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# Decent work in the world of sport

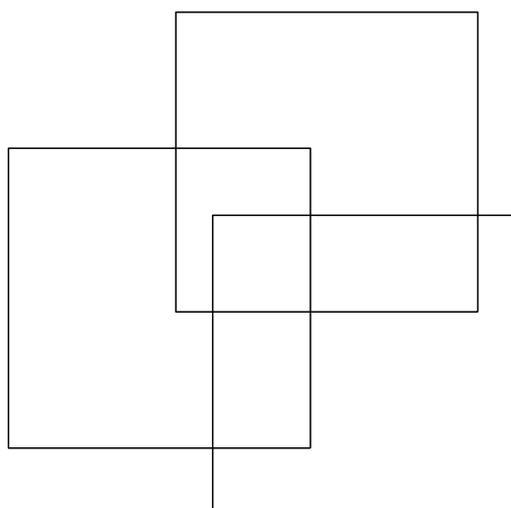


Sectoral  
Policies  
Department



## **Decent work in the world of sport**

**Issues paper for discussion at the Global Dialogue Forum  
on Decent Work in the World of Sport**  
(Geneva, 20–22 January 2020)



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INTERNATIONAL LABOUR OFFICE, GENEVA

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## Contents

	<i>Page</i>
Acknowledgements .....	vii
I. Introduction .....	1
II. Scope .....	1
III. The specificity and autonomy of sport.....	1
IV. Fundamental principles and rights at work .....	3
Freedom of association and collective bargaining .....	3
Child labour.....	5
Forced labour.....	6
Non-discrimination and equal opportunity and treatment.....	7
V. Terms and conditions of employment.....	12
Employment relationships.....	12
Salaries and other benefits.....	14
Working time.....	16
Occupational safety and health.....	17
VI. Social protection .....	20
VII. Skills development.....	21
Dual careers.....	22
Post-sport employment.....	23
VIII. International standards and athletes .....	24

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## I. Introduction

1. Sport is considered to be an important form of recreation and a means to promote peace, human health, development and decent work,<sup>1</sup> and is practiced by millions of amateur and professional athletes worldwide. Since the mid-twentieth century, professional sports have become a major industry, providing employment to millions connected to the sector. One recent market study estimates the value of the global sports market at US\$614 billion, excluding sports equipment manufacture.<sup>2</sup> In recent years, the human rights and labour dimensions surrounding sporting events, in particular mega-sporting events, have attracted considerable attention. This work has focused mainly on issues regarding the construction of sports venues, the manufacture of sports equipment and the impact of sports events on local communities.<sup>3</sup> At the same time, attention has also been drawn to the human and labour rights of the athletes who compete in professional sporting events. This paper deals with the specific issue of employment and the working conditions of athletes engaged in sport at the professional level.

## II. Scope

2. For the purposes of this paper, a professional athlete is defined as an athlete who gains income through competitive sport and whose activities are controlled by a sports organization, such as a club or federation. This definition includes (a) athletes whose only professional activity is sport, either as employees or as contract players of sports clubs; and (b) athletes who may have other jobs but who spend significant time training and competing in sports competitions from which they derive income, such as athletes in some Olympic disciplines. This paper does not consider the specific cases of student or military athletes, who compete within the frameworks of their institutions; nor does it cover referees, coaches, volunteers and other support personnel. The paper also does not cover amateur athletes who compete on a purely recreational level.
3. Included in the scope of this paper are all types of sports, including team and individual sports, Olympic and traditional sports (e.g. Gaelic sports) and combat sports, as well as special categories of sport such as the Paralympics. Emerging sport types, such as e-sports and extreme sports, are not covered, although many of the trends identified in this paper pertain to these sports as well.

## III. The specificity and autonomy of sport

4. Sport has long had a specificity which has afforded it legal space within the bounds of civil and labour law. In Europe in the nineteenth century, democratic movements sprung in part from gymnastic societies that promoted freedom of association and expression. Indeed, in sports circles, the term “freedom of association” is often understood as the right of sports associations to organize sporting activities independently of government interference. The

<sup>1</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO): [International Charter of Physical Education, Physical Activity and Sport](#), 2015.

<sup>2</sup> *Business Wire*: “[Sports: \\$614 billion global market opportunities & strategies to 2022](#)”, 14 May 2019.

<sup>3</sup> G. Ryder: “[A world of sport that fully respects human rights](#)”, statement of the ILO Director-General at the inaugural meeting of the Advisory Council of the Centre for Sport and Human Rights, 26 June 2018.

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specificity of sport is evident in laws governing athletes. Many athlete-related issues, ranging from contracts to the rules of sports competitions, are governed by the rules of sporting federations that are often perceived as operating separately from labour law and other national laws under the concept of the so-called “sporting exception”. Increasingly, however, athletes are challenging this exception and seeking to address sports matters through labour, administrative or civil law, while courts are increasingly having to distinguish between matters of a purely sporting nature and those which relate to other areas of law. In this regard, a number of European Court rulings (e.g. Walgrave, Donà, Bosman, Meca-Medina) have applied European law over sporting rules, under the principle that sport is also an economic activity in which athletes are economic actors. Sports law is an emerging field of law that has tried to position itself as an autonomous field of law, drawing on labour law and civil law while also recognizing the specificity of sport.<sup>4</sup>

5. The application of law in sports also operates through specific institutions. Most national sports governing bodies contain their own rule-making and dispute-settlement structures for internal regulation and enforcement. Sports cases that fall outside those governing bodies can be channelled through the national court systems.<sup>5</sup> Some countries, such as Germany and New Zealand, have a dedicated national sports tribunal that independently determines specific disputes within the sports sector.<sup>6</sup> Some sport-specific international tribunals have been established, such as the International Federation of Association Football (FIFA) Dispute Resolution Chamber as well as the Basketball Arbitral Tribunal.
6. Regionally, the European Court of Justice and Court of Human Rights have heard sports law cases. At the international level, the Court of Arbitration for Sports (CAS), based in Lausanne, provides a technical and specialized environment to hear and decide upon sports disputes. The Swiss Federal Tribunal provides “quality assurance” for CAS procedures and oversees any challenges made to CAS awards under Swiss law.<sup>7</sup> A lack of access to dispute settlement and remedy has been considered an important obstacle to protecting the rights of athletes. A number of sports contracts contain “forced arbitration” clauses that prevent access to a full [choice of legal remedies](#) and channel grievances to specific arbitral bodies. The CAS system, in turn, has been criticized for the high cost of its proceedings and its dependence on some major sports federations for funding.<sup>8</sup>

<sup>4</sup> F. Buy et al.: *Droit du sport*, fifth edition (LGDJ, 2018).

<sup>5</sup> S. Boyes: “Sports law: Its history and growth and the development of key sources”, in *Legal Information Management*, Vol. 12 (2012), No. 2.

<sup>6</sup> Sports Tribunal of New Zealand: “[About the Sports Tribunal](#)”, on Sports Tribunal of New Zealand website.

<sup>7</sup> L. Reilly: “[An introduction to the Court of Arbitration for Sport \(CAS\) & the role of national courts in international sports disputes: An symposium](#)” in *Journal of Dispute Resolution*, Issue 1 (2012).

<sup>8</sup> A. Rigozzi and F. Robert-Tissot, “[‘Consent’ in sports arbitration: Its multiple aspects](#)”, in E. Geisinger and E. Trabeldo-de Mestral (eds): *Sports Arbitration: A Coach for Other Players?* (Huntington, 2015).

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## IV. Fundamental principles and rights at work

### Freedom of association and collective bargaining

7. With the professionalization of sport, there has been a surge in the number of athlete unions and player associations globally.<sup>9</sup> In some areas of sport, athletes' unionization exists and thrives, such as in men's soccer, cricket and rugby, as well as in many domestic sports in the United States. For example, the Major League Baseball Players Association (MLBPA) has a history spanning more than five decades. Through the MLBPA, baseball players negotiated their first collective bargaining agreement in 1968 and continued to achieve basic employment rights, such as pensions and base salaries as well as the right to free agency.<sup>10</sup> They have also utilized collective action tactics such as work stoppages to achieve more favourable working conditions. Numerous women's soccer teams, including in Denmark, Ireland and Nigeria, have threatened or gone on strike to protest discriminatory working conditions,<sup>11</sup> while domestic sports leagues in the United States have a long history of work stoppages and lockouts.<sup>12</sup>
8. Athlete commissions are also popular forums for addressing athlete interests. Such bodies, however, have been criticized for not being an adequate substitute for independent athlete unions since their structure, procedures and influence in sport are often prescribed by sport federation rules.<sup>13</sup> In some countries in which there are general obstacles to freedom of association and collective bargaining, athlete unions face the same hurdles.
9. The status of the employment relationship can also hinder unionization and the effective recognition of the right to collective bargaining. In the United States, athletes who practice mixed martial arts (MMA), a rapidly growing combat sport, are unable to form a union because they are currently recognized as independent contractors instead of employees of the Ultimate Fighting Championship (UFC), the sport's premier organizing body.<sup>14</sup> By contrast, the British Columbia Labour Relations Board held in 2019 that Canadian rugby sevens players were employees and were entitled to collective bargaining because their athlete agreement made them subject to the direction and control of Rugby Canada, notwithstanding their amateur status. The case is under appeal.
10. Based on the broad scope of application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the ILO supervisory bodies and especially the ILO

<sup>9</sup> B. Schwab: "[Celebrate humanity: Reconciling sport and human rights through athlete activism](#)", in *Journal of Legal Aspects of Sport* (2018).

