

POLICY AND LEGAL FRAMEWORKS FOR PREVENTING INTERPERSONAL VIOLENCE IN ELITE SPORT

Sports Equity™ Lab in association with

- The Global Health Justice Partnership of the Yale Law School and the Yale School of Public Health
- Schell Center for International Human Rights at Yale Law School
- Sports Law Solutions

2024

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A NOTE ON THE TIMELINESS OF THIS PROJECT

This report on interpersonal violence in sport was researched and written more than two years ago, in 2021, yet its call to action to change policy and structure related to international sports to better prevent abuse in sport is, if anything, more important in light of recent events. International and elite athletes and sporting events re-emerged from local, national, and global lockdowns and in the shadow of more than six million COVID-19-related deaths. Yet the constraints of the pandemic world continued: The 2020 Tokyo Summer Olympic and Paralympic Games took place in 2021 with almost no live audience; and the 2022 Beijing Winter Olympic and Paralympic Games were held with limited live viewers and, for the latter, in the context of international condemnation of the Russian invasion of Ukraine.

Although global rhetoric portrays the return of international and elite sporting events as a “return to normal,” we flag a different trend. We saw athletes stepping up for their own wellbeing, their mental health, and the role of sport in advancing social justice and a common good: Naomi Osaka or Simone Biles making clear that their mental health and wellbeing take priority over commercial and institutional interests that hold “the games must go on”; the U.S. gymnasts taking their demands for justice to Congress and articulating their critiques of the failed Federal Bureau of Investigation/Department of Justice investigations of their former team doctor’s serial sexual abuse; and the Paralympic athletes threatening to boycott wheelchair events if the International Paralympic Committee (IPC) did not ban Russia and Belarus from their Games. Across international sport, there was dynamic athlete action.¹ We see athletes, individually and collectively, organizing to demand transformation, while the institutions and power structures of sport stand largely in stasis.

This report details diverse institutional interests: the sports federations, the media, the international and national sports regulatory bodies, the various professionals (coaches, trainers, therapists, clinicians), highlighting both their role in setting the conditions

¹ Tuakli-Wosornu, Y. A., & Darling-Hammond, K. (2022). Unapologetic refusals: Black women in sport model a modern mental health promotion strategy. *The Lancet Regional Health – Americas*, 15(100342). Calow, E. (2022). ‘Well, what was the message you got?’: the discursive power of Naomi Osaka and her peaceful protest at the 2020 U.S. Open, *European Journal for Sport and Society*, 19:4. Leppard, TR. (2022). Athlete activism and the role of personal and professional positionality: The case of Naomi Osaka. *International Review for the Sociology of Sport*, 57(8).

for interpersonal violence to happen and their failures to enact material change in policies of response and accountability. As we note in the report, the making of these institutions has a long history. Indeed, the colonial and extractive structure of international sport and its gender, race, and other discriminatory features are baked into the structure of contemporary sport. The 2022 Commonwealth Games in Birmingham, United Kingdom, notably opted to take on this history and its present-day Global North/South inequities of race, place, and gender through a co-organized project of artists and athletes. Specifically, Johannesburg-based painter and filmmaker Thenjiwe Niki Nkosi, has interrogated the meanings of the Birmingham Games through a multi-site multimedia artwork, *Equations for a Body at Rest*. This work highlighted both transformation and stasis through time and foregrounded the idea that the Games, including in their current iteration, are part and parcel of an ongoing white Commonwealth geo-political-industrial project, despite the diverse realities modern athletes face.

In publicly asserting their inherent human value above and against that of their sports institutions, often at incredible personal cost, athletes of the 21st century sporting events inspired entire groups of people to embrace transformation – in this case, away from coercive power structures that commodify athletes and towards power-balanced, accountable models that center compassion and humanism in sport, alongside excellence. We have seen this before in examples of well-known athletes fighting to express their commitments to justice in athletic spaces: Wyomia Tyus paving the way for contemporary athlete-activists by standing with peers and revolutionaries (wearing dark-colored shirts and even dedicating their medals to the cause); Muhammad Ali refusing the Vietnam draft; and Tommie Smith and John Carlos refusing to lower their fists at the 1968 Mexico City Olympic Games in protest against racial injustice.² The difference? In the past, athletes' bold actions provoked primarily negative social and media backlash. In today's sport context, however, where social media enables a broader poll of public opinion, global reactions to athletes' acts of resistance have been overwhelmingly supportive and affirming, especially among young people and others who hold less social power.

2 Longman, J. (2021, June 17). A Quiet Demonstration and a Long Shadow. *The New York Times*. <https://www.nytimes.com/2021/06/17/sports/olympics/wyomia-tyus-athlete-protests-racism.html>.
Brown, DeNeen (2018, June 16). Why Muhammad Ali refused to serve in the Vietnam War. *The Washington Post*. <https://www.washingtonpost.com/news/retropolis/wp/2018/06/15/shoot-them-for-what-how-muhammad-ali-won-his-greatest-fight/>.
Belson, K. (2021, July 21). Tommie Smith Talks Protests and the Olympics. *The New York Times*. <https://www.nytimes.com/2021/07/21/sports/olympics/tommie-smith-protest.html>.

So far, changes in the picture have come about by athletes' actions, not yet by institutions' measures. Thus, this report, its analysis of power structures, and its recommendations are timely. We believe the collective insights and analysis of the power structures that have built, maintained, and nurtured the conditions for athlete harm can be the basis for organized and material change.

ACKNOWLEDGEMENTS

We thank all the athletes, researchers, advocates, and students who participated in the making of this report, but we want to add one more note of gratitude. The present report and many of our meetings and other activities were carried out under the ongoing constraints of the coronavirus disease (COVID-19) pandemic. As our colleague in human rights Victor Madrigal has written: “The one thing that we must do is not to pretend that any of this work has been carried out under business as usual.”³ We wish to thank all of our colleagues who continue to do their work in this on-going COVID pandemic and, in far too many cases, in the shadows of armed conflict, as well as the athletes whose delayed and deferred dreams suffered such a toll in the pandemic. All this happened even as the global commitment to health equity – especially in testing, vaccination, and treatment – also faltered in the face of global actors and powers that put self-interest above global care.

Key researchers, advisors, and authors include Rebecca Achieng Ajulu-Bushell, Lauren Blazing, Daniel Braggi, Andrea Carska-Sheppard, Alice M. Miller, and Yetsa A. Tuakli-Wosornu, for the concept note, “Intentional Violence in the Elite Sporting Environment” and Alice M. Miller, Rohan Naik, James Silk, and Yetsa A. Tuakli-Wosornu for this report.

Participants in the “#MeTooSport in the Larry Nassar Era: Legal Frameworks for Preventing Intentional Violence in Sport Roundtable” discussion, which took place virtually on December 2, 2020, included: Norman Arendse, Marie-Claude Asselin, Sheree Bekker, Erin E. Buzuvis, Andrea Carska-Sheppard, Joyce Cook, Andrea Florence, Natalie Galea, Amos Guiora, Daniela Heerdt, Sandra Kirby, Jen Klein, Sarah Klein, Kyle Knight, Michele Krech, Michael McNamee, Marilou McPhedran, Alice M. Miller, Margo Mountjoy, Douglas NeJaime, Madeleine Laura Pape, Laura Robinson, Brendan Schwab, James Silk, Judith Van der Veen, and Yetsa A. Tuakli-Wosornu.

Individuals making demands and organizing for change in the face of institutional stasis is far too familiar a story, and yet demands and organizing can go forward: Our hope is that this report contributes to genuine and effective movement among the proactive individuals who are advancing justice in sport and that it inspires the same among sports institutions.

³ United Nations High Commissioner for Human Rights, *A/HRC/47/27: The law of inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (2021).

TABLE OF CONTENTS

Introduction	6
A. Goals of the Report and its Antecedents	6
B. Topic and Focus: Why Elite Sport?	7
C. Structure of the Report	8
I: The Harms Engendered by Unique Constellation of Regimes in Elite Sport	10
A. Power Dynamics in Elite Sport	11
B. Institutional Contexts as Sites of Complicity and Conditioning	13
C. Ableist Constructs as Exacerbators of Abuse in Sport	14
D. Harmful Narratives that Perpetuate Silence and Acquiescence	16
II: The Failures of Existing Safeguarding Policies	19
A. Systems Designed to Protect Those in Power	20
B. Barriers to Reporting and How Reporting Itself Is a Flawed Method to Produce Protective Action	22
C. How The “Values” of Sport Can Impede Safeguarding	25
D. Thinking Power Through for Effective Prevention, Protection and Repair: Real Safeguarding	26
III: Sports Governance: A Tool to Protect Athletes?	29
A. The Challenges of Self-Regulation	30
B. The Failure of Public Mechanisms	31
C. A Hybrid Model	32
Conclusion	34
Appendix A: Invitation to the Roundtable	38
Appendix B: Roundtable Agenda	40
Appendix C: Concept Note	42

INTRODUCTION

A. Goals of the Report and its Antecedents

This report aims to synthesize a range of issues, debates, and concerns relating to interpersonal violence⁴ in elite international sport. It builds upon prior work, particularly an extensive “Intentional Violence in the Elite Sporting Environment” concept note attached, and includes insights articulated during the “#MeTooSport in the Larry Nassar Era: Legal Frameworks for Preventing Intentional Violence in Sport Roundtable” discussion, which took place virtually on December 2, 2020. The Roundtable brought together athletes, academics, lawyers, activists, medical doctors, and officers from international sporting bodies to explore the range of abusive practices directed against elite athletes and to interrogate the systemic failure to prevent, respond to, and reform the policies and institutions that give rise to them. Although the meeting did not lead to a consensus on all issues discussed, it produced clear points of agreement for action, many areas for further inquiry and research, and a powerful exploration of a wealth of knowledge and experience that has yet to be fully utilized by policymakers, government officials, and sports administrators. Agreement was strong on the need to include more athlete voices, to put speech and advocacy by and for athletes at the center of all efforts at reform. There was similarly strong agreement that efforts at reform must pay attention to the hierarchies of power in sport and the way they dovetail with hierarchies of power outside of sport, including global legacies of racism, sexism, and ableism. The place of least consensus is the place where sport regimes are at their most obdurate: private sport governance.

We hope this report captures the wealth of knowledge and insights for athletes and their allies to use as they seek to change the conditions that all too often create situations that foster harm, not joy, in sport. To do so, the report merges insights from the concept note and from the December Roundtable. The Roundtable discussion engaged with a series of questions that the concept note raised. Those questions included:

⁴ Here we use the term “interpersonal violence,” defined as: the intentional use of physical force or power, threatened or actual, against other persons by an individual or small group of individuals, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation. Another term in use in the literature, “trauma and adversity,” refers to both interpersonal violence (e.g., physical, psychological, and sexual harassment and abuse and neglect) and a broader range of societal and contextual factors contributing to toxic stress (e.g., parental mental illness, housing insecurity, neighborhood violence).

- How does the culture of elite sport facilitate interpersonal violence? What are the elements of that culture?
- How have current safeguarding regimes failed, and how can they be improved?
- What would sports governance that centers athletes and their protection⁵ look like?

The Roundtable had multifold objectives: to address the rampant reports of athlete abuse globally, to foster dialogue about interpersonal violence in elite sport and identify common interests and goals, and to develop connections as part of building a global network of advocates to facilitate continued dialogue, better and more responsive research, and joint advocacy.

The report does not share all comments or viewpoints stated in the Roundtable, attempt to summarize the entire discussion, or attempt to find consensus in areas where it did not exist. Instead, it highlights areas of substantial agreement and debate and aims to highlight the diversity of views on certain topics. Although it does not seek to make universal recommendations, the report will, ideally, be useful for identifying areas for further inquiry and research. We hope this report can, in conversation with emerging global sport-safeguarding scholarship and advocacy, help guide tangible change to better protect athletes.

B. Topic and Focus: Why Elite Sport?

This report focuses on elite, international sport, which overlaps with professional sport and is significantly distinct from recreational and much school-based sport. In recent years, elite athletes from both the Global North and Global South have spoken out about abuse and maltreatment they have suffered in sport as both children and adults.⁶ As Section II explores, in the elite sporting arena, a unique set of overlapping and interconnected actors, institutions, and interests produce a culture of profit-driven exploitation that treats athletes as commodities, alienated from their sense of self-worth and often separated from peers and community. In response to reports of abuse, some governments and sporting bodies have made meaningful but limited efforts to engage with

⁵ Beyond basic athlete “protection,” there is, of course, athlete wellbeing and true thriving. Thriving as a concept is formally beyond the scope of this report, but it is evoked and alluded to where appropriate.

⁶ The terms “Global North and Global South” are used in many settings to distinguish the geopolitical distribution of various forms of power (financial, military, industrial capacity) and access to and control over resources (including access to equal protection of the law, control of extractive industries) as well as control of narratives across the globe. At the same time, some actors do not recognize a place for themselves in the way these terms distinguish or fail to distinguish and pinpoint the distribution of geopolitical power and wealth.

elite athletes and create systems that prioritize their safety and wellbeing. However, the mechanisms they have developed have largely fallen short of their stated goal. They are primarily responsive rather than preventative; they are structured, at best, to respond to individual abuse but do not address its root causes; and they are insulated from accountability outside sports institutions. This report specifically interrogates the conditions that give rise to abuse, the failures of current safeguarding strategies in elite, international sports governance, and the enabling hierarchical power structures in various social, political, and cultural environments. Although the report focuses on elite sport, we hope it will have more expansive effects, especially in light of the leadership role elite sport plays in establishing and altering sport ideals and, more practically, because of the way elite sport practices trickle down to more recreational and school-based sport.

C. Structure of the Report

The report is divided into three parts. The first part explains the unique culture of elite sport that facilitates abuse. This includes performance regimes in which competitive success is prioritized above wellbeing, open-secrets regimes in which abuse is known but tolerated by insiders, largely to maintain their inside position, and hierarchical power structures of decision-making that place athletes at the bottom. It also covers the harmful narratives in sport that foster a strict code of silence.

The second part discusses the many failures of current safeguarding measures. Critiques of safeguarding policies include concern for the pressures the policies put on individual athletes and athlete-survivors to come forward alone, on their own initiative; the policies' hierarchical and heteronormative power structure, their lack of outward accountability, and their failure to account for different sporting cultures. This section flags that major attitudinal and cultural shifts in sport, facilitated by leadership, are necessary for effective prevention, protection, non-repetition, and accountability measures. These necessary shifts include no longer centering attention only on individual perpetrators and, instead, both focusing on structural facets that beget harm and integrating data-driven trauma care within the elite sporting arena. This part also urges that effective interventions recognize that structural vulnerability feeds off of intersecting axes of race, place, gender, age, and [dis]ability, as well as other contextual and institutional power imbalances. This perspective is urgent to make possible the responses necessary to address both system-wide structural accountability and the integrated, localized solutions, all based on commonly adopted universal principles.

The final part addresses what effective sports governance that prioritizes the mental, emotional, physical, and social health and safety of athletes could look like. It notes the dangers that self-regulation and private-actor-controlled, internal arbitration processes pose to the protection of human rights and highlights the tension arising between sport claims to independence and oversight by public versus private organizations. It asks for an athlete-centered, athlete-driven version of sports governance that is committed to international human rights standards.

The report concludes by asking for a new analytical frame – one that looks to non-traditional spaces – within and beyond the boundaries of sport – for wisdom – to develop full and genuine understanding of the forms and devastating effects of interpersonal violence on diverse athletes and the need to create structures that appropriately deal with these harms. It also advocates for education and empowerment of officials, coaches, and other leaders to build capacity within the broader sport world for action that protects athletes and promotes their wellbeing. It ends with a list of considerations for sport practitioners in their future work.

I. THE HARMS ENGENDERED BY THE UNIQUE CONSTELLATION OF REGIMES IN ELITE SPORT

Many elite athletes train under strict regimens, often from childhood. In these unique environments, where performance outcomes are often supreme, athletes can experience a range of unique harms. These harms occur, not solely because of individual perpetrators, but also and primarily because of the structures that facilitate, tolerate, and encourage such behavior. These structures and norms inherently champion and reward certain behaviors, making them more likely, and discount others, making them less likely. This section explicates how the culture of elite sport can foster abuse. It contemplates these questions: How do the cultures endemic to elite sport engender interpersonal violence? How can abuse prevention efforts account for the varied dynamics that different sporting contexts present? Certainly, sport is not *totally* unique. There are analogous sociocultural milieus that share some features of elite sport environments, including military settings, family homes, educational classrooms, religious institutions, and others.

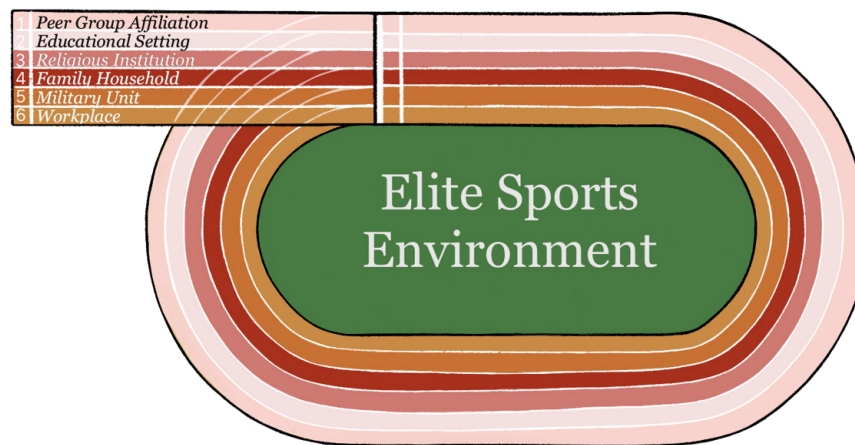


Figure 1: Similarities between the sports environment and other complex sociocultural contexts (non-exhaustive list). Similar to a family household, parental and sibling roles naturally occur in nuclear training groups; similar to a military unit, strict hierarchies and the sense of country/team above self is salient; similar to a community-based peer group, peer pressure in sport can feel inevitable and hypnotic; similar to a religious institution, the devotion and emotion of sport can reach levels of fervor; similar to an educational classroom, learning, skill acquisition, personal development, and hierarchy have primacy in sport.⁷

⁷ Tuakli-Wosornu YA, Galea NR, Forsdike K, *et al* Methodological and ethical limitations of interpersonal violence research in Sports and Exercise Medicine: advancing an athlete-centred approach. *British Journal of Sports Medicine* Published Online First: 07 June 2023. <https://doi.org/10.1136/bjsports-2023-106754>.

A. Power Dynamics in Elite Sport

Research shows that the power structures in sport, which traditionally place coaches and other authority figures in positions of power over athletes, have the potential to cause dangerous relational dynamics that can be exploited.⁸ Deep trust in the authority and sovereignty of coaches – and the wider elite sport training ecosystem, including clinicians, nutritionists, physiotherapists, administrative staff, and older or more successful teammates – whether conscious or unconscious, sets the preconditions for instances of misuse and abuse of power.⁹ Athletes feel unwilling or unable to voice dissenting opinions, clarifications, or complaints and are even taught to see harmful behavior, such as playing through injury or remaining silent witnesses to harsh or abusive behaviors, as necessary to accomplishing performance goals.¹⁰ Subservient to coaches and other sports officials, they are often rendered incapable of seeing themselves as rights-holding individuals with full and equal agency in sport settings.¹¹ As one expert at the Roundtable noted, elite sport often demands that athletes’ bodies become instruments of others’ identity, status, and income.¹²

Child and female athletes are often at higher risk of exploitation by coaches and other sports authorities. Many athletes, one of the Roundtable experts noted, have reported that “boundary crossing” from coaches was a regular occurrence and that it often

8 Roberts, V., Sojo, V., & Grant, F. (2020). Organisational factors and non-accidental violence in sport: A systematic review. *Sport Management Review*, 23(1), 8–27. <https://doi.org/10.1016/j.smr.2019.03.001>.

Roberts, V. L., & Sojo, V. E. (2020). To strive is human, to abuse malign: Discrimination and non-accidental violence of professional athletes without employee-style statutory protection. *British Journal of Sports Medicine*, 54(4), 253–254. <https://doi.org/10.1136/bjsports-2019-100693>.

9 Cense, M., & Brackenridge, C. (2001). Temporal and Developmental Risk Factors for Sexual Harassment and Abuse in Sport. *European Physical Education Review*, 7(1), 61–79. <https://doi.org/10.1177/1356336X010071006>. Gaedicke, S., Schäfer, A., Hoffmann, B., Ohlert, J., Allroggen, M., Hartmann-Tews, I., & Rulofs, B. (2021). Sexual Violence and the Coach–Athlete Relationship – A Scoping Review From Sport Sociological and Sport Psychological Perspectives. *Frontiers in Sports and Active Living*, 3. <https://www.frontiersin.org/articles/10.3389/fspor.2021.643707>.

10 Fortier, K., Parent, S., & Lessard, G. (2020). Child maltreatment in sport: Smashing the wall of silence: a narrative review of physical, sexual, psychological abuses and neglect. *British Journal of Sports Medicine*, 54(1), 4–7. <https://doi.org/10.1136/bjsports-2018-100224>. Parent, S., & Vaillancourt-Morel, M.-P. (2021). Magnitude and Risk Factors for Interpersonal Violence Experienced by Canadian Teenagers in the Sport Context. *Journal of Sport and Social Issues*, 45(6), 528–544. <https://doi.org/10.1177/0193723520973571>.

11 Tuakli-Wosornu, Yetsa A. (2020). Superhumans or sitting ducks?: Examining the gaps in elite athletes’ knowledge and understanding of their rights in sport. *Human Rights Defender*, 29(2), 24–26. <https://search.informit.org/doi/10.3316/INFORMIT.386242879837680>.

12 Roundtable Discussion. David, P. (1998). Children’s Rights and Sports – Young athletes and competitive sports: exploit and exploitations. *International Journal of Children’s Rights*, 7(1), 53–81.

enabled various types of subtle and overt abuse.¹³ This is because the role of the coach is often multi-faceted and nebulous; the coach becomes massage therapist, nutritionist, life coach, and psychologist, particularly for athletes with disabilities.¹⁴ Additional risk of harm is created when coaches act beyond their professional competence. Elite athletes trained from childhood have remarked, too, that athletic training often teaches athletes to ignore pain.

One former child athlete remarked, “It’s not that you’re stripped of any sense of identity; it’s that you literally never form one.”¹⁵ Here, the role of the coach can become all-encompassing, as the athlete may unconsciously look to their coach for guidance in the formation of their very identity. This can lead to the chronic infantilization of athletes and steep, entrenched, and seemingly insurmountable power imbalances between athletes and the “adults/authorities” around them. Athletes who are separated from other adults and children their own age can become entirely dependent on their coaches and other sports authorities, who act as a lifeline for food, medical care, social feedback and learning, and other necessities for health and development within and beyond the boundaries of sport.

The normalization of practices that harm athletes occurs, in part, because abusive behaviors, practices, and relationships are so commonplace in elite sport that some fail to recognize it as abuse.¹⁶ Such behaviors, which would not be accepted in other contexts, can come to be viewed as perfectly acceptable in the world of sport, especially in the context of a singular focus on “success”. In many instances, athletes who have been victimized victimize others years later as they assume the roles of coach or trainer. In these instances,

13 Roundtable Discussion. Fortier, K., Parent, S., & Lessard, G. (2020). Child maltreatment in sport: Smashing the wall of silence: a narrative review of physical, sexual, psychological abuses and neglect. *British Journal of Sports Medicine*, 54(1), 4–7. <https://doi.org/10.1136/bjsports-2018-100224>. Parent, S., Lavoie, F., Thibodeau, M.-È., Hébert, M., Blais, M., & Team PAJ. (2016). Sexual Violence Experienced in the Sport Context by a Representative Sample of Quebec Adolescents. *Journal of Interpersonal Violence*, 31(16), 2666–2686. <https://doi.org/10.1177/0886260515580366>. Marsollier É, Hauw D. (2022). Navigating in the Gray Area of Coach-Athlete Relationships in Sports: Toward an In-depth Analysis of the Dynamics of Athlete Maltreatment Experiences. *Frontiers in Psychology*, 13.

14 Tuakli-Wosornu, Y. A., & Kirby, S. L. (2022). Safeguarding Reimagined: Centering Athletes’ Rights and Repositioning Para Sport to Chart a New Path. *Frontiers in Psychology*, 13. <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.815038>. Tuakli-Wosornu, Y. A., Sun, Q., Gentry, M., Ona Ayala, K. E., Doolan, F. C., Ottesen, T. D., Caldwell, B., Naushad, N., Huang, P., & Kirby, S. (2020). Non-accidental harms (‘abuse’) in athletes with impairment (‘para athletes’): A state-of-the-art review. *British Journal of Sports Medicine*, 54(3), 129–138. <https://doi.org/10.1136/bjsports-2018-099854>.

15 Roundtable Discussion.

16 Jacobs, F., Smits, F., & Knoppers, A. (2017). “You don’t realize what you see!”: The institutional context of emotional abuse in elite youth sport. *Sport in Society*, 20(1), 126–143. <https://doi.org/10.1080/17430437.2015.1124567>.

legacy perpetrators might have a blindness to the fact that they are participating in and maintaining a culture of violating bodily integrity and that they are repeating the violations they endured and learned to accept as “normal”. In one example, elite hockey players in Canada admitted to coping with the abuse they suffered during hazing rituals by inflicting that same behavior upon later generations of players.¹⁷

The abuses that attend the regulation of gender eligibility in girls’ and women’s sports, for example, have become culturally sanctioned across the Global North and follow a long history of sports bodies policing women’s bodies, regulating who counts as a female athlete, and controlling girls’ and women’s expressions of self and femininity in sport.¹⁸ Among the supporters of strict gender eligibility enforcement in sport are cisgender female athletes who themselves have experienced gender inequality in sport. Struggles over gender regulations (which might apply to athletes with differences in sex characteristics or distinguish transgender athletes and cisgender athletes), crowd out attention to inequitable funding and social support for sport for girls at all levels. Understanding how abuse is normalized across elite sport requires an understanding of how abuses that are perpetuated by gender eligibility requirements become sanctioned and accepted as part of the culture of elite sport.¹⁹

B. Institutional Contexts as Sites of Complicity and Conditioning

Although many of the abusive behaviors in elite sport are carried out in interpersonal contexts, institutional complicity created by the culture of elite sport allows these behaviors to flourish unchecked. Perverse incentives driven by the benefits of winning weigh against individual non-athlete stakeholders in elite sport settings taking preventative action, and these incentives turn bystanders (witnesses of harm) into enablers (facilitators of harm). The distinction here is crucial: Bystanders are passive observers who witness another being harmed, while enablers make active decisions to suppress knowledge and protect the institution rather than the athlete in peril.²⁰ Although enablers do

¹⁷ Roundtable Discussion.

