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movement of African Cricketers**

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Beyond *Kolpak*: EU Law's unforeseen contribution to the movement of African Cricketers

Introduction

Cricket historically consisted at an international level of 'Test Matches' played between selected Commonwealth Countries. The first recognised Test Match, between sides from Australia and England, took place in 1877 though there is record of a match between the USA and Canada in 1844. Test Matches are now spread over 5 days with each side having two innings with three results possible, a win for either side or a draw. There can be between 1 and 7 matches in one 'Test Series' between the same countries. Matches were not always time limited and the last 'timeless Test' took place between South Africa and England in Durban in 1939. After 10 days play the match was abandoned as a draw to enable the English players to catch the boat home. There are now much shorter forms of the game, from one-day matches of usually 50 overs per side, to the more recent Twenty/20 format that consists of only 20 overs per side lasting around 3 hours in total.¹ Cricket has been firmly tied to concepts of English identity, beyond sport, and the relationship to the colonies. Paradoxically and due to the spread of the game through the empire birthplace was originally deemed irrelevant to qualification to represent England. As Wagg notes; 'Arguably, nationality did not enter the discourse of English cricket in any significant way until the 1990s'.² Whilst this can be seen at a national level within the professional game, English County cricket, the participation of 'overseas players' not qualified for England has been tightly controlled. The links to Africa, particularly South Africa, has been significant for both the English national side and the County game. The relationship has caused political controversy at Governmental level demonstrating that cricket's historic link to international relations is ongoing. The *Kolpak* decision was born out of a more contemporary set of political allegiances, membership of the European Union, but its impact was firmly connected back to African players.

The emergence and development of cricket in Africa is inextricably linked to the expansion of the British Empire, and is pointedly not limited to South Africa.³ The broader African influence is illustrated by the combined side of East Africa, comprising representatives from Kenya, Tanzania, Uganda and Zambia, which was Africa's representative at the inaugural one-day World Cup held at Lords in 1975.⁴ The fourteen man East African Squad was made up of seven Kenyans, three Zambians, two Tanzanians and two Ugandans.⁵ This coincided with the period when South Africa, the most prominent of the African sides, was excluded from international competition due to the political system of apartheid and consequent boycott. The development of cricket through the British Empire produced a geographical variation in the playing seasons between the Southern and Northern hemispheres. This was reflected in the first set of Minutes of the newly founded Imperial Cricket Conference (ICC) in 1909. The ICC originally comprised of England, South Africa and Australia and was expanded in 1926 to include the West Indies, New Zealand and India with Pakistan added in 1952. In

1965 the name was formally changed to the International Cricket Conference and Associate Membership introduced. In 1989 the third name; the International Cricket Council was adopted.⁶ Despite name changes the initials, ICC, have remained the same. Originally the ICC instigated a set of international tours in two cycles 1909-1913 and 1913 -1917. Either Australia or South Africa would tour England in May to August with England reciprocating to one of the others in November to March.⁷ This seasonal difference was later reflected, on an individual level, with African, Australian, West Indian and New Zealand players able to play in both their own domestic cricket and also the English season, as paid professionals. English players were also able to travel the other way. Player movement was dependent on a range of political and legal considerations imposed by the host country. During the period of South Africa's international isolation numerous individual cricketers played professionally in English County Cricket; thus the global movement of African cricketers has been driven by both political and economic factors.

The development on the international one-day tournament from 1975 permitted the Associate Member countries that qualified through the ICC Trophy to compete against the Test playing nations.⁸ Five day long Test Matches inevitably favour the countries with a stronger playing base and infrastructure to hone the necessary skills. One-day matches can be more easily influenced by outstanding individual performances, and so the increased significance of shorter versions of the game has allowed the sport to broaden its base. A viable tournament and the desire to attract an increased television audience required more sides so a route was opened up, from the 1979 competition onwards, for qualification through the ICC Champions Trophy. The history of the World Cup illustrates the development of nations such as Zimbabwe and Kenya who have managed to pull off shock results.⁹ Contemporaneously political power within cricket's international administration has shifted from the Marylebone Cricket Club (MCC) at Lord's to Asia, lessening the English influence. The MCC, a private members club, was originally the controlling body of not just English cricket but the international game.¹⁰ Now the national Governing Body of cricket in England is the England and Wales Cricket Board (ECB) and Glamorgan, a Welsh County, plays in the County Championship as First Class County. The ECB was operational from Jan 1st 1997 replacing the Test and County Cricket Board (TCCB) that existed from 1968 -1996. Scotland and Ireland have their own national sides and Governing Bodies. The forums of two important legal decisions that have shaped the contemporary international game, and further enabled player movement, aptly demonstrate the loss of power. The first, *Greig v Insole*, took place in the Royal Courts of Justice in London in 1978, in a period when Lord's was still the centre of cricket administration.¹¹ The case directly involved cricket and here the legal forum and cricket authority were geographically congruent. The second case, *Kolpak*,¹² involved handball rather than cricket, and was determined by the European Court of Justice, based in Luxemburg. The eventual impact however was that professional cricket employment in England was no longer just a 'national' matter and sport, including County Cricket, could be influenced by same European legal principles that had already impacted, so fundamentally, on professional football across all the major European leagues.¹³ Fear of the ramifications of *Kolpak* caused a crisis

of national identity in English cricket. The doomsday scenario was of unlimited numbers of overseas players playing in the County game disrupting a previously tight quota system. As County cricket is the professional base from which the national side is drawn there was concern that the national side would be weakened through a more limited selection pool. The essence of this fear was that English cricket would no longer be populated by English players.

This piece begins by outlining the colonial connection, and the influence of English society upon African cricket. It explores issues of player movement and the rise of international one-day cricket from 1975 through the upheaval of World Series Cricket (WSC) in the late 1970s. The key point is the analysis of *Kolpak*, a case that for a period appeared indirectly to drastically open up the market to players from the African, Caribbean and Pacific (ACP) countries that had signed an Association Agreement with the European Union. The case was determined at a time when cricket in both South Africa and Zimbabwe was facing political turmoil and this combination of factors led to a significant migration of cricketers from Africa to England. This in turn led to expression of concerns, by the cricket's governing bodies in both England and South Africa, about the potential impact of this player relocation on the national teams. Zimbabwe was in the internal throes of both a political and cricket crisis. In England political efforts were instituted to restore control over player mobility thus ameliorating the 'crisis'. An obvious question is why this very specific issue and these legal decisions are of interest to sports historians. Maguire in 1995 sketched out the common ground between sports history, sports sociology and sports geography citing his own work, with John Bale, on sports labour migration.¹⁴ As lawyers, operating from a socio-legal perspective, we would argue that the history and sociology of specific events or the sport itself are important to understand the legal decisions and the broader influence of law. From the other direction an appreciation of the role of law in shaping sport and constructing sporting values contributes to the common ground referred to by Maguire. Disregarding the law this short period of player migration is part of the historical lineage of cricket from its very origins that can be of interest to historians of both cricket and sport more generally.

