



SPORT & HUMAN RIGHTS

CAN SPORT CHANGE THE WORLD?

2019 HIGINBOTHAM LECTURE
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“Finally, this nightmare has ended, I am very happy to see everyone happy with me at this moment, thank you for all my support and I would [sic] like to say thank you Australia.”
Wife of Hakeem al-Araibi.

INTRODUCTION

Powerful sentiments from new Australian citizen, Hakeem al-Araibi’s wife and a sound starting point for tonight’s exploration of sport’s social obligation to positively change the world.

But we will challenge the global sports industry¹ further, and ask whether sport might contribute to *saving* it by making a decisive contribution to the fruition of the unfulfilled dream of the past three quarters of a century for a truly universal standard of human conduct.

My thesis tonight is that sport *can* do so through two core aspects: the social currency of athletes to amplify important discussions; and most powerfully the sport and rights movement which gives credence to the athlete’s message, brings sport and athletes together in shared advocacy and is enabling the promotion of international rights instruments on a truly global level.

We will extrapolate lessons from the campaign to free Hakeem al-Araibi early this year, and ask whether anything has changed?

Along the way I will again call on FIFA to urgently abide by their human rights obligations; propose that human rights increase the legitimacy of the athlete voice; urge Australia to join the movement

¹ Including in the fast emerging e-sports industry.

including the need for a sport and rights institute; and highlight my concerns about climate migration and how football is uniquely impacted.

A mighty challenge in the next forty minutes, undoubtedly, in fact we could say we're aiming for the title, going for the double. You get the point and best prepare yourself for plenty more sporting metaphors and truisms. *Ready. Set.* But will sport *go* where it, as yet, daren't?

THE SPORT AND HUMAN RIGHTS MOVEMENT

I. THE ATHLETE VOICE

Sport is in large part powerful because it brings humans together on the basis of shared, agreed rules. In football, the field represents contest boundaries, fairly drawn. 211 countries come together, of every background, religion, race, colour and gender and are equal. It teaches us to be global citizens and the concept of sport and its players advocating for global standards of human interaction is completely natural to our mind.

So, we shouldn't be surprised when, given athletes' careers depend on the fair application of rules, they take visceral offence at, and feel a need to use their voice to expose injustice in their sport, community or world. In fact, we should welcome it, and by bringing human rights into the athlete's lens, their protests become more impactful.

Of course, historians know that sport by its very nature has an element of defiance built into its competitive fabric. When the Blues and Greens chariot teams, about to race in 532 A.D. in Constantinople demanded that

the Emperor pardon from execution several of their, what we'd now call 'fans', or 'supporters', Justinian's refusal set off six weeks of rioting and the deaths of 30,000.

Although the Presidents of sporting organisations have, not infrequently, been accused of acting like quasi-emperors, we thankfully did not need to act quite so destructively earlier this year when campaigning to free our young friend from a Bangkok prison of which more, later.

We have countless examples of athlete activism which were founded on breaches of humanitarian principles that needed to be illuminated. Even if sport didn't conflate the two, which is a defining characteristic of many of the most iconic moments in sporting history.

Internationally, for example, the raised black gloves in the 1968 Olympic Games in Mexico² to protest racial discrimination is iconic for the very reason that it stood against not only prejudice, but prevailing social wisdom and policy, both sport and government, of the day.

Athletes have the same frailties and flaws as anyone else, they are not superhuman rather it is their refusal to give in to these weaknesses, that is so meritorious. We see desirable qualities in their struggles and triumphs, and even in their very public failures are lessons to be drawn. And we live vicariously through their journey, because it is ours, only on camera.

So, when I talk about *athlete voice*, I am not referring to moral worthiness, or the 'role model' trope, rather I am proposing we accept that sport, and

² Andrew Webster, 'Finally, the real story about Peter Norman and the black power salute', Sydney Morning Herald (online), 20 Oct 2018 < <https://www.smh.com.au/sport/finally-the-real-story-about-peter-norman-and-the-black-power-salute-20181018-p50abm.html> > From a human rights perspective, the protest accorded with the right to non-discrimination on the basis of colour, United Nations *Universal Declaration of Human Rights*, 1948.

its most famous proponents have social power which is very well earned. The question is how they spend it?

We are all aware of prominent athletes who answer the responsibility to return the support and opportunities that they have been provided. And in my view it is in supporting a civil society, fundamental human rights and advocating for humanitarian values that this debt is repaid.

I argue that it is through a rights-based approach that the athlete is liberated from the constraints of political or commercial concerns that sport often imposes, whether explicitly or implicitly. It allows them to use their voice to support those being violated and to educate the next generation about the rights they hold individually and between each other, as equal members of the human race.

Surely, free and equal in dignity and rights, endowed with reason and acting towards one another in a spirit of brother (and sister) hood³ is the very essence of the sporting ethos, is it not?

In the domestic context, when four time Paralympian Kurt Fearnley, or wheelchair tennis and basketball dual international, Dylan Alcott challenge perceptions of what an athlete can achieve in a wheelchair, hurtling headlong down the track or across the court with immense courage and dexterity one moment, and advocating for the rights of the disabled in the next, they fertilize the rights of others.

When proud Adnyamathanyha and Narungga man, Adam Goodes performs a beautiful, stirring, ancient Aboriginal war dance with such unmistakable pride in his culture and people, how must this resonate with indigenous

³ United Nations, *The Universal Declaration of Human Rights*, Article 1 <<https://www.un.org/en/universal-declaration-human-rights/>>.

youth who are facing discrimination and wondering, can I really succeed by being a black man, or must I act white, or grey, or some shade in between? Then they see an Aboriginal man, proud to the depths of his soul, standing for indigenous rights and this progresses the case for reform.