¹⁸ Padawer, R. (2016, June 28). The Humiliating Practice of Sex-Testing Female Athletes. *The New York Times*. <https://www.nytimes.com/2016/07/03/magazine/the-humiliating-practice-of-sex-testing-female-athletes.html>. United Nations High Commissioner for Human Rights (2020). *Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights*. <https://digitallibrary.un.org/record/3872495>.

¹⁹ Roundtable Discussion. United Nations High Commissioner for Human Rights (2020). *Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights*. <https://digitallibrary.un.org/record/3872495>.

²⁰ Roundtable Discussion. Tuakli-Wosornu, Y. A., Amick, M., Guiora, A. N., & Lowe, S. R. (2022).

not directly cause harm to the survivor, their knowing, coupled with inaction, allows it to continue or accelerate. In many cases, the coaches, teammates, and parents who witness abuse choose to ignore it for myriad complex reasons. These can include prioritizing outcome over process, fear of ending funding and sponsorship deals, worry about disrupting training regimens, and conscious or unconscious calculations to prioritize success over safety. In this view, athletes are seen as commodities, vehicles for advancing the identity, status, and income of others. Their wellbeing is valued for their ability to win sporting competitions, with little regard for their wellbeing and health in their life outside sport both during and after their competitive careers.

Law scholars have argued that institutional complicity allows perpetrators to act with impunity and immunity.²¹ Professor Amos Guiora has identified a triangle of complicity in which the perpetrator, enabler, and bystander all have a clear and vested interest in protecting themselves and the sports entity in question.²² In this paradigm, an individual's self-interested loyalty to or dependence on an institution prevents them from speaking out or defending the abuse victim. Although this paradigm manifests on the individual level, it stems from a broader practice and perspective permeating elite sport that values allegiance to institution over individual wellbeing. This dynamic between institutions and their protectors, inadvertent or otherwise, can render athletes, their entourages, and abuse survivors powerless and is illustrative of the overwhelming power disparity that dominates the culture of elite sport.²³

C. Ableist Constructs as Exacerbators of Abuse in Sport

Athletes with disabilities are also at higher risk for interpersonal violence. Para and adaptive athletes²⁴ often face additional challenges and regularly confront harmful

Athlete abuse hurts everyone: Vicarious and secondary traumatic stress in sport. *British Journal of Sports Medicine*, 56(3), 119–120. <https://doi.org/10.1136/bjsports-2021-104715>.

21 United Nations High Commissioner for Human Rights, *A/HRC/44/26: Intersection of race and gender discrimination in sport: report of the United Nations High Commissioner for Human Rights* (2022).

Krech, M. (2019). *The Misplaced Burdens of 'Gender Equality' in Caster Semenya v IAAF: The Court of Arbitration for Sport Attempts Human Rights Adjudication* (SSRN).

22 Roundtable Discussion.

23 Guiora, A. N. (2021). *Sexual Assault Enablers, Institutional Complicity, and the Crime of Omission* (SSRN Scholarly Paper No. 3866918). <https://doi.org/10.2139/ssrn.3866918>.

24 The term “Para” (capital P, no trailing hyphen) refers to three key elements: (1) it refers to non-Paralympic Games events or activities and is used in a non-Paralympic Games context; (2) the event, activity or person must fall under the jurisdiction of the IPC or an IPC member (i.e., IPC-sanctioned sports participants) and (3) the event, activity or person must be governed by the requirements of the IPC Athlete Classification Code. The term “adaptive” is broader, as adaptive athletes and adaptive sport include but are

norms: They are regularly brought up in environments where discrimination and stigma around disabilities are rampant. Studies have shown that children with disabilities are almost four times more likely to become victims of violence than children without disabilities and nearly three times more likely to be subjected to sexual violence, with girls at the greatest risk.²⁵ Also, disability is gendered. A global study conducted by the United Nations Population Fund revealed that girls and young women with disabilities face up to ten times more gender-based violence than girls and women without disabilities.²⁶ Scientists at the International Olympic Committee estimate that athletes with physical or intellectual impairment may be up to four times more likely to be victimized than athletes without such impairments.²⁷ A myriad of factors can contribute to this disparity: general dependency, social powerlessness, communication-skill deficits, and learned compliance. Similarly, in some settings, perpetrators, which can include teammates, coaches, trainers, and family members, tend to view disabled athletes as “safe targets for abuse”.²⁸ The power differential between athletes and the larger sport structure might be exacerbated with Para and adaptive athletes, who tend to hold even less power than their counterparts due to mental, developmental, or physical impairments layered on top of and, at times, overshadowing their identity and status as athletes.²⁹

Critical theorists have shown that that disability is socially constructed and deeply intersectional (i.e., derives meaning and impact from different systems of power, such as race, gender, and age), and that institutions, more than impairments, systematically disable people.³⁰ Through this lens, the Paralympic Movement can be considered

not limited to IPC-sanctioned activities.

25 Children with disabilities more likely to face violence, says UN-backed study. *UN News*. (2012, July 12). <https://news.un.org/en/story/2012/07/415382>.

26 Five things you didn't know about disability and sexual violence. *United Nations Population Fund*. (2018, October 30). <https://www.unfpa.org/news/five-things-you-didnt-know-about-disability-and-sexual-violence>.

27 Mountjoy, M., Brackenridge, C., Arrington, M., Blauwet, C., Carska-Sheppard, A., Fasting, K., Kirby, S., Leahy, T., Marks, S., Martin, K., Starr, K., Tiivas, A., & Budgett, R. (2016). International Olympic Committee consensus statement: Harassment and abuse (non-accidental violence) in sport. *British Journal of Sports Medicine*, 50(17), 1019–1029. <https://doi.org/10.1136/bjsports-2016-096121>.

28 Tuakli-Wosornu, Y. A., Sun, Q., Gentry, M., Ona Ayala, K. E., Doolan, F. C., Ottesen, T. D., Caldwell, B., Naushad, N., Huang, P., & Kirby, S. (2020). Non-accidental harms ('abuse') in athletes with impairment ('para athletes'): A state-of-the-art review. *British Journal of Sports Medicine*, 54(3), 129–138. <https://doi.org/10.1136/bjsports-2018-099854>.

29 Ona Ayala, KE; Zogg, CK.; Tuakli-Wosornu, YA.; McKay, C; Raum, G; Wang, K (2023) The Effect of Paralympic Athlete Status on Public Perceptions of Competence and Capability in Persons With Blindness. *Palaestra* 37(1):35.

30 Goodley, D. (2013). Dis/Entangling Critical Disability Studies. *Disability & Society* 28(5), 631-644.

an echo chamber for ableist narratives that position Paralympians and other adaptive athletes as sportspeople who, by virtue of their participation, not athleticism, have conquered disability.³¹ For example, during the 2012 Summer Paralympic Games in London, advertising campaigns portrayed Para athletes as superheroes.³² Channel 4, a British broadcaster of the Paralympic Games, produced a trailer entitled “Meet the Superhumans.”³³ This narrative has the potential to harm athletes with disabilities, especially those who have not reached any traditionally conceptualized pinnacle of sporting success. It might suggest that athletes with disabilities were able to participate successfully in sport because they overcame their disability, implying that disability is something to overcome rather than a core and valued part of one’s identity. Furthermore, the narrative indirectly contributes to a perception of sport as an inherently ableist construct that people with disabilities must alter themselves to fit into. The narrative also obscures the unique harms that individuals with disabilities experience.³⁴

D. Harmful Narratives that Perpetuate Silence and Acquiescence

There are two dominant normative regimes in sport culture that make protective interventions in elite sport difficult. First, pain is presented as normal and necessary in elite sport, which leads to “performance regimes” that might obscure abusive practices. Second, speaking up against perpetrators who are involved or even leaders in the sport is actively discouraged. This success-focused reality gives rise to the “open secrets regimes” that compels athletes and onlookers to remain silent.

In a culture that rewards physical toughness and emphasizes a “survival of the fittest” attitude, it is difficult for many athletes to identify abuse as or even after it occurs.³⁵ Further, it is difficult and, at times, destabilizing for many athletes who have internalized their constructed identity as fit, tough, and physically imposing, to

<https://doi.org/10.1080/09687599.2012.717884>. Shildrick, M. (2012). Critical Disability Studies: Rethinking the Conventions for the Age of Postmodernity. In N. Watson, C. Thomas, A. Roulstone (eds.). *Routledge Handbook of Disability Studies* (pp. 30-41).

31 Goggin, G., & Newell, C. (2000). Crippling Paralympics? Media, Disability and Olympism. *Media International Australia*, 97(1), 71–83. <https://doi.org/10.1177/1329878X0009700110>.

32 Hodges, C.E.M.; Jackson, D.; Scullion, R.; Thompson, S.; Molesworth, M. *Tracking Changes in Everyday Experiences of Disability and Disability Sport within the Context of the 2012 London Paralympics*; Project Report; CMC Publishing, Bournemouth University: Poole, UK, 2014.

33 Roundtable Discussion.

34 Rutland, E. A., Suttiratana, S. C., da Silva Vieira, S., Janarthanan, R., Amick, M., & Tuakli-Wosornu, Y. A. (2022). Para athletes’ perceptions of abuse: A qualitative study across three lower resourced countries. *British Journal of Sports Medicine*, 56(10), 561–567. <https://doi.org/10.1136/bjsports-2021-104545>.

35 Roundtable Discussion.

self-identify as a “victim” following abuse. Thus, for many, abuse is not necessarily recognized for what it is. Interpersonal violence includes, but is not limited to, bullying, cyber-bullying, harassment, neglect, hazing, physical abuse, emotional abuse, and sexual abuse and includes many subcategories.³⁶ Some forms, such as physical abuse, may be very apparent to onlookers, while other forms, such as financial abuse or blackmail, may not be. Performance regimes encourage athletes to see these abusive behaviors as ordinary, even necessary, parts of training to win. They are taught to conform and uncritically accept the notion of “performance above all.” The attitude of “get to the top at whatever cost” shifts focus away from the institution that enables harm to occur unchecked.³⁷ Furthermore, the culture of elite sport values suffering and often drills into athletes, from a young age, that success without sacrifice and pain cannot exist. Elite child athletes might lose the ability to experience adolescence and childhood on their own terms.

While performance regimes can operate to convince athletes that they do not experience abuse, “open secrets” regimes demand athletes’ silence even when they do recognize abuse. The culture of elite sport emphasizes an insider-versus-outsider paradigm. Few outside the world of elite athletics can relate to the copious amounts of time, sacrifice, and pressure that athletes face each day, and these exceptional demands yield a tenacious belief that “only we know what we go through.” This culture loosens the ties between those in the in group (athletes) and those outside the group (non-athletes) to the point where it is common for elite athletes to have few relationships outside of the sporting world. This further entrenches athletes in their own world, and it cements the mindset that to speak to the outside world risks exclusion from the only community one has known and felt embraced by. This regime gives power to the abuser and imposes a hefty emotional – and, in some cases, physical and material – cost to speaking publicly about abuse. To speak out, an athlete must risk breaking the rules of inclusion, exploding the open secret, and, possibly, losing access to team, sport, and livelihood.³⁸

Elite athletes are often bound by a “code of silence” that operates differently in specific contexts, particularly along lines of race and gender. For example, an African American football player, who experienced sexual abuse from a team doctor, noted that

³⁶ Roundtable Discussion.

³⁷ Roundtable Discussion.

³⁸ Tuakli-Wosornu, Y.A., Carska-Sheppard, A., Miller, A.M., Ajulu-Bushell R.A., Blazing, L., Briggs, D., *Intentional Violence in the Elite Sporting Environment: Concept Note* (2020) (hereinafter “Concept Note”).

there was internal silence among his fellow Black male athletes about the sexual abuse they experienced. The athletes felt that to highlight the sexual abuse they faced from another man was at odds with the hyper-masculine culture of elite football and the racist tropes that govern Black masculinity in the United States.³⁹ Research on male victims in conflict has shown that the majority of men who have come forward to speak about the sexual abuse they experienced are sexually diverse men (i.e., gay or transgender).⁴⁰ Additionally, in elite football and in sport generally, male athletes who are not conforming to traditional male gender norms (e.g., emotional restraint, aggression, heterosexuality) are often ostracized.⁴¹ When female athletes come forward to break the silence on sexual assault and rape, they break certain rules associated with traditional femininity: that women are available to be raped by men. When men come forward to speak about sexual assault and rape, they break a different set of codes set by traditional masculinity: that a man who is raped is queer.⁴² These barriers of gender pose different challenges but illustrate how a “code of silence” regime operates in different contexts and is both gendered and racialized.

The above discussion raises a pressing question: How do you empower athletes to speak up about abuse and harassment? Any answer must involve changing the culture that compels athletes to remain silent. The next section critically analyzes the failures of institutions to protect athletes against interpersonal violence.

39 Roundtable Discussion.

40 Erdem, Z. P. (2020). “They Treated Us in Monstrous Ways.” *Human Rights Watch*. <https://www.hrw.org/report/2020/07/29/they-treated-us-monstrous-ways/sexual-violence-against-men-boys-and-transgender>.

41 Kågesten, A., Gibbs, S., Blum, R. W., Moreau, C., Chandra-Mouli, V., Herbert, A., & Amin, A. (2016). Understanding Factors that Shape Gender Attitudes in Early Adolescence Globally: A Mixed-Methods Systematic Review. *PLOS One*, 11(6), e0157805. <https://doi.org/10.1371/journal.pone.0157805>.

42 Roundtable Discussion. Dolan, C., Fletcher, L. E., & Oola, S. (2013). Promoting Accountability for Conflict-Related Sexual Violence Against Men: A Comparative Legal Analysis of International and Domestic Laws Relating to IDP and Refugee Men in Uganda. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2758940>.

II. THE FAILURES OF EXISTING SAFEGUARDING POLICIES

Across the world, athletic institutions and sports bodies have instituted policies, known as safeguarding, that ostensibly aim to protect athletes from abuse. The term and concept of “safeguarding” refers to a response regime first developed in the United Kingdom (UK) to protect children from abuse and neglect.⁴³ Over the last twenty years, and in reaction to emerging allegations of interpersonal violence, the world of sport has developed its own versions of safeguarding policies and practices.

In the wake of a series of high-profile allegations of athlete abuse, the UK National Society for the Prevention of Cruelty to Children founded the Child Protection in Sport Unit in 2001 to address safeguarding in sport. For two decades, it has worked with sports bodies, schools, and national governing bodies to protect children in sport. Many sports organizations have adopted its guiding standards, which include risk-assessment procedures for events, processes for whistleblowing and complaints, and guidelines on the intimate care of disabled children or young people.⁴⁴

In 2014, UNICEF’s International Safeguarding Children in Sport Working Group published its International Safeguards for Children in Sport after more than fifty international organizations piloted proposed safeguards. The IOC, National Olympic Committees (NOCs), and international sports federations, too, have implemented safeguarding measures. In 2016, the IOC issued its Consensus Statement on Harassment and Abuse in Sport and adopted a framework for safeguarding athletes from harassment and abuse during events.⁴⁵ NGOs and players associations have also campaigned for and developed safeguarding procedures. However, the mere existence of safeguarding procedures does not guarantee effective steps toward prevention or other forms of protection and response. Their implementation and structure have often been haphazard or entirely nonexistent, and their efficacy has been limited.⁴⁶ In some instances, sports bodies have publicly endorsed certain safeguarding strategies but have failed to use them. Meaningful accountability – which requires that both individuals and systems be held to agreed-upon

43 *History of child protection in the UK.* (2022). NSPCC Learning. <https://learning.nspcc.org.uk/child-protection-system/history-of-child-protection-in-the-uk/>.

44 *Standards for safeguarding and protecting children in sport.* (2022). NSPCC. https://thecpsu.org.uk/media/445556/web_cpsustandards.pdf.

45 *IOC Framework for Safeguarding Athletes and Other Participants from Harassment and Abuse in Sport.* (2016). International Olympic Committee. https://olympics.com/athlete365/app/uploads/2020/12/IOC_Games_Time_framework.pdf.

46 Roundtable Discussion.

standards of redress, repair, and measures to guarantee non-repetition – is often absent.⁴⁷ Policies need to be carefully tailored to their local context; ones that work in one region or sport setting might not work in another. The following sections describe key factors that arise across sporting contexts that cause safeguarding procedures to fall short.

A. Systems Designed to Protect Those in Power

The power imbalances that clearly exist within individual relationships in sport (i.e., athlete and coach) are exacerbated by the very institutions set up to govern elite sport. The structural organization of sports bodies creates a central conflict: In cases in which the abusers are part of or affiliated with a sports body, the institution's vested interest in protecting its image competes with its interest in protecting athletes. Many participants in the Roundtable discussion noted the substantial motivation for sports bodies to have safeguarding measures in name to allow them to claim they are working on the matter, but then they fail to actually enact safeguarding in a meaningful way. Sports bodies have an interest in ensuring that abuse is seen as occurring at an individual, rather than an institutional, level, as the former perception can deflect attention from the latter. In addition, by escaping negative attention and obscuring abuse at the institutional level, these sports bodies avoid having to restructure leadership. For example, if an abuser has a winning record as a coach and major events are approaching, an organization might be tempted to stall in removing that abusive coach.⁴⁸ Moreover, many athletes are completely unaware of their rights and of the safeguarding policies in place, partly because those policies are intentionally opaque and meant to quell outside demands more than actually protect victims.⁴⁹ The existing power structures in international sport – which place politicians and sports officials at the top and athletes at the bottom – undermine the efficacy of safeguarding measures. Several Roundtable participants observed that existing power structures must be inverted in order for safeguarding policies to function effectively.⁵⁰

The case of Gabon's under-20 women's national football team illustrates clearly the phenomenon of sports bodies covering up abuse. In 2019, the Gabonese Football Fed-

⁴⁷ Concept Note, 1-10.

⁴⁸ Hall, M. (2022, July 7). 'I told them': How multiple systems failed when Toledo coach's alleged sexual misconduct was reported. *The Guardian*. <https://www.theguardian.com/sport/2022/jul/07/brad-evans-toledo-investigation-sexual-misconduct-part-two>.

⁴⁹ Roundtable Discussion.

⁵⁰ Roundtable Discussion.

eration opened an investigation into staff of the under-20 women's team after accounts of rape, sexual abuse, and mistreatment surfaced on social media. In response, the sports minister announced that there would be an internal investigation. However, the Federation later suggested that the allegations were untrue, and no public repercussions resulted from the supposed "investigation."⁵¹ This case illustrates how sports authorities might have a disincentive to implementing safeguarding policies in the first place and from enacting those policies even once they are established.

An additional weakness inherent in current safeguarding measures is their focus on rooting out individual perpetrators rather than changing the broader culture that encourages abuse.⁵² Investigations and actions under the authority of safeguarding regimes tend to center perpetrators and harness outrage at the atrocity in ways that de-center survivors and other athletes affected by abusive cultures while deflecting attention from powerful institutional actors and their institutions. Although notoriety and public pressure can play a role in forcing governments and sports organizations to protect athletes, narratives that highlight individual abusers – especially when the story includes sexual abuse – can lead attention away from the structures that gave rise to the abuse.⁵³ Roundtable members noted that, most often, approaching complex human rights questions solely through an interpersonal lens is ultimately futile.⁵⁴ In addition, notoriety or scandal as a core feature of accountability depends upon individual athletes coming forward to actually report abuse – which, in turn, assumes they have a platform to speak. This assumption, however, depends on privileging certain voices over others. Differences across gender, race, access to resources, geo-political location, sport, and nationality mean that individuals with lower levels of social capital and less capacity to withstand aggressive responses are likely to face greater barriers to reporting.⁵⁵

Many participants in the Roundtable said they believed that the role of the media should be problematized as well. News coverage of abuse of athletes often centers

51 (2023, March 29). Gabon investigates alleged rape of women footballers. *Sportstar*. <https://sportstar.thehindu.com/football/football-gabon-authorities-to-investigate-sexual-abuse-allegations-women-players-managers-news/article27241087.ece>.

52 Roundtable Discussion.

53 Miller, A. M. (2004). Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection. *Health and Human Rights*, 7(2), 16–47. <https://doi.org/10.2307/4065347>.

54 Roundtable Discussion.

55 McDonald, S., & Day, J. C. (2010). Race, Gender, and the Invisible Hand of Social Capital. *Sociology Compass*, 4(7), 532–543. https://www.researchgate.net/publication/230271908_Race_Gender_and_the_Invisible_Hand_of_Social_Capital.

perpetrators and pushes sensationalist narratives that come at the expense of athletes' mental and physical health. Media coverage, while keenly important in cultivating public support, also puts undue pressure on athletes to speak publicly about their abuse, which they may not be ready or willing to do.⁵⁶ By focusing disproportionately on individual abusers, media coverage risks nurturing the perspective, among the public and policy makers, that interpersonal violence in sport is an individual rather than a structural and systemic issue.

B. Barriers to Reporting and How Reporting Itself Is a Flawed Method to Produce Protective Action

These hierarchical systems of sports authority heighten cultural and institutional barriers that discourage athletes from coming forward. Currently, safeguarding processes largely rely on athletes reporting abuse. However, the 2016 IOC Consensus Statement on Sexual Harassment and Abuse noted that “the power imbalances associated with hierarchical and heteronormative masculine authority systems of sport ... lead to a culture of secrecy and deference that facilitates abuse.”⁵⁷ Athletes are unlikely to come forward to report abuse if they do not trust the power structures in place or the individuals to whom they would report. The challenges are exacerbated for female, queer, and trans athletes, who are often subordinated by gender stereotyping, homophobia and transphobia, and traditional religious values.⁵⁸ In sport, which often emphasizes notions of traditional masculinity and femininity, queer and trans male athletes are expected to report abuse in a system that is actively hostile to their being. That they would be eager to come forward is unlikely.⁵⁹ Participants in the Roundtable agreed that reporting mechanisms in elite sport today largely lack trust from athletes, who may be asked to report to high-ranking officials or individuals with whom they have no relationship. Furthermore, in some international sports bodies, reporting

⁵⁶ Roundtable Discussion.

⁵⁷ Mountjoy, M., Brackenridge, C., Arrington, M., Blauwet, C., Carska-Sheppard, A., Fasting, K., Kirby, S., Leahy, T., Marks, S., Martin, K., Starr, K., Tiivas, A., & Budgett, R. (2016). International Olympic Committee consensus statement: Harassment and abuse (non-accidental violence) in sport. *British Journal of Sports Medicine*, 50(17), 1019–1029. <https://doi.org/10.1136/bjsports-2016-096121>.

⁵⁸ Reardon, C. L., Hainline, B., Aron, C. M., Baron, D., Baum, A. L., Bindra, A., Budgett, R., Campriani, N., Castaldelli-Maia, J. M., Currie, A., Derevensky, J. L., Glick, I. D., Gorczynski, P., Gouttebarga, V., Grandner, M. A., Han, D. H., McDuff, D., Mountjoy, M., Polat, A., ... Engebretsen, L. (2019). Mental health in elite athletes: International Olympic Committee consensus statement (2019). *British Journal of Sports Medicine*, 53(11), 667–699. <https://doi.org/10.1136/bjsports-2019-100715>.

⁵⁹ Roundtable Discussion.

mechanisms are available only in a few languages, thus alienating a sizable portion of athletes.⁶⁰

Many reporting mechanisms across the world also offer little protection to athletes. Especially in the Global South, existing systems inside and outside sport are not well structured to encourage reporting and genuine repair. Crucially, local law enforcement is often unwilling or unable to provide protection. There have been many cases of athletes reporting abuse and then suffering retribution and threats of violence.⁶¹ In Afghanistan, for example, members of the Afghan Women's National Football Team reported that the President of the Afghan Football Federation, Keramuddin Keram, and other officials had raped and sexually harassed players.⁶² Subsequently, some government officials labeled the women as lesbians – an accusation that could lead to the murder of the women. Although FIFA banned Keram, other named perpetrators remain involved with Afghan sport.⁶³ In this case, where players reported abuse and then the relevant governing institutions failed to take protective and system-wide corrective action, the failure itself can be seen to have perpetuated harm.

Individual reporting can also extract a large emotional toll from all involved. Trauma affects not just the victim and perpetrator; those who listen to accounts of others' trauma or who are witnesses to it suffer secondary trauma.⁶⁴ Even well-intentioned reporting systems can subject teammates and the many actors constituting the regime of sport to both inquiry and the presentation of the evidence of abuse without being provided with any mode of support. Effective reporting structures would provide physical and psychological support to all parties, including those who are aware of the accounts of abuse. Research in trauma studies emphasizes that a physician's (or other therapist's) role in managing allegations of abuse should not focus only on the survivor, but must also provide support for the family, entourage, and teammates of the abused.⁶⁵ For sports organizations, which tend to be interested in productivity and cutting financial

60 Roundtable Discussion.

61 Roundtable Discussion.

62 Wrack, S., & Wrack, E. by S. (2018, November 30). Fifa examining claims of sexual and physical abuse on Afghanistan women's team. *The Guardian*. <https://www.theguardian.com/football/2018/nov/30/fifa-examining-claims-sexual-physical-abuse-afghanistan-womens-team>.

