

WORLD LAW FORUM

# CONFERENCE REPORT

WLF CONFERENCE ON  
HUMAN RIGHTS IN INTERNATIONAL SPORT

7 - 10 JULY 2021

WORLD  
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# World Law Forum Conference on Human Rights in International Sport

## Conference Report

Virtual Conference  
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## EXECUTIVE SUMMARY

Between 7th and 10th July 2021, the **World Law Forum (WLF)** hosted its first virtual conference on **Human Rights in International Sport**. With the Tokyo Olympics approaching and the FIFA World Cup 2022 and Winter Olympics 2022 also on the horizon, the Forum reckoned there was no better time to concentrate on the human rights issues that have marred mega-sporting events for a considerably long time.

Mega-sporting events are historically and officially known as events that bring together people from all corners of the world. However, these large-scale events have often violated the human rights of various individuals involved in either the creation of these events or of those who have participated as athletes. Despite the fact that most host countries, stakeholders, and other organisational entities involved in these events have human rights policies and have publicly condemned their violation, there are still many legal and institutional obstacles that permit these violations to occur.

The Conference consisted of thirty (30) speakers, who all shared their own experiences related to human rights in sports. There were a total of 8 panels that all addressed various aspects of human rights and international sports. Discussions ranged from the rights that athletes have to the responsibility of states and stakeholders in these large-scale sporting events, and ended with panel discussions on the optimal way to move forward. The panelists included athletes, officials of international organizations and federations, activists, and lawyers who were all able to share their own experiences within the sports human rights system. Panelists from diverse backgrounds were able to shed light on a number of nuanced aspects of human rights frameworks that exist and need to be put into place in order to create a more fair and just sporting world.

Without the support of the panelists, who shared their lived experiences, the World Law Forum would be ill-placed to commit to any of the work it hopes to achieve. The WLF Conference on Human Rights in International Sport is but a stepping stone towards mobilising greater efforts to achieve collective human rights objectives within sport, and the Forum hopes to do justice to these aspirations.

This report will demonstrate some of the key ideas and discussions that were presented during the conference. It will showcase the various opinions that each panel brought forward and some of the recommendations the panelists had to improve the current system.

## OPENING STATEMENTS

Pratik Bakshi, co-founder of the World Law Forum, welcomed all attendees to the four-day conference, expressing admiration for the resilience that individuals the world over have displayed in this difficult year, and condolences for those who have lost loved ones.

Sport has for centuries played a significant role, not only in peacekeeping, but also in aiding many in escaping difficult circumstances. At such a time, the UEFA Euro Cup and Tokyo Olympics have proven welcome distractions from the complexities of living through a pandemic, albeit accompanied by associated nuanced controversies. The sporting industry has become far more complex over the years, giving rise to several issues with deep social impacts. As Pratik emphasized, these issues need to be addressed, and addressed soon. For instance, the developments in Tokyo and Qatar revolving around freedom of expression and labour rights respectively have been welcome improvements, but are only small steps towards the larger goal of placing human rights at the heart of international sport.

Pratik noted that over the last year, the controversial Rule 50 of the Olympic Charter has attracted debate, with the Olympic Committee making the decision to uphold it, albeit with relaxations, in early 2021. This is an important decision to consider, especially at a time when political voices are being increasingly suppressed in countries across the world. Given the dynamic shifts witnessed by the world of sport through constantly changing political and economic landscapes, and the many upcoming international mega-sporting events over the next year, the World Law Forum has felt that this is the most appropriate time to host this event to discuss the burning issues involving human rights in international sport. With speakers from wide-ranging backgrounds, including record-holding athletes, officials from international bodies, lawyers, activists, and academics, this four-day event covered issues of the rights of athletes, workers, and citizens involved in the staging of large sporting events; the role that sports governing bodies, host countries, and sponsors and broadcasters can play in upholding human rights; as well as aspects of human rights due diligence and redressal mechanisms for victims. We concluded this conference with a panel on the way forward for human rights in sport.

Pratik underscored his hope that this platform helps the forum expand its work involving business and human rights in sport, and lets the organization create meaningful and tangible outcomes involving changes in policy and implementation. Concluding his address, Pratik, on behalf of himself and the World Law Forum, indicated that he hoped all participants would make the most of the four days to extract as much as possible out of this learning experience, and officially opened the series of panels.

## HUMAN RIGHTS VIOLATIONS IN MEGA-SPORTING EVENTS

The first panel on human rights violations in mega-sporting events was divided into two sections - the first, on the rights of athletes; and the second, on the rights of workers and citizens in host countries.

### HUMAN RIGHTS OF ATHLETES

The panelists who were part of the discussion on the rights of athletes were **Paul J Greene, Esq.**, Founder of Global Sports LLC; **Matthew Graham**, Director of Legal & Player Relations, World Players Association; **Kat Craig**, Founder and CEO of Athlead; and **Blake Leeper**, who is an eight time Paralympic track and field international medalist. This panel was moderated by **Tanya Kini**, Community Manager at She Sports Switzerland.

During the course of the panel on the human rights of athletes, the panelists brought forward insightful assessments of the human rights of athletes. The session commenced by delving into personal accounts of athletes in circumstances where they face discrimination at the hands of sports governing bodies. When human rights are being violated in international sports, many institutional errors occur. As some of the panelists stated, it is often the athletes' own responsibility to hold these governing bodies accountable, and it is their responsibility to keep sports safe and fair, an approach that is incredibly unfair and arbitrary. For some athletes, enforcing human rights can be a dangerous occurrence without the proper institutional practices and remedies in place. Athletes either face professional sanctions and risk being banned from competing in future games, or they face profound physical or emotional distress because the correct human rights mechanisms have not been put in place.

A key issue that was identified during this panel was the sports governing bodies' adamance to self regulate. However, self-regulation must then be accompanied by the responsibility to protect the players and provide remedy - a responsibility that is often shirked. An essential part of having an appropriate human rights framework and accompanying mechanism is that players can bring forward cases where their rights have been violated without any consequences. Many have called for sports governance bodies to enforce the UN Guiding Principles on Business and Human Rights. One of the crucial aspects of these Guiding Principles is access to remedy. As many athletes have stated, taking on the Court of Arbitration for Sport (CAS) or any of the governing bodies is a challenging and expensive campaign. If sports governing bodies wish to self regulate, they must have the appropriate mechanisms and institutional arrangements set up. For example, in cases where female athletes have faced sexual abuse they were only able to present their case to a panel of white men; a female representative was unavailable.

