THE SPORT LEGAL FRAMEWORK IN KENYA

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Abstract
This paper seeks to examine and analyse the emerging sport legal framework in Kenya with a view to establishing the extent to which it establishes an enabling environment that allows the country to harness sports for development. It begins by highlighting the historical policy and legal framework background for sport in Kenya before scrutinizing the current legal regime for sport. In the process, it will expose glaring limitations and, or shortcomings of the policies and law. It concludes by making various recommendations for policy development and law reform necessary for substantial and sustainable realization of the social and economic benefits of sport.

1.0 Introduction

In the modern world, sport is a multiple billion-dollar industry. Accountable and responsive governments today understand that sport is big business and a source of employment for thousands of citizens if properly harnessed. Sport business industry provides a source of livelihood for sports persons, people engaged in sports management and all persons employed in various enterprises connected to sports, both directly and indirectly.¹ It is therefore not surprising that the Kenya Government’s Sessional Paper No. 3 of 2005 on Sports Development declares that sport is an important source of employment and a venue for creation of wealth.² Similarly, Kenya’s long term development strategy: Vision 2030, declares that the country “aims to capitalize on her international reputation as an ‘athletic superpower’ by opening up the country for top global sports events, encouraged by corporate sponsorship.”³

Several countries are already reaping the benefits from their investments in the sport industry. For instance, in 2015, the sport industry in Britain was supporting 450,000 jobs and was estimated to be worth £20bn and was still growing steadily.⁴ Sport, therefore, has been recognized and proven as one of the best tools for tackling a country’s social and economic ills. “Governments worldwide are increasing using sport for development purposes. This includes programs in support of “sport for peace”; a “green environment”; fighting poverty and crime as well as substance abuse; awareness issues around HIV and AIDS; women, children and people with disabilities and social cohesion. Sport works primarily by bridging relationship across social, economic and cultural divides within society, and by building a sense of shared identity and fellowship among groups that might otherwise be inclined to

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¹ Sport business consists of several different segments including sports tourism, sporting goods manufacture and retail, sports apparel, amateur participant sports, professional sports, recreation, school and college athletics, outdoor sports, sports marketing firms, sport sponsorship industry, sports clubs, sport science and research, and sports organizations.


⁴ “Britain’s Sport Industry hitting top form”, The Telegraph, 03 May 2015.
threaten each other with distrust, hostility or violence. By sharing sports experiences, sports participants from conflicting groups increasingly grow to feel that they are alike, rather than different.”

Moreover, sport is a human right which all governments should make available to their people. The right to play and participate in sport is embodied in UN Human Rights Instruments including the Convention on the Rights of the Child (CRC); the Convention on Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of Persons with Disabilities (CRPD).

Sport means all forms of physical activity which, though casual or organized participation, aim at expressing or improving physical fitness or mental well-being, forming social relationship or obtaining or obtaining results in competitions at all levels. The Sports Act, 2013 defines ‘sport’ to include all forms of physical or mental activity which, through casual or organized participation, or through training activities, aims at expressing or improving physical and mental well-being, forming social relationships or obtaining results in competition at all levels, and includes any other activity as the Cabinet Secretary may, from time to time and after consultation with technical department responsible for sports, prescribe.

However, to be able to effectively realize and sustain the socio-economic benefits of sport, a country must provide an enabling environment that allows sport industry to thrive. Such an enabling environment is provided and established by appropriate policies and laws governing sport. Sport policies and laws must provide an attractive environment for investment in sport by both the public and private sector by eliminating red tape and guaranteeing certainty and predictability of actions and processes in regulation and resolution of grievances. There must be systems of accountability, transparency, responsibility and certainty in disbursement and use of public funds in sport. To be enabling, the legal framework must establish strong sport management and administration systems characterized by effective financial accountability, management mechanisms and leadership.

This paper seeks to examine and analyse the emerging sport legal framework in Kenya with a view to establishing the extent to which it establishes an enabling environment that allows the country to harness sports for development. It begins by highlighting the historical policy and legal framework background for sport in Kenya before scrutinizing the current legal regime for sport. In the process, it will expose glaring limitations and, or shortcomings of the policies and law. It concludes by making various recommendations for policy development and law

8 See section 2 thereof.
reform necessary for substantial and sustainable realization of the social and economic benefits of sport.

2.0 Historical Policy and Legal Framework Background

Most of the sport disciplines in their current form were introduced in Kenya by the British colonial government in the first half of the 20th century. The post-colonial government however did not isolate sport as a priority factor in the development of the country. The government seemed to be more focused on the challenges of poverty, disease and illiteracy and sport, going by the then existing policy documents, had no role in addressing these challenges.

The Government of Kenya has regulated the practice and management of sport from pre-independence times. This was initially through the office of the Registrar of Societies under the Societies Act, Chapter 108 of the Laws of Kenya. This Act defines a society as any club, company, partnership or other association of ten or more persons, whatever its object or nature, established in Kenya. Section 4 of the Act makes it mandatory for all societies in Kenya to be registered under it.

Sports associations were societies for the purposes of the Societies Act. They were thus governed and regulated under the Act. Consequently, the Kenya Football Association was registered in 1946 while the Hockey Sports Association and Athletics Sports Association were registered in 1950 and 1951 respectively. The National Olympic Committee of Kenya was registered in 1954.

National sports associations were similarly registered under the Societies Act and had branches in the then administrative provinces and districts of the country. Various sports clubs such as football clubs could also be registered under the Societies Act and later, as companies under the then Companies Act, Chapter 486 of the Laws of Kenya. The clubs were affiliated to the relevant national sports associations which were in turn affiliated to the corresponding global sports body.

For decades after Kenya’s independence, sport was under the social services department of a governmental ministry. It was only until 2003 that sport was accorded full ministerial status in the government. Currently, sport is under the Ministry of Sports, Culture and Arts of the Government of Kenya. The Department of Sports under the Ministry is headed by the Principal Secretary for Sports with the Commissioner for Sports directly under him/her.

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10 The colonial government’s Societies Act was repealed in 1968 by the new Societies Act which came into force on 16th February, 1968.
11 Section 2 thereof
12 Ibid, note 2
13 This Act has since been repealed and replaced by the Companies Act, No. 17 of 2015.
Under the Kenya National Sports Policy of 2002, the Department of Sports is charged with the mandate of developing, promoting and providing technical advice on all matters relating to sports and recreational activities. The Policy provides for the following:

a) Identification of linkages between sports and national development;

b) Ways and means of improving the quality of various sports disciplines in the country;

c) Sports funding and marketing through fund raising and sports publicity;

d) Development, provision and maintenance of sports facilities, goods and equipment;

e) Nurturing athletes’ careers, education and training;

f) Establishment of a National Sports Institute to regulate and enforce performance standards and provide training in sports;

g) Means, ways and systems for enforcement of rules against sports malpractices including doping; and

h) Coordination, administration and regulation of sports bodies and disciplines.

