

THE PROTECTION OF CHILDREN IN SPORT

Professor Paul Singh, 2006.

“Everyone has inherent dignity and the right to have their dignity respected and protected”

THE POLICY & LEGAL FRAMEWORK FOR CHILD PROTECTION

The United Nations’ Universal Declaration on Human Rights, the Convention on the Rights of the Child and the South African Charter of Physical Education and Sport all give recognition to the right of children to have the full opportunity for play which promotes their general culture and well being, and to have equal opportunities provided for cultural, artistic and recreational activities.

The International Convention on the Rights of the Child

Preamble

“Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance”,

“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”,

“Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”,

“Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and

recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children”,

“Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

“Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child”,

“Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries”

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3

3.1 In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Constitution RSA

Section 28 of the South African Bill of Rights deals specifically with the rights of Children. Sub-section 1 provides that every child has the right-

- (b) to family care or parental care, or to appropriate alternative care when removed from the family;**
- (d) to be protected from maltreatment, neglect, abuse or degradation.**

Sub-section 2 provides that:

A child's best interests are of paramount importance in every matter concerning the child.

Children thus have a constitutional right to appropriate care and to be protected from abuse.

Child Care Act, (74 of 1983); Child Care Amendment Act, (86 of 1991 & 13 of 1999)

Makes the sexual abuse of children a criminal offence. In terms of section 50(1)(a) and (b), it is also a criminal offence for a parent or guardian, or any person having the custody of a child, to –

- (a) ill-treat a child;
- (b) abandon a child.

National Sport and Recreation Act, (110 of 1998)

Paragraph 6 deals with National Sport & Recreation Federations

6.1) The national sport and recreation federations must assume full responsibility for the safety issues within their sport and recreation disciplines.

RIGHTS & EXPECTATIONS IN SPORT

The positive health benefits and expectations from participation in sport are well documented in literature. But this does not mean that all experiences in sport are

positive. When parents send their children to a sport club, they expect the club to provide a safe, nurturing and enjoyable environment. They expect their children to be educated about sport, and through sport. They expect them to be encouraged to learn and to play, not to be abused in any way. Parents place their ultimate trust in sport organisations, their coaches and administrators. But what happens when that trust is breached? No sport organisation wants to be associated with the headline: 'Coach found guilty of sexual abuse'. Moreover, management can no longer believe that it would not happen in their sport. In reality, it could happen, and it does more often than people like to think. From the social to the elite levels, sport can provide a breeding ground for those who like to prey on children.

WHAT IS ABUSE?

There are different ways in which a child in sport could be abused. These are dealt with hereafter.

Physical

Physical abuse is the deliberate physical injury to a child, or the wilful or neglectful failure to prevent physical injury or suffering. This may include hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, confinement to a room, or inappropriately giving drugs to control behaviour.

Neglect

Neglect is the persistent failure to meet a child's physical and/or psychological needs, likely to result in significant harm. It may involve a parent or care-giver failing to provide adequate food, shelter and clothing, failing to protect a child from physical harm or danger, failing to ensure access to appropriate medical care or treatment, lack of stimulation or lack of supervision. It may also include neglect of, or not responding to a child's basic emotional needs.

Sexual

Sexual abuse involves forcing or enticing a child to take part in sexual activities, whether or not the child is aware of what is happening, and informed consent is not or cannot be given. The activities may involve physical contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children

in looking at pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways. These acts constitute a criminal offence.

Emotional

Emotional abuse is the persistent emotional ill treatment of a child that causes severe adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may involve causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Smothering a child's development through over-protection can also be a form of abuse. Some level of emotional abuse is involved in all types of ill treatment of a child, though it may occur alone. Domestic violence, adult mental health problems and parental substance misuse may expose children to emotional abuse.

MANIFESTATIONS OF ABUSE IN SPORT

Abuse is evidenced mostly in the form of behaviour by males towards females, and adults toward children. But it can also occur between males, between females, or as behaviour by females toward males. Mostly perpetrators are known to the child-athlete and belong to the sport environment. In a national research report on The Status of SA Women in Sport & Recreation: 1994-2004, Burnett (2004: 58) indicated that

“In all provinces, participants reported cases of sexual harassment and abuse by male coaches and authoritative figures.”

