AN ANALYSIS OF PROCEDURAL HUMAN RIGHTS IN SPORTS DISPUTE RESOLUTION FRAMEWORKS IN SOUTH AFRICA

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by

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DECLARATION

I, Lucky Lempiditse Thekisho, student number 21152969, for the degree of Doctor of Laws (LLD), declare that ***An Analysis of Procedural Human Rights Aspects of the Sports Dispute Resolution Frameworks in South Africa*** is my own work.

I declare that the above work and all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I submitted the thesis to originality-checking software and that it meets the accepted originality requirements.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.



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ABSTRACT

Sports dispute resolution frameworks often operate in parallel to mainstream legal systems, and the South African sports dispute resolution framework is no exception. The rationale for this approach is to uphold sports autonomy. However, this parallelism creates a tension between preserving sports autonomy and upholding constitutional human rights obligations, particularly procedural rights. This study examines this tension in South Africa. South Africa's Bill of Rights establishes substantive and procedural standards that all institutions, including private sporting bodies, must respect. The research addresses a critical problem: sports dispute resolution frameworks in South Africa often lack the procedural human rights guarantees typically available in mainstream justice systems. The study's primary objective is to investigate these frameworks' compliance with the procedural human rights standards set out in the South African Constitution and international instruments, and to evaluate the adherence of various sporting codes to the right of access to the courts and the principles of natural justice. The study uses the traditional doctrinal legal research methodology. The findings reveal a pervasive pattern among major sporting bodies in South Africa – SASCOC, SAFA and the CSA – of systematically prioritising organisational autonomy over the protection of procedural rights. These organisations employ mechanisms that function as *de facto* ouster clauses, limiting judicial oversight, while their adjudicative bodies lack independence and impartiality. Procedural complexity and resource asymmetries create significant barriers to accessing fair dispute resolution, particularly for individual athletes and smaller organisations. The frameworks exhibit troubling transparency deficits, the inconsistent application of procedural safeguards, and problematic patterns of judicial deference that challenge effective constitutional oversight. To address these deficiencies, the study makes the following recommendations: developing a comprehensive legislative framework that establishes minimum procedural standards; establishing an independent sports ombudsman; creating a collaborative Sports Procedural Rights Charter; implementing structural reforms to enhance adjudicative independence; improving transparency through systematic publication requirements; addressing resource asymmetries; providing specialised judicial training; aligning with international best practices; and implementing obligatory institutionally funded mediation. These reforms would reconcile the legitimate need for specialised sports governance with non-negotiable procedural justice requirements, strengthening the credibility of sports regulatory systems and protecting fundamental rights in South Africa's constitutional democracy.

Keywords: sports dispute resolution, procedural human rights, constitutional compliance, sporting autonomy, natural justice, arbitration independence, access to justice

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LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
AfCHPR	African Court on Human and Peoples' Rights
AFSA	Arbitration Foundation of Southern Africa
AIDRFs	Alternative International Dispute Resolution Frameworks
AIOWF	Association of Winter Olympic International Federations
ANOC	Association of National Olympic Committees
ASOIF	Association of Summer Olympic International Federations
BAT	Basketball Arbitral Tribunal
BCE	Before the Common Era
CAF	Confederation of African Football
CAS	Court of Arbitration for Sport
CCMA	Commission for Conciliation, Mediation and Arbitration
CEO	Chief Executive Officer
CSA	Cricket South Africa
DISSA	Disability Sport South Africa
DRC	Dispute Resolution Chamber
DSAC	Department of Sport, Arts and Culture
DSD	Differences of Sex Development
ECtHR	European Court of Human Rights
EU	European Union
FIBA	International Basketball Federation

FIFA	Fédération Internationale de Football Association
GCB	Gauteng Cricket Board
IAAF	International Association of Athletics Federations
IACtHR	Inter-American Court of Human Rights
IBF	International Basketball Federation
ICAS	International Court of Arbitration for Sport
ICC	International Cricket Council
ICCPR	International Covenant on Civil and Political Rights
IFs	International Federations
IOC	International Olympic Committee
ISFs	International Sporting Federations
JB	Judicial Body
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
MOI	Memorandum of Incorporation
NCC	Northern Cape Cricket
NDC	National Disciplinary Committee
NDRC	National Dispute Resolution Chamber
NEC	National Executive Committee
NOCs	National Olympic Committees
NOCSA	National Olympic Committee of South Africa
NSOs	National Sports Organisations
OECD	Organisation for Economic Cooperation and Development

PSL	Premier Soccer League
PSOs	provincial sporting organisations
SACB	South African Cricket Board
SACU	South African Cricket Union
SAEF	South African Equestrian Federation
SAFA	South African Football Association
SAIDS	South African Institute for Drug-Free Sports
SARU	South African Rugby Union
SASCOC	South African Sports Confederation and Olympic Committee
SDRCSA	Sports Dispute Resolution Centre of South Africa
SJN	social justice and nation-building
UCBSA	United Cricket Board of South Africa
UDHR	Universal Declaration of Human Rights
UEFA	Union of European Football Associations
UN	United Nations
VAR	Video Assistant Referees
WADA	World Anti-Doping Agency
WHO	World Health Organization
WPCA	Western Province Cricket Association

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CHAPTER 1: INTRODUCTION TO THE STUDY

1.1 Introduction

The contemporary world of sports has undergone a remarkable evolution. Its current dynamic nature has evolved from its original purpose of simply facilitating physical skills, recreation, enjoyment and relaxation to professionalism and business.[1] Sports have emerged as a highly lucrative business.[2] Hence, sports have attracted business interest through brand sponsorships, athlete talent management, hosting and broadcasting rights, merchandise sales, training and development.[3] The sports industry has ushered in complex dynamics, such as management and administration or international sports governance. Jedlicka describes international sports governance as a unique product of an international system, where the existing system of transnational sports governance organisations should be studied in much the same way as other international governance institutions, such as the United Nations (UN), the World Health Organisation (WHO) and the Organisation for Economic Cooperation and Development (OECD), are studied.[4] This conceptualisation of international sports governance as an institution has seen, at the global level, sporting codes being regulated by sports federations and confederations, such as the International Olympic Committee (IOC); the Federation Internationale de Football Association (FIFA), headquartered in Lausanne, Switzerland; and the International Basketball Federation (IBF), which was founded in June 1932, to mention a few.

According to the FIFA Statutes and Regulations Governing the Application of the Statutes and the Standing Orders of the Congress, FIFA's regulatory organisations also operate at the continental and national levels. These governing bodies establish their own sporting rules and regulations. The realm of sports has a unique governance structure; unlike other social and economic areas, sports-related disputes are typically not brought before civil or criminal courts. This is due to the distinct nature of sporting disputes, the need for prompt resolution, and the need for a technical understanding of the complexities in each sport. Within the sports world order and ecosystem, parties and stakeholders have implicitly agreed to resolve their disputes through first-line channels rather than involving the ordinary civil courts of their respective countries.

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1 Simon Darnell, *Sport for Development and Peace: A Critical Sociology* (Bloomsbury Academic 2012).
2 ibid 24-28.
3 Stefan Szymanski, 'A Theory of the Evolution of Modern Sport' (2008) 35(1) Journal of Sport History 132.
4 Scott Robert Jedlicka, 'Sport Governance as Global Governance: Theoretical Perspectives on Sport in the International System' (2008) 10(2) International Journal of Sport Policy and Politics 287-304.

In South Africa, a variety of sports administration systems are in place, with each sporting code responsible for managing its own specific duties and functions.[5] For instance, the South African Sports Confederation and Olympic Committee (SASCOC) is the national umbrella body responsible for administering Olympic and Commonwealth Games sports in South Africa.[6] The sports dispute resolution frameworks in South Africa are modelled on the international sports dispute resolution framework, and are often criticised for not allowing their subjects to take their grievances through the country's justice system.[7] Given this scenario, a relevant question is how the Court of Arbitration for Sport (CAS), as an arbitral tribunal, addresses human rights-related concerns. Any mechanism for alternative dispute resolution (ADR) must adhere to the human rights standards for a fair hearing, which are based on the principles of natural justice: *audi alteram partem* and *nemo judex in causa sua*.[8] The first principle can be translated thus: 'no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them'. Denning described the second principle as follows: '[t]o ensure a fair trial, the second principle is that the judge must have no interest himself in any matter that he has to try. He must be impartial. No person can be a judge in his own cause and say that he must not have the slightest interest in the result of the case.'[9] This sacrosanct principle demands that each party be heard before any case is decided, whether in ADR or in sports.

Hence, central to this study is the recognition that procedural human rights - those rights that govern the manner in which disputes are resolved, and decisions are made – occupy a uniquely vulnerable position in sports governance. Unlike substantive rights, which proscribe particular outcomes, procedural rights regulate the process by which outcomes are reached. They include the right to a fair hearing (section 34 of the Constitution), the right to procedurally fair administrative action (section 33), the right to legal representation (section 35(3)(f)), and the right of access to courts. They include the principles of natural justice: *audi alteram partem* and *nemo iudex in causa sua*. The systemic non-compliance of South African sports dispute-resolution mechanisms with these rights is the normative concern of this research.

At the outset, it must be noted that the study's concern with 'justice in sports' is not a reference to an autonomous or self-contained conception of justice peculiar to sport. Rather, 'justice in sports' as used in this thesis refers to the justice that sporting bodies purport to administer through their

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5 South African Sports Confederation and Olympic Committee (SASCOC), 'SASCOC Constitution' <https://www.safa.net/fifa-statutes/> accessed 5 May 2024.

6 ibid 1.

7 John O'Leary and Teng Khoo, 'Changing the World: Sport, Racism and Law in South Africa and Malaysia' (2013) 13 International Sports Law Journal 45-54.

8 Auwais Rafudeen, 'A South African Reflection on the Nature of Human Rights' (2016) 21 African Human Rights Law Journal 225.

9 Alfred Thompson Denning, *The Road to Justice* (Stevens & Sons 1955).

internal dispute-resolution mechanisms. The thesis identifies the problem that these mechanisms frequently fail to adhere to the universal standards of procedural justice that are equally binding on private bodies exercising quasi-judicial functions under the constitutional order. The tension between sports regulatory autonomy and constitutional procedural rights is therefore not between two equally legitimate and irreconcilable values, but between an exercise of private power and the constitutional imperatives that govern all such exercises of power in South Africa. Furthermore, this study focuses specifically on procedural rights, not because substantive rights are unimportant, but because procedural rights are the gateway through which all substantive rights must pass. A denial of procedural fairness frequently results in the denial of substantive justice. In the sporting context, where athletes and other stakeholders routinely confront powerful institutional adversaries, procedural protections are not merely technical guarantees but practical preconditions for the realisation of any other rights they may hold.

1.2 Problem statement

The sporting fraternity has developed unique dispute resolution mechanisms that frequently operate in parallel with, and often in tension with, mainstream dispute resolution systems. This is true both domestically and internationally. The problem examined by this study operates on two related but distinct levels. At the first level, sports dispute resolution mechanisms in South Africa lack the procedural human rights guarantees typically available to everyone in the mainstream justice system.[10] These include the right to a fair hearing, the right to be heard before a decision is made, the right to an independent and impartial tribunal, the right to legal representation, and the right to timely and reasoned decisions. The inequitable, unfair, or unjust application of these procedural human rights in resolving sports disputes is the core subject of this research. In essence, the first dimension of the research problem concerns the tension between procedural human rights protection and the exercise of regulatory autonomy in sports governance.

At the second level, the constitutional and regulatory frameworks of major South African sporting bodies, including the South African Sports Confederation and Olympic Committee (SASCOC), the South African Football Association (SAFA), and Cricket South Africa (CSA), require disputes to pass through prescribed internal mechanisms before recourse to ordinary courts. The constitutional concern is not the existence of internal dispute resolution itself, but whether mandatory exhaustion requirements, finality provisions, restrictive timeframes and the costs associated with specialised proceedings make judicial recourse practically ineffective. This

[10] Lazar Nanev, 'Sports Law as an Independent Branch of Law' (2013) 2 Balkan Social Science Review 167-187. See also Mark Johnson, 'The Role of Arbitration in Sports Dispute Resolution: A Comparative Analysis' (2020) 32 Journal of International Arbitration 145.

distinction is important because compulsory sports arbitration cannot always be equated with conventional consensual arbitration: participation in organised competitive sport may leave athletes with little practical choice but to accept the dispute-resolution mechanisms prescribed by governing federations. Wagner and Samanci demonstrate, through their analysis of the *Pechstein* litigation, that the compulsory character of sports arbitration has important implications for the application of procedural human rights and the availability of judicial scrutiny.[11]

In South Africa, these restrictions engage section 34 of the Constitution, which guarantees the right to have disputes resolved by the application of law in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. The problem therefore arises where internal-remedy requirements cease to operate merely as preliminary dispute-resolution procedures and, through their cumulative effect, function as de facto ouster clauses that substantially impede access to judicial scrutiny. The significance of this concern is reinforced by Shahlaei's analysis of Court of Arbitration for Sport jurisprudence, which identifies inconsistencies in the treatment of human-rights claims and questions whether sports arbitration provides an effective remedy where adequate human-rights safeguards are absent[12]. The problem addressed by this study is consequently whether the dispute-resolution frameworks of SASCOC, SAFA and CSA preserve meaningful access to constitutionally compliant adjudication or subordinate that access to sports-regulatory autonomy.

1.3 Rationale of the study

The main aim of this study is to investigate the compliance of sports dispute resolution frameworks with the procedural human rights contained in the Constitution of South Africa, 1996 and international instruments.

1.3.1 Study objectives

The specific objectives of the study are as follows:

a) To investigate the compliance of dispute resolution frameworks for sports with the procedural human rights in the Constitution of South Africa, 1996 and international instruments.
b) To evaluate the compliance of various sporting code frameworks with the right to access the courts.

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[11] Gerhard Wagner and Oguzhan Samanci, 'Arbitration Meets Human Rights—The Pechstein Saga and Its Implications for Commercial Disputes' (2025) 41(2) Arbitration International 257–285

[12] Faraz Shahlaei, 'The Collision between Human Rights and Arbitration: The Game of Inconsistencies at the Court of Arbitration for Sport' (2024) 40(2) *Arbitration International* 169–204

c) To assess the extent to which the sports dispute resolution frameworks adhere to principles of natural justice.

1.3.2 Research questions

The main research question for this study is: to what extent do the dispute resolution frameworks of major South African sporting organisations comply with the procedural human rights standards set out in the South African Constitution and relevant international agreements?

The specific research questions are:

a) What procedural safeguards, including the right to a fair hearing, the right to an independent and impartial tribunal, the audi alteram partem principle, the nemo iudex in causa sua principle, the right of access to courts, and the right to reasoned decisions, are provided for in the dispute resolution frameworks of SASCOC, SAFA, and Cricket South Africa?
b) Do the dispute resolution frameworks of these selected sporting bodies comply with the procedural human rights standards set out in the South African Constitution, particularly sections 33 and 34 of the Bill of Rights, and with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights?
c) To what extent do the dispute resolution frameworks of the selected sporting bodies comply with the principles of natural justice, and what structural or institutional mechanisms, including de facto ouster clauses that limit access to the courts, operate to undermine such compliance?

1.4 Significance of the research

There is limited understanding of human rights violations in South African sports during dispute resolution, including instances of discrimination, unfair treatment, and inadequate due process. Recognising and addressing these issues will help to establish equitable dispute resolution mechanisms. Athletes, as key stakeholders in sports, must have their rights protected. By examining the international dispute-resolution framework from a human-rights perspective, this study aims to clarify and uphold the often-compromised or neglected rights of athletes in South Africa. This will enable the creation of policies and procedures that safeguard athletes' human rights and promote their fair treatment and welfare throughout the dispute resolution process.

1.5 Review of the literature

1.5.1 International framework

International federations (IFs) and national sports organisations (NSOs) are, respectively, at the helm of the power hierarchy that governs, regulates and develops sport, both internationally and nationally.[13] For instance, Rule 30 of the Olympic Charter empowers IFs to enforce the rules and establish eligibility criteria for the ethical governance of their respective sports. The national governing bodies, or NSOs, of each country constitute the IFs' membership. As agents for the IFs in their respective countries, the NSOs are accountable to their IFs and must comply with their rules. However, the NSOs are also bound by applicable national legislation.[14] The relationship between the NSO and its IF is sometimes determined by national law.[15] Regional or provincial sporting organisations (PSOs) are accountable to both NSOs and IFs.[16]

Using ADR mechanisms to resolve sports disputes may be a prerequisite for government support. However, IFs have existed for decades, free of outside influence, and have developed their own 'complex and entirely inbred procedure for resolving disputes'.[17] In doing so, they have historically not welcomed the possibility of external decision-makers, particularly civil courts. Initially, disagreements between the organisation and its members should be resolved by internal administrative review within the body, independent arbitration, or a combination of the two.[18] The organisation should also establish appeal policies based on its own decisions.

Critics point out that this may lead to the perception, on the part of athletes, that they are fighting their own organisation as an adversary, according to rules established by that adversary, before decision-makers who are appointed by that adversary.[19] This perception can be addressed by using external arbitrators, a practice that has led several Commonwealth countries to adopt sport-specific independent arbitral boards for this purpose.[20] Arbitration fares better when disagreements between two bodies do not involve national legislation.[21] Therefore, IFs exert significant control

[13] James AR Nafziger, *International Sports Law* (2nd edn, Transnational Publishers 2004).
[14] Susan Haslip, 'A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada (2000-2001)' (2000) 11 Marquette Sports Law Review 245.
[15] Ashley Slamat, 'Sports Law: What is It?' (2023) <https://slamatlaw.co.za/sports-law-ashley-slamat-attorneys-no-games-just-law/> accessed 29 March 2024.
[16] ibid 39.
[17] ibid.
[18] International Olympic Committee, *Olympic Charter* (2021), Rule 61.
[19] Nancy Kate Raber, 'Dispute Resolution in Olympic Sport: The Court of Arbitration for Sport' (1998) 8 Seton Hall Journal of Sports Law 82.
[20] Slamat (n 15).
[21] James AR Nafziger, 'International Sports Law as a Process for Resolving Disputes' (1996) 45 International and Comparative Law Quarterly 13. See also Frank Oschütz, 'Harmonization of Anti-Doping Code Through Arbitration: The Case Law of the Court of Arbitration for Sport' (2002) 12(2) Marquette Sports Law Review 684.

over the resolution of a dispute. The case of *Nagra v Canadian Amateur Boxing Association* is a prime example.[22] In that case, an athlete resorted to civil proceedings and successfully compelled an NSO to allow him to compete in circumstances that breached an IF's regulations.

1.5.2 Constitution of South Africa, 1996

Sport is subject to the country's general law, which includes all municipal by-laws, such as provisions relating to the sale of alcohol and the protection of minor children at sporting events and sports clubs.[23] In addition, various laws apply to all sports, covering aspects such as the promotion of equality, non-discrimination, freedom of association, the rules of natural justice regarding equality and equity of choice, selection for participation in various sporting codes, and administrative appointments.[24] Sport in the modern era has assumed a business character in many respects and has adopted commercial practices involving trademarks, passing-off, unlawful competition, logos, contracts, broadcasting rights, copyright, employer–employee relationships, media and spectator rights, and the law of defamation. Sport also involves criminal law – unruly crowd behaviour, riots, and assault – as well as various other laws applicable to sports and sporting events.[25]

In South Africa, sport-related law is subject to the spirit and letter of the Constitution of South Africa, 1996, as the country's supreme law, which includes the Bill of Rights (Chapter 2 of the Constitution) and its range of human rights afforded to all South African citizens.[26] Furthermore, the erstwhile Department of Sports and Recreation (now known as the Department of Sports, Arts and Culture (DSAC)) has developed a range of legal and policy instruments to regulate and administer sport.[27] The Constitution emphasises the inalienable right to access the courts and to be afforded a fair hearing, as well as the inherent right to privacy and to be treated with dignity, irrespective of race, class, creed or gender, as expressed in the Bill of Rights. Since the Constitution is the supreme law of the country, sports governing bodies are obliged to voluntarily declare their commitment to upholding human rights in their respective rules and regulations, policies, norms

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22 Susan Haslip, 'A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada' (2001) 11 Marquette Sports Law Review 258.

23 Lyndon Bouah, 'An Analysis of the Implementation of the National Sport and Recreation Plan in the Western Cape' (PhD thesis, University of the Western Cape 2016). See also Cora Burnett, 'Value of Sport in Post-apartheid South Africa' (2019) 41(2) South African Journal for Research in Sport, Physical Education and Recreation 11-27.

24 ibid 12.

25 World Intellectual Property Organisation, 'Sport and Broadcasting Rights: Adding Value' (2013) <www.wipo.int> accessed 5 March 2024.

26 Hoolo 'Nyane, 'Constitutional Morality in South Africa: Is it the Missing Link?' (2024) 39 South African Journal on Human Rights 154-170.

27 Department of Sport and Recreation, *Sport and Recreation Annual Report 2012-2013* (DSR 2013).

and values, performance standards, and administrative processes, in accordance with the National Sport and Recreation Act.[28] The departmental perspective is outlined in section 5.3.

1.5.3 Legislative framework

1.5.3.1 National Sport and Recreation Act

In addition to the Constitution, the National Sport and Recreation Act and the DSAC's White Paper on Sport and Recreation serve as seminal reference points for the legislative and policy framework instruments that regulate and govern all forms of sport in South Africa.[29] The National Sport and Recreation Act was amended by the National Sport and Recreation Amendment Act,[30] the aim of which is to provide for the Minister of Sport and Recreation's intervention in certain sport disputes. This Act also provides guidelines for promoting equity, representation, and redress in sports and recreation.[31]

Moreover, the National Sport and Recreation Amendment Act provides for the promotion and development of sport and recreation, and the coordination of the relationships between the Sports Commission, the national sport and recreation federations, and other agencies to provide for measures aimed at correcting imbalances in sport and recreation, to promote equity and democracy in sport and recreation, to provide for dispute resolution mechanisms in sport and recreation, to empower the Minister to make regulations, and to provide for matters connected therewith.[32]

1.5.3.2 White Paper on Sport and Recreation, 2011

The 2011 White Paper on Sport and Recreation is 'an official publication of the National Government' and serves the purpose of pronouncing 'clearly the Government's policy regarding sport and recreation in the Republic of South Africa' in order 'to give effect to the Constitutional requirement that Members of the Cabinet must provide'.[33] The White Paper is also in consonance with the approach of the United Nations concerning the right to play and participate in sport as a fundamental human right, as reflected in international frameworks such as the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

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[28] Act 110 of 1998.
[29] Department of Sport and Recreation, *White Paper on Sport and Recreation* (DSR 1998).
[30] Act 18 of 2007.
[31] National Sport and Recreation Amendment Act, s 13A.
[32] National Sport and Recreation Amendment Act, Preamble.
[33] DSR, *White Paper on Sport and Recreation* (note 27) 14. See also United Nations, 'Universal Declaration of Human Rights is Turning 75' (6 December 2023) <https://unfoundation.org/blog/post/the-universal-declaration-of-human-rights-is-turning-75-heres-what-you-need-to-know/> accessed 18 May 2024.

In tandem with the range of human rights in the Bill of Rights, the White Paper envisages strategic outcomes in sport, measured by two indicators: maximum involvement in sport and recreation, and improvements in South African athletes' national and international performances.[34] The White Paper emphasises emerging good governance trends across all affiliated sports bodies, organisations, and federations by applying the King III Report's principles.[35] These principles encompass alternative and transformative dispute resolution approaches, among others. The White Paper further acknowledges the role of acceptable ethical conduct, or a standard of behaviour, for athletes to address negative practices such as harassment, corruption, exploitation, the abuse of alcohol and prohibited drugs, violence, and misbehaviour by players and spectators. The White Paper's view is that if sport is free of drugs, this enhances global anti-doping efforts, allowing for honesty, fair play and good health in sports.

1.5.4 Dispute resolution frameworks for selected federations

The dispute resolution frameworks of a few international and South African federations have been selected for comparative analysis. The selected regulatory bodies in this section each have their own dispute-resolution frameworks. However, it is particularly important to determine the extent to which the frameworks comply with the fundamental human rights standards, concerns and tenets enshrined in the Constitution, as set out by international, regional, national and local bodies or organisations.[36]

1.5.4.1 South African Sports Confederation and Olympic Committee (SASCOC)

The South African Sports Confederation and Olympic Committee (SASCOC) is the national umbrella body responsible for administering Olympic and Commonwealth Games sports in South Africa.[37] In the preamble to its constitution, SASCOC categorically declares and pledges its commitment to 'the principles of equal opportunity, non-racialism and non-sexism',[38] as well as its espousal of, and affiliation to, the Olympic movement; SASCOC also 'undertakes to comply with the provisions of the Olympic Charter and to abide by the decisions of the IOC'.[39] SASCOC

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34 DSR ibid.

35 DSR ibid.

36 Coleman Doriane Lambelet, 'Semenya and ASA v IAAF: Affirming the Lawfulness of a Sex-Based Eligibility Rule for the Women's Category in Elite Sport' (2019) 83 Sweet & Maxwell's International Sports Law Review 19. See also Gerald Imray, 'Olympic Champion Caster Semenya Wins Human Rights Case but Testosterone Rules May Remain for Years' (2023) <www.apnews.com/article/caster-semenya-sex-eligbility-court-ruling-0ad6f46e1357659f8cc315dde7b01faf> accessed 28 March 2024.

37 David Maralack, 'Country Report: South Africa' in Marion Keim and Christo de Coning (eds), *Sport and Development Policy in Africa* (Stellenbosch University Press 2014).

38 South African Sports Confederation and Olympic Committee (SASCOC), 'Constitution of the South African Sports Confederation Olympic Committee' (2018) <https://sashowjumping.co.za/uploads/province/9-June-2018-SASCOC-Constitution-Final-and-Approved-Doc.pdf> accessed 5 May 2024.

39 ibid art 1.2.

encourages actions that promote peace, non-sexism and sports ethics (e.g., tackling doping). Moreover, the SASCOC constitution directs non-member federations to abide by the constitutional imperatives of their respective federations. Article 50 of the SASCOC constitution clearly states that its members are bound by the organisation's dispute resolution mechanisms. SASCOC's board appoints a panel of at least four senior advocates to serve as arbitrators in the case of a dispute. If the disputants do not agree to arbitration, the matter is referred to the CAS, whose decision is deemed 'final and binding on all parties in all manners whatsoever'.[40] Controversially, SASCOC's constitution prevents its members from seeking external relief, by stating in Article 50.1.1:

> Subject to the Constitution of the Republic, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained through the dispute resolution procedures contemplated by this Article (including the holding of an arbitration as envisaged in Article 29.3, on an urgent basis), no body or individual falling under the jurisdiction of SASCOC shall approach a Court of Law to decide on a Sport related dispute it has with a body or individual affiliated to SASCOC or with SASCOC itself, until such individual or body has first exhausted all available internal remedies, at all appropriate levels which is applicable to such a party, and as may be applicable to such a dispute or complaint.

SASCOC's view is that sports should be regulated without the interference of the courts. However, the South African Constitution entitles everyone to recourse to the courts as the final arbiter in unresolved disputes.[41] Therefore, both SASCOC and the courts must develop detailed and amicable dispute-resolution strategies that are guided by and consistent with the Constitution. Espousing a culture of human rights in the constitutions of SASCOC and similar sports federations in South Africa will contribute to the improved regulation of the federations.

1.5.4.2 South African Football Association (SAFA)

The South African Football Association (SAFA) is the national governing body for football in South Africa. Like SASCOC's constitution, the SAFA constitution (in section 71.5 and section 72.1, read together) dissuades its members from seeking external legal recourse in the case of a dispute, except through its approved channels:

> Subject to the Constitution of the Republic, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained through the dispute resolution procedure contemplated by this Article, no body or individual falling under the jurisdiction of SAFA shall approach a Court of Law to decide on a dispute it has with a body or individual affiliated to SAFA … SAFA, its Members,

[40] ibid art 54.

[41] Sections 34 and 36 of the South African Constitution, 1996.

> Players, Officials and match agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA, CAF or SAFA.[42]

These sections are aligned with section 4.3 of the SAFA constitution, which emphasises SAFA's provision of the required institutional mechanisms to decide on any internal grievances emanating from any duly recognised member or affiliate of SAFA that is in good standing. The internal 'institutional mechanism' refers to the Dispute Resolution Committee, which comprises at least three members, as outlined in section 58. Similar to SASCOC's approach, section 73 of the SAFA constitution also recognises FIFA or the CAS as the final arbiter in cases referred to it by SAFA or its national, provincial or local affiliates, where the South African Constitution has no direct bearing on the matter in dispute. Regarding the arbitration process, section 67.2 states that the SAFA constitution should ensure the SAFA Disciplinary Code's compliance with the Disciplinary Code of FIFA. Furthermore, section 4 of Article 81 of the SAFA Disciplinary Code encourages the party requesting arbitration ('the requestor') to first file the request through a notice of dispute that fully details the grounds of the dispute. In the event of a dispute about the SAFA Appeal Board's decisions, such dispute or discontent must be submitted to SAFA for arbitration within 72 hours 'of the decision being made known to the parties in writing … accompanied by a deposit as specified in the Schedule of Fees'.[43]

In accordance with the Schedule of Fees, the arbitrator, whose decision is final and binding on all parties to the dispute, is empowered to grant costs to any party or decide which party is responsible for such costs, jointly and severally. Most importantly, the arbitrator may exercise his or her discretionary powers and call upon the chairpersons of previous Disciplinary Committees or the Appeal Board to explain their decisions on the issue under arbitration. The arbitrator's discretionary powers derive from the SAFA constitution, which allows the arbitrator to broaden and define the scope of the investigation.

1.5.4.3 Western Province Cricket Association (WPCA)

The Western Province Cricket Association (WPCA) is an affiliate of Cricket South Africa (CSA), the national governing body for cricket in South Africa. The constitution of the WPCA states that, subject to the South African Constitution, and unless there is a need for urgent relief which cannot be obtained through the dispute resolution procedures as contemplated in the constitution, no club, club members, officials, prescribed officers, office-bearers or members shall approach a court of

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42 SAFA, 'SAFA Statutes' (2015) <https://www.safa.net › uploads › 2017/03 › SAF...PDF> accessed 5 May 2024.
43 ibid art 81 section 4.

law to decide a dispute with the WPCA or an individual falling under the jurisdiction of the WPCA.[44] The WPCA, like SASCOC and SAFA, acknowledges the South African Constitution as the supreme law, within which sports justice and equity, human rights, and dispute resolution are to be internally regulated by the association, organisation, or federation.

In terms of section 42 of the WPCA constitution, all disputes concerning club matters and matters falling within the jurisdiction of a member shall be resolved using the dispute resolution mechanism set out in the member's constitution 'through negotiation, mediation … a round table meeting or arbitration and [the CEO or Director] may authorise a representative to carry out any of the functions allocated to him or her'. Regrettably, the arbitration process is final, with no further legal recourse for an aggrieved party or member. Section 42.8.10 provides that 'the decision of the arbitrator shall be final and binding, with no right of appeal'.

1.5.4.4 South African Rugby Union (SARU)

The South African Rugby Union (SARU) is the national governing body for rugby in South Africa.[45] Section 25.1 of the SARU constitution provides that, in the event of a dispute between members, or between a member or members and SARU, or between a person(s) and a member(s), or between a person(s) and SARU, arising from or in connection with the constitution or regulations, such a dispute may be referred to negotiation, arbitration and mediation.[46] Furthermore, any party to a dispute is not precluded from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict or *mandamus*, pending finalisation of a dispute through this dispute resolution process, for which purpose the parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa.

Most significantly, the SARU constitution allows appeals, unlike the WPCA constitution, which effectively prohibits them. Section 25.4 of the SARU constitution clearly states:

> If mediation fails, the parties must refer the dispute within ten (10) days for resolution by arbitration (including any appeal against the arbitrator's decision) by an arbitrator (appointed by agreement between the parties) as an expedited arbitration under the then current rules for expedited arbitration

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[44] Western Province Cricket Association, 'Western Province Cricket Association Constitution' (3 August 2020) <https://newlandscricket.com/wp-content/uploads/2020/09/WPCA-Constitution-Approved-at-AGM-on-3-August-2020.pdf> accessed 5 April 2024.

[45] South African Rugby Union (SARU), 'Constitution of the South African Rugby Union' (11 May 2021) <https://www.sarugby.co.za/media/atgcx3zp/saru-constitution-approved-agm-2021-final.pdf> accessed 18 May 2024.

[46] Wendell Roelf, 'Race Debate Clouds South Africa's Rugby World Cup Preparation' *Reuters* (Cape Town, 31 August 2015) 1. See also Andre Louw, 'A Critical Evaluation of the Interaction Between Sport and Law in South Africa' (DPhil thesis, Stellenbosch University 2010).

> of AFSA. If the parties cannot agree on any arbitrator within a period of ten (10) days after the referral, the arbitrator will be appointed by the Secretariat of AFSA.[47]

In terms of section 16.12 of the SARU constitution, judicial officers, appeal committees and appeal officers appointed by SARU are expected to be independent and autonomous. Their decisions shall be binding on SARU, which shall not have the power to affirm, revoke or alter any such decision.[48]

Due to the plethora of international sport bodies, associations or organisations, the constitutions of only a few are highlighted in this study. Although it is difficult to identify a clear hierarchical order given the sheer number of countries and sports involved, Professor James Nafziger, who has written extensively on international sports law, has identified several normative trends for resolving sport-related disputes. One such trend is that IFs have the authority to review certain decisions of national governing bodies, such as those involving issues of status or competition.[49] Adding another layer of complexity, NSOs and the national governing bodies of multi-sport organisations are also constrained by the decisions of multi-sport organisations such as National Olympic Committees (NOCs) and National Commonwealth Games Associations.

1.5.4.5 Court of Arbitration for Sport (CAS)

The CAS is the final arbiter of all disputes related to Olympic sports and has the power to overturn decisions by all sporting bodies or associations within its jurisdiction, including those of the International Olympic Committee (IOC).[50] The NOCs have the authority to intervene in disputes regarding eligibility in Olympic competitions. In some instances, national legislation empowers the NOCs to sanction international competitions and determine eligibility status. The IOC is the ultimate internal decision-maker within the Olympic movement and has the authority to review a range of NOC decisions at the request of an athlete or an IF, or on its own initiative.

The CAS resolves disagreements between IFs and NOCs.[51] Most IFs submit disputes to the CAS, although a few employ their own arbitral panels.[52] As outlined in articles S4 and S5,[53] the CAS

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47 South African Rugby Union, 'Constitution' (approved 2 May 2023) <https://www.sarugby.co.za/general/governance-and-documents/> accessed 4 March 2024.

48 Arbitration Act 1965 (South Africa), s 31(1).

49 Tsubasa Shinohara, 'Human Rights in Sports Arbitration: What Should the Court of Arbitration for Sport do for Protecting Human Rights in Sports?' (2023) Liverpool Law Review 1-23.

50 Jack Thomas Sugden, Stephen Sheps and John Sugden, 'Assessing Governance without Government: A Proposal for the International Council of Sport Governance' (2023) 15 International Journal of Sport Policy and Politics 473-491.

51 Graeme Mew and Mary Jane Richards, 'More than Just a Game: Resolving Disputes in Modern Sport' Paper Presented at the Fourteenth Commonwealth Law Conference, London, September 2005.

52 James AR Nafziger, 'International Sports Law as a Process for Resolving Disputes' (note 21) 132.

53 Court of Arbitration for Sport, Code of Sports-related Arbitration (2022), Rule S4. <https://jusmundi.com/en/document/rule/en-cas-court-of-arbitration-for-sport-code-of-sports-related-arbitration-2022-cas-code-of-sports-related-arbitration-2022-tuesday-1st-november-2022> accessed 12 May 2024.

comprises 22 members who are experienced jurists, appointed for a period of four years, as follows: six members from the IFs (five from the Association of Summer Olympic International Federations (ASOIF) and one from the Association of Winter Olympic International Federations (AIOWF)); four members from the Association of National Olympic Committees (ANOC); four members appointed by the IOC; and four members from the 14 ICAS members listed above, after due consultation to safeguard athletes' interests.

Article S14 provides that the ICAS must appoint its arbitrators and mediators from

> the list of CAS arbitrators with appropriate legal training, recognised competence with regard to sports law and/or international arbitration, a good knowledge of sport in general and a good command of at least one CAS working language, whose names and qualifications are brought to the attention of ICAS, including by the IOC, the IFs, the NOCs and by the athletes' commissions of the IOC, IFs and NOCs. ICAS may identify arbitrators with specific expertise in dealing with certain disputes.[54]

In terms of art R38, the arbitration process commences with the claimant lodging a matter for arbitration to the CAS Court Office. Article R41.3 allows a third party to be involved in the arbitration process, after which the Arbitration Panel decides to resolve the dispute in accordance with the rules of law preferred by the parties or, in the absence of such an option, according to Swiss law. The parties may also grant the Arbitration Panel authority to decide ex aequo et bono in terms of art. R45. Article R47 of CAS allows for an appeal process, provided that the appellant has exhausted all possible legal remedies before the appeal is lodged.[55] In its review of the arbitration matter, the panel decides on the applicable regulations or:

> the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, Association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.[56]

1.5.4.6 Federation Internationale de Football Association (FIFA)

The Federation Internationale de Football Association (FIFA) is the international umbrella body responsible for the control and governance of football in a non-discriminatory and non-sexist manner.[57] Under section 1 of Article 20 of the FIFA constitution, only recognised continental football associations, federations, or confederations may become FIFA members. In terms of art

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54 CAS, 'Code of Sports-related Arbitration' (note 57), Rule S4.
55 DSR, *The Case for Sport* (DSR 2009).
56 CAS, 'Code of Sports-related Arbitration' (note 57), Rule R58.
57 Federation Internationale de Football Association (FIFA), 'FIFA Statutes: Regulations Governing the Application of the Statutes' (April 2015).

61 of the FIFA constitution, the organisational structure of FIFA comprises (in addition to 26 Standing Committees) three judicial committees: the Disciplinary Committee, the Ethics Committee and the Appeal Committee. Section 2 of art 62 states that the main function of the Disciplinary Committee is to impose the sanctions prescribed by the FIFA Disciplinary Code on members, clubs, officials, players, intermediaries, and licensed match agents.

Article 63 provides that the Ethics Committee pronounces the sanctions under the FIFA Code of Ethics for officials, players, intermediaries, and licensed match agents. According to art. 64, the Appeal Committee is regulated by the Disciplinary Code and the Code of Ethics. Section 3 of art 64 declares: 'Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS).' FIFA considers the CAS the supreme body for conflict resolution across all forms of sport, excluding rule violations in soccer.[58]

1.5.5 The Gap in the Literature

The foregoing literature review demonstrates that, while the interface between human rights and sports dispute resolution has attracted growing scholarly attention globally, a significant lacuna remains in the South African context. Three interrelated gaps can be identified. First, the existing literature on sports dispute resolution in South Africa is predominantly descriptive and institutionally oriented. Studies by Louw, Coetzee, and Blackshaw have provided valuable overviews of the governance structures of major sporting bodies and the mechanisms through which disputes are resolved. However, these works do not undertake a sustained normative evaluation of whether these mechanisms comply with the procedural human rights guaranteed by the South African Constitution and relevant international instruments. This thesis addresses that gap by subjecting the dispute resolution frameworks of SASCOC, SAFA, and the CSA to rigorous doctrinal analysis through the lens of constitutional and international human rights standards.

Second, while international scholarship has examined the human rights dimensions of sports arbitration, particularly in relation to the Court of Arbitration for Sport (CAS), this literature has focused predominantly on European and international contexts. Scholars such as Foster, Rigozzi, and Blackshaw have analysed the CAS's compliance with the European Convention on Human Rights, but their analyses are not directly transposable to the South African context, where the operative constitutional framework, historical legacy, and institutional design of sporting bodies differ materially. This thesis contributes to filling this geographical and contextual gap by

[58] Federation Internationale de Football Association (FIFA), *FIFA Safeguarding Policy* (FIFA 2022).

grounding the analysis in the South African Constitution and the African Charter on Human and Peoples' Rights.

