



15 August 2023

# SAFA's Relationship with its Members

What are the parameters of that relationship?



**Extracted from the book "Our Football is Broken"**  
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## **CHAPTER 5**

### **SAFA'S RELATIONSHIP WITH ITS MEMBERS**

*This extract is from the book "Our Football is Broken: How to Fix South African Football's Dispute Resolution System".*

Chapter 1 of this book examined the basic structure of the SAFA Statutes and its various principles, focusing on the separation of powers doctrine as one of the fundamental bases for governing the sport in South Africa. It is also important to examine the corporate structure of SAFA, its governance environment and the relationship between the national association and its Members as another example of the envisaged relationship between the constituent parts of the Association.

It is hard to find official standards for the governance of voluntary, self-regulating organisations like SAFA. In the late 1990s and early 2000s, Richard Wilkinson of the Institute of Directors of South Africa (IODSA) championed better corporate governance standards for the South African sporting fraternity. The IODSA oversees the development of the world-renowned King Code of Corporate Governance. Wilkinson served on the National Olympic Committee and was an avid promoter of good governance principles for sports. He introduced many sports federations to the concept of transparent and accountable governance.

But, no particular South African code dominates the governance model of South African football. SAFA purports to support the King Code of Corporate Governance but makes no formal reference to it in any of its official documents.

As a result, the SAFA Statutes serve as the organisation's primary governance tool. The Statutes are an evolving set of principles designed to

encompass the organisation's evolving culture, set within a broader framework. That framework includes:

- i. The National Sports and Recreation Act
- ii. The Companies Act;
- iii. The Safety at Sports and Recreation Events Act (SASREA)
- iv. The Department of Social Development's Code of Good Practice for South African Non-profit Organisations (2001);
- v. The Non-Profit Organisations Act No. 71 of 1997;
- vi. Public Benefit Organisations under the Income Tax Act No. 58 of 1962;
- vii. South African NGO Coalition's (SANGOCO) Code of Ethics for Non-profit organisations (1997);
- viii. The Independent Code of Governance and Values for Non-profit Organisations in South Africa (2012);
- ix. The FIFA and CAF Statutes;
- x. the King Code of Corporate Governance;
- xi. The SASCOC Constitution.

The concept of good governance is difficult to define from one jurisdiction to the next. Even European sports bodies struggle with the concept. In a landmark series of studies on sports in 10 European nations, the 2018 version of the National Sports Governance Observer (NSGO) reported that "*Governance* is an extremely broad and abstract notion for which no single definition exists. Scholars often advance multiple and different dimensions when conceptualising the notion".<sup>1</sup> According to the NSGO, there are two schools of thought: one arguing the flaws of composite indicators because it is impossible to measure an abstract term like 'governance'; The other supports the idea as a means to ignite a debate and extract accountability. The latter concept appears to be the dominant framework for South African sport.

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<sup>1</sup> *National Sports Governance Observer – Final Report 2018*, Arnout Geeraert (ed.), p. 15

The King IV Code of Corporate Governance defines the term as follows:

*Corporate governance, for the purposes of King IV, is defined as the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes:*

- i. *Ethical Culture*
- ii. *Good performance*
- iii. *Effective control*
- iv. *Legitimacy*

*The use of 'corporate' in the term 'corporate governance' is used to differentiate it from other forms of governance, for example national or political governance. 'Corporate' refers to organisations that are to form legal entities separate from their founders and therefore applies to all forms of incorporation whether as company, voluntary association, retirement fund, trust, legislated entity or others.<sup>2</sup>*

Regardless of whatever meaning is appropriate, the concept is here to stay. Good governance is based on accountability, transparency, separation of powers, and fairness. These values are also enshrined in the SAFA Statutes.

*Play the Game*, the organisation that oversees the compilation of the NSGO, has developed an extensive set of 46 good governance principles that is worth looking at. It believes that “[w]hile no single definition of ‘governance’ exists, governance research focuses either on policies, politics (i.e. power relations), or polity (i.e. institutional rules and procedures)”. The NSGO considers the following four principles as the pillars of good governance in sport:

- i. Transparency
- ii. Democratic processes;
- iii. Internal accountability & control, and

- iv. Societal responsibility.

But first, let us look at how the SAFA Statutes have changed over time and why the separation of powers philosophy is so important to South African football governance.

