

**TRANSFORMATION AND AFFIRMATIVE ACTION IN SOUTH
AFRICAN SPORT**

BY

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SUMMARY

This dissertation attempts to delve in to the controversial and complicated world of affirmative action and transformation in South African sport. The history of this country is taken into account as we are still grappling with the legacy of apartheid in sport. Various sports are analysed in detail in tandem with the way these policies are implemented by the government. We look at the progress being made by the various administrators in sport at the provincial and national levels. The research was mainly focused on legislation that has been passed on the above issues and tested against the Constitution. One has to try and determine if affirmative action has a legal basis in the sporting arena and analyse the drawbacks already faced by the implementation of these policies. I have also tried to incorporate the experiences faced in Australia and New Zealand as they have both faced challenges of a similar nature in their sporting environments. It is important to acknowledge that there will never be an overnight solution to the challenges we face in sport. The road we have embarked on is a long and winding one and patience is indeed a key component as we strive to move from our bitter past. This has always been a sensitive issue in South Africa and great lengths have been taken to be as objective and as sensitive as possible in the work.

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7.1 Conclusion

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1.1 Introduction

Years ago when I first came to study in South Africa, I was awestruck by the quality of sport in general in this country. South Africa had just won the Rugby World Cup in 1995 as well as the African Cup of Nations in 1996 to be crowned as the best soccer team in Africa. There was an aura of invincibility among sportspeople in general, the public at large and the respect that came by virtue of being one of the top sporting nations in the world.

I also had the privilege to study South African history in great detail and the unfortunate events that unfolded during the darkest days of apartheid. The country was banned from taking part in sport as a result of the racial composition of the teams that was not reflective of the demographics of this country. The predominantly black population was not afforded a chance to compete on an equal footing with their white counterparts in all spheres of society with a specific emphasis on sport in this context.

With the advent of democracy and the historic new constitution, one of the goals that the new government set out to accomplish was to bring the previously disadvantaged communities into the mainstream again. Affirmative action came into play at all levels of society and sport was no exception. Sporting codes that were targeted for transformation by the government included rugby, cricket, hockey, netball and swimming. The government put it in no uncertain terms that they wanted change and they wanted it immediately in all the sporting codes mentioned. The quota system came about with the emphasis being on a certain number of black players being included in the team that they represented. This quota system was to be implemented as law by the administrators in charge of sport.

I have always played and watched sport my whole life and indeed my dream has always been to be a sports lawyer or an administrator in sport. I believe firmly in the merits of equal competition in any sporting code irrespective of colour. South Africa's past is well documented and there is definitely a need to try and correct the imbalances that existed in the past. This is a delicate process that the government has to handle in the most humane way so as not to discriminate against talented non-black players whose chances of representing their team would diminish

greatly. This is a topic which I feel needs to be discussed and debated at length and I hope to achieve something meaningful with my dissertation when I delve into this deeply divisive and controversial topic .

Affirmative action and the quota system in sport are going to be here for a long time, there is no indication of a sunset clause by the government hence we must all find a way to embrace it, accept it and to understand that there is a very noble motive behind this. My concern is in the implementation of the policies and the great loss of genuine world class talent in all sporting codes as a result of these policies. There should be an indication by the government of when these policies will end or some concerted effort to try and retain the incredible talent that is being lost every day.

There have been numerous documented cases of how this issue has deeply divided the different stakeholders in South African sport. Sportspeople, coaches, administrators, the press and many other interested parties all have different views on this subject but they all acknowledge the difficulties and the complexities of affirmative action in sport. South Africa's policy of apartheid led to numerous sanctions affecting all spheres of society with sport being no exception. The country was admitted back into main stream sport only in 1990. It is important to note that this country has participated in and hosted numerous major sporting events. The Olympic Games from 1992, 1996, 2000, 2004 and Beijing 2008 are all examples of the games that South Africa has participated in. This also goes hand in hand with the cricket World Cups of 1999-2007 and the rugby World Cups of 1995-2007. The most interesting fact about South Africa's undoubted sporting prowess is the fact that every major sporting event that we have been involved in has always had the giant shadow of transformation and quotas in the background. We just cannot seem to escape from this issue even when our teams are doing so well.

In March of 2008,¹ Charl Langeveldt who was a national team cricket player pulled out of the team scheduled to tour India after selection controversy. He had replaced fellow fast bowler Andre Nel for the tour after pressure from Cricket South Africa boss Norman Arendse.

¹ The Witness, 20 March 2008, Topic 38, Ref No:953

Langeveldt did not want to be in the team simply because of his colour and also because Nel was in better form than he was at the time.

In June of 2008,² the Parliamentary Sport Committee chairperson Butana Khompela summoned the President of the South African Hockey Association Dave Carr to parliament and demanded that the squad for the Olympics be reviewed and that a 50-50 split be implemented when the final team was announced. The problem lay in the fact that this 50-50 split policy that Khompela wanted was agreed to by SAHA but only for governmental competitions. The Olympics are clearly not governmental games and the South African Sports Confederation and Olympic Committee (SASCOC) was not willing to compromise the quality of the team just for political appeasement.

In August of 2007,³ there was more controversy during the Spar Interprovincial Netball championships. Netball South Africa (NSA) policy stipulates a 5:2 ratio of black and white players or vice versa which negatively affected Zululand which only had black players resulting in any of Zululand's opponents being awarded six points.

The list goes on and on and I could write a book just on the number of times that sport in this country has encountered this issue.

1.2 PURPOSE AND SIGNIFICANCE OF THE STUDY

When one seeks to write about a topic as sensitive as this one, one has to try and empathise with both the affected sportspeople and the administrators involved. It would not be right for me to appear biased or in favour of one stakeholder over the other. I believe that my biggest aid in writing about this is the fact that I speak from a neutral perspective when taking into account my roots.

The history of this country is well documented as I shall explain later on in my thesis but one has to try and understand why we even have these policies in our sports. My objective is to try and raise awareness about the effect these policies have on the sportspeople that represent South Africa as well as the way these policies are being implemented. I hope to see the day in this

² The Star, 13 June 2008, Topic 38, Ref No: 2011

³ The Star, 7 August 2007, Topic 38, Ref No: 2994

country where teams that are selected to represent this country are chosen purely on merit as race is the one factor that no sportsperson has control over.

1.3 RESEARCH METHODOLOGY

South Africa is a country governed by its Constitution and any law that is contrary to the Constitution will be invalid. This will be the point of departure in my research.

South African case law and statutory law will also be taken in to consideration and tested against the Constitution to determine if the statutes in question are valid.

I will focus extensively on the policies that the various sporting bodies in the different sporting codes try to implement. Basically this would entail analysing rugby, cricket, netball, hockey and swimming policies at provincial and national level and testing these policies against the Constitution.

Affirmative action and the quota system is still a relatively new issue in this country and there are unfortunately not many books on the topic hence I will be referring more to secondary sources of information.

1.4 STRUCTURE OF THE CHAPTERS

In the second chapter, I would briefly look in to the sporting history of this country to give me the perspective of the previously disadvantaged sportspeople who were unable to represent their country of birth. I would also profile in brief some examples of prominent sportsmen and women who were unable to represent South Africa.

In the third chapter, I will analyse the concept of transformation in great detail as well as trying to understand how this concept came to be introduced in South African sport. In this chapter, I will also look at the concept of affirmative action in depth and how it is being implemented in this country today. Affirmative action in sport will be discussed in tandem with the quota system. I will also examine the careers of many talented South African born sportspeople who have been forced to ply their trade in other countries as a result of the quota system.

The fourth chapter will have an in depth analysis of the major sporting codes in this country directly affected by affirmative action and the quota system. I will discuss rugby, cricket, netball,

hockey and swimming. Provincial and national team policies on transformation in all these sports will be discussed as well.

The fifth chapter will have a comparison between the quota system as it is applied here in South Africa and as it is applied in Europe and any other country that applies it in sports.

The sixth chapter will test the constitutionality of these policies. The various Acts that set out these policies will be tested against the Constitution. Any relevant case law will also be discussed in this chapter.

The seventh chapter will contain my conclusions and any possible recommendations especially after analysing where we have come from as a nation to determine how far we have progressed from the end of apartheid.

CHAPTER 2

2.1 Historical Background

South Africa is a complex country with an even more complex past. Years of state sanctioned segregation in all spheres of society have created a huge imbalance in resources that exists to this day. If one could say that the playing fields were not even in the past could no doubt be interpreted as a gross understatement. The various Acts in place at the time simply allowed for separate development of the races to the detriment of the predominantly ‘*black*’ majority. In the sporting arena and representing the country in the respective sporting code, the black majority were simply not given a chance to compete with their white counterparts. Separate leagues for almost all the major sporting codes developed alongside the white leagues. Prominent sporting personalities who were not white were simply disqualified from mainstream sports resulting in an unprecedented loss of talent that could have been so beneficial to this country’s sporting heritage.

Transformation is defined as the management of change in a way that will eliminate crude references to race in sport yet promote the ideals of harmonious co-existence, working together and playing together.⁴ This definition goes hand in hand with the ideals espoused in the Constitution (Act 108 of 1996) which acknowledges the past differences and now seeks to correct the imbalances that existed in society in general and sports in particular.

Segregation was institutionalised under apartheid as illustrated by various Acts of Parliament such as the Group Areas Act (1950) which prohibited the mixing of races or the Urban Areas Act (1955) which reserved sporting facilities according to your respective race.⁵ The playing fields were simply uneven for majority of the citizenry of South Africa. This situation was simply untenable and it was apparent that it could not last. South Africa and apartheid after the 1960 Sharpeville massacre was brought into worldwide notoriety and faced sports sanctions and bans that prevented the country from taking part in any international sports competitions. This period

⁴ Cloete R (2005) Introduction to Sports Law in South Africa p 153

⁵ Gemmel, Jon (2007) ‘South African Cricket’ : ‘The Rainbow Nation Must Have A Rainbow team’ Sport in Society 10:1, 49-70

was simply known as the isolation years and this was the beginning of the end of segregation and separation in sports.

In 1969, South Africa was expelled by the International Olympic committee (IOC) and the year that the sporting world turned its back on the country.⁶ South Africa was at the crossroads at the end of 1970 because they had either been expelled or suspended from numerous sporting codes such as boxing, athletics, swimming, basketball, tennis and many others.⁷ The only exception was rugby as there were still some tours like the All Black team which toured in 1970 and the Springboks touring in 1971.⁸

South Africa's response was to hold the South African Games in 1973 to make up for those who were not able to compete at the Olympics and by 1976 with the violent Soweto uprisings, the government's self-confidence was hard hit and they had to consider reforming their racist attitudes.⁹ The All Blacks still toured South Africa and in protest many African countries boycotted the 1976 Montreal Games so as to bring about the total isolation of South African sport as well as against those countries that were still seen to be allies of the apartheid state.¹⁰ There was the historic agreement in Gleneagles, Scotland at the Commonwealth heads of government meeting in 1977 where they basically agreed to fight the injustices of apartheid by discouraging competition with countries where teams are based on racial lines or ethnic background.¹¹ In 1979, an inquiry into sport by the Human Sciences Research Council was made and in its first report the following year, they recommended the repeal of a number of discriminatory laws which the government acceded to like the Group Areas Act and the Liquor

⁶ Booth (1998) 99 (Booth, *The Race Game Sport and Politics in South Africa* published in 1998, reference from page 99)

⁷ *Ibid*, 99

⁸ Allison L (ed) (1986) 134. (Editor, *The Politics of Sport* published in 1986, reference from page 134)

⁹ Allison (1986) 136

¹⁰ *Ibid*, 136.

¹¹ *Ibid*, 136

Act.¹² There was still deep divisions in South African sport as clearly seen in cricket as countries like India and Pakistan blocked moves to re-admit South Africa which led to the so called ‘rebel tours’ in 1982 and 1983 where players were offered big money to break the boycotts.¹³

In rugby which was long seen as associated with apartheid supremacy, tours between the three major rugby playing countries in the southern hemisphere were in jeopardy. South Africa and New Zealand never played each other again between 1981 and 1992 with South Africa being isolated from the International Rugby Board countries after 1984.¹⁴ There was still some behind the scenes manoeuvring by the powerful Transvaal Rugby Football Union President Louis Luyt to arrange for some All Black players to come and tour albeit for a huge fee.¹⁵ The South African Rugby Football Union was formed after the merger of SARU and the SARB and test matches were held against the Australian and New Zealand sides in 1992 to mark the return from isolation.¹⁶ South Africa’s return from its pariah status in the world of sport marked a turning point in the future of this great country. For so long, this country was the object of vilification and a bastion of oppression but at last there seemed to be hope that the era of segregation and racism in sport had come to an end. The sporting history of this country is absolutely fascinating in the way it shows the dark side and the more humane side of mankind all at once.

The tragedy for so many talented sportspeople was their inability to represent their country for reasons beyond their control but this did not in any way diminish their supreme talent. It is very sad when one acknowledges that a career in top level sport is always very short but the beauty of history is that even those who were ineligible to play for their country of birth, had their sporting achievements well documented. I will profile some of the finest sportspeople South Africa

¹² Allison (1986) 138

¹³ Allison (1986) 139

¹⁴ Nauright (1997) 150 (Nauright, Sport Culture and Identities in South Africa book published in 1997, reference from page 150)

¹⁵ Nauright (1997) 151

¹⁶ Nauright (1997) 152

produced during those dark days whose bright talent illuminated the sporting arena but alas were never allowed to showcase their talent for the entire world to see.

Errol Tobias

His name, his legend will live forever in the hearts of all sports loving citizens of this country. He was a man of immense character in the face of great adversity who possessed brilliant skills on the rugby field.

