

THE CRIMINALIZATION OF MATCHFIXING IN KENYA

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School

By

OBURE ROY RABIN

082136

Prepared under the supervision of

Sarah Ochwada

January 2018

Contents

| | |
|--|-------------------------------------|
| CHAPTER 1 | 3 |
| INTRODUCTION AND BACKGROUND..... | 3 |
| STATEMENT OF PROBLEM | 4 |
| RESEARCH OBJECTIVES | 5 |
| HYPOTHESIS | 5 |
| JUSTIFICATION OF THE STUDY | 5 |
| LITERATURE REVIEW..... | 6 |
| THEOROTICAL FRAMEWORK..... | 8 |
| SOCIOLOGICAL AND ECONOMIC PERSPECTIVE..... | 8 |
| RESEARCH METHODOLOGY | 9 |
| DATA COLLECTION | 9 |
| Mapping of regulatory arrangements | 9 |
| LIMITATIONS OF THE STUDY..... | 10 |
| CHAPTER BREAKDOWN | Error! Bookmark not defined. |
| DURATION AND WORKPLAN..... | Error! Bookmark not defined. |
| BIBLIOGRAPHY..... | 10 |
| CHAPTER 2 | 12 |
| THE CONCEPT OF MATCH FIXING..... | 12 |
| INTRODUCTION | 12 |
| CHAPTER 3 | 18 |
| CURRENT CRIMINAL & DISCIPLINARY PROCEEDINGS FOR MATCHFIXING | 18 |
| INTRODUCTION | 18 |
| CHAPTER 4 | 24 |
| DIFFERENT JURISDICTIONS ON THE CRIMINALIZATION OF MATCH FIXING | 24 |
| INTRODUCTION | 24 |
| CHAPTER 5 | 29 |
| CONCLUSIONS AND RECCOMENDATIONS ON MATCH FIXING IN KENYA..... | 29 |
| Introduction | 29 |
| CHAPTER BREAKDOWN..... | 31 |
| CONCLUSIONS AND RECCOMENDATIONS | 32 |

CHAPTER 1

INTRODUCTION AND BACKGROUND

There are many different definitions of sports however; I hold that sport is an institution which is a social behavior, the core of which is competition based on an individual or team skill and strategy. The specific behavior ranges from basic games children play to the serious competitions of professional athletes. This institution extends deep through economics, education and even mass media to extents; it has been studied by various serious professions such as anthropologists, historians, economists, political scientists, social psychologists and authors in physical education. By virtue of sport being an institution, there have been attempts to study sports, by authors from the various numerous fields, from the perspective of the existing body of knowledge in their respective fields. With the commercialization of sports, as well as the increasingly high stakes involved, the study of sports has become a lucrative area for the legal profession too. The study of sports law or rather the law relating to sports creates an interface to study the relationship between society, the institution of sport and with the laws or legal principles. Dishonesty in sports goes a very long way back several decades back and although the occurrence primarily has its roots in commercial sports, various terms such as rigging or throwing games have been used to elaborate on it, there is no doubt that this fixing phenomenon has been around in sports for quite a long while.

From 1919 in the USA, there surfaced allegation on the Chicago white sox that some of the players on the team had received various amounts of money to 'throw' a world series game¹. The sport of boxing has also suffered from this vice as was believed in a 1965 heavyweight match between Sonny Wilson and Mohammed Ali where it was believed orders from the underworld had been issued for one Liston to throw the match when he fell from a not so phenomenon punch². Match fixing has not only been seen in the USA but several other countries in the world such as Japan where sumo wrestling matches have had several allegations levied against them due to the structure of sumo wrestling matches³.

¹ Stonecypher L, *Say it ain't so joe*, 2005.

² <https://www.mirror.co.uk/sport/boxing/muhammad-ali-vs-sonny-liston-173117>

³ Duggan M, Levitt S, *Winning isn't everything: corruption in sumo wrestling*, 2008.

Incidents of match fixing have not only been seen on a national level further but also at the supranational level (the Olympics). An instance of this was seen in the 2002 Olympics where a Russian mob star was alleged to have approached the skating teams of Russia and France trying to convince them to fix the outcome of an upcoming match⁴.

As seen can be seen from the examples that have been mentioned, this is clearly a problem that is widespread and transverses through the various different types of sports. Another common feature that is observed with this phenomenon is its connection to the underworld and gambling.

STATEMENT OF PROBLEM

Through the course of my paper, I shall discuss the relationship of sports with criminal law with respect to match-fixing. I shall also be looking into some examples of 'fixing' in sports and the concepts of 'spoiling' and 'cheating' in sports as well as what conduct is considered to be 'match-fixing'. Various penal laws shall also be reviewed in India to see whether or not match-fixing qualifies as a criminal offense and I shall also look into the law in the United States of America with respect to match-fixing and related conduct as well as the sanctions regime which is has been put in place by the International Cricket Council (hereinafter ICC) and steps taken by the Board of Control for Cricket in India (hereinafter BCCI) for the purpose of curbing match-fixing, this two countries have been chosen as I believe they've made the most headway in the issue and thus form a good basis for the discussion. I shall also discuss the adequacy of disciplinary measures and look into the elements of criminal liability and determine whether or not match-fixing merits a criminal sanction and shall also try to evolve a test for determining the appropriate sanctions to be applied based upon 'on-field' and 'off-field' factors which influence decisions in sport. In case of Ahmed v. State of Rajasthan, it was laid that the act of match fixing becomes a 'dishonest' only when there is an intention, irrespective of the result. Now in case of match fixing whether there is an element of 'dishonest concealment of fact' and whether it causes a wrongful loss or wrongful gain to someone. When a player conceals the fact of receiving money from punters or bookmakers, it can be construed as 'dishonest concealment of fact'. The fact that they cause wrongful gain to themselves construes wrongful loss to spectators. But to bring this 'dishonest concealment' under Cheating one has to prove intention to

⁴ ESPN, 'Alleged russian mobster accused of olympic skating fix' <http://espn.go.com/oly/news/2002/0731/1412258.html> on 23 January 2017.

cause wrongful loss to spectators⁵. In my view this wrongful loss to spectators is mere consequence of this act and is only incidental and thus lacks the intention of causing wrongful loss. So, who cheated whom? Could those who placed illegal bets deemed to have cheated by a fixed match?

RESEARCH OBJECTIVES

- i. Examine the legal framework of Sports offences in Kenya.
- ii. Examine the appropriateness of criminalizing match fixing in Kenya.
- iii. Formulate a guiding principle on how it should be applied and operate under the Kenyan law
- iv. Access the situation of Match fixing in the Kenyan context.

HYPOTHESIS

Match fixing is a problem in Kenya that needs to be legislated for and not ignored. Match fixing should be a criminal offense in Kenya Under the criminal code.

JUSTIFICATION OF THE STUDY

This study is justified as Match fixings primary goal is for monetary value. When individuals conspire to fix matches, this is done majorly for betting where the individuals can reap from a certain outcome. Does this not qualify as a criminal offence due to acquiring funds through manipulation of events?

Match fixing is further a problem that should be anticipated in Kenya following the boom in the betting industry and the few cases of match fixing that have already began springing up such as the case of the AFC Leopards allegations that they had fixed a KPL match and leaked the information to certain key individuals to reap of the information⁶.

