

Cricket South Africa (CSA)

**Parliamentary Portfolio Committee on Sport Arts and
Culture**

08 February 2022

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AGENDA

- CSA Delegation
- CSA Board Composition
- Status of the Fundudzi Report
- **SOCIAL JUSTICE AND NATION BUILDING REPORT**
 - ❖ Report Summary
 - ❖ Way Forward

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CSA DELEGATION

CSA Delegation

Mr Rihan Richards	– <i>President of CSA</i>
Mr Lawson Naidoo	– <i>Chairperson of the Board</i>
Adv Steven Budlender SC	– <i>Lead Independent Director</i>
Ms Muditambi Ravele	– <i>Chairperson – Transformation Committee</i>
Mr John Mogodi	– <i>Non-Executive Director</i>
Mr Pholetsi Moseki	– <i>Interim CEO and Executive Director</i>

CSA BOARD COMPOSITION

Board Composition

Independent Non-Executive Directors



Chair
Lawson Naidoo



Lead Independent Director
Steven Budlender



Norman Arendse



Andrew Hudson



Simo Lushaba



Andisa Ntsubane



Mark Rayner



Muditambi Ravele

Non-Executive Directors



Daniel Govender



John Mogodi



Simphiwe Ndzundzu



Craig Nel



Tebogo Siko



ACEO
Pholetsi Moseki



ACFO
Christelle Janse van Rensburg

Committee Assistant: Alisha James

FUNDUDZI REPORT

Status of the Fundudzi Report

Findings and Recommendations Implemented

- 1) Terminated flagged and improper contracts
- 2) Instituted and finalised employees disciplinary matters
- 3) Obtained legal advice on civil and/or criminal recourse, where applicable
- 4) Policies reviewed and updated to strengthen the control environment
- 5) Appointed and outsourced Internal Audit Service Provider
- 6) 2 findings against previous Board Members – (1) recusal/potential conflict of interest and (2) access to restricted area; addressed
- 7) Majority independent board appointed

Current Status...

- 1) Continuous review and improvement of policies and the control environment
- 2) Legal disputes with several dismissed employees (CCMA/Courts) and terminated contractors
- 3) Global Sports Commerce (GSC) under Judicial Management in Singapore. CSA submitted a claim as part of GSC's creditors, allowing the company to participate and vote in the liquidation process.

SOCIAL JUSTICE AND NATION BUILDING (SJN) REPORT

SJN Report *Summary*

SJN Report - Summary

□ BACKGROUND

- ❖ The erstwhile CSA Board launched the SJN initiative, mostly as a direct response to a public statement on 14 July 2020 by 43 former black national cricketers and coaches in support of the world-wide #BlackLivesMatter protests in sport and more broadly.
- ❖ Due to well-documented challenges CSA experienced during that period, the Board resigned and was replaced by an Interim Board (IB) constituted after various engagements and consultations led by Minister of Sports Arts and Culture, Mr Nathi Mthethwa MP.
- ❖ After several months' delay due to the IB being occupied with other critically urgent matters, the IB started engaging on the initiative with the Ombudsman, Adv Dumisa Ntsebeza SC. The engagements included discussions and amendments to the duration of the project, budget, resourcing, risks (legal/other) and terms of references (ToR's).
- ❖ The IB's term ended with the appointment of a new Board of Directors on 12 June 2021. The Board finalised the ToR's and the Rules of Procedure for the SJN hearings, and the hearings resumed on 05 July 2021.

SJN Report - Summary

□REPORT

- ❖ The Social Justice and Nation Building (SJN) Ombudsman, Adv Dumisa Ntsebeza SC delivered his report to the Board of CSA on 10 December 2021.
- ❖ The report was subsequently shared with different stakeholders, including the Minister, the Portfolio Committee, SASCO, implicated individuals; and the general public on 15 December 2021. The report is also available on CSA's website – www.cricketsa.co.za
- ❖ The Ombudsman compiled the report after hearings and submissions into the causes, nature and extent of racial discrimination and lack of transformation in all cricket structures since unification 30 years ago.
- ❖ The Ombudsman's process was initially due to last four months but was later extended to over six months at the Ombudsman's request with CSA making available extensive legal and other resources to the Ombudsman for this process, including spending more than R7.5 million on the process, despite an initial budget of R5 million.
- ❖ The Ombudsman explained in his report that he could not make “definite findings” regarding racial or gender discrimination. Rather, he explained that his findings and recommendations were “tentative” and that, where appropriate, further formal processes should follow.