When it comes to human rights, pro athletes are often short-changed, with their careers put at stake. Firstly, they are not allowed to unionise, which prohibits them from freely expressing themselves. Additionally, if an Olympic athlete violates the Olympic Charter, they can face career ending consequences. The International



Olympic Committee (IOC) comes up with rules based on the Charter, and athletes have to adhere to them if they want to participate. Rule 50 of the IOC, which forbids any kind of "demonstration or political, religious or racial propaganda" at venues, has faced significant backlash in the months leading up to the 2020 Olympics. The Rule severely impacts athletes' right to free speech. The IOC claims that the Olympics have always been apolitical. However, many historical events contradict this statement. In the 1936 Olympics in Berlin, many German athletes saluted Hitler through the infamous 'Heil Hitler' salute despite the IOC banning all Aryan superiority propaganda, without being banned from the Games. However, at the Mexico City 1968 Olympics, Tommie Smith and John Carlos protested the treatment of African Americans in the United States, and were promptly banned from the Olympics. Subsequently, in the 2016 Rio Olympics, the IOC created a refugee team to call attention to the refugee crisis. Therefore, it cannot be denied that the Olympics on multiple occasions has been political. While athletes do have the opportunity to challenge rulings, these challenges are often unsuccessful.

In 2014, Principle 6 was included in the Olympic Charter, stipulating that athletes could not be discriminated against on the grounds of their sex and sexual orientation. Even though this was an important milestone, we continue to see that transgender athletes cannot compete. Openly trans athletes are competing in this year's Tokyo Olympics for the very first time.

Also discussed, was the competence of the CAS to hear matters involving human rights aspects, given that it was originally not created to adjudicate matters of this nature and that often, the arbitrators do not have human rights training or backgrounds. Also, of relevance, is the lack of transparency within the CAS structure for those approaching the Court as witnesses or victims. There is an absence of checks and balances, as the body is a private entity and its inner workings are not subject to larger scrutiny and accountability. However, the panel did note that the subjectivity of the decisions based on the judges on the panel cannot be attributed to an overall incompetence of the body. The CAS has been trying to address issues within its machinery, and has attempted, with limited success, to put in place protections for complainants and other parties that are adversely affected by its current structural inadequacies.

The session ended with certain proposals for the international sports system. One of the paramount issues in athletes' human rights is that the governing bodies are failing to protect them. They have to abide by public policy and respect human rights. More importantly, governing bodies need to be diverse; they are predominantly governed by white males who have an astonishing amount of power in sports that mainly rely on female athletes and athletes of colour. It is important that governing bodies make a binding commitment to international human rights standards and implement the UN guiding principles on Business and Human Rights, as the autonomy of sports is conditional upon respect for human rights.

## HUMAN RIGHTS OF WORKERS AND RESIDENTS IN HOST COUNTRIES

In the second panel of the conference, the rights of workers and residents in host countries were discussed. The panelists for this discussion were **Dr. Giovanni Di Cola** (Special Advisor, Office of the Deputy Director General, International Labour Organisation); **Phylesha Brown-Acton**, Co-Founder and Executive Director, F'INE Pasifika Aotearoa Trust; **Dr. Chamindra Weerawardhana**, Author, Political Analyst, and Human Rights Advocate. The panel was moderated by **Almas Shaikh**, who is a human rights lawyer.

Several arguments were presented to illustrate discriminatory policies in sports and the negligence of international human rights, augmented by the numerous allegations of human rights abuses emerging prior to the upcoming Qatar FIFA World Cup 2022. The session commenced by continuing the discussion from the preceding panel on the rights of athletes, focusing on gender-based injustice within sports. Women, especially women of colour, are the ones who most frequently suffer discrimination. This is often upheld through stereotypes and the framing of information that often leads to misinformation. In addition, there is a lack of sponsorship and media attention. Because the sporting world is often controlled by white, male Europeans, individuals from other regions and communities feel there is a lack of support for their unique problems.

As mentioned in the previous panel, the IOC recently added a provision stating that athletes will not be discriminated against based on sex or sexual orientation. However, the sporting sector has not yet created a system where bodily autonomy is upheld. It often starts with the manner in which the media portrays trans athletes and tries to vilify them. It is also important to address inter-sex discrimination in sports. Although this is difficult, many activists have called for sporting regulations to have a more open dialogue with activists, governments and other stakeholders. Sports governing bodies function along conservative practices that appease the majority that is in power, such that the right to play and participate in these mega sporting events is controlled by a binary viewpoint of what gender is.

Sports federations often claim to use best practices, arguing that their rules and regulations are based on equality and uniformity. However, a great deal of systemic discrimination arises from the expectations of uniformity. In the drive for uniformity, we often see that women of colour are often discriminated against, especially impacting women athletes of lower economic status who are from the global south.

The UN, through resolution 40/5 on the *elimination of discrimination against women and girls in sport*, has called for sports federations to cease all humiliating and unnecessary medical procedures. In pursuance of the same, both the UN and South Africa supported Caster Semenya. We can see many more examples in the Olympics, such as the cases of Christine Mboma and Beatrice Masilingi, who were both banned from competing in the 2020 Tokyo Olympics for having a naturally high testosterone level.

These issues are multi-faceted. Many human rights activists do not oppose certain regulations that can be seen as an advantageous asset. However, the application of those rules are very uneven. For example, Michael Phelps was recorded as having a lung capacity of 12 litres while the average man has a capacity of



6 litres. Usain Bolt has a higher proportion of fast-twitch to slow-twitch fibres, which is considered to be his 'superhuman feature'. In both cases, these advantageous functions have been considered to be natural features.

We do occasionally see that athletes' rights are upheld. Dutee Chand challenged the IAAF's hyperandrogenic ruling and caused the IAAF to change their regulations. It took her two years to win this case, and although this was considered a victory for Chand, who competes in 100 m and 200 m events, the IAAF then claimed that the rule would continue to be applied to runners who participated in the 400 meter to 1-mile run, effectively ending Caster Semenya's career.

The subsequent portion of the conference focused on labour rights and the institutional practices around it. Over the years, much focus has been on the rights of athletes, with the peripheral rights of workers largely ignored. However, the issue has gained more attention with significant work being done to alleviate the situation of workers involved in mega-sporting events. The panelists discussed the importance of a constant engagement between the sports federations and the relevant actors. Recently, relevant platforms have been created involving cooperation between federations and bodies such as the International Labour Organization (ILO) and the Center for Sports and Human Rights.