A part from the Sports Department under the Ministry of Sports, Culture and Arts, another Government body created with the mandate to oversee sports related matters was the Sports Stadia Management Board. The Board was established under the State Corporations Act, Chapter 446 of the Laws of Kenya through Legal Notice No. 180 of 15th November 2002 with the responsibility to develop and manage sports facilities, including stadia, in Kenya.

3.0 The Law Governing Sports in Kenya

Eight years after the Kenya National Sports Policy was developed, the people of Kenya promulgated a new Constitution on 27th August 2010. In December, 2012, Kenya’s Parliament passed a Sports Bill. This piece of legislation was assented to by the President on 14th January, 2013. In the year 2016, the National Assembly enacted the Anti-Doping Act, 2016. This Act was amended soon thereafter through the Anti-Doping (Amendment) Act, 2016.

The laws that directly govern sports in Kenya can therefore be said to comprise the Constitution, the Sports Act, 2013(as amended), the Anti-Doping Act, 2016 (as amended),

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14 No other policy has been developed since. In September, 2010, the then Minister for Sports re-launched the Policy. This policy therefore comprises the main sport’s policy framework currently. The Policy was approved and adopted by the Kenyan Parliament through Government Sessional Paper No. 3 of 2005 on Sports Development, (March 2005, Government Printer).

15 The Act was amended by the Sports (Amendment) Act, No. 7 of 2019 which repealed the entire Part III of the Act which established the National Sports Fund. The National Sports Fund gave way to the Sports, Arts and Social Development Fund which had been established in 2018 by the Treasury under the Public Finance Management Act, No.18 of 2012.
the subsidiary legislation made under the two Acts of Parliament, the relevant Treaties to which Kenya is a party such as the United Nations Educational, Scientific and Cultural Organization Convention Against Doping in Sports and the constitutions of the various national sports associations as read together with the constitutions, rules and standards of their respective international sports bodies to which they are affiliated.\textsuperscript{16}

3.1 The Constitution

The provisions of the Constitution applicable to sports are twofold. First are those provisions that give duties and responsibilities to the Government and other public bodies in relation to sports for the benefit of the public. Second are those provisions that accord rights to citizens in relation to sport generally.

Kenya is a constitutional democracy and the Constitution is the supreme law. It binds all persons and all state organs at the national and county level.\textsuperscript{17} As the supreme law of Kenya, any law, including customary law, that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.\textsuperscript{18} The Constitution therefore is the yardstick for measuring the legality of other legislation, rules and regulations enacted in Kenya including constitutions and rules of sports bodies and associations.\textsuperscript{19}

The Constitution of Kenya creates two levels of government, namely: the national government and 47 county governments. Both governments are distinct and inter-dependent and conduct their relations on the basis of consultation and cooperation.\textsuperscript{20} Every national state body, including sport institutions and organizations, is obligated to ensure reasonable access to its services in all parts of Kenya.\textsuperscript{21} The Constitution distributes functions between national and county governments. Sport is designated as a concurrent function between the National and County Governments.\textsuperscript{22}

It is therefore necessary for clear policy guidelines and legal framework spelling out how each level of government performs this function to avoid duplication, confusion, uncertainty and wastage. Such a scenario does not and cannot provide an enabling environment for sport to blossom. Currently, Kenya does not have a comprehensive sport policy. Such a policy will cover issues, among them, the existing legislative and institutional framework for sport, time bound deliverables, strategic goals and how the goals are to be realized, demarcation of roles

\textsuperscript{16} In \textit{Ferdinand Omuaryala v. Athletics Kenya (2019) eKLR}, the Sports Disputes Tribunal considered and applied the provisions of IAAF constitution, WADA Code and CAS jurisprudence in determining the case. It should further be noted that there are numerous laws that affect sport directly or indirectly including the laws governing contracts, labour laws and intellectual property laws. These laws are however not the focus of this paper.

\textsuperscript{17} Article 2(1) of the Constitution.

\textsuperscript{18} Article 2(4) of the Constitution.

\textsuperscript{19} In the case of \textit{Noah Mika Angoya v. Kenya Secondary Schools Sports Association (KSSSA) & 2 Others (2019) eKLR}, the Constitutional Court found a section of the association’s constitution to be unconstitutional for being, among others, discriminatory and therefore null and void.

\textsuperscript{20} Article 6(2) of the Constitution.

\textsuperscript{21} Article 6(3) of the Constitution.

\textsuperscript{22} See Article 186 of the Constitution as read together with Fourth Schedule thereto.
and responsibilities between national and county governments, an audit of existing sport facilities, academies, clubs and organizations, both public and private, throughout the country. Such a policy must be backed by a strategic plan that expands on the implementation of pertinent policy directives in the policy. The policy would set the government’s vision for sport and detail the impact the government would like to achieve through appropriate investments in particular outcomes and strategic objectives.

Article 10 of the Constitution declares the national values of the Republic of Kenya and the principles of governance which bind all state organs, state officers, public officers and all persons whenever any of them enacts, applies or interprets any law or makes or implements public policy decisions. Such persons must be guided by the principles of sharing and devolution of power, the rule of law, democracy, participation of the people, human dignity, human rights, non-discrimination, good governance, integrity, transparency and accountability in exercise of their public offices. The Constitution therefore commands the national government, county governments, public bodies and officers including officials of sports federations to embrace and observe the principles of good governance in the management and, or regulation of sport in Kenya. There still remains need for widespread public awareness campaigns and compliance by various public bodies and officers and all stakeholders in sports with these constitutional dictates. One of the challenges facing Kenya currently is implementation and compliance with the Constitution both vertically and horizontally.

The Constitution commands that public money be used in a prudent and responsible way. This obligation extends to governments and any person (sports organizations/bodies) given public money for a particular purpose. A sports organization that uses public money given by the National Government or County Government to procure goods or services must apply a system of procurement that is fair, equitable, transparent, competitive and cost effective. Such procurement is governed by the Public Procurement and Asset Disposal Act, 2015.