He was the first black player in the history of South African rugby to start a test match for the Springboks which occurred at Newlands against Ireland in 1981 at the age of thirty-one.¹⁷ His chance came when the starting centre called Willie du Plessis was injured.¹⁸ Tobias's inclusion was vehemently opposed by the supporters of apartheid and also by his own people in Caledon who felt strongly about playing for such a racist outfit.¹⁹ He played his last two tests in 1984 against the South Americans and in that test another player of colour was introduced in Avril Williams setting the tone for other players of colour.²⁰

Matthews Motshwarateu

Matthews 'Loop-en-Val' Motshwarateu had an awkward running style that made him look like he would fall over at any instant.²¹ Loop-en-Val is the Afrikaans translation of Run and Fall.²² He was born in Soweto in 1958 but lived a relatively short life when he was killed in a robbery at the age of forty-three.²³ He was a wonderfully talented middle- distance runner who beat the then

¹⁷ Morgan B (2003) www.southafrica.info/ess_info/sa_glance/.../errol-tobias.htm accessed on 6th of October 2009

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Morgan B (2003) www.southafrica.info/ess_info/sa_glance/.../matthewsmotshwarateu.htm accessed on 6th of October 2009

²² Ibid

²³ Ibid

highly rated Ewald Bonzet over five thousand metres in the famous athletics stadium of Coetzenburg in Stellenbosch in 1978.²⁴ He went on to break the record as well as the four year old ten thousand metre record of Bonzet and became the first South African to ever run that distance under twenty-eight minutes.²⁵ He had become a legend and even secured himself a scholarship to the United States of America where he became even more successful.²⁶ He won the ten kilometre world title in 1988.²⁷ He returned to his homeland in 1995 but sadly struggled to make a living before finding a job as a second-hand car dealer which eventually proved to be his demise as he was killed in a robbery.²⁸ The saddest part was his inability to pay for his own funeral after such a storied career.²⁹ In perhaps a fitting tribute to the man, the 2002 Soweto Marathon was run to honour his memory as the greatest athlete Soweto ever produced.³⁰ He was an icon and one of the greatest runners this country has ever produced.

Basil d'Olivieira

It would not be possible to acknowledge sportsmen of the past without mentioning his name. He is synonymous with the game of cricket in South Africa and widely recognised as one of the finest cricketers ever this country has produced.

He was born in 1931 of mixed- race origins which immediately put him at a disadvantage and denied him future opportunities that white cricketers were afforded.³¹ He was never afforded a chance to attain Springbok colours but had to play for the South African Cricket Board of

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Morgan B (2003) [www.southafrica.info/ess_info/sa_glance/.../basil d'olivieira.htm](http://www.southafrica.info/ess_info/sa_glance/.../basil_d'olivieira.htm) accessed on 6th of October 2009

Control (SACBOC) which represented players of colour.³² He played for the SACBOC team in the fifties against Kenya and East Africa scoring four hundred and forty-seven runs at an average of fifty-six in the 1958/59 tour.³³ He left for England after he received a contract from the famous English cricket commentator John Arlott.³⁴ He would eventually represent England and the irony of it was that he had a spot in the team to tour South Africa but wasn't selected in order to avoid political controversy.³⁵ He eventually finished his test career with an average of forty with fifteen centuries to his name as well as forty-seven wickets taken to cap a remarkable career despite having never played for his country of birth.³⁶

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

CHAPTER 3

TRANSFORMATION, AFFIRMATIVE ACTION AND THE QUOTA SYSTEM

3.1 Introduction

Transformation is the management of change in a way that will eliminate crude references to race in sport yet promote the ideals of harmonious co-existence, working together and playing together.³⁷ There is not really one definition of transformation as used in the South African context. Transformation does not just apply to sport in general but to society at large. Sport is just a microcosm of South Africa in general.

I would interpret transformation as a move from the bitter past to a brighter future for this great land. The so called winds of change have swept across the spectre of sport and the results though not as great as the government would want, there is progress being made. The situation is delicate as it is impossible to please all the stakeholders in sport without ruffling some feathers. The government through the Parliamentary Sports Portfolio Committee chairperson Butana Khompela has often slated many sport administrators for the perceived lack of transformation in sport. He does not mince words and many times his statements have been controversial to say the least. I remember vividly when the honourable Khompela said he would consult the ministry of Home Affairs in order to withdraw the passports of the Springboks before the Rugby World Cup of 2007 because of his displeasure with the composition of the team. Statements like those show the frustration of the government but measures so drastic could indeed have a negative impact on any sporting code.

There are three important categories³⁸ of people that have to be considered in this process of transformation. The first is the group with the mindset of the past and who view any kind of change as counterproductive and unnecessary.³⁹ The second group is one with a foot in the past and one in the future which still renders them undecided, uncertain and unsure about the long

³⁷ Cloete R (ed) (2005) 153. (Editor, published in 2005, reference from page 153)

³⁸ Basson W (2006) 2 South African Rugby Union's Broad Based Transformation Process And Charter

³⁹ Ibid, 4

term future of this country.⁴⁰ The last group is those who are firmly positioned in the future and want to be a part of the solution to the many challenges facing this country.⁴¹

3.2 The Origins of Transformation in Sport

The advent of democracy in 1994 was symbolic in this country for a number of reasons. It signified a welcome and long awaited change and created hope that the country would now have equal opportunity for all its citizens. The release of Nelson Mandela and his ascent to power was a very powerful moment in the history of South Africa. It is notable to remember that South Africa had just come out of the sporting wilderness and was now positioning itself to be a major player in the sporting arena. The facts on the ground were simply not able to be swept under the carpet. Years of institutionalised segregation had left a legacy of inequality in resources in all sectors of society. Sport was no different and the notion of change though noble, was not going to happen overnight. The major sporting codes of rugby and cricket were especially major sticking points for the government. Soccer was the undoubtedly most popular sport but was relatively unscathed as there was never really an issue of transformation in soccer. The government specifically targeted the predominantly white sporting codes. The government knew that sport could be the most powerful uniting factor at its disposal but the challenge lay in how to harness the sporting potential in this country. A major turning point after 1994 was the Rugby World Cup of 1995 and the fact that this country was hosting the tournament.

Rugby for so long had been associated with oppression and apartheid and in general had a very negative image. The administrators of the sport like the powerful Louis Luyt and Danie Craven were seen as the very embodiment of the image of rugby that the government desperately wanted to shed. In 1976, Craven declared that ‘no black will ever wear a Springbok jersey’.⁴²

This was a golden opportunity in every respect for South Africa to show how far the country had come. The Springbok emblem was also a sticking point as previously white South African sports

⁴⁰ Ibid

⁴¹ Ibid

⁴² Booth (1998) 25 (Booth, *The Race Game Sport and Politics in South Africa* published in 1998, reference from page 25)

teams competed during apartheid under the Springbok emblem.⁴³ The situation was tense to say the least as there was just so much at stake. The highlight was the Springboks winning the tournament and unifying the country in a way that had never been seen before. The scenes of citizens of all races celebrating the triumph of the Springboks will surely never be forgotten. In one fleeting moment, the power of sport was illustrated for all to see as the bitter past was forgotten albeit just for a while and the euphoria around the country was tangible. The government knew at once that there was indeed hope of building a non-racial nation.

By the time of the Cricket and Rugby World Cups of 1999, the problem of the racial composition of the teams was a major talking point. It is notable to remember that at the previous 1995 World Cup, there was only one player of colour in the team in Chester Williams. The then minister of sport Steve Tshwete complained about the lack of change in the physical chemistry of the national teams.⁴⁴ The pace of transformation angered the government and went against the promises that the then President of SARFU Louis Luyt made to Nelson Mandela that the teams would be ‘rainbow in character’.

Transformation had become the biggest talking point in sport especially in rugby and cricket and this was the origin of the debates that still rage on to this day.

3.3 AFFIRMATIVE ACTION

Carol Lee Bacchi defined affirmative action as: ‘A term that originated in the United States that refers to a wide range of programmes directed towards targeted groups in order to redress inequalities due to discriminatory practices.’⁴⁵ Broadly, it takes two forms: policies to alter the composition of the labour force and policies to increase representativeness of public committees, political parties and educational institutions’.⁴⁶

⁴³ Farquharson K and Majoribanks T (2003) 32 Transforming the Springboks (Issue: 29(1)) Faculty of Social Sciences, University of Cape Town

⁴⁴ Ibid 39

⁴⁵ Bacchi CL The Politics of Affirmative Action (1996) 15

⁴⁶ Louw A (2004) 122 Should The Playing Fields Be Levelled? Revisiting Affirmative Action In Professional Sport Stellenbosch LR

Section 6(2) of the Employment Equity Act⁴⁷ states that ‘it is not unfair discrimination to... distinguish, exclude or prefer any person on the basis of the inherent requirements of a job’. Section 15(1) of the same Act asserts that ‘affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer’.⁴⁸

There are numerous interpretations of affirmative action but the basis or the rationale behind it is to level the playing fields so to speak. There is still a great imbalance in the resources available which the government is trying to remedy. In the sporting arena, the situation is the same and the state has decided to implement affirmative action in sport. Affirmative action can be either in its ‘weak’ form or its ‘strong’ form.⁴⁹ The weak form refers to a situation where preference is given to members of a certain group to influence decisions between candidates who are otherwise equally qualified for the particular position.⁵⁰ Strong affirmative action involves selecting candidates from designated groups over other candidates who are better qualified for the position.⁵¹

The problem lies in the way in which to apply affirmative action to the various sporting codes that the government has earmarked. The first way is to recruit individuals from historically disadvantaged communities.⁵² Selection policies which under-utilise individuals from historically disadvantaged communities should be reviewed and also the use of special admission programmes to ensure greater participation from historically disadvantaged people.⁵³

⁴⁷ Act 55 of 98

⁴⁸ Habib A and Bentley K (2008) 156 (authors, Habib and Bentley, book published in 2008, referenced from 156)

⁴⁹ Louw A (2004) 125 Stellenbosch LR

⁵⁰ Ibid

⁵¹ Ibid, 126

⁵² Cloete R (2005) 155

⁵³ Ibid

There should also be sensitivity and diversity training to contribute to a greater awareness of the need to include historically disadvantaged citizens.⁵⁴

Sports administrators in this country have huge challenges in trying to implement these policies. The notion of trying to level the playing fields is very noble but the truth is that it is a minefield that needs the most astute administrators to negotiate through. Resources among the historically disadvantaged communities are scarce and very unevenly distributed. Cricket pitches of good quality are not easily accessible as an example while quality rugby pitches are normally in expensive private schools which the majority of the citizens simply cannot afford. The most important challenge though is simply the legacy of apartheid. To make it as a professional sportsperson requires tremendous investment at the early developmental stages of one's career. If one looks at top Springbok rugby players, you would notice that they had access to the best facilities and were primed for success from infancy. Some players went to top rugby schools like Grey College in Bloemfontein or St Stithians in Johannesburg. They participated in high level competition from an early age and they had excellent coaching available. All these factors simply added to their exposure and experience which made them the best players in the country. The same cannot be said of the historically disadvantaged communities who simply were left out of mainstream sport. There was no investment, no development, no foundation and no base from which talent could be nurtured and developed. Top schools even today are simply unaffordable to many and this has created a huge problem. There are simply not enough suitably qualified or experienced individuals to make affirmative action programmes successful.⁵⁵

3.4 The Quota System

Nick Mallet, the former Springbok coach, intended to drop Breyton Paulse who at the time was one of only two black Springboks in a test against Wales in 1999 despite his good form put forth this argument: 'I will not be pushed around on this issue. I feel very strongly about it. There is no way I will never take part in anything that can be construed as window dressing. (He continued :) The changes need to be made at grassroots, through the age groups and at provincial level. When

⁵⁴Ibid

⁵⁵ Ibid 156

you get to international level, you have to be the best there is. That is what international sport is about'.⁵⁶

This is without a doubt, the most controversial topic in South African sport. Quotas are fixed preferences which require that a set number of historically disadvantaged individuals should participate.⁵⁷ A quota can be defined as 'a number or percentage of people, constituting a required or a targeted minimum.'⁵⁸ In sport, it translates in to a set number of individuals from historically disadvantaged communities that must be on the field of play in the relevant sporting code at all times. The predominantly white sports such as rugby, cricket and netball have the system in place and it is not negotiable. The fact is that during apartheid, there was a quota system already in place which simply meant being black disqualified one from selection.⁵⁹ What the quota system boils down to is race based selection and demographic representation hence the countrywide outcry. The key word always bandied about by the government is 'representivity'. This means that any team that represents South Africa must be representative of this country in terms of demographics. In practice this is difficult to execute as black people make up more than eighty percent of the population. This means that were the quota system to be applied strictly to rugby for example, it would mean that at least twelve of the fifteen players would have to be black. This would obviously create an even bigger problem.

The issue with quotas is the balance between the system itself and merit based selection. Those that argue for the quota system would contend that it is a way of forcing change, provided that it is applied honestly.⁶⁰ Those that disagree with the quotas will contend that the very essence of competitive sport is negated. Merit is the deciding factor when selecting teams for international competition. Meritorious selection cannot be the only factor in selection when the bitter

⁵⁶ Farquharson K and Majoribanks T (2003) Transforming the Springboks Issue 29:1 p 40

⁵⁷ Cloete R (2005) 156

⁵⁸ Louw A (2004) 240 Stellenbosch LR

⁵⁹ C Ray (2002) 66 Do we need sport quotas? Pace

⁶⁰ Cloete R (2005) 156

apartheid legacy is taken into account. Quotas are a double edged sword as they have both benefits and drawbacks.

Quotas can themselves be a stumbling block in the pursuit of transformation in sport as clubs constantly develop players who are then sold to richer clubs to simply meet their quota requirements and in this way are simply window dressing.⁶¹ Quotas can also push players who are not ready for the rigours of international competition to a higher level where they are exposed as inept, unable to adapt and sometimes singled out for the poor performance of the whole team.⁶² This has the opposite effect that transformation seeks to achieve. Such players suffer a dramatic loss of confidence and if they don't have the mental strength, they simply vanish from the international arena.

The quota debate has been raging on and on for years now with no end in sight. The previously all white sports such as rugby and cricket have had quotas in place for some time. The fact is that despite the controversy, many talented black sportspeople would never have made it professionally without the quota system in place. Players like Chester Williams and Breyton Paulse for the Springboks, Makhaya Ntini and Mfuneko Ngam for the Proteas are but a few examples of direct beneficiaries of the quota system. Quotas are a way to guarantee the participation of players who would never have been given a chance otherwise.