63 Khalida Popal [@khalida_popal]. (2020, July 24). *FIFA & CAS finalised their decision and banned the former president of the football federation. But how about those men that we reported to @FIFAcOm who also sexually abused our players? WHY they are in the federation and around women football?* <https://t.co/D8St3m2Pv0> [Tweet]. Twitter. https://twitter.com/khalida_popal/status/1286554440737198080.

64 Roundtable Discussion.

65 Roundtable Discussion.

costs, providing support for secondary trauma often is either intentionally ignored or a blind spot.⁶⁶

Currently, safeguarding measures depend on reporting, and several discussants in the Roundtable believed that to encourage athletes, their teammates, members of their entourages, sport leaders, and other potential onlookers to come forward, safeguarding should be a long-term process inquiring into the conditions of the particular sport overall, including its training regimes, rather than one that an athlete must seek out after a harm has been committed. For example, one participant said:

Any concept of reporting must be based on athletes being empowered from their beginning in the sport – allowing them early decision-making from their first time in sport instead of disabling their decision making. If we enable them from the outset, we’ll get athletes talking about abuses because they’re enabled by systems we and they have participated in. What we can do is build an environment where athletes and others talk about these issues not just in terms of reporting, but in terms of good quality environment free of harassment. If athletes are regularly asked, “How are you being treated? How can the environment be improved? Do you feel respected?” then reporting becomes a small piece of larger discussion about the quality of sport experience. That gives us a different context around reporting.⁶⁷

Implicit in this more contextual engagement is an idea about trust – that any effective reporting requires trust in systems – a theme echoed by many Roundtable participants. Spaces where trust and confidence are operational and actively nurtured from the outset would create an atmosphere in which athletes are more likely to come forward. One discussant asked, “Where are the spaces [in sport] where people feel free to have open communication without fear?”⁶⁸ Highlighting those spaces of trust, and understanding how they have contributed to that culture, can be useful in creating reporting mechanisms that are survivor centered. As one Roundtable participant said, “The broader question should not just be how do we empower athletes in the current regime that perpetuates injustice, but what do we need to unlearn and dismantle to create safer spaces?”⁶⁹

66 Roundtable Discussion.

67 Roundtable Discussion.

68 Roundtable Discussion.

69 Roundtable Discussion.

Ultimately, making concrete improvements in reporting involves changing many currently baked-in aspects of the institutional culture of sport.

C. How the “Values” of Sport Can Impede Safeguarding

Although sport has long claimed political neutrality and independence as values, these much-repeated rhetorical ideals produce one of the most intransigent barriers to effective safeguarding policies. Olympic Movement founder Pierre de Coubertin espoused a view – echoed in the Olympic Charter – that sport transcends differences in culture, history, and geography.⁷⁰ The supposedly apolitical nature of sport can help sports organizations evade outside scrutiny for two reasons. First, under the perspective this claim supports, sport is treated as if separate from geopolitics. Second, sport (i.e., the structures of sport) is portrayed as lacking interest in distributions of power.⁷¹

Yet it is clear and well documented that political interests and political factions are rife and, given the market structures of its institutions, inherent within elite sport. International sporting success is frequently tied to nationalism, and sport holds a commanding place in the international economy. In 2018, for example, global brands spent £34.1 billion on sports sponsorship,⁷² while the final tally for the 2016 Olympics in Rio de Janeiro alone topped \$13 billion.⁷³

One result of the ostensibly apolitical nature of sport is that safeguarding as a practice in sport is divorced from other important and complex human rights issues, such as transgender exclusion and so-called sex testing, which proponents of these practices portray as raising “political” issues rather than safeguarding’s apolitical “safety” issues. The outcome is that discrimination, medical mismanagement, and ethical violations vis-à-vis differently gendered bodies are baked into conversations around sports “fairness” and are not seen as issues of safeguarding. Moreover, current approaches to safeguarding largely center able-bodied, cisgender athletes. One discussant noted, “It is an uncomfortable fact that the vast majority of safeguarding centers predominantly white, vulnerable

70 Lenskyj, H. J. (2018). *Gender, athletes’ rights, and the Court of Arbitration for Sport*. Emerald Publishing Limited.

71 Concept Note, 23.

72 Cutler, M. Global sports sponsorship spend to reach £35bn in 2019 – Two Circles. (2019, May 2). *Two Circles* (GB). <https://twocircles.com/gb-en/sport-misses-out-on-14bn-despite-growth-year-for-sponsorship-spend/>.

73 *AP Analysis: Rio de Janeiro Olympics cost \$13.1 billion*. (2017, June 14). AP NEWS. <https://apnews.com/article/d1662ddb3bae4d2984ca4ab65012be78>.

women as most worthy of protection.”⁷⁴ Other systems of power that affect the conditions of (un)safe sport and, thus, are issues for safeguarding, such as racism, white supremacy, transgender rights, indigenous rights, and disability rights, are viewed as inherently too “political” for discourse about sport.

Promotion of international sport as a tool for social and economic development poses risks that are similar to those posed by the narrative that sport is inherently a boon to communities and apolitical. Campaigns that push sport as a tool for prosperity and peace often mask the way that sport recreates structural power dynamics and perpetuates abuse.⁷⁵ Although sports can undoubtedly promote health and international collaboration, problems arise when sport is painted as unequivocally moral, apolitical, and beyond reproach. Some sports bodies have used the discourse around “sports being good for development” to deflect negative attention. In Haiti, for example, when female soccer players reported that the Haitian Football Federation’s president had coerced players into having sex, the federation put out a statement doubting the claims and noting that “our project is first of all a human project which aims to change the future of young people.”⁷⁶ Acceptance of both narratives – that sport is not political and that it is simply a tool for prosperity and a developmental good – are implicitly and explicitly invoked to deflect attempts to call attention to the harms that occur as a result of sport. The layering of professed “safeguarding measures” on top of this rhetoric perpetuates the conditions that give rise to abuse.

D. Thinking Power Through for Effective Prevention, Protection and Repair: Real Safeguarding

There is no one-size-fits-all approach to safeguarding, but efforts to develop effective safeguarding regimes should take into account four key modes of understanding how power operates in sport. First, intersectional analysis can highlight that abuses arise and are experienced – and those affected by abuse face barriers to redress – along different axes of power. Harm analysis and responses must consider the role of gender in light of its interactions with age, race, disability, geography, access to resources, and other axes of difference. When developing safeguarding procedures, organizations must engage the

74 Roundtable Discussion.

75 Chappelet, J.L., (2016). Autonomy and Governance: Necessary Bedfellows in the Fight against Corruption in Sport. In Transparency International (Ed.). *Global Corruption Report: Sport* (pp. 16-29).

76 Aarons, E., Molina, R., Cizmic, A., & Aarons, E. by E. (2020, April 30). Haiti FA president accused of sexually abusing young female footballers. *The Guardian*. <https://www.theguardian.com/football/2020/apr/30/haiti-fa-president-accused-of-sexually-abusing-young-female-footballers>.

most vulnerable groups, including queer and transgender athletes, child athletes, and disabled athletes. Until there are specific safeguarding procedures in place to protect these groups, safeguarding as a whole will not be complete.⁷⁷

Second, effective safeguarding regimes must be part of larger programs to engage with and work to dismantle the specific policies and practices that both reflect and reinforce the power imbalances that create authority without accountability in sport. The power structures of sport, which subordinate athletes, breed interpersonal violence, as discussed above. Creating safeguarding policies that fail to address this dynamic would be futile. Also, to create robust reporting mechanisms, organizations must understand how these power dynamics discourage athletes from reporting abuse.

Third, safeguarding measures must be part of efforts to understand abuse as systemic and to achieve accountability for institutions and the structures of sport to better prevent future harms. What are the specific institutional practices and cultural regimes that encourage abuse? Is it club rules on parental involvement? High fees for access? Internal penalties for disrupting “team spirit”? Too often, safeguarding focuses on individual perpetrators instead of the prevailing institutional culture that enables harms. It is impossible that all abuses happen “in secret” and to only one person; if “everyone knows” (i.e., an enabler syndrome ensures silence), how can enablers be constructively called in to be part of redress and repair? Safeguarding that does not push for institutional reform will enable abuse to continue.

Finally, to be effective, policies that set up safeguarding regimes must take into account local contexts. Copying models from one site to another is unlikely to be effective given the vast cultural differences across the elite sporting world. Interventions must emphasize cultural sensitivity and the general political environment in which the sport is operating when working across the Global North and South, particularly in contexts of contrasting resource scarcity and abundance. In implementing new policies, care must be taken to note where rule of law might be tenuous, where independence of the police and judiciary is questionable, where gender and sexual rights claims might be disregarded, and where national identification and geopolitical interests might constrain action. This means that safeguarding procedures in two different countries, or even within a country, to be effective, might need to look quite different.⁷⁸

77 Concept Note, 10-11, 42-44.

78 Concept Note, 12, 16-18.

While current safeguarding measures are not adequate for the protection of athletes across sporting contexts, they have improved greatly in the past two decades. To be maximally effective, rather than band-aid solutions, these protections must be preventative instead of solely addressing abuse after it occurs. Safeguarding, as part of meaningful protective policy and as part of larger public engagement around interpersonal violence in sport, must address the institutions that enable and perpetuate abuse rather than just the individual perpetrators. The next section addresses the role of sports governance – particularly in its current form and its insulation from rights-based challenges – in addressing interpersonal violence in sport and asks what effective sports governance might look like.

III. SPORTS GOVERNANCE: A TOOL TO PROTECT ATHLETES?

In the world of elite sport, regulation and accountability play out through a constant push-and-pull between private, international sports bodies and public (i.e., national and international) legal regimes. Traditionally, sports bodies have enjoyed extensive, although not absolute, autonomy from oversight by national and international legal systems. But despite the general tendency toward autonomy, a number of public law regimes shape sport governance and, in some instances, offer alternative routes for prevention and redress of interpersonal violence.

The bodies governing elite sport are often, but not always, intertwined. The concept note explains: “A web of sporting regulations and contractual agreements binds lower-ranking sports organizations to higher-ranking ones, creating power dynamics within global sport.”⁷⁹ The International Olympic Committee, which sits at the head of Olympic sport, exercises considerable authority over international sports federations (IFs), national Olympic committees (NOCs), and organizing committees of the Olympic Games (OCOGs).⁸⁰ “Key to this power dynamic is the IOC’s control over participation in the Olympic Games: As the gatekeeper to the Games, the IOC conditions participation on the lower sports bodies’ year-round adherence to the Olympic Charter and the World Anti-Doping Agency (WADA) Anti-Doping Code.⁸¹ In turn, the rules and regulations of the IFs control their 96 respective national federations (NFs). Thus, a hierarchy emerges – the rules of higher-ranking sports organizations govern lower ones, and local and national sports organizations are bound to their international overseers.”⁸² Athletes might be bound by the relevant organization’s rules and regulations regarding how they can raise complaints and in what venue those complaints can be addressed.⁸³ For example, FIFA prohibits recourse to public courts in most instances.⁸⁴ Some sports organizations’ rules bind athletes in the sports they oversee to arbitrate any sports disputes before arbitral bodies like the Court of Arbitration for Sport (CAS), keeping the adjudication and enforcement of athletes’ rights within private regulation.⁸⁵ This entire regime – justified

79 Concept Note, 30.

80 Concept Note, 30.

81 Concept Note, 30.

82 Concept Note, 30.

83 Concept Note, 30.

84 Concept Note, 30.

85 Concept Note, 31.

in light of the claims of sports' intrinsic community benefit, apolitical nature, and "striving for excellence," which were elaborated in the preceding section – insulates elite sports' constellation of power differentials and further fosters the conditions for abuse.

A. The Challenges of Self-Regulation

Sport has managed to retain relative autonomy from public law regimes. Many national and international governments either expressly or tacitly recognize sport autonomy, and the IOC may suspend NOC funding and revoke their right to participate in Olympic Games if states pass legislation that "unduly interferes" in the Olympic Movement.⁸⁶ The result of this autonomy is that sports bodies can act with little outside oversight, often to the detriment of athletes.

The discussants in the Roundtable agreed that, for a number of reasons, the current model of sports governance does not effectively protect the rights of athletes and that efforts to improve accountability within the self-regulation of sports bodies are largely futile. First, there remains a fundamental conflict of interest within sports bodies. The image and profitability of the sports body is paramount, and allegations of abuse that threaten either of those assets are seen as an existential threat to the sport body itself.⁸⁷ Therefore, the leadership of sports bodies finds value in hiding the prevalence of interpersonal violence and keeping any discussions of it internal.

Several recent examples within elite international sport illustrate the dangers of internal regulation. In the aforementioned 2019 case in Gabon, where accounts that the staff of the Gabon U-20 Women's National Football Team raped and sexually abused players appeared on social media, the alleged perpetrators were subjected to no sanctions; instead, the Gabonese Football Federation filed a complaint against the journalist who broke the story.⁸⁸ To count on independent sports bodies or federations to deliver justice for victims has often proven to be unproductive.

Institutional gaps within the broader elite sport world allow named perpetrators to be banned in one league but not another. For example, disconnect between the US Center for SafeSport and the National Collegiate Athletic Association (NCAA) allowed alleged abusers to continue working with young athletes though they were suspended for sexual misconduct by SafeSport, a nonprofit organization that aims to address the abuse

86 IOC (2020). *Olympic Charter: Rule 28.9*.

87 Roundtable Discussion.

88 Gabon's media regulator does it again, suspending a leading news site. *RSF*. (2019, August 6). <https://rsf.org/en/gabon-s-media-regulator-does-it-again-suspending-leading-news-site>.

of minors in sport. Specifically, in 2018, two NCAA coaches who were suspended from USA Volleyball for sexual misconduct and other abuse were allowed to continue coaching their NCAA teams.⁸⁹ Because of the lack of coordination between US SafeSport and the NCAA, perpetrators are able to move from institution to institution without their records following them and without facing consequences. The Roundtable agreed that this patchwork of protections fails to protect athletes.⁹⁰

B. The Failure of Public Mechanisms

There was a consensus among Roundtable participants that self-regulation is not ideal, but participants lamented that public-law accountability mechanisms have also failed to protect athletes. Domestic courts have declined to exercise jurisdiction over the IOC on matters related to the Olympic Games. In one case, the U.S. Court of Appeals for the Ninth Circuit rejected gender discrimination claims against the IOC, finding that “a court should be wary of applying a state statute to alter the content of the Olympic Games,” as the Games are “organized and conducted under the terms of an international agreement – the Olympic Charter.”⁹¹ The court was reluctant to apply “one state’s statute” to regulate an event that engaged international competitors under the terms of the Olympic Charter. National-level court systems are also often slow, and it is not uncommon for cases to take several years to reach a verdict: indeed, as noted below, use of the Court of Arbitration for Sport is often justified by its speed. Discussants in the Roundtable noted that, to effectively protect the health of athletes, courts must be efficient in adjudicating these issues, but because they are not, they are not the best avenue for redress.⁹²

In some instances, domestic governments and courts lack the power or jurisdiction to intervene. In other settings, where these institutions are fundamentally corrupt, they are barriers to justice. After female soccer players accused the president of the Haitian Football Federation of coercing players into having sex with him, as described above, the National Network for the Defense of Human Rights, an established Haitian human rights organization, suggested that the soccer players had fallen victim to the general fail-

89 Reid, S.M. (2022, January 20.) Why aren’t college coaches subject to SafeSport bans for sexual misconduct?. *Orange County Register*. <https://www.ocregister.com/2020/01/22/why-arent-college-coaches-subject-to-safesport-bans-for-sexual-misconduct/>.

90 Roundtable Discussion.

91 *Martin v. International Olympic Committee*, 740 F.2d 670, 677 (9th Cir. 1984).

92 Roundtable Discussion.

ure of the Haitian justice system to provide adequate protection for victims and witnesses.⁹³ In much of the Global South, where judicial institutions lack independence, they are not a recourse for victims.

While Roundtable participants largely agreed about these challenges, the group notably disagreed on the potential for arbitration to be an appropriate mechanism for aggrieved athletes. Sport disputes are commonly resolved through arbitration – using either processes internal to the relevant sports body or agreed-upon external arbitrators. Traditionally, arbitration has been the primary mode of dispute resolution for sports because arbitral bodies offer relatively expedient, low-cost, confidential decisions that are tailored specifically to the elite sport context. Arbitration can also provide speedy and cost-effective resolution, which is particularly important to athletes, whose short careers may depend upon a quick decision in an eligibility dispute.⁹⁴ One participant said that arbitration based on trauma-informed models and including built-in accommodations for victims are potentially fruitful and noted the success of the Sport Dispute Resolution Centre of Canada as an example. Other discussants pushed back, however. They noted that, on a logistical level, arbitration often occurs behind closed doors, might prevent athletes from having their voices heard, and can produce less public precedent. One noted that “the shortcomings of arbitration don’t outweigh the benefits.” Another argued that mediation and arbitration in a system in which there are power imbalances is fundamentally unfair, as it benefits the perpetrator and can cause athletes to feel forced into an inappropriate remedy. They asked, “What does it mean for a human rights abuse issue to be arbitrated?”⁹⁵

C. A Hybrid Model

While the Roundtable participants agreed that there is no perfect model of sports governance, many expressed an interest in a hybrid, public-private system that might be an independent, global entity that has broad oversight over elite sport across the world. Participants debated what this model might look like, and there was no consensus. One participant suggested it could be a private entity funded with public monies. Another discussant stated that it could be a private entity committed to a set of universally, publicly adopted human rights guidelines. Of course, this model alone would not necessarily be sufficient; this body would have to carefully and continually monitor the implementation

93 Haiti: FIFA Failing Sex Abuse Survivors. (2023, February 21). *Human Rights Watch*. <https://www.hrw.org/news/2023/02/21/haiti-fifa-failing-sex-abuse-survivors>.

94 Roundtable Discussion.

95 Roundtable Discussion.

of evolving human rights norms. The body would also have to reconsider the longstanding assertion of political neutrality and autonomy in sport that has allowed interpersonal violence to occur unchecked.

Roundtable participants agreed that an effective model of sports governance must be athlete-centered, with athletes fully involved in its creation. One discussant said, “It’s hard for me to imagine a governing body constituted by sports bodies, but it’s not as hard to imagine some independent body negotiated between athletes, other interested entities, and sports governing bodies and that has the teeth of monitoring, sanctions, and transparency.”⁹⁶

Another participant noted that it is not enough for an entity to just sanction an abuser and that a victim-centered approach requires that athletes have genuine access to remedy. Remedy is not only sanctions; it must entail a process that victims can trust, reconciliation, and compensation. The discussant noted that reconciliation and compensation are necessary to give legitimacy back to sports bodies. “Sport needs to understand it’s not enough to be seen to be doing something; its legitimacy will depend on access to remedy. . . . [W]e’re still looking at things through sports norms, and we need to look at them through human rights norms. That means the hierarchical approach must be replaced with a shared approach.”⁹⁷

One participant posed the questions: How do we incentivize sports systems to be better when there are active incentives against that? How do we use public and internal mechanisms to do that? Those questions – as well as what a global independent entity might look like – need to be addressed. Answering these questions will require a new lens, a new analytic framing of the dynamic of interpersonal violence in sport, and openness to fresh ideas to guide research and decision-making on *how* harms befall specific athletes – not just *that* harms befall athletes – and how to provide athletes with effective protection.

96 Roundtable Discussion.

97 Roundtable Discussion.

CONCLUSION

The Roundtable discussion did not answer all questions posed and evinced most disagreement when it came to the question of proposals to change the formal regime of sport governance. But the points of agreement provide a strong foundation for efforts to build effective systems to protect athletes.

- Athletes face abuse both from individual perpetrators whose actions are enabled by broader regimes and, in some cases, from policies and structures that themselves perpetuate harm (i.e., gender eligibility regulations).
- Sports bodies are currently ill-equipped to handle the interpersonal violence and other abuses against athletes, and the culture of elite sport engenders interpersonal violence in many ways.
- The inherent structure of sports bodies gives power to sports officials at the expense of athletes, resulting in a system that both enables and causes violence.
- Any system of sports governance that is to be truly effective must be athlete led, and safeguarding mechanisms must be survivor centered.

Discussants in the Roundtable noted that education could prove to be a powerful tool to transform the culture of elite sport. Educating athletes, parents, coaches, and others can change harmful narratives around sport that obscure and enable harm. Sports bodies can partner with universities, UNICEF, and human rights organizations to provide proper safeguarding training. Such training can help build capacity across sport, and it can begin to create new norms around the safety and protection of athletes. Education needs to be specific to each region of the world in order to navigate cultural differences and ensure that systems are culturally sensitive and appropriate.⁹⁸

One Roundtable discussant involved in elite sport clarified the argument for education, noting that “education without power is frustration.”⁹⁹ Ultimately, however, education could help upend the current governance system that subjugates athletes. As participants in the Roundtable noted, education cannot be simply learning about effective safeguarding measures, but must also involve unlearning. What do we need to unlearn about our structures of governance? How do we rethink how systems and power should be organized? These are key questions that need to be answered in ensuing discussions.¹⁰⁰

98 Roundtable Discussion.

99 Roundtable Discussion.

100 Roundtable Discussion.

Although there is no “one size fits all” approach to preventing, responding to, and repairing harms, Roundtable participants observed that the concept note prepared to serve as the basis for the Roundtable discussion identified a new analytic frame that can help guide future safeguarding initiatives. This frame arises from a systematic and structural interrogation both of the conditions that give rise to abuses inflicted in elite sporting environments and of how athletes experience the wide range of unique harms. In sport, interlocking regimes of power exercise control over athletes that varies in form along lines of race, gender, sexuality, disability, age, class, place, and other categories and axes of difference. Recognizing intersectionality is necessary to creating regimes that protect all athletes of all identities – not just those in the majority. The proposed new analytic frame also notes that safeguarding initiatives need to be altered to protect the most vulnerable athletes.¹⁰¹

Safeguarding must take into account power imbalances inherent in sport. Current measures rely on athletes reporting abuse, but, given the barriers that many athletes face, future inquiry should investigate safeguarding measures that do not rely solely on reporting. A new framework should recognize that power imbalances determine what counts as abuse and how abuse is addressed. A new analytic framework should critically consider which voices are elevated to define and decide questions related to athlete well-being, as well as how and why those voices are amplified. Safeguarding measures must also take into account the structural flaw inherent in sport as it has long been organized, whereby sport’s claim to autonomy has produced a lack of public accountability. A new framework should consider, not only the extent to which existing cultural, national, international, economic, and normative frameworks validate or enable sports governance systems, but also how these systems are insulated from or responsive to external accountability.¹⁰²

Finally, approaches to identifying harm must take into account the local context: Safeguarding measures that work in the United States, for example, may not be as effective in another setting in which there are distinctly different social and legal landscapes, in which local actors have varying levels of access to fair and effective courts, gender equality, community support, and resources for independent living. When international sports organizations that are incorporated in the Global North adopt rules and procedures rooted in Global North-based values (e.g., the over-dependence on reporting systems to prevent

101 Concept Note, 11.

102 Concept Note, 11.

interpersonal violence reflects Global-Northern neoliberal values of reliance on individually motivated action and individualized fault), the slippage between the rules and the potential of their local application is likely to impair interventions in the Global South. Solutions must be context specific.¹⁰³

To conceptualize and combat the culture and practice of interpersonal violence in the elite sport context, we must continue to examine and challenge the conditions that give rise to abuses inflicted in elite sporting environments. We should think about how to upend existing power structures. In particular, we should consider how meaning and power flow between global institutions and local contexts and find ways to alter those flows that will allow us to build frameworks that are athlete centered and independent of geographically specific value sets. For example, this conversation presents an opportunity to change conflicts of interest between athletes and sports bodies into common interests. Formulating this new frame will require interdisciplinary perspectives to explore this central question: What kind of transferrable tools can centers of power provide that might aid local actors who must identify existing harms, prevent future harms, and provide redress for those who suffer harms and violations of rights?

The discussion that will continue in the coming years will be bolstered when it is athlete led, includes a variety of voices, and approaches questions from a truly interdisciplinary perspective. The Roundtable's success was due, in part, to the participants' different identities: athletes, sports officials, lawyers, academics, and others.

In the broader conversation around protecting athletes, voices from the Global North have been privileged at the expense of others. The Roundtable's participants were almost all based in the Global North, and many important perspectives were glaringly absent. Several questions emerged. Chief among them is how can Global South-driven conversations become the starting point for, and Global South organizations the convenors of, further discussions, in order to center non-traditional spaces? In particular, initiatives need to consider which athletes are given the opportunity to present solutions that are working for them. Looking to paralympic athletes from the Global South who are not necessarily bound to a long history of structured sport can provide new modes for understanding elite sport. Those athletes can challenge basic assumptions of how elite sport and its governing bodies respond to abuse.¹⁰⁴ Looking to non-traditional athletes and to sports structures in the Global South can help identify new solutions for and understand-

103 Concept Note, 12.

104 Roundtable Discussion.

ings of elite sport, inclusive modes of being athletes, and how to embed cultural pluralism into sports governance and protective systems. Gleaning knowledge from these spaces can be helpful in changing the narrative, shifting power, and setting up practices that dismantle the structures of power that perpetuate violence.

APPENDIX A: INVITATION TO THE ROUNDTABLE

Orville H. Schell, Jr.
Center for International
Human Rights

SPORTS
EQUITY™
Lab



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Save the Date: Virtual Convening (02 December 2020)

We are pleased to invite you to join our rescheduled virtual roundtable discussion, #MeTooSport in the Larry Nassar Era: Legal Frameworks for Preventing Intentional Violence in Sport Settings. The event will convene academics, international human rights researchers and advocates, practicing attorneys, doctors and other health professionals, and sports scientists for an interdisciplinary reckoning with discrimination, harassment, and abuse in international sport.

