

ABSTRACT

Sports and Entertainment: Niches or Fabrics of Attaining the African Dream?

By

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Within the context of ensuring peace and security as well as the integration and unification of Africa as encapsulated in the Agenda 2063, sports and entertainment provide veritable means for attaining the socio-economic aspirations of the Agenda particularly of integration and unity. They have also proven to be agents of development in many climes. They also impact positively on international trade, support business growth, entrepreneurship and job creation. The innate love for sports and entertainment builds a kinship and team spirit which transcend national differences and foster universal values of fair play, mutual respect and friendship in addition to enhancing reputation of countries. However, certain challenges bedevil the sports and entertainment sector in Africa such as dearth of infrastructure and viable institutions; absence of a strong legal and regulatory regime of patent protection and an integrated planning and management framework which has discouraged useful innovations. Other challenges identified in the paper include weak institutional capacity, instances of non-compliance with international regulatory requirements, fraud and corruption which adversely impact an already poorly managed human resource sector within the continent. Furthermore, with exception of a few, most African States lack the capacity to negotiate beneficial agreements. Consequently, taking cognizance of the growing African population, it is imperative to harness the abundant human resources in-order to attain the aspirations of Agenda 2063. Clearly, there is a need for a paradigm shift on the perception and management of human resource assets in Africa. Thus, the adoption of the African Agenda 2063 by the African Union presents the means and golden opportunity to achieve this shift. The paper also recommends for a unified and strong legal frame work which will address the issue of structure, adequate data, piracy, inordinate distribution channel and regulations for the development of sports and entertainment in the continent.

Key Words: Entertainment, Sports, Regulation, Institution

1.0 INTRODUCTION

The need for Africa's unity and Integration has been at the for-burner of the African agenda as the continent continues to engage at the periphery of the global economy. This is evident from the continent's declining share and performance in global production and trade due to non-

implementation of continental agreements.¹ The majority of sub-Saharan Africa's (SSA) 47 countries are small and least developed, according to UNCTAD's definition. (UNCTAD, 2007).² In addition to border barriers, cultural differences and tribal sentiments, many other constraints exist that endanger peace and cohesion in Africa. The quest for African Unity has been inspired by the spirit of Pan Africanism, focusing on liberation, political and economic independence which is motivated by development, based on self-reliance and self-determination of African people with democratic and people-centered governance.³ Prior to the 20th century, African countries have tried to find Africa-driven solutions to the continent's problems, but those attempts failed because Africa was weak, politically and economically.⁴ Even after attaining independence, the economic policies of most African states have continued to be influenced by their ex-colonial masters.⁵ Under such "neo-colonial" set-up, Africa's levers of fiscal, monetary and foreign exchange policies were manipulated from outside and the result of it was a weak continent.

It is not in doubt that since the 1990's, there has been a movement towards a greater democratization of the African polity. But this democratic trend has to an extent led to a greater accountability and transparency of governments which in turn has fostered integration and unity. On the economic side, Africa began to show impressive growth rates since 2005, six (or seven in some years) of the fastest growing global economies every year have been from Africa.⁶ It is true

¹ Trudi Hartzenberg, Regional Integration in Africa, Trade Law Centre for Southern Africa (tralac), World Trade Organization Economic Research and Statistics Division, October 2011. Pg 3.

² Ibid

³ Agenda 2063, The Africa we want. Final edition published in 2015, African Union Commission, <https://www.scribd.com/document/350822804/Agenda-2063>

⁴ H. H. S VISWANATHAN, Africa's 'Agenda 2063': A Document of Hope, ORF Issue Brief. APRIL 2018 ISSUE NO. 237, https://www.orfonline.org/wp-content/uploads/2018/04/ORF_IssueBrief_237_AfricaAgenda.pdf . Pg 2

⁵ ibid

⁶ H. H. S VISWANATHAN, Africa's 'Agenda 2063': A Document of Hope, ORF Issue Brief. APRIL 2018 ISSUE NO. 237, https://www.orfonline.org/wp-content/uploads/2018/04/ORF_IssueBrief_237_AfricaAgenda.pdf . Pg 2

that much of this growth is due to increase in commodity prices, because of a greater demand from some of the emerging economies like China, India, Brazil and Indonesia.⁷ A McKinsey study of Africa's economies in 2010, "Lions on the Move", showed that there was growth in both resource-rich as well as resource-poor countries after 2005.⁸ Therefore, geopolitical and geo-economic factors indicate that Africa is well-poised to have a longer-term vision which can be achieved through other means of integration such as sports and Entertainment.