Another justification is whether there are already possible sanctions to such individuals in Kenya currently. The current sanctions to such cases are seen to be dealt with at the club level with no history of harsh consequences to the people who have been caught participating in such as the

⁵ 1967 Cri LJ 1053(Raj.)

⁶ <http://www.goal.com/en-ke/news/4523/kenyan-premier-league/2016/08/18/26634002/afc-leopards-summon-players-over-match-fixing-claims> on 21 January 2017.

story has been recurrent `investigations are ongoing ` this has been the common song when such cases arise and the end to them as well. There is thus a need for state sanctions to be formulated to deal with such as the path that is currently being followed will encourage more practice of the vice among sportsmen in the country. Football regulation in the country from the FKF has sanctions on the vice but they are in my view painless as they are easily succumb navigated and aren't harsh enough to stop the vice. Match fixing should also be understood to be a financial crime equal to that of insider trading, what if the Nairobi Stock Exchange o for example was left to deal with regulation of insider trading in Kenya? The vice would be rampant as they don't have the necessary tool to properly curb and deter the vice.

LITERATURE REVIEW.

A fixed match occurs when a match is played to a completely or partially pre-determined result. I shall look at two types of match fixing here namely non betting match fixing and betting match fixing. Differentiating the two, non-betting cases concern sport-motivated match fixing where the primary aim is to “achieve a sporting advantage directly from its result”⁷. In contrast to this which is betting-related match fixing; this is done for securing an economic gain indirectly from a sport event through betting activity (European Commission, 2012). Under Non-betting match fixing, Cases of non-betting-related match fixing are prominent in amateur tournaments. Such is the case in Japanese sumo wrestling competitions, as Duggan and Levitt (2002) bring to light. A form of reciprocity exists whereby sumo wrestlers who have already secured tournament advancement would lose intentionally, or “throw” the match, to assist another wrestler in advancing. From the same standard, non-betting-related match fixing occurred in the 1999 Cricket World Cup. In this competition, a contest between the West Indies and Australia was fixed “when Australia, confident of winning the match and guaranteed progression, slowed down their own scoring rate to a crawl so as to boost their opponents’ chances of qualifying”⁸ The “end-of-season-phenomenon”⁹ paved the way for one of the first known cases of match manipulation in soccer in 1915 during a game between English outfits Manchester United and Liverpool. The fix was led by top players on both sides in an effort to keep Manchester United

⁷ European Commission report, 2012, p. 9.

⁸ Preston & Szymanski, Match fixing 2003, p. 618.

⁹ European Commission, 2012, p. 10.

from being relegated to England's second division. Secure in mid-standings, Liverpool agreed to lose to help Manchester stave off demotion¹⁰. North American sports have a similar issue as the "end-of-season-phenomenon" relegation-promotion battle common in European soccer leagues (Jessop, 2006). In North America, most leagues reward a lower finish with a higher draft pick and, hopefully, a better quality prospect (Jessop, 2006; Soebbing & Mason, 2009). This, unfortunately, induces "tanking" by poorer quality teams towards the end of season, thus hurting the credibility of the team and league¹¹.

Under Betting-related match fixing. Reported cases of betting-related match fixing have existed for centuries. Hill (2010a) writes about rowing's popularity in 1869 before a memorable race between Harvard and Oxford and its sudden demise at the hands of match fixing gamblers whose fixes were so "prevalent that some would happen during the race" (p. 289, emphasis in original). Another classic and popular example of a gambling-related fix occurred in Major League Baseball (MLB) in 1919. Eight members of the Chicago White Sox were banned for life from baseball for intentionally losing games allowing the Cincinnati Reds to win the World Series (Bachin, 2003). Reportedly, the Chicago players decided to lose out of spite towards their stingy owner who refused to increase their wages or pay earned performance bonuses thus making the bribe monies that much more enticing (Bachin, 2003). Presently, instances of betting-related match fixing have become more prevalent than its non-betting match fixing counterpart. Gorse and Chadwick (2011) analyzed known global cases of match fixing from 2000-2010 and determined 33 of 57 (57.89%) reported cases were betting-related (Appendix B). Included amongst these cases are British horse racers who were manipulating race results, with jockeys passing insider information on to bookmakers (Maennig, 2005) and Pakistani cricketers bowling to less than their abilities at the behest of gamblers (Gorse, 2014; Gorse & Chadwick, 2011). Recently, Russian tennis player Andrey Kumantsov was banned for life by the International Tennis Federation for offences related to betting and match fixing (Sky Sports, 2014; Tennis Integrity Unit, 2014)¹². In North America, former National Basketball Association (NBA) referee Tim Donaghy resigned from his position and pleaded guilty in 2007 after a Federal Bureau of

¹⁰ European Commission, 2012; Hill, 2010.a.

¹¹ Balsdon, Fong, & Thayer, Match fixing 2007.

¹² Report prepared for the remote gambling association and their partners , BY SAMANTHA GORSE & PROFESSOR SIMON CHADWICK, CENTRE FOR THE INTERNATIONAL BUSINESS OF SPORT COVENTRY UNIVERSITY BUSINESS SCHOOL

Investigation (FBI) examination into claims that he placed wagers on games he officiated and of which he could then control the outcome (Soebbing & Mason, 2009).

Smith's (2011) claim that "the very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of its outcome" (p. 2), is supported by Gorse and Chadwick (2011) who felt the uncertainty inherent in sport gives it its unpredictable joy. Forrest and Simmons (2003) build on these sentiments by suggesting fans may be disenchanted by the charade and refuse to attend live events because a "loss of confidence in the integrity of competition will lessen the attractiveness of the spectacle and, consequently, lower attendance" (p. 607). The concepts of consumer reaction when faced with match fixing corruption (Buraimo et al., 2012) and spectator attraction dwindling (Forrest & Simmons, 2003; Gorse & Chadwick, 2011; Smith, 2011) are where this study is launched.

THEOROTICAL FRAMEWORK.

Potential drivers and effects of match fixing are developed from a sociological and economic perspective framed by the concept of organizational capacity.

SOCIOLOGICAL AND ECONOMIC PERSPECTIVE.

Apart from tarnishing the integrity of the sport, match fixing also has economic effects where the perpetrator of the vice is positively affected as they can acquire proceeds from betting. The rest of the public however faces a negative effect.¹³ A direct effect on the economy can be seen where the betting sector experiences a rapid increase in liquidity in effectively unregulated markets. Sports autonomy holds for sporting federations setting their own legislation which normally lacks binding rules that clearly specify the punishments of the vice and thus threatens the integrity of the game¹⁴.

A potential cause of match fixing has been seen under the argument that corruptive behavior helps organizations to deal with bureaucracies on matters that are deemed bad policy. From this, the avoidance of bureaucracies is used to maximize revenues. Clubs are on record to have indicated that by experiencing higher bureaucracy, they would likely perform corrupt actions.

¹³ Match-fixing in international sports: Existing processes, law enforcement, and prevention strategies, Forrest, D. (2013). (pp. 177–198).

¹⁴ Is There a Global Sports Law? by Ken Foster 2012

In conclusion of the theoretical framework, match fixing would probably be more of an issue in countries where the problem of corruption is more of an issue. Clubs that have been affected by the issue are expected to be more burdened by inefficient bureaucracies and focus more on competitive football. Human resource capacities such as qualified and well paid staff should be protective measures against the problem of *match-fixing*. Affected clubs are expected to demonstrate lower levels of revenue diversification, public subsidies and commercial revenues, and have fewer financial capacities to pay players and taxes. Within the structural dimension of organizational capacity, affected clubs are suggested to have a lower emphasis on socio-structural systems, and a lower likelihood to engage in dependable relationships with other institutions. The protectiveness of other organizational capacities against match-fixing remains unclear and requires empirical validation.

