



World Players Association

#WorldPlayersUnited

Date: 28 August 2018



ATHLETE ACTIVISM

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. If sport is to be true to the powerful and universal ideals it proclaims, then it must uphold the state's duty to protect internationally recognised human rights along with the corporate responsibility to respect human rights. At the global level, however, sport commonly seeks to govern itself in a special way through its devotion to the principles of neutrality, autonomy and the specificity of sport.
- IV. The people who make sport possible – the athletes – and those affected by the magnitude of modern sporting events, including local communities, workers, children, journalists and fans, have suffered harm. Athletes, as people, naturally want for themselves and their people the same fundamental human rights to which everyone is entitled under international law.
- V. These forces are giving rise to three levels of athlete activism: (1) individual activism; (2) collective activism; and (3) institutional activism. This activism – which involves the exercise of the enabling rights to freedom of expression and association – is grounded in a deep respect for human rights, as well as sport, and the dignity of pursuing sport for a living. Its objective is to reconcile sport and human rights.
- VI. However, all too often, athlete activists pay a heavy price, including the sacrifice of their sporting careers. As the substantial body of work highlighted in this policy demonstrates, athlete activism should not necessitate such sacrifice. Sport has a duty to embrace the opportunity presented by athlete activism and ensure that sport is a genuine force for good.²

THIS POLICY RECOGNISES THAT:

1. *Athletes are powerful agents for social change*

According to former National Football League player and NFL Players Association Executive member Scott Fujita, “sports figures like Jackie Robinson, Billie Jean King and Muhammad Ali have been powerful agents for social change. That’s why the messages athletes send – including the way they treat others and the words they use – can influence many people, especially children.”³ But there is a price to be paid, even though it is those who fight “against discrimination and for equality” who “end up on the right side of history.”⁴

2. *Athlete activism drives sport to be a genuine force for good*

Athlete activism today plays a central role in ensuring that sport is a force for good and upholds, as a matter of practice, the ideals it proclaims, including human rights. While the tendency of sport is to curtail political protest such as that engaged in by Tommie Smith, John Carlos, Peter Norman and Vera Caslavka on the basis that it damaged the Olympic Games, this policy asserts that the very same protest in fact positively contributed to the advancement of the Olympic mission by “promoting a peaceful society concerned with the preservation of human dignity.”⁵

3. *Athlete activism encompasses the breadth of internationally recognised human and labour rights*

Athlete activism today encompasses the breadth of internationally recognised human and labour rights, both within and through sport. Individual athletes demand the right to compete free of discrimination, as well as the right to organise collectively to address abuse, appalling conditions of work, or entrenched gender discrimination and pay inequity. Others work institutionally to change the very system that places the enjoyment of fundamental freedoms in conflict with the practice of sport and to hold sport to account for harm caused to the rights of those it impacts and touches.⁶

4. *The framework for reconciling sport and human rights through athlete activism exists*

The responsibility of Sports Governing Bodies (SGBs) to respect internationally recognised human rights including the right to freedom of expression and association unquestionably extends to those who sit at the heart of sport – the athletes. To this end:

- a) the framework for doing so is set out under the *World Player Rights Policy*,⁷
- b) the most pertinent substantive rights of to be respected are articulated in the *Universal Declaration of Player Rights*,⁸ and

- c) SGBs must, together with leagues, clubs, employers and other actors, take proactive steps to promote a player's long term personal growth as well as sporting excellence and maximise his or her mental health, physical health and social wellbeing in accordance with the *World Player Development Wellbeing, Transition and Retirement Standard*.⁹

THIS POLICY ALSO RECOGNISES THAT, despite short-term controversy, athlete activism has in the long run positively influenced both sport and sport's capacity to shape society for the better, including by creating greater opportunity.¹⁰ Sport must therefore, as the Commonwealth Games Federation (CGF) is demonstrating, "be a non-adversarial force for good in this world, that creates a safe space for courageous conversation and even more importantly a safe space for taking brave action."¹¹

I. BARRIERS TO ATHLETE ACTIVISM

1. 1968 – 2018

The 50 year period that separates athlete activists Colin Kaepernick, Eric Reid, Abby Wambach and Pep Guardiola from Tommie Smith, John Carlos, Peter Norman and Vera Caslavaska appears to have done little to reconcile sport and human rights. The exercise of their right to freedom of opinion and expression and their actions against discrimination resulted in threats, penalties and ostracism. Yet the same 50 year period has seen the explosive professionalisation, globalisation and, even, "giganticism" of sport as a business, political and legal undertaking.¹²

