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EDITORIAL

Remedy and redress for sport-related human rights abuses

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1 Introduction

Participation or involvement in sport carries with it many benefits, including the potential to advance human rights. However, like any other sector or part of society, sport can also cause or be linked to harm and abuse, situations that may be exacerbated or overlooked precisely because sport is typically a good thing, and is characterised by a high degree of autonomy and self-regulation. This special issue is published at a time when a broad sport and human rights agenda is gathering momentum, with particular scrutiny on the human rights impacts of mega sport events (MSEs), notably the Beijing 2022 Winter Olympic and Paralympic Games, and the FIFA World Cup Qatar 2022. While these MSEs have drawn the spotlight, the range of human rights issues linked to sport go much deeper and wider into the day-to-day fabric of sport. Indeed, human rights abuses linked to sport occur at local, regional, and global levels, both on and off the field, before, during, and after competitions and matches, as well as close to and far away from sporting event venues. They involve, among others, cases of discrimination and racism, exploitation, displacement, violence, and abuse, which can affect athletes including child athletes, as well as communities, families and individuals attending as fans or living in and around countries that host sport events, workers on construction sites for sport infrastructure and in the supply chain.

While human rights commitments are increasingly being made and a greater understanding of due diligence and risk can now be expected, the issue of access to remedy for sport-related human rights abuses remains an immense challenge, with affected persons poorly served and remedy infrastructure poorly developed. The high degree of autonomy within sport provides valuable safeguards and protections to a sector recognized for its social good, but there remains a deficit of accountability and insufficient systems in place to remediate the types of abuse cases inevitable given the scale of power imbalances seen in the world of sport.

Access to remedy is a human right in itself. Every affected person has the right to effective remedy and redress, in the form of the actual process and the result. This is enshrined in a number of regional and international human rights treaties.[1] However, in the sporting context, for many abuses there is either a lack of effective remedy mechanisms altogether, or significant obstacles exist in accessing available mechanisms.[2] As a result, affected persons are often left without any remedy and redress, and state and non-state actors responsible for sport-related harms are too often not held accountable for actions or inactions resulting from or connected to their activities.

This special issue, organized and edited by Daniela Heerdt and William Rook with the support of the Centre for Sport and Human Rights (the Centre), brings together different perspectives and expertise on one of the most challenging issues in sport: remedy and redress for sport-related human rights abuses. The goal of this special issue is to stimulate further research, encourage new perspectives, and to further enrich a growing body of work that is increasingly identifying gaps and proposing a diverse range of solutions. A joint project like this, together with the International Sports Law Journal, is one of the many ways in which the Centre hopes to contribute to sharing knowledge and building capacity across the entire sports ecosystem, and

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[1] For example, Article 8, Universal Declaration of Human Rights (UDHR) 1948 and Article 2(3), International Covenant on Civil and Political Rights (ICCPR) 1966, provide for the right to remedy. See Amnesty International (2014).

[2] Centre for Sport and Human Rights (2019); Mega-Sporting Events Platform for Human Rights, 'Remedy Mechanisms for Human Rights in the Sports Context' (2017) 2.4 https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Remedy_Mechanisms_for_Human_Rights_in_the_Sports_Context%2C_Jan-2017.pdf. Accessed 13 July 2022; World Players Association (2021a).

to connect with contemporary research from emerging and established researchers. With the rising number of reports on cases of abuse in sport, and MSEs taking place in countries with poor human rights records, the need for more knowledge and understanding of how to address human rights abuses in the sporting context is more pressing than ever.

An open call for papers enabled a variety of perspectives and approaches to be featured in this special issue. We are pleased to include contributions on international, regional and national remedy systems and initiatives (see articles on the United Nation's human rights system by Gonzales, and on the European Convention on Human Rights (ECHR) as applied by the Court of Arbitration for Sport (CAS) by Duval), as well as emerging concepts and mechanisms (see articles on restorative justice by Begum, on Japan's sport remedy system by Shoichi and Yagi, and on the development of the Independent Mechanism in Canada by Donnelly et al.), and concrete cases (see article by Kuwelkar on the CAS case Keramuddin Karim v. FIFA). We cover a wide range of affected groups and sports, such as athletes, children, and referees (see articles on the Athlete Commission of Commonwealth Sport by Naidoo and Grevemberg, on children in sport by Aine et al., and on referees by Carpenter). Despite this wide range of topics covered, there are common threads concerning the challenges and the ways to address them, which will be summarized briefly in this editorial with the intention to introduce and contextualize the included articles rather than anticipating their detailed discussions and findings. We are grateful to the respective authors featured in this issue, to the journal's editor for this collaboration, to the anonymous peer-reviewers for their support, and for the good exchanges between authors we were able to convene during the drafting period.