RESEARCH METHODOLOGY

DATA COLLECTION

This research will be that of Desktop research where I will rely on primary and secondary sources for the data. Under the primary sources of data, law such as the criminal procedure code of Kenya and Sports act of Kenya. Policies on international sports and laws that regulate and govern FIFA and other sporting federations and organizations shall also be used in order to formulate a guiding principal in the matter with regard to the Kenyan context. Precedence on match fixing being dealt with in other jurisdictions shall also be reviewed. The secondary sources that shall be used here will be those such as journals and articles written by experts in the field in question where the similar issues was put under review and expertly analyzed. The materials shall be accessed from online sources and e-library`s.

Mapping of regulatory arrangements

In addition to the data collected through desktop research, I intend to obtain information on relevant regulatory frameworks from the national gambling regulators of the European Union ,this will include obtaining information on risk assessment in the regulatory frameworks.

Investigating and researching on the existence, scope and rationale of preventive rules and practices on the matter.¹⁵

LIMITATIONS OF THE STUDY

The scope of the study is limited due to the unavailability of extensive precedent and jurisprudence on the matter. This is due to the issue having not been seen in the country before thus a type of ignorance on the matter from the relevant parties to legislate on such, a sort of blind eye to the problem which is there and very rife. Further due to an unavailability of resources to carry out research on the ground, I shall only rely on desktop research. The limited published research in the area of match-fixing is characterized by a lack of consensus about the drivers and effects that actually constitute it, and often based on weak theoretical foundations¹⁶

BIBLIOGRAPHY.

Forrest, D. (2013). Match fixing: An economics perspective. In M. R. Haberfeld & D. Sheehan (Eds.), *Match-fixing in international sports: Existing processes, law enforcement, and prevention strategies* (pp. 177–198). Cham: Springer.

ESSA (European Sports Security Association) Code of Conduct, available at <http://www.eu-ssa.org/code-of-conduct>

Emrich & Pierdzioch, 2015 Emrich, E., & Pierdzioch, C. (2015). Theoretische Rahmung. In E. Emrich, C. Pierdzioch, & W. Pitsch (Eds.)

ESPN, Alleged Russian Mobster Accused of Olympic Skating Fix, available at <http://espn.go.com/oly/news/2002/0731/1412258.html> (Last visited on August 25, 2008).

Balsdon, Fong, & Thayer, 2007; Forrest et al., 2008; Jessop, 2006; Soebbing & Mason, 2009.

Match-fixing in international sports: Existing processes, law enforcement, and prevention strategies, Forrest, D. (2013). (pp. 177–198).

Balsdon, Fong, & Thayer, Match fixing 2007

¹⁵ ESSA (European Sports Security Association) Code of Conduct <http://www.eu-ssa.org/code-of-conduct/>

¹⁶ In E. Emrich, C. Pierdzioch, & W. Pitsch (Eds.), *Emrich & Pierdzioch, 2015 Emrich, E., & Pierdzioch, C. (2015). Theoretische Rahmung.*

European Commission, 2012, p. 9.

Preston & Szymanski, 2003.

European Commission, 2012, p. 10.

European Commission, 2012; Hill, 2010.a.

<http://www.goal.com/en-ke/news/4523/kenyan-premier-league/2016/08/18/26634002/afc-leopards-summon-players-over-match-fixing-claims> on 21 January 2017.

ESPN, 'Alleged russian mobster accused of olympic skating fix' <http://espn.go.com/oly/news/2002/0731/1412258.html> on 23 January 2017.

Stonecypher L, Say it ain't so joe, 2005.

Duggan M, Levitt S, Winning isn't everything: corruption in sumo wrestling, 2008.

CHAPTER 2

THE CONCEPT OF MATCH FIXING

INTRODUCTION

One of the challenges in dealing with match fixing is that the concept is not precisely defined. As a matter of jurisprudence, match fixing necessarily must be defined precisely if it is to be governed. A standard of "I know it when I see it" may work for other things, but cannot work for match fixing.

Sports institutions do not precisely define 'match-fixing'. In its Communication 'Developing the European Dimension in Sport' the Commission states the following¹⁷:

'Match-fixing violates the ethics and integrity of sport. Whether related to influencing betting or to sporting objectives, it is a form of corruption and as such sanctioned by national criminal law. International criminal networks play a role in match-fixing associated with illicit betting. Due to the worldwide popularity of sport and the trans-frontier nature of betting activities, the problem often goes beyond the remit of national authorities. Sport stakeholders have been working with public and private betting companies to develop early warning systems and educational programs, with mixed results. The Commission will cooperate with the Council of Europe in analyzing the factors that could contribute to more effectively addressing the issue of match-fixing at national, European and international level. Integrity in sport is also one of the issues that will be addressed in the forthcoming Commission consultation on the provision of online gambling services in the EU.'

At the European level, a definition of match-fixing has been agreed by the Council of Europe in its Recommendation on the promotion of the integrity of sport against manipulation of results, notably match-fixing, which includes the following definition¹⁸:

'The expression "manipulation of sports results" covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as

¹⁷ http://ec.europa.eu/sport/news/communication-on-sport-adopted_en.htm, January 2011

¹⁸ http://www.coe.int/t/dg4/epas/resources/texts/CM_Rec_2011_10_en.pdf, March 2011

matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition.'

The Council of Europe launched the Convention against the manipulation of sports results after negotiations where the question of defining what match-fixing was undoubtedly central in the framework of the negotiations which developed contrasting issues and possible conflicting areas.

First, the notion of "irregular alteration" simply replaces "match fixing" with another imprecise and undefined concept. For example, is the purposeful losing of a match to gain a better seed in a two-stage tournament (group/knockout) an "irregular alteration"? Does, for instance, one set of rules apply to badminton and another to football (as the tournaments format for both are different thus one would be considered match fixing and the other irregular alteration)? The notion of "irregular alteration" forces a discussion of player/coach/referee intent/motives and ventures into territory that would be difficult if not impossible to regulate.

Second, and perhaps more problematic, is the notion of "uncertainty normally associated with the results of a competition." Academic literature suggests that uncertainty in results has been overplayed as an important factor in policy making¹⁹, as the evidence is equivocal as to how much fans actually value uncertainty. Of course, if it is indeed uncertainty that really matters, then the simplest response would be to not investigate match fixing, and leave it as just another unknown variable affecting sporting outcomes. But what matters in my view to fans is their subjective uncertainty about the outcome, not objective uncertainty. In the end a metaphysical discussion of the ontological status of uncertainty in sporting events probably is not the direction to go to better govern match fixing.

The definition thus restates the problem in different language and invokes a value (preservation of uncertainty) that is of dubious stature in competition. The governance of match fixing will require some further consideration of what exactly it is that is problematic about match fixing, and the practical steps that might be taken to regulate it. This is no easy task.

¹⁹ The Economic Design of Sporting Contests, Stefan Szymanski, Vol 41, No. 4, Dec 2003, pg 1137-1187

It is not enough to only describe what exactly match fixing is but is as important to understand the reasons people engage in this vice so as to understand the concept of match fixing better.