In 2018, the Government of Kenya established the Sports, Arts and Social Development Fund for funding of sports, among other programs, in the country. Under regulation 4, sources of funds for the Fund include proceeds from charges levied on proceeds of sports lotteries under section 69A of the Betting, Lotteries and Gaming Act. The Regulation reserves only an amount not exceeding 35 per cent of the Fund in any financial year for promotion of sports and development in the country. Promotion of sports and development

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23 Good governance principles include transparency, equity and inclusiveness, participation of stakeholders, responsiveness, effectiveness and efficiency, observance of the rule of law, accountability and consensus building.

24 Article 201(d) of the Constitution.

25 Article 227(1) of the Constitution.

26 An Act of Parliament to give effect to Article 227 of the Constitution and providing for procedures for efficient public procurement and disposal of assets of public entities.

27 The Fund was established through the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018, Legal Notice No. 194, published in the Kenya Gazette Supplement No. 133 of 25th October, 2018. The Regulations were made by the Cabinet Secretary for Finance under the Public Finance Management Act, No. 18 of 2012.

28 Ibid, Regulation 4(2) thereof.
activities include the development of sports and recreation facilities including stadia, gymnasiums, buildings and tracks, facilitation of sports persons and organizations for participation in sports events and competitions, nurturing and developing talents in sports, facilitating training and capacity building programs for persons involved in sports, training of technical sports personnel and sports support personnel, among others. Under Regulation 13, sports organizations, professional sports persons and statutory sports institutions, such as the ones established under the Sports Act, 2013, are eligible for funding from the Fund. Application for such funding is to be received by the Administrator of the Fund 6 months before the commencement of the financial year and the same must be in line with the Budget Circular issued by the Administrator by 30th August every year setting the ceiling for funding for sports in the coming year and the priority programs, projects and activities selected for funding in the financial year.

It is doubtful whether the Fund will provide sufficient funding for sport in the country. As we will note below, even the sports institutions established under the Sports Act, 2013 have not been fully capacitated with requisite human and financial capital, seven years after their establishment. The effect is that these institutions are yet to embark on serious consideration and discharge of their respective statutory mandates. Moreover, development and maintenance of sports facilities such as stadia require huge capital expenditures. Restricting funding to sports to not more than 35 per cent of the total funds allocated in any financial year implies that the Fund cannot finance development of a single multi sports stadium.

Any public officer including officials of sports organizations or clubs in the sports sector is duty bound to observe and abide by the values and principles of public service in Article 232 of the Constitution in discharging his functions. He is required to observe high standards of professional ethics, ensure efficient, effective and economic use of public resources, provide services to the public that are responsive, prompt, effective, impartial and equitable and involve the people and or stakeholders in the process of policy making. He must also be transparent and accountable for his administrative actions. Such an officer is obligated to provide accurate information to the public and or stakeholders in timely manner. All these values and principles when observed and practised collectively concretize into good corporate governance. Sport prospers in an environment of good corporate governance.

However, leadership and management of sports organizations in Kenya are still bedevilled with wrangles, personalization and lack of transparency and accountability; the ‘beautiful’ provisions of the Constitution and the Sports Act, 2013 notwithstanding. In the case of Eliud Mutali v. Registrar of Sports & Another, the Sports Disputes Tribunal observed thus:

“This is an unfortunate feature of sports governance and sports disputes in Kenya. Too often, individuals see federations as their personal property to be controlled and used as they see fit with no consideration for the interests of the athletes for whose benefit these federations are intended to exist.

29 See ibid, Regulation 7(2) thereof.
30 Ibid, Regulation 14(2).
31 Ibid, Regulation 14(1).
The Tribunal will not countenance this. Where disputes of this nature exist, they must be shown to be bona fide disputes brought for the benefit of the federation and the athletes who play the particular sport and not ego fights for the control of a federation.”

Chapter 4 of the Constitution is on the Bill of Rights. The Constitution declares firmly that the Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies. The import of this provision is that the National Sports Policy of 2002 must be informed and founded on the Bill of Rights in order to meet the constitutional threshold. There is therefore an obvious urgent case for review of this policy as the Constitution renders it obsolete.

It is the fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. Under Article 27(4) and (5) of the Constitution, the State or any person shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. So that in fulfilling this right, the State is required to ensure that opportunities and facilities for exploiting one’s sporting talent are available and accessible by all citizens in all the counties of Kenya. This is achievable through development and implementation and enforcement of appropriate policies and laws.

Article 36 of the Constitution guarantees freedom of association. The right to freedom of association comprises the right to form, join or participate in the activities of an association of any kind. Any legislation that requires registration of an association of any kind must provide that registration may not be withheld or withdrawn unreasonably and must provide a right to a fair hearing before registration is cancelled. Any sports legislation providing for registration of sports organizations must uphold this right.

Article 47 of the Constitution gives every Kenyan a right to fair administrative action. An administrative action is fair when it is expeditious, efficient, lawful, reasonable and procedurally fair. Further, where a right or a fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person must be given written reasons for the action. The national government, the county governments, government sports officers, sports associations and clubs are bound by the Constitution to observe this right while overseeing and managing sports matters and in dealing with sports persons in Kenya.

The Constitutional Court has affirmed that the Bill of Rights binds all persons including private sports clubs in Kenya. Under Article 20(1) of the Constitution, “the Bill of Rights applies to all law and binds all state organs and all persons”. In Article 260 of the

32 See the judgement of the Tribunal in the case of Eliud Mutali v. Registrar of Sports; George Wasonga (Interested Party) (2019) eKLR.
33 Article 19(1) of the Constitution.
34 Article 21(1) of the Constitution.
35 See Article 36 (1) & (3) of the Constitution.
36 The Sports Act, 2013 provides for registration of all sports associations in Kenya.
Constitution, the word “person” is defined to include “a company, association or other body of persons whether incorporated or unincorporated”. Under Article 21(1) of the Constitution, it is the duty of all persons to protect the Bill of Rights by observing, respecting, protecting, promoting and fulfilling the rights and fundamental freedoms.\textsuperscript{37}

In the judgement,\textsuperscript{38} the Court emphasized that the Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies and must be protected and promoted for the purpose enunciated under Article 19(2) of the Constitution, which is “to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.” The Court held that Article 22(1) of the Constitution gives every person a right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. Once seized of such a petition, the Court is enjoined by the Constitution under Article 20(3), in giving effect to the rights enshrined in the Bill of Rights, to develop the law to the extent that it does not give effect to a right or fundamental freedom; and adopt the interpretation that most favours the enforcement of a right or fundamental freedom taking into account Article 20(2) which provides that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom\textsuperscript{39}.