Furthermore, Agenda 2063 which aims to enable Africa to remain focused and committed to the ideals it envisages in the context of a rapidly changing world and which is also a strategic framework for the socio-economic transformation of the continent must look at sports and entertainment as a veritable means for attaining the socio-economic aspirations of the Agenda particularly of integration and unity and also of the economic impact. Economic impact in sport and entertainment can be defined as the net change in any economy resulting from any sporting event.⁹ The change is caused by activity involving the acquisition, operation, development and managements of sports and events facilities as well as the human capital development which are supposed to be operationalized through adequate infrastructure and viable institutions; presence of a strong legal and regulatory regime of patent protection and an integrated planning and management framework which will encourage useful innovations. In addition, Africa must comply and respect international regulatory obligations, build strong institutions, avoid corruption and fraud in these areas and recognize the need for shared values and intra-African common destiny.

⁷ Ibid.

⁸HHS VISWANATHAN, Africa's 'Agenda 2063': A Document of Hope, ORF Issue Brief. APRIL 2018 ISSUE NO. 237, https://www.orfonline.org/wp-content/uploads/2018/04/ORF_IssueBrief_237_AfricaAgenda.pdf . Pg 2

⁹ Lieber, S.R., and Alton, D. J, 1983, visitor expenditures and the economic impact of public recreation facilities in Illinois. In Lieber, S.R., and Fesenmeier, D.R., Recreation planning and management. State College, PA: Venture Publishing.

Flowing from the above challenges, this paper will discuss sports and entertainment as a means of achieving integration and unity on the African continent and as a peace brand to be marketed in Africa. It will examine laws and institutional mechanisms/frameworks in the sports and entertainment industry for achieving peace and security in Africa and address the issue of structure, data, piracy, inordinate distribution channel and regulations for the development of sports and entertainment in the continent.

2.0 INTEGRATION AND UNITY ON THE AFRICAN CONTINENT: THE WEIGHT OF SPORTS AND ENTERTAINMENT

Integration is the creation of a feeling of oneness where the diversities are recognised and respected by imbibing a sense of nationhood. Regional integration is seen as a rational response to the difficulties faced by a continent with many small national markets and landlocked countries.¹⁰ It is a complex issue but on a brighter side, socio-economic and cultural differences can be harnessed into building continental and political integration. The record of regional integration in Africa so far has been a sobering one, and many regional groupings are marked by uncoordinated initiatives, political conflicts and low levels of intra-regional trade.¹¹ This idea of integrating African countries has long been promoted by political leaders in speeches, official conferences and formal treaties, although with only limited results on the ground.¹²

Indeed, since independence it has been embraced as an important component of development strategy and large number of regional Integration arrangements (RIA's) has been concluded several of which have significant membership overlap. There are however few success stories as African RIAs are generally ambitious schemes with unrealistic time frames towards deeper

¹⁰ Ernest Harsch, Making African Integration a Reality. From Africa Recovery, Vol.16, 2-3, September 2002, pg 10. www.un.org/en/africarenewal/vol16no2/162reg1.htm> accessed 7 June 2018.

¹¹ Ibid

¹² Ibid

integration¹³ and in some cases even political unions.¹⁴ They can better be said to be usually neighborhood arrangements.¹⁵ It is of note also that several external and domestic factors have impeded the African Integration in the past such as transborder migration laws, monetary differences, challenge of trade liberalization, political commitment etc.¹⁶ Nevertheless, the concept in recent years has acquired greater urgency, dramatized by the formal launching of the African Union. But at this time of heightened international competition, African regional integration must accelerate so that the continent can respond ever more effectively to a globalizing world.

Aspirations 2 of the Agenda 2063 which is to have an integrated continent politically united and based on the ideals of pan-Africanism, and a vision for Africa's renaissance envisages a united Africa with an integrative infrastructure that criss-crosses the continent. It also envisages that countries in Africa will have a dynamic and mutually beneficial links with her diaspora and be a continent of seamless borders, and management of cross-border resources through dialogue.¹⁷

The idea of developing and unifying Africa using sports and entertainment cannot be overemphasized as it can be seen from its huge economic impact in Europe where in 2004 it generated an income of €407 billion representing 3.7% of EU GDP and employing 15 million persons (5.4% of the labour force).¹⁸ That impact has continued to grow, and in many cases, sport has become "big business" (primarily because broadcasting rights – particularly for TV –

¹³ Reference to deeper integration in the context of African regional integration usually means progress from a free trade area to a customs union and beyond to eventual political union. This contrasts with the use of the term deeper integration to refer to the inclusion of behind the border issues such as services, investment and competition policy on the regional integration agenda. Both are used in this paper – the appropriate distinction being noted when the term is used.

¹⁴ Ernest Harsch, Making African Integration a Reality. From Africa Recovery, fn 10. accessed 7 June 2018.

