



**British Institute of
International and
Comparative Law**

'Sport and Human Rights: A Conversation with Sarah Joseph'

Event Report

Date: 29 November 2016, 12:30-14:00

Venue: British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London WC1B 5JP

Speakers:

- **Professor Sarah Joseph**, Professor of Law at Monash University, and the Director of its Castan Centre for Human Rights

Chair:

- **Professor Robert McCorquodale**, Director of BIICL



On 23 November 2016, British Institute of International and Comparative Law hosted the lunchtime seminar on Sport and Human Rights. The seminar was convened by Dr Jean-Pierre Gauci, Research Fellow in Public International Law.

Taking the form of an informal conversation between Professor Robert McCorquodale and Professor Sarah Joseph, the seminar explored issues ranging from the use of sport as a platform to suppress or promote human rights, gender discrimination in sports, drug testing as a possible interference with athletes' human rights, the hosting of major sporting events in countries with poor human rights records, challenges to labour rights of athletes as well as the role of the Court of Arbitration for Sport and its compliance with internationally accepted human rights and rule of law standards.

Sarah Joseph is Professor of Law at Monash University and the Director of its Castan Centre for Human Rights Law. She is currently a visiting fellow at British Institute of International and Comparative Law.

Opening the discussion, Sarah Joseph highlighted how human rights permeate various disciplines. Major sporting events such as the Olympic Games provide a platform for the interrelation between sports and human rights to be highlighted. In the 1972 Olympics both the outstanding athletic performances as well as the terrorist attacks remained in the minds of spectators. Finally, attention was drawn to the Chapecoense football club plane crash, uniting the sporting world in this moment of sadness.

Starting with the consideration of whether sport has been used as a platform for the suppression as well as the promotion of human rights, Sarah Joseph considered the 1936 Summer Olympics hosted in Berlin. This major sporting event showcased both the extremism of the Nazi regime, but it was to an extent outshined by the exceptional performance of Jesse Owens. The ability of sports to unite people despite ideological and other differences was illustrated through the friendship that developed between Owens and Luz Long, with Owens attending the wedding of Long's son as best man. Today's major sporting events are used as a platform to draw attention to political and social issues. Such events provide opportunities to highlight human rights issues, as seen recently for example in the United States with the personal protest of quarterback Colin Kaepernick over racism in that country.

However, such events can also be a platform for negativity. The complicity of sporting teams with South Africa's Apartheid regime was met with vehement condemnation by the international community. Similarly, the pseudo-obligatory drugs regime applied to East German athletes was a human rights violation as the drugs' impact on the athletes' health is now coming to light. Sports has the ability to foster nationalism and tribalism, especially in soccer, and it can also attract terrorism as was evidenced by the attacks on Stade de France. Further issues arise as to discrimination on the basis of age, sex, gender and ability constituting a barrier to participation in sports.



Relating the controversy surrounding Caster Semenya's participation in the women's 800 meters during the 2009 Olympic Games, Sarah Joseph highlighted the fact that sports sees gender as binary, not taking into account individuals' specific gender identities. While men and women are biologically different, so that men are generally faster and stronger, in Caster Semenya's case the intrusion of her privacy was not only undue but also excessive. Though the most prominent case, Caster Semenya's is not the only one to raise issues of hormone levels constituting an unfair advantage when competing. In a welcomed decision, the Court of Arbitration for Sports, set up to settle disputes relating to sports through arbitration, threw out the previously held requirement that a maximum level of testosterone in the blood of a hyper-androgenous female athlete must be suppressed through medication.

The International Olympics Committee advises that transgender men can compete as men. This permissibility finds its basis in the assumption that they would be at a physical disadvantage to their co-competitors. It advises that transgender women, however, be obliged to take hormone suppressants to keep their hormones at a level considered "fair" in women's competitions. A question arises as to how transgender children should be treated in sports and what rules may apply to non-cis gendered participants in community sports. Though in the United Kingdom transgender individuals are protected by anti-discrimination laws, these do not apply to sports.

Turning then to the question of whether major sporting events ought to be held in countries which have poor human rights records, Sarah Joseph recalled arguments that large events should never go to such countries, as hosting such events gives legitimacy to the regimes. However, this line of argument undermines the fact that countries generally considered as legitimate have themselves been involved in some of the most significant human rights and humanitarian law violations of recent history, for instance the United Kingdom and United States of America's involvement in the Iraq war. This involvement has however not caused a comparable outcry by the international community to ban major sporting events from those countries. A better criterion is to demand that the hosting of mega events not contribute to human rights abuses.