When SAFA was founded on March 23, 1991, with a uniform charter resulting from the amalgamation of the four racially oriented football associations, it became a *universitas*. The Soccer Association of South Africa (SASA), the South African Soccer Federation (SASF), the South African National Football Association (SANFA), and the Football Association of South Africa (FASA) were the four founding associations.

Following a crisis of confidence in the Association that resulted in the forced resignation of its third President following the report of a judicial commission of enquiry into the Association's activities, the SAFA constitution was realigned for the first time in 1997.

This revised constitution included, among other things, new principles that took a deliberate step away from the concept of an Executive Presidency by establishing the role of Chief Executive Officer to maintain a respectable distance between the organisation's oversight and operational structures and to professionalise the Association's administration.

In 2006, the Association decided to realign its internal boundaries to reflect changes brought about by the Municipal Demarcation Board's refinement of all municipal lines across the country. There are now 52 SAFA Regional Members, up from 25 previously.

During the 2006 realignment, members argued whether to adopt a plan to change SAFA from a volunteer to a corporate model. Members flatly rejected the idea, citing the need to maintain their

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<sup>2</sup> *King IV Report on Corporate Governance*, Institute of Directors in Southern Africa, p. 11

legal autonomy as separate entities. Since then, the bulk of SAFA's Members have registered as Public Benefit Organisations (PBOs), with about 200 LFAs following suit.

A debate on whether the name 'SAFA' should be deleted from the titles of each of the Regions and LFAs, as requested by the SAFA President, has raged in recent years. This discussion was not conclusive. However, in late 2021, SAFA Amajuba Region decided to change its name to Amajuba Regional Football Association, dropping the SAFA name, which suggests that the idea is still alive. The debate was based in the desire that each Region and LFA wanted to maintain their unique identities and associated only through their statutes.

As a result, there is little doubt that the South African Football Association remains legally disjointed from its members. However, it would be naive to believe that the relationship should be adversarial. Indeed, SAFA and its Members are independent administrative bodies with separate legal rights and obligations, but they are bound together by a contract (the Statutes) that specifies the terms and conditions that regulate the relationship in the sport's best interests.

The second major adjustment of the constitution occurred in 2008 when related clauses were grouped together and regulatory elements strengthened in associated documents. These revisions retained the concept of a non-Executive President and a statutory role for the CEO, but expanded on the procedural rights for individuals appearing before its tribunals.

In 2011, the third significant update brought the statutes in line with the FIFA Standard Statutes. FIFA's goal was to establish a globally consistent set of football governance principles. Unfortunately, the earlier constitution's detailed procedural fairness provisions were lost in the revamp, leaving judicial bodies without a comprehensive procedural guide, and forcing them to rely on the broad procedural provisions of the new SAFA Disciplinary Code, which was modelled on the FIFA Disciplinary Code.

Additional changes followed in 2012, 2013, 2015, 2017 and 2018. Some of the 2012-2015 changes were occasioned by directives from FIFA. Key among the FIFA recommendations were:

- i. That Executive Members should not be allowed to vote in the SAFA Congress (2012);
- ii. That the number of meetings of the National Executive Committee (NEC) should be limited following FIFA's approval of a 32-member NEC, but with the proviso that the size of the NEC be reduced to approximately 18 members by 2016;
- iii. An emphasis on the separation of powers;

To illustrate the point further, the diagrams below depict the corporate structure of the national association and each of its Members, each of them holding a 'shareholding interest' in the national body. However, each Member remains governed by its own statutes / constitution.

SAFA produced Standard Statutes for Regions and LFAs as a result of FIFA's standardisation initiative, which began in 2001, and mandated that each Member align its statutes with the Standard Statutes. For the SAFA Statutes to have any force and effect, the majority of the clauses had to be incorporated into each Member's statutes first.

The statutes define the parameters of the relationship between the three structures. The Provincial Structure also had its own constitution that defined the relationship between the Members within each Province.