¹⁵ African integration in this paper refers by and large to the experience of Sub-Saharan Africa, although brief reference is made to the Arab Maghreb Union as one of the building blocks of the African Economic Community

¹⁶ Ernest Harsch, Making African Integration a Reality. From Africa Recovery, fn 10. accessed 7 June 2018.

¹⁷ See Aspiration 2 of Agenda 2063.

¹⁸ European Commission, Competition: Sports Overview, 23.03.2017 http://ec.europa.eu/competition/sectors/sports/overview_en.html. Accessed 11/6/2018.

have become very profitable).¹⁹ It is one of the biggest economic industries in Europe and a labour-intensive industry. Forecast growth is likely to lead to additional employment contributing to the goals of the Europe 2020 strategy.²⁰ while in South Africa where sports is not formally recognised as an economic sector and figures are hard to come by, the data from the department of sports and recreation estimates that in 2009 sporting activity contributed about 21% to the country's GDP which is about R41 billion.²¹ Like other commodities, sport has been a commodity that is produced, marketed and sold to the public.²²

Needless to say, apart from religion, sport is the only forum that can bring people together for a common goal.²³ It is possible for sports, through the International Olympic Committee (I.O.C.), and the International Sports Federations to succeed where the United Nations has failed to promote world peace.²⁴ Sports has been used, in the past, as a political weapon to express dissatisfaction by boycotting the Olympic games. If sports can be used to achieve political objectives, it is possible to use sports to achieve and promote peace initiatives at local, national and international levels.²⁵ Most countries see sports as indirectly related to the national development and as such do not have a Ministry of Sports. In the absence of the Ministry of Sports, the sport portfolio is lumped in with other government departments where sport is merely seen as a voluntary enterprise and

¹⁹ Ibid

²⁰ European Sport Statistics, 10/06/2018 http://ec.europa.eu/sport/policy/economic-dimension/sport-statistics_en. Accessed

²¹ Phumudzo S. Munyai, Why its time competition law was applied to sport in South Africa, November 12, 2017. www.google.com/amp/s/theconversation.com/amp/why-its-time-competition-law-was-applied-to-sports-in-south-africa-86782. Accessed 6/12/2018.

²² McPherson, Curtis, I.E. and Loy, r.W. (1989). The Social Significance of Sport. An Introduction to the Sociology of Sport. Champaign, Illinois, Human Kinetics Books.

²³ Mike Boit, The Role of Sport in Nation Building: [http://www.playthegame.org/news/news-articles/2000/using-sports-in-national-development/Using Sports in National Development](http://www.playthegame.org/news/news-articles/2000/using-sports-in-national-development/Using%20Sports%20in%20National%20Development). 12.11.2000

²⁴ Ibid

²⁵ Ibid

luxury most poor nations can ill afford.²⁶ This goes to show that the role of sport in the national development efforts has not been well articulated and understood in many nations.

To understand the link between sports, national development, unity and Integration, the paper will take an overview of the fundamental benefits of sport from the perspectives of individual requirements. A good example of the impact of sports and entertainment in Africa is the case of the Mathare Youth Sport Association (MYSA) a Kenyan Association, which strategizes the use of youth soccer programmes in the slums of Nairobi to bring hope to the lives of thousands of destitute children in the slums.²⁷ Taking the advantage of soccer fever in the slums, the MYSA programmes have been able to make a major breakthrough in crating sustainable programmes in the fight against the rampant drug abuse in the slums, slow down the crime rate, make an impact on school dropout and create positive attitude and hope among thousands of children in the slums.²⁸ As a marketing strategy and a role model for the kids in the slums, the MYSA established a Mathare United Football Club (FC), which has risen in ranks to become a formidable football club in the super league division and has won different awards. What is important to note is that all the players of the Mathare United FC hail from the slums of Nairobi and are role models and a source of inspiration to all the children in the slums. All the players of the Mathare United FC are required to do 80 hours per month of garbage cleanup in the slums as part of MYSA's golden environmental objectives. The slogan of MYSA giving the youth a sporting chance epitomizes MYSA's philosophy of inspiring the kids through sport to be positive and to accept the challenges in life.

2.1. Social Contribution of Sport

Numerous policy papers claim that sport contributes to society in terms of social inclusion and the development of social capital. For example, in a review paper, Bailey (2005)²⁹ identified the five areas of physical health, cognitive and academic development, mental health, crime reduction, and reduction of

²⁶ ibid

²⁷ Andanje Mwisukha, Njororai, W.W.S. And - Onywere Vincent, Contributions of Sports Towards National Development In Kenya,p77-80. Kenyatta University Physical & Health Education, Nairobi, Kenya.