And when our most loved National sporting team,⁴ the Matildas challenge the heavily discriminatory FIFA prizemoney distribution⁵, it's important. Not only to other teams globally and women's sport generally, but the cause of gender equality itself.

So, too when LGBTI members of the team such as Chloe Logarzo stand proudly in who they are, likewise the admirable US Women's National Team Captain, Megan Rapinoe, and it says to young girls, that you're perfect as you are.

Sport can shift conversations because it is a very rare phenomenon, a social institution where we share lasting emotions, in a predominantly safe way, with tribalism that means little in a substantive sense but is hugely enjoyable nonetheless and perhaps more so for this very reason. As the Polish, Pope John Paul II famously said in relation to my game, '*amongst all unimportant subjects, football is the most important*' and that is precisely the point.⁶

It will be even more important, though, when sporting bodies accept the right of athletes to promote and protect other humans, and we will return to this friction in a moment.

⁴ Ministry of Sport, *The Matilda's are Australia's most-loved sporting team* <<https://ministryofsport.com.au/the-matildas-are-australias-most-loved-sporting-team/>>.

⁵ ABC News, PFA launches campaign for pay equity in men's and women's soccer on eve of Women's World Cup 4 June 2019 < <https://www.abc.net.au/news/2019-06-04/pfa-steps-up-fight-for-world-cup-pay-equity-for-matildas/11177058>>.

Australians feel good about, and we join together through sport in a way that is arguably of ever-increasing value in a fractious world. If sport is the universal language of the world, then, how powerful can it be in the promulgation of universal rights?

II. PROTECTION OF ATHLETES – HAKEEM AL-ARAIBI

We have the perfect, probative example of the fusion of ‘sport and rights’ in the campaign to free Hakeem who was facing the threat of *refoulement* to Bahrain from where he fled, having been tortured as part of the crackdown on high profile athletes in the Arab Spring.⁷

Granted a protection visa in Australia, he bravely spoke out in 2016 against then FIFA Presidential election candidate and President of the Asian Football Confederation, Sheikh Salman bin Ibrahim Al Khalifa, which likely cost Salman the most powerful seat in world sport. Salman was President of the Bahrain Football Federation when Hakeem was incarcerated and tortured years before and yet did not come to his aid. Late last year, Hakeem and his young wife travelled on their honeymoon to Bangkok, and were detained on an improper Interpol Red Notice at Bahrain’s request, pending extradition.

The challenge of the campaign to free him was to maintain a rigorous focus on a multi-partisan, apolitical message, even more so because his case was potentially so politically charged. A young, Muslim male at a time when some of this community have rightly expressed feelings of marginalisation in Australian society⁸ and a refugee who came to Australia by plane which

⁷ National Geographic, What was the Arab Spring and how did it spread? <
<https://www.nationalgeographic.com/culture/topics/reference/arab-spring-cause/>>.

⁸ Professor Andrew Markus, ‘Mapping Social Cohesion’, (The Scanlon Foundation Surveys 2018).

somehow makes one different to the poor souls who undertake the journey in a barely, if not un-seaworthy vessel.⁹

Hakeem was a *plane person* and his good fortune, and I use the term advisedly as the young man has suffered detestable treatment at the hands of several Governments,¹⁰ was to play football. You see, not only did this mean that the international community could be activated in his defense, and that his status as a sportsman made him more relatable, more *human* than the millions of other equally as worthy asylum seekers, he also had the benefit of the entire international human rights framework.

In fact, he had greater recourse to international standards as a registered footballer, than he did under Australian, Bahraini or Thai domestic law.

Following the awarding of FIFA (Federation International de Football Association)¹¹ World Cups to both Russia and Qatar and the associated human cost and reputational damage from discriminatory laws or the deaths of migrant workers¹², the human rights community was able to encourage football to adopt a robust human rights policy.¹³ This obligates official bodies to protect and promote all internationally-recognised human rights.¹⁴

⁹ The Economist, *Far more would be refugees arrive in Australia by plane than by boat*, (accessed 7 September 2019) <<https://www.economist.com/asia/2019/09/07/far-more-would-be-refugees-arrive-in-australia-by-plane-than-by-boat>>.

¹⁰ Americans for Democracy and Human Rights in Bahrain, *HRC40 Written Statement Torture Victim Hakeem Al-araibi Detained in Thailand for 76 Days* (27 February 2019) <<https://www.adhrb.org/2019/02/hrc40-written-statement-torture-victim-hakeem-alaraibi-arbitrarily-detained-in-thailand-for-76-days/>>.

¹¹ <https://www.fifa.com>.

¹² Business and Human Rights resource Centre, *Labour Rights and the Qatar World Cup* <<https://www.business-humanrights.org/en/major-sporting-events/labour-rights-and-the-qatar-world-cup-2022>>.

¹³ This followed an open letter calling for action by FIFA in June, 2014 from the former UN Secretary-General's Special Representative for Business and Human Rights, Professor John Ruggie of Harvard University and Mary Robinson, former President of Ireland and UN High Commissioner for Human Rights. The later report, '*FIFA and Human Rights*' by Professor Ruggie, made 25 recommendations to align the sport, and particularly major sporting events (MSE's) with the UN Business and Human Rights Guiding Principles (UNGPs): FIFA, 'Report by Harvard expert Professor Ruggie to support development of FIFA's human rights policies', 14 April 2016 <<https://www.fifa.com/about-fifa/who-we-are/news/report-by-harvard-expert-professor-ruggie-to-support-development-of-fi-2781111>>.

¹⁴ FIFA, 'Human Rights Policy' (May 2019 Edition).

