

# Protect, Respect and Remedy: Global Sport and Human Rights

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☞ Human rights; Norms; Sports governing bodies

## 1. Introduction—an essential question

An essential question continues to be asked of those who govern sport: what, precisely, are the *minimum standards* of expected conduct of Sports Governing Bodies (SGBs)?<sup>1</sup> After all, major global SGBs such as the International Olympic Committee (IOC) and the Fédération Internationale de Football Association (FIFA) are not only transnational businesses of considerable scale and reach, they purport to act autonomously and exercise the power to make and enforce legally binding regulations which impact people in far-reaching ways. Indeed, SGBs have developed a specific “global law without the state”.<sup>2</sup>

This article will consider the forces that have, over the last decade, made respect for internationally recognised human rights a minimum standard of expected conduct of SGBs. The autonomy of sport, as section 2 explains, cannot be legitimate when connected with human rights abuse. Section 3 provides an overview of the pressing human rights challenges that global sport confronts due to its significant impacts on the human rights of athletes and other people involved in its activities and business relationships. Section 4 considers the different standards of conduct of SGBs expected under the conflicting norms that inform the framework and principles of internationally recognised human rights and the content of global sports law.<sup>3</sup> Section 5 reviews the varying approaches of major global SGBs to meeting their corporate responsibility to respect internationally recognised human rights, which range from organisations such as the Commonwealth Games Federation (CGF) which has made championing human rights a central and

distinguishing feature of its work, to the International Association of Athletics Federations (IAAF) which continues to deny it has any responsibility to respect human rights. This article concludes by reflecting how human rights will shape the future governance of global sport, including the development and practice of global sports law.

## 2. Autonomy, legitimacy and human rights

The fifth fundamental principle of Olympism set out in the *Olympic Charter* recognises that as “sport occurs within the framework of society”, SGBs “have the rights and obligations of autonomy”.<sup>4</sup> The rights identified are far reaching: (1) “freely establishing and controlling the rules of sport”; (2) “determining the structure and governance of their organisations”; and (3) “enjoying the right of elections free from any outside interference”. Two obligations are identified: (1) the application of “political neutrality”; and (2) “the responsibility for ensuring that the principles of good governance be applied”.<sup>5</sup>

The “principles of good governance” is an illusory phrase. The IOC, to preserve its position and in response to a series of scandals, has sought to define it. Its *Basic Universal Principles of Good Governance of the Olympic and Sports Movement*, as approved by the XIII Olympic Congress Copenhagen 2009, were adopted after then IOC President Jacques Rogue remarked that the IOC “cannot expect others to adhere to high ethical standards if we do not do so ourselves”.<sup>6</sup> The basic universal principles emphasise integrity, ethical standards, transparency, accountability and control.<sup>7</sup> They also encourage “harmonious relations with governments while preserving autonomy”.<sup>8</sup> However, “autonomy from formal regulatory public interference is an obsession for [SGBs]”.<sup>9</sup> Both the IOC and FIFA have a track record of imposing sanctions to stop government interference in national SGBs, resulting in their national teams and clubs being excluded from international competition and the withdrawal of development funding.<sup>10</sup>

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<sup>1</sup> “Global sport”, for the purposes of this article, consists of the Olympic Movement, the three main constituents of which are the IOC, the International Sports Federations (IFs) and the National Olympic Committees (NOCs). IOC *Olympic Charter*, 9 October 2018, p.9, <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf> [Accessed 16 June 2019].

<sup>2</sup> A. Duval, *The FIFA Regulations on the Status and Transfer of Players: trans-national law making in the shadow of Bosman*, Asser Institute, Asser research paper 2016-06 (2016), p.25, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2760263](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2760263) [Accessed 16 June 2019].

<sup>3</sup> For the purposes of this article, “global sports law” includes its component parts known variously as *lex sportiva* and “Olympic law”—which is, in effect, law made by and imposed at the behest of SGBs. See B. Schwab, “Celebrate humanity: Reconciling sport and human rights through athlete activism” (2018) 28(2) J.L.A.S. 172, <http://journals.iupui.edu/index.php/jlas/article/view/22570> [Accessed 16 June 2019].

<sup>4</sup> *Olympic Charter* (fn.2 above), p.11.

<sup>5</sup> *Olympic Charter* (fn.2 above), p.11.

<sup>6</sup> IOC, *Good Governance*, <https://www.olympic.org/good-governance> [Accessed 16 June 2019].

<sup>7</sup> IOC, *Basic Universal Principles of Good Governance of the Olympic and Sports Movement*, 11–12 February 2018, pp.1, 7–8, [https://stillmed.olympic.org/Documents/Conferences\\_Forums\\_and\\_Events/2008\\_seminar\\_autonomy/Basic\\_Universal\\_Principles\\_of\\_Good\\_Governance.pdf](https://stillmed.olympic.org/Documents/Conferences_Forums_and_Events/2008_seminar_autonomy/Basic_Universal_Principles_of_Good_Governance.pdf) [Accessed 29 June 2019].

<sup>8</sup> IOC, *Basic Universal Principles of Good Governance of the Olympic and Sports Movement*, 11–12 February 2018, pp.1 and 12.

<sup>9</sup> A. Geeraert, *Sports Governance Observer 2015*, “Play the Game” (2015), p.13, [http://www.playthegame.org/media/5786679/sgo\\_report\\_final\\_3.pdf](http://www.playthegame.org/media/5786679/sgo_report_final_3.pdf) [Accessed 16 June 2019].

<sup>10</sup> In 2013, the Indian Olympic Association was suspended by the IOC for planning to stage an internal election. At the time, Sri Lanka was also threatened with suspension, while Ghana, Panama and Kuwait have all been suspended in the last decade or so. In the last five years alone, FIFA has suspended Pakistan, Nigeria, Guatemala, Kuwait, Sudan, Mali and Sierra Leone for this reason.

Such severe action requires legitimacy. Accordingly, the IOC has turned to the General Assembly of the United Nations (UN), which granted the IOC observer status in 2009. In October 2014, that body, in adopting a resolution that recognised sport as a means to promote education, health, development and peace, resolved that it “supports the independence and autonomy of sport as well as the mission of the [IOC] in leading the Olympic Movement”.<sup>11</sup> The resolution also called for a policy framework that “safeguards human rights in the world of sport”.<sup>12</sup>

The UN, of course, was founded to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”, and not to preserve the autonomy of sport.<sup>13</sup> In June 2011, the UN Human Rights Council (UNHRC) unanimously endorsed the *United Nations Guiding Principles on Business and Human Rights* (UNGPs).<sup>14</sup> The corporate responsibility to respect human rights is, according to the UNGPs, “a global standard of expected conduct for all business enterprises wherever they operate”.<sup>15</sup> It applies to SGBs because “the fact is that international sports associations like FIFA do conduct significant levels of commercial activity”.<sup>16</sup>

In November 2018, the UN General Assembly reconsidered sport. Its resolution once again supported the independence and autonomy of sport as well as leadership position of the IOC.<sup>17</sup> However, on the matter of human rights, it was more precise. The General Assembly encouraged “relevant entities involved in delivering mega sport events to respect applicable laws and international principles, including the [UNGPs] ‘Protect, Respect and Remedy’ Framework”.<sup>18</sup> It also acknowledged the *Kazan Action Plan*,<sup>19</sup> adopted in July 2017 by the world’s sports ministers under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO), which called for the safeguarding of athlete rights as the first step towards protecting the integrity of sport, and unambiguously stated that “the fundamental human rights of everyone affected by or involved in the delivery of physical education, physical activity and sport must be protected, respected and fulfilled in accordance with the [UNGPs]”.<sup>20</sup>

Dramatic events—revealed through courageous activism and journalism in the four-year period between its two resolutions—compelled the UN General Assembly to make it clear that any legitimacy it may give global sport demands that the human rights impacts of the activities and extensive business relationships of SGBs are addressed. Meeting the corporate responsibility to respect internationally recognised human rights is now clearly a *minimum standard* of expected conduct of all SGBs. Further, it is a standard that exists independently of and separate to any notion of good governance.

### 3. Global sport’s pressing human rights challenges

#### 3.1 Human rights impacts

Despite the stated “goal of Olympism [being] to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity”,<sup>21</sup> the organisation of the Olympic Games and other mega sporting events “have come under repeated scrutiny from human rights experts and campaigners over a gamut of concerns”.<sup>22</sup>

For the 2008 Beijing Olympics, as many as 1.5 million people were displaced, child labour, excessive working hours and abuse of health and safety laws were reported in the supply chain for several Olympic licensees and, at the height of venue construction, at least 10 people were killed and some 17,000 workers complained of workplace exploitation.<sup>23</sup> Before the 1996 Atlanta Olympics, “a programme entitled ‘Clean the Streets’ saw 9,000 arrest citations issued to homeless people, most of them African-Americans”.<sup>24</sup> This was only after “30,000 people were forcibly evicted before the Olympics, with 1,200 public housing units lost, and 15,000 low-income residents priced out of the city”.<sup>25</sup> Further, “during the Vancouver 2010 Winter Olympics and London 2012, civil liberties groups and journalists complained of limits on free speech and assembly imposed by host authorities and event organisers ostensibly to safeguard brand rights”.<sup>26</sup> The 2014 Sochi Winter Olympics were held

<sup>11</sup> UN Resolution adopted by the General Assembly on 31 October 2014, “Sport as a means to promote education, development, health and peace”, 69/6, p.5, [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/69/6](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/6) [Accessed 16 June 2019].

<sup>12</sup> UN Resolution adopted by the General Assembly on 31 October 2014, “Sport as a means to promote education, development, health and peace”, 69/6, p.2.

<sup>13</sup> UN Charter of the United Nations, <https://www.un.org/en/sections/un-charter/preamble/index.html> [Accessed 16 June 2019].

<sup>14</sup> UNOHCHR, *United Nations Guiding Principles on Business and Human Rights* (2011), [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) [Accessed 12 June 2019].

<sup>15</sup> UNOHCHR, *United Nations Guiding Principles on Business and Human Rights* (2011), p.13.