SJN Report - Summary

□ CSA RESPONSE

- ❖ In light of the Ombudsman's findings, the Board of CSA decided to institute formal enquiries into CSA employees, suppliers or contractors who are implicated by the SJN report.
- ❖ The Board did so mindful of its duty to treat allegations of racism or discrimination with the utmost seriousness and in a manner that ensures fairness and due process in terms of South Africa's labour legislation and the Constitution.
- ❖ In addition, the CSA Board and management are engaging with the other tentative findings and recommendations in the Report in detail and will, before the end of February, be announcing a series of further steps and actions to transform cricket aligned to the Board's new strategic framework and pillars of access, inclusion and excellence.
- ❖ At this stage, what follows is a summary of the Ombudsman's findings and recommendations, which the CSA Management Board are presently working on.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Grievance Procedures

- The Ombudsman found that the issues facing cricket “*are a complex interaction of multiple factors stemming from the history of this country and consequent socio-economic factors that prevail today.*”
- In solving these issues, all of the factors must be addressed as all are important and affect each other.
- It was further recommended that an anonymous grievance filing system, that cannot be manipulated, would effectively address the fears of players and other cricket stakeholders of victimisation.
- The Ombudsman concludes that it is important for any institution to have an internal grievance policy and procedures to deal with the grievances of the people involved in it.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Women's Cricket

- The Ombudsman finds that Women's cricket has a "*painful history of gender discrimination and sexism*".
- The Ombudsman accepts that strides have been made by both CSA and SACA concerning the development of women's cricket, but the strides could have been made much earlier if women were part of the transformation agenda from the outset, and that CSA should accelerate its efforts.
- The Ombudsman view is that 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 participation in the sport of cricket.
- It is the Ombudsman's view that CSA should undertake the same scouting exercises in relation to female junior cricketers, as it undertakes for the various age groups for boys.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Exclusionary Practices - Language

- The Ombudsman recommended that players be encouraged to speak a unified language which is understood by all players and one with which players are comfortable. Players should not, however, be discouraged from speaking any other languages and that mediation procedures should be put in place as a means of giving aggrieved players the platform to air their frustrations where players are unjustifiably silenced and discouraged from speaking their native languages.

❖ Exclusionary Practices – Travelling and accommodation

- The Ombudsman did not find that players were discriminated against on the allocation of travelling and accommodation, but rather gravitated towards each other due to personal relationships, cultural and language differences.

SJN Report - Summary

❑ FINDINGS AND RECOMMENDATIONS

❖ Salaries and Contractual Disparities

- Insofar as a complaint by Mr Mbhalati, the Ombudsman acknowledged the case made out by Titans Cricket that contracts were formulated after considering on-field performance, experience and/or a player's growth potential.
- The Ombudsman did state though that there is a history of not affording black African players game time, which has implications for how effectively they are assessed considering the above.
- The Ombudsman also called upon CSA to revisit its match fees system and whether there are less restrictive means which are available to fulfil the purpose, as the current match fees system has the effect of punishing reserve players for not playing.
- The Ombudsman recorded that the complaint by Mr Selowa regarding the payment of unequal salaries to Black and White players will remain unrebutted until North West Cricket Union produces evidence to the contrary.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Access to transportation

- The Ombudsman concluded that CSA needs to level the playing field by ensuring that players are provided with transport to and from practice and that providing transport money did not address issues of unreliable transport systems available to players.