The Empire, Cricket and Africa: English County Cricket as escape route

The relationship between cricket and the British Empire has been well documented but the connection is far more complex than a simple transference of a sporting culture. As Allen notes, cricket was part of a broader cultural domination that was rooted in a sense of racial superiority and a desire to civilise Africa.¹⁵ In this analysis cricket was intimately tied to the politics, economics, class, law, religion, morality and the culture of the era in addition to the individual personalities who shaped the sport. It was far more than a game imported and played by colonists. Allen does note the pragmatism that led, in the West Indies, to a more relaxed approach to participation in terms of racial background.¹⁶ Tours from England were used to promote not just cricket but

wider values and reinforce the ties to the British Empire.¹⁷ According to Birley Lord Harris observed ‘that cricket had “done more to consolidate the Empire than any other influence”’.¹⁸ Cricket was viewed an important part of the process of Anglicising South Africa:

‘For Harris and fellow imperialists, the game was significant throughout the empire in providing a cultural and sporting bond that not only could transmit the important scriptures of British civility but also, in his words, had become “a strand in the elastic cord which unites the Colonies and the Mother country”’.¹⁹

Desai and Vahed make the point more bluntly, arguing that in Victorian times cricket was seen as a useful way of disciplining colonials and fostering muscular Christianity; ‘[i]n South Africa, cricket came to represent British class ideology in relation to Afrikaners and racist exclusion in relation to blacks’.²⁰ Allen notes that the English cultural values, so intimately embodied within cricket, led to a weakening of Afrikaner interest during the Boer war period.²¹ Birley argues that South Africa’s key asset – gold – might explain why the Springboks were admitted to what he called the magic circle of Test cricket.²² The strong South African support for the foundation of the ICC demonstrates the close cricketing ties between the two countries and Pelham Warner saw the ICC as the obvious link between the MCC and the overseas cricketing countries.²³ The natural location of the ICC at Lord’s represented its close physical ties to the MCC. In terms of South African cricket, Desai and Vahed note that its story, like the defeat of apartheid itself, is often told in overly simplistic terms.²⁴ Cricket, and indeed sport generally, is entwined with South African history and a fundamental part of the national psyche. Relations between sport and politics are undoubtedly complex and require detailed analysis. The critique of Desai and Vahed explores this complexity; ‘Mandela met De Klerk. Graeme Pollock met Basil D’Oliveira. Apartheid had been stumped. Past and present merged. The covers were pulled off to reveal a level playing field. Another “small’ miracle. Critical voices of dissent were drowned out by the over-arching language of nation-building’.²⁵

The crucial period for South African cricket, and indeed South African sport in general, revolves around the Basil D’Oliveira affair in 1968.²⁶ The furore around his original non-selection, and later reversal, for an MCC tour of South Africa precipitated a series of events that led to the eventual exclusion of South Africa from international sport. These events included the series of protests around the Springbok rugby tour of England in 1969-70 that led to the cancellation of the 1970 South African cricket tour to England.²⁷ The International Olympic Committee (IOC) duly expelled South Africa that was later followed by the unanimous approval of the Gleneagles Agreement in 1977. The Commonwealth of Nations agreed to formally discourage both contact with and competition against South African teams or individuals. The bans and exclusions were crucial to the eventual removal of the system of apartheid in South Africa. As Peter Hain noted, ‘Sport was intrinsic to the very fabric of apartheid and its maintenance on a racist basis was therefore important to the continuation of apartheid’.²⁸ The exclusion of South Africa from international sport undoubtedly accelerated political change. The IOC lifted its ban in 1991, therefore allowing

participation at the Barcelona Olympics in 1992, following the official abolition of apartheid.²⁹ Arguably full abolition of apartheid only occurred following the general elections of 1994. Participation at the 1995 Rugby World Cup and the 1996 Cricket World Cup demonstrated that South Africa was now returned to the fold of international sport. During the period of isolation numerous high-class South African cricketers had sought to practice their trade as professional players in England.

Permitting an influx of overseas professional players into English County Cricket had required a change in the qualification rules that in the 1960s required residency within the County boundaries for two years. The pressure for change came from the Counties themselves who saw the allure of overseas players as a means to revitalise their ailing finances. The regulations altered in a slow, piecemeal, fashion before immediate registration without a residential qualification, was permitted from the 1968 season but with a limitation of one player for 3 years.³⁰ It was hoped that the 'stars' of the international game would attract the spectators who had deserted County Cricket, especially with a new 40 over League competition sponsored by John Player. This development also opened up a new revenue stream via opportunities provided by live television. From this point onwards top South African players took advantage of the shift in regulations. Some such as Barry Richards, Eddie Barlow, and Mike Procter had already played international cricket before the ban. A second group, who hadn't previously played for South Africa, saw an opportunity to play international cricket by representing England through parental qualification. Playing in the County game was important to showcase their talents to the selectors. This latter group included Tony Greig, Ian Greig, Chris Smith, Robin Smith and Allan Lamb. Other players such as Peter Kirsten, Garth Le Roux, Jimmy Cook and Clive Rice played professionally in England and returned to play internationally for South Africa once the ban was rescinded.³¹ Graeme Hick, who was born in Zimbabwe, played County Cricket and qualified for the national side through a seven-year residency qualification. At an international level Williams has noted that historically Englishness in terms of national eligibility could be acquired or conferred.³² Wagg notes the application of an '...ever more malleable definition of English nationality' to describe how the cricket authorities in England responded to the changed player environment.³³ Outside of these nationality and qualification related debates, a separate more commercially oriented development was taking place in international cricket that would also effect player movement.

World Series Cricket (WSC) and Individual Player Movement

Permitting overseas players to play English cricket was part of an attempt to revitalise the domestic game. One-day cricket had been introduced as attendances at the three day first class game had fallen leaving the Counties even more dependent on the revenue derived from the national side. The 1975 Cricket World Cup demonstrated the new financial possibilities, and illustrated that the rights to broadcast games would become sought after and valuable. Corporate sponsors became key players and Gillette and John Player were at the forefront

of the emergence of the one-day game. As Wagg notes the creation of the John Player League amounted to the MCC reasserting its hegemony and control over the game.³⁴ The battle between an entrepreneur and the cricketing authorities was not long in coming and perhaps inevitable given the new broadcasting landscape and the potential rewards. As Slade J observed in the *Greig* case:

‘The very size of the profits which can be made out of cricket matches involving star players, however, must for some years have carried with it the risk that a private promoter would appear on the scene and seek to make money by promoting cricket matches involving world-class cricketers’.³⁵