\section*{3.2 The Sports Act, 2013}

This legislation was enacted by Parliament to implement the National Sports Policy 2002 ten years after the policy was adopted. It seeks to address ills and challenges facing sport in Kenya since independence. These ills and challenges have resulted in under-utilization of sport as a tool for economic development. Some of the ills and challenges were identified in the 2002 policy. They include lack of transparency and accountability in the leadership and management of sports organizations, inadequate funding of sports programs by the Government, lack of proper equipment and facilities for various sports that are accessible throughout the country and non-compliance with the laws and regulations governing sports management.

The Act is an action of the National Government in discharging its sports functions nationally pursuant to the Constitution of Kenya. It came into force on 1st August 2013. It sets out to harness sports for development, encourage and promote drug free sports and recreation,

\textsuperscript{37} See the judgement in the case of Rose Wangui Mambo & 2 Others v. Limuru County Club & 17 Others (2014) eKLR “The respondents cannot be allowed to wave a private entity card to bar this Court, when properly moved, from assuming jurisdiction where there are allegations of breach of fundamental rights and freedoms by its members or any other person. It cannot be safe, in a progressive democratic society, to arrive at a finding that allows private entities to hide behind the cloak of ‘privacy’ to escape constitutional accountability. We think that it would be to accord a narrow, constricted interpretation to our Supreme Law, contrary to the canons of constitutional interpretation that have for ages infused our judicial system and which now find constitutional sanction under Article 259 to accede to such a proposition,” the Court opined.

\textsuperscript{38} Ibid.

\textsuperscript{39} Ibid
establish sports institutions and provide for administration and management of sports in Kenya.\(^{40}\)

The Act establishes Sports Kenya and Kenya Academy of Sports as statutory sports institutions. It also creates Sports Disputes Tribunal for dispute resolution. It further provides for regulation and management of sports associations and bodies in Kenya and establishes the office of Registrar of Sports.

3.2.1 **Sports Kenya**

This is one of the state corporations established under the Act for purposes of revamping the sport industry in Kenya. Sports Kenya is a national institution established as a body corporate with perpetual succession and a common seal.\(^{41}\) It succeeds the Sports Stadia Management Board established under the State Corporations Act through the Sports Stadia Management Order, Legal Notice No. 180 of 2002. As a national institution charged with public functions, Sports Kenya is required to ensure that its services are accessible in all parts of the country.\(^{42}\)

The functions of Sports Kenya include promotion, co-ordination and implementation of grassroots, national and international sports programs for Kenyans in liaison with relevant sports organizations and facilitate active participation of Kenyans in regional, continental and international sports. It is also mandated to establish, manage, maintain and develop sports facilities throughout Kenya. The Act also allocates Sports Kenya the duty to adopt, develop, plan, set and enforce sports facilities standards in Kenya. Towards developing and promoting sports in the country, the corporation is required to collaborate with county governments, learning institutions and other stakeholders in identification, development and nurturing of sporting talents among Kenyans and provision of sports equipment, facilities and technical training.\(^{43}\)

Other important functions given to Sports Kenya are determination of the national colours to be used by Kenyan teams in national and international competition in consultation with the relevant national sports organizations and facilitation of the preparation and participation of Kenya teams in various international events.\(^{44}\)

Sports Kenya is managed by a Board of thirteen persons, seven of whom are representatives of various Government departments’ officers. Four members of the Board are to be nominated by umbrella sports bodies and appointed by the Sports Cabinet Secretary. The Chairperson of the Board is an appointee of the President of Kenya. There is no requirement for competitive recruitment of the Chairman.\(^{45}\) The Director General of Sports Kenya, who is

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\(^{40}\) See the preamble to the Act.  
\(^{41}\) Section 3(2) of the Act.  
\(^{42}\) This is in line with the Constitution. See section 3(6) of the Act.  
\(^{43}\) See section 4 of the Act.  
\(^{44}\) Ibid. Section 4 of the Act.  
\(^{45}\) See section 6 of the Act.
the Secretary to the Board and chief executive officer of Sports Kenya, is to be sourced competitively by the Board.\textsuperscript{46}

Going by its statutory functions, Sports Kenya is intended to be the panacea for inadequate and sub-standard sports facilities in Kenya. Many sports disciplines lack appropriate training facilities and grounds leading to lost opportunities for various sports talents in these fields. To be able to fully discharge this important mandate, Sports Kenya must secure heavy budgetary financing from the Government as developing and maintenance of sports facilities are capital intensive.

These budgetary financing has not been forthcoming and Sports Kenya has been unable to effectively discharge any of its statutory functions since its establishment. No new stadium has been built in the Country. Sports Kenya has also not developed any sports facilities standards.\textsuperscript{47} There is also no evidence of Sports Kenya promoting, coordinating and implementing any grassroots, national and international sports programs for Kenyans in liaison with relevant sports organizations.

3.2.2 \textit{The Kenya Academy of Sports}

The Kenya National Sports Policy 2002 recognizes the important role played by sports education, training and research in sports development. To develop, sustain and improve the country’s performance in sports, there must be systems, mechanisms and institutions providing standard training in various sports disciplines including proper diet and nutrition. There must be opportunities for training coaches of various sports in accordance with international curriculum standards and certification procedures. To compete successfully for opportunities in the sports world, a country must make deliberate investments in sports science research and development.

To fill this gap in the sports management and development spectrum, the Act establishes the Kenya Academy of Sports as a legal public entity.\textsuperscript{48} The Academy is charged with the following fundamental public sports functions, among others:

a) Establish and manage sports training academies in Kenya;

b) Organize, administer and co-ordinate sports courses for technical and sports administration personnel;

c) Promote research and development of talent in sports in liaison with sports organizations and educational institutions; and

d) Conduct, collate and store sports research data and findings.\textsuperscript{49}

\textsuperscript{46} Section 8(1) of the Act

\textsuperscript{47} Thus country governments and private individuals have been building stadia and other sports facilities without any guiding national standards.

\textsuperscript{48} See section 33 of the Act

\textsuperscript{49} See section 35 of the Act
Full exploitation of sports for economic development necessitates that all individuals engaged in the sports industry whether as teachers, managers, coaches, agents, health care providers and researchers are specially trained in the respective sports fields. Such training must be available locally for easy accessibility from any part of the country.