<sup>16</sup> J. Ruggie, “For the game. For the world.” *FIFA and human rights* (Harvard Kennedy School, 2016), p.10, <https://www.hks.harvard.edu/centers/mrcbg/programs/cr/research/reports/report68> [Accessed 16 June 2019].

<sup>17</sup> UN Resolution adopted by the General Assembly on 26 November 2018, “Sport as an enabler of sustainable development”, p.6, [https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/News/2018/12/Sport-as-an-enabler-of-sustainable-development-EN.pdf#\\_ga=2.51371115.371137899.1543873361-222201374.1543873361](https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/News/2018/12/Sport-as-an-enabler-of-sustainable-development-EN.pdf#_ga=2.51371115.371137899.1543873361-222201374.1543873361) [Accessed 16 June 2019].

<sup>18</sup> UN Resolution adopted by the General Assembly on 26 November 2018, “Sport as an enabler of sustainable development”, p.6.

<sup>19</sup> UN Resolution adopted by the General Assembly on 26 November 2018, “Sport as an enabler of sustainable development”, p.2.

<sup>20</sup> UNESCO, *Kazan Action Plan*, 13–15 July 2017, p.12, <https://en.unesco.org/mineps6/kazan-action-plan> [Accessed 16 June 2019].

<sup>21</sup> *Olympic Charter* (fn.2 above), p.11.

<sup>22</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.2 [https://www.ihrb.org/uploads/reports/2013-10-21\\_IHRB\\_Mega-Sporting-Events-Paper\\_Web.pdf](https://www.ihrb.org/uploads/reports/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf) [Accessed 16 June 2019].

<sup>23</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.2.

<sup>24</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.13.

<sup>25</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.9.

<sup>26</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.3.

after the passage of an anti-gay propaganda law the previous June, which banned the public discussion of gay rights and relationships in front of children and teenagers, and concerns over authorities turning a blind eye to assaults on Russia's LGBTI citizens.<sup>27</sup> Reports from 50 years ago "suggest that up to 500 pro-democracy student protestors were killed, or disappeared and hundreds more injured, by a secret police squad ten days before the start of the 1968 Mexico Olympics".<sup>28</sup>

The "problem is the Olympics itself".<sup>29</sup> The IOC Presidency of Jacques Rogge from 2001 to 2013 was "remarkable for its almost complete indifference to the financial and social consequences of the urban gigantism that it had let loose and then nurtured".<sup>30</sup> The Olympics, already expensive:

"were given a shot of fiscal and architectural steroids by the soaring ambitions of, amongst other things, the Greek and Brazilian booms, China's return to great-power status and Russia's determination to let us know it never lost it. The already soaring costs of Olympic security in the 1990s were sharply increased by the fallout of 9/11 and the increasing preference of the IOC and the organizers to wall and defend aseptic Olympic spaces in the host cities scrubbed clean of the homeless, protesters and guerilla marketeers."<sup>31</sup>

The problem, however, is certainly not confined to the Olympics. On 2 December 2010, FIFA selected Qatar as the host of the 2022 FIFA World Cup, with the host projecting expenditures totaling US\$200 billion.<sup>32</sup> On 28 May 2015, Building and Wood Workers International (BWI), the Global Union Federation grouping free and democratic unions with members in the building, building materials, wood, forestry, and allied sectors, filed a complaint against FIFA with the National Contact Point (NCP) of Switzerland set up under the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines).<sup>33</sup> The complaint asserted that it "was clear from the outset that

the level of construction required to deliver the 2022 FIFA World Cup would increase significantly the number of migrant workers living and working in Qatar and thereby increase the violations of human rights"<sup>34</sup> including restrictions on a worker's right to freedom of movement due to the kafala system,<sup>35</sup> the confiscation of passports,<sup>36</sup> discrimination with regard to salaries and other working conditions,<sup>37</sup> the non-payment of wages,<sup>38</sup> the imposition of high recruitment fees on migrant workers,<sup>39</sup> unsafe working conditions resulting in serious injuries and death,<sup>40</sup> being unable to form or join trade unions (unlike Qatari workers),<sup>41</sup> altered employment contracts,<sup>42</sup> detention,<sup>43</sup> appalling living conditions,<sup>44</sup> and lack of access to an effective remedy.<sup>45</sup> The complaint was informed by reports of DLA Piper, Amnesty International (AI), Human Rights Watch (HRW), the BWI and the International Trade Union Confederation (ITUC),<sup>46</sup> as well as a seminal report dated 23 April 2014 of the UN's Special Rapporteur on the human rights of migrants, François Crépeau, which made 67 recommendations to the UNHRC.<sup>47</sup> The BWI's complaint also cited the separate complaint dated 28 September 2012 against Qatar filed by the ITUC with the International Labour Organization (ILO), which resulted in the ILO's Committee on Freedom of Association recommending to the ILO Governing Body that Qatari law be changed "so as to give effect to the fundamental principles of freedom of association and collective bargaining", with the expectation "that this labour reform process will include the full participation of the social partners".<sup>48</sup>

While the primary duty to protect the rights of those workers lies with the State of Qatar, the BWI's complaint asserts that FIFA, as a multinational enterprise, "has a separate responsibility under the [OECD Guidelines] to respect the human rights of migrant construction workers who are building the Stadiums and infrastructure for the FIFA 2022 World Cup".<sup>49</sup> FIFA "knew, or should have known, at the time of its decision that appointing Qatar as the host country for the FIFA 2022 World Cup would

<sup>27</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.29.

<sup>28</sup> Institute of Human Rights and Business (IHRB), *Striving for excellence: Mega-sporting events and human rights*, 31 October 2013, p.5.

<sup>29</sup> D. Goldblatt, *The Games. A global history of the Olympics* (W.W. Norton & Co Inc, 2016), p.437.

<sup>30</sup> Goldblatt, *The Games. A global history of the Olympics* (W.W. Norton & Co Inc, 2016), p.438.

<sup>31</sup> Goldblatt, *The Games. A global history of the Olympics* (W.W. Norton & Co Inc, 2016), pp.437–438.

<sup>32</sup> Business Insider, "Qatar is spending \$200 billion on the world cup. Here's a first look at its newest stadium", 24 August 2017, <https://www.businessinsider.com/qatar-unveils-new-world-cup-2022-stadium-despite-domestic-disputes-arab-sanctions-fifa-2017-8?r=US&IR=T> [Accessed 17 June 2019].

<sup>33</sup> OECD, *OECD Guidelines for Multinational Enterprises* (2011), <http://www.oecd.org/corporate/mne/48004323.pdf> [Accessed 16 June 2019].

<sup>34</sup> BWI, *Specific instance against the Fédération Internationale de Football Association (FIFA) to the Swiss National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises*, 28 May 2015, p. 1, para. 1.

<sup>35</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.5, para.20.

<sup>36</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.6, para.22.

<sup>37</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.6, para.23.

<sup>38</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.6, para.24.

<sup>39</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), pp.6–7, para.25.

<sup>40</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.7, paras 26–28.

<sup>41</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.7, para.29.

<sup>42</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.8, para.30.

<sup>43</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.8, para.31.

<sup>44</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.8, para.32.

<sup>45</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.8, para.33.

<sup>46</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.19.

<sup>47</sup> UNHRC, *Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Mission to Qatar*, 23 April 2014, [http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1\\_en.pdf](http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf) [Accessed 16 June 2019].

<sup>48</sup> ILO Governing Body, *Reports of the Committee on Freedom of Association*, 13–27 March 2017, pp.225–238, para.862(a), [https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/--relconf/documents/meetingdocument/wcms\\_239692.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/--relconf/documents/meetingdocument/wcms_239692.pdf) [Accessed 16 June 2019].

<sup>49</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.1, para.2.

result in adverse human rights impacts on hundreds of thousands of migrant workers”.<sup>50</sup> Instead, FIFA had failed to: (1) address human rights in the 2010 bidding process; (2) conduct ongoing due diligence to identify, prevent and mitigate actual and potential adverse human rights impacts; and (3) avoid contributing to those impacts.<sup>51</sup>

The BWI’s complaint heralded a series of reforms to the governance of FIFA in relation to human rights.<sup>52</sup> Further, the pressure on Qatar by the ILO Governing Body led to its decision in November 2018 to implement a three-year co-operation programme designed to ensure compliance with fundamental labour standards. In September 2018, the state of Qatar announced changes to its labour code removing the requirement of migrant workers to obtain the consent of their employers to leave the country. ITUC Secretary General Sharan Burrow described the reforms as “a huge step for workers’ rights and the end of the kafala system for migrant workers in Qatar” and “a distinctive example for the region”.<sup>53</sup>

In May 2019, FIFA abandoned moves to expand the FIFA World Cup 2022 from 32 to 48 teams, which would have required Qatar to share the tournament with neighbouring countries such as Bahrain, Kuwait, Oman, Saudi Arabia and the United Arab Emirates. Minky Worden, the Director of Global Initiatives with HRW, had written that, “FIFA’s consideration of Saudi Arabia stands in stark contrast to the organization’s claims that human rights are a key part of its values and the rules of the game”, as they are “global standards that Saudi Arabia has shown no interest in meeting”.<sup>54</sup> Facing a June 2019 deadline, it was simply not possible for FIFA to address all logistical requirements, including the human rights due diligence process that was absent from the original decision to award the event to Qatar.