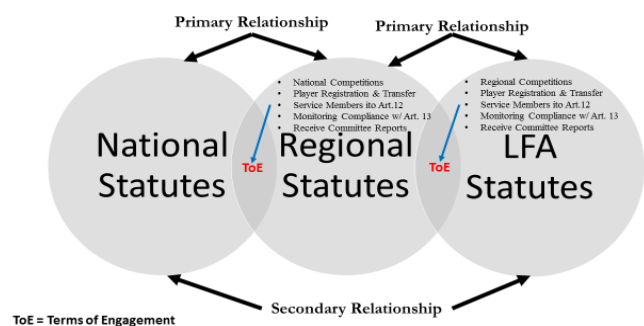


Figure 1 - Constitutional Relationships

Article 12 of the SAFA Standard Statutes for Regions bestows the following rights on its Members (LFAs):

12.1 The Members of SAFA (insert name) have the following rights:

12.1.1 to take part in the Congress of SAFA (insert name), to know its agenda in advance, to be called to the Congress within the prescribed time and to exercise their voting rights;

12.1.2 to draw up proposals for inclusion in the agenda of the Congress;

12.1.3 to nominate candidates for all bodies of SAFA (insert name) to be elected;

12.1.4 to be informed of the affairs of SAFA (insert name) through the official bodies of SAFA (insert name);

12.1.5 to take part in competitions and/or other sports activities organised by SAFA (insert name);

12.1.6 to exercise all other rights arising from the Statutes and regulations of SAFA (insert name).

12.2 The exercise of these rights is subject to other provisions in these Statutes and the applicable regulations.

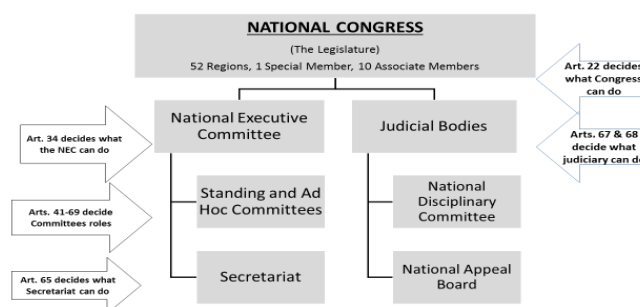
Article 1.9 of the Standard Statutes for Regions mandates that the Region “shall be a universitas with full legal personality including the rights to sue and be sued in its own name and to hold property in its own name. It is formed for an unlimited period of time.”

In South African law, a *universitas* is incorporated under the common law once it adopts a constitution that states (i) perpetual succession; and (ii) that its assets and liabilities are held independently from its members. As a result, SAFA's members are legally disjointed from the organisation. Similarly, SAFA's Members get legal standing as juristic persons with rights and the ability to make independent decisions, whereas Regions and LFAs are legally disjointed from their Members.

Figure 3 - National Governance Structure

Correspondingly, Article 12 of the SAFA Standard Statutes for LFAs contains the same requirements for the Members of the LFAs, in this case, the clubs.

As noted above, a *universitas* in South African law is incorporated in terms of the common law once it has adopted its constitution. This does not mean that an LFA has no functional relationship with its Region as its parent body in the area. It simply means that the relationship is governed by the Statutes, Rules and Regulations agreed upon by both parent and affiliate.



It means that the LFA is obliged to follow its own statutes to convene its congresses, including its elective congresses. The LFA must exercise its authority under its Statutes by convening its Quadrennial (Elective) Congress in accordance with Article 25 of its Statutes and conduct its elections in accordance with its own statutes. It must also abide

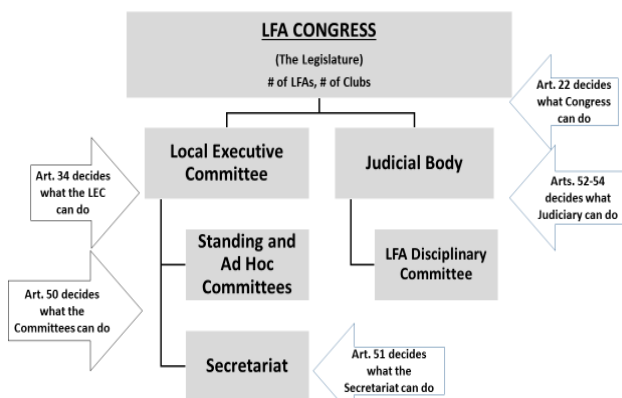


Figure 2 - LFA Governance Structure

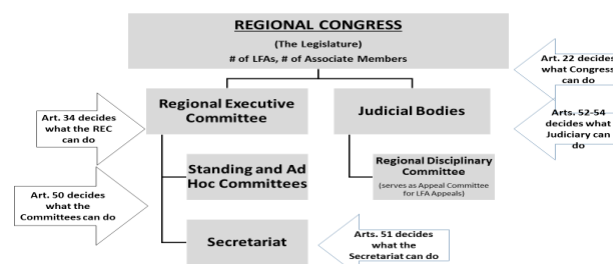


Figure 4 - Regional Governance Structure

by the provisions of the SAFA Electoral Code by appointing an independent Electoral Committee in accordance with Articles 3 and 5 of the SAFA Electoral Code.

