



CRICKET
SOUTH AFRICA

**MAYENZEKE
MANJE!**



SOCIAL JUSTICE AND NATION-BUILDING

Social Justice and Nation-Building Project

Interim Report

**INDEPENDENT INQUIRY INTO THE CAUSES, NATURE AND EXTENT OF
RACIAL DISCRIMINATION AND LACK OF TRANSFORMATION IN CRICKET
STRUCTURES SINCE UNIFICATION**

10 December 2021

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CHAPTER ONE

BACKGROUND AND PROCESS

INTRODUCTION

“South Africa's special sect or brand of racism was so fantastically egregious that it had to be declared a crime against humanity by no less a body than the United Nations itself. And our country, inspired by our impressive democratic credentials, ought to have recorded remarkable progress towards the realisation of our shared constitutional vision of entrenching non-racialism.

Revelations of our shameful and atrocious past, made to the Truth and Reconciliation Commission, were so shocking as to induce a strong sense of revulsion against racism in every sensible South African.

But to still have some white South Africans address their African compatriots as monkeys, baboons or kaffirs and impugn their intellectual and leadership capabilities as inherently inferior by reason only of skin colour, suggests the opposite. And does in fact sound a very rude awakening call to all of us.”¹

1. The roots of the Social Justice and Nation-Building Project (“SJN”) can be traced back to the senseless and tragic murder of George Floyd by a police officer in Minneapolis, in the USA.
2. George Floyd’s murder sparked debate and discussion all over the world about racism, oppression and the dehumanisation of Black people. This conversation reignited the Black Lives Matter movement and it also had an immediate impact in sport in South Africa.

¹ *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others* 2017 (1) SA 549 (CC) at para 2.

3. When Lungi Ngidi, South Africa's fast bowler, was requested to comment on the Black Lives Matter movement, he stated the following:

"It is definitely something we would be addressing as a team. And if we're not, it's obviously something that I would bring up. It's something that we need to take seriously, like the rest of the world is doing."

4. Lungi Ngidi's comment on the Black Lives Matter movement exposed the racism and deep divisions that exist in the cricketing fraternity when it attracted backlash from former white Test players who did not support Black Lives Matter movement and its philosophy.
5. Former South African cricketer, Rudi Steyn wrote the following on his Facebook page:

"I believe the Proteas should make a stand against racism, but if they stand up for 'Black Lives Matter' while ignoring the way white farmers are daily being 'slaughtered' like animals, they have lost my vote."

6. Boeta Dippenaar referred to the Black Lives Matter movement as nothing more than a 'leftist political movement'. He further stated that, "if you want me to stand shoulder to shoulder with you Lungi then stand shoulder to shoulder with me with regard to farm attacks."
7. Pat Symcox also added his views: "What nonsense is this. He must take his own stand if he wishes. Stop trying to get the Proteas involved in his belief. Besides the fact that right now Cricket South Africa should be closed down. A proper dog-and-pony show with cricket being dragged through the mud daily. Buy popcorn

and watch. Now when Ngidi has his next meal perhaps he would rather consider supporting the farmers of South Africa who are under pressure right now. A cause worth supporting.”

8. This led to the statement by thirty-one former South African cricketers and five senior coaches on Black Lives Matter, which read:

“We commend Lungi Ngidi for supporting #BlackLivesMatter – and we’d like to add our support for it too. We note the criticism aimed at Lungi for expressing his views – and we hope that Cricket South Africa (CSA), together with fellow cricketers – both present and past – will come out strongly in support of #BLM.

We note too that the most outspoken criticism directed at Ngidi has come via former players such as Pat Symcox, Boeta Dippenaar, Rudi Steyn, Brian McMillan and others, and we urge that their views be challenged.

We are not surprised at their comments.

Given South Africa’s well-known past, black cricketers have borne the brunt of subtle and overt racist behaviour for many years, including from some colleagues. Consequently, there is a need to understand how white privilege feeds into the perpetuation of these old attitudes and assumptions.

Our attitude, mistakenly, we now believe, has always been to say: ‘These are teething problems, and that these will be resolved if we are patient.’

But after almost three decades of cricket unity, the views expressed from one side of the racial divide are still very much part of our lives, and we now believe: Teething problems cannot be allowed to continue for this long.

We see this as an opportunity for CSA to be unequivocal about its position and to make sure the problem is confronted, and we also invite our fellow white cricketers to join in this move to defend human dignity.

We represent, or have represented, South Africa on merit.

Far too many white South Africans cannot accept that black cricketers have proved, time without end, that they are good enough to play at the highest level.

We want to remind South Africans that as recently as 2017, we were told that a South African sister sport, rugby, was 'dead' – killed by 'transformation'.

But guess what? South African rugby won a World Cup last year.

We cannot recall anyone suggesting that the victory was due to transformation.

Why is transformation always rammed down the throats of national teams when they lose, but never when they win?

Can there be equal treatment, please?'

All the signatories to the release stated that they have stories to tell about the racism they have had to endure as they strove to get to the top of their sporting careers.

Sadly, these have often been at the hands of teammates.

It is important to bring these into the open, and for CSA to support black cricketers who come forward to air their stories. Here we also include our women colleagues.

We live in a beautiful, diverse country, but where the playing fields are still far from level, and the transformation of cricket and people's lives should be of paramount importance.

We are determined that future generations should not have to experience the pain we have had to endure, and that no South African cricketer should be discriminated against in the future.

Racism is a global problem and, as the great Michael Holding explained, we can no longer just keep on laughing, grimacing and moving on.

We support Lungi Ngidi ... we support #BLM and, in this week that we remember Nelson Mandela's birthday, we believe that, with honesty and sincerity all-round, lingering racism in cricket and our

beautiful country can be tackled once and for all – for the sake of every child and every cricketer in South Africa.”²

9. Following the aforesaid statement on the Black Lives Matter movement, black players started to openly share their experiences on subtle and overt racism in the sport.
10. These revelations prompted the then Board of Cricket South Africa to initiate this process of truth-seeking, healing and reconciliation in the game of Cricket.
11. The Social Justice and Nation-Building Project is reported as the brainchild of Dr Eugenia Kula-Ameyaw.

THE TERMS OF REFERENCE

12. The Terms of Reference of the SJN Project were adopted by the new Board of Cricket South Africa on 1 July 2021.
13. The Terms of Reference highlight that the Independent Social Justice and Nation-Building Ombudsman (“the Ombudsman”) appointed by Cricket South Africa, **Adv Dumisa Ntsebeza SC**, has been tasked to provide the Board with a comprehensive Report which contains recommendations of measures to prevent the future incidences of racial and other forms of discrimination in cricket.

² Statement by former South African cricketers and senior coaches on Black Lives Matter, 14 July 2020. Signed by: Makhaya Ntini; Vernon Philander; Ashwell Prince; Paul Adams; JP Duminy; Charl Langeveldt; Mfuneko Ngam; Robin Peterson; Aaron Phangiso; Justin Ontong; Herschelle Gibbs; Roger Telemachus; Wayne Parnell; Monde Zondeki; Omar Henry; Alfonso Thomas; Victor Mpitsang; Henry Davids; Loots Bosman; Henry Williams; Alviro Petersen; Thandi Tshabalala; Rory Kleinveldt; Thami Tsolekile; Dane Piedt; Garnett Kruger; Shafiek Abrahams; Lonwabo Tsotsobe; Eddie Leie; Imraan Khan; Ethy Mbhalati; Geoffrey Toyana; Wandile Gwavu; Rivash Gobind; Mandla Mashimbyi; Faiek Davids

14. The Terms of Reference set out that the Ombudsman has been appointed for the purposes of contributing to truth, healing and reconciliation in the game of cricket as part of CSA's social justice and nation-building project.
15. The objectives of the Social Justice and Nation Building Project include promoting unity and reconciliation by:
 - a. promoting equality in cricket;
 - b. determining the causes, nature and extent of the racial discrimination and lack of transformation in cricket structures since Unification, including the antecedents, circumstances, factors and context of such discrimination, as well as the perspectives of the victims and the motives and perspectives of the alleged perpetrators, by conducting investigations and holding hearings and affording the alleged perpetrators the opportunity to respond to allegations levelled against them; and
 - c. Establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations.
16. The following principles apply in fulfilling the mandate of the Ombudsman: accessibility; victim-centredness; confidentiality, the promotion of the health and safety of participants; representativity; transparency; accountability; an open and honourable process; comprehensiveness; inclusivity; an educational and holistic approach; justice; fairness; respect; voluntariness and flexibility.

RULES OF PROCEDURE

17. The SJN Hearing Rules of Procedure were revised by the new Cricket South Africa Board on 3 July 2021.
18. The SJN hearings were conducted in accordance with the Constitution of the Republic of South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“the Equality Act”), the Terms of Reference and the rules of natural justice.
19. The SJN hearings were inquisitorial in nature.
20. The SJN proceedings are not a criminal inquiry as a result, the civil standard of proof in making my findings was utilised.
21. The Rules of Procedure permitted the use of materials of any nature including submissions, opinions, statements, affidavits, oral testimonies under oath, academic materials and so on, provided that allegations against any individual or organization were made on affidavit or via oral testimony under oath.
22. All interviews and public hearings were recorded and a full record of the proceedings is available.

USEFUL GUIDE TO THE READING OF THE REPORT

23. Many commentaries have been highlighted in the course of analysing the evidence especially in relation to a number of recommendations that came from statements submitted, from the affidavits and from the oral testimonies of witnesses and all other stakeholders – like the scene setters, so-called.
24. In the course of writing this Report, the OTO has punctuated the Report by integrating into the text of the Report commentaries, particularly after analysis of the evidence.
25. In an ideal world, the OTO would have preferred that the Report is drafted in such a way that it analysed all the evidence first (documented or oral) separately, give a summary thereof, and typically, at the end, under the heading “concluding remarks” recall all the commentaries made under the text of the Report.
26. Regrettably, this entire project was undertaken by the OTO under the most pressing conditions. It was under-resourced. It also operated under extreme strictures of time. There were inevitable delays, not of the OTO’s making. There was for example, no simultaneous transcription of the record of proceedings. Parties representing the alleged perpetrators sought extensions of time in order to get the record to prepare and lead evidence in rebuttal of allegations made against those whom they represented even Cricket South Africa sought extensions of time on a similar basis.

27. Notwithstanding these difficulties especially the strictures of time within which the OTO was asked to submit this Report, the OTO trusts that the integration of evidence analysis with simultaneous commentary has not deprived the Report of a seamless flow that we believe any reader of the Report will be able to appreciate and follow without being confused.

28. Within the time at its disposal and despite the shortcomings of having had to integrate evidence analysis with simultaneous commentary thereon, every endeavour, we hope, has been made to make the Report readable, intelligible and user-friendly.

CHAPTER TWO
LEGAL PRINCIPLES
UNFAIR DISCRIMINATION

29. Discrimination was broadly defined by the Constitutional Court in *Prinsloo v Van der Linde and Another*³ to mean "...the unequal treatment of people based on attributes and characteristics attaching to them."⁴
30. Our courts have countlessly brought to bear that equality must be interpreted contextually. In other words, one cannot divorce our South African history, which is littered with human rights abuses, racialisation, sexism and segregated development from the equality interpretative inquiry. In this regard, Moseneke J in *Minister of Finance and Another v Van Heerden*⁵ held that:

*"...It is therefore incumbent on courts to scrutinise in each equality claim the situation of the complainants in society; their history and vulnerability; the history, nature and purpose of the discriminatory practice and whether it ameliorates or adds to group disadvantage in real life context, in order to determine its fairness or otherwise in the light of the values of our Constitution..."*⁶

31. Hence, a contextual inquiry is necessary in order to protect against a formalistic approach to adjudication which fails to realise the transformative mandate of the Constitution. Substantive equality keeps at the fore of the inquiry, generational systemic disparities that still plague our society. It recognises the political, social,

3 1997 (3) SA 1012
4 Ibid, para 31
5 2004 (6) SA 121 (CC)
6 Ibid, para 27

and economic inequality that pervades our spaces. Thus, limiting the disenfranchised in our society.⁷

32. In order for substantive equality to be upheld, the Ombudsman is called to assess the effects of certain rules, practices or conduct in cricket as a way to give credence to substance over mere form.⁸ The fact that overt racial segregation, racial intolerance and systematic selective development along racial lines has been eradicated, does not entail that the residual effects of this past are no longer experienced by the marginalised in South Africa.

TEST FOR UNFAIR DISCRIMINATION

33. It is trite that the enquiry in terms of the equality clause is two prong:⁹
- a. The first leg requires that we determine whether an "*impugned provision [or conduct] does differentiate between people or categories of people*". Once it is established that there was no differentiation, the equality enquiry stops there.
 - b. If there is differentiation, we are called on to determine whether such differentiation amounts to unfair discrimination. In order to determine unfair discrimination, two questions must be answered: (a) whether the differentiation amounts to discrimination; and (b) if so, whether the discrimination is unfair.

⁷ *Prinsloo* case supra note 8, para 20

⁸ Iain Currie & Johan De Waal *The Bill of Rights Handbook* (6th ed) (2013) pg. 213

⁹ *Harksen v Lane NO and Others* 1998 (1) SA 300 paras 42 and 53(a)

34. If the discrimination is on any of the listed grounds, it is presumed to constitute unfair discrimination and is subject to a rebuttable presumption that such discrimination is not unfair.¹⁰ In turn, the defendant will have the duty to demonstrate that the discrimination is fair.
35. Discrimination on unlisted grounds does not invoke the presumption of the unfairness. However, a provision or conduct on unlisted grounds may be discriminatory wherein it possesses "*attributes or characteristics which have the potential to impair the fundamental dignity of persons as human beings, or affect them adversely in a comparably serious manner*".¹¹ Thus, unfairness is not presumed where the discrimination is based on unlisted grounds. In this case, the complainant has the onus to prove that the discrimination is unfair.¹²
36. Where unfair discrimination is found to exist, a section 36 inquiry is explored in order to determine the justifiability of the limitation.¹³

DIFFERENTIATION

37. The Constitutional Court separates "*mere differentiation*" from differentiation which arises as a result of unfair discrimination. In other words, differentiation that does not amount to unfair discrimination will not raise a cause for concern.¹⁴

10 Ibid, paras 45 and 53(b)

11 Ibid, para 46

12 Iain Currie & Johan De Waal op cit note 13, pg. 224

13 **Harksen** case supra note 15 paras 53(c)

14 Iain Currie & Johan De Waal op cit note 13, pg. 218 to 219

38. However, mere differentiation crosses the boundary of acceptability and ventures into the zone of discrimination in circumstances where *"there is no rational relationship between the differentiation in question and the governmental purpose which is proffered to validate it"*.¹⁵
39. On the other hand, differentiation which results in unfair discrimination, relates to differentiation on any of the prohibited grounds listed in section 9(3) of the Constitution.¹⁶ Equally, in cases involving discrimination on unlisted grounds, the differentiation is perpetuated *"...based on attributes or characteristics which have the potential to impair the fundamental dignity of persons as human beings, or to affect them adversely in a comparably serious manner"*.¹⁷

DISCRIMINATORY CONSEQUENCES / EFFECTS OF THE CONDUCT

40. Goldstone J in the **Harksen** case sets out factors which must be considered in determining whether an impugned provision or conduct has impacted unfairly on complainants (the factors are not a closed list):¹⁸
- a. The social positioning of complainants.
 - b. Whether the complainants experienced a form of political, social and economic disenfranchisement?

15 **Prinsloo** case supra note 8, para 26

16 Iain Currie & Johan De Waal op cit note 13, pg. 218 to 222

17 **Harksen** case supra note 15, para 46

18 **Harksen** case supra note 15, para 51

- c. Whether the discrimination complained of falls within any of the categories of listed prohibited grounds?
- d. The nature of the provision, conduct or power and the purpose sought to be achieved by it i.e. is aimed at achieving a worthy and important societal goal?
- e. The degree to which the complainants are impacted by the discrimination i.e. has the provision or conduct infringed on the complainants human dignity or is the "*impairment of a comparably serious nature*"?

DIRECT AND INDIRECT DISCRIMINATION

41. Both forms of direct and indirect discrimination are covered within the general scope of unfair discrimination. The inclusion of indirect discrimination in the equality clause extends its application to the discriminatory effects or consequences of a provision or conduct.¹⁹ Indirect discrimination broadens the applicable parameters of discriminatory provisions or conduct beyond crass, overt, arbitrary and irrational differentiation to subtle forms of differentiation that "*may appear to be neutral and non-discriminatory*" which may also result in discrimination.²⁰
42. The **Walker** case gives us a glimpse of an instance wherein the Court found the discrimination to be indirect on the grounds of race.²¹ Mr Walker, a resident in

19 *Pretoria City Council v Walker* 1998 (2) SA 363 (CC), para 31

20 *Ibid*, para 31

21 *Ibid*, para 32

what the Court calls Old Pretoria, which was a predominantly white area, alleged that he was entitled to withhold payment to the City Council of Pretoria for services rendered on the grounds that the Council's conduct violated his right to equality. The Council applied a system of differential levies for electricity and water. Wherein residents of the Old Pretoria area were levied "*on a tariff based on actual consumption*" determined using meters installed on each property whereas predominantly black areas - Mamelodi and Atteridgeville - were charged a uniform rate.²² Langa DP held that the Council's enforcement of a policy that imposed tariffs against predominantly white residents while predominantly black residents were only levied on a flat rate, which was lower, triggered the presumption of unfair discrimination.²³

43. Another case on indirect discrimination involves section 1xix(d)(v) of Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 ("COIDA") which excluded domestic workers employed in private households thereby preventing them from accessing any social security benefits under COIDA.²⁴ Victor AJ found that COIDA indirectly discriminated against domestic workers on the grounds of race, sex and gender given that domestic workers are predominantly black women.²⁵ He further reiterated the established principle that "*seemingly benign or neutral distinction that nevertheless has a disproportionate impact on certain groups amounts to indirect discrimination*".²⁶

²² Ibid, paras 1, 4 and 5

²³ Ibid, para 35

²⁴ *Mahlangu and Another v Minister of Labour and Others* 2021 (2) SA 54 (CC) para 6

²⁵ Ibid, para 73

²⁶ Ibid, para 92

44. Indirect discrimination also extends to cases where the differentiating provision or conduct is discriminatory in its effect irrespective of the intention. In the **Walker** case the Council's selective enforcement of arrear charges in a predominately white area, for pragmatic reasons, was rejected by the Court. It was found that the Council had refrained from enforcing arrear charges in Mamelodi and Atteridgeville in order to avoid hostile reactions from the residents while the contractors were still in the process of installing meters in the area.²⁷ Similarly, in **President of the Republic of South Africa and Another v Hugo**²⁸ the President's good intentions in granting the special remission of mothers in efforts to uphold the best interests of children was found to be insufficient to "*establish that the impact of the discrimination upon fathers was not unfair*".²⁹ Thus, good intentions are insufficient to absolve the impugned.

27 **Walker** case supra note 24, paras 73 and 74

28 1997 (4) SA 1

29 *Ibid*, para 42

CHAPTER THREE

THE EVIDENCE OF THE SCENE SETTERS

INTRODUCTION

45. The SJN hearings officially commenced on 5 July 2021. The first week of the hearings was designated to what we termed the *scene setters* – stakeholders who volunteered to share their insights or general views on the history of cricket, the current state of cricket and the extent to which discrimination or the advancement of designated groups, has or has not played a part in the sport since the unity process in 1991.
46. Further, the role of the *scene setters* was to provide a historical and contextual framework of cricket as we know it.
47. From 5 – 8 July 2021, we heard evidence from 11 *scene setters*, all with diverse backgrounds in cricket administration, academia, journalism and coaching. The former Minister of Sport from 1999 – 2004, Mr Ngconde Balfour was also one of the *scene setters*.
48. The themes which emerged from the evidence of the *scene setters* are set out in the sections which follow below.

THE EXCLUSION OF BLACK CRICKETERS FROM THE HISTORY OF SOUTH AFRICAN CRICKET

49. Professor André Odendaal (“Professor Odendaal”) testified that there were four mainstream volumes on the history of South African Cricket which cover the years 1876 to 1960.
50. He drew our attention to the fact that in the four volumes that cover the history of South African Cricket, there is only one scorecard that appears relating to Black Cricketers.³⁰
51. Professor Odendaal noted that Black Cricketers are entirely absent in the rest of the history of South African Cricket until recently.
52. In his oral testimony, Professor Odendaal made the following comments on the exclusion of Black Cricketers in history:

“This gave rise to notions that Black people did not play so-called Western sports, like cricket and rugby. In these histories, they’re fixed into caricatured past as “primitive people” who somehow preferred hunting and dancing to these White men’s games.

Apartheid and exclusion became naturalised eventually, and these assumptions about the naturalness of the culture of sport continued to be reproduced in new guises in the 21st Century, post democracy, without any great self-awareness by an historically illiterate media and sports constituency in the democratic in the democratic era, reproducing and making acceptable past exclusion in sport in the process.”³¹

30 CSA SJN VOL I Transcript, 5 July 2021, Page118 – 119 at line 23 – 25 and line 1 – 3.

31 Ibid at page 119, line 6 – 21.

53. Professor Odendaal emphasised how history books have been influenced by the broader pattern of colonial and apartheid control and how to a large extent, South Africans are still tied in by those histories.

54. Professor Odendaal expressed the following on the project of decolonising:

“So the project of decolonising South African sports history is an effort to understand how the absences of a colonial subject in sport were engineered, and how colonial narratives became fixed in the minds of South Africans, and to attempt to redress the situation.”³²

55. Professor Odendaal testified that the process of redress referred to above, requires a full-scale re-imagining and rewriting of the history of sport in South Africa.³³

56. Professor Odendaal referred to the following books which he authored and had shared with the OTO when the SJN Project commenced:

- a. “The Story of an African Game”, published in 2003;
- b. “Cricket and Conquest”, which covers history of South African cricket from 1795 to 1914;
- c. “Divided Country”, which covers the period from Union in 1910 to 1960;

³² Ibid at page 120, line 21 – 25.

³³ Ibid at line 7 – 9.

- d. “Pitch Battles”, which focuses on the systemic nature of racism in sport, in South Africa and globally; and
- e. “The Blue Book”, which is a statistical history of Western Province cricket.

57. Professor Odendaal testified that the books mentioned above have been part of the broader rewriting of history project. Further, that the books go beyond existing colonial and apartheid narratives by integrating from the very beginning, at every stage and in every area, the experience of excluded cricketers in the county.³⁴

58. In respect of “The Blue Book”, Professor Odendaal averred that:

“[It] is a statistical history of Western Province cricket and in that book we show that you can go back, actually, and through painstaking research – this has taken two decades, the overall project – and find in newspapers and in other sources, the statistical histories for excluded Black and women cricketers.”³⁵

59. Professor Odendaal concluded the section on the history of South African cricket by asserting that Black Cricketers were incontestably amongst the pioneers of the game in South Africa and the broader colonial world.³⁶

60. In his oral testimony, Advocate Norman Arendse SC (“Advocate Arendse”) stated that he concurs with Professor Odendaal on Black people and Cricket. He asserted as follows:

“Black people have been playing cricket for more than a century - for many, many, many years - and it’s not a game that is alien to the Black culture. In

34 Ibid at page 122, line 23 – 24; page 129, line 20 – 24.

35 Ibid at page 122 from line 1 – 8.

36 Ibid at pages 129 – 130.

fact, cricket is also in our DNA. We have known cricket, we have played cricket. And the same goes for women.”³⁷

61. Advocate Arendse further testified that rugby and cricket were important sports for apartheid and the apartheid government in that that the sports were used to further propaganda on the superiority of the white race.

TRANSFORMATION SINCE CRICKET UNITY IN 1991

62. Professor Odendaal testified that cricket unity was the vision of Isaiah Badmele, Paul Grendon and others who had in 1899, when they started the Barnato Tournaments and the South African Coloured Cricket Board as a home for all those cricketers excluded from the Whites-only official South African Cricket Association.³⁸
63. Professor Odendaal further mentioned that the Whites-only South African Cricket Association played all its one hundred and seventy tests in over forty series against only three countries: England, New Zealand and Australia. He expressed the following in his oral testimony:

“Even after India and West Indies and later Pakistan, came on in the 1920s, ‘30s and 40s, there was no attempt by the Whites-only South African Cricket Association to engage them because segregation and apartheid were seen as the normal thing.”³⁹

37 CSA SJN VOL II Transcript, 6 July 2021 at page 278 – 279.

38 Ibid at page 137, line 9 – 15.

39 Ibid at line 19 – 25.

64. Professor Odendaal indicated that the struggles of non-racial cricketers and of the black cricketers brought about unity in 1991 which led to the formation of the United Cricket Board of South Africa (“the UCB”).

65. Professor Odendaal testified that the UCB was based on principles of equality and aimed to promote cricket as a game for all South Africans. In addition, that unity and development were key priorities.

66. Professor Odendaal averred the following sentiments:

“Despite strides forward, there were, by 1997 however, growing concerns about the lack of delivery and change in various areas of cricket. This applied particularly to the top administrative and playing levels.

The showcased provincial and national teams remained almost completely white, in fact. Only four black players in the whole of the 1990s played for South Africa: Omar Henry, Paul Adams, Herschelle Gibbs and Makhaya Ntini, and there was a definite sense that prevailed amongst gatekeepers in cricket, that these people were not good enough, that this, somehow or other, was ‘our game’.”⁴⁰

67. Professor Odendaal further highlighted that it became evident that the unity process was rushed because of the political imperatives of the time and that many people felt that it should have been more demanding in terms of what was required.

68. In his oral testimony, Mr David Mashiyi, also reiterated the opinion that the 1991 unity process was rushed:

40 Ibid at page 138, line 15 – 25. Page 139, line 1 – 3.

“The problem of cricket started way, way back, like I would say when we started pulling together, in 1991. There were things that were never addressed during that period.

For instance, in fact, I believe the process was rushed, because the development was never placed as a priority. Because if we talk about development, there are things in development that are so critical. They were critical in 1991, and they are still today.

We are talking about challenges just like equipment, we are talking about infrastructure, we are talking about how to identify Black cricketers from an early age. That, for me, is something that was never, never really being touched, so as years went by it led to many things that were happening in cricket.”⁴¹

69. Mr Mashiwi then avers that in view of the above, the challenges facing cricket must not be viewed through the race lens of black and white but rather the system as a whole should be critiqued.

AFRICANISATION OF THE GAME

70. Professor Odendaal’s oral testimony further focused on the new phase of transformation that CSA entered in 2013. He averred the following:

“In 2013, CSA entered a new phase of transformation, which specifically emphasised Africanisation of the game, and again targets and scorecards were set nationally by the Eminent Person’s Group established by the Minister and the Department of Sport, which sought to bring cricket in line with those demographics that we mentioned.

What happened as a result of the focus on Africanisation was the number of black players – particularly Black African national players – jumped by fifty-four individuals playing for South Africa, from thirty-eight to ninety-two in the three years from 2017 to 2020.”⁴²

41 CSA SJN VOL IV Transcript, 8 July 2021 at Page 545.

42 Ibid at page 145 from line 3 – 17.

71. Advocate Arendse's testimony also focused on this new phase of transformation:

"It was only in 2013, after Nicholson and the new Board was installed, that the first thing that the new Board decided - and Chris Nenzani was then the President and the Chairman of the new Board - the first thing we decided was to have an indaba where all stakeholders would be represented.

The whole cricket family would be invited to attend. So that was a big gathering, and all the provinces were there, all the coaches were there, the umpires, the players, sponsors were invited, we had headline speakers, and the important thing about that indaba was the theme.

*The theme of the indaba was: The Africanisation of Cricket. We're an African country, we must find African solutions to our difficulties and our problems. We can't import English, Australian or even Indian solutions."*⁴³

72. Advocate Arendse stated that new targets had to be introduced during this period and emphasized that as a result *"there are now many Black boys playing professional cricket, bowling, batting, participating in the game, and it's because of the targets that were introduced."*⁴⁴

AMACAL'EGUSHA

73. Mr Dumile Mateza ("Mr Mateza") testified on the importance of the Amacal'egusha cricket tournament and the impact it has had on Black African cricketers and on the sport in general. He relayed the following on the tournament:

"Amacal'egusha is a cricket tournament. While the game has often been seen as a traditionally white-dominated sport, as the Professor indicated yesterday, this tournament has been played since the 1920s between villages in the country's rural Eastern Cape regions.

43 CSA SJN VOL II Transcript, 6 July 2021 at page 287.

44 Ibid at page 288.

A lack of facilities has not dampened enthusiasm for the sport amongst rural communities in the region which was the home of national players like Makhaya Ntini and Monde Zondeki, who played for South Africa.

Even the most impassionate of appeals does not stir an umpire during a Amacal'egusha village cricket tournament.

Village cricketers sing and dance before a match and during the Amacal'egusha village tournament in the villages near Middledrift, King William's Town and elsewhere in the Eastern Cape.

A bowler would make a delivery during the Amacal'egusha and you would hear a voice from the enthusiastic crowd: 'Makadumb' ikhwapa.' In other words, the bowler must bowl until he's armpit is swollen..."⁴⁵

74. Mr Mateza further elaborated that Cricket South Africa has ignored the importance of this tournament. He averred as follows:

"This Tournament, to all intents and purposes, could be the breeding ground, and has been, for cricketers of African descent, but alas, it was neglected. But it is not too late as it is still in existence. This is where Makhaya Ntini came from before, through a scholarship offered by the Business Executive Cricket Club to attend Dale College. That was before he was given the scholarship to go to Dale."⁴⁶

75. In his concluding remarks, Mr Mateza recommended expressed that the Amacal'egusha Tournament is an opportunity that should be enhanced and developed.

SOUTH AFRICAN CRICKETERS' ASSOCIATION AND TRANSFORMATION

76. Professor Odendaal also reflected on the role of the South African Cricketers' Association in respect of transformation in the past:

45 CSA SJN VOL II Transcript, 6 July 2021, page 198 at line 21 – 25; page 199 at line 1 – 9.

46 Ibid at page 200, line 6 – 18.

“SACA is a progressive force, hopefully, today. Many times in the past, it resisted the opening up in quicker ways, the opportunity for Black players by arguing for lower targets, and so on.”⁴⁷

...

I think it’s more representative now, and seems to be on a good path, but there were times in the past where it was actually a brake to change, in my opinion, as someone who was in the system at the time.”⁴⁸

77. Advocate Arendse expressed the following about the South African Cricketers’ Association and transformation:

“The South African Cricketers’ Association is a very important institution in our cricket, but it also has changed because of demographics. I would say that in the early years, when we formed what is called a closed-shop agreement with SACA, SACA was often an impediment to change in our cricket, especially when it came to the national team, because it was overwhelmingly White.

The overwhelming majority were White players, because it was mostly White players playing franchise cricket, and therefore representing the country at a national level, and it was very difficult for Black players to break through.

But because of the changes we introduced in 2014/2015, with more and more Black players coming through the system, and then also becoming members of SACA, because it’s the only trade union recognised by Cricket South Africa.”⁴⁹

78. In concluding his evidence on SACA and their role on transformation at the time, Advocate Arendse acknowledged that the demographics of SACA changed and that their attitude towards transformation also changed.

THE MEDIA AND TRANSFORMATION

47 CSA SJN VOL I Transcript, 5 July 2021, page 152 at line 23 – 25; page 153 at line 1 – 2.

48 Ibid at page 153 at line 8 – 12.

49 CSA SJN VOL II Transcript, 6 July 2021, page 289.

79. Professor Odendaal further testified on the role of the South African media on issues relating to transformation.

"It's not a media-bashing exercise, it's a simple fact that at every stage of a transformation process there have been anti-transformation voices.

*If one looks at the biographies of our top players in the 2000s, you will see a persistent moaning and negativity about transformation, and so this is something that has not been accepted with alacrity always, although you don't hear much of that currently in the media."*⁵⁰

80. Professor Richard Calland also commented on the role of the media:

"Lastly, the media. It does seem to me that in terms of both transformation and in terms of this complex question of organisational ethos and culture, the media have an important part to play in two directions, in two ways.

Firstly, because they are intermediaries. They are the intermediaries who stand between the general public and the game of cricket and the way in which they communicate, report on, analyse, comment on the game of cricket, I think, matters a great deal.

Secondly, because of the way in which they themselves represent the game of cricket, the positions they take, the attitudes they strike and the relationships they hold with cricketers and people in Cricket South Africa may have a significant impact. So I would suggest that they are, although independent of, they are an important stakeholder, yes, and also, in a sense, an extension - a third arm, anatomically - of the organisation of cricket.

*So I think a good deal of effort and thought needs to be put into how to educate the media, how to bring them into this conversation, how to help all of the cricket media fraternity to get to grips with this."*⁵¹

81. Further testimonies relating to the role of the media in Cricket emanated from the player's testimonies in Chapter 3 of the Report.

50 CSA SJN VOL I Transcript, 5 July 2021, at page 153 from line 13 – 22.

51 CSA SJN VOL IV Transcript, 8 July 2021 at page 718 – 719.

THE DEPARTMENT OF SPORT AND THE DEPARTMENT OF BASIC EDUCATION

82. Advocate Arendse expressed the view that the Department of Sports, Arts and Culture and the Department of Education were not prioritizing school sport.

83. In his oral testimony, Mr Mateza asserted the following:

“The list of superior rugby schools in South Africa roughly mirrors the best of cricket schools in South Africa. Being an elite school that provides the best sports training and academic instruction in the country it follows that they mirror the socio-economic makeup of the country to a large extent as well. So the Department of Sport, and that of Education, should shoulder the blame and play their part.”⁵²

84. Mr Mateza further extended his views on the Treasury’s budget for sport:

“...when Treasury is budgeting for education, Treasury doesn’t budget for sport at schools. The sport budget is at Sport. Therefore, sport sometimes falls short, because I think sport is the last on the radar of departments that get money.”

SCHOOLS’ CRICKET

85. Advocate Arendse raised the following question on schools’ cricket:

“How can this country ever fulfil its potential in cricket, rugby or football, when we have thousands and thousands of schools and we do not even tap into the potential that’s in those schools?”⁵³

86. This question follows his expressed concerns regarding the fact that many black players that were emerging in cricket and playing franchise cricket attended formerly white schools or formerly white model C schools. He stated that not

⁵² Ibid at pages 221 – 222.

⁵³ CSA SJN VOL II Transcript, 6 July 2021, page 296.

enough players were coming from township schools, which he noted as a problem.

87. Mr Max Jordaan (“Mr Jordaan”) also testified that the players who play in the national team come from Model C schools.

88. Dr Mary Anne Dove (“Dr Dove”) also testified on schools’ cricket:

“What essentially happens is that if you play mini cricket, if you do not have access to go to a school that offers cricket facilities, it is very difficult to progress, because there are very few facilities for players who do not end up going to school.

So the vast majority of this group of players ended up ... going to what we call formal Model C schools, or private schools, on bursaries and that was a reason that they succeeded.”⁵⁴

89. Mr David Mashiyi testified that:

“...out of every Black cricketer that has represented the national team - I’m talking about the Proteas senior team - there is only one who really came from our schools, like Black schools. Most of them come from what you call traditional cricket schools. And that is the system. That is made so that those schools – that every one of us thinks we have to send our children to those schools.”⁵⁵

⁵⁴ CSA SJN VOL III Transcript, 7 July 2021 at page 395.

⁵⁵ CSA SJN VOL IV Transcript, 8 July 2021 at page 548.

RECOMMENDATIONS FROM THE EXPERTS

THE ISSUES:

90. Dr Mary-Ann Dove, in her comprehensive study into the reasons for limited representation of Black African cricketers at elite levels in South Africa⁵⁶, summarises the issues in the South African cricket landscape as follows:

" Access to opportunities and competition – access to opportunities in cricket is mainly provided by family, mini-cricket development programmes, attendance at well - resourced schools, admission to Cricket South Africa's High Performance pathway and sufficient quality of opportunities to perform at the senior level. However, for the majority of potential cricketers in South Africa and other low-middle-income societies, these opportunities are less accessible due to a variety of socio-ecological constraints. (own emphasis)

Holistic player development - layer-centred management and active mentoring further enable holistic player development. This necessitates having sufficient and appropriately trained coaches from diverse backgrounds who can build congruent relationships with all players based on an understanding of their needs, both on and off the field. (own emphasis) A lack of commitment to the holistic development of all players has resulted in the slow progress of players, from some ethnic groups, transitioning to the highest levels of South African cricket.

Effective support networks - In order to retain players within the system, support from within the cricket structures was found to be most important during the transition from U19 to senior level. Increased socioeconomic and cultural challenges seem to exacerbate the already high level of player dropout during this stage

Inclusive team environment - In addition, team effectiveness was compromised by insufficient leadership skills, poor communications and a lack of understanding of the uniqueness of each player. Improved team cohesion and effectiveness, facilitated by emotionally intelligent and transformational team leadership, will create more inclusive team

⁵⁶ Mary-Ann Dove "Socio-ecological factors in talent development in cricketers in a diverse society" (PHD thesis:UCT) 2018, Available at: https://open.uct.ac.za/bitstream/handle/11427/29800/thesis_hsf_2018_dove_mary_ann.pdf?sequence=1&isAllowed=y, pages 255 – 258.

environments with the potential for enhanced individual and team performance.

Adaptive mindsets - This research found that attitudes towards players from ethnic groups different to oneself, have been shaped by the country's historical social forces that will take time and dedicated effort to overcome. These mind-sets were revealed in various situations: the manner in which teams were selected, the amount of playing time afforded to some players, a lack of belief in the cricket abilities of Black African players by predominantly White coaches, ethnic-aligned cliques in teams, attitudes towards targets and transformation and a failure to recognise the impact of South Africa's complex inequalities on the development of all players. (own emphasis) Therefore, for genuine integration to occur, there is a need for all stakeholders to adapt their mind-sets to eliminate racial bias and accept the diversity of talented cricketers playing the game in South Africa.

Intrapersonal attributes - A range of intrapersonal characteristics was identified by the players as contributing either positively or negatively to their cricket development and success. Although these attributes were fairly consistent across the ethnic groups, extrinsic motivators, less access to resources to manage injuries, and a decreased self-belief due to coach attitudes were most apparent among Black African players. (own emphasis)

Target intervention - Despite providing opportunities to an increasing number of Black African players at the representative levels, and inspiring young players to pursue a career in cricket, the target policy has had a limited effect on the other barriers and enablers to talent development. The lack of holistic player development, throughout the pathway, for all those wishing to play cricket has resulted in an insufficient number of players from some ethnic groups at the elite level. Furthermore, it has had a negative impact on individual players from all ethnic groups, as well as exacerbating the limited inclusivity of team environments. Although CSA has introduced some complementary interventions to provide additional support to players, this research has shown that these can only have a limited impact, until such time that some of the wider socio-economic inequities that continue to plague South Africa are addressed."

91. Dr Dove's research was conducted independently by herself and her team at the University of Cape Town on or around 2016. Other experts in cricket and

stakeholders have come before the Ombudsman and highlighted the same or similar issues.

92. Former first-class cricketer and historian, Professor Andre Odendaal provided a historical perspective of the adaptive mindsets issue raised by Dr Dove and highlighted above. In his submission before the Ombudsman, Professor Odendaal writes the following:

"The inherent violence that underpinned cricket's growth in southern *Africa*, we argue, also shaped its character. The mindsets behind British and settler militarism directly incubated an exclusive 'culture' of cricket that became infused with notions of racism, narrow masculinity, Social Darwinism and imperial superiority (own emphasis), leading to the implementation of an official colour bar from 1894 onwards. It was impossible for the archetypal British game, with its close military associations, to remain innocent against the long background of conquest and dispossession (own emphasis). Indeed, there is ample evidence to show that it was tightly woven into the fabric of imperialism and colonial power in southern Africa (Cricket and Conquest, chapters 9, 24, 28, 29 and Epilogue).

The changing political economy after the discovery of diamonds and gold from the 1870s onward led to Britain consolidating its power over the whole of southern Africa, leading to the new Union of South Africa in 1910. Whereas initially there had been a promise of accommodating the political and sporting aspirations of an emerging black middle class within the developing colonial society, thereafter segregation became the key word. The 1913 Natives Land Act and the urban legislation of the 1920s and *succeeding* government policies set out systematically to control the movement, labour and living areas of black citizens. It was made clear to them that political rights and sport were for whites only (own emphasis). *Divided Country* shows how underlying tectonic shifts sausage machined society into segregation until there were seven different 'national' cricket bodies existing at the same time in South Africa by the 1950s."

93. Professor Odendaal's account of cricket history in South Africa provides an insight of why cricket finds itself with issues of racism and lack of transformation. This in depth understanding of history supports the findings and allegations made by Dr Dove that "... *attitudes towards players from ethnic groups different to*

oneself, have been shaped by the country's historical social forces that will take time and dedicated effort to overcome." It is of paramount importance to note the history so that in reflection and strategising for the future, the issues highlighted are dealt with objectively and without vilifying individuals as this has the potential of creating conflict that could halt and not assist the process of rebuilding.

94. Governance expert and political economist, Professor Richard Calland, used the case study of international cricketer Temba Bavuma to display the issues of access to opportunities, effective support networks, adaptive mindsets and target intervention as highlighted in Dr Dove's research findings above. He states the following in his submission to the Ombudsman:

"In my view, the facts speak for themselves. The fact that, for example, since 1994 only one black African batsman of international quality (Temba Bavuma) has emerged is inexplicable, inexcusable and unacceptable. It is equally clear to me that white players, in general, continue to get more chances to prove themselves, and are treated differently from black players. Again, Bavuma is a good example: he has been in and out of the team, moved up and down the order, and when he was dropped in late 2019, Proteas' coach Mark Boucher's comments, in which he claimed to "understand the need for transformation" but then undermined his statement by the way in which he sought to justify his decision, patronizing Bavuma – by then an experienced player with around 40 Test caps – in a way that was borderline racist or at least a 'classic' example of an 'inarticulate premise' held by some white people that black people/players are perennially 'young', 'inexperienced', 'learning the game', or 'transformation selections'. This was a very revealing moment, indicative of a prevailing prejudicial attitude in leadership structures in the Proteas set up and more broadly in the game in South Africa."

95. Professor Calland continues to corroborate Dr Dove's research findings in the following way:

"Fourth, transformation should be seen in structural terms and not just through the relatively one-dimensional lens of demographic numbers."