The Kenya Academy of Sports is therefore expected to provide relevant training and research in sports science, sports management and sports development to support the sport industry’s growth. Once established and running, the Academy is expected to address the perennial problem of inferior performance by Kenyan athletes and inability to nurture sporting talent by reason of lack of quality coaching and training in the given sports disciplines. It is to serve as education resource for upgrading coaching and training of athletes through instruction, research and service.

There is no evidence currently of any Sports Academy being built and run by the institution. Indeed, there is no evidence of the Kenya Academy of Sports commencing to discharge any of its statutory functions since it was operationalized by the Government.

3.2.3 Administration, Regulation and Management of Sports Bodies

The Sports Act, 2013 creates the office of the Registrar of Sports responsible for registration and regulation of sports organizations and multi sports bodies representing sports organizations, licensing of professional sports activities and professional sports persons and arbitration of registration disputes that may arise between sports organizations.50

Every sports organization must be registered with the office of the Registrar of Sports to acquire legality. Any sports organization that is not so registered is an unlawful entity and cannot benefit from the privileges and rights given under the Act.51 A sports organization may be registered either as a sports club, a county sports association or a national sports organization.52

Towards addressing the challenges of maladministration of sports organization in Kenya, the Act provides for certain minimum structural and constitutional requirements that must be met by every sports organization before it may be registered by the Registrar of Sports.53 Every constitution of a sports organization in Kenya must contain the prescribed provisions set out in the Act. Among them is the requirement that only Kenyan citizens can be officials of national sports organizations in the capacity of chairperson, secretary and treasurer.54 The constitution must also provide that elections of officials of the sports organization shall be held at regular intervals of periods between two and four years. In other words, the term of office of elected officials of sports organizations shall not be more than four years and less

50 See section 45(1) and (2) of the Act
51 See section 46(1) of the Act
52 The Sports Registration Regulations, 2016 defines sports organization as a body registered for purposes of promoting sports by whatever name.
53 Section 4(b) of the Act
54 Second Schedule (b) to the Act
than two years. Officials of sports organizations are henceforth only eligible for serving a maximum of two terms.\textsuperscript{55}

A constitution of a sports organization must also make provisions on elections of officers of the organization incorporating and complying with the general principles of electoral system under Article 81 of the Constitution of Kenya. Article 81 of the Constitution is under Chapter Seven thereof which provides for representation of the people. It provides for Kenya’s electoral system and process. It demands that the electoral system must comply with the following principles:

a) Freedom of citizens to exercise their political rights;

b) Not more than two thirds of the members of elective public bodies shall be of the same gender;

c) Fair representation of persons with disabilities;

d) Universal suffrage based on fair representation and equality of vote; and

e) Free and fair elections which are by secret ballot, free from violence, intimidation, improper influence or corruption, conducted by an independent body, transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.

A constitution of sports organization must therefore uphold the rights of members to elect their officials. It must also make provisions to ensure that at no time will the elected officers of the organization comprise more than two thirds of either male or female gender. The constitution must also provide structures for representation of persons with disabilities in the leadership of the sports organization. These provisions are intended to uphold the rights of the members of sports organization. They are hoped to address the challenge of individualist leadership of sports organizations in Kenya that is not responsive and accountable to the interests of the members.

Constitutions of sports organizations must bind them to regular free and fair elections which are by secret ballot, free from violence, intimidation, improper influence or corruption, conducted by an independent body, transparent and administered in an impartial, neutral, efficient, accurate and accountable manner. The product will be officials of integrity that are accountable to the members and the public and are transparent in the management of sports organizations. Issues of nepotism, corruption and lack of a clear vision and strategy in the management of sports organization can be effectively address by having systems, processes and rules for free, fair, credible and verifiable elections of officials of sports bodies in Kenya.

The Registrar of Sports has the power to cancel a certificate of registration of sports organization under the Act where it is established to his/her satisfaction, upon giving the sports organization audience, that the registration was obtained through misrepresentation or

\textsuperscript{55} See Second Schedule (c) to the Act
non-disclosure of material facts, the organization has violated the conditions upon which the registration was granted and or the sports organization is guilty of breach of the law.56

The Registrar of Sports has the duty to monitor and supervise the management and administration of all registered sports organizations to ensure compliance with their constitutions, rules and the law. To discharge this duty, the office has power to inspect books, accounts and records of sports organizations.57

Pursuant to section 72 of the Sports Act, the Cabinet Secretary in charge of sports has since made ‘The Sports Registrar Regulations, 2016’58 covering registration of sports bodies, licensing of sports persons, division of sports organization’s revenue, inspection of sports organization, elections in sports organizations and arbitration and mediation of sports disputes by the Registrar, among other miscellaneous matters. The Regulation is further to but subject to the provisions of the Act.

It is the Registrar of Sports who is charged with the important responsibility of administering and enforcing the provisions of the Constitution and the Sports Act within sports organizations and stakeholders. The office must therefore be properly capacitated through provision of sufficient personnel and necessary capital resources to be able to aide in attaining the objectives of the Sports Act and meet the above stated constitutional requirements and thresholds.

3.2.4 Dispute Resolution

There is a half-hearted attempt to establish a distinct system for resolution of sports disputes in Kenya by establishment of the Sports Disputes Tribunal under the Act. Unlike the ordinary courts, the Tribunal is composed of persons who are lawyers and have experience in sports law and or been engaged in sports activities or management.59 These qualifications and background are meant to enable members of the Tribunal make sports relevant and legitimate decisions and rulings.60

The jurisdiction given to the Tribunal is highly qualified and is not exclusive. It therefore allows sports disputes to continue to be brought before the normal courts. Tribunal has jurisdiction to determine: appeals arising from decisions made by national sports organizations or umbrella national sports organizations whose rules specifically allow for appeals to be made to the Tribunal in relation to issues such as disciplinary decisions and selection to the Kenyan team; appeals from decisions of the Sports Registrar under the Act;

56 Section 51 of the Act
57 Section 52 and 53 of the Act.
59 Section 55(1) & (2) of the Act.
60 The argument has been that sports law is special and unique with distinct norms, rules and principles and therefore it is only insiders who know the sports and its informal conventions who are best placed to make judgements over sports disputes. See generally Foster, K. (2019). Global Sports Law Revisited, The Entertainment and Sports Law Journal, 17 (1), 4.
and other sports related disputes where parties thereto agree to refer them to the Tribunal and it agrees to hear them.\textsuperscript{61}

In the case of Football Kenya Federation v. Kenya Premier League Ltd & 4 Others, the High Court found and held thus on the effect and full purport of section 58 of the Sports Act:

“… there is no express provision ousting the jurisdiction of the High Court from entertaining the dispute herein. ..., it was not shown that any of the sports organizations have already incorporated in their constitutions and promulgated rules specifically allowing for appeals to be made to the Tribunal and material to this dispute---“other sports related disputes that all parties to the dispute agree to refer to the Tribunal and the Tribunal agrees.”\textsuperscript{62}

The Court went further to hold thus:

“... On the submissions by the first respondent that FIFA and FKF statutes and constitutions oust this courts' jurisdiction to hear this dispute, may I remind the parties that in the cases I have referred to above, all relate to ouster of jurisdiction by either the constitution or the statute and where the ouster is by statute, it must derive that ouster from the constitution."\textsuperscript{63}

The jurisdiction of the Tribunal to determine appeals arising from decisions made by national sports organizations or umbrella national sports organizations whose rules specifically allow for appeals to be made to the Tribunal in relation to issues such as disciplinary decisions and selection to the Kenyan team under section 58 of the Act is meant to uphold the autonomy of global sports law as a transnational legal order whereby international sports bodies such as FIFA and IOC claim immunity from review and supervision by national courts.\textsuperscript{64}

Global sports law is recognized generally as a private regulatory order which is legitimizied by contracts and consents between international sports federations on one hand and national sports federations and sports persons on the other\textsuperscript{65} and operating transnationally to transcend national variation and is immune from state regulation and legal order in its own right.\textsuperscript{66}

National sports federation have therefore to expressly provide for and recognize the Tribunal as the alternative dispute resolution body within their constitutions, otherwise the Tribunal has no jurisdiction over the disputes that may arise within the given sports federation. In order to maintain the autonomy and independence of sport and avoid breach of constitution of international sports federations, national sports bodies could structure their dispute resolution

\textsuperscript{61} Section 58 of the Act.
\textsuperscript{63} Ibid
\textsuperscript{64} See Foster, K, note 59. Foster defines global sports law as an autonomous transnational legal order established by international sporting federations as interpreted by institutions of alternative dispute resolution created by these federations.
\textsuperscript{65} Thus Article 68(2) of FIFA Constitution provides that ‘Recourse to ordinary courts of law is prohibited unless specifically provided for in FIFA Regulations. ... Article 68(3) further states that ‘... Instead of ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted tribunal recognised under the rule of the Association or Confederation to CAS.’
\textsuperscript{66} Foster, K. Ibid, p. 2
systems in a manner that has the Tribunal and CAS hierarchically with CAS being the final appeal tribunal.

However, the jurisdiction of the Tribunal to hear appeals against administrative and quasi-judicial decisions of the Registrar of Sports has been upheld by the Courts\textsuperscript{67}. The law is that where there is an alternative remedy and especially where Parliament has provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted in actions brought in disregard of the appeal procedure.

The Tribunal is directed to apply alternative dispute resolution methods including arbitration, mediation and conciliation in resolving sports disputes before it and where appropriate provide expertise and assistance to parties in a relevant alternative dispute resolution method applied in resolving the dispute.\textsuperscript{68}

The Tribunal is therefore intended to resolve sports disputes fairly and expeditiously. Some sports disputes such as participation in the Kenya team require timely and immediate resolution. Disputes over election of officials of a sports federation must also be resolved quickly to avoid stagnation of the management and operation of the organization. To facilitate speedy and fair resolution of sports disputes, the Tribunal is not bound by the technical rules of evidence and procedure like the normal courts. Accordingly, the draft Rules of the Tribunal allow parties and witnesses to speak in their indigenous language if that is the language they best understand, representation by a person of one’s choice and further provide that facts in dispute may be established by any reliable means, including admissions. The Tribunal may also itself make inquiries into the subject matter of any proceedings before it and order production of necessary documents and information.\textsuperscript{69}

With a view to ensuring that all sports disputes brought before the Tribunal do not again find their way to the normal courts and thereby be caught in the wheels of delay in determination, the draft Rules provide that decisions of the Tribunal shall be final and binding and shall not be questioned in any courts of law.\textsuperscript{70} Appeals against the decisions of the Tribunal lie to the Court of Arbitration for Sports where the rules or policies of the relevant International Sports Federation or the National Sports Organization so provide.

It should be noted that Section 42 of the Act as read together with Second Schedule (f) require all sports organization to subscribe to the Court of Arbitration for Sports policies and rules which abhor referral of sports disputes to courts of law.

3.3 The Anti-Doping Act, 2016

\textsuperscript{67} See the case of Anna Nganga & 6 Others (suing as Steering Committee of Badminton Kenya v. Registrar of Sports & Another (2017) eKLR where the Court declined to grant judicial review reliefs against the Registrar of Sports in view of the provisions of section 58 of the Sports Act which provides that appeals against decisions or actions of the Registrar of Sports are to be made to the Sports Disputes Tribunal.

\textsuperscript{68} Section 59 of the Act.


\textsuperscript{70} This provision, however, needs to be in the principal Act to be binding and enforceable. Right of appeal or lack of it must be provided for in the legislation and not in subsidiary legislation.
Kenya has been facing challenges in addressing doping in sports particularly among its athletes who participate in international events. It is reported that by 2011, forty Kenyan athletes had failed drug tests. As of January, 2016, eighteen Kenyan athletes were suspended for doping and are together serving bans totalling to 55 years.\textsuperscript{71}

The World Anti-Doping Agency (WADA) had given Kenya deadlines for compliance with the anti-doping rules and requirements. One such requirement was enactment of an appropriate anti-doping legislation to provide an enabling environment and framework for more local testing as a means of dealing with the menace among athletes. Kenya was required to pass the piece of legislation by April, 2016.\textsuperscript{72}

With a view to complying with the anti-doping rules and meeting the WADA deadline, Kenya National Assembly passed the Anti-Doping Act, No. 5 of 2016 in April, 2016. The law was assented to by the President on 22\textsuperscript{nd} April, 2016. Nonetheless, the WADA Compliance Committee in its meeting in Montreal, Canada in May 2016 found Kenya non-compliant with the anti-doping rules and requirements and recommended to the WADA Board to bar Kenya from participating in the Olympics games scheduled in Rio, Brazil in August 2016. It was contended that Kenya had introduced some amendments to the anti-doping law that are contrary to the WADA prescriptions and rules.\textsuperscript{73}

Faced with the risk of missing the Rio 2016 Olympics games, Kenya rushed amendments to the Anti-Doping Act, 2016 in line with WADA requirements through enactment of the Anti-Doping (Amendment) Act, No. 18 of 2016.\textsuperscript{74}