The dispute originated in Australia and concerned the underlying issue of the award of Australian test match Broadcasting pitching the Australian Cricket Board against media tycoon Kerry Packer. It was the direct refusal to grant Packer’s Channel 9 the rights that led to the creation of an alternative competition, World Series Cricket. WSC offered a direct challenge to the cricketing establishment, both nationally in Australia and internationally. The rise of a rival competition meant the loss of control over the players who now had alternative employment options not controlled by their relevant national board. WSC contracted 34 players that comprised 18 Australians; and four each from England, South Africa, the West Indies and Pakistan. The duration of the contracts was between one and three years, with one lasting for five years. Whilst for many of the players the fundamental attraction was money, the evidence relating to Mike Procter demonstrated the twin incentives for a South African banned from international cricket:

“The contract offered not surprisingly appealed to him, because it gave him the opportunity of playing cricket at the higher level of which he was otherwise deprived and also offered some financial security for himself and his family.³⁶

Procter duly signed a three-year contract with WSC having discussed the terms with other players, but signed it without taking formal legal advice. This clear challenge to ownership and control of Test cricket and cricketers (the WSC players were contracted to play ‘test’ matches) required a response. After the revelations in May 1977 the English Test and County Cricket Board (TCCB) decided to ban players from participating at County level subject to an international ban being adopted by the ICC. The TCCB ban was to be formally approved after the ICC decision had been made but effectively the outcome had already been decided. The ICC took two steps to restrain the World Series Cricketers. First it altered the rules for player eligibility for Test matches;

‘.no player who after October 1, 1977, has played or has made himself available to play in a match **previously disapproved by the conference** (our emphasis) shall thereafter be eligible to play in any Test Match without the express consent of the conference to be given only on the application of the governing body for cricket of the country for which, but for this sub rule, the player would be eligible to play.’³⁷

Thus participation in a 'disapproved match' automatically removed eligibility to play Test Cricket unless the national Governing Body e.g. the Test and County Cricket Board (TCCB) or the Australian Cricket Board (ACB) made an application to the ICC. The answer to the question of what constituted a 'disapproved match' was swiftly clarified at the same meeting:

'It is hereby resolved for the purposes of Appendix I (f) that any match arranged or to be arranged by J.P. Sports (Pty.) Ltd., Mr. Kerry Packer, Mr. Richie Benaud or associated companies or persons to take place in Australia or elsewhere between October 1, 1977, and March 31, 1979, is disapproved.'³⁸

The ICC further sought to persuade the member countries to issue similar bans that in England had already been agreed on an 'in principle' basis. Players participating in World Series Cricket faced both an international and domestic ban from playing cricket. The problem facing the County Clubs in England was the loss of their very valuable crowd generating overseas players. The biggest loss would have been the West Indian contingent that included Clive Lloyd, Gordon Greenidge, Desmond Haynes, Viv Richards, Andy Roberts, Joel Garner, Michael Holding *et al.* All five of the eventual participating South Africans had County contracts; Garth Le Roux at Sussex; Clive Rice at Nottinghamshire; Barry Richards at Hampshire and Eddie Barlow with Derbyshire. Mike Procter one of the plaintiffs in the action against the cricket authorities was a valuable asset:

'He has played for the Gloucestershire County Club since 1968, and is now its captain. He is an all-round cricketer of great ability. Under his leadership, Gloucestershire in 1977 completed one of the most successful seasons in its history. For that season he earned in all about £7,500, a substantial part of which represented expenses and bonuses accruing from his county's various victories.'³⁹

Player movement and a greater degree of contractual freedom and earning power were at the root of this new venture, whilst the cricketing authorities sought to retain control through draconian measures. This approach had previously been used in the original battle over the English one-day game between the TCCB, MCC Council and the Rothman's Cavaliers that had included a ban on registered players from participating in the Cavalier's matches. The inevitable crisis brought about by the introduction of WSC was effectively resolved due to a number of pressures. First the English High Court in *Greig v Insole* ruled that the bans imposed were unlawful as an unreasonable restraint of trade. Second at both international and domestic level in England there was not clear unity and Packer cleverly exploited the international divisions.⁴⁰ Finally Packer, as part of the settlement, obtained what he had originally sought; the television rights to Australian Cricket. The result was an end to WSC after 2 seasons although many of the innovations such as coloured clothing and night matches have remained and been developed. For players the post WSC cricket environment was a changed landscape. What the *Greig* decision did demonstrate was that the cricketing authorities could not act with impunity as if run by a

private members' club. Due regard had to be given to contractual relationships and it was a clear exposure that the era of absolute power, exercised by a small group in committee rooms in London, was well and truly over. Greig was not so much a decision about mobility, though this was a consequence, but rather about the character of the administrative control of cricket. Ironically the Test players had been facing the type of international ban that the South Africans were already subject to. Contemporaneously the South Africans were able to participate in high-level international competition as members of the Rest of the World side. However after the settlement the situation for the South Africans reverted to the *status quo* with the even more tantalising development of the international 50 over game still out of reach.

Bosman, Cotonou and Kolpak

The European Union and its organs had historically not concerned itself with sport.⁴¹ Szyszak reviewed much of the case law that has evolved in the area but also noted that the EU does not have a specific, defined policy on sport; 'From the recommendations of the Adonnino Report sport had been used as a tool of integration but there was no Treaty amendment or special policy created for sport. Instead the Court of Justice triggered an awareness of the special nature of sporting rules and their relationship with Community law'.⁴² This view is supported by den Bogaert and Vermeersch who argue that whilst there is no direct and express Treaty competence, Community Institutions have nevertheless been able to create a form of direct sports policy by utilising policies in other fields such as competition, culture or education, in tandem with the ECJ cases outlined below.⁴³ Various cases including *Walrave*, *Meca-Medina* and others have appeared, but it is undoubtedly the *Bosman* decision that stands out because of the consequent effects on professional football throughout Europe. *Bosman* addressed both the issue of freedom of movement as well as the legitimacy of national quotas. The effect on cricket was likely to be minimal given the limited penetration of cricket throughout Europe. There have however been a small number of examples such as Ryan ten Doeschate who signed for Essex in 2003. As an EU National, through his Dutch citizenship even though born in South Africa, he has eligibility to work under the *Bosman* principle. Other notable examples of European cricketers include Amjad Khan and Eoin Morgan. Khan is Danish born but qualified to play for England whilst Morgan was born in Dublin and had represented Ireland before playing for England.⁴⁴ These are the modern day equivalents of the South Africans who sought England qualification during the period of the international ban. The motivation, to play cricket at the highest level, is the same. The cause, however, is different. In the examples of Khan and Morgan their countries of birth were unlikely to develop their standard of cricket to the requisite level during their career. The primary issue here is the qualification rules for national representation rather than freedom of movement though there are examples of European players who have just sought to play County cricket as a profession.⁴⁵

As the overwhelming penetration of cricket was geographically linked to the British Empire there has been limited signs of the influence of the EU

decision in *Bosman*.⁴⁶ The EU does however sign numerous agreements with other countries to promote both trade and broader cooperation, and it was via one of these that a potential effect for cricket developed. The Cotonou Agreement was signed in June 2000 following negotiations that had commenced in 1998. The parties were the EU on one side, and the 79 countries from Africa, the Caribbean and the Pacific (ACP) on the other. Members of the ACP group included the cricket playing nations of South Africa and Zimbabwe in addition to a number of Caribbean islands. The Agreement noted;

