



ENSURING ACCESS TO JUSTICE IN GLOBAL SPORT

Preamble

- I. The **World Players Association** (World Players) exists to champion the dignity of the player and the humanity of sport.
- II. World Players has a three-part goal in the pursuit of this vision. First, the human rights of everyone involved in the delivery of sport must be protected, respected and, where needed, upheld. Second, the same must be true for the players. Third, the impact of sport must be positive, including in sporting, economic, environmental and cultural terms.¹
- III. For this goal to be realised for players, it is essential that the internationally recognised human rights of players are substantively recognised by sport, and that players can effectively access justice both through formal legal systems and within the framework of sport.
- IV. The protection and fulfilment of a player's internationally recognised human rights are determined by a variety of actors including governments and Sports Governing Bodies (SGBs), which, at the global level, are multinational enterprises of considerable economic and political scale and influence.
- V. This determination is frequently through Operational-level Grievance Mechanisms (OGMs), that are created and administered by SGBs. These OGMs may either be administered internally at the level of the enterprise as is the case in many professional leagues, or alternatively, through bodies established by global sport such as the Court of Arbitration for Sport (CAS).²

- VI. In so doing, OGMs frequently subject a player's rights to the the governance and regulatory requirements of SGBs.³ This is often through a "closed loop" that sees the insertion of compulsory arbitration into player contracts, which forces a player's consent to as a pre-condition of participation.⁴
- VII. OGMs, however, often lack the jurisdiction and capacity to protect a player's rights. Professor John Ruggie, the architect of the *United Nations Guiding Principles on Business and Human Rights* (UNGPs), noted this in his April 2016 report to the Fédération Internationale de Football Association (FIFA) where it was stated "if an arbitration system is going to deal effectively with human rights-related complaints, it needs certain procedural and substantive protections to be able to deliver on that promise."⁵
- VIII. The cost involved in advancing grievances through OGMs are often prohibitively high for a player and not matched with transparent and effectively resourced legal aid mechanisms.

ACCORDINGLY:

- IX. This policy sets out the key principles that must be embedded to ensure a player's substantive and procedural rights are protected, respected and fulfilled in global sport.

I. JUDICIAL AND NON-JUDICIAL GRIEVANCE MECHANISMS MUST BE AVAILABLE

1. Grievance mechanisms assume various formats:⁶
 - a) state-based judicial mechanisms, including national courts and labour tribunals;
 - b) non-state judicial mechanisms, such as the European Court of Human Rights;
 - c) state-based non-judicial mechanisms, for example, national human rights institutions and national contact points under the *OECD Guidelines for Multinational Enterprises*;⁷ and
 - d) non-state non-judicial mechanisms, including grievance mechanisms built on processes of negotiation, mediation, adjudication and arbitration. OGMs in sport can be an example of such mechanisms.
2. In accordance with principle 30 of the UNGPs, sport must ensure that an applicable grievance mechanism is available to a player as his or her circumstances may require.
3. This is especially true for promoting access to state-based judicial mechanisms (including civil court and tribunals) which must form the foundation of a wider system of remedy.⁸ In this respect, Article 22 of the *FIFA Regulations on the Status and Transfer of Players* is an illustrative example, where it provides that grievance resolution through FIFA's Dispute

Resolution Chamber is “without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes.”⁹

II. GUARANTEE THE EFFECTIVENESS OF GRIEVANCE MECHANISMS

1. SGBs have a duty to ensure that the eight “effective remedy” criteria of principle 31 of the UNGPs is adhered to within its grievance mechanisms:¹⁰
 - a) legitimate: grievance mechanisms must be sufficiently independent in their governance and administration to enable trust from stakeholder groups;
 - b) accessible: grievance mechanisms must be widely known and available to a player. A player must be afforded the opportunity to present their case, and procedural fees must not be a barrier to access. The provision of legal aid must be available in appropriate cases;
 - c) predictable: this includes adherence to case management timetables and issuing decisions within a reasonable time without unnecessary delay;
 - d) equitable: a player should have access to the same evidentiary information and legal precedents that SGBs seek to rely, including the right to representation by competent counsel, and assistance to redress geographic and linguistic barriers;
 - e) transparent: information regarding key governance and financial matters affecting the operation of a grievance mechanism must be available and known;
 - f) rights-compatible: grievance mechanisms must have the necessary human rights expertise and procedures embedded in their operation to enable protection of a player’s substantive rights. This will include training arbitrators on human rights related matters; and
 - g) a source of continuous learning: grievance mechanisms must undergo ongoing assessment and reflection of its activities to ensure a player’s rights are protected.
2. All grievance mechanism must be responsive to the needs of classes of players who are at heightened risk of vulnerability of marginalisation and face additional barriers to access.¹¹ For example this will include children, or players in countries with particular geographic, language or cultural barriers.