In 2015 the UNHR Council issued a report which condemned the mixing of sport and politics. Nonetheless, sporting events were and continue to be boycotted as a response to political and ideological regimes. The most famous boycott was staged in South Africa against the regime, which likely played some role in the eventual end of Apartheid. The economic sanctions suffered by South Africa at the time were more significant, but the international community's joint condemnation of the regime demonstrated through the boycott of sporting activities which usually unify the international community was also a decisive factor.



Comments such as Jerome Valcke's that "less democracy is sometimes better" in choosing World Cup venues are not helpful. In order for rights violations to be adequately addressed, organisations like FIFA must be held accountable. They are increasingly aware of the fact that their reputations are at risk and their need for rehabilitation. This leads on to the next question whether human rights can be positively asserted against bodies such as FIFA and the International Olympic Committee.

There are also numerous issues concerning the rights of individual athletes. Issues arise regarding due process, workers' rights, the right to health, and children's rights. Regarding the latter, we are now hearing terrible allegations about historical sexual abuse in soccer.

With regard to working rights, one may note that great restrictions are often placed on the individual freedoms of athletes, such as football players, which are not shared in other professions. As such, they experience greater difficulty in moving teams than, for example, a university lecturer might in moving from one institution to another. Generally, bodies similar to trade unions are useful in boosting the working rights of athletes. However, historically these have had little power and traction, compared to workers' organisations in other fields. However, there has been a distinct increase in the strength of players' labour rights in more recent times. Players' associations have been able to leverage individual court decisions for the benefit of the broader athlete community. In this regard, the EU has been leading in this area, with the US and Australia lagging behind.

Sporting professions come with the acute risk of grave injury. These are habitually obtained accidentally and can be aggravated by the player's own decision to carry on after being injured. Even where significant injuries occur, the public does not view these as significant, as players are often portrayed as living a glamorous life in the public eye, with the injuries being considered incidental to the profile. Injuries obtained during sporting activities are, crucially, not treated as human rights violations.

NFL players are in a uniquely dangerous situation. It is now estimated that 40% of players may ultimately suffer from NFL related brain damage, including Chronic Traumatic Encephalopathy. As this disease can only be diagnosed in a post-mortem examination of the brain, the exact number is not known. The NFL has been aware of this problem for years and has been known to attempt to keep the extent of the problem covered up, endorsing flawed research aimed at disproving the findings. These attempts to keep the issue under wraps has been compared to the actions of Big Tobacco, similarly attempting to keep findings and allegations under wraps. To some extent injuries are inherent in certain sports and are embedded in their very nature. In order thus to address the issue of how to deal with CTE and other, less extreme injuries occurring during sports one would have to entirely prevent injuries, but the question remains as to how can this be attained without taking away the very combative nature of contact sports?



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Going back to enforcement of rights, Sarah Joseph picked up on the role of the Court of Arbitration for Sport. It was established in 1984 and endowed with a very broad jurisdiction. It is common practice that players contractually forfeit their right to settle disputes in national courts but instead use the Court of Arbitration for Sport as the sole judicial forum to assert their rights against sporting clubs and organisations. The Court of Arbitration for Sport has the benefit of dealing with cases before it in a swift manner and also establishing a uniform case law for sports related claims arising across the globe. But does compulsory CAS jurisdiction interfere with the fundamental right of access to a court? The CAS is not a court in the sense considered in international human rights conventions but a private arbitral body. Of course players are free to enter into a contract under which they waive their right to approach courts. But it is difficult to characterise such a waiver as voluntary if it is impossible to participate in the desired competitions without signing such contracts. Further, the grounds of appeal from a CAS decision are limited and can only be considered in Switzerland, constituting further hurdles to players' right to access court. Sarah Joseph recalled the case of the Canadian female football team which intended to bring a case relating to sexual discrimination before the Canadian human rights tribunals. They were pressured to drop the case due to compulsory CAS jurisdiction. It may be questioned what experience the CAS has on issues of sexual discrimination, compared to the expertise of the Canadian tribunals.

Closing on her deliberations and opening the floor to questions, Sarah Joseph highlighted that it must not be forgotten that playing sports in and of itself constitutes a human right. Article 15 of the International Covenant of Economic and Social Rights specifically outlines the right of everybody to participate in cultural life, which undoubtedly includes sports. The right also touches on the principle of non-discrimination within the right to participate in sports as well as the simple health benefits arising from participation in sports, and the right to play in the Convention on the Rights of the Child.

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