The Anti-Doping Act (as amended) creates the Anti-Doping Agency, provides for administration and enforcement of anti-doping rules and resolution of doping disputes. It purposes to give effect to the World Anti-Doping Code and the United Nations Educational Scientific and Cultural Organization Convention against Doping in Sport.\textsuperscript{75} The two instruments aim at protecting the fundamental right of athletes to participate in sports activities that are free from doping by putting in place coordinated and effective mechanisms to detect, deter and prevent doping in sports so as to ensure fairness and equity in sports and also protect the health of athletes. The Act therefore applies to the Kenya National Anti-Doping Organization, athletes and athletes support personnel in Kenya. It defines doping as use of prohibited substances and methods in any sporting activity whether competitive or recreational in order to artificially enhance performance.\textsuperscript{76}

3.3.1 The Anti-Doping Agency


\textsuperscript{72} Ibid

\textsuperscript{73} Ibid

\textsuperscript{74} This piece of law was assented to by the President on 23\textsuperscript{rd} June 2016 and became operational on 27\textsuperscript{th} June 2016. See also Elias Makori, ‘Anti-doping agency removes Kenya from list of non-compliant countries,’ in the EastAfrican newspaper of Thursday August 4 2016.

\textsuperscript{75} Section 4 of the Anti-Doping Act.

\textsuperscript{76} Section 2 and 3 of the Anti-Doping Act.
The Anti-Doping Act creates the Anti-Doping Agency of Kenya (Agency) as the national anti-doping organization in Kenya. It is established as a body corporate with requisite legal capacity and attributes.\(^{77}\) It has exclusive statutory mandate to carry out anti-doping activities in Kenya and its authority is to be recognized by all national sports federations in Kenya.\(^{78}\)

The Agency has a number of functions including promoting doping free sports, creating awareness against doping in sports, implementing the World Anti-Doping Code and associated international standards, implementing anti-doping activities in Kenya, implementing the Prohibited List as published by the World Anti-Doping Agency from time to time, carrying out investigations in matters of doping in sports, prosecuting anti-doping offences before tribunals, and implementing the Anti-Doping Administration and Management System Program.\(^{79}\)

The Agency is run by a ten member Board comprising Government officers and appointees.\(^{80}\) The Agency is run by a secretariat headed by the Chief Executive Officer.\(^{81}\)

### 3.3.2 Administration and Enforcement of the Act

For purposes of according prior notice of the World Anti-Doping Code, all athletes and their agents must bind themselves to the Code by signing a declaration of the acceptance.\(^{82}\) It is the duty of every athlete to be knowledgeable of and comply with the Anti-Doping Rules. However lack of knowledge of the Anti-Doping Rules is not a defence in a case of infringement.\(^{83}\) Every sports organization must prepare rules requiring athletes and each athlete support personnel who participates as coach, trainer, manager, team staff, official, medical or paramedical personnel to agree to be bound by the Anti-Doping Rules and the Agency’s results’ management authority in conformity with the World Anti-Doping Code as a condition for participating in sports activities of the federation.\(^{84}\)

The Act accords an athlete individual responsibility for complying with the Anti-Doping Rules. Every athlete must be available for, and submit to in-competition and out-of-competition testing at any time and place, with or without advance notice.\(^{85}\) The Agency employs anti-doping compliance officers to enforce the Act.\(^{86}\)

The Act creates both criminal and non-criminal sanctions for non-compliance with its provisions. Failure to obey the summons of the Agency, refusal to submit a sample or to be examined, failure to comply with any lawful order or direction of the Agency, presentation of false information or a false statement, or violating the rules of confidentiality, public

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\(^{77}\) The agency has perpetual succession, can sue and be sued in its own name and can own and dispose of property. See section 5(2) of the Act.

\(^{78}\) Section 2A of the Act.

\(^{79}\) Section 7(1) of the Act

\(^{80}\) Section 10 of the Act

\(^{81}\) Section 17 of the Act

\(^{82}\) Section 27(1) of the Act

\(^{83}\) Section 27(5)(a) of the Act

\(^{84}\) Section 41B of the Act

\(^{85}\) See Section 5 of the Act.

\(^{86}\) Section 29(1) of the Act.
disclosure and or privacy of data is an offence punishable by a fine of up to Kenya Shillings One Hundred Thousand or imprisonment of a term not exceeding one year or both.\textsuperscript{87}

Anyone who unlawfully transports or transfers prohibited substance, stocks suppliers of products containing prohibited substances in an unlawful manner or administers, applies or generally causes an athlete to use prohibited substance commits an offence and faces a fine of not less than Kenya Shillings Three Million or imprisonment for a term not less than three years.\textsuperscript{88}

The Act also makes it an offence for persons participating in recreational sports in a gym, fitness centre, private club or other similar facility to use, possess, administer, buy, sell, stock, transport or in any way deal with prohibited substance. If convicted, an accused may be fined not less than Kenya Shillings One Hundred Thousand or imprisoned for a term of not more than one year. This offence however does not apply to athletes or athlete support personnel.\textsuperscript{89}

It is also an offence for a medical practitioner, including doctors, nurses, pharmacists, physiotherapists and traditional herbalists to prescribe, dispense and or administer a prohibited substance or method to an athlete. They are also prohibited from acquiring, stocking or possessing prohibited substances.

The Act also provides for non-criminal sanctions for sports organizations, athletes and athletes support personnel found in violation of Anti-Doping Rules. For sports organizations, the sanctions include reprimand, withdrawal of services funded by public resources, suspension from eligibility for funding by the Government and cancellation of registration by the Registrar of Sports.\textsuperscript{90} Athletes and athletes support personnel who violate any anti-doping rules face sanctions and punishment specified in the Anti-Doping Rules of the Agency.\textsuperscript{91}

\subsection{Dispute Resolution}

The Act gives the Sports Disputes Tribunal established under the Sports Act jurisdiction to hear and determine all cases on anti-doping rule violations by athletes and athletes support personnel and on issues of compliance with the World Anti-Doping Code by sports organizations.\textsuperscript{92} In exercising its jurisdiction, the Tribunal is guided by World Anti-Doping Code, the various international standards established under the Code, the 2005 UNESCO Convention against Doping in Sports, national law and the Agency’s Anti-Doping Rules, among other relevant laws.\textsuperscript{93}

\textsuperscript{87} Section 42(1) of the Act.
\textsuperscript{88} Section 42(2) of the Act. The Act also permits the sentencing court to impose both fine and imprisonment upon conviction with the offence.
\textsuperscript{89} See section 42(3) and the proviso thereto.
\textsuperscript{90} Section 42(5) of the Act.
\textsuperscript{91} Section 42(6) of the Act.
\textsuperscript{92} See section 31(1) of the Act. Excluded from this jurisdiction are criminal offences related to doping concerning recreational athletes and other entities or organizations.
\textsuperscript{93} Section 31(2) of the Act
Anti-doping disputes involving national and county level athletes, athlete support personnel, sports organizations, professional athletes and professional sports persons are to be resolved by the Tribunal both at the first instance and on appeal in accordance with its Rules of Procedure. However, disputes involving international level athletes are to be resolved by the Tribunal at the first instance with right of appeal lying with the Court of Arbitration for Sports. If an international level athlete, an athlete support personnel, the Agency, an international federation or the World Anti-Doping Agency is not satisfied with a decision of the Tribunal, he/she/it may lodge an appeal with the Court of Arbitration for Sports.