### 3.2 Athlete rights impacts

Research into the rights, wellbeing, safety and careers of professional and elite athletes undertaken since 2010 highlights a series of adverse impacts on their human rights.<sup>55</sup> Revelations include:

- the economic pressures that many athletes (especially women) confront and which undermine their capacity to sustain the intense demands of an elite career;<sup>56</sup>
- a lack of respect for contracts and non-conformity with international and national level labour standards. Players and athletes are frequently paid late, and in some instances not at all, with concerns extending to forced labour and human trafficking;<sup>57</sup>
- racism and gender discrimination;<sup>58</sup> and
- alarming cultures of bullying, including horrific instances of child abuse and exploitation (including sexual abuse) in several sports.<sup>59</sup>

The failure of prominent SGBs to proactively promote the human rights of athletes has had appalling consequences which are the demonstrated symptom of the governance and culture of elite and Olympic sport. In December 2018, investigators from the global law firm Ropes & Gray LLP, led by partners Joan McPhee and James P. Dowden, released a 233-page report that detailed the findings of their investigation into Larry Nassar’s abuse of hundreds of elite and Olympic gymnasts and other children in the US since the early 1990s. The report identified the cultural and governance failures that enabled Nassar’s criminal wrongdoing. While the culture in elite gymnastics and Olympic sport “fosters many positive values—including teamwork, patriotism and the pursuit of excellence—it also makes the sport of gymnastics inherently attractive to child sexual predators, erodes normal impediments to abuse and reduces the likelihood

<sup>50</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.12, para.46 (emphasis in original).

<sup>51</sup> *Specific instance against FIFA to the Swiss NCP* (fn.35 above), p.13, para.49. The revised OECD Guidelines took effect on 25 May 2011. Even though this was after the awarding of the event, FIFA’s duty in relation to human rights due diligence is an ongoing one.

<sup>52</sup> See section 5.2(a) below.

<sup>53</sup> ITUC, “ITUC, BWI and ITF welcome end of exit permits for 1.5 million migrant workers in Qatar”, 5 September 2018, <https://www.ituc-csi.org/ituc-bwi-and-itf-welcome-end-of> [Accessed 16 June 2019].

<sup>54</sup> *Washington Post*, “Saudi Arabia’s repression shouldn’t be awarded with a World Cup”, 15 May 2019, [https://www.washingtonpost.com/opinions/2019/05/15/saudi-arabia-repression-shouldnt-be-rewarded-with-world-cup/?noredirect=on&utm\\_term=.6bfeb8f3d272](https://www.washingtonpost.com/opinions/2019/05/15/saudi-arabia-repression-shouldnt-be-rewarded-with-world-cup/?noredirect=on&utm_term=.6bfeb8f3d272) [Accessed 16 June 2019].

<sup>55</sup> World Players Association (WPA), “The development of the Universal Declaration of Player Rights”, 14 December 2017, [http://www.uniglobalunion.org/sites/default/files/imce/udpr\\_development\\_14\\_dec\\_17\\_v1.pdf](http://www.uniglobalunion.org/sites/default/files/imce/udpr_development_14_dec_17_v1.pdf) [Accessed 16 June 2019].

<sup>56</sup> See generally, FIFPro, *FIFPro Black Book Eastern Europe*, 12 February 2012, <https://fifpro.org/images/documents-pdf/BLACK-BOOK.pdf> [Accessed 16 June 2019]; FIFPro, “2016 FIFPro global employment report”, <https://footballmap.fifpro.org/#keyFindings> [Accessed 16 June 2019]; FIFPro, “2017 FIFPro global employment report: Working conditions in women’s football”, <https://www.fifpro.org/attachments/article/6986/2017%20FIFPro%20Women%20Football%20Global%20Employment%20Report-Final.pdf> [Accessed 16 June 2019].

<sup>57</sup> See fn.57 above. Also see generally, Federation of International Cricketers’ Associations (FICA), *FICA International Cricket Structural Review 2016*, <http://www.thefica.com/wp-content/uploads/2016/07/L-FICA-International-Cricket-Structural-Review-2016-single-page.pdf> [Accessed 16 June 2019].

<sup>58</sup> FICA, *FICA International Cricket Structural Review 2016*.

<sup>59</sup> FICA, *FICA International Cricket Structural Review 2016*. Also see generally UNICEF, *Protecting children from violence in sport: A review with a focus on industrialized countries* (2010), [https://www.unicef-irc.org/publications/pdf/violence\\_in\\_sport.pdf](https://www.unicef-irc.org/publications/pdf/violence_in_sport.pdf) [Accessed 29 June 2019]; K. Alexander, A. Stafford, R. Lewis and University of Edinburgh, NSPCC Child Protection Research Centre, *The experiences of children participating in organised sport in the UK: Main report* (2011), <https://www.nspcc.org.uk/globalassets/documents/research-reports/experiences-children-participating-organised-sport-uk-main-report.pdf> [Accessed 16 June 2019]; D. Daniels, *Report to USA Gymnastics on proposed policy and procedure changes for the protection of young athletes*, 26 June 2017, [https://usagym.org/PDFs/About%20USA%20Gymnastics/ddreport\\_062617.pdf](https://usagym.org/PDFs/About%20USA%20Gymnastics/ddreport_062617.pdf) [Accessed 16 June 2019]; and Mega-Sporting Events Platform for Human Rights, “Children’s rights in the sports context”, *Sporting Chance White Paper 4.1*, Version 1, January 2017, [https://www.ihrb.org/uploads/reports/MSE\\_Platform%2C\\_Childrens\\_Rights\\_in\\_the\\_Sports\\_Context%2C\\_Jan\\_2017.pdf](https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Childrens_Rights_in_the_Sports_Context%2C_Jan_2017.pdf) [Accessed 16 June 2019].

that survivors will raise complaints”.<sup>60</sup> The United States Olympic Committee (USOC) and United States of America Gymnastics (USAG) permeated a “self-limiting” and “loose governance model” in which Nasser “thrived”.<sup>61</sup> There was a “marked disconnect at both institutions between adopted policies and effective action” that “permitted the unchecked growth of policies, practices and cultural norms that were not reflective of a child-first approach and led to the absence of effective, on-the-ground protective measures”.<sup>62</sup>

Moreover, the USOC’s approach “permitted other [national SGBs] to implement policies and practices that failed adequately to address the risk of athlete abuse, resulting in patterns of deficiencies in complaint processes across Olympic sports”.<sup>63</sup> Most fundamentally, a direct connection between the vulnerability of the athlete and the pursuit of sporting success was identified:

“[T]he sport rendered athletes inherently vulnerable ... [T]here were embedded cultural norms unique to elite gymnastics that eroded normal impediments to abuse while at the same time reducing the likelihood that survivors would come forward. The culture was intense, severe and unrelenting. It demanded obedience and deference to authority. It normalized intense physical discomfort as an integral part of the path to success.”<sup>64</sup>

The Committee to Restore Integrity to the USOC—also known as Team Integrity—submitted 12 recommendations to USOC Chief Executive Sarah Hirshland in January 2019, designed to replace a “money and medals” and “anti-athlete” culture with an “athletes first” mission that would “better protect more than eight million young athletes from sexual, physical and emotional abuse”.<sup>65</sup> Recommendation 10 demands that the USOC “must cut ties with anti-athlete law firms, including those that participated in the Nasser cover up”.<sup>66</sup> The recommendation, which raises far-reaching questions about the practice of sports law, notes that “law firms have been paid hundreds of thousands of dollars, if not millions, to oppose athlete complaints and sexual abuse cases”, “at best, these lawyers prolong and unnecessarily complicate fairly standard conflicts between athletes and their [national SGB]”, and “are economically incentivized to be anti-athlete”.<sup>67</sup>

## 4. Conflicting norms? Global sport and human rights

In recent years, the international community has made meaningful progress towards embedding the internationally recognised human rights of all involved with or affected by global sport—including athletes—in accordance with the UNGPs. In June 2018, the independent Centre for Sport and Human Rights (CSHR) was established to advance this objective, which is also essential to legitimising the governance, activities and business of global sport. To this end, the Advisory Council of the CSHR includes governments, sponsors and broadcasters of sport, NGOs, trade unions, player associations, intergovernmental agencies (such as the UN Office of the High Commissioner for Human Rights (UNOHCHR), UNESCO, the ILO and the OECD), and major sports bodies including FIFA, the Union of European Football Associations (UEFA), the International Paralympic Committee (IPC), the Special Olympics and the CGF. The IOC has been an active observer and is also taking steps to embed human rights into some of its activities.<sup>68</sup>

These constructive developments were triggered by a human rights crisis, with the abuse of migrant workers in Qatar being a tipping point.<sup>69</sup> By an open letter dated 11 June 2014 to then FIFA President Joseph S. Blatter, Professor John Ruggie, the architect of the UNGPs, and Mary Robinson, the former President of Ireland and UN High Commissioner for Human Rights, wrote that “[a]ll countries face human rights challenges, but more effective and sustained due diligence is clearly needed with respect to decisions about host nations and how major sporting events are planned and implemented”.<sup>70</sup> Accordingly, SGBs such as FIFA should “[m]ake an explicit commitment to respect human rights and establish a strategy for integrating a human rights approach based on the [UNGP]s into the [SGB]s operating procedures”.<sup>71</sup> Within 18 months, a consensus had developed among UN agencies, SGBs, governments, local organising committees, sponsors, the wider business community, trade union confederations, civil society, academia and other experts with direct experience in the delivery and oversight of a major sports event that global sport risked losing its “social licence” (“the legitimacy required in the

<sup>60</sup> Ropes and Gray, *Report of the independent investigation: The constellation of factors underlying Larry Nassar’s abuse of athletes*, Executive summary, 10 December 2018, p.10, <https://www.nassarinvestigation.com/en> [Accessed 16 June 2019].

<sup>61</sup> Ropes and Gray, *Report of the independent investigation: The constellation of factors underlying Larry Nassar’s abuse of athletes*, p.11.

<sup>62</sup> Ropes and Gray, *Report of the independent investigation: The constellation of factors underlying Larry Nassar’s abuse of athletes*, p.11.

<sup>63</sup> Ropes and Gray, *Report of the independent investigation: The constellation of factors underlying Larry Nassar’s abuse of athletes*, p.11.

<sup>64</sup> Ropes and Gray, *Report of the independent investigation: The constellation of factors underlying Larry Nassar’s abuse of athletes*, p.3.

<sup>65</sup> Inside the Games, “Committee to restore integrity to USOC submits 12 recommendations following meeting with chief executive”, 24 January 2019, <https://www.insidethegames.biz/articles/1074546/committee-to-restore-integrity-to-usoc-submits-12-recommendations-following-meeting-with-chief-executive> [Accessed 16 June 2019].