2 Status Quo

A brief outline of remedy and accountability mechanisms relevant to the sport and human rights context is necessary to understand the discussion on challenges and solutions and the contributions to this special issue. In principle, a wide range of dispute resolution methods and mechanisms are important for addressing sport-related human rights cases, as has been highlighted by the Centre in a study conducted in 2019.[3] What this study shows, however, is that very few of them have an explicit mandate or capacity to address human rights issues, and none of them have been specifically designed to address human rights cases in the context of sport or sporting events.

Relevant mechanisms include judicial, non-judicial, and operational-level mechanisms. In terms of judicial mechanisms, relevant options exist on the domestic and regional level. Despite the fact that both Fédération Internationale de Football Association (FIFA) and the International Olympic Association (IOC) as well as other sport organisations try to prohibit recourse to ordinary courts of law for sports-related disputes, a number of sport-related cases ended up before national courts. One example is the case filed by the Dutch trade union FNV, Building and Wood Workers' International (BWI), the Bangladeshi Free Trade Union Congress and a migrant worker from Qatar against FIFA before the *Handelsgericht* Zürich accusing FIFA of being responsible for violating international human and labour rights by awarding the World Cup to Qatar. Another relevant case arose in a federal court in Brazil in relation to the right to peaceful protest and freedom of expression around Olympic venues.[4] The European Court of Human Rights (ECtHR), a regional judicial mechanism, has dealt with a number of cases related to sports, mostly concerning Article 6 ECHR on the right to fair trial and the responsibility of Switzerland, Article 8 ECHR on the right to private and family life and the responsibility of France, as well as Article 10 ECHR on the right to freedom of expression and the responsibility of Croatia.[5] There are also sport-related cases pending before the Inter-American Court of Human Rights.[6]

Quasi-judicial mechanisms would include national sport dispute organizations, which are public or private organizations that offer mediation and arbitration services to facilitate the resolution of sport-related disputes. Examples are Sport Resolutions in the UK, the Sports Tribunal of New Zealand, the Sport Dispute Resolution Centre of Canada, the Japan Sport Arbitration Agency, Sport Dispute Solutions Ireland or National Sports Tribunal of Australia.[7] These tribunals and organizations usually deal with cases concerning disciplinary sanctions against athletes, for instance on doping charges, but are likely to also deal with human rights issues.

[3] Centre for Sport and Human Rights (n 2).

[4] Mackey (2016).

[5] Mutu and Pechstein v. Switzerland Appl Nos 40575/10 and 67474/10 (ECtHR, 2 October 2018); Fédération Nationale des Syndicats Sportifs (FNASS) and Others v. France Appl Nos 48151/11 and 77769/13 ECtHR (18 January 2018); Šimunić v. Croatia Appl. No 20373/17 ECtHR (22 January 2019); for an overview of sport-related cases before the ECtHR, see European Court of Human Rights, 'Sport and the European Convention on Human Rights' (2022) https://www.echr.coe.int/Documents/FS_Sport_ENG.pdf.

[6] See for instance https://www.corteidh.or.cr/docs/tramite/meza.pdf.

[7] See for instance https://www.nationalsportstribunal.gov.au/, https://www.sportresolutions.co.uk/, http://www.crdsc-sdrcc.ca/eng/home, http://www.sportstribunal.org.nz/.

Further state-based mechanisms of relevance to the sport context are National Human Rights Institutions (NHRIs) and National Contact Points (NCPs) established under the OECD Guidelines for Multinational Enterprises (OECD Guidelines).[8] In fact, a number of cases from the sporting context have been dealt with by the Swiss and UK NCPs, challenging the human rights due diligence obligations that sports bodies have under the OECD Guidelines.[9] NHRIs can as well play a significant role for providing accountability for sport-related human rights abuses. In fact, NHRIs and NCPs are explicitly mentioned in Principle 6 of the Sporting Chance Principles and have been part of the discussions during a high-level expert meeting on remedy in the sport and human rights context in The Hague in 2018.[10] In particular, NHRIs of MSE hosts could play a significant role in supporting those adversely affected by MSE-related human rights abuses in access to remedy, and we have a seen partnerships emerge between MSE organisers and NHRIs in both Qatar and Australia.[11]