Although the racial and gender breakdown at the top end of a sector is an important indicator of progress, as we have learnt from other sectors and institutions, such as the judiciary and the Bar, or corporate ownership and leadership, achieving a truly non-racial and non-sexist society requires a careful dissection of the whole 'value chain'. By analogy, for example, in order to increase the number of women or black judges, one needs to look at briefing patterns at the Bar, at financial support for young professionals from disadvantaged backgrounds, and at mentorship and leadership culture within the legal profession more generally. Fifth, in order to effect meaningful, structural change, the 'right' governance and leadership is a necessary (if not sufficient) condition for progressive transformation. Sixth, applying the learning from my work on corporate leadership and sustainability, it is clear that the direction of travel for the most thoughtful, smart and committed companies is in their ability to integrate their approach to sustainability into their core business strategy and in their ability to articulate a clear 'social purpose'." (own emphasis)

96. In their submission to the Ombudsman, the Non-Racial Sport History Project, also reiterated that transformation is a broad term that requires a cognisance of the history of South Africa and how this history relates to cricket and also the effects of this history today as these factors have a significant role to play in the issues faced in cricket today. They wrote the following:

"The word "transformation" is currently the buzz word and has been used since 1990. Recently it is has been said that cricket has not been transformed because white players called certain black players "brownies", or white players did not invite the black players to join them to parties or "night outs". Thus far the transformation mindset that was adopted post 1990 has not changed; the mindset is to transform apartheid to be more acceptable; allow black persons to play with us (whites); remove signs such as "whites only" or "no blacks and dogs allowed"; but a select few acceptable blacks to world class facilities and academies for coaching and development and let them be thankful for the privilege afforded them. Transformation is a much broader and deeper concept particularly in the South African context; for a sporting society to be transformed it must be inclusive of all who aspire to play that sport. Sports organisations must be structured to be inclusive and be cognisant of the socio-economic conditions that prevailed and still prevails in the black communities. No matter how "transformation" is defined it is abundantly clear that sports in South Africa has not been transformed, whether racially or broadly socio- economically, into a community based non-racial model. Our Society is still Abnormal and hence there can be No Normal Sport..." (own emphasis)

97. Finally, Mr. Max Jordaan, former cricketer and current transformation officer at CSA, also found the following issues facing cricket in South Africa today:

"The structural unity process did not adequately deal with the Apartheid fault lines of socio-economic inequalities, racial prejudice, unequal access to facilities and fair opportunities for all. In an environment where one's culture and positionality determine the world view, group think often prevails. In such a world, the ideas of dissenting voices get guillotined, and the dominant group view holds sway. It is often found that players who affiliated within this group therefore needed to become a conformist alternatively, a man in a mass, stripped from his/her convictions. Those who did not share similar culture and positionality, became marginalized.

Professional sport a potential means of upward mobility.

Provides access to economic resources.

Challenges the balance between power relations and marginalisation.

Potential to reinforce discrimination and marginal positions.

Post professional transitioning advances some athletes in a power position and neglects those on the margins.

Creates downward social drift."

98. Unrelated to the expert's diagnosis of the issues in cricket, Mr. Mohammed Moosajee, a former Proteas team manager and doctor, raised an important point that many testimonies before the Ombudsman have never been raised with the CSA because of fear of victimisation.⁵⁷ It is important for any institution to have

⁵⁷ Mohammed Moosajee affidavit before the Ombudsman, para 124.

an internal grievance procedure or method to note and deal with the grievances of the people involved in it. As the saying goes, justice delayed is justice denied.

99. In summation, the experts have unanimously found that the issues facing cricket, though may be placed under an umbrella term of racism and lack of transformation, are a complex interaction of multiple factors stemming from the history of this country and consequent socio-economic factors that prevail today. They have also all stated that in solving these issues faced by CSA, all of the factors must be addressed as all are important and affect each other.

RECOMMENDATIONS

100. In her research report/ thesis, Dr Dove provided a detailed table outlining all the issues stated above and her recommendations on each issue. Her recommendation includes, *inter alia*, continuation of mini-cricket development programmes throughout the country, monitoring of playing time for all players at franchise level, enhancing focus on interpersonal skills development of coaches and administrators, implementing additional support programmes for holistic player development, and the encouragement of former players to actively contributing to CSA plans and models for players. A copy of this table is annexed hereto and marked "A".

101. Similarly, Mr. Jordaan made the following recommendation to address the lack of access to opportunities and marginalisation of black players:

" The lack of access in the Townships remain the Achilles heel of the cricket development programme. Which the establishment of Hubs / RPC's proven

to be the gateway for many budding stars to progress to the professional arena of cricket, maintenance of these facilities must become a key focus to CSA. The unique opportunities of these central place cricket centers within disadvantaged communities, becomes a means to an end, and not the end in itself. These hubs must be staffed with top quality coaches, and its schools' fixtures must take place on a regular basis. It can become the landmark facilities for multicoded sport in the Townships (sic)."⁵⁸

102. Mr. Moosajee makes the following recommendations to deal with the grievances of players, coaches, selectors and administrators being fearful to raise their concerns because of the threat of victimisation:

"We must promote a culture of honesty and players must be encouraged to raise their concerns. In about 2016, CSA's then CEO, CSA' General Manager Cricket and I agreed to introduce the completion of a feedback form by players and management. Players and management completed this on an anonymous basis and therefore could raise whatever issue they wanted to, without the risk of being victimised. We often received very good feedback through this process about what we should do differently or how we could improve. These forms included sections on selection and team culture. In one instance, there was criticism regarding communication to players left out of the team and we devised solutions to address this. In another instance, players complained about selectors being mindful of their roles and not acting as coaches on tour. This was communicated to the selection panel at the time so that they were aware of where their role stopped. In a further instance players asked for one on one feedback from the coaching staff at the end of each tour and this was then introduced.

The form included questions about whether individuals felt they were treated with respect and in the same manner as other team members. The form also included questions about team environment, unity and diversity. Since the completion of these forms was on an anonymous basis, players and management could be open and transparent about their feelings after each series and this was then fed into a report which was submitted to CSA's Cricket Committee, which was a sub-committee of CSA's Board and was chaired by a member of CSA's Board. The convenor of selectors, Corrie Van Zyl, as General Manager and I as the Team Manager were invitees to these Cricket Committee meetings. The Cricket Committee generally included an independent ex-cricketer and in meetings that I attended Robin Peterson or Gary Kirsten attended as the ex-cricketer. A representative of SACA also attended these meetings. I am not sure whether this feedback process after each tour has continued after my time as Team Manager came to an end. If the feedback process was discontinued, I urge the Ombudsman to include in his recommendations the reintroduction of this

⁵⁸ Mac Jordaan Submission to Ombudsman.

process in his recommendations, as it is a good way of identifying issues and giving players and management an anonymous platform to raise concerns.

During my time as Team Manager and from at least about 2013, the Proteas Head Coach, Convenor of Selectors, General Manager Cricket of CSA and I would meet with each Proteas contracted player and his agent (although the agent's presence was not compulsory, and some agreed to meet without their agent) for the purpose of a Player Development Plan meeting (PDP). Amongst others, performance for the season, areas for improvement, contract ranking, opportunities to play in foreign leagues and post cricket plans are discussed. For example, if a player is interested in commenting after cricket and is coming to the end of his playing career, meetings are facilitated with broadcasters."⁵⁹

103. An anonymous grievance filing system would effectively address the fears of victimisation harboured by players and other cricket stakeholders. However, the fear may still exist where the "anonymous" filing system can be manipulated to expose people filing grievances and victimise them. Further, it would be futile for the system to exist without a policy on how the grievances should be addressed. Therefore, it is recommended that should the system be brought back to CSA, its anonymity is prioritised and there is a proper procedure of resolving the grievances implemented.

104. It is apparent that the work required in addressing the issues in cricket is in abundance but as the saying goes, 'good things don't come by easy'. The CSA is encouraged to embark on the noble pursuit to achieve its transformation vision and return the game of cricket to all South Africans and not only a privileged few.

⁵⁹ Mohammed Moosajee affidavit before Ombudsman, para 125 – 131.

CHAPTER FOUR

WOMEN'S CRICKET

105. One of the scene setters Professor Andre Odendaal at page 166 to 171 of the transcript of his evidence, stated the following about the racial exclusion of women in cricket:

"PROF ODENDAAL: It's something that comes out of the IB experience, and I will speak very briefly to it. It is on page 54. There are three or four pages. But, Chair, the struggle for fairness in South African and world sport in the 20th century centred largely on race, and in the course of time discrimination against Black athletes, mainly men, officially came to be recognised as unacceptable, though institutionalised racism remains widespread. But racism and class discrimination in sport went hand-in-hand with another aspect of deep seated institutionalised discrimination, and that was sexism and literally a hundred-and fifty years of exclusion of women from the cricket mainstream. Cricket from early on became so exclusionary that the very sex of those women who sought to play the game was questioned and turned into a source of ridicule. For instance, WG GRACE, whom everyone knows is one of the great characters in cricket history, said already in the 1880s, of some women who were trying to play professionally before crowds of 10 000 to 15 000: They might be original and they might be English, but they are neither cricketers nor ladies. Women could play golf, tennis and hockey, but cricket was taboo. There was a very good reason for this, and that is the notion of a gentleman's game that consciously created social construction in the British boy's public schools of the mid-19th century, where young, and what have been termed as "muscular Christians" were prepared for service and leadership in maintaining the Empire, and this was transplanted to colonial SOUTH AFRICA and continues to flourish even today. So the game is not just called a gentleman's game by accident, it's a specific way in which cricket was defined. And we've written in these books, Chair, "Cricket and Conquest", "Divided Countries" and "Pitch Battles", in detail, how this gender discrimination emanated and how it strongly kept women out, although they were there again, from the present. So cricket became a White male, deeply segregated, imperial game, which also reinforced control over the female body on and off the field. Sexism has been at the core of the traditions and culture of South African and world cricket since the start. Women, for instance, were not allowed in certain places in club houses, they were seen as adornments and supporters, and only in the late 19th century did educational reformers start breaking this convention that women's place had to be in the kitchen, that athletics was in fact unhealthy for them, and turn the argument around, the same way as in the boy's schools, to say: By

having a fit body you fulfil all the things, the matrimonial aspects of giving birth, and other things as well. So the reformers of the 19th century turned it around and eventually, as women were given political rights and fought for the franchise, the right to make their own decisions about participation in sport also grew, so that the first Women's Cricket Association in ENGLAND, a national one, happened in the 1920s, after women's participation and working in the factories in World War I, and their demands for the vote, got them the vote. They then started their own national cricket bodies, their own magazines, and also the first test matches happened in 1931. And so the progress of women in sport was directly linked to women having the vote and getting power to make their own decisions, but it still remained a very exclusive game. Recently, since the signing of our Constitution in 1996, gender discrimination has been outlawed. It's only since the 1990s that the first Black women started playing representative cricket, and SOUTH AFRICA fully became part of the international competitions. So we're seeing now, in the 21st century, Chair, very, very good progress by women in sport globally, and this is starting to show in cricket as well. The PROTEAS have done fantastically in the 2020 World Cup in AUSTRALIA and also in beating INDIA last year. The recent contracting of players has gone with a 415% salary increase for the top players, from around R150 000 to R500 000 per annum between 2017 and 2020. There is also going to be a new budget and a new semi-pro system in place for a second tier strata of players from this season coming. But South African women's involvement in cricket is still very, very marginal. We mustn't become disarmed by the fact that our women are now getting more of a profile at the top level. It needs focussed strategies to end this historical legacy and ensure that girl children and women become full citizens and part of the mainstream of South African cricket. We have proposed, as the CSA interim Board that it is now time to address directly those systemic reasons for exclusion and holding women back and instead of piecemeal adjustments, CSA should take major strategic decisions regarding the complete inclusivity of women in cricket. We had talks with EDDIE KHOZA, who is the Cricket Services Manager, and also representatives from NEW ZEALAND, WEST INDIES and ENGLAND about this, and it was an education to hear what those countries are doing. Also, our own members of the Executive at CSA have shown a level of awareness and they are trying to do their bit to grow the women's game, but it is simply not enough for the long-term. Structurally and resource wise, we need greater integrated planning and a sharper focus and commitment at all levels from CSA... [OTO's emphasis]

106. Dr Jacques Faul, at page 4443 to 4444 of the transcript states the following concerning women cricket:

DR JACQUES FAULL... And then, sir, since you've started this I had to do a lot of introspection. I had to. And I am sorry to say today that we've neglected women's cricket. I'm sitting here and I'm actually ashamed of how

much more we should have done. I even asked sponsors: Will you sponsor the women? We now ask why did we celebrate men that much and not women? I have to be honest, I think CRICKET SOUTH AFRICA got it right first; they do it right. To me it is not nice to admit that, and that will be the headline in the newspapers tomorrow, that I said I haven't done enough for the women. But it's not a PR exercise, it's here about being honest and I am sorry then if I also got it wrong with certain things.

107. Mr Sandile Lukhele echoes similar sentiments concerning lack of support for women cricket at page 2318 of the transcript

"SANDILE LUKHELE:...something, and we lose a lot of players as we go from mini-cricket to hard-ball. I would like to expand on these challenges, but focussing now on the challenges that specifically affect girls in the rural areas, keeping in mind that the challenges that I have just mentioned equally affect them (indistinct) themselves. In the rural communities people still believe that cricket is for men, and not women. They have that stereotype of thing. This is because women's cricket is not shown on TV channels that can be easily accessed by the majority of our community. Yes, cricket is there on TV. The question is, can a person in my village access cricket? Can a person who does not have DStv access cricket? Can a person who is not able to pay a DStv premium access cricket? That's the question that remains. Currently, in my personal view, cricket is for DStv premium payers only in SOUTH AFRICA. If rural communities could watch women's cricket on TV their mind-set about women playing cricket will change drastically. So I think the reason there is so much stereotyping around...

108. At page 2319 to 2320, of the transcript Lukhele further states:

"SANDILE LUKHELE:...women playing cricket in the rural areas is because they don't see it on TV. Most of these parents started hearing about cricket from their kids. Like when the kids would come home and say: Mummy, at school I'm playing cricket, and the mummy would ask: What is that? They started hearing it from their kids for the first time, because there is no TV coverage of that. Due to that lack of exposure we are raising cricket girls that do not have cricket role models. There is no exposure. Even if you want to say to the child: I want you to bat like CHLOE, or I want you to bowl like TUMI; but the child will say: Who is TUMI? It comes back to you as the coach - you have to go back and download videos: Where do we bowl? Where do we bat? Then you would have to use your own data and show the child: This is how I want you to bat; this is how I want you to bowl. But if we had a different scenario where cricket was for everyone, I would say to

the child: CHLOE is playing now, switch on your television, switch on SABC and I want you to hit the ball the way CHLOE is hitting it...

Those are the challenges that we face. Due to the lack of this exposure, we will have our cricket girls from Under 13 - as they transit from the mini-cricket to Under 13, already they have problems. They have financial challenges, travelling, they have to pay for their own transport fees. So, as she progresses she ends up exiting the cricket pipeline because the money - this expense is very high and there is a serious lack of cricket role models. I think this brings me back to the very first point I mentioned. Due to the lack of cricket facilities girls from the rural areas find it hard to survive should they be selected for provincial games, or for national week or regional week. I have seen a lot of girls coming from the teams that I've coached, making provincial teams. When you get that child to the trials, the selectors will be very sport on, and see that the child is talented. Now the difference is when the child is now selected to go to the national league, the child has to (mother tongue). Remember, the child is used to playing cricket...

109. At page 2328 Mr Lukhele makes the following recommendation regarding woman cricket:

"...My other point on the way forward is that I believe the CSA should try and negotiate TV coverage that will broadcast more domestic women's cricket and the MOMENTUM PROTEAS to the majority of South Africans, so that our girls can watch their role models. If we can have TV coverage that can be accessed by everybody, and if we can have the women's domestic league and the MOMENTUM PROTEAS games shown on an accessible TV channel, I think that will have a hugely positive impact on growing the young girls environment, in growing the young girls in colour around proper training. Should that young girl who dreams of being a PROTEA star, see the domestic league being played on a weekend, being played just like when she has played for..."

110. Ms Zola Thamae stated the following in her written statement to the OTO

"TEAM CONTINGENT

The team would consist of 14 players when travelling abroad, a coach, an assistant coach, a manager and a video analyst.

If we needed services of a doctor or physio, the opponent would avail that when need arises.

Times changed and that it is not the case any longer with regards to team contingent as the team now will have a team doctor and a physio at the same time.

GENERAL VIEWS

PAST	PRESENT
<i>No girls and women academy in place.</i>	<i>Academies in place and functional.</i>
<i>No salaries or stipend</i>	<i>Contracts now in place</i>
<i>There was a women's association/structure.</i>	<i>Structures abolished however they can still contribute to advancement of women's cricket.</i>
<i>No sponsors at the time.</i>	<i>Sponsorships in place.</i>
<i>Limited resources.</i>	<i>Advance technology and digital resources.</i>
<i>No job opportunities back then.</i>	<i>Women currently are provincial coaches and do commentary as well.</i>
<i>Limited/few tournament and or leagues.</i>	<i>Now strength vs strength league in place, more cricket played than before.</i>
<i>Limited funding allocation generally for women.</i>	<i>There is significant improvement however more attention is still required.</i>

111. Ms Nolubabalo Ndzundzu gave the following account on gender discrimination in cricket.

"Gender discrimination within the sport

- 22 *For the period of 5 years in SA women's team (cricket) we were not earning anything. We went on tours and would only be given meal allowance, and no match fees, salary or anything like that. I simply could not make a living out of playing cricket. I could not support my family through the sport, instead my family had to make sure that I have everything before going to games. This is a classic example of gender discrimination within the sport.*
- 23 *I do not recall a period in the democratic South Africa [where] the players for the Protea men's team and provincial teams were not being paid match fees and salaries after having undertaken tours and played*

in tournaments. I challenge anybody who disagrees with this conclusion to produce evidence to the contrary.

- 24 *Only after I played in the world cup in 2005 did I realize that I needed to let it go and start looking for something that will advantage my family as well, which is a job. I gave up not because I thought I had finished with my part on the field of play but because I was hungry, disempowered, discriminated against and so was my family. I could not put anything on the table but I was taking from it and the people who promised me jobs in Border cricket were nowhere to be found. [OTO emphasis]*
- 25 *Since September 2006 I have been working for the South African Police Service as a police officer and I never thought of becoming one but I was left with no choice but to go for what was available to me at that particular time.*
- 26 *I will never hate the game. I still love the game of cricket. I just regret wasting my time believing empty promises. I have regained my strength and confidence because I have learnt that there are people who still believe in me in and out of cricket. That is why I will never turn away people who come to me for advice in the game especially young cricketers. Being a role model and mentor is what keeps me going. [OTO's emphasis]*

My expectations from CSA

- 27 *In view of the aforesaid, I have the following expectations from the CSA:*
- 27.1 *An apology from CSA as a federation for allowing the abuse.*
- 27.2 *I desire to be compensated for all the games I played nationally and internationally for which I received no remuneration.*
- 27.3 *A recognition from CSA or the Minister for being the first black woman to play cricket for South Africa at that level.*
- 27.4 *Be given the opportunity to serve cricket as this was a promise that never materialized.*
- 28 *Cricket was my first love. It was love for cricket that saved me from committing suicide during those racist times. [OTO's emphasis]*

SACA on women cricket

112. Mr Andrew Breetzke testified as follows regarding the accessibility of cricket to women (page 5237 to 5240):

"MR BREETZKE: I can deal with that, Mr Chair. In our initial submission we do deal with the PROTEAS women in quite a bit of detail. If I take you to paragraph 188 of our submission you will see I start dealing with the professionalisation of the PROTEAS women over the past five years. Those first contracts for PROTEAS women were awarded in 2014/2015, and in the same year they became SACA members. The development of professional team sport for women has been interesting worldwide, not only in SOUTH AFRICA. That goes for football, even rugby, and cricket. We generally have been about four or five years behind ENGLAND and AUSTRALIA, who are pioneers in this field of women's sport. But effectively in the 2014/2015 season it was the first time women became professional in South African cricket. They were amateurs before. That was a significant step in terms of the professionalisation of the women's game. In 2018, for the first time, women were included in our Memorandum of Understanding. We're now in a situation where the achieving of equality between male and female players was a key issue in our MOU 2018. For example, women having the same medical aid benefits, the same provident fund benefits, having the same travel benefits. That's something as simple as the PROTEAS men's team flies Business Class overseas, the PROTEAS women's team must fly Business Class overseas. In 2018 we also negotiated a significant increase in the remuneration of the women to levels that made it a good career for them, and also introduced the commercial rights element for the women as well, so they now have commercial rights as well. The reality is, the PROTEAS women earn less than the PROTEAS men. They do, and that's not unique to SOUTH AFRICA, that's around the world, where the women's teams earn less than the men's teams. The benchmark-type figure is at 25% of what the men earn, which is similar to the rest of the countries around the world. One of the factors, of course, is the number of days of cricket played. The women do not play test cricket, they only play T20 cricket and ODI cricket. So if you do an analysis - and we've done a lot of studies - you will see in a season where the men play for sixty days of the year, the women might play for 32 days of the year. So there are those factors as well. Where there has been significant progress at ICC level, which is where FICA does a lot of good work, is around prize money. We've increased the prize money for the women, to make it a larger amount relative to the men. We are also currently in negotiation with SAMU(?) - we've actually just concluded it - to have a next level of professional women. The great challenge for women's cricket in SOUTH AFRICA has been to have a PROTEAS team of fourteen/fifteen contracted women, but nothing below. So your pipeline is amateur. It almost doesn't exist. It's a bit of a luck-of-the-draw if a player comes through. That's prejudicial to the development of the women's game. Why I am sitting today, and MR WACHIPA and MR COOK were dealing

with it on Monday and Tuesday, which was so important, we've actually to come to a point where the next level of contracted women, is forty contracted women below the fourteen PROTEAS women. That's a significantly positive development in terms of women's cricket. They will be semi-professional. They're not fully professional yet, but it's a step in the right direction to increase the number of women playing cricket and earning money from cricket. Interestingly, the professionalisation of the women's game, in 2011, if you go to ENGLAND, it was the first time women became members of their association. But in 2014 full professional contracts were issued to the English women for the first time, and in 2019 they had their first domestic contracts. We're in 2021, so we're two years behind them. These countries have all gone through a development phase and I think, importantly, in terms of the role of the SJN, the plan that CSA had around that in a different phase – and I know MR EDDIE KHOZA, to whom you will be speaking just now, is very instrumental in that and will be able to provide you with a lot of information. In AUSTRALIA, in 2011 the women became members of the AUSTRALIAN CRICKET ASSOCIATION and received contracts for the first time. So AUSTRALIA was actually the first out of the blocks. Then in 2017 women started sharing in their revenue share model, and in 2018 is when it happened for our women. So you're right to highlight it. We have put it out in my initial submission, and I have dealt with it on page 188. It's a priority for CSA and it's a priority for SACA. To what extent we have two of the PROTEAS women: MIGNON DU PREEZ, who sits on the SACA...[OTO's emphasis]

113. Mr Breetzke's evidence is corroborated by Mr Eddie Khoza who at paragraphs 69 to 77 shares similar sentiments on the progress made to develop women's cricket. Mr Khoza states the following at paragraph 71 of his affidavit:

"71. Unfortunately, however, women's cricket does not yet generate broadcast revenue. Currently, all broadcast revenue emanates from men's game. It is hoped that this will change in due course as the popularity of women's cricket continues to expand in South Africa and worldwide."

COMMENTARY

114. It is clear from the evidence presented before the OTO that women cricket has a painful history of gender discrimination and sexism. The situation has prevailed unabated for many years. It would appear that even after the unification of cricket, women cricket predictably remained at the back of the packing order. It was

simply not a priority. This was expected, considering that cricket is a male dominated sport and is loosely referred to as the 'gentlemen's game'. With its history distorted by toxic patriarchy women had no chance at forming an integral part of the game even post-unification. The evidence tendered before the OTO has revealed that even limited resources dedicated to grass roots cricket seem to expended on the development of boy cricket.

115. Dr Faul and Professor Odendaal point out at the neglect of female cricket years after democracy. Dr Faul goes as far as accepting this poignant reality concerning female cricket. It is such brutal honesty and courage on the part of Dr Faul that can help improve female participation in the game of cricket.

116. The OTO has been extremely touched and hugely impressed by the candour and integrity with which Dr Faul came across in his engagement with the SJN Project. Listening to the almost self-flagellation utterances about their shortcomings as CSA was disarmingly welcome. His evidence had a ring of honesty and credibility.

117. He struck the Ombudsman as someone who wants to make a meaningful contribution to the SJN Project of healing the wounds of the past and building a new future in cricket where our country's foundational values of human dignity, the achievement of equality and advancement of human rights and freedoms will henceforth be the ethos dictating the conduct of those who are part of CSA at all levels.

118. The OTO also notes and accepts that strides have been made by both SACA and CSA concerning the development of female cricket as this goes a long way in

showing that something is being done to develop female cricket in South Africa. However, CSA could have made the strides it is making currently much earlier if women were part of the transformation agenda from the outset.

119. CSA needs to appreciate that the reason most of its revenue is derived from male cricket is because of the systematic and systemic gender based exclusion of women from any participation in the sport of cricket. This is a factor that CSA must always be mindful of and alive to in its discussions about the development of women cricket and why women cricket is struggling for sponsorships. As such the status is by design.

120. Therefore, while CSA now appears to have adopted a hands-on approach towards the development of women cricket, it is the OTO's considered view that CSA should accelerate its efforts in this regard.

121. The OTO understands that CSA regularly undertakes scouting for its teams at various age groups for boys. It is the OTO view that it should undertake the same exercise in relation to female junior cricketers as well.

122. From the affidavit prepared by Mr Khoza it appears that CSA has made provision for women cricket at U/19. The OTO is not told of CSA's reach to other age groups of women cricket. Mr Lukhele pointed out to the issue that cricket does not reach young girls in the rural areas.

CHAPTER FIVE

THE EVIDENCE OF CURRENT AND FORMER PLAYERS ON FORMS OF RACIAL DISCRIMINATION

EXCLUSION ON THE BASIS OF LANGUAGE

123. Black players have come forward raising concerns regarding an exclusionary culture where Afrikaans is presented as the preferred language, either intentionally or unintentionally, in the change rooms. Black players further complain that there is a practice of silencing them whenever they attempt to communicate with each other in their native languages. The issue of language lies at the heart of unity, inclusivity and social justice. Therefore, it requires careful attention so as to ensure that an environment is created where the primary language is inviting because it is understood by all players and everyone is comfortable in that space. The encouragement of a unified language does not mean that all other languages which are spoken by the players should be discouraged. The aim is to find a unified language while embracing all other languages.

124. Various players came to the fore and testified of how language has been used to either silence or exclude them:

- a. Mr Nkateko Ethy Mbhalati ("**Mr Mbhalati**") commented that "*team talk*" was conducted in Afrikaans in the change rooms.⁶⁰ He further stated that players would speak in Afrikaans in the change rooms even though he did not

60 Nkateko Ethy Mbhalati Affidavit, dated July 2021, paras 10

understand a word.⁶¹ In this regard, Mr Mbhalati recounted an interaction in the changing rooms:

"...Also in the change room we couldn't even speak our home languages amongst each other because they will complain saying, 'English please', but they would continue to speak Afrikaans, and we dared not complain".⁶²

- b. Similarly, Mr Sinethemba Mjekula ("**Mr Mjekula**") stated that most communications with the umpires were in Afrikaans and when he queried this, given that he could not understand what was being said he was labelled a "Julius Malema".⁶³ He alleged that the label was meant to cast him as intolerant and a racist.
- c. Mr Mjekula added that in some games where there was a white umpire and the captains of the team were white, the umpire and the captains would communicate in Afrikaans whereas in cases where both umpires were black, the Manager was not happy when they communicated in their home languages.⁶⁴
- d. As regards to the issue of discouraging players of colour from speaking their native languages, Mr Mjekula noted how black players were not allowed to speak isiXhosa in the changing rooms whereas the Afrikaans and English languages were freely spoken.⁶⁵ He explained that the matter was

61 Mbhalati Affidavit, dated July 2021, paras 10 and 21

62 Mbhalati Affidavit, para 21

63 Sinethemba Mjekula Affidavit, undated para 11

64 Mjekula Affidavit, para 14

65 Mjekula Affidavit, para 8

escalated to the Chief Executive Officer, Mr Dave Emslie, who undertook to take up the issue with the coach. However, he testified that nothing was done to address the issue:

*"The other incident was when I was at the Warriors. There was a problem of us Black players: me, Tsotsobe, Makhaya Ntini and Attie Dyili. We were not allowed to speak Xhosa in the change room. There was a meeting that was called by the CEO, who was Dave Emslie then, to address that issue. We were not allowed to speak Xhosa in the change room while we were talking to one another, but the other guys were speaking Afrikaans. In this meeting with the CEO, we had our own meeting first as the Black players... I said to the CEO: This is the best way for us to communicate and we don't have a problem with these guys if they speak Afrikaans and English, but the problem is when we speak Xhosa they think we're talking about them, which we are not. That matter wasn't solved, that now, when we were in the change room we needed to speak English, not our language."*⁶⁶

- e. Equally, Mr Lonwabo Tsostobe ("**Mr Tsostobe**") complained of black players being reprimanded for speaking in their native languages in the change rooms:

*"...we had a language problem, where we as black players in the changing rooms – I can't talk Xhosa with my counterpart or my colleague.... We would always be crucified for talking in Xhosa, with someone that you relate to."*⁶⁷

125. In response to Mr Mbhalati's allegations on the use of Afrikaans, Messrs Dave Nosworthy, Richard Pybus, Matthew Maynard, and Robert Walter, coaches that worked for the Titans during Mr Mbhalati's time, denied that team talks were held

66 CSA – SJN Hearings Transcript Volume XX, dated 02 August 2021, pg. 2870

67 CSA – SJN Hearings Transcript Volume IX, dated 16 July 2021, pg. 1145

in Afrikaans,⁶⁸ with Messrs Pybus, Maynard and Walter asserting that they cannot speak nor were they fluent in Afrikaans.

126. Mr Nosworthy clarified that the agreed or official language for communication was English:

*"During my time as Head Coach there was no language policy, other than 'English' being the one common language as that is what all players best understand. This was agreed to by all teams every season at our annual pre-season team building seminars."*⁶⁹

127. In fairness to Mr Mbhalati, he did explain that several unsuccessful attempts were made by the coach to enforce English as the primary language:

*"Even the coach tried to enforce that most of the time it must be English in the changing room, but one would find that the Afrikaans-speaking guys would always – I think it was their culture. Titans cricket had more of an Afrikaans culture/union."*⁷⁰

128. Against the backdrop of this evidence the OTO remarks that it is by no means motivating for the preference of certain languages to others. In mirroring our "South African rainbow nation", all languages should be embraced and celebrated equally. Language can be used as a means to shut and keep out any unwanted persons. Thus, the consistent implementation and enforcing of a unified language is critical to cricket's social inclusivity. The OTO therefore encourages Cricket South Africa ("**CSA**") to find ways of sensitising players and

68 Dave Nosworthy Affidavit, undated, para 4 of Kabelo Khaas Affidavit, Annexure 2; Richard Pybus Affidavit, undated, para 4 of Kabelo Khaas Affidavit, Annexure 3; Matthew Maynard Affidavit, undated, para 1 of Kabelo Khaas Affidavit, Annexure 4; and Robert Walter Affidavit, undated, para 4 of Kabelo Khaas Affidavit, Annexure 5

69 Nosworthy Affidavit, undated, para 4 of Kabelo Khaas Affidavit, Annexure 2

70 CSA – S/JN Hearings Transcript Volume X, dated 19 July 2021, pg. 1228

staff of the dual potential of language – it can bring people together but also has the devastating impact of causing disunity and distrust.

129. Where players are unjustifiably silenced and discouraged from speaking their native languages, mediation procedures ought to be put in place as a means of giving aggrieved players the platform to air their frustrations in a safe space where such sensitive issues can be dealt with constructively with a view to building a united, inclusive and tolerant cricket sporting code.

A. SALARY AND CONTRACTUAL DISPARITIES

130. Mr Mbhalati gave detailed accounts of salary and contractual disparities which he experienced.

- a. He averred that he was at a disadvantage when negotiating his contract and that one of the coaches pointed out that he could not justify his ask because he *"did not have a car instalment or paid for a bond or rental [because he] was staying for free at the cricket communal/flats"*.⁷¹
- b. During the 2014/15 season, as senior player, he recalled being offered a junior contract which he initially rejected. Upon amendments being effected to align the contract with a player of his calibre and experience he signed the contract.⁷² He narrated his experience as follows:

71 Mbhalati Affidavit, para 13

72 Mbhalati Affidavit, paras 33 – 34

"I think it was from 2013 things started getting worse. The ill treatment and the discrimination was worse. There was a time that I was offered a junior contract. So from where I was earning, if I remember very well it was R600 000 - to earn about R300 000 or something like that. I said: You know what, I'm not going to sign this contract.

...

And I remember he [Malibongwe Maketa] once said to me: They want to offer you this contract, don't sign it. Tell them that you're moving to another franchise. They can never afford to lose you because you're one of the best Black African players with experience. So to lose you would be a big blow. Tell them you don't want to sign, and then they will give you a different contract. And, yes, I remember that time it worked and then I got better contract."⁷³

- c. In explaining the drop in the contractual price offered, Mr Walter cites Mr Mbhalati's low fitness levels and remarked that:

"Given that Ethy's performances in white ball cricket had started to drop off along with his overall fitness levels as well as the fact that his incidence of injury's had also started to increase (all of these not uncommon for a bowler in their mid 30's), it was decided that we would give him a lesser contract with a view to him predominantly being available for red ball cricket. Given that this was his strongest suite at that point and also where he could add the greatest value to the team. It was unlikely that he would play a major part in the shorter formats of the game..."⁷⁴

- d. During the 2015/16 season, Mr Mbhalati's contract was shortened. He alleges that the coach informed him that he would only be signed for the 4-Day Competition – which is a single format, Mr Mbhalati could play in all formats.⁷⁵ After an unsuccessful application at a school in Centurion, with

73 Transcript Volume X, pg. 1275

74 Robert Walter Affidavit, undated, para 9 of Kabelo Khaas Affidavit, Annexure 5

75 Mbhalati Affidavit, para 38

assistance of the Titans, Mr Mbhalati ended up working for the Easterns Cricket Union.⁷⁶

- e. With respect to the income disparity, during the Indian Champion's League Mr Mbhalati testified that he ended up taking lesser remuneration home than the players who were selected to play as part of the starting 11. He contended that although the standard fee for the 15 man squad was R100 000 (One Hundred Thousand Rands), "*after that one's pay would be calculated according to how many games one played*".⁷⁷ Mr Mbhalati was not selected to play a single game.

131. In refuting Mr Mbhalati's averments, Messrs Nosworthy and Pybus have argued that contracts were formulated on the basis of a player's on-field performance, experience and growth potential.⁷⁸ In particular, Mr Nosworthy explained the approach to contractual formulation emphasising that:

- "● *During my time as Titans Head Coach, all contracts were drafted and discussed at length equally and fairly by myself and the Chairman of the Board Mr Brandon Foot – with the Board then signing off on all such contracts.*
- *At no time was any contract amount, conditions, or perk ever based or discussed on any race basis – but only on a player's performance, a player's experiences, a player's potential, and the overall team balance for the following season.*
- *Further to this, and as part of my own contracting process – each and every player was ranked by my own 7 x S's which were:*

76 Mbhalati Affidavit, para 39

77 Mbhalati Affidavit, para 30

78 Nosworthy Affidavit, undated, para 1 of Kabelo Khaas Affidavit, Annexure 2. Also see Pybus Affidavit, undated, para 1 of Kabelo Khaas Affidavit, Annexure 3

(Both Physically & Mentally)

- i. Strength*
- ii. Stamina*
- iii. Speed*
- iv. Suppleness*
- v. Skills*
- vi. Spirit*
- vii. Statistics"*⁷⁹

132. Mr Mbhalati was not the only cricketer to voice concern regarding the parity of income and contractual terms. Likewise, Mr Tsotsobe added to the voices of black cricket players who felt that they were not remunerated fairly or in proportion to their white colleagues.⁸⁰ Mr Tsotsobe briefly touched on this in his testimony saying:

*"Well, Mr Chair, just as something we can also look into, that you guys - because in terms of discrimination and in terms of unfairness – draw up, or ask CSA to give you the distributions that were done by SACA. Compare my distributions with Morne Morkel, because he was a bowler and I was a bowler. The contracts that we had – my last contract I think was close to R740 000. Compare that to Morne Morkel's contract and see the differences that Dr Eugenia was talking about."*⁸¹

133. For completeness, Eugenia Kula-Ameyaw, a former CSA Director, raised problems with income and contractual disparities across different races and genders, at the SJN Hearings:

79 Nosworthy Affidavit, undated, para 1 of Kabelo Khaas Affidavit, dated 12 September 2021

80 Lonwabo Tsotsobe Affidavit, para 42

81 Transcript Volume IX, pg. 1205

"The sample was thirty-four on the same level, the way I was given it. Eight were Africans, two Coloureds, three Indians and eight Whites. They were males. Then the others, females: there are four Africans, one Coloured, two Indians and six Whites. The salaries I have just put as they are - the salaries. In the next one I did averages, and the average is R113 702,49 for males, and for females it's R33 382,00.

...

For the Africans it's R114 191. That's the raw data I was given, because I said I don't want four months, just give me – we were in August, hence it says the date here. I needed July. This is July. Then the Coloureds are R79 194 and Indians R105 209. R156 216 is for Whites.

...

The males' average is R113 702,49. At least the Africans are more than the average by R488,00, the Coloureds are less than the average by R34 508,00, Indians are less than the average by R8 493,63. Whites are above average by R42 514,00.

...

So for the females it's a sorry story. R33 000,00 is the average, and then Africans are less than the average by R434, and Coloureds are less by R6 000,00. ...R670,00 and then Indians are more than the average by R1 915,00 and Whites are more than the average by R5 264,00."⁸²

COMMENTRY:

134. The OTO acknowledges that the Titans have made out a case that contracts were formulated taking into consideration on-field performance, experience and/or a players growth potential. However, the factors taken into account in the process of formulating such contracts must be contextualised. It is common cause that there is a history of not affording African players game time. If African players are not afforded sufficient opportunities to play, then that has implications for how effectively they are assessed on the basis of their on-field performance,

experience and/or their growth potential. In other words, if one is not playing; (1) how will the trajectory of one's performance be determined; (2) what experience can one possibly get; and (3) how will one's level of growth be determined in the absence of game time?

135. In respect to income disparities, the CSA is called upon to revisit its match fees system. We take note of and commend the CSA's efforts in increasing match fees that are distributed to reserve players. However, the CSA should seriously reconsider the purpose of match fees and whether there are less restrictive means which are available to fulfil such a purpose. The current match fee system has the effect of punishing reserve players for not playing by denying them equal remuneration. To the OTO the effects of a parity of match fees appears to be acutely felt by African players who face the added challenge of access to playing opportunities which impacts on their ability to earn.

MPHO SELOWA

136. Moving on to Mr Selowa's complaint relating to unequal salaries, the response by the Northwest Cricket Union is highly contradictory. They say that *"the allegations refer to the period during 2010, which makes it extremely difficult to locate and verify records dating back 11 years. However, I was able to establish that the first time any player on a semi-professional contract earned R15 000.00 per month was only during or about the 2020/2021 cricket season"*.

- a. If it is true that the Union was unable to locate and verify records dating back 11 years, there is no way they could establish that the first time any player

was paid R15 000 was only during 2020/ 2021. How could they verify this without those records dating 11 years back?

- b. Further, they do not explain how they have miraculously established that no player was paid R15 000 back in 2010 without the relevant records. Our law allows for an inference to be drawn against a defendant in special circumstances where the complainant's claim speaks for itself (*res ipsa loquitur*) and the evidence required to prove or disprove is in the possession of the defendant. In **Goliath v Member of the Executive Council of Health, Eastern Cape**⁸³ the Supreme Court of Appeal says the following about the *res ipsa loquitur*:

"[10] Broadly stated, res ipsa loquitur (the thing speaks for itself) is a convenient Latin phrase used to describe the proof of facts which are sufficient to support an inference that a defendant was negligent and thereby to establish a prima facie case against him... It is not a presumption of law, but merely a permissible inference which the court may employ if upon all the facts it appears to be justified (Zeffert & Paizes 'The South African Law of Evidence' 2ed at 219). It is usually invoked in circumstances when the only known facts, relating to negligence, consist of the occurrence itself ..."

- c. Additionally, in **Ntsele v MEC for Health, Gauteng Provincial Government**⁸⁴ the High Court ruled against the MEC for Health on the following basis:

"[124] Consequently, because the essence of the treatment accorded to the plaintiff on the 7 September 1996 is peculiarly within the knowledge of the defendant's employees, and the defendant has not adduced any direct cogent evidence to discharge the evidential rebuttal burden of probable negligence, the invocation of the maxim res ipsa loquitur in this kind of exceptional case, given the critical

83 2015 (2) SA 97 (SCA).

84 [2013] 2 All SA 356 (GSJ).

missing clinic and hospital records pertaining to the plaintiff's treatment on 7 September 1996, is legally justifiable having regard to the section 27 of the Constitution."

- d. For the sake of completeness, the SJN proceedings are a *sui generis* legal process where the Ombudsman is tasked with – "*determining the causes, nature and extent of the racial discrimination and lack of transformation in cricket structures since Unification, including the antecedents, circumstances, factors and context of such discrimination, as well as the perspectives of the victims and the motives and perspectives of the alleged perpetrators, by conducting investigations and holding hearings and affording the alleged perpetrators the opportunity to respond to allegations levelled against them...*"⁸⁵ The circumstances under which Mr. Selowa submitted complaints against the North West Cricket Union are special circumstances and the investigation into their truthfulness is highly reliant on a considered response from the Union.
- e. Consequently, until the Northwest Cricket Union produces evidence to the contrary of the complaint by Mr Mpho Selowa regarding payment of unequal salaries to black and white players, the Ombudsman must treat Mr Selowa's testimony as unrebutted.

85 Terms of reference: Independent Social Justice and Nation - Building Ombudsman; Available at: <https://cricket.co.za/wp-content/uploads/2021/07/SJN-Terms-of-Reference.pdf>.

B. DIFFERENTIAL TREATMENT IN TERMS OF TRAVELING AND ACCOMMODATION

137. Another obstacle that African players appear to be tackling is the issue of the alleged racial segregation in terms of travel and accommodation.