<sup>66</sup> The Committee to Restore Integrity to the USOC, “Our recommendations to create an athlete-first culture at the US Olympic movement”, 21 January 2019, p.8, <https://www.insidethegames.biz/media/file/130910/Team+Integrity+Athlete+First+Recommendations+to+USOC+1+21+2019.pdf> [Accessed 16 June 2019].

<sup>67</sup> The Committee to Restore Integrity to the USOC, “Our recommendations to create an athlete-first culture at the US Olympic movement”, 21 January 2019, p.8.

<sup>68</sup> CSHR, <https://www.sporthumanrights.org/> [Accessed 16 June 2019].

<sup>69</sup> See generally, AI, “Qatar: No extra time: how Qatar is still failing on workers’ rights ahead of the World Cup”, 12 November 2014, <https://www.amnesty.org/en/documents/mde22/010/2014/en/> [Accessed 16 June 2019].

<sup>70</sup> IHRB, *Open letter to FIFA President JS Blatter*, 11 June 2014, <https://www.ihrb.org/uploads/statements/2014-06-11-Open-Letter-FIFA.pdf> [Accessed 16 June 2019].

<sup>71</sup> IHRB, *Open letter to FIFA President JS Blatter*, 11 June 2014.

eyes of a community for a particular activity”).<sup>72</sup> The consensus acknowledged that “whilst better information exchange between sporting traditions, venues and other stakeholders would serve a valuable purpose, it would not be sufficient on its own to rebuild trust in the eyes of society. Accountability is also essential”.<sup>73</sup> There was also recognition that the UNGPs and the *ILO Declaration on Fundamental Principles and Rights at Work* (ILO Declaration)<sup>74</sup> “provided the standards required for governments and businesses alike”.<sup>75</sup>

The CSHR, which emerged from the consensus with the purpose of providing the needed accountability, adopted the *Sporting Chance Principles* (SCPs) in June 2018 under the chairmanship of Ms Robinson. The SCPs, which build on the framework and principles of the UNGPs, provide that:

“[a]ll actors involved in sport should commit to protecting and respecting internationally recognised human rights through their activities and business relationships. Harms that do occur should be addressed. All actors should strive to act responsibly, through their governance, through proper safeguarding, and through protecting/respecting the rights of all stakeholders including athletes, fans, communities, workers, children, volunteers, journalists, human rights defenders, and potentially marginalised groups.”<sup>76</sup>

Further, “[e]ffective remedy should be available to those whose human rights are negatively impacted by the activities or business relationships of the actors involved in sport”.<sup>77</sup>

The “Protect, Respect and Remedy Framework” of the UNGPs “addresses *what* should be done; the Guiding Principles *how* to do it”.<sup>78</sup> Together, they rest on three pillars:

“The first is the state duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing the rights of others and to address adverse impacts with which they are

involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.”<sup>79</sup>

Each pillar is an “essential component in an interrelated and dynamic system of preventative and remedial measures”.<sup>80</sup> The corporate responsibility to respect human rights “already exists as a well-established social norm over and above compliance with laws and regulations”,<sup>81</sup> “independently of states’ abilities or willingness to fulfill their own duties”, and where “noncompliance can affect a company’s social licence to operate”.<sup>82</sup> It is “one social norm that has acquired near-universal recognition within the global sphere in which multinationals operate”.<sup>83</sup> “[R]especting rights’ means to not violate them, to not facilitate or otherwise be involved in their violation. And it entails a correlative responsibility to address harms that do arise”.<sup>84</sup>

In designing the UNGPs, Professor Ruggie deliberately found a path forward between voluntary and mandatory approaches that had induced a policy stalemate at the international level in relation to business and human rights. While criticised by some advocacy groups for not creating new legal requirements,<sup>85</sup> it has “bite”, including that “unless a company can know and show that it respects human rights its claim that it does remains just that—a claim, not a fact”.<sup>86</sup>

Global sports law, in contrast, does not exist as a well-established social norm. The nature of the regulatory power in global sport is, in the main, derived from contract.<sup>87</sup> SGBs:

“play a fundamental role as legislative and executive powers in the day-to-day operations of sporting regulations, while the judicial power is mainly in the hands of the internal dispute resolution mechanisms of the SGBs and the [Court of Arbitration for Sport (CAS)]. The force of the SGBs depends on their monopolistic position and their capacity to exclude a person, a team, a country from sporting competitions worldwide.”<sup>88</sup>

The World Anti-Doping Code (WADC), for example, while purporting to be the single global authoritative standard in relation to anti-doping, achieves its binding force through a network of private contracts. SGBs “are compelling their members (and their members’ members)

<sup>72</sup> IHRB, *Report: Human rights and mega-sporting events*, 18–20 November 2015, p.3, [https://www.ihrb.org/uploads/meeting-reports/2016-1-12\\_Wilton\\_Park\\_Conference\\_on\\_MSEs\\_and\\_Human\\_Rights.pdf](https://www.ihrb.org/uploads/meeting-reports/2016-1-12_Wilton_Park_Conference_on_MSEs_and_Human_Rights.pdf) [Accessed 16 June 2019].

<sup>73</sup> IHRB, *Report: Human rights and mega-sporting events*, 18–20 November 2015, p.9.

<sup>74</sup> ILO, “ILO Declaration on Fundamental Principles and Rights at Work” (1998), <https://www.ilo.org/declaration/lang--en/index.htm> [Accessed 16 June 2019].

<sup>75</sup> IHRB, *Report: Human rights and mega-sporting events*, 18–20 November 2015, p.9.

<sup>76</sup> CSHR, *Sporting Chance Principles* (2018), principle 3, <https://www.sporhumanrights.org/en/about/principles> [Accessed 16 June 2019].

<sup>77</sup> CSHR, *Sporting Chance Principles* (2018), principle 6.

<sup>78</sup> J. Ruggie, *Just Business: Multinational Corporations and Human Rights* (W.W. Norton & Co Inc, 2013), p.82.

<sup>79</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.82.

<sup>80</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.82.

<sup>81</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.91.

<sup>82</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.91.

<sup>83</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.92.

<sup>84</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.95.

<sup>85</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.101.

<sup>86</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.101.

<sup>87</sup> See, generally, L. Freeburn, *Regulating International Sport. Power, Authority and Legitimacy* (Brill Nijhoff, 2018), pp.6–49.

<sup>88</sup> A. Duval, “What lex sportiva tells you about transnational law”, Asser Institute, Asser research paper 2019-02 (2019), p.9, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3400656](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3400656) [Accessed 16 June 2019].

to comply with the [WADC] through their private rules” in order “to be admitted to international competitions. Thus, in theory at least, by controlling access, SGBs impose norm observance”.<sup>89</sup> Human rights analysis has been applied to the WADC, which “can be viewed as one example of a long-term trend to increase human rights scrutiny and the accountability of non-state actors on the basis of objective human rights”.<sup>90</sup> However:

“The objective of eradicating doping in sport is the pre-eminent policy purpose that underpins the anti-doping institutions and will dominate any assessment by them of the human rights compatibility of impugned measures.”<sup>91</sup>

It is in this way that the intersection of sport and human rights presents both an enormous opportunity but a significant challenge for global sport. SGBs have enjoyed hegemony in relation to the promulgation and enforcement of global sports law for some time. In that law, the pre-eminent policy purpose of the SGB has prevailed and it has been able to construct and impose its regulations to that purpose irrespective of their human rights impacts. In contrast, “an authoritative ‘list’ of internationally recognized human rights already exists and does not need to be reinvented”.<sup>92</sup> It includes the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the two Covenants),<sup>93</sup> the ILO Declaration and, depending on the circumstances, other relevant standards, for example in relation to women, children and migrant workers. These internationally recognised human rights can be enforced not only through arbitration, but by the weight of the international community and global sport’s social licence. The question is whether SGBs will embrace or shun their corporate responsibility to respect them.

## 5. SGBs and the corporate responsibility to respect internationally recognised human rights

### 5.1 Enacting the corporate responsibility to respect human rights

The UNGPs apply “... to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure”.<sup>94</sup> Accordingly, the UNGPs apply to SGBs and other organisations within the world of sport, including leagues, clubs, national associations, academies, dispute resolution services, regulatory and enforcement agencies and other enterprises such as player agencies. The UNGPs include the human rights of athletes within their remit.<sup>95</sup>

In March 2018, the Mega-Sporting Events Platform for Human Rights—the forerunner to the CSHR—published *Championing human rights in the governance of sports bodies* (Championing human rights) with input from the IOC, FIFA, UEFA and the CGF.<sup>96</sup> It reads:

“[SGBs] have a responsibility to respect human rights: that is, to provide equal opportunity to play and to avoid people’s human rights being harmed through their activities or business relationships, and to address harms that do occur.”<sup>97</sup>

In order to implement human rights in the governance of SGBs, *Championing human rights* sets out four steps that SGBs “should follow ... to demonstrate they are promoting the values of sport and showing respect for human rights in line with best practice and international norms, notably the [UNGP]”.<sup>98</sup> They are: (1) commit and embed including by making a public commitment to respect human rights; (2) identify any actual and potential risks to human rights and prioritise action; (3) take action to address risks and provide access to remedy where necessary; and (4) report and communicate how the organisation is addressing risks to human rights.<sup>99</sup> Accordingly, these steps provide a sound basis to review the varying approaches of major global SGBs to meeting their corporate responsibility to respect internationally recognised human rights.

<sup>89</sup> Duval, “What lex sportiva tells you about transnational law”, Asser Institute, Asser research paper 2019-02 (2019), pp.16–17.

<sup>90</sup> A. Byrnes, “Human rights and the anti-doping lex sportiva—the relationship of public and private international law, ‘law beyond the state’ and the law of nation states”, Chapter 5, in U. Haas and D. Healey (eds), *Doping in Sport and the Law* (Hart Publishing, 2016), p.104.

<sup>91</sup> Byrnes, “Human rights and the anti-doping lex sportiva—the relationship of public and private international law, ‘law beyond the state’ and the law of nation states”, Chapter 5, in Haas and Healey (eds), *Doping in Sport and the Law* (2016), p.104.