CONDITIONS THAT FAVOUR ABUSE IN SPORT

Sport is a particularly vulnerable activity because it often involves close relationships between adults and children, and usually these adults are in a position of trust and authority. The relative social and legal freedom afforded to voluntary sport allows large numbers of youth to be entrusted to adults about whom parents know very little, other than their coaching qualifications perhaps. With coaches capable of exercising great power and authority over young people desperate to achieve success, the ingredients of the coaching situation lead to a potentially risky mix where children are susceptible to abuses of power by unscrupulous coaches. Additionally, not all sports organisations

understand the legal and ethical ramifications of ignoring harassment and abuse. There appears to be a trend where National Federations deny that children may be subjected to abuse in their sport either because they do not know how to deal with it, or they believe that if they openly address harassment, it may generate negative publicity for them.

The culture of sport has been highlighted by several authors for its high tolerance of sexual exploitation, although this varies among sports. If a sports club has no policy for preventing sexual exploitation then there is unlikely to be cultural support for athletes who come forward with complaints. Before athletes can make a formal complaint, they must have some confidence that the authorities will treat it fairly and confidentially.

Outside of sport, the potential for exploitative relationships developing is recognised and addressed by professional codes of conduct, as in the case of lawyers and medical doctors. Within sport it is regulated by International and National Federations' codes of conduct for coaches, as well as codes of conduct for sport officials and administrators. Additionally, specific codes of conduct regulate the behaviour of those, such as sport psychologists, sport scientists, sport medicine practitioners etc., who render support services to sport. These codes prohibit sexual relationships between the relevant professionals and their students/ patients/ athletes.

The issue of sexual relationships between child (as well as adult) sport participants in unequal power relationships should be analysed in the context of creating a safer sport environment. In the case of children, there is no doubt that such relationships are exploitative. Even if both parties are legally adult, such relationships can be exploitative because there is usually a disparity between the parties in terms of authority, maturity, status and dependence. Examples of this are employer-employee relationships, where employers have the power to hire and fire, or coach-athlete relationships, where coaches can influence the career opportunities of athletes, or athletes' sense of self-esteem.

Although exploitative relationships between adults in sport may not necessarily be unlawful, and therefore may not carry the risk of vicarious liability for a sport organisation, administrators have a moral obligation to discourage such relationships

because of the damage that they can do to the more vulnerable party. Such damage can affect sport performance and the future involvement of the athlete in sport. There is also the possibility that if coercion is a factor, such relationships can amount to unlawful harassment, thus having consequences for the liability of the organisation. Sex with a minor, whether involving a minor of the same or opposite sex, constitutes a criminal offence, which must be reported to the police.

CASE LAW

In a recent case, Joe Lourenco (45), a former gymnastics coach appeared in the Johannesburg Magistrate's court on 28 November 2002 for sexually abusing two of his gymnasts over 22 years ago. Lourenco was sentenced to a five year suspended term and ordered to pay R61,500 in damages to Glenn Joselowitz (33). He was also found guilty in a separate case of molestation and fined a further R74,000. The damages were awarded to cover the costs of psychotherapy for the complainants. Joselowitz stated that Lourenco was their coach when they were working towards their Springbok colours. "We had a pupil-coach relationship and we respected and feared him in many ways. He thoroughly abused that position." He elaborated that he suffered the scars of abuse. "I was completely listless and had lost all self-esteem and self-respect. Through therapy I realised that I was actually a victim." He also realised that in order to expose the perpetrator, he would have to expose himself.

GUIDELINES FOR ACTION

1. Identify the different role players that should be involved in a multi level and a multi faceted approach to tackle the problem
2. Get key role players (eg. SRSA, SASCOC, DoE, NF's) to acknowledge the problem.
3. Screen coaches/ volunteers
4. Conduct criminal record check on coaches/ volunteers during recruitment
5. Develop specific policy on Child Protection (See sample hereafter)
6. Develop specific procedures for reporting and taking disciplinary action

7. Appoint abuse officers in sport clubs/organisations
8. Provide education to all relevant parties
9. Develop codes of conduct
10. Develop national register of offenders in sport