- a. In the 1993 under 13 tour of Gqeberha, Mr Tsolekile gives an account of racial segregation where he and two other players of colour were separated from their teammates and forced to sleep in the kitchen of an unspecified individual's house for the duration of the tour:

"The worst experience we had during our stay was when we had to sleep in the kitchen. I don't come from a rich family, nor do I come from a middle-class family, but I come from a family with values and with principles, and in my family we lived in a house. I can't recall sleeping in a kitchen or sleeping on a mattress, but me and Alben Coleman, the other Black African player, had to share a small mattress for the duration of that whole week. We also had to listen to our White teammates -

*there was also one Coloured guy and one Indian guy.... They were actually sleeping at Grey High School. During that week I remember when we had to wash in the morning, we had to wash in a small bucket, and each evening we had to wait for twenty or thirty minutes for the water to get warm, and then me and Alben had to share the same bucket of water."*⁸⁶

- b. Mr Mbhalati's tells of his experience with differential treatment with respect to accommodation. He recalls that there were instances where the team list which regulated which players would be sharing a hotel room was changed to remove his name which, at the time, was next to a white player's name. He alleges that such removal sought to replace him with another white

player.⁸⁷ Furthermore, he maintains that, throughout his touring, there was never an instance where he shared a room with a white player:

*"When we get to our hotels, it just happened that each and every time when I had to share a room, I would share a room with a Black person. There was not a day where I shared a room with a White person."*⁸⁸

- c. Mr Mbhalati alleges that travel was also segregated; wherein white players had their own vehicle which led to the vehicle that transported black players being labelled as the "Darkie Bus".⁸⁹
- d. In amplification to the contention of racially segregated travel, Mr Mjekula testifies of his experience when he was with the Border Cricket Academy:

*"First of all, as Black players, we had our own bus. White players had their own bus and we had our own bus. It was like that, and when you would get to the hotel as well, you would share with a Black player, not with the White players. We never shared rooms with them."*⁹⁰

- e. Mr Tsotsobe adds that when travelling to Johannesburg with the Warriors, three or four vehicles would be used. Of these, black and white players would travel in separate vehicles.⁹¹

138. In contesting racial segregation of travel and accommodation at the Titans, Mr Nosworthy states that when he booked accommodation, he would send a single list of all the players to the specific hotel. Though he admits that at times he would pair up the players according to their technical abilities – bowlers, batsmen, team

87 Mbhalati Affidavit, para 19

88 Transcript Volume IX, pg. 1146

89 Mbhalati Affidavit, para 19

90 CSA – SJN Hearings Transcript Volume XX, dated 02 August 2021, pgs. 2860 – 2861

91 Transcript Volume IX, pg. 1145

leaders or in order to benefit "*the teams thinking and plans during the match*".⁹² He further concedes to the possibility that there may have been other factors that resulted in divisions between players on the basis of the colour of their skin:

*"The overall room sharing policy was however never policed by me as ultimately players needed to be comfortable with whomever they wished share with as adults – so this was generally left for players to coordinate amongst themselves before departure or even on arrival."*⁹³

139. By the same token, Mr Pybus denies that there was any intention to transport or accommodate players in a racially segregated manner. He concedes to noticing that players would group themselves in a particular manner when travelling. However, he mentions that he raised this concern with the players and they informed him that their travelling arrangements are "*premised on friendships and no other criteria*".⁹⁴ Maynard reiterates the stance that players shared rooms according to their preferences.⁹⁵ Mr Walter joined in and maintained that transport and accommodation was arranged without any racial considerations:

*"When the travelling party was 12 players, all players shared rooms, these rooms were allocated by the hotel as twin rooms and barring providing a rooming list had nothing to do with us. Teams management/support staff had single rooms and on the occasion that team travelled with 13 players the captain would receive the extra single room along with management. If the captain chose to give his single room away to another player that was his prerogative and had nothing to do with any preferential treatment towards white players. As for the transportation allegation I do not recall this to be the case."*⁹⁶

140. Generally, it is evident that players were not intentionally racially segregated when travelling or when rooms were allotted to them. The primary cause of the

⁹² Nosworthy Affidavit, undated, para 3 of Kabelo Khaas Affidavit, Annexure 2

⁹³ Nosworthy Affidavit, undated, para 3 of Kabelo Khaas Affidavit, dated 12 September 2021

⁹⁴ Pybus Affidavit, undated, para 3 of Kabelo Khaas Affidavit, Annexure 3

⁹⁵ Maynard Affidavit, undated, para 2 of Kabelo Khaas Affidavit, Annexure 4

⁹⁶ Walter Affidavit, undated, para 3 of Kabelo Khaas Affidavit, Annexure 5

divisions between players emanate from cultural and language differences. More work has to be done in rolling out recreational projects that educate players on the diverse cultures and languages that exist within the team and that will give them an opportunity to, as a team, come up with strategies on how they are going to socially integrate.

141. It goes without saying, that Mr Tsolekile's experience during the 1993 under 13 tour of Gqeberha is unacceptable. We acknowledge that an apology was issued. Nevertheless, it must be stated that such arbitrary, irrational and deplorable treatment should be weeded out. Accordingly, the CSA is urged to develop questionnaires that will be given to players of all ages where players can anonymously share their experiences when touring.

C. ACCESS TO TRANSPORTATION

142. With regards to access to transportation, Mr Seate 'Sonnyboy' Letshela ("**Mr Letshela**") explains that transport was a huge issue in his early career as a cricketer. As a boy living in Kagiso Krugersdorp, Mr Letshela had to face the challenges of travelling to and from the Wanderers Stadium for practice. He notes that he was often labelled as a late comer by coaches. This was done without considering the challenges of manoeuvring the taxi and train systems to get to practice on time. What's more troubling is Mr Letshela's account that, at times, there would be no taxis by the time practice ended and he would have to take

shelter in nearby taverns or brothels in town.⁹⁷ He gave more detail of the difficulties he faced during his testimony at the SNJ hearings:

"I would have to make a plan to find public transport, and sometimes that would be at 19h00, when there were no taxis available. Our practice would start at 17h00 and would perhaps finish at 18h30, which would give me thirty minutes to make sure I got to the taxis. That was one of the things that I would struggle with. Sometimes when I reached Joburg the taxis would already have left. Maybe I could get a taxi from Rosebank to Joburg, but when I reached Kagiso it would be a problem. So I would sometimes have to end up sleeping in a tavern or a place where, at my age I can say where ladies work at night."⁹⁸

143. Although the Gauteng Highveld Strikers provided financial support to players by giving them transport money, what was not taken into account was the historic geographic segregation that systematically placed black South Africans at the periphery of economic hubs which significantly contributes to access challenges to this day.⁹⁹

144. In addition, Mr Mjekula shared to the difficulties with access to transportation when traveling to practice sessions commenting that:

"I was staying in Motherwell while I was playing for the Eastern Province Amateur side, so I needed to take two taxis to go to George's Park for practice... We spoke to the coach about these difficulties, because sometimes you would get to a taxi, you've got a big cricket bag, and the taxi driver says: No, you cannot put this thing here, you have to pay for it. So those were the difficulties. But I made sure I was on time for the practice. There was one time I was late and I explained to the coach that you cannot jump in the taxi and then when you get there the taxi goes. The taxi needs to be full. And there are days that are not busy, there are days that are busy when the taxi gets full quickly. I explained. He wasn't happy and the other players were saying some things."¹⁰⁰

97 Seate 'Sonnyboy' Letshele Affidavit, dated July 2021, paras 4 – 5

98 CSA – SJN Hearings Transcript Volume VIII, dated 15 July 2021, pgs. 988 – 989

99 Letshele Affidavit, para 6

100 Transcript Volume XX, pgs. 2862 - 2863

145. A great example of how geographic injustices were taken into consideration relates to Mr Khaya Majola's ("**Mr Majola**") tenure at the Soweto Cricket Club, where Mr Letshela tells of Mr Majola's organised transport that would pick players up from school and drop them at practice and would take them home after practice.¹⁰¹

146. CSA needs to level the playing field by ensuring that players are provided with transport to and from practice. Providing players with transport money does not address issues of unreliable transport systems available to players and cases where young players have to leave practice at hours where no transport is available. These are tough reforms but are necessary if the CSA is serious about its transformation objectives.

D. LACK OF ACCESS TO PLAYING OPPORTUNITIES

147. It seems inexperience is used as a means of excluding African players. Access to opportunities is fundamental to advancing social and economic inclusivity. Regrettably, many African players have come forward and narrated how their careers prematurely ended because they were not given a chance to play.

Nkatheko Ethy Mbalathi

- a. In the build-up to the 2011 World Cup, Mr Mbalathi was selected as part of the preliminary squad for the Proteas. He remarks that before the final

¹⁰¹ Letshela Affidavit, para 7

squad was announced, the selectors told him that he was not to be part of the final squad because he lacked experience.¹⁰² Kabelo Khaas, Head of Business Development of Amcor, Independent Board Member of Titans/NCU and the Head of the Transformation and Ethics Committee, deposed to an affidavit pointing out that the CSA, as the responsible party, would have to answer to this allegation.¹⁰³

- b. During the Indian Champion's League, Mr Mbhalati alleges that he was denied an opportunity to play on the basis of arbitrary reasons. When he enquired on the reasons for not selecting him to play, he recounts that the coach and captain explained that he was not going to play because he had "*a bad attitude*" as he refused to follow the captains instructions during a middle practice before the team left for India.¹⁰⁴
- c. Mr Walter denies telling Mbhalati that he was not selected because he has a bad attitude and gives the following counter version:

"Personally I do not recall ever having a discussion with Ethy about having a bad attitude and this being the basis of his non-selection at the Champions League, I have spoken to the captain as well who also confirmed that he did not have a conversation with Ethy about the bad attitude either... I also would not have told any player that they would not play in the tournament at all because there are just too many variables that would influence such a decision (injury, form, position in the tournament, strategy etc). A discussion may have been had saying that Ethy potentially would not be in the starting line up given the players that were available for us for that particular tournament but I would not have told him that he was not going to play a game before even heading off to the tournament itself. In this particular tournament we fielded the same XI throughout on the basis of the performance of that team who lost the first game to Chennai Super Kings, then won

102 Mbhalati Affidavit, para 18

103 Khaas Affidavit, para 4.9

104 Mbhalati Affidavit, para 29

*consecutive games against Sunrises Hyderabad and Brisbane Heat and went into a must win match against Trinidad and Tobago. The 4 players who did not play a game were CJ De Villiers, Graeme Von Buuren, Eden Links and Ethy himself."*¹⁰⁵

Lonwabo Tsotsobe

- d. The failure of CSA to use dead rubber games to expose players and develop their expertise was also raised by Mr Roger Telemachus. With similar concerns, Mr Tsotsobe questions the reasoning behind not using dead rubber games as a means to give upcoming players experience. He notes that he was selected to play in the 2009 ICC Champions Trophy held in South Africa. However, he was not given an opportunity to play despite there being dead rubber games.¹⁰⁶
- e. Mr Tsotsobe recounts two incidences where he was allegedly excluded on the grounds of an injuries he sustained.
 - i. He tells of his exclusion in the 2011 Test Series against Sri Lanka, and laments his exclusion from the test squad owing to a side strain which he alleges was not an issue because he was still bowling in the nets.¹⁰⁷ He specifically links his exclusion to a statement Mr Mohammed Abdul Samad Moosajee ("**Mr Moosajee**") made to news24 commenting that:

¹⁰⁵ Walter Affidavit, undated, para 8 of Kabelo Khaas Affidavit, Annexure 5

¹⁰⁶ Transcript Volume IX, pg. 1151

¹⁰⁷ Transcript Volume IX, pg. 1172 – 1173

"In answering the question whether I would be given an opportunity to play, Mr Moosajee stated the following:

*'Lopsy is much better but we're building him up slowly.'*¹⁰⁸

- ii. Mr Tsotsobe asserts that he was not injured in the Test Series and was fit to play.¹⁰⁹
- iii. Mr Moosajee denies that there was any dishonesty in his statement regarding Mr Tsotsobe's fitness:

*"Contrary to what Mr Tsotsobe says, he had returned to the squad, after having suffered a side strain. He was still easing himself into bowling at full pace and was not recovered at that stage. My comments to the media were therefore based on medical evidence. Please also understand that I am not a selector and do not get involved in selection issues. Therefore, if Mr Tsotsobe was fully fit and if the selectors felt that he should play in the next test, I could not have interfered with that."*¹¹⁰

- iv. In 2013 Mr Tsotsobe recalls being compelled to undergo surgery for an injury to his ankle which he sustained in and has been playing with since 2008.¹¹¹ In preparation for the World Cup, which was set for the period of 16 March 2014 to 06 April 2014, Mr Tsotsobe alleges that he attended two physiotherapy sessions per day – one from Lions and another recommended by the CSA. Subsequently, he played in the Momentum Cup and got five wickets and man of the match for the first game. In the middle of the Momentum Cup (approximately five games) he was the leading wicket taker – claiming about fourteen / sixteen

108 Tsotsobe Affidavit, para 12

109 Tsotsobe Affidavit, para 14

110 Moosajee Affidavit, para 109

111 Transcript Volume IX, pg. 1159 – 1160

wickets. He brings to bear that despite his performance, he was not selected as part of the T20 World Cup team.¹¹² Mr Andrew Hudson explained that the reason he was not chosen to play was because he had not, at the time, played enough games.¹¹³

- v. In attempting to refute the claim that he was not selected on reasons of a lack of experience, Mr Tsotsobe submitted an article which questioned his exclusion from the match:

"In his eight ODIs for South Africa, Abbott has the third worst average (54.20) of all time for players who have represented the Proteas in five or more matches. His strike-rate of 74.8 is also the third worst ever. Abbott's only saving grace is that his economy rate is 4.34, but if South Africa is after bowlers, then the exclusion of Lonwabo Tsotsobe is baffling.

Tsotsobe, who was the number-one ranked ODI bowler once upon a time, has an ODI average of just 24.96, an economy rate of 4.74 and a strike-rate of 31.5. He also has experience under his belt with 61 caps in the format. Tsotsobe underwent surgery last year and was kept out of international competition for most of 2014, largely because selectors weren't sure whether he had returned to match-fitness. In the One-Day Cup, he topped the wicket taking table and in the T20 competition, he was second on the list with 14 wickets".¹¹⁴

- vi. The nub of Mr Tsotsobe's complaint is that, as a result of his injury, he was required to play at the franchise level to prove his fitness. However, the same was not required of fellow white players, in

¹¹² Transcript Volume IX, pg. 1161

¹¹³ Transcript Volume IX, pg. 1162

¹¹⁴ Daily Maverick, Antoinette Muller, Tsotsobe's World Cup exclusion – that most baffling of all selections, dated 13 January 2015 <https://www.dailymaverick.co.za/article/2015-01-13-tsotsobes-world-cup-exclusion-that-most-baffling-of-all-selections/>

particular, Mr Dale Steyn who was selected to play in the 2014 World Cup despite his recovery from a shoulder injury.¹¹⁵

- vii. Mr Moosajee disputes Mr Tsotsobe's averment that he did not participate in the T20 World Cup in 2014. He asserts that Mr Tsotsobe was part of the World Cup squad and that his surgery only took place after the World Cup.¹¹⁶ Mr Moosajee does not take his dispute any further by tendering evidence of Mr Tsotsobe's presence in the T20 World Cup. Given that Mr Tsotsobe tendered an article which corroborates his absence in the World Cup, we are of the view that his averment has not been successfully refuted.
- viii. Mr Moosajee further denies Mr Tsotsobe's averment that he was compelled to undergo surgery as a ruse to exclude him from playing in the 2014 T20 World Cup:

"101. I do not believe that Mr Tsotsobe was forced to undergo surgery. My recollection is that he initially had problem with his ankle in 2012. This problem was being managed by the Team's physiotherapist, together with a foot and ankle specialist that CSA paid to treat Mr Tsotsobe.

102. The problem with his ankle had not completely healed, despite medication, physiotherapy, rehabilitation, rest and cortisone infiltrations. By 2014 a foot and ankle specialist recommended that surgery was necessary as the problem was persisting and the cortisone was no longer having the desired impact.

103. The surgery was recommended by the foot and ankle specialist, which the CSA medical committee supported. Mr

¹¹⁵ Tsotsobe Affidavit, paras 15 – 16

¹¹⁶ Mohammed Abdul Samad Moosajee Affidavit, undated, para 99

*Tsotsobe was not forced to go for the surgery and he agreed that the surgery was necessary for him.*¹¹⁷

148. Granted, there may be circumstances where a player is not selected for justifiable reasons. Certainly, we're not seeking to unduly restrict the CSA's ability to make strategic decisions on which players to put forward for certain games. One cannot ignore the plethora of stories that have been brought before the ombudsman by African players on multiple cases where they were overlooked with respect to playing opportunities. Looking at the grand scale of restricted access to game time, the historic and present day effect or consequences of such exclusion amounts to unfair racial discrimination.

149. When a player is declined an opportunity to play, rational and justifiable reasons must be given for that exclusion. We recommend that confidential grievance policies and procedures should be implemented to specifically allow players to lodge grievances where they feel they have been unjustifiably excluded from playing. Remedial measures must be specified so as to ensure certainty and appeal procedures should be embedded in the process to allow players multiple avenues through which they can voice their dissatisfaction with their treatment.

E. RACIAL SLURS

150. In the **SARS** case Mogoeng CJ discusses the detrimental effects of racial slurs and holds the following:¹¹⁸

¹¹⁷ Moosajee Affidavit, paras 101 – 103

¹¹⁸ SARS case, para 4

"It follows that the word kaffir was meant to visit the worst kind of verbal abuse ever, on another person. Although the term originated in Asia, in colonial and apartheid South Africa it acquired a particularly excruciating bite and a deliberately dehumanising or delegitimising effect when employed by a white person against his or her African compatriot. It has always been calculated to and almost always achieved its set objective of delivering the harshest and most hurtful blow of projecting African people as the lowest beings of superlatively moronic proportions. Professor Pierre de Vos has this to say about the term kaffir:

'This term has an ugly history in South Africa and was almost exclusively used by white racists as a gross generalisation to denigrate black South Africans. To be called a kaffir is to be called a lazy and stupid person. But the assumption behind the word is that by being lazy and stupid one is merely behaving as all black people always behave — as white people expect black people and know all black people to behave. So even when a white person is called a kaffir, the recipient of the insult is being told that he or she is just as lazy and stupid as all black people are known to be by all racist white people.'

151. African players have given evidence of multiple situations where they have been at the receiving end of racial slurs. We explore below some of the complaints made by players where they were allegedly called derogatory names by certain individuals encountered at various stages of their careers.

Nkatheko Ethy Mbalathi

- a. Mr Mbhalati recounts how players were calling him a "quota player" when the new franchise domestic cricket and transformation systems were introduced in 2004/05.¹¹⁹

119 Mbhalati Affidavit, dated July 2021, para 9

- b. He further tells of an instance where he was called a quota player by one of the opposition players during his time at the cricket club for Pretoria Technikon.¹²⁰
- c. In expressing his discomfort with being called a quota player, Mr Mbhalati commented as follows:

*"...this word 'quota' doesn't sit well with me, because it feels as if somebody is calling you the 'K' word. Quota for me is the same as being called the 'K' word, because it has never been used by other Black Africans or non-Whites..."*¹²¹

- d. We commend the Northerns Cricket Union for taking disciplinary action against one of the implicated players.¹²² The label quota player insinuates that African players are inferior to their white colleagues in terms of their intellect, talent and sporting prowess. It further casts a dark cloud on African players hardwork which merits their advancement in cricket and reduces them to a bunch of lazy people who abuse the colour of their skin to the detriment of white players. Such misconceptions ought to be dispelled through open dialogues where players are sensitised to the history that informs the CSA's transformation objectives. The focus should be to demonstrate that the CSA is not taking transformative measures simply because it has an agenda against white players. Such measures are necessitated by the unfair advantage that white players are privileged to have due to the unique South Africa history of segregated development.

120 Mbhalati Affidavit, para 11

121 Transcript Volume X, pg. 1231

122 Transcript Volume X, pg. 1231

PAUL ADAMS

152. The Ombudsman received allegations of racism from former professional cricketer, Paul Adams ("**Mr Adams**") against current South African 'Proteas' Cricket Coach, Mr Mark Boucher ("**Mr Boucher**") and South African former cricketer, Mr Johann Louw ("**Mr Louw**").

153. In his statement before the Ombudsman, Mr Adams highlighted experiences of racism in the many years he played cricket in South Africa at different levels. In outlining experiences of racism at international level, Mr Adams stated, *inter alia*, the following about Mr Boucher:

"Being called 'Brown Shit' when I was playing by teammates 20 odd years ago still echoes in my memories. I recall that Mark Boucher in particular would call me by that name and would be used as a fines meeting song for me ... 'Brown shit in the ring, tra-la-la-la'. Yes I was having the time of my life playing for my country and being one of the first black players to represent my country so I brushed it off and focused on my game because I wasn't going to allow these racists to affect my mindset. I knew then already what was happening was wrong. But there was no one to talk to or to support a player who spoke up so like my fellow black friends I shrugged it off and let it go."

154. Mr Adams continued to state the following about a comment Mr Louw made on a WhatsApp group chat:

*"Johan Louw made the comment 'Hoe lank gaan hulle nog daai aap daarhou?'
He was referring it towards Lawrence Mahatlane the coach of the SA U19 side following the SA U19 team loss vs Zimbabwe on 07 January 2020."*

155. When translated into the English language, Mr Louw's comment means *"How long are they going to keep that monkey there for?"*.

156. In response to Mr Adams' statement detailed above, Mr Boucher stated the following in paragraphs 21 - 23 of his affidavit before the Ombudsman:

"[21] In that environment, lots of us had nicknames for each other which had racial connotation and we all called each other those names – the Black African guys, the African guys, the White guys. I was also given a nickname which made reference to my colour by one or two players, but I can categorically say that I did not give Mr Adams the name 'Brown Shit'. I don't know who gave him the name.

[22] As I have said, my role in the meetings was to be fines master. There were other roles, such as 'Pourer', the 'Timekeeper' and the 'Songs Master'. Apart from the role of fines master which I maintained throughout my career, the other roles changed regularly. I don't recall which 'Songs Master' initiated the song referred to by Mr Adams but I acknowledge that it has now become apparent from testimony of former teammates that some of what happened at these meetings was totally inappropriate, unacceptable and in retrospect understandably offensive.

[23] While at the time we thought it was playful within a team environment in which we all participated as a normal part of team dynamics, I deeply regret and apologise for the part I played by joining in with my team-mates in singing offensive songs or using offensive nicknames."

157. Mr Louw also responded to the complaint made by Mr Adams against himself as detailed above. He addressed this complaint in an affidavit deposed by him before the Ombudsman. Paragraphs 6 – 8 of his affidavits state the following:

"[6] I admit that I was the author of the referenced 'WhatsApp' post, dated 7/01/2020, as referred to and extracted from a WhatsApp' group which I verily believe was formed and/or administered by the former protea cricketer Mr Pat Symcox. The group I might mention consisted of approximately 40 former SA players.

[7] In response to the complaint or allegation made, following the 'WhatsApp' post I presented, I wish to respectfully submit that the post was not directed at Mr Paul Adams, nor was it made with the intention to be derogatory in nature or to defame or violate the dignity of any person or institution. I posted the comment as an Afrikaans speaking person and within the context in which an Afrikaans speaking person would utter his displeasure or dismay within the concurrence of particular circumstances. (I

might mention that the prevailing circumstances at the time 7/1/2020, was the fact that the SA u19 team had just lost to Namibia).

[8] I accept and have taken cognisance of the fact that my post may well be viewed as having been inappropriate. I did not, whilst on the spur of the moment of creating the post, think that the Afrikaans used in the post could well be interpreted differently by other persons. I sincerely apologise should I have caused any offence to any person by creation of the post..."

158. A proper reading of the above responses from Mr Boucher and Mr Louw reveal a lack of sensitivity and understanding of the racist undertones of their comments.

159. Mr Boucher states, "*In that environment, lots of us had nicknames for each other which had racial connotation and we all called each other those names – the Black African guys, the African guys, the White guys. I was also given a nickname which made reference to my colour by one or two players...*". Because of the history of this country, the gravity of calling people nicknames with racial connotations will not weigh the same for black people. It is disappointing that Mr Boucher seems to not appreciate this salient common understanding. He further goes on to proffer an apology, in paragraph 23 of his affidavit, that is buttressed by an excuse that the comments he made were within a team setting as if racism can be excused if done in a team setting. Further, Mr Boucher does not bring the Ombudsman into confidence about the 'White name/s' he and/or other white players were referred to as by the team. This creates an impression that the name calling was reserved for certain players, the black players.

160. Mr Louw says, "*I wish to respectfully submit that the post was not directed at Mr Paul Adams, nor was it made with the intention to be derogatory in nature or to defame or violate the dignity of any person or institution. I posted the comment as an Afrikaans speaking person and within the context in which an Afrikaans*

speaking person would utter his displeasure or dismay within the concurrence of particular circumstances. (I might mention that the prevailing circumstances at the time 7/1/2020, was the fact that the SA u19 team had just lost to Namibia)...".

Two issues emerge from this apology:

- a. One, Mr Louw seems to suggest that because he called some other black person a monkey and not Mr Adams specifically, this should excuse his actions and by extension Mr Adams cannot be offended by his actions; and
- b. Two, Mr Louw says he made the comment that a black coach is a monkey within the context in which an Afrikaans speaking person would utter his displeasure at the occurrence of a certain event. Basically, Mr Louw is saying that such racial slurs ('monkey'), in his experience, are acceptable in the Afrikaans speaking people's community and Mr Adams or anyone else who would find such racial slurs offensive, must understand that it's just an Afrikaans speaking people way of doing things.

161. As stated above, the responses from Mr Boucher and Mr Louw display an alarming and concerning reality that these two gentlemen do not comprehend the South African apartheid/discriminatory and racist history.

162. It will be recalled that in the recent past, numerous cases have emerged in South Africa where white people have referred to black people as 'monkeys', and other racial slurs and rigorous public discussions have followed around such matters on the general media, social media, places of work, private social circles and other platforms.

163. One of these cases is the Penny Sparrow case where Penny Sparrow, an old white woman, referred to a group of black people who were captured in a picture at a beach as 'monkeys' on her Facebook account. This incident occurred in 2016 and due to the public outcry the African National Congress ("**ANC**") instituted an action against Penny Sparrow in the Equality Court. The Equality Court in **ANC v Sparrow**¹²³, said the following:

"The consequence: The words posted by the respondent received unprecedented coverage nationally and internationally. With it came a great deal of hurt, suffering, shame, embarrassment and anger for South Africans of all races. Of recent there has been a dramatic increase of reported incidents of open racism and hate speech in South Africa. The South African Human Rights Commission has publicly reported that in this year alone over 230 cases of racism were registered with the commission. At the same time there can be little doubt that there are many other instances of racism that are never reported and which never reach the public domain, either through social media or the mainstream media and which never see the light of day in our Equality Courts. The words published by the respondent are also highly inflammatory. There must have been a realisation on the part of the respondent that members of the society would be enraged on the comments posted. The memories of humiliation, suffering and indignity endured by black people for so long would have come flooding back, given our history described above. There was not surprisingly a huge public outcry and members of the community were deeply hurt, offended and enraged. We would do well as a nation in transition to remember that words are powerful weapons which, if used indiscriminatory, can lead to extreme and unacceptable action. Retaliation by members of affected race groups could possibly be violent, resulting in racial conflict, strife and general chaos on a national scale in South Africa. Hate speech by itself has the potential of undoing the significant gains made since 1994. Hate speech from wherever it comes cannot be underestimated." (own emphasis)

164. Another example of these famous 'racial slur' cases in South Africa is the Vicky Momberg case where a middle aged white woman referred to black policemen as '*useless Kaffirs*'. Following this incident, Vicky Momberg was convicted and

123 *ANC v Sparrow* (01/16) [2016] ZAEQC 1 (10 June 2016).

sentenced to three years imprisonment by the Randburg Magistrates Court.¹²⁴

When she tried to appeal the conviction and sentence, the High Court dismissed her application stating the following in paragraphs 29 - 33¹²⁵:

"[29] In Pistorius v S it is stated thus: 'It is a well-known fact that these words formed part of the apartheid-era lexicon. They were used during the apartheid years as derogatory terms to insult, denigrate and degrade the African people of this country - similarly words like 'boer', 'coolie' and 'bantu'. The word is both offensive and demeaning. Its use during apartheid times brought untold pain and suffering to the majority of the people of this country. Suffice to say that post-1994 we, as a nation, wounded and scarred by apartheid, embarked on an ambitious project to heal the wounds of the past and create an egalitarian society where all, irrespective of race, colour, sex or creed, would have their rights to equality and dignity protected and promoted. Our Constitution demands this. Undoubtedly, utterances like these will have the effect of re-opening old wounds and fanning racial tension and hostility'...

[30] In South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and Others Mogoeng CJ at para 54 quoted authoritatively, Zondo DCJ (then JP) in Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Kapp where the latter stated: 'The attitude of those who refer to, or call, Africans "kaffirs" is an attitude that should have no place in any workplace in this country and should be rejected with absolute contempt by all those in our country - black and white - who are committed to the values of human dignity, equality and freedom that now form the foundation of our society. In this regard the courts must play their proper role and play it with the conviction that must flow from the correctness of the values of human dignity, equality and freedom that they must promote and protect. The courts must deal with such matters in a manner that will 'give expression to the legitimate feelings of outrage and revulsion that reasonable members of our society - black and white - should have when acts of racism are perpetrated.

[31] The learned CJ continued at para 56 wherein he stated: 'The use of this term captures the heartland of racism, its contemptuous disregard and calculated dignity-nullifying effect on others...Conduct of this kind needs to be visited with a fair and just but very firm response by this and other courts as custodians of our constitutional democracy if we ever hope to arrest or eliminate racism. Mollycoddling cannot cut it.' (own emphasis)

¹²⁴ *Momberg v S* (A206/2018) [2019] ZAGPJHC 183.

¹²⁵ *Ibid.*

165. Evidently from the above quoted case law, the issue of insulting black people using racial slurs has been strongly condemned and punished by the courts and South African citizens. It is unsettling that in the background of all the above famous cases addressing the issue of calling black people derogatory names, and more especially amidst CSA policies and trainings on racism and transformation, Mr Boucher and Mr Louw confidently present the ignorant and ill-considered apologies outlined above.

166. As stated above by the learned judges in the mentioned case law, the use of derogatory words like 'kaffirs', 'monkey' and similar words including 'brown shit', degrade, demean and infringe on the dignity of black people. Their use is unjustifiable. The fact that Mr Boucher and Mr Louw tried to excuse or give reasons to calling their black colleagues such derogatory terms reveals that they have not undergone diversity and transformation training or where they have, that they apathetic towards diversity and transformation. Both conditions equally appalling for leaders of the cricket sport in South Africa.

SINETHEMBA MJEKULA

167. In 2007, during a 4-day game against the Titans at Supersport Park, Mr Mjekula alleges that Mr Pierre Joubert ("**Mr Joubert**") called him "Kaffir".¹²⁶ In his testimony, he narrates the incident as follows:

"So he did say the 'K' word and then: What is this guy doing here, and all those things. They were very close to me, so I took a step away from these guys and didn't tell Rusty, because I wanted us to focus on the game. I said:

126 Mjekula Affidavit, para 9

*Must I report this to the umpires? But the square leg umpire, I think could have heard it. I said: Let me not report to the umpires, let me just keep quiet."*¹²⁷

168. Mr Joubert denies making any racial utterances towards Mr Mjekula.¹²⁸ In attempting to refute such allegations, he acquired a series of witness statements. In the main, he contends that if he indeed made the alleged racial slur, there would have been players present to hear him:

*"...I mention that Mr. Mjekula alleges that, at the relevant time, the fielders around the bat were: short leg, leg slip, wicket keeper and slip. If that was so, and there certainly were many fielders around the bat at the end of the Warriors' second innings, given the state of the Match and the fact that two spin bowlers were bowling from both ends, then certainly these fielders would have heard the offensive remark."*¹²⁹

169. Mr Joubert cites Messrs Francois du Plessis fielding at second slip, Heino Kuhn, the wicketkeeper, and Martin van Jaarsveld fielding at first slip as persons who were close enough and due to their proximity would have heard the alleged utterance, if it indeed took place.¹³⁰

170. Mr van Jaarsveld deposed to an affidavit, dated 01 September 2021. As to whether he heard Mr Joubert call Mr Mjekula the K word he says:

*"I confirm the correctness of the contents of Mr Joubert's statements in as far as it relates to me, his reply to the allegation against him about the use of the k-word, as well as Mr Joubert's averments pertaining to the purported confrontation, the fielding positions, the Titans' Team Culture, and the Titans' Team Composition."*¹³¹

¹²⁷ Transcript Volume XX, pg. 2875

¹²⁸ Pierre Joubert Affidavit, dated 13 September 2021, paras 4.1 and 4.3

¹²⁹ Joubert Affidavit, para 15

¹³⁰ Pierre Joubert Affidavit, dated 13 September 2021, paras 16.8 and 16.11

¹³¹ Martin van Jaarsveld Affidavit, dated 012 September 2021, para 5 of Joubert's Affidavit, Annexure "PJ4"

171. Although Mr du Plessis confirms that the "game in question was a very long time ago" and he therefore "cannot remember that specific game or the situation in question". He maintains that "If Pierre Joubert did say that, it could have been something that I might have remembered, and I don't ever recall him saying the word he is accused of during the time that I played with him".¹³²

172. Mr Kuhn deposed to an affidavit confirming that he has "never heard Pierre or anyone that ...[he has] played with say the K-word to anyone".¹³³

173. As regards to whether the umpires could hear the racial slur, Mr Mjekula gave an account of what transpired:

*"I said: Must I report this to the umpires? But the square leg umpire, I think could have heard it. I said: Let me not report to the umpires, let me just keep quiet. Even during this game, the chaps were coming at me with things I felt were racist and they were so personal. And at that stage the umpires could hear. They never, never intervened at any stage."*¹³⁴

174. Mr Joubert identifies Messrs Gerhard Pienaar and Brad White as the umpires who were present on the day and questions the possibility that the umpires would not react if they heard him calling another player the K word:

"16.14 If I understand Mr Mjekula's evidence correctly, that he claimed that the two on field umpires, Mr. Gerhard Pienaar and Mr. Brad White, 'could hear' and 'They never, never intervened at any stage'...

16.15 If is for Mr, Pienaar and Mr. White to say what they make of this allegation against them, but I respectfully submit that the farfetched and untenable nature of the allegation against the two umpires are self-evident. It is truly startling to allege, as Mr. Mjekula does, that two umpires would

132 Francois du Plessis Affidavit, undated of Joubert Affidavit, Annexure "PJ5"

133 Heino Gunther Kuhn Affidavit, undated of Joubert Affidavit, Annexure "PJ6"

134 Transcript Volume XX, pg. 2875

*hear the k-word being uttered by a player on field where they are the umpires, and that they would ignore it."*¹³⁵

175. Mr Pienaar deposed to an affidavit arguing that due to the distance between the umpires and the players, the umpires would not have been in a position to hear the verbal exchanges between the two players:

*"However, I can honestly say that neither me nor my colleague B White heard as alleged by Mr Mjekula that he was called the K word by Mr Joubert. Mr Mjekula who became an umpire later in his career would acknowledge that for an umpire that are +/-22 meters away from the action it would be totally impossible to hear if a fielder at short leg would say something to the batsman unless he shouts at the top of his voice."*¹³⁶

176. The umpires dispute that they were within earshot of the incidence. They claim that the distance between the players and themselves would have made it impossible for them to hear Mr Joubert. This assertion effectively takes the umpires out of the picture. Meaning that it would be irrational to rely on the umpires inaction or their failure to hear Mr Joubert as proof that Mr Joubert did not make the derogatory utterances.

177. Given that Mr Mjekula is known to stand up for himself and address any grievances he has, Mr Joubert queries Mr Mjekula's failure to take action against him:

*"...it is incomprehensible that a player in Mr. Mjekula's position would have not taken action when being called the k-word, if not on the field, then afterwards. In this regard I mention that Mr. Mjekula was no shrinking violet on the field..."*¹³⁷

135 Joubert Affidavit, para 16.14 – 16.15

136 Gerhardus Hendrik Pienaar Affidavit, undated of Joubert's Affidavit, Annexure "PJ7"

137 Joubert Affidavit, para 16.25

178. However, the aforementioned contention overlooks Mr Mjekula's chosen act of retaliation after the game. Where he alleges to have approached Mr Joubert and said; "*[y]ou know what, my man, I think SA Rugby needs some props, you don't belong in this game*".¹³⁸ Nonetheless, Mr Joubert denies that Mr Mjekula ever said this to him.¹³⁹

179. In addition, Mr Malibongwe Maketa who was the trainee assistant coach for the Titans at the time, deposed to an affidavit giving his account of what transpired. Of primary importance is that he does not "*remember a lot about the game*" and that he was "*not on the field of play when the supposed incident took place*".¹⁴⁰ Mr Maketa's statement eliminates him from the scene where the incident is alleged to have taken place. Therefore, his statement lacks credibility and cannot be reasonably relied on to corroborate Mr Joubert's version of events.

180. On the strength of the evidence before the Ombudsman, we cannot make definitive findings on whether Mr Joubert made the racial slur. This is also exacerbated by the implicated or affected individuals – Messrs Joubert, du Plessis, Kuhn, and van Jaarsveld – who were not present at the SJN Hearings where their versions could be tested to establish what actually happened.

181. In two separate incidences, Mr Mjekula recounts being called derogatory names by certain players:

138 CSA SJN Hearings Transcript Volume XX, 02 August 2021

139 Joubert Affidavit, dated 13 September 2021, para 10.8

140 Malibongwe Maketa Affidavit, undated, para 1 of Joubert's Affidavit, Annexure "PJ2"

- a. When he was playing for the Warriors he states that he had a regrettable encounter with Mr Hylton Deon Ackerman ("**Mr Ackerman**") during a warmup session where the team was playing touch rugby. Mr Mjekula explains that he did not pass the ball to Mr Ackerman which prompted Mr Ackerman to stop the game and he began swearing at him allegedly calling him a "black cunt".¹⁴¹
- b. He further tells of being called "*Satan and Tikoloshe*"[sic] by Messrs Karl Hurter and Gerrie Pienaar.¹⁴²

182. Messrs Ackerman, Hurter and Pienaar have not submitted statements nor presented themselves at the SJN Hearings to put forward their version of events and refute Mr Mjekula's averments. Thus, Mr Mjekula's averments stand. We therefore find that Messrs Ackerman, Hurter and Pienaar unfairly discriminated against Mr Mjekula by making racial slurs and calling him derogatory names.

F. ACCUSATIONS OF THEFT

183. Mr Letshela gives us incite into what can only be termed unfortunate and repugnant behaviour by his superiors during the Indian National Team's tour of South Africa. He notes that he was accused of stealing Mr Sachin Tendulkar's bat wherein Mr Allen Kourie ("**Mr Kourie**"), the former Chief Executive Officer of the Gauteng Cricket Board, used profane language when demanding that Mr

¹⁴¹ Sinethemba Mjekula Affidavit, undated, para 4

¹⁴² Joubert Affidavit, para 12

Letshela return the bat and went as far as to threaten Mr Letshela warning that he "*would never play cricket ever again*".¹⁴³

184. Mr Letshela comments that no apology was forthcoming the Gauteng Cricket Board after it was discovered that he did not steal the bat:

*"Even after they discovered that I did not steal the bat and that bat was actually never stolen, no one ever came back to apologise to me until this day."*¹⁴⁴

185. He reiterated the silence of the Gauteng Cricket Board on this matter during his testimony at the SJN Hearings:

*"Nothing was ever done about it. Nobody has ever told me who really stole the bat, or how it came about that I was accused of stealing it."*¹⁴⁵

186. This incident had a significant impact on Mr Letshela's reputation, mental health and career. He states that he was teased "*as the guy that stole Sachin Tendulkar's bat*" by not only provincial players but also players from England during his career there from 2004 to 2009. It is noteworthy that Mr Letshela left South Africa to go and play in England because he was told that he would never play for his country. Mr Letshela says he tried to take his life due to the unbearable pain of having to face humiliation, reputational damage and the shame of being labelled a thief for a crime he did not commit.¹⁴⁶

143 Ibid, paras 12 – 13

144 Letshela Affidavit, para 14

145 Transcript Volume VIII, pg. 1001

146 Ibid, paras 14 – 15

187. Mr Letshela's version stands as the ombudsman has not received any statements or testimonies that refute his averments. We find that the unfounded accusations of theft were arbitrary and irrational.

G. BLACK PLAYERS FORCED TO CARRY THE BAGS OF SENIOR PLAYERS

188. Mr Tsotsobe discusses his initial experiences after he was selected to tour with the Proteas. He complains that he was required to carry the bags of senior players into the team bus. He alleges that it later occurred to him, as a senior player, that "*none of the newly selected white squad members were subjected to the so-called initiation exercise*".¹⁴⁷

189. He testified at the SJN Hearings giving detail to the above contention:

*"...The first time I toured, when I got to Australia, I had to take off my blazer and pack all the bags in the bus. But when I was there in 2012/2013, some of the new players that came into the squad - they would literally organise the citizen of the country that we were in, either to pack the bus into some other sort of transport, to follow us to the stadium, and as players we would just get into the bus and go straight to the hotel. When we got to the hotel, in the morning or the afternoon, we would get our bags next to our hotel rooms. Then you would just take your bag and put it in your room."*¹⁴⁸

190. Mr Moosajee denies that the practice of requesting juniors to carry bags was enforced against players of colour. He further clarified that the Logistics Manager normally requests the youngest capped players to assist in carrying players bags in circumstances where the Logistics Manger cannot locate any porters from the

¹⁴⁷ Tsotsobe Affidavit, para 9

¹⁴⁸ Transcript Volume IX, pg. 1171

specific hotel or any nearby locals to assist in loading all the bags onto the team bus:

*"The Logistics Manager would be responsible for ensuring that all bags are loaded on to the Team Bus. For overseas tours, often there would be more than 100 bags to load onto the Team Bus. If the Logistics Manger could not find porters from the hotel or locals to assist him with loading the bus, he would request the youngest capped players to assist him in loading the bags on to the bus. Race had nothing to do with who was chosen to load the bus and White players that were part of the youngest capped players also had to assist in loading bags."*¹⁴⁹

191. Given the two versions placed before the Ombudsman, we find that there is insufficient evidence to make out a prima facie case of unfair racial discrimination.

H. ISSUES OF SELECTION

KHAYELIHLE ZONDO

192. In 2015, the Proteas men's tour of India was to be contested by both South Africa and India in the three formats of the game; namely T20, ODI and final test match series.