<sup>92</sup> Ruggie, *Just Business: Multinational Corporations and Human Rights* (2013), p.96.

<sup>93</sup> UNOHCHR, “Universal Declaration of Human Rights” (1948), [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) [Accessed 16 June 2019];

UNOHCHR, “International Covenant on Civil and Political Rights” (1966), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [Accessed 16 June 2019];

UNOHCHR, “International Covenant on Economic, Social and Cultural Rights” (1966), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [Accessed 16 June 2019].

<sup>94</sup> UNOHCHR, “United Nations Guiding Principles on Business and Human Rights” (2011), p.1.

<sup>95</sup> B. Schwab, “‘When we know better, we do better’. Embedding the human rights of players as a prerequisite to the legitimacy of lex sportiva and sport’s justice system” (2017) 32(4) M.J.I.L. 45, <http://digitalcommons.law.umaryland.edu/mjil/vol32/iss1/4> [Accessed 16 June 2019]; and B. Schwab, “Embedding the human rights of players in world sport” (2018) Int. Sports Law J. 16, <https://doi.org/10.1007/s40318-018-0128-9> [Accessed 16 June 2019].

<sup>96</sup> CSHR, “Championing human rights in the governance of sports bodies” (2018), <https://www.ihrb.org/megasportingevents/resource-view/championing-human-rights-governance-sports-bodies> [Accessed 16 June 2019].

<sup>97</sup> CSHR, “Championing human rights in the governance of sports bodies” (2018), p.5.

<sup>98</sup> CSHR, “Championing human rights in the governance of sports bodies” (2018), p.7.

<sup>99</sup> CSHR, “Championing human rights in the governance of sports bodies” (2018), p.7; B. Schwab, “Celebrate humanity: Reconciling sport and human rights through athlete activism” (2018) 28(2) J.L.A.S. 203–204.

## 5.2 SGBs and respecting human rights in practice

Major global SGBs can be categorised in one of four ways regarding their demonstrated and practical commitment to meeting their corporate responsibility to respect human rights:

1. **SGBs which expressly acknowledge their responsibility and have adopted measures to embed human rights into their governance and activities:**

FIFA, the CGF and UEFA fall into this category. Here the practical challenges of implementation exist principally around accountability and access to remedy;

2. **SGBs which tentatively acknowledge their responsibility, but only in relation to aspects of their activities:**

The IOC does not, for example, wish for its responsibility to impact certain aspects of its governance and activities including, most notably, its regulatory authority and the substantive rights of athletes. The World Anti-Doping Agency (WADA) also belongs in this category. Both work to redefine the human rights of athletes through their regulations to suit their governance objectives;

3. **SGBs which deny the existence of their responsibility:**

The IAAF has recently emerged as the most assertive member of this group; and

4. **SGBs which have yet to recognise or address their responsibility.**

(a) SGBs which expressly acknowledge their responsibility to respect human rights

FIFA, UEFA and the CGF all acknowledge their corporate responsibility to respect internationally recognised human rights, as demonstrated by their membership of the Advisory Council to the CSHR and their consequential commitment to upholding the SCPs.<sup>100</sup> Other SGBs to make this commitment include the IPC and the International Basketball Federation (FIBA).<sup>101</sup>

In response to its human rights crisis,<sup>102</sup> FIFA was the first to act in a regulatory sense. At its February 2016 congress, FIFA incorporated a new art.3 entitled “Human rights” into the FIFA Statutes, which reads:

“FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights.”<sup>103</sup>

FIFA’s *Human Rights Policy May 2017 edition*<sup>104</sup> was developed in response to an April 2016 recommendation of Professor Ruggie to FIFA to “Adopt a Clear and Coherent Human Rights Policy” as it is “the first step for any organization on the path to respecting human rights”.<sup>105</sup> The policy’s four pillars accord with *Championing human rights* by committing FIFA to respecting human rights in accordance with the UNGPs,<sup>106</sup> requiring FIFA to engage “in an ongoing due diligence process to identify, address, evaluate and communicate” human rights risks, including by “providing for or cooperating in remediation where it has caused or contributed to adverse human rights impacts”.<sup>107</sup> FIFA’s human rights commitments are “binding on all FIFA bodies and officials”, including when “interpreting and enforcing FIFA rules”.<sup>108</sup> Other important initiatives of FIFA include the establishment of an independent FIFA Human Rights Advisory Board in March 2017 (which makes and publishes recommendations to FIFA on the implementation of its human rights commitments),<sup>109</sup>

<sup>100</sup> CSHR, *Sporting Chance Principles* (2018) (fn.77 above).

<sup>101</sup> CSHR, “Who we are. Advisory Council”, <https://www.sporhumanrights.org/en/about/who-we-are> [Accessed 16 June 2019].

<sup>102</sup> *Open letter to FIFA President JS Blatter* (fn.71 above).

<sup>103</sup> FIFA, *FIFA Statutes*, art.3, August 2018, <https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa> [Accessed 16 June 2019].

<sup>104</sup> FIFA, *FIFA’s Human Rights Policy May 2017 edition*, [http://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/12/fifashumanrightspolicy\\_neutral.pdf](http://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/12/fifashumanrightspolicy_neutral.pdf) [Accessed 16 June 2019].

<sup>105</sup> “For the game. For the world.” (fn.17 above), p.29.

<sup>106</sup> *FIFA’s Human Rights Policy* (fn.105 above), para.1.

<sup>107</sup> *FIFA’s Human Rights Policy* (fn.105 above), para.6, p.7.

<sup>108</sup> *FIFA’s Human Rights Policy* (fn.105 above), para.13, p.10.

<sup>109</sup> FIFA, “First report of FIFA’s human rights advisory board”, published 9 November 2017, <https://www.fifa.com/governance/news/y=2017/m=11/news=first-report-of-fifa-s-human-rights-advisory-board-published-2919234.html> [Accessed 16 June 2019]; FIFA, “Second report of FIFA’s human rights advisory board”, published 26 November 2018, <https://www.fifa.com/governance/news/y=2018/m=11/news=second-report-of-fifa-s-human-rights-advisory-board-published.html> [Accessed 16 June 2019].

publication of the *FIFA activity update on human rights*, May 2017,<sup>110</sup> and the incorporation of human rights requirements in the criteria for the bidding and awarding of the 2026 FIFA World Cup.<sup>111</sup> The human rights plan for that event, which was ultimately awarded to a united North American bid encompassing the Canada, Mexico and the US, was developed by Mary Harvey who, in December 2018, was appointed as the inaugural Chief Executive Officer of the CSHR.<sup>112</sup> UEFA has similarly incorporated human rights standards and express references to the UNGPs in its major bidding requirements and staging agreements, including for the 2024 UEFA EURO and its other major events such as the UEFA Champions League.<sup>113</sup> While it has not made a human rights policy commitment of its own, as a FIFA confederation it arguably falls within FIFA's regulatory net.

In October 2017, the CGF published the *Commonwealth Games Federation Human Rights Policy Statement*,<sup>114</sup> which pledges the CGF to respecting an extensive range of international human rights instruments and applying the higher standard where national regulations or laws differ or are in conflict. It expressly commits the CGF to implementing the UNGPs and the ILO Declaration, including through due diligence, remediation and engagement.

A major challenge for SGBs such as FIFA, UEFA and the CGF who have made human rights commitments sits under the third pillar of the UNGPs framework: access to an effective remedy. A roundtable convened by the CSHR at the Permanent Court of Arbitration (PCA) at The Hague in October 2018 identified three major gaps that exist in this context.<sup>115</sup> They are:

1. **Sports-related human rights violations for which no remedy mechanism can be identified:**

US basketball player Bilqis Abdul Qadir, for example, had to sacrifice her career to successfully campaign between 2014 and 2017 for the overturning of FIBA's hijab ban as the compliance of FIBA's on-court apparel rules which prevented the wearing of headgear could not readily be challenged on human rights grounds within the sport's

dispute resolution framework despite its discriminatory impact on grounds of gender and religion;<sup>116</sup>

2. **Situations in which remedy mechanisms exist, but certain groups or individuals either do not have access, face considerable barriers in access, are not aware of how to access, or are not aware that these mechanisms exist at all:**

Iranian women who wish to enter Iranian stadia to watch men's football do not have the standing to challenge Iran's stadium ban despite it being enforced by the Football Federation Islamic Republic of Iran (FFIRI) in violation of arts 3 and 4 of the FIFA Statutes. This is because the relevantly affected women are not party to FIFA's private contractual framework;<sup>117</sup>

3. **Situations in which there is an existing mechanism, but it is not fully human rights-compliant:**

The principal example is the CAS. In his April 2016 report to FIFA, Professor Ruggie wrote, in relation to football's dispute resolution system, that procedural and substantive reforms are required if the system is to be compatible with internationally recognised human rights and, in particular, Principle 31 of the UNGPs.<sup>118</sup> He noted that "while the FIFA dispute resolution system and the CAS' 300-plus arbitrators who sit at the peak of the system may be well equipped to resolve a great variety of football-related disputes, they generally lack human rights expertise."<sup>119</sup>

The landmark #SaveHakeem campaign, which mobilised civil society in late 2018, early 2019 to prevent the threatened refoulement of Bahraini footballer Hakeem Al-Araibi, a refugee and human rights defender granted asylum in Australia, highlights a fourth significant gap: where the SGB is being called on to maximise its leverage over governments to prevent the abuse of the human rights

<sup>110</sup> FIFA, *FIFA activity update on human rights*, May 2017, p.2, [https://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/21/activityupdate\\_humanrights\\_may2017\\_neutral.pdf](https://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/21/activityupdate_humanrights_may2017_neutral.pdf) [Accessed 16 June 2019].

<sup>111</sup> FIFA, *FIFA guide to the bidding process for the 2026 FIFA World Cup* (2016), <https://img.fifa.com/image/upload/hgopypafviladnm7q90.pdf> [Accessed 16 June 2019].