2. Barriers to athlete activism

There are significant substantive, cultural and systemic barriers to athlete activism embedded in the governance of global sport. For example:

- a) the seventh fundamental principle of Olympism prescribes that "[b]elonging to the Olympic Movement requires compliance with the *Olympic Charter* and recognition by the [International Olympic Committee (IOC)];"¹³
- b) the IOC defines athlete rights without embedding the internationally recognised human rights of athletes and by subjecting them to the rules and regulations of SGBs;¹⁴ and
- c) one of the strongest features of the governance of global sport is the broad condemnation of athletes seeking access to judicial remedies, despite that being a fundamental right, including through express regulation and the making of threats to exclude athletes from major international competitions.¹⁵

II. INDIVIDUAL ATHLETE ACTIVISM

1. *Freedom of expression and opinion*

- a) The right to freedom of expression and opinion is referred to in Article 19 of the *Universal Declaration of Human Rights* (UDHR) and given legal effect under Article 19 of the *International Covenant on Civil and Political Rights 1966* (ICCPR).¹⁶ It serves as an enabler of all other rights. As the reactions to the activism of Smith, Carlos, Norman, Caslavka, Kaepernick, Wambach, Reid and Guardiola make clear, in global sport, “the interference with athletes’ freedom of expression is more likely to come from employers or [SGBs]” than State actors.¹⁷
- b) The *Olympic Charter’s* prohibition of political demonstration is a cornerstone of the IOC’s purported commitment to remain at all times “strictly politically neutral.”¹⁸ However, the objective of political neutrality does not justify a blanket prohibition of political demonstration.
- c) Consistent with the more nuanced approach now being taken by the CGF, the *Olympic Charter* could simply follow the ICCPR which provides that the right:
 - ...carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.¹⁹

2. *The right to work and access to an effective remedy*

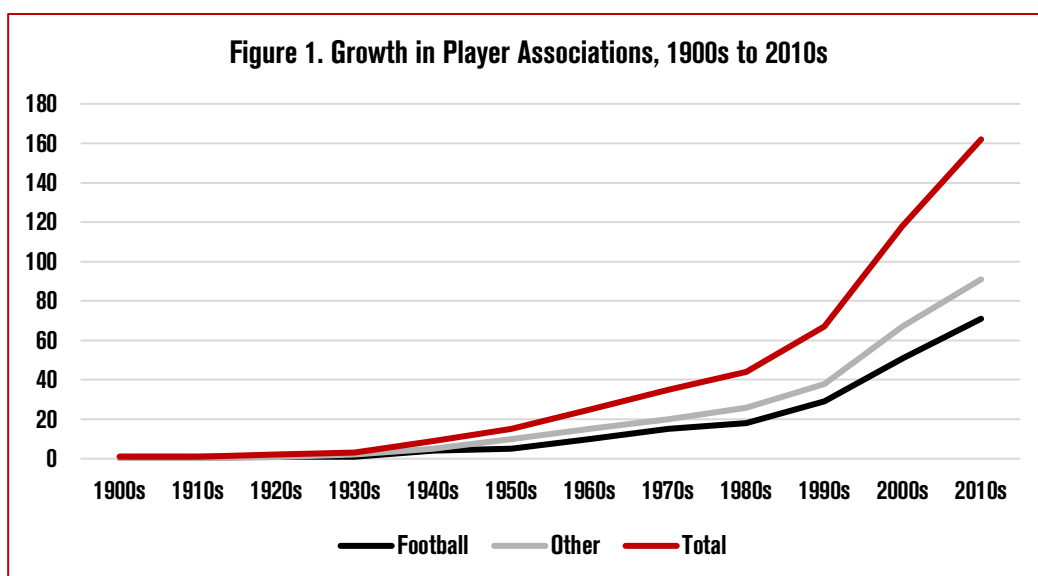
- a) According to an English court in 1964, professional footballers were subject to:
 - ...an employers’ system, set up in an industry where the employers have succeeded in establishing a monolithic front all over the world, and where it is clear that for the purpose of negotiation the employers are vastly more strongly organized than the employees.²⁰
- b) Since that time, players from a variety of sports including Major League Baseball player Curt Flood have been willing to risk their careers and livelihoods so that their fellow professionals can enjoy – as players – the same basic rights and freedoms that all citizens enjoy.²¹ This has been achieved through the development of a body of case law from 1964 to 1995 in jurisdictions such as the United States, Europe and Australia that was hard fought for and saw players legally recognised as workers, free to form and join unions and free to move in the exercise of their trade as professional athletes without the imposition of any unreasonable restraint.²²

- c) Fundamental to the success of such individual athlete activism was the determination shown to win the internationally recognised human rights to “work, to free choice of employment, [and] to just and favourable conditions of work,”²³ as well as to “have an effective remedy” including “the possibility of judicial remedy”.²⁴
- d) The combination of the court rulings and collective activism established that not only were the fundamental rights of players to pursue their profession being unreasonably and, therefore, unlawfully restrained, the same restraints were not in the best interests of sport.