An influential document in this sphere was John Ruggie's report, commissioned by FIFA in light of the adverse human rights impacts the governing body was accused of having in its global operations, including the death of migrant workers in Qatar. It provided the distinction between being responsible for organizing an event and being in control of all the elements that lead to a good legacy. Since then, sports governing bodies have been endowed with greater responsibility when it comes to activities involved in the staging of mega-sporting events. For example, World Athletics has recently stated that universal human rights do not apply to private entities. The panel pointed out that this statement is inherently false, as human rights are universal rights and not simply applicable to State bodies. This includes the fundamental rights of workers, the freedom of association, freedom of collective bargaining, rights against child labour and those against trafficking, among others. Obligations of federations, do not, however, absolve States of responsibility for the violation of human rights within their respective territories.

The legacy that mega-sporting events leave behind must also address aspects of the rights of citizens in host countries. In the past, host countries with poor human rights track records have reacted poorly to international criticism of regressive domestic laws. Leading up to the events, activists and citizens have been arrested, with States clamping down against internal criticism through the use of violence. Citizens also face issues such as displacement and eviction in order to accommodate large-scale events. In granting host status, governing bodies must also consider the impact the event will have on people living in the host countries, and make sufficient arrangements as part of their due diligence. As the Ruggie Report indicates, how a country intends to address human rights issues within its jurisdiction must be part of the evaluating criteria during the bidding process. This does not necessarily mean the pre-emptive exclusion of countries from the process. It is simply a means to create a framework in order to improve conditions in the years leading up to the event, thereby leaving behind a greater legacy after its completion.

One of the main issues with sports, as mentioned before, is that it is a very autonomous world. In 1995, *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman (Bosman Case)* was a very impactful ruling for athletes. It held that sports laws are not outside the scope of national and international law. The freedom of establishment and movement is applicable to everyone, including football players.

An important concluding element of the panel discussion was the role consumers of sport play in creating safer sporting ecosystems. As consumers of sport, it becomes important for not only individual sports fans, but also officials to demand accountability and stand up against structural inequalities that further systems of bias and exploitation within the sports industry. Acknowledging privilege and unlearning ingrained biases are integral aspects of addressing the ever-growing concerns of rights violations. Changes must begin at the top of the chain, so that they may reflect at all stages of the MSE life-cycle.

## THE RESPONSIBILITY OF HOST COUNTRIES IN UPHOLDING RIGHTS

**Alessandro Oliverio**, attorney at law, isportlaw; **Guido Battaglia**, Head of Policy and Outreach at the Centre for Sport and Human Rights, **Nan Sato**, attorney at law, Field-R Law Offices, and **Faraz Shahlaei**, Adjunct Professor & JSD Candidate, Loyola Law School.

Multiple players hold responsibility during the staging of mega-sporting events. This panel discussed the responsibilities of the host countries and their role in upholding rights. States are the primary parties to international human rights treaties and are also held responsible for human rights violations in sports. It is incredibly important that States recognize both the positive and negative social and economic impacts mega-sporting events can have on their countries. On the one hand, it can provide jobs and create economic revenue. However, it can also amplify discrimination, violate labour rights and athlete's freedom of expression. The panelists pointed out that there are many State actors involved when it comes to mega-sporting events, and it can be a complex task to align them all and ensure full human rights compliance. However, if national governments, local and municipal authorities, workers unions, sports bodies, civil society, and other stakeholders all play a role, it is not impossible for mega-sporting events to leave behind a positive legacy and impact.

When looking at Qatar, we see that many of the workers did not have contracts and were working under the highly controversial *kafala* system. There were numerous health and safety issues present and migrant workers were in extremely vulnerable positions. Despite Qatar saying that they were not liable, and that responsibility lay with the independent contractors, the country is still responsible for modern slavery allegations. One of the main tools for host countries to use to ensure human rights compliance in business are the UNGPs. The UNGPs contain both the State's obligations and duty to protect human rights, and the corporation's duty to respect human rights. As of 2017, the Host City Contract for FIFA must contain an anti-corruption and human rights principles clause.

The Paris 2024 Olympics will be the first mega-sporting event to expressly reference the UNGPs. Past contracts contained clauses stating that host countries would protect and respect human rights. The 2024 Olympics contract states these rights would be protected in a '*manner consistent with all internationally recognised human rights standards and principles, including the UNGPs*'. In addition to the reference, France has also introduced two new national laws. In 2016, the Sapin II Law was passed, which addresses anti-corruption and enforces compliance with international standards in transparency. Secondly, in 2017, it passed the Duty of Vigilance Law, which is France's new corporate human rights obligation, requiring companies in France to identify and prevent human rights risks related to their business practices. In addition to various new laws, Le Celce de la Compliance came up with a new initiative, Compliance 24,



is a group of international opinion-makers who will propose a detailed framework for the components and the monitoring of the Paris 2024 Compliance program.

The panel continued with the presentation of several recommendations that States could adopt to assist in implementing and upholding rights. Firstly, all States should adopt minimum standards on protections and compliance. These are developed with the United Nations, the International Labour Organisation (ILO), and other stakeholders like the Center for Sports and Human Rights. Secondly, States must aim to have a permanent independent human rights committee that oversees human rights issues related to mega-sporting events, conducts on-site inspections, makes reports and gives recommendations. We already see some of these practices taking place in many jurisdictions and sports. For instance, Formula 1 adopted a Modern Slavery Act and a hotline for people to report abuses. For the Tokyo Olympics, the ILO and Tokyo agreed to promote socially responsible labour practice standards for sustainability and the upholding of human rights in the procurement of licences and in supply chains. Lastly, it is important to create a human rights legacy where states, sports governing bodies and stakeholders work together. This powerful legacy also benefits the host city in demonstrating their commitment to human rights.

The Center for Sport and Human Rights is a key player in creating a positive legacy in mega sporting events, especially considering the number of actors involved. The Center includes government agencies, UN agencies, sports bodies, NGOs, trade unions, sponsors, and broadcasters. They regularly meet in working groups and are the human rights organisation for the world of sports. In addition, they make tailor-made advice for certain sporting events, aiding in the development of tools and guides for everyone involved in the events. One of their most prolific guides is the Mega-Sporting Event Lifecycle: Embedding Human Rights from Vision to Legacy. This guide was created by a working group that was chaired by a government and an international trade union representative. It contains elements of good practice at each stage of the Mega-Sporting Event lifecycle, to ensure transparency and that human rights are upheld.