²⁸ Ibid

²⁹ Richard Bailey, Evaluating the relationship between physical education, sport and social inclusion, Educational Review, 57: 1, 71 — 90. <http://dx.doi.org/10.1080/0013191042000274196>> accessed 10 June, 2018.

truancy and disaffection as areas where sport makes contributions to society. However, there is little research that examines these contributions empirically. Delaney and Keaney (2005)³⁰ analyzed the relationship between the extent of sporting participation and the level of social capital across Europe to see how sport contributes to community bonds and active citizenship. They measured “social capital” in terms of social trust, political and institutional trust, democratic participation and social participation. On the other hand, they measured “participation in sport” in terms of probabilities of membership in sport organizations and probabilities of being involved in sport organizations as a player, as well as probabilities of volunteering in sport organizations.³¹ They found that “there are very strong correlations between a nation’s level of sports membership and the levels of social trust and well-being, although the correlation with trust in institutions is much weaker, which indicates that countries with higher levels of membership in sports groups among citizens also have higher levels of social trust.”³²

Sports can also serve as means to fight social problems, as it is evidently clear that most of the countries in Africa are losing war against social problems, the spread of infectious diseases especially the HIV AID, drug abuse and crime rate. Certainly, sport can be used to change the attitude of the people in the slums and bring hope to their lives. As already pointed out, a breakthrough in sport development at national and international level may reduce poverty, ethnic strife and genocide which has become one of the greatest challenges facing African Countries, Nigeria in Perspective. This is not implying that sports is a panacea to every social and economic problem but it could come as good form of distraction and change the political parameters.

From the above discussions its evident that using sports as a means of achieving peace, unity and integration is imminently plausible although as already pointed out, in general, there are many impediments that hamper the development of sport in Africa such as lack of planning, ethnic strife, lack of information, poverty and subsequently poor funding and not to mention natural calamities such as

³⁰ Andanje Mwisukha, Njororai, W.W.S. And - Onywera Vincent, Contributions of Sports Towards National Development In Kenya,p77-80. Fn 28

³¹ Ibid

³² (Delaney & Keaney, 2005, p. 32)

constant drought, flood etc. It is also notable that Africa is lagging behind from the rest of the world in sports that require high level of skill development despite its wealth of natural economic and human resources which has been attributed to logistical problems making it rather impossible to tap the talents, which are known to be quite abundant in virtually every sport. Most of these problems could be solved through equitable distribution of resources, prioritization and good planning strategies.

3.0 THE WAY FORWARD FOR THE DEVELOPMENT OF SPORT AND ENTERTAINMENT IN AFRICA.

3.1. Diversification of Sports in Africa: There is an urgent need for diversification in sports participation in Africa and which must be done on two fronts, one is the aspect of female participation, while the second is in the development of skills to participate in variety of sporting activities. The issue of gender has for a long time plagued the development and growth of sports in Africa because it has only been men in Africa bringing Olympics medals to their countries until very recently the African women are now rising into the limelight of big time sports.³³ Although the momentum is on, but there are still many factors that militate against the advancement of women sports and they still have a long way to reach the level of European and American women especially in sport requiring high skill development. Generally, as earlier stated, Africans are still far behind in highly skilled sporting activities and has attributed it to a number issues which this paper considers to be lack of political will on the part of leaders and lack of awareness and citizenship participation. All these makes it rather impossible for talents to be harnessed.

During the Atlanta and Sydney Olympics Africans featured competitively in 3 sports, namely boxing, athletics and soccer out of about 26 Olympic sports.³⁴ Also, at the 2016 Olympics games

³³ Ibid

³⁴ List of Olympic games host cities <https://www.bbc.com/sport/olympics/rio-2016/medals/sports/cycling#cycling>

held in Brazil, Africans did not feature in up to 50% of the total Olympic sports.³⁵ This therefore necessitates that African countries should have full knowledge of their own resources and potentials and the desire to exploit them for their own benefits. Kenya and Ethiopia have succeeded in middle and long distance running with minimum investment.³⁶ As already stated many exceptional sports talents in Africa is untapped because of lack of proper network for talent identification and development. In recent years, Kenya surprised the world by beating the famous West Indies cricket team, a sport that has always been a preserve for the developed commonwealth countries and the Asian nations while for the first time Nigerian participated in Snow games at the 2018 winter Olympics games.³⁷

Also, it was recorded that in 1996 winter Olympics, two Kenyans opted to change from running to skiing and with a sponsorship from Nike Sports manufacturers of the United States and Finnish Skiing Federation the two runners made impressive performance at the Nagano, Winter Olympics.³⁸ This shows that the talents of Africans are not only limited to the traditional events but we are indeed capable of diversifying talents in order to venture into non-traditional sports. Africans, therefore, have the potentials to excel in a wide range of sport disciplines to make the Olympics and the world championships more exciting and competitive. If sports development is synonymous with economic development as discussed above, then it would be wise for the African countries to use sport as one of the means to achieve economic impact.