An interesting case occurred when the Springbok management ignored the Western Province player Luke Watson who was himself from a renowned rugby family that renounced apartheid rugby policies and went on to play non-racial rugby in the townships.⁶³ The premier of the Western Cape at the time Ebrahim Rasool went on to say that Watson should receive preference over other white players because he hailed from a family that openly opposed apartheid policies.⁶⁴

⁶¹ *ibid*

⁶² *Ibid*

⁶³ Habib A and Bentley K (2008) 295

⁶⁴ *Ibid*

For many white South Africans sports fans, the quota system simply is a synonym for racism as it appears to deny white sportspeople opportunities which are being given to their black counterparts. The fact is even fifteen years of independence has not completely changed the mindsets of many people. The legacy of apartheid and racism still permeates every sector of society with sport being no exception. These policies are a necessary evil for the purpose of redress in society. Black players though have to be exceptional to make it at the highest level thanks to the perception that they are only in the team because of their colour. The system is also vague when in some sports like rugby there is no quota given while in cricket; the Cricket South Africa CEO Gerald Majola said that the 2007 World Cup ought to have had seven black players.⁶⁵ The system has caused so much outcry that some South Africans have touted the idea of an Afrikaner equivalent of the Maori side in New Zealand to afford Afrikaner players the chance to play rugby so long as they accept the Afrikaner language and culture as their own.⁶⁶ This then leaves one wondering what the future of professional sport in this country is. We have got uncompromising political figures like Butana Khompela and the Minister of Sport the Reverend Makhenkesi Stofile who have a bill in the pipeline sure to cause even more outrage than ever before. This proposed bill will be discussed in later chapters in detail. The most unfortunate aspect of the quota system is also the most ironic. During the heights of apartheid, there were so many talented sportspeople who simply vanished into obscurity unable to represent their country of birth. With the advent of the new democratic dispensation, redress was seen as a key component. This redress is evident in the sporting arena through the quotas in place. The most ironic part is we have a very similar situation currently with many talented predominantly white sportspeople simply emigrating to ply their trade overseas. This talent drain is an unfortunate but inevitable aftermath of the quota system. The local talent in sports like rugby and cricket is world-class and our loss is another's gain. Superstar talents like Kevin Petersen, Clyde Rathbone and Pieter De Villiers all left to ply their trade where they felt they had a better chance. It is important to acknowledge that the loss of top quality South African born and bred talent is the gain of other countries.

⁶⁵ Ibid 306

⁶⁶ Ibid

3.4.1 Kevin Petersen

His story is well documented. He is a classic example of a man of immense talent lost to the country of his birth forever. He was born on June 27, 1980 in the town of Pietermaritzburg, Kwa Zulu Natal.⁶⁷ He went to the prestigious Maritzburg College where he made his debut for the Natal's B team side in 1997.⁶⁸ He played against an England team captained by Nasser Hussain in 1999 and really impressed the tourists with Hussain recommending that Petersen sign an English county cricket contract.⁶⁹ Petersen claimed that he was dropped from the first team because of the racial quotas in place that dictated that a provincial team should always field four players of colour.⁷⁰ He has since been an outspoken critic of the quota system which he believes forced him to ply his trade elsewhere.⁷¹ He was at one time the captain of the England team and is a world-class right handed batsman and occasional spin bowler.⁷²

3.4.2 Clyde Rathbone

He was a wonderfully talented rugby player whose career was beset by injuries throughout until his premature retirement at just twenty-eight years of age. He was born in Durban on July 23 1981 and spent his entire childhood in Durban.⁷³ He played rugby as a South African junior as well as for the South African Schools team and eventually captaining the South African under-21 side to glory at the World Cup.⁷⁴ He played provincial rugby for the Sharks before leaving for

⁶⁷ Retrieved from "http://en.wikipedia.org/wiki/Kevin_Pietersen"

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ ibid

⁷² Ibid

⁷³ Retrieved from, [http:// en.wikipedia.org/wiki/Clyde_Rathbone](http://en.wikipedia.org/wiki/Clyde_Rathbone)

⁷⁴ Ibid

Australia to play for the Brumbies.⁷⁵ There was a huge debate surrounding which country he would play for but he chose Australia which led to an unprecedented critique of the man by the press in South Africa.⁷⁶ His talent was lost to South Africa and it hurt many people. He was developed as a rugby player locally before leaving as the finished article which was indeed a bitter pill to swallow for many fans and supporters of the game in South Africa.

3.4.3 Pieter de Villiers

He was a genuinely gifted prop forward born in Malmesbury, South Africa who left and played his club and international rugby for France before retiring in 2008 at the age of thirty-six.⁷⁷

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ http://en.wikipedia.org/wiki/Pieter_de_Villiers

CHAPTER FOUR

ANALYSIS OF SPORTING CODES

4.1 Introduction

With the advent of democracy in 1994, the new Constitution that was finalised in 1996, sweeping changes in all sectors of society were introduced. The sporting arena which was such a powerful tool of oppression during the apartheid years was due for a major shake up. Certain sports were identified as being resistant to change and were targeted by the government for change from the top to the bottom levels. Netball, cricket, rugby, swimming and hockey were for a long time seen as unrepresentative of the demographics of the country. In fact, there were hardly any black participants of note in those sporting codes.

With South Africa having such a large black population living in poverty, sport was always and will always be seen as an avenue to financial success. For generations, opportunities for black sportspeople were few and far between and the government knew that the situation was indeed untenable and had to change. The sporting industry was a major employer and a major contributor to the Gross Domestic Product of the country during the apartheid years and continues to do so even now. No citizen in his wildest dreams would ever have envisaged that the 2010 Soccer World Cup would ever be held in South Africa. The potential for sport to play an active role in nation building is enormous but the challenges that existed years ago still plague sport today. Corruption, mismanagement and a lack of accountancy has driven some sporting codes in to financial problems from which they are unlikely to come out of soon.

The agenda of the government has always been to redress the injustices suffered in the past and to try and create a level field for all to compete. This has been very difficult to achieve for a myriad of reasons. In some cases, the mindsets of the past still live on in the administrators while in others there is simply no will to change and transform with the times. The road ahead is long and uncertain but the fact remains that these policies of affirmative action and quotas are here to stay. Many sports embraced change with hardly any controversy but others that showed a reluctance to change were earmarked for change. I simply want to illustrate what progress has been achieved so far in these sporting codes and whether the policies are working or not. It is a

sensitive issue with the livelihoods of many people at stake and must be approached with empathy and sensitivity.

Rugby has been the focus of the government's attention for a long time. Long seen as the domain of white supremacy, the government singled out rugby as the cornerstone of its transformation and affirmative action policies in sport. From the mere mention of the Springbok emblem to the issue of the first ever black Springbok coach, rugby has never been far from the limelight. In my analysis of the sport, I seek to illustrate how the sport has been dealing with the numerous changes introduced after the new dispensation and indeed try and see what future the game has if any in the new South Africa.

4.2 Historical Background

In the past, national sporting colours and the Springbok emblem were seen as exclusively for whites.⁷⁸ Rugby and in particular Springbok colours were simply inaccessible to the black population. There was a great passion for the game amongst the historically disadvantaged members in society but there was little opportunity to make it to the top even after 1994. This was the cause of a lot of frustration amongst the masses and the view developed that rugby was still an elite sport for the privileged few and any black players at the top level were there to appease the politicians. Transformation and politics are closely related to rugby in this country. In the years just before democracy, the two dominant bodies controlling the sport were at constant loggerheads with SARU led by Ebrahim Patel and the SARB led by Danie Craven disagreeing on almost every key issue.⁷⁹ It took the intervention of the then ANC sport spokesperson and future Minister of Sport, Steve Tshwete, to bring the two warring factions together.⁸⁰ Unity prevailed in the boardroom with both parties now as joint presidents of a new unified body called SARFU.⁸¹ The unity off the pitch did not however translate to the same off

⁷⁸ Nauright J Sport Culture and Identities in South Africa (1997) 11

⁷⁹ Grundlingh A, Odendaal A and Spies B Beyond the Tryline Rugby and South African Society (1995) 5

⁸⁰ Ibid 4

⁸¹ Ibid 5

the pitch. Rugby was still full of controversial incidents. The issue of the Springbok emblem arose once again much to the chagrin of the conservative Afrikaners. Mluleki George who was formerly of SARU and now a senior member of SARFU argued that the emblem represented too much hurt and had to be replaced by a new, more representative emblem.⁸² The issue wore on until a compromise was reached with the retention of the Springbok from the SARB but combined with four proteas and a rugby ball from SARU.⁸³ The sport appeared to be heading in the right direction for a while but racism was never far away. This was evidenced by the crowd defiantly singing the old South African anthem during the test against the All Blacks in 1992 and even giving Steve Tshwete the old South African flag for him to autograph.⁸⁴ This was a show of defiance that infuriated the ANC and showed that the game had a long way to go before transformation could be achieved. The 1995 World Cup was supposed to be a catalyst in transforming not just the sport but society in general and the gradual removal of the negative stereotypes that still existed in society. Here was a chance to show the world that South Africa was indeed a nation keen to shed its apartheid legacy and embrace change. The Springboks had the support of the then president Nelson Mandela who even described the Springboks as ‘our children’.⁸⁵ It was a deeply symbolic moment for the country as a whole because the vast majority of the country was not even interested in the team but they idolised Mandela. The team won the tournament eventually and united the entire nation in victory with race being immaterial. The team at the time only had one black player in wing Chester Williams.

The quota issue came to the fore at the next World Cup four years later with plenty of controversy around the team with regards to the lack of black players and the selection criteria.⁸⁶

South Africa was at a transition as the euphoria of winning the last World Cup was long gone while the cold hard facts were hard to ignore. There was hardly any process made with regard to

⁸² Ibid 9

⁸³ ibid

⁸⁴ Booth D (1996) *Journal of Modern African Studies* at 467

⁸⁵ Ibid 469

⁸⁶ Farquharson K and Majoribanks T (2003) *UCT Faculty of Social Science* at 33

the demographics and the composition of the team from the last tournament. Reconciliation was a key theme in the country at the time and the Springboks were vital in getting the message across. Mandela, Archbishop Tutu and newly elected president Thabo Mbeki were the point men in trying to use the team to further unify the country. It is important to note that the National Sport Council had recommended after the last World Cup to remove the Springbok emblem but Mandela, Tutu and Steve Tshwete voted against that development.⁸⁷ The squad presently had only two black players and this greatly incensed the Minister of Sport Tshwete who said that, ‘there was a lack of change in the physical chemistry of the national team’.⁸⁸

4.3 SARU Transformation Charter

The South African Rugby Union has a transformation charter aimed at literally transforming the sport from the grass roots level. The essence of rugby’s transformation is basically to focus on equitable access, skill and capacity and increase the involvement with communities.⁸⁹ SARU’s transformation model has six areas which define the organisation’s transformation status.⁹⁰ These six areas are Demographic Change, Access Improvement, Skill and Capacity Improvement, Community Involvement, Employment Equity and Preferential Procurement.⁹¹

The progress and status of transformation is evaluated on the basis of trends in overall transformation achievement as well as the trends in each one of the six transformation areas.⁹² There is a scorecard and templates applicable to National, Provincial, Super 14 and Club level and so on as well as a fictitious example of a Provincial Scorecard.⁹³ The preamble to the transformation charter states in brief that SARU is committed to transformation and the principle

⁸⁷ Ibid 39

⁸⁸ Ibid

⁸⁹ Basson W (2006) SARU’S broad based transformation charter and process at 10

⁹⁰ Ibid 14

⁹¹ www.saru.co.za SARU Status Report- Transformation June 2008

⁹² Basson W(2006) 14

⁹³ Ibid

of broad based empowerment which will significantly increase the number of black persons involved as well as dramatically improving performances.⁹⁴ The six areas targeted for change by the organisation are the key drivers necessary to implement tangible change in the sport.

4.3.1 Demographic Representation

This basically refers to the profile on and off the field to represent a long term goal of achieving a more equitable population demographic profile at local, provincial and national level.⁹⁵

4.3.2 Access

The vast inequalities of South African society are well documented. There is a huge wealth gap between the rich and the poor which has a direct impact on the accessibility of resources by the poor. A simple example would be to look at the state of the game in terms of direct financial investment in the townships or rural areas. A clear disparity would be revealed in the investment in urban areas in comparison to the rural areas and this in itself is a huge problem. The passion for the game is probably even greater in the rural areas as it is a way to break the cycle of poverty if one was able to make it to the top. The main hindrance though is the inability to access the resources that will nurture one's talent.

4.3.3 Skill Development

Rugby is a professional sport sustaining the lives of hundreds of players and their families. Any professional sport in any country can only thrive if there are skilled people involved in the running of the game. Skills are not negotiable especially when it comes to the administration of the game for without the proper skills, the demise of the game would be inevitable. Coaches and officials as well as referees play a crucial role in the advancement of the game. Coaching in my opinion goes to the very heart of the game. A skilled coach is an added benefit to the growth of the game. The challenge facing rugby as a sport and society in general is a lack of skills. One of the most unfortunate legacies of apartheid was the poor education that the vast majority of the

⁹⁴ Ibid 35

⁹⁵ Ibid 53

population was subjected to. Education or skills cannot be fast tracked and the only way is for any people who want to be involved in the sport in general to get some form of quality education or skills training.

4.3.4 Employment Equity

The Employment Equity Act⁹⁶ has structures laid out which should be used as guidelines to bring about an equitable representation of black persons in all occupations and positions at all levels of SARU over a certain period of time.⁹⁷

4.3.5 Preferential Procurement

Procurement⁹⁸ basically means the process of obtaining supplies of something, especially for a government or an organisation. In rugby terms the process would mean outsourcing of goods and services from targeted members of society so as to bring these members of society into the mainstream of SARU affairs.⁹⁹ For a long time, the involvement of black people in rugby was often negligible. SARU hopes to remedy this situation by involving black people from the management level to the bottom.

4.3.6 Investment in Broader Community (Social Investment/ Community Development) Component

The sport of rugby like any other is a spectator sport. The spectators derive entertainment and pleasure from watching their respective teams play whether it is a large union like the Blue Bulls playing or simply a small club side. The fans contribution to the game cannot be emphasised enough. The tickets that they purchase or the team merchandise all contribute financially to the long term sustainability of the sport. Rugby as a sport through its administrators has to give back to the community by supporting any kind of community initiatives. Sport is one of the most

⁹⁶ 55 of 98

⁹⁷ Basson W (2006) 57

⁹⁸ Hornby A S (2000) Ox Adv Dict

⁹⁹ Basson W(2006) 57

important aspects of South African society and it can play an active role in community development. The youth in this country face massive challenges from unemployment to crime and to a lack of opportunity. Sport can harness the untapped potential of the youth by getting them involved and in this way keeping them from negative influences like drugs or crime.