Third, and most significantly, the existing literature has not adequately engaged with the phenomenon of de facto ouster clauses in South African sports governance, that is, the systematic use of mandatory exhaustion-of-remedies requirements, restrictive timeframes, and contractual arbitration agreements to limit access to the ordinary courts in sports-related disputes. While the broader constitutional literature has examined ouster clauses in administrative law, their application to private sporting bodies has not received dedicated scholarly analysis. This thesis is the first sustained academic treatment of this phenomenon in the South African sports law context, and its findings carry significant implications for the intersection of constitutional accountability and private sports governance.

1.6 Research methodology

1.6.1 Research paradigm

The research paradigm is a perspective or worldview through which the researcher situates a particular philosophical viewpoint or scientific, academic, or intellectual tradition or culture within the context of the issue or phenomenon being studied or investigated.[59] This research adopted a critical legal perspective to investigate the human rights aspects of national and international dispute resolution frameworks in sports. The critical legal paradigm or perspective opposes 'legal formalism' as a framework for exploring new or alternative approaches to understanding life and living in the context of the law and its legality.[60] Furthermore, the critical legal paradigm posits that intellectual analysis is pivotal to challenging the status quo and to addressing new problems arising from conventional historical, social, economic, and other circumstances.[61]

On the basis of its intellectual rootedness, the critical legal paradigm views the law and politics as inseparable, serving as a foundational premise for explaining the historical, socio-economic, and other causal dynamics linked to injustice and inequality.[62] Therefore, in the context of this study, the critical legal perspective is deemed relevant insofar as it acknowledges and embraces the evolving nature of human rights in national and international sports law, and facilitates a critical

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[59] Gibson Burrel, *Sociological Paradigms and Organisational Analysis* (Routledge 2017). See also Robert Kenneth Yin, *Case Study Research Design and Methods* (5th edn, SAGE 2014).

[60] Safa'at Mucamatd Ali and Milda Istiqomah, 'De-radicalization Program in Indonesian Prisons: Reformation on the Correctional Institution' (2022) 7 Petita Jurnal Kajian Ilmu Hukum dan Syariah 11-20.

[61] ibid 11.

[62] Sara Efrat Efron and Ruth Ravid, *Writing the Literature Review: A Practical Guide* (Guilford Publication Inc 2019).

assessment of existing dispute resolution mechanisms through a lens that prioritises human rights considerations.[63] In this regard, the appropriateness and relevance of the critical legal perspective is premised on its enablement of a critical and eclectic review or analysis of the South African Constitution and other relevant laws, on the one hand, as well as human rights and dispute resolution, on the other.

1.6.2 Research design

The research design was primarily qualitative, employing a case study methodology. Multiple instances of international sports disputes, particularly those involving human rights considerations, were systematically analysed. The chosen cases represented a diversity of sports, nationally, regionally and internationally, ensuring a comprehensive understanding of the issues at hand. Legal documents, arbitration decisions and relevant policy frameworks were examined to extract patterns and insights.[64]

1.6.3 Research method

The primary research method is doctrinal legal research. The doctrinal legal research method essentialises the legal principles emanating from the courts and the legislature by emphasising the particularities, 'instead of the general and the non-probabilistic nature of statements of law'.[65] Furthermore, the doctrinal legal research method is viewed as

> the most appropriate methodology for legal research, as it is concerned with solving legal problems through the legal analysis of legal norms. Additionally, the sources of legal norms are internally determined by the discipline itself and cannot be identified through qualitative and quantitative research.[66]

In the context of this study, the doctrinal legal research method was applied using a multiple-data triangulation strategy involving a comprehensive review of legal literature as secondary information sources and interviews for the primary source of information for empirical purposes.[67] Accordingly, the review of legal literature encompasses statutes, case law and scholarly articles in

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63 Daniela Heerdt and William Rook, 'Remedy and Redress for Sport-Related Human Rights Abuses' (2022) 22 The International Sports Law Journal 85-92.

64 John Howard Carter, 'The Law of International Sports Disputes' Lecture Presented to the Annual Meeting of the Indian Society of International Law, November 2004 <www.asil.org/pdfs/carterspeech0411.pdf> how do youaccessed 12 March 2024.

65 Terry Hutchinson and Nigel James Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 117.

66 Mkhululi Nyathi, 'Re-asserting the Doctrinal Legal Research Methodology in the South African Academy: Navigating the Maze' (2023) 140 South African Law Journal 365.

67 Gibson Burrel, *Sociological Paradigms and Organisational Analysis* (Routledge 2017).

peer-reviewed journals. The primary objective of the literature-focused approach was to acquire relevant information from the existing legal framework regarding local and international dispute resolution in sports.[68]

1.7 Ethical considerations

This study adhered to the University of South Africa's Research Ethics Committee guidelines on the conducting of ethical research.[69] All research activities were carried out in line with the university's ethics clearance procedures. As the study did not involve human participants but was instead based entirely on the analysis of publicly available documents – including statutes, case law, international treaties, arbitration awards and peer-reviewed scholarly literature – there were no direct ethical risks associated with participant involvement.

Nonetheless, academic integrity, proper citation and respect for intellectual property were strictly observed throughout the research process. All sources of legal and academic materials, such as the South African Constitution, national and international sports law frameworks, CAS decisions, and legal scholarship, were duly acknowledged and referenced. This ensured that the study maintained a high standard of academic rigour and ethical responsibility in handling documentary sources.

1.8 Delimitation of the study

The delimitation of this study serves to precisely outline its boundaries and focus areas.[70] The investigation focused only on the international and South African dimensions of the dispute resolution framework for sports, with a meticulous examination of the human rights mechanisms, processes and institutions engaged in resolving disputes at the global level in the realm of sports.

1.9 Outline of the study

The thesis is structured as follows:

CHAPTER 1: INTRODUCTION TO THE STUDY

This chapter provides the foundation and background for the study. It also addresses the problem statement and provides the rationale for undertaking the research.

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68 Efron and Ravid (n 66).

69 University of South Africa (UNISA), *UNISA Policy on Research Ethics* (2016).

70 John Ward Creswell and Cheryl Nolan Poth, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (SAGE 2016). See also Samar Rahl, 'Research Design and Methods: A Systematic Review of Research Paradigms, Sampling Issues and Instruments Development' (2017) 6 International Journal of Economics and Management Science 1-5.

CHAPTER 2: CONCEPTUAL AND THEORETICAL FRAMEWORK

This chapter outlines and clarifies the key concepts used throughout the study. Concepts such as human rights, procedural human rights and ADR, and the meaning and dimensions of sports and human rights are examined and defined.

CHAPTER 3: THE INTERNATIONAL DISPUTE RESOLUTION FRAMEWORK FOR SPORTS

This chapter examines the history of the CAS, and critically appraises its structure, powers and jurisdiction. The chapter also explores the procedural steps available at the CAS to determine how the rules enable aggrieved parties to access justice through the sports arbitration system. The enforcement and appellate jurisdiction of the CAS, including the processes for challenging arbitral decisions, are also investigated.

CHAPTER 4: INTERNATIONAL NORMS AND STANDARDS FOR PROCEDURAL HUMAN RIGHTS

This chapter focuses on international norms and conventions regulating human rights. It examines universal human rights concepts relating to substantive and procedural trials, including the twin pillars of natural justice – *audi alteram partem* and *nemo judex in causa sua* – to demonstrate that fair hearing and fair trial standards are central to the Universal Declaration of Human Rights, 1948. The right to a fair hearing, as guaranteed by the International Covenant on Civil and Political Rights (ICCPR), is analysed, with particular focus on the right to a fair trial, the presumption of innocence, appeals, and protection against double jeopardy. The chapter also considers the relevant provisions of the Banjul Charter and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, to which South Africa is a signatory.

CHAPTER 5: PROCEDURAL HUMAN RIGHTS UNDER THE CONSTITUTION OF SOUTH AFRICA

This chapter provides a doctrinal analysis of the legal and regulatory instruments that define and safeguard substantive and procedural rights within the South African legal framework. The chapter examines the extent to which international human rights standards and the provisions of the Bill of Rights in the Constitution of South Africa are reflected in the regulation of sports dispute resolution processes. Using the Caster Semenya case as a point of reference, this chapter critically analyses the content and scope of procedural rights in South Africa, particularly as they relate to fairness, access to justice and the protection of athletes' rights in sporting contexts.

CHAPTER 6: DISPUTE RESOLUTION FRAMEWORKS FOR SELECTED SPORTS IN SOUTH AFRICA

This chapter analyses the dispute resolution frameworks of selected South African sports federations, namely SASCOC, SAFA and the CSA. These bodies are assessed to determine whether their regulatory frameworks are aligned with the human rights standards embedded in the South African Constitution.

CHAPTER 7: CONCLUSION AND RECOMMENDATIONS

This chapter summarises the entire study. It presents the major research findings and offers recommendations for legal and institutional reform or adoption.

1.10 Conclusion

This research explores and analyses the intricate intersection between human rights and sports dispute resolution frameworks. Recognising the growing importance of sports as a global phenomenon and the corresponding increase in disputes arising in this context, the study aims to shed light on the extent to which human rights considerations are incorporated into current dispute resolution mechanisms, using South Africa as a case study. The primary goal of the research is to appraise the extent to which sport's governing bodies, such as SASCOC, SAFA and the CSA, establish rules to prevent discrimination and how human rights concerns are addressed in sports policies at the international, regional, national and local levels.

CHAPTER 2: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Introduction

The evolution of sports over the years, from its archaic form to the current post-modern era, has prompted an evaluation of human rights concerns.[71] Evolution has given rise to the need to address potential ethical and legal issues involving all stakeholders in the value chain of sport and its administration.[72] Sport is viewed as an integrated activity encompassing all forms of organised or casual physical activity, whose primary aim is to improve or demonstrate physical fitness, mental well-being, social interaction, or to achieve organised, competition-based results at all levels.[73] Accordingly, 'sport' refers to a bodily activity or game played in a formal or informal competition or contest as a mechanism to enhance human life.

Sports existed in ancient civilisations, with physical activities prominent in various societal activities. The history of sports depicts remarkable changes in rules, equipment and the overall cultural environment for athletic competitions.[74] Sports were part of ancient civilisations such as the Egyptian and Greek civilisations. For example, ancient Egyptians were known to have participated in sports such as wrestling, swimming and archery, as early as 2000 BCE.[75] However, organised sports are credited to the Greeks, who pioneered the ancient Olympic Games in 776 BCE as a prominent event showcasing unity and athletic prowess across the Greek city-states. Technological advancements have shaped the sports industry throughout history, making it highly competitive. Participants in various competitive sporting codes continue to strive to demonstrate their physical fitness and skill improvement.[76] Sport competitions at the national and international levels have continued to see a trend of world records being set across different sports codes.[77]

Whereas medieval sport was influenced by the feudal system in which it was situated and saw the emergence of jousting tournaments and martial arts, the 19th century brought industrialisation and urbanisation, both of which led to the development of modern sports and the establishment of

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71 Gordon Brown (ed), *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* (Open Book Publishers 2016).

72 ibid.

73 Association for Applied Sport Psychology, 'Definition of Sport' <https://appliedsportpsych.org/about-the association-for-applied-sport-psychology/about-sport-and-performance-psychology/definition-of-sport/> accessed 19 June 2024.

74 Doaa El Shereef, 'Ancient Egyptian Sports and Fundamental Principles of Olympics' (November 2020) <https://www.researchgate.net/profile/Doaa-El-Shereef> accessed 14 June 2024.

75 ibid.

76 David Epstein, *The Sports Gene: Inside the Science of Extraordinary Athletic Performance* (Current 2013).

77 Michael Lobban, 'Legal Formalism' in Markus D Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (Oxford University Press 2018) <https://doi.org/10.1093/oxfordhb/9780198794356.013.23> accessed 22 April 2025.

formal rules and governing bodies.[78] The 20th century witnessed the rise of global sporting events such as the Olympic Games and the FIFA World Cup, which solidified sports' appeal worldwide. International sports competitions such as the Olympic Games are held every four years for athletes from all over the world to compete at a common, pre-scheduled venue.[79] At such sporting events, the human rights of the sportsperson are also factored into ensuring fairness between competitors. Accordingly, Principle 4 of the Olympic Charter's Fundamental Principles stipulates that sport is a human right and that unrestricted means and opportunities should be created for every individual to be involved in sport voluntarily, without discrimination of any kind, and in the Olympic spirit of mutual understanding, friendship, solidarity and fair play.[80]

The magnitude of sports development and participation in the contemporary world has resulted in a demand for skilled professionals in the sports industry, expanding sports into a massive business and industry that encompasses a wide range of professions, including exciting career opportunities for passionate athletes, sports management and marketing, sports journalism, and event planning.[81] Moreover, the sporting industry has flourished and gained popularity through revolutionary innovations such as the introduction of synthetic materials in equipment, the advent of virtual reality, the adoption of officiating video technology, wearable technology, training methods, data analytics, and fan engagement.[82] These developments have expanded the boundaries and heights of performance and fairness in sports.[83] Against this background, human rights issues and dispute-resolution dynamics in sports have emerged.

Given this state of affairs, this chapter aims to clearly outline the conceptual framework and theoretical parameters of this research study. Concepts such as sports, human rights, procedural human rights, and alternative or special dispute resolution are fundamental to this chapter. Therefore, the conceptual framework presents the overall structure and interrelatedness of abstract ideas in the study, while the theoretical framework locates and describes the particular theory underpinning the study and also explains the relationships that exist between the various critical aspects or core variables (concepts or abstract ideas) based on existing research and relevant to the

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78 Patrick K Thornton, *Sports Law* (Jones and Bartlett Publishers 2011).

79 John E Findling and Kimberly D Pelle (eds), *Encyclopedia of the Modern Olympic Movement* (Greenwood Press 2004).

80 International Olympic Committee (IOC), 'Olympic Charter' (October 2023) <https://olympics.com>olympic-charter> accessed 27 May 2024.

81 Dimitrios Panagiotopoulos, 'International Symposium of Sports Law "Sports in the World Today and Sports Law"' (5 July 2024, Athens) <https://lnkd.in/dxkCxCyh> accessed 10 May 2024.

82 Daniel Memmert et al, 'How Big Data Has Changed the Game: The Use of Analytics in Sports' in Paul Baca (ed), *Big Data in Sport: Analytics, Technology and the Smart Stadium* (Routledge 2021).

83 Dimitrios P Panagiotopoulos and Wang Xiaoping (eds), *Sports Law: Structures, Practice, Justice, Sports Science and Studies* 20th IASL Congress Proceedings, Athens (2014).

study.[84] In addition, the conceptual framework contextualises the research problem and the relevant study objectives, maps out how they converge, and contributes to the development of coherent conclusions following the data collection and analysis.[85]

Furthermore, the study's theoretical underpinnings and parameters are derived from the reviewed literature and articulate my philosophical approach to the study's contentious issues.[86] The theoretical grounding of the study is premised on the alternative or special dispute resolution framework, within which the human rights culture is appraised in relation to the rule of law, on the one hand, and sports participation and administration, on the other. This study is grounded in the modernisation theory of sport, which is examined alongside the evolving intersection of human rights and contemporary sports governance. This theoretical framework provides a lens for examining the evolution of sports governance, including the development of dispute-resolution mechanisms and the growing emphasis on human rights in the sporting context.

Furthermore, the study incorporates elements of the human rights-based approach to sports, as advocated by scholars such as Donnelly[87] and Kidd and Donnelly.[88] This approach emphasises the importance of recognising and protecting the rights of all individuals involved in sports, from athletes to spectators, and provides a framework for analysing the ethical and legal challenges that arise in the sporting world. This chapter sets the stage for a comprehensive exploration of the intersections between sports, human rights and dispute resolution by integrating these theoretical perspectives. It provides a foundation for understanding the complex dynamics at play in modern sports governance and the ongoing efforts to ensure that sports remain a force for positive social change and human development.

2.2 The interface between human rights and sports: Modern theories

The relationship between sports and human rights has become increasingly complex in the modern era.[89] As sports have evolved from primarily recreational activities to major global industries, they have intersected with human rights concerns in multi-faceted ways. Several key theoretical frameworks have emerged to conceptualise this interface. One prominent theory is the '*lex*

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84 David R Thomas and Ian D Hodges, *Designing and Planning Your Research Project: Core Skills for Social and Health Research* (Chicago Sage Publications 2018).

85 Irene Korstjens and Albine Moser, 'Series: Practical Guidance to Qualitative Research. Part 4: Trustworthiness and Publishing' (2018) 32(24) European Journal of General Practice 120-124.

86 ibid 122.

87 Peter Donnelly, 'Sport and Human Rights' (2008) 11 Sport in Society 381; Bruce Kidd and Peter Donnelly, 'Human Rights in Sports' (2000) 35 International Review for the Sociology of Sport 131.

88 Kidd and Donnelly ibid.

89 Barbara Keys, 'The Early History of Human Rights and Sport' in Richard Giulianotti (ed), *Routledge Handbook of Sport and Human Rights* (Routledge 2019).

sportiva' approach, which posits that sports have developed their own transnational legal order separate from traditional state-based legal systems.[90] Foster argues that this *lex sportiva* has emerged as a transnational autonomous legal order created by the private global institutions that govern international sport.[91] According to this view, sports governing bodies like FIFA and the IOC have created a *sui generis* system of rules, norms and dispute resolution mechanisms that operate autonomously from national and international law. Latty further contends that this autonomy allows for the development of a coherent and specialised body of rules tailored to the specific needs of the sports world.[92] However, critics like Schwab warn that this can lead to a 'human rights-free zone' where athletes and other stakeholders lack adequate protections.[93] This tension between sports autonomy and human rights protections lies at the heart of many debates about sports governance and dispute resolution.

Another influential framework is the 'human rights in sport' model, which advocates for explicitly integrating human rights principles and standards into sports governance structures. This approach emphasises that sports organisations have human rights responsibilities and should align their policies and practices with international human rights norms. Donnelly contends that sport has become a site for human rights struggles and a vehicle for human rights education.[94]

The UN Guiding Principles on Business and Human Rights have been particularly influential in shaping this perspective. Ruggie's seminal report on FIFA and human rights argues that sports governing bodies have a responsibility to avoid infringing the human rights of others and should address adverse human rights impacts that involve them.[95] Commentators like Heerdt suggest that embedding human rights considerations into sports governance is essential for ensuring the integrity and legitimacy of sporting institutions in the 21st century.[96] However, others contend that an overly rigid application of human rights norms could undermine sports' unique cultural and competitive aspects. This debate reflects broader tensions between universalist and relativist approaches to human rights in different cultural contexts.

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90 Ken Foster, 'Is There a Global Sports Law?' (2016) 2 Entertainment and Sports Law Journal 1.

91 ibid.

92 Franck Latty, *La Lex Sportiva : Recherche sur le Droit Transnational* (Martinus Nijhoff Publishers 2007).

93 Brenda Schwab, 'When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport's Justice System' (2018) 32 Maryland Journal of International Law 4.

94 Donnelly, 'Sport and Human Rights' (n 91) 381.

95 John G Ruggie, 'For the Game, For the World: FIFA and Human Rights' (2016) Corporate Responsibility Initiative Report No. 68, Harvard Kennedy School.

96 Daniela Heerdt, 'Tapping the Potential of Human Rights Provisions in Mega-Sporting Events' Bidding and Hosting Agreements' (2018) 17(3) International Sports Law Journal 170.

A third theoretical lens examines sports through the concept of 'sports exceptionalism'. This view holds that sports occupy a special cultural and legal status that justifies certain exemptions from general laws and norms, including human rights standards. Gardiner et al note that sports law has developed as a discrete area of legal study and practice, reflecting the special characteristics of sport.[97] Proponents argue that the unique nature of athletic competition necessitates specialised rules and governance structures. Anderson suggests that the specificity of sport justifies a degree of autonomy from ordinary legal norms.[98] However, critics argue that this exceptionalist stance can lead to human rights abuses being rationalised or overlooked in sports. Weatherill warns about the danger of regarding sport as so special that it deserves to be exempted from the rules of law that apply to other sectors.[99] Balancing the legitimate need for sports-specific governance with core human rights protections is the challenge.

The 'global sports law' theory offers a somewhat intermediary position, conceptualising sports governance as a hybrid system that interacts with both state-based law and private regulatory mechanisms. This approach recognises the *sui generis* aspects of sports while also emphasising the need for external checks and balances, including human rights protections. Casini describes this as a process of 'juridification' of sports governance.[100] Proponents argue that this hybrid model can help to reconcile the autonomy of sports governance with the need for human rights safeguards. They suggest that sports tribunals like the Court of Arbitration for Sport (CAS) can serve as forums for developing jurisprudence that respects both sporting integrity and individual rights. Lindholm posits that the CAS has the potential to develop a coherent body of sports law that incorporates human rights principles.[101] Critics, however, question whether such hybrid systems can adequately protect athletes and other stakeholders, given the power imbalances inherent in global sports structures. Boyes raises concerns about the lack of democratic legitimacy in international sports governance structures.[102]

Recent scholarship has also examined sports–human rights interactions through the lens of business and human rights frameworks. This perspective emphasises the responsibilities of sports organisations as economic actors to respect human rights throughout their operations and supply chains. The Mega-Sporting Events Platform for Human Rights argues that sports governing bodies

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97 Stephen Gardiner et al, *Sports Law* (Routledge 2012).

98 Jack Anderson, *Modern Sports Law: A Textbook* (Hart Publishing 2010).

99 Stephen Weatherill, *Principles and Practice in EU Sports Law* (Oxford University Press 2017).

100 Lorenzo Casini, 'The Making of a Lex Sportiva by the Court of Arbitration for Sport' (2012) 12(5) German Law Journal 1317.

101 Johan Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence: An Empirical Inquiry into Lex Sportiva* (TMC Asser Press 2019).

102 Simon Boyes, 'Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies' [2017] Public Law 363.

have a responsibility to respect human rights throughout their operations.[103] Mega-sporting events have come under particular scrutiny, with human rights advocates calling for stronger protections for workers, local communities, and other affected stakeholders.

Worden highlights the need for human rights due diligence in the planning and delivery of major sporting events.[104] This business and human rights approach highlights the need to consider the wide-ranging impacts of sports beyond only athletes and immediate participants. Grix argues that 'sports organisations must adopt a proactive approach to identifying and mitigating human rights risks in their supply chains'.[105]

The competing theoretical positions do not require a choice between unrestricted sporting autonomy and the wholesale subordination of sports regulation to ordinary state law. This thesis adopts a qualified conception of sporting autonomy. Lex Sportiva is persuasive to the extent that it recognises the need for specialised transnational rules and adjudicative institutions, but the transnational character of those rules does not establish immunity from external legal standards. Sporting autonomy is therefore functional rather than absolute: it may justify specialised rules and procedures where expertise, consistency and expedition are required, but it cannot justify derogation from minimum standards of procedural fairness, independence, impartiality and access to an effective remedy.[106]

A contemporary context in which the relationship between sporting autonomy and universal human-rights protection becomes particularly contested is the regulation of sex and gender eligibility in competitive sport. The regulation of sex and gender in competitive sport exposes a difficult boundary between sporting autonomy and universal human-rights protection. Sporting federations have a legitimate interest in maintaining meaningful competition categories, including the women's category. The legal difficulty arises when eligibility rules distinguish among women on the basis of biological characteristics and require affected athletes to alter naturally occurring physiological traits as a condition of participation. The *Chand* and *Semenya* disputes demonstrate that such rules cannot be treated solely as technical questions of competitive classification because they engage equality, non-discrimination, privacy and bodily integrity. Scholarship on CAS

[103] Mega-Sporting Events Platform for Human Rights, 'Sporting Chance: White Paper 1.1 Championing Human Rights in the Governance of Sports Bodies' Institute for Human Rights and Business, London (2017).
[104] Minky Worden, 'Raising the Bar: Mega-Sporting Events and Human Rights' Human Rights Watch World Report (2015).
[105] Jonathan Grix, 'The Politics of Sports Mega-Events' (2012) 3(1) Political Insight 4.
[106] Ken Foster, 'Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport's Jurisprudence' (2005) 3(2) *Entertainment and Sports Law Journal* 1; Brendan Schwab, 'Embedding the Human Rights of Players in World Sport' (2018) 17 *The International Sports Law Journal* 214.

jurisprudence has shown that framing sex eligibility predominantly as a scientific dispute can marginalise these human-rights dimensions.[107]

These controversies do not displace the universality of human rights; rather, they test how universal guarantees operate within a differentiated sporting system. Universality does not require identical treatment of every athlete, but it does require that distinctions affecting protected interests be objectively justified, proportionate, and subject to effective independent review. In *Semenya* v *Switzerland*, the European Court of Human Rights' Grand Chamber did not determine the substantive validity of the eligibility regulations; it found that the compulsory and exclusive nature of CAS jurisdiction required sufficiently rigorous judicial examination of the athlete's substantiated complaints. This thesis therefore adopts qualified sporting autonomy: sporting bodies may regulate eligibility, but classifications affecting participation, dignity or equality must remain subject to independent and effective human-rights scrutiny.[108]

A related question concerns whether participation in sport has itself developed into an autonomous human right. The increasing recognition of sport in international human rights discourse raises the question of whether participation in sport constitutes an autonomous human right or derives its protection from established rights. Article 1 of UNESCO's International Charter of Physical Education, Physical Activity and Sport describe the practice of physical education, physical activity and sport as a fundamental right for all. That recognition is normatively important, but it does not by itself establish a freestanding and universally enforceable right to sport with settled content, duty-bearers and remedies. This thesis therefore treats participation in sport primarily through established rights, including equality and non-discrimination, dignity, health, education, association and cultural participation. The relevance of the emerging right-to-sport discourse to this study is procedural: where exclusion, suspension, eligibility rules or disciplinary sanctions materially affect participation, the legitimacy of the restriction depends on both the substantive rights engaged and the availability of an independent and effective procedure through which the decision may be challenged.[109]

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[107] Lena Holzer, 'What Does It Mean to Be a Woman in Sports? An Analysis of the Jurisprudence of the Court of Arbitration for Sport' (2020) 20(3) *Human Rights Law Review* 387; Seema Patel, 'Gaps in the Protection of Athletes Gender Rights in Sport—A Regulatory Riddle' (2021) 21 *The International Sports Law Journal* 257.

[108] *Semenya v Switzerland* App no 10934/21 (ECtHR, Grand Chamber, 10 July 2025).

[109] UNESCO, *International Charter of Physical Education, Physical Activity and Sport* (adopted 17 November 2015) arts 1.1–1.4; *Mutu and Pechstein v Switzerland* Apps nos 40575/10 and 67474/10 (ECtHR, 2 October 2018).

2.2.1 The Theoretical Approach adopted in this Study

Having surveyed the principal theoretical frameworks through which the interface between sports and human rights has been conceptualised lex sportiva, the human rights in sport model, sports exceptionalism, and global sports law this study adopts a position that is most closely aligned with the human rights in sport model, as articulated by Donnelly, Kidd, and elaborated upon through the United Nations Guiding Principles on Business and Human Rights. This choice is deliberate and requires justification. The lex sportiva approach, while valuable for understanding the development of a transnational body of sports-specific rules, carries the risk identified by Schwab: it may lack legitimacy and fail to comply with internationally recognised human rights, thereby exposing athletes to regulatory systems that inadequately protect their fundamental rights.[110] In the South African constitutional context, this risk is particularly acute. The Constitution does not recognise the internal rule-making authority of private bodies as a justification for departing from constitutional rights. Section 8(2) of the Constitution makes clear that the Bill of Rights binds natural and juristic persons to the extent that it is applicable, having regard to the nature of the right and any duty imposed by the right.[111] This provision forecloses any argument that sports bodies' regulatory autonomy exempts them from constitutional procedural obligations.

The sports exceptionalism thesis, advanced by Gardiner and Anderson, faces similar difficulties in the South African context. While the thesis accepts that sport has unique characteristics warranting specialised governance, a proposition that this study does not contest, it rejects the conclusion that such specialisation can justify the abridgement of constitutional procedural rights. Weatherill's warning about the dangers of treating sport as 'so special' that it deserves exemption from ordinary law is particularly apt in a constitutional democracy where the supremacy of the Constitution is non-negotiable.[112]

The study therefore proceeds on the basis that procedural human rights are universal, inalienable, and fully applicable to sports dispute resolution mechanisms in South Africa. The human rights based approach adopted here serves not merely as a normative aspiration but as a practical analytical framework: the procedural rights derived from the Constitution and international instruments function as evaluative criteria against which the compliance of sports dispute resolution mechanisms is assessed. Sporting autonomy is recognised as legitimate, but only within

[110] Brendan Schwab, 'Embedding the Human Rights of Players in World Sport' (2018) Centre for Sport and Human Rights

[111] Constitution of the Republic of South Africa, 1996, s 8(2).

[112] Stephen Weatherill, *Principles and Practice in EU Sports Law* (OUP 2017)

the parameters established by constitutional law. Where sporting autonomy and procedural human rights conflict, the latter must prevail.

This theoretical position does not entail that all sports dispute resolution must be identical to formal court proceedings. The thesis acknowledges, following Ruggie and Heerdt, that sporting bodies may legitimately develop specialised adjudicative mechanisms that are adapted to the needs of sport.[113] The requirement is not formal identity with courts, but substantive compliance with the procedural rights that make any adjudicative mechanism legitimate. This distinction between formal and substantive compliance with procedural rights runs as a thread through the entire analysis.

2.3 Revisiting the concept of human rights

The concept of human rights, rooted in the fundamental belief in the inherent dignity and worth of every human being, has evolved significantly over time, reflecting changing societal values, philosophical perspectives, and global political dynamics.[114] Central to this concept are the principles of universalism and inalienability, asserting that human rights apply equally to all individuals, regardless of their circumstances, and cannot be surrendered or taken away.[115] As Donnelly articulates, '[h]uman rights are, literally, the rights that one has simply because one is a human being'.[116] This seemingly simple notion encompasses a complex web of legal, moral and philosophical considerations that have been debated and refined over centuries. The modern conception of human rights is largely rooted in the aftermath of World War II and the establishment of the United Nations. The Universal Declaration of Human Rights (UDHR), adopted in 1948, serves as a cornerstone document for defining and promoting human rights globally. Glendon describes the UDHR as 'a bold attempt to articulate a common set of principles that could serve as a standard of achievement for all peoples and nations'.[117] The UDHR's preamble explicitly states that human rights are 'equal and inalienable', underscoring their universal applicability across all human activities and contexts, including sports. However, the implementation and interpretation of these rights have been far from straightforward. As Mutua argues, '[t]he human rights movement is marked by a damning metaphor. The grand narrative of human rights contains a subtext that depicts an epochal contest pitting savages, on the one hand, against victims and

[113] John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN 2011); Daniela Heerdt, *Blurring the Lines of Public and Private in International Sports Governance* (Asser Press 2019).
[114] Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 1-3.
[115] Philip Alston and Ryan Goodman, *International Human Rights* (Oxford University Press 2013) 155-157.
[116] Donnelly *Universal Human Rights in Theory and Practice* (n 110) 1-3.
[117] Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House 2001).

saviors, on the other.'[118] This critique highlights the complex power dynamics and cultural tensions that often underlie human rights discourse and practice, even as it reaffirms the fundamental universality of these rights.

The concept of human rights has expanded over time to encompass a broader range of issues and protections, all while maintaining the core principle of universality. Traditionally, human rights were primarily focused on civil and political rights, such as freedom of speech and religion, and protection from torture. However, as Sen points out, '[t]he domain of human rights has been extended beyond the traditional terrain of personal liberty and other first-generation rights to include second-generation rights (involving claims to economic and social security) and third-generation rights (including rights to development and to a healthy environment)'.[119] This evolution reflects a growing recognition of the interconnectedness of various aspects of human well-being and dignity, reinforcing the idea that human rights are indivisible and apply across all spheres of human activity, including sports and recreation. Shue's influential work on basic rights further underscores the importance of economic and social rights, arguing that 'the fulfilment of subsistence rights is essential for the enjoyment of other rights'.[120] This perspective emphasises the inalienable nature of human rights, suggesting that they are not contingent on specific circumstances or contexts, but are inherent in the human condition itself. Nickel elaborates further on this concept, stating that 'human rights are universal moral rights, something that all people, everywhere, at all times ought to have, simply because of the fact that they are human'.[121] This universal and inalienable nature of human rights provides a strong foundation for arguing their applicability in all human endeavours, including the realm of sports.

While the universality of human rights remains a cornerstone principle, its implementation in diverse cultural contexts has been the subject of ongoing debate. Critics argue that a universalist approach can be overly Western-centric and may fail to account for diverse cultural norms and practices. However, proponents of universalism maintain that the fundamental principles of human dignity and equality transcend cultural boundaries. Donnelly proposes a concept of 'relative universality', suggesting that 'while human rights are universally applicable in principle, their specific interpretations and implementations must be adaptable to various cultural, social, and political contexts'.[122] This perspective attempts to balance the universal aspirations of human rights with the need for contextual sensitivity and cultural respect, while still affirming the core

[118] Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42(1) Harvard International Law Journal 201.
[119] Amartya Sen, 'Elements of a Theory of Human Rights' (2004) 32(4) Philosophy and Public Affairs 315.
[120] Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton University Press 1996).
[121] James Nickel, *Making Sense of Human Rights* (Blackwell Publishing 2007).
[122] Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29(2) Human Rights Quarterly 281.

principle that human rights apply to all individuals in all contexts. An-Na'im offers a complementary view, arguing that 'the universal legitimacy of human rights norms is dependent on their cultural legitimacy within diverse societies'.[123] This approach seeks to ground the universal applicability of human rights in local cultural contexts, reinforcing their relevance across all human activities, including sports. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, reaffirms this universal and inalienable nature of human rights, stating that 'all human rights are universal, indivisible and interdependent and interrelated'.[124] This declaration serves as a powerful assertion of the applicability of human rights principles across all domains of human life, providing a strong basis for their integration into sports governance and dispute resolution frameworks.

2.4 Procedural human rights

Procedural human rights form a crucial component of the broader human rights framework, focusing on the processes and mechanisms by which rights are protected and justice is administered.[125] These rights are fundamental to ensuring fairness, equality and transparency in legal and administrative proceedings.[126] As Galligan emphasises, '[p]rocedural rights are not merely technical rules but embody fundamental values of dignity, equality, and the rule of law'.[127] The concept of procedural human rights encompasses a wide range of protections, including the right to a fair trial, due process, equality before the law and access to justice. These rights are enshrined in various international instruments, most notably in articles 8 to 11 of the UDHR and articles 14 to 16 of the International Covenant on Civil and Political Rights (ICCPR). Francioni argues that 'procedural rights serve as a bridge between substantive rights and their effective realisation, ensuring that individuals have meaningful opportunities to assert and defend their rights'.[128] In the context of sports governance and dispute resolution, procedural human rights take on particular significance given the unique power dynamics and the specialised nature of sports-related conflicts. As Foster notes, '[t]he application of procedural human rights in sports arbitration is essential for maintaining the legitimacy of the lex sportiva system'.[129] This becomes especially pertinent given the often mandatory nature of sports arbitration clauses and the potential for

[123] Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press 1992).
[124] United Nations General Assembly, 'Vienna Declaration and Programme of Action' World Conference on Human Rights, Vienna, 14-25 June 1993, A/CONF.157/23.
[125] Dinah Shelton, *Advanced Introduction to International Human Rights Law* (Edward Elgar Publishing 2014) 67-69.
[126] Tom Bingham, *The Rule of Law* (Penguin Books 2011) 90-92.
[127] DJ Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures* (Oxford University Press 1996).
[128] Francesco Francioni, *Access to Justice as a Human Right* (Oxford University Press 2007).
[129] Foster, 'Is There a Global Sports Law?' (n 94) 1.

conflicts of interest within sports governing bodies. Blackshaw highlights that 'the right to a fair hearing before an independent and impartial tribunal is a cornerstone of procedural justice in sports disputes'.[130] However, the implementation of these rights in the sports context is not without challenges. Critics such as Panagiotopoulos argue that 'the closed nature of many sports dispute resolution mechanisms can potentially undermine key procedural guarantees'.[131] This tension between the autonomy of sports governance and the need for robust procedural protections remains a central issue in contemporary debates on sports law and human rights.

The concept of access to justice, a key component of procedural human rights, takes on particular nuances in the sports context. As Bertil observes, '[a]thletes often face significant barriers in accessing effective remedies for human rights violations, including financial constraints, power imbalances, and the risk of retaliation'.[132] The principle of *nemo judex in causa sua* (no one should be a judge in their own cause) is particularly relevant in sports governance structures, where governing bodies may act as both regulators and adjudicators. Findlay and Mazzucco argue that 'the independence and impartiality of sports tribunals are essential for ensuring procedural fairness and maintaining athlete confidence in the system'.[133] The right to legal representation and the ability to present one's case fully are also crucial aspects of procedural rights in sports disputes. However, as Rigozzi points out, '[t]he expedited nature of many sports arbitration proceedings can sometimes conflict with the thorough examination of evidence and arguments required by procedural fairness standards'.[134] This highlights the ongoing challenge of balancing the need for swift resolution of sports disputes with the imperative of comprehensive procedural protections.

The principle of transparency in decision-making is another critical aspect of procedural human rights with significant implications for sports governance. Boyes contends that 'the often opaque nature of decision-making in sports governing bodies can undermine accountability and procedural fairness'.[135] This lack of transparency can extend to the selection of arbitrators, the formulation of rules and regulations, and the rationale for decisions. As McArdle argues, '[g]reater transparency in sports arbitration proceedings is essential for building trust in the system and ensuring compliance with procedural human rights standards'.[136] The concept of equality of arms, which

[130] Ian Blackshaw, *Sport, Mediation and Arbitration* (TMC Asser Press, 2009).
[131] Dimitrios Panagiotopoulos, *Sports Law: Lex Sportiva and Lex Olympica* (Ant N Sakkoulas Publishers, 2013).
[132] J Bertil, 'Athletes and Access to Remedies: Addressing Human Rights Violations in Sport' (2021) 34 International Sports Law Journal 122.
[133] Hilary A Findlay and Marjolaine Mazzucco, 'The Rights of Athletes, Coaches, and Participants in Sport' in *Fundamentals of Sport Law* (Human Kinetics 2010).
[134] Antonio Rigozzi, 'Challenging Awards of the Court of Arbitration for Sport' (2010) 1(1) Journal of International Dispute Settlement 217.
[135] Stuart Boyes, 'Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies' [2017] Public Law 363.
[136] David McArdle, *Dispute Resolution in Sport: Athletes, Law and Arbitration* (Routledge 2015).

requires that all parties to proceedings have a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage *vis-à-vis* their opponent, is particularly relevant in disputes between individual athletes and powerful sports organisations. Nafziger suggests that 'the inherent power imbalance in many sports disputes necessitates robust procedural safeguards to ensure a level playing field'.[137] These procedural rights issues intersect with broader questions of governance and accountability in international sports organisations, as highlighted by Geeraert's work on the democratic deficit in global sports governance.[138]

A human rights-based approach, as employed in this thesis, is not merely a background orientation. It has specific operational consequences for the analysis undertaken in subsequent chapters. Drawing on the framework articulated by Donnelly and developed in the sports context by Kidd and Donnelly, this approach translates into four concrete analytical commitments. First, the approach requires that the core procedural rights applicable to sports dispute resolution be identified and defined with precision. For this thesis, the following are the procedural rights whose compliance is assessed in Chapter 6: (a) the right to a fair and public hearing before an independent and impartial tribunal (sections 33 and 34 of the Constitution; article 14 of the ICCPR; article 7 of the African Charter; article 10 of the UDHR); (b) the right to be heard and to respond to adverse evidence (audi alteram partem); (c) the right that no one shall be a judge in their own cause (nemo iudex in causa sua); (d) the right to legal representation; (e) the right to reasoned decisions; (f) the right of access to courts or other independent forums; and (g) the right to appeal or review.