3.2. Adequate Data collection/Record: There is need for a Local Sport Profile tool to be set up in African Countries as is the case in England. The Local Sport Profile tool, developed by Sport

³⁵ BBC Sport, Olympics, Rio 2016 result schedule, <https://www.bbc.com/sport/olympics/rio-2016/medals/sports/cycling#cyclling>

³⁶ Mike Boit, The Role of Sport in Nation Building: [http://www.playthegame.org/news/news-articles/2000/using-sports-in-national-development/Using Sports in National Development](http://www.playthegame.org/news/news-articles/2000/using-sports-in-national-development/Using%20Sports%20in%20National%20Development). 12.11.2000

³⁷ *ibid*

³⁸ Jere Longman, Olympics;Kenyans Trying That Other Cross-Country, Dec 20, 1997, <https://mobile.nytimes.com/1997/12/20/sports/olympics-Kenyans-trying-that-other-cross-country.html>. Accessed 17, July 2018.

England, helps local authorities in England to generate a sporting profile for their area in the form of charts and tables, bringing together data on sporting participation and provision.³⁹ This data is useful for local authorities and other partners involved in developing and delivering sporting opportunities in their communities. The profiles were updated in February 2012 to include data from Active People according to a survey released in December 2011.

Data is taken from a variety of sources including the Active People Survey, Active Places, Department of Health and the Office of National Statistics. The tool provides up-to-date information including: demographic data, health data, sports participation, market segmentation, facilities data with regional and national comparators. Since February 2012 the tool now includes data on latent demand for sport (the proportion of adults who would like to do more sport); and latest Local Enterprise Partnerships profiles. In addition, there have been a number of cosmetic changes, making the Tool more user-friendly.⁴⁰

3.3. Intellectual Property/Patent Protection: Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.⁴¹ Innovation and creativity are key drivers in the world of sport. In every sporting field, inventors and creators are working behind the scenes to push the boundaries, creating new opportunities for enjoyment and for athletes to better their performance.⁴² IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish. IP lies at the heart

³⁹ CASE programme local tools: Sport and Culture and Heritage, <https://www.gov.uk/guidance/case-programme-local-tools-sport-and-culture-and-heritage>

⁴⁰ Ibid

⁴¹ World Intellectual Property Organisation (WIPO), What is Intellectual Property? <http://www.wipo.int/about-ip/en/>

⁴² ibid

of the huge commercial opportunities offered by the world of sport. IP rights (especially patents, trademarks and broadcasting rights) - and the legal protection they give – help to secure the economic value of sport.⁴³ This in turn stimulates growth of the sports industry, enables sporting organizations to finance high-profile sports events, and provides the means to promote sports development. Business transactions related to sponsorship, merchandising, broadcasting and media deals are all built on IP rights.⁴⁴ The sports industry has a growing impact on the world economy, creating jobs, investing in public infrastructure and mobilizing resources, therefore the protection of African invention along these lines will aid our capacity to negotiate beneficial agreements.

3.4. Unified Antitrust /Competition Law in Africa⁴⁵: there is a wide recognition that sports have transformed itself from a social activity into an economic activity with potential to spur economic development. Antitrust and Labor issues in sports addresses how labor issues have affected sports and how courts have treated the application of antitrust rules to the sports industry, particularly to the situation involving a professional sports union that negotiates with owners of a league. While the concepts of antitrust and labor law are often considered distinct subjects on their own, in the sports industry, these areas of the law are quite often interrelated.

In Africa however, many Nations have not enacted an Antitrust/ Competition law. It is of note that COMESA Countries (i.e Common market for Eastern and Southern Africa) have created a commission known as the COMESA Competition Commission ("the Commission") which has its seat in Lilongwe, Malawi with the responsibility of enforcing the COMESA Competition

⁴³ World Intellectual Property Organisation (WIPO), Sports and Intellectual Property, <www.wipo.int/ip-sport/en/>

⁴⁴ Ibid

⁴⁵ Competition law also supports the view that using one's financial strength to destabilise rivals, for example by poaching their key staff, may be anticompetitive.