❖ Accusations of theft - Mr Letshela

- The Ombudsman concluded that given that Mr Letshela's evidence of being unfairly accused of theft, which had a detrimental effect on his career was unrefuted, the Ombudsman found that the accusations of theft were arbitrary and irrational.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Lack of access to playing opportunities

- The Ombudsman recognised that while there may be circumstances where a player is not selected for justifiable reasons, “inexperience” appears to be an excuse to exclude African players.
- The Ombudsman added that he is not seeking to unduly restrict CSA’s ability to make strategic decisions on which players to put forward for certain games, but the plethora of stories that had been brought before him by black African players that were overlooked with respect to playing opportunities, cannot be ignored.
- The Ombudsman also stated that if one looks at the grand scale of restricted access to game time, such exclusion amounts to unfair racial discrimination when one considers the present day consequences of such exclusion.
- The Ombudsman recommends that when a player is declined an opportunity to play, rational and justifiable reasons must be given for the exclusion and confidential grievance policies and procedures should be implemented to specifically allow players to lodge grievances where they feel that they have been unjustifiably excluded from playing. It was further recommended the process allow players multiple avenues to express dissatisfaction with their treatment.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Racial Slurs

- The Ombudsman concluded that Mr Boucher's and Mr Louw's responses to Mr Adams submissions revealed a lack of sensitivity and understanding of the racist undertones of their comments.
- The Ombudsman referred to the apology contained in Mr Boucher's affidavit but was critical of it by recording that his apology is "*buttressed by an excuse that the comments he made where (sic) within a team setting as if racism can be excused if done in a team setting.*"
- The Ombudsman was also critical of Mr Boucher for not disclosing the White names he and other White players were called, as this created the impression that the name-calling was reserved for Black players.
- The Ombudsman concluded that Mr Boucher's and Mr Louw's apologies display "*an alarming and concerning reality that these two gentlemen do not comprehend the South African apartheid/discriminatory and racist history*"; and the use of the words "brown shit" was unjustifiable and the responses by "*the two gentlemen revealed that they have not undergone diversity and transformation training*".
- The Ombudsman concluded that the attack on Mr Myoli by Mr Frylinck was racially motivated.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Black players forced to carry bags of senior players

- The Ombudsman found that there was insufficient evidence to make out a prima facie case of unfair racial discrimination following allegations by Mr Tsotsobe that only Black players had to carry bags.

❖ Match Fixing

- The Ombudsman is of the view that race played no part in the match fixing investigation, and he could not find any evidence supporting the allegation that Black players were targeted during the investigation.

❖ Governance

- The Ombudsman commented that any institution requires good governance and sound administration to carry out its objectives. The Ombudsman also stated that CSA's efforts to provide cricketing facilities in remote areas 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.

❖ Recommendations from stakeholders – clubs, coaches and others

- The Ombudsman strongly encourages CSA to consult regularly with cricket stakeholders through questionnaires and talks and to provide mechanisms where those involved in cricket can make suggestions.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Failure of Members (Cricket Unions) to invest in transformation and development

- The Ombudsman commented that the development of previously disadvantaged communities is intrinsically tied to transformation.
- Stadiums in the rural areas and townships are the very first step to reaching the goal of equal access to cricket for all people.
- The Ombudsman suggests that CSA, the government and other relevant stakeholders need to start from scratch in achieving the goal of making cricket a truly transformed sport.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Public schools' involvement in cricket

- The Ombudsman noted that the inequality in South Africa can be seen in most corners of society. This inequality is informed by the unfortunate history of the country.
- The Ombudsman finds that it would be more prudent and sustainable to equip public schools and to develop such schools with proper facilities, rather than the current approach of picking a few students from public schools to join private schools to access private schools' facilities.

SJN Report - Summary

❑ FINDINGS AND RECOMMENDATIONS

❖ Lack of facilities in rural areas and townships

- The Ombudsman noted that 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. In addition, the injustice of not having access to the sport of cricket will persist in Black communities.
- The Ombudsman stated that lack of facilities creates a huge barrier to access of the sport of cricket for most people. The Ombudsman is of the view that these barriers are exacerbated by the irregular and unfair practices adopted by some cricket selectors and administrators and disapproves of this conduct.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Khaya Zondo matter

- The Ombudsman concluded that Mr de Villiers provided incoherent and unsubstantiated reasons for his opposition to the inclusion of Mr Zondo in the 5th and final ODI in India, and that it was irrational to select Mr Elgar over Mr Zondo; commenting that it appeared Mr de Villiers went to extreme lengths to ensure that a White player played ahead of Mr Zondo.
- The Ombudsman added that Black people are denied opportunities because of misconceptions regarding the competence of those Black players as compared to their White counterparts.
- The Ombudsman concluded that Mr Zondo was a victim of the exclusionary culture which persists within the cricket ecosystem and that Mr de Villiers was willing to flout the National Selection Policy of CSA to ensure that a Black person was not placed in a position, which he deemed as requiring greater experience.
- The Ombudsman found Mr de Villiers' actions to be arbitrary and irrational.