III. COLLECTIVE ATHLETE ACTIVISM

1. Freedom of association and effective recognition of the right to collective bargaining

- a) The *Decent Work Agenda* of the International Labour Organization (ILO) involves “freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.”²⁵ In this way, it expresses the aspirations of modern athletes. The ever increasing demands of professionalism – driven by the combined forces of economic growth and the increased prestige of sport for governments and business as well as SGBs – mean that just pay and conditions of work are now simply essential for both male and female athletes.²⁶
- b) Coupled with increasing concerns over the negative human rights impacts of the activity of sport and SGBs on athletes, world sport is seeing the “normalisation of the right of players to organise”²⁷ and, as shown in **Figure 1**,²⁸ the “dramatic emergence of player associations across the globe.”²⁹



2. Gender equality

- a) According to Billie Jean King on the narrowing of the “great gender gap”, “women’s sports will have arrived *only* when women’s team sports are accepted.”³⁰ Yet, in 2015, the Fédération Internationale de Football Association (FIFA) paid the United States Soccer Federation USD\$2 million for winning the FIFA Women’s World Cup in Canada only a year after paying the German Football Association US\$35 million for winning the 2014 FIFA World Cup (for men).³¹
- b) The period since has witnessed a powerful wave of collective action by women footballers, including players in Ireland, Denmark, The Netherlands, Finland, Chile, Argentina, Brazil, the United States, Norway, and Australia. The actions sought to address a lack of opportunity or decent pay and conditions.³²
- c) A recommendation of the 2018 *IOC Gender Equality Review Project*³³ calls for “NOCs and IFs to establish mechanisms to address inequalities between genders in prize money and other athlete payments,” with “transition plans to close the gender pay gap” to be actioned by December 2020.³⁴
- d) The UDHR provides that, “[e]veryone, without any discrimination, has the right to equal pay for equal work.”³⁵ Article 11 of the 1981 *UN Convention on the Elimination of All Forms of Discrimination Against Women*,³⁶ calls on States Parties to “eliminate discrimination against women in the field of employment” acknowledging the right “to work as an inalienable right of all human beings,”³⁷ and “to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as *equality of treatment in the evaluation of the quality of work*.”³⁸ The principle of “equal remuneration for men and women workers for work of equal value” is also enshrined in Article 2 of ILO C100.³⁹
- e) Equal prize money for women players, therefore, sits clearly as not only an objective of FIFA, but also a commitment and responsibility. This is also the case for all SGBs.

IV. INSTITUTIONAL ATHLETE ACTIVISM

1. *The Sport and Rights Alliance (SRA)*

- a) The SRA “is an unprecedented global coalition of leading Non-Governmental Organisations (NGOs) and trade unions” – including Amnesty International, the Committee to Protect Journalists, Football Supporters Europe, Human Rights Watch, the International Trade Union Confederation and Terre des Hommes, Transparency International Germany and World Players – “working together to embed human rights and anti-corruption across world sport and to promote the rights and well-being of those most affected by human rights risks associated with the delivery of sport...including children, women, activists, minorities, fans, athletes, and other workers.”⁴⁰

- b) Founded in early 2015 to pressure SGBs to ensure their decision-making and operations respect international standards for human rights, labour rights and anti-corruption, in accordance with the UNGPs, the SRA has played “pivotal roles in landmark decisions by [SGBs] to adopt new policies, bidding criteria for mega-events, and [HCC] clauses that embed their responsibilities to respect human rights, labour standards, and anti-corruption measures,” including the IOC, FIFA, the CGF and the Union des associations européennes de football (UEFA).⁴¹