There are a number of mechanisms that exist at the MSE level, or are run by private actors involved in the MSE business, which following the definition provided in the United Nations Guiding Principles on Business and Human Rights (UNGPs) would be considered as operational-level grievance mechanisms.[12] This would include any mechanism administered by a company involved in sport-related human rights abuses. It would also include mechanisms run by FIFA or the IOC, such as their Ethics or Disciplinary Committees and Commissions. Also relevant for the present context are their complaint mechanisms for media representatives, which apply to instances related to the Olympic Games or the FIFA World Cup.[13] FIFA's mechanism also explicitly applies to human rights defenders.[14] Another example of an operational-level grievance mechanism at MSE level is the Complaint and Dispute Resolution Mechanism established by the London Organizing Committee for the Olympic Games, which was developed to resolve complaints and disputes related to breaches of the Sustainable Sourcing Code.[15] The organizers of the 2020 Tokyo Olympic and Paralympic Games also launched grievance mechanisms for the event based on a Sustainable Sourcing Code. However, these mechanisms have been criticized for not being effective and in some cases unusable, because workers are not made aware of them.[16] Finally, elements of the role of CAS could potentially be categorized as an operational-level grievance mechanism, since it is a private body that originally has been established by the IOC itself to function as 'regulator' of the Olympic system.[17] However, since it solves sport-related disputes based on arbitration and renders legally binding awards, it should be primarily be considered a judicial mechanism.[18]

It is important to acknowledge that remedy mechanisms can take different forms and shapes, and not always fit into the categories of judicial, non-judicial or operational-level. In fact, some of the human rights issues that come up in the sporting context and elsewhere require creative solutions to provide effective remedy. An interesting example is the model adopted in Qatar by the Supreme Committee for Delivery and Legacy to require contractors pay back recruitment fees to migrant workers. While limited in scope, this reimbursement programme offered an innovative solution and system to provide effective remedy in form of compensation to affected people.

[8] OECD, 'OECD Guidelines for Multinational Enterprises' (2017) http://mneguidelines.oecd.org/guidelines/. Accessed 13 July 2022.

[9] Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by Americans for Democracy and Human Rights in Bahrain (ADHRB)—Initial Assessment; Specific Instance regarding the International Ice Hockey Federation submitted by Stowarzyszenie Zawodników Hokeja na Lodzie (Polish Ice Hockey Players Association); Sarfaty (2015).

[10] Centre for Sports and Human Rights, 'The 2018 Sporting Chance Principles' (2018) Principle 6 https://www.sporthumanrights.org/uploads/files/Sporting_Chance_Principles_2018.pdf. Accessed 13 July 2022; Centre for Sports and Human Rights, 'Meeting Report: Strategic Dialogue on Remedy' (2018) https://www.sporthumanrights.org/en/resources/meeting-report-strategic-dialogue-on-remedy. Accessed 13 July 2022.

[11] Australian Human Rights Commission "FIFA 2023 Women's World Cup Human Rights Risk Assessment" (2021) https://humanrights.gov.au/our-work/business-and-human-rights/publications/fifa-2023-womens-world-cup-human-rights-risk. Accessed October 2022.

[12] The UNGPs define them as mechanisms which are "accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm". See Commentary to Principle 29.

[13] IOC, 'Media Complaints Reporting Tool' (2016) https://ioc.integrityline.org/. Accessed 13 July 2022; FIFA, 'FIFA Statement on Human Rights Defenders and Media Representatives' (2018) https://digitalhub.fifa.com/m/ec85f3de496c6cb6/original/ejf1ecdku14lm2v9zc03-pdf.pdf. Accessed 13 July 2022.

[14] FIFA Statement on Human Rights Defenders and Media Representatives (n 15).

[15] LOCOG (2012).

[16] Building and Wook Worker's International, 'The Dark Side of the Tokyo 2020 Summer Olympics' (2020) https://www.bwint.org/web/content/cms.media/1542/datas/darksidereportlo-res.pdf. Accessed 13 July 2022.

[17] JL (Jean-Loup) Chappelet and Brenda Kübler-Mabbott, *The International Olympic Committee and the Olympic System : The Governance of World Sport* (Routledge 2008) Chapter 7.

[18] CAS, Sport and Human Rights (2022), https://www.tas-cas.org/fileadmin/user_upload/2022.06.20_Human_Rights_in_sport__20_June_2022_.pdf. Accessed 25 July 2022.

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