SJN Report - Summary

❑ FINDINGS AND RECOMMENDATIONS

❖ North West Cricket and Free State Cricket - accommodation

- The Ombudsman criticised North West Cricket (NWC) for the accommodation provided to Black players.
- The Ombudsman also found that the responses provided by NWC in relation to the accommodation to be untrue and misleading.
- The Ombudsman further found that inferior accommodation was provided to Black students by Free State Cricket (FSC) and the two key role players involved in that decision were Mr du Preez (the Academy Coach at the time) and Mr van Heerden (the CEO of FSC).
- The Ombudsman added that FSC ought to have known and done better.

❖ Roger Telemachus

- The Ombudsman concluded that Mr Telemachus failed to demonstrate that there was differentiation, and therefore unfair discrimination, on the ground of race in the appointment of a White head coach, Michael Smith at KZN Inland, over himself.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Thami Tsolekile – playing opportunities

- While the Ombudsman appreciated that Mr Zondi fought for Mr Tsolekile's inclusion in the starting eleven, the Ombudsman found that the decision of the selection panel was totally irrational and showed clear signs of systemic racism.
- The Ombudsman recorded that he was persuaded by the argument that CSA, its coaches and selectors unfairly discriminated against Mr Tsolekile on the basis of his race. The Ombudsman also found that CSA was dishonest about its cricketing reasons for not playing Mr Tsolekile.
- The Ombudsman was also critical of CSA being dismissive of the concerns around Mr Smith's alleged involvement in the constant exclusion of Mr Tsolekile from the Proteas team.
- The Ombudsman went on to indicate that it was this dismissive and uncaring conduct which destroyed cricket players' careers.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Eastern Cricket

- The Ombudsman found that lack of access to cricketing facilities, disunity, infighting and general mismanagement of the affairs of the Eastern Cricket (EC), are barriers to real transformation.
- The Ombudsman is critical of the fact that CSA has apparently not made the required periodical interventions as directed by Judge Ngoepe in his October 2018 report.
- The Ombudsman noted that transformation is not possible where there is a paralysis in governance.

❖ Northerns Cricket Union

- The Ombudsman has recommended that CSA and all its structures be more conscientious and transparent when dealing with player remuneration.
- The explanation provided by Northerns Cricket Union (NCU) in regard to Mr Phangiso's allegations of discriminatory remuneration was both reasonable and acceptable, but the Ombudsman criticised NCU for the lack of care it took in properly explaining the terms of the contract to Mr Phangiso.
- The other allegations against NCU were not fully investigated by the Ombudsman due to "*strictures of time*".

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Graeme Smith appointment and Independent Contractor Agreement

- The Ombudsman concluded that CSA's HR Manual does not empower CSA to conduct recruitment by way of headhunting. In headhunting Mr Smith, the Ombudsman found that Mr Moroe acted outside of CSA's Policy and concluded that the appointment was irregular, irrational and unfair.
- The Ombudsman further found that the appointment of Graeme Smith as an independent contractor was highly irregular and contravened CSA's procurement policy.
- The Ombudsman also found that the interviews for the appointment of the Director of Cricket were a sham and there was a serious governance lapse on the part of CSA.
- The Ombudsman further insinuated that Mr Smith had racial prejudices against reporting to a Black CEO.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Mark Boucher appointment

- The Ombudsman states that the fact that Mr Smith was not advised by the CSA Board to comply with the HR Manual when he made appointments, does not absolve Mr Smith from what the Ombudsman deems to be irregular and inexcusable conduct. The Ombudsman further stated that Mr Smith needed to realise that he was handsomely remunerated for the position, and he claimed to possess all the attributes for the position and he ought to have known all of the governance controls in the organisation.
- The Ombudsman found that CSA, Mr Smith and Mr Nenzani all failed to explain the process followed and applied in appointing Mr Boucher and other staff members.
- The Ombudsman found that there was unfair discrimination in the appointment of Mr Boucher ahead of Mr Nkwe.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Disciplinary action – Thabang Moroe

- The Ombudsman was of the view that CSA's failure to discipline Dr Faul for the irregular appointment of Mr Smith as an independent contractor did not amount to unfair discrimination, as was alleged by Mr Moroe.