2. **The Centre for Sport and Human Rights (CSHR)**

- a) The need for collective action through an independent institution drove the significant multi-stakeholder commitment that on 26 June 2018 culminated with the announcement of the formal establishment of the CSHR by its chair, Mary Robinson, the former President of Ireland and UN High Commissioner for Human Rights.⁴² The establishment of the CSHR is the work of an “unprecedented alliance [which] includes intergovernmental organisations, governments, sports bodies, athletes, hosts, sponsors, broadcasters, civil society representatives, trade unions, employers and their associations, and national human rights institutions.”⁴³
- b) The vision of the CSHR is “[a] world of sport that fully respects human rights.”⁴⁴ The CSHR’s functions centre on “the promotion of effective approaches to prevention, mitigation, and remedy of adverse human rights impacts.”⁴⁵ It will be governed by a board of independent trustees who will be elected by an advisory council in which six key stakeholders are given equal status: (1) intergovernmental organisations; (2) governments; (3) trade unions (including World Players); (4) NGOs and National Human Rights Institutes; (5) sponsors, broadcasters and commercial partners; and (6) SGBs and organising committees, including the FIFA, UEFA and the CGF.⁴⁶ The IOC has yet to be accepted as a member of the Advisory Council.
- c) The CSHR’s statutory objectives enshrine the *Sporting Chance Principles* committed to by all members of the advisory council.⁴⁷ They demand that “human rights are taken account of at all times,”⁴⁸ “affected groups have a voice in decision-making...including athletes, fans, communities, workers, children, volunteers, journalists, human rights defenders, and potentially marginalised groups,”⁴⁹ “access to remedy is available,”⁵⁰ and “collective action is harnessed to realise human rights.”⁵¹

V. CREATING A SAFE SPACE FOR ATHLETE ACTIVISM

1. Sport provides both the occasions to celebrate humanity and, due to its intensity, scale and reach, the circumstances to impact people negatively. Sport is, by its nature, a shared experience. Yet the institutions which govern it are, all too often, exclusive in their approach. Just as sport is a shared experience, the transnational legal framework which governs it must now also be shared.
2. Consistent with this policy, a commitment to embedding internationally recognised human rights in global sport has now been made by six key stakeholder groups: SGBs; governments; leading intergovernmental agencies such as the United Nations (UN) and the ILO; business and the brands; NGOs; and the trade union movement, including the organised voice of athletes. Much work remains to be done to convert that commitment into genuine reconciliation. Substantive, cultural and institutional change is demanded. Without it, adverse human and athlete rights impacts will not be prevented when they should and those whose rights are violated will continue to be denied a remedy.
3. For this work to be completed, athlete activism will remain essential, individually, collectively and institutionally. Moreover, the three levels of athlete activism will need to engage strategically with each other, not only for the benefit of athletes, but for everyone touched by sport.
4. If global sport is to be a true force for good and celebrate humanity throughout the world, it must first protect, respect and uphold the human rights of those who make it possible. Those that govern sport have a duty to create a safe space for athlete activism.

Adopted:

World Players Association

Brendan Schwab

Executive Director

Tuesday 28 August 2018

Nyon, Switzerland

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 Schwab, B. “*Celebrate Humanity.*”

³ N.Y. TIMES, *Acceptance by Example, on the Field and at Home* (23 Mar. 3), <https://www.nytimes.com/2013/03/24/sports/football/scott-fujita-acceptance-by-example-in-locker-room-and-at-home.html>

⁴ POLITICO MAGAZINE, *The Arc of History Bends a Knee Toward Kaepernick* (27 May 2018) <https://www.politico.com/magazine/story/2018/05/27/nfl-national-anthem-protest-colin-kaepernick-trump-administration-218546>

⁵ *Olympic Charter*, p. 11.

⁶ Schwab, B. “*Celebrate Humanity.*”

⁷ Refer Policy / Statement / Resolution 5.

⁸ Refer Policy / Statement / Resolution 8.

⁹ Refer Policy / Statement / Resolution 7.

¹⁰ CNN, *Tommie Smith and John Carlos Join 2016 Olympic Team at the White House*, (29 Sep 2016) <https://edition.cnn.com/2016/09/29/sport/tommie-smith-john-carlos-us-olympic-team-white-house/index.html>

¹¹ A.B.C., *A Sport’s Body that Embraces Politics? Welcome to the Commonwealth Games Federation* (14 Apr. 2018), <http://www.abc.net.au/news/2018-04-08/a-sports-body-that-embraces-politics3f-welcome-to-the-commonwe/9630966>

¹² Goldblatt, D. (2016). *The Games. A Global History of the Olympics*. W. W. NORTON & COMPANY, INC., p. 437.

¹³ *Olympic Charter*, paragraph 7, p. 12.

¹⁴ IOC ARR.D.

¹⁵ Ruggie, J. *For the Game. For the World*, p. 26.

¹⁶ UDHR, Article 19; ICCPR, Article 19.