However, after reviewing the Minutes of seven Regional Executive Committees in various Provinces in 2021, I discovered that more than 80% of some Regions' deliberations were about the operations of LFAs, such as LFA leagues, serving as Electoral Committees for LFA elections and directly running elections in LFAs, and monitoring "compliance" in LFAs using nebulous compliance criteria that are not based on the Statutes. No Regional committee reports, policy proposals or Regional football development matters were discussed in these meetings.

The SAFA Statutes and the SAFA Standard Statutes for Regions and LFAs are very specific about what criteria keeps a Member in good standing. The *Definitions* section of each statutes describes a Member in good standing as follows:

*"Member in good standing": means a Member which has complied with all obligations imposed upon Members by the Constitution*

"Obligations" and "by the Constitution" are the important phrases in this definition. Members may only be considered not in good standing if they fail to comply with the provisions mentioned under Article 13 (Members' Obligations) in the national Statutes and Article 12 (Members' Obligations) in the Standard Statutes for Regions and LFAs. There are no other criteria that can lead to a Member's compliance status being revoked.

The twelve (12) criteria that define Members' obligations, including the preservation of the Member's admissions criteria provided in Article 11.2 of the Statutes, serve as the litmus test for compliance. In a legislative setting, these 13 criteria

necessitate considerable engagement with Members using an assessment tool that must be agreed upon by all Members (Congress). Membership rights are a matter of constitutional law that may only be changed by a legislative assembly through a constitutional amendment.

Compliance criteria for continued membership rests with the Congress and cannot be usurped by an individual or an executive committee. The compliance function can be delegated by Congress to an independent body or the Executive Committee only after the criteria had been determined by it. But the decision on continued Membership remains the preserve of the Congress.

Yet, as seen in Case Abstract #1 in this book, a Regional President stood up in an elective Congress in 2022 and declared half of the Region's Members as non-compliant and prevented them from voting.

The Region is also required to operate in accordance with its own statutes, free of undue interference from the SAFA Head Office. Intervention by the parent body, except under extraordinary circumstances, is not automatic and must be requested.

SAFA and FIFA have a similar relationship. FIFA's Statutes control the organisation's members. Locally, the NSL and SAFA have traditionally had a parent-affiliate relationship, with a lot of policy and operational divergence between them. The invitation to speak at the NSL Annual General Meeting is extended to SAFA as a courtesy and out of respect, not as a right.

As a former database developer, I find the theory of hierarchies in computer science quite useful to illustrate their utility in organisational structures. Programming structure usually follows one of two types of organisational hierarchies: (i) accountability hierarchies and (ii) affiliation hierarchies.<sup>3</sup>

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<sup>3</sup> *Accountability and Affiliation Hierarchies*, San Jose State University Computer Science

<http://www.cs.sjsu.edu/~pearce/modules/patterns/analysis2/hierarchies/index.htm>



In accountability hierarchies, the parent-subordinate relationship is characterised by a supervisory ethos. A corporation with many divisions, a secretariat with multiple departments and a multi-level supervisory structure where subordinates report to seniors, are examples of accountability hierarchies. The parent is positioned in a supervisory capacity in relation to the subordinate. Instructions are issued based on operational requirements and must be followed at the risk of disciplinary consequences. There is therefore an internal linear structure within the hierarchy.

On the other hand, in affiliation hierarchies, the components of the organisation form separate structures affiliated to a parent structure. A federative structure with multiple members governed directly by their own rules is an example of affiliation hierarchies. The relationship is governed by two constants, in this case, the statutes of each organisation. The programmer must therefore build these distinct constants into the programme structure for the algorithm to produce the required results. The programmer then parses the input variables through the constants (the statutes). All the variable inputs must pass a validity test contained in the constants.



Figure 5 - NSL Governance Structure

The affiliation hierarchical model finds application in the SAFA-Region-LFA relationship. With each structure governed by its own statutes, the affiliation model prevents day to day intervention into the affairs of the affiliate as each maintain separate organisational meetings, books of account, leagues, administrations and judicial bodies, amongst other things.

The affiliation hierarchical model is also applicable to the relationship between FIFA and its affiliates and between SAFA and its affiliates.

