fine, the Panel notes that SAFA submitted that it was “*excessive and unduly harsh*” and that other sanctions were available. SAFA did not convince the Panel that a judging body could ignore the prescribed sanctions and look into perhaps Article 45.3 of the disciplinary Code instead. As such, the Panel was compelled to apply those sanctions.
158. The Panel felt that in order to disturb the prescribed sanction (the fine), it must be grossly disproportionate or there must be some form of unequal treatment SAFA could point to.
159. The Panel noted that once SAFA withdrew its team, the team it beat in qualifying, from Mauritius, was able to participate in AFCON 2020, only for it to withdraw too. At the Hearing, the CAF confirmed that it received the same sanction as SAFA had, the same fine and a ban from the same 2 tournaments. As such, there was no unequal treatment.
160. There was no strong evidence of damage or loss suffered by the CAF, although inevitably some (the CAF cited bringing the sport into disrepute and damaging its image and reputation) would have been suffered when any team pulls out of an event so close to its start. However, the test for the Panel is whether a fine of this quantum is “*grossly and evidently disproportionate*”. The Panel notes that the closer a withdrawal is to the start of AFCON 2020, the higher the fine. This makes sense, as logistically and reputationally, it has a bigger impact on the host Federation and on the CAF too, in the eyes of the supporters, the sponsors and the like. A fine of USD 75,000 does not seem grossly and evidently disproportionate to the act of pulling a team out of a major event days before its start.
161. In conclusion, the Panel has no option but to reject SAFA’s remaining prayer for relief and therefore to reject its Appeal in this matter.

B. Conclusion

162. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel determined to dismiss SAFA’s Appeal entirely.
163. Any further claims or requests for relief in this procedure are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the South African Football Association on 26 March 2020 against the decision of the Confédération Africaine de Football Appeal Board of 16 March 2020 is dismissed.
2. The decision of the Confédération Africaine de Football Appeal Board of 16 March 2020 is upheld in its entirety.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.