III. EMBED STAKEHOLDER ENGAGEMENT IN THE DESIGN AND GOVERNANCE OF OGMs

1. Additional requirements are necessary for OGMs that must be built on the principle of “consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.”¹² This is necessary to maintain their ongoing legitimacy.¹³

2. The outcome of dialogue and stakeholder engagement in many sports has delivered OGMs that include robust processes of:
 - a) conferral and mediation aimed at the expeditious resolution of disputes;
 - b) defined case management timeframes in relation to the conduct of disputes, and the notification of decisions;
 - c) entitlement to legal representation;
 - d) equal say in the appointment of arbitrators who have the capacity to oversee disputes, and their ultimate selection in presiding over the matter in hand;¹⁴
 - e) procedural safeguards in relation to the conduct of proceedings, and exchange of evidentiary information and legal precedents; and
 - f) agreement on the choice and application of governing rules and law
3. These processes are typically exemplified in OGMs that are a product of collective bargaining, which is a means to embed stakeholder engagement and dialogue.

IV. DEVELOP EFFECTIVE LEGAL AID SYSTEMS

1. Legal aid is an essential component of a player’s fair trial and effective remedy rights. In the absence of effective legal aid systems, a player may validly terminate his or her arbitration agreements.¹⁵
2. Despite its importance, the governance and administration of SGB’s legal aid systems lack transparency. Even where a framework exists in theory for the provision of information,¹⁶ practically details are limited regarding the resourcing of legal aid and the selection of counsel.
3. Concerns also arise regarding the accessibility of legal aid for a player and its utility as a means of protecting his or her rights given the complex legal and evidential circumstances of many sport related disputes.
4. To ensure the provision of effective legal aid, SGBs must design and implement systems that meet the criteria in Table 1.¹⁷

Table 1 – Criteria for Effective Legal Aid in Global Sport

Criteria	Explanation
Scope	Legal aid must be available to a player with regard to: <ul style="list-style-type: none"> • The importance of what is at stake • The complexity of the proceedings • Capacity to represent him or herself

Accessibility	Legal aid systems must be widely known and available to a player, and accessible at all stages of proceedings, particularly noting the importance and legal complexity of many investigative procedures.
Choice	A player must have access to an appropriate selection of counsel with regard to subject matter expertise, and language and cultural considerations.
Quality	Legal aid systems must effectively advance a player's best interests. This includes consistency of representation across the legal process; and the provision of adequate time for counsel, who's often acting pro-bono, to prepare and present a defence.
Appointment	Reasons must be granted where requests for legal aid are rejected, and they should be reviewable.
Practical matters and transparent oversight	<p>Legal aid systems must be adequately resourced and funded to ensure their effective operation. Information must be publicly available on budgeting, the range of counsel available, and the particulars of grant requests made and refused.</p> <p>It is essential that the provision of legal aid is made independently, and free from conflict of interest where the grantor may have an interest in the outcome by way of an award of damages, or other relief, against it.</p>

Adopted:

World Players Association

11th Executive Committee meeting

Thursday 6 June and Thursday 19 September 2019

By video and teleconference

Notes:

¹ The three-part goal of World Players embraces all athletes as well as players in professional team sports, and this policy is to be interpreted accordingly.

² UNGPs, commentary to Principle 29, pp. 31 – 32.

³ CAS Code, s 4.

⁴ Duval A. “*The ‘Victory’ of the Court of Arbitration for Sport at the European Court of Human Rights: The End of the Beginning for the CAS,*” *ASSER INTERNATIONAL SPORTS LAW JOURNAL*, 10 Oct. 2018, ‘<http://www.asser.nl/SportsLaw/Blog/post/the-victory-of-the-court-of-arbitration-for-sport-at-the-european-court-of-human-rights-the-end-of-the-beginning-for-the-cas>

⁵ Ruggie, J. “*For the Game. For the World.*”

⁶ *Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights*, SHIFT PROJECT pp 14 – 17, (5 May 2014) https://www.shiftproject.org/media/resources/docs/Shift_remediationUNGPs_2014.pdf

⁷ OECD Guidelines.

⁸ UNGPs, Principle 25, p 27.

⁹ FIFA RSTP, Article 22.

¹⁰ Also see - Council of Europe, *Recommendation on Ensuring the Independence of Hearing Panels (bodies) and Promoting Fair Trial in Anti-Doping Cases*, 20 Feb. 2017

¹¹ UNGPs, commentary to Principle 25, pp. 27 – 28.

¹² UNGPs, Principle 31(h), p. 34.

¹³ UNGPs, Principle 31, p. 35.

¹⁴ *Circular no. 1010*, FIFA (20 Dec. 2005) http://goldengate-law.com/pdf/fifa_circular/fifa_circular_1010.pdf

¹⁵ A Riggozi & F Robert-Tissot, ‘*Consent in Sports Arbitration: its multiple aspects*’, in E Geisinger & E Trbaldo (ed) – de Mestral, *Sports Arbitration: A Coach for Other Players?* (2015), Swiss Arbitration Association, pp 74 – 75.

¹⁶ Court of Arbitration for Sport, *Legal Aid Guidelines*, (2013), Article 18.

¹⁷ These criteria have been adapted from the guidance in European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights: right to a fair trial - civil limb*, 31 Aug. 2018, pp. 28 – 29; and Council of Europe, *Handbook on European Law Relating to Access to Justice*, January 2016, pp. 57 – 73.