Overlaps between the affiliation and accountability hierarchies do occur through the provision of dispute resolution mechanisms (at the appeal and arbitration levels); through the provision of promotional league systems; policies on player status and transfer; cross-border engagements between Members; and other operational support programmes such as technical and administrative development and training methods and data aggregation. But these overlaps do not lead to the affiliates becoming mere instruments for parental manipulation.

According to the minutes of the above-mentioned Regional Executive Committee meetings, Regions regard LFAs as direct linear subordinates within the same constitutional structure. They failed to recognise the legal distinction between these entities.



Figure 6 - South African Football Affiliation Hierarchy

In the same manner that the FIFA rules are not, *ipso facto*, directly applicable at the level of a national federation, so too are the provisions of the SAFA Statutes not directly applicable unless it has been included in the rules of the affiliate for it to have any force and effect. If SAFA failed to do so, then FIFA's recourse would be to suspend SAFA from any of FIFA's competitions and from receiving any other membership privileges. Policy decisions of the parent body must also be carefully navigated to ensure that it does not fall afoul of the statutes of any party in the parent-affiliate relationship. Instructions to affiliates must still pass the test of legality before it can be implemented by the recipient of that instruction.

As already indicated in the national governance structure diagram, the National Congress (meaning the Members of SAFA) sits at the top of the proverbial food chain. However, in an illiberal democracy a single organ of the organisation – like an executive committee – can arrogate most functions of the organisation to itself, and can leave the organisation vulnerable to the abuse of power, and may turn it into an *anocracy*.

SAFA’s primary duty is to act on behalf of and service its Members. However, the current power equation has been inverted and affiliates are treated as hierarchical subordinates instead of shareholders.

act *ultra vires* the constitutional mandates of both structures.

The SAFA judiciary is not depicted in the diagram as its role is of an independent nature, albeit that its functions are also governed by the Statutes. The separation of powers principle [*which is explained in more detail in chapter 4*] is further highlighted when read together with the following diagram:

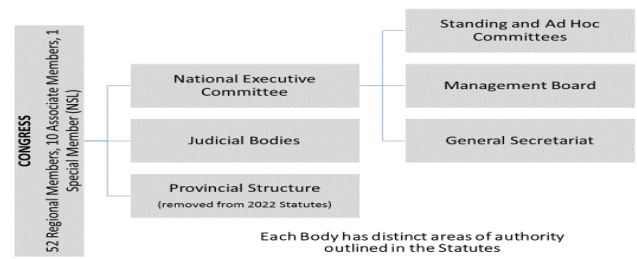


Figure 7 - The Bodies of SAFA

The Carver Policy Governance (CPG) framework is a comprehensive theory of governance for any organisation. It is not possible to present the full theory of the policy governance framework in this book. However, the summarized description below is meant to contextualise the role of an executive body within an organisation.

*Because it [the Carver Policy Governance framework] is a complete theory, it informs board planning, mission, committee work, agenda control, budgeting, reporting, CEO evaluation, management relationships, fiduciary responsibility, and all other aspects of the board job.<sup>4</sup>*

As illustrated in the diagram above, the Carver Policy Governance model describes the role of the board as follows<sup>5</sup>:

*The purpose of [1] the board job is, [2] on behalf of some ownership, [3] to see to it that the organisation [4] achieves what it should and [5] avoids what is unacceptable.*

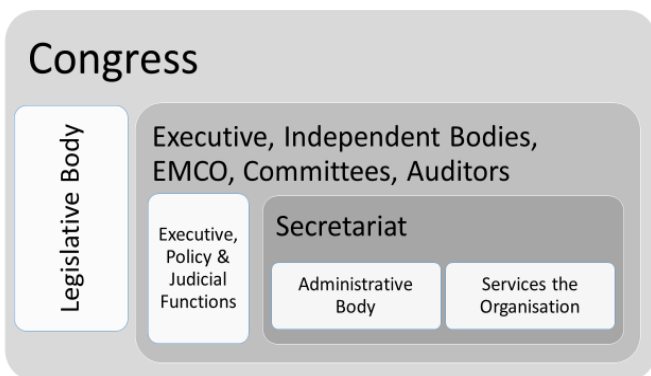


Figure 8 - Separation of Powers Diagram

The diagram above is adapted from the ageless Carver Policy Governance framework. It is designed for non-profit organisations and succinctly spells out the roles and responsibilities of various role-players within an organisation like SAFA.