The one-day, closed-door roundtable discussion will take place via Zoom, and center on legal, ethical, and cultural challenges in international competitive sport. Our dialogue will re-examine existing mechanisms for abuse prevention and redress, offering practicable solutions that protect athletes' rights while recognizing the needs of sports organizations.

A forthcoming Concept Note will provide background and encourage conversation based on common understandings of the conditions that facilitate athlete harms. During focused discussion sessions, roundtable participants will respond to the four principal sections of the Note:

1. Elite sport's unique challenges for abuse prevention and redress
2. The wide range of harms facing elite athletes
3. Gaps in existing prevention and redress regimes
4. Implications of various legal regimes for effective prevention and redress

Our goal is to guide practice and generate specific recommendations for sports organizations and national actors. We will discuss the potential shape and scope of the meeting's outcome document on 2 December.

Although this convening will not directly address gender stereotyping, women athletes with differences of sexual development, transgender and related gender identity concerns, many of this project's themes can be useful to, or supportive of, challenges to myriad forms of inequity, discrimination, and violence in sport.

The meeting is co-hosted by the Global Health Justice Partnership of the Yale Schools of Law and Public Health, the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School, the Sports Equity™ Lab, and Sports Law Solutions, under the guidance of Andrea Carska-Sheppard, BCL/LLB, and Yetsa Tuakli-Wosornu, MD/MPH, members of the International Olympic Committee Working Group for the Prevention of Harassment and Abuse in Sport. This event is made possible by a generous grant from the Oscar M. Ruebhausen Fund.

We hope you will join us on 02 December—a logistical note will follow.

Please respond to sarah.harwood@yale.edu with questions and/or confirmation of interest by 30 October 2020.

All the best,

Alice M. Miller, JD
Assistant Clinical Professor, Yale School of Public
Health & Associate Professor (Adjunct) of Law
Co-Director, Global Health Justice Partnership

Yetsa A. Tuakli-Wosornu, MD, MPH
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James Silk, JD, MA
Binger Clinical Professor of Human Rights, Allard K.
Lowenstein International Human Rights Clinic
Director, Orville H. Schell, Jr. Center for International
Human Rights

Andrea Carska-Sheppard, BCL/LLB
General Counsel Workplace Options
Principal, Sports Law Solutions

Doug NeJaime
Anne Urowsky Professor of Law, Yale Law School

APPENDIX B: ROUNDTABLE AGENDA

#MeTooSport in the Larry Nassar Era: Legal Frameworks for Preventing Intentional Violence in Elite Sport

02 December 2020
0930-1530 EST

Join from PC, Mac, Linux, iOS or Android: <https://yale.zoom.us/j/93267271061>

Or Telephone : 203-432-9666 (2-ZOOM if on-campus) or 646 568 7788

Meeting ID: 932 6727 1061

International numbers available: <https://yale.zoom.us/j/93267271061>

Roundtable Schedule	
0930-1010	Opening and Section I: Introduction - Moderators: Yetsa A. Tuakli-Wosornu, Andrea Carska-Sheppard, Alice M. Miller
1010-1015	5-minute break
1015-1125	Section II: How Does the World of Sport Generate a Range of Unique Harms? - Lead Interlocutors: Gigi Alford, Andrea Florence, Amos N. Guiora, Jen Klein, Sarah Klein, Madeleine Pape, Judith van der Veen - Moderators: Yetsa A. Tuakli-Wosornu, Alice M. Miller
1125-1145	20-minute break
1145-1255	Section III: Can Existing Safeguarding Regimes Account for the Conditions that Generate Harms in Sport? - Lead Interlocutors: Sheree Bekker, Natalie Galea, Sandra Kirby, Kyle Knight, Michael McNamee, Margo Mountjoy, Laura Robinson - Moderators: Yetsa A. Tuakli-Wosornu, Andrea Carska-Sheppard
1255-1330	35-minute break
1330-1440	Section IV: Does the Structure of Sports Governance Systems Impede Effective Safeguarding? - Lead Interlocutors: Marie-Claude Asselin, Erin E. Buzuvis, Joyce Cook, Daniela Heerdt, Michele Krech, Hugh Fraser, Matthieu Reeb, Brendan Schwab - Moderators: Andrea Carska-Sheppard, Alice M. Miller
1440-1445	5-minute break
1445-1530	Conclusion: Key Takeaways and Next Steps - Moderators: Yetsa A. Tuakli-Wosornu, Andrea Carska-Sheppard, Alice M. Miller

APPENDIX C: CONCEPT NOTE

NOVEMBER 2020
CONCEPT NOTE

INTENTIONAL VIOLENCE IN THE ELITE SPORTING ENVIRONMENT

YETSA A. TUAKLI-WOSORNU, ANDREA CARSKA-SHEPPARD, ALICE M. MILLER
REBECCA ACHIENG AJULU-BUSHELL, LAUREN BLAZING, DANIEL BRIGGI

Acknowledgements

This Concept Note has been prepared for the #MeTooSport in the Larry Nassar Era: Legal Frameworks for Preventing Intentional Violence in Sport Roundtable. The project is the product of an interdisciplinary collaboration between the Sports EquityTM Lab, Sports Law Solutions, the Global Health Justice Partnership at Yale Law School, and the Schell Center for International Human Rights at Yale Law School.

This project was made possible with the generous support of the Oscar M. Ruebhausen Fund at Yale Law School. Many thanks are due to Doug NeJaime and Jim Silk for their review and insightful guidance over the course of this effort.

Executive Summary

Sport has the power to unite people from all races, cultures, and backgrounds. It speaks an international language and provides opportunities for unparalleled personal and political development. But now, in this same space, elite athletes across the world are speaking out about abuse—and sport stakeholders are beginning to listen. Widespread reports of violence, harassment, and maltreatment of athletes have led to calls for meaningful reforms to keep players safe. But, too often, safeguarding policies and procedures fall short. To generate holistic prevention and intervention, effective reforms must address not only abuse itself, but also the unique characteristics of the elite sporting environment that enable and perpetuate violence against athletes. This Note examines the underlying conditions that give rise to incidents of abuse, interrogating the role of power in different social, cultural, and geopolitical sporting contexts.

“Widespread reports of violence, harassment, and maltreatment of athletes have led to calls for meaningful reforms to keep players safe.”

The Elite Sporting Environment

Our analysis centres on the world of elite sport, which is distinct from recreational or other sporting environments because athletes’ bodies and performances become instruments of others’ status and incomes. This commodification of athletes creates fertile ground for abuse, enabling and reinforcing the following elite-sport-specific conditions that foster abuse:

- Intense physical training demands coupled with mental and emotional toughness create a **culture of resilience** that masks athlete suffering.
- **Absolute trust of sport authority figures** normalizes practices that threaten athlete well-being, obscuring athletes’ rights and abilities to advocate for themselves.
- Positive performance outcomes increase an athlete’s **over-conformity to harmful sport norms**, making that individual more vulnerable to abuse and less likely to report.
- An **outcome-focused agenda** that prioritises the public image of sport over the interrogation of the athlete’s developmental process; disincentivizing non-athlete stakeholders from taking preventative action. Gendered and racialized celebrity norms exacerbate the effects on athletes who identify as women and women of color.
- The **emphasis on present success** at the expense of long-term wellbeing discourages penetrating inquiry into sport’s negative impact on the lives of elite athletes and limits athletes’ ability to build dignified, meaningful post-sport identities.

In addition to these key factors, two regimes within sport culture make identifying and redressing the harms athletes face more difficult:

- **Performance regimes:** As those who have spent hours on the track, in the pool, in the gym, or on the field can attest, suffering is endemic to elite sport. A ‘win at all costs’ culture compels high-level athletes to uncritically accept and commit to performance ideals, often prioritizing sport over health. In striving for peak performance at the expense of all else, athletes expose themselves to risk of harm simply by “buying in” and over-conforming to the value system of sport itself.
- **Open-secrets regimes:** Sport teams are tight-knit groups that form deep bonds over a common ‘only we know what we go through’ or ‘us vs. them’ perspective on shared suffering. This insider knowledge acts as an informal mode of discipline wherein the practice of abuse within the team becomes an ‘open secret’—widely known within the group but not acknowledged in any way. This shifts power to the abuser and renders targets and witnesses complicit in the abusive practices, stymying responses and resistance.

Critical Perspectives for Examining Sport

The central project of this Note is to invite a new analytical frame to conceptualize the institutional and individual relationships of power underlying athlete harms in order to craft effective, holistic interventions and remedies. To build this framework, we suggest that four understandings of power must guide effective interventions:

1. **Intersectionality:** Abuse arises at the intersection of different axes of power—from gender to age to race to disability to resource access and more. Our analysis must account for the fact that abuse arises from inequities brokered by different systems of power.
2. **Power Imbalances:** Coaches, administrators, and medical personnel, among others, all command considerable authority over the advancement of an athlete’s career. Concerns about career-ending retaliation may impede prevention and reporting of intentional violence. Our frame must acknowledge and address these power imbalances.
3. **Structural Accountability:** National and international legal regimes tend to limit their interference in sport affairs, creating a system of ‘sport autonomy’. Sport governing bodies are thus granted wide latitude to create their own rules and adjudicate their own disputes with limited accountability to outside regulatory regimes. Our analysis must recognize and draw into question the shape of these structures and institutions.
4. **Global Power, Local Solutions:** Principles and practices to address abuse in sport must translate across radically different settings. An effective framework requires attention to the way that policies play out in the global North as well as the global South; in resource scarce as well as resource abundant environments; and in spaces where the rule of law is strong or tenuous. Ultimately, local solutions may need to be profoundly different across different local contexts.

Several interventions that have emerged in response to reports of abuse. One response, ‘safeguarding’, has been widely adopted in the sport world. In recent years, the International Olympic Committee (IOC) and most International Sports Federations (IFs) have also enacted safeguarding measures, which the Note explores in more detail. But as these interventions are adopted, questions about implementation, efficacy, and the relationship to broader structural change remain. Our critical perspectives and understandings of power allow us to see how and why cultural characteristics of elite sport might impede safeguarding:

1. **Uneven Access to Media Attention and Notoriety (Intersectionality):** As demonstrated by the public demand for justice following news of the USA Gymnastics scandal, notoriety can be a valuable tool to hold sport organisations accountable. In most contexts, though, sport governing bodies have larger platforms than do individual athletes. And some athletes face higher barriers to sharing their stories, as social and cultural factors may constrain access to media or discourage public reporting of abuse.
2. **The Heteronormative and Masculine Nature of Sport (Power Imbalances):** At the local level, coaches, trainers, and others may use their positions to abuse athletes. These dynamics are exacerbated by their relationship to gender, race, sexuality, nationality, age, access to resources, or disability, whereby proximity to white, male, cisnormative presentation is idealised and rewarded. But power imbalances at the organisational level—where global North-based centres of power generate and enforce most sport policy—may operate to perpetuate and shield local wrongdoings.
3. **Sport’s Claim to Moral Idealism and Apoliticalism (Structural Accountability):** Sport has historically staked a claim to an apolitical, morally neutral ideal, but this claim masks the role sport plays in impacting both internal and external politics. First, although sport might appear separate from geopolitics, it has become inextricably linked with nationalism and market forces. Second, even if sport may claim to lack internal power interests, sport hierarchies constrain actors and enable abuse.
4. **The Use of Sport as a Tool for Development and Peace (Global Power, Local Solutions):** Governments, non-governmental organisations, corporate partners, and sport organisations have actively promoted sport as a tool for social and economic development. But by elevating sport values as a social good, the discourse of sport for development and peace can discourage critical examination of sport values themselves. While sport can undoubtedly promote health, wellness and international collaboration, problems arise when sport is painted as unequivocally moral, apolitical, and beyond reproach

Structural Barriers to Sport Safeguarding

Our analysis also considers structural barriers built into the world of sport that frustrate efforts to prevent athlete abuse. Most international sport governing bodies exercise significant control over their national and sub-national member organisations, creating a hierarchical structure of sport organisations bound together by contractual agreements. In many instances, governments grant these sport organisations wide latitude to make and enforce their own regulations. Indeed, a number of national and international governments have adopted policies that expressly recognise ‘sport autonomy’, allowing sport bodies to govern themselves with limited state interference. But legal and regulatory regimes engage differently with sport in various countries, states, and territories. Paradoxically, the tendency toward ‘sport autonomy’ may lead to underenforcement of rights in some contexts while, at the same time, providing much-needed rights-enforcing clout in other contexts in which the government is unable or unwilling to step in. As we work toward an analytic framework, we must consider how sport governing bodies shoulder responsibility and accountability in different geopolitical settings.

“[G]overnments have adopted policies that expressly recognise ‘sport autonomy’, allowing sport bodies to govern themselves with limited state interference”

Call for Action

This Note is a starting point to spur dialogue and develop concrete action steps to deconstruct and confront the range of harms facing elite athletes. Drawing from the Note for grounds and guideposts for conversation, the #MeTooSport project will bring together stakeholders and experts from diverse fields to tackle harm-producing sport conditions from an athlete-centred, intersectional, and cross-contextual perspective. Ultimately, we seek to answer the question: what user-friendly, transferrable tools can global centres of power provide to aid local sport actors who must identify existing harms, prevent future harms, and provide redress for athletes? In responding to this call, #MeTooSport and its partners will strive to build a safer world of sport for all athletes.

Contents

Table of Abbreviations	7i
Table of Color Keys	8i
I. Introduction: Sport’s Unique Challenges to Preventing and Responding to Intentional Violence	1
A. The Paradox of Harms and the Unique Environment of Sport	1
B. A New Framework: Addressing the Conditions That Enable Intentional Violence in Sport	2
C. Erecting the Breakwater: Finding a Common Vocabulary and Boundaries to Begin Delineating the Range of Intentional Harms Arising in Sport	2
Δ The Challenges of Consolidating Terminology: Selection and Assignment	3
D. Overview: Roadmap of the Concept Note	4
II. The World of Sport Generates a Range of Unique Harms	6
◆Section II: Framing Questions	6
A. Introduction: Critically Examining the World of Elite Sport	6
B. The Elite Sporting Environment is Unique	6
Δ Perceptions of Elite Para Sport: Harmful Narratives in Sport	8
C. Two Cultural Regimes Within Sport Complicate Efforts to Identify and Remedy Athlete Harms	9
1. Performance regimes	9
2. Open-secrets regimes	9
D. Prevention and Remedy Efforts Must Account for and Alter Sport’s Power Dynamics	10
Analytical Frame:	10
Four Power Aspects that Generate and Facilitate Harmful Conditions in Sport	10
1. Intersectionality	10
2. Power Imbalance	11
3. Structural Accountability	11
4. Global Power, Local Solutions	11
III. Existing Safeguarding Regimes Cannot Account for the Conditions that Generate Harms In Sport	13
◆ Section III: Framing Questions	13
A. Introduction: Safeguarding as a Response	13
B. The Application of Safeguarding in Sport	13
Δ Eight Safeguards: International Safeguarding Children in Sport Working Group	14
C. Gaps and Shortfalls of Sport-Specific Safeguards	16
Δ Safeguarding: Institutional Gaps & US SafeSport	16
1. Uneven Access to Platforms for Notoriety	18
	5i

Δ Notoriety as an Accountability Tool: Gabon Football U-20 Women’s National Team	18
2. Hierarchical, Heteronormative and Masculine Authority Systems	20
Δ Barriers to Reporting: Afghan Women’s Football Team	21
3. Idealism, Neutrality, and Sport	22
Δ Political Neutrality and IOC Policy: A Shifting Paradigm?	24
4. Sport for Development and Peace	25
Δ Haiti: Sport as Development and the Claim to a Moral High Ground	27
IV. The Structure of Sports Governance Systems Can Impede Effective Safeguarding	29
✦ Section IV: Framing Questions	29
A. Introduction: Accountability in the World of Sport	29
B. Structural Barriers to Safeguarding	30
1. Private Law: Vertical Integration Through Contractual Agreement	30
Δ The CAS and Alternative Dispute Resolution: An Appropriate Forum for Human Rights Disputes?	31
2. Private Law: Contractual Provisions to Prevent Human Rights Violations	32
Δ Corporate Efforts To Protect Rights: Gap Filling or Accountability Shifting?	34
3. Public Law: Sport Autonomy and The Limited Reach of Public Law	35
Δ Switzerland: Liberal Oversight for the CAS and Sport Associations	36
4. Public Law: Uneven Enforcement of Public Law and Human Rights Norms	37
Δ Sport and International Human Rights	39
C. Closing the Gaps	41
V. Conclusion: A New Analytic Frame Is Needed to Cognize Harms and to Shape Effective Mechanisms for Prevention and Redress	42
A. Determining the Frame	42
An Analytical Frame: Power Aspects and Conditions that Foster Athlete Harms	42
1. Intersectionality: Race, Gender, Disability	42
2. Power Imbalance: Power of Definition and Power of Decision	42
3. Structural Impact: Vertical Integration, Network Creation, and Exceptionalism	43
4. Global Power and Local Solutions	43
✦Central Framing Questions	44

Table of Abbreviations

CAS	The Court of Arbitration for Sport
FIFA	International Federation of Association Football
IF	International Sports Federation
IOC	International Olympic Committee
NF	National Sport Federation (see National Governing Body)
NGB	National Governing Body (see National Sport Federation)
NOC	National Olympic Committee
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGP	United Nations Guiding Principles on Business and Human Rights
US	United States of America

Table of Color Keys

Throughout the Concept Note, questions, themes, and examples are separated into color coded boxes as follows:

Grey Box Examples of or elaborations on key concepts

Blue Box Questions to guide inquiry and discussion

Green Box Essential elements for building a new analytical frame

Intentional Violence in Sport

Concept Note

I. Introduction: Sport's Unique Challenges to Preventing and Responding to Intentional Violence

A. The Paradox of Harms and the Unique Environment of Sport

Clear and consistent evidence of athlete abuse and institutional failures of response have emerged in notorious cases across the world—yet nowhere are these problems holistically and well-addressed. Athletes' stories reveal long-running cases of multiform sexual harm, from Larry Nassar's egregious abuse of US women's gymnasts to Keramuudin Karim's repeated sexual assault and coercion of Afghan women's soccer players. This kind of sustained abuse is made possible not just by the malicious intentions of one offender, but by widely shared policies and practices within sport. These toxic sporting regimes maintain their grip on the world of sport through power imbalances, information asymmetries, under-reporting, denial, and normalization, all steeped in ideologies unique to sport: of striving, excellence, and insider "we alone understand our lives" narratives. In the Nassar and Karim cases and other global examples of abuse, asymmetries in age, race, access to resources, and accountability further exacerbate these maladaptations of response.

Interventions designed to provide prevention and redress are often unable to surmount the barriers created by the interlocking institutional features that render the elite sport context unique. Thus, harmful conditions persist, fostering and maintaining an experimental arena of high-performance sport wherein excellence is pursued, no matter the risk.

Furthermore, the global North-driven nature of the bodies that govern, safeguard, and regulate the world of sport ensures that specific local contexts often face additional broad and insuperable barriers to prevention, intervention and redress. In order to create effective, comprehensive, athlete-centred, sustainable and culturally competent responses, the interlocking institutional aspects of sport that generate this tension between global and local centres of power must be addressed.

Effective prevention and redress require more than a checklist of useful interventions. Meaningful reform requires an understanding of not just *what* intentional violence is happening; but *how* it is happening. Thus, a critical, holistic analysis must consider the many different kinds of power, motives and interests operating in sport.

B. A New Framework: Addressing the Conditions That Enable Intentional Violence in Sport

Sports governing bodies, governments, non-governmental organisations, athletes, and a host of other stakeholders have started to identify, acknowledge, and address intentional violence in sport. Against a backdrop of allegations of athlete mistreatment, safeguarding and other responses have emerged; but experience and analysis reveal that these interventions are doomed to fall short of what is needed, as they are limited by the unique cultures and structures of the elite sporting environment. This Concept Note is part of a larger project, #MeTooSport, which calls for a deeper reckoning by all involved. Engaging stakeholders across the world of sport, we will develop a framework to understand and restructure the sport-specific underlying conditions that enable intentional violence against athletes.

To that end, this Note is intended to provide the analytical and empirical background to foster collaboration among the many actors, institutions, and disciplines that will be needed to design and implement effective, holistic plans for prevention and redress. Virtual meetings, podcasts, academic and policy publications, and other media will challenge and develop the ideas in this Note, channeling these concepts into concrete action.

C. Erecting the Breakwater: Finding a Common Vocabulary and Boundaries to Begin Delineating the Range of Intentional Harms Arising in Sport

Talking about the problems in sport and their potential solutions in sport requires a common grounding as to scope and **terminology**.¹ Athletes face a range of harms that are difficult to define because they manifest in the practice of sport which, itself, is defined by going beyond the routine movement of bodies in everyday life. At the same time, sport is not free of the discriminations, unfair resource allocations, and exploitative practices of everyday life.¹ Contemporary research, literature, legislation, and activism seek to address multiform harms but use different words, take different approaches, and target different problems ranging from pay disparity to gendered exclusions, media coverage to parental involvement.

This Note does not address all potential harms arising in sport; the piece does not explore issues of resource allocation, pay parity, or de jure (law-based) or de facto discrimination. Rather, our analysis focuses on the conditions, ideologies, norms, and structures that give rise to athlete abuse. By tracing

¹ E.g., Rebecca A. Mattson, “LGBTQ Athletes and Discrimination in Sport,” in *Sexual Orientation, Gender Identities, and the Law: A Research Bibliography, 2006-2016*, ed. Dana Neacsu and David Brian Holds, 2018; Wladimir Andreff, “Economic Distortions: Infringing Human Rights in Sport,” in *An Economic Roadmap to the Dark Side of Sport* (Palgrave Pivot, 2019), 109–38, https://doi.org/10.1007/978-3-030-28456-5_4; Ted Rogers School of Management in partnership with Global Athlete, “Olympic Commercialization and Player Compensation: A Review of Olympic Financial Reports,” December 6, 2019, <https://static1.squarespace.com/static/5c8a203ac46f6d6629eac1f4/t/5ea0788e6944957714622d5f/1587574929736/2020.04.22+Olympic+Commercialization+and+Player+Compensation+FINAL.pdf>.

the cultural and structural characteristics of modern elite sport, we seek to expose the deliberately chosen policies and practices that inflict grave mental, physical, and health consequences on individual athletes. The terms framing this discussion focus primarily on variable manifestations of violence and the different naming practices: intentional violence vs. abuse vs. maltreatment vs. harms.

In this Note, we draw on a variety of disciplines and literatures, and these sources sometimes favor more legal terms (e.g., assault, abuse) or more sociological (e.g., maltreatment).² In health, and also in the junctions of health and rights, terms such as gender-based violence, sexual violence or harmful practices are relevant.³ Each term derives its meaning from a distinct research base and underlying structure of understanding. In this Note, we use the term ‘intentional violence’ knowing that, in some settings, the more common term is abuse. We use violence to convey an embodied assault on mind and body; such assaults also attack the person’s dignity.

Moreover, even as we select one term, we are aware that the naming process also is part of another form of structural and institutional power: the power of one discipline over another, of some places and people over others. We invite consideration of the most useful vocabulary/ies as part of the larger collaborative project.⁴

Δ The Challenges of Consolidating Terminology: Selection and Assignment

Dominant epistemologies will continue to reach visible crises and seek transformation as we develop new analytic frames and new ways of cognising existing issues. These epistemological constraints must be understood and taken into account when considering the language we know and choose, because inherent to a discussion of terminology is always the concern over whether the definitions that brought us to the present are able to take us to the future.

For example, the terms ‘global North and global South’ are terms used in many settings to distinguish different forms of power (financial, military, industrial capacity) and access to and control over resources (including access to equal protection of the law, control of extractive industries) as well as control of narratives across the globe. At the same time, some actors do not recognize a place for themselves in the way these terms distinguish geopolitical power and wealth

² Emma Kavanagh et al., “Managing Abuse in Sport: An Introduction to the Special Issue,” *Sport Management Review* 23, no. 1 (February 2020): 1–7, <https://doi.org/10.1016/j.smr.2019.12.002>.

³ Erin Casey et al., “Gender Transformative Approaches to Engaging Men in Gender-Based Violence Prevention: A Review and Conceptual Model,” *Trauma, Violence, & Abuse* 19, no. 2 (May 18, 2016): 231–46, <https://doi.org/10.1177/1524838016650191>.

⁴ See Thematic Glossary Appendix and MeTooSport.com.

(such as some former Soviet Union nations and those who see themselves as the ‘South within the North’).

The interdisciplinary nature of this Note highlights the difficulty in selecting and assigning terminology, as we are always engaging a moving target. This struggle to agree on terminology selection can also represent the struggles within and complex connections among subjects. These discussions throw light on the tensions inherent in trying to define language deliberately and with reference to existing knowledge and canons, while, at the same time, allowing language to do work to transform itself and our ways of thinking.

D. Overview: Roadmap of the Concept Note

The four sections that follow seek, first, to identify critical perspectives on the factors that enable intentional violence in sport and the principles that must guide remedies; second, to assess existing responses in light of these principles and in the context of other features of ‘sport culture’; third to consider the particularities of the legal regimes governing elite international sport and their implications for seeking prevention and remedy for harm; and finally, to posit some ways forward, with attention to the often-neglected questions of useability and transferability to diverse settings across global sporting regimes and nations and cultural contexts.

Section II enumerates conditions underlying the unique sporting environment and giving rise to intentional violence. Particular consideration is given to elite sport, the vulnerable populations therein, and the disparity between insider and outsider knowledge. We posit that effective and athlete-dignity-affirming methods of prevention and redress must be analysed and developed in relation to four key understandings of power: the role of intersectionality, the invisible prevalence of structural causes of abuse, the implications of power imbalance, and a commitment to seeing the interplay between global power and local solutions.