Second, the approach requires that these rights be treated as the evaluative benchmarks against which the selected sporting bodies' dispute resolution frameworks are assessed. Compliance is evaluated not merely on the basis of formal acknowledgement of these rights, but on whether the structural design and practical implementation of the relevant frameworks give them substantive effect. Third, the approach demands that power asymmetries between institutional actors and individuals be acknowledged and factored into the analysis. Sports governing bodies wield significant power over athletes and other stakeholders. A human rights-based approach requires the analysis to consider not only whether procedural rights are formally available, but also whether they are practically accessible given the resource disparities, institutional dependencies, and informational asymmetries that characterise sports governance. Fourth, the approach requires that recommendations for reform be grounded in human rights standards and be oriented towards enhancing the practical realisation of procedural rights, rather than merely improving

[137] Nafziger, *International Sports Law* (n 13).
[138] Arnout Geeraert, *The European Union in International Sports Governance* (Palgrave Macmillan 2015).

administrative efficiency. These analytical commitments are sustained throughout Chapters 4, 5, 6, and 7 of the thesis.

2.5 Special sports dispute resolution framework

The theory underlying the special sports dispute resolution framework is rooted in the unique nature of sports and the perceived need for a specialised system to address sports-related conflicts.[139] This framework is primarily justified by the concept of sports specificity, which recognises that sporting activities and organisations possess distinct characteristics that set them apart from other social and economic sectors. The principle of sports specificity has been widely accepted in legal and academic circles, with scholars arguing that it requires a tailored approach to dispute resolution.[140] This concept acknowledges the intricate web of relationships between various stakeholders in the sports world, including athletes, clubs, national and international federations, and commercial partners. These relationships are governed by a complex system of rules and regulations that often require specialised knowledge to interpret and apply effectively. Furthermore, the global nature of many sports and the need for uniform rules across jurisdictions have been cited as reasons for a parallel dispute-resolution system operating outside traditional national legal frameworks.[141]

Another crucial theoretical underpinning of the special sports dispute resolution framework is the principle of autonomy in sports governance. This principle asserts that sports organisations should have the right to self-regulate and manage their affairs without undue interference from external entities, including state governments and ordinary courts. Proponents of this theory argue that the autonomy of sports bodies is essential to maintaining the integrity and fairness of competitions and preserving the unique cultural and social values associated with sports.[142] The concept of sports autonomy has been particularly influential in shaping the structure and operations of international sports federations and the CAS. These institutions often justify their existence and authority by claiming they are best equipped to understand and adjudicate sports-related disputes, owing to their specialised knowledge and experience. However, critics have pointed out that this

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[139] Blackshaw, *Sport, Mediation and Arbitration* (n 126) 15-17.

[140] Foster, 'Is There a Global Sports Law?' (n 94) 1; Richard Parrish, *Sports Law and Policy in the European Union* (Manchester University Press 2003); Stephen Weatherill, *European Sports Law: Collected Papers* (TMC Asser Press 2007).

[141] Blackshaw, *Sport, Mediation and Arbitration* (n 126); Nafziger, *International Sports Law* (n 13); Matthew J Mitten and Hayden Opie, '"Sports Law": Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution' (2010) 85(2) Tulane Law Review 269.

[142] Jean-Loup Chappelet, *Autonomy of Sport in Europe* (Council of Europe Publishing 2010); Arnout Geeraert, Milena Mrkonjic and Jean-Loup Chappelet, 'A Rationalist Perspective on the Autonomy of International Sport Governing Bodies: Towards a Pragmatic Autonomy in the Steering of Sports' (2015) 7(4) International Journal of Sport Policy and Politics 473.

emphasis on autonomy can sometimes lead to a lack of transparency and accountability, potentially compromising the rights of individual athletes or other stakeholders.[143]

The theory of *lex sportiva*, or the law of sports, also plays a significant role in justifying the parallel dispute-resolution framework for sports. This concept refers to the body of principles and rules that have emerged from the decisions of sports arbitration bodies, particularly the CAS.[144] Proponents of *lex sportiva* argue that it represents a unique and coherent legal order specifically tailored to the needs of the sports world.[145] They contend that this specialised body of law is necessary to address the complex and often time-sensitive issues that arise in sports, such as eligibility disputes, doping cases and contractual conflicts between athletes and clubs. The development of *lex sportiva* through arbitral decisions is seen as a way to ensure consistency and predictability in sports dispute resolution across different jurisdictions. However, critics have raised concerns about the legitimacy and fairness of this system, arguing that it may lack the same level of legal scrutiny and public accountability as traditional court systems.[146] Questions also arise about the extent to which *lex sportiva* adequately protects the human rights of athletes and other stakeholders, particularly where the interests of powerful sports organisations conflict with individual rights.

2.6 Conclusion

The conceptual and theoretical framework outlined in this chapter provides a comprehensive foundation for understanding the complex interplay between sports, human rights and dispute resolution mechanisms. The evolution of sports from recreational activities to global industries has led to the development of specialised governance structures and dispute resolution frameworks. However, this evolution has also brought to the fore significant human rights concerns and challenges. Modern theories of sport, particularly the concept of *lex sportiva* and the principle of sports autonomy, have shaped the current landscape of sports governance and dispute resolution. These theories justify the existence of parallel legal systems for sports, arguing for the need for specialised knowledge and the swift resolution of conflicts. However, as discussed, this approach has been criticised for potentially creating a 'human rights-free zone' in which athletes and other

[143] Steve Cornelius, 'Jurisdiction of the Court of Arbitration for Sport' (2007) 2007(1-2) International Sports Law Journal 14; Antoine Duval, 'Lex Sportiva: A Playground for Transnational Law' (2013) 19(6) European Law Journal 822; Lindholm, *The Court of Arbitration for Sport and its Jurisprudence* (n 105).

[144] Antoine Duval and Antonio Rigozzi (eds), *Yearbook of International Sports Arbitration 2016* (TMC Asser Press 2018) 3-5.

[145] Casini (n 104) 1317.

[146] Antonio Rigozzi, 'Challenging Awards of the Court of Arbitration for Sport' (2010) 1(1) Journal of International Dispute Settlement 217.

stakeholders may lack adequate protection.[147] The examination of human rights concepts, particularly procedural human rights, highlights the tension between the specialised nature of sports governance and the universal applicability of human rights principles. The right to a fair trial, due process, and access to justice are fundamental aspects that must be considered in any dispute-resolution framework, including those in sports.[148] The challenges of implementing these rights within sports arbitration and governance structures underscore the need for careful consideration and potential reforms.[149] The special sports dispute resolution framework, while aiming to address the unique needs of the sporting world, must also grapple with issues of transparency, accountability and the protection of individual rights. The concept of sports specificity, while valuable in many respects, should not be used to justify bypassing fundamental human rights protections.[150]

[147] Schwab 'When We Know Better, We Do Better (n 97) 4.
[148] Francesco Francioni, *Access to Justice as a Human Right* (Oxford University Press 2007).
[149] Duval and Rigozzi (eds), *Yearbook of International Sports Arbitration 2016* (n 140) 10-12.
[150] Foster, 'Is There a Global Sports Law?' (n 94) 1.

CHAPTER 3: THE INTERNATIONAL DISPUTE RESOLUTION FRAMEWORK FOR SPORTS

3.1 Introduction

The international dispute resolution framework for sports has evolved significantly over the past century, reflecting the growing complexity and global nature of sports governance.[151] This framework encompasses a diverse array of institutions, mechanisms and principles designed to address the unique challenges posed by sports-related disputes.[152] As Foster notes, the development of this framework has been driven by the need for specialised, efficient, and globally consistent dispute-resolution processes that can accommodate the fast-paced nature of sports competitions while respecting the fundamental rights of athletes and other stakeholders.[153] The international sports dispute resolution landscape is characterised by a complex interplay between various entities, including national and international sporting federations, specialised arbitration bodies, and, increasingly, human rights institutions. This multi-faceted system aims to balance the autonomy of sports organisations with the need for legal oversight and the protection of individual rights; this balance has been the subject of ongoing debate and legal scrutiny.[154]

At the heart of the international sports dispute resolution framework lies the principle of *lex sportiva*, a concept that refers to the unique body of rules and principles that have emerged from the decisions of sports tribunals, particularly those of the Court of Arbitration for Sport (CAS).[155] As articulated by the CAS in the landmark case of *AEK Athens and SK Slavia Prague v UEFA*,[156] *lex sportiva* represents 'a set of unwritten legal principles ... a sort of common law of sport' that guides the resolution of sports disputes at the international level. This concept has been instrumental in shaping a coherent and specialised approach to sports dispute resolution, allowing for the development of principles tailored to the sports world's specific needs and characteristics. However, the application of *lex sportiva* has been controversial, particularly concerning its interaction with national legal systems and international human rights norms.[157] The tension between the autonomy of sports governance and the protection of fundamental rights has been a

[151] Ian S Blackshaw, *International Sports Law: An Introductory Guide* (Asser Press 2017) 23.
[152] Antoine Duval and Ben van Rompuy, 'The Compatibility of Forced CAS Arbitration with EU Competition Law: *Pechstein* Reloaded' (2015) 23 Journal of European Competition Law and Practice 1, 3.
[153] Foster, 'Is There a Global Sports Law?' (n 94).
[154] Ian Blackshaw, *Mediating Sports Disputes: National and International Perspectives* (TMC Asser Press 2002); Nafziger, *International Sports Law* (n 13).
[155] Casini (n 104) 1319.
[156] CAS 98/200.
[157] Antoine Duval, 'Lex Sportiva: A Playground for Transnational Law' (2013) 19(6) European Law Journal 822.

recurring theme in international sports jurisprudence, as evidenced by cases such as *Meca-Medina and Majcen v Commission of the European Communities*,[158] where the European Court of Justice asserted that even rules of a 'purely sporting interest' must comply with European Union (EU) law, including fundamental rights protections.[159]

The international dispute resolution framework for sports is characterised by a hierarchical structure, with various levels of dispute resolution mechanisms, ranging from internal processes within national sports federations to the CAS, often referred to as the 'Supreme Court of World Sport'.[160] This hierarchy reflects the principle of exhausting internal remedies, a fundamental concept in both international law and sports governance, which requires parties to seek resolution through the internal mechanisms of their respective sports organisations before resorting to external arbitration or judicial review. The prominence of arbitration in this framework, particularly through the CAS, has been reinforced by key legal instruments such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates the global enforcement of arbitral awards.[161] However, recent developments, including the decision of the European Court of Human Rights (ECtHR) in *Mutu and Pechstein v Switzerland*, have highlighted the need for sports arbitration processes to adhere to fundamental human rights standards, particularly the right to a fair trial in art 6 of the European Convention on Human Rights (ECHR).[162] These developments underscore the evolving nature of the international sports dispute resolution framework and the ongoing challenges in reconciling the specific needs of sports governance with the broader principles of international law and human rights.

In light of these complex dynamics, this chapter comprehensively analyses the international dispute-resolution framework in sports. It traces the historical development of this framework, examines the general principles governing international sports dispute resolution, and explores the hierarchical structure of dispute-resolution institutions. The chapter also delves into alternative dispute resolution (ADR) mechanisms, the role of national courts, and the emerging jurisdiction of international human rights courts and tribunals over sports disputes. The chapter highlights the intricate balance between the autonomy of sports governance and the protection of individual

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158 *Meca-Medina and Majcen v Commission* Case C-519/04 [2006] ECR I-6991 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62004CJ0519> accessed 5 September 2024.

159 ibid.

160 Matthieu Reeb, 'The Role and Functions of the Court of Arbitration for Sport (CAS)' (2002) 2 International Sports Law Journal 21.

161 United Nations, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (United Nations Treaty Series, vol 330, 10 June 1958) <https://treaties.un.org/doc/Treaties/1959/06/19590607%2009-35%20PM/Ch_XXII_01p.pdf> accessed 5 September 2024.

162 *Mutu and Pechstein v Switzerland* (Application nos 40575/10 and 67474/10, ECHR, 2 October 2018) <http://hudoc.echr.coe.int/eng?i=001-186828> accessed 5 September 2024.

rights, as well as the ongoing efforts to enhance the fairness, efficiency and legitimacy of sports dispute resolution at the international level. As sports continue to grow in global significance, both economically and culturally, the development of this framework will play a crucial role in shaping the future of sports governance and ensuring that the rights and interests of all stakeholders are adequately protected.

3.2 History of the international dispute resolution framework

The origins of international sports dispute resolution can be traced back to the late 19th and early 20th centuries, coinciding with the emergence of organised international sports competitions.[163] The modern Olympic Games, revived in 1896 by Pierre de Coubertin, significantly established the need for a formal system to resolve disputes in international sports.[164] Initially, disputes were handled *ad hoc*, often by the organising committees of individual events or by the nascent international sports federations.[165] The International Olympic Committee (IOC), founded in 1894, was one of the first bodies to address disputes at an international level, though its processes were initially informal and lacked standardisation.[166] Blackshaw notes that the early years of international sports governance were characterised by a lack of clear legal frameworks, with decisions often made on the basis of personal relationships and informal negotiations rather than established legal principles.[167]

The period between the two World Wars saw a gradual increase in the complexity of international sports competitions and, consequently, the disputes arising from them. Foster highlights that this era witnessed the emergence of more structured approaches to dispute resolution, particularly in individual sports federations.[168] For instance, the Fédération Internationale de Football Association (FIFA), founded in 1904, began developing internal mechanisms to resolve disputes over player transfers and competition rules. However, these early mechanisms were often criticised for lacking independence and transparency. As Gardiner et al point out, many of these systems were controlled entirely by the sports bodies, raising questions about impartiality and due process.[169] This period laid the groundwork for future developments and highlighted the need for more robust and independent dispute resolution systems in international sports.

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[163] David McArdle, *Dispute Resolution in Sport: Athletes, Law and Arbitration* (Routledge 2015) 8.
[164] Nafziger, *International Sports Law* (n 13).
[165] McArdle (n 159) 8.
[166] Jean-Loup Chappelet and Brenda Kübler-Mabbott, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge 2008).
[167] Blackshaw, *Mediating Sports Disputes* (n 150).
[168] Foster, 'Is There a Global Sports Law?' (n 94) 1.
[169] Gardiner et al *Sports Law* (n 101).

The post-World War II era (1945–1980) marked a significant turning point in the development of international sports dispute resolution. The globalisation of sports and the increasing commercialisation and professionalisation of athletics have led to more complex and frequent disputes that require sophisticated resolution mechanisms.[170] During this period, international sports federations established more formal dispute resolution procedures. The International Association of Athletics Federations (IAAF, now World Athletics) introduced its first formal arbitration process in 1954, setting a precedent for other sports bodies.[171] Similarly, FIFA expanded its dispute resolution mechanisms, creating specialised committees to handle disputes related to player transfers and disciplinary matters.[172]

The 1960s and 1970s saw an increased focus on athletes' rights, partly in response to high-profile disputes and controversies. The case of *Reynolds v International Amateur Athletic Federation*[173] in the 1990s highlighted the tensions between sports governing bodies and national legal systems, underscoring the need for a more coherent international framework.[174] The Olympic Movement also underwent significant changes during this period. The IOC, recognising the need for more structured dispute resolution, began to develop more formalised processes for handling conflicts arising during the Olympic Games. The introduction of the Olympic Charter as a governing document in 1908, with subsequent revisions, provided a basis for dispute resolution in the Olympic context.[175] However, as Blackshaw observes, these developments were still largely piecemeal and lacked consistency across different sports and jurisdictions.[176] The absence of a unified approach to sports dispute resolution at the international level became increasingly problematic as the stakes in international sports grew, both financially and in prestige.

The 1980s marked a crucial transition period in the evolution of international sports dispute resolution. This decade saw increased recognition of the need for more specialised and independent mechanisms to handle sports-related disputes. Several key developments during this period laid the groundwork for the modern framework of international sports arbitration. A very significant event was the establishment of the CAS in 1984. Founded by the IOC under the leadership of then-President Juan Antonio Samaranch, the CAS was conceived of as an

[170] Nafziger, *International Sports Law* (n 13).
[171] Ken Foster, 'Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport's Jurisprudence' (2006) 3(2) Entertainment and Sports Law Journal 1.
[172] Allan Erbsen, 'The Substance and Illusion of Lex Sportiva' in Ian S Blackshaw, Robert CR Siekmann and Janwillem Soek (eds), *The Court of Arbitration for Sport 1984-2004* (TMC Asser Press 2006) 441.
[173] *Reynolds v International Amateur Athletic Federation* 505 US 1301 (1992).
[174] Michael S Straubel, 'Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do its Job Better' (2002) 36 Loyola University Chicago Law Journal 1203.
[175] Chappelet and Kübler-Mabbott (n 138).
[176] Blackshaw, *Sport, Mediation and Arbitration* (n 136).

independent body to resolve sports-related disputes through arbitration.[177] The creation of the CAS represented a major step towards a unified system of sports dispute resolution at the international level.

Initially, the CAS faced challenges regarding its independence, particularly due to its close ties with the IOC. As Blackshaw notes, these concerns were addressed in 1993 by the Swiss Federal Tribunal in *Gundel v FEI*,[178] which led to significant reforms in the CAS's structure, enhancing its independence and credibility.[179] During this period, there was also an increasing recognition of the unique nature of sports disputes and the need for specialised knowledge to resolve them. This led to the development of what Foster calls *lex sportiva* – a body of principles and rules specific to sports law.[180] The concept of *lex sportiva* began to take shape through the decisions of various sports tribunals and arbitration bodies, including the nascent CAS.

The 1980s also saw a growing tension between the autonomy of sports governing bodies and the intervention of national courts. Cases such as *Reynolds v IAAF* highlighted the complexities of jurisdiction in international sports disputes.[181] These conflicts emphasised the need for a more robust and widely recognised international system of sports dispute resolution. This decade also witnessed an increase in doping-related disputes, particularly following the disqualification of Canadian sprinter Ben Johnson at the 1988 Seoul Olympics. This high-profile case brought international attention to the issue of doping in sports and the need for effective dispute resolution mechanisms in this area.[182]

The significance of *Reynolds* for this study lies in the limits it exposes in claims of sporting autonomy. A sports governing body's authority to establish uniform rules does not itself determine whether the procedures through which those rules are enforced satisfy external legal standards. This distinction becomes particularly important where a regulatory decision affects an athlete's eligibility to compete and, consequently, professional opportunities and livelihood. The specialised nature of sport may justify rules and adjudicative procedures adapted to competition, but it cannot by itself justify insulating decisions with substantial individual consequences from independent

[177] Reeb (n 156) 21.
[178] *Elmar Gundel v Fédération Equestre Internationale (FEI)* CAS 1992/A/63.
[179] Ian Blackshaw, 'The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively "Within the Family of Sport"' (2003) 2(2) Entertainment Law 61.
[180] Foster, 'Is There a Global Sports Law?' (n 94) 1.
[181] Straubel (n 170) 1203.
[182] Barrie Houlihan, *Dying to Win: Doping in Sport and the Development of Anti-Doping Policy* (Council of Europe Publishing 2002).

legal scrutiny. *Reynolds*, therefore, supports the position adopted in this thesis that sporting autonomy is functionally legitimate but procedurally constrained.[183]

The 1990s saw a significant consolidation and expansion of the international sports dispute resolution framework. This decade was marked by the strengthening of existing institutions and the creation of new ones, reflecting the growing complexity of sports-related disputes. The CAS underwent significant reforms in the early 1990s, largely in response to the *Gundel* case. In 1994, the Paris Agreement led to the creation of the International Council of Arbitration for Sport (ICAS), which took over administrative and financial control of the CAS from the IOC.[184] This restructuring enhanced the CAS's independence and credibility as an impartial arbitration body for sports disputes.

The 1990s also saw an expansion of the CAS's jurisdiction. Many international sports federations began to recognise the CAS as the final arbiter for disputes, incorporating CAS arbitration clauses into their statutes and regulations.[185] This trend towards the centralisation of sports dispute resolution under the CAS umbrella marked a significant step towards a more unified system of international sports law. During this period, the concept of *lex sportiva* continued to develop and gain recognition. CAS awards began forming a body of jurisprudence that was increasingly cited and relied upon in subsequent cases, creating a distinct set of legal principles applicable to sports.[186] This development was crucial in addressing the unique aspects of sports disputes that often fell outside the scope of traditional legal frameworks.

The 1990s also saw increased attention to doping issues in sports. The creation of the World Anti-Doping Agency (WADA) in 1999 marked a watershed moment in the fight against doping and had significant implications for dispute resolution in this area.[187] WADA's establishment led to the development of the World Anti-Doping Code, which provided a harmonised set of anti-doping rules and procedures, including provisions for dispute resolution. Another important development during this decade was the growing recognition of athletes' rights and the need for their representation in sports governance and dispute resolution processes. The formation of athletes' commissions within various sports organisations and the IOC reflected this trend.[188] These

[183] Ken Foster, 'Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport's Jurisprudence' (2005) 3(2) *Entertainment and Sports Law Journal* 1.
[184] Reeb (n 156) 21.
[185] Blackshaw, *Sport, Mediation and Arbitration* (n 136).
[186] Foster, 'Is There a Global Sports Law?' (n 94) 1.
[187] Houlihan (n 178).
[188] Lucie Thibault, Lisa Kihl and Kathy Babiak, 'Democratization and Governance in International Sport: Addressing Issues with Athlete Involvement in Organizational Policy' (2010) 2(3) International Journal of Sport Policy and Politics 275.

developments contributed to a more balanced approach to dispute resolution, considering the perspectives and interests of athletes more explicitly. The 1990s also witnessed an increase in commercial disputes in sports, reflecting the growing economic importance of the sector. Issues related to broadcasting rights, sponsorship agreements, and intellectual property became more prevalent, requiring more sophisticated dispute-resolution mechanisms.[189] This led to an expansion of the types of disputes handled by sports arbitration bodies and contributed to the further specialisation of sports law.

The early 2000s marked a period of maturation for the international sports dispute resolution framework, characterised by consolidating existing structures and emerging new challenges.[190] The CAS strengthened its position as the main body for resolving international sports disputes. Its caseload increased significantly during this period, reflecting its growing acceptance and importance in sports.[191] The CAS's jurisprudence began to play a more significant role in shaping sports law, with its decisions being widely cited and influencing the policies and practices of sports organisations worldwide.[192]

A very significant development of this era was the growing focus on anti-doping efforts and related dispute-resolution mechanisms. The World Anti-Doping Code, adopted in 2003 and implemented in 2004, provided a harmonised set of anti-doping rules across sports and countries.[193] This code included specific provisions for dispute resolution, further cementing the CAS's role in handling doping-related cases. The early 2000s also saw an expansion of national-level sports dispute resolution bodies. Countries such as the United Kingdom, Canada and New Zealand established their own sports arbitration tribunals, often modelled on the CAS.[194] These national bodies played an important role in resolving domestic sports disputes and contributed to the development of sports law principles.

However, this period also brought new challenges to the international sports dispute resolution framework. The increasing commercialisation of sports led to more complex disputes involving substantial financial interests. As Blackshaw notes, this raised questions about the adequacy of

[189] Blackshaw, *Mediating Sports Disputes* (n 150).
[190] Jack Anderson, Richard Parrish and Borja García, *Research Handbook on EU Sports Law and Policy* (Edward Elgar Publishing 2018) 112.
[191] Despina Mavromati and Matthieu Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials* (Kluwer Law International 2015).
[192] Anderson et al *Research Handbook on EU Sports Law and Policy* (n 185) 115.
[193] Barrie Houlihan and Dag Vidar Hanstad, 'The Effectiveness of the World Anti-Doping Agency: Developing a Framework for Analysis' (2019) 11(2) International Journal of Sport Policy and Politics 203.
[194] Heather A Findlay, 'Rules of a Sport-Specific Arbitration Process as an Instrument of Policy Making' (2006) 16(1) Marquette Sports Law Review 73.

existing arbitration procedures in handling such high-stakes cases.[195] Another challenge that emerged during this period was jurisdiction and the relationship between sports arbitration bodies and national courts. Cases such as *Pechstein v International Skating Union*[196] highlighted the tension between sports arbitration's autonomy and athletes' right to access regular courts.[197] These cases sparked debates about the fairness and legitimacy of mandatory arbitration clauses in sports.

The early 2000s also saw increased attention to governance and integrity issues in sports. Scandals such as the Salt Lake City Olympic bid controversy and corruption allegations in FIFA led to calls for greater transparency and accountability in sports organisations.[198] These developments had implications for dispute resolution, highlighting the need for mechanisms to address governance-related disputes and ethics violations. Furthermore, this period witnessed a growing recognition of the importance of mediation in sports disputes. While arbitration remained the primary method of dispute resolution, many sports organisations began to incorporate mediation into their dispute resolution frameworks, recognising its potential to deliver more flexible, collaborative solutions.[199]

The late 2000s and 2010s saw further refinement of the international sports dispute resolution framework and the emergence of new frontiers in sports law and arbitration. A significant development during this period was the continued evolution of the CAS. The CAS underwent several structural and procedural reforms to enhance its efficiency and address criticisms regarding its independence and transparency. For instance, the introduction of a *pro bono* legal aid system in 2013 aimed to improve access to CAS arbitration for athletes with limited financial means.[200] The role of the CAS in resolving doping disputes was further solidified by the 2015 revision of the World Anti-Doping Code. This revision strengthened the CAS's position as the final arbiter in doping cases, while also introducing more flexible sanctioning rules.[201] The establishment of the Anti-Doping Division of the CAS in 2019 marked another important step in specialising the handling of doping-related disputes. This period also saw an increased focus on human rights issues in sports. Cases involving gender verification in athletics, such as the Caster Semenya case,

[195] Blackshaw, *International Sports Law* (n 147).
[196] 'Pechstein v International Skating Union – Court of Arbitration for Sport at the Target' (2015) 22(1) MÜHF-HAD 512.
[197] Antoine Duval, 'The Court of Arbitration for Sport and EU Law: Chronicle of an Encounter' (2017) 24(6) Maastricht Journal of European and Comparative Law 797.
[198] Jean-Loup Chappelet, 'Towards Better Olympic Accountability' (2011) 14(3) Sport in Society 319.
[199] Blackshaw, *Sport, Mediation and Arbitration* (n 136).
[200] Mavromati and Reeb (n 186).
[201] Antoine Duval and Mike Viret, 'The World Anti-Doping Code 2015: ASSER International Sports Law Blog Symposium' (2016) 16(1-2) International Sports Law Journal 99.

brought complex issues of human rights, science and sports policy to the fore.[202] These cases challenged arbitrators to navigate the intersection of sports regulations and fundamental human rights principles.

The 2010s witnessed the growing use of technology in sports dispute resolution. The introduction of video assistant referees (VARs) in football, for example, raised new questions about the role of technology in decision-making and dispute resolution in sports.[203] Similarly, blockchain technology for sports arbitration started being explored to enhance transparency and efficiency in dispute resolution processes.[204] Another significant development was increased attention to match-fixing and sports integrity issues. The establishment of bodies such as the Athletics Integrity Unit in 2017 reflected a more proactive approach to addressing integrity threats in sports.[205] These developments led to new disputes and challenged existing dispute resolution frameworks to adapt to these emerging issues.

The late 2000s and 2010s also saw a continued debate over the mandatory nature of sports arbitration. The ECtHR's 2018 decision in the *Pechstein* case, while ultimately upholding the validity of CAS arbitration, highlighted ongoing concerns about athletes' rights and the balance between the autonomy of sports governance and individual rights.[206] Furthermore, this period witnessed an expansion of ADR methods in sports. Mediation, in particular, gained more prominence as a complementary method to arbitration. Many sports organisations and events, including the Olympic Games, began incorporating mediation services to resolve disputes more efficiently and to maintain relationships between parties.[207] The COVID-19 pandemic in 2020 presented unprecedented challenges to the sports world and its dispute resolution mechanisms. The postponement of major sporting events and the disruption of regular competition schedules led to novel legal and arbitration issues. The CAS and other sports dispute resolution bodies had to adapt quickly, implementing remote hearing procedures to address unique contract and scheduling disputes arising from the pandemic.[208]

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[202] Marcus Krech, 'The Misplaced Burdens of "Gender Equality" in *Caster Semenya v IAAF*: The Court of Arbitration for Sport Attempts Human Rights Adjudication' (2020) 20 International Sports Law Journal 205.

[203] Dan Svantesson, 'Could Technology Resurrect the Dignity of the FIFA World Cup Refereeing?' (2014) 30(5) Computer Law and Security Review 569.

[204] John T Holden and Ryan M Rodenberg, 'Blockchain and Sport' (2017) 11(4) Sport, Ethics and Philosophy 455.

[205] William Llewellyn, Jason Gleaves and Wayne Wilson, 'The Historical Development of the World Anti-Doping Agency and its Authority in Global Anti-Doping Governance' (2021) 38(4) International Journal of the History of Sport 384.

[206] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 797.

[207] Blackshaw, *International Sports Law* (n 147).

[208] LawInSport, 'The Impact of COVID-19 on Procedures in Sport Disputes Resolution – First Report 12 June 2020' (12 June 2020) <https://www.lawinsport.com/topics/covid19-impact/item/the-impact-of-covid-19-on-procedures-in-sport-disputes-resolution-first-report-12-june-2020> accessed 25 December 2024.

The significance of *Pechstein* extends beyond the institutional independence of CAS. It exposes a structural weakness in treating sports arbitration as equivalent to ordinary consensual arbitration. In organised elite sport, an athlete may have to accept an arbitration clause prescribed by a governing federation as a condition of participation. Formal acceptance therefore does not necessarily demonstrate meaningful freedom to choose the adjudicative forum.This thesis argues that, *Pechstein* establishes an important relationship between compulsion and procedural protection: the weaker an athlete's practical ability to choose the forum, the stronger the justification for ensuring institutional independence, procedural fairness and meaningful judicial supervision. Compulsory sports arbitration is not objectionable merely because it is compulsory; its legitimacy depends on whether the imposed system provides safeguards commensurate with the absence of genuine bargaining choice.[209]

The history of the international dispute resolution framework in sports reflects continuous evolution and adaptation. From the informal mechanisms of the early 20th century to the sophisticated, multi-faceted system of the 2020s, sports dispute resolution has developed in response to the changing landscape of international sports. The establishment and growth of the CAS have been central to this evolution, as the CAS provides a specialised forum for resolving sports-related disputes at the international level. The development of *lex sportiva*, the increasing focus on athletes' rights, and the integration of ADR methods have all contributed to a more comprehensive and nuanced approach to sports disputes. Challenges remain, particularly in balancing the autonomy of sports governance with individual rights, addressing emerging issues such as technological advancements and integrity threats, and ensuring accessibility and fairness in dispute resolution processes. As sports evolve, so will the frameworks for resolving sports-related disputes. The future of international sports dispute resolution is likely to see further refinements and adaptations. Emerging technologies, changing societal values, and new sports and competitions will undoubtedly present fresh challenges and opportunities for dispute resolution in the sports world. The ongoing task is to maintain a system that is fair, efficient and responsive to the unique needs of the sports community while upholding fundamental legal principles and human rights.

3.3 General principles governing international dispute resolution

The international dispute resolution framework for sports is guided by several fundamental principles to ensure fairness, efficiency and respect for human rights. These principles have

[209] Gerhard Wagner and Oguzhan Samanci, 'Arbitration Meets Human Rights—The Pechstein Saga and Its Implications for Commercial Disputes' (2025) 41(2) *Arbitration International* 257.

evolved and are shaped by the unique nature of sports disputes, international legal norms and the specific challenges faced in sports arbitration.[210] These principles are especially significant in South Africa, given the country's history and constitutional emphasis on human rights.

3.3.1 Principle of party autonomy

A cornerstone principle in international sports dispute resolution is party autonomy, which recognises the right of parties to choose the method of dispute resolution and the rules governing the process.[211] In the sports context, this often manifests as arbitration clauses in athlete contracts or sports organisation statutes.[212] However, the application of this principle in sports has been debated, particularly regarding the mandatory nature of arbitration in many sports disputes. As Rigozzi and Robert-Tissot note, the principle of party autonomy in sports arbitration is often more theoretical than practical, given that athletes frequently have no choice but to accept arbitration clauses as a condition of their participation in their sport.[213]

Barkhuizen v Napier[214] set a precedent for evaluating the constitutionality of contractual terms, including arbitration clauses, based on public policy considerations. The tension between party autonomy and athletes' rights has been a subject of international debate. The ECtHR's decision in *Mutu and Pechstein v Switzerland*[215] acknowledged the validity of the CAS system while emphasising the need for procedural safeguards to protect athletes' rights. This decision has implications for the global interpretation of party autonomy in sports arbitration, including in South Africa.

3.3.2 Principle of due process

Due process is a fundamental principle in any dispute resolution system. It is particularly important in sports disputes, where athletes' careers and reputations are often at stake. Due process principles encompass several vital elements, including the right to a fair hearing, the right to be heard and equal treatment.[216] The CAS has developed its own jurisprudence on due process, influencing national sports arbitration bodies. Key elements of due process in the CAS proceedings include

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[210] Antoine Duval, 'Lost in Translation? The European Convention on Human Rights at the Court of Arbitration for Sport' (2022) 22 International Sports Law Journal 132.
[211] W Yan, 'Court of Arbitration for Sport: Rules and Issues' (2023) 11 Open Journal of Social Sciences 64.
[212] Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014).
[213] Antonio Rigozzi and Fabrice Robert-Tissot, '"Consent" in Sports Arbitration: Its Multiple Aspects' in Elliott Geisinger and Elena Trabaldo-de Mestral (eds), *Sports Arbitration: A Coach for Other Players?* (Juris 2015) 59-94.
[214] *Barkhuizen v Napier* [2007] ZACC 5.
[215] *Mutu and Pechstein v Switzerland* (n 158).
[216] Blackshaw, *International Sports Law* (n 147).

the right to be heard, the right to equal treatment and the right to a reasoned decision.[217] These principles align with South African constitutional values and have been incorporated into the dispute resolution mechanisms of national sports bodies. However, challenges remain in ensuring due process in all sports disputes. Naidoo and Slogrove highlight that in some cases, particularly at the lower levels of sport, athletes may lack access to legal representation or face time pressures that compromise their ability to present their case fully.[218] Addressing these challenges is crucial for upholding human rights in sports dispute resolution.

3.3.3 Principle of independence and impartiality

The principles of independence and impartiality are crucial for ensuring the legitimacy and credibility of sports dispute resolution mechanisms. These principles require that arbitrators and decision-makers be free from external influences and personal biases.[219] Internationally, the independence of the CAS has been a subject of scrutiny and reform. The 1994 Paris Agreement, which led to the creation of the International Council of Arbitration for Sport (ICAS), was a significant step towards enhancing the CAS's independence from the International Olympic Committee (IOC).[220] However, debates about the CAS's true independence continue, with some scholars arguing for further reforms to strengthen its autonomy.[221] The principle of independence also extends to national sports federations and their dispute resolution mechanisms. In South Africa, the independence of these bodies is crucial for ensuring the fair treatment of athletes and upholding human rights. *Coetzee v Comitis and Others*[222] highlighted the importance of independent dispute-resolution mechanisms in sports, with the court emphasising the need for fair procedures in player-transfer disputes.

3.3.4 Principle of transparency

Transparency is increasingly recognised as a crucial principle in sports dispute resolution, particularly given the public interest in many sports-related disputes.[223] This principle

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[217] Mavromati and Reeb (n 186).
[218] Rashid Naidoo and Cheryl L Slogrove, 'Sports Arbitration in South Africa: Challenges and Opportunities' (2020) 20 International Sports Law Journal 82.
[219] Reeb (n 156) 21.
[220] Antonio Rigozzi and Brianna Quinn, 'Evidentiary Issues before CAS' in Michele Bernasconi (ed), *International Sports Law and Jurisprudence of the CAS* (Weblaw 2014).
[221] Johan Lindholm, *The Court of Arbitration for Sport and its Jurisprudence: An Empirical Inquiry into Lex Sportiva* (TMC Asser Press 2019).
[222] *Coetzee v Comitis and Others* 2001 (1) SA 1254 (C).
[223] Antoine Duval, 'The Court of Arbitration for Sport and EU Law' (2015) 22 *Maastricht Journal of European and Comparative Law* 224, 232.

encompasses the publication of arbitral awards, clear procedural rules and open hearings in appropriate cases.[224]

Internationally, the CAS has sought to increase transparency, including publishing reasoned awards and introducing public hearings in certain cases.[225] However, challenges remain in balancing transparency with other considerations, such as confidentiality and athletes' privacy. There have been calls for greater transparency in sports governance and dispute resolution. Louw argues that increased transparency in sports tribunals and arbitration proceedings could enhance accountability and public trust in the sports system.[226] This aligns with broader efforts to promote transparency and good governance in sport, as outlined in the National Sport and Recreation Plan.[227]

3.3.5 Principle of proportionality

The principle of proportionality is particularly relevant in sports disputes, especially in cases involving sanctions for rule violations. This principle requires that any restrictive measure or sanction imposed on an athlete or sports organisation should be proportionate to the offence committed.[228] The principle of proportionality is reflected in South Africa's constitutional jurisprudence, particularly in the application of the limitations clause (s 36) of the South African Constitution. This principle has implications for how sports disputes are resolved and sanctions are imposed.

The CAS has developed a body of jurisprudence on proportionality, particularly in doping cases. The principle of proportionality is explicitly recognised in the World Anti-Doping Code, which allows sanctions to be reduced based on the athlete's degree of fault.[229] This approach has influenced anti-doping procedures in South Africa, as implemented by SAIDS. However, challenges remain in ensuring proportionality in all sports disputes. McLaren notes that in some cases, particularly those involving technical rule violations, the principle of strict liability may conflict with the need for proportionate sanctions.[230] Balancing these considerations remains an ongoing challenge in sports dispute resolution.

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[224] Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence* (n 105).
[225] Court of Arbitration for Sport, 'Code of Sports-related Arbitration' (2019).
[226] Andre Louw, *Sports Law in South Africa* (Kluwer Law International 2010).
[227] Department of Sport and Recreation, Republic of South Africa, 'National Sport and Recreation Plan' (2012).
[228] Foster, 'Lex Sportiva and Lex Ludica' (n 167) 1.
[229] World Anti-Doping Agency, 'World Anti-Doping Code' (2021).
[230] Richard McLaren, 'The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes' (2001) 35(3) Valparaiso University Law Review 379.

3.3.6 Principle of lex sportiva

The concept of *lex sportiva*, or the specific body of rules and principles applicable to sports, has gained recognition as a guiding principle in international sports dispute resolution. *Lex sportiva* encompasses both the rules of sports federations and the jurisprudence developed by sports arbitration bodies, particularly the CAS.[231] The recognition of *lex sportiva* must be balanced against constitutional principles and national law. Louw argues that while *lex sportiva* plays an important role in sports dispute resolution, it must be applied in a manner consistent with South African constitutional values and human rights norms.[232]

The CAS has played a significant role in developing *lex sportiva* through its jurisprudence. Key principles of *lex sportiva* include the specificity of sport, strict liability in doping cases, and fairness in competition.[233] These principles have influenced how sports disputes are resolved globally. However, the application of *lex sportiva* is not without challenges. Critics argue that it may sometimes conflict with national legal systems or human rights norms.[234] In South Africa, this tension is particularly relevant given the country's strong constitutional framework and emphasis on human rights.

3.3.7 Principle of expeditious resolution

The principle of expeditious resolution is crucial in sports disputes, where delays can significantly impact athletes' careers and the integrity of competitions. This principle requires that disputes be resolved quickly and efficiently, without compromising fairness.[235] This principle has influenced the development of sports dispute resolution mechanisms in the country, with many sports bodies establishing fast-track procedures for urgent cases.

