

## **THE LEGAL FRAMEWORK FOR SPORTS DEVELOPMENT IN NIGERIA**

by *Kelvin Omuojine, Esq.*\*

SUMMARY: Introduction – 1. The Position in South Africa – 2. The Position in the European Union – 3. The Position in Nigeria – Conclusion/Recommendations

### *Introduction*

Sports literature usually commence with an allusion to the extent to which sport has grown in the past few decades. This growth is obvious and it has heralded the development of sports as a commercial brand. Sporting events and programmes have now become huge brands wielding significant economic interest. Consequently, many persons who engage in sporting activity do so not merely for leisure or the physical wellbeing it portends but as a full-fledged career or with this aim. There is no escape from the fact that the huge commercial significance that sport has amassed over the years brings with it heightened legal interests and concerns, especially for stakeholders who invest resources in the industry. Apart from those who seek to protect their legal and commercial interests in sports, there is also the government interest – promoting social ideals in an atmosphere of law and order. Governments all over the world have acknowledged sport as a veritable tool in the attainment of governmental objectives both at internal and international levels. This is why proactive governments have taken concrete steps to fashion, adopt and implement a policy aimed at the development of sports. Perhaps it may be of value at this point to acknowledge the varying contexts in which the terms ‘sport’ and ‘recreation’ are sometimes used. Sport generally embodies different forms of physical activity which may be practiced for leisure or as an amateur, distinct from the practice of it as an income-yielding profession; on the other hand, recreation basically refers to the practice of sport for non-professional purposes and includes other forms of leisure apart from sport. The separate use of both terms is a common feature in many sports policy documents. The term ‘sport’ is used herein in a very broad context.

---

\* Attorney at law in Nigeria.

In Nigeria, sport has had an appreciable impact on national development and there is the unquenchable desire to keep up with past successes. The national narrative however, is that a lot more needs to be done in terms of administration and providing the enabling environment for sport to thrive. With population growth and lapse of time, there is the need for provision and maintenance of more sporting and recreational facilities. Also, with the global advancement in professional sport, there is the need for improved technical competence. From the investment in sporting facilities in the wake of the oil boom to the African Nations Cup successes in 1980 and 1994, Olympic gold medals in 1996, sport has frequently been regarded as perhaps the most potent unifying factor in the multi-ethnic country. With the recent failures in sports competitions, there have been calls for a revamp of sports administration. This includes a clear-cut government policy on sports development. This article takes a look at the South African and the European Union examples, and then analyzes the position in Nigeria before concluding with recommendations, all from a legal perspective.<sup>ss</sup>

### *1. The Position in South Africa*

Like other countries, post-apartheid South Africa realized the social and economic potential inherent in sports. Having hosted and won the African Cup of Nations in 1998, won the Rugby World Cup in 1995 and 2007 and hosted the FIFA World Cup in 2010, there was the intention to harness this potential on the back of these successes. In 2011, the final draft of the White Paper on Sport and Recreation was produced after consultation with stakeholders. The White Paper embodied the policy framework for sports development in the country. A National Sport and Recreation Plan was also formulated as the machinery to implement the policy statement contained in the White Paper.

The legal framework within which the South African sports policy was to be implemented comprised enabling laws and statutorily recognized organizations. The National Sport and Recreation Act<sup>1</sup> had identified the Sports Commission as the overall co-coordinating body for the promotion and development of sport and recreation in South Africa, although it recognizes the distinct mandate of the NOCSA.<sup>2</sup> Presently however, the responsibility of the Sports Commission is now vested in the Department for Sport and Recreation with the disestablishment of the Sports Commission.<sup>3</sup> In the White Paper, Sport and Recreation South Africa is the body charged with implementing the constitutional ideals hinged on the democratic values of human dignity, equality and freedom. The objective is to develop and implement national policies and programmes using sport and recreation to address those issues, even though the constitution did not make express provisions for the development of sport and recreation. Despite the absence of express constitutional provisions on

---

<sup>1</sup> No. 110 of 1998, as amended.

<sup>2</sup> National Olympic Committee of South Africa.

<sup>3</sup> South African Sports Commission Repeal Act, No. 8 of 2005.

sports development, there is no dearth of relevant and enabling national legislation on the subject. Such include the National Sport and Recreation Act, the South African Institute for Drug-Free Sport Act<sup>4</sup> and the South African Boxing Act.<sup>5</sup>

The implication is that there is a legal basis upon which the initiative of promoting and developing sport and recreation and the co-ordination of the relationships between relevant agencies can be carried out. Roles are clearly mapped out and funding can be properly channeled. Also, in recognition of the growing number of sporting disputes, the Department for Sport and Recreation is, by virtue of the National Sport and Recreation Act, responsible for dispute resolution mechanisms.