Section III details the establishment and application of safeguarding policy in sport and critiques ineffective organisational response policy as a means by which alternatives are crowded out and athletes are placed at risk. The heteronormative and masculine nature of sport, uneven access to media attention and notoriety, the use of sport as a tool for economic development and peace, and the claim to political neutrality in sport are all examined as cultural factors contributing to policy shortfalls.

Section IV explores the legal autonomy customarily granted to sport organisations and examines the interplay of athletic governing bodies with legal and regulatory regimes. At the intersection of

privately regulated sports organisations and national and international legal regimes, we identify barriers to effective action that vary with international structural differences.

Section V proposes guideposts to develop a new analytic frame to analyse and confront the wide range of harms facing elite athletes. This frame incorporates and expands on each of the key understandings of power (intersectionality, structural impact, power imbalance, and global power/local solutions), inviting an interdisciplinary response to the question: what kind of user-friendly, transferrable tools can centres of power provide to aid local actors who must identify existing harms, prevent future harms, and provide redress for those who suffer harms?

II. The World of Sport Generates a Range of Unique Harms

◆Section II: Framing Questions

1. How do the conditions and cultures endemic to elite sport create space for intentional violence?
2. How do regimes that prioritize performance over wellbeing and conformity over self-advocacy complicate efforts to see and address athlete abuse?
3. How can prevention efforts account for the power dynamics at play in varying elite sport contexts?
4. How can a framework to address intentional violence against athletes work within—or dismantle—narratives that may obscure abuse in Para sport and other elite sport?

A. Introduction: Critically Examining the World of Elite Sport

Around the world, elite athletes train and compete under unique conditions and adhere to sport-specific values. In these singular, high-performance environments, players suffer a wide-ranging array of harms. In Section II, we identify several characteristics of the world of elite sport that foster and perpetuate this athlete abuse. In addition to tracing these distinctive elements of sport, we illuminate two disciplinary regimes within sport that prevent athletes from reporting mistreatment. Finally, we propose four understandings of power that must underlie any open, effective effort to address the conditions enabling abuse in sport.

B. The Elite Sporting Environment is Unique

Elite sport is distinguishable from recreational sport and other sporting environments by the extent to which athletes' bodies and performances become instruments of others' status and income. This extensive investment by others sets up the specific conditions that permit abuse to thrive. We suggest that the following factors render high-performance sport a distinct and fertile environment for abuse:

- The physical demands of training are grueling and there is an expectation that athletes display emotional toughness. This means that mental health is not just an instrument of competition but a mechanism for conforming to an accepted standard of enduring pain. The specific culture of resilience in elite sport acts as a mask to the suffering that some individuals experience as part of their elite sport participation.⁵

⁵ Celia Brackenridge, Joy D. Bringer, and Daz Bishopp, "Managing Cases of Abuse in Sport," *Child Abuse Review* 14, no. 4 (2005): 261, <https://doi.org/10.1002/car.900>.

- The absolute trust in the authority of coaches (and the wider elite sport training ecosystem: physicians, nutritionists, physiotherapists, admin staff, older teammates etc.) exists as a precondition for instances of misuse and abuse of power. This results in the normalisation of practices that pose significant ongoing threats to the well-being of elite athletes.⁶ The normalisation of harmful practices blurs lines for elite athletes; in this environment, their rights become less clear, their ability to see themselves as rights-holding individuals is impaired (of what use is asserting rights when they are dependent on others to continue to achieve ‘greatness?’), and any incentive to advocate for these rights to be upheld becomes obsolete.
- Risk of abuse is not evenly distributed. Individual characteristics may heighten athletes’ susceptibility; indeed, athletes with developmental, cognitive, or physical impairments are more likely to experience intentional violence.⁷ We also see that most athletes are more vulnerable to intentional violence just before they achieve some modicum of greatness in their sport.⁸ The direct relationship between athletes’ performance and their risk of experiencing intentional violence suggests a confluence of factors. First, a positive correlation likely exists between investment in athletes’ performance outcomes and abuse; the more invested the stakeholders are, the more vulnerable to intentional violence the elite athlete becomes. Second, higher levels of performance may leave athletes less protected by existing structures of prevention and redress. Finally, players on the cusp of greatness are likely over-conforming to sport ideals that value performance over personal health, making these athletes less likely to recognize or report abuse.
- Perverse incentives weigh against individual preventative action from non-athlete stakeholders. Coaches, parents, and other stakeholders prioritize outcome over process.⁹ This outcome-focused agenda escalates when funding and sponsorship deals create celebrity standing for elite athletes. The weighty responsibility of many athletes’ ‘role model’ status is a key factor in the negative incentive structure to address abuse, as critical examination of violence in sport would run counter to entrenched narratives that paint prominent athletes as invincible or superhuman. Because sexism and racism have created dangerous celebrity

⁶ Aaron C.T. Smith et al., “Contextual Influences and Athlete Attitudes to Drugs in Sport,” *Sport Management Review* 13, no. 3 (August 2010): 194, <https://doi.org/10.1016/j.smr.2010.01.008>.

⁷ Margo Mountjoy et al., “International Olympic Committee Consensus Statement: Harassment and Abuse (Non-Accidental Violence) in Sport,” *British Journal of Sports Medicine* 50, no. 17 (April 26, 2016): 1021, <https://doi.org/10.1136/bjsports-2016-096121>.

⁸ Celia Brackenridge and Sandra Kirby, “Playing Safe,” *International Review for the Sociology of Sport* 32, no. 4 (December 1997): 413, <https://doi.org/10.1177/101269097032004005>.

⁹ Hamish Telfer, “Protective Practice: Coaching Children and Young People,” in *Sport, Children’s Rights and Violence Prevention*, ed. Celia Brackenridge, Tess Kay, and Daniel Rhind (Brunel University London, 2012), 35-36, <https://bura.brunel.ac.uk/bitstream/2438/7072/2/Fulltext.pdf>.

norms for women athletes—and, specifically, women of colour—these negative incentives weigh even more heavily against them.

- The hypnotic power of elite sport discourages penetrating inquiry into its harms to participants.¹⁰ Elite sport’s **performance-driven agenda** Δ leaves little to no room for inquiry into participants’ lives.¹¹ Instead, emphasis is on performance in the present with limited consideration for an athlete’s future beyond the next Olympic Games or similarly significant event. Elite athletes may be actively discouraged from weighing long-term considerations in favor of reaching short-term competitive goals. This lack of interest in the lives of elite athletes outside their sporting performance and dissuasion from looking beyond the next major performance affords each player a very limited identity. Little room remains for dignity and meaningful decision-making, especially as athletes depart the world of sport at the close of their playing careers. This present- or near-future-focused agenda denies many athletes the chance to develop meaningful post-sport identities.

Δ Perceptions of Elite Para sport: Harmful Narratives in Sport

While many of the characteristics of the elite sport environment map onto Para sport, Para athletes often face additional harmful narratives and norms. Critical theorists suggest that disability is socially constructed and deeply intersectional (i.e. derives meaning and impact from different systems of power, such as race, gender, and age),¹² and that institutions, rather than impairments, systematically disable people.¹³ Through this lens, the Paralympic Movement can be considered both an agent of disability apartheid (e.g., ‘special Games’ for ‘special athletes’) and an echo chamber for hegemonic, ableist narratives that position Paralympians as sportspeople who, by virtue of their participation, not athleticism, have conquered disability.¹⁴

Central to these narratives are “stock stereotypes of ‘brave, elite athletes’, ‘special people’, ‘remarkable achievers’” and the unambiguous positioning of disability as a weakness, deficiency, or negative condition one should naturally aim to ‘beat’.¹⁵ The centring of disability (instead of performance) in the relatively small canon of mainstream media stories detailing Paralympic sport

¹⁰ Craig A. Wrisberg, “Quality of Life for Male and Female Athletes,” *Quest* 48, no. 3 (August 1996): 392, <https://doi.org/10.1080/00336297.1996.10484205>.

¹¹ Emma J. Kavanaugh and Abby Brady, “A Framework for Understanding Humanisation and Dehumanisation in Sport,” in *Enhancing Athlete Welfare*, ed. Daniel Rhind and Celia Brackenridge (Brunel University Press, 2013), <https://bura.brunel.ac.uk/bitstream/2438/8243/2/FullText.pdf>.

¹² Dan Goodley, “Dis/Entangling Critical Disability Studies,” *Disability & Society* 28, no. 5 (July 2013): 631–44, <https://doi.org/10.1080/09687599.2012.717884>.

¹³ Margrit Shildrick, “Critical Disability Studies: Rethinking the Conventions for the Age of Postmodernity,” in *Routledge Handbook of Disability Studies*, ed. Nick Watson, Carol Thomas, and Alan Roulstone (Routledge, 2012), 30–41.

¹⁴ Gerard Goggin and Christopher Newell, “Crippling Paralympics? Media, Disability and Olympism,” *Media International Australia Incorporating Culture and Policy* 97, no. 1 (November 2000): 71–83, <https://doi.org/10.1177/1329878x0009700110>.

¹⁵ Goggin and Newell, “Crippling Paralympics? Media, Disability, and Olympism.”

may lessen the general public's perception that elite Para sport is about win-at-all-costs performance—but this may, at the same time, inadvertently lessen the perception that elite Para sport is 'elite' at all.

When the Para sport narrative centres not on performance, but rather on participation, social inclusion through sport, and overcoming disability, the restrictive performance-based regimes that bind Para athletes are obscured. A stereotyped story glosses over Para sport's highly competitive selection processes, hard-earned competition, and rigorous demands on athletes. The story of overcoming disability can, therefore, render invisible other struggles and abuses among Para athletes. How can a framework to address intentional violence against athletes work within—or dismantle—narratives that may obscure abuse in Para- and other elite sport?

C. Two Cultural Regimes Within Sport Complicate Efforts to Identify and Remedy Athlete Harms

From the host of unique features of elite sport we derive and focus next on two dominant regimes within sport culture that render the elite sporting environment uniquely difficult for crafting prevention and redress interventions against abuse. First, in elite sport extreme suffering is presented as essential to success, creating 'performance regimes.' Second, talking about abuse violates the deep comradery generated by an 'only we know what we go through' perspective on suffering. This deep comradery produces silent suffering within 'open-secrets regimes' fueled by power differentials and the emotional bonding of insiders against outsiders.

1. Performance regimes

- *Agony as excellence and 'going beyond' as a defining characteristic of the elite athlete*

It is difficult for all stakeholders (e.g., athletes, coaches, clinicians, fans) to identify problems and seek solutions in an arena within which extreme physical duress and mental toughness are not only expected but rewarded.¹⁶ In this pain-driven environment, conformity to sporting norms of 'performance above all' drives athletes to prioritize sport over health.¹⁷ Athletes are encouraged to uncritically accept and commit to the ideals of sport, often at high cost.¹⁸ This becomes a form of positive deviance whereby elite athletes are not rejecting norms, but rather are over-conforming to what could be classed as the value system of sport itself.

¹⁶ M.B. Anderson, "Challenges for Sport Psychology" (September 2006).

¹⁷ Keith Ewald and Robert M. Jiobu, "Explaining Positive Deviance: Becker's Model and the Case of Runners and Bodybuilders," *Sociology of Sport Journal* 2, no. 2 (June 1985): 144–56, <https://doi.org/10.1123/ssj.2.2.144>.

¹⁸ Robert Hughes and Jay Coakley, "Positive Deviance among Athletes: The Implications of Overconformity to the Sport Ethic," *Sociology of Sport Journal* 8, no. 4 (December 1991): 307–25, <https://doi.org/10.1123/ssj.8.4.307>.

2. *Open-secrets regimes*

- *Sport community is defined by the insider knowledge that ‘only we know’*

The milieu of sport is further constituted as one of insider vs. outsiders: only athletes and their intimates understand the challenges of training and competition. In this kind of in-group/out-group setting, knowledge of sport-related harms can function as part of a regime that further entrenches not only the specialness of the athletes but also the danger of going outside the group for help. Athletes thus find themselves silenced within regimes of ‘open secrets.’ The concept of ‘open secrets’ can serve as an analytic lens onto a specific, informal mode of discipline and regulation wherein practices of abuse within a tightly defined group (an “us vs. them” group identity such as might exist between police vs. civilians, religious group vs. nonbelievers etc.) are widely known but not acknowledged in any official way. This regime shifts power to the abuser and renders both targets and witnesses of the abuse complicit in the abusive practices. Keeping the secret becomes part of the terms of inclusion in the special group, stagnating response and resistance.¹⁹

D. Prevention and Remedy Efforts Must Account for and Alter Sport’s Power Dynamics

In response to sensational but incomplete accounts of abuse and a poorly defined and mischaracterized range of harms, policy standards and programmatic interventions have developed. However, most of these interventions fall short, failing to account for the structural nature of the risk environment or offer accessible, useful help to athletes. Sections III and IV trace these interventions and their shortcomings.

Understanding, analyzing, and improving the institutions and interventions explored in Sections III and IV will require an analytical frame that accounts for the unique context and risks of elite sport. Four fundamental insights and principles emerge from our analysis, in Section II, of the conditions in which intentional violence in sport flourishes. These principles, in turn, must guide our efforts to shape effective interventions:

¹⁹ Pauline Oosterhoff, Prisca Zwanikken, and Evert Ketting, “Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret,” *Reproductive Health Matters* 12, no. 23 (January 2004): 68–77, [https://doi.org/10.1016/s0968-8080\(04\)23115-9](https://doi.org/10.1016/s0968-8080(04)23115-9).

Analytical Frame:

Four Power Aspects that Generate and Facilitate Harmful Conditions in Sport

1. Intersectionality

- *Abuse arises at the intersection of different axes of power*

Harm analysis and response must consider the role of gender in light of its interactions with age, race, disability, access to resources, and other axes of difference. Abuse arises differently across gender, and male- and female-identifying individuals may have different reasons for under-reporting. Specific concerns also arise for vulnerable groups: athletes under the age of 18 engage specific regimes of protection under international human rights and national law, and persons with disabilities also contain within their specific lived experience heightened risks and specific regimes of protection. Thus, analysis must consider the reality that that abuse is generated and tolerated as a result of the inequities flowing from various systems of power.

2. Power Imbalance

- *Power imbalance among individual actors in sport*

Intentional violence arises as unique aspects of the elite sport context enable the exploitation of entrenched interpersonal sporting power imbalances, real or perceived, as well as legacies of power imbalance in the world outside sport. Coaches, administrators, and medical personnel, among others, all command considerable authority in the advancement of an athlete's career. Concerns over one's own performance or personal reputation erect substantial barriers to the prevention and reporting of intentional violence. Consideration must be given to established power imbalance in structuring solutions.

3. Structural Accountability

- *Structural power differences between sports governing bodies and other institutions traditionally invested in accountability*

Sports governing bodies generally enjoy a presumption, enshrined in both public law and in sport governing body regulations, of autonomy from legal or political interference. This default to autonomy fosters intentional violence within sport by limiting institutional accountability, channeling disputes into limited forums, and restricting athletes' options for redress. And even as athletes face heightened risk, sports governing bodies maintain their claim to autonomy by referring to longstanding notions of sport as an apolitical platform for peace and development. Meaningful interventions, therefore, must grapple with the structural constraints facing athletes as well as the institutional culture that perpetuates those structures.

4. Global Power, Local Solutions

- *A dissonance between global decision-making power and the solutions it affords local contexts*

Principles and processes must be usable across radically different settings and must prioritise international cooperation. Interventions must hold cultural sensitivity at the fore when working across the global North and South and in contexts of resource scarcity and abundance, as these settings may have an effect on dominant voices within a narrative. So too, analysis must consider spaces where rule of law might be tenuous, where gender and sexual rights claims might be disregarded, and where market-driven interests, reputational concerns, or national identifications might constrain action. Ultimately, this framework must be constructed with the knowledge that local solutions may need to be profoundly different (and/or differently understood) across different local contexts—even those ones that are seemingly situated in the same geographic space.

III. Existing Safeguarding Regimes Cannot Account for the Conditions that Generate Harms In Sport

◆ Section III: Framing Questions

1. How do existing safeguarding mechanisms apply to athletes along different vectors of risk (e.g., age, race, gender, geo-political location)?
2. How can we ensure that different safeguarding systems communicate and develop in concert with one another?
3. Can we develop safeguarding systems that are less reliant on reporting? If so, what might those systems look like?
4. How do public attention and the power of notoriety empower or disadvantage athletes in different contexts?
5. How does sport's claim to political neutrality obscure power imbalances within the sporting context? And can we acknowledge sport's positive role in society without obscuring structural and cultural problems within sport itself?

A. Introduction: Safeguarding as a Response

In Section II, we considered several aspects of elite sport that enable and exacerbate intentional violence against athletes. Section III highlights the sporting world's responses to abuse—predominantly, 'safeguarding' initiatives—and points to barriers that complicate these efforts.

The term and concept of 'safeguarding' refers to a response regime first developed in the United Kingdom (UK) to protect children from abuse and neglect.²⁰ Over the last twenty years, and in reaction to emerging allegations of intentional violence, the world of sport has developed its own versions of safeguarding policies and practices.

B. The Application of Safeguarding in Sport

In the wake of a series of high-profile allegations of athlete abuse, the UK National Society for the Prevention of Cruelty to Children founded the Child Protection in Sport Unit to address safeguarding in sport. Since 2001, the unit has worked with the UK Sports Councils, national governing bodies, schools, and public facing organisations to prevent harassment and abuse of

²⁰ "History of Child Protection in the UK." *National Society for the Prevention of Cruelty to Children*, 5 July 2019, learning.nspcc.org.uk/child-protection-system/history-of-child-protection-in-the-uk.

children in sport. The Child Protection in Sport Unit publishes guiding standards which many sports organisations have adopted.²¹

In 2012, UNICEF formed the International Safeguarding Children in Sport Working Group. In the Working Group, dozens of experts came together to draft a set of safeguards to apply across sports contexts. Upwards of fifty international organisations, governments, sports teams, and other institutions piloted the safeguards, and in 2014, the Working Group published its **International Safeguards for Children in Sport** Δ .²² These safeguards, along with the safeguards established by the Child Protection in Sport Unit, take as their starting point several guiding principles from the United Nations Convention on the Rights of the Child,²³ and pertain specifically to children under the age of 18.²⁴

Δ Eight Safeguards: International Safeguarding Children in Sport Working Group

The Working Group established eight safeguards for organisations to protect children under 18 in sport:

1. Developing Your Policy
2. Procedures for Responding to Safeguarding Concerns
3. Advice and Support
4. Minimising Risks to Children
5. Guidelines for Behaviour
6. Recruiting, Training and Communicating
7. Working with Partners
8. Monitoring and Evaluation

The group also acknowledged that the above framework would need to be tailored to local contexts. Thus, any effective safeguarding system would need to be built on the following CHILDREN pillars:²⁵

²¹ National Society for the Prevention of Cruelty to Children Child Protection in Sport Unit, “Standards for Safeguarding and Protecting Children in Sport,” 2018, https://thecpsu.org.uk/media/445556/web_cpsustandards.pdf.

²² International Safeguarding Children in Sport Working Group, “International Safeguards for Children in Sport,” 2016, <https://downloads.unicef.org.uk/wp-content/uploads/2014/10/International-Safeguards-for-Children-in-Sport-version-t-o-view-online.pdf>. Founding organisations for the UNICEF Safeguards included Beyond Sport, Caribbean Sport & Development Agency, Child Protection in Sport Unit, Comic Relief, Commonwealth Secretariat, International Inspiration, Keeping Children Safe, Right to Play, Swiss Academy for Development, UNICEF UK, UK Sport, and WomenWin.

²³ International Safeguarding Children in Sport Working Group, “International Safeguards,” 7. For further discussion of the applicability of human rights provisions to sport safeguarding, see Section IV, *supra*.

²⁴ Child Protection in Sport Unit, “Standards for Safeguarding,” 6.

²⁵ Margo Mountjoy et al., “Safeguarding the Child Athlete in Sport: A Review, a Framework and Recommendations for the IOC Youth Athlete Development Model,” *British Journal of Sports Medicine* 49, no. 13 (June 17, 2015): 883–86, <https://doi.org/10.1136/bjsports-2015-094619>.

1. Cultural Sensitivity: The safeguards need to be tailored to the cultural and social norms of the context.
2. Holistic: Safeguarding should be viewed as integrated into all aspects of an organisation as opposed to being an additional element.
3. Incentives: There needs to be a clear reason for individuals and an organisation to work towards the safeguards.
4. Leadership: The Safeguards need to have strong support from those working in key leadership.
5. Dynamic: Safeguarding systems need to be continually reviewed and adapted to maintain their relevance and effectiveness.
6. Resources: The implementation of the safeguards needs to be supported by appropriate resources (e.g., human, time, financial).
7. Engaging Stakeholders: A democratic approach should be adopted that invites and listens to the voices of those in and around the sport context (e.g., parents, community leaders etc.).
8. Networks: An organisation's progress towards the safeguards will always be strengthened by developing networks with other organisations.

The IOC, National Olympic Committees (NOCs), and International Sports Federations, too, have implemented safeguarding measures. In 2016, the IOC issued its Consensus Statement on Harassment and Abuse in Sport²⁶ and adopted a framework for safeguarding athletes from harassment and abuse during events.²⁷ Simultaneously, the IOC issued a toolkit and guidelines for IFs and NOCs.²⁸ These policies and procedures—which address psychological abuse, physical abuse, sexual harassment, and neglect—require preventative education, institute IOC safeguarding officers for events, and specify reporting procedures for anyone who experiences harassment or abuse.²⁹ The IOC prevention policies encompass all athletes without age-related or other restrictions, but the IOC toolkit for International Sports Federations and National Olympic Committees encourages sport organisations to consider adopting targeted policies to protect at-risk groups including young athletes, athletes with impairments, women and girls, or boys and men.³⁰

²⁶ Mountjoy et al., “International Olympic Committee Consensus Statement: Harassment and Abuse (Non-Accidental Violence) in Sport,” 1019–29.

²⁷ International Olympic Committee, “IOC Framework for Safeguarding Athletes and Other Participants from Harassment and Abuse in Sport (Games Time Period),” 2016, https://d2g8uwgn11fzhj.cloudfront.net/wp-content/uploads/2018/01/18110101/IOC_Games_Time_framework.pdf.

²⁸ International Olympic Committee, “Safeguarding Toolkit,” Olympic.org, accessed September 30, 2020, <https://www.olympic.org/athlete365/safeguarding/>.

²⁹ In addition, the framework provides that the relevant IF or NOC will resolve disputes between two members of the same IF or NOC. Otherwise, the IOC itself will take action. IOC, “Framework for Safeguarding Athletes (Games Time Period),” 6.2.

³⁰ IOC, “Safeguarding Toolkit,” 33.

Non-governmental organisations and players’ unions have also pushed for safeguarding mechanisms to protect athletes. The World Players Association, for instance, has encouraged a “children first and athletes second” approach in its Declaration on Safeguarding the Rights of Child Athletes.³¹ In this way, organisations of various origins have acknowledged and attempted to address the problem of intentional violence in sport. Questions regarding implementation, efficacy, and relationship to structural change, endure, however.

C. Gaps and Shortfalls of Sport-Specific Safeguards

Although elite sports organisations have increasingly adopted policies termed safeguarding initiatives, the proposed protections often fall short. In some cases, overly simplistic or prescriptive safeguarding policies do not account for vastly different individual experiences and local contexts, as when safeguarding policies over-rely on reporting, requiring individuals to come forward in spaces where they might face potentially life-threatening backlash on and off the field.³² Such “cookie-cutter” policies fail to identify the intersection of harms arising from within and outside the elite sport context, or might not consider how safeguarding rules disparately affect individual, high-risk athletes.

At worst, safeguarding regimes might cloud or prevent self-reflection by individuals and institutions, uncritically **adopting rules that enable the abuse they seek to address** Δ.

Δ **Safeguarding: Institutional Gaps & US SafeSport**

The US Center for SafeSport investigates and adjudicates sexual abuse cases for the USOPC.³³ A disconnect between the US Center for SafeSport and the National Collegiate Athletic Association (NCAA), however, allows alleged abusers to continue working with young athletes despite active SafeSport suspension.

For example, in 2018, Long Beach State men’s volleyball coach Scott Touzinsky was suspended for sexual misconduct by USA Volleyball, the sport’s NGB. Two months later, Charlie Wade, head coach of University of Hawaii men’s volleyball, was also suspended by SafeSport and USA Volleyball for alleged sexual abuse of an underage girl.³⁴

³¹ World Players Association, “Declaration on Safeguarding the Rights of Child Athletes,” 2017, https://www.uniglobalunion.org/sites/default/files/files/news/world_players_declaration_on_safeguarding_the_rights_of_child_athletes.pdf.

³² See “Barriers to Reporting: Afghan Women’s Football Team” box below.

³³ US Congress, “Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017,” 115th Cong., 2nd sess., 2018, 633-644, <https://www.congress.gov/115/crec/2018/01/29/CREC-2018-01-29-pt1-PgH633-4.pdf>.

³⁴ Scott Reid, “Why Aren’t College Coaches Subject to SafeSport Bans for Sexual Misconduct?,” *Orange County Register*, January 22, 2020, <https://www.ocregister.com/2020/01/22/why-arent-college-coaches-subject-to-safesport-bans-for-sexual-misconduct/>.

Under their suspensions, the coaches were banned from events sponsored by both USA Volleyball and the USOPC. However, the NCAA does not enforce SafeSport bans, so both coaches were permitted to continue coaching their college teams.³⁵ Because of the lack of coordination between US SafeSport and the NCAA, perpetrators can move from institution to institution without carrying records or facing consequences. In effect, a coach who was banned from working with athletes in the US Olympic system might, nonetheless, work with athletes of the same age on college teams—programs that often serve as a pipeline or training grounds for US national programs. Thus, although SafeSport purports to “make athlete well-being the centrepiece of our nation’s sports culture,”³⁶ gaps in communication create a confusing patchwork of protections that might allow perpetrators to reenter coaching and re-engage with vulnerable athletes.