<sup>10</sup> Major League Baseball Players' Association: "[FAQ](#)", on Major League Baseball Players' Association website.

<sup>11</sup> European Parliament Think Tank: "[Gender equality in sport: Getting closer every day](#)", briefing, Mar. 2019.

<sup>12</sup> CNN: "[Pro sports lockouts and strikes fast facts](#)", on CNN Library website, 21 May 2019.

<sup>13</sup> L. Thibault et al: "Democratization and governance in international sport: Addressing issues with athlete involvement in organizational policy", in *International Journal of Sport Policy and Politics*, Vol. 2 (2010), Issue 3.

<sup>14</sup> G. Birren and T. Schmitt: "[Mixed martial artists: Challenges to unionization](#)", *Marquette Sports Law Review*, Vol. 28, Issue 1.

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Committee on Freedom of Association (CFA) have considered that professional athletes, regardless of their contractual arrangement or employment status, are covered by the guarantees of these two instruments.<sup>15</sup>

11. Social dialogue across sports disciplines varies by sport and region. A lack of professional status, of formalized contracts and of player unions can hinder social dialogue processes. For example, there is no international body for basketball players and fewer than ten basketball associations and/or unions are member of the World Player Association.<sup>16</sup>
12. In contrast, soccer is the most professionalized and organized team sports internationally, with a total of 65 national players associations being formally recognized as Fédération Internationale des Footballleurs Professionnels (FIFPro) members. Yet the geographic spread of those associations is unbalanced: 31 are in Europe, 15 in the Americas, 12 in Africa and seven in Asia/Oceania.<sup>17</sup> In some countries, the unionization rates of soccer players can reach higher than unionization rates in other working sectors, as high as 90 to 100 per cent.<sup>18</sup>
13. In many countries, there is no formal or structured collective process for negotiation between players and their clubs. In Angola and Costa Rica, soccer players must negotiate with their management on an individual basis. In Nigeria, there is no overall collective mechanism for negotiating the working conditions of soccer players despite the existence of a collective bargaining agreement in the Premier League. Some countries, such as the Islamic Republic of Iran, have neither unions nor associations for soccer players, meaning that all stakeholders – players, managers and clubs – act independently of one another.<sup>19</sup> The Federation of International Cricketers’ Associations has criticized the lack of representative bodies for cricket players in both India and Pakistan, as well as the lack of recognition of established associations in Bangladesh and Sri Lanka.<sup>20</sup>
14. In the United States, collective bargaining agreements are commonplace in the major sports leagues, which have a long history of unionization. In addition to working conditions, these collective agreements also cover player transfers, freedom of movement and, in baseball, paternity leave. The collective bargaining process can be tense, creating a large number of stoppages in the form of employee strikes and employer lockouts.<sup>21</sup>
15. At the level of the European Union (EU) and within the framework of European sectoral social dialogue, a social dialogue committee for the sport of soccer was created in 2008 and was chaired by the Union of European Football Associations (UEFA), with FIFPro representing the players and the European Club Association and the European Leagues representing the employers. The major achievement of this committee was an autonomous

<sup>15</sup> ILO Committee on Freedom of Association: Report No. 336, March 2005, [Case No. 2347](#) (Mexico); Report No. 344, March 2007, [Case No. 2481](#) (Colombia).

<sup>16</sup> M. Banus: *Background study on challenges and opportunities for decent work in sport* (unpublished), 2017.

<sup>17</sup> FIFPro: “[Members](#)”, FIFPro website.

<sup>18</sup> Banus: op. cit., 2017.

<sup>19</sup> *ibid.*

<sup>20</sup> Federation of International Cricketers Associations (FICA): *FICA 2016 annual review*, 2017.

<sup>21</sup> D. Pannett: “[Collective bargaining in sport: Challenges and benefits](#)”, in *UCL Journal of Law and Jurisprudence*, Vol. 4, No. 1 (2015).

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agreement in 2012 on the minimum requirements for standard player contracts. In addition to basic player and club obligations, the agreement includes reference to anti-doping and anti-racism.<sup>22</sup> It is, however, non-binding and does not involve member States. Instead, the implementation is left to the signatories and affiliates of the agreement, so that methods of implementation may differ depending on the member State.<sup>23</sup>

16. Some sports have collective bargaining frameworks at the global level. In November 2017, FIFPro and FIFA entered into a cooperation agreement that covers such issues as dispute resolution, abusive practices, player transfers and the respect of internationally recognized human rights. Also in November 2017, World Rugby and the International Rugby Players Association entered into a new memorandum of understanding that establishes cooperation on such issues as health and competition time.

## Child labour

17. Participation in sport has been noted for its many positive effects for children, including increased engagement in education and skills development.<sup>24</sup> However, in the world of professional sport, children can be exposed to risks of child labour. Unregulated sports academies have come under scrutiny for subjecting children to intensive training schedules with hopes of sending them to professional sports clubs for profit. In one case, several minors from western African countries were sent to an unregistered soccer academy in the Lao People's Democratic Republic, with some minors aged 14 or 15 even playing in league games.<sup>25</sup> Some child athletes were forced into contracts with this academy for up to six years but were never paid or provided with adequate accommodation.<sup>26</sup> Soccer academies have also been reported as a medium to circumvent the club transfer rules imposed by FIFA. In one reported case, a sports academy bought a professional club in Europe to provide an "elite" experience to its young male players.<sup>27</sup> Such practices can lead to abuse, with players rarely having a say about their career choices and destination once their time at the academy ends.<sup>28</sup>

<sup>22</sup> B. Keller: "The regulation of professional football at the European Union level: Towards supranational employment relations in the football industry?", in M. Barry et al. (eds), *Research Handbook of Employment Relations in Sport* (Edward Elgar Publishing, 2016).

<sup>23</sup> A. Cattaneo: "Social Dialogue and the regulatory power of governing bodies", in *The International Sports Law Journal*, Vol. 17, Issues 3-4.

<sup>24</sup> Barça Foundation and UNICEF: *Getting into the game: Understanding the evidence for child-focused sport for development: Report Summary*, 2019.

<sup>25</sup> British Broadcasting Corporation (BBC): "Underage African footballers 'trafficked' to Laos", on BBC Africa Sport website, 21 July 2015.

<sup>26</sup> *ibid.*

<sup>27</sup> United Nations: *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, Human Rights Council, Fortieth Session, Geneva, 25 Feb.–22 Mar. 2019.

<sup>28</sup> *ibid.*

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18. Some reports have found that boys in United States Major League Baseball (MLB) academies in Central America prioritize sport over education in order to enter such academies, although only 3 to 5 per cent of players graduate to the professional leagues.<sup>29</sup> In response, some academies sponsored by MLB teams have increased their efforts to ensure that their players receive an adequate and formal education in order to ensure a smooth transition to work or further education if they do not sign with a professional club.<sup>30</sup> An additional concern is informality, with research indicating that about 25 per cent of professional soccer players under the age of 18 do not have formal, written contracts.<sup>31</sup>
19. While rare, the trafficking of child athletes has been documented. ILO action brought about the ban of the use of children as jockeys in camel racing, which was not only dangerous but often involved the trafficking and sexual exploitation of young boys.<sup>32</sup> FIFA has banned international transfers for soccer players under the age of 18, but critics have pointed out that exceptions are often utilized to circumvent these rules. Several soccer clubs have been sanctioned for ignoring the ban altogether.<sup>33</sup> It is believed that the majority of those trafficked in the world of soccer are minors.<sup>34</sup>
20. FIFA, the International Olympic Committee (IOC), the Commonwealth Games Federation and a number of sporting federations have specific guidelines regarding children in professional sports. Similarly, the World Players Association has issued the Declaration on Safeguarding the Rights of Child Athletes, taking a “children first and athletes second” approach.<sup>35</sup> The United Nations (UN) Special Rapporteur on the sale and sexual exploitation of children, has noted, however, that the wide range of such codes of conduct and ethics do not follow identical approaches nor standardized terminology.<sup>36</sup>

## Forced labour

21. The international transfer of athletes and “transfers of allegiance”, whereby athletes switch or adopt a new nationality to compete for another team, have raised questions of forced labour. A joint investigation by several international media companies uncovered that several athletes who switched their national allegiance ahead of major sporting events were

<sup>29</sup> A. Wasch: “Children left behind: The effect of Major League Baseball on education in the Dominican Republic”, in *University of Texas Review of Entertainment & Sports Law*, Vol. 11, Issue 1.

<sup>30</sup> *ibid.*

<sup>31</sup> United Nations: *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, op. cit., 2019.

<sup>32</sup> UNICEF Innocenti Research Centre: *Protecting Children from Violence in Sport: A review with a focus on industrialized countries*, 2010.

<sup>33</sup> United Nations: *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, op. cit., 2019.

<sup>34</sup> J. Ruggie: “*For the game. For the world.*” *FIFA & human rights*, Corporate Responsibility Initiative Report No. 68 (Harvard Kennedy School, 2016).

<sup>35</sup> World Players Association/UNI Global Union: *Declaration on Safeguarding the Rights of Child Athletes*, 2017.