It is becoming evident that host countries, too, are making efforts to include human rights in their games. Tokyo has adopted several measures to try and make it one of the most inclusive games. The first is by the Tokyo Organising Committee for the 2020 Olympic & Paralympic Games (TOCOG), wherein the Committee created a human rights grievance redressal mechanism to deal with any complaints. Even though these complaints do not seek any punitive measures, they are meant to facilitate communication between the parties. The TOCOG has seen between 12-13 claims so far, of which all but one were rejected for lack of jurisdiction. One of the problems that the lack of enforcement can be attributed to is the limited resources that bodies connected to the organizing committees are able to assign to resolution mechanisms. Furthermore, multiple and different actors are involved in the violation of rights, creating jurisdictional challenges. The panel discussed the need to have an independent mechanism or entity that would be able to file civil lawsuits in the national courts and manage independent arbitrations. This would address the conflict that entities such as TOCOG face while dealing with claims.

TOCOG has stated that they want these games to be the most inclusive ever, and they wish to incorporate diversity, equity and inclusion into every aspect of their operations. Moreover, they have stated that the UNGPs will be applied in a three-pronged manner. *Firstly*, it will be integrated into the day-to-day activities of workers, volunteers, officials, and everyone who works at the Olympics. *Secondly*, it will be implemented during the games at event venues. This would apply to athletes and supporters. *Lastly*, efforts are underway to ensure that sourcing and supply chain workers' human rights are protected.

TOCOG has also set up a Pride House Tokyo which will have a number of features such as pop up information centres to spread information and awareness about LGBTQA+ and other sexual minorities, and provision of support to LGBTQA+ athletes, friends, family, and spectators. Japan has created a three-phase system for the games. The first phase is Toward 2020, where everyone related to the games is informed about human rights issues, sustainability and other aspects of diversity and inclusion. Second is United 2020, during the games where everyone celebrates their diverse backgrounds, and it all comes together during the games. Lastly, Beyond 2020, which commences once the games have ended, aims to create a sustainable and inclusive society and practice that endures. The protections adopted by Japan to safeguard child athletes also received domestic and international attention following the Human Rights Watch report on the abuse of children titled “I was hit so many times I can't count”. The report also likely encouraged increased commitment from sporting organizations.

The concluding discussion involved the timing of the Games. While the panel agreed that a number of measures had been put in place to ensure the safety of the athletes and citizens, one panelist was of the opinion that holding an event with insufficient safeguards in the middle of the pandemic would be irresponsible and a risk to public health. Japan has since seen a spike in the number of COVID-19 cases following the commencement of the Olympic Games.

## IMPLEMENTATION OF OBLIGATIONS BY SPORTS GOVERNING BODIES

**Jonathan Taylor QC**, Partner Bird & Bird, **Andreas Graf**, Head of Human Rights and Anti-discrimination of FIFA, and **Michele Krech**, Doctoral Candidate at NYU Law.

During the third panel discussion, the role of sports governing bodies in addressing human rights was brought into perspective, with particular focus on FIFA's human rights policy and the role of the CAS in arbitrating matters involving human rights. The panelists for this session were Andreas Graf, Head of Human Rights and Anti-discrimination at FIFA and Jonathan Taylor QC, Partner at Bird & Bird. The panel was moderated by Michele Krech, Doctoral Candidate at NYU Law.

The discussion started by looking at the obligations from the sports governing bodies' perspective. These obligations were categorised into three types:

*First*, the bare minimum, which would be what they are 'technically' responsible for. For example, FIFA's headquarters are in Switzerland. Therefore, they are required to comply with the basic national law of Switzerland. In addition, when they have an event in another country, they are required to comply with those national laws. However, FIFA has recognised that this is not enough.

*Second*, the actual minimum, which would require the governing body to respect international regulations in accordance with the UNGPs. John Ruggie's 2016 report published its recommendations for FIFA on how to respect and embed human rights globally. It outlined the necessity to follow the UNGPs and perform due diligence checks.

*Third*, moral responsibility, which requires organisations to do more than just avoid causing harm, and to use their platform to drive change.

In response to the feedback, criticism, and consultations, FIFA published *FIFA'S Human Rights Policy 2017*. They identified the 3 most significant human rights risks, i.e., risk associated with sporting events, risk associated within FIFA football governance globally, and risks within FIFA. In addition, FIFA also expanded their new due diligence mechanisms. They divided them into three phases



### **1. Bidding and Selection**

As of November 2017, human rights are an integral part of the bidding process. Countries that want to submit a bid must provide strategies on how human rights won't be violated. In addition, they must also contain a human rights context assessment that needs to be commissioned by an independent entity. There are a wide range of guarantees that states have to include in their strategies, this includes but is not limited to labour rights, children's rights, and safety and security. Bidders are divided into low, medium, and high risk categories. This categorisation influences potential host countries compliance and can also be used as leverage.

### **2. Verification and Strategy and Planning**

The second phase is the verification of the strategy, this occurs after the bidder has been selected. It is a process of verification of the process that led to the risk strategy. For example, the Women's World Cup 2023 has gone through the aforementioned bidding process, wherein FIFA partnered with national human rights institutions to conduct stakeholder evaluations.

### **3. Preparation and hosting**

The last phase occurs before and during the games. In preparation for the mega sporting event, FIFA makes sure labour rights are being respected and that the strategy is effectively being implemented. In addition, when hosting, FIFA adopts a policy of non-discrimination to ensure that spectators, workers, players, and all other relevant actors involved with hosting are able to participate and experience the games.

It is incredibly important that sports bodies do not infringe human rights and produce an adequate mechanism for protection and remedy for the breach of human rights. More importantly, the mechanism needs to be independent and competent within human rights law frameworks. It is also integral to incorporate mandatory due diligence checks and an emphatic level of understanding towards athletes and other involved parties bringing forward human rights claims. Sport bodies need a lot of help when it comes to human rights, and need to help to create mechanisms that allow people to effectively access remedy and to ensure that the journey through the internal justice system is not an unattainable one.