Internationally, the CAS has developed procedures for expedited arbitration, particularly for disputes arising during major sporting events like the Olympic Games.[236] These procedures aim to balance the need for quick resolution with the requirements of due process. However, challenges remain in ensuring expeditious resolution in all sports disputes. Naidoo and Slogrove note that in some cases, particularly those involving complex scientific evidence or multiple parties, achieving

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[231] Foster, 'Is There a Global Sports Law?' (n 94) 1.
[232] Andre Louw, 'An "Ad Hoc" Affair: A Constitutional Assessment of the South African Sports Commission Act' (2012) 12(1-2) International Sports Law Journal 65.
[233] Nafziger, *International Sports Law* (n 13).
[234] Antoine Duval and Ben van Rompuy, 'The Compatibility of Forced CAS Arbitration with EU Competition Law' (n XX).
[235] Blackshaw, *International Sports Law* (n 147).
[236] Court of Arbitration for Sport, 'Code of Sports-related Arbitration' (2019).

a quick resolution can be challenging.[237] Balancing speed with thoroughness and fairness is an ongoing consideration in sports dispute resolution.

3.3.8 Principle of confidentiality

Confidentiality is an important principle in many forms of ADR, including sports arbitration. This principle aims to protect the privacy of the parties involved and to encourage open and frank discussions during the dispute resolution process.[238] The principle of confidentiality must be balanced against constitutional rights to access to information and open justice. *City of Cape Town v South African National Roads Authority Limited and Others*[239] emphasised the importance of open justice in arbitration proceedings, potentially impacting how confidentiality is approached in sports disputes.

Internationally, the CAS Code provides for confidentiality in its proceedings, although this can be waived by the parties' agreement.[240] However, there is a growing trend towards greater transparency in sports arbitration, particularly in cases of significant public interest. The tension between confidentiality and transparency remains a key challenge in sports dispute resolution. While confidentiality can protect athletes' privacy and encourage settlement, it may also limit public scrutiny and accountability in sports governance.[241]

3.3.9 Principle of finality

The principle of finality is crucial in sports dispute resolution, as it provides certainty and closure. This principle is often reflected in the limited grounds for appeal of arbitral awards and the binding nature of decisions.[242] The principle of finality must be balanced against the constitutional right of access to courts. The South African Arbitration Act[243] provides limited grounds for setting aside arbitral awards, similar to international standards. However, the constitutional right of access to courts may provide an additional avenue for challenging arbitral decisions in certain circumstances.

Internationally, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) provides the principal framework for the recognition and enforcement of foreign arbitral awards, including awards arising from international sports

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[237] Naidoo and Slogrove (n 212) 82.
[238] Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014).
[239] *City of Cape Town v South African National Roads Authority Limited and Others* [2015] ZACC 25.
[240] Court of Arbitration for Sport, 'Code of Sports-related Arbitration' (2019).
[241] Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence* (n 105).
[242] Blackshaw, *International Sports Law* (n 147).
[243] Act 42 of 1965.

arbitration where the Convention applies. South Africa is a party to the Convention and gives effect to its obligations through domestic legislation. The enforceability of an arbitral award does not, however, render it immune from judicial scrutiny. CAS awards have been challenged before domestic courts, particularly before the Swiss Federal Tribunal as the supervisory court at the seat of CAS arbitration, while the legal consequences of compulsory CAS arbitration have also been considered by courts in other jurisdictions. The *Matuzalém* and *Pechstein* litigation demonstrates that the finality of sports arbitration remains subject to judicial scrutiny where public policy, the validity of the arbitration arrangement or fundamental procedural guarantees are implicated.[244]

The general principles governing international dispute resolution in sports reflect a complex balance between the need for specialised, efficient dispute resolution mechanisms and the protection of fundamental rights and fairness.[245] While significant progress has been made in developing a robust framework for sports dispute resolution, challenges remain. These include ensuring the true independence and impartiality of arbitration bodies, balancing confidentiality with transparency, and reconciling the specificity of sports law with broader legal and human rights norms. As sports continue to evolve and new challenges emerge, these principles will most likely continue to develop and adapt. The ongoing task for South Africa and the international sports community is to ensure that dispute resolution mechanisms remain fair, efficient and respectful of human rights, while also addressing the unique needs and characteristics of the sporting world.

3.3.10 *Implications for sports dispute resolution*

For this study, the principles examined above impose identifiable constraints on sports adjudication. Human dignity requires procedures that treat athletes as rights-bearing participants rather than merely as subjects of the federation's authority. Equality and non-discrimination require procedural rules and access to remedies to operate without unjustifiable differential treatment. Proportionality requires procedural restrictions, including exhaustion requirements, time limits, and limitations on review, to bear a defensible relationship to the sporting objective they serve. Procedural fairness and institutional independence require notice of the case to be answered, a meaningful opportunity to present that case, and determination by an independent and impartial

[244] *Matuzalém Francelino da Silva v Fédération Internationale de Football Association (FIFA)* Swiss Federal Tribunal, 4A_558/2011, 27 March 2012; *Claudia Pechstein v International Skating Union* Bundesgerichtshof [German Federal Court of Justice], KZR 6/15, 7 June 2016.

[245] Ian Blackshaw, 'ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration and Mediation Center' (2013) 24 Marquette Sports Law Review 1.

decision-maker. Access to an effective remedy requires an adverse decision to remain capable of meaningful challenge where protected rights are implicated.[246]

These requirements provide concrete criteria for the analysis of SASCOC, SAFA and CSA in the subsequent chapters. The existence of an internal appeal, arbitration clause or specialised tribunal will therefore not, by itself, establish procedural compliance. The analysis must determine who appoints the decision-maker, whether the parties can meaningfully present their cases, whether reasons are provided, what time and cost barriers apply, whether internal remedies must first be exhausted, and whether recourse to an ordinary court remains practically available. The central inquiry is thus whether each framework achieves the benefits of specialised sports adjudication without restricting the procedural protections against which its decisions must be tested.

3.4 The hierarchy of international dispute resolution institutions

The international framework for sports dispute resolution is characterised by a complex, multi-tiered structure reflecting modern sports' global nature and the need for specialised mechanisms to address sports-related conflicts.[247] This hierarchical system, which has evolved over decades, encompasses various levels of authority and jurisdiction, from local sports clubs to international governing bodies. This framework aims to provide a unified and consistent approach to resolving sports disputes while respecting the autonomy of sports organisations and the specific needs of different sporting disciplines.[248] The hierarchy of international dispute resolution institutions in sports is not merely a bureaucratic structure but a reflection of the intricate relationships between various stakeholders in the sporting world. It represents a delicate balance between the need for local autonomy and global consistency, between the specificity of sport and the universal principles of justice and human rights.[249] This balance is particularly crucial in the context of South Africa, a country with a unique sporting history and a constitutional framework that emphasises human rights protection.[250]

Delving into the various levels of this hierarchy, it is essential to consider how each tier interacts with and influences the others, and how this structure as a whole impacts the protection and promotion of human rights in sports. The effectiveness of this system in safeguarding athletes'

[246] Arnout Geeraert, 'A Legit Supreme Court of World Sports? The CAS(e) for Reform' (2021) 21 *The International Sports Law Journal* 260; Brendan Schwab, 'Embedding the Human Rights of Players in World Sport' (2018) 17 *The International Sports Law Journal* 214.
[247] McArdle (n 132).
[248] Reeb (n 156) 21-25.
[249] Foster, 'Is There a Global Sports Law?' (n 94) 1-18.
[250] Antonio Rigozzi and Emily Wisnosky, 'The Recent Revision of the Code of Sports-related Arbitration (CAS Code)' (2016) Jusletter 20.

rights, ensuring fair competition and maintaining the integrity of sports is a matter of ongoing debate and scrutiny, particularly in countries like South Africa that are striving to reconcile international sporting norms with domestic legal and constitutional imperatives. The sections that follow will examine each level of this hierarchy in detail, starting from the foundational level of national sports federations and their subsidiaries, moving up to international sporting federations, and culminating in the CAS as the apex institution for sports dispute resolution. Throughout this analysis, I will focus on this structure's human rights implications, particularly as they relate to the South African context.

3.4.1 National sports federations and their subsidiaries

National sports federations (NSFs) and their subsidiaries are at the base of the international sports dispute resolution hierarchy.[251] The international sports dispute resolution framework is often conceptualised as a hierarchical structure, with NSFs and their subsidiaries typically forming the foundation.[252] However, the term 'national sports federation' can be misleading, as these organisations vary significantly in respect of their legal status, governance structures, and their relationships with both governmental bodies and international federations across different countries and sports.[253] This diversity complicates their role in dispute resolution and challenges the notion of a uniform 'base' in the international sports dispute resolution hierarchy. NSFs form the foundation of sports governance and dispute resolution at the local and national levels. NSFs play a crucial role in organising competitions, developing athletes, and implementing rules and regulations specific to their respective sports.[254] The structure and operations of NSFs in South Africa are significantly influenced by the country's unique historical and social context. The post-apartheid era has seen a concerted effort to transform these organisations to better reflect the demographic diversity of the country and to address historical inequalities in sports participation and governance.[255] This transformation process has had profound implications for how these federations approach dispute resolution and human rights issues.

NSFs have developed their own internal dispute resolution mechanisms. These mechanisms typically include disciplinary committees, appeals processes and, in some cases, specialised

[251] Mark James, *Sports Law* (3rd edn, Palgrave Macmillan 2017) 215.
[252] Jean-Loup Chappelet and Michaël Mrkonjic, 'Existing Governance Principles in Sport: A Review of Published Literature' in Jens Alm (ed), *Action for Good Governance in International Sports Organisations* (Play the Game/Danish Institute for Sports Studies 2013) 225.
[253] Borja García, 'Sport Governance after the White Paper: The Demise of the European Model?' (2009) 1 International Journal of Sport Policy 267, 270-272.
[254] Blackshaw, *Sport, Mediation and Arbitration* (n 136).
[255] A Desai and G Vahed, 'The Coming of Nelson and the Ending of Apartheid Cricket? Gatting's Rebels in South Africa, 1990' (2016) 33(15) IJHS 1.

arbitration panels.[256] The primary advantage of these federation-level dispute resolution systems is their sport-specific expertise and their ability to resolve conflicts quickly and efficiently.[257] However, the effectiveness of these internal mechanisms in protecting human rights has been criticised. Critics argue that these systems may lack independence, as the adjudicators are often closely tied to the NSFs.[258] This potential lack of impartiality raises concerns about the fairness of proceedings, particularly in cases where an athlete's rights may conflict with the NSF's interests.[259]

Moreover, the accessibility of these dispute resolution mechanisms is another critical issue from a human rights perspective. Many athletes, particularly those from disadvantaged backgrounds, may lack the resources or knowledge to navigate these systems effectively.[260] This inequality in access to justice within sports can perpetuate existing socio-economic disparities. The subsidiaries of NSFs, including provincial and local sports bodies, also play a role in dispute resolution at their respective levels. These organisations often handle disputes at the grassroots level, dealing with issues ranging from player eligibility to local competition rules.[261] While these lower-level bodies can provide more accessible forums for dispute resolution, they may face challenges in terms of resources, expertise and consistency in decision-making.[262]

In recent years, there has been a growing recognition of the need to align the dispute resolution practices of NSFs and their subsidiaries with broader human rights principles. A significant development in this regard was the establishment of the Sports Dispute Resolution Centre of South Africa (SDRCSA) in 2011.[263] The SDRCSA aims to provide an independent forum for resolving sports disputes, offering services such as mediation and arbitration. This institution tries to address some of the shortcomings of federation-level dispute resolution mechanisms, particularly in terms of independence and expertise.[264] However, the relationship between the SDRCSA and the internal dispute resolution mechanisms of NSFs is complex. While the SDRCSA offers an alternative forum, many federations still prefer to handle disputes internally, at least in the first instance.[265] This preference for internal resolution can sometimes conflict with athletes' rights to an

[256] Louw, *Sports Law in South Africa* (n 220).
[257] Nafziger, *International Sports Law* (n 13).
[258] Gardiner et al (n XX).
[259] R Cloete (ed), *Introduction to Sports Law in South Africa* (LexisNexis Butterworths 2005).
[260] Anderson, *Modern Sports Law* (n 185).
[261] Blackshaw, *Sport, Mediation and Arbitration* (n 136).
[262] Gardiner et al (n 165).
[263] Sports Dispute Resolution Centre of South Africa, 'Founding Document' (2011).
[264] Ian Blackshaw, 'ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center' (2013) 24 Marquette Sports Law Review 1.
[265] Louw, *Sports Law in South Africa* (n 220).

independent and impartial hearing, as guaranteed by both international human rights norms and the South African Constitution.[266]

The tension between the autonomy of sports organisations and the need for external oversight is particularly evident in cases involving human rights issues. For instance, disputes related to gender discrimination, racial equality or freedom of expression in sports often raise complex legal and ethical questions that may be beyond the expertise of sports administrators.[267] In such cases, the adequacy of federation-level dispute resolution mechanisms in protecting human rights has been called into question.[268] Furthermore, the proliferation of different dispute resolution mechanisms across various NSFs and levels of sport in South Africa has led to concerns about consistency and predictability in decision-making.[269] This lack of uniformity can undermine the rule of law in sports and create uncertainty for athletes and other stakeholders.[270]

Despite these challenges, NSFs and their subsidiaries remain crucial components of the sports dispute resolution framework in South Africa. Their proximity to the sports they govern and their specialised knowledge means that they are well-positioned to handle many types of disputes efficiently.[271] However, as the country continues to grapple with issues of transformation, equality and human rights in sports, these organisations face increasing pressure to reform their dispute resolution practices. The ongoing evolution of dispute resolution at the NSF level reflects broader global trends in sports governance. There is growing recognition internationally that sports organisations must balance their need for autonomy with their responsibility to respect and protect human rights.[272] This balancing act is particularly complex in South Africa, where the legacy of apartheid continues to influence discussions about fairness, equality and access to justice in sports.[273] As we move up the hierarchy of international sports dispute resolution, it becomes clear that the practices and decisions of NSFs and their subsidiaries form the foundation upon which higher-level mechanisms are built. The strengths and weaknesses of these ground-level institutions have significant implications for how disputes are handled at international levels and, ultimately, for the overall protection of human rights in sports.[274]

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[266] Z Motala and C Ramaphosa, *Constitutional Law: Analysis and Cases* (Oxford University Press Southern Africa 2002).
[267] Schwab 'When We Know Better, We Do Better (n 97) 4.
[268] S Greenfield and G Osborn (eds), *Law and Sport in Contemporary Society* (Frank Cass Publishers 2000).
[269] S Boyes, 'Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies' [2017] Public Law 363.
[270] Foster, 'Global Sports Law Revisited' (n 94) 1.
[271] D Healey, *Sport and the Law* (UNSW Press 2005).
[272] Schwab 'When We Know Better, We Do Better (n 97) 4-67.
[273] Motala and Ramaphosa (n 260).
[274] Stephen Weatherill, *Principles and Practice in EU Sports Law* (Oxford University Press 2017).

3.4.2 International sporting federations

The international sports governance structure is often described as having multiple tiers, with international sporting federations (ISFs) typically positioned above national bodies.[275] However, the term 'international sporting federation' encompasses a diverse array of organisations with varying levels of authority, resources and recognition.[276] These range from well-established, powerful bodies like FIFA (Fédération Internationale de Football Association) to smaller, less influential federations for niche sports. This diversity complicates their role in global sports governance and dispute resolution. While ISFs generally aim to regulate their respective sports globally, their effectiveness in doing so – and, consequently, their impact on dispute resolution – can vary significantly based on factors such as their financial resources, political influence, and the popularity of the sport they govern.[277] Organisations such as FIFA, World Athletics, and the International Cricket Council (ICC) oversee their respective sports globally, setting rules, organising international competitions, and establishing dispute-resolution mechanisms that often supersede those of NSFs.[278] The influence of ISFs on the dispute resolution landscape is profound and multi-faceted. These bodies typically have dispute-resolution mechanisms, including disciplinary committees, ethics committees, and, sometimes, specialised arbitration tribunals.[279] These mechanisms are designed to handle various disputes, ranging from technical rule violations to more complex issues involving governance, corruption and human rights.[280]

The policies and procedures of ISFs have significant implications. As a member of various international sporting bodies, South Africa must align its national practices with international standards.[281] This alignment extends to dispute resolution mechanisms, often requiring NSFs to incorporate or defer to the dispute resolution processes of their international parent bodies.[282] The relationship between ISFs and national bodies in the context of dispute resolution is not always straightforward. While ISFs generally respect the principle of subsidiarity, allowing national bodies to handle domestic disputes first, they often retain the right to intervene in cases of

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[275] Foster, 'Global Sports Law Revisited' (n 94) 4-5.
[276] Jean-Loup Chappelet, *The Autonomy of Sport in Europe* (Council of Europe Publishing 2010) 37-40.
[277] Arnout Geeraert, Jens Alm and Michael Groll, 'Good Governance in International Sport Organizations: An Analysis of the 35 Olympic Sport Governing Bodies' (2014) 6 International Journal of Sport Policy and Politics 281, 283-285.
[278] Matthew J Mitten and Hayden Opie, '"Sports Law": Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution' (2010) 85 Tulane Law Review 269.
[279] IS Blackshaw, RC Siekmann and J Soek (eds), *The Court of Arbitration for Sport 1984-2004* (TMC Asser Press 2006).
[280] R Parrish and S Miettinen, *The Sporting Exception in European Union Law* (TMC Asser Press 2008).
[281] Mitten and Opie (n 272) 269-322.
[282] J Anderson, 'The Juridification of Sport: A Comparative Analysis of Children's Rugby and Cricket in England and South Africa' (2019) 18 The International Sports Law Journal 171.

perceived mishandling or matters of international significance.[283] This dynamic can create tensions, particularly when international norms conflict with local practices or constitutional provisions.[284]

From a human rights perspective, the dispute resolution mechanisms of ISFs present both opportunities and challenges. On the positive side, these mechanisms can provide consistency and expertise that may be lacking at the national level.[285] They can also provide recourse for athletes or officials who believe their rights have been violated by national bodies.[286] For instance, South African athletes have occasionally appealed to ISFs when they believed that they were unfairly treated by national selectors or disciplinary bodies.[287] However, the human rights aspects of ISFs' dispute resolution mechanisms are not uniformly positive. Critics argue that these systems often prioritise sports' commercial interests over the rights of individual athletes.[288] Concerns have been raised about the independence and impartiality of decision-making bodies in ISFs, particularly given the close relationships among international sports administrators.[289]

Moreover, the global nature of these ISFs means that their dispute resolution mechanisms must navigate complex cross-cultural and legal landscapes. What may be considered a fair process in one jurisdiction might not meet the constitutional standards of another.[290] This complexity is particularly relevant for South Africa, with its strong constitutional protections and unique historical context.[291] The issue of access to justice at the ISF level is another critical consideration from a human rights perspective. The costs of bringing a case before an ISF can be prohibitive for many athletes, particularly those from developing countries such as South Africa.[292] This financial barrier can effectively deny athletes access to justice, potentially perpetuating power imbalances within the global sports system.[293] ISFs have also faced criticism for their handling of human rights issues that intersect with sports. Cases involving gender identity in athletics, religious expression

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283 Duval, 'Lex Sportiva' (n 153) 822.
284 Mitten and Opie (n 272) 269.
285 HA Findlay, 'Rules of a Sport-Specific Arbitration Process as an Instrument of Policy Making' (2005) 16(1) Marquette Sports Law Review 73.
286 A Rigozzi, 'Challenging Awards of the Court of Arbitration for Sport' (2010) 1(1) Journal of International Dispute Settlement 217.
287 AM Louw, 'Evaluating Recent Developments in the Governance and Regulation of South African Sport: Some Thoughts and Concerns for the Future' (2006) 2006(1-2) International Sports Law Journal 48.
288 Nafziger, *International Sports Law* (n 13).
289 DP Panagiotopoulos, 'Clauses for a Legitimizing Basis of Regulatory Competence in International Sports Activities: A Lex Sportiva and Lex Olympica Constitutional Charter' (2013) 10(1–2) International Sports Law Review Pandektis 15.
290 Blackshaw, *Sport, Mediation and Arbitration* (n 136).
291 Louw, *Sports Law in South Africa* (n 220).
292 Louise Reilly, 'Introduction to the Court of Arbitration for Sport (CAS) and the Role of National Courts in International Sports Disputes, A Symposium' (2012) 2012 Journal of Dispute Resolution 63.
293 Stephen Weatherill, *European Sports Law: Collected Papers* (2nd edn, ASSER International Sports Law Series, Springer 2014).

in football, and political protests in various sports have highlighted the challenges that ISFs face in balancing sporting regulations with human rights principles.[294] ISFs' responses to these issues have significant implications for athletes' rights globally, including in South Africa.[295]

In recent years, ISFs have recognised the need to more explicitly incorporate human rights considerations into their governance and dispute resolution frameworks.[296] This shift has been driven by a combination of external pressure from human rights organisations, athletes' advocacy groups and evolving public expectations.[297] FIFA, for instance, has taken steps to strengthen its human rights policies, including establishing an independent Human Rights Advisory Board.[298] Similarly, the IOC has incorporated explicit human rights commitments into its host city contracts.[299] These developments at the international level have the potential to positively influence dispute resolution practices in member countries.

However, the implementation of human rights principles by ISFs remains a work in progress. Critics argue that there is often a gap between the stated commitments of ISFs and their actions in practice.[300] The effectiveness of human rights policies in the context of dispute resolution often depends on the willingness of ISF leadership to prioritise these issues and on the existence of robust accountability mechanisms.[301] For South African sports, navigating the ISF-level dispute resolution landscape presents unique challenges. The country's strong domestic human rights framework, enshrined in its Constitution, can sometimes clash with the more limited protections offered by ISFs.[302] South African athletes and sports administrators must often balance their obligations to ISFs with their rights and responsibilities under national law.

The role of ISFs in dispute resolution also raises questions about the appropriate balance between the autonomy of sports governance and the need for external oversight.[303] While ISFs argue that sport-specific dispute resolution mechanisms are needed, there is growing pressure for greater transparency and accountability, particularly in cases that have significant human rights

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294 S Teetzel, 'The Onus of Inclusivity: Sport Policies and the Enforcement of the Women's Category in Sport' (2014) 41(1) Journal of the Philosophy of Sport 113.
295 J Anderson and N Partington, 'Duty of Care in Sport: Time for a Sports Ombudsman?' (2018) 18(1) International Sports Law Review 3.
296 Schwab 'When We Know Better, We Do Better (n 97) 4.
297 John Gerard Ruggie, 'Business and Human Rights: The Evolving International Agenda' (Corporate Social Responsibility Initiative Working Paper 31, John F Kennedy School of Government, Harvard University 2007).
298 FIFA, 'FIFA's Human Rights Policy' (May 2017 Edition 2017).
299 International Olympic Committee, *Host City Contract 2028: Principles* (September 2017).
300 D Heerdt, 'Tapping the Potential of Human Rights Provisions in Mega-Sporting Events' Bidding and Hosting Agreements' (2018) 17 The International Sports Law Journal 170.
301 Geeraert, *Sports Governance Observer 2015* (n 271).
302 Motala and Ramaphosa (n 260).
303 Foster, 'Global Sports Law Revisited' (n 94) 1.

implications.[304] As we consider the place of ISFs in the hierarchy of sports dispute resolution, it becomes clear that their influence extends far beyond the technical aspects of sport. These bodies play a crucial role in shaping the normative environment in which sports operate globally, including the standards for protecting human rights in the sporting context.[305]

3.4.3 The Court of Arbitration for Sport as the apex court for resolving sporting disputes

The CAS stands at the pinnacle of the international sports dispute resolution hierarchy.[306] Established in 1984, the CAS has evolved to become the main forum for resolving sports-related disputes at the international level.[307] Often referred to as the 'Supreme Court of World Sport',[308] the CAS plays a crucial role in providing a unified approach to sports arbitration, thus contributing to the development of a coherent body of global sports law.[309] The CAS's position at the apex of the sports dispute resolution framework has significant implications for the protection of human rights in sports, both globally and in the context of South African sports. The CAS handles a wide range of disputes, from commercial conflicts to disciplinary matters, and, increasingly, cases that intersect with fundamental human rights issues.[310]

The structure and procedures of the CAS are designed to provide a specialised, efficient and globally consistent approach to sports dispute resolution. The court operates through various divisions, including the Ordinary Arbitration Division, the Appeals Arbitration Division, and *ad hoc* divisions established for specific major sporting events.[311] This structure allows the CAS to address a diverse array of sports-related disputes while maintaining a degree of flexibility to meet the unique needs of different sporting contexts.[312] For South African sports, the CAS represents both an opportunity and a challenge. On the one hand, it provides a neutral, international forum for resolving disputes that might otherwise be subject to potentially biased or inconsistent national procedures.[313] This can be particularly valuable in a country like South Africa, where the legacy of apartheid has left lingering concerns about fairness and equality in various institutions, including sports organisations.[314] On the other hand, the relationship between CAS decisions and

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304 Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence* (n 105).
305 Duval, 'Lex Sportiva' (n 153) 822.
306 Reilly, 'Introduction to the Court of Arbitration for Sport' (n XX) 63.
307 Reeb (n 286) 21.
308 Chui Ling Goh and Jack Anderson, 'The Credibility of the Court of Arbitration for Sport' (2022) 13 Harvard Journal of Sports and Entertainment Law 205, 205.
309 Blackshaw, Siekmann and Soek (n XX).
310 RH McLaren, 'The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes' (2001) 35(2) Valparaiso University Law Review 379.
311 ibid.
312 Mavromati and Reeb (n 186).
313 Blackshaw, *Sport, Mediation and Arbitration* (n 136).
314 Louw, *Sports Law in South Africa* (n 220).

national legal systems, including constitutional protections, can be complex and sometimes contentious. While the CAS generally respects the principle of party autonomy in arbitration, its decisions can sometimes clash with national legal norms, particularly in areas related to human rights.[315] This tension is exemplified by cases where CAS rulings have been challenged in national courts, including in South Africa, on grounds of public policy or fundamental rights violations.

From a human rights perspective, the CAS's role as the apex institution for sports dispute resolution raises several critical issues. A primary concern is the question of access to justice. While the CAS provides a specialised forum for sports disputes, the costs associated with bringing a case before the CAS can be prohibitive for many athletes, particularly those from developing countries like South Africa.[316] This financial barrier effectively denies athletes access to the highest level of sports justice, potentially perpetuating inequalities in the global sports system.[317] Moreover, the independence and impartiality of the CAS have been the subject of ongoing debate. Critics argue that the CAS's close ties with ISFs, particularly the IOC, which played a key role in its establishment, may compromise its neutrality.[318] This perception of potential bias can be particularly problematic in cases where individual athletes' rights are pitted against the interests of powerful sports governing bodies.[319] The CAS has taken steps to address these concerns, including reforms to its governance structure and the introduction of legal aid programmes to improve access for athletes with limited financial means.[320] However, the effectiveness of these measures in fully addressing human rights concerns remains a matter of debate among scholars and practitioners.[321]

In the South African context, the interaction between the CAS and national legal systems raises particular challenges. The country's strong constitutional framework, with its emphasis on human rights protection, can sometimes clash with the more limited scope of review typically applied by the CAS.[322] This has led to situations where South African athletes or sports bodies have sought to challenge CAS's decisions in national courts, arguing that these decisions fail to adequately protect constitutional rights.[323] The case of Caster Semenya, the South African middle-distance

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315 Lindholm, *The Court of Arbitration for Sport and Its Jurisprudence* (n 105).
316 Reilly (n 286).
317 DP Panagiotopoulos, 'Clauses for a Legitimizing Basis of Regulatory Competence in International Sports Activities: A Lex Sportiva and Lex Olympica Constitutional Charter' (2013) 10(1–2) International Sports Law Review Pandektis 15.
318 Duval, 'The Olympic Charter: A Transnational Constitution Without a State?' (2017) 44(S1) Journal of Law and Society S144.
319 A Geeraert, M Mrkonjic and JL Chappelet, 'A Rationalist Perspective on the Autonomy of International Sport Governing Bodies: Towards a Pragmatic Autonomy in the Steering of Sports' (2015) 7(4) International Journal of Sport Policy and Politics 473.
320 Court of Arbitration for Sport, 'Guidelines on Legal Aid before the Court of Arbitration for Sport' (2019).
321 S Boyes, 'Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies' [2017] Public Law 363.
322 Lindholm, (n 105) 301-302.
323 Department of Sport and Recreation South Africa, 'National Sport and Recreation Plan' (2011).

runner, is a stark illustration of the complex interplay between the CAS's rulings, human rights considerations and national legal systems. Semenya's challenge to the IAAF's regulations on athletes with differences of sex development (DSD) not only highlighted the CAS's role in adjudicating sensitive human rights issues, but also sparked broader debates about gender equality, bodily autonomy and non-discrimination in sports.[324]

The Semenya case underscores the challenges that the CAS faces in balancing the specificity of sport with broader human rights principles. While the CAS upheld the IAAF's regulations, the decision has been criticised by human rights organisations and legal scholars for potentially violating fundamental rights to dignity, bodily integrity and non-discrimination.[325] The subsequent appeals and challenges in various forums, including the Swiss federal courts and the ECtHR, highlight the complex relationship between sports arbitration and human rights law.[326] The CAS's handling of cases with significant human rights implications has led to calls for reform, both from within the sports community and from external human rights advocates. These calls include proposals for greater transparency in CAS proceedings, enhanced human rights expertise among arbitrators, and more explicit incorporation of human rights standards into the court's decision-making framework.[327]

For South Africa, engaging with the CAS system while maintaining fidelity to its constitutional human rights commitments presents an ongoing challenge. The country's sports administrators, athletes and legal professionals must navigate a complex landscape where international sporting norms, as interpreted and applied by the CAS, may not always align perfectly with domestic constitutional protections. Looking to the future, the role of the CAS in protecting human rights in sports is likely to continue evolving. As global awareness of human rights issues in sports grows, the court may face increasing pressure to more explicitly consider human rights implications in its rulings.[328] This evolution could have significant implications for how sports disputes are resolved at all levels, potentially influencing practices in NSFs and ISFs.[329]

In conclusion, the CAS, as the apex institution in the hierarchy of international sports dispute resolution, plays a crucial role in shaping the landscape of global sports governance. Its position

[324] S Loland, 'Caster Semenya, Athlete Classification, and Fair Equality of Opportunity in Sport' (2020) 46(9) Journal of Medical Ethics 584, 584-590.
[325] JL Adair, 'In a League of their Own: The Case for Intersex Athletes' (2011) 18 Sports Lawyers Journal 121.
[326] L Mergaert, C Arnaut, T Vertommen and M Lang, *Study on Gender-based Violence in Sport* (European Commission 2016).
[327] A Duval, 'Time to Go Public? The Need for Transparency at the Court of Arbitration for Sport' [2019] Yearbook of International Sports Arbitration.
[328] Brenda Schwab, 'Embedding the Human Rights of Players in World Sport' (2018) 17 The International Sports Law Journal 214.
[329] Ken Foster, 'Global Sports Law Revisited' (2019) 17(1) Entertainment and Sports Law Journal 4.

at the pinnacle of this system gives it unparalleled influence in defining the norms and standards that govern sports disputes worldwide. However, this influence comes with significant responsibilities, particularly in the realm of human rights protection. For South Africa, with its unique historical context and strong constitutional human rights framework, engaging with the CAS system presents both opportunities and challenges. As the country continues to strive for a more equitable and rights-respecting sports environment, the interplay between national legal norms, international sporting regulations and CAS jurisprudence will remain a critical area of focus for athletes, administrators and legal professionals alike. The ongoing evolution of the CAS and its approach to human rights issues will undoubtedly have far-reaching implications for the future of sports dispute resolution, not only in South Africa but globally. As sports continue to grow in social and economic significance, ensuring that the apex institution for sports dispute resolution adequately protects and promotes human rights will be essential for maintaining the integrity and legitimacy of global sports governance.

3.5 Alternative international dispute resolution framework for sports

The realm of international sports dispute resolution has undergone significant evolution over the past few decades; various mechanisms have emerged, designed to address the unique challenges posed by sports-related conflicts. These mechanisms, often referred to as alternative international dispute resolution frameworks (AIDRFs) for sports, encompass a diverse range of approaches that go beyond traditional litigation or the established CAS system.[330] However, the word 'alternative' in this context is controversial. These frameworks are not necessarily alternatives to national legal systems, but rather complementary mechanisms that operate within the complex landscape of international sports governance.[331] The diversity of these frameworks – which can include mediation, early neutral evaluation and sport-specific arbitration bodies – reflects the multi-faceted nature of sports disputes and the varying needs of different stakeholders in the sports world.[332] Moreover, the effectiveness and legitimacy of these AIDRFs are subjects of ongoing debate. While they often aim to provide faster, more specialised and more cost-effective resolution of disputes, questions arise about their independence and transparency, and their ability to protect athletes' rights, particularly in cases involving human rights issues.[333] This section examines these

[330] Antoine Duval, 'The Olympic Charter: A Transnational Constitution Without a State?' (2018) 45(S1) Journal of Law and Society S245.
[331] Despina Mavromati, 'The Role of the Swiss Federal Tribunal and its Impact on the Court of Arbitration for Sport (CAS)' in Johan Lindholm (ed), *The Court of Arbitration for Sport and Its Jurisprudence* (TMC Asser Press 2019) 83-85.
[332] McArdle (n 132) 201-203.
[333] Tilman Bauer, 'Due Process in Anti-Doping Cases' in Ulrich Haas and Deborah Healey (eds), *Doping in Sport and the Law* (Hart Publishing 2016) 156-158.

frameworks, their effectiveness and their implications for human rights in the context of sports disputes, with particular attention to their relevance for South Africa and other developing nations. The section critically assesses the benefits and drawbacks of AIDRFs, considering their role in the broader ecosystem of sports governance and dispute resolution.

3.5.1 Court of Arbitration for Sport (CAS)

The CAS, established in 1984, is the main body for resolving sports-related disputes at the international level. While not strictly an 'alternative' mechanism in the traditional sense, the CAS has become the *de facto* standard for many international sports federations and organisations, effectively positioning itself as an alternative to national court systems for sports-related disputes. The CAS operates independently of any sports organisation and provides services to facilitate the settlement of sports-related disputes through arbitration or mediation. Its jurisdiction covers a wide range of cases, including disciplinary matters, doping issues and commercial disputes related to sports.[334] The CAS's role has been particularly significant in harmonising sports law across different jurisdictions and sports, contributing to the development of *lex sportiva* – a transnational body of sports law.[335]

A key strength of the CAS is its specialisation in sports law, which allows for more nuanced and sport-specific decisions, compared to traditional court systems. This expertise is particularly valuable in complex cases involving the intricate rules and regulations of various sports. However, the CAS has been criticised regarding its independence and the fairness of its procedures. A landmark case that brought these issues to the fore was *Mutu and Pechstein v Switzerland*,[336] where the ECtHR examined whether CAS arbitration meets the standards of a fair trial under Article 6(1) of the ECHR. While the ECtHR ultimately ruled that CAS arbitration does not violate the right to a fair trial, it highlighted concerns about the balance of power between athletes and sports governing bodies in the arbitration process. This case underscored the ongoing debate about the extent to which the CAS, despite its expertise, can truly provide a neutral forum for dispute resolution, especially in cases involving individual athletes challenging powerful sports organisations.[337]

The CAS's role in South African sports has been significant, particularly in high-profile cases involving South African athletes. For instance, the CAS played a crucial role in the controversial

[334] Court of Arbitration for Sport (CAS), *Code of Sports-related Arbitration* (1 July 2020) <https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2020__EN_.pdf>.
[335] Nafziger, *International Sports Law* (n 13).
[336] *Mutu and Pechstein v Switzerland* (n 158).
[337] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 224-255.

case of Caster Semenya, the South African middle-distance runner who challenged the IAAF's regulations on testosterone levels in female athletes. This case highlighted the complex intersections of sports law, human rights, and issues of gender and bodily autonomy. The CAS's handling of the Semenya case drew both praise for its careful consideration of complex scientific evidence and criticism for its ultimate decision, which some viewed as reinforcing discriminatory practices in sports.[338] This case underscored the challenges faced by dispute resolution bodies in balancing competitive fairness with individual rights and the need to be sensitive to cultural and social contexts, particularly when dealing with athletes from diverse backgrounds.

3.5.2 FIFA Dispute Resolution Chamber (DRC)

In football, the FIFA DRC serves as a specialised ADR body. Established in 2001, the DRC primarily deals with disputes between clubs and players regarding employment and contractual stability, as well as issues related to training compensation and solidarity mechanisms.[339] The DRC's composition is an attempt at balanced representation, with an equal number of representatives from players and clubs. This structure aims to ensure fairness and impartiality in decision-making, although questions have been raised about the true independence of the DRC, given its close ties to FIFA.[340]

A significant aspect of the DRC's work relates to the protection of minors in football; the DRC plays a crucial role in enforcing FIFA's regulations on the status and transfer of players, particularly on international transfers of minors. This function has important human rights implications, as it aims to protect young athletes from exploitation.[341] The DRC's decisions in this area have had far-reaching consequences, affecting the practices of football clubs worldwide and setting standards for the treatment of young players. For South Africa and other African countries, where the export of young football talent is a significant issue, the DRC's role in regulating these transfers is particularly relevant. The DRC's decisions have helped to shape policies that balance opportunities for young African players with the need to protect them from exploitative practices.

However, the DRC's effectiveness in addressing broader human rights issues in football has been questioned. Critics argue that its mandate is too narrow, as it focuses primarily on contractual and

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[338] Human Rights Watch, 'Caster Semenya Loses Appeal for Equal Treatment' (1 May 2019) <https://www.hrw.org/news/2019/05/01/caster-semenya-loses-appeal-equal-treatment>.

[339] FIFA, 'Dispute Resolution Chamber' (2021) <https://www.fifa.com/who-we-are/legal/judicial-bodies/dispute-resolution-chamber/> accessed 5 September 2024.

[340] Richard Parrish, 'Social Dialogue in European Professional Football' (2011) 17(2) European Law Journal 213-229.

[341] Serhat Yilmaz, 'Protection of Minors: Lessons about the FIFA RSTP from the Recent Spanish Cases at the Court of Arbitration for Sport' (2018) 18 International Sports Law Journal 15-28.

employment issues while neglecting wider human rights concerns in football, such as discrimination, freedom of expression and labour rights in the context of major tournaments. There have been calls for the DRC, or a similar body within FIFA, to expand its jurisdiction to encompass broader human rights issues, particularly in light of FIFA's 2017 human rights policy.[342] Such an expansion could have significant implications for addressing human rights concerns in football, including issues that are particularly relevant to South African and African football, such as racial discrimination and the rights of migrant players.

3.5.3 The Basketball Arbitral Tribunal (BAT)

The BAT offers an interesting model for sport-specific dispute resolution that has attracted attention for its unique approach. Established by FIBA in 2007, the BAT provides a mechanism for resolving contractual disputes in basketball through arbitration.[343] What sets the BAT apart is its emphasis on deciding cases *ex aequo et bono*, or according to what is fair and just, rather than strictly applying national laws. This approach allows for more flexible decision-making that accounts for the specific context of basketball and the sport's global nature.[344] The BAT's model is particularly interesting from a human rights perspective, as it allows for greater consideration of equity and fairness in resolving disputes, rather than being bound by the strict letter of the law or contract.

The BAT has been praised for its efficiency and cost-effectiveness, particularly in resolving disputes involving relatively small amounts. This accessibility is crucial from a human rights standpoint, as it helps to ensure that all participants in the sport, not only wealthy clubs or star players, have access to dispute resolution mechanisms. However, concerns have been raised about the enforceability of BAT awards in certain jurisdictions and the potential for conflicts with national laws.[345] These issues highlight the ongoing challenge of balancing the need for specialised, sport-specific dispute resolution with respect for national legal systems and principles of justice. For South Africa and other African countries with growing basketball scenes, the BAT model offers an interesting alternative to traditional dispute resolution mechanisms. Its emphasis on fairness and efficiency could be particularly beneficial in contexts where the legal system is overburdened or there is a lack of specialised expertise in sports law. However, the challenge lies

[342] Schwab, 'Embedding the Human Rights of Players in World Sport' (n 322) 214-232.
[343] Heinrich Radke, 'The Basketball Arbitral Tribunal: An Overview' (2019) 18 International Sports Law Journal 238-253.
[344] Despina Mavromati, 'National Disputes Before the Court of Arbitration for Sport (CAS)' (FSA/TAS Conference, September 2012).
[345] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 224-255.

in ensuring that such a system can operate effectively across diverse legal and cultural contexts and adequately address the specific human rights concerns that arise in different regions.