<sup>36</sup> United Nations: *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, op. cit., 2019.

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routinely exploited, had their mobility restricted and in some cases were forcibly drugged.<sup>37</sup> Lily Abdullayeva, an Ethiopian athlete who transferred allegiance to run for Azerbaijan in the mid-2000s, claimed that her prize money had been taken from her and that she had been tricked into taking performance-enhancing drugs. Similarly, Kenyan long-distance runner Leonard Mucheru, who transferred allegiance to Bahrain around the same period, stated that his passport had been taken and his mobility limited.<sup>38</sup> The confiscation of passports and seizing of earnings by rogue agents have also been reported in the world of soccer.<sup>39</sup>

22. In response to these claims, in 2017 the International Association of Athletics Federations (IAAF) suspended transfers of allegiance and in 2018 reintroduced the practice subject to new regulations, including a review panel to ensure the credibility of the claim, which provide that transferring athletes must receive all eligible rights of citizens in their new country and that no athlete may transfer under the age of 20.<sup>40</sup>
23. Questions of freedom of movement have also been raised in Europe. In the well-known Bosman ruling, the European Court of Justice ruled that fees requested from soccer clubs that wish to hire a player after their contract has ended at another club are a violation of EU principles on freedom of movement and competition law.<sup>41</sup>

## **Non-discrimination and equal opportunity and treatment**

### ***Gender-based discrimination***

24. On average, girls and women play sports less than boys and men worldwide.<sup>42</sup> In some countries, women may be restricted from accessing sport, while a general lack of safe sporting facilities worldwide may greatly hinder women's opportunities to pursue sports as both a career and recreation.<sup>43</sup> Throughout the higher tiers of the IOC and sports leadership globally, as well as in the field of coaching, there is a lack of female representation, which has knock-on effects on policymaking in sport.<sup>44 45</sup>

<sup>37</sup> *The Guardian*: "[Sebastian Coe alarmed by 'human trafficking' revelations in athletics](#)", 4 Aug. 2017.

<sup>38</sup> *The Guardian*: "['We are treated like sporting slaves': Ethiopian lifts lid on trade in athletes](#)", 3 Aug. 2017.

<sup>39</sup> *The Telegraph*: "[The dark side of football transfers](#)", 31 Dec. 2014.

<sup>40</sup> IAAF: "[IAAF Council makes key decisions in Buenos Aires](#)", press release, 27 July 2018.

<sup>41</sup> R. LeRoux: "How divine is my contract: Reflecting on the enforceability of player/athlete contracts in sport", in *South African Mercantile Law Journal*, Vol. 15 (2003), No. 1.

<sup>42</sup> K. Fasting et al.: *From Helsinki to Gaborone: IWG Progress Report: 2013-2018*.

<sup>43</sup> European Institute for Gender Equality: *Gender in sport*, 2017.

<sup>44</sup> *ibid.*

<sup>45</sup> J. Adireaanse: "[Gender Diversity in the Governance of Sport Associations: The Sydney Scoreboard Global Index of Participation](#)" in *Journal of Business Ethics* (2016, Vol. 137) pp. 149–160.

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25. In terms of participation, however, female athletes have achieved near parity with male Olympians: they made up 45 per cent of competitors at the 2016 Summer Olympics and 41 per cent of competitors at the 2018 Winter Olympics.<sup>46 47</sup> In the Paralympic Games, women's participation is not as close to parity with men's but is increasing at a steady rate and reached 38.7 per cent in the 2016 Summer Games.<sup>48</sup> Outside the Olympics, women's participation in professional sport varies widely and is often much lower than men's. For example, in cricket, the women's game at the elite level is extremely small, with only 120 fully professional players compared with 3,162 male players.<sup>49 50</sup>
26. The gender pay gap remains pervasive among professional athletes, with vast differences in salaries, endorsements and other revenue streams widening the gulf between male and female athletes. In soccer, the combined salaries paid to women in top-division competitions in seven countries<sup>51</sup> amounted to just under US\$40.7 million, roughly equal to the wages of a single top male soccer player.<sup>52</sup> In the 2018 *Forbes* list of the highest paid athletes, the top 100 spots belonged exclusively to male athletes.<sup>53</sup> Revenues created by men's and women's events can differ enormously as well, although this is also linked to promotion and development policies that often favour male sports. Nevertheless, efforts have been made to tackle this issue, with 35 out of the 44 sports that offer prize money now offering awards of equal value for male and female winners.<sup>54</sup> Such conditions may lead more female athletes to rely on part-time jobs or dual careers to support their athletic careers, and may also have greater long-term effects on the socio-economic prospects of female athletes after sports than on those of male athletes.
27. In addition to differences in pay, female athletes have reported receiving different treatment from their male counterparts, including a lack of access to some facilities and benefits-in-kind. Some players from Colombia's national women's soccer team have criticized the inferior treatment of their team compared with that of the men's team.<sup>55</sup> Before the 2015 Women's World Cup, 84 players representing 13 countries brought legal action claiming sexism against the Canadian Soccer Authority and FIFA in opposition to the use of artificial pitches. Players were concerned that artificial pitches heightened the risk of injury.<sup>56</sup>

<sup>46</sup> IOC: "[Factsheet: Women in the Olympic movement](#)", Jan. 2016.

<sup>47</sup> IOC: "[Statistics: Women at the Olympic Games](#)", on IOC website (undated).

<sup>48</sup> Women's Sport Foundation: *Women in the Olympic and Paralympic Games: An analysis of participation, leadership and media coverage*, 2017.

<sup>49</sup> FICA: *FICA women's global employment market report & survey 2018*.

<sup>50</sup> FICA: *FICA men's professional cricket global employment report 2017*.

<sup>51</sup> Australia, France, Germany, Mexico, Sweden, United Kingdom, United States.

<sup>52</sup> European Parliament Think Tank: *op. cit.*, 2019.

<sup>53</sup> *Forbes*: "[The world's highest-paid athletes 2018](#)".

<sup>54</sup> BBC: "[Prize money in sport: BBC Sport study](#)", on BBC Sport website, 19 June 2017.

<sup>55</sup> FIFPro: "[Women's football controversy in Colombia](#)", on FIFPro website, 25 Feb. 2019.

<sup>56</sup> BBC: "[Women's World Cup legal action over artificial pitches ended](#)", on BBC Sport website, 21 Jan. 2015.

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Similarly, the United States women's soccer team recently mounted a gender discrimination lawsuit against the United States Soccer Federation.<sup>57</sup>

28. In general, the sexual and reproductive health of athletes affects men and women differently, but the effects are not always well researched. Some female athletes have been outspoken that menstruation impacts their performance and can increase the likelihood of injury.<sup>58</sup> Like other professions, female athletes can encounter challenges in balancing their sporting career with maternity. Such athletes often face pressure to maintain their fitness levels during and after pregnancy, in addition to their health and well-being. In response, the IOC has committed to researching pregnancy among athletes.<sup>59</sup> Professional female athletes tend to drop in rankings during and after pregnancy and may as a result lose competitive advantages, such as seeding in tennis, which enables players to be given a more favourable ranking for the tournament's draw. In response to criticism, the Women's Tennis Association (WTA) has introduced a new special seeding rule for athletes returning from maternity leave in their 2019 Rulebook.<sup>60</sup> Similar changes to the maternity leave policy of the Ladies Professional Golf Association (LPGA) have also taken such concerns into account.<sup>61</sup> As an additional financial burden, female athletes have reported being dropped or suspended by their sponsors while pregnant, which places additional time pressure on athletes to return to work after giving birth.<sup>62</sup> Paternity leave is still a rarity in the sports world, although there have been some public instances of sports stars taking such leave.<sup>63</sup>
29. The participation of athletes who are intersex or transgender in sex-segregated sports is an evolving debate.<sup>64</sup> Sex verification tests are particularly contentious and considered by some as unnecessary, discriminatory and invasive.<sup>65</sup> In recent years, the IAAF has moved to introduce restrictions on women with hyperandrogenism, which causes high levels of hormones such as testosterone. The IAAF has maintained that this condition gives an unfair advantage to athletes in some female-only sports and that such athletes should only be eligible to participate against women if they take treatment drugs to lower their hormonal

<sup>57</sup> European Parliament Think Tank: *op. cit.*, 2019.

<sup>58</sup> BBC: "[Periods – how do they affect athletes & why are they monitored?](#)" on BBC Sport website, 21 May 2019.

<sup>59</sup> IOC: "[IOC drives discussions on pregnancy and elite athletes](#)", on IOC website, 2 Oct. 2015.

<sup>60</sup> WTA: "[The 2019 WTA Rulebook will introduce a new special seeding rule for players returning from maternity leave, a modernized attire rule, and the rollout of a 25-second shot clock. WTA Insider recaps the notable rulebook changes](#)", on WTA website, 17 Dec. 2018.

<sup>61</sup> *Golf Channel*: "[LPGA's new maternity policy to help players balance motherhood and work](#)", on Golf Channel website, 17 Jan. 2019.

<sup>62</sup> *Sports Illustrated*: "[Athletes speak out against Nike's lack of maternity leave protection, other companies make change](#)", 24 May 2019.

<sup>63</sup> BBC: "[Athlete blasted for paternity leave](#)", on BBC News website, 4 Apr. 2014.