¹⁷ Lindholm, J *From Carlos to Kaepernick and Beyond: Athletes’ Right to Freedom of Expression*, INT SPORTS LAW J (2017) 17: 1 – 3, at 2

¹⁸ INSIDE THE GAMES, *Bach INSISTS Political Neutrality the Secret Behind North Korean Involvement at Pyeongchang 2018* (20 Mar. 2018) <https://www.insidethegames.biz/articles/1062914/bach-insists-political-neutrality-the-secret-behind-north-korean-involvement-at-pyeongchang-2018>

¹⁹ ICCPR, Article 19.3.

²⁰ *Eastham v Newcastle United Football Club* [1964] Ch 413, at 438.

²¹ Snyder, B. (2006). *A Well-Paid Slave. Curt Flood’s Fight for Free Agency in Professional Sports*, VIKING, pp. 67 – 68.

²² Schwab, B. “When We Know Better, We Do Better.” See also generally, *Eastham v Newcastle United Football Club* [1964] Ch 413; *Buckley v. Tutty* (1971) 125 CLR 353; *Flood v. Kuhn*, 407 U.S. 258 (1972); *Robertson v. National Basketball Association* 389 F.Supp. 867 (1975); *John Mackey et al., v. National Football League et al.*, 543 F.2d 606 (1976); *Greig and others v. Insole and others: World Series Cricket Pty. Ltd. v. same.* [1978] 1 W.L.R. 302; *McNeil v. National Football League* 790 F.Supp. 871 (1992); *Adamson v. New South Wales Rugby League Limited* [1991] FCA 425 and Case C-415/93, *Union Royale Belge Des Societes de Football Association and Others v. Bosman and Others*, 1995 E.C.R. I-4921.

²³ UDHR, Article 23.1; ICCPR, Article 6.1.

²⁴ ICCPR, Article 3(a) and 3(b).

²⁵ ILO, *Decent Work*. <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

²⁶ *The Development of the Universal Declaration of Player Rights*, WORLD PLAYERS ASSOCIATION (14 Dec. 2017)

https://www.uniglobalunion.org/sites/default/files/imce/udpr_development_14_dec_17_v2.pdf

²⁷ Schwab, B. “When We Know Better,” pp. 30 – 32, and Dabscheck, B. *Forming Teams of their Own: the Dramatic Emergence of Player Associations Across the Globe* (26 Jan. 2017), LAWINSPOORT, <https://www.lawinsport.com/articles/item/forming-teams-of-their-own-the-dramaticemergence-of-player-associations-across-the-globe>

²⁸ Adapted from *Forming Teams of their Own*, *id.* Figure 1 excludes 17 unions where the official establishment date is unknown and associations of independent contractors (e.g. Professional Golfers’ Associations).

²⁹ *Id.*

³⁰ King, B.J. (1982). *The Autobiography of Billie Jean King*. GRANADA PUBLISHING, at 188.

³¹ THE GUARDIAN, *How Women in Tennis Achieved Equal Pay* (11 Sep. 2015) <https://www.theguardian.com/sport/2015/sep/11/how-women-in-tennis-achieved-equal-pay-us-open>

³² Schwab B. “Celebrate Humanity.”

³³ *IOC Gender Equality Review Project*.

³⁴ *Id.*, p. 21.

³⁵ UDHR, Article 23.2; ICESCR, Article 7(a)(i).

³⁶ CEAFDAW.

³⁷ CEAFDAW.

³⁸ CEAFDAW, Article 11(d) (emphasis added).

³⁹ ILO C 100.

⁴⁰ World Players, *Humanity*. <http://www.uniglobalunion.org/sectors/world-players/humanity>

⁴¹ See, generally, Schwab B. “When We Know Better”, pp. 11 – 15.

⁴² CSHR, *Launch of the Centre for Sport and Human Rights* (26 Jun. 2018), <https://www.sporhumanrights.org/en/news/launch-of-the-centre-for-sport-and-human-rights>

⁴³ CSHR, *Diverse Coalition Commits to Establishing Centre for Sport and Human Rights in 2018* (30 Nov. 2017), <https://www.sporhumanrights.org/en/news/diverse-coalition-commits-to-establishing-centre-for-sport-human-rights-in->

⁴⁴ CSHR, *Overview - Mission* <https://www.sporhumanrights.org/en/about/overview>

⁴⁵ *Id.*

⁴⁶ CSHR, *Who We Are – Advisory Council* <https://www.sporhumanrights.org/en/about/who-we-are>

⁴⁷ CSHR, *Sporting Chance Principles* <https://www.sporhumanrights.org/en/about/principles>

⁴⁸ *Id.*, at paragraph 4.

⁴⁹ *Id.*, at paragraph 5.

⁵⁰ *Id.*, at paragraph 6.

⁵¹ *Id.*, at paragraph 9.