‘The Community and its Member States, of the one part, and the ACP States, of the other part, hereinafter referred to as the ‘Parties’ hereby conclude this Agreement in order to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic political environment.’⁴⁷

It was not, however, the Cotonou Agreement that led to the apparently ground breaking case of *Kolpak*. In this instance the interpretation was of an earlier 1994 Europe Agreement, signed between the European Communities and their Member States and the Slovak Republic.⁴⁸ The issue was Article 38(1) of the Agreement that covered movement of workers;

‘Subject to the conditions and modalities applicable in each Member State: — treatment accorded to workers of Slovak Republic nationality legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.’⁴⁹

In *Kolpak* a Slovakian player was employed as a professional by a German handball team, but as a member of a (then) non EEA state was not considered eligible to qualify for the benefits of *Bosman* as regards nationality restrictions. The Court decided that an Association Agreement between Slovakia and the EU entitled him to equal treatment once in lawful employment. The decision was not as wide as *Bosman* as it didn’t confer the right to free movement but protected workers from discrimination once they had entered the country and been employed. It wasn’t immediately apparent quite how a Slovakian handball player’s claim might seriously impact upon English, South African and Zimbabwean cricket. However the Cotonou Agreement, that contained so many cricket playing countries as signatories, contained an almost identically worded provision.

‘Article 13 (3). The treatment accorded by each Member State to workers of ACP countries legally employed in its territory, shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Further in this regard, each ACP State shall accord comparable non discriminatory treatment to workers who are nationals of a Member State.’⁵⁰

Applying the principle of *Kolpak* to this agreement the outcome was that any lawfully employed cricketer from an ACP country had the legal right not to be discriminated against with respect to working conditions. In *Kolpak* the claim had related to the type of licence granted, and the claim that this discriminated against him. The German Handball Association operated a licensing system for players that differentiated between national and 'non national' players. It was the application of this licensing system that the Court held to be the discriminatory as *Kolpak* was entitled, by virtue of Article 38(1), to be treated as if he was a national player. It was not initially clear what impact the *Kolpak* decision would have in terms of incoming cricketers. Whilst this was a decision affecting the whole of the EU, and potentially all sports, within Europe only England contained a professional cricket league. The link back to the spread of cricket through the British Empire could suddenly be reawakened via a legal case as any player from an ACP country once in lawful employment was entitled to be treated without discrimination, and was, therefore, effectively treated as a 'national' player.

One of the problems facing cricket was the different 'categories' of players who played professional cricket. For the English national side, qualification to play has been affected by a mixture of residency, birthplace and ancestry in addition to any eligibility rules imposed by the International Cricket Council. The need to look beyond place of birth and include nationality harks back to the empire with the spread of personnel many of who would have been involved in the diffusion of cricket. A prominent example is Colin Cowdrey who played with distinction for England between 1954 -1975. He was born in India where his father was running a tea plantation.⁵¹ Nationality is dependent upon the eligibility rules set by Governments that can include birthplace and parental nationality and may change over time. The first 'Kolpak' player to arrive was Claude Henderson, a South African, who signed for Leicestershire for the 2004 season.⁵² In order to qualify as a 'non overseas' player he had to give up any international ambitions by signing a 'statutory declaration' that he would not seek to play for his national side. Ray Price, the Zimbabwean international, who signed for Worcestershire, joined him. Price still retained a desire to play Test cricket but with England rather than Zimbabwe with whom he was disenchanted.⁵³ Two 'Kolkaks' in the first season suggested this wasn't going to be such a serious issue.⁵⁴ It was however reported in December 2004, prior to the 2005 season, that a Sports Agency was circulating a list of some 80 professionals who would be eligible and interested to sign as Kolpak players.⁵⁵ The list was said to contain some 20 South Africans who were drawn by the salaries on offer that compared favourably to the sums paid by the Provincial teams at home.⁵⁶ The news of the list produced alarm at both the ECB and within the Professional Cricketers Association though in other quarters the view was that the situation was being overblown and that such an influx was unlikely.⁵⁷ There was a notable increase in 2005 of both South Africans and Zimbabweans the latter including both the Flower brothers who joined Essex and added to the overall Zimbabwe contingent.⁵⁸ Whilst the *Kolpak* case provided the legal opportunity to move this was only one factor. The other parts of the legal framework were the requirements to obtain a work permit and an employment contract. Without either of these the right to equal treatment under the Agreement had no effect. It also required players from the ACP countries who

were good enough to obtain both the necessary legal documents and ensure they were sufficiently motivated to take the opportunity. Even if there was a group of eligible players it also required the Counties to want to sign them. The political dimensions to both South African and Zimbabwean cricket created a situation where a significant group of players were happy to forgo international cricket. Zimbabwe in particular was undergoing its own democratic crisis that also played itself out through the game of cricket.

Cricket in Zimbabwe had been in very public crisis during the 2003 World Cup. The hosting of the tournament was shared between South Africa, Zimbabwe and Kenya although it had originally been awarded solely to South Africa.⁵⁹ The aim was to create an African World Cup. One major issue was Zimbabwe's ongoing political crisis that had led to the country being expelled from the Commonwealth in March 2002:

'Zimbabwe, which had been a member since independence in April 1980, is suspended from Commonwealth councils in March 2002, following the presidential election, which was marred by a high level of politically motivated violence and during which the conditions did not adequately allow for a free expression of will by the electors.'⁶⁰

The problem for Zimbabwe was that England, South Africa and England all wanted a sporting boycott to be applied. The vexed question as to whether England would fulfil their upcoming fixture in Zimbabwe became clouded by political pressures and descended into indecision.⁶¹ Eventually the ECB decided not to fulfil the fixture and Zimbabwe was awarded a walkover, took the points, and advanced to the next stage, ironically at the expense of England.⁶² This was in fact all rather overshadowed by what happened at Zimbabwe's opening game against Namibia. Here both Henry Olonga and Andy Flower wore black armbands to protest at the 'Death of Democracy' in Zimbabwe.⁶³ This had serious consequences with both players dismissed after the tournament and eventually forced to leave the country. The protest split the cricket world and reopened the thorny issue of the relationship of the game to political issues. The problems in Zimbabwean cricket continued, in 2004 Heath Streak was dismissed/resigned as captain and 14 players followed. This turmoil created a group of talented cricketers who saw little immediate future in Zimbabwean cricket and the offer of a stable County Cricket contract was enticing.