<sup>64</sup> United Nations: *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Human Rights Council, Thirty-second Session, 13 June–1 July 2016.

<sup>65</sup> Human Rights Watch: *Revoke Discriminatory Athletics Gender Regulations*, on Human Rights Watch website, 26 July 2018.

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levels.<sup>66</sup> However, the IAAF has come under criticism for basing that position on insufficient clinical evidence and flawed data,<sup>67</sup> while others, including the United Nations Human Rights Council (UNHRC), have found that that pressuring athletes to undergo unnecessary medical treatment is a violation of human rights.<sup>68</sup> The IAAF position has also been challenged in the CAS by athletes.<sup>69</sup> To date the CAS has sided in favour of the IAAF, ruling that while the regulations are “discriminatory”, “such discrimination is a necessary, reasonable and proportionate means of achieving the IAAF’s aim of preserving the integrity of female athletics in the Restricted Events.”<sup>70</sup>

30. In this regard, the IOC has introduced new rules for transgender athletes in 2015, which grant athletes who transition from female-to-male the eligibility to compete in the male category without restriction. For athletes who transition from male to female, however, the eligibility to compete in the female category is granted only so long as they declare that their gender identity is female and undergo treatment to suppress their levels of hormones such as testosterone.<sup>71</sup> The IOC is currently developing new guidelines to help international federations to shape sport-specific policies and regulations in relation to fairness, safety, inclusivity and non-discrimination.

### **Gender-based violence**

31. Athletes in professional sports can be vulnerable to power imbalances, such as those between coaches and athletes, as well as gender-based violence, sexual harassment and sexual assault against children and adults.<sup>72</sup> Girls and women have reported higher rates of sexual abuse,<sup>73</sup> but boys may be less likely to report such abuse.<sup>74</sup> A recent European Commission report estimates that between 2 to 8 per cent of children and young adults who participate in sports have been sexually assaulted, with young athletes being particularly vulnerable.<sup>75</sup> One of the most significant cases to have shocked the world of sport in recent years involved one of

<sup>66</sup> IAAF: [IAAF introduces new eligibility regulations for female classification](#), on IAAF website, 26 Apr. 2018.

<sup>67</sup> R. Pielke et al.: “[Scientific integrity and the IAAF testosterone regulations](#)”, *The International Sports Law Journal*, Vol. 19 (2019), Issues 1–2.

<sup>68</sup> *Reuters*: “[U.N. condemns making women athletes cut testosterone in intersex row](#)”, 22 Mar. 2019.

<sup>69</sup> *The New York Times*: “[Caster Semenya will challenge testosterone rule in court](#)”, 18 June 2018.

<sup>70</sup> CAS: *CAS Arbitration: Caster Semenya, Athletics South Africa (ASA) and International Association of Athletics Federations (IAAF): Decision*, media release, 1 May 2019.

<sup>71</sup> IOC: *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism*, minutes, Nov. 2015.

<sup>72</sup> United Nations: *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, op. cit., 2019.

<sup>73</sup> European Commission: *Study on gender-based violence in sport: Final report*, 2016.

<sup>74</sup> European Commission: *Expert Group on Good Governance: Recommendations on the protection of young athletes and safeguarding children’s rights in sport: Final document*, 2016.

<sup>75</sup> *ibid.*

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the physicians assigned to the United States gymnastics team, who has faced hundreds of allegations of sexual abuse from current or former gymnasts.<sup>76</sup>

32. Discrimination and harassment on the basis of actual or perceived sexual orientation have been widely reported by members of the lesbian, gay, bisexual, transgender, queer and intersex community in the world of sport. One international study found that 82 per cent of lesbian, gay and bisexual (LGB) participants surveyed had witnessed or experienced homophobia, including violence.<sup>77</sup> A report submitted to the House of Commons of the United Kingdom found that homophobia was prolific in soccer and suggested structured changes to increase LGB inclusion in sport, such as through enhanced visibility and the creation of safe spaces.<sup>78</sup>

### **Racial discrimination**

33. Racism within sport remains a challenge, with players susceptible to violence from teammates, spectators and others. Racism has been an especially serious problem in team sports, but it is also prevalent in individual sports such as tennis and golf.<sup>79</sup> European soccer has seen a number of high-profile racist incidents against soccer players of African or Afro-Caribbean origin,<sup>80</sup> including several such incidents occurring just since the start of 2019. This has led to bans and other means of punishment, including club fines and orders to play matches behind closed doors, without spectators.<sup>81</sup> In England and Wales, the Professional Footballers' Association organized a 24-hour social media boycott through the #Enough campaign to protest racist abuse from fans across social media platforms.<sup>82</sup>
34. While such incidents of abuse are widely reported in the European region, where a large number of organizations track them, racism in sporting contexts is prevalent globally. In response, international, regional and national governmental bodies and sports organizations, including the African Union, the Council of Europe, the Brazilian Football Federation and

<sup>76</sup> United Nations: *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, op. cit., 2019.

<sup>77</sup> E. Denison and A. Kitchen: *Out on the Fields: The First International Study on Homophobia in Sport*, 2016.

<sup>78</sup> United Kingdom: *Homophobia in Sport*, House of Commons Culture, Media and Sport Committee, Seventh Report of Session 2016–17.

<sup>79</sup> United Nations: *Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action: Note by the Secretary-General*, General Assembly, Sixty-ninth session, New York, Sep. 2014.

<sup>80</sup> *ibid.*

<sup>81</sup> BBC: “Montenegro racism: England’s Danny Rose ‘lost for words’ after UEFA issue punishment”, on BBC Sport website, 26 Apr. 2019.

<sup>82</sup> *The Guardian*: “Premier League players to boycott social media in protest at racist abuse”, 18 Apr. 2019.

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the National Hockey League, among many others, have taken measures to tackle racism in sport and to use sport as a mechanism for positive social change.<sup>83</sup>

## **Disability**

35. Sport is increasingly viewed as a way for people with disabilities, both physical and intellectual, to promote their agency and ability.<sup>84</sup> This is in large part due to the success of international sporting events such as the International Paralympic Games, the Deaflympics, and the Special Olympics.<sup>85</sup> However, such events also serve to portray the wide disparity that still exists between athletes at the Olympic and Paralympic levels. The International Paralympic Committee came under pressure when it was announced that it faced severe budget cuts for the 2016 Games, with as many as ten of 165 participating countries struggling to send their teams to Rio owing to a lack of tickets sold and Brazil's struggling economy.<sup>86</sup> An additional issue is the pay gap faced by para-athletes. Some sports do not offer prize money, compelling Paralympic athletes to rely on sponsorship to fund their sport or take a part-time job.<sup>87</sup> Until 2018, there was a large disparity between the medal bonuses received by United States Paralympians and Olympians.<sup>88</sup> Women with disabilities may face "double discrimination" in sport and may face more barriers to entry and conditions than their male counterparts.<sup>89</sup>

## **V. Terms and conditions of employment**

### **Employment relationships**

36. As in any other profession, player contracts set standards of employment between the athlete and their employer in order to ensure adequate protections, compensation and rules for termination. Typical parties involved in contract negotiation in sport can include the player, their agent or player association, the team and the sports club or sporting federation.<sup>90</sup> Fixed-term or unstable contracts are found in sport and are a source of risk for athletes who rely on

<sup>83</sup> United Nations: *Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action: Note by the Secretary-General*, op. cit., 2014.

<sup>84</sup> United Nations: *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, op. cit., 2016.

<sup>85</sup> International Paralympic Committee: "Record international audiences for PyeongChang 2018", on International Paralympic Committee website, 4 June 2018.

<sup>86</sup> BBC: "Rio Paralympics 2016: Games to go ahead with major budget cuts", on BBC Sport website, 20 Aug. 2016.

<sup>87</sup> Money: "'It's so much money': Paralympic athletes just scored a major victory for equal pay", on Money website, 28 Sep. 2019.

<sup>88</sup> *ibid.*

<sup>89</sup> International Platform on Sport & Development: *Sport and disability thematic profile*, June 2009.

<sup>90</sup> B. Keller: "The regulation of professional football at the European Union level: Towards supranational employment relations in the football industry?", in M. Barry et al. (eds), op. cit., 2016.

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their sporting career for income.<sup>91 92</sup> According to FIFPro, soccer players in Eastern Europe, Africa and some countries in Latin America have frequently faced contract problems and up to 8 per cent of players did not have a written contract with their club.<sup>93</sup> In cricket, according to the Federation of International Cricketers Associations, a majority of male players feel insecure in their contract,<sup>94</sup> while a quarter of female players do not even have contracts.<sup>95</sup>

37. In some sports, particularly individual sports, athletes are considered to be “independent contractors”, whereby they receive remuneration for participating in leagues and matches but are not necessarily eligible to collectively bargain or to receive benefits such as paid leave and social protection. This is the case for athletes in a number of golf tours and for UFC and World Wrestling Entertainment fighters. However, athletes under independent contracts are subject to many controls in the exercise of their profession, ranging from sports regulations to competition times and contract exclusivity, which has led some to argue that they have been misclassified as independent contractors when in fact they should be considered as employees.<sup>96 97 98</sup> As noted above, there are a growing number of cases of athletes who have succeeded in being considered “employees” for the purposes of unionization. Similarly, Vanessa Sahinovic, an Austrian synchronized swimmer who was hit by a bus at a competition venue, has successfully claimed before a workers’ compensation tribunal that she was a worker of the National Olympic Committee and was entitled to compensation.<sup>99</sup>
38. When it comes to terminating contracts, rules vary by sport. As with most contracts, parties in sport that wish to terminate a contract early must typically show breaches of the terms and conditions in their contract. In soccer, FIFA states that players claiming “sporting just cause” may terminate their contracts by establishing constructive dismissal on the part of the club. However this term is quite broad, meaning it can be left open to interpretation by courts.<sup>100</sup>

<sup>91</sup> European Commission: *EU Guidelines on Dual Careers of Athletes: Recommended policy actions in support of dual careers in high-performance sport*, 2012.