The panel debated whether there existed consensus on internationally recognised human rights and whether they were absolute. While one panelist argued that such consensus did not in fact, exist, the others were of the view that there is general consensus as to the range of rights that are internationally recognised. However, there may be dispute regarding the precise scope of these human rights in the context of sport. The panel also debated the allowable limits of restrictions on human rights. A panelist argued that there are certain cases where a proportional restriction of human rights is a viable option; an option that many States use to balance the rights of different groups. The panelist went on to state that even within sport, when human rights are restricted in the form of restricted participation, a very clear and often scientifically proven reason must be given and that all restrictions cannot be treated as arbitrary or as violations of human rights. The opposing argument on this front is that in human rights law, the issue is not whether the restriction on participation is clear or scientifically proven per se, but rather whether restrictions pursue a legitimate objective and are necessary, reasonable, and proportionate to that objective.

Despite the considerable amount of autonomy sports governing bodies are awarded, the existence of the CAS ensures there is a redressal mechanism for athletes. Whether the CAS is an appropriate forum has often been questioned. The panel noted that not only does the CAS maintain a list of arbitrators with expertise in human rights for parties to choose from, the Swiss Federal Tribunal has upheld a number of decisions by the CAS, finding that it had been able to rule on human rights matters and presented an adequate human rights analysis in those cases. It is relevant to note here that the SFT's jurisdiction is limited to human rights that are part of Swiss Public Policy. In addition, decisions of the European Court of Human

Rights involving human rights treaty law have in the past influenced policies of the sport adjudicator. For instance, the decision of the Court in the Mutu/Pechstein case resulted in the CAS announcing that it would make available to parties the right to request public hearings. The panel argued that applicable law before the CAS is primarily the rules and regulations of the relevant sport governing body. Therefore, it can be difficult to enforce human rights before the CAS. It remains to be seen whether the incorporation of human rights commitments into the rules of sports governing bodies (such as FIFA) will give human rights more relevance before the CAS.

The panel concluded with comments on the implementation of human rights policies on ground. Sports governing bodies have started to place members of their team or have third party monitors at their projects, who analyse and check the human rights performance of all parties and processes undertaken. Much progress has been made by many sports governing bodies in integrating human rights protections into their internal policies and into their operations. Achieving complete compliance is not entirely in the hands of these bodies and requires coordinated efforts by all parties involved. That said, there is a long road ahead before internal human rights policies of many federations become sufficiently compliant.

## THE ROLE OF SPONSORS, BROADCASTERS, AND OTHER STAKEHOLDERS IN ADDRESSING HUMAN RIGHTS VIOLATIONS

**David Reade QC**, Barrister at Littleton Chambers; **Nandan Kamath**, Principal Lawyer at LawNK; and **Rowena Samarasinhe**, Partner at Level, and Expert Partner at Portas Consulting.

Historically, the private sector has been under scrutiny for human rights concerns, with sport traditionally being used as a tool to put pressure on corporate organizations to mend their human rights record. With this backdrop, the panel noted that at the heart of any efforts by sponsors and broadcasters in addressing human rights violations in sport, is the alignment of interests, especially micro-level positions in relation to human rights. These rights relate not only to collective rights such as those against torture, but also individual rights involving the freedom of expression, religious belief, etc.

For the longest time, individual sports people have been articulating their own personal and political views which have conflicted with those accepted and held by others, especially those of social majorities. In such instances, sponsors and broadcasters perceive this as a hindrance to their profits when sportspersons wearing kits emblazoned with their brands, are associated with a particular view or thought that might face backlash from their following. The panel observed that the symbiotic relationship between sponsors and broadcasters, which relies heavily on viewership, means that sponsors have significant power in these circumstances. There have been many instances where sponsors have been uncomfortable with being associated with the grounding of views expressed by athletes, and have leaned on sporting bodies, selection committees, and professional sports employers to take action against them.

A decade or two ago, statements made by individuals received limited coverage. The rise of social media has created a dynamic situation wherein any views are promulgated to large audiences - audiences built at the behest of sponsors in order to increase reach. What is key in these relationships is the monetary aspect and the target audience that sponsors seek to reach. Unfavourable reactions to public statements have resulted in individuals not being selected for national sporting teams and existing contracts being terminated. In these cases, remedy may lie in employment law provisions, subject to jurisdiction. Often, however, relationships with Olympic organizations are not regarded as being employment relationships, leaving athletes with little to no access to remedy.



In addressing the role of sponsors and broadcasters in facilitating fairer systems, the alignment of money with interest in relation to human rights will be essential. Change will be driven by factors such as shareholder value and consumer and client perception. Corporate responsibility, for a long time, has focused on aspects such as labour law, child labour, work conditions, etc., with ethical issues receiving some attention. For instance, sport came under fire for associating with companies like Nestle and Coca-Cola for the negative impacts their campaigns and products had on people and the environment, especially in poorer countries.

Arguably, this has significantly progressed to a 360-degree view of human rights, with athletes, sponsors, and broadcasters holding previously untouchable sporting organizations themselves accountable. This is possibly connected to the rise of social media and the amplification of the athlete's voice. The changing role of sponsors and broadcasters also has a role to play here; a role that has evolved from one of intermediaries to that of partners. They are now also active representatives of the public, which has meant that cause-related marketing has seen an increase in recent years, especially since the pandemic, with a growing need to demonstrate the authenticity of partnerships. While sponsorship traditionally meant cost-effective advertising and maximising exposure, it is now more about the synergy of brands and connecting with rights holder values.

More critically, the focus has shifted from the private sector, from sponsors and broadcasters and their supply chains to the federations, the governing bodies, the events and leagues themselves. Sponsors are being more vocal about ethical considerations and putting pressure on organizations that they support to ensure that human rights are respected. MSEs in Beijing, Sochi, Rio, and Qatar saw significant pressure on the federations to ensure fair working conditions in terms of planning, construction, delivery, and legacy. Adidas, Coca-Cola, Hyundai, BP, Visa, and Sony, all demanded FIFA investigate its controversial decision of granting host status for the 2022 World Cup to Qatar amid corruption allegations. While this isn't human rights in its strictest sense, it demonstrates a departure from the position that sports rights holders were essentially supreme and unquestionable.