193. The National Selection Panel ("**NSP**") selected three separate squads to contest each format in line with clause 7.1(2) of the National Selection Panel: Policies, Procedures and Guidelines ("**NSP Policy**").¹⁵⁰

¹⁴⁹ Moosajee Affidavit, para 120

¹⁵⁰ Khayalihle Zondo Replying Affidavit, dated 12 November 2021 para 3.3

194. The NSP which selected the team to play in the tour of India included Messrs Linda Zondi; Russel Domingo; Hussein Manack; Luxolo Qoboshiyana and Errol Stewart.¹⁵¹
195. Approximately, a month before the Proteas toured India, the complainant ("**Mr Zondo**") was selected for the South Africa A team – a feeder team for the Proteas – which played a one day series in India.¹⁵²
196. Mr Zondo performed well on the South Africa A team tour and was the second leading run scorer behind Mr Quinton de Kock. As a result of his performance, Mr Zondo was selected for the T20 squad and for the one test squad for the National Proteas Team.¹⁵³ He spent about two months with the Proteas on the tour of India.
197. Five matches were scheduled to be played for the ODI series. During the fourth game of the tour of India, Mr David Miller ("**Mr Miller**") who is traditionally positioned as middle order (position five or six) was out of form and was subsequently made to bat in the first or second position. This change raised concern with certain players as it was considered as a drastic move.¹⁵⁴ Mr Miller was later moved back to the fifth position after failing to perform in the first position.¹⁵⁵

151 Clause 2.1 of the National Selection Panel: Policies, Procedures and Guidelines, effective from 01 October 2013 (revised in July 2016). Also see Khaya Zondo Replying Affidavit, para 5.3

152 CSA – SJN Hearings Transcript Volume XIII dated 22 July 2021, pg. 1813

153 Ibid, pg. 1814

154 Ibid, pg. 1818 - 1819

155 Ibid, pg. 1823

198. In addition, Mr Jean-Paul Duminy ("**Mr Duminy**") who travelled with the original team that was selected for the tour of India, sustained injuries during the tour and was ruled out of the remaining ODI series.
199. Mr Zondo was selected as the reserve batsman on the tour and would, therefore, be the next batsman in line to replace any batsman that was out of form or injured.¹⁵⁶
200. Due to Mr Millers' loss of form and Mr Duminy's injury, there was essentially two positions which Mr Zondo, as the reserve batsman, was eligible to participate in.¹⁵⁷
201. The NSP selected Mr Zondo to play in the fifth and final ODI series. Mr Hussein Manack ("**Mr Manack**"), the convenor selector travelling with the 15 men team in India, approached Mr Zondo after the 4th ODI and informed him that he will be playing in the 5th and final ODI.
202. On the morning of the fifth and final ODI, Mr Zondo recalls being called by the coach who explained that he will not be playing as previously planned.¹⁵⁸ He adds that just as the players were preparing to go to the match, Mr Abraham Benjamin de Villiers ("**Mr de Villiers**"), the captain, called Mr Zondo and confirmed that he was responsible for Mr Zondo being pulled out of the game.¹⁵⁹

¹⁵⁶ Ibid, pg. 1822. Mr Linda Zondi confirmed that usually in a squad of fifteen men, there will be a backup batter who takes over in cases where any batsman gets injured or has a loss of form (CSA – SJJN Hearings Transcript Volume XXIX dated 21 November 2021)

¹⁵⁷ Ibid, pg. 1824

¹⁵⁸ Khayalihle Zondo Founding Affidavit, undated, para 10

¹⁵⁹ Ibid, pg. 1833 – 1834

203. Before the game, Mr Dean Elgar ("**Mr Elgar**") was flown in from South Africa to play in the 5th and final ODI. Mr Elgar was therefore the 16th man joining a team of 15 players that were already in India. Despite being the sixteenth man, Mr Elgar was allowed to form part of the starting 11 for the 5th and final ODI.

I. MATCH FIXING

204. There were about four former cricketers who complained about the manner in which they were treated by the CSA investigation team during the match-fixing investigation.

205. They mounted two broad complaints against CSA and its investigation team. The first complaint is that black players were targeted during the match-fixing investigation. The complainants went on to intimate that there were a number of white players who ought to have been investigated on allegations of attempting to fix matches during the 2015 RamSlam competition, but CSA did not investigate nor charge them. The second complaint was that they were unfairly treated, coerced and intimidated to sign sanction agreements with CSA.

206. CSA, Becker Kemp Attorneys, SACA and Mervin Tabacks attorneys t/a Enderson submitted evidence in rebuttal of the allegations made against them by the complainants. We will not rehash all the evidence tendered by the parties before us on this aspect. Suffice it to say that the OTO has considered it in its totality.

207. Having considered testimonies from both complainants and respondents who appeared before the Ombudsman regarding the manner in which the match-fixing

investigation was conducted, the OTO is of the view that race played no part in the investigation. The OTO could not find any evidence supporting the contention that black players were targeted during the investigation. As such the allegation that black players were discriminated against on the basis of their race during the investigation was not proven. This was the narrow question that the Ombudsman was called upon to decide.

CHAPTER SIX

SUBMISSIONS OF CRICKET CLUBS, COACHES AND OTHER STAKEHOLDERS

LEADERSHIP AND ADMINISTRATION

208. Rajan Moodley, of Legends Cricket Club, expressed the following sentiments with regards to the administration of cricket hubs in Mpumalanga and CSA's dispute resolution mechanisms:

*“What is a hub and what is an RPC? Cricket **has spent millions of rands on development programmes and all of these things over the years, and throughout the time, until now, we have had these Regional Performance Centres and all of those things. But when we look at what the outputs are from those things, then we’ve got very little to show (own emphasis). Surely, as an investment in such programmes, you must want to see some kind of return on your investment. When I give you the example to say we have four of those hubs in the province, yet we can’t produce one contracted player, then it’s a serious problem, because nobody is monitoring what goes on in those programmes, what is happening. But we keep paying coaches and doing this and doing that just to satisfy whoever, to say: Right, we’re doing it; but we don’t know if we’re getting a result out of that (own emphasis). When I talk of disputes not resolved – and I’m going to give an example from my club, where we had a dispute with Ep Cricket that started in September last year. Everything was done according to the prescripts of the MOI, to lodge a dispute and challenge it and whatever it is. It wasn’t resolved. We then followed the next step required and referred the matter to Cricket South Africa in October. You’ll be surprised if I tell you that up till today that matter is still not resolved. Surely you cannot run an organisation successfully if you don’t pay attention to these things. And we are precluded. We can’t run to the courts. We don’t have the means to run to the courts to engage legal representation to represent us. We’ve got to follow the prescripts that are laid down, to say this is the dispute resolution mechanism. And when you do it then you get nowhere, and maybe the hope is that if you keep quiet long enough it will just fizzle away and disappear.***

When I talk of favouritism, I will just give you one example, but there are many. People have spoken about these things many times. I will give you one example that maybe somebody else may not want to mention. As an example, a particular player finished his first-class playing career a couple of years ago and then wanted to follow a career in some other form in cricket. And within a very short space of time that player was rushed through the ranks of umpiring to eventually be serving on the top panel that officiates

in provincial cricket, or franchise cricket, as we used to call it. Now, that's all well and good, but in the process of fast tracking that one person, many other people who had been in the system, waiting for opportunities, were ignored. And I'm not making any racial accusation, I'm calling it favouritism. I'm not going to go down that road, but that's unfair, because there are many other people who should have been given the same opportunity, and they weren't given that opportunity.”¹⁶⁰

209. He continued to state the following on leadership and administration in the CSA:

“You cannot run an organisation on the basis of minimal contact with your stakeholders. There is no reason to fear your stakeholders. You're not always going to have a pleasant relationship with your stakeholders, but you need to meet and consult with them on a regular basis (own emphasis). I'm going to give you another example. During this recent impasse at CSA – I think I mentioned it in my correspondence to the Ombudsman's Office, the clubs did not receive any – and I'm talking of the clubs here now, I can't speak for clubs in other provinces. No official information was ever sent to clubs about what was happening in cricket. The only information we got was through the media. I mention that in some correspondence with your offices. But when they were told to get proper mandates, clubs were sent a notification on the Thursday before Good Friday, for a meeting to take place on Easter Monday, 5 or Family Day at 16h00. Now, if your MOI says you must give 15 business days' notice - and in terms of the definitions contained therein, business days are defined as weekdays, excluding public holidays, and then it's obviously also excluding weekends. So for that meeting that was scheduled for the Monday, there was technically no notice given. The Thursday cannot count, because you can also exclude the day of the notice and the day of the event. The Friday was a public holiday, the Saturday was a weekend, the Sunday was a weekend and the Monday was a public holiday. So what do you think happened? There was no quorum. They then went ahead and tried to reschedule the meeting for two days later, which again is irregular. Again there was no quorum. I'm just pointing out, Mr Chairman, that when we talk of transformation there is a lot more that needs to be transformed besides representation in teams. Our entire cricket system needs to be reformed. That is the point I'm getting at...”¹⁶¹

160 CSA SJN Volume XV Transcript, pages 2160 – 2162.

161 CSA SJN Volume XV Transcript, pages 2173 – 2175.

a. Commentary

There is no question to the merit of the submissions made above by Mr Moodley. Any institution requires good governance and sound administration to carry out its objectives. CSA's efforts to provide cricketing facilities in remote areas of South Africa and create opportunities for the disadvantaged to enjoy the game of cricket will never succeed if there are no mechanisms in place to maintain such facilities.

210. **FAILURE BY CRICKET UNIONS TO INVEST IN TRANSFORMATION AND DEVELOPMENT**

ACCESSIBILITY OF CRICKET STADIUMS

- a. Mr Sipho Nondlwana, of Eastern Province cricket, during his oral testimony before the Ombudsman, said the following with regards to the accessibility of cricket stadiums:

“Unfortunately our local government is under siege with vandalism that is taking place across the country, not in terms of the unrest that took place two weeks ago, but in terms of what is becoming a norm, that the home of cricket in the township is no longer. It is bare. It has been looted, which is Dan Qeque Stadium Motherwell as well, in terms of one which was the host to ENGLAND 5 in 2003, has been looted. And this is going on and on and on with all the facilities that we have. There was a facility in the Northern areas, which is (indistinct) STREET, a multi-million facility that has been built by the municipality. Unfortunately, today it has been looted as well. Now, when new townships or new areas or new places of residence in terms of human settlement have been created, surely within local government there are various departments there which include recreation, in terms of the actual settlement itself, in terms of the service delivery that needs to be provided, such as 20 schools, clinics, shopping malls and all of that. Between the Department of Sports And Recreation, Cricket South

Africa and local government we need to look into this area of facilities and look at it thoroughly.”¹⁶²

- b. Similarly to the above, Mr Vusi Mathebula of Malekutu Cricket, lamented on the lack of cricket stadiums in Mpumalanga in the following terms:

*“Chair, it’s very said that today, since we got our democracy in 1994, **the whole of Mpumalanga has one cricket ground that is built in the township. Only one in the whole of Mpumalanga, and it was built by SASOL for Embalenhle Cricket Club. In the Lowveld there are no cricket grounds in any of the townships** (own emphasis). Malekutu Cricket Academy – you saw the video there where we were playing. That is the only sort of cricket facility we have. We engaged Cricket South Africa and Mpumalanga Cricket and at one stage they wanted to build a cricket ground. What happened was they came and said: Vusi and your team, go and identify a cricket ground that we’re going to build and so on. So we went to Vutselani Primary and did a presentation to the SGB - the School Governing Body. They gave us school land so we could build a ground there. Mpumalanga Cricket came and said: We have R1 million, we cannot take this whole R1 million and go and build a ground in Mpumalanga. That was their officer, the CEO: We can only split it. We’ll give you guys half of the money and, and with the other half of the money, we’re going to build a ground in the Highveld, which is Gananoque. I said: It’s fine, we’ll build a ground there at Vutselani Primary. Then there were some issues, and the ground was not finished but the earthwork was done. They did the earthworks and then they put in the pitch. After putting in the pitch we said to the union: The ground is not supported. You need to support the ground. They went and put irrigation there, and later they came back and said: There’s no water, so the project cannot continue because there’s no water to water the ground. Surveyors came and could not find water there. So we said: But what about the other portion that you spent in the Highveld? What they spent on the ground in the Highveld, it was built close to the headquarters of Mpumalanga Cricket Union at Bankenveld Golfing Estate. That ground was finished, watered and everything. **If you go there, that ground is nice. Because it’s built in a White suburb and it’s built for Whites that one was properly built with care. But the one at Malekutu, they built with no water, nothing. They didn’t build it with the same care as they built the one for the Whites** (Own emphasis). As I stand with you today, that ground in Malekutu, there are holes where me and you can stand inside and no one can see us...”¹⁶³*

162 CSA SJN Volume XV Transcript, pages 2033 – 2034.

163 CSA SJN Volume XV Transcript, pages 2109 – 2111.

c. Commentary

The development of previously disadvantaged communities, i.e. black communities which were previously neglected by the government during the Apartheid era, is intrinsically tied to transformation. The provision and maintenance of basic cricket infrastructure like stadiums in the rural areas and townships of South Africa is the very first step to reaching one of the key transformation goals of equal access to cricket for all people. Therefore, the above submissions are chilling in the context of transformation in cricket and suggest that CSA, the government and other relevant stakeholders will need to start from scratch in achieving the goal of making cricket a truly transformed sport.

THE INVOLVEMENT OF PUBLIC SCHOOLS IN CRICKET

- d. Mr Rajan Moodley, of Legends Cricket, highlighted the number of schools involved in cricket in South Africa. He set out the below quoted statistics during his oral testimony before the Ombudsman:

*“During June of last year the Minister of Sport was presented with a report by a group of persons known as the Eminent Persons Group, and in that report it highlighted the fact that **less than 10% of the 25 000 schools that we have participate in sport** (own emphasis). That immediately should pose a big question, Mr Chairman. If you look at any document that emanates from cricket, at the bottom of the letterhead or bottom of the page it says “Cricket South Africa ” is the controlling or governing body for all cricket, amateur and professional”. That should make us wonder. Why is it that less than 10% of all schools participate in sport?...*

*If you look at - and again, these are horrible terms, but let’s use them - the Black African cricket in your Proteas setup at the moment, which schools do they come from? And I’m not blaming these kids. I take my hat off to them because they’ve achieved what is due to them, but where do they come from? St Stithian’s, Hilton College, Sacs Cape Town, Marist Brother’s Joburg. That is where they come from, Mr Chairman. You need to ask yourself: **When are we going to get***

*people coming from Langa, Gugulethu, Soweto, Alexandra, New Brighton, Zwide, Kwazakhele, Umlazi, Kwamashu - all these places, and even other areas, other suburbs and townships. Because the truth be told, nobody is worried about the fact that these kids are not engaged in sport. In fact, a report was also released last year which says that of all the so-called Black African players who have represented South Africa up to now in cricket, Mfuneko Ngam is the only one from a traditional township and a traditional township school (own emphasis). Then I want to go further and mention that I conducted a study on representation of township schools in age-group teams in Eastern Province Cricket from 2009 to 2019. You have that document in the pack there. I'm not going to go through it, it's 22 pages long, but at the end of it, for that entire period, the average representation of township schools in all those age-group teams is also less than 10%. In fact it is 5,9,53%. So while we're meeting the quotas that are required, because it says 50% of those teams must be players of colour, the question is where are they coming from? They're coming from former Model C schools and they're coming from more affluent or elite schools, but they're not coming from the township schools (own emphasis)."*¹⁶⁴

- e. In the same breath, Mr Vusi Mathebula, on page 2 of his affidavit before the Ombudsmans, wrote as follows:

"However, the past 15 years have been a horror movie for black cricketers in the province, at times I think the word transformation is the cause for this movie that has been on show for so long. There are many young black Africans who are not playing cricket not because they were given the opportunity and they chose not to play cricket but because cricket as a sport has and was never been introduced in their villages or townships. There are no cricket facilities and there is no attempt to change the status even those areas where we are coaching (own emphasis)... What is happening currently is not justice for black cricketers in the province, if you want your child to play he must go to a white school or join a white club, why does it have to be so if transformation is taking the sport to the people. I have been trying to initiate and implement a 5-year grass root development project that will tranced cricket in the townships. I have written letters to Graeme Smith when he was appointed by CSA regarding assistance with PHASE 2 of the project until today I still have not got a response from him (own emphasis). I have also spoken to Mr Graeme Smith PA Sharla and she told me that the matter is handled by MCU, the very same people wo are the cause of the lack of cricket development in the province.

164 CSA SJN Volume XV Transcript, pages 2148 – 2151.

Please see find attached letter that was emailed to Sharla for Mr Graeme Smith Mpumalanga Cricket Union has failed to initiate or present a grass root development plan that redress. We have tried many times requesting MCU to assist in the implementation of the 5year development plan and we have even went as far as getting funding from the local government and the National Lotto to ensure that there is development in the villages and townships. Still to date there is not cricket Oval in any previously disadvantaged communities and that is not acceptable. "

- f. Mr Mathebula continues to say the following at page 3 of his affidavit before the Ombudsman:

*"Since Malekutu Cricket Academy was adopted by CSA a HUB we as founders, management of Malekutu Cricket Academy we have been in conflict with Mpumalanga Cricket Union and how the HUB must be run, we formed it from nothing and we thought we were best suited to ensure the our vision and objective of starting cricket in the Village of Malekutu would be realized, however this has not materialized since the takeover, Mpumalanga Cricket get rid of the Malekutu Cricket Academy founders and management, as they say it's the instruction of CSA. We wrote emails to Edward Khoza and he never even tried to consider what we were saying and he was the one who overlooked us, this is history for us now. **As of today the status of black cricketers in our province has declined and has never grown since 2005 when we started with the Malekutu Project** (own emphasis). In the current cricket season we saw a new rebel league were players of color teams consisting of Indian clubs pulled out of Ehlanzeni Cricket League and went to form their own Mbombela Premier League which was very popular with the locals in the Low-veld. I had started a development at University of Mpumalanga and I entered the University side in this league because Mpumalanga Cricket would not come to assist in setting up of the University side despite many attempts from my side to get the Union on board to assist"*

- g. Following from this, Mr Sipho Nondlwana, during his oral testimony before the Ombudsman, shared in this manner:

"...It's a system, in such a way that everything that you touched had a certain angle that it had to go through. For instance, if I don't want you to be selected, irrespective of how talented or how great you are as player, I can easily go to the coach, who's going to have the final say, and start promising him things, or a different player to take your place.

*It's a system in the sense that even if you could say that you have Black players from former Model C schools, you will find that in the former Model C schools, once their players are selected for provincial teams, either the Director of Sport in that school or the coach in that school will get a performance bonus because he has produced so many provincial players. And it's easy then for the schools to advertise the achievements that they have had as a school - that they are producers of provincial players. **But you can't have the same in a Government school, because in a Government school players don't play. There's no cricket, except the provincial union is the one who intervenes in the sense of sending coaches there, to try and get the kids into a central place to be coached** (own emphasis), unlike in the former Model C schools. That's the system, and the system continues. From school level it continues into club level and it continues into the provincial level.”¹⁶⁵*

h. Mr Nondlwana continued to say the following:

*“But coming back to what I was saying, with regard to township schools, in fact it won't be the Department of Basic Education, it will be the Department of Public Works. When they go and build schools, even new schools now, if you look at it, they will have a massive land, but no sports facility. A massive land but no sports facility. **You can't then develop an individual leaving out such things, because in order for anyone to grow in totality, you need to grow physically as well, and you need to grow in terms of your intellect, which would be your education; you need to grow spiritually, which would be your church; and you still need to grow emotionally. If you're not growing in all four of those components, you're going to find yourself wanting** (own emphasis) – the reason why we have idle minds. Some of these idle minds, if you could interview them, are addicted into Tik and all these kind of drugs. When you listen to them when they talk, you can see that this one was developed intellectually, because he's able to articulate. But the unfortunate part is that that idle mind has been left to those who are waiting to vulture them. This is the problem. **The problem is participation, and in order to participate you need facilities** (own emphasis). That cannot go in silos. The same applies where you need coaches in our schools. And yes, the union and Cricket South Africa can try their level best, but whatever they try is just a drop in the ocean. It's a drop in the ocean.”¹⁶⁶*

165 CSA SJN Volume XV Transcript, pages 2033 – 2034.

166 CSA SJN Volume XV Transcript, pages 2042 – 2043.

i. Commentary

Inequality in South Africa is prevalent and can be seen in most corners of the society. This inequality is informed by the unfortunate history of the country and it cannot be attributed to any stakeholder in these proceedings. Therefore, the stark differences in the access to proper cricketing facilities and coaching between private schools and public schools as described above is a consequence of circumstance. However, in the approach to undo the injustices of the past and provide equal opportunities in the sport of cricket, it is important to be intentional and strategic. The ombudsman is in agreement with the above submissions that it would be more prudent and sustainable to equip public schools and do the hard job of developing such public schools with proper cricket facilities rather than the current approach of picking a few students from public schools to join private schools to access such facilities. This is because developing public schools would bring the game of cricket closer to many more students than a few 'talented ones'. All students from previously disadvantaged communities would have an opportunity to try out cricket and be trained accordingly.

THE LACK OF CRICKET FACILITIES IN RURAL AREAS AND TOWNSHIPS

- j. On the issue of the lack of facilities , Mr Ajit Gandabhai of Azad Swaraj Sporting Club, shared in this degree:

"...But there are no dressing rooms, ablution facilities, turf nets, clubhouse or decent boundary markers. So when it rains you run to your car for refuge. Instead of focussing our energies on developing the playing side of the club we have spent endless time in developing the Progress cricket ground..."

This lack of decent facilities at grass roots level also militates against the growth of cricket. There was a post by the great former Proteas bowler, Vernon Philander, in August 2020, regarding the lack of world-class cricket facilities. This is also very relevant. Until we create facilities and level the playing fields

to give every South African an equal opportunity to play at the highest level we will forever carry a burden of inequality in our dreams of non-racial sport (own emphasis)...

*So the reason why I'm here is that something be done, like yesterday, to address the question of facilities. Because if you want to give every child an equal opportunity to play cricket at the highest level, facilities, facilities, facilities. So I'm hoping that this project brings some semblance of responsibility to Cricket South Africa, Government and SASCOC, to address this issue. And I speak for amateur cricket - each and every amateur cricket, because a lot of emphasis has been placed on elitist professional cricketers, and we, as amateur cricketers, have been left to fend for ourselves."*¹⁶⁷

- k. Mr Ashraf Allie ("**Mr Allie**") tells of problems with the state of the facilities in the Cape Province:

*"In Cape Town, historically, legacy - there are certain clubs that have ninety-nine year leases, and they have no issues. Some of them don't have what we have as challenges. They don't have a different sports code to deal with. So besides having to deal with the different sports code we, as management, must deal with the social ills, we must deal with all - there are ten other things we must deal with, as a Chairperson or as a Management Committee. It sets you back, it weighs you down but you continue. You have to fight the cause to be able to change your circumstances. Mr Chair, for four years we practised - we basically practise every day of the week, but I'm going to stick to senior practice now. Tuesdays and Thursdays. Every Tuesday we must put up nets, take down nets, but the club house is over there, 400 or 500 metres away. You must put them up. They take thirty minutes to put up you must take them down, and it takes thirty minutes to take them down. That's an hour of your training session gone. The condition of the nets is pathetic. We fight with the city. It took us years to get decent nets. It came to a stage where the management of Western Province said: Okay, we're going to set aside X amount of money for you - and I'll quote the amount of R30 000. You put up the nets yourself. We go to the city, we tell the city: We've now got budget for labour, we can at least start putting some of our people as well. We get the city to give us the material. The material we get is not the quality that we want. What can we do? We're desperate, we want nets up. As things stand now, the nets are up but they are not what they should be."*¹⁶⁸

¹⁶⁷ CSA SJN Volume XVI Transcript, pages 2279 – 2283.
¹⁶⁸ Transcript Volume XXII, pgs. 3278 – 3280

- I. Mr Allie further discussed the issue of insufficient funding granting to clubs which maintains the exclusionary nature of the cricket ecosystem:

*"In 2015 the club received R1 700. We had a meeting and I said to Clinton du Preez: Clinton, it's R1 700, but you're taking off R850, which is an historical loan - which was before my time. So the loan was taken off. I don't know, the province made a loan to the club at that time. But it was R1 700, which meant R850 for the season. We negotiated to scrap that loan, and it was agreed. In 2016 our grant increased to R2 115 and in 2017 to R3 200... in 2019 we received a grant of R5 618. That was in 2019. In December 2020 we received a grant of R5 618 again and that was the last of our grants."*¹⁶⁹

- m. Additionally on the issue of the lack of facilities, Mr Sandile Lukhele, a school cricket coach in the rural areas and townships of KZN, detailed the following observations while coaching cricket at school level in the rural areas and townships of KZN:

*"Also for the past twelve years, volunteering in these rural areas, the biggest challenges which there have been and are still there, I want to mention the first challenge that I highlighted in my notes here is the lack of cricket net facilities, which compromises the development of batting in our players. **You will never be able to develop a child to be a top batsman when you train that child on a dusty soccer field** (own emphasis). The second thing that I want to raise is that as much as that we don't have nets, we also - we still do not have nets, by the way - we also do not have proper cricket fields. I'm talking about the rural areas, I'm not talking about the schools that are in town, because they are well established. I'm talking about the townships and also the rural areas. The township around Piet Retief does not even have a single net, or a cricket field for that matter. And that applies to the townships around Pongola and the rural areas around Pongola. There is nothing like a net facility or a proper cricket field there. So this shortage hampers development a lot, and it compromises the type of players that will come into the provincial stream.*

The lack of a cricket field actually deprives our kids of a proper cricket game experience, simply because what a ball does on a soccer or cricket field that is dusty and what the ball does on a proper cricket pitch is two different things. The ball behaves

differently on these two different pitches (own emphasis). So our kids are training on dusty ground, on dusty fields. What happens as you play your game on that dusty ground, equipment and hard-balls depreciate very quickly. Now and again you have to replace your ball, now and again you have to buy a new bat. That again causes the schools where these players come from to neglect cricket development because they cannot afford to buy cricket equipment now and again. Because if you take a new hard-ball today to a dusty soccer field, by the time you are done it will be finished. If you take a bat there after a month that bat will be finished. Hence schools at times neglect us. When we ask for help from schools we don't get it, because if schools buy us a bat this month, three months down the line you'll go back and again ask for a bat, and then we don't get it, simply because we don't have proper cricket training facilities.

Another thing I want to raise is ***insufficient equipment, which causes our players, both boys and girls, to share helmets, they share gloves, they share bats, they share the rest of the equipment. If we do have two bats from one school, then we'll find that we have eight schools that don't have bats. So we are all using two bats from that particular school. During this period of COVID it became very hard for us, because we depend on sharing equipment*** (own emphasis). It becomes very hard for us to have a proper cricket match, because you'll find that we only have two bats, we have just two pairs of gloves. So when a batsman has to go in that batsman has to wait for the outgoing batsman to take off the gloves. So those are the types of challenges that we have when it comes to playing the game.”¹⁷⁰

- n. Mr Lukhele continued to state the following with regards to cricketing equipment and clothing:

“First of all, KFC does a great job providing equipment and clothing at mini-cricket level, but when the child progresses to hard-ball they have to buy their own clothing, their own equipment and pay for their own transport to games. Because they come from poor backgrounds they are forced by their own circumstances to leave cricket because it has become expensive for them all of a sudden, after being introduced to a lot of free-bees in mini cricket. I don't know how we can fill that gap between progressing a child from mini-cricket to hard-ball, because when we introduce a child to mini-cricket the child gets a lot of things, but all of a sudden now it's hard-ball and they can't

170 CSA SJN Volume XVI Transcript, pages 2311 – 2314.

*move to progress to hard-ball. There is nothing (own emphasis)."*¹⁷¹

- o. Mr Degambur from ECU also testified on the deteriorating conditions of "black clubs". He stressed that the deteriorating or non-existent infrastructure of clubs in the townships impacts on the accessibility of cricket to, in particular, black African players. In this respect he states that:

*"To start with this union had one of the longest standing CEO's in MR Cassim Suleiman. This union had a fair amount of money in its investment account, in excess of R19 million at any given time, while he was the CEO. Yet when you looked at facilities, to call them sub-standard is an understatement. And if you looked at facilities in the townships, they were basically non-existent and to date are still non-existent. We have ten Black clubs within our structures. They are Termed 'emerging clubs'. Black, Coloured and Indian clubs are termed as emerging clubs. I'm specifically talking about the Black clubs. Of those ten clubs there are two clubs that have facilities and the rest have less than basic facilities. How do these people in these communities produce players to compete and not have any facility?"*¹⁷²

- p. In particular, Mr Degambur who is based at the Tembisa club gives a grim picture of the state of the club:

*"I am currently attached to Tembisa. That is one of the biggest clubs or biggest areas in terms of townships. They have nothing. They have two nets probably. It is one of the biggest townships in our region, and they are one of the oldest existing clubs, but to date they have absolutely nothing – they have no facilities."*¹⁷³

171 CSA SJN Volume XVI Transcript, pages 2316.

172 Transcript Volume XVIII, pg. 2533

173 Transcript Volume XVIII, pg. 2544

- q. Supporting this concern regarding inadequate facilities at the Tembisa club,

Mr Moloko notes that:

"Tembisa Cricket Club plays in our premier league, and this is a picture of their facilities, which was taken in 2018. Fortunately, as the Chairman of the Facilities Committee, I've had the privilege of visiting these facilities and the state has not improved. This is what they currently look like.

...

*Looking at where the premier league side in Tembisa is, where they have to prepare themselves for competition against clubs that are practising in facilities that are close to professional standard, it makes one wonder about the gap that this perpetuates between the different clubs. **As you can imagine, if you are practising here, these nets are made of astro turf. Cricket matches are not played on astro turf. Astro turf is where there's concrete and carpet. As a coach and as a person that has played cricket, I can say that these facilities do not prepare you well for a cricket match that happens on turf (own emphasis).**"¹⁷⁴*

- r. Further on this issue, Mr Moloko bemoans the grant disparities between black and white clubs. In explaining the plight of black clubs in receiving insufficient financial assistance, Mr Moloko provides that:

"The first point is that the premier league clubs who get R476 000 of the grant, get 90% of the grant. So of the R548 000, 90% goes to the premier league clubs. Then the question is: What is the Black portion of these grants? In total Black clubs get 31% of the total grant. As I mentioned, there are four Black clubs that play in the premier league. These clubs make up 24% of the 31% I just mentioned, which means that the remaining twelve Black clubs only get 7% of the total grant. When I calculated the averages, that equates to R3 400 as money that is there to support these clubs. This R3 400 is supposed to support them for the whole season, and our cricket season runs for six months... Across the board, on average, the White clubs get R27 000, to assist them with running of cricket throughout the season."¹⁷⁵

174 Transcript Volume XVIII, pg. 2582 – 2584

175 Transcript Volume XVIII, pg. 2576

- s. Mr Moloko then invites the Ombudsman to recommend that the matrix for grants must be reworked to factor in the socio-economic challenges that clubs which house or allocated in previously disadvantaged areas have to content with:

*"My remedial actions that I'd hope for from this conversation – the first one is pretty straightforward, and I think it's an obvious one, that the matrix for the grants – and I believe this probably exists in other provinces, in other unions as well, but these matrixes need to change and if assistance is going to be given to clubs, it needs to keep in mind the communities that these clubs come from."*¹⁷⁶

- t. He provides the following reasons for this remedial measure:

*"What you would generally find in our White clubs is that they are from affluent suburbs. When I'm referring to White clubs these are generally clubs that have members, and they pay affiliation fees. So what happens within cricket clubs is that, if a member wants to be a part of the club, they pay a seasonal affiliation fee which then enrols them with the club and assists the club in running, in covering the costs that they would encounter throughout the season. That ranges from looking after the facilities that it might have, buying balls for cricket matches and so forth. So generally our White clubs have affiliation fees in place. In addition to that the communities from where these clubs are, generally are middle class. What I'm trying to say here is that these clubs do not come from our poorest, most poverty-stricken communities."*¹⁷⁷

211. Finally on the issue of the lack of proper cricketing facilities, Mr Zama Ndamane and Mr Ali Osmany of the Abu Asvat Institute for Nation Building, shared the following experiences:

"when we undertook to involve the most marginalised youth in cricket, we found, to our amazement, firstly, that cricket at schools was not at the right levels. That tells you that at the very basic grassroots level, if it is not at the right levels, from our own cricketing experience as cricket players and

176 Transcript Volume XVIII, pgs. 2593 – 2594

177 Transcript Volume XVIII, pgs. 2576 – 3577

administrators, you will automatically have failures and you're automatically going to have great degrees of frustration, especially amongst sportsmen that are very keen to develop their abilities and their skills. Our experience with the youth in the townships is that they were always eager to find a platform where they could play at their best, enjoy themselves and at the same time be a happy lot. And we found that the social cohesion exercise with them worked so exceptionally well that at a point all the Youth Development areas, under the flagship of the Gauteng Cricket Board at the time, looked forward to at least being present at the tournament, if not playing at the tournament.

...

for example, where the child comes out of a private cricketing school where all the facilities are there, all the technical knowledge is there, the technical know-how and the input at a very senior level is always present, as against the youth coming out of the townships. They've largely had to depend on themselves, not having a lot of the very specialised skills available to them on call, and it certainly leaves them wanting. Children at all levels need to be treated as equal (own emphasis) *and our view now is very much the fact that the private cricketing schools will always advance in leaps and bounds in the current structure that exists within Cricket South Africa - I believe in all the provinces. That leaves the most marginalised kids at a point of compromise, where the only avenues open to them, from our experience, is that they either get a scholarship into a private school, or, through the initiatives of the various youth cricketing weeks that are available, if perchance they happen to excel in a particular youth cricket week or a youth cricket match, that two or three of those players are then recognised."*¹⁷⁸

- a. They continued to share these sentiments:

"The one thing that keeps the children back from excellence is having to play on fields that are humanly degrading, and this is where the part of structural racism becomes very, very open. We've spoken at length and we've written at length to various bodies about the poor facilities, not only where we host the tournament, but the fact that there are more than seventy townships all over that do not even have a green space in which to have social activities. How then do you enhance sports, if provision is not made to level the playing fields and allow children to take their rightful place in the areas where they are domiciled, and have fields accessible to them, to enable them to enhance their own skills? This is a burning question which has to be answered. We have approached the local council - when I say the local council, the regional council. We have asked numerous times for meetings with the Mayor

178 CSA SJN Hearing Volume XVIII, pages 2631 – 2633.

and members of the Community Development Portfolio to meet with us and allow us the opportunity to put our case forward. We have been moved from pillar to post. We believe that the people who take the decisions are the people directly involved in the Mayor's office, for example at the local level.

The Mayor's office has not been forward enough with understanding the plight of the people, the communities and the kids at large, with the result that even at the Lenz track ground which we've been using - of the eight fields that we use there - I need to remind the honourable Counsel here that this field was used back in SACOS days, during anti-apartheid sports, by the likes of Dr Abu Baker Asvat and many like him: Dr Moosajee, who has played cricket under Cricket South Africa, people like Vincent Barnes, who represented Western Province. We played interprovincial games there. And in the apartheid days we were well able to use those fields to play interprovincial matches. Why then, under a new government, do we have to suffer the kind of degradation that we currently suffer?

There should never have been a need for that. But it proves that we've been let down. It proves that there's no seriousness on the part of the authorities to take the plight of the sports people seriously enough. That then impacts quite negatively on nation building and social cohesion, directly. Now, the fact that they are abdicating their responsibility is one thing, but the fact that they're actually ignoring the mandate that they carry on their shoulders, is another. And this is where our thrust has to be, to find out why this happens and why it cannot be rectified. We refuse to accept the fact, or rather the excuse that they hide behind. I wouldn't call it a fact. The excuse that they hide behind is budgetary constraints. We don't see the fact that budgetary constraints should be holding back the advancement of our youth."¹⁷⁹

b. Commentary

As stated in the above submissions, the provision of proper facilities is paramount in the development of any player in the game of cricket. For as long as there is a lack of proper cricket facilities in the rural areas and townships of South Africa, the shortage of talented players from disadvantaged communities will persist, and because statistically, most

¹⁷⁹ CSA SJN Hearing Volume XVIII, page 2635 – 2638.

black people live in these disadvantaged communities, this means that for as long as there is a shortage of proper cricketing facilities in the rural areas and townships of South Africa, there will be a shortage of talented black players. Moreover, the injustice of not having access to the sport of cricket will persist in black communities.

212. COACHING

- a. On a different note to the above, Mr Piwe Ncetezo, of Boarder Cricket in the Western Cape, shared some challenges he faced as a coach in a township cricket club he founded. He *thus* testified:

*“Now another challenge that we would have as coaches, we had the coaching courses, so we had to work elsewhere. We had to find jobs for ourselves as well as being township coaches. So we would go to academies. The first academy I worked for was an academy run by a guy called Ryan Maron. Ryan Maron used to play for Western Province, but because of the franchise matches he lost his contract and started this academy. Then I also started coaching at Bellville Cricket Club and was doing only Wednesdays there, so I’d get R100. I wouldn’t get a team. I wouldn’t say I was a coach, I’m just watching the kids. And then I’d get R100 in cash, and go. And then Ryan Maron would call us when he had holiday coaching clinics. Maybe we’d get R150 a day. But the thing is that we had clubs that we were running in the townships, so there was nothing happening there, but we ran these clubs. So imagine having to work elsewhere, and having to go and coach in the township, at a particular club, that Western Province was aware of. Mind you, cricket is not like other sports. In soccer, if I can give you an example, you just put one ball there and everybody plays. In cricket you have to teach these kids the basics of cricket: How to hold a bat, you also have to drill the attitude. Imagine you’ve been coaching at Ryan Maron and Belhar Cricket Club, and then you come back to this at 16h00 - and Western Province was aware that you were doing that. **They were not doing anything, they were not even giving you a stipend, to say: Listen, focus on this thing. In the first place they are actually the ones who encourage you to coach. They are actually the ones who encourage you to form a club. So the club is actually registered with them. They give you balls, they give you equipment, they give you transport money to transport the team. And, yes, that is good. Yes, it is good to do that. However, in any project, especially community development***

projects, something needs to be done for the person who is there, to make sure that they continue doing that, or else they are going to leave. In this case I left (own emphasis)...¹⁸⁰

- b. Mr Ncetezo continued to lament the following during the course of his oral testimony before the Ombudsman:

*"We cannot coach, because if they don't want you they don't want you. And they gave us the opportunity to do these courses, so if they let me do a course, and I'm thirty-five years old, what do they think I'm going to eat? Like Donald, now Donald is dead now from trying to be a DJ. That broke my heart. Donald has now left, and I met a lot of guys from Soweto, saying: Listen here, I'm even making beads now. Number two, the big and lucrative part of coaching is schools cricket. Because CSA has trained all these Black coaches, and there are so many, but here's the thing. We have schools cricket. Why not regulate the schools cricket and say: As much as there's a quota for players, let's have a quota for coaches. If I can ask you today how many Black coaches are coaching high school first teams, **I've been a Level 2 since 2010. And to be a Level 2 you must at least be coaching a high school first team, you must at least be coaching a club. However, when you apply to these schools they tell you to do a Level 3. You must have a Level 3. But now, to do a Level 3 you must be coaching a first team. So how are you going to do a Level 3? A Level 3 enables you to apply for a professional job in these schools. But in order for you to do Level 3 you need to work professionally and coach at these schools. There's something that doesn't add up, to me. How are you going to make Level 3? And people have been doing Level 3s, but we've never seen them coaching at those schools** (own emphasis). The stuff that we're discussing as coaches is like: Guys, listen here, the system is changing now a bit. Now, with my experience I cannot apply in (?) because I'm a Level 2. Because there's a ceiling now. It doesn't allow me to apply for any professional job, because I'm a Level 2, and I've been coaching cricket since 2007. I think it's fourteen years now, and I cannot do a Level 3. For a Level 3 I must be invited by Gauteng Cricket Board. Then they talk to Mr Mathe. So those are the challenges actually that I was talking about."*¹⁸¹

180 CSA SJN Volume XVI Transcript, pages 2213 – 2215.

181 CSA SJN Volume XVI Transcript, pages 2256 – 2258.

213. PLAYER SELECTIONS

- a. During his oral testimony before the Ombudsman, Mr Vusi Mathembula shared the following experiences of his time as a selector:

*“I was picked to be a selector for Under 11. When we were selected, Chair, we would pick the players of colour on the first day. They said: **Vusi, of the players of colour, which ones do you think are the best that we go through?** (own emphasis) The other Black selector that was with me was a guy called Hamilton. He’s from the Nkangala side in Witbank. **During the rest of the week we were selecting the White players because we had done with the Black players on day one** (Own emphasis). I remember on the last day of the trials, on the Friday, we were supposed to announce the team that was going to go to the National Week and they would be given caps. We selected the B team and the A team. On that day there was a player called Brendan Bredell, from Uplands and another White player from the Highveld, I can’t remember his name. They wanted that other player to play and I said: No, but throughout the whole week this player did not perform. And when I look at his technique - you want to pick him as a batsman, the guy does not have the technique to bat from one to number six, the White player. So we went on debating and debating until they took me to the side and said: Look, we know what this player can bring. I said: I don’t know that player. Why do we have trials if we know what players can bring? So let’s select players outside of the trials and then just send them there. I don’t know what the player could bring. He could not prove himself for five days. They said: No, no, no, this player will go. Hamilton pulled me to the side, and said: Vusi, the father of this boy is the one who sponsored the bags last year, so you cannot say this boy must not go. I said: Okay. Then the boy made the side. When they announced the managers and the coaches that were going to go with those sides to the National Week, my name didn’t come up. And I knew from there it was maybe because I was objecting towards the selection. So it’s fine. If that is the case, it’s fine. From that day, Chair, I never got any invitation, none whatsoever. That was the only time I was part of MPUMALANGA’s selection or coaches when I made my objections over that young man, and then I never made the side. I don’t know what became of Brendan Bredell but to me he looked a better batsman than the other batsman that they wanted. To answer your question, that is why I think I’m not picked to be part of the selections.”¹⁸²*

182 CSA SJN Volume XV Transcript, pages 2105 – 2106.

- b. Additionally, Mr Zama Ndamane and Mr Ali Osmany noted irregularities in the selection of players at CSA's Youth Cricket Weeks. In their own words:

*"...and we know this for a fact - that when the youth cricket weeks do take place, there is what we would call pre-selection that takes place amongst the private cricketing schools. Let me explain it a little better. **What happens is that the private cricketing schools, behind closed doors, during their own league fixtures between schools, make selections and they arrive at those selections** (own emphasis). Between them they obviously say: We need to make a compromise we need perhaps - and I'm giving an example, I'm not saying that that is the case. Maybe we need a wicketkeeper or we need a specialised fielder, maybe we need a spin bowler, so we could take one from the Youth Development Programme and that is the way the compromises, I believe, have been working. I've actually seen this work on the ground, and we've made an issue about it at the time when I was able to speak as a cricket administrator at Board meetings."¹⁸³*

c. Commentary

It has been established from the above testimonies that the lack of proper cricket facilities in the rural areas and townships of South Africa create a huge barrier to access to the sport of cricket for most black people. The irregular and unfair practices adopted by some cricket selectors and administrators, as expressed above, further exacerbates this unfortunate reality for black people. The ombudsman strongly disapproves of such practices and recommends that CSA adopts strict policies and procedures to guard against such practices and to punish those who are involved.