SARU’S Transformation Performance Scorecard

The scorecard is basically an indicator of where the process of transformation is headed.¹⁰⁰ It is important to note that all the six areas identified for transformation all have independent scorecards which I will show with the aid of tables and diagrams.

Selected Regional and National Population Demographics June 2006¹⁰¹

	ASIAN	COLOURED	WHITE	AFRICAN
WESTERN CAPE	< 1%	65%	21%	14%
CAPE TOWN METRO	2%	48%	23%	27%
EASTERN CAPE	<1%	7%	5%	88%
KZN	4%	<1%	4%	92%
GREATER DURBAN AREA	22%	4%	13%	61%
PRETORIA	2%	2%	37%	59%

¹⁰⁰ Ibid 61

¹⁰¹ Ibid 70

AREA				
VAAL TRIANGLE	1%	3%	17%	79%
NATIONAL	2%	9%	11%	78%

The weighting assigned to demographic representation varies from 25% to 100% and it relates to the black representation in all of SARU's structures on and off the field.¹⁰²

If one was to calculate a score for demographic representation, it would be as follows:

If a Currie Cup team in a specific region has a target figure for Black representation of about 50%, and an assigned weighting of about 5%, if the actual Black representation in the team is 27% , the score will be $27\%/50\% \times 5\% = 2.7\%$ ¹⁰³

All the six areas identified each have their own way of calculating and determining the progress made toward transformation.

Access as a targeted area is calculated as follows:

The practical measures to monitor changes are the percentage of rugby playing schools, the percentage of growth in rugby fields available to schools and clubs in urban areas, the percentage of rugby playing schools in urban areas, the percentage growth in rugby fields available to schools and clubs in urban areas and the percentage turnover applied directly to club and school infrastructure.¹⁰⁴

¹⁰² Ibid 69

¹⁰³ Ibid 72

¹⁰⁴ Ibid 73

Therefore, if the weighting associated with the percentage of rugby playing schools is 2% and there are 120 schools in the area of which only 15 are engaged in rugby and the target is to achieve a 25% target of schools to play rugby, the transformation score will be $15/120 \times 100\% \times 25\% \times 2\% = 1.0\%$ ¹⁰⁵

The Employment Equity score will be calculated as follows with the aid of a table:¹⁰⁶

OCCUPATIONAL LEVELS	BLACK MALES	WHITE MALES	BLACK FEMALES	WHITE FEMALES	SUBTOTAL
LEVEL 1	1	4	1	2	5
LEVEL 2	22	28	3	1	54
LEVEL 3	64	36	1	2	103
TOTAL EMPLOYEES	87	68	5	5	162

These are all hypothetical figures and a fixed hypothetical target of 30% with a weighting of 5% over three levels and six levels of gender then 5% of 6 works out to 0.83% per category.¹⁰⁷ Level 1 has five males which works out to 1/5 or 20% which coupled with a 30% target, the score for black males will be $20\%/30\% \times 0.83 = 0.55\%$ ¹⁰⁸. One then simply repeats the process for the other categories to get the entire picture of transformation.¹⁰⁹

¹⁰⁵ Ibid

¹⁰⁶ Ibid 74

¹⁰⁷ ibid

¹⁰⁸ Ibid

¹⁰⁹ Ibid 75

For the skills development area, the measurement is calculated as a percentage of the payroll applied to different programmes; if for example a SARU entity has spent R 10,000 on skill development and it has a payroll of R1,000,000 (1%) of payroll of which the target is 3% of the payroll, this 1% of the payroll translates to 33.3% of the target which means the score will be $R10,000/R1,000,000\% \times 100\% /3\% \times 20\% = 66.6\%$ ¹¹⁰

The preferential procurement score area will be calculated as follows: the reference is to total procurement expenditure of a SARU entity to a company that is 40% black owned and in compliance to the BEE Commission's target of 30% which will translate to the following; A SARU entity has spent R 200,000 out of a total of R 2,000,000, the entity would score $R200,000/R2,000,000 \times 100\%/30\% \times 10\% = 3.3\%$.¹¹¹

In the Social development component, the target for SARU and its designated entities will be 1% of total income and the entity has spent R100,000 out of R5,000,000, the calculation will be $R100,000/ R5,000,000 \times 100\%/1\% \times 10\% = 0.2\%$.¹¹²

These calculations seemed vague when I analysed them but the idea and the effort behind them by SARU is commendable. Quotas go hand in hand with transformation in rugby and by using this model in all the affiliated rugby unions in the country, it would be not be difficult to determine if the unions are indeed transforming in all the key areas. There is an overall grading system used by SARU much like marks in high school with a score of 80% deemed excellent, 71-80% good, 61%-70% being unsatisfactory and anything below 60% poor.¹¹³

I also looked at arguably the most progressive professional Provincial Union in the Blue Bulls to see what their policies are in regards to transformation and this is what I came up with.

¹¹⁰ Ibid

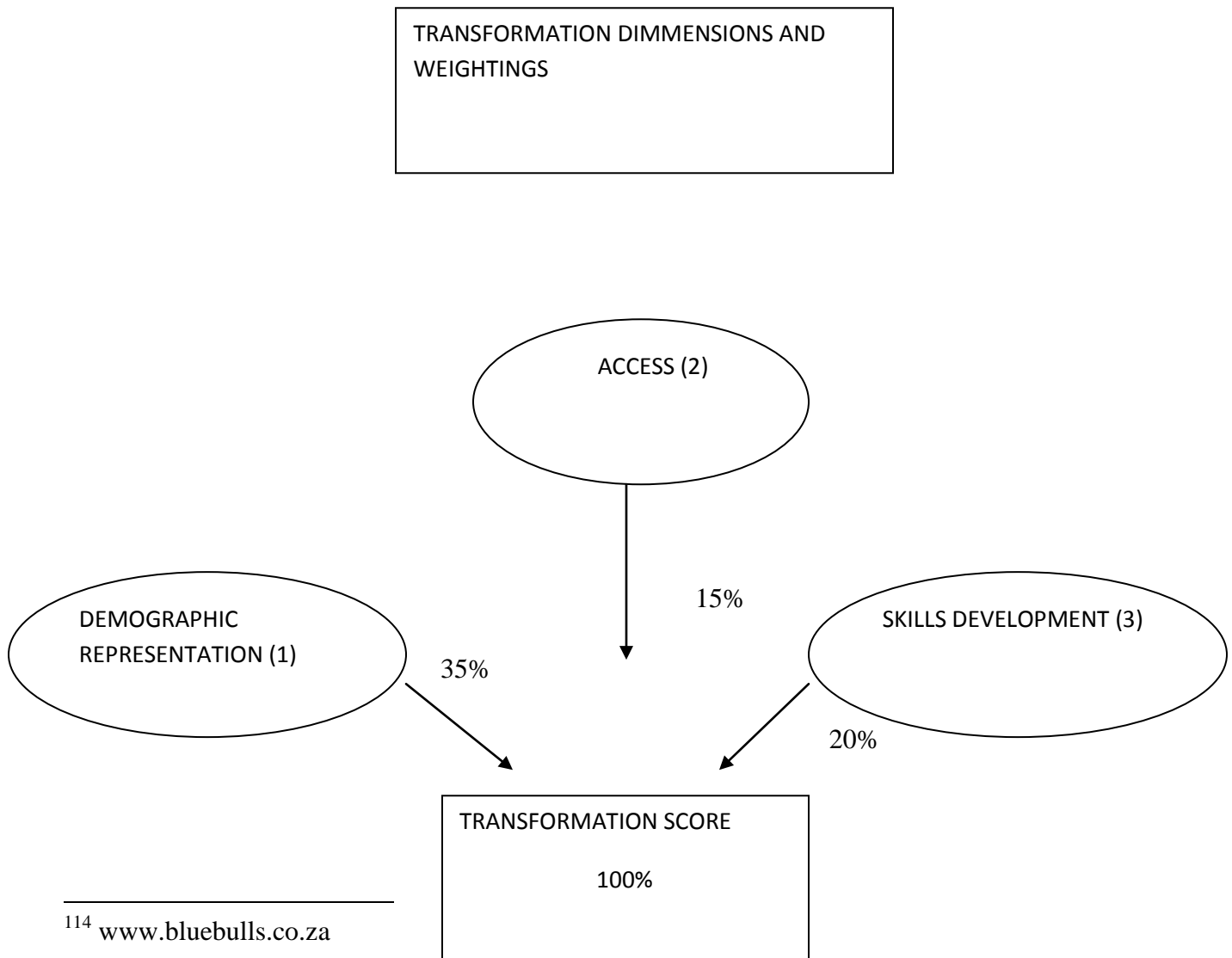
¹¹¹ Ibid 76

¹¹² Ibid

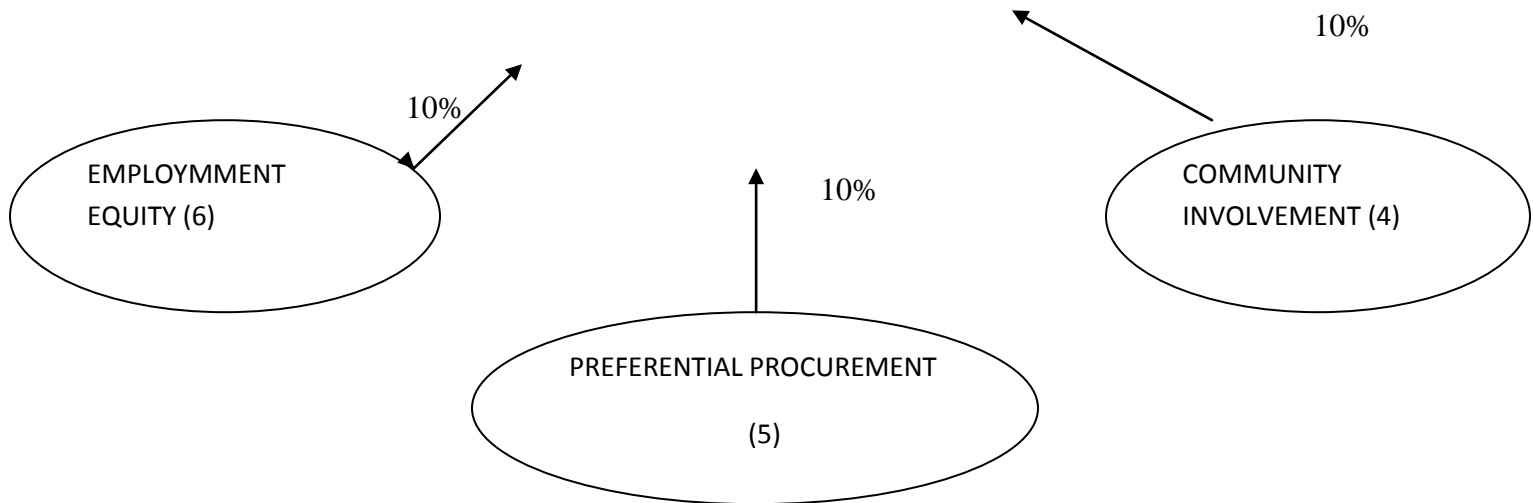
¹¹³ Ibid 77

Blue Bulls Rugby Union/Blue Bulls Club Strategic Plan 2009-2013¹¹⁴

This strategic plan encompasses all the goals in the short to medium term range that the club wants to achieve. Their vision is clear and concise and contains everything from the purpose of the club to their mission and objectives. One of the challenges listed down in the plan was the slow pace of transformation at Super 14 level, Currie Cup and the lower Vodacom sides as compared to the almost 50% participation of black players at the National junior teams. The Bulls have identified the six areas also listed by SARU but have analysed them in a different way to SARU.



¹¹⁴ www.bluebulls.co.za



As one can deduce from this diagram, the Bulls have allocated percentages to go with each of their targeted areas. These percentages work out to be their list of priorities which determine which areas are the most important to the Union. Demographic representation appears to be the area the Bulls have identified as their most important priority for transformation purposes. As evidenced by the model used by SARU, this demographic representation also applies to the number of black representatives on and off the field.

Quotas and affirmative action are simply not easy to apply on the sports field as it needs a holistic interpretation as used by the Bulls and SARU.

4.4 CRICKET

This is undoubtedly one of the biggest, most lucrative sports in South Africa and a sport that is always in the cross hairs of the government for purposes of transformation. Cricket in the past was a preserve of the white population and opportunities for black cricketers were few. The sport has always been popular with the black population hence the displeasure felt by the government when the teams just do not reflect the demographics of the country.

4.4.1 Brief history

The controlling body of the game in this country is called Cricket South Africa (CSA) and controls the game at all levels and for both genders at professional and amateur level.¹¹⁵ The sport's reputation suffered greatly during the apartheid years with the inability of black players to represent their country as well as the sanctions and the isolation years that almost crippled all progress in the sport. When the isolation period years ended, the sport was controlled by the United Cricket Board of South Africa (UCBSA) which was formed on 29 June 1991 after the amalgamation of the South African Cricket Union (SACU) and the South African Cricket Board (SACB).¹¹⁶ The first UCBSA executive was in office from June 1991 to June 1993 with Ali Bacher at the helm and eleven out of eighteen members of the executive being white.¹¹⁷ There was a lot of dismay at the slow pace of transformation at all levels of the game. A particular sticking point was Bacher himself who was widely associated with the 'rebel' tours during the apartheid years.¹¹⁸

There was hardly any black representation at either the provincial or the national level between the years of 1994-1998 and coupled with the fact that black administrators felt that their positions couldn't influence policy changes, led to the aggressive pursuit of development and the introduction of quotas.¹¹⁹ There was an all white team fielded for the test match against the West Indies in 1998 which showcased the demographic representativeness to be wholly inadequate despite the emphatic series win for the Proteas.¹²⁰ The UCBSA unveiled its Transformation Charter on 3 January 1999 as well as a Transformation Monitoring Committee (TMC) chaired by the former curator of the Robben Island Museum Professor Andre Odendaal.¹²¹ There was a UCB conference in May 1999 in which quotas were set from schools to provincial levels for

¹¹⁵ www.cricknet.co.za

¹¹⁶ *ibid*

¹¹⁷ Vahed G (2001) *Int Rev for the Soc of Sp* at 320

¹¹⁸ *Ibid* 321

¹¹⁹ *Ibid* 322

¹²⁰ Padayachee V Desai A and Vahed G (2004) *Patterns of Prejudice* Vol 38 at 268

¹²¹ *Ibid*

players, administrators, coaches, umpires and groundsmen to achieve equal representation by the year 2003.¹²² This was the beginning of the quota system in the sport.