3.5.4 Challenges

Despite the development of various ADR mechanisms in sports, several challenges remain:

(1) Harmonisation: With multiple dispute resolution bodies operating at different levels (international, regional and national), greater harmonisation is needed to ensure consistency in decision-making and to avoid forum-shopping.[346] This is particularly challenging given the diverse legal and cultural contexts in which sports operate globally. For South Africa, the challenge is developing national mechanisms that are responsive to local needs and legal traditions while also aligning with international norms and standards in sports dispute resolution.

(2) Enforcement: The enforcement of decisions made by ADR bodies can be challenging, particularly when these decisions conflict with national laws or involve parties from different jurisdictions.[347] This issue is particularly relevant in the context of international sports, where disputes often cross-national boundaries. Developing effective mechanisms to enforce sports arbitration awards, both domestically and internationally, is a significant challenge.

(3) Capacity-building: Continued capacity-building is needed in sports law and dispute resolution, particularly in developing countries, to ensure that all nations can participate effectively in these mechanisms.[348] This includes training legal professionals and arbitrators and educating athletes, coaches and sports administrators about their rights and responsibilities. For South Africa, investing in capacity building in this area can enhance the ability to manage sports disputes domestically and to engage with international sports dispute resolution mechanisms on more equal terms.

(4) Technological advancements: The increasing use of technology in sports, from video assistant referees to genetic testing, poses new challenges for dispute resolution bodies. These bodies will need to adapt to handle disputes involving complex technological issues.[349] This may require

[346] Blackshaw, *Sport, Mediation and Arbitration* (n 136).
[347] Antoine Duval and Ben van Rompuy, 'The Compatibility of Forced CAS Arbitration with EU Competition Law: Pechstein Reloaded' (23 June 2015).
[348] Ken Foster, 'Global Administrative Law: The Next Step for Global Sports Law?' (2012) 20(1) Sport and the Law Journal 42-49.
[349] Oscar Miralla, 'The Impact of Technology on Sports Dispute Resolution' (2020) 20 International Sports Law Journal 73-86.

developing new expertise and procedural rules to address issues arising from technological innovations in sport.

(5) Human rights integration: There is a growing call for the better integration of human rights principles into sports governance and dispute resolution. This includes considering human rights in decision-making and, if appropriate, expanding the jurisdiction of sports dispute resolution bodies to cover human rights violations in sports.[350] For South Africa, with its strong constitutional tradition of human rights protection, this trend presents both challenges and opportunities in the development of sports dispute resolution mechanisms.

(6) Cultural sensitivity: As international sports continue to globalise, dispute resolution mechanisms need to become more adept at handling cases that involve diverse cultural contexts. This is particularly relevant for South Africa, with its rich cultural diversity. Dispute resolution bodies need to develop the capacity to understand and respect cultural differences while maintaining consistent application of sports regulations and principles of fairness.

(7) Environmental concerns: As awareness of environmental issues grows, sports dispute resolution bodies may increasingly face cases related to the environmental impact of sporting events or the intersection of environmental regulations with sports activities. This could require developing new areas of expertise and new approaches to balancing sporting interests with environmental protection.

(8) Athlete voice and representation: There is a growing recognition of the need for greater athlete representation in sports governance structures, including in dispute resolution mechanisms. This poses challenges in ensuring genuine representation while maintaining the independence and expertise of dispute resolution bodies. For South Africa, with its history of struggle for representation and equality, this issue may resonate in the context of sports governance.

In conclusion, the landscape of alternative international dispute resolution for sports is diverse and evolving. While bodies like the CAS have established themselves as key players, newer and more specialised mechanisms continue to emerge. These alternative frameworks offer many advantages, including expertise in sports law, flexibility and greater efficiency than traditional court systems. However, they also face significant challenges, particularly in balancing the specific needs of the sports world with broader principles of justice and human rights. For South Africa and other developing nations, the evolution of sports dispute resolution presents both challenges and opportunities. On the one hand, national capacity in sports law and dispute resolution must be

[350] Schwab, 'Embedding the Human Rights of Players in World Sport' (n 322) 214-232.

developed, to ensure that local interests and perspectives are adequately represented in international sports governance. On the other hand, the experiences of various national and international dispute resolution mechanisms offer valuable lessons that can inform the development of effective, fair and culturally appropriate systems for resolving sports disputes.

As sports continue to globalise and new issues emerge, these ADR mechanisms will need to adapt and evolve to meet the changing needs of the sporting community while upholding fundamental principles of fairness and human rights. The future development of these mechanisms will likely involve greater emphasis on human rights considerations, increased harmonisation across different bodies and jurisdictions, and adaptation to new technological and social challenges in sports. For South Africa, the way forward may involve a multi-faceted approach: strengthening national sports dispute resolution mechanisms, investing in capacity-building in sports law and arbitration, engaging actively with international sports governance bodies to ensure African perspectives are represented, and developing innovative approaches to dispute resolution that draw on both international best practices and local legal and cultural traditions. ADR frameworks can play a crucial role in promoting justice, integrity and human rights in the world of sports by addressing these issues.

3.6 The role of national courts

While ADR mechanisms have become increasingly prominent in sports, national courts continue to play a crucial role in the sports dispute resolution landscape. This section examines the complex and evolving relationship between national courts and sports-specific dispute resolution mechanisms, the circumstances under which national courts intervene in sports disputes, and the implications of such interventions for sports governance and athletes' rights.

3.6.1 The tension between sports autonomy and judicial oversight

The relationship between national courts and sports governing bodies has long been characterised by a tension between the principle of sports autonomy and the need for judicial oversight. Sports organisations have traditionally argued for a high degree of autonomy, contending that the specificity of sport requires specialised governance structures and dispute resolution mechanisms.[351] This argument is often supported by referring to the global nature of sport and the need for uniform rules and regulations across jurisdictions. However, as sports have become increasingly commercialised and their societal impact has grown, the need for some degree of judicial oversight has been increasingly recognised. National courts have been called upon to

[351] Foster, 'Is There a Global Sports Law?' (n 94) 1-18.

intervene in cases where fundamental rights are at stake or where there are allegations of abuse of power or lack of due process in sports governance structures.[352]

The extent of judicial intervention varies significantly across jurisdictions. In some countries, courts have been relatively deferential to sports governing bodies, intervening only in cases of clear illegality or manifest unfairness. In others, courts have taken a more interventionist approach, subjecting the decisions of sports bodies to closer scrutiny.[353] This variation reflects differences in legal traditions, the status accorded to sport in national legal systems, and broader societal attitudes towards sports governance.

3.6.2 Grounds for intervention by national courts

National courts may intervene in sports disputes on several grounds:

(1) Violation of fundamental rights: Courts may intervene when decisions of sports bodies are alleged to violate fundamental rights protected by national constitutions or international human rights instruments. For example, in the case of Caster Semenya, the Swiss Federal Supreme Court was called upon to consider whether the CAS's decision upholding IAAF regulations on testosterone levels in female athletes violated fundamental rights protected under Swiss law.[354]

(2) Lack of due process: Courts may review the decisions of sports bodies to ensure that basic principles of procedural fairness have been observed. This includes ensuring that parties have had a fair opportunity to present their case and that decision-makers are impartial. In the landmark case of *Gundel v FEI*,[355] the Swiss Federal Supreme Court held that CAS awards could be challenged on grounds of procedural unfairness, leading to significant reforms in the structure of the CAS.

(3) *Ultra vires* actions: Courts may intervene when sports bodies are alleged to have acted beyond their powers. This could include cases where sports organisations have imposed sanctions not provided for in their regulations or have applied rules in a manner that is inconsistent with their stated objectives.[356]

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[352] Simon Boyes, 'Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies' [2017] Public Law 363-381.
[353] Mark James, *Sports Law* (3rd edn, Palgrave Macmillan 2017).
[354] *Caster Semenya v IAAF* Swiss Federal Supreme Court, 4A_248/2019 / 4A_398/2019 (2020).
[355] *Gundel v FEI* Swiss Federal Supreme Court, BGE 119 II 271 (1993).
[356] Blackshaw, *Sport, Mediation and Arbitration* (n 136).

(4) Public policy: In some jurisdictions, courts may refuse to enforce the decisions of sports bodies that are deemed to be contrary to public policy. The concept of public policy varies across jurisdictions but generally includes fundamental principles of justice and morality.[357]

(5) Competition law: Particularly in the EU, national courts have intervened in sports disputes on the basis of competition law. The European Court of Justice's decision in the *Bosman* case,[358] which fundamentally altered the transfer system in European football, is a prominent example of such intervention.

3.6.3 The interface between national courts and sports arbitration

The relationship between national courts and sports arbitration bodies, particularly the CAS, is complex and evolving. While many countries have laws that support the enforcement of arbitration awards, including those issued by sports arbitration bodies, courts retain the power to review such awards on certain grounds. In Switzerland, where the CAS is headquartered, the Federal Supreme Court has the power to review CAS awards under the Swiss Federal Act on Private International Law. However, the grounds for such review are limited, primarily focusing on issues of jurisdiction, procedural fairness and compatibility with public policy.[359]

[357] Reilly (n 286).

[358] *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* Court of Justice of the European Union (Case C-415/93) [1995] ECR I-4921.

[359] Antonio Rigozzi and Elliott Hasler, 'Sports Arbitration under the CAS Rules' in Manuel Arroyo (ed), *Arbitration in Switzerland: The Practitioner's Guide* (Kluwer Law International 2013) 936-1083.

National judicial scrutiny of CAS arbitration differs according to the applicable domestic legal framework and the basis on which intervention is sought. In Switzerland, where CAS is seated, the Swiss Federal Tribunal may review CAS awards on the limited grounds available under Swiss arbitration law. In *Matuzalém,* the Tribunal set aside a CAS award because the consequences of the sanction were incompatible with substantive public policy. The German *Pechstein* litigation concerned a different issue: whether the compulsory arbitration arrangement imposed on an athlete by a dominant sports federation could withstand scrutiny under German law. Read together, the cases establish that the finality accorded to CAS arbitration does not preclude domestic judicial intervention where the legally recognised grounds for review are established[360].

3.6.4 National courts and the enforcement of sports arbitration awards

National courts perform distinct functions in relation to sports arbitration: they may determine questions concerning the validity of arbitration agreements, exercise supervisory jurisdiction where permitted by the law of the seat, and decide whether foreign arbitral awards should be recognised or enforced. The New York Convention provides the international framework for recognition and enforcement, including specified grounds on which recognition or enforcement may be refused. In sports disputes, these functions are particularly significant where arbitration is imposed as a condition of participation or where enforcement raises public-policy or procedural concerns. CAS therefore provides specialised adjudication and transnational consistency, but the finality of its awards operates within, rather than outside, the legal framework governing arbitral review, recognition and enforcement[361].

3.6.5 The role of national courts in developing sports law

National courts have played a significant role in the development of sports law, at both the domestic and international levels. Court decisions have helped clarify the legal status of sports organisations, define the rights and obligations of athletes, and establish principles for resolving sports disputes. In common-law jurisdictions, court decisions have contributed to the development of a body of case law on sports-related issues. For example, in England, cases such as *Bradley v Jockey Club*[362] have helped to establish principles for the judicial review of decisions made by

[360] *Matuzalém Francelino da Silva v Fédération Internationale de Football Association (FIFA)* Swiss Federal Tribunal, 4A_558/2011, 27 March 2012; *Claudia Pechstein v International Skating Union* Bundesgerichtshof [German Federal Court of Justice], KZR 6/15, 7 June 2016.

[361] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3, arts III and V; *Matuzalém Francelino da Silva v Fédération Internationale de Football Association (FIFA)* Swiss Federal Tribunal, 4A_558/2011, 27 March 2012; *Claudia Pechstein v International Skating Union* Bundesgerichtshof [German Federal Court of Justice], KZR 6/15, 7 June 2016.

[362] *Bradley v Jockey Club* [2004] EWHC 2164 (QB), [2005] EWCA Civ 1056.

sports governing bodies. In civil-law jurisdictions, while court decisions do not have the same precedential value, they nonetheless play an important role in interpreting and applying sports-related legislation. For instance, in Germany, court decisions have been instrumental in shaping the application of association law (*Vereinsrecht*) to sports organisations.[363]

3.6.6 National courts and human rights in sport

National courts have increasingly been called upon to address human rights issues in sports. This reflects a growing recognition of the impact of sports governance decisions on athletes' fundamental rights and broader societal concerns about human rights in sports contexts.

3.6.6.1 Gender equality

Semenya v IAAF is a prominent example of courts grappling with complex issues of gender equality and non-discrimination in sport.

3.6.6.2 Labour rights

Courts in various jurisdictions have addressed issues related to athletes' labour rights, including freedom of movement and the right to work. The *Bosman* ruling[364] by the European Court of Justice is a landmark case in this area. This ruling by the European Court of Justice addressed labour rights, particularly freedom of movement and the right to work, significantly impacting the transfer system in European football.

3.6.6.3 Privacy and data protection

With the increasing use of biological data in sports, particularly in anti-doping efforts, courts have had to address issues of privacy and data protection. For example, in *Anti-Doping Danmark v Finn Mikkelsen*,[365] the Bundesgerichtshof (German Federal Court of Justice) considered issues related to the use of whereabouts information in anti-doping programmes.

3.6.6.4 Freedom of expression

Courts have addressed issues related to athletes' freedom of expression, including their right to protest. The case of Hakeem al-Araibi, where Australian courts were involved in preventing the

[363] BVerfG, *Order of the First Senate of 11 April 2018 – 1 BvR 3080/09* <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/04/rs20180411_1bvr308009en.html> accessed 10 October 2024.

[364] *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* (C-415/93) [1995] ECR I-4921.

[365] *Anti-Doping Danmark v Finn Mikkelsen* II ZR 126/16 (BGH, 15 June 2017).

extradition of a refugee footballer to Bahrain, highlighted the intersection of sports, human rights and international law.[366]

The role of national courts in sports dispute resolution faces ongoing challenges and continues to evolve, particularly in balancing the specificity of sport with universal legal principles and human rights.[367] Jurisdictional complexities arise from the global nature of sports, necessitating clear principles for determining jurisdiction, while greater harmonisation is needed to enforce international sports arbitration awards.[368] The growing complexity of sports law calls for specialised judicial expertise, prompting some jurisdictions to establish dedicated sports law courts. Additionally, national courts must refine their approach to ADR, ensuring access to justice while leveraging the benefits of specialised sports arbitration. Technological advancements such as gene editing and artificial intelligence pose novel legal challenges that courts must address. In conclusion, despite the prominence of ADR in sports, national courts remain crucial in preventing abuse by sports governing bodies, protecting fundamental rights, and contributing to the development of sports law in an increasingly complex landscape.

3.7 The jurisdiction of international human rights courts and tribunals over sports disputes

The intersection of international human rights law and sports governance presents a complex and evolving landscape, particularly in the context of dispute resolution. As sports have become increasingly globalised and commercialised, the potential for human rights violations in sporting contexts has grown, requiring a closer examination of the role of international human rights courts and tribunals in addressing these issues. The concept of human rights in sports disputes stems from the understanding that athletes, like all individuals, are entitled to basic human rights protections, and any actions by sports bodies that infringe upon these rights may invoke the jurisdiction of international human rights courts and tribunals.

To understand the potential jurisdiction of international human rights courts and tribunals over sports disputes, the mandates of these bodies must be examined. The primary international human rights courts are the ECtHR, the Inter-American Court of Human Rights (IACtHR), and the

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366 Helen Davidson, 'Hakeem al-Araibi: Power, Politics, Football and the Will of the People' *The Guardian* (London, 13 February 2019) <https://www.theguardian.com/sport/2019/feb/13/hakeem-al-araibi-power-politics-football-and-the-will-of-the-people> accessed 5 September 2024.

367 Antoine Duval, 'The "Victory" of the Court of Arbitration for Sport at the European Court of Human Rights: The End of the Beginning for the CAS' (10 October 2018) International Sports Law Blog <https://www.asser.nl/SportsLaw/Blog/post/the-victory-of-the-court-of-arbitration-for-sport-at-the-european-court-of-human-rights-the-end-of-the-beginning-for-the-cas-by-antoine-duval> accessed 3 October 2024.

368 Matthew J Mitten, 'Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations' (2009) 10 Pepperdine Dispute Resolution Law Journal 51.

African Court on Human and Peoples' Rights (AfCHPR).[369] The ECtHR, established in 1959, has jurisdiction over alleged violations of the ECHR by member states of the Council of Europe.[370] The IACtHR, operational since 1979, adjudicates cases of human rights violations under the American Convention on Human Rights.[371] The AfCHPR, established in 2004, has jurisdiction over cases related to the interpretation and application of the African Charter on Human and Peoples' Rights and other relevant human rights instruments ratified by African states.[372] These courts primarily deal with cases brought against states for alleged human rights violations. Their jurisdiction is typically limited to cases where domestic remedies have been exhausted, reflecting the principle of subsidiarity in international human rights law.[373] This principle posits that national authorities are best placed to address human rights issues in the first instance, with international mechanisms serving as a backstop when domestic systems fail to provide adequate protection or a remedy.[374]

In addition to these regional courts, the United Nations human rights treaty bodies, such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, play a crucial role in monitoring state compliance with international human rights treaties.[375] While these bodies cannot issue binding judgments, their decisions and general comments carry significant interpretative weight and contribute to the development of international human rights norms.[376]

Furthermore, the ECtHR has demonstrated that international human rights courts can have a meaningful impact on sports governance. In *Mutu and Pechstein v Switzerland*,[377] the ECtHR confirmed the applicability of human rights law to sports disputes, emphasising the right to a fair trial under art 6 of the ECHR. Such judgments underscore the relevance of due process and transparency in sports arbitration, and international courts are increasingly holding sports governing bodies accountable for human rights compliance.

Moreover, the role of UN human rights bodies cannot be understated. Even though their decisions are not legally binding, they contribute to the normative development of human rights law. For

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369 D Shelton, *Regional Protection of Human Rights* (Oxford University Press, 2010).
370 European Court of Human Rights, 'The ECHR in 50 Questions' (2014).
371 Inter-American Court of Human Rights, 'About the Court' <https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en> accessed 13 September 2024.
372 African Court on Human and Peoples' Rights, 'About the Court' <https://www.african-court.org/wpafc/about-us/> accessed 13 September 2024.
373 PG Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law' (2003) 97(1) American Journal of International Law 38.
374 ibid 38-79.
375 Office of the High Commissioner for Human Rights, 'The United Nations Human Rights Treaty System' (Fact Sheet No. 30/Rev.1, 2012).
376 H Keller and L Grover, 'General Comments of the Human Rights Committee and their Legitimacy' in H Keller and G Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP 2012).
377 *Mutu and Pechstein v Switzerland* (n 158).

instance, General Comment No. 24 of the Human Rights Committee emphasises that non-state actors, including sports federations, must respect the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR).[378] This guidance provides a framework for sports organisations to operate within to ensure compliance with international human rights obligations.

3.8 Conclusion

This examination of the international dispute-resolution framework for sports reveals a complex and evolving system with significant implications for protecting human rights in sports, particularly in South Africa. This chapter has traced the historical development of this framework, from its early stages to the current sophisticated, multi-tiered system, highlighting the critical role of various institutions in shaping the landscape of sports dispute resolution. The hierarchical structure of the international framework, encompassing NSFs, ISFs and, ultimately, the CAS, presents both opportunities and challenges for the protection of athletes' rights. While this system has largely succeeded in creating a uniform approach to sports dispute resolution, it has also raised concerns about accessibility, independence and the adequate safeguarding of fundamental human rights.

The interplay between this international framework and national legal systems is particularly relevant to the South African context. The role of national courts and the potential jurisdiction of international human rights tribunals over sports disputes introduces an additional layer of complexity. This intersection is crucial for South Africa, given its constitutional commitment to human rights and the need to balance this with the autonomy of sports organisations. The ADR mechanisms discussed in this chapter offer avenues for addressing some of the criticisms levelled against the traditional sports arbitration system. These alternatives may provide opportunities for South Africa to develop more inclusive and rights-respecting approaches to sports dispute resolution, particularly in addressing historical inequalities and promoting access to justice.

As South Africa continues to integrate into the global sports governance system, it faces the challenge of aligning its national frameworks with international standards while ensuring that the unique human rights considerations stemming from its historical and social context are adequately addressed. The ongoing debates about the independence, transparency and human rights protections of the international framework serve as important reference points for South Africa in refining its own sports dispute resolution mechanisms. The future development of South Africa's sports dispute resolution framework will likely require a nuanced approach that draws from

[378] Human Rights Committee, General Comment No 24 (1994) UN Doc CCPR/C/21/Rev.1/Add.6.

international best practices while remaining responsive to local realities. This may involve strengthening the role of national institutions in providing human rights oversight, enhancing the capacity of local sports bodies to handle disputes in a rights-respecting manner, and advocating for international reforms to better accommodate the needs of developing nations. While the international dispute resolution framework for sports provides a valuable template, South Africa's path forward must involve a careful consideration of how these mechanisms can be adapted or supplemented to ensure the robust protection of human rights in its sporting context. The ongoing evolution of this framework, both internationally and in South Africa, will be crucial in shaping a sports governance system that upholds the principles of fairness, equality, and human dignity central to South Africa's constitutional order.

The examination of the international dispute resolution framework for sports reveals several structural features that raise potential concerns about procedural human rights, which are examined in depth in Chapter 4. These features warrant explicit identification here, so that the reader understands how the institutional analysis in this chapter connects to the normative evaluation that follows.

First, the mandatory arbitration clauses embedded in the constitutional documents of international federations and national sporting bodies raise questions about consent and the right of access to courts. Athletes who wish to participate in their sport are frequently required, as a condition of participation, to submit to compulsory arbitration and to waive their right to approach ordinary courts. The compatibility of such arrangements with the right to a fair hearing and the right of access to courts, as guaranteed by international human rights instruments and national constitutions, is assessed in Chapter 4.

Second, the CAS, despite its status as the apex institution for international sports dispute resolution, has faced persistent questions about its independence and impartiality, given its historical ties to the International Olympic Committee and the manner of arbitrator appointment. These structural concerns engage the principles of independent and impartial adjudication that are central to the right to a fair trial under article 6 of the European Convention on Human Rights, article 14 of the ICCPR, and article 7 of the African Charter. Chapter 4 assesses the extent to which the CAS's procedures satisfy these requirements.

Third, the confidentiality of sports arbitration proceedings, while valued for encouraging candid settlement, conflicts with the transparency requirements of public hearings and open justice. The tension between confidentiality and transparency in sports dispute resolution is examined in Chapter 4 through the lens of international human rights standards.

Fourth, the complexity and cost of sports dispute resolution mechanisms, particularly at the international level, create practical barriers to access for individual athletes, particularly those from developing countries and lower socio-economic backgrounds. The principle of meaningful access to effective remedies, which is at the heart of the right to a fair hearing under international human rights law, requires that these practical barriers be taken seriously in any assessment of compliance. Chapter 4 addresses this dimension of the analysis in detail.

CHAPTER 4: INTERNATIONAL NORMS AND STANDARDS FOR PROCEDURAL HUMAN RIGHTS IN SPORTS DISPUTE RESOLUTION

4.1 Introduction

The realm of sports, with its global appeal and complex governance structures, has developed specialised dispute resolution mechanisms to address conflicts that arise. These mechanisms, while tailored to the specific needs of the sporting world, do not exist in isolation from the broader framework of international law and human rights norms. This chapter argues that although sports dispute resolution frameworks are specialised and have attained significant prominence, they must still comply with international norms on procedural rights. In instances where these specialised frameworks clash with general international norms, the latter will prevail. The evolution of sports dispute resolution systems reflects the increasing professionalisation and commercialisation of sports. As the stakes have grown higher, both in terms of financial implications and the impact on athletes' careers, the need for fair, efficient and specialised dispute resolution mechanisms has become paramount. International sports governing bodies, such as the International Olympic Committee (IOC) and the Fédération Internationale de Football Association (FIFA), have established their own arbitration systems, with the Court of Arbitration for Sport (CAS) emerging as the primary forum for resolving international sports-related disputes.[379]

While these specialised systems offer advantages in terms of expertise and efficiency, they also raise important questions about procedural fairness and the protection of athletes' rights. The unique characteristics of sports governance, including the centralised authority of international federations and the often-mandatory nature of arbitration clauses in sports contracts, warrant careful examination through the lens of international human rights standards.[380]

The modern international human rights regime, established in the aftermath of World War II, provides a robust framework for assessing the procedural fairness of dispute resolution mechanisms, including those in the sports context. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, laid the foundation for the protection of fundamental rights, including the right to a fair hearing.[381] Although not legally

[379] Blackshaw, *Sport, Mediation and Arbitration* (n 136) 15.
[380] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 224.
[381] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 10.

binding, the UDHR has gained the status of customary international law and has inspired numerous legally enforceable human rights instruments.[382]

Building on the principles enshrined in the UDHR, the International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966 and entered into force in 1976. The ICCPR, which as of 2024 has 173 state parties, provides more detailed guarantees regarding civil and political rights, including the right to a fair trial as articulated in art 14.[383] These provisions serve as crucial benchmarks for evaluating the adequacy of sports arbitration and dispute resolution procedures. Regional human rights instruments further reinforce and elaborate on these standards. In the African context, the African Charter on Human and Peoples' Rights (Banjul Charter), adopted in 1981 and entered into force in 1986, guarantees the right to a fair trial in art 7.[384] The European Convention on Human Rights (ECHR) similarly protects the right to a fair trial in art 6, which has been interpreted to apply to arbitration proceedings, including those in the sports context.[385]

The application of these human rights standards to sports dispute resolution has gained traction in recent years, as evidenced by landmark cases and policy developments. The ruling of the European Court of Human Rights (ECtHR) in *Mutu and Pechstein v Switzerland*[386] in 2018 marked a significant milestone, affirming that CAS arbitration must comply with article 6(1) of the ECHR. While the court did not find sports arbitration agreements inherently incompatible with the Convention, it emphasised the need for guarantees ensuring the fairness of the arbitration process.[387] The United Nations Guiding Principles on Business and Human Rights, unanimously adopted by the UN Human Rights Council in 2011, have further underscored the human rights responsibilities of non-state actors, including international sports federations.[388] These principles have been reinforced in the sports context by initiatives such as the Centre for Sport and Human Rights, established in 2018, which aims to support the integration of human rights across the sports ecosystem.[389]

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382 Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 Georgia Journal of International and Comparative Law 287.

383 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

384 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

385 European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

386 *Mutu and Pechstein v Switzerland* (n 158).

387 ibid.

388 UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Doc A/HRC/17/31.

389 Centre for Sport and Human Rights, 'About Us' <https://www.sporthumanrights.org/about-us/> accessed 20 October 2024.

Despite these developments, the alignment of sports dispute resolution mechanisms with international human rights norms remains a work in progress. Several challenges persist in this evolving field. One significant issue is the need to balance efficiency with procedural fairness. Sports governing bodies often argue for procedural adjustments to accommodate the unique needs of the sporting world, such as the need for swift dispute resolution to avoid disrupting competitions.[390] Striking the right balance between efficiency and comprehensive procedural safeguards is an ongoing challenge.

Another area of concern is consent and access to the courts. The widespread use of mandatory arbitration clauses in sports contracts has raised concerns about 'forced arbitration' and its compatibility with the right of access to courts.[391] While courts have generally upheld these clauses, debates about their fairness and validity continue. Transparency is also a pressing issue, as many sports arbitration proceedings occur behind closed doors, with limited publication of reasoned decisions. This lack of transparency can undermine public confidence in the fairness of proceedings and hinder the development of a consistent body of sports law.[392] Cross-jurisdictional enforcement is another challenge. The enforcement of sports arbitration awards across different jurisdictions intersects with human rights considerations, particularly when enforcement might be refused on public policy grounds.[393] Additionally, concerns have been raised about the composition of sports arbitration panels and decision-making bodies, particularly regarding their independence, impartiality and diversity.[394]

As the field of sports dispute resolution continues to evolve, several developments hold promise for better aligning these mechanisms with international human rights norms. The growing athlete rights movement may lead to enhanced guarantees being incorporated into sports regulations and arbitration rules.[395] Increased awareness of human rights concerns in sport, particularly in the context of mega-sporting events, may lead to greater attention to dispute resolution procedures.[396] Technological advancements, such as the development of online dispute resolution (ODR) tools,

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390 Mavromati and Reeb (n 186) 6-7.

391 Marc Edelman, 'Are Commissioner Suspensions Really Any Different from Illegal Group Boycotts? Analyzing Whether the NFL Personal Conduct Policy Illegally Restrains Trade' (2016) 58 Catholic University Law Review 631.

392 Duval, 'Lex Sportiva' (n 153) 822.

393 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3, art V(2)(b).

394 Lindholm, *The Court of Arbitration for Sport and its Jurisprudence* (n XX) 89-91.

395 World Players Association, 'Universal Declaration of Player Rights' (14 December 2017) <https://www.uniglobalunion.org/news/world-players-association-launches-universal-declaration-player-rights> accessed 20 October 2024.

396 Human Rights Watch, 'World Report 2024: Rights Trends in Mega-Sporting Events' (2024) <https://www.hrw.org/world-report/2024/country-chapters/global-0> accessed 20 October 2024.

may improve access to justice for athletes.[397] Ongoing jurisprudence from bodies such as the ECtHR may further clarify the application of human rights standards in sports arbitration.[398] Moreover, efforts to increase diversity and representation among arbitrators and decision-makers in sports-related disputes are gaining momentum.[399]

This chapter examines the intersection of international human rights norms and sports dispute resolution mechanisms in detail. It analyses the relevant international and regional frameworks, exploring key cases and developments, and assesses the challenges and opportunities in aligning sports dispute resolution with human rights standards. The chapter delves into the specific international and regional frameworks, including the UDHR, the ICCPR, and the European and African human rights instruments. Through this analysis, the chapter demonstrates that while sports dispute resolution frameworks have developed specialised procedures to meet the unique needs of the sporting world, they remain subject to overarching international human rights norms. In cases of conflict, the fundamental principles of procedural fairness and due process, as enshrined in international human rights law, must take precedence to ensure the protection of athletes' rights and the integrity of sports governance.

4.2 International frameworks

The context of sports dispute resolution, while specialised and increasingly autonomous, does not exist in isolation from broader legal principles and human rights standards. This section examines key international frameworks that establish fundamental norms for procedural rights, which are equally applicable to sports-related disputes. These frameworks serve as the bedrock upon which all dispute resolution mechanisms, including those in sports, must be built to ensure fairness, justice and respect for human rights. The UDHR and the ICCPR stand as pillars of international human rights law, enshrining principles of due process, fair trial and access to justice. While these instruments were not created with sports disputes specifically in mind, their provisions are universally applicable and set standards that sports tribunals and arbitration bodies must adhere to. Delving into these international frameworks, it becomes evident that despite the unique characteristics and needs of sports dispute resolution, these specialised mechanisms cannot contravene established international norms on procedural rights. When conflicts arise between sports-specific procedures and general human rights standards, the latter must prevail to maintain

[397] Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* (Oxford University Press 2017) 150-152.
[398] Antoine Duval and Ben van Rompuy, *The Legacy of Bosman: Revisiting the Relationship Between EU Law and Sport* (TMC Asser Press 2016) 217-219.
[399] Lucy Greenwood, 'Tipping the Balance: Diversity and Inclusion in International Arbitration' (2017) 33 Arbitration International 99.

the integrity of the global human rights regime and to ensure that athletes and other stakeholders in the sports world are not deprived of their fundamental rights. This examination of international frameworks demonstrates the inextricable link between sports dispute resolution and broader human rights norms, and reinforces the central argument that specialised sports tribunals, despite their distinctiveness, remain bound by and must uphold international standards of procedural fairness and justice.

4.2.1 The Universal Declaration of Human Rights (UDHR)

The UDHR was adopted by the United Nations General Assembly on 10 December 1948 and is one of the most fundamental documents in international human rights law; it has also had a significant impact on the resolution of sporting disputes. Although the UDHR is not a document designed for sports, its principles can be applied in the sporting context, as human rights are a universal concern in any activity, including recreation and professional sports. The extent to which its norms influence the sporting sphere – and which specific aspects should be emphasised – must be carefully considered on a case-by-case basis, particularly in the context of dispute resolution in global sports and athletics.[400]

The UDHR enunciates a charter of rights and freedoms that belong to every individual without distinction as to nationality, residence, sex, nationality or ethnic origin, colour, religion, language, political or other opinion, national or social origin, property, birth or other status. This universality is very important, given that global sporting competitions can involve teams or individual participants from all regions of the world, who are governed by, and required to adhere to, similar rules of the game. The fundamental principle of non-discrimination is enshrined in art 1 of the UDHR: 'All human beings are born free and equal in dignity and rights'; the topic has gained much significance globally because of issues of gender, racial discrimination and the rights of LGBTQ+ athletes. If this principle is applied to sports disputes, it means that all sportspersons must be allowed a fair, unbiased resolution of any dispute, regardless of the individual's characteristics or the sport.

Several articles of the UDHR are relevant to sport dispute resolution systems. Article 8 of the UDHR states: 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'. This right to an effective remedy has been interpreted broadly by scholars and courts, and it is also applicable to the realm of sports. Scholarly interpretations have emphasised that this right encompasses access

[400] McArdle (n 132) 23-25.

to formal judicial systems as well as ADR mechanisms, provided they meet certain standards of fairness and effectiveness.[401] In the context of sports, this has been understood to require that impartial and efficient means of resolving disputes are available, whether through national courts or specialised sports tribunals.[402]

The ECtHR has played a significant role in shaping the interpretation of the right to an effective remedy in sports contexts. In *Mutu and Pechstein v Switzerland*,[403] the ECtHR affirmed that arbitration proceedings in sports must comply with the right to a fair trial under art 6 of the ECHR, which mirrors the principles of art 8 of the UDHR. The court held that while specialised arbitration bodies like the CAS can be compatible with the right to a fair trial, they must meet certain criteria, including independence, impartiality and procedural fairness.[404] However, the application of these rights in the sporting context remains contentious. While the establishment of bodies like the CAS in 1984 can be seen as an attempt to provide an effective remedy for international sporting disputes, their compliance with human rights standards has been questioned.[405] Critics argue that the mandatory nature of CAS arbitration clauses in many sports contracts may infringe upon athletes' right to access national courts, potentially conflicting with the spirit of art 8 of the UDHR.[406] This ongoing debate underscores the complex interplay between specialised sports dispute resolution mechanisms and fundamental human rights principles.

Article 10 of the UDHR, which is the most crucial provision for sports dispute resolution, states: 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.' This article encapsulates fundamental principles of procedural justice, including equality of arms, the right to be heard and the impartiality of the deciding body. The application of these principles to sports arbitration has led to increased scrutiny of arbitration panel composition, arbitrator selection procedures and the transparency of proceedings. The ECtHR applied these principles in *Mutu and Pechstein v Switzerland*.[407] The court examined the compatibility of the CAS procedures with the right to a fair trial and identified several areas of concern. The court highlighted issues with the limited pool of arbitrators available for selection and the potential lack of fully public hearings in cases where such openness was deemed necessary.[408] This ruling underscores the

[401] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 226-228.
[402] McArdle (n 132) 45-47.
[403] *Mutu and Pechstein v Switzerland* (n 158).
[404] ibid paras 149-159.
[405] Chui Ling Goh and Jack Anderson, 'The Credibility of the Court of Arbitration for Sport' (2022) 13 Harvard Journal of Sports and Entertainment Law 1.
[406] Lindholm, *The Court of Arbitration for Sport and its Jurisprudence* (n 104) 215-218.
[407] *Mutu and Pechstein v Switzerland* (n 158).
[408] ibid paras 157-159, 175-177.

ongoing tension between the specialised nature of sports arbitration and the universal principles of procedural fairness enshrined in the UDHR. It demonstrates that while sports dispute resolution mechanisms can be compatible with human rights standards, they must continually evolve to meet the highest standards of fairness, independence and transparency.

Furthermore, art 11(1) of the UDHR enshrines the presumption of innocence, stating that '[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence'. In the context of sports, this principle implies that any athlete accused of rule violations should be given the benefit of the doubt, with the burden of proof resting on the accuser. This fundamental right is reflected in the World Anti-Doping Code, which explicitly states that anti-doping organisations bear the burden of establishing that an anti-doping rule violation has occurred.[409] However, applying this principle becomes complex and controversial in the context of strict liability doping offences. In these instances, the mere presence of a prohibited substance in an athlete's sample constitutes a violation, regardless of the athlete's intent or negligence.[410] This approach has led to significant debate about whether it effectively shifts the burden of proof and potentially infringes upon the presumption of innocence. The strict liability principle in doping cases operates on the premise that athletes are responsible for any substance found in their bodies, creating what some scholars call a 'reverse onus' situation.[411] While anti-doping organisations must still prove the presence of the prohibited substance, once this is established, the burden effectively shifts to the athlete to prove a lack of intent or fault in avoiding or reducing sanctions. This has been justified on grounds of maintaining a level playing field and the practical difficulties of proving intent in each case.[412]

Critics argue that this approach undermines the presumption of innocence by requiring athletes to essentially prove their innocence once a substance is detected.[413] They contend that it places an unfair burden on athletes, particularly given the complexities of modern doping techniques and the potential for the unintentional consumption of prohibited substances. Defenders of the strict liability approach, however, maintain that it is necessary for effective anti-doping efforts and that it does not entirely negate the presumption of innocence. They argue that athletes still have

[409] World Anti-Doping Agency, 'World Anti-Doping Code' (2021) art 3.1.
[410] Janwillem Soek, *The Strict Liability Principles and the Human Rights of Athletes in Doping Cases* (TMC Asser Press 2006) 155-157.
[411] Paul David, *A Guide to the World Anti-Doping Code: The Fight for the Spirit of Sport* (3rd edn, Cambridge University Press 2017) 64-66.
[412] Richard H McLaren, 'An Overview of Non-Analytical Positive and Circumstantial Evidence Cases in Sports' (2006) 16 Marquette Sports Law Review 193, 195-197.
[413] Melanie Haas, 'Necessity and Unintended Consequences: Is it Time to Eliminate the Requirement to Prove Use in WADA Doping Violations?' (2010) 20 Seton Hall Journal of Sports and Entertainment Law 201, 210-212.

opportunities to contest findings, demonstrate no fault or negligence, and seek reduced sanctions, preserving elements of due process.[414] This tension between the presumption of innocence and the practical necessities of anti-doping enforcement highlights the ongoing challenges in balancing individual rights with the integrity of sport. It underscores the need for continued refinement of anti-doping procedures to ensure that they align as closely as possible with fundamental human rights principles while still effectively combating doping in sports.

The collection and use of personal data in sports in general, as well as the application of anti-doping rules in particular, engage a variety of rights laid down in the UDHR, the most applicable of which is art 12, which deals with protection from arbitrary interference with privacy, family, home or correspondence. Requirements in anti-doping regulations that make elite athletes' whereabouts accessible have led to discussions about the optimal level of doping control and athletes' privacy rights.[415] This right to privacy arises in the area of dispute resolution, where the demand for transparency in the arbitration process may pose a challenge in determining competing rights.