❖ Match Fees

- The Ombudsman commended CSA and SACA's efforts to address the injustices of the past; but indicated that the problem of implementing a parity of match fees is that it has a disproportionate effect on Black players, who are usually the ones occupying the reserve positions.
- The Ombudsman encourages that players need to be given opportunities when there are "dead rubber" games.

❖ Petition on lack of access to playing opportunities

- The Ombudsman called on CSA and SACA to reconsider whether there are other less intrusive means which can be used to incentivise players given the disproportionate impact of the parity of match fees on Black players.

SJN Report - Summary

□ FINDINGS AND RECOMMENDATIONS

❖ Concluding Remarks

- The Ombudsman states that the process would have benefitted from more time and that the evidence of those who are defined as victims indicated a cause for concern.
- The Ombudsman recommended that CSA establish a permanent Office of the Transformation Ombudsman (*permanent OTO*). The permanent OTO must be impartial, independent and operate outside of the formal structures of CSA. CSA must ensure that the permanent OTO is properly funded and well resourced.
- The permanent OTO must be established as a platform where players, coaches, cricket administrators and other stakeholders could raise concerns and resolve disputes relating to gender and race discrimination.
- The Ombudsman concluded that the Terms of Reference do not make provision for reparations and implored the permanent OTO to look into whether players who have made reparation claims have made out a case for it.

SJN Report

Way Forward

SJN Report – Way Forward

- CSA's Board agrees wholeheartedly with the Ombudsman that the issues facing cricket "*are a complex interaction of multiple factors stemming from the history of this country and consequent socio-economic factors that prevail today.*" The Board thanks the Ombudsman for his insights and recommendations.
- CSA's response to the SJN project will be integrated into the company's five-year Strategic Plan that is currently being developed.
- The SJN project confirmed issues that CSA was grappling with that are confronting cricket in SA. CSA has already identified our 3 key pillars as - ACCESS, INCLUSIVITY AND EXCELLENCE.
- The report has also identified specific cases of discriminatory conduct, that require further probing to enable CSA and/or its Members to take further action on findings.
- It is important to note that many of these incidents are historic, but where possible and appropriate, CSA and its Members will take the necessary remedial and disciplinary action.
- CSA will also be focusing on the structural deficiencies in the cricketing system to ensure that these incidents do not recur, or where they do, effective and speedy means of addressing them are in place.
- Specific Board sub-committees will deal with matters falling under their purview from the report, with the sub-committees reporting back to the Board by end of February 2022, to enable the Board to consolidate an appropriate response. This response will be shared with all CSA's stakeholders when finalised.

SJN Report – Way Forward

- The Board grouped the report per themes and agreed to the following broad clusters to enable it to deal efficiently and effectively with the report:
 1. Governance issues – functioning of Board and its Committees. Review of Board Charter, Code of Conduct and other policy documents. Relationships with stakeholders – **Audit, Risk & Governance Committee**
 2. Women’s cricket – need to establish a Women’s Cricket Committee, and identify women to serve on Committees – **Nominations Committee**
 3. Player remuneration and selection policies – **Cricket Committee**
 4. Allegations of racism / racial slurs – **Social & Ethics Committee**
 5. Transformation & development programmes – inclusion tackling issues of social and cultural exclusion – **Transformation Committee**
 6. Expansion of cricket facilities and infrastructure – including in rural and township areas – **Transformation Committee and Pipeline Committee**
 7. Human resource issues and processes, including establishing an effective grievance procedure – **HR Committee**
 8. Establishment of a permanent Ombudsman – **Transformation Committee & SEC**

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