4.4.2 Enforcement of Quotas

This was the only way to ensure that black cricketers were going to be represented in the national team. There seemed to be a situation where black players of high quality at the youth levels who never made it to the provincial teams and this greatly concerned the then Minister of Sport Steve Tshwete.¹²³ There targets set to be achieved by 2003 included among others equal representation at senior management and board levels of the mother body, all selection panels were to have at least 50% black membership.¹²⁴ At provincial level, 22 of the 121 players had to be black by the 1999-2000 seasons and had to increase to 33 by the following season and to 44 the following year with various provinces being offered cash incentives to meet their targets.¹²⁵ The number of black players rose from 26 out of 132 which equates to about 20% in the 1998-1999 season to 86 out of 212 which is about 41% by the 2002 to 2003 season, about 130 players the following season and over 200 players playing in the top franchises and provinces by the 2004 to 2005 seasons.¹²⁶ Six players of colour represented the South African 'A' side in the 2002 to 2003 season and five black players were chosen for the World Cup in 2003.¹²⁷ The High Performance Centre which at the time was run by former test cricketer Gary Kirsten, was involved in developing talented players in to future Proteas had an intake of about 49% from the historically disadvantaged communities.¹²⁸ The Protea under-19 team that reached the finals of the World Cup in New Zealand in 2002 was captained by a Muslim Hashim Amla who is currently a

¹²² Ibid

¹²³ Vahed G (2001) International Review for the Sociology of Sport at 328

¹²⁴ ibid

¹²⁵ ibid

¹²⁶ Gemmel J (2007) Rainbow Nation must have a Rainbow Team at 63

¹²⁷ ibid

¹²⁸ ibid

mainstay of the Test side.¹²⁹ Other important developments included Wilson Ngobese becoming the first groundsman at Kingsmead, Wilf Diedericks becoming the first black test umpire, Rushdi Magiet becoming the convenor of selectors and Ray Mali who became the first African to head up a provincial union.¹³⁰ Currently, the Chief Executive Officer of CSA is Gerald Majola while the President is Dr Mtutuzeli Nyoka. It is important to note that for the sport to reach a point where the top two administrators are black and the continued progress of young black talent into the national fold like Lonwabo Tsotsobe or Wayne Parnell, the process has not been without challenges and certainly not lacking in controversy.

4.4.3 Quota Controversies

The issue around quotas will always be the merit argument. The proponents of the latter argument will always contend that merit should always be the point of departure when selecting a team. South Africa's unique past means that merit alone would never be the only reason that a player of colour will get selected. It is a valid argument in my opinion to contend that were it not for the quotas that were in place, many talented black players would never have got a chance to play at all at provincial or even national level. That is the sad reality of the sport in South Africa. Talented players of colour had to be placed in traditionally strong cricketing schools as youngsters to help nurture their talent or they would simply vanish in to obscurity. Players like Paul Adams, Herschelle Gibbs, Makhaya Ntini and Victor Mpitsang went to Plumstead High, Diocesan College, Dale College and Grey High respectively.¹³¹ Despite the progress of such players and many more that followed, controversy loomed above like a cloud that would not go away.

In the late nineties when the quotas were first introduced, one could cut the tension in the air with a knife as the situation deteriorated between the UCBSA and the senior white players to an extent that the then captain Hansie Cronje resigned in protest when he was informed by the

¹²⁹ Ibid

¹³⁰ ibid

¹³¹ Vahed G (2001) International Review for the Sociology of Sport at 323

UCBSA boss Ali Bacher that a team of colour would be selected for the 1999 World Cup.¹³² This attitude was mirrored in the behaviour of the then coach Bob Woolmer who contended that he selected the team for ‘cricketing reasons rather than to appease politicians’.¹³³ In 1999, there was another row when an all- white team was selected by Gauteng to play England which led to the intervention of the then Sports Minister Ngconde Balfour and subsequent resignation of the UCB president Raymond White who felt that he had been forced out for resisting political interference.¹³⁴ When Pat Symcox was replaced by the left arm spinner Paul Adams for the fourth test against the West Indies in 1999, the captain Hansie Cronje walked out on the team but later returned to the delight of the coach Woolmer.¹³⁵ In February of the same year the Gauteng coach Ray Jennings lost his job when he admitted that he wasn’t fully committed to transformation.¹³⁶ The controversies raged on unabated for a while much to the dismay of the administrators, the government and sports fans in general.

4.4.4 The End of Quotas?

The UCBSA formed a nine man National Cricket Committee in April 2002 after the heavy defeats to Australia a year earlier and sweeping changes were recommended which shook the very foundations of the game.¹³⁷ The national selectors were sacked, the TMC was disbanded and in July 2002 at a conference in Pretoria, it was announced that the national teams and senior provincial teams were to be chosen entirely on merit.¹³⁸ This greatly infuriated the Sports Minister Ngconde Balfour who summoned the UCB bosses to a meeting on 10 July 2002 where

¹³² Ibid 325

¹³³ Ibid

¹³⁴ Padayachee V Desai A and Vahed G (2004) Patterns of Prejudice Vol 38 at 269

¹³⁵ Gemmel J (2007) Rainbow Nation must have a Rainbow team, Spo in Soc at 61

¹³⁶ Ibid 62

¹³⁷ Padayachee V Desai A and Vahed G (2004) Patterns of Prejudice Vol 38 at 273

¹³⁸ Ibid

the UCB reaffirmed its position on quotas but committed itself to producing a minimum of five black players for the upcoming World Cup in 2003.¹³⁹

When the quotas were dropped by the UCBSA in July of 2002, one of the resolutions that were passed as a result of this meeting was that at the B level teams and below, quotas were replaced by the two following guidelines:

- All provincial B teams and teams below this level should contain at least a 50% representation by players of colour.
- These teams should contain at least one black African.¹⁴⁰

This committee of five experienced administrators also recommended that the resolution to drop the quotas was taken without any consultations with the affiliates of the UCBSA and without an adequate assessment of the report of the TMC and should therefore be reconsidered.¹⁴¹

The situation was never reversed but the new governing body of cricket (CSA) has in place a new target called the transformation thrusts¹⁴² which are ten in number and are a replacement of the quota system which are listed and explained below:

4.4.4.1 The Role of Cricket South Africa¹⁴³

This is the most important decision making body in the sport today and they must exercise their authority for the good of the game. The future of the game lies in the hands of this organ. It is a massive responsibility which needs to be undertaken with wisdom and experience by its leadership. The state of the game in South Africa is very healthy as the test and one day teams

¹³⁹ Ibid

¹⁴⁰ Smith J Fredericks G Basson W Nyoka M and Tshoma K (2002) Transformation In Cricket (Report submitted to the Honourable Minister of Sport Ngconde Balfour) at 4

¹⁴¹ Ibid 59

¹⁴² www.cricknet.co.za

¹⁴³ Ibid

are ranked among the top two in the world respectively. The challenge would be to maintain this progress at all levels of the game. The leadership of the body needs to be dynamic and accountable to all the sport's stakeholders. It is evident that the leadership changes from time to time through the elections which augur well for the sport as new leadership brings in new ideas and perspectives to approach the game.

4.4.4.2 Democratisation¹⁴⁴

The very word democratic is self explanatory as it comes from the word democracy which basically means a system controlled by people freely elected by the people or citizenry. CSA and its structures must show that there is healthy debate and space for people with different ideas so long as they are for the good of the sport. South Africa is a constitutional state with its leaders freely elected by the people. These ideals must be reflected by CSA in the way it runs the game. There must be a forum where all stakeholders are afforded a chance to state their issues, grievances or criticisms without being victimised.

4.4.4.3 Redress and Representivity¹⁴⁵

This is probably the most important thrust in my opinion. The sport has a major role to play in uniting South Africans of all races toward a common goal. The past is well documented hence the need to forge a more positive, more inclusive tomorrow. CSA has a moral duty as the custodians of the sport in this country to effect some form of redress by encouraging more involvement by the historically disadvantaged communities.

4.4.4.4 Constitution¹⁴⁶

South Africa has often been lauded for having one of the most progressive Constitutions in the world with a wide range of rights that are protected under the document. The previous governing body of cricket (UCBSA) had a constitution that laid the foundation for the current governing

¹⁴⁴ Ibid

¹⁴⁵ ibid

¹⁴⁶ ibid

body to follow. CSA has a mission and vision instead and among the goals it wants to achieve is excellence at all levels of the game and to increase the viewership of the game.

4.4.4.5 Competitiveness and Revenue¹⁴⁷

The essence of a sport is competition and entertainment in one comprehensive package. Viewership can only grow if the sport is entertaining which in turn creates a healthy revenue stream. Good, healthy competition will always attract sponsorship which will in turn grow the brand of the CSA and cricket in general as a sport. The newer more attractive versions of the game like the twenty over format have proven to be a smash hit with the spectators which is very good for the future of the game.

4.4.4.6 Development¹⁴⁸

The passion for the game throughout this country is well known. This passion exists even where there are no pitches or facilities. In rural areas, talent abounds like in the popular Proteas Makhaya Ntini and Mfuneko Ngam who both came from disadvantaged communities. Without proper development, talent will simply not be unearthed hence the importance of development for the future of the game. Cricket must be taken to all the corners of this country and to children of all ages through coaching clinics, new pitches and so on to encourage interest in the game.

4.4.4.7 Closing the Gap¹⁴⁹

There is already a huge divide in schools cricket, club, provincial and international cricket which must be minimised to reduce the loss of quality human resources in the game at all levels of the game.¹⁵⁰

¹⁴⁷ Ibid

¹⁴⁸ ibid

¹⁴⁹ Ibid

¹⁵⁰ Ibid

4.4.4.8 Funding and Distribution

Cricket as a sport in South Africa is indeed very professional with huge amounts of money at stake. Players are well paid at provincial and international level but there are still concerns. Like in any other major sport, the way in which the revenue is to be distributed will always be a challenge. Some provincial unions are simply richer than others and can therefore pay much better wages than others. They can also sign players of international quality which translates to more success on the field. There is definitely a need for a more equitable way of funds to be allocated especially to the smaller unions which will in turn create even stronger competition among the teams.

4.4.4.9 Recording the Full History of South African Cricket¹⁵¹

Cricket like any other sport in general is not race specific. People of all races played the game during apartheid and continue to play the game even today. The tragedy of apartheid is that the struggle and the feats of many of the past cricketers of colour are not well documented. One really needs to research in depth to find information on the history of the game in South Africa. This is the age of information we live in today and it is important to have that information readily available for the present and future cricketers to be aware of the struggles and obstacles that had to be overcome.

4.4.4.10 Accountability and Monitoring¹⁵²

Any organisation whether in the public or private sector needs to have checks and balances in place. Transparency is very important especially where money is at stake. CSA is not different in this respect as it handles millions of rands every year through its affiliates. Without checks and balances and regular audits, mismanagement would be rife which can only be detrimental to the game. Any official or affiliate of CSA must be accountable in cases of such unfortunate scenarios.

¹⁵¹ Ibid

¹⁵² Ibid

4.5 SWIMMING

This is undoubtedly one of the fastest growing sports in this country. The popularity of the sport has soared with the number of renowned and genuinely world-class swimmers that have been produced. The Olympic Games of 1996 in Atlanta, Georgia announced the arrival on the scene of one of the greatest if not the greatest breast-stroke swimmer of her generation in Penny Heyns. She ended up winning a double gold medal in those Games and set numerous world records throughout her career. The Olympics games in Athens, Greece eight years later saw the emergence of Roland Schoeman and Ryk Neethling to name a few who went on to win gold medals and further cement their reputation as legends. It has not always been rosy in the swimming arena in this country. This sport like all the others suffered greatly during the apartheid years and the majority of the population was not represented. The other problem has always been the introduction of the sport to the African majority. Swimming has never been a popular sport with the majority as it is often deemed to be an elite sport for the privileged few. Furthermore, the financial rewards from swimming are not as high as in the other major sport which has diminished the interest somewhat in the sport by the African majority. The investment in the sport for an athlete to succeed is very high as it involves expensive coaching and training methods, transport expenses and so on. For many citizens, especially the black Africans, these costs are too high and coupled with a chronic lack of facilities, have hampered the progress of the sport. These and many more challenges have been identified by the mother body in charge of swimming in South Africa called Swimming South Africa (SSA).

4.5.1 Transformation in Swimming

SSA first adopted a document on transformation in the 1999-2000 seasons to set targets for all provinces in the country at all levels in the sport with set targets on the swimmers, coaches, technical staff and administrators.¹⁵³ SSA noted three drivers that could aid in transformation:

- Political Structures ¹⁵⁴(Parliamentary Portfolio Committee on Sport) which is very vocal especially since the pace of transformation in the sport is simply too slow and the issue of representivity is always lurking in the shadows

¹⁵³ www.swimsa.ca.za

- Sponsors¹⁵⁵ - the drive to ensure that the sport shows growth in historically disadvantaged communities is not succeeding which in turn jeopardises the relationship with the sponsors who want to see progress in the said communities
- Socio-economic situation¹⁵⁶ - swimming is an expensive sport to take part in and for many people; this is a huge stumbling block which cannot be easily overcome.

SSA came up with short- term and medium term targets to aid with transformation in the sport.

4.5.2 Short-term approach¹⁵⁷

The truth is that the sport continues to be white dominated many years after democracy and this situation will not be allowed to go on. SSA also acknowledged that the goals first set in 1999 were a failure and has now come up with two objectives:

- Ensure African participation in all national teams by January 2008
- Immediately increase black participation in the sport at all levels of competition and in all sectors (coaches, administrators, athletes) of the organisation

4.5.3 Approach to Objective 1¹⁵⁸

With a short-term focus on swimming as a discipline, all senior team disciplines will be compelled to have a minimum 20% black participation by 2008 and junior teams to have at least a 50% African participation of which 20% should be black or else the team would not be ratified by the President of SSA and the executive member in charge of athletic development.