Section 32 (1) of the Act gives the Agency the right to appeal against a decision of the World Anti-Doping Agency or an international federation to the Court of Arbitration for Sports in accordance with Article 4.4 of the Code.

4.0 Areas for Policy Development and Law Reform: In Conclusion

The foregoing expose’ reveals that Kenya has developed a good legal framework for sports. However, to realize the social and economic benefits of sports, the existing law must be enforced and the established sports institutions enabled to fully perform their statutory functions and obligations through capacitation, both financially and materially. For success, this process must continue alongside necessary policy interventions and law reform.

The Kenya National Sports Policy 2002, which in September, 2010 was re-launched by the then Minister for Sports without any changes and or amendments, five years following its adoption by Parliament, was obsolete by the time the Sports Bill was developed and placed before Parliament for debate in 2012. It is no wonder then that there exists very limited nexus between the Kenya National Sports Policy 2002 and the Sports Act, 2013. There is therefore an urgent need for policy direction in sports by developing a new sport policy. The new policy must be guided and informed by the Constitution, the current global direction and policies of international and continental sports bodies such as FIFA, IOC and the Supreme Council for Sports in Africa (SCSA). Moreover, the policy must recognise that sport is a concurrent function of both national and county governments and make provisions and directions that ensure that both governments deliver sports functions in an integrated manner. The policy framework must provide for an integrated sports system that is effectively coordinated, aligned, functional and performance oriented in order to attain the social and economic values of sports.

Such a policy must be supported by an implementation plan that includes necessary amendments of existing laws and enactment of other necessary legislation. To develop the implementation plan, there is need for a comprehensive, current and reliable audit of sports facilities in Kenya (including those owned by the private sector). Such audit will permit

94 Section 31(4) of the Act.
95 Section 31(5) of the Act. The Act defines ‘an international level athlete’ in section 2 as an athlete who competes in sport at the international level as defined by each international federation.
96 Section 32(2) of the Act.
97 County Governments should, for example, be directed by the policy to include building of multi-purpose sports facilities in their plans and budgets.
proper planning for development of new facilities and maximum use of existing facilities\textsuperscript{98}. To be effective, the policy must be comprehensive and provide for the desired outcomes such as education and training of administrators, managers, coaches and technical officials of sports and regulation and management of sports academy systems. The policy must clearly demarcate roles and responsibilities of the national and county governments and other stakeholders such as national and county sports federations.

We have also established that under the Constitution of Kenya, which creates two levels of government, sport is a concurrent function of both the national and 47 county governments. At the national level, there exists both policy and legal framework for sport. There is however yet to be developed a comprehensive sports policy and or law by any county government. Yet any meaningful exploitation of sports as an economic industry requires existence of appropriate structures and systems at the grassroots level. Such structures and systems are established through policy and legislative intervention. County governments must therefore make policy and laws that dovetail into national sports policy and laws in a way that each level of government supports each other in discharging the sports functions. In this collaboration, care must be taken to avoid conflicts and duplication of roles between national and county governments’ sports institutions. Both national and county government must discharge their sports public mandates in an integrated manner for positive impact.

Sports organizations play a crucial role in the development of sports. The law must therefore provide a framework that ensures effective management and functioning of all sports organizations. The law needs to create an enabling environment for investment and engagement in the sports industry. The Sports Act has general provisions regarding sports organizations that bring about uncertainty. For instance, it is not clear whether the sports organizations and clubs registered under the Companies Act are to register under the new Sports Act again. Moreover, it is also not clear whether a sports association/organization may be a legal person. Further, the Act is silent on whether a legal person registered under another law may be a member of a sports association, club and or organization. Such uncertainties in the law discourage private investments in sport.

To ensure that ordinary sports disputes are not referred to the normal courts, it may be necessary to review and give mandatory jurisdiction to the Sports Disputes Tribunal in all sports disputes, including disputes arising within and between sports organizations. As currently provided for under section 58 of the Sports Act, sports disputes still find their way to the normal courts where a given sports organization has not provided for appeals against its decisions to the Tribunal in its constitution. Therefore, the qualification in section 58 of the Sports Act that the Tribunal has jurisdiction only over internal disputes in sports organizations whose constitutions designate the Tribunal as dispute resolution body should be repealed.

\textsuperscript{98} There is urgency to coordinate and regulate building of sports facilities by County Governments to avoid duplication and wastage of public resources. There is currently a rush by county governments to build stadia yet Kenya is yet to develop norms and standards governing development and maintenance of sports facilities. Meru, Kakamega, Mombasa and Machakos County Governments are examples of Counties that have built or re building stadia, which are primarily for football stadia.
There is also need to make provisions for enforcement and execution of the orders, awards and judgements of the Tribunal. The Act is silent on these important issues which go into the root of the Tribunal’s jurisdiction and authority. Inability of a judicial body to enforce its orders, decrees and directives greatly affects its effectiveness and authority as an adjudicative body. This makes the Tribunal an unattractive avenue for resolution of sports disputes.

Finally, the nexus between the Tribunal and the Court of Arbitration for Sports (CAS) also needs to be provided for in the Sports Act. This is important and necessary given that most international sports organizations such as FIFA, for example, only recognize CAS as the dispute resolution body for all disputes arising in football all over the world. An amendment ought to be made providing for appeals to CAS in specific kinds of disputes decided by the Tribunal. A good candidate for this category of disputes are disputes between or concerning management of sports organizations. It is also advisable to consider allowing appeals to the High Court on points of law only against decisions made by the Tribunal arising from the actions and or decisions of the Registrar of Sports.