The implementation of the UDHR's principles in managing sports disputes has been controversial. A major problem is how to reconcile the autonomy of sports organisations with the universality of human rights. International sports organisations have historically enjoyed a relatively high degree of freedom in their operations. This autonomy has been allowed to maintain the athletic specificity of sport and the harmonised management of sport worldwide. However, this autonomy may contradict human rights principles because sports organisations do not ensure adequate protection of athletes' rights or the use of fair means to resolve disputes.[416]

The concept of *lex sportive*, a set of rules and principles that apply to international sports, has been used as legal justification for deviations from conventional legal principles, including those under human rights law. Proponents have defended such peculiarities, claiming that sports warrant specific regulation and arbitration, different from general human rights. Others argue that this approach will result in negligence and the abandonment or dilution of the human rights of athletes.[417] The challenge, therefore, lies in determining appropriate measures that respect the unique characteristics of sport while simultaneously upholding the fundamental principles of human rights.

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[414] Antonio Rigozzi, Ulrich Haas and Emily Wisnosky, 'Breaking Down the Process for Determining a Basic Sanction under the 2015 World Anti-Doping Code' (2015) 15 International Sports Law Journal 3, 5-7.
[415] Nafziger, *International Sports Law* (n 13) 168-170.
[416] Foster, 'Is There a Global Sports Law?' (n 94) 4-6.
[417] Casini (n 104) 1320-1322.

Consent is another challenge when applying the principles of the UDHR to sport dispute resolution. When participating in sporting activities, many athletes sign arbitration agreements which bar their access to the national courts. It is controversial whether such clauses, which have been recognised by the courts, constitute 'forced arbitration', which is not compatible with the right to a fair trial under the UDHR.[418] In *Mutu and Pechstein v. Switzerland*,[419] the ECtHR did not find the Court of Arbitration for Sport (CAS) procedure to be incompatible with the right to a fair trial. However, the Court emphasised the necessity of procedural safeguards to ensure that the arbitration process upholds fundamental rights and guarantees fairness.

The application of UDHR principles has led to significant developments in sports dispute resolution over the years. A notable trend has been the development of athletes' rights and the requirement for clear, ethical working practices. This has led to changes in the rules and regulations governing arbitration; for instance, changes to the CAS code to permit public hearings in some cases and to increase arbitrators' caseloads.[420] Internal dispute resolution mechanisms and ethics commissions have been established in both national and international sports-regulating bodies, with many of these committees applying human rights principles.

The impact of the UDHR can also be discussed in relation to the growing focus on athletes' roles in sports governance and dispute resolution. Although the UDHR does not specify the right to vote or the right to a standing as such, it must be understood that the right to vote is an important facet of the right to freedom of association or to political participation. Some sports organisations have provided for the representation of athletes: some have formed athletes' commissions or have included athletes in their decision-making bodies. For example, the IOC has an Athletes' Commission, and athletes have voting rights at IOC sessions.[421] The trend toward greater athlete representation has implications for dispute resolution, as it can lead to the development of more athlete-centric procedures and safeguards.

The principles of the UDHR have also been evident in the formulation of specific human rights relevant to sport. The Centre for Sport and Human Rights, established in 2018, works to promote human rights in all aspects of sport, including dispute resolution. The Centre has provided guidance and recommended approaches to implementing rights-respecting complaint processes in sport, using the UN Guiding Principles on Business and Human Rights and other sources.[422] Likewise, the World Players' Association has developed the Universal Declaration of Player

[418] Katarina Pijetlovic, *EU Sports Law and Breakaway Leagues in Football* (TMC Asser Press 2015) 279-281.
[419] *Mutu and Pechstein v Switzerland* (n 158) paras 95-96.
[420] Court of Arbitration for Sport, 'Code of Sports-related Arbitration' (2019) R57.
[421] International Olympic Committee, 'Olympic Charter' (2020) rule 28.
[422] Centre for Sport and Human Rights, 'Sporting Chance Principles' (2018).

Rights, which cites the UDHR, seemingly in an attempt to apply its principles to the specific context of professional athletes.[423]

The application of UDHR principles in sports dispute resolution also increases awareness of the human rights implications of major sporting events. The competitions to organise and host events such as the Olympics and the FIFA World Cup have increasingly attracted controversy over human rights, particularly workers' rights, freedom of speech, and anti-discrimination. This has resulted in the incorporation of human rights criteria into bid evaluations and contracts with host cities or countries, as well as the approval of redress mechanisms for individuals and communities affected.[424] Although these mechanisms are not directly concerned with athlete disputes, they are important developments in the use of a rights-based approach to dispute resolution within the broader context of sports law.

The application of the UDHR's principles has also raised questions about cultural relativism and the UDHR's impact on sports dispute resolution. The UDHR states that everyone has rights, but the meaning and implementation of those rights differ across cultures and countries. This is problematic in international sports when people and institutions from different backgrounds must adhere to rules and solve problems together. For example, variations in cultural perceptions of gender equity or fair speech can pose problems for non-discrimination principles in sports administration or arbitration.[425] The right to education, as provided in Article 26 of the UDHR, can influence sports dispute-resolution mechanisms in college and youth sports. In some countries, especially the United States, there has been a major conflict between athletes' rights and the interests of the educational institutions they represent. Issues such as whether student-athletes can commercialise their name, image or likeness, and how scholarship systems are structured are closely tied to the dispute-resolution frameworks in educational sports systems.[426] The application of UDHR principles in these cases requires the careful balancing of educational goals, athletes' rights and the integrity of amateur sports.

The role of the UDHR extends beyond the formal sports dispute settlement and complaint procedures, embracing non-jurisdictional or non-legal techniques of mediation and conciliation. These methods include voluntary participation, mutual consent, and the amicable settlement of conflicts, which align well with the provisions of the UDHR on respect for human dignity. A significant number of associations linked to sporting activities have integrated other forms of ADR

[423] World Players Association, 'Universal Declaration of Player Rights' (2017).
[424] Human Rights Watch, 'China: Olympics Harm Key Human Rights' (2021).
[425] Anderson, *Modern Sports Law* (n 185) 89-91.
[426] *National Collegiate Athletic Association v Alston* 594 US ___ (2021).

that offer more satisfactory solutions and help maintain social relationships, unlike the adversarial approach.[427] Although the right to health is not recognised in the UDHR as an individual right, it can be seen as implicit in the right to an adequate standard of living guaranteed in art 25. In the sporting context, this right touches on the resolution of conflicts about medical attention, mental health and the abuse of athletes. In exercising this right, safeguarding policies and procedures in sports organisations must be established, together with unique mechanisms for addressing abuse.[428] Examples of systemic mistreatment in gymnastics and other sports have demonstrated the need for well-coordinated, appropriate and trauma-sensitive dispute resolution processes that recognise and support athletes' rights to bodily integrity and health.

The UDHR principles are also applicable to areas that are still developing in sports, such as the participation of transgender athletes and the influence of technology on competitions. Such issues relate to the essential principles of the UDHR, namely equality, privacy and human dignity. A system for resolving disputes in these areas must address the relationship between rights and risks on the one hand and the principles of non-discrimination and respect for human dignity on the other.[429] Another issue is the extent to which UDHR principles can be applied in individual sports dispute proceedings; their application will have an impact on the future of sport governance and integrity. By respecting human rights – as outlined in the Official Reporting System, which provides athletes with a formal channel to report abuses, and the Athletes' Charter of Rights, which affirms their rights to fair treatment and participation – sports institutions can regain trust by upholding the social and cultural values that make sport meaningful. This is especially significant at a time when sports are under serious pressure in terms of their legitimacy and reliability, which are impacted by issues such as doping, bribes, match-fixing and corruption.[430]

In predicting the future of the development of sports dispute resolution based on the principles enshrined in the UDHR, the following main trends can be identified. The first is the continuation of the athletes' autonomy agenda by ensuring that athletes' voices are heard in dispute resolution procedures. This could mean using technology to provide more 'pipelines' to justice, along with removing impediments such as expense, language and distance that may compromise an athlete's ability to access justice.[431] One key area of focus is the continued advancement of conflict

[427] Blackshaw, *Sport, Mediation and Arbitration* (n 136) 45-47.
[428] Celia H Brackenridge, 'Child Protection in Sport: Reflections on Thirty Years of Science and Activism' (2014) 3 Social Sciences 326, 328-330.
[429] Helen Jefferson Lenskyj, *Gender Politics and the Olympic Industry* (Palgrave Macmillan 2013) 112-114.
[430] Richard H McLaren, 'Corruption: Its Impact on Fair Play' (2008) 19 Marquette Sports Law Review 15, 17-19.
[431] Antoine Duval, 'The Rules of the Game: The Need for Transparency in Sports Governance' (2016) Play the Game Comment 01.07.2016 <https://www.playthegame.org/news/the-rules-of-the-game-the-need-for-transparency-in-sports-governance> accessed 10 October 2024.

avoidance strategies as proactive tools for managing and regulating disputes in the sporting arena. This also aligns with the spirit of the UDHR, as it seeks to establish the conditions under which the rights will be implemented. In the context of sports, this may involve areas such as education – particularly early childhood education – and the development of organisational cultures that recognise human rights and promote constructive dialogue over physical or aggressive confrontation.[432]

Artificial intelligence (AI) and human rights are likely to become increasingly important in sports dispute resolution. Although the application of AI, machine learning and big data analysis to sports organisations and arbitration bodies' decisions is a regular practice, a question that arises is how to make AI technology compliant with fundamental human rights, including the principles of non-discrimination, the right to private life and the right to a fair trial.[433]

Therefore, the UDHR has played an important role in conflicts and disputes in the sporting context. It has codified rules for international arbitration, provided a model for the formation of specific dispute-settlement agencies, and offered input on current athlete issues and on principles of modern sport. Thus, despite the difficulties in harmonising the SPSCS and sports dispute resolution in general with the provisions of the UDHR, the overall picture is optimistic, given the development of the recognition and protection of human rights in sport. The UDHR may therefore continue to serve as a leading reference point for assessing the appropriateness of dispute-resolution mechanisms, especially as sports evolve and face new challenges.

4.2.2 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR[434] was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976, serving as a cornerstone of international human rights law. As part of international law, the ICCPR expands on the civil and political rights recognised in the UDHR. It has extensive effects on the prosecution of sports disputes; its provisions offer clearer and more effective means to protect athletes' rights and foster fair processes. Since the adoption of the ICCPR has a continuing effect on sports management and various methods of dispute

[432] U Erdilanita and A Ma'mun, 'The Role of Sports Participation on Social Skill Development in Early Childhood and Adolescence' in *Proceedings of the International Seminar of Sport and Exercise Science (ISSES 2024)* (Atlantis Press 2025) 160-181.

[433] Michiel Fierens and Jan de Bruyne, 'Artificial Intelligence in Sports – The Legal and Ethical Issues at Play' (Robot Player, 21 August 2020).

[434] International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171 (ICCPR).

resolution in the international sports world, the international sports community has become more aware of the importance of referring to the ICCPR as a human rights standard.[435]

Article 2(3) of the ICCPR provides for the right to an effective remedy in the context of sports dispute resolution mechanisms, highlighting structural and access-related challenges in the process. This provision requires state parties to ensure that individuals can seek redress for violations of their rights through effective procedures, particularly when infringements are committed by individuals acting in an official capacity. In the realm of athletes' rights protection, this principle underscores the need for grievance-handling procedures in sporting institutions to be both effective and accessible. However, realising this right in sports remains problematic due to the transnational nature of many sporting activities and affiliations. As Nafziger points out, the international dimensions of sports complicate the provision of effective remedies for human rights abuses, requiring coordinated efforts from both national and international institutions.[436] The emergence of specialised sports tribunals and arbitration bodies, such as the CAS, can be seen as an effort to provide such remedies.

The effectiveness and compliance of these sports tribunals and arbitration bodies with the requirements of the ICCPR have been the subject of extensive legal analysis and case law. In *Mutu and Pechstein v Switzerland*, [437] the ECtHR examined the independence and impartiality of the CAS, as well as the issue of public hearings. While the ECtHR generally upheld the validity of CAS arbitration, it raised concerns about the closed list of arbitrators and the lack of public hearings in some cases, suggesting that the CAS may not fully meet the standards of art 14 of the ICCPR.[438] Similarly, legal scholars have analysed the tension between the autonomy of sports organisations and athletes' rights, particularly in the context of compulsory arbitration. Haas, for instance, has questioned whether the requirement that athletes submit to CAS arbitration as a condition of participation can be reconciled with the 'voluntary' standard implied by art 14 of the ICCPR.[439] Furthermore, Duval's analysis of the relationship between the CAS and EU law highlights the importance of public hearings and transparency in sports arbitration, aligning with the interpretations of art 14 in the context of the ICCPR.[440] Mavromati's research on the CAS and its jurisprudence also underscores the need for reforms to enhance arbitrator independence and

[435] McArdle (n 132) 23-25.
[436] James AR Nafziger, 'International Sports Law: A Replay of Characteristics and Trends' (1992) 86 American Journal of International Law 489, 505-506.
[437] *Mutu and Pechstein v Switzerland* (n 158).
[438] ibid.
[439] Ulrich Haas, 'The "Time Limit for Appeal" in Arbitration Proceedings before the Court of Arbitration for Sport (CAS)' (2011) 8 Schweizerische Internationale und Vergleichende Rechtszeitschrift 1, 3-4.
[440] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 237-238.

increase procedural transparency, to better align with the fair trial standards articulated in the ICCPR.[441] The application of art 2(3) of the ICCPR, which provides for the right to an effective remedy, remains a complex and evolving area of legal analysis in the context of sports dispute resolution mechanisms. The interplay between the autonomy of sports organisations, the rights of athletes, and the requirements of the ICCPR remains a subject of ongoing debate and jurisprudential development, as scholars and courts seek to balance these competing interests and ensure the fairness and accessibility of sports-related grievance procedures.

Article 14 of the ICCPR outlines a comprehensive set of fair trial rights, including the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. While this article was primarily designed for traditional judicial proceedings, its application to sports arbitration has become a subject of significant legal debate and analysis. In sports-related situations, the interpretation and application of art 14 have been particularly contentious, especially in the context of the CAS. The fundamental question is whether the CAS, as a private arbitration body, can meet the standards of independence and impartiality required by art 14.[442] One notable case where art 14 principles were scrutinised in a sports context is *Mutu and Pechstein v Switzerland*. This decision suggests that while sports arbitration systems like the CAS can potentially satisfy art 14 requirements, they must still adhere to certain fundamental principles of fairness and transparency.

The interpretation of art 14 in sports arbitration has also focused on the concept of 'compulsory arbitration'. Many athletes are required to agree to CAS arbitration as a condition of participation in their sport, raising questions about whether such arbitration truly meets the 'voluntary' standard implied in art 14.[443] Courts and legal scholars have grappled with whether this form of mandated arbitration can be reconciled with the right to a fair trial before an independent tribunal. Another aspect of art 14's interpretation in sports contexts relates to the public nature of hearings. While traditional court proceedings are generally public, many sports arbitration hearings are conducted in private. The ECtHR's decision in *Mutu and Pechstein* emphasised the importance of public hearings, suggesting that the interpretation of art 14 in sports contexts should lean towards greater transparency, at least in cases of significant public interest.[444] The application of art 14 principles has also led to ongoing debates about reforming sports arbitration procedures. These discussions often focus on enhancing the independence of arbitrators, ensuring a more diverse pool of decision-

[441] Lindholm, 'The Court of Arbitration for Sport (CAS) and its Jurisprudence' (n 105) 170-171.
[442] Antonio Rigozzi and Fabrice Robert-Tissot, 'Consent in Sports Arbitration: Its Multiple Aspects' in Elliott Geisinger and Elena Trabaldo-de Mestral (eds), *Sports Arbitration: A Coach for Other Players?* (JurisNet LLC 2015) 59, 72.
[443] Haas, 'The "Time Limit for Appeal"1.
[444] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 237-238.

makers, and increasing the transparency of proceedings.[445] Such reforms aim to bring sports arbitration more in line with the fair trial standards articulated in art 14 of the ICCPR. While art 14 of the ICCPR was not specifically designed for sports-related situations, its principles have been increasingly applied and interpreted in this context. The ongoing legal analysis and court decisions demonstrate a trend towards holding sports arbitration systems to standards similar to those of traditional judicial proceedings, while also recognising the unique aspects of the sports world.

Article 17 of the ICCPR protects the right to privacy, which has various links with sports dispute resolution. This right is relevant to the anonymity of the arbitration process, the depositor's control of athletes' data, and the intrusiveness of anti-doping measures. The conflict between the requirement of the publicity of proceedings and the right to privacy has been one of the most discussed issues in sports arbitration. As Mavromati and Reeb pointed out: 'The issue is, in fact, to find an adequate balance between the interest of the community to get informed on the occurrences of a specific sport event and the right of athletes and sport organisations on privacy protection.'[446] This balance is most relevant to the release of certain arbitral awards to the public and the holding of public hearings in certain significant cases.

The two provisions of the ICCPR that affect sports dispute resolution are the protection of freedom of expression (art 19) and freedom of association (art 22). These rights facilitate athletes' freedom of expression, to express discontent, to protest against those in authority in sports administration, and to form associations to lobby for their rights. These rights can be important in highlighting the lack of reform in sports governance and dispute resolution. However, tensions may arise when sports organisations impose restrictions on athletes' freedom to communicate and self-organise, often justified by appeals to competitive integrity or commercial interests. Blackshaw notes that '[t]he balance between athletes' freedom of expression and the legitimate interests of sports organisations in regulating conduct remains a contentious issue in sports law'.[447] This tension is particularly evident in athletes' freedom of speech – or protest – on social media and in other sporting contexts.

Freedom of movement is guaranteed in Article 12 of the ICCPR and is an essential element of the sports dispute regulation in issues that involve restrictions of an athlete's ability to participate or transfer to a different team. Issues such as player transfers, player eligibility, and competition bans often implicate this right. The application of freedom-of-movement principles in the sports context

[445] Lindholm, 'The Court of Arbitration for Sport (CAS) and its Jurisprudence' (n 105) 170-171.
[446] Mavromati and Reeb (n 186) 495-497.
[447] Blackshaw, *International Sports Law* (n 147) 112-114.

must be balanced against the need for regulatory frameworks to ensure competitive balance and integrity. For this reason, as Weatherill observed, 'the conflict between athletes' right to movement and the associative freedom of the sport organisations to decide their own rules of engagement is a familiar theme in sports law and may call for the fine calibration by the courts'.[448] This balancing act is apparent in the fight against transfer regulations and the eligibility rules that define sports law and the dispute resolution practice.

Article 26 of the ICCPR focuses on non-discrimination in sports dispute resolution. The article calls for equal rights within legal frameworks and prohibits discrimination based on race, colour, sex, language, religion, political or other opinions, nationality, wealth, birth, or other circumstances. In the sports context, these principles require that mechanisms for legal redress of grievances be available to all athletes and not depend on their individual qualities or the type of sport in which they engage. More specifically, the use of the non-discrimination principle has been especially effective in exploring gender equity in schools, with a particular focus on sports. Schwab points out that '[a]n increased emphasis on gender equality in sports has gone beyond the issue of participation to include the issue of treatment within sporting disputes, which address historical stereotyping and unfair treatment of women'.[449] This has paved the way for agitation over the composition of arbitration panels and the inclusive diversification of sports governance and dispute-resolution bodies.

The most persuasive general legal principle is the right to a fair trial by an independent tribunal, enshrined in art 14 of the ICCPR. This article provides for specific minimum rights: the right to be informed promptly of charges, the right to a reasonable amount of time and facilities to prepare a defence, the right to legal counsel, and the right to access and cross-examine witnesses. The application of these guarantees to sports arbitration has led to ongoing debates over the sufficiency of procedural protections in fora such as the CAS. Foster notes that '[t]he challenge for sports arbitration is, therefore, to offer efficient and appropriate means of dispute solution while staying within [the] parameters of [the] ICCPR's basic principles on procedure'.[450] This has led to further changes in the arbitration procedures, including expanded rights of representation and more detailed reasoned decisions.

Article 7 of the ICCPR on the prohibition of cruel, inhuman or degrading treatment has implications for sports dispute resolution in matters concerning the welfare of athletes and their protection from abuse. This provision enhances the development of safeguarding policies and

[448] Weatherill, *Principles and Practice in EU Sports Law* (n 268) 156-158.
[449] Schwab, 'Embedding the Human Rights of Players in World Sport' (n 322) 220.
[450] Foster, 'Is There a Global Sports Law?' (n 94) 4-6.

unique complaint-handling procedures for physical or psychological abuse in sporting activities. The abuse cases in gymnastics and other sports have raised the urgent need for sound and sensitive dispute resolution procedures that protect the athlete's human right not to be abused. Brackenridge et al state that '[r]ights-compliant strategies to address abuse in sporting contexts are important in order to support the ICCPR and maintain the integrity of governance in sporting bodies'.[451]

The right to an effective remedy, enshrined in art 2(3) of the ICCPR, has prompted discussions about the adequacy of existing sports dispute resolution mechanisms and the need for additional avenues of recourse for athletes. This has resulted in the emergence of a complex hierarchy for resolving disputes across different sports, incorporating internal grievance mechanisms, mediation and arbitration processes. An appreciation of these systems nevertheless raises the question as to whether they have been efficient in providing genuine remedies to victims of rights infringements. According to Findlay and Mazzucco, '[t]he task is to design dispute resolution provisions that are available to the athletes and effective in providing the relief required, yet deferent to the long arm of sport'.[452]

Restrictions on the right to liberty and security of person are regulated by art 9 of the ICCPR and affect sports dispute remediation in connection with provisionally suspending teams and other interim measures that inhibit an athlete's right to participate in competitions. The application of such measures, especially in doping matters, has been frowned upon because while many organisations deem it necessary to act quickly to protect the integrity of various competitions, athletes must be accorded the fairness and dignity of a legal process. Soek also correctly observes that '[t]he case under consideration teaches that the application of provisional measures in sports must be made with extreme care in order not to infringe the athlete's liberty interests while responding to prima facie credible risks to competitive fairness'.[453] This tension persists as a practical difficulty of the sports dispute resolution system that requires mandatory and accurate procedural protections and checks and balances.

In athletes' professional careers, the right to work as contained in art 6 of the ICCPR plays a role in relation to sports dispute resolution. Disputes over contract terminations, bans from competition, and other measures that impact athletes' ability to practise their profession implicate this right. The resolution of such disputes must consider the significance of the issues involved, as decisions in the sporting context can have a direct and substantial impact on athletes' livelihoods and financial

[451] Celia H Brackenridge et al, 'The Place of Dignity in Policies to Safeguard Athletes from Abuse' (2021) 23 International Journal of Sport Policy and Politics 295, 298-300.
[452] Hilary A Findlay and Marcus F Mazzucco, 'The Supervisory Role of the Court of Arbitration for Sport in Regulating the International Sport System' (2010) 20 Entertainment and Sports Law Journal 14, 16-18.
[453] Soek, *The Strict Liability Principles* (n 406) 155-157.

well-being. Parrish and Miettinen rightly argue that the continued professionalisation of sport has brought employment rights issues to the fore in sports dispute settlements, while addressing regulatory imperatives and athletes' career considerations.[454]

The application of the ICCPR principles to sports dispute resolution has been challenging. It is crucial to draw attention to the tension between the human rights approach and the independence of sport organisations. International sports federations (ISFs) have a long history of granting a lot of independence, which means that organisations have escaped close supervision. This autonomy has been rationalised by the premise of maintaining sport's 'sportness' as well as the hierarchy's global 'homogeneity'. Of course, this autonomy poses challenges to human rights when the executive committees do not pay attention to athletes' rights or fail to avail fair procedure for solving disputes. According to Boyes, the rights and proper authority of sport associations and organisations should be balanced with the human rights standards of governance and the settlement of disputes.[455]

The nature of state responsibility under the ICCPR in relation to sports dispute resolution remains in question. States bear the discretionary and overall responsibilities for fulfilling the ICCPR; most aspects of sports administration, disciplinary measures and dispute resolution are handled by private and non-governmental organisations. This has raised questions about how far a state can go in ensuring that private sports bodies are human rights-compliant. Shinohara regards state duty as the mechanism by which human rights obligations are indirectly imposed on private sports organisations, but this remains an uncertain and developing area of international sports law.[456] This issue must be noted in connection with major sporting events since state involvement in the organisation of an event and security measures for the event may entail the engagement of ICCPR provisions.

Another area of relevance for international sports dispute resolution is the extra-territorial aspect of the ICCPR. Some aspects sports competitions and governance occur in different countries, and this leads to the question of state jurisdiction under the ICCPR. A global human rights body, the UN Human Rights Committee, has interpreted the concept of extra-territorial obligations broadly, which could mean that states are constrained when policing the activities of their national sports authorities overseas. As Milanovic points out, it is possible that the regulation of international sport

[454] Richard Parrish and Samuli Miettinen, *The Sporting Exception in European Union Law* (TMC Asser Press 2008) 201-203.

[455] Simon Boyes, 'Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies' (2017) 17 International Sports Law Journal 35, 38-40.

[456] Tsubasa Shinohara, 'Which States Parties should be held Responsible for the Implementation of Positive Obligations under the ECHR in Sports-related Disputes?' (2021) 22 International Sports Law Journal 332.

activities, including mechanisms for dispute resolution, might be affected by the extra-territorial application of human rights treaties such as the ICCPR.[457]

Another aspect of the challenge is where human rights norms in the ICCPR interact with regional human rights instruments like the ECHR to form part of the interface through which human rights norms may be applied in the arena of sports dispute resolution. These instruments are generally similar, but there may be some differences in interpretation and, correspondingly, in application. International sports dispute resolution mechanisms must operate within this matrix of human rights obligations that intersect in numerous ways. Latty pointed out that '[t]he dilemma that sits before international sport related organisations is how they design sensitive resolution mechanisms when it comes to human rights while at the same time having a harmonised and standardised procedure that can suit all the complex human rights systems all over the world'.[458]

The future development of sports dispute resolution with reference to the ICCPR principles will impact the following areas. The first is the continuation of athlete-centred solutions; the process of resolving disputes must be easily understandable and adjustable to athletes' interests and positions. This may entail the use of technology to overcome barriers such as costs, language or geographical proximity that may prevent athletes from seeking justice. An area that needs special attention is increasing preventative measures to solve disputes. This accords with the principle enshrined in the ICCPR of establishing an environment in which the given rights are fully-fledged. Applying this to sport could mean an enhanced focus on education, prevention and creating organisational cultures that uphold human rights, and encourage communication and the resolution of disputes without the use of violence.

Another issue is AI and human rights in sports dispute resolution. As AI tools become more established in sports organisations and arbitration bodies as the tools for data analysis, supporting decisions and even making decisions automatically, issues arise about how to integrate those technologies to respect human rights when the latter are being violated. Solanki stated that AI in sports dispute resolution presents new human rights issues that are unprecedented and will demand novel legal strategies.[459]

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[457] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press 2011) 209-211.

[458] Franck Latty, *La Lex Sportiva : Recherche sur le Droit Transnational* (Martinus Nijhoff Publishers 2007) 432-434.

[459] Amit Solanki, 'AI and Data Analytics in Sports: Use Cases, Benefits, and Considerations' (Softwebsolutions, 11 March 2024) <https://www.softwebsolutions.com/resources/ai-data-analytics-use-cases-in-sports.htm>.

The future development of sports dispute resolution in light of ICCPR principles is likely to focus on several key areas. One is the further development of athlete-centric approaches, ensuring that dispute resolution mechanisms are accessible, understandable and responsive to athletes' needs and perspectives. This may involve the greater use of technology to enhance access to justice, as well as efforts to address barriers such as costs, language and geographical distance that can impede athletes' ability to seek redress. Another area of focus is likely to be the enhancement of preventative approaches to dispute resolution. This aligns with the ICCPR's emphasis on creating conditions where rights can be fully realised. In the sports context, this could involve greater emphasis on education, early intervention, and the development of organisational cultures that respect human rights and promote dialogue and the peaceful resolution of conflicts.

The ICCPR thus provides a solid base for the assessment and improvement of mechanisms for sports dispute resolution. Its provisions on fair trial rights, non-discrimination, privacy and other broad freedoms provide key reference points to ensure that athletes' human rights are not violated. While challenges remain in fully aligning sports dispute resolution with the ICCPR principles, the move towards greater recognition and protection of human rights in sport is clear. As the field advances, the ICCPR will remain an important source of reference in guaranteeing the rights to dignity, equality, liberty and freedom in any mechanisms designed to resolve sports disputes.

4.3 Regional frameworks

While the international human rights frameworks, such as the UDHR and the ICCPR, provide the foundational norms and standards for procedural rights, it is also important to consider the regional human rights instruments and jurisprudence that have shaped the understanding and application of these principles in specific contexts. Regional perspectives from Europe and Africa are particularly relevant for this study, which focuses on the human rights aspects of sports dispute resolution in South Africa. The European human rights framework, based on the ECHR and the jurisprudence of the ECtHR, has been instrumental in interpreting and applying international human rights norms in the European context. The ECtHR's rulings have had a significant impact on ensuring that sports dispute resolution mechanisms respect due process and fair trial rights, setting important precedents that have influenced the development of sports governance practices across the continent. At the regional level in Africa, the African Charter on Human and Peoples' Rights (ACHPR, the Banjul Charter) and the African Court on Human and Peoples' Rights (AfCHPR) have also played a crucial role in articulating and upholding procedural human rights standards. These regional frameworks, while complementing the international norms established by the UDHR and the ICCPR, provide an important context for understanding the unique cultural,

historical and institutional factors that shape human rights considerations in sports dispute resolution, particularly in the South African context. Examining these regional perspectives provides a more comprehensive understanding of how the universal principles of procedural fairness and due process should be interpreted and applied in the specialised domain of sports governance.

4.3.1 The European human rights framework

The European human rights framework represents one of the most developed and sophisticated regional systems for protecting procedural rights in sports dispute resolution. This framework, anchored in the ECHR and elaborated upon by the jurisprudence of the ECtHR, has significantly influenced the evolution of sports justice systems while maintaining the delicate balance between sporting autonomy and fundamental rights protection.[460] The European framework's approach to sports dispute resolution demonstrates that while sports governing bodies may establish specialised dispute resolution mechanisms, these must ultimately conform to core procedural human rights standards, particularly those enshrined in art 6 of the ECHR concerning the right to a fair trial. This harmonisation between specialised sporting procedures and fundamental rights protection has become increasingly important as the economic and social significance of sports has grown, making the framework's principles particularly relevant for understanding the broader relationship between sports law and human rights.[461]

The European framework's treatment of sports dispute resolution has moved through several distinct phases, reflecting the growing recognition that sporting bodies, despite their private nature, must respect fundamental procedural rights when exercising their quasi-judicial functions. The ECtHR was initially reluctant to intervene in sports-related disputes, viewing them as purely private matters, but it has progressively moved towards a more nuanced approach that acknowledges the public interest dimensions of sports justice.[462] The court's jurisprudence has established that while sports tribunals may operate with considerable autonomy, they must nonetheless ensure compliance with basic procedural guarantees, particularly when their decisions significantly affect athletes' professional lives and livelihoods. This development reflects a broader

[460] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 226.
[461] Jean-Paul Costa, 'Legal Protection in Sport and the Role of the European Court of Human Rights' (2014) 1 International Sports Law Review 3, 5.
[462] U Haas, 'Role and Application of Article 6 of the European Convention on Human Rights in CAS Procedures' (2012) 3 International Sports Law Review 43.

trend in European human rights law towards recognising the horizontal effect of fundamental rights in private relationships, particularly where significant power imbalances exist.[463]

Central to the European framework's approach is the concept of 'indirect horizontal effect', whereby fundamental rights obligations traditionally applicable to state actors are extended to private sports organisations by various legal mechanisms.[464] This doctrine has been particularly significant in ensuring that sports dispute resolution bodies, despite their private status, must observe essential procedural safeguards. The ECtHR has repeatedly emphasised that states have a positive obligation to ensure that private dispute resolution mechanisms, including those in sports, provide adequate protection for fundamental procedural rights. This approach has been crucial in establishing a coherent framework that respects both sporting autonomy and human rights protection, creating a model that has influenced sports dispute resolution systems worldwide.[465]

The framework's application to sports dispute resolution has been particularly evident in cases involving the CAS. The ECtHR's landmark decision in *Mutu and Pechstein v Switzerland*[466] marked a crucial development in this regard, establishing that the CAS's arbitration process must comply with the requirements of art 6 of the ECHR, particularly concerning the right to a public hearing. This decision exemplifies the framework's approach of recognising sports bodies' autonomy while insisting that they adhere to fundamental procedural guarantees. The case has had far-reaching implications for the structure and operation of sports arbitration systems, leading to significant reforms in how sports disputes are handled throughout Europe.[467]

The European framework has developed several key principles that must be observed in sports dispute resolution procedures. The right to access to justice stands as a fundamental pillar, requiring that athletes and other stakeholders have meaningful opportunities to present their cases before competent tribunals.[468] The principle of the independence and impartiality of tribunals has been particularly emphasised, with the framework establishing specific criteria for assessing whether sports dispute resolution bodies meet these requirements. The right to a fair hearing has been interpreted to encompass various procedural guarantees, including adequate time for preparation, access to evidence and the opportunity to present one's case effectively. Additionally,

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[463] Casini (n 104) 1320.
[464] Richard Parrish, 'Sports Law and Policy in the European Union' (2003) 28 European Law Review 649, 652.
[465] Foster, 'Is There a Global Sports Law?' (n 94) 3.
[466] *Mutu and Pechstein v Switzerland* (n 158).
[467] Richard McLaren, 'The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes' (2001) 35 Valparaiso University Law Review 379, 381.
[468] Antonio Rigozzi, 'Challenging Awards of the Court of Arbitration for Sport' (2010) 1 Journal of International Dispute Settlement 217, 220.

the requirement for reasoned decisions has been consistently upheld as essential for ensuring transparency and accountability in sports justice.[469]

A significant aspect of the European framework's contribution has been its emphasis on the need for genuine consent in arbitration agreements. The ECtHR has recognised that while arbitration may be an appropriate mechanism for resolving sports disputes, the validity of arbitration clauses must be scrutinised to ensure that they represent a genuine choice rather than mere adhesion to mandatory requirements.[470] This principle has led to increased scrutiny of standard arbitration clauses in sports contracts and has influenced the development of more balanced dispute resolution provisions that better protect athletes' interests while maintaining the efficiency of sports justice systems.[471]

The framework has also addressed the crucial issue of institutional independence in sports dispute resolution bodies. While acknowledging that complete separation from sports governing bodies may not be practical or desirable, the framework has established minimum standards for institutional and decision-maker independence.[472] This has resulted in significant reforms in the structure and governance of sports tribunals, particularly concerning the selection, appointment and tenure of arbitrators. The framework's influence has led to the development of more transparent and objective criteria for arbitrator appointments and has encouraged the adoption of stronger conflict of interest provisions.[473]

Procedural fairness in anti-doping proceedings has received particular attention in the European framework. Given the severe consequences of adverse findings in doping cases, the framework has insisted on enhanced procedural safeguards in these proceedings.[474] This has included specific requirements regarding the standard of proof, the handling of scientific evidence, and the right to challenge analytical findings. The framework's influence has been instrumental in developing more robust procedural protections in anti-doping proceedings while maintaining their effectiveness in combating doping in sport.[475]

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469 Gabrielle Kaufmann-Kohler, 'Arbitral Precedent: Dream, Necessity or Excuse?' (2007) 23 Arbitration International 357, 360.
470 Mitten and Opie (n 272) 272.
471 Ian S Blackshaw, 'The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively Within the Family of Sport' (2003) 2 Entertainment Law 61, 63.
472 James AR Nafziger, 'International Sports Law as a Process for Resolving Disputes' (1996) 45 International and Comparative Law Quarterly 130, 133.
473 Reilly (n 286) 65.
474 Katarina Pijetlovic, 'EU Sports Law and Breakaway Leagues in Football' (2015) 22 Sports Law Journal 119, 122.
475 Adam Lewis QC and Jonathan Taylor QC, *Sport: Law and Practice* (3rd edn, Bloomsbury Professional 2014) 456.

The framework's approach to urgent proceedings and provisional measures has been particularly significant in the sports context. Recognising the need for rapid decision-making in certain sporting situations, it has developed principles for ensuring procedural fairness even under significant time constraints.[476] This has included guidelines for emergency procedures that maintain essential procedural guarantees while accommodating the need for the swift resolution of disputes that could affect ongoing competitions or athlete eligibility.[477]

The European framework has also made substantial contributions to the development of standards for transparency in sports dispute resolution. While respecting the traditional confidentiality of arbitration proceedings, it has emphasised the public interest dimension of many sports disputes and the consequent need for appropriate levels of transparency.[478] This has led to significant reforms in the publication of decisions and the conducting of hearings, promoting greater accountability while protecting legitimate privacy interests.[479]

Access to justice considerations, particularly regarding costs and legal assistance, have been another important focus of the framework. It has emphasised that procedural costs must not create unreasonable barriers to access to justice, particularly for individual athletes who may face significant resource constraints.[480] This has influenced the development of more accessible dispute resolution mechanisms, including the provision of legal aid and the adoption of more reasonable fee structures by sports tribunals.[481]

The framework's influence extends beyond Europe, serving as a model for other regional systems and contributing to the development of global standards for procedural rights in sports dispute resolution. Its emphasis on combining respect for sporting autonomy with the robust protection of fundamental rights has proven particularly influential in shaping the evolution of sports justice systems worldwide.[482] The principles developed in the European framework have been increasingly adopted by ISFs and have influenced the development of dispute resolution mechanisms in other regions.[483]

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476 Anderson, *Modern Sports Law* (n 185) 289.
477 Duval and Van Rompuy, 'The Compatibility of Forced CAS Arbitration with EU Competition Law' (n 341) 97.
478 S Weatherill, 'Is the Pyramid Compatible with EC Law?' in B Bogusz, A Cygan and E Szyszczak (eds), *The Regulation of Sport in the European Union* (TMC Asser Press 2014) 295-309.
479 Mark James, *Sports Law* (3rd edn, Red Globe Press 2017).
480 Borja García, 'UEFA and the European Union: From Confrontation to Co-operation?' (2007) 3 Journal of Contemporary European Research 202, 204.
481 Richard Parrish and Samuli Miettinen, *The Sporting Exception in European Union Law* (TMC Asser Press 2008) 85.
482 Reilly (n 286) 66.
483 Duval, 'The Olympic Charter' (n 324) 248.

The significance of the European human rights framework's influence on sports dispute resolution cannot be over-stated. By firmly establishing that the specialised nature of sports governance does not exempt it from the fundamental guarantees of procedural fairness, the ECtHR has played a crucial role in safeguarding the human rights of athletes and other stakeholders. This jurisprudence has not only enhanced the legitimacy and credibility of sports dispute resolution mechanisms, but has also contributed to the broader efforts to embed human rights principles within the global sports ecosystem. However, it is important to note that the ECtHR's jurisprudence is not without its limitations and challenges. While the court has been unequivocal in its position that sports dispute resolution must adhere to the fair trial standards enshrined in the ECHR, the practical implementation of these principles has at times proven to be complex and context dependent. The highly specialised and technical nature of many sports-related disputes, coupled with the inherent tension between the autonomy of sports organisations and the requirements of human rights law, have necessitated a nuanced and case-by-case approach by the ECtHR.

Moreover, the court's rulings have not always been embraced with enthusiasm by the sports community, with some governing bodies and tribunals resisting the encroachment of human rights norms into their domain. The perception of sports as a self-contained, autonomous sphere, governed by its own specialised rules and procedures, has at times clashed with the ECtHR's insistence on the over-riding significance of international human rights law. Despite these challenges, the European human rights framework, and the ECtHR's jurisprudence in particular, remains a crucial touchstone for understanding the intersection of sports dispute resolution and procedural human rights. By establishing clear benchmarks and principles, this regional system has influenced the practices of sports organisations in Europe and has had a broader, global impact on the evolving standards of fairness and due process in the world of sports governance.