183 CSA SJN Hearing Volume XVIII, page 2633.

214. PLAYER PARTICIPATION IN TEAMS

- a. Mr Nash Degambur ("**Mr Degambur**") from the Easterns Cricket Union ("**ECU**") outlined instances where coaches have side-lined players in the Eastern region:

"We've had a situation where we've had a number of coaches who have specifically sidelined and marginalised players from this region, and backed player from outside of this region, threw hundreds of hours of balls to players from outside of this region, groomed players from outside of this region. Coached privately, but yet they cannot help and did not help and did not groom their own."¹⁸⁴

- b. Specifically, Mr Richard Das Neves, a coach, participated in the side-lining of a black player. In this regard, Mr Degambur explained that:

"...a white coach, Richard Das Neves threw a Black player's [Tumelo Simelane] bag out of the change room, saying that it stank. That same player got sidelined and marginalised. That youngster was knocking on the door of being a spinner within the Titans franchise, and he got kicked out.

...

He did not fit the profile, because the player questioned that if he was the twelfth man and must then carry and be the water boy for a three-day match - because he said: But what about the other player? Now you're being disrespectful and you're questioning me. He got sidelined for nothing. He got sidelined because somebody wanted to be the gatekeeper that would stop him from growing, from having the opportunity of his lifetime, which got taken away from him."¹⁸⁵

184 CSA – SNJ Hearings Transcript Volume XVIII dated 29 July 2021, pg. 2547 – 2548

185 Transcript Volume XVIII, pg. 2548 – 2549

- c. Mr Degambur tells of cases where players were excluded and dare we say cut out of cricket:

"Now, I'll give you Sizwe Zulu, a player. Now: You are a problem, you have discipline issues. Not once saying: Hey, but you're talented and let's work on your discipline issues. And the same with our Black coaches, they did not back the boy, they just went: Oh no, no, but sideline him because he's got discipline issues. Zwelo Ntsimbini left a corporate job for a contract. He was never backed, he's out in the cold, gone. Zweli doesn't have a contract, he doesn't have a job. Thulani Mbele had to leave this union and go to Limpopo. This young man has nothing. This union also failed him. A local boy, a decent enough cricketer, but not given the quality of opportunity, because he does not fit into the profile, he does not fit into the culture... Neo Felane goes to the Africa T20 game and we were embarrassed. I was embarrassed. That's a common status there. You are putting in a boy, a spinner for him to run around and field. Taudi Giamba(?), Kyle Landsberg: Oh, you do not fit into my culture, a coach's culture. And our Board does nothing. The coach is still untouched, but we've killed off players. We send a youngster, Nzwane(?) – all this young man did was be a water boy for that entire period... Another player Gerald (?), talented. He doesn't fit in but we will go and buy a player from outside because we want to win trophies... At this union at one stage, when Geoffrey Toyana was the coach, it had seven players of colour playing in the local team. Today we are buying players from outside of this union. I'm sorry for me that is totally and utterly unacceptable."¹⁸⁶

- d. He also raises concern regarding the loss of players that come through to unions via the under 19 coke week:

"In terms of Under 19 players again, we have a history, and I think most unions have the same thing. When it comes to players of colour, the bulk of our Under 19 players disappear - they just vanish. No one asks: What happened? You get points deducted for not producing, but what is the incentive then for having these players come through and then you just lose them? No one answers. Not one question comes from the CSA as to: You've had five or six players coming through your

*Under 19s but they're just lost, where did they go? You get punished for not producing, because you get scored by CSA."*¹⁸⁷

- e. Essentially, Mr Degambur contends that the CSA accredits coaches that are placed as union level where they act as gatekeepers.¹⁸⁸ In this respect, Mr Degambur states that:

*"...the thing that saddens me most is that these coaches are accredited by CSA... CSA needs to start doing things, where, if these people are found to have wronged, I will stand there and beg for their accreditation to be taken away. They do not deserve to be there. I know what I want, but we cannot have people like this, because whether you like it or not whichever way you look, these people are anti transformation, don't want transformation and are not interested in transformation."*¹⁸⁹

- f. Mr Degambur asserts that CSA interferes with the appointment of coaches because unions are reliant on the CSA for financial support:

*"They control the purse strings. They control the unions. Their right – CSA Essentially dictates the rules, because essentially they take the lead and the unions need to follow the lead. If CSA are writing the rules and yet are not enforcing the rules, they're not following up on the rules, they're not verifying the rules, the outcomes - then CSA are the people who are failing transformation. CSA has an obligation. If CSA says that the union is autonomous, yes, to some extent, but you are the controlling body."*¹⁹⁰

187 Transcript Volume XVIII pg. 2558

188 Transcript Volume XVIII, pg. 2551 – 2552

189 Transcript Volume XVIII, pg. 2551

190 Transcript Volume XVIII, pgs. 2552 – 2553

- g. Tshoko Moloko ("**Mr Moloko**"), the chairman of the Midrand Cricket Club and a member of the ECU's members council, shared an experience of Mr Neo Felane being side-tracked during the Africa T20 Cup match:

"What I witnessed on the day was this young bowler playing – I believe it was the semi-final game, and on the day he only got to bowl one over, being a main line bowler in the side. Then what stood out was the side consisted of a number of all-rounders who's speciality was in bowling, so they were in the side as a batsman/bowler. I witnessed a few of them bowling ahead of that young Black boy. This struck a chord with me, because growing up we would see it all the time, where we would be in a side just to field numbers and you wouldn't get an opportunity to bowl and you didn't get an opportunity to bat. Then the side won the game and they went on to play in the final. In the final, yet again, the same boy was in the side. In actual fact, I believe in the final he didn't get to bowl even a single over. I might have the two swapped around but what I do know is that he bowled one over in between the final and the semi-final."¹⁹¹

- h. Mr Moloko also speaks of the CSA's complicity in recognising coaches who act as gatekeepers and systematically exclude African players:

"Following that the coach of the union went on to win – I think he won one or two other trophies, and to my alarm when Cricket South Africa held their annual recognition ceremony our coach was recognised as Coach of the Year. Now this left me with a question, that Cricket South Africa, overseeing all these criteria that are in place to help drive transformation in cricket, surely it should have picked up this matter of players' being fielded just to tick a box."¹⁹²

- i. Mr David Poggenpoel, the Chairperson of the Helderberg Cricket Club, testified regarding the victimisation of the club because it had housed predominately black players:

191 Transcript Volume XVIII, pg. 2568

192 Transcript Volume XVIII, pg. 2570

"...I think it was on 5 December we received official correspondence from Western Province Cricket Association, requesting, amongst other things, my database for each and every registration form of our players, because by now it had become predominantly black... This is where I found it very odd that – look, in Western Province there are in excess of sixty clubs. Why this one club gets correspondence from Western Province, demanding, amongst other things: Forward each and every member you have recruited – his application form. That raised suspicions with me, because it tells me they want to purify my membership database..."¹⁹³

- j. Mr Poggenpoel touches on interference by the by the Western Cape Province in the running of the clubs activities. One of the instances mentioned relate to an Annual General Meeting ("**AGM**") held on 9 December where the Province sent through two officials to observe the AGM.¹⁹⁴ Mr Poggenpoel questioned the rationality of sending a delegation to observe the AGM upon the request of Mr Juan Van Boom, the president of the Helderberg Cricket Club, who had previously complained about the appointment of Mr Poggenpoel in 2019.¹⁹⁵ Mr Poggenpoel tells of the exclusion of black players from the AGM:

"...From the onset he tried to eliminate the ones in attendance by eliminating who was underage of 18 years. The meeting hadn't even started, and he was there as an observer. Then he tried to eliminate the ones under 18....Now, in the Constitution of South Africa, every person has the right to freedom of association. I think that's embedded in Section 18 of the Constitution of South Africa. SO because this child is Black, this youngster is from Nomzamo or Lwandle, who is this person to say: Because you are not 18 you are not allowed to votes? In other words, he's being deprived of his fundamental right to have a

193 CSA – SJN Hearings Transcript Volume XIX dated 30 July 2021, pg. 2701 and 2704

194 Transcript Volume XIX, pg. 2702

195 Transcript Volume XIX, pg. 2687 – 2688 and 2705

*say, to express himself – his freedom of expression. That is where my concern started....*¹⁹⁶

k. Mr Poggenpoel goes on to state that Mr Marvin Roos raised a motion of no confidence which brought the AGM to a halt.¹⁹⁷ The motion of no confidence was unsuccessful.¹⁹⁸

l. Mr Poggenpoel further narrates of an incident where players in his club where not alerted or invited to a game:

*"Yet I think it was on 5 December – I'm speaking under correction here – we found that there was a game of cricket on the field – it was a Saturday, and it was all Whites who played cricket. Now, we have these youngsters from the regions I just mentioned, who could only go as far as practising, not allowed to play games. But yet White persons – they don't even belong to Hilderberg Cricket Club. I don't know where they're from. But they have the venue to play cricket, in the face of my children."*¹⁹⁹

m. Mr Poggenpoel brought to the Ombudsman attention concerns raised by a community member of Lwandle, Mr Xolani Matiso ("**Mr Matiso**") through an email addressing issues regarding the deprivation of players from townships of opportunities to play cricket:

"He [Mr Matiso] wrote this email and he copied in two persons at *Cricket* South Africa as well. This was written on 11 December last year. I think this is part of the correspondence.

196 Transcript Volume XVIII, pgs. 2707 – 2708

197 Transcript Volume XVIII, pgs. 2708

198 Transcript Volume XVIII, pg. 2708

199 Transcript Volume XIX, pg. 2710

'On behalf of the community of Lwandle and Nomzamo I previously brought to the attention of Mr O' Malley and Mr Adams...'

Mr Adams is now the Vice Chairperson of Western Province Cricket:

'... that juniors and youth of our township are being deprived an opportunity to access proper playing and training facilities. It was also pointed out that Mr Marvin Roos, who is in charge of the facilities, is depriving our township children the right to access the sports grounds at Helderzicht.'

Helderzicht is the name of the sports ground.

'This has been ongoing for a year now and nothing has changed.'

Now, here's a man who has been complaining for a year, and everybody else has been submitting correspondence for as long as a year back, and nothing has changed. And now it has even escalated to a point where White privileges are being promoted there, in front of us. In front of us. Let me rather reserve my comment there."²⁰⁰

215. Mr John Rodgers ("**Mr Rodgers**") tells of the struggles of african players, during his early days in cricket, where such players were not familiar with officials that were officiating in matches which contributed to the bias of these officials towards such players:

"Although at times it wasn't just the competition that we had to face from the competition that we had to face from the opposition, but many a time the officials that were officiating in these matches were extremely biased. There was favouritism towards the White clubs. The White clubs enjoyed umpires that they had known for decades and they had a very good rapport – there was a very friendly exchange between, for example, the captain of a particular team and the umpires who were going to serve and do duty on that particular day. That also added to the strains and stresses that we, as players, had to endure when we played the game, because you not only had to now do the best that you could under the circumstances but you also now had to live with the fact that you had officials that were biased. That was very difficult to handle."²⁰¹

200 Transcript Volume XIX, pgs. 2712 – 2713

201 CSA – SJN Hearings Transcript XVII, dated 28 July 2021, pg. 2485

216. Mr Rodgers also touched on how black players are cut off from cricket through the questioning of their competence, which reduces the permissible window for them to make mistakes:

*"Because I'm sure you've heard, and I've also heard, that there is so much more that a Black player or a non-White player has to do on a more consistent basis to excel or to be recognised or to be given an opportunity. Whereas other players, White players in particular, have been given numerous opportunities in spite of not being successful at the very outset. Yet Black players were given one opportunity, maybe a second opportunity, and if they didn't succeed there you would never see them again. I'm talking about the ones who actually got an opportunity."*²⁰²

217. On the exodus of black players who have become disillusioned with cricket, Mr Rodgers comments that:

*"Many of us have left the game because of frustrations and also because our efforts were just fruitless at the end of the day. It's not that we wanted compensation as such but for me, for example, from a coaching perspective it was just the joy of seeing the Kids going into higher – being recognised. And I would proudly stand back and say: I coached that boy from that age to that age and now look where he is today. That would have been my reward, nothing more than that. Because you know you become despondent as time goes by. You also then realise that it will never allow you to be a part of anything sign if cant, and as a result then you withdraw."*²⁰³

218. MISUSE OF UNION RESOURCES FOR PERSONAL BENEFIT

a. Mr Degambur brought to the Ombudsman's attention, flagrant corruption and irregular expenditure at the Easterns Cricket Union:

"When I say also in the Ngoepe Report there are issues, because when I say this was run like a spaza shop, in his report he states,

202 Transcript Volume XVII, pg. 2505

203 Transcript Volume XVII, pgs 1, 2518 – 2519

*where family members of the CEO were involved in travel arrangements for the team bookings; family members were involved in catering at the Union. There was no open process for people to submit tenders, and unfortunately the one President had his security company working at this union."*²⁰⁴

- b. Mr Degambur notes that a coaching contract was awarded which exceeded to duration approved by the Easterns Cricket Union's Board:

*"We have a Director [Steph Duvenage] who signed a contract for a head coach of the semi-pro side, where the Board had mandated a one-year extension of the contract. That Director, with the Acting CEO [Hilton Nortje], essentially went and signed a three-year contract for the said coach."*²⁰⁵

- c. Mr Degambur raised concern regarding directors of the Easterns Cricket Union being involved in misconduct and resigning as a means to avoid disciplinary action:

*"When we get down to directors of this union, there are quite a few instances of wrongdoing. To start with Mr Vonya resigned as President, but before he resigned as President, he was facing charges by this union, which he has still not faced to date. We have instances where independent Directors [Tota Tsotsotso] become involved in operational issues, and they just resign after they get involved."*²⁰⁶

- d. Mr Degambur further accuses ECU of regularly appointing Mr Tsotsotso as an independent Board member in contravention of the MOI which requires that an independent board member must be a "*resident in Ekurhuleni, in the area, in the district*".²⁰⁷ Mr Degambur alleges that Mr Tsotsotso "*lived in*

204 Transcript Volume XVIII, pgs. 2538 – 2539

205 Transcript Volume XVIII, pgs. 2539 – 2540

206 Transcript Volume XVIII, pgs. 2539 – 2540

207 Transcript Volume XVIII, pg. 2540

Sandton and was appointed as an independent Director because he knew Mr Vonya, or Mr Vonya knew him".208

219. RECOMMENDATIONS FROM CLUBS, COACHES AND STAKEHOLDERS

- a. At the conclusion of his oral testimony before the Ombudsman, Mr Nondlwana recommended the following:

"Now on "The Way Forward", because I can see that I'm left with eight minutes. The way forward is that Cricket South Africa once incorporated a Black African Clubs Forum to its Board, with at least two seats on an automatic basis, voted by Black African clubs. This was to address Black African participation and inclusivity across all provinces. I would urge this Commission to consider that. This formation of a Black African Clubs Forum is not in competition with the union that is there democratically, it's to partner with the unions, and this forum is to enable them to go down to those schools, into their various areas, and ensure that schools are playing and clubs are adopting schools. Clubs need to take ownership of the game of cricket in their areas so that we are all working as a unit rather than working in silence, because if you are working in silence, you're not going to be able to achieve anything.

Last but not least, we need to support women's cricket, not as a necessity that is there, we need to support it holistically. I'm glad that now they also have contracts, but the contracts must be the same as the men, because there's no difference. When they go out there, they don't go and represent the country as the wife. They're representing the country as people that we sent to go and win the World Cup, if it had to happen like that. The same support that the men's team has, the women's team must also have the same support. If I'm paid R1 000 as a player, as a man in a man's team, why not give KAPPIE R1 000 as well. What's the difference between me and KAPPIE, because we are both players. Equality will take us far."209

208 Transcript Volume XVIII, pg. 2540

209 CSA SJN Volume XV Transcript, pages 2061 – 2062.

- b. Mr Rajan Moodley also concluded his oral testimony before the Ombudsmans with recommendations to solve the issues in cricket that he had highlighted in this manner:

“We need a complete overhaul of all the structures in cricket. We need to revise every process, every procedure and every system in cricket, because obviously if we look at why we are here today, those things haven’t worked. That is what I feel is required in cricket if it’s going to be achieved. We need a mass capacity-building programme to ensure that the administrators at all levels are properly skilled. We need to redirect resources to where they are most needed. Then cricket must play the role that it’s claiming to play. It must act as a catalyst to bring about the changes that we need...”²¹⁰

- c. Mr Moodley further provided recommendations on the issue of poor cricket facilities that have been provided by the CSA but not maintained accordingly . He expressed the following to the Ombudsman:

“Mr Chairman, we’ve had that before. There are other facilities that are in a worse off state, which were mentioned here before –multi-million rand projects that have been stripped bare. But it’s because of those problems that I mentioned earlier: alcohol abuse, drug abuse – all of those things. Yes, those are socio-economical and societal problems that we are all faced with. But to answer your question, I think we need a bit of radical thinking. We need to start thinking outside of the box, and maybe we need to say: Look, the idea of putting a facility in an isolated place, where you have one caretaker staying in a cottage to look after it, doesn’t work anymore.

I mean, the facility that was mentioned to you earlier by Mr Nondlwana – he spoke about Fernis Street(?). I mean, there they had the caretaker under siege. They told him: Look, you stay there in your cottage and don’t interfere with us. Because his cottage is in one corner of the field and the fancy clubhouse that was built prior to the 2010 World Cup is a distance away. So in the middle of the night, when it’s pitch dark, he can’t go and investigate, even if he hears a noise. He’ll be murdered.

210CSA SJN Volume XV Transcript, pages 2185 – 2186.

We need a bit of radical thinking, to say: How do we then give our people proper facilities, taking into account that we're not going to change the mind set of vandalism, drug addiction and substance abuse overnight. But we can't deprive our people of facilities when it might take many, many years to correct that mind set and to correct those things. We maybe need to look at other models that are being used elsewhere (own emphasis), where facilities are – I'll give you an example. In the middle of Mumbai there is one particular area which they call Maidans – a ground which has about 14/ 15 cricket pitches on it. You can have 14 cricket matches happening there, all at the same time. I'm not saying we must go to that extent, but we could build things that maybe have three or four fields in one complex, where you can concentrate your efforts and have the proper type of security, and those things. I also don't think we can afford to put a cricket field or a cricket pitch in every school, because we all know a cricket pitch needs a lot of maintenance. I told you one of the things I believe in is sustainable development. Today you put in your facility and then tomorrow you can't stop it. We need to start looking at radical ideas to provide our people with facilities, but not look at excuses for not providing them with the facilities.”²¹¹

- d. Similarly, Mr Gandabhai also proposes a solution for addressing the issue of lack of facilities in cricket clubs. He recommended the following during his testimony before the Ombudsman:

“We therefore recommend that during the investigation by the Ombudsman that particular attention be given to finding creative solutions and resources to be allocated to upgrade sporting facilities by convening meetings, such that the cricketing fraternity, provincially and nationally, local government departments, municipal, provincial and national, as well as SASCOC, jointly and severally take responsibility to address that (own emphasis). The outcomes should be such that players, from juniors to seniors, are able to walk to decent cricketing facilities. Provision of facilities must be made at the top of the priority list.”²¹²

211 CSA SJN Volume XV Transcript, pages 2190 – 2193.

212 CSA SJN Volume XVI Transcript, pages 2281.

- e. Furthermore, Mr Sandile Lukhele also made some recommendations to the CSA pertaining to the lack of cricket facilities, equipment and clothing in the rural areas and townships of South Africa. This is what he offers:

"What I personally think will be a way forward - and again this is just my suggestion - I think the CSA should engage local municipalities, they should engage with private companies and the Department of Education about developing facilities in rural communities and schools that prove to be very active in cricket development. I also feel that the CSA should look into adopting cricket-playing schools, to focus on schools in rural areas, so that the talented kids in the area will remain within their demographic areas. As they grow in cricket - we've seen that demographic areas become role models for the young ones that are still coming, as they mature in cricket, and once they make the Proteas, eventually, the rural community will always pride itself on having produced a Protea star ... What if CSA can go to the rural areas, or rather engage with a municipality or the Department of Education to have proper schools. If the school proves to be producing a lot of players, then CSA must adopt that school and have a proper school in the rural areas, so that those kids may grow and mature in cricket while they are still within a familiar environment ...

If CSA is serious about transforming the game, this is where they should start. They should start by levelling the training fields. Let a child that needs incentive, let a child that trains in a proper cricket net compete with a child that trains in Khumbali in the dusty street; let them compete in one thing, after you have given me, or you have given the money for the same facilities that the child in Sandton has. I don't know who is supposed to build facilities for rural areas and townships. I don't know. But I believe that CSA can actually negotiate with the municipalities and that CSA can actually negotiate with the Department of Education. I think something can be done..."²¹³

- f. Finally, in one of their comparative analysis of cricket in South Africa and other developing countries like Sri Lanka, Mr Ndamane and Mr Osmany proposed that -- *"Maybe this Committee needs to provide a solution that says to Cricket South Africa, let's learn from other nations. Let's learn from*

213 CSA SJN Volume XVI Transcript, pages 2326 – 2330.

*what the Sri Lankan schools are doing on that tiny island, to produce – and they have already won the World Cup. We haven't."*²¹⁴

- g. When asked to comment on the issue of communities vandalising existing cricket facilities provided by CSA, Mr Ndamane and Mr Osmany responded in the following way:

*"There's a very important residential area in Port Elizabeth, called Red Location, and I'm involved with volunteers - some of them very prominent in that area. It's an impoverished area and we'll build world-class facilities there and the community is fully behind us. The key to vandalism, Chair - and this is a lesson from Braamfischerville, when you build, you must involve the community surrounding that facility in the build project. You must involve them after you've built. You must involve them in putting content into that facility. Many people make the mistake of putting world-class facilities that become White elephants with no content. By content I mean programmes that will run, twenty-four seven if you can, from the local community. And then communities from outside will come and join, like they did in Braamfischerville. We will do that in Red Location. We've given them that lesson inshala to building more facilities. Because if you don't do that, this country will see a rise in crime, will see a waste of youth potential, will see a destruction of our nation. No, Chair, we must build facilities."*²¹⁵

- h. Commentary

It is evident from the above recommendations that cricket stakeholders are enthusiastic about cricket and they are committed to assisting in ensuring that the game of cricket is made accessible to all. The recommendations highlighted above are a small portion of the many solutions proposed by stakeholders in the SJN hearings. In the circumstances, the Ombudsman strongly encourages the CSA to consult regularly with cricket stakeholders,

²¹⁴ CSA SJN Hearing Volume XVIII, page 2664.

²¹⁵ CSA SJN Hearing Volume XVIII, page 2677 – 2679.

i.e develop questionnaires, facilitate talks, and provide mechanisms where those involved in cricket may make suggestions.

CHAPTER SEVEN

RESPONSES FROM THE ALLEGED PERPETRATORS

Player Accommodation

220. At page 4093 of the Transcript Mr Prinsloo states the following regarding player accommodation facilities at the Northwest Cricket Union:

“ACCOMMODATION OFFERED TO PLAYERS

North West Cricket did not award a contract to any player which included or made provision for accommodation as part of any obligatory contractual purpose. North West Cricket, however, made some facilities available to be used as accommodation by the players who may need to be provided with accommodation. It was offered completely free of charge. Some of these facilities were indeed situated under the ninth pavilion of the cricket stadium. This happened before my time, but it’s my understanding that it was occupied by players of all races, including White players who went on to represent the South Africa A team.”

“MR Selowa makes allegations that the White House was reserved for White players and that it was superior to the other accommodation available to players at North West Cricket. The submission by Mr Selowa (indistinct) that the White House effectively confirms North West Cricket’s submission that in fact the accommodation was administered to all players on the same terms and irrespective of race. North West Cricket denies the allegation by Mr Selowa, for the reasons detailed in paragraphs 70 to 75.”

221. At page 4095 of the transcript Mr Prinsloo is asked the following question by Adv.

Ngqele:

ADV NGQELE: Mr Prinsloo, I know this was obviously before your time as CEO at NORTH WEST, but we heard allegations from DR OUPA NKAGISANG, we heard from MR MPHONGA SELOWA as well as MR PAPI MBESI who all stated that no White players lived in the White House and that it was reserved for Black players. They gave us examples of those Black players who lived there at the time. Would you perhaps know which White players lived in the White house?

MR PRINSLOO: No, I don't know which White players stayed in the White House. I do know that there were White players staying under the main pavilion. That I know from what I've heard from interviews I had with DR FAUL, and so forth, because that happened during his time. I cannot comment with authority on whether there were White players in the White House.

ADV NGQELE: So is the union disputing that there were only Black players in the White House? Is the union disputing that or stating that they don't have knowledge of that fact?

MR PRINSLOO: No, I don't have knowledge if it was only Black players staying there. That's what I'm saying.

ADV NGQELE: Okay, thank you.

CHAIRPERSON: Who would be in a position to rebut that from the union, do you know?

MR PRINSLOO: I think that DR JACQUES FAUL was the CEO during that time, and after him MR HEINRICH STRYDOM. We can approach them to make a submission in that regard.

222. Dealing with another dwelling offered as accommodation for players in Northwest, Mr Prinsloo states as follows at page 4099 of the transcript:

"MR PRINSLOO: Right, if I continue on page 20 paragraph 75.

"The Elgro Hotel remains a reputable private hotel in Potchefstroom. The owner is a long-standing supporter of North West Cricket, and without this contribution North West Cricket is otherwise not able to offer the players a place to stay free of charge. This accommodation, criticised by Dr Nkagisang, is in fact carpeted and properly furnished complete with a fridge, mini stove and complimentary cleaning services twice a week. Some of the cricket players, however, vandalised the rooms, as noted in the written submission by the Elgro Hotel itself. It has since been available and allocated to the Leopard Rugby Union players. In this regard see the letter from the Elgro Hotel, annexed hereto as NWC5."

223. Mr CJ Van Heerden, made the following remarks in his affidavit concerning the accommodation of players at the Free State Cricket Union:

"34) The Academy players were not paid or under contract . We assisted them with free accommodation. This was meant to assist players, until they could qualify for contracts. It was under no circumstances that we meant this in bad faith"

"35) The accommodation was unserviced and the players had to keep their bedrooms and kitchen clean. But as the saying goes 'no good deed will go unpunished' "

LACK OF DIVERSITY EDUCATION IN CRICKET

224. Mr Adward Khoza testified on behalf of CSA in relation to CSA's role in addressing diversity concerns within the Proteas mens Team. His evidence as captured in his affidavit is as follows:

"103. in the 1990s, a Transformation Charter for cricket in South Africa was developed and various seminars and speaking sessions in each province were held to allow people to give their views on cricket.

104. Professor Andre Odendaal, who headed the Transformation Committee at the time then had a two-day meeting with the men's national team to explain the importance of transformation. Similar meetings were also then had with provincial teams.

105. The Transformation Charter was a pledge that cricket recognised its past and is going to change. CSA set targets to make sure that transformation was practically implemented. Within three years of this happening, the number of first class players of color increased to over forty. This was a significant increase, because prior to the setting of targets, the provincial teams consisted only of a handful of players from historically disadvantaged communities.

106. Regrettably, these seminars did not continue at regular intervals. In 2010, the national men's came together for a 'culture camp'. There were thereafter a number of diversity training sessions and recently a further 'culture camp'.

107. The aim of the 'culture camps' and diversity training sessions is to, amongst others, build an authentic, diverse and inclusive sense of identity.

108. Lack of team identity, racial divisions, performance challenges and the lack of defined team culture were identified as the aspects that needed to be addressed with world renowned specialists at the 2010 camp. The development of a team culture was part of what the camp was designed to archive.

109. the late struggle veteran Ahmed Kathrada was one of the facilitator and experts on cultural identity and inclusiveness who worked with the 2010 squad.

110. Since the 2010 'culture camp', both the national men and women's teams have had several other diversity training sessions to address matters of diversity and inclusiveness.

111. The impact of the 'culture camps' are measured through, amongst others, Proteas Tour Review Surveys. These surveys monitor, amongst others matters of diversity and inclusion within the team environment. Players are give an opportunity to anonymously provide input regarding how they experienced the environment. The results of the surveys are then discussed with team management. To this end, I attach a copy of the Proteas Team Culture Report ("the Report") marked CSA55, which was prepared by Volvo Masubelele who is CSA's current Team Manager.

112. The Report was prepared after the 18 – 22 August 2020 'culture camp'. It is clear from the Report that CSA is trying to integrate and provide support to players of differing social classes and racial backgrounds.

113. Hard conversations during the 'culture camp' were had around the issues of trust, racial discrimination, lack of transparency, breakdown in communication and disconnections in lived experiences.

116. At the same time, CSA recognises that culture camps are not an end in themselves. Rather, a key element is to ensure that what is discussed at these culture camps is actually implemented. This is a responsibility of all stakeholders – the players, team management, CSA management and the CSA Board."

SACA's testimony on Diversity Education

225. In its submission dated 6 May 2021 to the Obudsman SACA states as follows:

"9. SACA INITIATIVES 9.1. PDP Process

With a view to taking initiative in constructively dealing with issues of discrimination, diversity and development, specific Initiatives have been identified by SACA. These initiatives focus on individual and team/collective intervention:

The issues raised in paragraphs 5.2.2.1 and 5.2.3 relate to the impact of Contracting, Selection and Expectation on players. The SACA Exco identified the failure of team management to engage players on their career plans/opportunities/expectations as a key failure that leads to discontent in this regard. To this end, SACA has insisted that a Player Development Plan (PDP) process be embarked upon for each player. This plan sets out a process to be followed

9.2. Collective Team Diversity

9.3. Individual Diversity Modules bi-annually with each player so as to ensure that the player is aware of his/her standing in the team and the performance expectations thereof.

CSA has agreed to this initiative, and the relevant clauses have now been included in the Provincial Contract to commence in the 2021/2022 season. We are yet to review the effectiveness of the PDP at domestic level and more importantly need guidance on how these processes can and should be enforced.

During the latter part of 2020, our members requested that SACA assist with addressing diversity issues within the team context. The BLM movement highlighted race and diversity concerns within the team context and players of all races indicated a need for intervention. The request was again tabled and discussed at the SACA AGM held in December 2020.

As an organisation, SACA embarked on a process to source appropriate professionals in the field to provide teams with the relevant skills and training, and to develop a plan to be implemented. Two key obstacles were identified during this process were Covid and cost.

Covid has resulted in a delay in the implementation of this initiative to September 2021 when the new playing season starts. The SACA Executive Committee has also set aside an amount of R1million to fund this initiative. This is a significant sum of money for SACA, and is evidence of the commitment to this process.

We will however look to collaborate with the Provinces to assist in funding the initiative in the long run.

Player education is a key element of the SACA Player Plus programme. A component of the programme is a module that focuses on Respecting Differences, which provides players with information to assist them understand and embrace diversity.

SACA has launched an online education platform and this module, along with a number of other prescribed modules, is now available to all players. Players are encouraged to engage with their PDMs, the platform and various ad hoc workshops available to them.

Please visit the site on <https://player-plus-online.saca.org.za/site/signin>, and use the Username: CSASJN Password: CSASJN and then under Personal Development Topics click the Respecting Differences Tab...

226. Mr Breetzke of SACA elaborates on SACA's initiatives at educating its members about diversity management at paragraph 200.1 to 201 of its affidavit to the Ombudsman filed on 13 September 2021.

200.1 The PDP initiative has been included in all player contracts for the current season;

200.2 The Collective Team Diversity initiative will commence in September 2021 when the Provincial Teams meet for the commencement of the new season. We have already organised that Gauteng and Free State will be the first to receive the initiative, and the management of the Provincial have given their full commitment to assisting us in this regard.

200.3 The individual Diversity Modules are active, an introduced to players through their PDMs when engaging on the specific modules.

200.4 The Cricket Equipment initiative has commenced with the identification of clubs throughout South Africa that require support, and we have already started receiving equipment from players.

Funding of these initiatives is always a challenge, especially given the perilous financial state of cricket in South Africa. However, the SACA Player Executive Committee has earmarked R1m to fund the Collective Diversity initiative. The sustainability of funding will continue to be a challenge.

201...Our policy with topics such as Diversity is that they are best done in person due to the inter-personal and relational aspects involved.

That said, the online platform is designed to supplement the work done at the coalface by the PDMs. SACA wants players to have relevant resources at their fingertips, content that they can engage with at their own pace and time. This access point has become particularly valuable under Covid-19 Pandemic conditions. The online platform – and in this the progress report of each player relevant to each module. This is typically read together with each individual player's Athlete DS profile..."

227. Dr Jacques Faul testifying on his behalf before the Ombudsman stated the following at page 4441 to 4444 of the transcript, about education on diversity with cricket:

...face – I also need a mirror in front of me. I came here, and I don't know if the other CEOs - it doesn't matter, the national CEOs – I was involved for 18 years. I wanted to come here and I want to thank 5 you, I really, really want to thank you from my heart for this opportunity. But I also have to face what we got wrong. I also have to sit in front of you and say: Okay, what could we have done better? I'm honestly going to say to you that we must have been very naïve to think that if we have transformed on a certain level, if we have majority Black Boards or we have a majority management that are people of colour, there is not racism. Because if I listen to all of these tragic stories, there is. We haven't done enough. We haven't done enough to provide a mechanism outside the management. For us to now say: But, no, they never came to me. There must have been reasons why they never came to us. That, to me, was the first thing that I realised and we also have to apologise for that.

Then, sir, we're not using the opportunity when we work with kids in teams, to teach them diversity. If I were asked and you say: FAUL, you can go back to 2003, you've now had the SJN, if there 5 was an SJN time machine and I could go back, I would go to every single coach and team and I would tell them: Teach people about diversity. I think the racism they experience - we didn't realise that people would come from such diverse backgrounds. I would have a person, a kid who would play for HAMMANSKRAAL – and I'm not going to mention the high-profile schools because it's unfair, but there would be a person who would come from a good private school, we would put them into one team, and you can imagine the difficulty for these players. I take you back to my story when they said: I've never had shoes, I've never slept on a bed. We missed the opportunity. We, as administrators, missed the opportunity. It should be compulsory that you do diversity training. Sir, if you put 11 kids in a team and they don't know each other and they field and they take a wicket, they will all cheer and they will all hug each other. That

is the power of sport. We've missed the opportunity, which I'm sorry for. Also, I am a man that was blessed to learn. I think we should do more independent assessments, climate assessment of staff and players, so that we can get a real picture. Because if you have my future in your hands, I'm not going to say to you: I feel discriminated against. That's the worst thing I could do. People want to play. That is something I want to say. And then, sir, since you've started this I had to do a lot of introspection. I had to. And I am sorry to say today that we've neglected women's cricket. I'm sitting here and I'm actually ashamed of how much more we should have done. I even asked sponsors: Will you sponsor the women? We now ask why did we celebrate men that much and not women? I have to be honest, I think CRICKET SOUTH AFRICA got it right first; they do it right. But where I am, at affiliate level, I don't think we do justice..."

KZN CRICKET RESPONSE TO MR BEN MALAMBA

228. In response to Mr Malaba's complaint about an alleged pay discrimination perpetuated against him, by KZN Cricket Mr Heindrich Strydom stated as follows (at page 3820 of the transcript):

"MR STRYDOM: I am the Chief Executive Officer of the KZN CRICKET UNION and duly authorised to propose this affidavit on behalf of both bodies, the cricket professional entity as well as the amateur entity. In response to MR BEN MALAMBA's transcript, as well as his unsigned affidavit, my response is limited to the issues raised by MR MALAMBA insofar as they relate specifically to KZN cricket. In essence, what we could pick up is there are two issues that he raises, namely the salary issue of 2002 and then problems that he encountered with his work in the southern part of the province. He's worked all these years and he's still working. If we can look at paragraph 27 of MR MALAMBA's affidavit, my response to this claim is limited due to the fact that a period of nineteen years has passed since 2002 and the records of salaries paid all those years ago are no longer available. Therefore I am unable to verify his allegations in regard to the discrepancy in his salary at the time. I have, however, been able to inspect his employee file and did not find any record of any complaint or other communication relating to his salary at the time. MR MALAMBA is currently still employed at the KZN CRICKET UNION and I can confirm that I have not received any complaints from him regarding his salary during my time at the helm."

229. At page 3822 of the transcript Mr Strydom states the following:

"MR STRYDOM: If I can go back to his affidavit where he said: To my astonishment I discovered that coordinators were getting R15 000 and more than me at the time. Just to my knowledge now, and having been involved in the cricket system for quite a while, first of all there are differences between the different unions so there is no - yes now, lately, there has been a funding model where there's activity based funding, where there's a guideline for unions to use. I'm not even sure if it was in place back then. Also, just on that, I think most of our coaches now are only earning in the region of R15 000 per month. So in 2002, in my opinion, I don't think it could have been in that same region as it is now, nineteen years later. In terms of his complaints, it's definitely something I would like to take up with him after this has been concluded. But definitely in my dealings with him over the last four years there have not been any complaints or any issue brought to my attention by him."

KZN CRICKET RESPONSE TO AYAVUYA MYOLI

230. From page 3850 to 3852 of the transcript to the evidence before the OTO

Mr Strydom states the following regarding how the Union handled Mr Myoli's alleged racially motivated assault:

"MR STRYDOM: In my affidavit in terms of MR MYOLI's affidavit, I basically responded. Again it was sort of a year-and-a-half before I started at the KZN CRICKET UNION. My first dealings with it were in 2020, when there was an article written on the matter. It basically came to light in the media in 2020. What I did - and my response is based on my own access to records at the KZN CRICKET UNION, my own investigations and enquiries that I managed to do, including MR DE WET, who was the CEO at the time and MR FAEEZ JAFFAR, who was the President of the KZN CRICKET UNION. They both have knowledge of the various aspects of this matter. If I can maybe highlight some items in my affidavit: "From such investigations Mr Frylinck's disciplinary hearing was dealt with in terms of the HR Policy of KZN Cricket at the time. The incident which gave rise to Mr Frylinck's initial suspension and disciplinary hearing appears to have been treated as an off-field incident following a heated argument between Mr Myoli and Mr Frylinck, both employees of KZN Cricket at the time, and which argument culminated in the assault by Mr Frylinck on Mr Myoli." I would like to point you to - and I don't know if I can skip to the emails that I sent on this morning. It's basically the process that I had in 2020, and when the article came out I actually phoned MR MYOLI. I had known him before then, as he was in NORTHWEST at the time when I was at NORTHWEST. Basically what

happened is I phoned him and I said: Aya, if you can please - in terms of the media article, how can I help and how can we resolve this matter, because I certainly don't want things hanging in the air and I would like us to move forward in an amicable manner? We had various interactions, various conversations. Then I basically summarised everything in an email, which I would like to read, and then also his response to it. MR CHRIS NENZANI was the President of CRICKET SOUTH AFRICA at the time and our own 5 President, MR BEN DLADLA, asked me to please look into the matter and see how we could resolve it. So if I can read my email – is that fine?"

231. Mr Strydom goes further to provide the following explanation at page 3860 of the transcript and then we referred to the various Codes of Conduct and why and how we didn't apply – or why we applied the KZN Cricket Code of Conduct. Franchise players were basically employed by the franchises and subject to the franchise's disciplinary code, so that is the code that we used. *"After serous consideration of your case I can understand why you remain aggrieved."* I think in our conversation I acknowledged that we could possibly have done a few things better, so I said: *"I can understand why you remain aggrieved. You did not testify in the process and the findings and sanction were not communicated."* I think for us the big lesson is that the sanctions weren't communicated with MR MYOLI at the time, so he wasn't aware that ROBBIE got a monetary fine or community service and a written warning. We could possibly have communicated that to MR MYOLI.

232. At page 3869 to page 3871 of the transcript, after reading a letter prepared by Mr Myoli to Mr De Wet of KZN cricket Mr Strydom stated the following:

"From what I could gather, nowhere there did he say it was a racial incident. He said he was physically assaulted and according to that that was how the notice was then treated and also the disciplinary hearing.

MR TOM: Mr Strydom, just look at the third-last paragraph, which says: "This is also a contravention of Cricket South Africa's values, which include accepting South Africa's diversity as a strength." How do you understand that statement? I know you were not part of KZN Cricket at the time, but we just want to understand what your understanding is of that?

MR STRYDOM: Well, in my mind I think SOUTH AFRICA is a very diverse country and it basically means that we need to work as a team. That's what he probably means there. Because he says: "It cannot be desirable for the team," which to me basically says that we must be able to work together as a team.

ADV NGQELE: It's so unfortunate, because you were obviously not the CEO at the time and we're putting all these questions to you. I suppose we might have to follow up with PIET as well, who was the CEO. I just want to understand from you. You were saying that there was an independent advocate at the disciplinary hearing. If you go to MR MYOLI's paragraph of his affidavit, he says: "Even though I did not know much about the disciplinary proceedings, I thought that it was weird that I, as the complainant, was not in the disciplinary hearing but was made to wait outside." Are you able to see the paragraph that I'm speaking to?

MR STRYDOM: Yes.

ADV NGQELE: I guess it does go back to where you acknowledge in your affidavit that it wasn't a transparent process.

MR STRYDOM: Like I said, I agree in hindsight that maybe it could have been more transparent and that MR MYOLI should have been kept informed, first of all in terms of the plea bargain that happened and then also the sanctions that were imposed on MR FRYLINCK..."

KZN CRICKET UNION RESPONSE TO ROGER TELEMACHUS

233. Concerning the appointment of Mr Smith as a coach for the KZN cricket club, Mr Strydom stated the following:

MR STRYDOM: Yes, sir. Maybe I can just talk about the process that we undertook to fill that position. Basically in terms of our employment policies we have the necessary processes and procedures that we have to follow when making appointments. I want to also maybe just state that from a KZN cricket point of view governance is a big thing for us, and we've been on the CSA scorecard. Quite humbly I would like to say we've been the number 1 union for the past three seasons, so it's something that we really put a lot of emphasis on in terms of our governance structures and having the right checks and balances in place with all our processes. So in terms of this specific process we advertised the position on a national basis. Maybe just also a bit more background, the KZN Inland team had a coach in place whose contract came to an end at the end of April as well. So we opened up the application for the post nationally to see who would like to apply and what possible candidate we could attract. We opened it up nationally and

got quite a few applications. The committee then short-listed five candidates, and MR TELEMACHUS was one of those candidates. We then had an interview process conducted by the panel. Unfortunately on the day of the interviews I had a COVID scare so I couldn't attend those interviews, but the committee carried on with the process. On the committee, if I can maybe mention, we have our Convenor of Selectors, who is also the Cricket Committee Chairman, we have the Cricket Services Manager for KZN Inland, we have the Coaching Manager for KZN Inland and then also our HR Administrator for the KZN CRICKET UNION. Maybe also to add from a racial point of view, all four of these committee members were people of colour. They conducted the interview process. I then got the feedback from them and they all felt that MR MICHAEL SMITH, who we then appointed, was the best candidate. I basically presented that to the Cricket Committee and they were all happy for us to carry on with the appointment. So from a procedural point of view I basically then had to finish up the contracts and sign off with MR MICHAEL SMITH. We then also had the process of ...²¹⁶

234. Upon being further asked to explain the appointment of Mr Smith, Mr Strydom responded as follows to Adv. Ngqele.

"ADV NGQELE: Sorry, while you are still mentioning MICHAEL SMITH's selection for the position, in MR TELEMACHUS' affidavit he says that he was the most qualified on the short-list but was still not chosen. Would you say that he was more qualified than MR MICHAEL SMITH?"