<sup>112</sup> CSHR, "Mary Harvey appointed CEO of the Centre for Sport and Human Rights", 12 December 2018, <https://www.sporhumanrights.org/en/news/mary-harvey-appointed-chief-executive-of-centre-for-sport-and-human-rights> [Accessed 16 June 2019].

<sup>113</sup> IHRB, "UEFA announces new human rights requirements for 2024", 1 May 2017, <https://www.ihrb.org/news-events/news-events/uefa-announces-new-human-rights-requirements-for-2024> [Accessed 16 June 2019]; and UEFA, *UEFA EURO 2024 Tournament Requirements*, 1 May 2017, [http://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/Regulations/02/46/30/61/2463061\\_DOWNLOAD.pdf](http://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/Regulations/02/46/30/61/2463061_DOWNLOAD.pdf) [Accessed 16 June 2019].

<sup>114</sup> CGF, *Commonwealth Games Federation Human Rights Policy Statement*, 5 October 2017, <https://thecgf.com/sites/default/files/2018-03/CGF-Human-Rights-Policy-Statement-17-10-05.pdf> [Accessed 16 June 2019].

<sup>115</sup> CSHR, *Meeting report. Strategic dialogue on remedy. The Hague. 15 October 2018*, [https://www.sporhumanrights.org/uploads/resources/CSHR%2C\\_Meeting\\_Report\\_-\\_Remedy\\_Sport\\_and\\_Human\\_Rights%2C\\_Oct\\_18\\_.pdf](https://www.sporhumanrights.org/uploads/resources/CSHR%2C_Meeting_Report_-_Remedy_Sport_and_Human_Rights%2C_Oct_18_.pdf) [Accessed 16 June 2019].

<sup>116</sup> CSHR, *Meeting report. Strategic dialogue on remedy. The Hague. 15 October 2018*, p.7; The Undeclared, "Bilqis Abdul-Qadir endured the heartache of choosing faith over basketball", 18 November 2018, <https://theundefeated.com/features/bilqis-abdul-qaadir-had-to-choose-muslim-faith-over-fiba-basketball/> [Accessed 16 June 2019].

<sup>117</sup> FIFA and FIFA Human Rights Advisory Board, *Second report by the FIFA Human Rights Advisory Board: Including the Board's recommendations and FIFA's responses*, September 2018, p.24, <https://resources.fifa.com/image/upload/fifa-second-human-rights-advisory-board-report.pdf?cloudid=hw134ajrosjubxevkwvh> [Accessed 16 June 2019].

<sup>118</sup> "For the game. For the world." (fn.17 above), p.26.

<sup>119</sup> "For the game. For the world." (fn.17 above), p.26.

of a person the game has a responsibility to protect.<sup>120</sup> Hakeem's case was particularly relevant to global sport, as he was granted asylum due to retaliation by Bahrain because of his political activism and visibility as a player during Bahrain's prodemocracy protests in 2011 and his comments in April 2016 about the human rights record of FIFA Presidential candidate Sheikh Salman bin Ibrahim Al Khalifa, a member of Bahrain's ruling family, President of the Asian Football Confederation (AFC) and a Senior Vice President of FIFA.<sup>121</sup> Former Australian football captain Craig Foster, who led the campaign to save Hakeem, said, following his release after 77 days in a Thai jail, that "[s]tepping forward to uphold the human rights of everyone in the game should be a natural part of its values system".<sup>122</sup> Foster argued that much more should have been done, including the consideration of sporting sanctions by FIFA and the IOC on Bahrain and Thailand. Despite FIFA's adoption of the *FIFA Statement on Human Rights Defenders and Media Representatives*, May 2018<sup>123</sup> and the common use of sporting sanctions to preserve the autonomy of sport,<sup>124</sup> calls by activists and unions, including the World Players Association (WPA), for sporting sanctions to maximise sport's leverage over both governments were ignored by FIFA.<sup>125</sup> Their development seems necessary and poignant given the emergence of "sportswashing" by states seeking international legitimacy despite poor human rights records.<sup>126</sup>

### (b) SGBs which tentatively acknowledge their responsibility, but only in relation to aspects of their activities

The IOC, while observing the development of the CSHR, chose not to become a member of its Advisory Council to avoid committing to the SCPs. The IOC has, however, made two recent and important commitments to respecting human rights. The first was the decision to make "specific changes to the [Olympic Games'] Host City Contract (HCC) 2024 with regard to human rights, anti-corruption

and sustainable development standards"<sup>127</sup> following engagement with the Sport and Rights Alliance (SRA)<sup>128</sup> and as part of a general commitment to "collective and proactive action on human rights protection".<sup>129</sup> The IOCHCC now obliges the host city, host National Olympic Committee (NOC) and the organising committee to "protect and respect human rights and ensure any violation of human rights is remedied", including in a manner consistent with the UNGPs.<sup>130</sup> Further, under the *IOC Supplier Code 2018*,<sup>131</sup> the IOC expects its suppliers to comply with a number of standards including the UNGPs and the ILO Declaration.

However, the IOC has deliberately resisted efforts to make such commitments in relation to the human rights of athletes. In October 2018, the IOC Session in Buenos Aires adopted the *IOC Athletes' Rights and Responsibilities Declaration (ARRD)*<sup>132</sup> and amended the *Olympic Charter* by giving the IOC Session the power to adopt or amend the IOC ARRD "upon recommendation of the [IOC] Athletes' Commission and to promote respect for this Declaration within the Olympic Movement".<sup>133</sup> The 12 "rights" set out in the IOC ARRD are not sourced by reference to internationally recognised human rights, and are made subject to ten responsibilities, which include the broadly worded responsibility to "comply with applicable national laws, and the rules of the qualification processes and competitions, of the sport, and of the relevant sporting organisation, as well as the *Olympic Charter*".<sup>134</sup> Already, the IOC is relying on the statement of responsibilities to address efforts by athletes for greater recognition of their rights, including their capacity to generate income from their profile and image. Kevin Groome, Vice President of Legal and Business Affairs, IOC TV and Marketing Services, said in May 2019 that:

"It's worth focusing on two elements of the [IOC ARRD]. Recognising the athletes' opportunity and ability to leverage their image to generate income, but on the other hand acknowledging it is important

<sup>120</sup> *New York Times*, "Soccer player's detention poses 'historic test' for global sports", 31 January 2019, <https://www.nytimes.com/2019/01/31/world/asia/bahrain-soccer-thailand-fifa.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer> [Accessed 16 June 2019].

<sup>121</sup> *New York Times*, "Shadow of human rights abuse follows contender in FIFA vote", 24 February 2016, <https://www.nytimes.com/2016/02/25/sports/soccer/sheikhs-candidacy-opens-new-door-to-criticism-of-fifa-human-rights.html> [Accessed 16 June 2019].

<sup>122</sup> *The Guardian*, "Privileged sports officials willing to sacrifice Hakeem Al-Araibi's life should be expelled: Craig Foster", 12 February 2019, <https://www.theguardian.com/global/commentisfree/2019/feb/12/sport-officials-willing-to-sacrifice-hakeem-al-araibi-life-while-in-a-position-of-prestige-should-be-expunged> [Accessed 16 June 2019].

<sup>123</sup> FIFA, *FIFA Statement on Human Rights Defenders and Media Representatives*, May 2018, <https://resources.fifa.com/image/upload/fifa-statement-on-human-rights-defenders-and-media-representatives.pdf?cloudid=ef1ecdku14lm2v9zc03> [Accessed 16 June 2019].

<sup>124</sup> See fn.11 above.

<sup>125</sup> *The Guardian*, "Football must go in hard over the Hakeem Al-Araibi affair", 27 January 2019, <https://www.theguardian.com/football/blog/2019/jan/27/hakeem-al-araibi-bahrain-detention-thailand-extradition-order-fifa-ioc> [Accessed 16 June 2019].

<sup>126</sup> *iNews*, "Want to know how successful sportswashing is? Just look at Manchester City fans who cheerlead for Abu Dhabi", 30 November 2018, <https://inews.co.uk/sport/football/manchester-city-abu-dhabi-uae-sports-washing/> [Accessed 16 June 2019].

<sup>127</sup> IOC, "IOC strengthens its stance in favour of human rights and against corruption in new Host City Contract", 28 February 2017, <https://www.olympic.org/news/IOC-strengthens-its-stance-in-favour-of-human-rights-and-against-corruption-in-new-host-city-contract> [Accessed 16 June 2019].

<sup>128</sup> WPA, "Sport and Rights Alliance", <https://www.uniglobalunion.org/sectors/world-players/humanity> [Accessed 16 June 2019].

<sup>129</sup> IOC, "The IOC committed to collective and proactive action on human rights protection", 30 November 2017, <https://www.olympic.org/news/the-IOC-committed-to-collective-and-proactive-action-on-human-rights-protection> [Accessed 16 June 2019].

<sup>130</sup> IOC, *Host City Contract Principles* (2017), section 13.2(b), p.16, [https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Principles.pdf#\\_ga=2.234594526.118546868.1560675144-277412905.1557328691](https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Principles.pdf#_ga=2.234594526.118546868.1560675144-277412905.1557328691) [Accessed 16 June 2019].

<sup>131</sup> IOC, *IOC Supplier Code*, September 2018, <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/celebrate-olympic-games/Sustainability/Spheres/IOC-Supplier-Code-Final.pdf> [Accessed 16 June 2019].

<sup>132</sup> IOC, "The Athletes' Rights and Responsibilities Declaration (ARRD)", October 2018, [https://d2g8uwgn1fzhj.cloudfront.net/wp-content/uploads/2018/10/09134729/Athletes-Rights-and-Responsibilities-Declaration\\_2018.10.07.pdf?utm\\_source=hootsuite&utm\\_medium=social&utm\\_campaign=entourage](https://d2g8uwgn1fzhj.cloudfront.net/wp-content/uploads/2018/10/09134729/Athletes-Rights-and-Responsibilities-Declaration_2018.10.07.pdf?utm_source=hootsuite&utm_medium=social&utm_campaign=entourage) [Accessed 16 June 2019].

<sup>133</sup> *Olympic Charter* (fn.2 above), rule 18.2.10, p.42.