In South Africa the political upheaval in cricket was caused through the imposition of racial quotas within sports teams in the post apartheid era. Sport was specifically mentioned in the 1994 Reconstruction and Development Programme:

'3.5.3 Sport and recreation are an integral part of reconstructing and developing a healthier society. Sport and recreation should cut across all developmental programmes, and be accessible and affordable for all South Africans, including those in rural areas, the young and the elderly. The RDP must facilitate the mobilising of resources in both the public and private sectors to redress inequalities and enhance this vital aspect of our society.'⁶⁴

The burning question was how the national sides in cricket and rugby would be transformed to better represent the new South Africa. However as Farland and Jennings note the notion of representivity is dependent on a number of different factors and it requires more justification than a case of profiling the nation and the team.⁶⁵ During the late 1990's there were a number of controversial selections and the introduction of a Monitoring Committee reviewing selection decisions and a threat of formal quotas.⁶⁶ Eventually racial quotas and targets for 2003 were introduced by the UCB.⁶⁷ These were however scrapped in 2002 by the UCB for the national and senior provincial sides. Kevin Pietersen claimed the operation of the quotas was a central reason for his decision to leave South Africa and seek an international career with England. Disagreements over racial 'targets' and 'guidelines' have continued to emerge when controversies over selections have appeared. In March 2008 Charl Langeveldt withdrew from the tour to India after the controversy surrounding his selection ahead of Andre Nel;

'The controversy centred on the fact that South African coach Mickey Arthur had insisted on Nel being in the squad, but it is alleged that Langeveldt was picked to lift the number of black players to comply with the "target" of seven black players in a 14-man squad'.⁶⁸

Langeveldt issued a statement to the effect that he did not want to be selected solely on grounds of his colour. The impact was that both players, Nel and Langeveldt, were lost to South African cricket when they signed for Surrey and Derbyshire respectively under the Kolpak principle.⁶⁹ Arthur himself later resigned citing differences with Cricket South Africa over their vision for the national side.⁷⁰ The English Counties offered an escape route for those cricketers who for whatever reason were dissatisfied. This exodus led to Ken Borland in the *Natal Witness* referring to Kolpak, somewhat melodramatically, as 'the rape of South African cricket',⁷¹ and there was great concern about the loss of young talent:

'The flood of players leaving for England, even if they would not have represented south Africa, has weakened the domestic game in South Africa. CSA's first reaction was to ban such players from domestic cricket in South Africa. But they quickly realised that this would affect the standard of the domestic game, and since May 2008 they have allowed each franchise to field three Kolpak players'.⁷²

The obvious influx of Kolpak players in England became apparent at a County game in 2008 between Leicestershire v Northamptonshire at Grace Rd with 13 overseas players, of whom a number were Kolpak signings, participating.⁷³ The number of players not qualified to play for England, whether identified as Kolpak or not, was becoming a major anxiety for the ECB. However the Counties were more concerned with their own domestic affairs and Kolpak, and other non-qualified players, offered a potentially quick route to 'success'. One potential route for the ECB was to incentivise the Counties to *not* sign non-qualified players. At the end of the 2004 season the ECB announced a new set of financial inducements. The key element was that part of the fee paid from the ECB to each

County would have a performance dimension. The most important of the criteria related to qualification to play for England both in terms of internationals produced (including England A and age groups) and the contracted players who were England qualified with extra emphasis on those under 23.⁷⁴ This approach, of investing in English qualified players at domestic level was further outlined in the 2005-2009 Strategic Plan.

‘Counties will be rewarded for the development of England cricketers and provided with resources to monitor the performance of all England Qualified cricketers in each First Class match by 2006. Those financial incentives will rise to the equivalent of ten per cent of income by 2009.’⁷⁵

The importance of a successful English national side was stressed in the strategic plan that sought to further embed rewards for the counties development of English players:

‘The goal is to have a minimum of 50 Under 26 England qualified cricketers playing first class cricket by 2011 and by 2013 50% of those players to be in the top half of either the bowling or batting first class averages.’⁷⁶

The English approach, using income, to incentivise Counties not to contract non England qualified players was adopted in South Africa but in a slightly different format. The fundamental question, below the upper echelons of the game, was to produce more black cricketers whilst at the higher levels it was to keep the young talent away from the predatory English Counties. In its Annual Report of 2006/7, the Chief Executive Officer, Gerald Majola specifically referred to the Kolpak issue. He noted that; ‘CSA now regards the matter as (a) serious drain on its elite player pool.’⁷⁷ Majola also sought to make it clear that it wasn’t the transformation policy that was causing the problem but rather the ‘strength of sterling against the rand’. Part of the proposed solution to retain the players’ loyalty was to set out a new agreement (a Memorandum of Understanding) between CSA and the players union, SACA.

SACA’s proposals contained a specific reference to Kolpak:

7.1 The MOU seeks to protect the interests of South African cricket and retain, as far as possible Players within the game in South Africa. This includes provision for “carve-outs” in all county contracts, player clearance processes and Kolpak player regulation.⁷⁸

This suggested a joint approach that if the rewards were sufficient player movement to England would diminish. This would clearly benefit those driven by financial considerations but not those who had issues with the transformation policies. What was being evidenced was the enacting of incentives in both South Africa and England.

Kolpak 'Reform'

In addition to this less than wholly successful attempt to regulate internally, an alternative strategy was also adopted to seek clarification of the Cotonou agreement as it had been 'understood' post *Kolpak*. Contemporaneously the European Commission was forging a new approach to Sport through a White Paper that recognised the 'specificity of sport'.⁷⁹ In its evidence to the House of Commons Culture, Media and Sport Select Committee (on the Sport White Paper), the ECB noted that around 80% of income was generated by international cricket. The ECB also expressed concerns about the free movement of players, noting that 80 non English qualified cricketers had appeared in the County game the previous season. However this was not just an issue for the ECB:

'There have been significant problems caused in South Africa and the West Indies and there are concerns for the future being expressed in both Australia and New Zealand. Furthermore, the absence of any meaningful legitimate means of limiting unqualified cricketers is straining relationships with the South African and West Indies cricket boards who view the use of the Kolpak principles as a serious threat to their development of players. Such is the legitimate concern within South Africa that the chairman of their board recently made a dedicated personal visit to the UK to solicit the maximum support possible from ECB to correct a situation which is damaging to cricket in South Africa'.⁸⁰

What is however more intriguing that this general view of the threat of Kolpak, both home and abroad, was the ECB's perception of the limits to the *Kolpak* case. In his oral evidence to the Committee Giles Clarke, the then Chairman of the ECB, in reply to a question, commented:

'I would be very delighted if the Committee were to focus in on the question of how we have a situation where English cricket cannot be allowed to manage its own affairs because, as you rightly state, a Slovakian handball player wished to play in the second division of the German handball league. That decision in the European court following a trade treaty known as the Cotonou Agreement, whose participants had little understanding of what the consequences would be— that was drawn by a certain group of lawyers to have a definite conclusion that it provided the right of free movement of labour from citizens of a country signing the Cotonou Agreement—is where our Kolpak problem, which you have correctly analysed, comes from. We would welcome clarity. We want clarity to manage our sport above all. There is no clarity in that area and we do not believe it is the purpose of a governing body to spend its time and money trying to establish legal test cases but, rather, with all due respect to yourselves, for the politicians to legislate and us to comply with the law.'⁸¹

Leaving aside the issue that it wasn't the Cotonou agreement that was the subject of *Kolpak*, although as noted above the relevant clauses on discrimination in employment don't differ, the evidence suggests a misunderstanding of the actual

decision. The outcome was not and never was freedom of movement from ACP countries akin to Bosman. However Clarke seems to be suggesting this was the ECB's interpretation: 'it provided the right of free movement of labour from citizens of a country signing the Cotonou Agreement.' This view perhaps explains why more restrictive barriers to initial entry and gaining lawful employment, that then triggered the right not be discriminated, against weren't enacted. This also clarifies the approach to the Commission by two British Conservative MEPs.