CHAIRPERSON: He gives the argument ...

MR STRYDOM: I think we had requirements for the position, which was to be a Level 3 coach. So all the candidates who were on the short-list qualified according to those requirements we had. Yes, ROGER has a Level 4 coaching qualification, which is a big positive, but we had also worked with MR TELEMACHUS for quite a long period so we knew what he was going to bring to the table. In terms of the committee's feedback with the interview process they just felt MR SMITH's presentation was very impressive, and he also adhered to all the requirements that we had so that's why they felt they wanted to go with MR SMITH."²¹⁷

216 Transcript at page 3850 to 3852.

217 Transcript at page 3839

235. Upon being asked by the Ombudsman whether race had anything to do with non-appointment of Mr Telemachus to the position in question:

"MR STRYDOM: I think first and foremost the process that we followed was a very open and transparent process. As I mentioned, we had our committee that did the interviews. We didn't just look at the issue of experience, we looked at all the issues, all the information we could obtain. First of all, feedback from people that we spoke to, feedback from players, and then during the interview in terms of the impressive interview that MR MICHAEL SMITH managed to give. Then also, obviously with MR TELEMACHUS we have a track record, where he has been employed with the KZN CRICKET UNION for the past seven years. All of those things were considered. Then according to all of that we made an appointment of the person we felt was the best candidate to take KZN Inland forward.

...

MR STRYDOM: On the committee, the original committee would have been myself, our Cricket Committee Chairman, who is a Black person, the Cricket Services Manager at KZN Inland, who is a Black person, the Coaching Manager at KZN Inland, who is a Black person and then also our HR Administrator, who is also a Black person. The day the interviews were conducted they were actually conducted by four Black people. I couldn't attend because of a COVID scare, so the committee conducted the interviews and made their recommendation to me a few days later. So basically it was done by four Black people.

CHAIRPERSON: Yes, okay..."²¹⁸

APPOINTMENT OF SENIOR STAFF AT CSA

The appointment of Graeme Smith

236. Mr Pholetsi explained CSA's position regarding the appointment of Graeme Smith as follows:

218 Page 3840 to 3841 of the transcript.

"56. At paragraph 2.6 of the proposed resolution, it was recorded that "[t]hrough this recruitment process a suitable candidate has been identified." This paragraph also went on to record that the suitable candidate would come at a high financial cost to CSA (namely, R4 million) which costs were in line with similar appointments made by the English Cricket Board ("ECB"), Cricket Australia ("CA") and the West Indies Cricket Board ("WI"). RemCo was requested to approve the recommendation by CSA Management to appoint a DoC at remuneration of R4 million per annum.

57. On 14 October 2019, a draft of this resolution was submitted to the then COO, Naasei Appiah, for final review. The COO suggested changes, as is evident from the chain of emails attached as annexure "CSA13". The reference to the ECB, CA and WI at paragraph 2.6 of the resolution were based on Mr Moroe advising Mr Gubevu that the R4 million was based on global standards.

58. After having received the then COO's input, Mr Gubevu sent it on to Shirley Zinn, Dawn Mokhobo and Beresford Williams (Board RemCo members) and also to Mr Moroe, the CFO, the COO and the Company Secretary. Shirley Zinn approved the proposed RemCo resolution on the same day and Beresford Williams approved the resolution the next day, as is evident from the emails attached as "CSA14"

59. On 15 October 2019, Shirley Zinn requested that the position be advertised and that two candidates (one for the DoC role and one for the role of Convenor of Selection) be presented to the board as is evident from the email attached as "CSA15".

60. After Mr Gubevu received instructions from Mr Moroe, who had consulted with RemCo members, Mr Gubevu arranged for adverts for the DoC position to be prepared.

61. On 18 October 2019, the advert for the DoC position was published on, amongst others, PNet and CSA's website and also distributed to all affiliate members of CSA. The closing date for the DOC position was 31 October 2019. A copy of the advertisement for the DoC is attached marked "CSA16".

62. On 18 to 20 October 2019, there were interactions between Mr Moroe and Mr Smith. Mr Moroe indicated to Mr Smith that a formal process was being undertaken, that Mr Smith was still his preferred choice and that Mr Smith should send his CV to Mr Gubevu.

63. On 24 October 2019, five CVs for the DoC position were received from PNet. PNet sent two further CVs to CSA on 31 October 2019. Ten CVs were sent directly to the CSA platform (careers@cricket.co.za).

64. On 30 October 2019, Mr Smith emailed his CV to Mr Gubevu. A copy of this email is attached as annexure "CSA17".

65. On 31 October 2019, Mr Gubevu forwarded Mr Smith's email to Chantel Moon ('Ms Moon').

65.1. Mr Gubevu, having not been privy to the instruction given by Mr Moroe to Mr Smith on 20 October 2019, was not sure why Mr Smith had emailed his CV to him and neither was Ms Moon.

65.2. Mr Gubevu then speculated that it might be for the DoC position, because media articles were suggesting that Mr Smith was going to be appointed.

65.3. On that same day, Mr Gubevu, on Ms Moon's request, sent an email to Mr Smith asking him to send his application together with a cover letter, comprehensive CV, copies of his SA ID, his qualifications and at least two contactable references to "careers@cricket.co.za". Mr Smith was also told that the closing date for the application was 31 October 2019.

65.4. Mr Smith then submitted his documents, including his CV.

66. Mr Smith's timeline sets out the events leading up to his interview.

66.1. On 6 November 2019, Mr Smith was told to attend an interview.

66.2. On 7 November 2019, Mr Smith was told by Ms Moon that he needed to do a 15 – 20 min presentation dealing with certain issues:..

...

67. On 7 November 2019, Mr Gubevu was advised in writing by Mr Moroe that he was being formally transferred from the HR Department to the Transformation Department and Mr Gubevu's understanding was that from that date he was to have no involvement in HR matters. A copy of this letter is attached as annexure "CSA18".

68. The short-listed candidates were to be interviewed by a panel consisting of Tebogo Siko, Beresford Williams, Dawn Mokhobo, Jack Madiseng (all Board members) and Mr Moroe ('the Panel').

69. On 7 November 2019, Jack Madiseng declared a conflict of interest in respect of Hussein Manack ('Mr Manack'). He advised that while he was not friends with Mr Manack, he knew him very well and he had been part of the team that nominated Mr Manack as a selector for CSA.

70. On 8 November 2019, four short listed candidates were interviewed by the Panel. The short listed candidates were:

70.1. Corrie van Zyl;

70.2. Mr Smith;

70.3. Mr Manack; and

70.4. Dave Nosworthy.

71.1. Mr Smith gave an oral presentation during his interview and answered the questions that he was asked to prepare on.

71.2. The other shortlisted candidates made formal presentations during their interview.

72. On 12 November 2019, Mr Moroe sent Mr Smith an email in which he stated the following:

“As mentioned to you Graeme that you are at the moment the preferred candidate but before I can formally make the offer to you. I would like you to fly in on Friday morning so you can meet with our President, Head of HR and myself, so we can give you not only the mandate but also what is expected of you in this role. So you can gauge if you still want to go ahead or not! Post this meeting then you and I will sit and go through what needs to be in your employment offer letter then followed by your employment contract. So in a nutshell I'm in agreement but the flow of process is key. What I need from you at the moment so we can move fast on all this is to avail yourself so we can fly you in on Friday morning and you can fly out same day. I would really like to make announcements around this immediately.”

73. Mr Smith responded to Mr Moroe's email on the same day. In his email, Mr Smith expressed his frustration with the process and explained that it was crucial for them to get into the agreement phase. He indicated to Mr Moroe that he was under extreme pressure with other business commitments and could not wait any longer. A copy of this email is attached marked “CSA20”.

74. On 14 November 2019, certain sections of the media were already reporting that Mr Smith was going to be appointed as the DoC. But, by that stage, Mr Smith had still not yet received a formal offer or draft agreement.

75. Following the media reports, Mr Smith sent an email to Mr Moroe in which he expressed his frustration with, and disappointment in, the process that had been followed by CSA in the DoC's appointment. Shortly after sending the email to Mr Moroe, Mr Smith issued a media statement recording that he had withdrawn his interest for the role. He added that he had not developed the necessary confidence that he would be given the

level of freedom and support to initiate the required changes. Copies of Mr Smith's email and Tweet are attached marked...

76. According to Mr Smith's timeline, on 14-15 November 2019 Chris Nenzani ('Mr Nenzani') – the CSA President – called Mr Smith and sought to persuade him to change his mind.

77. On 21 November 2019, in response to Mr Smith's withdrawal, Jack Madiseng, wrote to the Panel and Ms Moon as follows:...

78. Also on 21 November 2019, in response to Jack Madiseng's email, Beresford Williams wrote as follows:..

"Agree that the current situation needs our undivided attention. The DOC is key...We need to make a call on the next best candidate or go out for other options. The cricketing vacancies needs to be filled, we going into a tough series against England and Australia..."

79. On 22 November 2019, I understand that Mr Smith met with Mr Nenzani at the Cullinan Hotel in Cape Town. Mr Moroe and Shirley Zinn (also a board member) attended the meeting as well. During the meeting, those attending sought to persuade Mr Smith to take on the DoC role.

80. It is appropriate to contextualise CSA's continued efforts to recruit Mr Smith.

80.1. Mr Smith was the captain of the Proteas team for 11 years.

80.2. He therefore has an extensive local and international reputation, which CSA considered would be commercially valuable.

80.3. During 2019, CSA was in a precarious position and had been for some time. The ongoing political infighting at CSA, its decision to revoke the media's accreditation for the Msanzi Super League (an act for which CSA had received heavy criticism) and Standard Bank giving notice of its intention not to renew its sponsorship and threats by other sponsors to pull out, had severely damaged CSA's reputation.

80.4. The CSA Board and management, including Mr Nenzani, therefore believed that appointing Mr Smith would assist to revive CSA's tarnished reputation and to develop CSA and South African cricket.

81. After the meeting, Mr Smith reconsidered his decision to withdraw from the process..."

237. Mr Nenzani submitted a statement to the Ombudsman on 9 September 2021, responding to questions posed by the Ombudsman concerning the appointment of Mr Smith and Boucher. Below is Mr Nenzani's explanation of the rationale behind Mr Boucher's appointment:

"At the conclusion of the ICC World Cup in England in 2019 and given the catastrophic failure of the Senior Men's National Team, the Board mandated the then CEO and his executive management to develop a model for a new national team management structure. That structure was presented and adopted by the Board in early August 2019.

The new management structure gave the Director of Cricket the authority and responsibility to appoint the National Team Director (National Coach), the Assistant Team Director, the National Selection Panel Convenor, amongst the appointments he could make. This did not give him powers not to follow due appointment processes. It does, however, happen that head-hunting becomes necessary in the appointment of coaches. This had happened in the past when CSA appointed coaches.

The appointment of Mr. Mark Boucher should be viewed in the relevant context of the time. He had been the most successful coach in the South African professional cricket for two full seasons with the Titans Franchise. South Africa had experienced an embarrassing monumental failure at the Cricket World Cup in England in 2019. The morale of the team, the organization and most importantly that of the cricket supporting public was very low. The inbound English Tour for the 2019/2020 summer was two weeks away. There was a need to have in place a permanent coaching structure ahead of the tour and to enhance team stability. At the time the governance of the organization was going through a period of turbulence, with the Board dealing with many crisis situations. To have a settled national team was extremely important."

238. Mr. Moseki also discusses Mr. Boucher's appointment from paragraph 125 to 131 of his affidavit. At paragraph 125, he confirms that Mr. Boucher was appointed by

Mr. Smith in terms of clause 12.6 of his employment contract. He specifically states:

"125. As I have indicated above, clause 12.6 of Mr Smith's contract gave him the power to appoint the members of staff reporting to the DoC, acting in consultation with the CEO. This included the Head Coach.

"125.1 This was unsurprising given the role of the DoC. Even if somebody else was appointed in this position, such person would have been responsible for appointing the Head Coach and the support staff for the national teams.

125.2 Moreover, it is not uncommon in international sport not to advertise the positions of Head Coach and his/her support staff. Often relevant persons are head hunted and appointed to these roles. For example when Russel Domingo became the Head Coach of the Proteas Men's team, the position was not advertised, he was requested to take up the role."

239. At paragraph 128.2 of his affidavit Mr. Moseki refers to an email by one Mr. Richardson who seems to admit that the recruitment and selection Manual of CSA was not followed in the appointment of Mr. Boucher. In this regard Mr. Moseki states:

"128.2 In the same email, Mr. Richardson provides Dr Faul with a summary of events which led to Mark Boucher's appointment. He records that the "normal process for the appointment of the coaching staff, i.e., the advertisement of the person and the full interview process would not have been possible in these circumstances".

128.3 Mr. Richardson makes the point that England was due to arrive in South Africa on or about 14 December 2019 and the first match was scheduled to take place on 26 December 2019."

240. From paragraph 129 to 131 of his affidavit, Mr. Moseki testifies as follows:

"130. It would not be appropriate for me to enter this debate, save to say the following:

130.1. *It is unsurprising that these debates occur. Appointments to any prominent sporting position – and particularly head coach of a national team – will always spark differences of opinion.*

130.2. *Coaching qualifications are but one factor, amongst many, that are taken into consideration when hiring an appropriate candidate. There are a number of other factors that are taken into account. These include, coaching qualifications, coaching record at franchise level or elsewhere and playing experience at domestic or international level.*

130.3. *Any such appointment would have to weigh up these sorts of considerations and reasonable people could disagree on the appropriate outcome.*

131. *However, where witnesses have suggested that Mr Nkwe was demoted, this is not accurate. Mr Nkwe was appointed as the Interim Head Coach only for the India series – on a caretaker basis and this appointment terminated at the end of that series."*

Mr Graeme Smith on the appointment of Mark Boucher

241. Mr Graeme Smith submitted an affidavit wherein which he provided the following explanation about Mr Boucher's appointment.

"74. As regards Mark Boucher's appointment, I understand that CSA and Mr Jacques Faul will provide a detailed report to the CSA Board on the appointment of both myself and Mark Boucher.

75. I attach a detailed timeline relating to Mark Boucher's appointment (and my own appointment, given that the two were related)...

...

81. Thirdly, my understanding is that the appointments of Mr Boucher and Mr Nkwe were approved by the CSA Board, the CSA President, the Acting CEO, the CFO, HR, Legal and the Company Secretary. On 13 December 2019, one-page letters of appointment for Mr Boucher and Mr Nkwe were prepared by HR manager Chantelle Moon and signed by the Acting CEO and the CFO. On the same date Ms Moon sent an email to the Acting CEO, the CFO and the Company Secretary with the letters of appointment for Mr Boucher and Mr Nkwe as follows (see attached hereto marked "GS9"):

“Dear All,

Please find attached offers as discussed. Legal has reviewed as well.

I will work on the contracts this weekend as discussed with Graeme, we felt the issuing of the offers were key for today.

Warm regards,

Chantel Moon”

82. A draft press release confirming the appointments of Mark Boucher, Enoch Nkwe, Chari Langevelt, Linda Zondi, Justin Ontong, Ashwell Prince, and Volvo Masubelele was approved by the CSA President, so one would naturally assume their appointments were also approved by the CSA Board.

83. If the process was indeed flawed in some manner, I would have expected the Board or the President of the head of HR or the Company Secretary or legal department to have made it known to me at the time. I received not one objection, in fact the opposite. HR, Legal, Company Secretary, the President, the Board, the Acting CEO and the CFO all endorsed the process and the appointments. Indeed, I received a whatsapp messages from the CSA President Mr Nenzani on 16 December 2019 (after the various appointments had been made) saying “Continue the good work’.

242. Mr Graeme Smith concludes:

“95. Finally, it is important to remember that Mark Boucher had been one of the most successful coach[es] in terms of performance in the years leading up to his appointment. Since his appointment as head coach of the Titans in 2016, he led the Titans to no less than five domestic titles - two One Day Cups, two T20 Challenge titles and one four-day Sunfoil Series trophy. Apart from that, he also had substantial international experience of having played at the highest level in different conditions across different continents over a prolonged period of time. Hence, his ability to maximise the strengths of different players in varying conditions across the globe was an immensely valuable attribute that put him ahead of other candidates at the time.”

Easterns Cricket Union on cricket facilities

243. Mr Landsberg on behalf of the Easterns Cricket Union testified as follows:

"MR LANDSBERG: Thank you, Adv Fumisa. In terms of MR NASH DEGAMBUR, I think I also did put in writing a response to his testimony. I do not have a lot that I refuted, bar one correction pertaining to what he submitted before you, Chair. That had to do with the allegation of the forensic report and the disciplinary hearing of the CEO, who testified yesterday. The correction is that the disciplinary happened, not as a result of the FUNDUDZI Report but as a result of an internal audit report by our Internal Auditors, TIKANMENT(?), and there is currently still a CCMA matter going on about that. For the most part, other than on MR NASH DEGAMBUR's testimony, I don't have too much to refute there and no specific allegation was made against me, by MR DEGAMBUR.

ADV NGQELE: No problem. Obviously you would have had sight of the email so I will just read it out. It was part of MR DEGAMBUR's submission. In his submission he stated that: "A QUICK OVERVIEW OF ECU We are a small union that has been runn like a spaza shop for many years, to the detriment of the people and region it represents, namely Ekurhuleni. After many years of discord, disunity and infighting we now seem to have settled on a Board that shares the visions of our Members' Council and hopefully represents our needs and vision. For the past five to seven years this union has regressed disproportionately, thereby rendering service, quality of opportunity and representation of Black players and players of colour to almost a zero, thereby rendering cricket a non-viable option for most people it supposedly represents and who it should benefit the most." That was one of the complaints that has been highlighted, even yesterday as well. It is just something that we would like you to address, please?

MR LANDSBERG: Absolutely, and as I previously stated, I think that's exactly the mandate I believe of the SJN to look into things like that instead of these personal spats, but we will also deal with the personal spats. I have to agree with MR DEGAMBUR, and, just to give a little bit of background, two of the previous speakers - and I'm saying this with a lot of respect to them - do not have all the background of where we're coming from. I think myself, MR FORBES, MR MOAGI and even MR DEGAMBUR have served the structures for much longer than the two previous gentlemen. But that's not to minimise their contributions in any way. This is exactly why we ended up at the first NGOEPE report. The previous dispensations, the previous Boards, paid a lot of lip service to development, to the tune that even if funds were raised in the name of cricket development and previously disadvantaged communities the money would just never reach the supposed beneficiaries. MR DEGAMBUR is one hundred percent correct in.."

244. Mr Abraham Benjamin De Villiers submitted a statement in response to allegations made against him. He states the following:

"5. I would like to address several specific statements to the SJN hearings.

Ashwell Prince

6. My former Protea teammate Ashwell Prince has said that three players - Paul Harris, Jacques Rudolph and me - referred to him as a 'quota player'. Ashwell and I have not always seen eye to eye, but I have always respected him as a person and a cricketer, and I have never referred to him as a 'quota player' or in racial terms.

Kagiso Rabada

7. It has been alleged that, at one stage, I did not support KG's inclusion in the Protea team. I have absolutely no recollection of ever stating that I did not want KG to be included in the Protea team, nor any reason why I could have or would have stated the same. I am a massive admirer of KG, and what he has achieved in the game, and I believe we have always enjoyed an excellent relationship.

Khaya Zondo

8. Before the 2015 tour to India, I was informed that Khaya Zondo would be added to the 15-man playing squad as a 16th man. I was told by the selectors that Khaya was joining the tour simply so he could gain experience and 'see how the system works', and specifically that he was not part of the actual playing group.

9. JP Duminy and Rilee Rossouw were injured during the ODI series against India, which meant we needed to call up a top order batsman as a replacement. My understanding was that the next players in line were Dean Elgar and Farhaan Behardien.

10. I was therefore surprised to be informed by the selectors that Khaya was going to be included in the XI for the fifth and deciding ODI in Mumbai. He would be making his debut in what was a decisive match, when we had the opportunity to become the first South African team to win a one-day international series in India.

11. My concerns were based entirely and unequivocally on cricketing considerations.

12. I felt we should adhere to the previously agreed position that the next players in line for selection were Elgar and Behardien, and that it was wrong to parachute into the starting side an inexperienced and emerging player who, as the selectors had clearly stated, was not intended to be a member of the playing squad.

13. With hindsight, I should have outlined these concerns to Linda Zondi, the convenor of selectors, but he was at home in South Africa. Instead, I explained my views to the CEO of Cricket South Africa, who was in Mumbai. This was an error. I did not mean to bypass the convenor, and I have apologised for any offence caused.

14. However, to be completely clear, I was the captain of the national team expressing my opinions on a matter of selection before an important match. I was motivated by what I believed was best for the team, by pure cricketing considerations.

Perception of the Proteas

15. While everybody is entitled to their opinions, and recollections will obviously vary, I am disappointed that some statements to the SJN hearings have created the impression that (a) the Proteas were often a divided and unhappy group, (b) management and senior players, including me, made little effort to welcome and support players and (c) our conduct was effectively uncaring and racist.

16. I do not believe this is a fair reflection of the reality. Throughout my years within the Protea squad, as a senior player and particularly as captain in all formats, I always made a particular effort to ensure every single player in and around the national squad was made to feel welcome and supported at all times.

17. The content of many hundreds of text messages still on my cell phone, exchanged between me and players who have made statements to the SJN hearings, is private and should remain so, but they do support my view that the Proteas environment was more harmonious and supportive than may have been conveyed in the headlines. The team enjoyed sustained success during this period, and this would not have been possible if the players, management and staff were not united. 18. I am not saying everything was perfect. Nothing is ever perfect on this earth, and we were a group of young men striving to perform under intense pressure. However, I remain proud to have represented my country and played for the Proteas, a team that always strived to reflect the best of South Africa, on and off the field.

CHAPTER EIGHT

ANALYSIS OF THE EVIDENCE

WHETHER SELECTION / FIELDING OF PLAYERS WAS DISCRIMINATORY?

KHAYALIHLE ZONDO

Did Mr de Villiers' conduct amount to differentiation?

Whether the exclusion of Mr Zondo from participating in the 5th and final ODI was justified?

245. It is common cause that Mr de Villiers was opposed to Mr Zondo's selection in the 5th and final ODI. In this regard, Mr de Villiers confirms that he was "*surprised to be informed by the selectors that Khaya was going to be included in the 11 for the 5th and deciding ODI in Mumbai*".²¹⁹

246. Mr de Villiers cites various incoherent and unsubstantiated reasons for his opposition, including that:

- a. The NSP had previously explained to him that Mr Zondo was included on the tour of India for the purposes of gaining experience.²²⁰

219 Abraham Benjamin de Villiers Affidavit, dated 05 September 2021, para 9.2

220 Ibid, para 9

247. Mr Zondo would be making his debut in what he regarded as a decisive match where the Proteas would have *"had the opportunity to become the first South African team to win a one-day international series in India"*.²²¹

248. The NSP was *"wrong to parachute into the starting side an inexperienced and emerging player who, as the selectors had clearly stated, was not intended to be a member of the playing squad"*.²²²

249. Mr Zondo was selected by the NSP to play in the 5th and final ODI. Mr Linda Zondi (**"Mr Zondi"**), the convener of selectors who stayed behind in South Africa at the time, confirmed that the NSP agreed that Mr Zondi, as the backup batter, must play.²²³ Mr Zondi reiterated the following reasons for Mr Zondo's selection:

"We were playing in India. It was never any a 50/50 decision, because we weren't comparing Khaya Zondo to anyone. The player who was in the middle order, who was David Miller, was out of form. If you are out of form, it never said: A White player is out of form. It was David Miller, a player, who was out of form, so who was the next player as a backup? It was Khaya Zondo. He was not there as a Black player. He was there as a guy who had performed in India, in the SA A, he was a guy who had done well in the franchise".²²⁴ [SIC]

250. Mr Zondo was selected to play because two positions had opened up. Mr Miller, who occupied a middle order position, was out of form and Mr Zondo, a middle order batsman was next in line to take his place. In addition, Mr Duminy was

221 Ibid, para 9.2

222 de Villiers Affidavit op cit note 48, para 9.5

223 Transcript Volume XXIX op cit note 44, pg. 4332

224 Ibid, pg. 4345 – 4346

injured.²²⁵ It is submitted that the decision not to substitute the player that had lost his form or the injured player with Mr Zondo was a deliberate attempt to exclude him from playing.²²⁶

251. Instead of allowing Mr Zondo to play, Mr Elgar was flown in from South Africa to participate in the starting 11 in Mr Zondo's place. It is noteworthy that Mr Elgar, a white player, who was flown in because, in Mr de Villiers' opinion, an experienced player was preferred over Mr Zondo, had no ODI experience. Given Mr Elgar's lack of experience, it was irrational to select him instead of Mr Zondo as part of the starting 11. Similar to Mr Zondo, Mr Elgar was also starting off his ODI career.²²⁷

252. It paramount to also bring to the Ombudsman's attention that Mr Zondo had also outperformed Mr Elgar in the South Africa A tour. Furthermore, Mr Elgar was placed in a batting a position which he doesn't specialise in – middle order.²²⁸ Mr Zondi confirmed the complainants performance during the South Africa A tour in India. In this respect Mr Zondi which states:

*"We put Khaya Zondo in the ODIs for SA A. SA A is the team below the Proteas. Khaya Zondo dominated. He played well in the SA A in India, hence we brought him into the ODI, T20 and then the 50 overs..."*²²⁹

225 Ibid, pg. 4330

226 Transcript Volume XIII op cit note 40, pg. 1822

227 Ibid, pg. 1829 – 1830

228 Transcript Volume XIII op cit note 44, pg. 1836

229 Transcript Volume XXIX op cit note 43, pg. 4311

253. In addition, Mr Zondi clarified that Mr Elgar was originally flown in from South Africa to be a backup batter because Mr Zondo was selected in the starting 11 for the 5th and final ODI.²³⁰ It is evident that the NSP did consider Mr Elgar but regarded Mr Zondo as the competent and logical replacement for Mr Miller. Mr Zondi's statement that Mr Elgar was flown as a backup batter is in line with clause 7.7(7) of the NPS Policy states that:

254. *"Although seldom required and to be applied with great care when necessary, a situation can arise where the selection panel is not able to co-ordinate a decision while on tour (due to time zone or other reasons) and an instant decision is needed to fly in a player to serve mainly as a back-up player in the squad. In such instance, the Tour selector, Coach, Captain and Team Manager are authorized to make a 'practical selection' taking budget factors into account". (own emphasis)*

255. Aggrieved by the NSP's decision to choose Mr Zondo, Mr de Villiers decided to take matters into his own hands and approached Mr Lorgat in hopes to sway the selection of the team in accordance with his arbitrary preferences. He further confronted Mr Manack who admitted to buckling under the pressure and replaced Mr Zondo with Mr Elgar.

256. Mr Elgar was not selected because he was a better player than Mr Zondo, as he was still starting out in his ODI career. Furthermore, he was brought in from South

230 Ibid, pg. 4333

Africa as a replacement batter and, against the NSP's decision, was catapulted to the starting 11 without just cause.

257. It appears that Mr de Villiers went to extreme lengths to ensure that a white player is secured participation in what he regarded as a critical game for the Proteas. As discussed above, racial discrimination continues to plague our society under the guise of merit justifications. Black people are denied opportunities because of unscrutinised misconceptions regarding their competence as compared to their white counterparts. Mr de Villiers' conduct evidences this erroneous and baseless misconception of Mr Zondo as a black player. One may go far as to state that he feared to place a person whom he viewed as incompetent, by virtue of the person being a black player, in what he regarded as a prized match.

258. His blatant disregard of the NSP Policy, amounts to not only a procedural irregularity, but, at the core of the matter, flies in the face of CSA's commitment to transformation.

259. Another misleading statement made by Mr de Villiers relates to the participation of Mr Rilee Rossouw ("**Mr Rossouw**") during the ODI series against India. Mr de Villiers asserts that Mr Duminy and Mr Rossouw were injured during the ODI series against India. This required a top order batsman as a replacement which would be Mr Elgar and Mr Farhaan Behardien ("**Mr Behardien**").²³¹

231 de Villiers Affidavit op cit note 48, para 9.1

260. Contrary to Mr de Villiers' statement, Mr Behardien was part of the starting 11 that played in the ODI series matches including the July 2015 match against Bangladesh, August match 2015 against New Zealand and the India Tour in 2015.²³² Further, Mr Rossouw sustained his injuries before the tour and, as a result, could not travel to India with the T20 or the ODI squad.²³³ In this regard, a news report dated 26 September 2015, submitted by Mr Zondo as evidence of Mr Rossouw's injury before the India Tour, comments that:

"...Meanwhile, Rilee Rossouw has been ruled out of the entire limited-overs leg of the India tour as he continues his recovery from a stress fracture to his foot he sustained against New Zealand with the South Africa medical team being careful not to rush him back.

Rossouw was not set to play the T20s, but had been in line for the one-day series which followed. His place will be taken by uncapped batsman Khaya Zondo who was already part of the T20 squad.

"The medical committee have decided its still too early for him to be pushed at this stage," South Africa team manager Mohammed Moosajee said. "The plan is to get him to be ready by the end of October."²³⁴

261. Mr Zondo was overlooked after having spent two months in India with the Proteas for a white player who was not part of the original ODI squad. Mr de Villiers cannot explain his irrational conduct which resulted in the exclusion of Mr Zondo from participating as part of the starting 11 in the 5th and final ODI.

232 Cricwaves South Africa tour of India, 2015 <https://www.cricwaves.com/cricket/tour/282/south-africa-tour-of-india-2015/2/4260/farhaan-behardien/PlayerStats.html>

233 Khaya Zondo Replying Affidavit op cit note 38, para 4.1

234 ESPN cricinfo Albie Morkel replaces injured Wiese, dated 26 September 2015 <https://www.espn.com/cricinfo/story/albie-morkel-replaces-injured-wiese-923561>, Annexure A of the Khaya Zondo Replying Affidavit, dated 12 November 2021

Undermining of the NSP's independence

262. It is submitted that Mr de Villiers' disregard of the NSP's decision to select Mr Zondo as part of the starting 11 in the 5th and final ODI constitutes a deliberate undermining of the NSP's independence. The NSP was the appropriate and competent body to make the final decision on the selection of Mr Zondo, not the captain.

263. Mr Manack, in his affidavit to the Ombudsman, explains the purpose of adopting a policy on selection as follows:

*"The adoption of this Selection Protocol Document meant that the Captain no longer attended and voted at selection meetings. Rightly or wrongly there was a perception at the time that the Captain and those close to him yielded too much power in decisions relating to the composition of teams and were hindering as opposed to enabling transformation. The change therefore was an important change to the way Proteas teams were selected".*²³⁵

264. Clause 1 of the NSP Policy prohibits any undue influence "*in fact and appearance*" of the NSP's performance of its duties. It further restricts the NSP's accountability to the Board and chief executive. The Board and chief executive are tasked with ensuring that there are no external influences in the selection of teams. Notwithstanding that the captain is entitled to communicate his selection preferences and the NSP is required to consider the captain's recommendations, the NSP Policy expressly excludes the captain from the NSP.²³⁶ His views are therefore not peremptory nor should his views seek to unduly influence the NSP's

235 Hussien Manack Statement, undated para 84

236 Clause 6.4(5) of the NSP Policy

selection process. Clause 7.7(3) of the NSP Policy reiterates that the captain is entitled to be consulted on team selection, he is not authorised to "*have the final say in team selection*".

265. Mr Manack confirmed that Mr de Villiers "*aggressively pursued*" the inclusion of Mr Elgar as a player in the starting 11. Mr de Villiers' actions are inconsistent with the NSP's decision to choose Mr Zondo as the player in the starting 11. In this regard, Mr Manack confirmed that a "*majority of the selection panel supported...[his] view*" that Mr Zondo should be selected to play.²³⁷

266. Despite, a clear prohibition against the captain influencing the NSP's selection of teams, Mr de Villiers sought to change the NSP's decision. His determination to get Mr Zondo off the team propelled him to explore the extreme, yet irregular, option of approaching Mr Lorgat in hopes to change the NSP's selection.²³⁸ Mr Lorgat confirmed, in his affidavit to the ombudsman, that he directed Mr de Villiers to contact the designated selector on tour, Mr Manack and take his concerns up with him.²³⁹ Mr Manack also attests to the captain's persistence to change the selection and notes that:

"The captain got in contact with CSA's then CEO to complain strongly that he was not happy with the inclusion of Khaya. Even though the captain did not say in my presence, I had the distinct feeling, reading between the lines,

237 Manack Statement op cit note 64, para 103

238 Haroon Lorgat Affidavit, dated 02 November 2021 para 9(iv)

239 Ibid, para 9(vi)

that there was a possibility that he may have threatened not to play in that final game if Khaya Zondo was played at the expense of David Miller".²⁴⁰

267. Mr de Villiers conceded that he should have approached Mr Zondi, as the convenor of selectors, and not bypass the appropriate competent structures and speak to Mr Lorgat.²⁴¹ He concedes to this irregularity but fails to appreciate the harm caused by his conduct. Whether, knowingly or unknowingly, Mr de Villiers' arbitrary conduct had the effect of stifling Mr Zondo's career progression.

268. Mr Zondo was a victim of the exclusionary culture which persists within the cricket ecosystem. Mr de Villiers was willing to flout the NSP Policy just to ensure that a black player was not placed in a position which he deemed as requiring greater experience. It is then puzzling that the preferred choice is a white player who does not specialise in the position that was open and had no experience in the ODI series, at the time. The only reasonable conclusion is that Mr de Villiers unfairly discriminated against Mr Zondo on racial grounds. His actions were arbitrary and irrational as there was no justifiable purpose for Mr Zondo's replacement. His conduct was motivated by underlying unsubstantiated bias with respect to the competence of black players.

MPHO SELOWA

269. Mr Mpho Selowa ("**Selowa**") submitted complaints about racism he experienced at the Northwest Cricket Union before the Ombudsman. He alleged that he was

240 Manack Statement op cit note 64, para 104

241 de Villiers Affidavit op cit note 48, para 9.5

earning a lower salary than his white colleagues at the Union and that he was placed in an inferior accommodation than the white players; in paragraphs 26 – 29 of his affidavit, he states the following:

"[26] I moved to Northwest after they offered me a R2500 a month contract because they were looking for a keeper/batsman. The coach of the Northwest cricket team was Mr Monty Jacobs. Upon my arrival, I was told I would live at the "white house." This was where black cricketers stayed and the place was in a shocking state. My father did not agree that they could ask me to come all the way from England (where I was playing off season cricket) and make me stay in such a place while white players stayed in townhouses and earned more.

[27] I established that white players were earning more than black players in the team through asking questions. I enquired from the finance department as to whether the players were earning the same. The answer that I received was in the negative. A black African lady employed within the finance department revealed to me that I was supposed to earn R15 000 but am earning what I earn because the rest of the money is allegedly shared among the white players in the team.

[28] The individual referred to above, further informed me that Cricket South Africa was conducting an audit of salaries in respect of the whole union, and that CSA had been told that I earn R15 000. I never took this issue further in fear of victimization.

[29] Turning to the issue of the 'white house', father spoke to the then CEO the Northwest Cricket Mr Jacques Fauls of about the state of the 'white house', so that they find me a suitable place to stay. Following their discussion, I was placed at a suitable place to stay..."

270. In response to the allegations above, The Northwest Cricket Union addressed a letter to the Ombudsman alleging the following in paragraphs 2 and 3:

"[2] We kindly draw your attention to paragraph 62 and paragraph 66 of NWC's submission. For ease of refence copied below.

62. Insofar as Mr Selowa's submissions are concerned, the allegations refer to the period during 2010, which makes it extremely difficult to locate and verify records dating back 11 years. However, I was able to establish that

the first time any player on a semi-professional contract earned R15 000.00 per month was only during or about the 2020/2021 cricket season.

66. Remuneration packages of players are no different from any other economic and financial exchange. Agreements are concluded between players and NWC. The terms are negotiated and agreed upon, striking a balance based on the principles of supply and demand, typically applicable to cricketing terms. These include inter-provincial demand, player profile, player statistics, the individual skill-set of each player, team composition and CSA's transformation requirements, to name but a few. "

271. They continued to state the following in regard to the accommodation provided to players:

"[3.1] We wish to briefly highlight the contradiction between the submission by Mr Selowa in Par 28 and Dr Nkagisang's oral testimony on page 2425 – 2426 (Record Volume XVII) regarding the accommodation offered at NWC.

[3.2] Dr Nkagisang makes the allegation that the "White House" was reserved for white players and that it was superior to the other accommodation available for players at NWC

[3.3] NWC denies the allegations by Mr Selowa for reasons detailed in Paragraphs 73 – 75 of NWC's submission, copied herein below for ease of reference:

73. NWC did not award a contract to any player which included or made provision for accommodation as a part of any obligatory contractual terms.

74. NWC however made some facilities available to be used as accommodation by the players who may need to be provided with accommodation. It was offered completely free of charge. Some of these facilities were indeed situated under the main pavilion of the cricket stadium. It was occupied by players of all races, including white players who went on to represent South Africa's A team. The "white house" and all other accommodation were administered on the same terms to all players equally. It remained their free choice to make use of the offered accommodation. This is confirmed to be the position, dating back to at least 2009, when Mr Strydom was first appointed by NWC..."

272. The allegations in Northwest Cricket Union's response at paragraphs 3.1 and 3.2 of the letter as outlined above are untrue and misleading. Mr Selowa's version

that the 'White House' was accommodation provided to black players and it was in a "*shocking state*" corroborates Dr Nkagisang's testimony before the Ombudsman. In his oral testimony before the Ombudsman, Dr Nkagisang says the following about the 'White House':

*"They stayed at the White House. It is a house at the stadium, which has now been taken over by PUK. Later on they moved out because the house was dilapidated, and black players were put in that dilapidated house..."*²⁴²

273. It bears mention that the Northwest Cricket Union does not deny that the allegations made by Mr Selowa and Dr Nkagisang that the 'White House' was dilapidated and in a generally unsuitable condition for accommodation. Instead, they continue, in paragraph 3.3 outlined above, to justify providing this dilapidated and inhabitable accommodation to players by saying the following: "*NWC however made some facilities available to be used as accommodation by the players who may need to be provided with accommodation. It was offered completely free of charge*". It is unjustifiable to provide inhabitable or unsuitable accommodation to people in the name of 'assisting them and providing it free of charge'.

274. It is common cause that because of the history of this country, the economically disadvantaged class is mostly made up of black people. The Constitutional Court

242 CSA SJN VOL XIV page 2426, para 5 – 10.

in *Duncanmec (Pty) Limited v Gaylard N.O. and Others*²⁴³ stated the following in relation to this fact:

*"[3] 'Our history is of particular relevance to the concept of equality. The policy of apartheid, in law and in fact, systematically discriminated against black people in all aspects of social life. Black people were prevented from becoming owners of property or even residing in areas classified as 'white', which constituted nearly 90% of the landmass of South Africa; senior jobs and access to established schools and universities were denied to them; civic amenities, including transport systems, public parks, libraries and many shops were also closed to black people. Instead, separate and inferior facilities were provided*²⁴⁴. *The deep scars of this appalling programme are still visible in our society."* (own emphasis)

275. The Northwest Cricket Union ought to have appreciated this fact as they speak highly and ceaselessly of their consideration of CSA transformation policies in the Union's decision making and their commitment to transformation²⁴⁵. The very essence of transformation is the acknowledgement of past discriminatory laws which have dire effects of inequality in today's society and the commitment of levelling the playing field between the previously disadvantaged and advantaged. The Constitutional Court in *AfriForum and another v University of Free State*²⁴⁶, stated the following in this regard:

"Apartheid has left us with many scars. The worst of these must be the vast discrepancy in access to public and private resources. The cardinal fault line of our past oppression ran along race, class and gender. It authorised a hierarchy of privilege and disadvantage. Unequal access to opportunity prevailed in every domain. Access to private or public education was no exception. While much remedial work has been done since the advent of

243 [2018] ZACC 29.

244 Own emphasis.

245 Para 4.2 of Northwest Cricket Union/ Response to Submissions by Mpho Selowa letter; Northwest Cricket Union submission.

246 2018 (4) BCLR 387 (CC).

constitutional democracy, sadly deep social disparities and resultant social inequity are still with us. It is so that white public schools were hugely better resourced than black schools. They were lavishly treated by the apartheid government. It is also true that they served and were shored up by relatively affluent white communities. On the other hand, formerly black public schools have been and by and large remain scantily resourced. They were deliberately funded stingily by the apartheid government. Also, they served in the main and were supported by relatively deprived black communities. That is why perhaps the most abiding and debilitating legacy of our past is an unequal distribution of skills and competencies acquired through education. In an unconcealed design, the Constitution ardently demands that this social unevenness be addressed by a radical transformation of society as a whole and of public education in particular." (own emphasis)

276. It is said that change begins with an acknowledgement that change is required.

Where there is no such acknowledgement but a strong conviction and arrogance of false knowledge, the road to actual transformation will be a long one.

EDDIE LEIE

277. The Ombudsman received allegations of racism and the ill-treatment of black players by the Free State Cricket Union.

278. Mr. Eddie Leie, at paragraphs 34 and 35 of his affidavit before the Ombudsman stated the following about the living conditions of young black players at "Free State Knights" :

"[34] The treatment of black players there was so dire, and affecting me personally because they had to stay in the former storerooms under the stand at the stadium and Boys would be threatened that they are given Accommodation, so they better act right or step up..."

"[35] What was painful to me is the kitchen in this storeroom boys had to live in. These people are professional cricketers' guys. Living under at the stadium under the stands [sic]. Where it used to be a storeroom."

279. In response to the above paragraphs, the Chief Executive Officer ("CEO") of Free State Cricket, Mr. CJ Van Heerden, made the following allegations in an affidavit to the Ombudsman:

"34) The Academy players were not paid or under contract . We assisted them with free accommodation. This was meant to assist players, until they could qualify for contracts. It was under no circumstances that we meant this in bad faith.