<sup>92</sup> EU Athletes et al.: *An analysis of the working conditions of professional sports players*, 2013.

<sup>93</sup> FIFPro: *2016 FIFPro global employment report: Working conditions in professional football*.

<sup>94</sup> FICA: *FICA men’s professional cricket global employment report 2017*.

<sup>95</sup> FICA: *FICA women’s global employment market report and survey 2018*.

<sup>96</sup> G. Birren and T. Schmitt: op. cit.

<sup>97</sup> V. Salminen: “UFC fighters are taking a beating because they are misclassified as independent contractors: an employee classification would change the fight game for the UFC, its fighters, and MMA”, in *Pace Intellectual Property, Sports & Entertainment Law Forum*, Vol. 7 (2017), Issue 1.

<sup>98</sup> B. White: “The lasting impact of a professional wrestling career and the need to unionize”, in *Fordham Intellectual Property, Media and Entertainment Law Journal*, 10 Apr. 2019.

<sup>99</sup> *Causa Sport News*: “Fall Vanessa Sahinovic’: Verunglückt als Arbeitnehmerin”, 24 May 2017.

<sup>100</sup> J. Anderson: “Arbitration, negotiation and contracts in sport”, in M. Barry et al. (eds), op. cit., 2016.

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39. Restraints on the freedom of movement of players between clubs represent another contractual issue, as reflected in the reserve clauses in United States professional sports contracts.<sup>101</sup> In most cases, employees are free to search for work elsewhere after the end of a contract. However, in some sports such as handball and rugby league, transfer systems prevent players from becoming free agents at the end of their contracts.<sup>102</sup> In Europe, particularly in soccer, transfer systems determine whether a transfer fee must be paid between clubs to allow the player to move. Since 1996, players over the age of 24 have been free to enter into sports contracts as a direct result of the Bosman ruling (see paragraphs 4 and 22 above), which under EU law pertains to the right to freedom of movement. Additional transfer rules designed to give players greater mobility were developed by FIFA in the early 2000s. However, specific regulations, such as the prohibition against terminating contracts mid-season, have led to player–club disputes.<sup>103</sup> Clubs may also attempt to monopolize athletes’ participation by preventing them from taking part in outside competitions by imposing penalties or other sanctions. In 2017, the European Commission found that the International Skating Union (ISU) had breached EU competition rules by so doing and ordered the ISU to stop the practice and change its rules.<sup>104</sup> Additional difficulties may arise relating to the “capacity to contract” of minors in the world of sports, especially given that sporting talent is often spotted at a young age.<sup>105</sup>

## Salaries and other benefits

40. For athletes who are eligible or able to earn income from their sporting activities, that income may come in many forms, including fixed salaries, prize earnings and revenue from image rights and sponsorship deals. In the United States, collective bargaining agreements may guarantee minimum wages for players or enable players to bargain for contracts that mix fixed amounts of guaranteed salaries with performance-related bonuses, such as in the National Football League (NFL).<sup>106</sup>

41. In rugby, cricket and some United States sports leagues, wage caps are popular as a way to promote parity among teams and keep competition thriving. In New Zealand rugby, for example, wage caps are supplemented by spending on additional protections such as health insurance premiums, while top-up incentives are provided for “super rugby” players who play at the provincial level in New Zealand. Further earnings are possible for those who play on the country’s national All Blacks team.<sup>107</sup> This is in sharp contrast to some European

<sup>101</sup> S. Gardiner and R. Welch: “Player trades, free agents and transfer policies in professional sport”, in M. Barry et al. (eds), op. cit., 2016.

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*

<sup>104</sup> European Commission: “[Antitrust: International Skating Union’s restrictive penalties on athletes breach EU competition rules](#)”, press release, 8 Dec. 2017.

<sup>105</sup> J. Anderson: “Arbitration, negotiation and contracts in sport”, in M. Barry et al. (eds), op. cit., 2016.

<sup>106</sup> J. Solow and P. von Allmen: “Performance expectations, contracts and job security”, in M. Barry et al. (eds), op. cit., 2016.

<sup>107</sup> *Stuff*: “[How New Zealand Rugby keeps our best players in country under salary cap](#)”, on *Stuff* website, 11 Sep. 2016.

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soccer leagues in which star players and clubs routinely break spending records, leading to a large concentration of wealth among top teams.

42. Outside the most popular sports leagues in the most prosperous regions, wages can be a source of tension and strain for athletes. A 2016 report by FIFPro, the soccer players' union, found that young African players frequently reported that their pay was overdue, a problem that affected over 90 per cent of interviewed athletes in some African countries. Globally, 21 per cent of players interviewed earned less than US\$300 per month.<sup>108</sup> In cricket, 35 per cent of male players have experienced non-payment of contracts.<sup>109</sup> In another study examining four sports across Europe, many players have stated that their salary is sometimes or always paid late, with little access to a swift remedy.<sup>110</sup> For these reasons, many players undertake further employment to supplement the wages from their sporting career.<sup>111</sup>
43. Additional income for athletes may be generated by self-marketing through the use of athletes' image rights and sponsorship deals. Image rights are typically defined privately through employment and commercial contracts of athletes and their clubs or sports corporations.<sup>112</sup> However, sports law does not regulate image rights and the relevant laws vary by country. Disputes often arise between the collective and individual rights to images, especially for players who participate in team sports. For this reason, FIFA has recommended that clubs and players reach an agreement on a player's image, and has suggested that a player may exploit their rights by themselves while the club may exploit the player's image rights as part of the squad.<sup>113 114</sup> For athletes at the top of their field, lucrative sponsorship deals often widen the pay gap between sports stars. Similarly, the sponsorship pay gap between men and women reveals another layer of gender disparities in sport.<sup>115</sup>
44. In the Olympic Games, the use of sponsorship and image rights of athletes is a contested area. Until June 2019, Rule 40 of the Olympic Charter prevented athletes competing in the Games from allowing their image to be used for advertising during the period of the Games, although in practice the IOC waived the application of this rule to allow athletes to use their image in advertising under certain conditions.<sup>116 117</sup> Litigation in Germany by athletes and

<sup>108</sup> FIFPro: *2016 FIFPro Global employment report: Working conditions in professional football*, op. cit.

<sup>109</sup> FICA: *FICA men's professional cricket global employment report 2017*, op. cit.

<sup>110</sup> EU Athletes et al.: op. cit., 2013.

<sup>111</sup> *ibid.*

<sup>112</sup> C. Pina: *The Role of IP for athletes and image rights* (World Intellectual Property Organization, 2014).

<sup>113</sup> *ibid.*

<sup>114</sup> FIFA: "Professional football player contract minimum requirements", Circular No. 1171, 24 Nov. 2008.

<sup>115</sup> BBC: "100 Women: Is the gender pay gap in sport really closing?", on BBC News website, 23 Oct. 2017.

<sup>116</sup> IOC: *Olympic Charter: In force as from 26 June 2019*.

<sup>117</sup> J. Grady: "Analyzing Rule 40's restrictions on using athletes in Olympic sponsorship at Rio 2016" in *The Entertainment and Sports Law Journal*, Vol. 15 (2017), No. 1.

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sportswear companies resulted in a decision to allow more flexible rules to be applied to German athletes.<sup>118</sup> In June 2019, the IOC announced changes to the Olympic Charter to make Rule 40 and its accompanying guidance more flexible for the 2020 Olympic Games to be held in Tokyo.<sup>119</sup>

## Working time

45. In addition to playing time, athletes must factor in training, travel time and other commitments, such as promotional tours. Dual career athletes face additional time constraints when it comes to scheduling their sporting life along with their other work or educational commitments. In women's rugby, which has a large number of semi-professional and dual career athletes, many athletes dedicate their annual leave to rugby training and the irregularity of tournaments has often resulted in under- or over-training to fulfil contractual requirements.<sup>120</sup> For athletes with informal or independent contracts, paid leave is not always guaranteed. One study found that, on average, only 30 per cent of male soccer players in the Americas and 27.5 per cent in Africa were taking their national minimum requirement of annual leave.<sup>121</sup> A 2013 study focused on European athletes found overwhelming support for increased collective agreement to regulate minimum standards for working time and other contractual issues.<sup>122</sup>
46. In some sports such as soccer, extended playing seasons are diminishing players' annual leave and compromising their necessary de-training and recuperation periods.<sup>123</sup> The surge in popularity of European soccer around the world has led to the increase of international tours in Asia and the United States, which are often used as a way to raise club exposure and revenue. Since these tours tend to occur in-between playing seasons, time which has in the past typically been reserved for players' annual leave, some managers have claimed that they may have an impact on players' fitness levels.<sup>124</sup> For similar reasons, the Rugby Players Association in England has criticized the extension of the playing season from nine months to ten, citing undue physical and mental strain on players as a concern.<sup>125</sup> To balance these complaints, mandatory in-season rest periods have also been introduced as part of the

<sup>118</sup> Reuters: "[Olympics: German athletes score advertising win over IOC for Games](#)", 27 Feb. 2019.