How is match fixing done?

Match fixing is done differently depending on the sport or circumstance, however I shall give a brief overview of the common processes. First there is normally is an individual or organization which fixes matches thus they may approach individual players or the teams management .Majorly matches are fixed as huge bets are placed on particular team or individual to win or lose or draw a match ,bookies are normally involved in the process to avoid them flagging any suspicious bets or forwarding such to authorities so they include themselves to also profit by making the odds of the even to happen look less desirable , hence more people will bet against the fixed outcome and ensure more profits. So player accepts money and does what he is asked to do .Hence the outcome of match is controlled by the fixer who earns A lot by winning such bets. This is the process of Fixing. Applicable in all sports equally well. But cricket is more susceptible due to ease. In football, A player underperforming is easily detected.

Why do people involved in sport agree to match-fix?

Money is the main motivation, but there have to be reasons why some people and sports are more susceptible than others, ²⁰particularly given the professional and legal ramifications of getting caught. It is rarely money alone that is the sole reason for agreeing to participate in match-fixing. A first possible explanation is that individuals involved in sport are easier to manipulate than those involved in a team environment, where the risk is much higher due to complex interactive outcomes. This is often a reason put forward in tennis and snooker, for instance. Furthermore, this explains why referees are a prime target, particularly in football as evidenced in the Oriekhov case and the conviction of Chinese international referee Huang Junjie²¹, as they have a high degree of influence over the outcome of a contest. Interestingly, however, statistics from Declan Hill show that referees are often, unwittingly, unable to deliver a

²⁰ Examination of Threats to Integrity of Sports”, Section 4.4, Oxford Research A/S, April 2010

²¹ Chinese referee Huang Junjie admits fixing matches including Sydney FC game”, The Australian, December 20, 2011.

successful fix, and in reality corrupting club officials delivers the highest success rate as they can influence the club and its entire culture.²² Any sport, or level within a sport, which is scrutinized less rigorously will be more susceptible to match-fixing. This is often the case with lower league football, which is less scrutinized due to its importance in the overall football pyramid in a particular country. Prior to the Pakistan cricketers scandal, the ICC which, despite other numerous high profile match and spot fixing cases, spent less than 1 per cent of its profit on its Anti-Corruption and Security Unit,²³ which I would argue was disproportionately low. This is in contrast to the International Tennis Federation (the world governing body of tennis) which spends 30 per cent of its worldwide development fund on its integrity unit.²⁴ Historically, Italian football is the prime example of a third possible reason for the likely targets for match-fixing as in end-of-season games, where neither team needs to win (in essence a ‘dead rubber’) they agree to play out a draw, so match-fixing is more prevalent where the contest does not affect the final outcome of a competition. Finally, and perhaps of a more troubling nature, is the prospect of agreeing to match-fix as a result of duress. This was one of the defenses put forward by John Higgins in the match-fixing scandal in South Korean football where a player was found dead in a hotel room accompanied by a suicide note referring to a match-fixing ring.²⁵ Duress can take two forms: duress by threats and duress by circumstances.²⁶ The legal hurdle to be overcome to be successful with either variant of this defense is high and not often successful in a sporting context. However, given the increasing prevalence and acknowledgement of the involvement of criminals and gangs who orchestrate large-scale match-fixing this may become an increasingly frequent tale when sports people are caught out. If you were told that if you did not agree to go along with the plan then your family will be in danger, what would you do? Suddenly the money seems quite appealing after all, and upholding your own reputation and that of the sport less so.

²² To Fix or not to fix? How corruptors decide to fix football matches”, Declan Hill, *Global Crime*, Volume 10(3) 157–177, August 2009.

²³ Integrity: Combating spot-fixing in cricket: the role of the ICC”, Amrut Joshi, *World Sports Law Report*, Volume 9(1), January 2011

²⁴ Betting and the integrity of sport (International Update)”, Huw Roberts—IAAF Legal Counsel, presentation Sport & Gambling conference, London, September 29, 2011.

²⁵ Match-fixing South Korean footballers banned for life, *BBC News Asia-Pacific*, June 17, 2011.

²⁶ Corruption: Agreeing to match-fixing under duress: analysis, Kelly Hudson and Rod Findley, *World Sports Law Report*, Volume 8(6), June 2010.

Hopefully, it is now clear that there are a multitude of reasons why illegal bookmakers and criminals try, and indeed succeed, in targeting certain sports, and individuals within those sports, more than others.

The sources and type of people engaged in arranging sports to be fixed

Who organizes match-fixing, tempting sports people to put their careers at risk in a disciplinary, reputational and criminal sense? There appear to be various different categories of people who are engaged, ranging from criminals running illegal betting syndicates, to the players themselves. It is perhaps best to start by addressing the stereotypes that exist, namely that the people/criminals come from Eastern Europe, Russia and the Far East. This is not without substance as can be seen in many of the instances I have mentioned including in football, snooker and tennis. Yet is far too simplistic to say that these are the principal problem areas, as we are dealing with a truly worldwide problem, with criminals and their organizations' tentacle spreading far and wide across the globe. The primary source of concern for governing bodies around the world on this topic is that many of the problems surrounding sport gambling arise from territories and markets where gambling is banned, such as the Far East, because where there are prohibitions gambling is driven into the black market.²⁷ Indeed, Interpol has revealed that through operations in this part of the world it has made nearly 7,000 arrests. Further, it estimates the volume of illegal betting and match-fixing to be worth \$500bn (£311bn) in the Asian market alone. A darker side is emerging to the behavior of people involved in organizing match-fixing. One matter I addressed earlier is threats through duress. The second, doping, has only come to light as part of the latest match-fixing scandal to surface in Italian football. It has been alleged that in a match in November 2010, Paganese v Cremonese, players had their drinks spiked in an attempt to hamper their performance, with several falling ill during the game. Those innocent players are being dragged into the murky world of match-fixing without any knowledge or consent is in my opinion morally heinous. Furthermore, along with the usual criminal characters implicated, several well-known players, including former Italian international

²⁷ Sports bookmakers seek safety in numbers against cheating", Bill Wilson, BBC Business News, November 10, 2010.

Christian Doni, are said to have been actively complicit in organizing this second round of fixing to take place⁵³ with 17 people now facing criminal charges.²⁸

Conclusion

The perception of the problem of match-fixing can be as serious a threat as the actual problem itself, so both are important to tackle and look at. The increasing presence of criminals across the sporting spectrum should be a concern for all stakeholders and provide additional impetus to the continuing need for concerted action on a global scale, principally given that organized crime never loses money in illegal gambling operations: one way or another they make a profit

²⁸ Ex-Italy player Cristiano Doni arrested over match-fixing, BBC Sport, December 19, 2011

CHAPTER 3

CURRENT CRIMINAL & DISCIPLINARY PROCEEDINGS FOR MATCHFIXING

INTRODUCTION

In this section the paper shall be looking at the existing circumstances around criminal and disciplinary sanctions which may be applicable to match fixing. Before discussing the specific provisions of criminal law which might apply to match-fixing, it is important to understand to whom these provisions are likely to apply. Three categories of persons may be identified to whom these provisions could apply.

- The players
- The persons involved in the betting syndicates
- The officials who regulate the game

This paper shall look at the provisions of criminal law in Kenya and compared to other jurisdictions and try to find out how they may possibly apply to these three categories of persons.