Furthermore, athletes are no longer willing to put the interests of sport and its stakeholders ahead of their own. The panelist illustrated this by drawing attention to recent developments. In March 2019, 28 members of the US women's national team sued the US soccer federation for gender discrimination in connection to earnings, training and playing conditions, coaching, and travel arrangements. Secret deodorant, a brand that had previously run a number of equal pay campaigns, donated over half a million dollars to address the shortfall. As a result, other sponsors like Nike and Budweiser also came out in support of the women's team. Conversely, Nike recently came under fire for its lack of contractual protection for athletes around maternity conditions. The negative publicity spurred change, and the debate in itself has improved maternity protections for athletes across the board. After Naomi Osaka's withdrawal from the French Open, mental health focused app, Calm pledged financial and emotional support for players fined for electing to shun press conferences on mental health grounds. Evidently, brands, in their own capacities, are in a position to offer support to athletes in furtherance of human rights objectives.

The impact of major stakeholders weighing in on the debate cannot be understated. With the moral clauses in contracts becoming increasingly popular, we can expect to see a stronger use of leverage by key stakeholders in sport. According to a survey by Octagon, sports fans are more likely to support brands that support racial equality. This is also the case with other human rights considerations, creating necessary pressure on broadcasters and sponsors to conduct their own due diligence when providing financing to the sporting ecosystem. Given the importance of commercial funding in sport, these factors will likely have a positive impact on the sporting ecosystem as a whole.

The growing role of sponsors, broadcasters and other stakeholders in sport will also create newer issues such as those of privacy and data protection. Broadcasters integrate personal data into programming to make viewership more engaging. Here, the panel dwelled on questions of meaningful consent and legitimate interests that arise regarding the collection and processing of athletes' personal data. Further, when personal data is commercialized or taken to betting markets, the rights of athletes to profits gained through these avenues also require attention. In many jurisdictions, blackout periods for sponsorships before events such as the Olympics entail the barring of all privately obtained sponsorships. All sponsorships during this time are raised into the Olympic Committee with zero shares to the athlete. There is an urgent need to overhaul structures that exploit the labour of athletes and workers in order to gain profits. This is a process that has already begun, and substantial progress is expected moving forward.

Given the disaggregated, federated, and global nature of sports, due diligence and monitoring of workplace and labour practices become difficult. Whether the heart rate of an athlete during a particularly difficult time in a match should be broadcasted on screen is not only an ethical question, but one involving rights. Where the line must be drawn is a question that must begin in boardrooms, and must permeate into sports bodies and practices within the pyramid of sport.

The panel continued by discussing the ever-expanding meaning of human rights and cultural relativism, observing that this creates a difficulty in identifying common issues, values, and themes across regions. Additionally, it also becomes necessary to address the danger of cultural imperialism when multinational companies exert pressure regarding values that may be deemed Western-centric. In the absence of universal agreement regarding international standards, one might expect to see some jurisdictions pass legislation with extraterritorial effects – holding entities incorporated within their jurisdictions responsible for failure to adhere to nationally accepted standards while operating in other jurisdictions. However, the likelihood of such laws restricting broadcasting and other rights appears to be low, given monetary disincentives and the risk of infringing rights.

Going forward, one can expect concerted efforts towards embracing a larger scope for human rights in sport. However, efforts may not immediately result in a landing on any clear universal legislative involvement or agreement. This should not be perceived as a hurdle, as much can be done by all stakeholders involved nonetheless.

## HUMAN RIGHTS DUE DILIGENCE AND APPLICABLE STANDARDS

**Kenneth Roth**, Executive Director of Human Rights Watch; **Katie Fudakowski**, Partner at Farrer & Co; **Adam Smith-Anthony**, Partner at Omnia Strategy, and **Rory Oake**, Junior Consultant at Ardea International.

The panel on human rights due diligence and applicable standards discussed existing guidelines, standards, and laws that govern various aspects of human rights in sport, their effectiveness, gaps in the law, and ways to strengthen and create global policy.

The UN Guiding Principles on Business and Human Rights (Guiding Principles) have become an authoritative global standard. They elaborate three pillars for addressing corporate impacts on human rights - the State's duty to protect human rights, the business responsibility to respect human rights, and the need for effective access to remedy.

The Guiding Principles differentiate between three scenarios in which businesses could be associated with human rights harms, stating that they should avoid causing or contributing to adverse impacts through their own activities and seek to prevent or mitigate impacts that are directly linked to their operations, products, or services by their business relationships. The latter situation may be the most difficult for a business to address, and appropriate action may range from increasing or using leverage to terminating the relationship. Multinational businesses often have a lot of leverage and can have a strong bargaining position when it comes to the rights of workers, children, and other affected groups.

One of the most important aspects of the Guiding Principles is human rights due diligence (HRDD). Conventional due diligence is nothing new as a means of identifying and overcoming risks or obstacles to the business itself. However, HRDD enables a business to discharge its human rights responsibilities to other stakeholders, with a focus on the most vulnerable, and often with the help of internal and external human rights experts. It should be an ongoing process, commensurate with the severity and likelihood of the human rights risks. This process comprises a cycle of four stages. First, the business should identify and assess any actual or potential adverse human rights impacts with which it may be involved. Second, it should integrate and act upon its findings. Third, the business should track the effectiveness of its responses. Fourth, it should communicate effectively how it has addressed its human rights impacts. Although the Guiding Principles provide a detailed framework on what companies should do, the required action for each business differs based on the situations they find themselves in and the impacts they have.

Although the Guiding Principles are not binding, a lot of businesses – including major sporting bodies – have committed to implementing them into their strategies, policies and processes. One of the main reasons for this has been the reputational and commercial benefits identified by leading businesses. Increasingly, legal obligation and compliance is becoming a major driver of such implementation.



The Guiding Principles call on States to consider a smart mix of measures to foster business respect for human rights. In recent years, many states have adopted legislation imposing new human rights obligations on companies. This has included disclosure requirements, like the UK and Australian Modern Slavery Acts and EU initiatives such as the Non-Financial Reporting Directive. Some States have put in place procedural requirements to conduct human rights due diligence – some without civil liability provisions, such as the Dutch Child Labour Law and the EU Conflict Minerals Due Diligence law, while some have provided for liability, such as France’s 2017 Duty of Vigilance Law, considered the first of its kind. Germany and Norway adopted HRDD in June 2021.