4.5.4 Approach to Objective 2¹⁵⁹

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

¹⁵⁶ *ibid*

¹⁵⁷ *ibid*

¹⁵⁸ *Ibid*

All aquatic disciplines and all sectors will be required to meet the required targets as set by the SSA executive after consultation with the provincial and national structures with financial rewards for compliance with the targets and punitive measures for non-compliance with the targets. A two-tier target system will be applicable with provinces either getting a Category 1 or 2 status with greater emphasis on category 1 provinces which are Kwa- Zulu Natal, Western Province, Central Gauteng, Northern Tigers and the Eastern Cape. The other provinces will be in Category 2.

Target Tables¹⁶⁰ (2005-2006)

	1	2	3	Nat 'B'	Snr Nat	SCS
Swimming	397	192	92	31	27	
Open water swimming				4	6	15%

Athlete Participation international Competition

Swimming _____ World Championships (LC) _____ 20%

Africa Jnr Championships _____ 50%

Commonwealth Games _____ 20%

Diving _____ Junior Teams _____ 20%

Synchronised Swimming__ Senior Teams _____ 20%

¹⁵⁹ Ibid

¹⁶⁰ ibid

Junior Teams _____ 30%

Water Polo _____ Senior Teams _____ 1 per team

Junior Teams _____ 3per team

Open Water Swimming _____ Junior Teams _____ 30%

C. Technical officials Measured on two separate levels, ie (1) key and (2) additional officials

	1	2	3	Nat 'B'	Snr Nat	Other Snr Nat Comps	Other Jnr Nat Comps	SCS
Swimming	60%	30%	30%	40%	30%			
Diving	20%				20%	20%	30%	
Synchronised Swimming	20%				20%	20%	30%	
Water Polo					20%	20%	20%	
Open Water Swimming				20%	20%	20%		20%



D. Team Management in International Participation¹⁶¹

Swimming_____ 50%

Diving_____ 50%

Synchronised Swimming_____ 50%

Water Polo_____ 50%

Open Water Swimming_____ 50%

ALL TARGETS MEASURED BY TOUR

E. Team Management in Domestic (Participation Provincial Targets)¹⁶²

Swimming_____ 50%

Diving_____ 50%

Synchronised Swimming_____ 50%

Water Polo_____ 50%

Open Water Swimming_____ 50%

Measured over the season as an overall target. Provinces required to set relevant targets for club competitions

Category 1
CGA

¹⁶¹ *ibid*

¹⁶² *Ibid*



F. Provincial Leadership¹⁶³

Cat 1 Provincial Committees__ 50%

Cat 2 Provincial Committees___ 50%

Cat 1 Delegations_____ 50%

Cat 2 Delegations_____ 50%

Eastern Province

KZNA

Northern Tigers

Western Province

Category 2

All Other Provinces

G. National Leadership

Executive Committee____ 50%

Sub- Committee's_____ 30%

The medium- term approach to transformation has two objectives as well:¹⁶⁴

- Ensure that every structure and sub-structure within SSA has a development programme aimed at increasing black participation within the structure and sub-structure
- Task responsible agencies for the monitoring the implementation of these programmes

At Provincial level the structures and substructures are clubs, provincial executives, discipline boards and technical and selection committees while at National level the structures are the national executive, the national head office, the national technical committees and the selection committees.

Clubs¹⁶⁵

¹⁶³ ibid

¹⁶⁴ ibid

Clubs must produce a development programme that must include one or more schools within the community where the club is based as well as showing a plan which indicates how the club will develop black coaches, administrators and technical officials. Clubs must also show an involvement with Community Based Organisations (CBO) from adjacent disadvantaged communities.¹⁶⁶

Provinces¹⁶⁷

All category one Provincial boards, Technical and Selection Committees must have at least 50% black representation by 2006 while category two Provincial boards, Technical and Selection Committees must have at least 20% black representation by 2006 and 50% black representation by 2008. Provincial delegations to national meetings including AGM's must be at least 50% black from 2006 for category 1 provinces and by 2007 it must be the same for category 2 provinces. The nominations from the provincial discipline boards for national and technical selection committees must be 60% black with at least 30% African from category 1 provinces while category 2 provinces must have 40% black with at least 20% African.

National level¹⁶⁸

At this level, all appointments to various positions in the organisation must be made according to the Employment Equity Act. By 2008, SSA national office should be representative of all the national demographics within all levels of the office (from management to support staff and so on)

Swimming is a sport undergoing major changes and it is my hope that these changes will reflect at the elite Olympic level with at least one black swimmer winning a medal. Change in any sport

¹⁶⁵ *ibid*

¹⁶⁶ *Ibid*

¹⁶⁷ *ibid*

¹⁶⁸ *ibid*

cannot be achieved overnight but only through meticulous planning and setting goals to be achieved.

4.6 NETBALL

This is arguably the most popular women's sport in this country. It is played at all levels and at all age groups with vigour and passion. The sport has long been associated with white dominance hence the government's intention has always been to transform this sport from top to bottom. Apartheid unfortunately contributed immensely to the sidelining of the African majority from the sport and coupled with the chronic lack of facilities which led to extreme frustration among the majority. The isolation of South Africa during apartheid meant that from 1970-1994 there were no international teams travelling to and from South Africa.¹⁶⁹ The advent of democracy brought with it sweeping changes in the sport.

4.6.1 The Quota System in Netball

Netball's governing body Netball South Africa (NSA) was formed in 1994 and at its first netball competition in 1994, black players complained bitterly about racial selection of players which spilled over to 1995 when an All White team was sent to the All-Africa Games.¹⁷⁰ The president of NSA had to resign and the executive was reconfigured but the 1996 National championships were halted by black women protestors who felt that racial transformation was taking too long.¹⁷¹ There was another serious altercation at the 1999 National championships which led to the executive committee being reconfigured again and the appointment of an African woman as president of NSA together with a diverse executive committee.¹⁷²

¹⁶⁹ Pelak CF (2005) *Sociology of Sport Jour* at 63

¹⁷⁰ *ibid*

¹⁷¹ *Ibid*

¹⁷² *ibid*

Due to all these protests, the administrators of the sport came up with affirmative action policies to increase black women's participation in the sport.¹⁷³ In 1995 for the first time, racial quotas were introduced at the under- 19 level and by the year 2000 quotas were introduced at National level.¹⁷⁴ Provincial teams had to have at least a 40% representation of Blacks or Whites or they would suffer deductions and furthermore and there were to be two players on the court at all times from the under represented race.¹⁷⁵

The latest development is the target system which was previously referred to as the quota system which ensures that all eligible players are given an opportunity to play and as far as the target policy goes, the 50:50 representation is the key.¹⁷⁶ All teams selected have to be ratified by NSA executive to make sure the team complied with the selection policies.¹⁷⁷

4.6.2 Challenges Facing Netball

The main challenge is the sponsorship as not all teams have the funding required to succeed. Furthermore, players representing South Africa are not paid which has led to a mass exodus of talent to other countries.¹⁷⁸ This shortage of money continues to harm the sport and the players who can't eke out a decent living from the sport. A major cash injection is needed to take the sport in to the future and to make the sport as competitive as possible.

4.7 HOCKEY

Though this sport has not always been the most watched or popular sport, the sport has been heavily criticised for its perceived lack of transformation at all levels. Hockey has never really been a mainstream sport in South Africa in terms of media coverage or success on the field or

¹⁷³ Ibid 64

¹⁷⁴ ibid

¹⁷⁵ Ibid 65

¹⁷⁶ www.netball-sa.co.za

¹⁷⁷ ibid

¹⁷⁸ ibid

even in terms of financial incentives to take up the sport. Furthermore, the playing equipment is expensive and the field has to be a special surface called astro turf which is costly to lay. These challenges among many others have made the sport undesirable for many sporting enthusiasts.

4.7.1 Transformation in Hockey

The managing body in charge of the sport in this country is called the South African Hockey Association (SAHA). SAHA has laid down some regulations regarding transformation which came into effect from 15 November 2008.¹⁷⁹ The figures for the National teams are as follows:

- Those that relate to the events under the macrostructure of SAHA such as the Olympics and the Commonwealth Games will be as per agreement with SAHA while
- The selection for all other National Senior and under 21 teams will be on merit but must reflect the hockey playing demographics of the country.¹⁸⁰

All South African under 18 teams must have nine players of colour by 2008, nine players of colour by 2009 and nine players of colour by 2010 out of a squad of eighteen players for any tournament.¹⁸¹

4.7.2 Management Level

At this level, all officials at management level of Senior and under 21 Provincial teams will be as per audit but all provinces are required to have at least one person of colour at that level while the management of all youth teams must have one person of colour.¹⁸²

¹⁷⁹ www.sahockey.co.za

¹⁸⁰ *ibid*

¹⁸¹ *ibid*

¹⁸² *ibid*

CHAPTER FIVE

5. COMPARISON BETWEEN SOUTH AFRICA, AUSTRALIA AND NEW ZEALAND

Australia and New Zealand are both major competitors of South Africa in the sporting arena. The sports of cricket and rugby are those that spring to mind when one thinks of the rivalries between these countries. For many years and even during the darkest years of apartheid, contests between these countries captured the imagination. Rugby and cricket tours were always captivating in the intensity of the matches. Whenever the Springboks played the All Blacks it was more than just a rugby match. It was a debate on and off the field by the players and fans alike as to who was the superior team. Legendary players in the All Black side like Collin Meads or more recently Zinzan Brooke were idolised even here in South Africa. There was a mutual respect between the adversaries on the field of play. It was no different with Australia as some say the rivalry sometimes borders on sheer hatred. On the cricket field, the Australian have always seemed to outperform the Proteas in major tournaments. One only needs to remember the World Cup in 1999 when the Australians beat the Proteas by one run in the semi-finals to eliminate the South Africans. The same team also knocked out the Proteas in the 2007 edition at the same stage of the tournament. These defeats hurt the South African sporting mad public very deeply. On the rugby field, the Wallabies have won two World Cups and have been the number one ranked team in the world from time to time. It is important to note that all three countries participate in the Tri- Nations tournament which is held annually between these World Cup winning sides as well as the prestigious Super 15 championship between their top provincial rugby sides. Some top South African players actually were poached by the Australians like Dan Vickerman and Clyde Rathbone which added fuel to the fire whenever these sides compete against each other.

Apart from the rivalries between these countries, there is a key component that all three share that in my opinion makes them unique. Race is a factor that played a huge role in making these comparisons. Whereas in South Africa, we had the evil system of apartheid, in New Zealand and Australia they have always treated their indigenous population differently from the rest. In Australia the indigenous population are the Aborigine while in New Zealand we have the Maori people. Though not as cruelly as in apartheid, these indigenous populations have suffered greatly as they struggled to compete with their counterparts due to a lack of facilities in some cases or

just pure discrimination in others. The most amazing point is that both the Maori and the Aborigine population have had some of the most outstanding athletes these countries have ever produced. The Olympic champion in Sydney 2000 over the four hundred meters for women was the world renowned Cathy Freeman of Aborigine heritage just to give an example.

My comparison seeks to understand how New Zealand and Australia have dealt with these problems and even see if we can learn something from our two rivals. In countries where race discrimination is not uncommon, I would ask myself how the public respond to teams that are not demographically representative.

The Maori people of New Zealand are avid players of the country's most popular sport; rugby. One of the biggest talking points in New Zealand rugby is the Maori All Black team. No other team in any other sport in New Zealand stirs up as many emotions as the Maori All Blacks. The origin of this team dates back to 1996 after the first season of the Tri-Nations rugby tournament when players from the Maori All Blacks as well as the Junior All Blacks were selected alongside the All Black side.¹⁸³ The Maori and Junior All Blacks were used as feeder teams for the All Black side.¹⁸⁴ The side's composition consisted of players who were visually and culturally Maori only which in other words means race based selection policies. The New Zealand Rugby Union (NZRU) now uses genealogy as opposed to cultural ties for Maori selection which has led to many players receiving exposure to top level rugby like the great Christian Cullen who was selected for the Maori team in 2003 to enable him to win back his place in the All Black side in time for the World Cup later that year.¹⁸⁵ Cullen claimed he was culturally linked to the Maori through his grandfather who was born in New Zealand's South Island where Maoris are the predominant group.¹⁸⁶

¹⁸³ Hokowhitu B and Scherer J (2008) *Sociology of Sport Jour* at 245

¹⁸⁴ *ibid*

¹⁸⁵ *ibid*

¹⁸⁶ *ibid*

The issue at hand is not Christian Cullen but the racial policies that have been the focal point of this Maori team. A team composed of one race only would give rise to an outcry anywhere in the world. The history of New Zealand is not complete without taking in to account the contribution made by the Maori population. This team does not operate in a vacuum as it is administered by the NZRU for the benefit of the All Black team. The policies for selection are sanctioned by the NZRU.¹⁸⁷

In the darkest days of apartheid, race- based selection was the buzz word in sports. How then, is it possible for a country to use such policies in the twenty first century? Well, the comparison between South Africa and New Zealand's rugby policies draw some interesting arguments. For one, it is not the All Black team that is selected on racial grounds. The Maori team is like a feeder team for the All Blacks and its purpose is to strengthen the latter team. However, for many conservative New Zealanders, the Maori team is racist by its very nature and should be abolished with immediate effect. They argue that were there to be an all white team selected for the All Blacks, the controversy would be enormous and the consequences substantial for the sport in general. The conservatives forget that the NZRU sanctioned a test match against South Africa in 1960 that featured an all white All Black side and also allowed the 1981 Springbok tour that even featured a game against the Maori All Blacks.¹⁸⁸

New Zealand did not have apartheid policies but that didn't mean that there was no racism, it was just not as open as in South Africa. The difference now is that we in South Africa would never allow a single race team to compete at any level and in any sporting code irrespective of whether it was for the benefit of a particular national side.