"35) The accommodation was unserviced and the players had to keep their bedrooms and kitchen clean. But as the saying goes 'no good deed will go unpunished. "

280. During his oral testimony before the Ombudsman on 18 October 2021, Mr. Van Heerden made the following concessions regarding the said accommodation provided to Academy players by the Free State Cricket Union:

281. That the Academy players who utilised the accommodation were disadvantaged students who could not afford travelling from and to the Free State Cricket Union training stadium situated in Bloemfontein. These students were not from Bloemfontein but other places in the Free State including Kroonstaad and Bethlehem.

- a. That the Free State Cricket Union intended on providing the accommodation for a short term period (six months) to see whether these students would qualify for a contract with the Union - they wanted to take these students to the next level of cricket.
- b. That all the students who utilised the accommodation were black and,

- c. That he is not proud of the accommodation that was provided to these students. To quote him verbatim, he said, "*have we (Free State Cricket Union) ever thought it was the best solution? Most probably not.*"

282. Willem Gravett in his paper titled, "*The Myth of Objectivity: Implicit Bias and the Law*"²⁴⁷ states the following in the introductory passage of the paper:

"Racial stereotypes are the product of extensive cultural and societal learning. Thus, virtually no person can grow up in a society without having learned the stereotypes assigned to the major ethnic groups. Moreover, we learn cultural attitudes and beliefs about race very early in life - as young as three years old - at a time when it is difficult to separate the perceptions of a teacher (usually a parent) from our own. At this early stage, we learn not so much through an intellectual understanding of what our parents tell us about race, as through emotional understanding of who our parents are and what we see our parents do. We adopt our parents' beliefs about the societal context in which we live because we experience them as our own. Not only do our stereotypes become socially ingrained at an early age, but they also become resistant to change, although we may grow up to hold explicit non-biased views of the world ...While historical experience has made racism an integral part of our culture, our society has more recently embraced an ideal that rejects racial discrimination as illegal and immoral..."

283. He goes on further to say the following:

"...explicit racial bias is only part of the problem. Equally important - and likely more pervasive and insidious - are the unexpressed, hidden biases that remain in peoples' hearts and minds. This is the phenomenon of implicit racial bias - the cognitive processes whereby, despite even our best intentions, the human mind automatically classifies information in racial categories and against disfavoured social groups. In this context, a clarifying comment on terminology might be in order. The denomination "explicit" emphasises awareness of having a thought or feeling, and thus refers to the kind of biases that people knowingly - sometimes openly - embrace. "Implicit", by contrast, emphasises unawareness of having a thought or feeling, and thus denotes stereotypical associations so subtle that people who hold them often are not even aware of them. Furthermore, a person

²⁴⁷ Gravett WH "The Myth of Objectivity: Implicit Racial Bias and the Law (Part 1) *PER / PELJ* 2017(20) - DOI <http://dx.doi.org/10.17159/1727-3781/2017/v20n0a>.

might even reject that implicit thought or feeling as inaccurate or inappropriate upon conscious reflection. This distinction is important because conventional wisdom holds that attitudes and stereotypes about social groups are only explicit in the sense that human actors are guided solely by their explicit beliefs and their conscious intention to act. However, just as scientific experimentation has demonstrated that Aristotle's physics did not accurately describe the behaviour of objects, modern social psychology has found that many common understandings of human social behaviour are simply wrong. Human behaviour is not largely under conscious control. To the contrary, our behaviour is often guided by racial and other stereotypes of which we are completely unaware. Consequently, these implicit biases leak into our everyday behaviour, such as whom we befriend, whose work we value and whom we favour, while we remain largely oblivious of their influence."²⁴⁸ (own emphasis)

284. When summarised, Mr. Van Heerden's response to the allegations that the Free State Cricket Union provided unsuitable accommodation to black students in their training academy, is that the Union provided unsuitable accommodation to the black students because the Union was assisting them. When objectively considered, this response from the Free State Cricket Union demonstrates unconscious racial bias against the black students.

- a. Firstly, why did the Free State Cricket Union provide low grade 'assistance' to the black students when, as Mr. Van Heerden conceded during his oral testimony before the Ombudsman, the Union always knew that the assistance provided was not good enough?
- b. Secondly, if the Free State Cricket Union knew that these students required accommodation temporarily (six months), why did they choose to provide accommodation that was sub-standard? Providing decent accommodation

248 Gravett WH "The Myth of Objectivity: Implicit Racial Bias and the Law (Part 1) *PER / PELJ* 2017(20) - DOI <http://dx.doi.org/10.17159/1727-3781/2017/v20n0a>.

for six months would not have caused a significant dent on the finances of their organisation. Additionally, if they knew at the time that the accommodation was *"not the best solution"*, why did they not take immediate action to find the "best solution" or simply make the decision to not provide accommodation at all?

- c. Finally, if the Free State Cricket Union intended on taking these students to the next level of cricket and make them contract players with the Union, would logic not dictate that they provide them with comprehensive support, the best assistance, especially knowing that the students come from disadvantaged backgrounds? Why did they make these students live in practically inhabitable conditions if they wanted them to succeed in cricket and with the Union?

285. The only answer that a reasonable person can come up with to the questions above is that it is because these students were black and disadvantaged. Due to their unconscious bias against these black students, the Free State Cricket Union did not make any consideration for their health and safety. It also did not consider the effects living under compromised conditions would have on them and on their prospects of success with the Union.

286. It is important to note that the two key role players involved in making the decision to provide sub-standard accommodation for the black students were old white males, the academy coach at the time, a certain Dillon Du Preez and the CEO of the Union, Mr. Van Heerden. In a 2018 study examining manager-employee

relations in democratic South Africa using an unobtrusive implicit measure of managers' racial bias by C Berg and J Hooble of the University of Pretoria, the following was found:

"In Hypothesis 1 we found that white managers had higher race bias scores than black managers, suggesting that old Apartheid value systems may still exist in white managers' mindsets today..."²⁴⁹

287. In light of the above, it is apparent that like many unconscious managers in South Africa today, Mr. Du Preez and Mr. Van Heerden still hold racial biases which made them unconsciously ill-treat and overlook the ill treatment of the black students under their care at the Academy. There is no other logical conclusion besides this. They knew that the accommodation they provided was not good enough, but they did nothing to make the situation better. Mr. Van Heerden even said during his oral testimony before the Ombudsman that he is not proud of it, and he would never advertise.

288. It is common cause that because of the history of this country, the economically disadvantaged class is mostly made up of black people. The Constitutional Court in ***Duncanmec (Pty) Limited v Gaylard N.O. and Others***²⁵⁰ stated the following in relation to this fact:

"[3] Racism and discrimination were the hallmarks of the policy of apartheid that was implemented in the previous order. That policy rested on the false notion and belief that the white race was superior and that the other races were inferior. Consequently, black people were denied their dignity and

249 C Berg & J Hooble "Implicit Racial Bias in South Africa: How far have Manager-Employee Relations come in the Rainbow Nation? Accessed at: <https://www.tandfonline.com/doi/abs/10.1080/23322373.2018.1522173>

250 [2018] ZACC 29

other fundamental rights. The institutionalisation of racism brought intolerable suffering, hurt and humiliation to them. As observed by this Court in Brink:

'Our history is of particular relevance to the concept of equality. The policy of apartheid, in law and in fact, systematically discriminated against black people in all aspects of social life. Black people were prevented from becoming owners of property or even residing in areas classified as 'white', which constituted nearly 90% of the landmass of South Africa; senior jobs and access to established schools and universities were denied to them; civic amenities, including transport systems, public parks, libraries and many shops were also closed to black people. Instead, separate and inferior facilities were provided. The deep scars of this appalling programme are still visible in our society.' (own emphasis)

289. It is further common cause that because of the above statement, numerous equity and transformation policies have been adopted by the government, its various institutions at different levels of society and the private sector. Such equity and transformation policies are geared towards the redress of past discriminatory laws and resultant inequalities visible in black communities today. The adoption of such equity and transformation policies is in recognition of the owing need for positive action in reaching the desired constitutional goal of equality.

290. The Department for Sport and Recreation in South Africa established a Transformation Charter for Sport in South Africa²⁵¹ at the 2011 sport and recreation indaba. Clause 1.6 of this Charter states the following:

"It has to be recognised that sport cannot transform itself until it transforms its thinking. Thinking within the organisation is defined as the mental activity of every member of the organisation - all the idea generation, learning and skill development, exchange of information, development of strategic directions, communication, research, process improvement and quantum

251 Available

at:https://www.westerncape.gov.za/text/2011/8/transformation_charter_with_scorecard_-_draft_7_11_july_2011.pdf.

leaps that make up the total intellectual activity of the organisation. This is seen as SA sport's real transformational challenge. The strategic and moral imperative for transformation has to be seized upon as an opportunity for sport to reinvent itself. For transformation efforts to be effective a fundamental shift in the way the whole organisation is structured and managed, the way in which it deals with its constituent members, how leadership conduct themselves, how the game is marketed and promoted, how sport's image and reputation is managed and how all component structures collectively act and think. This represents an intellectual challenge of some format. A "more of the same" approach will have limited success. "Out of the box" thinking to bring forth creative, innovative and original ways of dealing with the issues involved will provide the breakthroughs required." (own emphasis)

291. According to the CSA website, CSA established its first Transformation Monitoring Committee in 1998²⁵² and in the 2016 Transformation Committee terms of reference, paragraph 1.1 states the following:

"Transformation is a national strategic imperative in our country and it is a fundamental tenet in the vision and strategy of Cricket South Africa NPC (CSA)."

292. The appalling incident of low grade accommodation provided to black students in the Free State Cricket Academy occurred in the 2017/2018 season. This is well after all the above-mentioned transformation agendas, charters and commitments had come into full effect. The Free State Cricket Union ought to have known and done better.

THAMI TSOLEKILE

293. Mr. Tsolekile's cricketing ability has not been questioned by any witness who came and testified at the SJN Hearings. From undisputed facts, Mr. Tsolekile was

252 Available at: <https://cricket.co.za/transformation-philosophy/>.

a prolific cricketer in his position and a leader in the cricketing fraternity at all levels of his playing career. Of course, this excludes his time with the Proteas. It is hard to exclude Mr. Tsolekile's race as having been the main reason why he did not succeed in the Proteas.

294. CSA, Mr. Graeme Smith, and some selectors at the time really failed Mr. Tsolekile and many black players of his time in many ways.

295. Mr. Tsolekile was the first black captain for the SA schools' team in 1998. He went on to captain the South African u/19 at a World Cup in Sri Lanka. This is the same u/19 team which had Graeme Smith as a member.

296. CSA does not dispute Mr. Tsolekile's averments as contained in paragraphs 23 to 27 of affidavit. For ease of reference Mr. Tsolekile states:

"2012 – 2014 Proteas

23 Through consistency over the years for South African A side and the Gauteng Lions team, I put performances that were hard to ignore. Eventually, I was given a national contract by CSA for the first time.

24 I was the only player in that 2 years who was not given the opportunity to play for the Proteas. Even players such as Quinton De Kock who weren't contracted to CSA at that time, got to play ahead of me in the test squad even though I was performing better than him at club level where we played for the same team.

25 I was fortunate to have travelled with the national team to the England tour, Australia, Dubai, Pakistan, and New Zealand. Even though I made to carry drinks for players and was never allowed to play. I am grateful for what I learnt through observations in the tours and the strong character that I built through many rejections and experiences during those tours. I remember, the day before the New Zealand game, I was told by the convener of selectors Mr. Andrew Hudson that I was going play in that game and only to be told on the morning of the game by Mr. Hudson that Graeme Smith

(the captain) didn't want me in the team. These were painful news to receive, particularly when regard is had to the fact that I had been waiting for that opportunity and financial incentive that accompanies game time.

26 I think after the aforesaid incident involving Graeme, my frustration grew towards the game and its gate-keepers, it was the 'last straw on the Camel's back'. Following this experience, I together with fellow black cricketers, wrote and signed a petition to CSA about black players being made to carry drinks, not being trusted, or recognized and not being given opportunities to play for the national team. A meeting was held at the airport with few board members, advocate Norman Arendse SC and Peter Cyster from Boland to mention a few were part of the meeting. We raised our concerns until today we never got answers and few players were victimized and 2 months later, I lost my National contract."

297. As indicated above CSA has not rebutted these allegations with any vigor in the affidavit filed by Mr. Eddie Khoza. Mr. Khoza states:

"173 It is difficult for me to comment on why Mr. Tsolekile did not get to play more. That question is again best addressed to the selectors at the relevant times..."

173.3 record that Mr. Tsolekile was competing with three wicketkeepers at various stages: Mark Boucher, AB de Villiers and later, Quintin de Kock."

298. A number of issues emerge from these paragraphs which the OTO deals with herein below:

- a. The first issue is that from 2012 to 2014, when Mr. Tsolekile (following consistent and outstanding performances for the SA A side) was a nationally contracted player, he never played a single match for the Proteas. At all relevant and material times the position he plays in was occupied by Mr. Boucher and later Mr. AB De Villiers. Both of whom are white players. Mr. Tsolekile does not appear to strongly question the selection of these two

players, although he submits that Mr. De Villiers did not want to keep the wicket some point.

- b. At the time he was a nationally contracted player he was in better form than Mr. Quinton De Kock but the latter with the aid of CSA and selectors was played ahead of him, with no explanation. How do you do this to a player that has waited for this opportunity for seven years while playing for the SA A team? What kind of cricketing reasons are these that can keep a player out action for such a long time in circumstances where one those who were preferred in the position in question has retired (Mr. Boucher) and the other chose a different position in the system (Mr. De Villiers)? OTO is of the view that even if De Kock showed promise, his selection ahead of Tsolekile who was playing better than him at club level (the Gauteng Lions) was unfair discrimination towards Mr. Tsolekile, who waited for his chance diligently since the retirement of Mr. Boucher.

299. One of the then selectors during the 2012 to 2014 period was Mr. Linda Zondi. During his testimony before the Ombudsman, he was asked about his views concerning Mr. Tsolekile's exclusion. He stated the following:

"Mr Linda Zondi: I think when one then accepted the decision of the panel, I personally went to Smith, as a selector to try and speak to him as the captain. I said: You know what, yes, the decision of the selection is final but I truly believe, as the captain, it's important that we see Thami play. In his favour, he just said: Linda, , at the end of the day I will get the team from the convenor, and at the moment the panel says this is the starting XI, and I will go through with that. I think probably that's where THAMI came up with the decision, when he went online and said:..."

Adv Ngqele: Mr Zondi, I have a question. The other selectors on the panel, who did they want? Did they want a different player, or was it just a matter of they didn't want Thami Tsolekile to be part of the Starting XI?

Mr Zondi: No, I think at that time Quinton de Kock was coming through the system. He was one of the young talented players that had come through the system. I stand to be corrected but I think Quinton de Kock was really coming through the system. As I said, if my memory serves me well, it was another wicketkeeper who came through the system. AB was a guy that we also used as a keeper. But I stand to be corrected, I think it was Quinton, the reason being in terms of him being a batter as well, I think it could have been justifiable. This is the issue about selection. Sometimes as a selector you look at stats but there is more to it. There is a decision about stats and a decision about the transformation agenda, so one has to look at everything else before you make a decision. If you look at this critical decision, yes, it was justifiable in that sense, but it was a matter for us to say in the structure of the Proteas at the time, in 2012 and 2013, there was not much transformation coming through the system. And that was an opportunity. If you had to use the opportunity of saying..."²⁵³

300. While it is undisputed that Mr Zondi fought for Mr Tsolekile's inclusion in the starting 11, the decision of panel was totally irrational and showed clear signs of systemic racism. The decision exposes systemic racism in that sense that Mr Tsolekile, a black African player could not be trusted even though he undisputedly performed better in his position than a fellow promising team mate Mr. De Kock.

301. The constant exclusion of Mr Tsolekile led Mr Makhaya Ntini to publicly question and criticise CSA for not giving Mr Tsolekile a chance. Mr Ntini specifically stated in public that the exclusion of Mr Tsolekile was because of the colour of his skin. Ntini's remarks of Tsolekile's exclusion were widely reported, on 19 November 2012, the Timeslive reported Ntini to have said:

"I don't understand how we can only have one black cricketer in our (Test) squad," Ntini said. "What's going on? In the whole squad – one.

*Tsolekile would have been playing if he was white. People will say we are talking politics, but we need to say these things."*²⁵⁴

302. The OTO is persuaded by the argument that CSA, its coaches and selectors unfairly discriminated against Mr Tsolekile on the basis of his race. Further, CSA was dishonest as to its cricketing reasons for not playing Mr Tsolekile.

303. Further to the above, CSA was extremely dismissive of the concerns around Mr Graeme Smith's alleged involvement in the constant exclusion of Mr Tsolekile in the Proteas. It is not clear from **CSA60** to Mr Khoza's affidavit whether, CSA investigated the allegations of Mr Smith's alleged involvement in the exclusion of Mr Tsolekile. CSA appears to have sprung into the defence of Mr Smith without establishing the veracity of the allegations. It is this dismissive and uncaring conduct which destroys careers of black players within cricket.

304. Although there is some truth that in the claim that he had no part to play in the selection, but evidence suggests that the captain has influence on who is fielded. Testimony before the Ombudsman has shown that this is simply not possibly true. Mr de Villiers' influence in ensuring that Mr Khaya Zondo does not play is one example of how influential the position of a team captain is in cricket. Furthermore, as demonstrated above, Mr Zondi also considered the position of team captain to be very influential, that is why he went to speak to Mr Smith for

254 <https://www.timeslive.co.za/news/south-africa/2012-11-19-ntini-rant-disturbs-thami/>

his assistance regarding Mr Tsolekile's playing time. CSA and Mr Smith knows this and continues to deny it.

305. Mr Tsolekile is supported in his views that Mr Smith indeed exerted a great level influence in the decision-making of the Proteas playing teams, by Mr Telemachus, Mr Loots Bosman, Paul Adams and other players who spoke about the clique of 5 players which was known as the big five made up of Mr Smith and his Protea friends. The evidence around unwelcome conduct of the so called big five was undisputed and well corroborated. The Ombudsman had no option but to accept it.

ROGER TELEMACHUS

306. Common cause facts relate to the following:

- a. Before CSA conducted its restructuring exercise of the domestic cricket, KwaZulu Natal ("**KZN**") had two provincial teams – the KZN Coastal and KZN Inland.²⁵⁵ The provincial teams acted as feeder teams to the KZN franchise – the Hollywoodbets Dolphins.²⁵⁶
- b. Mr Telemachus coached the KwaZulu Natal Coastal team for approximately seven years. He holds a level four coaching certificate.²⁵⁷

255 Heinrich Strydom Affidavit, dated 23 August 2021, para 6.2

256 Ibid, para 6.3

257 Roger Telemachus Affidavit, para 12 and 14

- c. Domestic cricket underwent restructuring and the CSA decided to dissolve the franchise system and upgrade the provincial teams into professional structures for the 2021/2022 season.²⁵⁸
- d. After the end of the 2021 season in April 2021, Mr Telemachus was informed that the KZN Coastal team will not be included as part of the new domestic cricket structure.²⁵⁹ Resultantly, Mr Telemachus' position as the coach of the KZN Coastal team was rendered redundant.²⁶⁰
- e. The KZN Inland management advertised nationally positions for coach and assistant coach for the 2021/2022 season. Mr Telemachus applied for both positions.²⁶¹ He was one of the five shortlisted candidates and was called for an interview.²⁶²
- f. Mr Telemachus was, however, not successful in his application for both the coach and assistant coach positions.²⁶³ A Mr Michael Smith ("**Mr Smith**") was appointed as the coach for the KZN Inland team.²⁶⁴

258 CSA -SJM Hearings Transcript Volume XXVI 18 October 2021, pg. 3827

259 Telemachus Affidavit op cit note 3, para 15

260 Ibid, para 15

261 Ibid, para 15. Also see Strydom Affidavit op cit note 1, para 8

262 Transcript Volume XXVI op cit note 4, pg. 3831

263 Strydom Affidavit op cit note 1, para 8

264 Telemachus Affidavit op cit note 3, para 16. Also see Strydom Affidavit op cit note 1, para 10

Was there differentiation in the appointment of Mr Michael smith which amounted to unfair discrimination?

307. Mr Telemachus contends that the appointment of Mr Smith at the KZN Inland team was not fair, open, and transparent.²⁶⁵ He further raises concern that Mr Smith's appointment constitutes unfair discrimination on the grounds of race.

308. He submits that he was qualified for the coaching position at KZN Inlands because he holds a level 4 coaching certificate,²⁶⁶ and has a good track record as head coach of the KZN Coastal where he won (3) three domestic trophies for the team during his tenure as the coach.²⁶⁷ It noteworthy that Mr Heinrich Strydom ("**Mr Strydom**"), the KZN Cricket Chief Executive Officer, disputes the number of trophies and asserts that KZN coastal only won two trophies, in 2018 and 2020, during Mr Telemachus' tenure.²⁶⁸

309. Mr Telemachus questions Mr Smith's appointment arguing that Mr Smith had less coaching experience because he, at time, had never coached in a franchise or provincial team – Mr Smith was a high school coach.²⁶⁹ In terms of qualifications,

265 Telemachus Affidavit op cit note 3, para 14

266 Ibid, para 16

267 Ibid, para 14

268 Transcript Volume XXVI op cit note 4, pg. 3826

269 Telemachus Affidavit op cit note 3, para 16.1

in comparison to Mr Telemachus, who holds a level 4 (four) coaching certificate, Mr Smith only had a level 3 (three) coaching certificate.²⁷⁰

310. During Mr Strydom's testimony at the SNJ hearings, he conceded to this point and stated the following:

*"I can confirm that Mr Smith wasn't a head coach at any provincial level before. So I fully agree with that and the fact that he hasn't got a level 4 coaching certificate."*²⁷¹

311. However, Mr Strydom presented the following evidence in refuting Mr Telemachus' contention that his application for the coaching position was declined because of his race:

- a. Mr Smith's appointment was done in accordance with the KZN Cricket employment policies and transformational objectives were taken into account.²⁷²
- b. The panel that interviewed Mr Telemachus constituted of 4 (four) Africans including the Convenor of Selectors who also holds the position of Cricket Committee Chairman; Cricket Services Manager for KZN Inland; Coaching Manger for KZN Inland and the Human Resources Administrator for KZN Cricket Union.²⁷³ Although, Mr Strydom was meant to be part of the

270 Ibid, para 16.2

271 Transcript Volume XXVI op cit note 4, pg. 3835

272 Telemachus Affidavit op cit note 3, para 10.2

273 Transcript Volume XXVI op cit note 4, pgs. 3831 – 3832

interview panel, he could not attend as a result of a COVID scare.²⁷⁴ The interview panel presented Mr Smith's name to Mr Strydom as the preferred candidate for the coaching position. Mr Strydom in turn, forwarded Mr Smith's name to the Cricket Committee who, according to his statement, was satisfied with the appointment of Mr Smith.²⁷⁵

- c. The interview panel was not only impressed with Mr Smith's interview but also his proposed plans for "*taking KZN Inland forward*".²⁷⁶
- d. One of the minimum requirements for qualification of candidates for consideration as the head coaches was a level 3 (three) coaching certificate. All the candidates that were shortlisted, including Mr Smith, qualified with the basic minimum requirements.²⁷⁷
- e. Mr Smith has "*coached*" some players on a one-on-one basis who have gone on to represent the Proteas or played franchise cricket.²⁷⁸ When asked on Mr Smith's performance, players (including people who had worked with Mr Smith) gave positive feedback.²⁷⁹

274 Ibid, pgs. 3831

275 Ibid, pgs. 3832

276 Ibid, pgs. 3833 and 3843

277 Ibid, pgs. 3833

278 Ibid, pgs. 3834 and 3837

279 Ibid, pgs. 3837

- f. Mr Smith has "international coaching experience having worked with Pakistan Super League".²⁸⁰ What Mr Strydom fails to clarify is that Mr Smith was a batting consultant.²⁸¹ When question on this during the SNJ Hearings, Mr Strydom explained that, as a batting consultant for Pakistan Super League, Mr Smith had to fulfil assistant coach functions as part of his duties.²⁸²
- g. Mr Telemachus had a modest performance throughout the 7 (seven) years that he has been employed by the KZN Cricket Union.²⁸³ In this regard, Mr Strydom submitted that for the period between 2015 to 2020, KZN Coastal secured a team average position of 9th for the T20, 8th for the List A and 7th for the 3 day competition.²⁸⁴
- h. Mr Telemachus received negative feedback from players on the annual coaches reviews. Mr Strydom, further commented that a significant number of players were of the opinion that "*KZN has been overly accommodating to Mr Telemachus in this regard due to his performance and record as a coach...*".²⁸⁵

280 Telemachus Affidavit op cit note 3, para 10.4

281 Transcript Volume XXVI op cit note 4, pgs. 3836

282 Ibid, pgs. 3836

283 Ibid, pgs. 3840

284 Telemachus Affidavit op cit note 3, para 11 read with annexure "HS 1"

285 Transcript Volume XXVI op cit note 4, pgs. 3842 - 3843

312. Mr Telemachus states that he called Mr Strydom and requested reasons as to why his application was declined. He notes that Mr Strydom informed him that Mr Smith was appointed because he brought "*more value and credentials to the table*".²⁸⁶ Mr Strydom disputes saying this and asserts that he merely stated that Mr Smith was considered the "*right candidate to take KZN forward*".²⁸⁷ On both accounts of the reasons Mr Strydom gave for Mr Smith's appointments, Mr Strydom did not communicate such reasons in a meaningful way that would allow Mr Telemachus to get clarity on the factors/issues that the interview panel took into account in making their decision.

313. Given the aforementioned evidence, on a balance of probability, Mr Telemachus has failed to demonstrate that there was differentiation on the listed ground of race in Mr Smith's appointment as the head coach of KZN Inland. Where there is no finding of differentiation, the inquiry stops there. In other words, there can be no finding of discrimination if there is no differentiation.

CRICKET UNIONS

EASTERNS CRICKET UNION

314. In his submission to the Ombudsman on 15 May 2021, Mr. Nash Degambur states the following regarding the appalling state of cricketing facilities in townships an

286 Telemachus Affidavit op cit note 3, para 17

287 Transcript Volume XXVI op cit note 4, pgs. 3848

"In a nutshell facilities in disadvantaged communities are dismally lacking and there are no signs of there going to be improvements anytime soon.

This unfortunately is one of the biggest problems that has no solution in sight for a long time to come.

Opportunity for Black players and players' of colour:

Like i said the past 5 to 7 years have set this union back but more importantly the repercussions for black players and players of colour is immeasurable the damages done is going to take years to rectify if at all. The issue of more concerns is that white player's and some import black players are guaranteed but the other marginalised players in Indian and coloureds have little or no say and have no protection nor a real voice. That double standard needs redressing. Currently in my humble opinion the contracted players incur tier two team is no way a reflection of our representation of ECU and the region and unfortunately we could regress further."

315. On 10 September 2021, the Easterns Cricket Union's Mr Bernard Landsberg responded to Mr Degambur's submission as follows:

"Mr. Nash De Gambur submissions I cannot question for the most part bar one correction pertaining to the CEO suspension and disciplinary in that the charges did not stem from Fundudzi findings and report but rather from an internal audit and investigation by EC NPC auditors TIC & Mend." (own emphasis)

316. In view of this response by Mr Landsberg, the issues raised by Mr Degambur remain unresolved by the Easterns Cricket Union. Mr Landsberg's response is an admission to the fact that the realisation transformation is stifled at the Easterns Cricket Union.

317. The inadequacy of facilities towards emerging cricket clubs is not a new phenomenon faced by Easterns Cricket Union. This issue was raised in the past in the form of a grievance to CSA by the Emerging Cricket Clubs of Ekurhuleni (these clubs are large from under-privileged townships of Ekurhuleni which fall

under the jurisdiction of Easterns Cricket Union). CSA appointed the retired Judge Bernard Ngoepe to preside of the grievance in 2018. In his report dated 25 October 2018, Judge Ngoepe made the following findings and recommendations:

"Findings: There has been lack of provision of facilities in the areas of emerging Clubs; in fact, they have been neglected. This has been an issue as far back as 2012. I doubt whether the "unlocked" amount of 2m would be sufficient to even make a dent, given the description of the neglect. But it also appears that at least some of the clubs did not fully co-operate towards the procurement of facilities.

Recommendations: The issue of facilities is very important. It is crucial for the identification and development of talent, all of which cannot be done unless there are facilities in underdeveloped areas. This is a matter in which CSA should take keen interest if it need to play a supervisory role in terms demanding period feedback. It is crucial to the greater goal of achieving a representative sporting code. Given the duration and extent of the neglect, the R2m allocated is not to be enough; more money should be allocated. All these to be done in close consultation with Emerging Clubs. After all, they know their needs better. Some kind of programme should be structured to show commitment."

318. It is apparent from Mr Landsberg's agreement with Mr Degambur's allegations that the findings and recommendations made by Judge Ngoepe in his report of October 2018 have not been addressed. This conclusion is supported by the testimony of Mr Tsoko Moloko.

"Tsoko Moloko: ... Then there is an admin grant that pretty much all the clubs get. The premier league lunch only goes to premier league clubs. The tablet grant only goes to premier league clubs as well. The senior field grant - so how the union operates is that they look at how many fields a club has, and based on that you are allocated a grant for the fields that you have. One can automatically see how that would put Black clubs at a disadvantage, because the issue of facilities is not unique only to Easterns. If you go across the country you will quickly realise that there are a handful, I can probably count them on my one hand - there are a handful of clubs that have facilities within their townships. So this grant will hardly go to Black clubs because

*we do not have the facilities. And the same would apply to the junior grants that I've listed there."*²⁸⁸

319. What the OTO distils from the above is that the lack access to cricketing facilities is a grave barrier to any efforts to transform the game of cricket. The OTO ventures to remark that without access to facilities transformation is not possible at all.

320. On consideration of evidence submitted by the Mr. Nash Degambur, Mr. Tsoko Moloko, Mr. Mpho Seopa, it is apparent that another barrier to real transformation within the Easterns Cricket Union is disunity, infighting and general mismanagement of the affairs of the Union in question. It is further apparent the CSA has not made the required periodical interventions as directed by Judge Ngoepe in his report of October 2018. Transformation is not possible where there is a paralysis in governance.

NORTHERNS CRICKET UNION

321. Mr Aaron Phangiso alleges the following in his Affidavit before the Ombudsman:

"At age 19, I was selected to play for the South African U/19 cricket team. During the same period, I was contracted to the Northerns. This was the first professional contract I signed as a cricket player. In terms of this contract, I was to earn R1 200 (One Thousand, Two Hundred Rands) per month. I was advised that the details of my contract were confidential and should not be disclosed with any fellow player. Northerns u/19 team featured amongst others the following cricket players: Mr AB De Villiers (White player); Mr FAF Du Plessis (White player); Mr H Leroux (White player); and Mr F Nkuna (Black African player). During dressing room discussion among teenage teammates, I learned that the aforesaid white players were all earning above myself and Nkuna. They disclosed that they

288 Page 2581 to 2582 of the transcript to Moloko's evidence.

were earning approximately R5000 (Five Thousand Rands) per month. I was disappointed at learning about this differentiation in the remuneration of players. I did not think that this differentiation could be justified on any rational basis, but I could not dare raise my concern as I feared reprisal from the management of the team."

322. Mr Kabelo Khaas, in his testimony before the Ombudsman, conceded that the allegations outlined above by Mr Phangiso were correct, and continued to provide a reason for the differentiation of salary packages between black and white players at the time in the following terms:

"He was contracted by Northerns Cricket Union and was earning R1 200, which was way lower than his counterparts at the time, who also played for the South African Under 19 team, namely Mr Faf Du Plessis, Mr Heinrich Le Roux And Mr Frans Nkuna as well. Mr Phangiso was paid R1 200 as opposed to the other players, who earned approximately R5 000, according to his knowledge. Chair I must confirm that that is correct.

However, it is not entirely correct because there are different structures of the R5 000 being paid to these players. Let me say, rather, these players were given the R5 000 as a retainer. These other guys, who were very young, who were talented, who had just made the Under 19 South African team were hot property. Other provinces would be interested, so you want to have some kind of a retention strategy to ensure that they stay within the system so they can play for the Titans one day. The reason why Mr Phangiso earned R1 200 is that they would all be given an opportunity to choose how the salary should be structured...Because Mr Phangiso was from Soshanguve his R5 000 was structured in three ways. Part of it would go to his accommodation to be close to Supersport Park, where he would get the best opportunity to get to the stadium fast and be in an environment that would put him very close to facilities where he would then practise with the Titans B or Northerns B at the time. He would then receive groceries from the amount that he received as part of the R5 000 stipend - I will call it a stipend. This is the only different, whereas White players would stay in proximity to the stadium. They wouldn't necessarily need care in terms of groceries and they wouldn't necessarily need to be close to the stadiums, as opposed to a young Black player travelling about 60+ kilometres from a township in Soshanguve every day, required to be at Supersport Park. That was never going to help his cause of focusing on cricket and growing as a player as well."²⁸⁹

323. When asked whether the details above were explained to Mr Phangiso, Mr Khaas said the following:

"This obviously would be the details in the contract. But given his age, at , I don't know if he maybe didn't – was it explained to him? It should have been explained, if you ask me, because you were dealing with a 19-year-old here at the time. Clearly he was not aware of it, hence he actually brought it up. In his own mind and to his knowledge: White players earned R5 000 and he was earning R1 200, but why? I am not too sure, to be honest, Advocate, if it was articulated clearly to him what the R5 000 entails, or rather what the 5 other money from his stipend went towards but clearly he was not under that impression, hence he made the submission."²⁹⁰ (own emphasis)

324. The explanation provided by the Northerns Cricket Union is both reasonable and acceptable. The only criticism to be made in this regard is the lack of care the Union took in properly explaining the terms of the contract between itself and Mr Phangiso, more specifically in explaining his salary structure and discrepancies in the salaries between the young players. It was important for the Union to do this because people talk and misunderstandings like these could lead to a perception that the Union is discriminatory and racist - as evident in this very case.

325. In this regard, it is recommended that CSA and all its structures to be more conscientious and transparent when dealing with player remuneration.

THE TITAN'S RESPONSE TO MR ETHY MABALATHI, PHANGISO, SELOWA AND PRINCE

326. It is remarkable that the Titans have not admitted to a single averment contained in Mr. Mbalati's affidavit even his lived experiences. This is simply not possible.
327. None of the 'witnesses' referred to Mr. Klaas' affidavit have appeared before the Ombudsman or even reduced their rebuttals to Mr. Mbalati's averment statement or affidavits under oath. Their letters and emails in response to Mr. Mbalati's statements under oath are of no help to the Ombudsman in getting to the truth of the allegations made by Mr. Mbalati.
328. From paragraph 4.2 to 4.16 Mr. Khaas dismisses the experiences relayed by Mr. Mbalathi without providing any evidence in substantiation of his rebuttals.
329. Mr. Khaas refers to a number of persons in support of his content that Mr. Mbalathi's allegations are baseless, however most of the persons he refers to 'do not recall' the incidents narrated by Mr. Mbalathi. Mr. Mbalathi on the other hand recalls these incidents vividly because they were perpetrated on him.
330. It is shocking that a player has to arrange his own benefit match having diligently served the team for more than 10 years. With respect that is not how a team should treat a stalwart.
331. Mr. Khaas adopts the same attitude in respect of Messrs. Phangiso, Prince and Selowa in circumstances where he has no personal knowledge of their pain of being called and referred to as 'quota' players.

332. By way of example Mr. Khaas accepts Mr. De Villiers and Paul Harris' responses to complaints raised by Mr. Ashwell prince without question. What is more disturbing about this denialism on the part of Mr. Khaas is that none of these individuals appeared before the Ombudsman to explain their alleged conduct. Their version could not be tested in any manner or form.

333. Ultimately the allegations made by players against the Northerns Cricket Union could not fully investigated owing to strictures of time. With this being said, the OTO is unable to make definitive conclusions concerning the most of the complaints raised against this union and the alleged respondents serving this union.

IS RACISM AND DISCRIMINATION IN THE APPOINTMENT OF STAFF?

334. On or about August 2019 CSA approved an organizational structure in terms of which a position of Director of Cricket ("**DoC**") was created. In terms of the approved organizational structure, the DoC would be in charge of all National Team Matters and cricket within the system (including Pipeline Cricket) and would in turn report to the Chief Executive Officer who reports to the CSA Board.

335. The Team Director (Head Coach) as well as the National Convenor of Selectors would report directly to the DoC.

336. It is common cause that in terms of the new organizational structure the following positions reported directly to the DoC.

- a. Head of Cricket Pathways;
- b. National Convenor of Selectors;
- c. Chief Medical Officer;
- d. Proteas Men's Team Director; and
- e. Proteas Women's Team Director.

337. According to a press release issued by CSA on 4 August 2019, pending the appointment of the DoC, all cricketing decisions within the system would be made by Mr. Corrie van Zyl, who had assumed the position of Acting DoC and the then CEO of CSA Mr. Thabang Moroe would appoint an interim management team selection panel and captain for the tour to India.

338. According to a timeline submitted by Mr. Smith (annexure "**GS6**" to his affidavit) Mr. Smith records the following events concerning his eventual appointment to the position of DoC:

- a. He was approached by Mr. Moroe on 10 July 2019 in Southampton concerning the DoC role.
- b. On 6 August 2019, Mr. Moroe initiated contact and wanted to arrange a meeting with Mr. Smith;

- c. On 19 August 2019, Mr. Smith met with Mr. Moroe in Cape Town and informed him that he had been mandated to fill to the DoC and wanted to know whether Mr. Smith was interested in the position.
- d. On 28 August 2019, Mr. Smith was flown by Mr. Moroe to Johannesburg for a meeting to discuss the DoC role and on his arrival, he was informed that the meeting would be held at Dr Ali Bacher's house. Mr. Smith was surprised by Dr Bacher's involvement in the pursuit for his services. At this meeting Mr. Smith was offered the position of DoC by Mr. Moroe and Dr Bacher. According to Mr. Smith, they advised him that the terms of the appointment would be discussed with upon his return from the impending work trip to India, where the latter was a commentator for Star India.
- e. Mr. Moroe sent Mr. Smith messages throughout the Indian tour, saying he could expect a contract.
- f. On 14 October 2019, Mr. Moroe sent Mr. Smith a message informing him that he (Moroe) has '*submitted a paper to Remco*' and '*as soon as the round robin resolution is approved*' he would be sending Mr. Smith a contract.
- g. On 18 October 2019 Mr. Moroe sent Mr. Smith a message informing him that "...HR chairperson wants to go through formalities which will take at least a day but the whole board is supportive of my choice being you!" In response to this email Mr. Smith informed Mr. Moroe that he would like to see the draft agreement so as to assess the terms.

- h. On 20 October 2019, Mr. Moroe requested Mr. Smith to send his curriculum vitae ("**CV**") to one Musa.
- i. On 31 October 2019, Mr. Smith was requested to send his 'application' with a covering letter, a comprehensive CV, copies of SA ID and qualifications, and at least two contactable references. Mr. Smith complied with this directive.
- j. On 6 November 2019, Mr. Smith received an email from one Chantelle Moon wherein Moon was informing him that he would have to do a 15 to 20 minutes presentation during his interview. In the said email moon went further to advise Mr. Smith on the topics he would have to cover or discuss in his presentation.
- k. On the same day according, to Mr. Smith, Moon addressed another email to him informing him to prepare on the following issues:

"Please prepare for these:

1. Their strategy on bridging the relationship between SACA and CSA

2. Their thoughts on the new CSA league (Currently 12 teams), and would they want to keep the status quo or review? How do they plan to execute their approach (current / reviewed scope) taking into consideration that the new league has been approved by members council?

I really like the following questions on the guide:

1. How do they see the DoC role making an impact?

2. Their views on current transformation state of CSA, gaps, and plan to close them?

3. If they were successful, what support would they need from the Board and CEO?..."

339. On 9 November 2019, Mr. Smith received a telephone call from Mr. Moroe informing him that he 'got the job' but needed him in Johannesburg.

When were interviews held and what happened during interviews?

340. According to Mr. Moseki²⁹¹ the interviews were held on 8 November 2019 and 4 shortlisted candidates were interviewed:

- a. Mr. Corrie van Zyl;
- b. Mr. Smith;
- c. Mr. Hussein Manack; and
- d. Dave Nosworthy.

341. According to Mr. Moseki, Mr. Smith gave an oral presentation during the interview and answering the questions that he was asked to prepare. The other candidates made formal [written] presentations during their interviews.²⁹² On this point Mr.

291 Paragraph 70 of Moseki's affidavit.

292 Paragraph 71. To 71.2 of Moseki's affidavit.

Moseki is corroborated by Mr. Manack who testified as follows regarding the eventual appointment of Mr. Smith to the current position

"Current CSA Director of Cricket appointment

141. After the position was advertised, I was shortlisted as one of four possible candidates according to the media.

142. I was invited to do a presentation to a CSA interview panel. I did a presentation before the panel which I thought went quite well.

143. This, along with media reports that Graeme Smith was no longer interested in the position made me think that I had a good chance of being appointed. I was not appointed, and I received no feedback from CSA as to why my application was not successful.

144. I am not bitter that I did not get appointed as the Director of Cricket as I believe everything happens for a reason that God alone knows. Based on the narrative in the media and the pressure for South Africa to follow in the footsteps of the English and to appoint one of their past Captains as the Director of Cricket, I can understand why the current incumbent was appointed.

145. I am, however, disappointed that CSA at the time made me go through the trouble of preparing a comprehensive presentation. I spent a significant amount of time in preparing the presentation and this involved speaking to a number of cricket people. I also spent some money getting people to assist in putting together a top class presentation.

146. It seems that the then CSA board wanted to create the impression that they were following due process, by advertising the position, conducting interviews of shortlisted candidates, and then appointing the best candidate based on the interviews.

147. The reality, however, appears to be different. Newspaper reports suggested that both the then CEO and President of CSA were meeting with the Director ultimately appointed and doing their best to convince him to take up the position.

148. It is wrong to run a public non-profit organisation in this way. If we are going to be true to the constitutional values of openness, transparency, and accountability, we should not be trying to mislead South Africa. Let me be clear, I am not accusing the current board of CSA and I hope that these

governance lapses will not occur under their watch. There were, however, serious governance lapses under the previous board of CSA.

149. Unfortunately, it seems that the governance lapses were not limited to the appointment of the Director of Cricket and also flowed over into the appointment of the Head Coach, who was appointed by his friend although he was under qualified to be a first class coach, was appointed without an interview, nor was the position advertised in the first place to allow other qualified and experienced coaches to apply."

342. From the evidence tendered before the Ombudsman it appears that it is only Mr. Smith who did not submit a written presentation to the interview panel. Remarkably, Mr. Smith turned up to be the successful candidate against all 4 shortlisted candidates despite not submitting a written presentation to the interview panel.