At the European Union level, the Sustainable Corporate Governance initiative was announced in April 2020, with the intention of introducing cross-sectoral mandatory HRDD and an expansion of directors’ duties. If the approach formally recommended by the European Parliament in February 2021 is followed, it will be an ambitious and challenging new law, although it is expected to be pared back during the political process. The European Parliament has also considered and adopted an outline proposal for the “EU Directive on Mandatory Human Rights, Environmental and Good Governance Due Diligence”, which is expected to come into force in 2023. In adopting the proposal, the EU has recognised that voluntary initiatives have not achieved significant progress in preventing human rights harms, underscoring the need for the UNGPS to be written into law.

Thereafter, focus was shifted to one of the most important elements businesses should be focusing on, i.e., the rights of children. There is often a lack of awareness on children’s rights issues, which stems from a disproportionate amount of focus on child labour while turning a blind eye to other child rights issues. For example, in the case of mega-sporting events, one of the largest risks children face are forced evictions, followed by inadequate rehabilitative housing. These games bring a huge influx of people, which then leads to an increased level of sexual and physical violence towards children. Moreover, the abuse of child athletes has been a major issue in recent years. The most ratified human rights treaty is the Convention on the Rights of the Child. Several key articles need to be taken into account whenever the rights of children are being discussed. Article 3 states that *decisions made on behalf of the child should be in their best interest*, and Article 12 lays down that *children have a right to a voice and to be heard*. In relation to due diligence, it means that there must be meaningful consultations with the child or their representative as a potential stakeholder. In April 2012, UNICEF produced a tool for investors to integrate child rights into their business models. They produced 5 due diligence indicators and 5 issue indicators. The due diligence indicators measure how well children’s rights are integrated into their processes. The issue indicators look at how well companies are managing certain child rights risks. Each issue indicator contains several questions about the specific issue. They include questions about child labour rights, decent work for parents and caregivers, child protection and safety, practices related to marketing to children, etc.

The panel then went on to talk about the on-the-ground-ground implementation of due diligence in sport outside of legal structures. Historically, many have not seen sport as the big business that it is. They are seen as events that bring people together with the purest of intentions. However, in reality, we see that they are enormous businesses that have to abide by human rights principles. Many actors use these sports events to cleanse their abusive images. For a significant amount of time now, governments have been sports washing their image. They use these sporting events to try to cleanse their human rights ledgers. They spend a large amount of money on PR while sports governing bodies stand by. For example, in the 2020 UEFA European Football Championship, UEFA censored many players, spectators, and stadiums from showing their support for the LGBTQIA+ community. They claimed not to want to offend anyone with

pride symbols. However, among the biggest sponsors of the UEFA is Gazprom, one of the biggest Russian State-owned energy companies. Gazprom largely funds the Kremlin, which suppresses many LGBTQIA+ rights in Russia. We see this all over the sports world - governments use sports as a political tool and sports governing bodies allow it. We see cases where sports governing bodies are political themselves, but forbid their players from displaying political inclinations. For instance, workers are dying building the FIFA stadiums with very few regulations and protections to ensure their safety. Players protesting human rights violations in Qatar during the qualifying rounds for the FIFA World Cup were threatened with disqualification. The IOC, too, severely restricts the rights of athletes to express political opinions. The sports world was always seen as very exclusive, with other issues kept at an arm's length from sporting events. However, with increased media coverage and public criticism, sports governing bodies are being forced to apply due diligence standards to their operations. It is paramount to acknowledge that the environment that sports takes place in is intrinsically linked to human rights.

## REDRESSAL MECHANISMS FOR VICTIMS

**Nikki Dryden**, Human Rights & Sport Lawyer and Former Olympic Swimmer; **Dr. Payoshni Mitra**, Athletes' Rights Advocate; **Andrea Florence**, Acting Director, Sport & Rights Alliance, and **Molina Asthana**, Vice President, Law Institute of Victoria.

The panel on redressal mechanisms for victims of human rights abuses discussed the various organizational, national and international redressal mechanisms that exist for athletes who have been victims of sexual assault, discrimination, racism, and other human rights violations. The panelists included Nikki Dryden, Human Rights & Sport Lawyer and Former Olympic Swimmer; Dr. Payoshni Mitra, Athletes' Rights Advocate; and Andrea Florence, Acting Director, Sport & Rights Alliance. The panel was moderated by Molina Asthana, Vice President, Law Institute of Victoria.

The third pillar of the UN Guiding Principles for Business and Human Rights is access to remedy. It is key that athletes have access to remedy when their human rights have been violated. According to the UNGPs, these can occur at the State level, but also internally through the business enterprise themselves.

Athletes can be subjected to various different types of abuses, from physical violence to sexual and emotional abuse. Some states have made an effort to create national courts which aid in access to remedy. The panel discussed the case of Australia, which has a national sports tribunal that specialises in three different divisions. First, anti-doping, second, general provisions and third, appeals. Australia also has a national redressal scheme for abuse victims. However sports bodies are not required to join and if they do not have the finances to support a claim, they may not be eligible to participate. Sports bodies often have their own mechanism and are reluctant to use that of the government.

The human rights of athletes are defined by internationally-recognised human rights standards and principles, including the United Nations Guiding Principles on Business and Human Rights. The IOC acts through countries' representatives, who are also able to create rules and regulations that affect athletes. Athletes are forced to sign the agreement, with limited negotiating powers with regard to clauses, and are unable to compete in any of the games if they decline. In these contracts, they give up a lot of their freedoms, including waiving their rights to judicial proceedings and agreeing to resolve all issues through internal mechanisms and arbitration. The European Court of Human Rights has called this forced arbitration, wherein athletes are forced to sign these agreements when they are most vulnerable, i.e., when they have just finished training and no lawyers are present. Some countries do have special tribunals that deal with sports-related issues and FIFA, World Athletics, and FINA all have disciplinary, ethics panels and integrity



units. However, the ultimate jurisdiction is awarded to CAS, and appeals have mainly been brought before the European Court of Human Rights and the Swiss Federal Tribunal.

Athletes, like all individuals, are awarded human rights under international law. However, the complexity of the redressal mechanism and the transnational rights of athletes, make access to remedy difficult. For decades, sport has enjoyed a significant amount of autonomy, with bodies such as the IOC building this autonomy into their mandate. As private actors, sports bodies have allowed human rights abuses to occur. Many activists have called for this autonomy to be reduced and for states to get more involved in protecting and safeguarding the human rights of athletes.