<sup>119</sup> IOC: "[Commercial opportunities for participants during the Olympic Games Tokyo 2020 presented](#)", press release, 26 June 2019.

<sup>120</sup> International Rugby Players: *Women's survey: Who's playing the game?* (undated).

<sup>121</sup> FIFPro: *2016 FIFPro Global Employment Report: Working conditions in professional football*, op. cit.

<sup>122</sup> EU Athletes et al.: op. cit., 2013.

<sup>123</sup> FIFPro: "[At the limit: Player workload in elite professional men's football](#)", on FIFPro website, 2019.

<sup>124</sup> *The Telegraph*: "[Revealed: The heavy price Premier League clubs pay for lucrative pre-season globetrotting](#)", 1 Aug. 2016.

<sup>125</sup> The Rugby Players Association (RPA): "[RPA statement regarding proposed Premiership season changes](#)", on RPA website, May 2017.

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changes in premier-level rugby to improve player welfare.<sup>126</sup> European handballers and tennis players have raised similar complaints about extended playing commitments.<sup>127</sup>

## Occupational safety and health

47. Given the required high levels of physical and mental attention, occupational safety and health is of particular concern in the professional world of sport. The physical nature of sport may mean that on-the-job injuries are higher for athletes than for most other workers. In addition, athletes who are constantly under pressure to maintain strict physical and performance standards are at risk of mental duress. Further occupational safety and health concerns for athletes include issues relating to violence, corruption, cheating, doping and organized crime.
48. Sports injuries may be common for professional-level athletes. At the 2008 Summer Olympics, 9.6 per cent of athletes suffered an injury and 50 per cent of those injuries prevented athletes from training or competing. Similarly, 11.2 per cent of athletes sustained injuries at the 2010 Winter Olympics, although only 23 per cent of those injuries prevented the athlete from competing or training.<sup>128</sup>
49. It is important to distinguish between the short-term and long-term impacts of injuries. While some minor injuries may only put athletes out of play for a few weeks, others may have lifelong impacts or even prove fatal. Perhaps the most important conversation on this subject in the last decade has been about the impacts of concussions on athletes in contact sports. In rugby union, the incidence of concussion is rising every year: 17 per cent of professional players reporting a concussion in the 2015–16 season.<sup>129</sup> Of particular concern is the vulnerability of athletes to chronic traumatic encephalopathy (CTE), a neurodegenerative disease resulting from repeated head injuries. CTE may affect a patient's mood and behaviour and may result in dementia. A 2017 paper identified CTE in 110 of 111 former United States NFL players.<sup>130</sup> Based on the NFL experience, CTE has also become a concern in recent years in sports such as combat sports, hockey, baseball and even soccer (relating to balls headed in the course of play).
50. Violence may be manifested in a number of ways in sport. In some contact sports, players' actions become physically aggressive as a means to win. In ice hockey, violence and fights on the rink are commonplace and often considered part of the sport's entertainment appeal. Similar to other intense contact sports, CTE has been discovered in several ice hockey

<sup>126</sup> BBC: *In-season breaks for rugby players to be introduced by RFU*, on BBC Sport website, 23 Oct. 2018.

<sup>127</sup> *Libération*: “Dans le hand, toutes les décisions sont prises sans que l'on écoute les joueuses et les joueurs”, 3 Apr. 2019.

<sup>128</sup> M. Fischetti: “Leg and head injuries are frequent at the Olympics”, in *Scientific American* (2012), Vol. 307, No. 2, p. 92 (Aug. 2012).

<sup>129</sup> J. Rafferty et al: “On average, a professional rugby union player is more likely than not to sustain a concussion after 25 matches”, in *British Journal of Sports Medicine*, Vol. 53 (2018), Issue 15.

<sup>130</sup> J. Mez et al: “Clinicopathological evaluation of chronic traumatic encephalopathy in players of American football”, in *JAMA*, Vol. 318 (2017), No. 4.

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players.<sup>131</sup> Fans, coaches or others in a position of power may use violence as a way to exert control over players. A FIFPro study on soccer players in Eastern Europe discovered that 11.7 per cent of respondents had been a victim of a violent act, frequently at the hands of spectators.<sup>132</sup> Threats of violence against soccer players was notably high in the Plurinational State of Bolivia, the Republic of the Congo, Scotland (United Kingdom) and Zimbabwe.<sup>133</sup> After tennis star Monica Seles was attacked by a spectator during competition, security was increased at many top-level competitions. Many female sports stars have nonetheless reported that they still face threats of violence and instances of stalking, both of which have been exacerbated by the growth of social media.<sup>134</sup>

- 51.** The pressure of competitive sports may take a mental as well as a physical toll on athletes. Young athletes experiencing the pressure of “making it” to the top levels in sport can face especially intense psychological pressure. Those unable to break into the top ranks may become isolated, distressed and even suicidal, as reports following young men rejected from soccer academies have discovered.<sup>135</sup> Athletes, in particular female athletes, who participate in professional sports that require specific weight and shape requirements such as gymnastics have a higher risk of developing eating disorders, including anorexia nervosa.<sup>136</sup> As in other workplaces, instances of bullying are prevalent in the world of sports. In the last three years, the United Kingdom sports body has discussed numerous reports of bullying across a range of sports, including cycling, equestrian, para-swimming and bobsleigh.<sup>137</sup> <sup>138</sup> <sup>139</sup> Similar reports have emerged around the world: 15 per cent of soccer players have experienced bullying or harassment from fans and management, while 66.7 per cent of players in Egypt have reported bullying or harassment by fans on match day.<sup>140</sup>
- 52.** Cheating, organized crime and corruption are all also considered to be occupational and safety hazards. Doping (the taking of illegal performance-enhancing drugs to improve the chances of winning) is a serious issue in the world of sport. Those responsible for doping

<sup>131</sup> R. Kale: “[Stop the violence and play hockey](#)”, in *Canadian Medical Association Journal*, Vol. 184 (2012), Issue 3.

<sup>132</sup> FIFPro: *FIFPro Black Book: Eastern Europe*, 2012.

<sup>133</sup> FIFPro: *2016 FIFPro Global Employment Report: Working conditions in professional football*, op. cit.

<sup>134</sup> *The New York Times*: “[Concerns over personal safety haunt women on tennis tour](#)”, 30 June 2015.

<sup>135</sup> *The Guardian*: “[‘Football’s biggest issue’: the struggle facing boys rejected by academies](#)”, 6 Oct. 2017.

<sup>136</sup> S. Bratland-Sanda and J. Sundgot-Borgen: “[Eating disorders in athletes: Overview of prevalence, risk factors and recommendations for prevention and treatment](#)”, in *European Journal of Sport Science*, Vol. 13 (2013), Issue 5.

<sup>137</sup> *The Guardian*: “[British Equestrian Federation could lose £21m funding after bullying is revealed](#)”, 15 Mar. 2018.

<sup>138</sup> *The Guardian*: “[Para-swimmers bullied and verbally abused in coach’s ‘climate of fear’](#)”, 12 Oct. 2017.

<sup>139</sup> BBC: “[UK Sport: Nearly one in three elite GB athletes experienced or saw ‘unacceptable behaviour’](#)”, on BBC Sport website, 17 May 2018.

<sup>140</sup> FIFPro: *2016 FIFPro Global employment report: Working conditions in professional football*, op. cit.

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may often extend beyond the circle of athletes to include a wide network of additional actors, ranging from coaches to the national state. In the Tour de France cycling competition, doping became widespread and resulted in ex-post disqualifications of nine of the 12 Tour winners between 1999 and 2010.<sup>141</sup> The discovery of state-sponsored doping has led to national bans on athletes in the Olympics.<sup>142</sup> Doping is not just a matter of integrity but also one of health. Many performance-enhancing drugs have harmful and lasting side effects for the physical and mental well-being of athletes.<sup>143</sup> There have also been cases in which athletes have been given performance-enhancing drugs without their knowledge or consent.<sup>144</sup>

53. In response to growing concerns, the World Anti-Doping Agency (WADA) was established in 1999 to act as a world leader in combating the use of performance-enhancing drugs in sport.<sup>145</sup> While the actions of the WADA to reduce instances of doping in sport have on the whole been welcomed, it has been claimed that its recent reforms do not adequately include the voices of athletes, organizations and governments and that WADA is not sufficiently independent.<sup>146</sup> Athlete whereabouts reporting systems, severe punishments such as bans from competition and complex appeals processes have been criticized by athletes as violations of privacy and due process, that lack health and rehabilitation dimensions in their approach.<sup>147</sup>
54. Other forms of corruption in sport which may typically involve athletes include match-fixing, bribery, conflicts of interest, money laundering, illegal gambling and the misuse of inside information.<sup>148</sup> The manipulation of sporting competitions may involve a network made up of criminals, athletes (coerced or willing participants) and/or other sports officials such as referees who tamper with the natural course of a sporting event for personal gain.<sup>149</sup> The measurement of match-fixing is challenging because of a lack of cohesive statistical

<sup>141</sup> W. Andreff: [“Chapter X: The Tour de France: a success story in spite of competitive imbalance and doping”](#), in D. Van Reeth and D. Larson: *The Economics of Professional Road Cycling* (Springer, 2016).