Though crises were the genesis and FIFA's will to implement its provisions is always under scrutiny as we will touch on shortly, I congratulate the governing body for having made the strongest commitment in international sport.

Are we now seeing sport brought back inside the international rule of law in a world where sport has created its own *lex sportiva*, a so-called *global law without the state*?¹⁵ It is immensely exciting to consider what we may achieve in a bold new world where sport must uphold the universal values which are, in reality, anything but universal.

Because while the principles of the UN Universal Declaration of Human Rights have been embedded in the constitutions or law of over 90 countries,¹⁶ FIFA's membership stands at a hefty 211.¹⁷ Qatar is proof that while adherence to, or domestic implementation of UN instruments is voluntary,¹⁸ membership of global sport is something that citizens will not see put at risk. Restrict free press,¹⁹ discriminate on the basis of sexual orientation and against women's rights,²⁰ sure, but get kicked out of FIFA? No, way.

Can football achieve what domestic law in its 211 Member Federations is often unwilling, or incapable?

Article 7 of the FIFA Human Rights Policy of 2017, states for example that:

¹⁵ Duval, Antoine, 'The FIFA Regulations on the Status and Transfer of Players: Transnational Law-Making in the Shadow of Bosman' (April 1, 2016). Forthcoming, A. Duval and B. Van Rompuy, *The Legacy of Bosman*, Springer, T.M.C. Asser Press, 2016 ; T.M.C. Asser Institute for International & European Law 2016-6.

¹⁶ Stand Up Human Rights, *The Universal Declaration of Human Rights 70th Anniversary* <<https://www.standup4humanrights.org/layout/files/proposals/UDHR70-MediaFactSheet.pdf>>.

¹⁷ Fifa.com, *FIFA - Associations and Confederations - FIFA.com* <<https://www.fifa.com/associations/>>.

¹⁸ Human Rights Watch, *World Report 2019: Rights Trends in Qatar* (2019-01-17) <<https://www.hrw.org/world-report/2019/country-chapters/qatar>>.

¹⁹ Richard J. Roth, 'Opinion | Awaiting a Modern Press Law in Qatar', *The New York Times* 20130508 2013 <<https://www.nytimes.com/2013/05/09/opinion/global/Awaiting-a-Modern-Press-Law-in-Qatar.html>>.

²⁰ Qatar Legal Portal, 'Issuing the Penal Code' (2004) <https://www.unodc.org/res/cld/document/qat/penal-code_11_2004_html/2014_Penal_Code_Law_11_2004_26.pdf>.

Where national laws and regulations and international human rights standards differ or are in conflict with each other, FIFA will follow the higher standard without infringing upon domestic laws and regulations. Where the national context risks undermining FIFA's ability to ensure respect for internationally recognised human rights, FIFA will constructively engage with the relevant authorities and other stakeholders and make every effort to uphold its international human rights responsibilities.

We had to make an *undue* effort to acquire *every* effort from FIFA and the reality is that the players, public, Australian Government and sport and rights movement saved him, not the institutional football system.

Nevertheless it is vital to understand that the Football Federations of Thailand²¹ and Bahrain²² were obligated to protect Hakeem's rights under the *Convention Relating to the Status of Refugees*²³ and the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment*²⁴ rather than domestic refugee or human rights law.

Most failed miserably to do so but, in the past, we would have been merely appealing to their better nature, morality or values of the game and I need not remind the human rights or legal fraternity about the efficacy of that approach when money, self-interest or politics are involved, as all three almost always are, in contemporary sport.

²¹ Football Association of Thailand, <http://fathailand.org>.

²² Bahrain Football Association, <http://www.bfa.bh/en>.

²³ United Nations High Commissioner for Refugees, 'The 1951 Refugee Convention' (2019) <<https://www.unhcr.org/en-au/1951-refugee-convention.html>>.

²⁴ United Nations High Commissioner for Refugees, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (1984).

This also meant that the international sport and human rights community,²⁵ who led the creation of the groundbreaking policy, were deeply committed to its obedience, and poised to apply leverage on Government and sporting stakeholders alongside the global campaign.²⁶

More than once did we reflect throughout that, if Hakeem was a swimmer, table tennis player or a sprinter, for example, he may still be in that prison cell. His expertise with the round ball begat trouble due to his profile in 2012, and saved his life in 2019.

Hakeem stands with us today as a living reminder of what Australia can achieve in the name of humanity, compassion and empathy, and I believe one day these qualities will be acknowledged as national strengths, not weaknesses. And of how we *can* overcome the dizzying barrage of messages that dehumanize real living and breathing human beings, families, kids.

Let us hope that Hakeem's case can be a light in the darkness from which we can navigate a way forward. Australians are compassionate as has been proven for Hakeem and I feel sure that too many of us have had enough of the constant stories of suffering of people who sought refuge. As the families of so many of you in the audience tonight and listening, or reading around the nation have done, or would do in the same circumstances. As would I.

²⁵ Including World Players United (WPU), Professional Footballers Australia (PFA), FIFPro, Human Rights Watch, Amnesty International, the Gulf Institute for Democracy and Human Rights (GIDHR)²⁵, the Bahrain Institute for Rights and Democracy (BIRD), the Centre for Sport and Human Rights and the Sports and Rights Alliance.

²⁶ Minky Worden, *Hakeem Al-Araibi's case is a true test of Fifa's new human rights policy* (2018-12-06) <<https://www.hrw.org/news/2018/12/06/hakeem-al-araibis-case-true-test-fifas-new-human-rights-policy>>.

I had the profound pleasure of working with one who became an icon, Laszlo Urge (Les Murray),²⁷ whose family paid people smugglers to get to Australia from Hungary in 1957 and for whom sport was the propellant, through broadcasting, to a life of celebrated achievement and recognition from the Governments of both Australia and Hungary.