To evade outside scrutiny or avoid administrative burdens, sports organisations might decline to build and foster networks with non-sport bodies that could strengthen safeguards.³⁷ Sports bodies also weigh commercial costs against reputational costs, electing to adopt sub-optimal safeguarding frameworks with an eye toward protecting their own financial well-being at the expense of athletes.³⁸ Ultimately, this ineffective safeguarding may cultivate an environment that enables athlete exploitation, as the rhetoric of safeguarding crowds out alternatives without offering any meaningful protection.

The confluence of cultural factors embedded in the world of elite sport as detailed in Section I and II widens the gaps in safeguarding regimes, creating conditions ripe for athlete abuse.³⁹ To more accurately interrogate how these cultural factors are operating, it is necessary to hold them up to a broader framework. In evaluating the overarching understandings of power identified in Section II as ethical sites within which these factors work we see:

³⁵ US Center for SafeSport, “Frequently Asked Questions: U.S. Center for SafeSport,” US CenterforSafeSport.org, accessed November 5, 2020, <https://uscenterforsafesport.org/response-and-resolution/faqs-and-helpful-links/>.

³⁶ US Center for SafeSport, “About Us: Mission and Vision: U.S. Center for SafeSport,” USCenterforSafeSport.org, accessed November 5, 2020, <https://uscenterforsafesport.org/about/our-work/>.

³⁷ For example, Baroness Tanni Grey-Thompson issued a 2017 report solicited by the UK Minister of Sport highlighting the connections and contributions needed from government and private- and public-sector actors to ensure athlete safety, health, and support. Baroness Tanni Grey-Thompson, “Duty of Care in Sport,” April 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610130/Duty_of_Care_Review_-_April_2017__2.pdf.

³⁸ In 2020, the COVID-19 pandemic laid bare the potential for conflict between athlete well-being and sport organisations’ bottom lines, as some athletes were left to choose between their own health and their livelihood. Andrew Keh, “Coronavirus Leads Some Athletes to Opt Out, If They Can Afford It,” *The New York Times*, July 3, 2020, sec. Sports, <https://www.nytimes.com/2020/07/03/sports/coronavirus-players-nba-mlb-opt-out.html>.

³⁹ Victoria Roberts, Victor Sojo, and Felix Grant, “Organisational Factors and Non-Accidental Violence in Sport: A Systematic Review,” *Sport Management Review* 23, no. 1 (April 2019): 8–27, <https://doi.org/10.1016/j.smr.2019.03.001>. Roberts, Sojo, and Grant offer a systematic review of organisational factors that enable and motivate intentional violence in sport.

- an **intersectionality** problem—uneven access to platforms and resources;
- a **power imbalance** problem—the heteronormative and masculine nature of sport authority systems;
- a **structural impact** problem—sport’s claim to moral idealism and apoliticism; and
- a **global power** problem—sport’s use as a global unifier and tool for development does not well serve local communities.

1. Uneven Access to Platforms for Notoriety (Mapped to Power Aspect 1: Intersectionality)

While public opinion might motivate sports organisations to adopt incremental changes, an affirmative role for celebrity or notoriety does not extend equally to all contexts. Paradoxically, while globalization has led to increased participation and competition in sport, it has simultaneously brought consolidation of power in international sport governance systems; because most elite sports teams and organisations fall under the umbrella of their national and international governing bodies, decision-making power is concentrated in the hands of a few high-level officials.⁴⁰ Thus, even as a more diverse and expansive collection of athletes and stakeholders populate the world of elite sport, their power to drive systemic change remains limited.

Despite the centralising of sport authority, **notoriety and public pressure still play a role in motivating sport and non-sport bodies to action**.^Δ After members of the US Gymnastics team stepped forward to share their stories of abuse by team physician Larry Nassar, the public scandal spurred USOPC and NCAA investigations and sanctions, forced USGA into bankruptcy, fostered the creation of SafeSport, and inspired federal legislation.⁴¹ Similarly, other athletes—take, as recent examples, Mary Cain (US Track and Field), Khalida Popal (Afghan Women’s Soccer Team), Megan Brown (Canadian Track and Field), and Lisa Mason (UK Gymnastics)—have raised complaints that have led sports governing bodies or governments to act.⁴²

Δ Notoriety as an Accountability Tool: Gabon Football U-20 Women’s National Team

Media scrutiny can play an important, albeit imperfect, role in holding sport bodies accountable. In 2019, the Gabonese Football Federation opened an investigation into staff on the Under-20 Women’s National Team after accounts of rape, sexual abuse, and mistreatment surfaced on social

⁴⁰ Section IV more closely considers the structure of international sport organisations.

⁴¹ US Congress, “Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017,” 115th Cong., 2nd sess., 2018, 633-644, <https://www.congress.gov/115/crec/2018/01/29/CREC-2018-01-29-pt1-PgH633-4.pdf>.

⁴² Some of these examples are further explored in boxes below.

media.⁴³ Freelance journalist Freddy Koula was first to make the accusations public through a Facebook post alleging that members of the U-20 team were sexually assaulted. The same post also claimed that members of the team were forced to live in a cramped hotel room with mattresses on the ground and that players were left unpaid.⁴⁴ Freddy Koula has 18,368 followers on Facebook, while the Gabon Women's Football team appears not to have a Facebook page, group, or large following.

In response to the allegations, Gabon's Sports Minister, Alain-Claude Bilie-By-Nze, asked the Gabonese Football Federation to investigate, stating, "[t]he seriousness of the alleged facts has just led me to refer the matter to [the Gabonese Football Federation] for an internal investigation." Bilie-By-Nze also referred the case to a public prosecutor, which could eventually result in legal proceedings against the alleged offenders. In response, the Federation issued a press release online and via Twitter saying that the organisation would investigate the allegations, but also casting doubt on the legitimacy of the claims.

Koula, however, faced backlash after breaking the story. The Gabonese Football Federation filed a complaint against the journalist with the Gabonese High Communication Authority, alleging that the facts in the post were unproven and harmful to the Federation's reputation. The High Communication Authority subsequently suspended Koula's media license for three months.⁴⁵ In filing its complaint, the Federation effectively suggested that the complaints of the U20 players were untrue, and, to date, no public repercussions have fallen on the accused officials.

Notoriety or scandal as constructive features of accountability depend upon athletes actually reporting and having a platform to speak: this assumption privileges certain voices over others. Differences across gender, race, access to resources, geo-political location and nationality may leave individuals with varying levels of social capital.⁴⁶ Furthermore, to harness the power of notoriety, athletes must report abuse publicly—a decision that is influenced by social and cultural factors.⁴⁷

Even when athletes manage to generate some form of media attention, the resulting groundswell too often leads to foot-dragging, blame-shifting, and surface-level changes that do little to empower athletes. "Internal investigations" supplant third-party investigations (Nike's Oregon Project & Cain), few officials face consequences, and those consequences are usually delayed (Afghan Soccer

⁴³ The Hindu, "Gabon Investigates Alleged Rape of Women Footballers," Sportstar, May 25, 2019, <https://sportstar.thehindu.com/football/football-gabon-authorities-to-investigate-sexual-abuse-allegations-women-players-managers-news/article27241087.ece>.

⁴⁴ Koula, Freddy. "U20 Women's Panthers Calvary..." May 23, 2013. Facebook. <https://www.facebook.com/FreddyKoula/posts/859724891055791/>.

⁴⁵ Modérateur, "La HAC Interdit Au Journaliste Freddy Koula Moussavou de Pratiquer Son Métier Durant 3 Mois," Gabonactu.com, July 16, 2019, <https://gabonactu.com/la-hac-interdit-au-journaliste-freddy-koula-moussavou-de-pratiquer-son-metier-durant-3-mois/>. Journalists Without Borders has identified HAC as an arm of government corruption in Gabon

⁴⁶ Steve McDonald and Jacob C. Day, "Race, Gender, and the Invisible Hand of Social Capital," *Sociology Compass* 4, no. 7 (July 2, 2010): 532–43, <https://doi.org/10.1111/j.1751-9020.2010.00298.x>.

⁴⁷ 'Performance regimes' and 'open secrets regimes,' discussed above, also enable abusers by chilling reporting.

& Popal), or individual offenders are quietly removed from their positions (Canadian Track and Field & Brown). All the while, reporting athletes face scrutiny from the media, teammates, fans, and others within and outside of the sporting community.

When public scandal arises, blame or fault often centres on individual perpetrators without regard for the structural failings that enable abuse. Although this problematic focus on bad actors shifts accountability away from power structures that perpetuate athlete mistreatment, public discourse has recently begun to direct some (albeit, limited) scrutiny toward institutions. More athletes are coming forward with stories that implicate not only individual abusers, but also sports officials and organisations that have knowingly and flagrantly failed to respond to reports of abuse. Coverage of Larry Nassar's abuse provides an example; it pointed to gross mismanagement and criminal coverups on the part of USA Gymnastics and Michigan State University.⁴⁸ Likewise, reporting about former French figure skater Sarah Abitol's 2020 allegations of assault decried not only her abusive coach, but also the blatant inaction of the French Federation of Ice Sports and the French Sports Ministry.⁴⁹ Effective calls for reform must continue to demand accountability from institutions as well as individuals; merely imposing consequences on an abuser without also addressing the underlying conditions that facilitated the harm will lead to temporary solutions, leave ineffective safeguarding regimes in place, and endanger other athletes.

2. Hierarchical, Heteronormative and Masculine Authority Systems (Mapped to Power Aspect 2: Power Imbalance)

As the 2016 IOC Consensus Statement on Sexual Harassment and Abuse recognized, “the power imbalances associated with hierarchical and heteronormative masculine authority systems of sport . . . lead to a culture of secrecy and deference that facilitates abuse.”⁵⁰ Power imbalances manifest at the local level, but national or global institutions often enable ongoing abuse. When coaches, physios, trainers, and others lever their positions to abuse athletes, the exploitation is often enabled by, at best, organisational reluctance to investigate and, at worst, affirmative institutional protections. Contextually specific conditions like gender, race, nationality, age, disability, or access to resources might further amplify these skewed power dynamics.

⁴⁸ The Associated Press, “Investigation into Michigan State’s Handling of Larry Nassar Suspended,” NBC News, December 24, 2019, <https://www.nbcnews.com/news/us-news/michigan-state-investigation-handling-larry-nassar-suspended-n1106976>; Saj Chowdhury, “USA Gymnastics: How the Sport Has Become Beset by Allegations of Sex Abuse,” *BBC Sport*, December 16, 2016, <https://www.bbc.com/sport/gymnastics/38266205>; Richard Winton, David Wharton, and Gus Garcia-Roberts, “McKayla Maroney Accuses USOC and USA Gymnastics of Covering up Sexual Abuse with Secret Settlement,” *Los Angeles Times*, December 20, 2017, <https://www.latimes.com/local/lanow/la-me-maroney-gymnastics-settlement-20171220-story.html>.

⁴⁹ https://www.espn.com/olympics/story/_/id/29048967/former-french-skater-sparks-sport-latest-sexual-abuse-reckoning

⁵⁰ Mountjoy et al., “IOC Consensus Statement,” 7.

Safeguarding efforts overwhelmingly rely on grievance reporting, but **power imbalances heighten cultural and institutional barriers that discourage athletes from coming forward**.⁵¹ Athletes confront varying degrees of marginalisation within and outside of sport. Sexualisation, traditional gender roles, gender stereotyping, and religious or ethnic beliefs often subordinate women, trans athletes, and queer athletes.⁵¹ These cultural constraints and other forms of identity-based discrimination are perpetuated by many sport actors, including coaches, teammates, leagues, healthcare providers, family members, and the public.⁵² Faced with threats of shaming, outing, and retaliatory violence, some marginalised athletes hesitate to report intentional violence.⁵³

As discussed in Section II, athletes also tend to over-conform to unsafe norms, unquestioningly prioritizing athletic performance over their own welfare.⁵⁴ Perpetrators exploit ‘performance regimes’, capitalizing on athletes’ over-adherence to sport values to maintain control and chill complaints. Further, within teams, regimes of ‘open secrets’ about abuse bind together those who are in-the-know, as secret-keeping becomes a defining characteristic of the group.⁵⁵ Thus, to report, an athlete must risk breaking the rules of inclusion, exploding the open secret, and, possibly, losing access to team, sport, and livelihood.

Δ Barriers to Reporting: Afghan Women’s Football Team

Power imbalances, concerns about exclusion from the in-group, and fear of violent retaliation weighed against members of the Afghan Women’s Football Team who sought to report sexual misconduct. In 2018, members of the team reported that the President of the Afghanistan Football Federation, Keramuddin Keram had raped and sexually harassed players in his office. During the same period, a male official and assistant coach coerced and sexually assaulted players at training camps, offering money and roster spots in exchange for sex.

Khalida Popal, the former head of the Women’s Football Department at the AFF, reported the abuse after fleeing Afghanistan to seek asylum in Denmark. “It was very difficult for us, living in the country, to talk about these things because these are very powerful guys,” Popal explained in an interview with *The Guardian*. “If a player from Afghanistan raised a voice they [could] get killed.” Other players who made complaints were labeled lesbians and removed from the national team. “If they spoke out, no one would listen to them because being accused of being lesbian or gay in

⁵¹ Claudia L Reardon et al., “Mental Health in Elite Athletes: International Olympic Committee Consensus Statement,” *British Journal of Sports Medicine* 53, no. 11 (May 16, 2019): 684, <https://doi.org/10.1136/bjsports-2019-100715>.

⁵² Reardon et. al, “Mental Health in Elite Athletes,” 684.

⁵³ See Afghan Women’s Footballer Khalida Popal’s testimony in the “Barriers to Reporting: Afghan Women’s Football Team” box below.

⁵⁴ Hughes and Coakley, “Positive Deviance Among Athletes,” 307.

⁵⁵ M.S. Miller et al., “Sexual Torture of Men in Croatia and Other Conflict Situations: A Open Secret,” *Reproductive Health Matters* 12, no. 23 (April 2004): 68–77.

Afghanistan is a topic you don't speak about and puts you and your family in a lot of danger."⁵⁶

Although the Afghanistan Football Federation vigorously denied the allegations, Afghan judicial authorities and FIFA undertook investigations. After years of alleged sexual abuse and cover-ups, FIFA banned Keram along with the Asian Football Confederation's top official, finding that the official was aware of the abuse and had a duty to report and prevent it.⁵⁷ In July 2020, the Court of Arbitration for Sport upheld Keram's ban.⁵⁸ While the decision marked a step forward, Popal has pointed out that other reported perpetrators have faced no consequences and are still working within Afghan football.⁵⁹

Power imbalances are also incorporated into and generated by the global regulatory bodies. For example, the World Anti-Doping Association (WADA) (headquartered in Montreal, Canada and incorporated in Lausanne, Switzerland) operates as an international watchdog whose policies extend to every corner of elite sport. Athletes are held to WADA's policies both in- and out-of-competition—the global WADA Code sets standards that bind every athlete in the Olympic movement, and local sport organisations must enforce WADA's policies against individual athletes. If athletes are accused of doping violations, their only option for appeal is through the global hierarchy of sport: at the CAS, where individual athletes especially from the global South and/or without resources may find themselves at a disadvantage relative to sports organisations headquartered in the global North.⁶⁰ In this hierarchic institutional structure, the fact that policies originate in centres of power far from athletes—and in regimes based in the global North—can perpetuate or shield local power disparities.

3. Idealism, Neutrality, and Sport (Mapped to Power Aspect 3: Structural Impact)

Sport's vision of itself as a universal ideal goes hand-in-hand with sports organisations' long-standing claim that sport is apolitical. Olympic Movement founder Pierre de Coubertin espoused a view—echoed in the Olympic Charter—that sport transcends differences in culture, history, and

⁵⁶ Suzanne Wrack, "FIFA Examining Claims of Sexual and Physical Abuse on Afghanistan Women's Team," *The Guardian*, November 30, 2018,

<https://www.theguardian.com/football/2018/nov/30/fifa-examining-claims-sexual-physical-abuse-afghanistan-womens-team>.

⁵⁷ Associated Press, "FIFA Bans Afghan Official in Fallout of Sexual Abuse Scandal," *ProSoccerTalk* (NBC Sports), October 11, 2019),

<https://soccer.nbcsports.com/2019/10/11/fifa-bans-afghan-official-in-fallout-of-sexual-abuse-scandal/>.

⁵⁸ FIFA.com, "Who We Are - News - FIFA Welcomes CAS Decision in the Case of Former President of Afghan Football Federation Keramuudin Karim - FIFA.Com," www.fifa.com, July 14, 2020,

<https://www.fifa.com/who-we-are/news/fifa-welcomes-cas-decision-in-the-case-of-former-president-of-afghan-football-fe>.

⁵⁹ Khalida Popal (@Khalida_Popal). 2020. "FIFA & CAS finalised their decision and banned the former president of the football federation. but how about those men that we reported to @FIFACOM who also sexually abused our players? WHY they are [sic] in the federation and around women [sic] football?" Twitter, July 24, 2020, 2:50 a.m.

https://twitter.com/khalida_popal/status/1286554440737198080.

⁶⁰ For more on WADA and the appeals process, see Section IV.

geography.⁶¹ The purported apolitical nature of sport can function as a shield from review in two ways. First, sport can appear separate from geo-politics, even as sport has become a point of national pride with certain sports and nationalism becoming inextricably linked. Second, sport often appears to lack internal power interests.

By viewing Coubertin's Olympic ideals and philosophy as universal and changeless, narratives that centre sport as a paragon of peace and development often take an ahistorical stance that uncritically accepts existing power dynamics within sport.⁶² Thus, the claim that sport is removed from politics can veil pervasive inequities and abuses, as autonomous sports bodies are allowed to operate in moral isolation, relatively unchecked by public law accountability mechanisms.⁶³ This apolitical ideal of sport has been reaffirmed time and time again, by national governments across the political and geographic spectrum, even as the European Union and other governments express desire to more closely regulate sport.⁶⁴ These prevailing beliefs about the purity and political neutrality of sport can mask harms and erect barriers to prevention.

Further, claims that sport is neutral and apolitical are tough to reconcile with the ballooning economic power of elite sport. Even as governments have tried to regulate sport more closely or to reshape the role of sport in society, a global sports economy has emerged, commanding substantial investments from stakeholders in the public and private sectors. In 2018, for instance, global brands spent £34.1 billion on sports sponsorship,⁶⁵ while the final tally for the 2016 Olympics in Rio de Janeiro alone topped \$13 billion.⁶⁶ One consequence of increasing outside investment in sport may be the resistance of the elite international sporting sphere to undergo reform by subjecting itself to increased scrutiny.⁶⁷ In addition to sport's economic clout, elite athletics are closely tied to politics,

⁶¹ Helen Jefferson Lenskyj, *Gender, Athletes' Rights, and the Court of Arbitration for Sport* (Bingley: Emerald Publishing Limited, 2018).

⁶² Lenskyj, *Gender, Athletes' Rights, and the Court of Arbitration for Sport*.

⁶³ Celia H. Brackenridge, "Fair Play or Fair Game? Child Sexual Abuse in Sport Organisations," *International Review for the Sociology of Sport* 29, no. 3 (September 1994): 287–98, <https://doi.org/10.1177/101269029402900304>.

⁶⁴ Jean-Loup Chappelet, "Autonomy and Governance: Necessary Bedfellows in the Fight against Corruption in Sport," in *Global Corruption Report: Sport* (Routledge, 2016), 16–29,

https://images.transparencycdn.org/images/2016_GCRSport_EN.pdf. The EU began contemplating a policy for sport with its 2007 White Paper on Sport and Pierre de Coubertin action plan. It was not until 2009, though, that the EU acquired responsibility for sport in the Lisbon Treaty. Article 6(e) of the Treaty on the Functioning of the European Union (TFEU) confers upon the EU competence over sport, while Article 165 establishes a sports policy, which includes reference to the "specific nature of sport" and its "structures based on voluntary activity." Katarzyna Anna Iskra, "Sport," Fact Sheets on the European Union (European Parliament, February 2020), <https://www.europarl.europa.eu/factsheets/en/sheet/143/sport>.

⁶⁵ Matt Cutler, "Global Sports Sponsorship Spend to Reach £35bn in 2019," Two Circles, May 2, 2019, <https://twocircles.com/gb-en/articles/sport-misses-out-on-14bn-despite-growth-year-for-sponsorship-spend/>.

⁶⁶ Renata Brito and Stephen Wade, "AP Analysis: Rio de Janeiro Olympics Cost \$13.1 Billion," *AP NEWS*, June 14, 2017, <https://apnews.com/d1662ddb3bae4d2984ca4ab65012be78/AP-Analysis-Rio-de-Janeiro-Olympics-cost->

⁶⁷ In *Efficient Deterrence of Workplace Sexual Harassment* Professor Joni Hersch suggests that profit-maximizing firms in the US do not have adequate incentives to eliminate workplace harassment because the cost of workplace reform is greater than the cost of allowing harassment to persist—in essence, sexual harassment is "not costly enough for adequate

as international sporting success has become a marker of geo-political power and national identity.⁶⁸ But, in part because sporting bodies may be hesitant to engage in political activity that deters investors, the claim to **neutrality holds fast even as the economic and political implications of elite sport escalate** Δ.

Δ Political Neutrality and IOC Policy: A Shifting Paradigm?

In 2020, the IOC's Rule 50, which bans protests at Olympic events, has faced increasing scrutiny. Since 1978, the IOC Charter has prohibited demonstrations and political, religious, and racial propaganda in Olympic areas.⁶⁹ In the buildup to the Tokyo Games, the IOC Athletes' Commission issued a statement reinforcing the ban on athlete activism, justifying the rule on the grounds that "sport is neutral and must be separate from political, religious or any other type of interference."⁷⁰ However, in the pandemic-driven year-long delay of the Games, widespread support for athletes using their platforms to advocate for racial justice may be moving the needle.

Demonstrations against racial inequity and police brutality have swept professional sport from the NFL to the Premier League, and many organisations have changed their official lines to support athletes expressing their views.⁷¹ In July 2020, Global Athlete, an athletes' rights movement, issued a statement urging the IOC to join these organisations in pushing back the veil of neutrality and letting athletes use their platforms, as "[s]ilencing the athlete voice has led to oppression, silence

deterrence." Likewise, sport organisations may be unwilling to undertake significant reforms if the potential cost of implementing serious change outweighs the potential costs of maintaining the (economically fruitful) status quo. Joni Hersch, "Efficient Deterrence of Workplace Sexual Harassment Efficient Deterrence of Workplace Sexual Harassment," *University of Chicago Legal Forum*, 2019, 147–70,

<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2135&context=faculty-publications>.

⁶⁸Rasmus K. Storm and Tor Georg Jakobsen, "National Pride, Sporting Success and Event Hosting: An Analysis of Intangible Effects Related to Major Athletic Tournaments," *International Journal of Sport Policy and Politics* 12, no. 1 (2020): 163–78, <https://doi.org/10.1080/19406940.2019.1646303>.

⁶⁹International Olympic Committee, "Olympic Charter," Rule 57, 1978,

https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Olympic-Studies-Centre/List-of-Resources/Official-Publications/Olympic-Charters/EN-1978-Olympic-Charter.pdf#_ga=2.161116344.401963193.1597088569-1390708574.1586969189; International Olympic Committee, "Olympic Charter," Rule 50, 2020,

https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=2.25502462.234401678.1601611318-630110527.1601073225.

⁷⁰IOC Athletes' Commission, "Rule 50 Guidelines Developed by the IOC Athletes' Commission," January 2020,

<https://www.olympic.org/-/media/Document%20Library/OlympicOrg/News/2020/01/Rule-50-Guidelines-Tokyo-2020.pdf>; IOC "Olympic Charter," 2020, Rule 50.

⁷¹US Soccer, "US Soccer Board of Directors Votes to Repeal National Anthem Policy," US Soccer.com, June 10, 2020, <https://www.ussoccer.com/stories/2020/06/us-soccer-board-of-directors-votes-to-repeal-policy-national-anthem-policy>; Caroline Linton, "'We Were Wrong,' NFL Commissioner Roger Goodell Says," CBSNews.com, June 6, 2020,

<https://www.cbsnews.com/news/nfl-roger-goodell-video-apology-colin-kaepnick-protests-george-floyd-2020-06-06/>; Lawrence Ostlere, "Coe Backs Athletes' Right to Protest despite IOC Ban Threat," *The Independent*, June 10, 2020, <https://www.independent.co.uk/sport/olympics/athletes-protest-sebastian-coe-world-athletics-olympic-ban-a9559401.html>.

has led to abuse, and silence has led to discrimination in sport.”⁷² Institutional actors, too, began to criticize Rule 50—the LA 2028 Olympic Committee⁷³ and the Canadian Centre for Sport Ethics⁷⁴ have encouraged the IOC to allow athlete expression. Olympic athlete protest has a rich history—from American runners Tommie Smith and John Carlos raising their fists in the 1968 Mexico City Olympics to protest the treatment of Black Americans to Ethiopian marathoner Feyisa Lilesa crossing his arms in the 2016 Rio Olympics in support of the Oromo tribe.⁷⁵ But these athletes faced sanctions for their speech, and it is yet to be seen whether the IOC will change its stance before the 2021 Games.

Sport governing bodies are aware that public questions about the integrity of sport will result in both commercial and reputational damage and that the commercial realities may be harsher than the public trust realities—this can prompt prevention and redress measures that, at their core, exist to shield and protect governing bodies at the expense of vulnerable athletes.⁷⁶ As acknowledged in the IOC Guidelines for IFs and NOCs, “Sexual harassment and abuse occur worldwide. In sport, they give rise to suffering for athletes and others, and to legal, financial and moral liabilities for sport organisations.”⁷⁷ Safeguarding systems in this view seek to protect athletes but also function to lessen institutional liability.