<sup>142</sup> A. Duval: [“The Russian doping scandal at the court of arbitration for sport: lessons for the world anti-doping system”](#), in *International Sports Law Journal*, Vol. 16 (2017), Issues 3–4.

<sup>143</sup> H. Pope et al.: [“Adverse health consequences of performance-enhancing drugs: An Endocrine Society scientific statement”](#), in *Endocrine Review*, Vol. 35 (2014), No. 3.

<sup>144</sup> *The Guardian*: [““We are treated like sporting slaves”: Ethiopian lifts lid on trade in athletes”](#), 3 Aug. 2017.

<sup>145</sup> WADA: [“What we do”](#), on World Anti-Doping Agency website, 2019.

<sup>146</sup> The Sports Integrity Initiative: [“WADA denies rejecting World Players Association’s reform proposals”](#), on The Sports Integrity Initiative website, 28 Nov. 2018.

<sup>147</sup> M. Overbye and U. Wagner: [“Experiences, attitudes and trust: an inquiry into elite athletes’ perception of the whereabouts reporting system”](#), in *International Journal of Sport Policy and Politics*, Vol. 6 (2014), Issue 3.

<sup>148</sup> Ecorys and A. Manoli: [Mapping of corruption in sport in the EU: A report to the European Commission](#) (2018, Luxembourg); [Corruption in sport, Resolution of the Conference of the States Parties to the United Nations Convention against Corruption](#), Seventh session, Vienna, 6–10 Nov. 2017.

<sup>149</sup> United Nations Office on Drugs and Crime (UNODC) and International Centre for Sport Security: [Resource guide on good practices in the investigation of match-fixing](#), 2016.

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data.<sup>150</sup> In a study of 600 athletes across 13 sports in Europe, 35 per cent surveyed believed matches at their level were fixed, with 20 per cent of athletes being aware of a fixed game occurring in the year prior to the study.<sup>151</sup> One private initiative that analyses sports data and monitors sporting integrity flags estimates that the outcomes of about four in every 1,000 matches are “suspicious”.<sup>152</sup>

55. At the international level, different types of initiatives exist to combat corruption in sport. Some aim to raise the awareness of both law enforcement agencies and sports organization (such as an INTERPOL/IOC workshop on combating manipulation of competitions), while some aim to effectively combat corruption in sporting organizations, including by improving investigation capacities, such as the multi-stakeholders initiative of the International Partnership Against Corruption in Sport (IPACS) launched in 2017 by the Organisation for Economic Co-operation and Development (OECD), the United Nations Office on Drugs and Crime (UNODC), the Council of Europe, the IOC and the United Kingdom Government. In addition to legal measures, effective protections may involve whistle-blowing protection and reducing the incentive for corruption, in particular for athletes. A case study on match-fixing and bribery in Finland’s soccer league has argued that the risk of their players accepting bribes would decrease if a better working environment for players could be ensured, including competitive salaries and good working conditions.<sup>153</sup>

## VI. Social protection

56. Social protection plays an important role in the life and employment of an athlete. Professional sports with formalized contracts for their players tend to ensure medical care, sickness and injury benefit for players.<sup>154</sup> In cases where athletes are contractors, they may be responsible for their social protection. Such issues may also be established through collective bargaining since sports with a strong history of social dialogue have enabled players to negotiate for improved pension plans.<sup>155</sup>
57. However, unstable or independent contracts, lower retirement ages and the high risk of injury make athletes vulnerable to life-cycle shocks. Athletes therefore need stronger protections and safety nets to ensure financial stability during and after their sporting careers. In the EU, coverage of athletes varies among states, but examples of good practice include state-issued injury insurance for all athletes with a licence from a national sports association, as occurs in Luxembourg.<sup>156</sup> Athletes on precarious contracts may also be at risk of manipulation by

<sup>150</sup> KEA European Affairs: *Match-fixing in sport: A mapping of criminal law provisions in EU 27* (Mar. 2012).

<sup>151</sup> *The Economist*: *Play up, play up: Match-fixing is more common than ever*, 23 Sep. 2017.

<sup>152</sup> *ibid.*

<sup>153</sup> Ecorys and A. Manoli: *op. cit.*, 2017.

<sup>154</sup> B. Keller: “The regulation of professional football at the European Union level: Towards supranational employment relations in the football industry?”, in M. Barry et al. (eds), *op. cit.*, 2016.

<sup>155</sup> P. Bouris and R. Gomez: “Power games: understanding the true nature of season-ending labor disputes in Major League Baseball and the National Hockey League”, in M. Barry et al. (eds), *op. cit.*, 2016.

<sup>156</sup> European Commission: *EU Guidelines on Dual Careers of Athletes: Recommended policy actions in support of dual careers in high-performance sport*, *op. cit.*, 2012.

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their employers. FIFPro's global report demonstrated low rates of employment contracts in several countries, in particular in Eastern Europe, which limits players' entitlement to social protection. Clubs may also use secondary contracts as a way to circumvent the payment of social security to players. In Tunisia, 55 per cent of players did not have social security cover.<sup>157</sup>

58. A growing issue in the world of sport is the provision of maternity or paternity protection for athletes. Several female athletes have been outspoken about the barriers to having children during their athletic career. In addition to the physical and competitive difficulties (see paragraph 27 above), female athletes in particular may experience financial pressure in balancing sport and pregnancy. In one study focused on women soccer players, only 8 per cent of respondents received provisions for maternity pay from their club or national federation.<sup>158 159</sup> An employment study on women's cricketers revealed that three quarters of respondents were unsure how their contract dealt with pregnancy.<sup>160</sup> As in many other professions, paternity leave provisions still lag behind maternity leave. Major League Baseball is the only pro-sports league in North America to offer paternity leave: it introduced three days for players to attend the birth of their child as of their 2011 collective bargaining agreement.<sup>161</sup>

## VII. Skills development

59. Athletes go through numerous transitions during their sporting career, including progressing from junior to senior/elite level sports, balancing dual career tracks and ultimately retiring. Athletes' skill development is important both in the context of their sporting capability and also to ensure sufficient educational and professional training to ensure their employability after their sports career is over. Concerns have been raised about athletes increasingly compromising their educational and vocational development to focus on their sporting demands.<sup>162</sup> This has spurred concern about young athletes' welfare and right to education, in particular when their sporting career ends.<sup>163</sup> Sporting groups, governments and other institutional bodies have attempted to address this by developing responses such as career assistance programmes, guidelines and educational pathways.<sup>164</sup>

<sup>157</sup> FIFPro: *2016 FIFPro Global Employment Report: Working conditions in professional football*, op. cit.

<sup>158</sup> FIFPro: *2017 FIFPro Global Employment Report: Working conditions in professional women's football*.

<sup>159</sup> The equivalent study on working conditions in men's football did not discuss paternity leave.

<sup>160</sup> FICA: *FICA Women's Global Employment Market Report & Survey 2018* (2018).

<sup>161</sup> Major League Baseball Players Association: *2017-2021 Basic Agreement*.

<sup>162</sup> I. Henry: "Athlete development, athlete rights and athlete welfare: A European Union perspective", in *The International Journal of the History of Sport*, Vol. 30 (2013), No. 4.

<sup>163</sup> D. Aquilina: "A Study of the relationship between elite athletes' educational development and sporting performance", in op. cit., 2013.

<sup>164</sup> N. Stambulova et al.: "ISSP Position stand: Career development and transitions of athletes", in *International Journal of Sport and Exercise Psychology*, Vol. 7 (2009), No. 4.

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60. The progression from junior to senior/elite level sport is frequently considered the most difficult transition athletes make owing to its high dropout rate and commitment level.<sup>165</sup> Some talented young athletes join elite sporting academies that provide both academic and athletic training. Such academies range in structure and may be private (e.g. in Singapore), part of the public-school system (for example in Finland)<sup>166</sup> or coordinated through governments and national sporting federations (for example in the United Kingdom Premier League). These academies can require large investments of time and money, with varying sporting and academic results. For example, Austrian ski-school athletes won 90 per cent of the country's winter Olympic medals from 1992–2006.<sup>167</sup> On the other hand, 88 per cent of students in French rugby academies do not receive professional contracts.<sup>168</sup> Similarly, in a study of 303 United Kingdom academy soccer players aged 17 and 18, 99 per cent did not have professional contracts five to six years later; the same study found that education was not prioritized by the players or their clubs, and that the rejected athletes were often left with insufficient skills for a non-sporting career, causing emotional distress.<sup>169 170</sup>

## Dual careers

61. For athletes, a dual career refers to the combination of their sporting career with higher-level education or employment, perhaps over a period of 15 to 20 years.<sup>171 172</sup> While challenging, dual careers may offer benefits for athletes' skill development during and after their sporting career.<sup>173</sup>

62. Many student athletes balance aspirations for a professional sporting career with higher level or vocational education. Successful dual career management requires flexibility and facilitation from educational institutions, as found in a study focused on student athletes from four southern African countries.<sup>174</sup> In some countries, particularly in Europe, efforts

<sup>165</sup> N. Stambulova et al.: “[Searching for an optimal balance: Dual career experiences of Swedish adolescent athletes](#)” in *Psychology of Sport and Exercise*, Vol. 21 (2014).