In the eyes of every asylum seeker, I see haunting images of these two. And I cannot work with someone that Australia loved, or come to know this amazing young, new Australian named Hakeem and his extraordinary wife, and yet look away when the Les' or Hakeem's of today are being harmed. And I pray, Australia, neither can you.

I do believe the better nature of Australians which I know, and Hakeem shows exists, will prevail. Because if Hakeem is proof of anything, it is that when we stand for what is right and just, we can achieve extraordinary things. We need our political leaders to come together as people, and find a better path forward for us all. We will need to be pragmatic and there may be no perfect answer, but move forward we must. Please.

Given the multicultural DNA of football in this country and the vast number of refugees who we play with, and against every weekend on pitches all around the nation, our community has a wonderful opportunity to raise our voice in support of humane treatment of all, as they did for Hakeem. That's not politics. That's pure, human, rights.

And here's where athletes can ground their advocacy safely in an apolitical place. They can know that human rights transcend sports, and governments. When we advocate for humane laws and treatment of vulnerable people, based on international instruments, it is not about the

²⁷ Laszlo Urge < [https://en.wikipedia.org/wiki/Les_Murray_\(broadcaster\)](https://en.wikipedia.org/wiki/Les_Murray_(broadcaster))>.

political right, left or centre. We are all united through our immutable rights that *underpin* or sit *above* politics, whichever you prefer.

This is why in the #SaveHakeem campaign, I was careful to work with all parties, all leaders, and continue to do so, to demonstrate that there are fundamental standards and values which exist independently of any policy. And advocating for vulnerable people is certainly one.

III. ONGOING FAILURE OF GOVERNANCE ACCOUNTABILITY

The problem is that Hakeem was a unique victim in many ways. A footballer. A refugee. Based in Australia where there is a national reverence for sport, a strong player union framework and ethos of solidarity between athletes, and a generation of former players with three decades of experience fighting for player rights.

Without the decisive work of Foreign Minister, Marise Payne and the Australian Ambassador-Designate, Allan McKinnon and his Embassy staff in Bangkok, along with the strong public support of the Australian Prime Minister, Scott Morrison he would have been beyond our reach, nevertheless the FIFA policy provided a benchmark for accountability in what was a seminal test of the new sports world.

But there are other victims in sport who don't possess these advantages and for them, the system must operate satisfactorily. It does not.

At a time when we should be focused on the incredible global opportunity for women's rights through sport, the failure of the system has resulted in tragedy.

Sadly, in the past week we have seen the death of an Iranian female football fan, Sahar Khodayari who self-immolated in protest at the Iranian Government's discriminatory refusal to allow women to attend football matches.²⁸ Despite statutory gender equality provisions, FIFA has watched women being detained, imprisoned and beaten, all the while failing to impose the sanction of suspension or expulsion that is expressly provided for.²⁹

It is significant that, although FIFA made clear that sporting sanctions on Bahrain and Thailand were *not* possible in Hakeem's case, our insolent promotion of the threat (although, in truth empty) of being kicked out of international competition cut through deeply to the Thai, football loving population.

The Asian Confederation has done too little for the women of Iran, as they did nothing for Hakeem and as well as holding the AFC to account for a fast growing list of abuses, I call on FIFA to apply their statutes immediately and ban the Islamic Republic of Iran from international competition until such time as women have equal rights to watch football. Until this happens, equality is a lie that is putting lives at risk.

The Iranian women campaigned for years, but where could they prosecute their case? As this audience well knows, rights and policies are one thing, remedy another. This is the next step of the sport and human rights journey which raises the question as to whether a new remedial chamber is necessary. One with specific human rights expertise that the Court of Arbitration for Sport (CAS)³⁰, for example, lacks, a point made by former

²⁸ Al-Jazeera, 'Blue girl: Iran's football fan, denied stadium entry, dies', 11 Sept 2019 <<https://www.hrw.org/news/2019/08/19/afghanistan-fifa-sexual-abuse-investigations-stall>>.

²⁹ FIFA Statutes 2018 Edition, *Article 4: Non-discrimination, equality and neutrality* <<https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa>>.

³⁰ T. A. S. C. A. S. Court of Arbitration for Sport, *Latest news and media releases* <<https://www.tas-cas.org/en/index.html>>.

UN Secretary-General's Special Representative for Business and Human Rights, Professor John Ruggie.³¹

This is even more critical in light of the failure of the electoral eligibility criteria and FIFA Code of Ethics³² to hold officials to account such as, for example the President of Iranian football³³, Mehdi Taj, who was elected in April as a Vice President of the AFC amid the complete failure of his governing body to protect Sahar and her colleagues.

Similarly, the Secretary-General of the Afghanistan Football Federation³⁴, Sayed Ali Reza Aghazada was elected to the Executive Committee of the Asian Football Confederation (AFC), even though at that time suspended by the Afghan Attorney General's office for alleged sexual abuse of women national team players.³⁵

The global players' body, FIFPro also needs to do more, in my view as a former Chairman of our domestic Union. Despite a flagrant breach of his human rights obligations to Hakeem, the AFC President, Salman remains beyond challenge, has garnered Australia's vote for reelection and calls for accountability are illusory. It is FIFPro's responsibility to challenge any official whose conduct threatens player safety and to impress the highest standards of governance of the sport.

How are officials, who stood by when the Afghan women were abused, when the Iranian women fans faced discrimination which led to an avoidable death, when Hakeem was facing certain torture, still being

³¹ See above n8, p26.

³² FIFA Code of Ethics 2018 Edition < <https://resources.fifa.com/image/upload/fifa-code-of-ethics-2018-version-takes-effect-12-08-18.pdf?cloudid=uemlkcy8wwdtlll6sy3j>>.