Rules.⁴⁶ The Commission commenced official operations in 2012 with a seminar on the "Implementation of a Regional Competition Regulatory Framework in the Common Market for Eastern and Southern Africa (CO MESA)".⁴⁷ The lack of institutional framework for enforcement has plagued the implementation of the Rules.⁴⁸ But More recently the commission and the Egyptian antitrust authorities have referred the heads of the Confederation of African Football (CAF) to the Egyptian Economic Court for competition -law violations relating to certain exclusive marketing and broadcasting rights.⁴⁹ It has also been reported that the Egyptian Competition Authority (ECA) has also initiated prosecution of seven companies engaged in alleged government-contract bid rigging in the Medical supply of field, relating to hospital supplies. In South Africa, it was noted that the business of sport is riddled with unfair practices that infringe the Competition Act. There are lots of practices in sport that are viewed as normal but should in fact be cause for concern because they may undermine the competition Act. Applying competition law in sports will promote fairness, professionalism, efficient resource allocation and economic development.⁵⁰ Countries should enact competition laws to protect the players and the business as this will bring sports in line with standard rules of business and

⁴⁶ United Nations Economic Commission for Africa, COMESA - Common Market for Eastern and Southern Africa, <https://www.uneca.org/oria/pages/comesa-common-market-eastern-and-southern-africa>> accessed 15 June, 2018.

⁴⁷ Webber Wentzel's Competition Practice Group, South Africa: The Comesa Competition Commission, 14 February 2012 <http://www.mondaq.com/southafrica/x/164650/Antitrust+Competition/The+Comessa+Competition+Commission> accessed 11/6/2018.

⁴⁸ The practical effects of the enforcement of the Comesa Competition Rules will be most keenly felt in the area of merger notifications. The Rules make transactions in the Comesa region with a regional dimension notifiable to the Commission.

⁴⁹ African Antitrust & Competition Law Analysis, A spring smorgasbord of African Competition Law Developments <https://africanantitrust.com/category/sports>> accessed 13/06/2018

⁵⁰ Phumudzo S. Munyai, Why its time competition law was applied to sport in South Africa, November 12, 2017. www.google.com/amp/s/theconversation.com/amp/why-its-time-competition-law-was-applied-to-sports-in-south-africa-86782. Accessed 6/12/2018.

recognize the important role that sports play in the economy.⁵¹ Nigeria remains for now one of the few strong African Economies without any antitrust legislation.⁵²

European Competition law includes legislation in the areas of antitrust, merger control and state Aid. Antitrust rules are of particular relevance to the sports sector as they prohibit anti-competitive agreements and practices, as well as abuse of a dominant position.⁵³ Such cases have generally concerned regulatory and organizational aspects of sport and certain revenue-generating activities connected with it, such as the selling of media rights and the ticket sales arrangements for events. The Growing economic significance of activities connected to sport has meant that the European Commission has had to deal with an increasing number of sport-related competition cases.⁵⁴ Local or national sport-related cases are normally dealt with by the national competition authority in the member state concerned, with the commission generally focusing on cases with cross border implications. There is close cooperation between the commission and national competition authorities to ensure a consistent application of EU antitrust rules. In the QC Leisure (also known as ‘Murphy’) ruling of 4 October 2011, the European Court of Justice interpreted the application of EU competition law provisions to broadcasting licence agreements for sporting events, including analysis of the admissibility of exclusive licence agreements for specific territories.⁵⁵ There was also the Meca-Medina ruling of 18 July 2006⁵⁶. This was a landmark decision where the court provided useful guidance on the application of EU competition

⁵¹ One important aspect is the rules for sport leagues and competition that benefit, favour or give one club- or a few clubs -an advantage over others. The competition principle could be infringed if clubs of equal status in the same association or league deprived of the opportunity to compete- or if they are placed in a competitive disadvantage- without a justifiable sporting or operational reason. This could amount to an exclusionary act in terms of section 8 of the Competition Act.

⁵² African Antitrust & Competition Law Analysis, A spring smorgasbord of African Competition Law Developments <https://africanantitrust.com/category/sports>> accessed 13/06/2018.

⁵³ European Commission, Antitrust Law: Supporting fair play and cooperation in sport, https://ec.europa.eu/sport/policy/economic-dimension/antitrust-law_en

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ All England Reporter, Publisher Citation :[2006] All ER (D) 296 (Jul) Court: Court of Justice of the European Communities (Third Chamber).

rules to sport, notably in respect of the regulatory aspects of sport. Drawing from the EU experience it is imperative for Africa to have a unified antitrust law to help safe guard the sports and entertainment industry.