Robert Sturdy and Sir Robert Atkins, submitted similar written questions to the European Commission, the former in May 2008 and the latter in June 2008.⁸² Robert Sturdy asked:

'Sports governing bodies are greatly confused by the lack of clarity or specific guidance from the Commission in respect of the impact of the Cotonou Agreement on the freedom of movement of professional sportsmen from countries such as South Africa and Caribbean countries.

Sports governing bodies have provided evidence to the Commission on the potential damage that this agreement could cause to international sporting relationships and their own national sporting structures. Commission officials have recently suggested to sports governing bodies that, in their opinion, the Cotonou Agreement does not provide freedom of movement rights.

Could the Commission please make an unequivocal statement clarifying whether or not the Cotonou Agreement provides freedom of movement for professional sportsmen to play within the European Community?'⁸³

A month later Sir Robert Atkins further enquired;

'Can the Commission confirm what its advice is to sports governing bodies on the application of the Cotonou Agreement on the freedom of movement and worker rights of professional sportsmen and women? Is the Commission aware of the considerable confusion surrounding the application of the Cotonou Agreement to sport, and how does it intend to provide greater clarity so that sports governing bodies can act with confidence and certainty?'⁸⁴

The response on behalf of the Commission, by Mr Spidla, provided some reassurance for the ECB;

'The Commission would like, however, to clarify that access of the above third-country nationals to the labour market of Member States is a matter for domestic law. Decisions whether to allow access to employment in sports clubs in Member States are, therefore, the responsibility of the competent national authorities. (July 2008)⁸⁵

This 'clarification' made clear the limits to the decision that legal commentators had suggested all along. It enabled the ECB to tighten the requirements for participation by creating more hurdles for prospective players. More stringent qualifications to participate and gain lawful employment at the outset were introduced thus sidestepping *Kolpak*. This was a brief period of extreme uncertainty for the English cricket authorities caused by a restructuring of the nationalities of professional cricketers. Control over terms and conditions was attacked by the *Greig* decision but *Kolpak* threatened to alter the playing body itself much as *Bosman* had effected football. At the heart of this issue were the different interests of the County Clubs who were financially precarious and the requirements of the national side that needed a strong English qualified player pool. Whilst nationality had been used flexibly, by the national selectors to encompass talented South African players with parental qualification, other overseas immigration had been tightly restricted. *Kolpak* offered the potential for almost unlimited overseas player involvement unless the Counties could be dissuaded. The development of English qualified talent became part of the solution, as did the retention of South African players within South Africa. Control has been exerted through central contracts and the outcome a clearer more unified view on the way ahead to produce a successful national side. This foundation has then allowed Counties to bring in the best international players on short term contracts not for the County matches but the shorter versions of the game notably Twenty/20.

Conclusion

Analysis of the effects of the *Kolpak* case and the subsequent reaction to the influx of players provides a portrait of the historical development of cricket. The spread of cricket into the Southern hemisphere through the Empire is a key element. If cricket had not been linked to the Empire but been developed throughout Europe the decision wouldn't have made any difference though the earlier *Bosman* case would have had more impact. The natural links back to English cricket from South Africa and Zimbabwe highlighted the opportunities greater freedom of movement provided. The ability to limit the potential arrival of players was mired in an inevitably muddied definition of who was or could be an 'English' cricketer. Coupled with political problems within African cricket the timing of *Kolpak* worked well for those players who saw little future at home. The capacity to sign high quality already developed players also opened up the apparent division between the short term interests of the County Clubs, as the employers, and the national governing body. The dispute was reminiscent in some ways of the aftermath of WSC when again the Counties didn't want to lose those players who delivered much needed commercial success. Aside for the political dimension a County contract offered an economic opportunity and a greater degree of security than might otherwise be available. One of the driving factors for the recruitment of players into WSC was the perceived underpayment of players and this was also clearly present at this time. The *Greig* case had also

indicated how the Courts would view any attempt to place undue restrictions on players and this would have been amplified post *Kolpak* given this was a decision of the European Court of Justice. Cricket has become even more of a global televised game and the authorities have realised that the prevention of player movement through bans is impossible to maintain even if lawful. As the commercial development of cricket has expanded at great pace accommodations have been made to permit players to exploit their ability. At the same time governing bodies have sought to maintain their national sides through central contracts and increased financial incentives for the players. Whilst not as influential as the *Greig* decision *Kolpak* has in its own way pushed cricket along the same path to greater player freedom and caused a rethinking of national identity for English cricket.

References

Cases

Greig v Insole

Reports

English Cricket Board (2005) Building Partnerships: cricket's Strategic Plan 2005 - 2009: From Playground to test arena.

English Cricket Board (2010) Grounds to Play: ECB Strategic Plan 2010 -2013.

¹ Whilst an 'over' is now a standard 6 deliveries it has varied from 4 to 8 and the first One-Day International in Melbourne on January 5th 1971 consisted of 40 eight ball overs.

<http://www.espncricinfo.com/ci/engine/current/match/64148.html> (last accessed 19th August 2016)

² Stephen Wagg 'To Be an Englishman': Nation, Ethnicity and English Cricket in the Global Age, 2007, *Sport in Society*, 10:1, 11-32. See also Mike Marqusee, *Anyone But England: Cricket and the National Malaise*, (1994, London, Verso)

³ The coverage and materials on African cricket appears on first sight rather limited. The MCC library, for example, has little specific material that covers countries beyond South Africa and Zimbabwe. See the notable exception of Frederik Butler, *Cricket in Nigeria* (xxxx: , 1946). Some of Butler's papers are available via Commonwealth and African Studies section at Bodleian Library, GB 0162 MSS.Afr.s.1831. Butler also played for Nigeria until 1947.

⁴ The other seven sides were the six Test Playing nations comprising (the hosts) England, Australia, India, New Zealand, Pakistan and the West Indies. Sri Lanka participated as the leading Associate Member of the ICC.

⁵ The team lost all three matches; by 181 runs to New Zealand, by 10 wickets to India and by 196 runs to England. The Kenyan cricketer Ramesh Sethi, who top scored against England with 30 runs, proceeded to have a Minor Counties career with Shropshire.