³³ Football Federation Islamic Republic of Iran < <http://www.ffiri.ir/en/>>.

³⁴ Afghanistan Football Federation < <https://aff.org.af/>>.

³⁵ Minky Worden, 'Football leaders stand by as human rights abuses pile up,' Human Rights Watch 7 April 2019 < <https://www.hrw.org/news/2019/04/08/football-leaders-stand-human-rights-abuses-pile>>

elected to high office? We have to ask whether we have learnt anything from the #SaveHakeem campaign?

Sahar's blood has been spilt. And football will try to avoid answering on whose hands it lies but, what's most pressing is, who is going to ask?

When fans' or players' rights are in jeopardy, officials have to deliver and Sahar stands as the tragic cost of delay that we feared Hakeem would become and this is precisely why we confronted the politics of the game head on by gatecrashing FIFA, refused to let political compromise shape the outcome and forced football to act.

But we shouldn't have to.

IV.. MEGA SPORTS EVENTS (MSE'S)

When sport uses its newfound humanitarian muscle, the effects can be extremely powerful not just for one young man, but countries and continents. We can only wonder what effect embedding human rights provisions in bidding contracts for Mega Sporting Events might have in future given the disastrous consequences for many sectors of society when the roadshow descends.

And the trend towards 'sportwashing'³⁶ or using mega events to burnish a country's image and bury human rights abuses, increases the urgency to give affected people a 'sporting' chance.

³⁶ Barney Ronay, *Sportwashing and the tangled web of Europe's biggest clubs*, The Guardian, 16 February 2019 <<https://www.theguardian.com/football/2019/feb/15/sportwashing-europes-biggest-clubs-champions-league-owners-sponsors-uefa>>.

Child labor, supply chain abuse and construction worker deaths are but a molecule of the historic, human impact of FIFA World Cups and Olympic Games. The displacement of vulnerable people from event zones for construction or competition alone, reached as many as 1.5 million at Beijing 2008, saw 9,000 homeless citizens issued with a citation as part of the 'Clean the Streets' programme for Atlanta 1996, most of them African Americans as well as the forced eviction of 30,000³⁷, between 250,000 and 1.5 million for Brazil 2014³⁸ and a further 6,600 families for Rio 2016.³⁹

Awarding of the FIFA World Cup to Qatar, in 2010 was destined to increase the number of migrant workers required in the construction of a reported \$200 billion of infrastructure and lead to increased violations such as the restriction of the movement of workers, confiscation of passports, non-payment of wages and unsafe working conditions leading to serious injury and death.⁴⁰ You get the point.

Which is that, prior to human rights policies in sport, these horrendous impacts were largely considered the host nation's problem. No longer. Now, sport must account for its own business, and force states to adapt, and that's hugely exciting for the world we want to see.

Late last year, Qatar made long awaited changes to its labour code and *kafala* system⁴¹ that removed the right of employers to deny exit permits to

³⁷ Brendan Schwab, *Protect, Respect and Remedy: Global Sport and Human Rights* (2019) *Sweet & Maxwell's International Sports Law Review* 3, p 54.

³⁸ Arjyo Mitra, 'An Ethical Analysis of the 2014 FIFA World Cup in Brazil' (2015) 2 *Law and Business Review of the Americas* 21, 1 p 13.

³⁹ UNHCR, 2016 Global Report on Internal Displacement – Brazil: Olympic Games preparations displace thousands in Rio de Janeiro, 1 May 2016 < <https://www.refworld.org/docid/57a98bfa30b.html>>.

⁴⁰ See above n30.

⁴¹ Following a number of complaints by among others the International Trade Union Confederation (ITUC) and the International Labour Organisation (ILO) in 2012, the UN Special Rapporteur on the human rights of migrants in 2014 and Building and Wood Workers International the following year.

migrant workers. Much more needs to be done, but sport created an important, first step. One that saves lives.

And in a significant sign of positive change, human rights considerations were one factor taken into account in FIFA's decision *not* to extend the Qatar World Cup from 32 to 48 teams which would have necessitated matches being held in neighboring countries with ongoing breaches of international standards such as Bahrain, Kuwait, Oman, Saudi Arabia or the UAE.⁴² What pressure might this bring for reform?

The International Olympic Committee (IOC)⁴³ responded to concerns relating to the human rights impact of the Games through provisions in the 'Operational requirements' of its Host City Contract and an Advisory Committee on Human Rights chaired by HRH Prince Zeid Ra'ad Al Hussein, the former UN High Commissioner for Human Rights⁴⁴ who is reviewing the institutional need for policy is an opportunity for further progress.

Another test is looming for the IOC and Olympic athletes with the Beijing 2022 Winter Olympics and the egregious abuse being perpetrated on the Uyghur population in Northwestern China, for which the hosts can rightly expect to attract the ire of the sport and rights community. And the Commonwealth Games Federation's (CGF) Human Rights Policy Statement was adopted in October, 2017⁴⁵ followed by a welcome commitment to a binding policy in the past few weeks.

⁴² Minky Worden, *FIFA Expansion Plan for 2022 World Cup Halted* (2019-05-24)

<<https://www.hrw.org/news/2019/05/24/fifa-expansion-plan-2022-world-cup-halted>>.

⁴³ IOC - International Olympic Committee (2019-09-11) @olympics <<https://www.olympic.org/the-ioc>>.

⁴⁴ 'IOC sets up Advisory Committee on Human Rights chaired by HRH Prince Zeid Ra'ad Al Hussein - Olympic News' (2019) (2019-02-06) .