It is however important to note that the motive for supporting the Maori All Blacks by the NZRU in my opinion is noble. It affords players a chance to play their way back in to form and contention for an All Black place. The new genealogical criterion for selection allowed other players to be selected for the Maori team such as potential All Black flank Daniel Braid.¹⁸⁹

¹⁸⁷ Ibid 253

¹⁸⁸ Ibid 254

¹⁸⁹ Ibid 256

Furthermore, prominent Maori people such as Pita Sharples, the leader of the Maori party in Parliament has stated that being Maori is about identifying as one all the time and not about genealogy.¹⁹⁰ It would be easy for one to stand from a pedestal and criticise the Maori side and its policies but the fact is it is some form of affirmative action. The Maori side has no problem adopting white players just so long as the motive is not purely to get selected for the All Blacks but for players who proudly identify with the Maori culture. To simply dismiss the team as racist would be naive and narrow minded.

Australian sport would not be where it is today were it not for the immense contributions of the Aborigine population. Sporting heroes and superstars of Aborigine backgrounds that came to be loved by all Australians include the tennis queen of her generation Evonne Goolagong-Cawley¹⁹¹ and the rugby player Cliff Lyons.¹⁹² The struggle that such athletes went through to achieve greatness and dominance in their respective fields was incredible. The historical inequalities that have plagued Australia mean that an egalitarian society is still a very difficult goal to try and achieve even in the present.¹⁹³ When Christian missionaries came to Australia, the missions that they established introduced sport to the Aborigine nation in order to ‘civilise’ them.¹⁹⁴ The Aborigine teams that conformed to English standards in the cricketing arena were allowed to play against white Australians.¹⁹⁵ The 1870’s colonial governments put into place a series of racial and segregationist policies and laws such as the prevention of mixed marriages and the classifying of groups into white, black and half- caste.¹⁹⁶ It’s amazing just how similar

¹⁹⁰ Ibid 259

¹⁹¹ Tatz C (1987) 95 (author, Tatz, Aborigines in Sport published in 1987, reference from page 95)

¹⁹² Tatz (1987) 79

¹⁹³ Adair D and Vamplew W(1997) 63

¹⁹⁴ Adair and Vamplew (1997) 64

¹⁹⁵ ibid

¹⁹⁶ Ibid 65

the policies that the Aborigines had to comply with were to the apartheid laws here in South Africa.

Team sports for the Aborigine were confined to the rural government reserves where resources and facilities for recreational use were limited.¹⁹⁷ These government reserves are comparable to the townships here in South Africa as an area allocated mainly for one race of people and an area with scant resources. In the twentieth century, Aborigines were still on the fringes of white society but their athletic talents were exploited especially in boxing where they produced over sixty-two champions but the saddest aspect of it all is that many sporting heroes died destitute once their careers were over.¹⁹⁸ Aborigines were exploited by greedy promoters eager to make a buck. The most popular team sports in Australia are Australia Rules Football and Rugby League and during the last thirty years there has been an increased involvement by the Aborigines as they are natural athletes with many of them reaping massive financial rewards.¹⁹⁹ Despite the progress Aborigine sportspeople still endure racism from their opponents on a large scale in the sporting arena which led to senior Aboriginal footballers in May of 1995 pressurising the federal government to implement measures to curb racism in sport.²⁰⁰

Many Australians are vehemently opposed to racism in sport as evidenced by the public outcry when the superstar Aboriginal sprinter Cathy Freeman was lambasted by an Australian official for celebrating with an Aboriginal flag after her victory in the 1994 Commonwealth Games.²⁰¹

The situation in Australia has improved greatly over the years with racism in sport declining and tolerance of races like the Aborigine increasing. It should always be noted that racism in itself is a mindset which is difficult to change hence it can never be completely eradicated from Australian society. Aborigine sportsmen and women are now treated as Australian and the nation

¹⁹⁷ *ibid*

¹⁹⁸ *Ibid* 66

¹⁹⁹ *ibid*

²⁰⁰ *Ibid* 69

²⁰¹ *ibid*

celebrates when they perform well. The quota system has never been applied in Australian sport despite the discrimination suffered by the Aborigine in the past. Australians pursue an egalitarian society and merit in their selection for any sporting code. Promising athletes are selected by the Australian Institute of Sport after a rigorous selection process and are earmarked for success later on.

The difference between South Africa and Australia is that in the latter country, the ethnic minority suffered widespread discrimination while in the former country; the ethnic majority suffered a similar fate. Despite this important factor, we could learn something from the Australian society in that we should aspire to have a sporting base selected on merit that would one day do away with enforced quotas and affirmative action.

CHAPTER SIX

THE CONSTITUTIONALITY OF AFFIRMATIVE ACTION AND THE QUOTA SYSTEM IN SPORT

6.1 Introduction

South Africa is a constitutional state and all laws must be in line with the Constitution or they will be declared invalid. The final Constitution which was adopted in 1996 was hailed worldwide as one of the most progressive constitutions in the world. It encompassed a whole array of rights that are guaranteed and protected from the right to life to the right to housing and many more. The history of this country was taken in to account when the Constitution was drafted. Years of oppressive and segregationist laws left a legacy that had to somehow be corrected. The Constitution set about trying to correct the injustices of the past. On a wider scale, affirmative action was a way of effecting redress to the previously disadvantaged masses in South Africa. One of the cornerstones of our Constitution is the notion of equality. Affirmative action has been labelled by many as a form of reverse racism or discrimination and an insult to the theme of equality as embedded in our Constitution. The question that then needs to be posed is whether affirmative action is justifiable at all given the advent of democracy over a decade and a half ago.

6.2 ARGUMENT IN FAVOUR OF AFFIRMATIVE ACTION

In any legal argument, the point of departure is the supreme law of the land which in this case is the Constitution of South Africa of 1996. Section 2 of the founding provisions of the Constitution states that the Constitution is the supreme law of the Republic; any law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled.

Section 9 of the Constitution is the most relevant in this case as it impacts directly on the notion of equality. Section 9 (1) States that, ‘everyone is equal before the law and has the right to equal protection and benefit of the law’. Section 9(2) states that ‘equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken’. Section 9(3) states that ‘the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex,

pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth'. Section 9(4) states that 'no person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation may be enacted to prohibit unfair discrimination'. Section 9(5) states that 'discrimination on one or more grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair'.

Affirmative action and the quota system are inextricably linked to the notion of equality. The notion of equality must be broken down into formal and substantive equality. Formal equality means that people are treated the same and the law must treat individuals in like circumstances alike while substantive equality requires the law to ensure equality of outcome and is prepared to tolerate disparity of treatment to achieve this goal.²⁰² In light of the past, the latter notion of equality embraces the aims of the Constitution. When one looks at Section 9(2) it talks of measures to advance or protect certain categories of persons affected by unfair discrimination. This is described by the Constitutional Court as 'restitutionary equality'.²⁰³ One of the measures that the state is currently applying is affirmative action.

The Employment Equity Act²⁰⁴ has affirmative action as its cornerstone and according to Section 2(b) the Act states the goal of affirmative action is to ensure the equitable representation in all occupational categories and levels in the workplace. Section 6(2) of the same Act states that it is not unfair discrimination to -

- a) To take affirmative action measures consistent with the purpose of this Act; or
- b) Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

The beneficiaries of affirmative action must be from a designated group and must be suitably qualified for a particular job as a result of any, or a combination of; the person's formal qualifications, the person's prior expertise, the person's relevant experience or the person's

²⁰² Currie I and De Waal J (2005) 233

²⁰³ *ibid*

²⁰⁴ 55 of 1998

capacity to acquire within a reasonable time, the skills required for the job.²⁰⁵ In determining whether affirmative action is indeed an infringement of Section 9 of the Constitution, there was a formula tabulated by the Constitutional Court in the case of *Harksen v Lane*²⁰⁶:

- a) Does the challenged law or conduct differentiate between people or categories of people and if so does the differentiation bear a rational connection to a legitimate government purpose?²⁰⁷ Note that the Constitution clearly acknowledges the wrongs of the past and indeed embraced the notion of restitution while also stating that measures are there to advance or promote certain categories of people. If one approaches the issue from this viewpoint then affirmative action in sport does not amount to discrimination.
- b) Does the differentiation amount to discrimination?²⁰⁸ This will require a two stage analysis. If it is on a listed ground, discrimination will have to be established and if not on a specified ground, discrimination will only be proved if there are grounds that have the potential to impair the fundamental dignity of persons. This means that any sportsperson that alleges that he is being discriminated against will have to prove it if it's on a listed ground and if not he must show that his dignity has been fundamentally impaired.
- c) Secondly, if the differentiation amounts to discrimination, does it amount to unfair discrimination?²⁰⁹ If it has been found to have been on a specified ground, unfairness will be presumed and if not on a specified ground, unfairness will have to be established by focusing on the impact of the discrimination on the complainant. If at the end of this

²⁰⁵ Van Jaarsveld F Van Eck S (2005) 300

²⁰⁶ *Harksen v Lane* NO 1998(1) SA 300(CC) para 53

²⁰⁷ Currie I and De Waal J (2005) 235

²⁰⁸ *ibid*

²⁰⁹ *ibid*

stage of the enquiry, the differentiation is found not to be unfair; there will be no violation of section 9(3) and (4).²¹⁰

- d) The last stage of the enquiry will be that if the discrimination is found to be unfair, then it will have to be determined whether it is justifiable under the limitation clause.²¹¹

This entire process is difficult to conceptualise as the first stage is concerned with the right to equality and if there is a rational basis while the second stage activates if it is determined that the differentiation is indeed rational. Note that even if say affirmative action does indeed have a legitimate purpose is rational and can be justified under Section 36 it could still be deemed as unfair by the complainant.

It is important to understand the meaning of differentiation and discrimination and how they apply to this situation. Differentiation means treating people differently for a variety of legitimate reasons. Differentiation will be permissible if it does not amount to unfair discrimination [the grounds listed in Section 9(3)] hence mere differentiation need not be fair but it has to be rational meaning it has to have a legitimate purpose and a rational connection between the differentiation and the purpose.²¹²

Discrimination is a form of differentiation but on illegitimate grounds [Section 9(3)]. The equality clause does not prohibit discrimination but rather unfair discrimination which means treating people differently in a way that impairs their fundamental dignity as human beings.²¹³ The Constitutional Court in the case of *Harksen v Lane*²¹⁴ in determining whether discrimination has an unfair impact said;

²¹⁰ Ibid 236

²¹¹ ibid

²¹² Ibid 239

²¹³ Ibid 243

²¹⁴ *Harksen v Lane* NO 1998(1) SA 300(CC) para 52

- A) The positions of the complainants in society and whether they have been victims of past discrimination. Discrimination that burdens people in a disadvantaged situation is more likely to be unfair than those in a well- off position
- B) The nature of the discriminating law and its purpose would be whether the primary purpose of the law is to achieve a worthy and important societal goal
- C) The extent to which the rights of the complainant have been impaired and whether there has been an impairment of his or her fundamental dignity.²¹⁵

It will therefore be very difficult to prove especially in the sporting arena that affirmative action is indeed discriminatory and should be done away with. There is a worthy and important social goal trying to be achieved. There is a legitimate purpose behind affirmative action and a rational connection between the differentiation and the purpose. Affirmative action programmes are a composite part of the right to equality and conform to the internal test of section 9(2).²¹⁶

In the case of *President of the Republic of South Africa v Hugo*,²¹⁷ President Nelson Mandela granted a remission of sentence to all mothers who were in prison at the time and who had children under the age of twelve years. The respondent in this case who was a father of a child under the age of twelve years argued that the President's order was discriminatory against him while the court held that there was discrimination but not unfair as the purpose of the President's act was to achieve an important societal goal.²¹⁸ If one looks at this case for the purpose of affirmative action, the noteworthy aspect is that though affirmative action in sports is discriminatory, it is not unfair as it complies with the three factors raised in *Harksen v Lane*²¹⁹ to determine whether discrimination is unfair. The complainants in affirmative action cases are not

²¹⁵ Ibid 245

²¹⁶ Ibid 265

²¹⁷ 1997 (4) SA 1(CC)

²¹⁸ Currie I and De Waal J (2005) 246

²¹⁹ Harksen v Lane NO 1998(1) SA 300(CC) para 52

normally those who have suffered past patterns of discrimination but those who are relatively well-off. Affirmative action also seeks to achieve an important societal goal of equality when one bears in mind the unequal society that we live in.

In the case of *Mineworkers Union Obo Snyman and another / Eskom (Distribution)*,²²⁰ the employer in this case decided not to employ white women to affirmative action posts which the court said was rational and not amounting to unfair discrimination. The company had an aggressive employment equity policy in place and saw affirmative action as a means to an end. Using this case as a point of reference, one could argue that affirmative action policies in sport are harsh but a necessary evil in trying to achieve equality on the sports fields.

The government recently unveiled its affirmative action plans in its proposal for a new Employment and Occupational Equity statute through the Labour Ministry's Green Paper which has one of its key objectives, 'as measures to encourage employers to undertake organisational transformation to remove unjustified barriers to employment for all South Africans, and to accelerate the training and promotion for individuals from historically disadvantaged communities.'²²¹

As noted earlier, there is a distinction between formal and substantive equality with the latter being the relevant issue in this context. Substantive equality acknowledges the unequal nature of society and has now been embraced by the courts and indeed could be referred to as the 'mother of affirmative action'.²²² Under the discrimination provisions of the Employment Equity Act,²²³ the case of *Leonard Dingler Employee Representative Council v Leonard Dingler (Pty) Ltd*²²⁴ the court held that, 'discrimination is unfair if it is reprehensible in terms of the society's prevailing norms. Whether or not society will tolerate the discrimination depends on what the

²²⁰ {2000} 11 BALR 1314 (IMMSA)

²²¹ ELJ 1996 October

²²² Blandpan R and Colucci M (2009) 89

²²³ Act 55 Of 98

²²⁴ (1998) 19 ILJ 285 (LC) at 295H

object is of the discrimination and the means used to achieve it. The object must be legitimate and the means proportional and rational.’ If one looks at this approach by the courts, it is clear to see that they acknowledge the fact that affirmative action cannot simply be overlooked or simply deemed as unfair discrimination. The critics of affirmative action and the quotas in sport refer to it as ‘reverse racism or reverse discrimination’. In the case of *Minister of Finance v Van Heerden*,²²⁵ the court rejected the American ‘strict scrutiny’ approach which regards affirmative action as a suspect category and said that our constitutional understanding of equality includes remedial or restitutionary equality which are not a deviation or an invasion of the right to equality and are not ‘reverse discrimination or positive discrimination.’