4.3.2 African framework

The African framework for sports dispute resolution presents a unique and evolving landscape that reflects the continent's rich sporting heritage and its complex legal pluralism. While less institutionally developed than its European counterpart, the African framework demonstrates a growing commitment to establishing robust mechanisms for protecting procedural rights in sports disputes while acknowledging the need to incorporate traditional dispute resolution methods and address region-specific challenges. The framework operates within the broader context of the African human rights system, primarily anchored in the ACHPR[484] and supplemented by various

[484] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

sub-regional mechanisms. The ACHPR, also called the Banjul Charter, is a pivotal tool in protecting and promoting human rights in the African context. Adopted in 1981 by the Organization of African Unity (OAU), now the African Union (AU), the Charter came into force in 1986, marking a tremendous milestone in human rights jurisprudence in Africa.[485]

As a regional human rights treaty, the Charter is relevant to the dialogue of procedural human rights in sports dispute resolution frameworks in South Africa, given the country's ratification of the Charter and its dedication to upholding its standards.[486] The Charter is distinctive in its approach to human rights, as it not only enshrines individual rights but also emphasises collective rights and responsibilities. This holistic approach to human rights safety reflects African values and traditions, while adhering to familiar human rights standards.[487] In the context of sports dispute resolution, the Charter's provisions on the right to a fair trial and access to justice are particularly relevant.

Article 7 of the Banjul Charter has taken a central role in the discourse on procedural human rights in sports dispute resolution. It ensures the right to access competent national organs to have one's case heard, the right to appeal against violations of fundamental rights, the right to be considered innocent until proven guilty by a competent court or tribunal, the right to a defence, and the right to fair and speedy trial by an impartial court or tribunal. These rights are basic to applying fairness and justice in any dispute resolution system, including sports resolution systems. The right to have one's case heard, as provided for in art 7, applies to sports dispute resolution mechanisms. This means that athletes, coaches and other related stakeholders must have an opportunity for a fair and right hearing when the rights of stakeholders are allegedly violated. This principle has an affinity with the natural justice principle of *audi alteram partem*, according to which both sides of a case must be heard.[488] With reference to sports disputes, it requires the creation of easily recognisable and comprehensible procedures for filing complaints and appealing against decisions.

Moreover, as provided for in art 7(1)(b) of the Charter, the principle of 'innocent until proven guilty' is essential in sports-related disputes such as doping and other misconduct. This principle

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[485] Christof Heyns, 'The African Regional Human Rights System: The African Charter' (2004) 108 Penn State Law Review 679, 682.

[486] South Africa ratified the ACHPR on 9 July 1996. See African Commission on Human and Peoples' Rights, 'Ratification Table: African Charter on Human and Peoples' Rights' <https://www.achpr.org/ratificationtable?id=49> accessed 2 October 2024.

[487] Makau Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties' (1995) 35 Virginia Journal of International Law 339, 341.

[488] Giacinto della Cananea, 'Audi Alteram Partem' in *Due Process of Law Beyond the State: Requirements of Administrative Procedure* (Oxford University Press 2016) 35-60.

ensures that athletes are not condemned before being tried fairly and impartially.[489] This legal principle plays an important role in protecting athletes' rights and reputations in sports dispute resolution mechanisms because allegations of wrongdoing can harm athletes' careers.

The last of the recognised procedural fairness rights is the right to a defence, which is set out in art 7(1)(c). This right includes the right to make submissions on the issues in a case, to summon witnesses and to cross-examine witnesses. This right may include the right of access to justice, legal assistance and representation by legal counsel for participants in sports disputes, or in complicated cases that can result in severe sanctions and penalties.[490] Therefore, when a Charter right is infringed, it is essential that sports dispute resolution mechanisms comply with Article 7(1)(d) of the Charter, which guarantees the right to a trial within a reasonable time by an impartial court or tribunal. Many disputes that arise in the sporting context are time-sensitive, mainly because they concern whether a particular player will be included in a team or whether such a player is qualified to compete with others. However, such decisions must be made in a way that is completely professional and fair. This highlights the serious concern about the influence that sports governing bodies and other interested parties may exert on current dispute resolution processes.[491]

Other provisions of the Banjul Charter also occasionally affect procedural rights in the sports dispute resolution arena. Important legal grounds include art 3 on equality before the law and the equal protection of the law in relation to non-discrimination in access to and treatment by sports dispute resolution mechanisms. The existence of bias or inequality in the sports governance system makes this principle especially relevant, ensuring that all parties are treated fairly and without discrimination in the dispute resolution process. The freedom to receive information and the freedom of opinion and expression, specified in art 9, contribute to transparency and reporting on the resolution of sporting disputes. This right requires the provision of understandable information about the procedures for filing disputes, and the publishing of detailed decisions so that stakeholders understand why particular decisions were made.[492]

The African Commission on Human and Peoples' Rights is established by art 30 of the Charter and is entrusted with the responsibility of overseeing its implementation. The activities of the Commission have assisted in defining and explaining the specifics of the Charter and the protection

[489] Takele Soboka Bulto, 'The Utility of Cross-Cutting Rights in Enhancing Justiciability of Socio-Economic Rights in the African Charter on Human and Peoples' Rights' (2011) 29 University of Tasmania Law Review 142, 150.
[490] Frans Viljoen, 'The African Charter on Human and Peoples' Rights: The Travaux Préparatoires in the Light of Subsequent Practice' (2004) 25 Human Rights Law Journal 313, 318.
[491] Nsongurua J Udombana, 'The African Commission on Human and Peoples' Rights and the Development of Fair Trial Norms in Africa' (2006) 6 African Human Rights Law Journal 299, 305.
[492] Rachel Murray, *The African Commission on Human and Peoples' Rights and International Law* (Hart Publishing 2000) 128.

of procedural rights.[493] The Commission's decisions and interpretations of fair trial rights and the right of access to justice have wider implications for all forms of sports dispute resolution, not only arbitration. In *Constitutional Rights Project and Others v Nigeria*,[494] the Commission recognised the rights to be heard and to have one's case heard by a competent and impartial court or tribunal. The Commission said that this right is 'categorical in averting the violation of other rights' and its withdrawal could mean that 'other violations would remain undetected and uncompensated'.[495] This interpretation underscores the critical importance of procedural fairness in protecting substantive rights, a principle equally applicable to sports dispute resolution.

The Commission has also examined the independence and impartiality of tribunals, a critical factor in sports dispute resolution bodies. In *Amnesty International and Others v Sudan*,[496] the Commission held that special tribunals should be held to the same standards of fairness, openness and justice as ordinary courts. This principle is applicable to special sports courts and arbitration tribunals, which must adhere to the same standards as ordinary judicial courts.

Another body of enforcement of the Charter is the AfCHPR, provided for by the Charter's protocol, which came into force in 2004.[497] Although the court's jurisdiction is limited to states that recognise its competence, its jurisprudence can provide valuable guidance in interpreting procedural rights under the Charter. This could influence the development of sports dispute resolution frameworks across the continent.

However, as a preamble to the exercise of applying the Banjul Charter to sports dispute resolution in the South African legal system, it must be noted that provisions of the Charter are legally enforceable against state parties. South Africa is a signatory to the Charter, and thus must ensure that its national law and institutions, which regulate sports disputes, are compatible with the Charter.[498] This obligation also applies to non-state actors, including national sports federations, in relation to human rights compliance both in their operations and in relation to procedures for dealing with disputes. The provisions of the Banjul Charter are given force and effect through the domestication of international law, especially through the South African Constitution. The Constitution also allows international law to be taken into consideration by the courts when

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493 Vincent O Nmehielle, 'Development of the African Human Rights System in the Last Decade' (2004) 11 Human Rights Brief 6, 8.

494 *Constitutional Rights Project and Others v Nigeria* (2000) AHRLR 227 (ACHPR 1999).

495 ibid para 41.

496 *Amnesty International and Others v Sudan* (2000) AHRLR 297 (ACHPR 1999).

497 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 9 June 1998, entered into force 25 January 2004).

498 John C Mubangizi, *The Protection of Human Rights in South Africa: A Legal and Practical Guide* (Juta 2013) 112.

interpreting the Bill of Rights, by virtue of s 39(1)(b) of the Constitution, while s 233 of the Constitution requires the courts to adopt an interpretation of legislation that is most consistent with international law. These provisions mean that the principles of the Banjul Charter can be used to interpret and apply procedural rights in sports dispute resolution systems in South Africa.

Nevertheless, applying the principles of the Banjul Charter to sporting disputes may pose some difficulties. Some of the challenges emanate from the fact that most sports organisations are private institutions, and the fact that arbitration clauses are widely used in sporting contracts.[499] A contentious issue that arises with regard to private sports bodies is the extent to which they should be governed by principles of public law, including those contained in international human rights instruments such as the Banjul Charter.[500] Yet, there is an increasing awareness of the need to align the sports governance and dispute resolution systems with human rights. The UN Guiding Principles on Business and Human Rights, which do not apply to sport specifically, have certain elements that are intended to identify the responsibilities of non-state actors.[501] Aspects of this framework can be applied to sports organisations to clarify that they must respect human rights, especially procedural rights, when dealing with disputes.

The Banjul Charter is founded on collective rights and duties, which is also important for sports dispute resolution. The Charter also affirms the right to development (art 22) and the right to a satisfactory environment (art 24), which might be included within the right to play sports.[502] Such rights could contribute to the development of conflict-solving methods that focus not only on the particular rights of athletes, but also on the overall rights of teams, the associated sporting bodies, and the sporting society as a whole.

The ACHPR gives adequate protection to procedural human rights in sports dispute resolution. Its provisions relating to fair trial rights, the right of access to justice and the right to equality before the law are particularly relevant to the development of adequate systems in sports dispute management. While the Charter has not been invoked directly in private sport bodies, this framework should provide guidance in fashioning and governing sports dispute resolution systems in South Africa and across the African continent. The task for South African policymakers and sports administrators is to ensure that these are recognised in the contexts of the domestic sports

[499] Duval, 'The Court of Arbitration for Sport and EU Law' (n 192) 228.
[500] John Lindholm, 'The Problem with Salary Caps under European Union Law: The Case Against Financial Fair Play' (2011) 12 Texas Review of Entertainment and Sports Law 189, 195.
[501] United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) HR/PUB/11/04.
[502] Solomon T Ebobrah, 'The Future of Economic, Social and Cultural Rights Litigation in Nigeria' (2020) 1 CALS Review of Nigeria Law and Practice 108, 108-124.

system of governance and judicial remedies. This may involve a reconsideration of precedent to address deficiencies in procedural safeguards and the creation of new guidelines and procedures that acknowledge the Banjul Charter. By so doing, South Africa can achieve a system of sports dispute resolution that meets international human rights standards and also reflects the African values of togetherness and the harmonious resolution of conflicts, as embodied in the Banjul Charter.

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Principles and Guidelines) are a major development in the codification of procedural human rights in Africa. Recognised by the African Commission on Human and Peoples' Rights in 2003, this substantial report clarified the fair trial provisions of the ACHPR, as well as detailed principles for justice in Africa.[503] The Principles and Guidelines are particularly relevant to the discussion of sports dispute resolution frameworks in South Africa, as they offer specific benchmarks against which the procedural fairness of such mechanisms can be evaluated.

The formulation of the Principles and Guidelines was occasioned by the lack of specific directional information on how the fair trial rights adopted by Africa could be effectively operationalised. The Principles and Guidelines provide a more detailed and favourable context for these rights, given the African context, that is supposedly unique compared to that envisaged by other human rights indices such as the UDHR.[504] This elaboration is important to clarify how the fair trial rights should be implemented in various settings, including the sports dispute resolution framework. The Principles and Guidelines address virtually all aspects of fair trial rights such as tribunal integrity, the right to a remedy, equal protection and the right to be heard. Most of these principles are closely related to the establishment and functioning of sports dispute resolution systems in South Africa and other African states. For example, the right to access justice means that everyone is entitled to have their case heard and can take their grievances to competent national bodies if their fundamental rights have been infringed upon.[505] This principle also helps to explain why sports dispute resolution mechanisms must be open and available to all parties – rich or poor, big or small – in the sports fraternity.

A key aspect of the Principles and Guidelines is their emphasis on the independence and impartiality of tribunals. According to section A, it is prohibited for any person or authority in the government to interfere with the operations of judicial bodies and judicial officers by influencing

[503] African Commission on Human and Peoples' Rights, 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' (2003) DOC/OS(XXX) 247.
[504] Chidi Anselm Odinkalu, 'The Role of Case and Complaints Procedures in the Reform of the African Regional Human Rights System' (2001) 1 African Human Rights Law Journal 225, 234.
[505] African Commission on Human and Peoples' Rights, 'Principles and Guidelines' (n 499) section A(1).

their independence, which must be protected by the constitution and laws of the country.[506] In relation to sports dispute resolution, this means that arbitration panels and disciplinary committees are independent and should not be influenced by the sports governing bodies or any other party that may benefit from their decisions. Judicial officers must determine matters before them in an unbiased, fact-based and legally required manner, free from restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any source or for any reason.[507] This standard is especially important in sport, given that such disputes are usually highly sensitive, involving significant parties and interests; therefore, the proper protection of members who make decisions in such cases is more than warranted. Such a right is paradoxical and contradictory, as highlighted by section A(2) of the Principles and Guidelines, which significantly impacts the resolution of sports disputes. This provision states that any individual shall have the right to seek and obtain lawyers and legal services, and also have equal access to the courts and dispute resolution forums.[508] In the sports context, this provision demands the equal treatment of athletes, ensuring that all have access to legal assistance and the ability to participate in primary investigations or FIFA procedures, among other processes. The application of this principle may require the creation of enabling structures like legal aid or *pro bono* public services, so that the other party in the sports dispute has a chance to be heard.

The Principles and Guidelines also consider other matters related to a fair hearing, which is vital in any form of dispute resolution. Section A(1) states that in the hearing of any criminal charge against a person, or of a person's rights or obligations, everyone shall be afforded a fair and public hearing by a legally constituted competent, independent and impartial judicial body. The following specific points can be made with regard to this principle in an analysis of sports dispute resolution frameworks. First, it proposes that sports tribunals should proceed in public and only in exceptional circumstances in camera. Second, it raises the question of the competence of the decision-making body, meaning that sports disputes should be handled by competent arbitrators and panel members who should be legally qualified and familiar with the sport in which the dispute arose.

The right to be heard, as envisaged in section A(2)(i) of the Principles and Guidelines, is applicable to sports dispute matters. This right includes the opportunity to prepare a case, to present arguments and evidence, and to challenge or respond to opposing arguments or evidence. In the context of the welfare of individuals engaged in sports, the principle supports the general requirement of a fair amount of time and resources to prepare for the hearing, to access essential records and

[506] ibid section A(4)(a).
[507] ibid section A(4)(f).
[508] ibid section A(2)(a).

acquaintances, and to summon and cross-examine witnesses. Exercising this right might lead to the need to reform some specific attributes of the work of sports dispute resolution bodies, such as procedural tools that allow for the elimination of lengthy procedures for the preparation and presentation of cases.

The Principles and Guidelines also include the presumption of innocence, which is the right against self-incrimination, or the right of the accused person to be presumed innocent until proven guilty. This principle is particularly crucial in cases of doping or other offences in sports. According to section N(6)(e), the presumption of innocence simply means that, during a trial for any criminal charge, the onus lies on the prosecution. The main principle of criminal proceedings does not apply to sports disciplinary proceedings due to their nature; nonetheless, the presumption of innocence by sports disciplinary bodies applies *a fortiori* and imposes on the disciplinary body the burden of proving its allegations against the athlete. This principle has been instrumental in shaping anti-doping procedures and other disciplinary measures in sport because it insists on the production of relevant, cogent and adequate evidence leading to a fair hearing of the case, before athletes suffer any negative consequences.

Fair trial rights include the right of appeal, as provided for in section N(10) of the Principles and Guidelines. This principle is also relevant to sports dispute resolution. Every person convicted in the criminal process has the right to appeal to a higher court.[509] In the sports context, this principle has justified the creation of additional layers of grievance mechanisms, with the right of at least one appeal to the CAS. Every right that is exercised in the context of the resolution of sports disputes must fit with both the need for resolution and the possibility of correcting errors and achieving justice.

The Principles and Guidelines also address the issue of enforcement of judgments. Section Q asserts the state's duties in ensuring that any granted remedy is complied with by the relevant authorities. In sports dispute resolution, this principle reflects the significance of proper oversight of mechanisms by which decisions of sports tribunals might be implemented in national jurisdictions and across international boundaries. This may require the involvement of the sports legal bodies, the laws of the involved countries, or international law and other international bodies to ensure that legal decisions are recognised and enforced.

Section N(4), which discusses the right to an interpreter, is significant in the context of international sports competitions and dispute resolution procedures. This right ensures that persons

[509] ibid section N(10)(a).

who have a poor understanding of, or cannot speak, the language in which the proceedings are conducted should be provided with an interpreter. This right is important in the global environment of international sport where sportspersons and decision-makers speak different languages and may experience difficulties in understanding proceedings. It is also important for understanding issues of independence of lawyers and providers of legal services and their relationship with the athletes and other stakeholders in sports disputes.

Section I focuses on the legal professional's ability to exercise their functions free from threats of violence, impediments, harassment or undue interference.[510] As applied to sporting relations, this principle backs the call for measures to safeguard the autonomy of such legal representatives so that they can pursue the best interests of their clients as and when these need to be pursued against the powers of sporting associations or any other authority.

Section Q – Non-Judicial Bodies for the Resolution of Disputes – deserves specific consideration in the context of the development of ADR mechanisms in sport. The Principles and Guidelines highlight the possibility of the application of other means of dispute resolution, including traditional courts, to the extent that they meet the requirements of fair trials.[511] This recognition provides the foundation for assessing specialised sports tribunals and arbitration bodies for fairness and legitimacy, suggesting that while these mechanisms can play a valuable role in resolving disputes, they must adhere to fundamental principles of procedural fairness.

The Principles and Guidelines also address the status of victims within the framework of fair trial standards. Section P outlines principles for the protection of victims, prohibiting the abuse of power, and guaranteeing the right to access justice and to seek redress for any harm suffered. While these principles primarily concern criminal justice, they are applicable to sports dispute resolution in cases of abuse, harassment or other misconduct in sports settings. This means that they advocate for better sports dispute machinery that recognises the rights and needs of the harmed parties. Section F provides for the roles of prosecutors during investigations, though its effects on the responsibilities of investigative and prosecutorial agencies are evident. Although sports disciplinary proceedings are not criminal in nature, fairness, impartiality and the protection of the public interest, as articulated in this section, can inform the development of best practices for bodies responsible for investigating and presenting sports-related cases.

Military courts and special tribunals are discussed in Section L; it is emphasised that civilians should not be tried in such courts and the courts should be subject to the same fair trial standards

[510] ibid section I(b).
[511] ibid section Q(a).

as ordinary courts. While these principles are not directly relevant to sports-related disputes, they buttress the proposition that specific tribunals, including those in the sporting arena, must not operate beyond the strictures of fair trial guarantees.

Some of the principles regarding lawyers' independence outlined in section I are relevant to the role of legal advisers in the resolution of sports disputes. The principles concern freedom of communication between the lawyer and their client; the lawyer must have the necessary information, files and documents in order to effectively assist their client.[512] In the context of sports disputes, these principles argue for procedural recognition of the lawful representation of athletes and other litigants, and recognition of the need for effective representation in sports disputes resolution.

Section C addresses the issue of *locus standi* or the ability of a person to institute proceedings before a judicial body. States must guarantee that all individuals have a right to access judicial bodies with rights-based claims, and that any difference can only be on the basis of law and for a rational reason. As applied to sports disputes, this principle recommends that anyone should be allowed to access the dispute resolution system; where these rights are limited, this should be clearly stated and uniformly enforced. Section P, focusing on the protection of and assistance for victims and witnesses, is applicable to sports dispute resolution in sensitive cases, such as abuse or corruption. The principles include the requirement to ensure the protection of the identity and security of victims and witnesses and the need to render the necessary related services.[513] In the sports context, these principles point to the need for systems that safeguard whistleblowers and for procedures that can assist athletes or officials who wish to report the violation of the principles, with a view to discouraging the use of threats to discourage violators from reporting.

Section Q discusses traditional courts, acknowledging their relevance in the delivery of justice; however, they must uphold international standards on the right to a fair trial.[514] This recognition has implications for the use of traditional or customary systems of dispute resolution in sports governance structures, especially in societies where such structures are paramount. Section C provides for the right to an effective remedy, which is an extension of the right to be given access to a means of claiming disputes, and a guarantee that the means will deliver sufficient results. This principle supports the requirement that remedies must be capable of effectively addressing the

[512] ibid section I(c).
[513] ibid section P(f).
[514] ibid section Q(c).

unique features of jurisdiction in sports disputes, including the need to grant interlocutory relief to prevent irreparable harm to an athlete's career.[515]

Section A(4)(g) to (i) of the Principles and Guidelines provides that judicial officers should have immunity from civil or criminal proceedings for improper acts or omissions in the actual exercise of judicial work; notwithstanding, immunity should not apply to corruption or other serious crimes.[516] Applied in the sphere of sporting dispute resolution, this principle implies placing checks and balances on the arbitrators or panel members, on the one hand, and the need to preserve the independence of the decision-makers in the sporting dispute resolution process, on the other hand. Section A(4)(i) relates to the training of judicial officers as well as the preparation of the arbitrators and panel members in the sports disputes resolution system. The principles emphasise the importance of appropriate training in international human rights law and its application at the national level. In the sports context, this points to the need to train and develop those engaged in managing and resolving sports-related disputes in the necessary human rights standards that they can use in settling sports disputes.

The Principles and Guidelines constitute a valuable tool for analysing the procedural justice of sports-related dispute resolution mechanisms. Although developed with an emphasis on conventional judicial systems, this document contains guidelines that are directly applicable to sports dispute resolution systems. With South Africa and other African countries advancing and investing in appropriate methods for addressing sports-related disputes, the Principles and Guidelines provide guidance on designing such remedies to ensure justice and fairness globally. These broad principles need to be translated into specific usable processes in the South African sports dispute resolution framework so that it respects essential fair trial rights and caters for the peculiarities of those disputes.

4.4 Consolidated framework of procedural Standards applicable to dports Dispute resolution

The analysis of international and regional human rights instruments in this chapter yields a consolidated framework of procedural standards applicable to sports dispute resolution mechanisms. This framework serves as the normative benchmark against which the South African constitutional framework (Chapter 5) and the specific dispute resolution frameworks of SASCOC, SAFA, and the CSA (Chapter 6) are assessed. The standards are set out below.

[515] ibid section C(a).
[516] ibid section A(4)(g)-(i).

Standard 1 - Right to a fair and public hearing: Every person whose rights are affected by a sports disciplinary or dispute resolution process has the right to a fair and public hearing. This standard derives from article 10 of the UDHR, article 14(1) of the ICCPR, article 7(1)(d) of the African Charter, and section 34 of the South African Constitution. Public hearings may be restricted only in defined and proportionate circumstances, such as the protection of minors or genuinely confidential commercial information, and only with appropriate safeguards.

Standard 2 - Right to an independent and impartial tribunal: Sports dispute resolution bodies must be structurally independent from the organisations whose decisions they review, and their members must be free from actual and perceived conflicts of interest. This standard derives from article 14(1) of the ICCPR, article 7(1)(d) of the African Charter, and sections 33 and 34 of the South African Constitution. Appointments to adjudicative bodies should be made through transparent processes that are not controlled by the parties whose decisions are subject to review.

Standard 3 - Right to be heard (audi alteram partem): Every person affected by a sports dispute resolution process must have a meaningful opportunity to present their case, to receive and respond to evidence against them, and to summon and cross-examine witnesses. This standard derives from article 14 of the ICCPR, article 7(1)(a) and (c) of the African Charter, section A(2)(i) of the African Principles and Guidelines on Fair Trial, and section 34 of the South African Constitution.

Standard 4 - Presumption of innocence and standard of proof: In sports disciplinary proceedings, the body bringing the charge bears the burden of establishing the alleged violation to the applicable standard of proof. This standard derives from article 14(2) of the ICCPR, article 7(1)(b) of the African Charter, and section N(6)(e) of the African Principles and Guidelines on Fair Trial. The principle of strict liability in anti-doping proceedings is recognised but must be applied with procedural safeguards that protect against injustice.

Standard 5 - Right to legal representation: Persons facing sports disciplinary proceedings with potentially serious consequences for their career or livelihood have the right to legal representation. This right may be qualified in limited circumstances where the complexity and consequences of proceedings do not warrant it but must be available in all proceedings that could result in significant sanctions. This standard derives from article 14(3)(d) of the ICCPR, section I of the African Principles and Guidelines, and the constitutional jurisprudence on the right to legal representation in South Africa.

Standard 6 - Right to reasoned decisions: Sports dispute resolution bodies must provide written reasons for their decisions, enabling affected parties to understand the basis for the outcome, to assess its lawfulness, and to decide whether to appeal. This standard derives from article 7 of the

African Charter, section Q of the African Principles and Guidelines, and the constitutional requirement of procedurally fair administrative action under section 33(2) of the South African Constitution.

Standard 7 - Right of access to courts: No sports dispute resolution framework may permanently or effectively exclude access to ordinary courts for the resolution of legal disputes. Mandatory exhaustion-of-remedies requirements are permissible as a preliminary step, but must be subject to reasonable timeframes and must not operate as de facto ouster clauses that deny access to constitutional protection. This standard derives from section 34 of the South African Constitution, the constitutional prohibition on ouster clauses, and the principle of access to effective remedies under international human rights law.

Standard 8 - Right to appeal: Every person subject to an adverse decision in sports dispute resolution proceedings has the right to appeal to a higher or independent body. This standard derives from article 14(5) of the ICCPR, section N(10) of the African Principles and Guidelines, and the general principle of appellate review as a component of procedural fairness. The right of appeal must be practically accessible and not merely formally available.

Standard 9 - Timeliness: Sports dispute resolution proceedings must be conducted and concluded within a reasonable time, having regard to the particular time-sensitivity of sporting competitions and athletes' careers. Unnecessary delays constitute a violation of procedural fairness and may cause irreparable harm. This standard derives from article 14(3)(c) of the ICCPR and the general principle that justice delayed is justice denied.

Standard 10 - Proportionality of sanctions: Sanctions imposed in sports dispute resolution proceedings must be proportionate to the nature and gravity of the violation established. Disproportionate sanctions constitute a violation of procedural and substantive fairness. This standard derives from the proportionality principle as applied in the jurisprudence of the CAS, the European Court of Human Rights, and the South African Constitutional Court.

These ten standards constitute the normative framework applied in the subsequent chapters. Where the South African constitutional framework or the dispute-resolution frameworks of selected sporting bodies depart from any of these standards, the departure is identified and assessed as a failure to comply with procedural human rights.

4.5 Conclusion

This chapter examined the alignment of sports dispute resolution frameworks with international norms on procedural human rights. The argument is that, despite the specialised nature and

growing autonomy of sports arbitration bodies, their operations cannot exist in isolation from established international procedural rights frameworks. These norms are embedded in various international and regional human rights instruments; where conflicts arise, the primacy of international human rights standards must be recognised. Sports dispute resolution mechanisms, such as the CAS and other specialised tribunals, operate in a highly complex, transnational environment. As sports continue to globalise, so too have the legal and regulatory mechanisms governing them. However, despite this specialisation, procedural human rights must be upheld. Procedural fairness, the right to be heard, the right to a fair trial and the right to an effective remedy are cornerstones of international human rights law. These principles are enshrined in key documents such as the UDHR and the ICCPR, both of which mandate fair treatment and access to justice in dispute resolution.

Article 10 of the UDHR guarantees everyone the right to a fair and public hearing by an impartial tribunal. This principle is echoed in art 14 of the ICCPR, which stipulates that all individuals are entitled to a fair and public hearing by a competent, independent and impartial tribunal in the determination of any criminal charge or rights and obligations. These provisions are applicable not only to state courts, but also to non-state adjudicatory bodies, such as sports arbitration panels, which are tasked with resolving disputes involving athletes and sports organisations. Despite the specialisation of sports dispute resolution mechanisms, these bodies are not immune to the requirements of fairness and procedural rights as dictated by international law. As Nafziger states, the transnational nature of sports complicates the provision of effective remedies, yet it is imperative that these specialised tribunals comply with internationally recognised human rights standards.[517] Therefore, while sports arbitration bodies, such as the CAS, serve a unique function in maintaining order and resolving disputes in the sports community, their processes must align with general international norms, particularly those relating to procedural fairness and access to justice.

The legitimacy of sports arbitration hinges upon the adherence of these tribunals to basic procedural rights. This is especially true in cases where athletes' careers, livelihoods and reputations are at stake. Procedural fairness encompasses several elements, including the right to be informed of charges, the right to a fair hearing, the right to legal representation, and the right to an independent and impartial tribunal. Failure to adhere to these standards can result in a miscarriage of justice, harming the individual athlete and undermining the credibility of the sports arbitration system. For instance, the principle of *audi alteram partem* – the right to be heard – is

[517] Nafziger, 'International Dimensions of Sports Law' in Nafziger and Ross (eds), *Handbook on International Sports Law* (Edward Elgar Publishing 2011) 54.

fundamental to the concept of a fair trial. This principle requires that athletes be given a meaningful opportunity to present their case and respond to any allegations made against them. This case highlights the tension between the autonomy of sports arbitration bodies and the need for compliance with international human rights standards. The ruling underscored that while the CAS operates as a specialised tribunal, it must still respect the procedural rights guaranteed under international law.

Similarly, the right to an independent and impartial tribunal is a cornerstone of procedural fairness. Sports arbitration panels must be independent of the parties involved and perceived as such by the broader public. Any hint of bias or partiality can erode the legitimacy of the tribunal's decision-making process. Sports arbitration bodies, despite their specialisation, must therefore ensure that their panels are free from conflicts of interest and that their decisions are based on the merits of the case, rather than external pressures or biases.

A key challenge facing sports dispute resolution mechanisms is the transnational nature of modern sports. Athletes, coaches and sporting organisations operate across borders, and the legal frameworks governing their activities are often fragmented and inconsistent. This creates a complex environment for enforcing procedural rights, as different jurisdictions may have different standards for what constitutes a fair trial or an effective remedy. In this context, the role of international human rights law becomes even more critical. By establishing a baseline of procedural rights that all dispute-resolution mechanisms must adhere to, international norms safeguard against the erosion of fairness in sports arbitration. As Nafziger notes, the international dimensions of sports require a coordinated effort by both national and international institutions to ensure that athletes' procedural rights are protected.[518] This is particularly important in cases involving international sporting federations, which often have the power to impose sanctions that can significantly affect athletes' careers.

The creation of specialised sports tribunals, such as the CAS, represents an attempt to provide a uniform framework for resolving disputes in the international sports community. However, these tribunals must still operate within the broader framework of international human rights law. As demonstrated by cases like *Pechstein*, the failure to adhere to procedural rights can result in significant legal challenges and undermine the legitimacy of the tribunal's decisions. Therefore, while sports arbitration bodies play a crucial role in maintaining the integrity of sports, they must do so in a manner that respects the procedural rights of all parties involved.

[518] Nafziger, 'International Sports Law' (n 13) 62.

The South African context provides a salient illustration of the imperative to reconcile sports dispute resolution with international human rights standards. The country's approach to using sports as a tool for social transformation and empowerment, as well as its commitments under the African Charter and other regional instruments, underscores the importance of ensuring that the sports dispute resolution framework fully respects procedural rights and due process. Any deviation from these benchmarks undermines the rights of individual athletes and other stakeholders and risks compromising the transformative potential of sports in the broader societal context.

The analysis of international norms and standards for procedural human rights in sports dispute resolution highlights the need for specialised tribunals to comply with general international norms. Despite the autonomy and specialisation of sports arbitration bodies, they cannot operate in isolation from established human rights frameworks. Where conflicts arise, the general international norms must prevail. It is particularly important to ensure that athletes have access to fair and impartial dispute resolution mechanisms that respect their procedural rights. The evolution of sports arbitration bodies, such as the CAS, represents an important development in resolving sports-related disputes. However, their legitimacy depends on their adherence to international standards of fairness and justice. As sports continue to globalise, it is essential that these bodies remain accountable to the broader framework of international human rights law. In doing so, they will protect athletes' rights and enhance the credibility and integrity of the sports arbitration system as a whole.

CHAPTER 5: PROCEDURAL HUMAN RIGHTS UNDER THE SOUTH AFRICAN CONSTITUTION AND THEIR APPLICATION TO SPORTS DISPUTE RESOLUTION

5.1 Introduction

The intersection of sports law and constitutional rights presents unique challenges in South Africa, particularly concerning the balance between sporting autonomy and constitutional compliance.[519] While sports governing bodies are entitled to regulate their affairs, they must do so in a way that respects and promotes the fundamental rights enshrined in the Constitution, including procedural fairness, access to justice and equality before the law.[520] This requirement calls for scrutiny of existing sports dispute resolution frameworks to ensure they meet constitutional standards while maintaining the efficiency and expertise that specialised sporting tribunals can offer.[521] The constitutional framework's emphasis on substantive equality and justice requires that sports dispute resolution mechanisms provide formal access to adjudication and ensure meaningful and effective access to justice.[522] This includes cost considerations, accessibility, fairness of procedures and the availability of appropriate remedies.[523] The Constitutional Court's jurisprudence on access to justice and procedural fairness provides essential guidance for evaluating the adequacy of sports dispute resolution frameworks. It emphasises that these mechanisms must facilitate rather than impede the realisation of constitutional rights.[524]

The Constitution's vision of transforming South African society extends to all spheres of public life, including sports governance and dispute resolution.[525] This transformative agenda requires that sports dispute resolution mechanisms comply with minimum constitutional standards, actively promote constitutional values, and contribute to the broader project of social justice and equality.[526] The Constitutional Court has emphasised that transformation requires institutional reform and a fundamental change in approach to ensure that justice is procedurally and substantively fair.[527]

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[519] AM Louw, *A Critical Evaluation of the Interaction between Sport and Law in South Africa* (LLD dissertation, Stellenbosch University 2010).

[520] International Olympic Committee, *Olympic Charter* (17 July 2020) <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf> accessed 10 November 2024.

[521] *Minister of Justice and Constitutional Development v Southern Africa Litigation Centre* 2016 (3) SA 317 (SCA) para 88.

[522] *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC) para 45.

[523] Hugh Corder, 'Administrative Justice: A Cornerstone of South Africa's Democracy' (1998) 14 SAJHR 38, 40.

[524] *Van der Walt v Metcash Trading Ltd* 2002 (4) SA 317 (CC) para 65 (Mokgoro J).

[525] Zak Yacoob, 'The Role of Sports in Promoting Social Justice in South Africa' (2018) 22 Law, Democracy and Development 78, 80.

[526] Dennis Davis, 'Transformation and the Constitutional Promise' (2010) 26 SAJHR 85, 87.

[527] *Gcaba v Minister for Safety and Security* 2010 (1) SA 238 (CC) para 62 (Ngcobo CJ).

Furthermore, the constitutional requirement for independence and impartiality in adjudicative processes poses particular challenges in the sporting context, where dispute resolution mechanisms are often closely tied to sporting bodies.[528] The need to ensure both actual and perceived independence while maintaining the necessary sporting expertise requires careful institutional design and procedural safeguards.[529] This balance is crucial for maintaining the legitimacy and effectiveness of sports dispute resolution frameworks while ensuring that they meet constitutional standards.[530]

This chapter contextualises the analysis of sports dispute resolution frameworks within South Africa's constitutional paradigm, with a particular focus on procedural human rights protections. This examination is crucial given the significant impact of sports dispute resolution mechanisms on athletes' rights and careers, and the need to ensure these mechanisms align with constitutional values and principles. The unique nature of sports governance, characterised by a blend of private autonomy and public-interest considerations, presents distinct challenges in ensuring compliance with constitutional guarantees of procedural rights.

5.2 Procedural rights in South Africa

The procedural rights framework in South Africa is a comprehensive system designed to ensure justice, fairness and equality before the law, marking a decisive break from the procedural injustices that characterised the apartheid era.[531] These rights, enshrined in the Constitution and developed through jurisprudence, establish fundamental guarantees that are particularly relevant to sports dispute resolution mechanisms. In sports, where decisions by tribunals can profoundly impact the careers and livelihoods of athletes, the assurance of procedural fairness is critical. This section examines several key procedural rights enshrined in the South African Constitution and their application in sports dispute frameworks.

5.2.1 Right to a fair trial

The right to a fair trial, enshrined in s 34 of the South African Constitution, is a cornerstone of South Africa's democratic framework. This provision guarantees that everyone has the right to have any dispute resolved in a fair, public and impartial manner before a court or, where appropriate, another independent and impartial tribunal or forum. This right is not confined to

[528] Cora Hoexter, *Administrative Law in South Africa* (2nd edn, Juta 2012) 201.
[529] Antoine Duval, 'Questioning the (In)dependence of the Court of Arbitration for Sport' (2015) 15 International Sports Law Journal 253.
[530] *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC) para 152.
[531] *S v Makwanyane and Another* [1995] ZACC 3 para 262.

criminal proceedings; it extends to civil disputes and administrative adjudications, ensuring that principles of fairness are upheld across various legal and quasi-legal contexts. Section 34 embodies the commitment to justice and equality in all adjudicative processes, asserting the supremacy of the Bill of Rights in both state and private forums.

South African courts have affirmed that the right to a fair trial includes both procedural and substantive dimensions. In *Barkhuizen v Napier*,[532] the Constitutional Court addressed the enforceability of a contractual time-limitation clause and its compatibility with constitutional values. The court emphasised that even private arbitration processes must align with public policy informed by constitutional principles, including procedural fairness. It held that arbitration agreements cannot undermine individuals' constitutional rights, particularly the right to a fair hearing.[533] This case is particularly relevant to sports arbitration, where private entities wield significant influence over dispute resolution frameworks. The principles articulated in *Barkhuizen* underscore that fairness and impartiality must guide all arbitration processes, ensuring that private governance mechanisms, such as those used in sports, do not operate in a legal vacuum.[534]

The application of fair trial principles is especially significant in the sports context, where athletes often face asymmetrical power dynamics in disputes with governing bodies or federations. These imbalances call for robust procedural safeguards to ensure equitable treatment. The Constitutional Court's decision in *Sidumo v Rustenburg Platinum Mines Ltd*[535] further illustrates the importance of fairness in administrative adjudication. In this case, the court held that administrative decisions must meet the standard of reasonableness and that procedural fairness requires an acknowledgement of power disparities between parties.[536] This principle is critical in sports tribunals, where athletes may lack the resources or influence to challenge governing bodies effectively. The *Sidumo* case reinforces the need for impartial adjudication processes that provide all parties with an equitable platform to present their cases.[537]

A key question in the interpretation of s 34 is whether its protections extend beyond formal court settings to alternative dispute resolution (ADR) mechanisms. The Constitutional Court has consistently affirmed that the right to a fair trial applies to all forums where disputes are resolved by applying the law, including arbitration and quasi-legal bodies. For instance, in *Lufuno*

[532] *Barkhuizen v Napier* [2007] ZACC 5.
[533] ibid para 30.
[534] ibid para 35.
[535] *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* [2007] ZACC 22.
[536] ibid para 55.
[537] ibid para 62.