⁴⁵ Commonwealth Games Federation, *Human Rights Policy Statement*, 5th October 2017

<https://thecgf.com/sites/default/files/2018-03/CGF-Human-Rights-Policy-Statement-17-10-05_0.pdf>.

My contention that the synthesis of human rights with the lure of sport and mega sporting events will change the world, therefore, may still require a leap of faith to see what might be, but it is demonstrably already changing the lives of tens of millions.

VI. INDIVIDUAL CASES

Now well into the second half with the clock ticking down and the 'game on the line', let us maintain our 'game face,' 'dig in' as the 'going gets tough' and turn to some individual cases to stress both the value of sport's social perforation, and of a human rights approach.

We return to Adam Goodes. If the AFL was similarly obligated under international human rights law, what might have been different in the career of a great Australian? Racial vilification contravenes customary international law⁴⁶ as well as domestic of course but crucially, on the FIFA policy model, the AFL, and his club would have been duty bound to not only protect, but actively *promote* Adam's rights.

This might in future mean an obligation to actively confront racially discriminatory commentary and to assist Adam in ensuring a safe workplace through challenging stereotypes.

Thus an important discussion is amplified in a positive, educative way, a circumstance now occurring through the thought provoking and restorative documentary, *The Australian Dream*⁴⁷ alongside Wiradjuri man, Stan Grant, and perhaps that will be the greatest gift that Adam can give,

⁴⁶ *International Convention on the Elimination of All Forms of Racial Discrimination*
<<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>>.

⁴⁷ Madman Films, *The Australian Dream* <<https://www.madmanfilms.com.au/the-australian-dream/>>.

nevertheless who knows whether a brilliant career could have been saved? Hopefully, this never happens again but, if it does, what will sport do?

Australian Rugby Union player, Israel Folau is another, highly contentious and yet salient example and I can hear half the audience draw breath, the other draw their bows, because it's a really difficult issue particularly when we lack the context in which to approach it.

Within a human rights framework, the discussion would have been not about contractual rights, but universal instruments and an appropriate balance between freedom of speech and religious views, and the right to non-discrimination on behalf of the communit(ies) impugned. Risks would have been identified during the audit process and both the athlete, and the LGBTI community's concerns listened to, and addressed.

It would be a very different discussion that would raise the rights discourse, not threaten it and one reason why many of us believe that such divisive debates could be avoided should Australia implement a Charter of Rights⁴⁸ as the only western democracy to have failed to do so.

I feel for the sport, for Israel and particularly for the LGBTI community who have had to fight far too many battles over far too many decades and it might have been managed less controversially with the appropriate processes, and expertise in place. It is, in fact, the model case for the movement and could have been an opportunity to shape the public mind towards a fairer, safer society for all.

⁴⁸ Charter of Human Rights, *Australian Charter of Human Rights* | Join the campaign
<<https://charterofrights.org.au/charter-of-rights>>.

The balance is not always a simple one to strike, but human rights is the bedrock on which the discussion must rest.

Can sport help us all have difficult, national discussions in a reasonable, measured manner that carries Australia, issue by issue, to a better place? If we can teach the next generation how to approach complex issues through, firstly, recognizing the underlying rights they all possess and must respect in others, then sport will have achieved something very meaningful, indeed.

And need we spend countless hours debating whether Caster Semenya, the Olympic Gold medal-winning South African middle distance runner should, as part of a cohort of female athletes with *differences of sex development* (DSD), undergo treatment to lower her testosterone to fit within the sports' regulatory framework, as is the wish of the International Association of Athletics Federation (IAAF) and as legitimized by CAS? No. We've got better things to do, frankly.

Caster's rights to the 'dignity, bodily integrity and bodily autonomy of (her) person' are paramount in the new sports world, a point made by the UN Human Rights Council in March this year.⁴⁹ Now that Caster is a footballer, having joined a women's professional team in South Africa, the question, for now is moot, as she is protected by the very policy, the absence of which was her undoing.⁵⁰

⁴⁹ UNOHCHR, *Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on the issue of discrimination against women in law and in practice: Letter to IAAF President Coe*, (18 September 2018) <https://www.ohchr.org/Documents/Issues/Health/Letter_IAAF_Sept2018.pdf>.

⁵⁰ Guardian sport, 'Caster Semenya starts 'new journey' after joining football team', *The Guardian* 6 September 2019 <<http://www.theguardian.com/sport/2019/sep/06/caster-semenya-starts-new-journey-after-joining-football-team>>.

President of the IAAF, Sebastian Coe even went so far as to state that:

*The IAAF 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 or the European Convention on Human Rights.*⁵¹

It's staggering that a sport can purport to have no obligation to human rights and the IAAF stands almost alone as an impedance against universal protections. Again, her case is not straightforward, but if the answer is to chemically or surgically alter the body of the human to fit the sport, we've truly lost our way.

VII. Sport, and Rights

So I propose to you tonight that the implementation of human rights in sport will be a key driver in fulfilling the elusive dream of rights universality.

There will be growing pains, as sport recalibrates its approach to accept that today's educated, socially informed generation of athletes have a right and responsibility to speak out and, whenever governing bodies try to limit the athlete voice, they should be mindful that history very often vindicates the athlete.

The International Olympic Committee considered the historic protest by Tommie Smith and John Carlos in 1968 as 'a deliberate and violent breach of the fundamental principles of the Olympic spirit.'⁵² Many Australians

⁵¹ International Association of Athletics Federation, "IAAF publishes briefing notes and Q & A on female eligibility regulations", (7 May 2019) <<https://www.iaaf.org/news/press-release/questions-answers-iaaf-female-eligibility-reg>>.