In Dupper’s article,²²⁶ he states that weak affirmative action ‘merely involves efforts to ensure equal opportunity for members of groups that have been subject to discrimination. ‘

In the case of *Alexandre v Provincial Administration of the Western Cape Department of Health*,²²⁷ the presiding judge Murphy held that he supported the substantive notion of equality as embodied by the Constitution and the Employment Equity Act.

In the case of *Stoman v Minister of Safety and Security and Others*,²²⁸ there was a dispute in the South African Police Service regarding an employee’s promotion at the expense of another and the court held that the onus of proof is on the applicant who alleges discrimination occurred and that it was unfair. The court noted that measures to ensure representivity are constitutionally recognised and agreed with the policy of the Police of giving preference to previously disadvantaged employees.

²²⁵ 2004(6) SA 121 (CC) at para 29

²²⁶ Dupper O SALJ 2004

²²⁷ 2005 26 ILJ 765 (LC) at 777 para F-H

²²⁸ [2002] JOL 9408 (T)

In the case of *SAPU obo Lotter / SAPS*,²²⁹ where a policeman was preclude from applying for a promotion due to the Police' affirmative action policy, the court held that the affirmative action policy was fair and did not amount to unfair discrimination.

These cases show that affirmative action may appear to be discriminatory on the face of it but these policies are supported by the Constitution, the Employment Equity Act and are part of the fabric of society in the workplace. It is indeed a tricky affair to navigate when one tries to challenge these policies in court.

6.3 ARGUMENT AGAINST AFFIRMATIVE ACTION

Affirmative action programmes have as their object and purpose the unequal treatment of persons, in order to redress past unequal treatment against groups or individuals and warrants the question whether two wrongs make a right.²³⁰ Section 36(1) of the Constitution states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

In the sporting arena, the National Sport and Recreation Amendment Act, 2007 gave the Minister sweeping powers such as the power to issue guidelines or policies to promote equality, representivity and redress in sport(Section 13A) and the power to intervene in any non compliance with the guidelines issued in terms of Section 13A[s13(5)(a)(ii)] .²³¹ This amounts to political interference in sport which has seen countries such as Kenya and Greece banned from FIFA for interference. The main critique of affirmative action as it is applied in sport here is that the measures are not really aimed at advancing persons previously disadvantaged but really aimed at ensuring demographic representivity of sports teams.²³²

²²⁹ [2002] 8 BALR 889 (CCMA) fly note

²³⁰ Louw A (2009) 113

²³¹ Ibid 157

²³² Ibid 118

Equating representivity demographically to legitimate affirmative action is indeed absurd as it is not possible to have all sports teams to mirror the demographics of this country. Black people are probably about 85% of the population which would mean that they should be the dominant group in any sporting code in South Africa. This is not achievable as there are sports such as swimming, tennis and others where the African has never really had an active interest in. To include them to the exclusion of the other racial groups under the guise of affirmative action surely is discriminatory.

Section 15(2)(d) of the Employment Equity Act states that affirmative action measures implemented by a designated employer must include subject to subsection 3 measures to ensure the equitable representation of suitably qualified people from designated groups. Subsection 3 states that the measures included above include preferential treatment and numerical goals but exclude quotas. If quotas are indeed prohibited by the Act then they would fall short as a reasonable and justifiable form of affirmative action and would now lean toward employment discrimination.²³³ Whenever it is said that a certain number of employees (sportspeople) must be of a certain race, merit plays second fiddle to race and race becomes the deciding factor in the employment of such an individual.²³⁴ It is a fact that sports like rugby and cricket have long had an inadequate number of black African players but can selecting them now on a racial basis be deemed as rational?

The case of *Minister of Finance & Others v Van Heerden*²³⁵ explained the test for determining whether a measure like affirmative action would be unfair by applying a three step approach: the first step relates to whether the measures targets persons affected by unfair discrimination, the second step is whether the measure protects or advances such persons and the third is whether the measure promotes the achievement of equality. When one applies this test then it would be clear to see that demographic representivity does not equate to promoting the achievement of equality. In the case of *Du Preez v Minister of Justice and Constitutional Development &*

²³³ Ibid 132

²³⁴ Blandpan R and Colucci M (2009) 99

²³⁵ 2004(6) SA 121 (CC) par 37

*Others*²³⁶ the court had to consider the legitimacy of selection criteria which placed disproportionate weight on the race and gender of applicants as opposed to their experience as magistrates and the court held that such a policy placed an absolute barrier to the appointment of a white male and was irrational. Should we apply the judgement to a sporting scenario, we see the judgement leaning toward merit based selection as opposed to race based selection.

The case of *Public Servants Association of South Africa v Minister of Justice*,²³⁷ white males who had applied for senior posts in the Department of Justice were not even considered for interviews for vacant posts which the department countered by arguing that there were too many white males. The official policy was not considering white males for certain posts when they became vacant which led to the court saying that though forming part of an affirmative action programme, these actions were haphazard, random and overhasty and could not constitute measures to achieve affirmative action. They were consequently invalidated as unfair discrimination based on race and gender.²³⁸ Looking at the above case, it is indeed clear to see that there is a very fine line between affirmative action measures and unfair discrimination.

When one analyses the government's policy of transformation and affirmative action as applied by the various sports federations, these measures do not appear to be aimed at protecting and advancing persons who are previously disadvantaged by unfair discrimination as the wording of these measures as applied by the federations is aimed at achieving demographic representivity of the various sports teams and participants.²³⁹ If demographics are the key issue in these policies, then the various teams should be mostly comprised of black Africans players which obviously would lead to numerous legal challenges as the equality clause in the Constitution does not refer to 'demographic representivity' as a yardstick or indicator of equality.²⁴⁰ In a hypothetical situation, let's assume that a white player is excluded from a team because of affirmative action

²³⁶ 2006 JOL 17157 (SE)

²³⁷ 1997 (5) BCLR 577 (T)

²³⁸ Currie I and De Waal J (2005) 266

²³⁹ Blandpan R and Colucci M (2009) 92

²⁴⁰ Ibid at 93

and he wants to legally challenge these policies. The question would then be how he would go about challenging these policies. In terms of labour law and its development, the contracts between players and their clubs or federations are almost akin to employer-employee relationships which would equate to players being categorised as employees for purposes of the law. The case of *Dudley v City of Cape Town*²⁴¹ is a point of reference as it was held in this case that employees do not enjoy a right to ‘affirmative action’. Government policies appear to be leaning toward representivity as a yardstick for equality and in the realm of sport, how then would demographic representivity equal world class performance?²⁴²

If one looks at the workplace, it is not rational to always expect the workplace to reflect the country’s demographics so conversely in sport how then could that be achieved taking into account the various racial groups in this country?²⁴³ It is then apparent that these policies constitute an infringement of the right to equality of a number of athletes such as the one in my hypothetical example. If for example the white player is say a better rugby player in his position than the black African player, what then happens to merit as a means of selection? This means in essence that merit is irrelevant and race will now be the deciding factor in selection which could be construed as directly in conflict with the equality clause of the Constitution.

In the case of *Reynhardt v University of South Africa*,²⁴⁴ the court held that after the relevant employment equity targets had been achieved in terms of the University’s employment equity policy, the continued application of the latter’s employment equity policy in the present instance was not only a contravention of s 15(4) of the Employment Equity Act but also a violation of its own employment equity measures.

²⁴¹ (2004) 25 ILJ 305 (LC)

²⁴² Blandpan R and Colucci M (2009) 96

²⁴³ *ibid*

²⁴⁴ (2008) 29 ILJ 725 (LC) at para 129

The case of *Willemse v Patelia NO and Another*,²⁴⁵ where affirmative action in the public service was the issue at hand, the court held that employers should consider a variety of factors, of which past disadvantage is only one. Retention of skill and the efficient operation, particularly of state organs, clearly also require consideration.

When looking at the Employment Equity Act, if an employer after due consideration realises that operational requirements outweigh equity considerations, the appointment of the more suitable candidate on merit would not be arbitrary but based on a ‘very relevant and acceptable criterion’.²⁴⁶

What these two cases have in common is that affirmative action should be applied with care and with some rationale behind it as it definitely has the capability of causing more harm than good.

When looking at the policies of affirmative action and their applicability to the sporting arena, one cannot help but wonder whether these policies are consistent with the competitive nature of sport as well as the individual performance nature of sport where the team’s value is determined in large part by the unique individual characteristics of the team in question.²⁴⁷ When looking at team sports such as rugby or cricket, the Proteas and the Springboks have for a long time remained world-class with the latter team going on to achieve spectacular recent success. The Springbok team is brimming with individual talent that works together to form a formidable team. If we were to exclude certain players from the team due to affirmative action, the outcry would be heard far and wide. The competitive edge of the team and the sport in general would be compromised as each player brings a unique skill set to the team. Professional sport in general cannot be dealt with the same way as any other sector of the economy as athletes and the services they render are unique in themselves. Sport in general has a huge fan base across the country. One only has to look at the crowds during Springbok matches for example to see the passion of the spectators. Sport is hugely entertaining to the fans as people are seduced by the uncertain

²⁴⁵ (2007) 28 ILJ 428 (LC) at para 87

²⁴⁶ *PSA obo Karriem v SA Police Services & Another* (2007) 4 BLLR 308 (LC)

²⁴⁷ *Blandpan R and Colucci M* (2009) 110

outcome of the matches due to the participants' skills and talent which are central to the competitive value of the match as well as the industry itself.²⁴⁸

Let us analyse this in more detail. If I look at the Tri- Nations Series for example or a test match series between the Proteas and the Australian cricket team, the stakes are incredibly high. Fans are transfixed by the entertainment factor and the uncertain outcome of these matches. Punters place their bets; television companies make money from the broadcasting rights and so on. The teams have players selected purely on sporting merit which encompasses talent, skill, endurance, form and so on. Were the players to be selected on an affirmative action basis as the chief criteria, the interest in these matches would inevitably decline as the particular attributes of the players would be overlooked in favour of factors beyond their control (race). The effect on this massive multi-billion rand industry would be negative.

When one compares the professional sports industry to any other industry the differences are plain to see. In any other sector of the economy, employees are selected on experience, qualifications and so on hence an individual from a historically disadvantaged background can be justifiably hired if he has similar attributes while in sports an athlete's unique talent cannot simply be overlooked in favour of another from a disadvantaged background.²⁴⁹ The player's talent, appeal and skill are attributes that distinguish him from other employees and it is therefore a fact that any preferential selection policy which is based on the consideration of non-sporting attributes such as race are prejudicial and lack the rationality requirement for affirmative action in terms of the Constitution.²⁵⁰ Is it then justifiable to replace talent and experience with a player who might undermine the competitive edge that his team has?²⁵¹

²⁴⁸ Ibid 111

²⁴⁹ Ibid 112

²⁵⁰ Ibid 113

²⁵¹ Ibid 115

6.4 INTERNATIONAL DOCUMENTS

Principle 4 of the Fundamental Principles of Olympism states that, ‘The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.’²⁵²

Principle 5 of the same charter provides that, ‘ any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic movement.’²⁵³

Bye-Law 3 of the International Rugby Board (Objectives and Functions of the Board) provides that the IRB’S functions and objectives include, ‘to prevent any discrimination against Unions or persons on the grounds of race, sex, religion or political affiliation.’²⁵⁴

The Statutes of the *Federation Internationale de Football Association* (FIFA) in article 3 states that, ‘discrimination of any kind against a country, private person or groups of people on account of ethnic origin, gender, language, religion, politics or any other reason is strictly prohibited and punishable by suspension or expulsion.’²⁵⁵

South Africa’s policies on racial quotas and affirmative action in sport are unique and unheard of in any other country today. Team selection is normally dealt with by the various sporting federations and expressly excluded from the sphere of government intervention through the regulation of sport.²⁵⁶

²⁵² Olympic Charter (Blandpan R and Colucci M (2009) 117)

²⁵³ Ibid 118

²⁵⁴ Ibid

²⁵⁵ ibid

²⁵⁶ ibid



The fact is South Africa is burdened with a past unlike that of any other country and the inequalities that exist in society have to be balanced somehow. Sport is merely a microcosm of society and the inequalities in sport must be addressed in some way or the other.

CHAPTER 7

7 CONCLUSION

South Africa has come a very long way from the era of apartheid and segregation to a new age of freedom and democracy that we all enjoy. For many people this change has not been embraced and there still is a nostalgic look at the past. In the sporting arena, the changes that have been brought about by the government have left some sportspeople bitter and resentful due to a perceived lack of opportunity. The fact is that the equality that our Constitution embodies is one that translates to treating others unequally for others to be equal. This substantive notion of equality applies in all areas of society and sport is no exception.

The government is not trying to exclude talented sportsmen and women but simply trying to create opportunities for the many equally talented sportspeople who were never given a chance and who were never going to get a chance without some of these controversial policies. The sad reality of affirmative action is that it will never please everyone. There will be some casualties but there will be a greater number of beneficiaries from the same policies. Race and colour is inseparably linked in all sectors of society in South Africa and this is something that cannot be wished away. We took the reconciliatory angle after the advent of democracy so as to foster better relations between all the diverse race groups in South Africa. Changing a mindset is one of the most difficult things anyone can set out to do. The mindset that the African majority should stick to sports like soccer and leave the other sports to the White populace still lingers on today. Affirmative action is indeed a way of effecting redress and should not be seen as punishment for the wrongs of the past. If used correctly, affirmative action is a way of fostering better relations through practising tolerance and appreciation of the talents that all South African sportspeople have irrespective of colour.

The gripe that many have is that they want a time period for when these policies will come to an end. Nobody can answer such a question with absolute certainty but what we can do is work together to achieve a common goal. This is a great country rich in talent and sporting pedigree and class. We are unique as we have been blessed with a great diversity and pool of talent to choose from. Yes, the past is never forgotten but the future is what we should all aspire to make



as bright as possible for everyone. The key factor in my view is achieving equality in the sporting arena through merit. No sportsperson wants to be seen as a quota or affirmative action player. He or she wants to be acknowledged for their undoubted talent and potential and what they can offer their respective teams in terms of value. The day we acknowledge merit as our only criteria for selection is the day that we will have succeeded in our quest to be equal.

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