THE KENYAN PENAL CODE AND THE INDIAN PENAL CODE, 1860

The first law this paper shall be looking into is the Indian Penal Code, 1860 which is the foremost statute dealing with the general concepts and principles of substantive penal law in India. This Act has defined several acts or omissions to be offences and has prescribed specific penalties for each of them. Within the Code, prima facie, it may appear that the two offences of 'cheating'²⁹ and 'criminal conspiracy' would apply to match-fixing.

Cheating has been defined in Section 415 of the Indian Penal Code, 1860. It is this papers view that this Section does not apply to match-fixing because, of the fact that it involves deceiving 'a person'. Therefore, cheating is not an offence which can be committed in rem, but rather must be against a specific person. Cheating is also seen in the Kenyan penal code and also holds for

²⁹ The meaning of cheating in this chapter is the legalistic definition of cheating which has been given in 415, India Penal Code, 1860 and sec 315 of the Kenyan penal code.

deceiving a specific person under sec 315. What match-fixing involves is the deception of the public in general into thinking that the match is not fixed. Where the offence of match fixing is one where the public at large is affected, the framers of the Code have mentioned that cheating under sec 315 affects the specific victim. Further, Section 315 requires the transfer of property to take place between the accused and the victim. In match-fixing, there is no clear transfer of property from the alleged perpetrator to the victim. Therefore, it is submitted that this offence would not be made out. The second offence which may, prima facie, seem to be made out is that of criminal conspiracy. This is defined in Section 120-A of the Indian Code in the Kenyan code this can be seen in Chapter 41 under sections 393,394 and 395. Prosecutions for criminal conspiracy have become very common on account of the popularity that they enjoy in the prosecution for organized criminal activity. For there to exist a criminal conspiracy, two or more persons must agree to do either an illegal act or a legal act by illegal means. Now, match-fixing is not a per se illegal act as there is nothing in the Code which makes it an offence. Therefore, an agreement to fix a match would not be covered under the provisions of criminal conspiracy. Also, the means involved in order to fix matches may not necessarily be illegal and therefore, the ingredients would not be fulfilled and the offence would not be made out. Therefore, it is submitted that the offence of criminal conspiracy will not be made out with respect to match-fixing.

In order to look at the application of any other sections of both Codes, this paper shall determine whether or not the ingredients of wrongful gain, wrongful loss, dishonestly, fraudulently or injury are made out. These ingredients are essential with respect to any offence which may require conduct similar to match fixing. Wrongful gain requires the gain of property by unlawful means to which that person is not legally entitled. Wrongful loss requires the loss of property by unlawful means by a person who is legally entitled to the same. These ingredients would not be made out as there is a requirement for 'unlawful action' in order to gain or cause the loss of the property. Dishonestly is an intention to cause wrongful gain and wrongful loss to any person. Fraudulently is something which is done with the intent to defraud but not otherwise. This therefore, necessitates that the conduct of a person involved in match-fixing must be with the intent to defraud. This however may not always be the case. Therefore, it is difficult to say that this ingredient is made out. Injury is any harm which is illegally caused to any person, in body, mind, reputation or property. Therefore, the element of illegality of the harm makes it

inapplicable to the conduct which has been stated to match-fixing. This paper therefore holds that considering that the above mentioned offences and ingredients mentioned in the Code, being the relevant ones for the purposes of this discussion, are not made out, and therefore, both Codes would not apply to match-fixing. It would be important to hold that if the Code, were to be in some way applicable, then, it these would apply against all the three categories of persons mentioned above as its ambit is wide enough to cover those persons who mastermind the fixing of matches, the persons who actually fix them as well as those persons who abet them or otherwise gain from the behavior of the persons who indulge in such activities.

BETTING, LOTTERIES AND GAMING ACT OF KENYA AND THE PUBLIC GAMBLING ACT, 1867 & STATE GAMBLING LAWS OF INDIA

These legislations are the models for most of the state laws on gambling in their respective jurisdictions and therefore, form the basis for the study on the applicability of criminalizing match fixing. Section 12 of the Indian act states that the Act shall not apply to a game involving mere skill. This is a provision which can be seen in the Kenyan gambling acts as well in an implied manner not directly as the Kenyan act mainly deals with licensing and administration of the gambling industry. This problem had arisen with respect to the game of poker. The English Court of Appeal has in its decision held that poker is a game of chance and involves absolutely no element of skill and only pure chance.³⁰

THE PREVENTION OF CORRUPTION ACT, 1988 and ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003

These acts are intended to prosecute corrupt public servants as well as those persons who offer bribe. The term 'public duty' has been defined to mean a duty in the discharge of which the State, the public or the community at large has an interest. The first obstacle in the application of this Acts is seen as it applies only in relation to public servants. This means that for a prosecution to be initiated under this Act, it is necessary that the person who takes the bribe is a public servant; or in order to prosecute a person for offering a bribe, it is necessary to show that the bribe was offered to a public servant. The term 'public servant' is defined as "any person who

³⁰ BBC, Man Guilty in Poker Skills Case, available at <http://news.bbc.co.uk/1/hi/england/london/6267603.stm> (Last visited on August 24, 2008).

holds an office by virtue of which he is authorized or required to perform any public duty”, which has far-reaching relevance. On a very strict construction of the Act, these definitions would not apply to match-fixing. However, in India these constructions, if viewed in light of the decisions of the Supreme Court, in which it has been held that the BCCI ³¹performs enormous public functions and therefore, has a duty to act fairly, in good faith and reasonably,³² might serve to suggest otherwise. Therefore, it may be possible to state that the BCCI performs a public function or what may otherwise be said to amount to a public duty as can translate to the Kenya Premier League in Kenya or the Football Kenya Federation. As such, it may be possible that officials of the bodies as well as the players may be accommodated within the meaning of the word “public servant” in the Kenyan act, public body is defined as any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law, the FKF AND KPL can be seen to fall under this. Under Section 3(viii) of the Indian Act if it is possible to construe membership of the BCCI or its team representing India as a ‘public office. This argument is however a long shot . However, given the fact that there is no other effective remedy seemingly available within the framework of the penal laws in both countries, this interpretation may be the best alternative which may be available to prosecute persons for match-fixing. This Acts, if applicable, would apply to any person giving or receiving the gratification which may include any of the three categories of persons stated above.