⁵² BBC Home, *On This Day: 1968 Black athletes make social protest* <http://news.bbc.co.uk/onthisday/hi/dates/stories/october/17/newsid_3535000/3535348.stm>.

would know that silver medalist on that day, Peter Norman who stood in solidarity with his American colleagues and wore an ‘Olympic Project for Human Rights’ badge on the podium, only received an apology from the Parliament of Australia fifty years later,⁵³ one that the Olympic movement considered unnecessary.⁵⁴ And Cathy’s first attempt to display her indigenous pride at the Commonwealth Games was controversial and led to a ‘flag ban’.⁵⁵

Presently, athletes often, and often have to, speak to social causes through their representative body, or Union. Professional Footballers Australia (PFA)⁵⁶ under CEO, John Didulica and the global professional athlete Union, World Players United, led by PFA Chairman, Australian lawyer and leading proponent of the global movement for athlete rights, Brendan Schwab, were forceful allies.

As was FIFPro Vice President, Australian lawyer and former Socceroo, Francis Awaritefe and Head of Communications of the global footballer’s Union, another Australian, Andrew Orsatti, all very close friends and I acknowledge and thank them all.

As you can very clearly see, it was overwhelmingly *players* who represented the sport in advocacy despite the human rights policy binding the *officials*. And this is the vacuum that needs to be filled.

The players didn’t have a policy. We didn’t have statutory obligations, an ethics chamber to supposedly hold us to account, or a FIFA Human Rights Advisory Board to report on our progress or lack thereof. We just had our

⁵³ Andrew Leigh MP, Parliament apologises to Peter Norman, 11 October 2019 < <http://www.andrewleigh.com/3389>>.

⁵⁴ The Conversation, ‘I will stand with you: finally, an apology to Peter Norman’, 13 October 2012 < <https://theconversation.com/i-will-stand-with-you-finally-an-apology-to-peter-norman-10107>>.

⁵⁵ See above n4.

⁵⁶ Professional Footballers Australia < <http://pfa.net.au>>.

love of the game and belief in the values of solidarity that we hope to keep alive and pass onto the next generation.

And a deep conviction that stepping forward to help someone in need, cutting to the heart of the matter and refusing to give a single inch, is as Australian as it gets.

VIII. AUSTRALIAN SPORT AND RIGHTS INSTITUTE

I would like to see an independent sport and rights institute, perhaps under the Australian Human Rights Commission and a Human Rights Advisory Board which would work with all professional sport. This would assist with the necessary due diligence and risk assessment based on the Business and Human Rights 'Protect, Respect, Remedy' framework and would develop a holistic approach to the identification, mitigation and avoidance of human rights impacts, as well as the provision of positive rights throughout the entire sports architecture.

It would also assist in the analysis and legacy planning for Major Sports Event bids such as the Football Federation Australia bid for the 2023 FIFA Women's World Cup.⁵⁷

Leadership by the Coalition of Major Professional & Participation Sports (COMPPS)⁵⁸ and the Australian Athletes Alliance (AAA)⁵⁹, as the peak representative bodies, would benefit both, and provide a framework that builds on their social responsibility in a strategic way. As well as a statutory bridge between them when athletes stand up, and speak out.

⁵⁷ FIFA Human Rights Advisory Board, 'Terms of Reference' (2019) <<https://resources.fifa.com/image/upload/human-rights-advisory-board-terms-of-reference.pdf?cloudid=uvmsynwru9dpmyu5rgmi>>.

⁵⁸ The Coalition of Major Professional & Participation Sports <<https://www.compps.com.au>>.

⁵⁹ Australian Athletes Alliance <<https://ausathletesall.com.au>>.

IX. SPORT AND SOCIAL JUSTICE – A RIGHTS- BASED APPROACH

Sport must be a safe space where everyone in society has a right to feel protected, respected and of equal value. And it can stand proudly for social justice through a rights perspective without keeping score as to whether racquet, goggles or ball is more onside with the party, or policy of the day.

Should *all* sports have stepped forward for LGBTI rights? They would in fact be obligated under the *International Covenant on Civil and Political Rights*⁶⁰ which prohibits discrimination in Article 2(1)⁶¹ without distinction of any kind including on the basis of sexual orientation. This is not an opinion, a personal view, a bias. It is a universal right that the LGBTI community possesses and the support of football (FFA), rugby league (NRL), AFL, Cricket Australia, Netball Australia, basketball and others was recognition of the social duty of sport.⁶² Bravo.

Should *all* sport feel comfortable advocating for indigenous rights in this country, for reconciliation, constitutional recognition and truth telling of our history? Yes indeed, it would be their obligation under the UN *Declaration on the Rights of Indigenous Peoples*⁶³ and the right to self-determination.

⁶⁰ OHCHR | *International Covenant on Civil and Political Rights*
<<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.

⁶¹ Australian Human Rights Commission, 'Section 4-Human rights and discrimination on the basis of sexual orientation or gender identity - Addressing sexual orientation and sex and/or gender identity discrimination: Consultation Report (2011) | Australian Human Rights Commission' (2019) <<https://www.humanrights.gov.au/our-work/section-4-human-rights-and-discrimination-basis-sexual-orientation-or-gender-identity>>.

⁶² Josh Butler, *How Australian Sport is Supporting Marriage Equality*, Huffington Post 19 September 2017 <https://www.huffingtonpost.com.au/2017/09/18/how-australian-sport-is-supporting-marriage-equality_a_23206923/>.

⁶³ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*
<https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

In fact, Football Federation Australia is expected to adhere to FIFA's policy and it is hugely exciting to ponder what effects this might have on the rights of indigenous Australians to play football. This is an issue about which I am especially excited. National Rugby League (NRL)⁶⁴ and Richmond Football Club,⁶⁵ in particular have been outstanding representatives for indigenous recognition. In a sport and rights world, so would all others.