<http://www.cricketarhive.com/Archive/Players/1/1464/1464.html>

More recently a combined Africa XI played a combined Asia XI for the Afro-Asia Cup and the matches were awarded One Day International (ODI) status. The first series of three matches took place in 2005 and ended 1-1 with the trophy shared. The African squad comprised of 14 South Africans, three Zimbabweans and three Kenyans. The Second Afro-Asia cup took place in 2007 and the African squad contained 13 South Africans, three Zimbabweans and two Kenyans. There was a separate Twenty 20 Squad that had four South Africans, four Kenyans and three Zimbabweans. The Asian team won 3-0.

⁶ See generally

<http://www.icc-cricket.com/about/62/icc-organisation/history> (last accessed 14 April 2016).

⁷ See *The Times* 27 July 1909, p19. The Minutes also dealt with the commercial dimension setting out the price of admission of 1s for Test Matches with the gross gate proceeds shared equally.

⁸ Membership of the ICC is divided into 3 categories; Full, Associate and Affiliated. Associate Membership was introduced in 1965 for those countries who could not meet the demands of playing test cricket with Fiji and USA the first to join.

⁹ The shock result in 1996 was provided by Kenya who easily beat the West Indies whilst in the 1999 competition Zimbabwe beat both India and latterly South Africa to proceed and eliminate England.

¹⁰ See Derek Birley, *A Social History of English Cricket*, (1999, Arum press, London). The MCC does have a strong historic presence as well as the physical ownership of Lord's that is undoubtedly viewed as the home of cricket. The MCC is still the owner of the Laws of the Game though match regulations for particular games may vary.

<https://www.lords.org/mcc/laws-of-cricket/laws/>

(last accessed 19th August 2016)

For an insiders view of Lord's see: Sir Pelham Warner, *Lord's 1787-1945*, (Harrap, London, 1946).

¹¹ *Greig and Others v Insole and Others* [1978] 1 WLR 302.

¹² *Deutscher Handballbund v Maros Kolpak* (C-438/00 ECR 1-4135), hereafter *Kolpak*

¹³ There is a third set of cases in the Delhi High Court that demonstrates that the influence and perhaps more importantly the commercial power has shifted eastwards. This involved the owners of the Indian Cricket League (ICL) and the attempts of the Indian Cricket Board (BCCI) to halt its growth through player bans and other means. The issue was eventually overtaken by the creation of the Indian Premier League (IPL), by the BCCI, effectively outmanoeuvring the original competition.

¹⁴ Joseph Maguire, Common Ground? Links Between Sports History, Sports Geography and the Sociology of Sport, *Sporting Traditions*, vol 12 no 1 Nov 1995, 3-25. Joseph Maguire and John Bale, *The Global Sports Arena: Athletic Talent and Migration in an Interdependent World*, (London, Cass, 1994)

¹⁵ Dean Allen, 'South African Cricket, Imperial Cricketers and Imperial Expansion, 1850-1910', *The International Journal of the History of Sport*, 25:4, 443-471. See also his comprehensive account; Dean Allen, *Empire, War & Cricket* (South Africa Zebra Press 2015)

¹⁶ Allen, 'South African Cricket'.

¹⁷ On the two significant tours to New Zealand in 1902/3 and 1906/7 see Owen Mann, The Cultural Bond? Cricket and the Imperial Mission, *The International Journal of the History of Sport*, 2010, 27:13, 2187-2211. Mann describes these two tours as 'rich in imperial symbolism' (2189),

¹⁸ Derek Birley, *A Social History of English Cricket*, (London: Aurum Press, 1999), 164.

¹⁹ Allen, 'South African Cricket', 444.

²⁰ Ashwin Desai and Gollam Vahed, 'Beyond the nation? Colour and class in south African cricket', 2010, in Desai, ed, *The Race to Transform. Sport in post-apartheid South Africa*, Cape Town; HSRC Press. 177.

²¹ Allen, 'South African Cricket'.

²² Derek Birley, *The Willow Wand*, (Australia: Simon & Schuster, 1989).

²³ Sir Pelham Warner, *Lord's 1787 – 1945*, (London: George G. Harrap & Co. Ltd, 1946).

²⁴ Desai and Vahed, 'Beyond the nation?'

²⁵ Desai and Vahed, 'Beyond the nation?', 176.

²⁶ See for example Peter Osborne, *Basil D'Olivera. Cricket and Controversy, the untold story* (London: Little Brown, 2004). See also the discussion in Hain, 'Sing the Beloved Country' and Steve Greenfield and Guy Osborn, 'Enough is Enough. Race and Resistance in English Cricket', *Sociological Focus* 30, 4, 1997, 373-383.

²⁷ See further on the Stop the seventy Tour campaign Greenfield and Osborn, 'Enough is Enough'.

²⁸ Peter Hain, 'Sing the Beloved Country', 48.

²⁹ Youseff Ibrahim, 'Olympics Committee Ends Its Ban On Participation by South Africa', *New York Times*, 1991, July 9, available online via <http://www.nytimes.com/1991/07/10/sports/olympics-olympics-committee-ends-its-ban-on-participation-by-south-africa.html> (last accessed 16 April 2016).

³⁰ Alistair McLellan *The Enemy Within*, (Cassell: London , 1994)

³¹ Jimmy Cook was perhaps the most unfortunate returnee, he made his debut, aged 39, in the first match against India after South Africa was readmitted to international cricket. He was dismissed by the opening ball of the game becoming the first test match debutante to suffer this fate.

<http://www.espncricinfo.com/ci/engine/current/match/63586.html> (last accessed 14 April 2016).

³² Jack Williams, *Cricket and Race*, (Oxford: Berg, 2001).

³³ Stephen Wagg, "'To Be an Englishman": Nation, Ethnicity and English Cricket in the Global Age', *Sport in Society*, 10, 1, 11-32, (2007), 12.

³⁴ Wagg, 'To be an Englishman'.

³⁵ *Greig v Insole*, 1978, 310.

³⁶ *Ibid* 321-322.

³⁷ *Ibid* 330

³⁸ *Ibid* 330

³⁹ *Ibid* 321

⁴⁰ John Arlott, *The Issues of Cricket*, in David Allen, *Arlott on Cricket* (BCA: London, 1985)

⁴¹ More recent developments in EU policy making have highlighted the importance of sport within the Community. See Stephen Weatherill, 'EU Sports Law: The Effect of the Lisbon Treaty', *Oxford Legal Studies Research Paper* No. 3/2011 available online via

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1747916 (last accessed 14 April 2016).

⁴² Erika, Szyszczak, 'Competition and Sport', *European Law Review* 31, 1 2007 95-110, at 96.

⁴³ Stefaan Van den Bogaert and An Vermeersch, 'Sport and the EC Treaty: a tale of uneasy bedfellows?', *European Law Review*, 2006, 31, 6, 821- 840.

⁴⁴ Sir Tim O'Brien was a 19th Century version captaining both England and Ireland.