## 2. *The Position in the European Union*

Since the inception of the European Union (EU) in 1992,<sup>6</sup> it was not until 2007 that the European Commission (EC) published a White Paper on Sport. The Introduction to the White Paper described it as “the first time that the Commission is addressing sport-related issues in a comprehensive manner”. Previously, the EU had no express competence with regard to sports development since none of the pre-existing treaties contained any direct provisions in relation to sport. The only way out was through provisions in declarations, treaties or policies that had some bearing on sports. For instance, provisions for health and wellness could involve the provision of swimming pools, which not only fosters health but also promotes the sport of swimming. Therefore, although Europe was home to the biggest advancement in sports, as a body, the EU had no competence to contribute directly to its development. Nonetheless, the European Court of Justice played a significant role in the emergence of sports jurisprudence in its adjudicatory capacity, with landmark rulings such as the popular Bosman<sup>7</sup> decision of 1995 that changed the face of football.

Pursuant to the White Paper on Sport, the Lisbon Treaty<sup>8</sup> emerged as the first EU treaty containing provisions with regard to sport. Article 165 of the Lisbon Treaty provides that:

- (1) *The Union shall contribute to the promotion of European sporting issues, while taking into account the specific nature of sport, its structures based on voluntary activity and its social and educational function.*
- (2) *Union action shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions, promoting cooperation between bodies responsible for sport, and*

---

<sup>4</sup> No. 14 of 1997.

<sup>5</sup> No. 11 of 2001.

<sup>6</sup> The Maastricht Treaty created the EU in its current form; signed on 7 February 1992 and came into force on 1 November 1993.

<sup>7</sup> *Union Royale Belge des Societes de Football Association (Asbl) and Others v. Jean-Marc Bosman*, Case No. C-415/93.

<sup>8</sup> Signed on 13 December 2007 and came into force on 1 December 2009.

*protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.*

- (3) *The Union and member States shall foster cooperation with third countries and the component international organizations in the field of education and sport, in particular the Council of Europe.*

The above provisions have been regarded as giving the EC institutions a “soft competence” for sport while leaving major policy control to and recognizing the distinct jurisdictions of member states.<sup>9</sup> The article further provides that the Union institutions shall adopt incentive measures and recommendations, excluding any harmonization of the laws and regulations of the Member States. The impact of this treaty is that at the EU level, sports-specific programmes can be initiated and funded directly.

### 3. *The Position in Nigeria*

A timeline of sports policy development in Nigeria would commence with the Sports Development Policy of 1989. Although this policy statement never attracted any fame, it vested in the then Federal Ministry of Sports and Social Development the responsibility for the development and organization of sports and physical fitness in Nigeria. This responsibility was to include co-ordination of and co-operation with other sports bodies/groups as well as financial assistance. Together with the subsequent National Sports Policy of 2009, both policy documents represent government initiative and efforts towards sports development. It is not unjust to conclude that neither has attained any success in terms of implementation or even publicity.

Nigeria now operates under the 1999 Constitution which, like the South African Constitution, does not make express provision for sports governance or development. As stated above, the situation in South Africa is remedied by relying on relevant constitutional provisions as well as other legislation recognizing organizations with specific mandate for sports development. Chapter II of the Nigerian Constitution outlines Fundamental Objectives and Directive Principles of State Policy and although the government responsibilities therein are not legally enforceable,<sup>10</sup> a viable sports development policy can be hinged thereon as with the South African example in the White Paper. Under the fundamental objectives and directive principles there are political, economic and social objectives which can be harnessed for sports development as follows:

- Political objectives include the encouragement of national integration and the prohibition of discrimination.<sup>11</sup> As stated earlier sport is a major source of national integration and the promotion of sports competition and

---

<sup>9</sup> Culture, Media and Sport Committee, House of Commons, *Report on the European Commission White Paper on Sport*, published on 14 May 2008.

<sup>10</sup> Section 6(6) (c) 1999 Constitution.

<sup>11</sup> Section 15(2).

- participation would help in the attainment of this goal.
- Economic objectives include the promotion of national prosperity and an efficient, a dynamic and self-reliant economy.<sup>12</sup> The advancement of sport means that not only is it a source of livelihood for sports men and women, but also for those involved in coaching/education, infrastructure provision and maintenance and other allied endeavor. It also promotes industries such as media and merchandising. Summarily, the development of sport has widespread economic benefits.
  - Social objectives include the provision of adequate facilities for leisure, medical and health purposes. As highlighted earlier, the promotion of sports development includes recreation and leisure, which ultimately promote health and general wellbeing.