And should *all* sport involve itself in working towards a sustainable planet on behalf of its participants? Of course. Aside from being part of the Sustainable Development Goals,⁶⁶ it is arguably a human right⁶⁷ as we have seen for example in the *Leghari* case in Pakistan⁶⁸ and the landmark decision in *Urgenda*⁶⁹ just last year where the Hague Court of Appeal ruled that the Dutch Government had a duty to safeguard against dangerous climate change.

The preambular statement in the Paris Agreement that parties 'respect, promote and consider their respective obligations on human rights' when taking action to address climate change is also noteworthy.⁷⁰

In Australia's case, this discussion is far from being only about global citizenry, though, it's aspirational and intergenerational. An opportunity to participate in an industry transformation that can underwrite both the

⁶⁴ Preston Campbell, "A country where all kids have equal opportunity for their dreams", *The Sydney Morning Herald* 23 June 2019 <<https://www.smh.com.au/sport/nrl/a-country-where-all-kids-have-equal-opportunity-for-their-dreams-20190621-p52063.html>>.

⁶⁵ Parliament of Australia, *Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: 14/08/2014: Public consultation for constitutional recognition* < <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p>>.

⁶⁶ United Nations Development Programme, Sustainable Development Goals, Goal 13 < <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>>.

⁶⁷ *Sustainable Development Goals | UNDP* <<https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>>.

⁶⁸ *Ashgar Leghari v. Federation of Pakistan* (W.P. No. 25501/2015), Lahore High Court Green Bench, Orders of 4 Sept. and 14 Sept. 2015 <https://elaw.org/pk_Leghari> (*Leghari*).

⁶⁹ *The State of the Netherlands v Urgenda Foundation*, The Hague Court of Appeal (9 October 2018), case 200.178.245/01 (English translation) <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610>> (*State v Urgenda*).

⁷⁰ United Nations Climate Change, *What is the Paris Agreement?* < <https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>>.

wellbeing of the planet, and prosperity of the nation for our kids, and theirs.⁷¹

I welcome the commitment by FIFA to the *UN Sports for Climate Action Framework*,⁷² along with the Union of European Football Associations (UEFA), the World Surf League, Tennis Australia, the IOC, the National Basketball Association (NBA) and 47 other sporting organisations and invite the football community to place our shoulder to the global wheel.

The unifying power of football is unparalleled and as the global game, we are uniquely impacted. The increasing issue of human mobility from environmental factors and *climate migration*,⁷³ whether internal or external is deeply worrying, given what we see in the treatment of displaced people globally today.

In 2018 alone, there were an estimated 17.2 million displacements associated with disasters in 148 countries and territories and drought displaced 764,000 people in Somalia, Afghanistan and several other countries.⁷⁴ No one in football needs reminding that these are our fellow competitors, our community, our global family.

And, finally, we cannot discount the ‘cool’ factor. Through sport, the very concept and content of international human rights instruments would not only be more widely understood but perhaps, as member of the Indian

⁷¹ Which of course must be delivered in a just manner regarding displaced workers and employment transition.

⁷² *UNFCC and FIFA join forces to combat climate change* <<https://www.un.org/sustainabledevelopment/blog/2016/09/unfccc-and-fifa-join-forces-to-combatclimate-change/>>.

⁷³ United Nations Sustainable Development Goals, *Let’s Talk About Climate Migrants, Not Climate Refugees*, 6 June 2019 <<https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/>>.

⁷⁴ *Ibid.*

sports law fraternity suggested recently at a conference that I attended in Bangalore,⁷⁵ they might even become 'cool'.

In this way 'rights' may lend some of sport's luminescence. And I can think of nothing cooler than Australian kids understanding, and possessing the language to stand up for themselves and others.

Moreover, the *serve* of admiration is returned. When former Australian Human Rights Commission President and now UN Assistant Secretary-General, Gillian Triggs⁷⁶ told me recently that human rights needs sport, I replied that, yes, that is true, but sport needs the human rights community in equal measure to reestablish the humanitarian values which have undoubtedly been waylaid as both Hakeem, and the hundreds of thousands if not millions of people who fought for his freedom, can attest.

CONCLUSION

When it comes to sport and human rights, Australia is still stretching behind the blocks and going through our warm-up exercises when the gun has long blown. We need to join the sport and rights race in earnest and why not become an international leader in the field?

It will give administrators the jurisdiction, justification, and obligation to support essential social change, give athletes absolute freedom to raise their voices for a better society, and can *change* the world for the better. In fact, sport is so powerful, so captivating for people and polity alike that it might

⁷⁵ GoSports Foundation & LawNK, *The Sports Law & Policy Symposium 2019* < <http://sportslaw.in/home/wp-content/uploads/2019/07/0B8DB76D-BB45-43CD-B735-EFDA2A23DDE2.pdf>>.

⁷⁶ United Nations, Secretary-General Appoints Gillian Triggs of Australia Assistant High Commissioner, Office of United Nations High Commissioner for Refugees, 8 August 2019 < <https://www.un.org/press/en/2019/sga1897.doc.htm>>. *Many thanks to Alice Richardson of RMIT Graduate School of Business and Law for assistance with footnote referencing in this paper.

even *save* it. But that is another discussion, again. And the final whistle has blown.

Let us finish with the great Nelson Mandela, who embodied the too rare triumvirate of compassion, leadership and political life, and most fittingly with a well-worn sporting cliché:

For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others.

Because of sport, Hakeem al-Araibi was shackled, and through its remarkable power and the finest qualities of the 'Australia' that we wish to see, he, and his wife are now set free.

But through human rights sport, too, is at last becoming unchained.

And the human race will be the winner.