Many organizations are focused on safeguarding the rights of athletes and also making sure that they have the appropriate access to remedy. For example, Sporting Rights Alliance is an organization that focuses on promoting human rights in sports and aims to protect those most affected by the risks of sporting events. They also focus on access to remedy and give voice to those who otherwise would not have one. There is an urgency for redress, and many activists argue that to have significant change at the institutional level, we also need justice at the individual level. Most importantly, it is integral that reporting an abuse no longer carries huge professional risks. Athletes should not have to evaluate a trade-off between continuing their sports career and reporting their abuser.

The panel then went on to discuss specific instances of athletes who have been disruptors against abusive policy in sport, such as Dutee Chand, Caster Semenya, and Annet Negesa, comparing their cases, and examining the changes that have occurred in regulations regarding hyperandrogenism as a result of these cases.

Many countries have Truth and Reconciliation Committees which attempt to learn from past cases of abuse. Although there are usually no criminal charges involved, they document the truth of what has happened to athletes. There are also Centres for Safe Sport, which are independent national-level systems used to address abuse in sports. They serve as a hotline for complaints and conduct investigations, and they often then refer cases to law enforcement for prosecution. FIFA has also recently proposed an independent entity that will deal with human rights abuses.

There have largely been 4 principles set out for effective sports remedy. Firstly, it needs to take a survivor-centered and trauma informed based approach, thereby, being safe and non-exploitative. Secondly, government structures in this regard should be independent and exclusive. Thirdly, development and implementation should take place with meaningful involvement from key stakeholders. Lastly, it should be manageable in scope. It should deal with the problems effectively, but also should not overpromise.

In discussing recent developments regarding the rights of athletes, the panel shed light on the various interpretations of Rule 50.2 of the IOC that have emerged, such as the US Olympic and Paralympic Committee putting in place its own guidelines, allowing US athletes to protest on the podium. The Committee also defined what would fall outside the scope of free speech and free expression, and would therefore not be protected.

The role of social media in forcing change was also addresses, with panelists also bringing into focus the negative impacts of such platforms. Athletes from the Global South face a number of difficulties in accessing redressal mechanisms, relying on global alliances to support their cause. When trying to embed human rights in sports governing bodies, having a public campaign sometimes works, but there are moments where going public can endanger people and cause harm. A collective effort is necessary to ensure accountability, but it must be done while all the time taking into account the likely outcomes for all parties involved.

In concluding the discussion, the panel expressed positive expectations for diversity and inclusion in governance structures, with greater participation from women, people of colour, and other groups. This could inadvertently aid in addressing issues such as corruption and human rights violations.

## THE WAY FORWARD

**Dr. Giovanni Di Cola**, Special Advisor, Office of the Deputy Director General, ILO, **Dr. Madalina Diaconu**, Managing Partner, SPLC Law Office, and **Pratik Bakshi**, Co-Founder, World Law Forum

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The final panel, including Dr. Giovanni Di Cola and Dr. Madalina Diaconu, discussed what the panelists thought would be the best way forward. This panel was moderated by Pratik Bakshi, Co-founder, World Law Forum. The panel pondered upon the next steps that should be undertaken to address human rights issues in sports. A key observation was that discussions regarding the scope of human rights are testing the limits and understanding of what we know about human rights.

As one panelist stated, the devil is in the details. We rarely see businesses adopting a human rights-based approach, with most enterprises focusing on economic prosperity. However, when these many people are involved in the international sports world, a concise and inclusive human rights-based approach is necessary. Many important questions remain to see unanimous agreement from all parties involved, including gender rights, workers' rights, and the protection of athletes as workers.

Sport is no longer an independent sector and requires the participation of many different stakeholders. It is now being treated as a value chain where a number of issues would apply throughout. We can see that many important initiatives have been created to assist in the improvement of human rights within sports. Societal changes have also had a considerable impact on decision-making when it comes to sport. One of the main initiatives is the establishment of the Center for Sports and Human Rights. CSHR sees participation from civil society organizations, governments, sports bodies, international organizations, broadcasters, unions, and non governmental organizations, among others

The panel went on to shift focus to Prof. Ruggie's 2017 report, which placed responsibility on sports entities in organizing events independently from the capacity they have to control the different segments along the value chain. For instance, as was discussed before, sports governing bodies have no control over national laws. They, however, can take into consideration the consequences of selecting certain countries as hosts.

A majority of the changes that have been seen over the years have been promoted by professionals outside the sports world, creating a momentum towards greater implementation. There is now a complex relationship between the sporting world and external participants regarding the extent of implementation that various stakeholders can enable. Both states and sports bodies have the responsibility to respect and protect human rights. However, there are also several practical difficulties involved in this process. Sports bodies often lack the capacity and jurisdiction to address certain issues. In this context, they have attempted to include human rights where possible, such as in the bidding process, international regulations, and through various stakeholders.



Capacity in sport has been a longstanding issue. Documents such as the Agenda 2020 are weak and flawed when observed from the perspective of FIFA, IOC, and other sports governing bodies that find practical difficulties in implementing various aspects of human rights protections. In many instances, these bodies also lack jurisdiction when it comes to enforcement.

There are two main trends when it comes to the attitude of sports federations towards the issue of human rights. The first trend is that of sidestepping the issue of human rights altogether. While some of these governing bodies do not label themselves as human rights defenders, it is not necessarily true that their actions are in violation of human rights principles. The second trend involves bodies that have strived to catch up with societal changes and have declared themselves ready to implement the human rights agenda, including in their bidding processes, internal regulations, and other policies across the board. However, the gap between what is written in the policies, rules, and regulations and what occurs in practice can often be quite significant. This is often due to similar reasons such as lack of capacity and jurisdiction.

As stated before, an immense amount of detail is necessary to bridge the gap. Sports governing bodies need to become more explicit towards the centrality of human rights in their policies and operations. This mainly occurs through rules and regulations and an effective internal justice system that protects everyone against harassment and abuse. In addition, the governing bodies should also allow for an open discussion with the UN and other outside entities who can provide useful insight. Consumer awareness is increasingly becoming more important and civil society has a deep impact on the turnover of a company. The consumer's voice possesses a massive amount of leverage over enterprises, such that with the right amount of pressure from the outside, significant institutional change can occur.

An important takeaway of this panel was that we must admit we don't know everything regarding human rights and the only way to make progress is to listen to the needs of those who are most affected. Methodologies, mechanisms, and governance of sports bodies have a ways to go in the right direction before they can be fully effective.