There are four tiers of functional role players depicted in this internal accountability diagram: (i) Congress performs the legislative function; (ii) the NEC performs the executive function; (iii) the Secretariat performs the administrative function; and (iv) the staff perform the line function. Additionally, the judicial bodies serve to interpret the rules that control this separation of power.

The purpose of the illustration is to highlight the parameters within which each role-player should function. To cross the boundary of each circle is to

<sup>4</sup> *The Carver Policy Governance Model*, American Society of Corporate Secretaries

<sup>5</sup> *Ibid.*



*[1] The board job. It is the board's responsibility to govern; the board has a commensurate authority to govern. Individual board members do not. That is, whatever authority is legitimately wielded by a board is wielded by the board as a group. Hence, a CEO is bound by what the board says, but never by what any board member says;*

*[2] On behalf of some ownership. the board speaks on their behalf, a task that requires (a) knowing who the owners are and what their desires are, (b) being able to distinguish owners from customers (clients, students, patients) and other stakeholder groups;*

*[3] to see to it that the organisation. Seeing to it implies a commitment to assure, not simply to hope that things come out right. Seeing to it that things come out right requires three steps: First, the board must describe "right" - that is, the criteria that would signify success. Second, the board must hold someone accountable for reaching these criteria. This is most easily done by using the CEO function. Third, the board must systematically and rigorously check to see if criteria are being met, that is, the board must monitor performance regularly;*

*[4] achieves what it should. This is the most important aspect of instructing the CEO. The only achievement that justifies organisational existence is that which causes sufficient benefits for the right recipients to be worth the cost.*

*[5] and avoids what is unacceptable. The board can simply state the means that are unacceptable, then get out of the way except to demand data (monitor) that the boundaries thus set are being observed.*

No other school of organisational governance explains the role of the executive in an organisation as succinctly as the CPG model. Executive bodies must adopt a more structured approach to their governance by ensuring that all component parts of the organisation function harmoniously and refrain from usurping the roles of other bodies of the

organisation. It requires a reassessment of the commitment of each member for the organisation to achieve its purpose.

The CPG framework recognises that there is a significant risk that executive bodies will go beyond their mandates in an attempt to prevent what is unacceptable by interfering in operational affairs. Not only that, but the patronage trap makes it difficult for the executive to resist doing the wrong thing. To prevent this common error among executive bodies, it becomes even more critical for it to implement an effective governance and compliance monitoring mechanism.

Similarly, the executive bodies should avoid treating the shareholders (the Members) of the Association as instrumentalities of its own narrow power objectives.

The parent body's ability to interfere in the affairs of its Members is limited by those matters referenced in the Statutes such as Article 2.17.16 (the most frequently abused intervention clause), the disciplinary and ethics clauses and the monitoring and oversight functions stipulated in the Statutes.

In a virtual admission that executive committees never had the power to do so, the authority to inquire into the administrative and/or financial affairs of a Member has now been conferred on the National Executive Committee in the 2022 SAFA Statutes.

#### *Summary*

*This section's goal is to emphasise the kind of relationship that must exist between the national association and its members. For restricted goals such as political convenience and other non-governance related matters, it is not always acceptable for the national association to get involved in the day-to-day operations of its members.*

*The relationship between SAFA and its Members is governed by contract and is regulated by the statutes of each as a separate juristic entity capable of acting*

*in accordance with its own statutes, rules, and regulations.*

*Members intentionally chose to keep their individual identities as universitates and the parent-affiliate connection when SAFA restructured its Statutes back in 2006. The implication is that one cannot readily intervene in the affairs of the other without first consulting the constitutional framework. Simply put, the Region cannot decide on its own how it will conduct its Member elections. Similarly, FIFA cannot decide to organise SAFA elections unless there has been evidence of third-party interference in the election process, among other things provided for in the FIFA Statutes.*

*SAFA has devolved into an illiberal democracy with an inverted power structure in which a single body dominates the organisation's broader political debate. This must change since it encourages power abuse.*

*The NEC's mission is to ensure that the organisation achieves what it should and avoids what is unacceptable on behalf of the owners. Transparency, separation of powers, fairness, and democracy are among the foundational concepts of good governance.*

*The 46 NSGO principles of good governance can help SAFA evolve to the next level of sport governance achievement.*

*In order to comprehend how organisations should interact with one another, it is a good idea to learn the difference between accountability hierarchies and affiliate hierarchies. It's critical to avoid the parent-child communication trap that so many organisations fall into. Members' relationships should not be antagonistic, but rather based on mutual respect for the rules that bind them.*