4. Sport for Development and Peace (Mapped to Power Aspect 4: Global Power, Local Solutions)

For the last two decades, governments, corporate partners, and sports organisations have actively promoted sport as a tool for social and economic development. Efforts to use sport as an instrument to address inequity, reduce violence, and empower communities outside of sport,

⁷² Global Athlete, “Global Athlete Statement on Olympic Charter Rule 50,” GlobalAthlete.org, June 14, 2020, <https://globalathlete.org/our-word/ioc-rule-50>.

⁷³ David Wharton, “L.A. Olympic Officials Ask IOC to Allow Athlete Protests,” Los Angeles Times, July 31, 2020, <https://www.latimes.com/sports/olympics/story/2020-07-31/la-olympic-officials-ask-ioc-allow-athlete-protests>.

⁷⁴ Canadian Centre for Ethics in Sport, “CCES Position Statement on Freedom of Expression and the IOC’s Rule 50 | Canadian Centre for Ethics in Sport,” CCES.ca, June 23, 2020, <https://cces.ca/news/cces-position-statement-freedom-expression-and-iocs-rule-50>.

⁷⁵ Alastair Jamieson, “Ethiopian Medalist Fears for His Life after Rio Protest Gesture,” NBC News, August 22, 2016, <https://www.nbcnews.com/storyline/2016-rio-summer-olympics/feysa-lilesa-ethiopian-runner-makes-defiant-protest-gesture-rio-olympics-n635761>.

⁷⁶ Lauren B. Edelman and Jessica Cabrera, “Sex-Based Harassment and Symbolic Compliance,” *Annual Review of Law and Social Science* 16, no. 1 (October 13, 2020): 361, <https://doi.org/10.1146/annurev-lawsocsci-031820-122129>. Edelman and Cabrera find that “many organizational policies prevent liability more than they prevent harassment, in part because courts often fail to distinguish between meaningful compliance and the merely symbolic policies and procedures that do little to protect employees from harassment.”

⁷⁷ International Olympic Committee, “IOC Guidelines for International Federations (IFs) and National Olympic Committees (NOCs) Related to Creating and Implementing a Policy to Safeguard Athletes from Harassment and Abuse in Sport,” June 2, 2016, https://www.olympic.org/athlete365/wp-content/uploads/2017/11/IOC_Guidelines_for_IFs_and_NOCs.pdf.

though, can mask sport-specific conditions that facilitate inequity, violence, and disempowerment within sport itself.

The international Sport for Development and Peace movement seeks to use sport to reduce poverty, improve health and well-being, promote education, empower women, and generally advance social development.⁷⁸ Indeed, the preamble to the UN Sustainable Development Goals contains a nod to sport as an “important enabler of development” in its capacity to empower women and young people and to bolster health, education, and social inclusion.⁷⁹ In 2017, UNESCO adopted the Kazan Action Plan, marking a tangible commitment to foster international cooperation to link sport policy to the Sustainable Development Goals.⁸⁰ The Plan encourages “sport values education” to promote holistic development and lifetime learning, “providing a platform well-suited to developing the knowledge and leadership skills needed to promote sustainable development.”⁸¹ But by elevating sport values as a social good, the discourse of Sport for Development and Peace tacitly discourages critical examination of sport values themselves. An unquestioning acceptance of sport values can soften the ground for intentional abuse, as perpetrators can exploit athletes by taking advantage of values-based performance regimes and over-adherence to sporting norms.

The Sport for Development and Peace movement also invokes the archetype of sport as a global unifier. Peacebuilding, social inclusion, and unification echo throughout the rhetoric of elite sport as exemplified by the Olympic Truce.⁸² In 2000, the IOC established the International Olympic Truce Foundation, which seeks to “promote the Olympic ideals to serve peace, friendship and understanding in the world,” to “initiate conflict prevention and resolution through sport, culture and the Olympic ideals,” and to promote the ancient Greek tradition of the Olympic Truce.⁸³ Before each Olympic Games, the UN adopts a resolution encouraging member states to observe the Olympic Truce, to seek peaceful settling of international conflicts, and to recognize the importance of IOC initiatives for well-being and international understanding.⁸⁴ But the Truce is a non-binding

⁷⁸ United Nations Office on Sport for Development and Peace, “Sport and the Sustainable Development Goals,” *UN.Org* (United Nations, 2018),

https://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/Sport_for_SDGs_finalversion9.pdf.

⁷⁹ G.A. Res. 70/1, “2030 Agenda for Sustainable Development,” 37, A/RES/70/1 (October 21, 2019).

⁸⁰ United Nations Educational, Scientific, and Cultural Organisation (UNESCO), “Kazan Action Plan,” 2017, <https://unesdoc.unesco.org/ark:/48223/pf0000252725>.

⁸¹ UNESCO, “Kazan Action Plan,” MINEPS Sport Policy Follow-up Framework, C.II.3.

⁸² United Nations, “The United Nations and the Olympic Truce,” UN.org, accessed July 25, 2020, <https://www.un.org/en/events/olympictruce/background.shtml>.

⁸³ International Olympic Committee, “Olympic Truce,” Olympic.org, August 7, 2019, <https://www.olympic.org/olympic-truce>.

⁸⁴ G.A. Res. 72/6, “Building a Peaceful and Better World Through Sport and the Olympic Ideal,” A/RES/72/6 (November 16, 2017), for example.

ideal,⁸⁵ and its portrayal of sport as a unifying force can conceal lived realities of violence within and beyond sport.

While sport can undoubtedly promote health, wellness and international collaboration, problems arise when sport is painted as unequivocally moral, apolitical, and beyond reproach. Reliance upon the assumed social good brought about through sport can displace meaningful engagement with the problematic conditions plaguing sport itself.⁸⁶ When allegations of abuse arise, institutional actors might take advantage of the discourse of Sport for Development and Peace, **capitalizing on the assumed inherent “goodness” of sport to deflect negative attention** Δ and stake out the moral high ground without addressing the underlying concerns.

Δ Haiti: Sport as Development and the Claim to a Moral High Ground

In April 2020, female footballers in Haiti reported that Yves Jean Bart dit Dadou, president of the Haitian Football Federation, had coerced players into having sex at a national training centre. According to one former player, there was “pressure not to talk,” especially given that “these girls who live at the FIFA centre . . . they want to play for the country but if they speak about this situation they will be fired. They are hostages.”⁸⁷

Meanwhile, the Haitian Football Federation has said that it takes “such serious allegations very seriously.” But the Federation simultaneously cast doubt on the players’ claims, adding, “[T]o date, we have never received any complaints to this effect.” The Haitian Football Federation was also quick to point to its developmental goals as evidence of the Federation’s moral rectitude, stating, “[O]ur project is first of all a human project which aims to change the future of young people, to roll back the exclusion through play even if we know that in this country and even in the world some spirits are always at war against the beautiful and the good.”⁸⁸

On May 4, Marie Giselhaine, Haiti’s Minister for the Status of Women and Women’s Rights, took on the case on behalf of the government, and, though no formal complaints were filed, she asked

⁸⁵ During the Olympic Truce period in 2012, a humanitarian crisis in Syria raged on as Syrian troops sieged the city of Aleppo. “UK Government in Aleppo ‘Massacre’ Warning,” *BBC News*, July 27, 2012, <https://www.bbc.com/news/uk-politics-19019658>.

⁸⁶ The literature on corporate social responsibility suggests that, “corporations are increasingly appropriating social life and using arguments about self-actualization, social responsibility, ethical behavior etc. to legitimate their activities.” In the same vein, sports organisations may capitalize on predominant narratives about the productive and apolitical nature of sport to justify their practices. Gerard Hanlon and Peter Fleming, “Updating the Critical Perspective on Corporate Social Responsibility,” *Sociology Compass* 3, no. 6 (December 2009): 937–48, <https://doi.org/10.1111/j.1751-9020.2009.00250.x>.

⁸⁷ Ed Aarons, Romain Molina, and Alex Cizmic, “Haiti FA President Accused of Sexually Abusing Young Female Players,” *The Guardian*, April 30, 2020, <https://www.theguardian.com/football/2020/apr/30/haiti-fa-president-accused-of-sexually-abusing-young-female-footballers>.

⁸⁸ Aarons, Molina, and Cizmic, “Haiti FA President Accused of Sexually Abusing Young Female Players.”

the Minister of Justice and Public Security to take public action against Jean-Bart.⁸⁹ Now, Haitian police are investigating, and a judge has summoned several Haitian Football Federation officials to answer questions.⁹⁰ However, the National Network for the Defense of Human Rights has called for FIFA's intervention, suggesting that Jean-Bart and his cartel could overshadow a judicial investigation.⁹¹ On May 25, FIFA suspended Jean-Bart for 90 days pending investigation. In mid-August, the association extended Jean-Bart's suspension and sanctioned other Haitian Football Federation officials, but FIFA's response to the allegations is ongoing.

In August, witnesses and survivors reported threats and efforts to deter them from testifying against Jean-Bart.⁹² The National Network for the Defense of Human Rights suggests that the Haitian justice system does not provide adequate protection for victims and witnesses, and FIFA's efforts to ensure survivors' safety are unproven. Although FIFA offers a Package of Care to support survivors of sexual harassment and abuse,⁹³ it is unclear how or whether FIFA plans to protect the Haitian victims or witnesses.⁹⁴

⁸⁹ Juno7 Haiti, "Le MCFDF Pour La Mise En Mouvement de l'action Publique Contre Yves Jean Bart," Juno7.ht, May 4, 2020, <https://www.juno7.ht/mcfdm-mise-mouvement-action-publique-yves-jean-bart/>.

⁹⁰ The Jakarta Post, "FIFA Suspends Haiti Football Chief Accused of Rape," JakartaPost.com, May 26, 2020, <https://www.thejakartapost.com/news/2020/05/26/fifa-suspends-haiti-football-chief-accused-of-rape.html>.

⁹¹ Jakarta Post, "FIFA Suspends Haiti Football Chief."

⁹² Human Rights Watch, "Haiti: Football Sex Abuse Case Witnesses Threatened," HRW.org, August 14, 2020, <https://www.hrw.org/news/2020/08/14/haiti-football-sex-abuse-case-witnesses-threatened>.

⁹³ FIFA, "FIFA's Minimum Package of Care in Cases of Harassment and Abuse (with Reference to Cases under Article 23 of the FIFA Code of Ethics)," 2020, <https://resources.fifa.com/image/upload/fifa-s-care-package-for-cases-of-harassment-and-abuse.pdf?cloudid=jwfsapaqn0bflr4vgffn>.

⁹⁴ HRW, "Haiti: Football Sex Abuse Case Witnesses Threatened."

IV. The Structure of Sports Governance Systems Can Impede Effective Safeguarding

◆ Section IV: Framing Questions

1. What remedies and resources might be available for athletes whose rights have been violated? What role should state and non-state actors play in providing protections and remedies?
2. When sports organisations are governed largely by private contractual agreements between superior and inferior sports bodies, what are the implications of those agreements for preventing and remedying intentional violence in sport?
3. How does the non interventionist approach of many national and international governments to private sporting bodies affect athletes and organisations in different geo-political contexts? Can private international sporting organisations create policies and provide resources that intervene when needed while coordinating with or deferring to public legal and accountability mechanisms when necessary?
4. What are the implications and limitations of categorizing intentional violence in sport as human rights violations?
5. What is the proper forum to adjudicate intentional violence claims? When questions of intentional violence and human rights are at issue, do the shortcomings of arbitration outweigh the benefits?

A. Introduction: Accountability in the World of Sport

The world of elite sport is both constructed and constrained by overlapping legal and regulatory structures. Section III detailed how sport-specific *cultural* conditions hinder existing safeguarding models. In Section IV, we will consider how *legal and structural* regimes contribute to environments that can cultivate athlete harm, particularly by shielding key individual and institutional actors from accountability.

In the world of elite sport, regulation and accountability play out through a constant push-and-pull between private, international sports bodies and public (i.e. national and international) legal regimes. Traditionally, sports bodies have enjoyed extensive, although not absolute, autonomy from oversight by national and international legal systems. But in spite of the general tendency toward autonomy, a number of public law regimes shape sport governance and, in some instances, offer alternative routes for prevention and redress of intentional violence. In this section, we will examine the relationship between the characteristically private, contractually linked world of sport and several systems of public law.

B. Structural Barriers to Safeguarding

1. Private Law: Vertical Integration Through Contractual Agreement

Private contracts define the relationships between many actors in elite sport. Agreements govern employment, agency, sponsorship, event hosting, procurement, and intra- and inter-organisational dealings. These contracts bind individuals to teams, teams to sports organisations, and sports bodies to one another, creating a network of private agreements that shape the world of elite sport.

At an institutional level, the bodies at the heart of elite sport are intertwined and interdependent. A web of sporting regulations and contractual agreements binds lower-ranking sports organisations' to higher-ranking ones, creating vertical restraints within global sport.⁹⁵ At the head of Olympic sport, the IOC exercises considerable authority over IFs, National Olympic Committees (NOCs), and Organising Committees of the Olympic Games (OCOGs). Key to this power dynamic is the IOC's control over participation in the Olympic Games: as the gatekeeper to Games, the IOC conditions Games participation on the lower sports bodies' year-round adherence to the Olympic Charter and the WADA Anti-Doping Code.⁹⁶ In turn, the rules and regulations of the IFs control their respective National Federations (NFs). Thus, a hierarchy emerges—the rules of higher-ranking sports organisations govern lower ones, and local and national sports organisations are bound to their international overseers.⁹⁷

At the individual level, sporting bodies also require athletes to agree to adhere to the organisations' rules and regulations. In some cases, the relevant rules include dispute resolution clauses that define how and where a player may raise a complaint. The FIFA Statutes, for example, prohibit recourse to courts in most instances.⁹⁸ The Statutes also direct national associations to include arbitration clauses

⁹⁵ Jean-Loup Chappelet, "Autonomy of Sport in Europe," *COE.int* (Council of Europe, 2010), 41, <https://rm.coe.int/autonomy-of-sport-in-europe/168073499f>.

⁹⁶ IOC "Olympic Charter," Rule 40, 2020.

⁹⁷ The Argentine Hockey Confederation, for instance, follows the statutes and practices of the IOC and the International Hockey Federation. Confederación Argentina de Hockey, "Estatuto Confederación Argentina de Hockey Sobre Césped y Pista Art," 1(K), accessed May 15, 2020, <https://www.cahockey.org.ar/estatuto>; International Hockey Federation, "Statutes of the International Hockey Federation," 2.2(b), 2018, <http://www.fih.ch/media/13314743/fih-statutes-2018.pdf>.

⁹⁸ FIFA, "FIFA Statutes," § 59.2, 2019,

<https://resources.fifa.com/image/upload/fifa-statutes-5-august-2019-en.pdf?cloudid=ggyamhxxv8jrdfbekrrm>. The FIFA statutes do contain exceptions that formally allow players to access courts in some cases. However, as noted in John Ruggie's Report on FIFA and Human Rights, legal recourse may still be limited in practice: "For example, players from several countries participating in the 2015 Women's World Cup in Canada filed a complaint with the Human Rights Tribunal of Ontario on grounds of gender discrimination. Clearly, they were not prevented from accessing a public tribunal. But when they did so, they were allegedly threatened with suspension from their teams and from participating in the Cup." John Ruggie, "For the Game, For the World: FIFA & Human Rights," *Corporate Responsibility Initiative* (Cambridge, MA: Harvard Kennedy School, 2016),

in their national regulations.⁹⁹ As a result of these and similar provisions, athletes may be bound to arbitrate any sports disputes before arbitral bodies like the CAS under the sports organisation's rules, keeping the adjudication and **enforcement of athletes' rights within the privately regulated world of sport** Δ.¹⁰⁰

Δ The CAS and Alternative Dispute Resolution: An Appropriate Forum for Human Rights Disputes?

Sport disputes are commonly resolved through arbitration, starting with sports organisations' own decision-making boards that address rule violations and resolve complaints internally. In many cases, though, the decisions of sports bodies may be appealed to arbitral bodies outside the organisation. For example, in Kenya, disputes may be referred to the Sports Tribunal,¹⁰¹ in Brazil, the Tribunal of Sports Justice resolves sport-related cases,¹⁰² and in Canada, the Sport Dispute Resolution Centre of Canada hears national-level sport disputes.¹⁰³ Like most arbitral awards, CAS rulings are as binding as court decisions, but disputes involving national- or international-level players may often be appealed to the Court of Arbitration for Sport (CAS).

Traditionally, arbitration has been the primary mode of dispute resolution for sports because arbitral bodies offer relatively expedient, low-cost, confidential decisions that are tailored specifically to the elite sport context. Indeed, arbitration can provide speedy and cost-effective resolution, which is particularly important to athletes, whose short careers may depend upon a quick decision in an eligibility dispute. Arbitration also allows for the application of a uniform set of rules when conflicts involve international competition that stretches across multiple jurisdictions.¹⁰⁴ On the other hand, critics point out that arbitration often produces less public precedent—the CAS, for example, makes only some of its decisions public.¹⁰⁵ And the CAS, in particular, has been criticized for an alleged lack of independence from international sports bodies. In 2018 two athletes challenged the fairness of CAS's procedures before the European Court of Human Rights (ECHR).¹⁰⁶ Ultimately, the ECHR rejected challenges to the CAS's status

https://www.hks.harvard.edu/sites/default/files/centres/mrcbg/programs/crj/files/Ruggie_humanrightsFIFA_reportApril2016.pdf.

⁹⁹ FIFA, "FIFA Statutes," § 59(3), 2019.

¹⁰⁰ For example, Olympic disputes are heard exclusively by the CAS. IOC "Olympic Charter," Rule 61, 2020.

¹⁰¹ Parliament of Kenya, "Sports Act," § 55 (2013),

<http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%2025%20of%202013>.

¹⁰² "Brazilian Constitution of 1988," Art. 217 (1988).

¹⁰³ Sport Dispute Resolution Centre of Canada, "2015 Canadian Sport Dispute Resolution Code," 2015,

http://www.crdsc-sdrcc.ca/eng/documents/Annotated_CODE_2015_Final_EN.pdf.

¹⁰⁴ Often, arbitral bodies apply the statutes and regulations of the relevant sport organisation.

¹⁰⁵ The Court of Arbitration for Sport, "Procedural Rule R59," July 1, 2020,

<https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

¹⁰⁶ Mutu and Pechstein v. Switzerland (Judgment), App. Nos. 40575/10 and 67474/10, Eur. Ct. H.R. (2018). Chelsea football club terminated Mutu's contract after he tested positive for cocaine in 2004, and WADA banned Pechstein from speed skating at the Vancouver Olympics. Mutu argued that CAS was neither independent nor impartial, as one member of his panel was formerly a partner in a law firm that represented Chelsea's owner, and another had ruled against him on a previous panel. Pechstein contested CAS's impartiality, too, and also protested her lack of a public hearing.

as an independent and impartial body.¹⁰⁷ However, the ECHR also noted “the organisations which were likely to be involved in disputes with athletes before the CAS had real influence over the mechanism for appointing arbitrators.”¹⁰⁸

More countries are adopting sport-specific arbitration,¹⁰⁹ and CAS’s caseload has expanded.¹¹⁰ As sport organisations and actors increasingly turn to alternative dispute resolution, we must consider how far the reach of arbitration can extend. When questions of intentional violence and human rights are at issue, do the shortcomings of arbitration outweigh the benefits? If so, does the solution lie in routing cases that might implicate human rights away from arbitration? Or in adopting reforms to make arbitral bodies more appropriate forums for these matters? What principles must underlie fair decision making, and can arbitration incorporate those principles?

2. Private Law: Contractual Provisions to Prevent Human Rights Violations

The networks of contracts and rules that connect sports bodies may also incorporate human rights- or ethics-related provisions. For instance, FIFA commissioned Professor John Ruggie to study the association’s practices and help “embed respect for human rights across [FIFA’s] operations and business relationships.” In Article 3 of its Statutes, FIFA recognizes and pledges to strive to protect human rights, and the organisation has issued a Human Rights Policy that recognizes the need to protect players’ human rights.¹¹¹ The association also included human rights and labor standards in its bidding guide for the 2026 FIFA World Cup.¹¹² **FIFA’s human rights efforts are tailored to the United Nations Guiding Principles for Business and Human Rights** Δ (UNGPs), a framework for companies to prevent and address human rights abuses in business practice.¹¹³

¹⁰⁷ The Tribunal also found, though, that Pechstein should have been granted a public hearing in this instance.

¹⁰⁸ Mutu and Pechstein at 45.

¹⁰⁹ Kariuki Muigua, “Promoting Sports Arbitration in Africa,” (Chartered Institute of Arbitrators (Kenya Branch) 2nd Annual Lecture on the theme ‘Promoting Sports Arbitration in Africa’, 2019), 27, <http://kmco.co.ke/wp-content/uploads/2019/12/Paper-on-Promoting-Sports-Arbitration-in-Africa.pdf>. Proposals have been made to adopt sport tribunals in Nigeria and South Africa, for instance.

¹¹⁰ The Court of Arbitration for Sport, “Statistics,” 2017, https://www.tas-cas.org/fileadmin/user_upload/CAS_statistics_2016_.pdf. In 1996, the CAS heard 21 cases. In 2016, it heard 599.

¹¹¹ FIFA, “FIFA Statutes,” Art. 3, 2019; FIFA, “Human Rights Policy,” 5, May 2017, <https://img.fifa.com/image/upload/kr05dqyhwr1uhqy2lh6r.pdf>.

¹¹² Human Rights Council Report of the Special Rapporteur 40/51, “Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material,” A/HRC/40/51 (December 27, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/93/PDF/G1844693.pdf?OpenElement>.

¹¹³ United Nations, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” 2011, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

In the Olympic Movement, the IOC Charter extols the right to compete “without discrimination of any kind,” and the organisation has committed to developing a human rights policy.¹¹⁴ The Charter also references the Athletes’ Declaration of Rights and Responsibilities, an athlete-driven initiative that declares the right to compete without being subject to discrimination.¹¹⁵ Like FIFA, the IOC included a commitment to human rights and references to the UNGPs in its host-city contract principles for the 2024 Olympic Games.¹¹⁶

Although the IOC and most IFs include a commitment to non-discrimination in their governing documents and contracts, the scope of express protections for athletes’ rights is limited.¹¹⁷ Indeed, in some cases, IOC or IF policies can actively infringe on athletes’ rights. For example, as noted above, the IOC Charter expressly limits athletes’ freedom of expression,¹¹⁸ prohibiting any “demonstration or political, religious or racial propaganda . . . in any Olympic sites, venues or other areas.”¹¹⁹ Meanwhile, World Athletics regulations, by controversially requiring athletes with differences of sex development to lower their testosterone levels in order to compete,¹²⁰ can be seen as violating athletes’ right to respect for dignity, bodily integrity, and bodily autonomy.¹²¹ These and other constraints upon which sports governing bodies condition athletes’ participation can coerce athletes into a troubling tradeoff, as players must compromise their human rights in exchange for the right to play.

Many IFs have adopted, in addition to rights-related provisions, a code of ethics or a sexual harassment policy explicitly addressing intentional violence. In some instances, as with FIFA, these

¹¹⁴ International Olympic Committee, “IOC Continues Working on Human Rights and Takes First Steps on a Strategy,” International Olympic Committee, March 3, 2020, <https://www.olympic.org/news/ioc-continues-working-on-human-rights-and-takes-first-steps-on-a-strategy>.

¹¹⁵ IOC Athletes’ Commission Steering Committee, “Athletes’ Rights and Responsibilities Declaration,” October 2018, https://d2g8uwgn11fzhj.cloudfront.net/wp-content/uploads/2018/10/09134729/Athletes-Rights-and-Responsibilities-Declaration_2018.10.07.pdf.

¹¹⁶ Human Rights Watch, “Olympics: Host City Contract Requires Human Rights,” HRW.org, February 28, 2017, <https://www.hrw.org/news/2017/02/28/olympics-host-city-contract-requires-human-rights#>.

¹¹⁷ Human Rights Council Annual Report of the United Nations High Commissioner for Human Rights 44/26, “Intersection of Race and Gender Discrimination in Sport,” 12, A/HRC/44/26 (June 15, 2020).

¹¹⁸ The right to freedom of expression and opinion originates in the Universal Declaration of Human Rights and is given legal force by Article 19 of the International Covenant on Civil and Political Rights of 1996. United Nations General Assembly, “Universal Declaration of Human Rights,” Note 54, Art. 19 (1948); United Nations Human Rights Office of the High Commissioner, “International Covenant on Civil and Political Rights,” Art. 19 (1996).

¹¹⁹ IOC “Olympic Charter,” Rule 50, 2020.

¹²⁰ IAAF, “Eligibility Regulations for the Female Classification (Athletes With Differences of Sex Development),” 2.3(b), April 23, 2018, [https://www.worldathletics.org/news/press-release/eligibility-regulations-for-female-classifica.2.3\(b\)](https://www.worldathletics.org/news/press-release/eligibility-regulations-for-female-classifica.2.3(b)) of the Eligibility Regulations is the policy under which World Athletics decided to bar two-time Olympic champion Caster Semenya from competition on the basis of her testosterone levels.

¹²¹ Human Rights Council, “Intersection of Race and Gender Discrimination in Sport,” 34(f), A/HRC/44/26. Female eligibility regulations can also infringe on athletes’ rights to freedom from cruel, inhuman, or degrading treatment or punishment and torture, the right to work and to the enjoyment of just and favourable conditions of work, the right to the highest attainable standard of physical and mental health, the right to sexual and reproductive health, and the right to be free from arbitrary interference with privacy.

codes expressly bar sexual abuse and harassment.¹²² The International Tennis Federation, for example, has a code of ethics that draws directly from the IOC code and has adopted a player policy that explicitly prohibits sexual abuse toward players under the age of legal majority, and the International Ice Hockey Federation and International Boxing Federation have sexual harassment policies.¹²³

International sport bodies like the IOC and IFs can supplement local sport authorities by adopting comprehensive policies and allocating resources to enforce those policies. In this way, global sport powers might fill gaps left when local actors fail to effectively protect athletes' rights.¹²⁴ However, global sport action also has the potential to constrain athletes' rights and coerce local sport and non-sport actors.¹²⁵ To develop a more complete analytical framework, we must consider when, where, and whether global sport interventions in local contexts might best ensure athletes' rights.