3.5. Infrastructure and Viable Institutions: Clearly Africa lacks the culture of infrastructure development which means that for Africa to attain aspiration 2 of the Agenda 2063, there is need for mainstreaming sports development in Africa. Sports infrastructure and grounds are to be built and the existing ones to be upgraded. This will include construction of changing rooms, sanitary facilities, canopy roofs, storage rooms and provision of basic multi-purpose sports equipment. There is also need for local capacities to be developed to facilitate long term implementation of sports for development activities. Viable institutions can include training initiatives developed within schools such as vocational colleges, sports clubs, municipal institutions, non-governmental organisations and sports associations, enabling sports programme directors and staff to expand their knowledge of how to use and run sports facilities. Young adults should be trained up as youth coaches and exercise leaders who serve as role models.⁵⁷

3.6. Compliance with international regulatory requirements: Sports is an area of human interaction where respect for rules, team work and fair play are the norm. Teamwork, cooperation, abiding by the rules, respect for opponents and similar concepts all feature in the principles of the Charter of the United Nations. The issue of fraud and corruption adversely effect the human capital development. As Chiweshe 2014⁵⁸ stipulates, African football is in a bad state by all standard in Africa. Dealing with corrupt individual has made it difficult to follow

⁵⁷ German Cooperation, DEUTSCHE ZUSAMMENARBEIT, GIZ is already collaborating with international and local partners in some west African Countries such as Ethiopia, Kenya, Namibia and Togo to carry out a project titled Sports for Development in Africa. The multi state project aims to achieve development policy objectives more effectively through sports infrastructure and equipment, training Initiatives and sports activities and integrated education provision. Deutsche Gesellschaft für, International Zusammenarbeit(GIZ) GmbH, www.giz2015-enfactsheet-sport-for-development-in-africa.pdf. May 2015.

⁵⁸ Chiweshe, M.K. (2014) “The Problem with African Football: Corruption, and the (Under) development of the game on the continent”. In African Sports Law and Business Bulletin, 2014.

FIFA standing rules concerning non-interference in football matters by government or state bodies. Even with a number of African players playing in major leagues abroad, performance of African teams at the World cup continues to deteriorate and at the national level the football clubs suffer from polarization, corruption and tribalism.⁵⁹

4.0 LAWS AND INSTITUTIONAL MECHANISMS FOR THE DEVELOPMENT OF SPORT IN AFRICA

Every nation has a set of values and norms that govern the behaviour of its people. Similarly, every society has a system of social control or mechanism of ensuring that its people behave in consonance with its normative values in order to ensure social cohesion and integration. This is a way of keeping them together as one indivisible entity, with a common identity and destiny.⁶⁰

The issue of continental unity has become topical as the continent grows unprecedented. There is no gainsaying that the greatest challenge facing Africa is the threat to its unity. Reasons being multi-ethnicity with diverse cultures and traditions. But in spite of the seeming challenges of the cultural diversity in Africa, there have been many institutions promoting values which have continued to keep the continent united.

Some African Countries have sports policies, but the majority are fragmented and uncoordinated while the ministries in charge are sandwiched in other ministries. In the case of the United Republic of Tanzania, a sports policy has been in place but it has suffered from lack of implementation.⁶¹ In Benin Republic, a Sports policy is in place, too yet the government has no capacity to implement it. In Burkina Faso there has been progress in implementing its sports

⁵⁹ John O. Kakonge, Sports in Africa: An Untapped Resource for development, 12 May,2016, www.pambazuka.org/global-south/sports-africa-untapped-resource-development, Accessed 18 July, 2018.

⁶⁰ By Chinwe Okafor, Culture: A Medium of Social Cohesion and Integration, Jan 6, 2014. <http://realnewsmagazine.net/special-centenary-edition/culture-a-medium-of-social-cohesion-and-integration/>> accessed 19 June 2018.

⁶¹ Mwisukha , A. and Mabagala, S. 2011 “Governanace Challenges in Sports in East Africa” Unpublished paper presented at the International Conference of the African Sports Management Association held on 2-4 December 2011, Kampala, Uganda. Available from <http://irlibrary.ku.ac.ke/handle/123456789/13541>.

policy,⁶² in Kenya the sports policies and legislatives arrangements are outdated just like Nigeria with poor strategic planning development by the government. There is no doubt several capacity building and training attempts as well as providing an enabling environment in which civil society and the private sector could support sport activities.

However, Some countries having noted the impact of sports in Unity and diversity have gone as far as incorporating it in their Domestic laws for instance Article 37(5) of the 1992 Ghanaian constitution provides that "The State shall ensure that adequate facilities are provided throughout Ghana and that sports are promoted as a means of fostering national integration, health and self-discipline as well as international friendship and understanding while one of the objectives of the National Sports Policy Nigeria amongst others is to develop sports to become an instrument of national unity.⁶³ This is nevertheless a step in the right direction and other countries should take a cue from this giant stride.