LAWS DEALING WITH ORGANISED CRIME

After seeing that the ordinary penal laws in Kenya would not apply to match-fixing, this paper shall now look to the US laws where this problem has been encountered for a much longer period of time. The paper shall make a comparative analysis of the laws in the US as well as the law in Kenya to see whether match-fixing can be brought within the purview of the laws which deal with organized crime. In the USA, the act which is relevant for the purposes of this paper is the Racketeer Influenced & Corrupt Organizations Act of 1970. This law is intended to provide

³¹ The board of control for cricket in India

³² Board of Control for Cricket in India v. Netaji Cricket Club, 2005

prosecutors with a powerful and potent weapon against organized crime as it eliminates the need to prove that individuals are part of a single conspiracy and instead holds defendants liable for all acts of racketeering undertaken as part of an enterprise. It is required to show that there exists a pattern of criminal behavior, and not merely a single instance of conduct which has been made punishable under this Act. This Act has been successfully used against the offences of bribery, extortion, fraud, kickbacks etc. This Act also provides for civil claims for recovery alongside criminal action against the persons sought to be made liable. A prosecution and a suit for civil recoveries were once launched under the Racketeer Influenced & Corrupt Organizations Act, 1970 against Major League Baseball.³³ These recovery claims have been successfully used in a boxing-related case involving boxers Julio Cesar Chavez and Craig Houk regarding allegations of bribery and match-fixing.³⁴ Therefore, liability has been imposed in the US on match-fixing and sports regulatory authorities under a legislation which is meant to tackle organized crime. In Kenya, there are certain state legislations which have been enacted to combat organized crime such as the Prevention of Organized crimes act no.6 of 2010. However, the act would not apply to match-fixing because of the fact that Section 3 holds for what organized crime is and the act defines crime in part 1 or the preliminary as conduct constituting an offence against a provision of any law in Kenya punishable by a term of imprisonment of at least six months, or an offence against a provision of any law in a foreign state for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya, Match fixing doesn't fit this definition as it's not in any Kenyan law. Thus, after having discussed the existing regime of penal laws which may apply to match-fixing, this paper holds that, it is only the law in the United States, in the form of Racketeer Influenced & Corrupt Organizations Act, 1970 which certainly recognizes match-fixing to be part of organized criminal activity. In the absence of a similar law in Kenya, the paper holds that there exists no penal law in India which would cover match-fixing.

³³ Murray Chass, *Baseball: A Group's Racketeering Suit Brings Baseball to Full Bristle*, available at, <http://query.nytimes.com/gst/fullpage.html?res=9505E5D61539F934A25754C0A9649C8B63&sec=&spon=&pagewanted=1> (August 23, 2008).

³⁴ *Venzor v. Gonzales* 936 F. Supp. 445 JARVIS, ROBERT & PHYLLIS COLEMAN, *SPORTS LAW: CASES & MATERIALS* 796-803 (1999).

DISCIPLINARY MEASURES

The paper shall now briefly discuss the existing regime of disciplinary sanctions which exist under the “Code of Conduct for Players and Team Officials” of the International Cricket Council (hereinafter ICC Code).³⁵ The International Cricket Council in February 2001 enacted certain provisions in the ICC Code to prohibit gambling, betting, underperformance and inducement or encouragement to gamble, bet on or under-perform in a match or a series of matches. Further, suppression of information from the Anti-Corruption and Security Unit of the International Cricket Council has also been made actionable conduct under this Code. Further still, providing information about playing conditions or team compositions which have not been disclosed to the media in advance also amount to a violation of the Code of Conduct. The sanctions prescribed range from a fine, or a ban for a period of one year, to a life ban and an unlimited fine which must be determined on the basis of the facts and the circumstances of the case.

³⁵ International Cricket Council, Code of Conduct for Players and Team Officials, available at <http://in.yimg.com/iccricket/pdfs/code-of-conduct-for-players-and-officials.pdf> (Last visited on August 24, 2008).

CHAPTER 4

DIFFERENT JURISDICTIONS ON THE CRIMINALIZATION OF MATCH FIXING

INTRODUCTION

The implications or consequences of match fixing, from states that have established laws on such can be seen to take three forms:

- Penalties from governing bodies
- Criminal sanctions
- Reputational damage, being the least effective

The ultimate responsibility to keep sport clean from match fixing lies with the governing bodies from what is seen in countries with established laws on such.

In a report undertaken for the UK Government in February 2010 by the Sports Betting Integrity Panel (SBIP) outlines Britain's approach to address risks to the integrity of sport and sports betting and to protect our national and international reputation for being a safe place to enjoy both. The corrupt manipulation of sport events and related betting markets is often referred to as match fixing³⁶ with the purpose of looking at a the issues relating to the integrity of sports betting, the panel that held over the report formulated a uniform code of conduct on integrity which it recommended should be implemented across all sports. From the report, the SBIP looked at how the governing bodies each currently dealt with the following threats:

- Placing a bet
- Soliciting a bet
- Offering a bribe
- Receiving a bribe
- Misuse of privileged information

³⁶ Report of the Sports Betting Integrity Panel, Chapter 2b, February 2010.

- Failing to perform to one's merits
- Reporting obligations.

One of the panel's conclusions was that:

It is imperative that sports governing bodies have clear rules in relation to betting and insider information in their sports and for those rules to be communicated in an effective manner which is clearly understood by participants or competitors.

According to the report, the contravention of any rules and the punishment, have to be extremely severe as a deterrent and to show all stakeholders, especially the fans, that the threat is being taken seriously. In the report it was also seen how UEFA gave a life ban to one Mr. Oriekhov in the case against UEFA where Mr Oriekhov had violated the principles of conduct and his duty to disclose illicit approaches, set out in the UEFA Disciplinary Regulations, in failing to report immediately to UEFA that he had received offers from certain individuals to take an active part in their match-fixing scheme. Given the seriousness of the findings, a life ban on exercising any football-related activity was considered the appropriate sanction simply for failing to report that he had been approached to match-fix. Fines have to be at least equal to the amount gained from participating in match-fixing and it is his papers opinion that there should be penal element to them above and beyond this to give fines their true effectiveness. Criminal sanctions are the most effective deterrent to match-fixing. Being called a criminal to a sportsman's personal and professional integrity is severe and eternal damage.

Criminal fines are a viable option, but more powerful in extreme cases is the possibility of a prison term. It is a positive sign that national crime prevention organizations are taking match-fixing seriously, both in terms of the sources of the threat and of those participating in it.

To allow such punishments to take place, legislators in Kenya have to have well drafted, robust and overall effective laws in place. From the report, looking at the UK, there was some scrutiny of this on the UK laws in that the SBIP report saw that the definition of cheating under section 42 of the UK Gambling Act 2005 was not clearly set out and may help elusiveness for match fixers. In its recommendations to Member States, the Committee of Ministers of the Council of Europe had this to say:

“Member States should ensure that their legal and administrative systems are provided with appropriate and effective legal means for combating manipulation of sports results”³⁷

The International Dimension

The nature of match-fixing is larger scale crime, often organized by well-resourced international syndicates which are fixing matches on an industrial scale. This development has taken place since about the beginning of the millennium and became more evident to the general public with high-profile cases such as the 'Bochum' match-fixing scandal in 2009 where there was an attempt to influence the outcome of professional association football matches in Europe, and to defraud the gambling industry by betting on the results. The investigation centers on around two-hundred fixtures, including domestic league games in nine European countries: Germany, Belgium, Switzerland, Croatia, Slovenia, Turkey, Hungary, Bosnia-Herzegovina and Austria with around 320 suspicious matches in 13 countries revealed.³⁸ Organized crime groups involved in sports corruption may be actively engaging in different crime areas (e.g. international drug trafficking, money laundering)

Several countries in the Eu and other places have however identified the problem and initiated steps to deal with such, here's a look at some of the countries that have taken steps to curb the vice outside Kenya:

Australia

Match-fixers could be jailed for up to 10 years after State and Territory ministers agreed in November 2011 to introduce nationally consistent criminal offences for those who engage in match-fixing conduct or encourage others to do so. This was established in the Sports Betting National Operational Model Bill of 2014³⁹

³⁷ Recommendation CM/Rec (2011) 10 of the Committee of Ministers of Member States on promotion of the integrity of sport against manipulation of results, notably match-fixing", Recommendation C12, September 28, 2011

³⁸ <http://www.dw.com/en/europes-largest-match-fixing-trial-opens-in-bochum/a-6082391>

³⁹ Match-fixers will face jail under nationally-consistent laws, ausport.gov.au, November 21, 2011.