Δ Corporate Efforts To Protect Human Rights: Gap Filling or Accountability Shifting?

Sports organisations have taken some steps to adopt policies directed at human rights but some reforms are outward-facing and not oriented toward protecting athletes themselves. For example, human rights provisions have been adopted by FIFA and added to Olympic host-city contracts. However, while these new references to environmental impact, human rights, etc., mark a novel acknowledgement of sport's impact on and responsibility to the world at large, they might not go far enough to remedy the unique harms facing elite athletes.¹²⁶

Sports organisations regularly impose restrictive regulatory regimes on athletes, crossing boundaries into the private sphere in the name of athletic success.¹²⁷ For instance, anti-doping whereabouts requirements compel elite athletes to inform anti-doping agencies of their location at all times and to submit to random testing without notice. Such frameworks restrain athletes and tighten the grip of sports authorities on individuals without offering reciprocal powers,

¹²² FIFA, "FIFA Code of Ethics," Art. 23, 2018, <https://resources.fifa.com/image/upload/fifa-code-of-ethics-2018-version-takes-effect-12-08-18.pdf?cloudid=uemlkcy8wwdtlll6sy3j>.

¹²³ Human Rights Council Report of the Special Rapporteur 40/51, "Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material," A/HRC/40/51, 47-48 (December 27, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/93/PDF/G1844693.pdf?OpenElement>.

¹²⁴ For example, the IOC's Olympic host-city contracts require human rights protections above and beyond those required by some national governments. If enforced, the contracts would prohibit nations that do not meet the host-city standards from hosting Olympic mega-events. Human Rights Watch, "Olympics: Host City Contract Requires Human Rights," HRW.org, February 28, 2017, <https://www.hrw.org/news/2017/02/28/olympics-host-city-contract-requires-human-rights#>.

¹²⁵ Ryan Gauthier, *The International Olympic Committee, Law, and Accountability* (London ; New York Routledge, Taylor Et Francis Group, 2017), 13. Gauthier suggests that the IOC's host-city contract requirements may act as harbingers of neoliberalism, requiring prospective host cities to acquiesce to the global North-based IOC and Olympic sponsors and privatise some public resources.

¹²⁶ Brendan Schwab, "Celebrate Humanity": Reconciling Sport and Human Rights Through Athlete Activism," *Journal of Legal Aspects of Sport* 28, no. 2 (August 8, 2018): 181, <https://doi.org/10.18060/22570>.

¹²⁷ See Section II.

protections, or benefits for players. A further, crucial question arises in sport-specific human-rights-oriented reforms: what are sports organisations' responsibilities to athletes?

While current measures adopted by sport organisations affirm a commitment to *human* rights (e.g., FIFA's Article 58 or the IOC's 2024 host city contracts), many do not expressly reference *athlete* rights. If such measures are read to apply to athletes facing intentional violence, what remedies and resources might be available to athletes whose rights were violated?¹²⁸ What are the implications and limitations of categorizing intentional violence as human rights violations?

3. *Public Law: Sport Autonomy and The Limited Reach of Public Law*

While myriad private rules, regulations, and agreements govern the hierarchy of elite sport, the sporting world has enjoyed a longstanding history of relative autonomy from public law regimes. Many national and international governments recognize sport autonomy, either expressly—in statutes or case law¹²⁹—or tacitly—by allowing sports governing bodies to act with minimal regulation.¹³⁰ And many sport governing bodies reiterate their own independence by including claims to autonomy in their governing documents.¹³¹

The IOC and IFs, for instance, wield substantial clout to dissuade state governments from intervening in sport. The IOC may suspend NOC funding and revoke their right to participate in Olympic Games if states pass legislation that “unduly interferes” in the Olympic movement.¹³² For example, the Kuwaiti NOC was suspended from 2010 to 2012 (and again from 2015 to 2017) when Kuwait's government passed legislation that allowed the state to intervene in sport organisation elections.¹³³ Similarly, FIFA suspended Sierra Leone in 2018 after the nation's anti-corruption commission barred two Sierra Leone Football Association officials from the governing body's offices.¹³⁴ However, sport organisations selectively enforce these policies against smaller countries, and especially those in the global South; when the US Congress passed an act giving its NOC

¹²⁸ FIFA's Article 58, for example, would be arbitrated in the CAS, a forum that, as noted, is limited in its capacity to decide human rights disputes.

¹²⁹ E.g., “Brazilian Constitution of 1988,” Art. 217 (1988); “Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games,” 2009 BCSC 942; G.A. Res. 70/1, “Sport as a Means to Promote Education, Health, Development and Peace,” 8, A/69/L.5 (October 16, 2014); European Parliament, “Resolution of 8 May 2008 on the White Paper on Sport,” 5, P6_TA(2008)0198 (May 8, 2008).

¹³⁰ Hilary Findlay, “Accountability in the Global Regulation of Sport,” in *Ethics and Governance in Sport: The Future of Sport Imagined*, ed. Yves Vanden Auweele (Taylor & Francis Group, 2015), 69.

¹³¹ E.g., IOC Charter fundamental principle 5, declaring that sports organisations within the Olympic Movement have “the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.”

¹³² IOC, “Olympic Charter,” Rule 28.9, 2020.

¹³³ International Olympic Committee, “Suspension of the Kuwait Olympic Committee,” olympic.org, April 25, 2018, <https://www.olympic.org/news/suspension-of-the-kuwait-olympic-committee>.

¹³⁴ “FIFA Suspends Sierra Leone,” *BBC Sport*, October 5, 2018, <https://www.bbc.com/sport/football/45766356>.

property rights over the Olympic rings in the US, the IOC protested, but no formal sanctions followed.¹³⁵

Governments' legacy of non-intervention may leave sporting authorities with scant oversight, allowing them to operate with limited accountability to outside institutions or norms. When sports bodies are left to self-regulate, a tension might arise between sport autonomy—the proposition that **sport governance ought to remain separate from national and international law** Δ—and athletes' rights and well-being.¹³⁶ Thus, to craft a more complete framework to understand and address the conditions that give rise to intentional violence in sport, we must examine the complex relationships between sports organisations and outside regulatory regimes.

A holistic analysis of intentional violence in sport must recognize sport autonomy while acknowledging that it is not without limits. Different public law regimes bear on the privatized law of sport in distinct ways and to varying degrees. Despite the common practice of granting sport organisations a wide berth to self-regulate, a number of public law mechanisms constitute and confront the sports hierarchy. The section that follows will consider how public law bears on the largely privatized world of elite sport.

Δ Switzerland: Liberal Oversight for the CAS and Sports Associations

Lausanne, Switzerland, has been called the capital of international sport, as favorable Swiss tax laws and minimal regulations have enticed scores of sports organisations to establish their headquarters in the city. Indeed, many sports bodies are organised under provisions of Swiss law that grant those organisations wide latitude to shape their own rules and regulations. WADA, IOC, the Union of European Football Associations, and roughly sixty-five other international sports organisations¹³⁷ are domiciled in Switzerland, where they are set up as associations under Swiss law.¹³⁸ The Swiss law of associations empowers these associations to set their own bylaws or rules to govern their own bodies, establish the rights and obligations of their members, and resolve internal conflicts.¹³⁹

¹³⁵ Jean-Loup Chappelet, "Autonomy and Governance: Necessary Bedfellows in the Fight against Corruption in Sport," *Transparencycdn.org*, 2016, 19, https://images.transparencycdn.org/images/2016_GCRSport_EN.pdf.

¹³⁶ Mega-Sporting Events Platform for Human Rights, "Athletes' Rights and Mega-Sporting Events," *icsspe.org* (Sporting Chance White Paper 4.2, January 2017), <https://www.icsspe.org/system/files/Mega-Sporting%20Events%20Platform%20for%20Human%20Rights%20-Athletes%20Rights%20and%20MSE.pdf>.

¹³⁷ Rebecca R. Ruiz, "Swiss City Is 'the Silicon Valley of Sports'," *The New York Times*, April 22, 2016, <https://www.nytimes.com/2016/04/23/sports/olympics/switzerland-global-sports-capital-seeks-new-recruits.html>.

¹³⁸ Swiss Civil Code, Art. 60-79.

¹³⁹ Margareta Baddeley, "The Extraordinary Autonomy of Sports Bodies under Swiss Law: Lessons to Be Drawn," *The International Sports Law Journal*, December 20, 2019, 2, <https://doi.org/10.1007/s40318-019-00163-6>.

Disputes that arise from these associations' rules are often arbitrated at the Court of Arbitration for Sport (CAS), also headquartered in Switzerland. The CAS is organised under Swiss law, but national intervention in the court's decisions is rare. The CAS Rules were adopted in accordance with the Swiss Private International Law Act, which provides a framework for international arbitral tribunals seated in Switzerland.¹⁴⁰ Under this framework, CAS awards are final and may be reviewed only on limited grounds before the Swiss Federal Tribunal.¹⁴¹ Although CAS awards may be reviewed by the Swiss Federal Tribunal, state intervention is limited to a strict minimum, and is generally aimed at ensuring due process.¹⁴²

Thus, the Swiss law of associations, under which sports bodies are organised, and the Swiss law of arbitration, which governs the CAS, sport's primary arbitral body, create liberal regimes for making, enforcing, and adjudicating sporting rules and regulations. The limited Swiss oversight of international sports organisations illustrates the hands-off approach of many national governments to sporting bodies. How might this *laissez faire* system affect athletes and sports organisations in different geo-political contexts?

4. Public Law: Uneven Enforcement of Public Law and Human Rights Norms Against Sports Organisations

The structure and regulation of elite sports organisations vary from country to country. Each national government intervenes differently in sport, affording sports bodies varying levels of autonomy. While each region, nation, and territory has its own unique regulatory framework, many share common elements that can contribute to or constrain harmful sporting environments. These shared elements may include, for example: respect for sport autonomy (addressed above), national sport-specific legislation, antidiscrimination law, employment law, labor law, sport-specific tribunals, and national courts, among others.

We might imagine an ideal, mutually reinforcing relationship between privatized sports bodies and public law regimes: where legal regimes do not adequately protect athletes' rights, sports policies might be able to fill the void. On the other hand, where legal regimes offer stronger safeguards than sports governing bodies, sport institutions might best protect athletes by deferring to or incorporating those external accountability mechanisms.

¹⁴⁰ Swiss Private International Law Act, Ch. 12.

¹⁴¹ This procedure is also enumerated in R46 and R59 of the CAS Rules. Court of Arbitration for Sport, "Procedural Rules," R49 and R59, 2020.

¹⁴² Despina Mavromati, "The Role of the Swiss Federal Tribunal and Its Impact on CAS Arbitration," in *International Arbitration Insights: CAS & Lex Sportiva* (American Bar Association, 2017), 21, https://arbitrationlaw.com/sites/default/files/jurisdiction_of_the_cas_-_the_basics_-_international-arbitration-insights_a_ba_section_of_intl_law_2017-vol-i.pdf. The Swiss Federal Tribunal may review CAS awards for improper appointment of arbitrators, lack of jurisdiction, decisions beyond the claims submitted or failure to decide on one of the prayers for relief, lack of due process, or failure to comport with public policy. Swiss Private International Law Act, Art. 190(2).

This picture is complicated somewhat by the multitude of actors who contribute to athlete safeguarding. International and national sports bodies, governments, non-governmental organisations, and athletes' rights groups play overlapping roles in protecting athletes from abuse and redressing harms when they do occur. In some cases, this patchwork of protections may provide athletes with inconsistent and incomplete safeguards. For instance, a 2020 Human Rights Watch investigation of child abuse in elite sport in Japan reported that, without centralized, coordinated oversight of the many disjointed bodies regulating Japanese sport, a "fragmented authority structure has resulted in inconsistent and inadequate mechanisms for child athlete protection."¹⁴³

Further complexities arise from limits on the legal jurisdiction of national courts and international tribunals over private, transnational sport organisations like the IOC. Domestic courts have declined to exercise jurisdiction over the IOC on matters related to the Olympic Games. In one case, the United States Court of Appeals for the Ninth Circuit rejected gender discrimination claims against the IOC, finding that "a court should be wary of applying a state statute to alter the content of the Olympic Games," as the Games are "organized and conducted under the terms of an international agreement—the Olympic Charter." The court was reluctant to apply "one state's statute" to regulate an event that engaged international competitors under the terms of the Olympic Charter.¹⁴⁴ In 2010, British Columbia courts expressed a similar hesitancy to issue a decision that would bind the IOC, as the organisation "is neither subject to the jurisdiction of [the Supreme Court of British Columbia] nor governed by the [Canadian Charter of Rights and Freedoms]."¹⁴⁵ If national courts lack the power to bind organisations like the IOC, domestic accountability mechanisms for private, global sport bodies might be foreclosed. Additionally, if the IOC, like other global governance actors, is not considered a subject of international law, international legal avenues may also be unavailable.¹⁴⁶

In each local context, non-sport authorities, from domestic governments and courts to international bodies and tribunals, have varying capacities to enforce public law and human rights norms against sport authorities. In some instances, public authorities may lack power or legal jurisdiction to hold private, transnational sport bodies accountable. Thus, a framework for understanding and addressing intentional violence in elite international sport must take account of this patchwork of public law interventions into the world of sport.

¹⁴³ Human Rights Watch, "I Was Hit So Many Times I Can't Count": Abuse of Child Athletes in Japan," *HRW.org*, July 20, 2020, <https://www.hrw.org/report/2020/07/20/i-was-hit-so-many-times-i-cant-count/abuse-child-athletes-japan>.

¹⁴⁴ *Martin v. International Olympic Committee*, 740 F.2d 670, 677 (9th Cir. 1984).

¹⁴⁵ *Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, 2009 BCSC 942, para. 132.

¹⁴⁶ Ryan Gauthier, *The International Olympic Committee, Law, and Accountability* (London ; New York Routledge, Taylor Et Francis Group, 2017), 9.

△ Sport and International Human Rights

Human rights discourse has begun to permeate the world of elite sport. Players are demanding recognition of their rights as “people first, and athletes second,”¹⁴⁷ and sports organisations have started to nominally affirm some of those rights.¹⁴⁸ But questions remain as to whether sport accountability structures can live up to the rights-oriented rhetoric. As Brendan Schwab, executive director of the World Players Association, warns:

“The transnational autonomy of global sport and reach of global sports law arguably presents the perfect means for internationally recognised human rights to be protected, respected and, where violated, remedied. Yet, sporting norms devoid of human rights—in the absence of substantive, cultural and institutional change—are likely to prevail.”¹⁴⁹

Because every state has a vested interest in ensuring that their athletes compete on the world stage, international sports governing bodies hold considerable leverage over national governments.¹⁵⁰ As discussed above, sports governing bodies may condition participation upon state compliance with governing body regulations. Under the right conditions, then, global sports governing bodies could use their broad and unilateral power to pressure states to recognize and enforce human rights protections for players.

However, while some sports organisations have incorporated human rights recognitions into their governing documents,¹⁵¹ the majority of governing bodies expressly deny or tacitly remain silent as to any obligation to enforce athletes’ human rights.¹⁵² Notwithstanding the inconsistent policies and practices of global sports bodies, international human rights standards and norms should compel both state and non-state actors to address and remedy elite sport conditions that leave players vulnerable to harms and abuses.¹⁵³

Human Rights Framework

Several interlocking human rights provisions obligate states to prevent and redress discriminatory harms—including harms against athletes. A number of treaties and conventions bar sex or gender discrimination. In particular, the Convention on the Elimination of All Forms of Discrimination

¹⁴⁷ Brendan Schwab, “Embedding the Human Rights of Athletes,” *Human Rights Defender* 29, no. 2 (April 2020), https://issuu.com/humanrightsdefender/docs/volume_29_issue_2/s/10920624.

¹⁴⁸ See Section IV(B)(2).

¹⁴⁹ Schwab, “Embedding the Human Rights of Athletes,” 2020.

¹⁵⁰ Human Rights Council, “Intersection of Race and Gender Discrimination in Sport,” 41, A/HRC/44/26.

¹⁵¹ E.g., IOC and FIFA; see Section IV(B)(2).

¹⁵² E.g., World Athletics (IAAF), in 2019, issued a statement denying the power of: “[World Athletics] is not a public authority, exercising state powers, but rather a private body exercising private (contractual) powers. Therefore, it is not subject to human rights instruments such as the Universal declaration of human rights.” IAAF, “IAAF Publishes Briefing Notes and Q & A on Female Eligibility Regulations,” *worldathletics.org*, May 7, 2019, <https://www.worldathletics.org/news/press-release/questions-answers-iaaf-female-eligibility-reg>.

¹⁵³ Human Rights Council, “Intersection of Race and Gender Discrimination in Sport,” 17, A/HRC/44/26.

Against Women expressly provides that women should have “the same opportunities to participate actively in sport and physical education” and “the right to participate in . . . sports.”¹⁵⁴

A number of human rights standards and norms address sexual and gender-based violence against persons of all gender identities.¹⁵⁵ Provisions of other international instruments explicitly or implicitly recognize a broad right to sports participation: these measures often derive from the fundamental principles of the Universal Declaration of Human Rights, which calls for a right to rest and leisure¹⁵⁶ as well as a right to free participation in the cultural life of the community,¹⁵⁷ underpinned by a principle of non-discrimination.¹⁵⁸

More specific protections for athletes emerged in UNESCO’s 2017 Kazan Action Plan, which marked one of the first and most unequivocal assertions of athletes’ rights and the need for safeguarding. The Plan states that “the fundamental human rights of everyone affected by or involved in the delivery of physical education, physical activity and sport must be protected, respected and fulfilled in accordance with the United Nations Guiding Principles on Business and Human Rights.”¹⁵⁹ The Kazan Action Plan thus establishes the UNGPs as a minimum floor to govern sports governing bodies’ conduct.¹⁶⁰ In addition, the UN General Assembly’s 2018 Resolution on Sport as an Enabler of Sustainable Development calls for attention to gender equity and human rights promotion in sport.

Elite child athletes are promised further protections under the United Nations Convention on the Rights of the Child, which requires states to “recognise the right of the child to rest, leisure, to engage in play and recreational activities appropriate to the age of the child”¹⁶¹ and to “encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activities.”¹⁶² The Convention on the Rights of the Child also obligates states to shield children from “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”¹⁶³

¹⁵⁴ United Nations General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women,” Art. 13(c), (September 3, 1981), United Nations, *Treaty Series*, vol. 1249, p. 13, https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf

¹⁵⁵ Including: UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women,” Art. 6; UN General Assembly 48/104 “Declaration on the Elimination of Discrimination against Women,” Art. 8, A/RES/48/104 (December 20, 1993); Council of Europe, “Convention on Preventing and Combating Violence Against Women and Domestic Violence,” CETS No.210 (January 8, 2014); African Union, “Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa,” (November 25, 2005); and Special Rapporteur P. Kooijmans, “Torture and Other Cruel, Inhuman or Degrading Treatment,” E/CN.4/1986/15 (February 19, 1986).

¹⁵⁶ UN General Assembly, “Universal Declaration of Human Rights,” Art. 24.

¹⁵⁷ UN General Assembly, “Universal Declaration of Human Rights,” Art. 27.

¹⁵⁸ UN General Assembly, “Universal Declaration of Human Rights,” Art. 7.

¹⁵⁹ UNESCO, “Kazan Action Plan,” MINEPS Sport Policy Follow-up Framework, C.III.8.

¹⁶⁰ See Section IV(B)(2).

¹⁶¹ UN General Assembly, “Convention on the Rights of the Child,” Art. 31(1).

¹⁶² UN General Assembly, “Convention on the Rights of the Child,” Art. 31(2).

¹⁶³ UN General Assembly, “Convention on the Rights of the Child,” Art. 19.

The landscape of human rights safeguards against intentional violence and abuse in sport is well-populated, yet athletes may still lack access to effective remedies for human rights violations in sport, as many such claims are decided by arbitration and are appealable only to the CAS.¹⁶⁴ These gaps in the adjudication and enforcement of human rights claims and a dearth of global oversight often leave players with few options to meaningfully redress the human rights harms they face.¹⁶⁵

C. Closing the Gaps

From country to country, public legal structures intervene in sport to varying degrees. Although many national systems share some common threads, the vast differences among local institutions and cultures highlight the need for contextual specificity in policy making. If sport bodies are to be granted autonomy and limited oversight, gaps will emerge where the hierarchy of elite sport lacks the proper infrastructures, self-awareness, and incentives to fairly and adequately resolve questions of athletes' rights.

On the other hand, private, international sporting regulations also have the potential to fill gaps if and when public rights-enforcing systems fall short. By incorporating public law and human rights norms into global sport policy, sport organisations may be able to lend enforcement power to local sport actors and supplement insufficient local public law regimes.

A meaningful framework to address intentional violence, then, must address a tension between sport- and non-sport accountability mechanisms: when should non-sport legal authorities hold sport accountable by enforcing public law and human rights norms against sport bodies? When should sport bodies self-regulate to provide athletes with protections above and beyond those offered by public law regimes? Closing the gaps will require new lenses and a new frame to guide research and decision-making on *how* harms befall specific athletes—not just *that* harms befall athletes.

¹⁶⁴ Human Rights Council, "Intersection of Race and Gender Discrimination in Sport," 39, A/HRC/44/26. CAS decisions can be subject to a deferential appeal at the Swiss Federal Tribunal, see "Switzerland: Liberal Oversight for the CAS and Sports Associations" box above.

¹⁶⁵ See "Switzerland: Liberal Oversight for the CAS and Sports Associations" box above.

V. Conclusion: A New Analytic Frame Is Needed to Cognize Harms and to Shape Effective Mechanisms for Prevention and Redress

A. Determining the Frame

To conceptualize and combat the culture and practice of intentional violence in the elite sport context we must adopt a new analytic frame that arises from a systematic and structural interrogation of the conditions that give rise to abuses inflicted in elite sporting environments and of *how* athletes experience the wide range of unique harms.

An Analytical Frame: Power Aspects and Conditions that Foster Athlete Harms

1. Intersectionality: Race, Gender, Disability

In sport, interlocking regimes of power exercise control over athletes that varies along lines of race, gender, sexuality, disability, age, class, and other categories of difference. To understand and address the conditions that give rise to harms, we must take an athlete-centred, trauma-informed approach. As we generate an agenda for a systemic response, we must return to and prioritize the individual, intersectional experience.

2. Power Imbalance: Power of Definition and Power of Decision

Sport organisations, regulatory bodies, teams, and other sporting environments generate and operate within unique fields of social and cultural norms. In each distinct context, some actors have more power than others to define the rules of the game—for example, to shape an organisation's priorities and purposes, to say what counts as a harm, and to specify how harms might be addressed. Likewise, some individuals or institutions have more power to decide how the organisation or system operates. For instance, if a dispute arises, players with more social capital might have more leverage to determine the outcome and specify the consequences.

A new analytic framework should consider which voices are elevated to define and decide questions related to athlete well-being, as well as how and why those voices are amplified.

3. Structural Impact: Vertical Integration, Network Creation, and Culture of Exceptionalism

Private sports organisations face relatively little oversight and benefit from long standing assumptions that sport is inherently apolitical and infallible. Thus, athletes can face unique challenges arising from the relative autonomy and power of sports governing bodies.

A new analytic framework should consider the extent to which existing cultural, national, international, economic, or normative frameworks validate or enable sports governance systems and should examine how these systems are insulated from or responsive to external accountability.

4. Global Power and Local Solutions

The harms that athletes confront are inherently local; a player experiences intentional violence and injury as a lived, day-to-day, debilitating reality. And abusers are all too often those in closest proximity to athletes: coaches, trainers, officials who leverage their positions and exploit the ethos of the high-performance environment to victimize players. What's more, approaches to defining, preventing, identifying, and redressing harm are likely to be more or less effective in different contexts. This contextual specificity is especially important for organisations that operate across distinctly different landscapes where local actors have varying levels of access to rule of law, gender equality, community support, and resources for independent living. When international sports organisations incorporated in the global North adopt rules and procedures rooted in global North-based values (e.g. the over-dependence on reporting systems to prevent intentional violence reflects global-Northern neoliberal values of reliance on individually motivated action and individualized fault), the slippage between the rules and the potential of their local application could impair interventions in the global South. Solutions, then, will need to play out at the local level, adopting accountability mechanisms and providing local actors with tools to stop abuse where it happens.

A call for local solutions engenders a complication, though; global (markedly non-local) actors and institutions hold the lion's share of power and authority in the world of sport. Within the hierarchical structure of sports governance, global power brokers like the IOC and the IFs make and enforce the rules of the game, binding national organisations (NOCs, NFs) and their local counterparts.

◆Central Framing Questions

A new framework must examine the ways that global power works in local contexts with respect for the unique circumstances of any given locality. The frame should consider how meaning and power flow between global institutions and local contexts to build frameworks that are athlete-centered and independent of geographically-specific value sets. Formulating this frame will require interdisciplinary perspectives to explore the question: what kind of transferrable tools can centres of power provide to aid local actors who must identify existing harms, prevent future harms, and provide redress for those who suffer harms and violations of rights?

To work toward answering this central question about endowing local actors with the power to protect athletes in their own communities, further discussion of this Note might develop along several lines of inquiry addressed herein, including:

1. How should we address the conditions and cultures endemic to elite sport that create space for intentional violence?
2. How can we develop safeguarding systems that are less reliant on athlete reporting of intentional violence? What might those systems look like, and how would they affect individual athletes in different contexts?
3. How can we ensure that different safeguarding systems communicate with and develop in concert with one another to create comprehensive protections?
4. How can private international sporting organisations create policies—and provide resources—that intervene when needed, while coordinating with or deferring to public, legal and accountability mechanisms?