A perusal of federal legislation in Nigeria reveals a shortage of legislation geared towards sports development. The federal laws which have a bearing on sport are the National Institute for Sports Act,<sup>13</sup> Social Development Act<sup>14</sup> and Nigeria Football Association Act.<sup>15</sup> Despite the number, none of these statutes provides a comprehensive platform from which sports development can be pursued. The NIS Act establishes the National Institute for Sports, the objectives of which are basically geared towards the advancement of learning in specialized areas of sports development, conducting professional coaching courses, seminars, workshops, including the advancement of sports knowledge and skill.<sup>16</sup> This is basically a school for the administrators, coaches and technical advancement, without catering for the need for facilities and programmes aimed at directly promoting and funding actual participation and involvement in sports. The SD Act establishes a Social Development Division of the Federal Ministry of Employment, Labor and Productivity. With the aim of advancing social welfare, one of the numerous duties of the Department is the development of sports.<sup>17</sup> The NFA Act is the most elaborate effort in terms of sports development; however it is limited to football. Notwithstanding the calls for its amendment to suit the desires of the football world governing body - FIFA and the legally flawed metamorphosis of the NFA into NFF,<sup>18</sup> the statute established the Nigeria Football Association and vested it with the responsibility to encourage the development of all forms of amateur and professional football as well as provide source of funding for the game in Nigeria and encourage participation.

The above represents the legal framework governing sports administration and development in Nigeria. This current framework is deficient because not only

---

<sup>12</sup> Section 16(1)(a).

<sup>13</sup> Cap. N52, Vol.14, Laws of the Federation of Nigeria 2004.

<sup>14</sup> Cap. S7, Vol.14, Laws of the Federation of Nigeria 2004.

<sup>15</sup> Cap N110, Vol.12, Laws of the Federation of Nigeria 2004.

<sup>16</sup> Section 5 of the National Institute for Sports Act.

<sup>17</sup> Section 2(1) of the Social Development Act.

<sup>18</sup> The Federal High Court ruled in suit number FHC/ABJ/CS/179/10 that the national law recognizes only the Nigeria Football Association under the NFA Act, and not the Nigeria Football Federation.

is there no statutorily-recognized body vested with a primary duty of sports development but there is the absence of a mechanism for the resolution of sports disputes. With no efficient sport-specific dispute resolution body, sporting disputes so often find their way to the civil courts and are encumbered with the inimical features of litigation in the country. The National Sports Commission (NSC) – headed by the Minister of Sports - is viewed as the government body responsible for promoting physical fitness and developing sporting activities nationally and up to international competition level. However, the NSC is not one of the Federal Commissions and Councils created by section 153 of the Constitution. Nonetheless, the Constitution empowers the President to establish offices of Ministers<sup>19</sup> and to assign to them responsibility for any business of the Federation, including the administration of any department of government.<sup>20</sup>

### *Conclusion/Recommendations*

There is, in Nigeria, an inadequate legal framework of existing legislation for the development of sports. However, the provisions in Chapter II of the Constitution are such that can be built upon. There is the need for a statutorily-recognized government agency with specific statutory functions and responsibility for the development of sport in Nigeria.

The following are recommended:

- a) There should be a practical sports policy document comprising the input of a wide variety of sports stakeholders. Such a policy statement must reflect the socio-political peculiarities and involve all tiers of government including the local governments which have the constitutional responsibility for grassroots development.
- b) In addition to the National Institute for Sports, there should be a department of government with statutory functions in terms of funding and developing sports in the country. This government body would also have the sole responsibility of coordinating efforts of other sports authorities at the national and sub-national levels. For what it lacks in statutory backing, the National Sports Commission makes up for it in terms of structure with departments such as Grassroots Sports; Facilities and Stadia Management; Sports Planning, Research and Documentation; Sports Medicine; National Sports Federations and Elite Athletes; and Human Resources Management and Finance.
- c) There should be some form of legislation geared towards sports development. For instance, the availability of certain sporting/recreational facilities could be made a statutory prerequisite for the grant of certain types of educational, leisure/recreational etc licenses.

---

<sup>19</sup> Section 147.

<sup>20</sup> Section 148(1).

- d) There should be an independent sport-specific dispute resolution mechanism. The recurrence of football disputes being dragged to civil courts has had an adverse effect on the development of the sport and if the trend is not checked, it will stifle the development of other sports. In UK, for instance, Sport Resolutions UK is an independent organization established by the principal sports bodies to provide specialized dispute resolution.