<sup>134</sup> IOC ARRD (fn.132 above), para.II(4).

to respect the solidarity principle of the Olympic Movement which enables participation by all NOCs, all athletes, and allows all funding to be shared around.<sup>135</sup>

By failing to source the IOC ARRD in international law, the IOC is giving less recognition to the rights of athletes within the Olympic Movement than it does to the affected groups who fall within the remit of the IOCHCC or the *IOC Supplier Code*. In plain terms, the athletes have less rights than everyone else. However, it is surely arguable that in relation to the provision of the services of the athletes, the IFs, NOCs and national SGBs such as the USOC and USAG are integral parts of the most important supply chain in the IOC's business model.

In 2017, the WPA adopted the Universal Declaration of Player Rights (UDPR) as part of its mission to embed the human rights of players in global sport.<sup>136</sup> The WPA noted that the “rule books of world sport impose thousands of pages of onerous obligations, but none clearly spell out the internationally recognised human rights of athletes”.<sup>137</sup> Rachel Davis, the Managing Director of Shift and the honorary chair of FIFA's Human Rights Advisory Board, said that the UDPR “builds on the [UNGP]s in highlighting the roles of [SGB]s and states in preventing and addressing impacts on players' human rights. It confirms that players' rights are central to advancing the broader sports and human rights agenda”.<sup>138</sup>

The adoption of the IOC ARRD was strongly opposed by the SRA,<sup>139</sup> elite athlete representative bodies,<sup>140</sup> and the player unions, represented by the WPA,<sup>141</sup> which stated that the IOC ARRD fell “appalling below the requirements of the [UDPR]”.<sup>142</sup> Importantly the development, promulgation and content of the IOC ARRD failed to follow the framework of the UNGP, including by not referring to internationally recognised human rights as set out at Principle 12 of the UNGP,<sup>143</sup> and was developed in the absence of any human rights due diligence to identify salient athlete rights risks. On those

matters where there was an obvious and pressing need for the Olympic Movement to act proactively to protect athletes from harm—such as protection from the crisis of sexual abuse and harassment—the IOC ARRD failed to provide athletes with access to an effective remedy.

In the absence of the IOC acting to embed the internationally recognised human rights of athletes within the Olympic Movement, athletes continue to be at risk of suffering harm and having their human rights violated. This risk is exacerbated by the *Olympic Charter*—unlike art.3 of the FIFA Statutes—failing to make a constitutional commitment on the part of the IOC to human rights. According to respected legal scholar Antoine Duval, the “CAS considers that the [*Olympic Charter*] “is founded upon the Fundamental Principles of Olympism and of the Olympic Movement” and that “the principles of Olympism must axiomatically inform an interpretation of the substantive rules and by-laws of the Charter”.<sup>144</sup> The fundamental principles of Olympism are “currently the main limitative rules enshrined in the [*Olympic Charter*]” but “are invoked (rarely successfully) at the CAS to challenge the validity of the rules and decisions of the members of the Olympic movement”.<sup>145</sup> The fundamental principles of Olympism mention “human dignity”,<sup>146</sup> provide that “the practice of sport is a human right”,<sup>147</sup> and prohibit discrimination.<sup>148</sup> Overwhelmingly, however, “Olympism is a philosophy of life”.<sup>149</sup> That philosophy can promote both positive and harmful values and behaviours. An additional fundamental principle of Olympism is therefore needed to embed the human rights of athletes and other affected groups. It should read:

“The Olympic Movement is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights.”

In a similar way, WADA, as already noted, shapes any human rights discourse in the context of its objective of creating a “doping-free sporting environment”.<sup>150</sup> To

<sup>135</sup> *Inside the Games*, “IOC maintains German athletes' court decision over Rule 40 is ‘not generally applicable’”, 18 May 2019, <https://www.insidethegames.biz/articles/1079388/ioc-maintains-german-athletes-court-decision-over-rule-40-is-not-generally-applicable#.XOOWMHG0Iht.twitter> [Accessed 16 June 2019].

<sup>136</sup> WPA, *Universal Declaration of Player Rights*, 14 December 2017, [https://www.uniglobalunion.org/sites/default/files/imce/universal\\_declaration\\_of\\_player\\_rights\\_14\\_dec\\_2017.pdf](https://www.uniglobalunion.org/sites/default/files/imce/universal_declaration_of_player_rights_14_dec_2017.pdf) [Accessed 14 June 2019].

<sup>137</sup> WPA, “World Players Association launches Universal Declaration of Player Rights”, 14 December 2017, <https://www.uniglobalunion.org/news/world-players-association-launches-universal-declaration-player-rights> [Accessed 16 June 2019].

<sup>138</sup> See fn.138 above.

<sup>139</sup> WPA, *SRA letter to IOC President Bach*, 2 October 2019, [https://www.uniglobalunion.org/sites/default/files/files/news/sra\\_letter\\_to\\_ioc\\_bach\\_oct\\_2018\\_final.pdf](https://www.uniglobalunion.org/sites/default/files/files/news/sra_letter_to_ioc_bach_oct_2018_final.pdf) [Accessed 16 June 2019].

<sup>140</sup> WPA, *Joint letter from Athletes CAN, British Athletes Commission, DOSB Athletes Commission (Germany), Track and Field Athletes Association and the US Athletes Advisory Council to IOC President Bach*, 2 October 2018, [https://www.uniglobalunion.org/sites/default/files/files/news/2018-10-02\\_ioc\\_athletes\\_declaration\\_-\\_letter\\_to\\_dr\\_thomas\\_bach.pdf](https://www.uniglobalunion.org/sites/default/files/files/news/2018-10-02_ioc_athletes_declaration_-_letter_to_dr_thomas_bach.pdf) [Accessed 16 June 2019].

<sup>141</sup> WPA, *WPA letter to IOC President Bach*, 4 October 2018, [https://www.uniglobalunion.org/sites/default/files/files/news/wp\\_ioc\\_pres\\_4\\_oct\\_18\\_-\\_web.pdf](https://www.uniglobalunion.org/sites/default/files/files/news/wp_ioc_pres_4_oct_18_-_web.pdf) [Accessed 16 June 2019].

<sup>142</sup> WPA, “IOC told: Athlete rights are not a game”, 5 October 2018, <https://www.uniglobalunion.org/news/ioc-told-athlete-rights-are-not-a-game> [Accessed 16 June 2019].

<sup>143</sup> UNGP (fn.15 above), pp.13–14.

<sup>144</sup> A. Duval, “The Olympic Charter: A transnational constitution without a State?” *Journal of Law and Society*, Vol.45, Issue S1, July 2018, ISSN 0263-323X, pp.S245-S269 at p.S256.

<sup>145</sup> Duval (fn.145 above), p.S257.

<sup>146</sup> *Olympic Charter* (fn.2 above), principle 2, p.11.

<sup>147</sup> *Olympic Charter* (fn.2 above), principle 4, p.11.

<sup>148</sup> *Olympic Charter* (fn.2 above), principles 4 and 6, pp.11–12.

<sup>149</sup> *Olympic Charter* (fn.2 above), principle 1, p.11.

<sup>150</sup> WADA, “Who we are”, <https://www.wada-ama.org/en/who-we-are> [Accessed 15 June 2019].

this end, it respects “the rights and integrity of clean athletes”.<sup>151</sup> The stated purpose of the WADC is “to protect the athletes’ fundamental right to participate in doping-free sport”.<sup>152</sup> The WADC states that it “has been drafted giving considerations to the principles of proportionality and human rights”.<sup>153</sup> The WADC, however, relies on its “distinct nature” and that the WADC “represent[s] the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport”,<sup>154</sup> although that consensus does not include the player associations which have been systematically excluded from having meaningful input into WADA’s decision-making processes.<sup>155</sup>

WADA organises and publishes eminent legal views supporting the WADC on human rights grounds,<sup>156</sup> one of which concluded that “the internationally recognized principles of law encompass the notions of proportionality of sanctions and prohibition of excessively severe sanctions”.<sup>157</sup> However, these opinions have been given in the absence of evidence of the actual impacts of the WADC on the rights, physical and mental health, social wellbeing and careers of athletes. One extensive enquiry into those impacts found that the “implementation of policy is so tough that innocent athletes have been sanctioned, stigmatised and often given little opportunity for legal recourse”.<sup>158</sup> This is because of “moral arbitrators who over-emphasise the scandalous nature of doping, and under-emphasise or ignore the failings of, and harms caused by, anti-doping policies”.<sup>159</sup> It results in “the inevitable and unethical outcome of regularly punishing the wrong people”.<sup>160</sup> At the same time, the system has “consistently failed to crack down on doping”.<sup>161</sup>

According to the CAS in the important case of Peruvian football captain Paolo Guerrero—whose lengthy ban in 2018 threatened to force him to miss Peru’s first FIFA World Cup finals appearance in 36 years, provoking massive street protests in Lima—“the CAS jurisprudence ... is clearly hostile to the introduction of proportionality as a means of reducing yet further the period of ineligibility provided for the WADC”.<sup>162</sup>

WADA is governed by a foundation board, which consists of equal representatives of governments and the Olympic Movement.<sup>163</sup> In other words, it is an agency of

states which, under the UNGPs, have a duty to protect internationally recognised human rights, and SGBs, which have a corporate responsibility to respect them. Despite this, WADA has yet to make any constitutional or policy commitment to upholding human rights, undertake human rights due diligence, or provide access to an effective remedy where the human rights of athletes have been violated. Internationally recognised human rights are not subject to the consensus of powerful members of the global anti-doping community, as they are, inalienable rights vested in each individual person. Professor Ruggie’s earlier cited view—“unless a company can know and show that it respects human rights its claim that it does remains just that—a claim, not a fact”—therefore applies to WADA.<sup>164</sup> It must urgently undertake a comprehensive study into the impacts of its regime on athletes since its establishment in 1999, especially given that the regulatory regime it promulgates and enforces is the source and cause of those impacts.