<sup>166</sup> S. Radtke and F. Coalter: *Sports schools: An international review: Report to the Scottish Institute of Sport Foundation* (University of Stirling, 2007).

<sup>167</sup> R. Way et al.: *Sport schools in Canada: The future is here* (Canadian Sport Centre Pacific, 2010).

<sup>168</sup> I. Henry: op. cit., 2013.

<sup>169</sup> *The Guardian*: “[‘Football’s biggest issue’: the struggle facing boys rejected by academies](#)”, op. cit., 2017.

<sup>170</sup> C. Platts: “[Education and welfare in professional football academies and centres of excellence: A sociological study](#)”, doctoral thesis (University of Chester, 2012).

<sup>171</sup> C. Ryba et al.: “[Dual career pathways of transnational athletes](#)”, in *Psychology of Sports and Exercise*, Vol. 21 (2015).

<sup>172</sup> European Commission: *EU Guidelines on Dual Careers of Athletes: Recommended policy actions in support of dual careers in high-performance sport*, op. cit., 2012.

<sup>173</sup> *ibid.*

<sup>174</sup> T. Tshube and D. L. Feltz: “[The relationship between dual-career and post-sport career transition among elite athletes in South Africa, Botswana, Namibia and Zimbabwe](#)”, in *Psychology of Sport and Exercise*, Vol. 21 (2015).

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have increased to promote a dual career path for student athletes.<sup>175</sup> Universities and governments facilitate dual careers through specialized programmes, such as the Elite Sport Career study path at the Vrije Universiteit Brussel, Belgium, or the Advanced Apprenticeship in Sporting Excellence Programme run by the Skills Active programme in England.<sup>176</sup>

63. Similar challenges and opportunities exist for athletes who balance sport and employment. In the EU, several countries facilitate flexible job positions in their public sector for athletes.<sup>177</sup> Meanwhile in semi-professional or seasonal sports, many athletes work full-time or part-time alongside their sporting career. Several 2018 Winter Olympic and Paralympic athletes from Team USA were placed on jobs through the United States Olympic Committee's Athlete Career Education (ACE) programme, which partners with employers in retail and other areas to provide employment to athletes.<sup>178</sup> However, these paths are often used to maintain financial stability rather than to develop new skills.<sup>179</sup> In women's rugby, 60 per cent of women surveyed who receive a salary from their participation still feel the need to balance another job for additional income.<sup>180</sup> For athletes with semi-professional status or in sports that receive low remuneration, a dual career is often a necessity. In the Australian Football League (AFL), there is a reported culture of acceptance of dual career development. Yet, increased professionalization in the AFL has meant that even second-tier leagues require greater time investments from their athletes.<sup>181</sup>

## Post-sport employment

64. Athletes' retirement and their opportunities for post-sport employment have been a growing concern since the late 1980s. Athletes are frequently advised to prepare in advance for the termination of their sporting careers since voluntary retirement greatly aids the transition out of professional sports.<sup>182</sup> For this reason, retiring athletes with dual careers are often at an advantage, having developed a skill base and professional network. Career assistance programmes, run by national Olympic committees or national governments provide support in ways such as by identifying new career paths and opportunities for training and upskilling. At the international level, athletes can draw on the services of the IOC Athletes Commission Career+ platform. In addition, the IOC, International Paralympic Committee and the Adecco

<sup>175</sup> D. Aquilina: op. cit., 2013.

<sup>176</sup> European Commission: *EU Guidelines on Dual Careers of Athletes: Recommended policy actions in support of dual careers in high-performance sport*, op. cit., 2012.

<sup>177</sup> *ibid.*

<sup>178</sup> Team USA: "How the USOC's ACE Program helped Team USA's best make a living, earn degrees while training for PyeongChang", on Team USA website, Jan. 2018.

<sup>179</sup> *Money*: J. Calfas: "The surprising day jobs of winter Olympic athletes", on Money website, 7 Feb. 2018.

<sup>180</sup> International Rugby Players: op. cit.

<sup>181</sup> M. A. Pink, B. E. Lonie and J. E. Saunders: "The challenges of the semi-professional footballer: A case study of the management of dual career development at a Victorian Football League (VFL) club", in *Psychology of Sport and Exercise*, Vol. 35 (2018).

<sup>182</sup> N. Stambulova et al.: "ISSP Position stand: Career development and transitions of athletes", op. cit., 2009.

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Group, a global human resources firm, have created a partnership to pair retired athletes with employers.<sup>183</sup>

65. After retirement, the employability of athletes may vary. While not all athletes benefit from tertiary education, elite college athletes in the United States have similar rates of employment as their non-athletic peers.<sup>184</sup> Similarly high rates of employment were reported by the Professional Players Federation in the United Kingdom: more than 80 per cent of those surveyed in 2018 were in employment, self-employed or had retired from a second career.<sup>185</sup> However, more than 50 per cent of these respondents had experienced financial difficulty in the five years following their athletic retirement, leading some to develop mental health issues. Athletes are generally seen to have gained strong transferable skills during their sporting career, such as leadership and teamwork, which has led to an emergence of athlete-directed career services and programmes, with some employers developing entry pathways tailored to retired sportspeople.<sup>186 187</sup>

## VIII. International standards and athletes

66. At the intergovernmental level, there is a small but growing body of regional and international standards regarding athletes. A large number of these deal with sports integrity, including the Council of Europe's Code of Sports Ethics, European Sports Charter, Anti-Doping Convention and Convention on the Manipulation of Sports Competitions, as well as UNESCO's International Charter of Physical Education, Physical Activity and Sport and International Convention against Doping in Sport. The Council of Europe's European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches addresses violence in sports.
67. The ILO's engagement with the world of sport dates back to 1921, when Pierre de Coubertin, founder of the modern Olympics, met with Albert Thomas, the first Director-General of the ILO, to discuss the importance of sports for workers' leisure (since then a number of standards have been adopted that promote sports and sports facilities for workers).<sup>188</sup> The ILO has also been involved in the fight against child labour in the sports apparel and equipment supply chain and has promoted sports as a means to promote skills development and to combat child labour.<sup>189</sup> In 2018, the ILO and the Tokyo Organizing Committee of the Olympic and Paralympic Games (Tokyo 2020) signed an agreement to promote decent

<sup>183</sup> IOC et al: [Athlete Career Programme World website](#).

<sup>184</sup> Gallup: [Understanding life outcomes of former NCAA student-athletes: The Gallup-Purdue Index report](#) (2016).

<sup>185</sup> Professional Players Federation: ["Initial career transition research findings"](#), 5 Feb. 2018.

<sup>186</sup> *Financial Times*: ["Life after sport: What do elite athletes do next?"](#), 6 Sep. 2018.

<sup>187</sup> G. di Cola: [Beyond the scoreboard: Youth employment opportunities and skills development in the sports sector](#) (ILO, 2006).

<sup>188</sup> Work in Fishing Recommendation, 2007 (No. 199); Work in Fishing Recommendation, 2005 (No. 196); Seafarers' Welfare Recommendation, 1987 (No. 173); Seafarers' Welfare Recommendation, 1970 (No. 138); Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125); Seamen's Welfare in Ports Recommendation, 1936 (No. 48); Utilisation of Spare Time Recommendation, 1924 (No. 21).

<sup>189</sup> ILO: ["Football resource kit: Using football in child labour elimination and prevention projects"](#), on ILO website (2014).

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work in the preparations for, and operation of, the forthcoming games. To date, however, the ILO has not specifically dealt with conditions of work of athletes.

- 68.** The International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS) is an intergovernmental forum that facilitates dialogue to foster coherent international strategy on sport. The Kazan Action Plan, adopted by MINEPS VI in 2017 and elaborated with significant inputs from ILO and athlete unions, includes a specific policy component that refers to the safeguarding of athletes and workers in its sport policy follow-up framework.
- 69.** A number of private initiatives have also addressed athlete rights. In 2017, the World Players Association, a global federation of athlete unions, launched the Universal Declaration of Player Rights. According to the Association, the UDPR is the first articulation of player rights in accordance with existing internationally recognized labour and human rights standards and the UN *Guiding Principles on Business and Human Rights*. The Guiding Principles also provided the basis for the Centre for Sport and Human Rights, an initiative that brings together intergovernmental organizations, governments, sports bodies, athletes, hosts, sponsors, broadcasters, civil society representatives, trade unions, employers and their associations and national human rights institutions. The Centre's work also draws on the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy in the world of sport. In October 2018, the IOC Athletes' Rights and Responsibilities Declaration (ARRD) was adopted in a process led by the IOC Athlete Commission, covering such issues as discrimination, fair play, education, income, safety and health, freedom of expression and due process.<sup>190</sup> The ARRD has come under criticism from player associations, however, for offering protection lower than principles set out by other sports governing bodies and related organizations.<sup>191</sup>

<sup>190</sup> IOC: [Athletes' Rights and Responsibilities Declaration \(2018\)](#).

<sup>191</sup> UNI Global Union: ["Player unions denounce IOC Athletes' Declaration"](#), UNI Global Union website, 10 Oct. 2018.

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