343. Mr. On 14 November 2019 Mr. Smith issued a media statement publicly withdrawing his interest in the role of DoC.

344. Following his public withdrawal from the position, on the same day 14 November 2019, Mr. Smith received a telephone call from Mr. Chris Nenzani seeking to meet with him to discuss his withdrawal.

345. On 15 November 2019, Mr. Smith met with Mr. Nenzani and at such meeting, it was agreed that Mr. Smith would take the position of DoC and be allowed the freedom to make the appointments he wished to make. It was also Mr. Smith would not report to Moroe but the board.

346. It is common cause that following the aforesaid discussion and agreement with Mr. Nenzani and other internal interactions between board members of CSA, Mr.

Smith was appointed to the position of DoC on a three months' fixed term contract.²⁹³ This contract was signed on 12 December 2019 appointing Mr. Smith as a DoC from 9 December 2019 to 31 March 2020.

347. When the three months' fixed term contract came to an end on 31 March 2020, on 1 April 2020, CSA and Mr. Smith entered into different contract in terms of which Mr. Smith was appointed as an Independent Contractor. This contract is to terminate on 31 March 2022. We deal with this contract later in this submission.

Was the process leading up to the appointment of Mr. Smith Fair and regular?

348. The HR Manual is instructive in answering this questions. The HR Manual provides as follows pertaining the recruitment, selection and appointment of all employees of CSA.

"3. Recruitment and Selection

Recruitment is probably the single most important element of the Human Capital practice as it determines the type of talent we bring into the organisation and therefore the effectiveness of teams we create and the organisation as a whole.

The position can become vacant due to one of the following reasons:

The current incumbent moving into another role

The current incumbent leaving the organisation altogether

A newly created position within the structure

a. CSA requires that all recruitment and selection to positions are conducted fairly and with respect for the rights and dignity of individuals.

b. CSA's recruitment and selection process is transparent and designed to ensure the most suitable applicant is appointed.

c. Equal employment opportunities apply to all employment practices including but not limited to recruitment, selection, appointment, deployment, promotion, redundancy, conditions of service, and training and development. Exceptions will be made where a strategic decision has been made to address the employment equity targets and source potential employees exclusively from previously disadvantaged groups.

d. The departmental head where the vacant position exists must review the role profile for relevance. Where changes are required, to be submitted in writing or in case of new position, a role profile to be drawn up in consultation with Human Resources Manager.

e. The departmental head Manager responsible to complete a recruitment form and forward to Human Resources Manager confirming headcount and budget for the role if it is a newly created role.

d. All recruitment requisition forms and new positions to be signed off by the CEO.

e. All vacant positions are advertised internally (including at Regional Cricket Unions) and where necessary, on the CSA website, then external advertising, search and/or recruitment agencies may be utilised to source suitable candidates; except where an existing employee has been identified through the career development and succession planning process.

f. Panel interviews are the preferred method of conducting interviews to ensure fair and broad representation of expertise in the selection process.

i. Recruitment and selection process may include screening and leadership, or other psychometric assessments based on need and relevance per position.

j. Checks: All permanent employment offers are subject to satisfactory checks and verifications being conducted prior to making an offer of employment.

At least two thorough employment reference checks with former employers or managers.

Qualification confirmation for all stated qualifications.

Credit checks where a position and responsibilities warrant.

ID confirmation to verify citizenship.

Criminal checks on all candidates before offers are made.

4. Employment Letter Content

4.1 Appointment

CSA follows an open, fair and thorough recruitment and selection process for appointments as outlined in this manual. The role profile is also attached as part of the offer of employment for ease of reference

4.2 Travel

Due to the nature of the organisation, sport is played throughout the year locally and internationally, with concentration during specific times of the year (cricket season). See CSA's revised local/domestic travel and international travel policy guidelines."

349. On a CSA board meeting of 6 September 2019 and following the adoption of the Job Profiles in respect of the positions of DoC and Convenor of Selection, the CSA board resolved as follows:

"Resolution – the Board was satisfied with the Director of Cricket and Convenor of Selection profiles Management had presented. Taking into consideration the issues raised by the Board, Management will subsequently execute the two appointments."²⁹⁴

350. Following this mandate, as demonstrated above, Mr. Moroe started recruiting Mr. Smith.

²⁹⁴ See annexure CSA10 of Mr. Moseki's affidavit.

351. It is common cause that the recruitment of Mr. Smith was well underway and at an advanced stage when the position was eventually advertised.²⁹⁵ For instance on 28 August 2019, Mr. Smith was offered the position by Mr. Moroe and Bacher at the latter's house. On 14 October 2019, Mr. Moroe had according to Mr. Smith '*submitted a paper to Remco*' and '*as soon as the round robin resolution is approved*' he would be sending Mr. Smith a contract. This paper submitted by Mr. Moroe to Remco is attached as annexure CSA12 to Mr. Moseki's affidavit.

352. In the paper to Remco Mr. Moroe and Musa Gubevu, report that 'in implementing the Boards decision, management considered and concluded that a headhunting process was the most effect recruitment method to recruit and appoint the DOC, given the limited timeframe, scarcity and availability of potential candidates in the market.'

353. We have considered the HR Manual and documentation filed support of CSA's response we could not find any document or policy in terms of which CSA management is empowered to conduct recruitment by way of headhunting. It is our view that the procedure undertaken by Mr. Moroe recruiting Mr. Smith was ultra vires the HR Manual as it makes specific provision for recruitment, selection, and appointment for all positions at CSA. In headhunting Mr. Smith, Mr. Moroe acted outside of CSA policy.

²⁹⁵ According to Mr. Smith's own timeline Mr. Moroe commenced his pursuit for services on 10 July 2019.

354. On 15 October 2019, CSA advertise the position of DoC.²⁹⁶ We surmise that this change in recruitment approach was or may have been informed by the existence of the HR Manual.

355. It is clear from the timeline ("GS6" to Mr. Smith's affidavit) submitted by Mr. Smith and Mr. Moseki's affidavit, that Mr. Smith was greatly assisted by Mr. Moroe, Gubevu and Ms. Moon in-

- a. preparing for his interview for the position in question; and
- b. submitting his application and supporting documents.

356. According to Mr. Moseki²⁹⁷ Mr. Moroe was part of the interview panel which interviewed the candidates for the position of DoC.

357. Mr. Moroe was obviously biased in favour of Mr. Smith when regard is had to his interaction with him and what he told Remco on 14 October 2019.

358. As Mr. Manack states in his affidavit, Mr. Smith did not even prepare a presentation for his interview. Whereas other candidates had to go through the hardship and make the effort to prepare a presentation and where still not considered suitable for the position.

296 See annexure "CSA15" to Mr Moseki's affidavit.

297 Paragraph 68 of his affidavit.

359. In of the aforesaid undisputed facts, it is OTO's view that the appointment of Mr. Smith ahead of other candidates was not fair to the other candidates who were interviewed. Mr. Manack is correct in his suggestion that the appointment of Mr. Smith was a foregone conclusion. The interview process was a sham, and it really undermined the dignity of all those who took the time and effort to apply for the position and prepare for it.

360. Accordingly, OTO concludes that the appointment of Mr Smith was irregular, irrational and unfair.

Mr. Smith's racial prejudices against Black CSA Management

361. Mr. Smith has made it clear in his timeline document that he was not willing to report to Mr. Moroe. He provides no explanation why he was reluctant to report to Mr. Moroe. He goes as far as saying that he did not trust Mr. Moroe who was the CEO of CSA at the time wished to report to the board of CSA as opposed to Mr. Moroe.

362. Mr. Smith further states in his timeline that he is only prepared to take the position on the three months because he did not trust CSA. CSA at the time was led by a black African CEO and black African President, Mr. Nenzani.

363. When Mr. Moroe was suspended, Dr Faul was appointed on an interim CEO of the CSA. Mr. Smith was now happy to report to Dr Faul as his CEO. This conduct on the part of Mr. Smith evinces his racial bias against black leadership at CSA.

There was no reason for Mr. Smith to insist on report to the board when the CSA structure dictated that he reports to the CEO.

The appointment of Mr. Smith as an independent contractor

364. When Mr Smith's three months' fixed term contract expired on 31 March 2020, it was neither renewed nor extended. Instead CSA and Mr Smith entered into an independent contractor agreement in terms of which Mr Smith's services were engaged from 1 April 2020 to 31 March 2022.

365. A relationship between an independent contractor and an employer is a purely commercial undertaking not governed by the Labour Relations Act 66 of 1996 as amended.

366. Mr Moroe testified that before OTO that this commercial arrangement between CSA and Mr Smith was unlawful as it was in breach of the Supply Chain Management Policy of CSA. Mr Moroe further testified that he was disciplined and subsequently dismissed for appointing a particular service provider as a consultant to CSA (Tinanati Management (Pty) Ltd), without following the Procurement Policy of CSA.

367. Mr Moroe was correct, the appointment of Mr Smith as independent contractor was highly irregular as it contravened the provisions of CSA's procurement Policy in relation to the appointment of service providers.

368. It must be recalled that Mr Smith was appointed to the position in question following an advertisement and sham interviews. The position is in the organisation structure of CSA and reports to the CEO. In other words a DoC is an employee of CSA. He like, any other senior employee is empowered to appoint employees in his unit. How his position transformed to that of an independent contractor is unexplained by CSA and Mr Smith himself. This is a serious governance lapse on the part of CSA.

369. The OTO of the view that the true nature of the relationship between CSA and Mr Smith is still that of an employer and employee. Mr Smith is for all intents and purposes an employee of CSA. There is nothing which changed in the employment relationship between then and now.

APPOINTMENT OF MARK BOUCHER

370. Mr Omphile Ramela testified that the appointment of Mr Boucher ahead of Mr Nkwe into the position of Team Director or Head Coach undermined efforts to transform the game. He went on to testify that Mr Boucher was under qualified for the position compared to Mr Nkwe. That the appointment of Mr Boucher and Nkwe being appointed as his assistant was a demotion of the latter. The said demotion could only have been influenced by the colour of Mr Nkwe's skin.

371. Mr Ramela further testified that Mr Smith and the CSA Board contravened the HR Manual in respect of the appointments made by Mr Smith.

372. Mr Roger Telemachus testified that according to CSA own requirements the position of Head Coach or Team Director for the Protea's men senior team requires a level 4 coaching badge or certificate. Mr Telemachus himself has a level 4 coaching certificate. Mr Telemachus testified that the position of the Head coach was not advertised and according to him the current Head Coach was not qualified for the position as he did not possess a level 4 coaching certificate which is what was required for a senior coaching position.²⁹⁸

373. Messrs Telemachus and Ramela are also supported by Mr Hussein Manack who states as follows in his affidavit:

"148. It is wrong to run a public non-profit organisation in this way. If we are going to be true to the constitutional values of openness, transparency and accountability, we should not be trying to mislead South Africa. Let me be clear, I am not accusing the current board of CSA and I hope that these governance lapses will not occur under their watch. There were, however, serious governance lapses under the previous board of CSA.

149. Unfortunately, it seems that the governance lapses were not limited to the appointment of the Director of Cricket and also flowed over into the appointment of the Head Coach, who was appointed by his friend although he was under qualified to be a first class coach, was appointed without an interview, nor was the position advertised in the first place to allow other qualified and experienced coaches to apply." (own emphasis)

374. According to available and uncontested evidence a level 4 is the highest cricket qualification currently available in South Africa and is mainly for professionals,

298 Telemachus' affidavit at paragraph 14.

career coaches working within the national and domestic professional structures. Attendance to this level 4 coaching certificate is by CSA invitation only ²⁹⁹.

375. It is common cause that Mr Boucher was appointed as a head coach for the Proteas cricket team in December 2019 by Mr Graeme Smith.

Was Mr Boucher appointed in accordance with CSA recruitment and selection policies?

376. In terms of the CSA organisational structure the position Head Coach is referred as Team Director. In terms of the CSA organisational structure, the Head Coach together with other administrators report to the Director of Cricket, in this case Mr Smith. Mr Smith's contract makes mentions, without any elaboration, the CSA Human Resources Manual ("**HR Manual**").³⁰⁰ As indicated elsewhere in these submissions, CSA has to follow the HR Manual in its recruitment processes.

Mr Smith's response to allegations concerning Mr Boucher's appointment

377. At paragraph 81 his affidavit, Mr Smith avers that the appointments of Mr Boucher and Nkwe were approved by the CSA. According to annexure GS6 to Mr Smith's affidavit, as in terms of clause 12.6 of his 3 months fixed term contract he was granted the 'freedom' and latitude by the CSA board to make the appointments. Clause 12.6 of his three month fixed term contract which provides:

²⁹⁹ Opinion | Would CSA protect any other coach like they have Mark Boucher? (thesouthafrican.com)

³⁰⁰ Clause 2.

"12.6 appoint, manage, supervise and/or dismiss the members of staff reporting directly or indirectly to the Director of Cricket without prior approval of the CSA Board but always in consultation with the Chief Executive."

378. At paragraph 83 of his affidavit, Mr Smith concludes by testifying that:

"If the process was indeed flawed in some manner, I would have expected the Board of the President of the head of HR of or the Company Secretary or legal department to have made it known to me at the time. I have not received one objection, in fact the opposite. HR, Legal, Company Secretary, the President, the Board, the Acting CEO and the CFO all endorsed the process and the appointments. Indeed, I received a WhatsApp messages from the CSA President Mr Nenzani on 16 December 2019...saying "Continue the good work."

95. Finally, it is important to remember that Mark Boucher had been one of the most successful coach[es] in terms of performance in the years leading up to his appointment. Since his appointment as head coach of the Titans in 2016, he led the Titans to no less than five domestic titles - two One Day Cups, two T20 Challenge titles and one four-day Sunfoil Series trophy. Apart from that, he also had substantial international experience of having played at the highest level in different conditions across different continents over a prolonged period of time. Hence, his ability to maximise the strengths of different players in varying conditions across the globe was an immensely valuable attribute that put him ahead of other candidates at the time."

379. In the above paragraphs of his affidavit, Mr Smith does not explain how he arrived at the decision of appointing Mr Boucher. There is no mention, whatsoever of the CSA HR Manual having been applied by Mr Smith and CSA is the appointment of Mr Boucher and other appointments made during the period in question. At paragraph 65³⁰¹ of his affidavit, Mr Smith highlights Mr Boucher success as a

301 Mark Boucher is quoted by various independent cricketing resources as being one of the greatest wicket keepers of all time. According to Wisden publication, "[a] couple of years after making his Test debut as a raw 20-year old, Mark Boucher had acquired the soubriquet "Guinness"- for his collection of records. Fastest and youngest to just about every milestone, he became the most prolific keeper ever in February 2008, after a brief yo-yo at the top of the pile with Adam Gilchrist." In 2008 h was named Wisden Cricketer of the Year, a prominent accolade . In 147 Tests he made 555 dismissals, which I believe is a Test record. He was the first cricketer ever to reach 500 dismissals in Test cricket. He also made 5,515 Test runs at 30.30 with five centuries. He also played in staggering 225 One-Day internationals, making 425 dismissals, and scoring 4686 runs with a top score of 147

cricket player during the latter's playing days, he does not venture at all to explain the process he followed in appointing Mr Boucher in ahead of Mr Enoch Nkwe who was at that time an interim Head Coach for the Proteas.

380. On the evidence before the OTO, the accolades mentioned at paragraph 95 of Mr Smith's affidavit only qualify Mr Boucher to a level 2 coach. Mr Smith does not explain the reason for not attaching any weight to Mr Nkwe's international coaching experience and his domestic coaching success.

381. From a consideration of Mr Smith's affidavit alone, which is the only document he supplied the Ombudsman, it is clear that Mr Smith did not follow any CSA policy in appointing Mr Boucher and all other individuals including Mr Nkwe to the positions they were appointed to.

382. Considering the seniority of his position and the level of responsibility and authority he was clothed with in that position he ought to have known that appointments at CSA are made in accordance with the HR Manual. Mr Smith needs to know that, that is not how things work in the corporate world.

not out. In total between Test Cricket, One-day internationals and T20 internationals, he achieved 999 dismissals. According to espnricricinfo.com he is "likely to hold the record for Test dismissals among many others – long after his retirement". According to cricketing website cricbuzz.com, "[w]ith 3 World Cup appearances, 100 plus Test matches and 200 plus ODI's , Boucher was largely instrumental in South Africa's journey to becoming one of the best Test teams of all times. Unfortunately though, he suffered a serious injury on 9th July 2012, while playing a practice game on the tour England. He was hit in the eye by a bail after Tahir bowled Somerset batsman Gemaal Hussain. Boucher was not wearing a helmet nor glasses. He underwent surgery and was ruled out of the tour. Boucher, who planned to retire after the series, was forced to quit all forms of cricket on 10th July 2012."

383. The fact that he was not told or advised by the CSA board, CEO etc. to comply with the HR Manual when making his appointments does not absolve Mr Smith from his responsibility as senior employee of CSA at the time to comply with its provisions. Mr Smith needs to understand that he was handsomely remunerated for his position and professed to possess all the attributes for the position in question, one such attribute is familiarity with the governance controls in the organisation. The fact that board did not stop him does not render his conduct regular and excusable.

Mr Chris Nenzani's version

384. Mr Nenzani submitted a statement to the Ombudsman on 9 September 2021, responding to questions posed by the Ombudsman concerning the appointment of Mr Smith and Boucher. Below is Mr Nenzani's explanation of the rationale behind Mr Boucher's appointment:

"At the conclusion of the ICC World Cup in England in 2019 and given the catastrophic failure of the Senior Men's National Team, the Board mandated the then CEO and his executive management to develop a model for a new national team management structure. That structure was presented and adopted by the Board in early August 2019.

The new management structure gave the Director of Cricket the authority and responsibility to appoint the National Team Director (National Coach), the Assistant Team Director, the National Selection Panel Convenor, amongst the appointments he could make. This did not give him powers not to follow due appointment processes. It does, however, happen that head-hunting becomes necessary in the appointment of coaches. This had happened in the past when CSA appointed coaches.

The appointment of Mr. Mark Boucher should be viewed in the relevant context of the time. He had been the most successful coach in the South African professional cricket for two full seasons with the Titans Franchise. South Africa had experienced an embarrassing monumental failure at the

Cricket World Cup in England in 2019. The morale of the team, the organization and most importantly that of the cricket supporting public was very low. The inbound English Tour for the 2019/2020 summer was two weeks away. There was a need to have in place a permanent coaching structure ahead of the tour and to enhance team stability. At the time the governance of the organization was going through a period of turbulence, with the Board dealing with many crisis situations. To have a settled national team was extremely important."

385. Three things can be distilled from above passage extracted from Mr. Nenzani's statement:

- a. First, that the newly adopted CSA 'management structure', afforded Mr. Smith the authority and responsibility to make all the appointments he made including that of Mr. Boucher.
- b. Second, Mr. Nenzani seems to suggest (correctly in our view) that the authority to appoint the persons he appointed, did not mean that such appointment had to be made without following the policies and procedures of CSA.
- c. Third, Mr. Nenzani also seems to suggest that these appointments may have been made through a 'head-hunting' procedure which is permissible in certain circumstances. According to Mr. Nenzani, this head-hunting procedure had been followed in the past in respect of the appointment of head coaches.
- d. Fourth, without providing any answer as what process, policy of criterion was applied in appointing Mr. Boucher to the position in question, Mr. Nenzani suggests that Mr. Boucher's appointment must be viewed in light

of his success as Franchise coach, and the need for stability. Nowhere, in his statement does Mr. Nenzani mention Mr. Nkwe, particularly why his board consider Mr. Boucher better suited for a position which had been occupied albeit on interim basis by Mr. Nkwe.

- e. Fifth, if there was not enough time left to recruit in terms of the CSA policies, the question is why was the appointment of Mr. Boucher so urgent?

386. From an objective consideration of Mr. Nenzani's statement, the process followed in appointing Mr. Boucher into his current position ahead of Nkwe remains unclear. In fact, Mr. Nenzani does not answer this question at all in his statement.

387. Furthermore, that the appointment of Mr. Boucher and all those appointed with him (including Nkwe) was not made in accordance with the HR Manual.

Mr. Pholetsi Moseki's version

388. Mr. Moseki also discusses Mr. Boucher's appointment from paragraph 125 to 131 of his affidavit. At paragraph 125, he confirms that Mr. Boucher was appointed by Mr. Smith in terms of clause 12.6 of his employment contract referred to above. Mr. Moseki, however, does not explain the process followed by Mr. Smith in appointing Mr. Boucher, particularly whether the recruitment and selection Manual of the CSA was followed by Mr. Smith in making the appointments he made.

389. At paragraph 128.2 to 128.3 of his affidavit Mr. Moseki refers to an email by one Mr. Richardson who seems to admit that the recruitment and selection Manual of CSA was not followed in the appointment of Mr. Boucher.

390. On a reading of paragraphs 128.2 to 128.3 in Mr. Moseki's affidavit, he suggests that the reason for the failure on the part of Mr. Smith to follow the recruitment and selection manual in respect of the appointments he made was because there was little or no time to do so. This is so because that is what the email by Mr. Richardson says concerning the reason why normal CSA recruitment and selection processes could be followed.

391. At paragraph 129 of his affidavit, Mr. Moseki testifies that there has been a debate about whether Mr. Nkwe should have been appointed as the Head Coach of the Proteas instead of Mr. Boucher. Mr. Moseki proceeds to say that it is not appropriate for him as interim CEO of CSA to enter this debate. He advances no reasons why it is inappropriate for him to enter the debate. This is odd considering that the allegation is that Mr. Nkwe was race played a role in him not being appointed to the position of Head Coach.

392. In an attempt to respond to allegations concerning the superior qualifications Mr. Nkwe possess over Mr. Boucher, Mr. Moseki makes a general statement that coaching qualifications are but one factor, amongst many that are taken into account when hiring an appropriate candidate.³⁰² These include, coaching qualifications, coaching record at franchise level or elsewhere and playing

302 Para 130.2 of Mr. Moseki's affidavit.

experience at domestic or international.³⁰³ According to Moseki these considerations have to be weighed in making such appointments and that reasonable people could disagree on the appropriate outcome..

393. His attempt to respond to concerns about the impropriety of Mr. Boucher's appointment as discussed above, Mr. Moseki provides no evidence whether those were indeed the considerations taken into account in appointing Mr. Boucher to his current position. Mr. Moseki further does to not explain how those considerations were taken into account when Mr. Boucher was appointed his current position instead of Mr. Nkwe. Particularly why certain factors weighed less than others if this was indeed the case. In fact, during his oral testimony before the Ombudsman on 28 October 2021 Mr. Moseki admitted that he did not have personal knowledge of the process followed in appointing Mr. Boucher. His knowledge pertaining these issues stems from reading documents and timelines provided to him. In fact, Mr. Moseki was fairly new at CSA as he was appointed around June/July 2019.

394. On the OTO's assessment of the documents³⁰⁴ considered by Mr. Moseki pertaining the appointment of Mr. Boucher, such documents do not even attempt to explain why Mr. Boucher was preferred for the Head Coach position ahead of Mr. Nkwe who on CSA's own coach badges or levels is more qualified than Mr. Boucher.

303 Ibid.

304 Mr. Smith's timeline regarding appointments.

395. CSA, Messrs. Smith and Nenzani all failed to explain the process followed and applied in appointing Mr. Boucher and the other coaching staff members in December 2019. None of them contended that such appointments were made pursuant to the provisions of the HR Manual.

Was Nkwe discriminated against on the basis of race?

Coaching credentials Mr. Boucher vs Mr. Nkwe

396. On available information (or according to his CV) a few years after retiring in Mr. Boucher was appointed as the Head Coach of the Titans from 2016 until December 2019 when he was appointed by Mr. Smith to his current position. In the 3 year stint with the Titans Mr. Boucher had won five titles. These are:

- a. 2 One Day Cups;
- b. 2 T/20 Challenge titles; and
- c. 1 Four Day Sunfoil Series trophy.

397. Gathering from the evidence of Mr. Ramela, Manack and Telemachus which evidence has not been challenged, Mr. Boucher has a level 2 coaching certificate or is not qualified to coach first class cricket.³⁰⁵

305 Opinion | Would CSA protect any other coach like they have Mark Boucher? (thesouthafrican.com)

398. Nkwe on the other hand has won eight titles at various levels of his coaching. Twice a winner of second tier cricket competition at the Netherlands as player-coach. In 2016 Nkwe was appointed as the assistant coach to Mr. Anton Roux in the Netherlands National Cricket Team. In 2018 he returned to South Africa to be appointed as Head Coach of the Highveld Lions in that year he won both the CSA T20 Challenge and the 4 Day Sunfoil Series in his first season. Following this he was named the Head Coach of Jozi Stars for the inaugural Mzansi Super League in 2018. He won the tournament in that year. In 2019 he joined Vancouver Knights as Assistant Coach in the Global T20 tournament, and the team finished runners up.

399. In addition to the above Mr. Nkwe won the following trophies as a coach:

- a. One trophy with the Lions Cubs Week at a tournament offered by CSA in 2013; and
- b. Three club competitions with Gauteng Strikers.

400. Mr. Nkwe has a level 4 coaching certificate, which is the highest and requisite coaching certificate for a first class or a national coach.

401. Mr. Telemachus also has a level 4 coaching certificate as well as coaching experience with the KZN Coastal Team. Telemachus is also a former Proteas player having served the Proteas.

402. Did Mr. Smith and CSA differentiate between black and white coaches, when they appointed Mr. Boucher to the Head Coach position. The answer to the question is in the affirmative. Mr. Smith and CSA appointed Mr. Boucher ahead of Mr. Nkwe (or Mr. Telemachus).
403. The second stage of the inquiry is whether discrimination was unfair? It is presumed to be unfair if it is a listed ground. In the present case the listed ground is race. At this point the onus shifted to Mr. Smith and CSA to rebut the presumption of unfair discrimination.
404. From the available evidence before the OTO, Mr. Smith and CSA failed to rebut the presumption of unfair discrimination in the appointment of Mr. Boucher ahead of Mr. Nkwe and other similarly positioned black coaches. As already indicated in the chapter about discrimination, intention plays no part in the determination of whether certain conduct amounts to discrimination. What matters is the impact of such conduct on those affected by past disadvantage and discrimination. In this case the black coaches.
405. Lastly, to demonstrate the adverse and painful effect of the unfair discrimination on Mr. Nkwe Dr Faul although not contending that there was unfair discrimination perpetuated against Mr. Nkwe characterized Nkwe's state of being at the time the decision to appoint Mr. Boucher was taken, as follows:

"I set up a meeting - actually MR EDDIE KHOZA set up a meeting with me, saying that MR ENOCH NKWE wanted to meet with me. I met with him on 10 December here and I spoke to him. He said he was the interim coach so he had an expectation that he would continue. I said to him: It's my understanding that you would not but we want you to be part of the coaching

panel. He was devastated that he wouldn't go on. He also said to me for six weeks nobody spoke to him. For the last six weeks nobody had ever spoken to him so he didn't know what was going on. I said to him that he had to understand that I had only been there for three days or two days, given the Monday, but he should also understand that the previous CEO had gone through a lot at the end of December, so under those circumstances it was difficult for a CEO to also communicate with them, to be fair. I requested if he would consider being part of it, even as an assistant coach. He didn't agree right away. I then said to him: Why don't you come to CAPE TOWN? I'm going to go to CAPE TOWN. Why don't you meet with MR FAF DU PLESSIS, who was the captain then. We're going to have MR GRAEME SMITH there, we're going to have MR MARK BOUCHER there. Why don't you all get together and see if you can make this work? Would you please consider this? I've been in the industry a long time and I don't want to mention the adviser, but I will, sir, if you require me to do so in private. But I know his adviser. I spoke to his adviser, who said to me ENOCH was really hurt by the fact that he wasn't considered the Head Coach. I could see it as well. I could literally see he was hurt. I wanted him part of it for a couple of reasons. One is it's good for continuity, he had just been INDIA, he is a very successful coach, and he did well. We also realised that in future somebody like THEMBA BAVUMA would play a bigger role and he got on well with THEMBA BAVUMA. He had all the qualities that we wanted in a coach, and, as I said he was involved during the INDIA tour. I also don't blame him for having an expectation. I guess if you're in an acting position or an interim position, you do have that...³⁰⁶

406. Dr Faul accurately captures the effect of CSA's conduct on Mr Nkwe. Mr Nkwe's resignation should really not come as a surprise to CSA. CSA undermined its own transformation imperative in permitting the appointment of Mr Boucher ahead of Mr Nkwe.

Disciplinary action against Mr Moroe

407. Mr Moroe further contended during his oral testimony that while he was disciplined and dismissed for irregularly appointing Tinanati Management (Pty)

Ltd, Dr Faul who signed Mr Smith's independent contractor agreement on behalf of CSA was not disciplined. Mr Moroe claimed that this was discrimination.

408. CSA neither admitted nor denied allegations of selective discipline levelled by Mr Moroe. As the evidence currently stands, there is not rebuttal of Mr Moroe's evidence regarding selective discipline.

409. We are not convinced that the failure to discipline Dr Faul for the irregular appointment of Mr Smith as an 'independent contractor' amounts to discrimination. It is common cause that Mr Moroe was charged following an investigation by Fundudzi which uncovered a number of acts of misconduct committed by him. Dr Faul on the other hand is accused of having contravened the procurement policy on one accession. We do not believe that a case of discrimination has been established by Mr Moroe. There were a number of issues which led to the eventual dismissal of Mr Moroe. Although CSA did not rebut Mr Moroe's claims, he failed to make out a case.

INCOME DISPARITIES IN THE GRANTING OF MATCH FEES

410. Income disparities of any kind must be done away with if we are to close the inequality gap inherited from a legacy of apartheid and colonialism. Narrowing parity of incomes between black and white players is fundamental to transformation. Any arbitrary and irrational differentiation of income on the grounds of race amounts to unfair discrimination. Cricket South Africa must take proactive steps to ensure that all players are treated equally. To allow income

disparities to continue is to sanction the poverty of players who are adversely affected by such differentiation.

411. Previously, reserve players in the 12th to 15th positions in a squad were granted 25% of the amount paid to each of the starting 11 in match fees.³⁰⁷ Improvements were made to the match fee for reserves after Mr Phangiso raised concerns regarding the adverse effects of this system. Discussions between **CSA** and South African Cricket Association ("**SACA**"), in response to the concerns, culminated in an increased match fee of 50% for reserves.³⁰⁸

412. OTO commends the CSA and SACA's efforts to address the injustices of the precious match fee system which left reserves at an appreciable disadvantage. However, we urge the CSA to revisit the purpose of a parity of match fees between reserve players and players in the starting 11. If the reason for the parity of match fees is to incentivise performance by players so that you have the best starting 11, such a justification cannot suffice. There are other ways to incentivise performance i.e. players want to be in the starting 11 because it offers them an opportunity to represent their country, they get opportunities to be noticed which opens up more opportunities to play domestically and internationally.

413. The problem with implementing a parity of match fees is that it has a disproportionate effect on black players who are usually the ones occupying reserve positions. Disparities in match fees are felt more acutely by black players

307 Edward Khoza Statement, dated September 2021, para 47

308 Edward Khoza Statement, dated September 2021, para 47

because they are intrinsically linked to access to playing opportunities. The contentious issue of a lack of access to playing opportunities for black players is well known. Even before the SJN Hearings multiple complaints were raised:

MR AARON PHANGISO

414. Mr Phangiso recounts his frustrating experience at the Northerns Cricket Union where he was never afforded an opportunity to bowl or bat, despite being competent in these areas of the game. He eventually left after four seasons without ever being given a chance to develop as a bowler or batter.³⁰⁹

415. On his experience at the Proteas Men's National Team, Mr Phangiso explains the difficulty he experienced as he seldomly was selected to form part of the starting 11 irrespective of his performance or good form. He states that he, as someone who specialises in spin bowling, could not make the selection, even in tours to countries where the dominant cricket style was spin bowling i.e. India, Sri Lanka, and Pakistan.³¹⁰

416. As the only black player in three world cups – the 2013/14 T20 world cup in Bangladesh; 2015 50 over world cup hosted by Australia and New Zealand; 2015/16 work cup in India – Mr Phangiso was the only player that was not given any game time.³¹¹

ROGER TELEMACHUS

³⁰⁹ Phangiso Affidavit op cit note 2, para 9

³¹⁰ Ibid, para 13 – 14

³¹¹ Ibid, para 15 – 19

417. In the 2007 Proteas World Cup squad in the West Indies, Mr Telemachus was never given an opportunity to play. He specifically laments being denied an opportunity to play in two games that were left during round robin games wherein the Proteas had already qualified for the Super Sixes stage. When enquiring on the reasons why reserve players were not put forward for these two games for experience and exposure purposes, Mr Graeme Smith, the captain at the time, stated that there will be no changes in order to keep the teams momentum.³¹²

418. In another incident, Mr Telemachus explains that he was next to play in the semi-final of the 2007 World Cup because Mr Andre Nel was injured. A day before the game, he was informed by Mr Mickey Arthur that, owing to pressure by the governing political party – the African National Congress –, the CSA was directed to play Mr Makhaya Ntini because there were only white players in the starting 11.³¹³ It must be stated that the external involvement of third parties in the selection of teams is highly irregular. Any political influences in the selection of teams ought to be condemned. The CSA ought to put in place checks and balances that ensure that its independence is protected and to prevent the recurrence of incidences of this nature. However, this irregularity should not distract us from our core concern, which is the lack of representation in the starting 11 in cases where there are equally competent black players who are overlooked.

³¹² Roger Telemachus Affidavit, undated, para 7

³¹³ Ibid, para 10

419. We must take great caution in applying practices in a rigid manner which has the effect of stifling the development of players that belong to marginalised groups.

Mr Telemachus gives a great example of this type of danger wherein he states that:

*"...you have to give people an opportunity when there are dead rubber games. These two games were the perfect opportunity – again I can't stress it enough – the perfect opportunity for people who hadn't played in the World Cup, to give them an opportunity to play."*³¹⁴

PAUL ADAMS

420. Mr Adams also raised concern regarding the limited opportunities afforded to him.

In this regard, in his affidavit he states that:

*"...I also felt the pressure of **always needing to outperform white players with double the effort**... Be it in test cricket or 50 over cricket. I would be in the squad but the majority of the time I would get to play only 1 game in a series or tour, even though my stats say it should have been otherwise. When you see my stats I deserved more than the 1 game allowed to me on those occasions...."*³¹⁵

THAMSANQA TSOLEKILE

421. Mr Tsolekile notes that, despite having a national contract with the CSA, he was the only player that was not given an opportunity to play for Proteas during the 2012 to 2014 period.³¹⁶ Elaborating on his exclusion he comments that he and

³¹⁴ Transcript Volume VIII op cit note 8, pg. 1114

³¹⁵ Adams Affidavit op cit note 10, undated, pg. 2

³¹⁶ Thamsanqa Tsolekile Affidavit, dated July 2021, para 24

fellow players were made to carry drinks for other players during his travels with the Proteas.³¹⁷

LUNGILE LOOTS BOSMAN

422. Mr Lungile Loots Bosman ("**Mr Bosman**") recounts several cases where he was excluded in playing opportunities.

423. In the 2007 World Cup hosted by South Africa, Mr Bosman experienced a minor back injury. Mr Mickey Arthur advised him that he may be replaced because he was injured. In order to try and prevent his replacement, Mr Bosman consulted three specialists who confirmed that he is fit to play. Ultimately, Mr Bosman was not allowed to play in the World Cup match against Zimbabwe even though he had medical proof that he could play.³¹⁸

424. In addition, Mr Bosman comments that during the 2010 Cricket World Cup in the West Indies, "*[m]ost black players were made to carry drinks and were not being played*".³¹⁹ He explains that he should have batted at position 3 of the batting order but he ended up being drafted at position 7 and was dropped for the following game without any reasons for his exclusion from playing.³²⁰

317 Ibid, para 25

318 Ibid, para 6

319 Ibid, para 11 – 12

320 Ibid, para 12

MTHANDEKI TSHABALALALA

425. Mr Mthandeki Tshabalalala ("**Mr Tshabalalala**") tells of his experience in 2006 where he was selected to play for the Proteas in the T20 tour of Australia. He comments that he was not selected for any games in the tour.³²¹

426. In relation to the 2007 World Cup hosted by South Africa, Mr Tshabalalala notes that he "*never played a single match*" but was merely "*there to carry drinks*". He further brings to the Ombudsman's attention that:

*"I was not even played in the dead rubber games. These were the games which the Proteas played despite being knocked out of the World Cup."*³²²

PETITION ON LACK OF ACCESS TO PLAYING OPPORTUNITIES

427. Black Proteas cricket players lodged a petition with Mr Lorgat wherein the players gave an account of being excluded from playing opportunities within the Proteas and were instead used as waterboys.³²³ The CSA's lack of action in this regard is quite concerning. It demonstrates a complete disregard for transformation and a lack of empathy with the struggles experienced by fellow black players.

428. As can be gleaned from the various accounts from black players above, it is common cause that exclusion to playing opportunities takes place along racial lines. It can therefore be concluded that there is a greater probability of black

³²¹ Mthandeki Tshabalalala Affidavit, dated July 2021, para 16

³²² Ibid, para 17

³²³ Phangiso Affidavit op cit note 2, para 22. Also see Tsolekile Affidavit op cit note 18, para 26

players being reserve players. This in turn, means that a system of parity of match fees will disproportionately affect black players than their white counterparts.

429. In amplification of the disproportionate nature of the match fees, various black players have come forward and shared their experiences on how the allocation of match fees have adversely affected them:

- a. Mr Phangiso explained that previously reserve players (approximately four players) would usually share a fee of R25 000 (Twenty Five Thousand Rands) per match for the ODI series and R12 500 (Twelve Thousand Five Hundred Rands) per match for the T20. Mr Phangiso notes that a player who plays all 5 (five) matches of the ODI tour would normally obtain approximately R125 000 (One Hundred and Twenty-Five Thousand Rands) per tour.³²⁴ After the SACA's intervention, Mr Phangiso comments that the match fees for any format were shared between two instead of four players. The amounts remained unchanged – R25 000 (Twenty Five Thousand Rands) for ODI and R12 500 (Twelve Thousand Five hundred Rands) for T20.
- b. Mr Telemachus notes that, during his time, a no play no fee approach applied. Therefore, players who did not play would not be eligible to earn a match fee.³²⁵ He explains of his experience in this manner:

³²⁴ Aaron Phangiso Affidavit, undated, para 23

³²⁵ CSA – SJN Hearings Transcript Volume VIII, dated 15 July 2021, pg. 1114

*"I lost a lot of income for all those games I missed. Not just in the World Cup but in all the games that I was supposed to play. I lost on all of them. I didn't receive any income."*³²⁶

- c. Mr Adams recalls experiencing similar exclusion to that of Mr Telemachus and states, in his affidavit, that:

*"I think if there was a stat for most 12th man duties I could have the record for it. We must check with Andrew Samson. I was 12th man in around 200 ODIs and 40 to 50 tests matches. Previous past players who have appeared on the hearings have mentioned that when you play you get the lion share of the match fees. This structure of payments was not fair to players who do not make the playing squad but still needed to travel for months with the team and put in the hard work. It doesn't matter if we were black or white, the structure is unfair."*³²⁷

430. The efforts to try and bridge the gap by increasing the match fee from 25% to 50% are laudable. However, more must be done to remove any unnecessary obstacles for equal pay for players. We are not aware of the reasons for not implementing a system of parity for match fees. Given the disproportionate impact of the parity of match fees on black players, the CSA and SACA should to reconsider whether there are other less intrusive means which they can use to incentivise players, if indeed the purpose of such a system is incentivisation. By allowing match fees to be applied in this manner, the CSA is sanctioning the poverty of players. The aim should be to narrow the divide between the rich and poor, not to uphold it on the basis of arbitrary and irrational justifications.

326 Ibid, pg. 1115

327 Paul Adams Affidavit, undated, pg. 2

AYA MYOLI

431. Having considered the evidence tendered by Mr Myoli, SACA and Mr Strydom regarding whether the attack on Mr Myoli by Mr Frylink was racially motivated, the OTO is of the considered view that such attack was racially motivated.

432. Mr Frylink has not appeared before the OTO to explain his conduct. Furthermore, Mr Strydom did not have personal knowledge concerning the manner in which the incident was initially handled. While KZN Cricket Union apologised for the incident and that apology was accepted by Mr Myoli, the apology does not take away the racial nature of the unfortunate incident.

433. The facts in this case are self-explanatory, not only did Mr Frylink assault Mr Myoli he lied to airport staff using white privilege, and prevented Mr Myoli from boarding a flight. Mr Frylink's actions were deliberate, disgusting and purely racist. OTO hopes that CSA and its affiliates would be more sensitive when dealing with incidents such as these. Race related matters are not easy to handle, and parties may be tempted to avoid them any time they emerge, but the SJN process has shown that such an attitude to race issues is ill-advised.

CHAPTER NINE

CONCLUDING REMARKS

434. The Office of the Transformation Ombudsman wishes to state upfront that it cannot make definite findings in an instance where the evidence of both the so-called victims and theAQ alleged perpetrators was not tested – not even by the Ombudsman being inquisitorial.

435. There was no process in place for testing the submissions made to the Office of the Transformation Ombudsman. This process has merely raised issues and the recommendations and findings contained in text of the Report are merely tentative.

436. This process was not capable of bringing about the outcome envisioned in the Terms of Reference due to the strictures of time.

437. This is a process that would have benefitted from more time.

438. However, it is clear that when you read the evidence of those who are defined as 'victims', there is a cause for concern.

439. It would be irresponsible for Cricket South Africa to ignore the evidence of the 'victims' on the basis of rebuttals. We hope that CSA will be well-advised to take on board and to establish a process that will enquire the grievances and reach appropriate conclusions.

440. Having said that, the Office of the Transformation Ombudsman recommends that Cricket South Africa needs to establish a permanent Office of the Transformation Ombudsman (“the permanent OTO”). The permanent OTO must be impartial, independent and operate outside of the formal structures of Cricket South Africa.
441. Cricket South Africa must ensure that the permanent OTO is properly funded and well-resourced.
442. The permanent OTO should carry forward the work of the SJN Project by testing the of both the ‘victims’ and the ‘alleged perpetrators’ that was submitted during the SJN Project.
443. The permanent Office of the Transformation Ombudsman must be established as a platform where players, coaches, cricket administrators and other stakeholders can raise concerns and resolve disputes relating to, inter alia, gender and race discrimination.
444. The Terms of Reference as adopted by the Board on 1 July 2021, do not make provision for reparations. There are players who have made claims for reparations however the OTO does not have the power to consider reparation claim and making binding decisions relating to reparations is ultra vires.
445. The OTO implores the permanent structure that will be established to look into whether the players who have made claims for reparations have made out a case.