Bulgaria

Parliament approved legal amendments to make match-fixing and corruption in sport a crime with up to six years' imprisonment. Parliamentarians voted to approve a new law adding sport crimes to the Penal Code. Ognyan Stoychkov, one of the bill's authors, said the legislation includes sanctions for illegal online betting. Those found operating illegal gambling websites will be fined between BGN 20,000 and 50,000 (\$14,700-\$36,800). Match-fixers can receive six years behind bars and may be required to pay between BGN 1,000 and 10,000 (\$730-\$7,300) if they are found guilty of racketeering, fraud, or intimidation with the intention of influencing the outcome of sporting matches. Bribing an official or player to influence the final score carries a maximum sentence of 6 years in prison and a fine between BGN 5,000 and 15,000.

Those who are consistent violators can face up to eight years in prison and fines up to BGN 50,000 (\$36,800).

According to the law, those found guilty of match manipulation may be banned from visiting athletic events. If they are caught at matches, they could receive up to three years in

Russia

Up to 40 per cent of Russian Premier League matches, and more than 50 per cent of lower league matches, are allegedly not as competitive as they should be due to match-fixing.⁴⁰ There are even websites where fans can buy information on exactly which matches have already been fixed, to use for betting purposes.⁴¹ Having been awarded the football World Cup in 2018 Sergei Stepashin, the powerful head of the national audit office, said in an open letter to Prime Minister Vladimir Putin that Russia had to draw up tough anti-match-fixing laws. As a consequence, a new law was laid before Parliament which would for the first time allow criminal prosecution for match-fixing in the country.⁴² All of the above action is driven by the fact that even a mere suspicion of match-fixing, not adequately provided for or dealt with, is just as damaging as an actual scandal occurring. SGBs, government bodies and international bodies were part of an IOC

⁴⁰ Russia searches for weapon against match-fixing", Todays Zaman online, August 22, 2011

⁴¹ Russia searches for weapon against match-fixing", Todays Zaman online, August 22, 2011

⁴² Russia set to criminalise match-fixing", supersport.com, January 11, 2012

summit held in February, 2012 reflecting this view where there was a consensus that sporting fraud should be made a criminal offence across the world.⁴³ Hein Verbruggen, President of SportAccord⁴⁴ held that,

*“Integrity in sport is our most important commodity. Fans must believe what they see on the field of play represents a true test of the competitors’ skills. If they cannot, there is a real risk that they will ignore the sport and take sponsors and broadcasters with them.”*⁴⁵

Reputational damage to any professional is a significant intangible consequence of being accused of corruption in any walk of life, and sports people are no exception. Simply being accused of match-fixing, even if ultimately found not guilty, can see a sports person viewed suspiciously for the rest of their career by fellow professionals, fans and journalists, and can ultimately ruin a person’s career. This is a consequence which is often underestimated and overlooked. That is why it is of utmost importance that the law provides protection and redress for those who are wrongly accused of such behavior. Defamation laws are where this protection is found. The challenge for legislators is to strike the right balance between investigating people and revealing their identity backed by sufficient evidence, and making unfounded and indeed malicious allegations. This tension is currently best highlighted in privacy cases, such as that involving former head of the FIA, Max Mosley, who took his case against the News of the World on appeal to the Grand Chamber of the European Court of Human Rights,⁴⁶ and there are few high profile instances in sport in recent years where this has been an issue.

⁴³ IOC steps up fight against illegal betting, seeks global pledge to criminalize sports fraud”, The Washington Post, February 2, 2012.

⁴⁴ The umbrella organisation for 105 Olympic and non-Olympic sports federations

⁴⁵ Integrity in sport: Understanding and preventing match-fixing”, SportAccord, November 2011

⁴⁶ Max Moseley—European Court of Human Rights”, Collyer Bristow, June 2, 2011

CHAPTER 5

CONCLUSIONS AND RECCOMENDATIONS ON MATCH FIXING IN KENYA.

Introduction

Match fixing in Kenya is currently a murky area not really being considered much of an issue however some bookmakers have shown great concern over the vice following suspicious bets being made that have made certain individuals in positions in football 'overnight millionaires'.

Match fixing represents an ongoing threat to the integrity, reputation and societal welfare dimension of sports. It is an illegal activity that can be trans-national and is typically directly linked to criminal networks exploiting unregulated gambling markets. Current evidence indicates the pervasive nature of match-fixing across all levels and type of sport in Kenya. Findings from the fix which is European initiative on investigating the world wide vice produced a report which uniquely highlights the emotive nature of breaches of sporting integrity among both sport participants and spectators .Match-fixing is defined as the act of influencing the course or result of a sporting event for personal, sporting or financial gain. Relevant to match-fixing are the sharing of insider information (e.g. is a key player injured and unavailable to play?), betting on one's own competitive bout and tanking, the deliberate underperformance by a competitor or improper withdrawal before the conclusion of a match. All these breaches of integrity are prohibited across different levels of sport competition from amateur to Olympic and professional sport.

A documentary was released around early 2010 on an Asia- based football broker Wilson Raj Perumal who approached three Kenyan players (two of whom started the game) with instructions to "ensure everything is done to enable Nigeria win the match, a result that sent the West African country through to the 2010 Fifa World Cup in South Africa. Perumal arrived in Nairobi three days to the match accompanied by three of his associates including Manimaran Kalimuthu whom the Aljazeera report suggests used to carry "loads of money to facilitate payments". The four booked in and stayed at the Safari Park Hotel, which is located less than a kilometer from where the match took place and also where Harambee Stars players were residing. Kalimuthu claims his boss Perumal met with the said players before and after the match. The agreement

according to the report, was that the Kenyan players be paid Sh7 million (on current exchange rates) to ensure Kenya lost the match. Nigeria beat Kenya 3-2 to qualify for the World Cup⁴⁷.

Chief Executive Officer (CEO) of popular betting firm SportPesa Ronald Karauri was in early 2017 under the spotlight after claims that local participants of football matches were placing bets, hence likely get into match-fixing so as to influence the outcome of a game. Reports within the sports industry indicated that local players, coaches and even referees have been getting into the betting craze that has turned a number of people into overnight millionaires, including for local fixtures in which they involved the platform, which has gained immense popularity in the country lately, is claimed to be well monitored hence they ought to be able to note “suspect bets”. Kenya Premier League (KPL) CEO Jack Oguda has in the past held that they have put various measures in place to protect the integrity and reputation of football in the country. Such measures have been like prohibiting players to place bets and having they’re phone numbers blacklisted on all betting sites. However, that withstanding, it may still be a challenge to curb the malpractice, since there remains the reality of those who want to place bets using their friends’ or relatives’ phone numbers. Also, Foreign-based betting firms like Bet365 have Kenyan matches in their bets, which local sportsmen as well as other Kenyans can participate in without their numbers being noted. The Sportpesa CEO said that nonetheless, the betting company believes in the integrity of individuals who are part of the league that it sponsors, and they would likely not be involved in such cheating. World football governing body Fifa restricts all players, coaches, managers, club directors, and medical staff among other club parties from betting.