⁴⁵ Other Europeans have played at County level such as Ole Mortensen (Denmark and Derbyshire), Roland Lefebvre (Holland and Somerset) and Baz Zuiderent (Holland and Sussex).

⁴⁶ Irish cricket has developed with Europe and the side notably beat England in the 2011 World Cup and has provided at least two players Ed Joyce and Eion Morgan for England.

⁴⁷ Article 1

⁴⁸ The agreement was approved by Decision 94/909/ECSC, EEC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 359, p. 1).

⁴⁹ *Kolpak*, 5.

⁵⁰ Article 13(3)

⁵¹ The birthplaces of the England Cricket Captains demonstrate the issue. Post war almost a quarter were born abroad although the list includes Mike Denness (Scotland) and Tone Lewis (Wales). In recent years there have been four South African born captains (Tony Greig, Allan Lamb, Kevin Pietersen and Andrew Strauss) whilst Nasser Hussain was born in India.

⁵² He stayed with the County for over ten years, was granted a testimonial in 2011, and retired in 2013.

⁵³ See 'Price sets sight on England' June 15th 2006, available online via <http://www.espncricinfo.com/ci/content/story/250497.html> (last accessed 14 April 2016).

⁵⁴ The problem of identifying a 'Kolpak' player rather than a player who had qualified to play through another route is demonstrated by the case of Otis Gibson who had played for Glamorgan in 1994 as an overseas player. He later joined Leicestershire in 2004 and on the face of it could have been eligible under the Kolpak rule. However it seems he was qualified through the residential qualification. Thanks to Richard Holdridge at Leicestershire for the clarification.

⁵⁵ Lawrence Booth, 'Cricket fears flood of cheap South Africans', *The Guardian* December 10th 2004, available online via <http://www.theguardian.com/sport/2004/dec/10/cricket.lawrencebooth> (last accessed 14 April 2016).

⁵⁶ Ackerman also commented: "but it's not just about the money. In South Africa there is a tendency to start thinking of players as over the hill when they reach 28 but that age is normally the start of their best years." Ibid

⁵⁷ Lawrence Booth, Wessels: Kolpak fears blown out of all proportion. 10th January 2005, *The Guardian*, available online via

<http://www.theguardian.com/sport/2005/jan/10/cricket.northamptonshireccc>

⁵⁸ In addition to Ray Price who continued at Worcestershire and the Flower brothers at Essex Murray Goodwin joined Sussex and Travis Friend played for Derbyshire and Greg Lamb and Sean Ervine joined Hampshire. Heath Streak was listed as an overseas player for Warwickshire. The South African contingent was even more numerous and included Jonathan Trott.

⁵⁹ Justin Van Der Merwe and Janis Van Der Westhuizen, 'The 2003 Cricket World Cup and its Implications for Identity Formation and Democracy in Zimbabwe', *Commonwealth & Comparative Politics*, 45:3, (2007), 345-366.

⁶⁰ Available online via

<http://thecommonwealth.org/history-of-the-commonwealth/zimbabwe-suspended-councils-commonwealth> [last accessed 14 April 2016].

⁶¹ Tom Fordyce, 'A never ending farce', *BBC News*, 10 February (2003) available online via

http://news.bbc.co.uk/sport3/cwc2003/hi/newsid_2740000/newsid_2744200/2744285.stm (last accessed 14 April 2016).

⁶² New Zealand refused to travel to Kenya citing security concerns with the points awarded to Kenya. Again this proved costly with New Zealand losing a semi final spot as a consequence.

⁶³ Statement of Andy Flower and Henry Olonga. Available online via

<http://www.espncricinfo.com/ci/content/story/126517.html>

⁶⁴ Available at

<https://www.nelsonmandela.org/omalley/index.php/site/q/03lv02039/04lv02103/05lv02120/06lv02126.htm>

⁶⁵ Douglas Farland & Ian Jennings, Cricket and Representivity. The Case of Race Quotas in Team Selection, *Sport in Society*, 10:5, 818-839.

⁶⁶ Goolam Vahed, 'What Do they Know of cricket Who Only Cricket Know?' *International Review for the Sociology of Sport*, 36/3 (2001) 319 -336.'

⁶⁷ Ibid

⁶⁸ Desai and Vahed, 'Beyond the nation?', 197.

⁶⁹ Nel chooses Kolpak deal at Surrey 25th March 2009. ECB website available via

<http://www.ecb.co.uk/news/domestic/nel-calls-time-on-international-career.304670.EN.html>

⁷⁰ David Hopps, South Africa's quota debate reopens after Mickey Arthur's resignation, 27th January, 2010. *The Guardian*. Available online via

<http://www.theguardian.com/sport/2010/jan/27/mickey-arthur-south-africa-quotas>

⁷¹ K Borland, 'The rape of South Africa's resources, 2008, cricinfo, noted in Desai and Vahed, 'Beyond the nation?', 200.

⁷² Desai and Vahed, 'Beyond the nation?', 200-201.

⁷³ The Leicestershire side contained the following; 5 South Africans; HD Ackerman, Boeta Dippenaar, Jacques du Toit, Claude Henderson and Dillon du Preez, one Australian Jim Allenby and the West Indian Jermaine Lawson. The Northamptonshire overseas players were Nicky Boje, Riki Wessels, Lance Klusener, Andrew Hall, and Johan van der Wath all from South Africa.

⁷⁴ See 'FCF rule on performance payments', ECB website available via <http://www.ecb.co.uk/archive/article/2026> (last accessed 14 April 2016).

⁷⁵ English Cricket Board (2005) Building Partnerships: cricket's Strategic Plan 2005 - 2009: From Playground to test arena:

p17. Available online via

<http://www.ecb.co.uk/sites/default/files/building-partnerships-cricket-strategic-plan-2005-2009-602.pdf>

⁷⁶ ECB (2010) Grounds to PlayPage 30. Available online via

<http://www.ecb.co.uk/sites/default/files/grounds-to-play-11040.pdf>

⁷⁷ Cricket South Africa 2006/7 Annual Report, p 8. Available online via <http://ipublish.cc/wp/csa/wp-content/uploads/sites/4/2014/12/2006-2007-CSA-Annual-Report-and-Financial-Statement.pdf>

⁷⁸ Executive Summary Of SACA's Proposals For The MoU.

⁷⁹ White Paper On Sport Brussels, 11.7.2007 COM(2007) 391 final.

⁸⁰ House of Commons Culture, Media and Sport Select Committee, European Commission White Paper on Sport, 2008 HC 347. Ev 2 English Cricket Board. Interestingly Cricket South Africa also gave evidence to the same Committee.

⁸¹ House of Commons Culture, Media and Sport Select Committee, European Commission White Paper on Sport, 2008 HC 347. Ev 6 English Cricket Board.

⁸² It is not clear why two such similar questions were asked so close to each other.

⁸³ <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2008-2771&language=EN>

⁸⁴ <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2008-3333&language=EN>

⁸⁵ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2008-3333&language=EN>