### (c) SGBs which deny the existence of their corporate responsibility to respect human rights

On 7 May 2019, the IAAF issued a statement that read:

“The IAAF is not a public authority, exercising state powers, but rather a private body exercising private (contractual) powers. Therefore, it is not subject to human rights instruments such as the Universal Declaration of Human Rights or the European Convention on Human Rights.”<sup>165</sup>

In other words, the IAAF denies it has any responsibility to respect internationally recognised human rights. The IAAF also described “[h]uman rights as an umbrella term for a wide array of rights that it is broadly agreed all humans inherently possess. But that does not mean that those rights are absolute, inviolable or sacrosanct”.<sup>166</sup> As a body exercising private contractual powers, the IAAF regards itself as being limited only by the *IAAF 2019 Constitution*,<sup>167</sup> which under art.4.1(j) provides that the purposes of the IAAF include preserving “the right of

<sup>151</sup> WADA, “Who we are” (fn.151 above).

<sup>152</sup> WADA, *World Anti-Doping Code* (2015), p.11, [https://www.wada-ama.org/sites/default/files/resources/files/wada\\_anti-doping\\_code\\_2019\\_english\\_final\\_revised\\_v1\\_linked.pdf](https://www.wada-ama.org/sites/default/files/resources/files/wada_anti-doping_code_2019_english_final_revised_v1_linked.pdf) [Accessed 16 June 2019].

<sup>153</sup> WADA, *World Anti-Doping Code* (2015), p.11.

<sup>154</sup> WADA, *World Anti-Doping Code* (2015), p.17.

<sup>155</sup> “When we know better, we do better” (fn.96 above), p.44; WPA, “Equal say for athletes essential to legitimize global anti-doping”, 18 March 2019, <https://www.uniglobalunion.org/news/equal-say-athletes-essential-legitimize-global-anti-doping> [Accessed 16 June 2019].

<sup>156</sup> J.P. Costa, *Legal opinion regarding draft 3.0 revision of the World Anti-Doping Code*, 25 June 2013, <https://www.wada-ama.org/sites/default/files/resources/files/WADC-Legal-Opinion-on-Draft-2015-Code-3.0-EN.pdf> [Accessed 16 June 2019].

<sup>157</sup> Costa, *Legal opinion regarding draft 3.0 revision of the World Anti-Doping Code*, 25 June 2013, p.9.

<sup>158</sup> P. Dimeo and V. Moller, *The Anti-doping Crisis in Sport: Causes, Consequences, Solutions* (Routledge, 2018), p.viii.

<sup>159</sup> Dimeo and Moller, *The Anti-doping Crisis in Sport: Causes, Consequences, Solutions* (Routledge, 2018), p.vii.

<sup>160</sup> Dimeo and Moller, *The Anti-doping Crisis in Sport: Causes, Consequences, Solutions* (Routledge, 2018), p.viii.

<sup>161</sup> Dimeo and Moller, *The Anti-doping Crisis in Sport: Causes, Consequences, Solutions* (Routledge, 2018), p.viii.

<sup>162</sup> *WADA v FIFA and Jose Paolo Guerrero*, 2018/A/5571 at [86].

<sup>163</sup> WADA, “Governance”, <https://www.wada-ama.org/en/governance> [Accessed 16 June 2019].

<sup>164</sup> See fn.87 above.

<sup>165</sup> IAAF, “IAAF publishes briefing notes and Q&A on female eligibility regulations”, 7 May 2019, <https://www.iaaf.org/news/press-release/questions-answers-iaaf-female-eligibility-reg> [Accessed 16 June 2019].

<sup>166</sup> IAAF, “IAAF publishes briefing notes and Q&A on female eligibility regulations”, 7 May 2019 (fn.166 above).

<sup>167</sup> IAAF, *IAAF 2019 Constitution*, as amended on 1 November 2017, <https://www.iaaf.org/about-iaaf/documents/constitution> [Accessed 16 June 2019].

every individual to participate in Athletics as a sport, without unlawful discrimination of any kind undertaken in the spirit of friendship, solidarity and fair play".<sup>168</sup>

The IAAF statement followed criticism of the CAS decision of the previous week to dismiss the requests for arbitration filed by the South African athlete Caster Semenya and Athletics South Africa (ASA) against the IAAF concerning the *IAAF Eligibility Regulations for Female Classification (Athletes with Differences of Sex Development)* (DSD Regulations). That criticism involved human rights considerations that extended well beyond the question of discrimination. According to three UN Human Rights Special Procedures, these also include:

“the right to the highest attainable standard of physical and mental health, the right to physical and bodily integrity and the right to freedom from torture, and other cruel, inhuman or degrading treatment and harmful practices.”<sup>169</sup>

These broader human rights impacts could not be fully considered given that the IAAF, through a combination of the terms of the *IAAF 2019 Constitution* and private contract, only needed to satisfy the CAS that “the DSD Regulations were a necessary, reasonable and proportionate means of achieving the IAAF’s legitimate objective of fair and meaningful competition in female athletics”.<sup>170</sup>

The CAS found that the DSD Regulations were proportionate, albeit on a “prima facie” basis, but expressed “some serious concerns as to [their] future practical application” including the “side effects of hormonal treatment, experienced by individual athletes [which] could, with further evidence, demonstrate the practical impossibility of compliance”.<sup>171</sup> The CAS also pointed out that the “CAS Panel was restrained in its task, due to the strict framework of the arbitration”.<sup>172</sup> Within days of the CAS decision, the World Medical Association (WMA) raised ethical concerns about the regulations due to the weak and debated scientific evidence that informed their development. Further, the WMA said “it is in general considered as unethical for physicians to prescribe treatment for excessive endogenous testosterone”.<sup>173</sup> Taken together, the reservations of the CAS and the WMA demonstrate the lack of legitimacy that surrounds the DSD Regulations due to them failing to meet at least three of the four steps of *Championing human rights*: (1) their promulgation in the absence of an appropriate human rights policy commitment by the IAAF; (2) the failure to carry out human rights due diligence; and (3) the incompatibility of the CAS with human rights on the

question of remedy. These failures were a direct consequence of the IAAF’s refusal to recognise its corporate responsibility to respect human rights.

#### (d) SGBs which have yet to recognise or address their responsibility to respect human rights

The overwhelming majority of SGBs have yet to acknowledge or address their corporate responsibility to respect human rights. This is a major governance failure by global sport and one that extends to the regional and national levels of the industry due to the widespread ignorance of the duties and responsibilities of SGBs in relation to human rights. This not only presents a substantial risk to the human rights of the many people involved in or affected by the delivery of sport, its continuation will see the governance of sport lack legitimacy and struggle to maintain its social licence especially where there are revelations of adverse human rights impacts that should have been prevented or mitigated. Education is a key, and SGBs such as the FIFA, UEFA and the CGF—which have embraced the convergence of business, human rights and sport—will have an important role to play in engaging other SGBs in partnership with civil society and the emerging CSHR. So too can the IOC, although its conflicted position on sport and human rights will firstly need to be resolved if it is to fulfil this important duty.

## 6. Conclusion—human rights and the future of global sports law

Today, the *minimum standard* of expected conduct of any SGB includes fully acknowledging the corporate responsibility to respect internationally recognised human rights. That responsibility must be enacted through constitutional and binding policy commitments, a continuous process of human rights due diligence, enabling access to effective remedy for the victims of abuse, and genuine engagement and communication with affected groups and their representatives. Progress must also be transparently tracked and reported.

The governance of global sport and the making of global sports law are still largely shaped by the power of SGBs to compel norm observance through private contract and the strength of their monopolistic positions. As revelations of systematic human rights violations reveal, that authority coupled with the power of athletic dreams and aspirations can create another set of norms which are harmful to people. In contrast, the corporate responsibility to respect human rights is now a well-established social

<sup>168</sup> IAAF, *IAAF 2019 Constitution*, as amended on 1 November 2017, p.6.

<sup>169</sup> UNOHCHR, *Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on the issue of discrimination against women in law and in practice: Letter to IAAF President Coe*, 18 September 2018, [https://www.ohchr.org/Documents/Issues/Health/Letter\\_IAAF\\_Sept2018.pdf](https://www.ohchr.org/Documents/Issues/Health/Letter_IAAF_Sept2018.pdf) [Accessed 16 June 2019].

<sup>170</sup> IAAF publishes briefing notes (fn.166 above).

<sup>171</sup> CAS Media release: *Athletics. CAS arbitration: Caster Semenya, Athletics South Africa (ASA) and International Association of Athletics Federations (IAAF): Decision*, 1 May 2019, p.2, [https://www.tas-cas.org/fileadmin/user\\_upload/Media\\_Release\\_Semenya\\_ASA\\_IAAF\\_decision.pdf](https://www.tas-cas.org/fileadmin/user_upload/Media_Release_Semenya_ASA_IAAF_decision.pdf) [Accessed 16 June 2019].

<sup>172</sup> CAS Media release (fn.172 above).

<sup>173</sup> IAAF, *IAAF letter to the World Medical Association*, 7 May 2019, <https://www.iaaf.org/news/press-release/iaaf-letter-wma> [Accessed 16 June 2019].

norm that sits even above national laws and regulations. It therefore sits above global sports law, which needs to be reformed.

Global sports law must now be remade within the paradigm of business and human rights. SGBs can be associated with human rights harms in several ways, such as through the scale of mega sporting events or a failure to provide a safe environment for athletes and children. SGBs can also directly violate the human rights of athletes through their regulatory authority. Global sports law needs to substantively embed internationally recognised human rights, be developed proactively and through ongoing due diligence so that SGBs are aware of their human rights impacts. SGBs must also be willing to be accountable to judicial and non-judicial grievance mechanisms to ensure

any victims of human rights abuse can access an effective remedy. Any testing of a legal framework in this way can only enhance it. Institutions of sports governance will need to be built and reformed, such as the elevation of the CSHR into a global authority and centre of learning. At a minimum, the CAS must be reformed in line with the UNGPs.

These reforms plainly present cultural as well as governance and legal challenges. Those who govern and lead SGBs will need to be willing to share their authority with those affected by their decisions. And those who practise sports law will need to become acutely aware of the harmful impact of the law when practised simply for commercial gain and at the behest of the powerful.