5.0 THE NEED FOR A UNIFIED REGIONAL FRAME WORK FOR SPORTS AND ENTERTAINMENT IN AFRICA

The vision and mission of the Agenda 2063 is to build an integrated, prosperous and peaceful Africa, using the best of the continent's human and material resources. To this end, there is need for a unified regional frame work for sports and entertainment in Africa based on human-centred approach that seeks to promote human rights and dignity, protection of data and patent. However, this might likely be hampered in the absence of basic infrastructure and training equipment, political stability, adequate health care service, gender equality, youth marginalisation etc. But drawing upon the strategic objectives of the African Union Commission (AUC) social programme, and within the context of its objectives of promoting sustainable development, there

⁶² Keim , M and coining, C. (ed) 2014. *Sports and Development Policy in Africa: Results of a Collaborate Study of selected Country Cases*. Cape Town: Interdisciplinary Centre of Excellence for Sports Science and Development (ICSSD), University of Western Cape.

⁶³ Chapter Two of the National Sports Policy of Nigeria, 2009

is need to provide an overarching policy structure to assist African Union Member States to strengthen and give increasing priority to their national social policies and hence promote human empowerment and development.⁶⁴

The Social Policy Framework for Africa, developed at the first session of the AU conference of ministers in charge of social development, treated social development as goal in its own right rather than as subordinate to economic growth. It acknowledges that while economic growth is a necessary condition of social development, it is not exclusively or sufficiently able to address the challenges posed by the multi-faceted socio-economic and political forces that together generate the continent's social development challenges.⁶⁵ Sport is perceived to have the potential to alleviate a variety of social problems that often stem from social exclusion, including poor health, high crime levels, drug abuse, juvenile delinquency, educational under-achievement, and lack of social cohesion and community identity. Sport can also be a powerful tool to strengthen social ties and networks, and to promote ideals of peace, solidarity, tolerance and justice. Furthermore, as the African Union Heads of State and Governments acknowledged in their Declaration Proclaiming 2007 as the "International Year of African Football", sport can also be used in preventive campaigns against HIV/AIDS, and other scourges affecting the youth of the continent. It is, therefore, imperative that Africa adopts strategies that can enhance the use of sport as a catalyst for achieving peace and social development.⁶⁶

6.0 POLICY MEASURES

At the First session of the AU conference of Ministers in charge of social development held at Windhoek, Namibia in 2008 October 2008 the following recommendations were made:

⁶⁴ African Union, 'Social Policy Framework For Africa' First Session of The Au Conference Of Ministers In Charge Of Social Development Windhoek, Namibia 27 - 31 October 2008.

⁶⁵ Ibid

⁶⁶ African Union, 'Social Policy Framework For Africa' First Session of The Au Conference Of Ministers In Charge Of Social Development Windhoek, Namibia 27 - 31 October 2008. Pg 42

- (a) Implement the Framework for Sustainable Development of Sport in Africa, including the harmonisation of free movement of sports persons, and improvement of the conditions of service of all sports players; This can be achieved through workable feedback mechanism.
- (b) Conduct feasibility studies on the establishment and/or strengthening of sports academies; This can be achieved by creating an adequate monitoring mechanism.
- (c) Conduct an audit of the state of African sports in order to develop a programme of action to strengthen all sport codes as feasible commercial businesses;
- (d) Strengthen scientific and technological support systems for all sport codes;
- (e) Promote sport for development, peace and integration;
- (f) Promote the participation of women in sport through providing incentives and opportunities;
- (g) Support the All Africa Games to promote social and economic integration.

More importantly every nation should make sport development an integral part of national economic strategic planning and this can be done by defining and articulating sports policies in order to incorporate it in the national development strategies. The Nigerian Economic Recovery Growth Plan (EGRP) developed in 2017 made no mention of the use of sports and entertainment in the Economic growth plan.

5. There is an urgent need for the African Universities and Institutions of higher learning to reevaluate their curriculum in order to put more emphasis on human resource and development in sport science.

6. There is need for the IOC to invest in sport development including research in sport science among the African nations that have contributed to Olympic success over the last 30 years. Since sports can play such important roles, in the process of national development as discussed above, countries in Africa must make deliberate plans to promote and develop sports on a wide scale in

order to achieve maximum benefits. Unfortunately, this has not been the case, as sport development is marginalized by many nations in budgetary allocations and more importantly is the need for Local Sport Profile tool to be set up in local communities.

7.0 CONCLUSION

The Importance of sports has not been sufficiently appreciated by African government for it to be integrated into their national development plans. There is no doubt that sports could play a critical role in attaining peace, development and stability. Sports and entertainment can be an effective economic development tool to metropolitan areas and this impact has been felt largely in Europe on the number of publicly constructed stadia.

Finally, the performance of the African countries at the ongoing 2018 world cup has not been impressive which means Africa needs to harness exceptional talents to raise its standard of sports at the international scene.