Proven match-fixers are avoiding jail because of Governments refusal worldwide to criminalize the offence, representatives of every major sport in the UK warned recently at the country’s Football Association gala night held on the 12th January 2017. The police and Crown Prosecution Service have failed to pursue a number of fixing cases “despite very strong evidence”, according to information released to *Telegraph Sport* by the Sport and Recreation Alliance⁴⁸. Speaking on behalf of more than 300 national governing bodies, the SRA accused authorities of showing a “lack of appetite” for prosecuting match-fixing, which it said required a separate law to combat effectively. To demonstrate the inadequacy of existing legislation, the SRA-operated Sports

⁴⁷ <http://www.aljazeera.com/programmes/peopleandpower/2015/02/killing-ball-150218120522829.html>

⁴⁸ <http://www.telegraph.co.uk/sport/football/10876238/Sport-and-Recreation-Alliance-calls-on-Government-to-criminalise-match-fixing.html>

Betting Group – set up after a 2010 Government report into integrity in sport – sent Helen Grant, the sports minister, three case studies in which known fixers escaped criminal action. The three examples, from the highest levels of cricket, snooker and horse racing, involve offences which were sanctioned by the sports but which left the perpetrators free to continue their corrupt activities elsewhere⁴⁹. That sends out a message that we are not taking this problem seriously enough and that all the fixers are risking is a sports ban.

CHAPTER BREAKDOWN

CHAPTER 2

This chapter looked at the concept of match fixing, basically how it's done and its nature can be seen to be truly criminal. From chapter 2 it can be seen, the perception of the problem of match-fixing can be as serious a threat as the actual problem itself, so both are important to tackle and look at. The increasing presence of criminals across the sporting spectrum should be a concern for all stakeholders and provide additional impetus to the continuing need for concerted action on a global scale, principally given that organized crime never loses money in illegal gambling operations: one way or another they make a profit. There appears to be various different categories of people who are engaged, ranging from criminals running illegal betting syndicates, to the players themselves. Chapter 2 also asks the questions, why do people agree to match fix? And it is seen, Money is the main motivation, but there have to be reasons why some people and sports are more susceptible than others,⁵⁰ particularly given the professional and legal ramifications of getting caught. It is rarely money alone that is the sole reason for agreeing to participate in match-fixing.

⁴⁹ <http://www.telegraph.co.uk/sport/football/10876238/Sport-and-Recreation-Alliance-calls-on-Government-to-criminalise-match-fixing.html>

⁵⁰ Examination of Threats to Integrity of Sports”, Section 4.4, Oxford Research A/S, April 2010

CHAPTER 3

This chapter looks at the current laws in Kenya as opposed to those of other jurisdictions in an attempt to establish the relevance of criminalization of match fixing and the possibility of such in Kenya.

CHAPTER 4

This chapter looks at the jurisdiction of criminalization of match fixing in the international dimension and specific jurisdictions where it can be seen that match fixing is a multifaceted danger to the integrity of sport around the world as seen in the different cases elaborated on, it can be seen as a unique offence that requires specific skills to combat successfully.

For law enforcement agencies, using existing international conventions, in particular the United Nations Convention against Corruption, and adopting the provisions in the context of allegations of match-fixing will assist their investigative process. Although they are not bound by all the international instruments mentioned, sports organizations and other bodies with the jurisdiction and powers to investigate match fixing allegations can gain assistance from the principles of those instruments

CONCLUSIONS AND RECCOMENDATIONS

The following are some of the way I believe will go a long way in curbing the vice of match fixing;

1. Education

Tell players about the change in their status from coveted friend to slave when the match-fixers start 'calling the fix'. The US College Basketball officials do that, they have the former Mafiacapo Michael Franzese lecture their players about how the mob really works. At the moment not a single Kenyan football association has any education for their players using former fixers on how to avoid the dangers of dealing with criminals.

2. Security Units

Kenyan football associations also lack some very basic tools. For example, in Kenya we don't have a well-resourced security department, which is standard for almost every major sports

association in developed countries, in those leagues there are units which are specifically charged with protecting and policing the game. It is run by former police officers or intelligence agents who can gather information and help press charges against match-fixers. At the moment, in the football industry here in Kenya there is no equivalent department. It is like a sweet shop with no door. Until such organizations are put into place, then the fixing will continue.

3. Police Involvement

Another tactic is for the police force to mount real, effective investigation. The Fix (a world acclaimed documentary) reveals that the fixers have approached players at the Olympics, the Under-17, Under-20, women's and men's World Cup tournaments. An independent police investigation of the presence of Asian fixers at the international tournaments was needed and became effective in squeezing the vice out of the tournament.

4. Change payment policy

Players at high-level tournaments should be paid directly by the KFA. The gap between what a top player can earn in a domestic league and in an international game is extraordinary. Fixers know this and can exploit it. Every player should know before getting to the tournament what they will be paid for each game, what their win bonuses will be, and that the money will be paid directly into their accounts without going through the football associations.

5. Hold franchisees responsible

Franchisees have to be held more responsible and inquiries should look into the detailed doings of the owners also. In India Cricketers used to be paid very little and one could probably understand the temptation to be part of match fixing. But nowadays they are the highest-paid sportsmen in India and one has little sympathy for them.

6. Hold Betting Operators Responsible

In addition to holding players and teams responsible, FIFA and FKF must also hold betting operators responsible. There should be an obligation for operators to provide a detailed report of activities every quarter relating to income from bets on competitions (volumes by competition and team, obligation to declare instances on the basis of predefined thresholds). Going a step

further, FIFA and Interpol should work with these companies to create a more detailed method of flagging suspicious activity. In the same way there are algorithms and trading tools to facilitate wagers instantaneously, FIFA should regulate a minimum standard of anti-corruption compliance with all betting operators.

7. Paying players adequate remuneration

One of the biggest reasons players are susceptible to bribes is that they are in some kind of desperate financial need. When the match-fixing was recently discovered in China, for example, it was revealed that players in the top league were making as little as €235 per month, and that money was never guaranteed to come on time. Naturally, this does not just create resentment for the player toward his club, but also incentive to make a better living through questionable methods. UEFA is currently undertaking a big task with its Financial Fair Play initiative, but FIFA as a whole needs to make sure that salary floors are met as well. Issues in the Chinese Super League are well documented, particularly with popular club Shanghai Shenugha. Stiff penalties, along with further collaboration with the country's football governing body will be needed in order to make sure these issues disappear.

Through the course of this paper, I have established that sport has acquired a unique place in the societal structure and therefore, it must also occupy a distinct role in the legal realms. While match-fixing has been a phenomenon which has been prevalent for a very long time irrespective of nation or sport and most of the incidents thereof have close links to the underworld and illegal betting syndicates, precious little has been done about it especially in the legal field. Disciplinary sanctions which have been put in place by the governing body of the sport, have often proved to be inadequate to deal with match-fixing as it addresses only specific instances of misconduct within the control of the governing body, whereas the problem is of much larger proportions and extends far beyond the specific sport. While it has been established that match-fixing satisfies the criteria of culpability, harmfulness and moral wrongfulness which are necessary to impose criminal liability, there is no penal statute in India which can be certainly said to address or be legitimately extended to apply to match-fixing. The Racketeer Influenced Corrupt Organisations Act, 1970 of the USA is the only penal statute which seems to have some application in conduct similar to match-fixing. In theory at least, it can be stated that match-fixing should be criminalized and there is sufficient justification for the same