Mphaphuli & Associates (Pty) Ltd v Andrews,[538] the court held that procedural fairness principles must guide private arbitration proceedings to ensure compliance with constitutional standards. The court held that while private arbitration is a consensual process distinct from public judicial proceedings, it must still adhere to the principles of procedural fairness and natural justice.[539]

This expansive interpretation of s 34 highlights the supremacy of constitutional principles over private governance. Sports governing bodies, despite their autonomy, are bound by constitutional standards when resolving disputes. This ensures that procedural safeguards are not compromised in pursuit of efficiency or expediency. Despite these constitutional protections, several challenges persist in ensuring fair trials in the sports context. Athletes often encounter significant power imbalances when disputing decisions made by governing bodies. Many lack access to legal representation, and the processes adopted by sports tribunals are frequently opaque and subject to potential bias. Moreover, concerns about the independence of arbitrators appointed by governing bodies raise further questions about the impartiality of sports dispute resolution frameworks.[540] To address these challenges, procedural safeguards must be strengthened in sports dispute resolution mechanisms. Measures such as ensuring transparency, providing access to legal representation and enhancing arbitrator independence are essential to uphold athletes' constitutional rights. Training arbitrators and tribunal administrators in constitutional principles can also promote alignment with the Bill of Rights and bolster procedural fairness. The right to a fair trial under s 34 is indispensable in safeguarding justice and fairness across all forms of dispute resolution. This means that the South African constitutional model effectively subordinates all dispute resolution processes to the supreme constitutional values of human dignity, equality and fundamental fairness, thereby creating a robust legal environment where individual rights are protected even in highly specialised and autonomous sporting governance structures.[541] This approach reflects a progressive legal philosophy that recognises the potential for systemic power imbalances and provides comprehensive constitutional safeguards to mitigate such inequities, ensuring that no individual, regardless of their position or context, can be subject to arbitrary or unjust dispute resolution mechanisms. Cases such as *Barkhuizen*, *Sidumo* and *Lufuno Mphaphuli* demonstrate that procedural fairness is not limited to formal court settings but extends to private and alternative forums.[542] South Africa reinforces its commitment to constitutional values and ensures the

[538] *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews* [2009] ZACC 6.
[539] ibid.
[540] ibid para 39.
[541] *Pharmaceutical Manufacturers Association of SA v President of the Republic of South Africa* 2000 (2) SA 674 (CC).
[542] *Barkhuizen v Napier* (n 528); *Sidumo* (n 531); *Lufuno Mphaphuli* (n 534).

protection of individual rights in all spheres of life by asserting the authority of the Bill of Rights over private sports codes.

5.2.2 Access to courts

The constitutional right to access the courts, enshrined in s 34 of the South African Constitution, represents a fundamental guarantee that transcends mere procedural availability, embodying a profound commitment to substantive justice and meaningful legal recourse. This right is not a passive invitation to judicial institutions but an active constitutional mandate that requires the legal system to dismantle systemic barriers that historically prevented marginalised individuals from seeking legal redress. The Constitutional Court has consistently interpreted this right as a dynamic constitutional principle that demands a holistic approach to justice, recognising that formal legal accessibility means little without substantive mechanisms that enable genuine participation across diverse socio-economic contexts.[543]

The jurisprudential evolution of access to courts reveals a nuanced understanding that extends far beyond traditional interpretations of judicial accessibility. In *Government of the Republic of South Africa v Grootboom*,[544] the Constitutional Court articulated a transformative vision of justice that requires legal systems to create practical and realistic frameworks supporting effective participation from all societal segments, particularly those who were historically disadvantaged. This interpretation is particularly significant in specialised dispute resolution contexts like sports, where traditional judicial mechanisms are often replaced by complex, quasi-judicial tribunals with seemingly autonomous jurisdictional powers. The critical constitutional question emerges: can ADR mechanisms legitimately oust the jurisdiction of courts, and, if so, under what constitutional constraints? The profound implications of this inquiry extend beyond theoretical legal discourse, touching the very essence of access to justice and the protection of individual rights in specialised adjudicative frameworks.

The constitutional jurisprudence suggests a sophisticated approach that neither absolutely prohibits nor unconditionally permits the exclusion of court jurisdiction. In *Barkhuizen v Napier*,[545] the Constitutional Court established a critical principle that private dispute resolution mechanisms, including those in sports, cannot operate in a constitutional vacuum. This means that while specialised tribunals may have jurisdictional authority, they remain subject to fundamental constitutional principles of fairness, accessibility and substantive justice. The right to access courts

[543] *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC).
[544] *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).
[545] *Barkhuizen v Napier* (n 528).

is not an absolute right to judicial adjudication but a right to a fair, meaningful and accessible dispute resolution process that upholds constitutional values.[546] This nuanced interpretation creates a delicate balance between respecting the autonomy of specialised dispute resolution mechanisms and ensuring that such mechanisms do not become instruments of systemic exclusion or arbitrary decision-making. The constitutional framework demands a rigorous scrutiny of ADR processes, compelling them to demonstrate genuine commitment to the principles of procedural fairness, independence and substantive justice.

The constitutional approach recognises the unique characteristics of specialised dispute resolution mechanisms while simultaneously ensuring that such mechanisms do not become instruments of systemic exclusion or arbitrary decision-making. Sports tribunals must therefore demonstrate a comprehensive commitment to constitutional principles, including genuine independence from the sporting bodies that they adjudicate, transparent and accessible procedural mechanisms, reasoned decision-making processes, proportionate and justifiable limitations on judicial review, and meaningful opportunities for substantive challenge.[547] This constitutional model presents a dynamic understanding of access to justice that goes beyond traditional notions of judicial accessibility, requiring ADR mechanisms to create substantive pathways for legal recourse that are meaningful, affordable and protective of individual rights.[548]

The South African legal framework thus establishes a nuanced balance, acknowledging the need for specialised dispute resolution while simultaneously maintaining robust constitutional safeguards. ADR mechanisms in sports are permitted to operate with a degree of jurisdictional autonomy, but they cannot compromise the constitutional imperatives of fairness, accessibility and substantive justice.[549] This approach reflects a sophisticated legal philosophy that recognises the complexity of modern dispute resolution while maintaining an unwavering commitment to fundamental constitutional principles. The constitutional jurisprudence presents a dynamic model of access to courts – one that is flexible enough to accommodate specialised dispute resolution mechanisms while also protecting fundamental human rights.[550]

5.2.3 Right to legal representation

The constitutional right to legal representation in South Africa represents a complex and nuanced procedural guarantee that extends far beyond its explicit articulation in criminal proceedings,

[546] *Du Plessis v De Klerk* 1996 (3) SA 850 (CC).
[547] *Pharmaceutical Manufacturers Association* (n 537).
[548] *Carmichele v Minister of Safety and Security* [2001] ZACC 22.
[549] *Investigating Directorate: Serious Economic Offences v Nombwandla* 2000 (1) SA 713 (CC).
[550] *Law Society of the Cape of Good Hope v Attorneys Fidelity Fund Board of Control* 2003 (6) SA 238 (SCA).

emerging as a fundamental principle of substantive justice that challenges traditional interpretative boundaries of procedural rights.[551] While s 35 of the Constitution explicitly provides for legal representation in criminal contexts, the Constitutional Court has consistently demonstrated a sophisticated approach that recognises the broader implications of legal representation as a critical mechanism for ensuring procedural fairness in diverse adjudicative contexts. This expansive interpretation challenges the notion of legal representation as a narrowly defined right, instead positioning it as a fundamental constitutional protection that serves the broader objectives of ensuring meaningful access to justice, protecting individual rights and maintaining the integrity of dispute resolution processes.[552]

The jurisprudential development of this right reveals a profound constitutional commitment to procedural equity that transcends formal legal settings, creating a framework that demands careful consideration of the contextual complexities surrounding dispute resolution mechanisms. In *De Lange v Smuts NO and Others*,[553] the Constitutional Court articulated a nuanced approach that evaluates the right to legal representation through a contextual lens, recognising that the need for legal representation is not determined by the institutional setting, but by the potential consequences and complexities of the specific proceeding. This approach is particularly significant in specialised dispute resolution contexts like sports tribunals, where the potential career-ending implications of disciplinary proceedings demand a rigorous analysis of procedural fairness and the role of legal representation. The constitutional inquiry thus extends beyond mere procedural formalism, challenging ADR mechanisms to demonstrate their commitment to substantive justice and meaningful procedural protections.

Bernstein v Bester[554] provides critical insights into the constitutional understanding of legal representation, emphasising that procedural fairness in quasi-judicial settings may require legal representation to protect the rights of affected individuals, particularly when the adjudicative process involves complex regulatory frameworks or potentially severe consequences. In the sports dispute resolution context, this constitutional principle demands a sophisticated approach that recognises the unique power dynamics and specialised nature of sporting governance. The right to legal representation is not an absolute guarantee of legal counsel in every proceeding, but a nuanced constitutional protection that requires dispute resolution mechanisms to create meaningful opportunities for effective legal participation. This approach recognises that athletes may face significant challenges in navigating complex disciplinary processes, where technical rules,

[551] South African Constitution, s 35.
[552] *President of the Republic of South Africa v Hugo* (n 539).
[553] *De Lange v Smuts NO and Others* [1998] ZACC 6.
[554] *Bernstein and Others v Bester NO and Others* [1996] ZACC 2.

specialised knowledge and potential career-altering consequences create substantive barriers to meaningful participation.[555]

The constitutional framework presents a dynamic model of legal representation that neither absolutely mandates legal counsel in all proceedings nor permits unrestricted limitations on legal participation. Instead, it establishes a contextual approach that requires careful assessment of the specific circumstances, potential consequences and complexity of the dispute resolution process. In sports tribunals, this means developing adjudicative mechanisms that: provide meaningful opportunities for legal representation where the complexity of proceedings or potential consequences warrant such protection; ensure that the absence of legal representation does not fundamentally compromise the fairness of the adjudicative process; create transparent and accessible mechanisms that enable effective participation regardless of an individual's legal expertise; and recognise the potential power imbalances between athletes and sporting governance structures.[556]

This constitutional approach reflects an understanding that legal representation is not merely a procedural technicality but a critical mechanism for protecting individual rights and ensuring substantive justice. In the sports dispute resolution context, it challenges tribunals to develop adjudicative frameworks that are genuinely accessible, transparent and protective of athletes' fundamental rights.[557] The key constitutional inquiry is whether ADR mechanisms can create equivalent procedural protections that ensure meaningful participation and substantive fairness, even in the absence of formal legal representation.

The jurisprudential evolution suggests a sophisticated balance that recognises the need for specialised dispute resolution mechanisms while simultaneously maintaining robust constitutional safeguards. Sports tribunals are permitted a degree of procedural autonomy, but they cannot fundamentally compromise the constitutional imperatives of fairness, accessibility and substantive justice.[558] This approach demonstrates that the right to legal representation is not an absolute right to legal counsel in every proceeding but a constitutional protection that demands meaningful opportunities for effective participation and the protection of individual rights.

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555 *Pharmaceutical Manufacturers Association* (n 537).
556 *Investigating Directorate: Serious Economic Offences v Nombwandla* 2000 (1) SA 713 (CC).
557 *Carmichele v Minister of Safety and Security* [2001] ZACC 22.
558 *Law Society of the Cape of Good Hope v Attorneys Fidelity Fund Board of Control* 2003 (6) SA 238 (SCA).

*5.2.4 Right to be heard (*audi alteram partem*)*

The *audi alteram partem* principle is a foundational constitutional guarantee that transcends traditional legal boundaries, representing a profound commitment to procedural justice deeply embedded in the South African constitutional framework.[559] Far more than a mere procedural technicality, this principle embodies a fundamental human rights protection that ensures meaningful participation in dispute resolution processes in diverse institutional contexts. The constitutional jurisprudence reveals a sophisticated understanding of the right to be heard as a dynamic principle that requires adjudicative mechanisms to create substantive opportunities for genuine participation, challenging narrow interpretations that might reduce procedural fairness to formalistic or superficial engagement. In the context of sports dispute resolution, this principle is particularly critical, requiring that tribunals develop adjudicative frameworks that meaningfully protect athletes' rights to present their perspectives, challenge adverse evidence, and participate fully in processes that can fundamentally alter their professional trajectories.[560]

The Constitutional Court's interpretative approach to the *audi alteram partem* principle demonstrates a nuanced understanding that extends far beyond simplistic notions of procedural participation. In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*,[561] the court articulated a comprehensive vision of procedural fairness that requires genuine, meaningful opportunities for all parties to engage substantively in dispute resolution processes. This interpretation challenges ADR mechanisms, including sports tribunals, to develop adjudicative frameworks that are not merely technically compliant but genuinely committed to substantive justice. The constitutional inquiry is whether these specialised tribunals can create procedural mechanisms that effectively protect individuals' rights to be heard, particularly in contexts where power imbalances and specialised knowledge can create significant barriers to meaningful participation.[562]

The jurisprudential evolution of this principle reveals a profound constitutional commitment to protecting individual rights in contexts where traditional judicial mechanisms may be inadequate or inappropriate. In *Du Preez and Another v Truth and Reconciliation Commission*,[563] the court emphasised that the right to be heard encompasses more than a mere formal opportunity to speak; it requires a substantive framework that enables meaningful engagement with the evidence and

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[559] South African Constitution, s 33.
[560] *President of the Republic of South Africa v Hugo* 1997 (4) SA 1 (CC).
[561] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 11.
[562] *Pharmaceutical Manufacturers Association* (n 537).
[563] *Du Preez and Another v Truth and Reconciliation Commission* [1997] ZASCA 2.

arguments presented. In the sports dispute resolution context, these constitutional imperative demands that tribunals develop sophisticated procedural mechanisms that: provide clear and comprehensive information about proceedings; ensure meaningful access to relevant evidence; create genuine opportunities for athletes to challenge adverse claims; protect against arbitrary or unsubstantiated decision-making; and maintain transparency throughout the adjudicative process.[564]

This constitutional approach recognises the unique challenges of specialised dispute resolution mechanisms, particularly in sports, where the complexities of disciplinary proceedings can create significant barriers to meaningful participation. The right to be heard becomes a critical safeguard against potential abuses of power, ensuring that athletes are not subject to arbitrary decisions that can fundamentally alter their professional trajectories. The Constitutional Court's jurisprudence offers a sophisticated balance that acknowledges the need for specialised dispute resolution while also maintaining robust constitutional protections for individual rights.[565]

The constitutional framework presents a dynamic model of procedural fairness that neither absolutely prescribes nor unconditionally permits limitations on the right to be heard. Instead, it establishes a contextual approach that requires careful assessment of the specific circumstances, potential consequences and the complexity of the dispute resolution process. In sports tribunals, this means developing adjudicative mechanisms that create genuine opportunities for substantive participation, recognising the potential power imbalances between athletes and sporting governance structures. The key constitutional inquiry is whether ADR mechanisms can create equivalent procedural protections that ensure meaningful participation and substantive fairness.[566] This approach reflects a profound understanding of procedural rights as more than mere technical protections, instead conceptualising them as fundamental mechanisms for protecting individual dignity and ensuring substantive justice. In the sports dispute resolution context, the *audi alteram partem* principle challenges tribunals to develop adjudicative frameworks. The constitutional imperative is clear: specialised dispute resolution mechanisms cannot operate in a manner that fundamentally compromises individuals' rights to meaningful participation and fair adjudication.[567]

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[564] *Investigating Directorate: Serious Economic Offences v Nombwandla* (n 552).
[565] *Carmichele v Minister of Safety and Security* (n 553).
[566] *Law Society of the Cape of Good Hope v Attorneys Fidelity Fund Board of Control* 2003 (6) SA 238 (SCA).
[567] *Chief Lesapo v North West Agricultural Bank* 2000 (1) SA 409 (CC).

5.2.5 Right to reasons for decisions

Although not explicitly codified in the South African Constitution, the duty to provide reasons for decisions has been established as a fundamental component of procedural fairness through judicial interpretation and common-law principles. This duty ensures that decisions, especially those made by administrative and quasi-judicial bodies, are transparent, accountable and subject to scrutiny. It serves to protect individuals' rights by allowing them to understand the decisions affecting them, thereby facilitating meaningful engagement with and trust in the decision-making process. This principle has become especially significant in the context of sports dispute resolution, where decisions can profoundly influence athletes' careers, reputations and livelihoods.

In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*,[568] the Constitutional Court highlighted the need to provide reasons for administrative decisions. This case concerned the allocation of fishing quotas, where the applicant challenged the adequacy of the reasons provided for the decision. The court emphasised that offering reasons is integral to promoting accountability and transparency in decision-making. It held that the provision of reasons enables affected parties to understand the logic behind a decision, assess its lawfulness, and decide whether to seek review or appeal.[569] The principles articulated in *Bato Star* are directly relevant to sports tribunals, which, as quasi-judicial bodies, must adhere to the standards of fairness and reasoned decision-making. Athletes subjected to adverse rulings have the right to detailed explanations that justify the outcomes, thereby ensuring that the tribunal's processes align with constitutional norms.

The duty to provide reasons also facilitates effective judicial review or appeal, reinforcing the broader procedural fairness framework. In *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others*,[570] the Constitutional Court underscored the importance of reasoned decision-making in safeguarding procedural fairness. The court observed that decisions must be underpinned by clear and logical reasoning, which promotes transparency and protects against arbitrary or capricious actions.[571] This requirement ensures that decision-makers are accountable for their conclusions and that affected parties can evaluate whether their rights were adequately considered. In sports disputes, where

[568] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* 2004 (4) SA 490 (CC).
[569] ibid para 48.
[570] *Pharmaceutical Manufacturers Association* (n 537).
[571] ibid para 38.

adjudications often involve intricate rules and high stakes, providing detailed reasons is critical to maintaining the legitimacy and credibility of the tribunal system.[572]

The need for reasoned decisions is particularly acute in sports dispute resolution, given the significant personal, professional and financial implications of tribunal outcomes. Athletes, coaches and other stakeholders frequently rely on the decisions of sports governing bodies to shape their careers and reputations. When these decisions are made without clear reasoning, affected parties are left in a state of uncertainty and may perceive the process as biased or unfair. For instance, disciplinary actions, such as bans or fines, must be accompanied by comprehensive explanations that detail the evidence considered, the application of rules and the rationale for the sanction imposed. Without such transparency, the fairness of the adjudicative process is undermined, eroding trust in the system.[573]

Providing reasons also supports the principle of legality, a cornerstone of South African constitutional jurisprudence. In *Minister of Home Affairs and Another v Scalabrini Centre and Others*,[574] the Supreme Court of Appeal held that decision-making bodies must act within the bounds of legality and provide reasons that demonstrate compliance with legal standards.[575] This principle is applicable to sports tribunals, which must operate within the frameworks established by sports codes and constitutional principles. By articulating clear reasons, tribunals ensure that their decisions are lawful, rational and consistent with the principles of justice. Furthermore, the provision of reasons enhances the procedural safeguards available to athletes, enabling them to challenge decisions that appear to contravene their rights.[576]

In addition to its legal significance, the duty to provide reasons contributes to the legitimacy and acceptability of sports tribunals. Transparency in decision-making fosters trust among stakeholders, demonstrating that outcomes are based on objective and fair considerations. This is particularly important in contexts where power imbalances exist, such as disputes between athletes and well-resourced governing bodies. In *Sidumo v Rustenburg Platinum Mines Ltd*,[577] the Constitutional Court stressed the importance of fairness and transparency in mitigating such disparities, noting that decision-makers must account for the vulnerability of less powerful parties.[578] The system ensures that athletes are not disadvantaged by their lack of resources or

[572] ibid para 40.
[573] ibid para 44.
[574] *Minister of Home Affairs and Another v Scalabrini Centre and Others* [2013] ZASCA 134.
[575] ibid para 59.
[576] ibid para 62.
[577] *Sidumo* (n 531).
[578] ibid para 55.

expertise, thereby promoting equality before the law by requiring sports tribunals to provide reasons.[579]

While South African jurisprudence provides a robust foundation for the duty to give reasons, its practical implementation in sports tribunals remains uneven. Some tribunals have been criticised for issuing decisions that lack sufficient detail or that fail to address key aspects of the disputes. This deficiency can undermine the procedural fairness of the adjudicative process, leaving affected parties unable to assess the validity of the outcomes. To address this issue, sports governing bodies should adopt clear guidelines that require tribunals to provide comprehensive written reasons for their decisions. These guidelines should specify the elements that must be included, such as the evidence considered, the rules applied, and the reasons for the decisions.[580]

The benefits of providing reasons extend beyond the immediate parties to a dispute. Transparent decision-making contributes to the broader development of sports jurisprudence by creating a record of precedents that can guide future cases. This is particularly important in a field like sports, where rules and regulations are often complex and subject to interpretation. Tribunals can clarify how specific provisions of sports codes are applied in practice, thereby promoting consistency and predictability in decision-making by offering detailed reasons.[581]

5.2.6 Right to appeal or review

The right to appeal or review a decision constitutes a foundational principle of justice, ensuring accountability and redress in instances where initial rulings are flawed, procedurally irregular or substantively unjust. This right is enshrined in s 34 of the South African Constitution, which guarantees access to courts or other independent forums for the resolution of disputes in a fair and public manner. The Constitutional Court in *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others*[582] highlighted the indispensable role of appeals and reviews in any adjudicative system, asserting that these mechanisms are critical for correcting lower tribunal or administrative errors and preserving the integrity of justice. This principle is particularly significant in the context of sports dispute resolution, where decisions often carry profound implications for athletes' careers, reputations and financial well-being.

The appeal or review process in sports tribunals functions as a vital safeguard against procedural and substantive injustices. Sports governing bodies, as well as independent adjudicative bodies

[579] ibid para 61.
[580] *Bato Star Fishing* (n 564).
[581] ibid para 53.
[582] *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* [2005] ZACC 14.

like the Court of Arbitration for Sport (CAS), are tasked with providing athletes and other stakeholders with access to these mechanisms. The CAS, widely regarded as the apex tribunal for resolving international sports disputes, allows appeals on specific grounds such as procedural irregularities, misinterpretation of rules or arbitrary decision-making. These avenues of recourse align with the constitutional principles of fairness and justice, as articulated in *Mahlangu and Another v Minister of Police*.[583] In this case, the court emphasised that procedural fairness cannot be fully realised without robust mechanisms for appeal or review, particularly in disputes involving significant personal or financial stakes.

The importance of appeal and review mechanisms in sports disputes is heightened by the unique power dynamics that often exist between athletes and sports governing bodies. Governing bodies, with their significant resources and influence, may exercise disproportionate control over the adjudicative process, potentially disadvantaging athletes who lack comparable resources or legal expertise. The South African courts, in cases such as *Sidumo and Another v Rustenburg Platinum Mines Ltd*,[584] have consistently emphasised the need for fairness and equality in adjudicative processes, particularly when power imbalances exist. In the context of sports, appeals and reviews provide athletes with an essential counterbalance to these disparities, ensuring that decisions are subject to independent scrutiny and that procedural safeguards are upheld.

An illustrative example of the significance of appeals and reviews is the CAS framework, where decisions made by sports federations or tribunals are subject to rigorous review. CAS jurisprudence frequently addresses procedural fairness issues, reinforcing the requirement that initial tribunals adhere to principles of impartiality, transparency and reasoned decision-making. In *Mutu and Pechstein v Switzerland*,[585] the European Court of Human Rights (ECtHR), referencing CAS procedures, highlighted the need for appeal mechanisms to correct procedural deficiencies and maintain trust in the adjudicative system.[586] This case emphasises that the right to appeal or review is not merely a procedural formality but a substantive right that ensures fairness and enhances the legitimacy of sports tribunals.

South African courts have also acknowledged the constitutional imperative of appeals and reviews as a cornerstone of procedural fairness. In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*,[587] the Constitutional Court emphasised that the availability of judicial review serves as a critical check on administrative and quasi-judicial decisions, ensuring that they are

[583] *Mahlangu and Another v Minister of Police* [2020] ZACC 3.
[584] *Sidumo* (n 531).
[585] *Mutu and Pechstein v Switzerland* (n 158).
[586] ibid para 155.
[587] *Bato Star Fishing* (n 564)

lawful, rational and procedurally fair.[588] This principle is directly applicable to sports dispute resolution, where the high stakes involved require mechanisms to correct errors or injustices. By providing athletes with access to appeal and review processes, sports tribunals not only comply with constitutional standards but also foster confidence in their adjudicative frameworks.

Despite the importance of appeals and reviews, their practical implementation in sports dispute resolution can be challenging. Athletes may face significant barriers to accessing appeals, including financial constraints, limited legal representation and restrictive procedural rules. For instance, the costs of lodging an appeal with the CAS or pursuing judicial review in national courts can be prohibitively high, effectively excluding many athletes from exercising their procedural rights. South African courts have recognised the detrimental impact of such barriers in cases like *Biowatch Trust v Registrar, Genetic Resources and Others*,[589] where the Constitutional Court stressed the need for cost frameworks that do not impede access to justice.[590] Sports governing bodies must, therefore, ensure that their dispute resolution systems are accessible and equitable, providing all athletes with a genuine opportunity to appeal or review adverse decisions.

In addition to accessibility, the effectiveness of appeal and review mechanisms in sports tribunals depends on their adherence to procedural and substantive fairness standards. Appeals must be conducted by impartial and independent adjudicators who are empowered to scrutinise and, if necessary, overturn flawed decisions. The Constitutional Court in *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others*[591] affirmed that appeals and reviews must be more than superficial exercises; they must involve substantive consideration of the evidence, rules and reasoning underlying the original decision.[592] This requirement ensures that athletes' cases are thoroughly and impartially evaluated, bolstering the credibility of the adjudicative process.

The availability of appeal and review mechanisms also serves broader systemic purposes, contributing to the development of consistent and coherent jurisprudence in the field of sports law. Decisions rendered on appeal often establish important precedents, clarifying the interpretation and application of sports rules and regulations. This jurisprudential function is particularly valuable in sports, where the complexity and variability of rules can create uncertainty for athletes and governing bodies alike. Sports tribunals can promote consistency and predictability in

[588] ibid para 48.
[589] *Biowatch Trust v Registrar, Genetic Resources and Others* [2009] ZACC 14.
[590] ibid para 22.
[591] *Pharmaceutical Manufacturers Association* (n 537)
[592] ibid para 38.

decision-making, thus enhancing the overall integrity of the dispute resolution system by providing detailed and reasoned judgments on appeal.[593]

The right to appeal or review a decision is an essential component of procedural fairness, ensuring that errors or injustices in initial adjudications are rectified and that the principles of transparency, accountability and justice are upheld. South African jurisprudence, as reflected in cases such as *Minister of Health v New Clicks* and *Mahlangu v Minister of Police*,[594] underscores the constitutional imperative of providing accessible and effective appeal mechanisms. In the context of sports dispute resolution, these mechanisms are indispensable for safeguarding athletes' rights, addressing power imbalances and promoting trust in the adjudicative process. Sports tribunals can ensure that their appeal and review frameworks align with constitutional standards and meet the expectations of all stakeholders by adhering to the principles of fairness and equality.

5.2.7 Independence and impartiality of tribunals

The independence and impartiality of adjudicative bodies are fundamental to upholding the right to a fair trial and ensuring the integrity of the decision-making process. These principles are particularly critical in sports dispute resolution, where the potential for bias and undue influence is heightened by the relationships among athletes, governing bodies, sponsors, and other stakeholders. Section 34 of the South African Constitution guarantees everyone the right to have disputes resolved by an independent and impartial tribunal, underscoring the judiciary's essential role in ensuring fair and just outcomes. In *De Lange v Smuts NO and Others*,[595] the Constitutional Court affirmed that independence and impartiality are not mere formalities, but substantive guarantees necessary for the legitimacy of any adjudicative body.[596] This principle applies equally to sports tribunals, which must establish and maintain their neutrality to gain the trust of all parties involved.

Sports tribunals, particularly those operating under the authority of national and international governing bodies, face unique challenges in upholding independence and impartiality. The close association between these tribunals and sports organisations often raises questions about their ability to adjudicate disputes free from bias or external pressure. For example, the CAS has faced criticism regarding its structural ties to influential sports organisations such as the International Olympic Committee (IOC). Despite its status as an independent arbitral body, the CAS must continually address concerns about its impartiality to ensure compliance with international

[593] ibid para 42.
[594] *Minister of Health* (n 578); *Mahlangu* (n 579).
[595] *De Lange v Smuts NO and Others* [1998] ZACC 6.
[596] ibid para 70.

standards of fairness, including art. 14 of the International Covenant on Civil and Political Rights (ICCPR).[597] South African procedural jurisprudence, as articulated in *South African Association of Personal Injury Lawyers v Heath*,[598] reinforces that impartiality is indispensable in maintaining the integrity of the adjudicative process.[599] This standard mandates that all sports tribunals, whether domestic or international, adhere to strict impartiality to ensure that their decisions are free from any actual or perceived bias.

In South Africa, the principle of independence and impartiality is further supported by the courts' recognition of the need for neutral adjudicators in specialised tribunals. In *Bernstein and Others v Bester NO and Others*,[600] the Constitutional Court elaborated on the importance of decision-makers who are insulated from undue influence, emphasising that the credibility of any tribunal hinges on its ability to act independently of external pressures.[601] This principle is particularly pertinent in sports, where governing bodies often wield significant power over the rules, regulations and enforcement mechanisms that tribunals are tasked with interpreting and applying. The concentration of power in sports governance requires increased vigilance to prevent conflicts of interest that could compromise the impartiality of tribunal proceedings.

The challenges of maintaining impartiality in sports tribunals are further complicated by the financial and professional dependencies that often exist between athletes, governing bodies and sponsors. For instance, athletes frequently rely on governing bodies for access to competitions, funding and endorsements, creating an imbalance of power that could influence the outcomes of disputes. This dynamic underscores the importance of procedural safeguards to ensure that tribunals operate free from undue influence, as highlighted in *Sidumo and Another v Rustenburg Platinum Mines Ltd*.[602] The Constitutional Court in this case emphasised the need for adjudicators to base their decisions solely on the merits of the case, without regard to external pressures or interests.[603] In the sports context, this requires not only the formal independence of tribunals but also the perception of impartiality, as public confidence in the adjudicative process depends on both.

A key procedural mechanism for safeguarding impartiality in sports tribunals is the establishment of clear conflict-of-interest rules and transparency requirements. For example, the CAS has

[597] International Covenant on Civil and Political Rights (1966) art 14.
[598] *South African Association of Personal Injury Lawyers v Heath and Others* [2000] ZACC 22.
[599] ibid para 21.
[600] *Bernstein and Others v Bester NO and Others* [1996] ZACC 2.
[601] ibid para 85.
[602] *Sidumo* (n 531).
[603] ibid.

implemented procedures to ensure that arbitrators disclose any potential conflicts of interest prior to adjudicating disputes. While these measures have enhanced the CAS's reputation for neutrality, the body remains under scrutiny for its ties to influential sports organisations.

South African sports tribunals can draw valuable lessons from the CAS and other international models in developing their own frameworks for ensuring independence and impartiality. Domestic tribunals must not only establish clear procedural rules but must also cultivate a culture of transparency and accountability to uphold public trust. In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*,[604] the Constitutional Court stressed that the fairness of adjudicative processes depends on both the appearance and the reality of impartiality, requiring decision-makers to act in ways that inspire confidence among all stakeholders. In the sports context, this means that tribunals must not only avoid actual bias, but also address any perceptions of partiality that could undermine the legitimacy of their decisions.

The structural independence of sports tribunals is also crucial for protecting their impartiality. In *Van Rooyen and Others v The State and Others*,[605] the Constitutional Court highlighted the importance of institutional safeguards to ensure that adjudicators are insulated from undue influence, whether from internal or external sources.[606] Applying this principle to sports, tribunals must establish governance structures that separate their decision-making functions from the administrative and regulatory roles of governing bodies. This separation is essential for mitigating conflicts of interest and reinforcing the neutrality of the adjudicative process. Furthermore, tribunals must ensure that their arbitrators are appointed using transparent and merit-based processes to enhance their credibility and independence.

The principle of impartiality extends beyond the adjudicators to encompass the procedural rules and practices of the tribunal. As articulated in *Pharmaceutical Manufacturers Association*,[607] procedural fairness requires that all parties have an equal opportunity to present their cases and that decisions are based solely on the evidence and arguments presented.[608] In sports disputes, this means that athletes must be afforded a fair platform to challenge decisions made by governing bodies, and tribunals must ensure that their processes do not disproportionately favour one party over another. The adoption of procedural safeguards, such as the right to legal representation and

[604] *Bato Star Fishing* (n 564).
[605] *Van Rooyen and Others v The State and Others* [2002] ZACC 8.
[606] ibid para 38.
[607] *Pharmaceutical Manufacturers Association* (n 537).
[608] ibid para 50.

access to evidence, is essential for achieving this balance and maintaining the impartiality of the adjudicative process.

The independence and impartiality of tribunals are indispensable components of procedural fairness, particularly in the specialised field of sports dispute resolution. South African jurisprudence, as reflected in cases such as *De Lange v Smuts NO* and *Sidumo v Rustenburg Platinum Mines*, underscores the constitutional imperative of ensuring that adjudicative bodies operate free from bias or undue influence. In the context of sports, where the stakes are often high and the power dynamics complex, tribunals must adopt robust safeguards to uphold these principles and inspire confidence among athletes and other stakeholders. Sports tribunals can align with constitutional standards and foster trust in their adjudicative frameworks by prioritising independence and impartiality.

5.2.8 Timely resolution of disputes

The timely resolution of disputes is an essential element of procedural fairness and justice, deeply rooted in the principle that justice delayed is justice denied. Although not explicitly stated in s 34 of the South African Constitution, the right to a fair trial includes the requirement that disputes be resolved within a reasonable time. This aspect of procedural fairness has been repeatedly emphasised in South African jurisprudence, most notably in *Sanderson v Attorney-General, Eastern Cape*,[609] where the Constitutional Court stated that undue delays in judicial processes undermine fairness and erode public confidence in the legal system.[610] In the context of sports dispute resolution, the implications of delays are even more pronounced. Athletes' careers are typically brief and very dependent on timely participation in competitions, sponsorships and other professional engagements. Consequently, delays in resolving disputes can lead to irreparable harm, including missed opportunities, financial losses and diminished career prospects, underscoring the need for expedient adjudicative processes in sports tribunals.

The unique nature of sports disputes magnifies the importance of timely resolution. Unlike other legal contexts, where delayed outcomes may have long-term but recoverable consequences, sports-related decisions often have immediate and irreversible impacts. For instance, the eligibility of an athlete to participate in a forthcoming competition or their suspension following an alleged violation requires swift adjudication to prevent undue prejudice. In *President of the Republic of South Africa v South African Rugby Football Union*,[611] the Constitutional Court highlighted that

[609] *Sanderson v Attorney-General, Eastern Cape* [1997] ZACC 18.
[610] ibid para 39.
[611] *President of the Republic of South Africa v South African Rugby Football Union* [1999] ZACC 9.

procedural delays in administrative or adjudicative processes compromise the principle of effective legal recourse and the ability of parties to receive fair treatment. This principle directly applies to sports, where the fast-paced and event-driven nature of the industry necessitates efficient resolution mechanisms to safeguard athletes' rights and ensure procedural fairness.

The CAS and similar sports adjudicative bodies have developed expedited procedures to address time-sensitive cases, aligning with South African standards of procedural fairness. The CAS, for example, offers an 'emergency arbitration' mechanism, enabling disputes to be resolved swiftly before critical events, such as international competitions. While these expedited procedures have been lauded for their efficiency, they must also balance speed with the thoroughness required to ensure justice. In *Sanderson*,[612] the Constitutional Court cautioned against sacrificing fairness in the pursuit of expediency, emphasising that procedural integrity should not be compromised to meet deadlines. This balance is particularly challenging in sports tribunals, where the pressure for swift decisions often clashes with the complexity of cases, requiring detailed consideration of evidence and arguments.

The principle of timely resolution is not only about protecting athletes' immediate interests but also about maintaining the legitimacy and credibility of sports dispute resolution systems. Prolonged delays can undermine stakeholders' trust in the fairness and effectiveness of the process, leading to perceptions of bias or inefficiency. In *Pharmaceutical Manufacturers Association*,[613] the Constitutional Court stressed that procedural fairness is integral to public confidence in adjudicative frameworks.[614] This observation is equally applicable to sports, where the reputation of governing bodies and tribunals is closely tied to their ability to resolve disputes in a timely and transparent manner. The absence of prompt resolution mechanisms risks eroding the faith of athletes, sponsors and fans in the integrity of the sporting system.

Moreover, the financial and professional consequences of delayed dispute resolution in sports cannot be overstated. Athletes often rely on their earnings from competitions, endorsements and sponsorships, all of which can be jeopardised by unresolved disputes. For example, a prolonged suspension due to an unresolved disciplinary case can result in significant income losses and tarnish an athlete's reputation, even if they are ultimately exonerated. The Constitutional Court in *Bato Star Fishing*[615] noted that fairness in administrative decisions requires consideration of the practical impact on affected individuals, reinforcing the importance of timely resolutions.[616] Sports

612 *Sanderson* (n 539).
613 *Pharmaceutical Manufacturers Association* (n 537).
614 ibid para 89.
615 *Bato Star Fishing* (564).
616 ibid para 44.

tribunals must therefore prioritise procedural efficiency, ensuring that their processes do not unduly disadvantage athletes or disrupt their livelihoods.

South Africa's sports tribunals can draw on international best practices, such as those established by the CAS, while also adhering to constitutional principles of fairness and reasonableness. The CAS's commitment to resolving disputes within a fixed timeframe, typically three months from the filing of an appeal, sets a benchmark for efficiency in sports adjudication. However, domestic tribunals must also address local challenges, including resource constraints and the need to align with South African legal standards. In *Van Rooyen and Others v The State and Others*,[617] the Constitutional Court highlighted the importance of institutional capacity in ensuring timely justice, noting that delays often stem from systemic inefficiencies rather than intentional misconduct.[618] Addressing these structural issues is essential for South Africa's sports tribunals to meet the dual objectives of efficiency and fairness.

Timely resolution also involves ensuring that the procedural rules governing sports tribunals are designed to prevent unnecessary delays. Clear timelines for filing complaints, submitting evidence and delivering judgments are essential for maintaining procedural discipline and avoiding protracted disputes. In *Sidumo*,[619] the Constitutional Court emphasised the importance of procedural rules that promote efficiency without compromising fairness.[620] For sports tribunals, this means adopting streamlined processes that minimise administrative delays while allowing sufficient time for the fair consideration of cases. The use of technology, such as virtual hearings and electronic case management systems, can further enhance efficiency by reducing logistical barriers and expediting communication between parties.

The implications of delayed dispute resolution extend beyond individual cases, affecting the broader governance of sports. Inconsistent or slow adjudication can lead to fragmentation within the sporting community, with athletes and other stakeholders seeking alternative forums to resolve disputes. This fragmentation undermines the authority of sports governing bodies and weakens the cohesion of the regulatory framework. In *Bernstein and Others v Bester NO and Others*,[621] the Constitutional Court highlighted the role of fair and efficient adjudication in fostering compliance and unity in regulated systems.[622] For South Africa's sports sector, ensuring timely resolution is

[617] *Van Rooyen and Others v The State and Others* [2002] ZACC 8.
[618] ibid para 36.
[619] *Sidumo* (n 531).
[620] ibid para 65.
[621] *Bernstein and Others v Bester NO and Others* (n 596).
[622] ibid para 85.

therefore not only a matter of procedural fairness, but also a strategic imperative for maintaining the integrity and stability of the industry.

In conclusion, the timely resolution of disputes is a critical component of procedural fairness in sports, aligning with the constitutional guarantee of fair trial rights in s 34. South African jurisprudence, as reflected in cases such as *Sanderson v Attorney-General, Eastern Cape* and *President of the Republic of South Africa v South African Rugby Football Union*, underscores the importance of expedient adjudication to prevent undue prejudice and uphold the legitimacy of the legal process. For sports tribunals, this requires a delicate balance between speed and thoroughness, supported by robust procedural rules and adequate institutional capacity. By prioritising timely resolution, South Africa's sports dispute resolution frameworks can safeguard athletes' rights, enhance public confidence, and contribute to the overall fairness and effectiveness of the sporting system.

5.2.9 The promotion of the Administrative Justice Act and the Promotion of Access to Information Act in the context of sports dispute resolution

A comprehensive account of procedural human rights in the South African context requires engagement with the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and the Promotion of Access to Information Act 2 of 2000 (PAIA), both of which give effect to rights in the Bill of Rights that are directly relevant to sports dispute resolution.. PAJA gives effect to the right to just administrative action guaranteed by section 33 of the Constitution. It provides that administrative action must be lawful, reasonable, and procedurally fair, and that where administrative action adversely affects the rights of any person, that person must be given written reasons for the action.[623] The question of whether the disciplinary and dispute resolution decisions of sports governing bodies constitute 'administrative action' within the meaning of PAJA is significant and not straightforward.

The Constitutional Court has held, in Calibre Clinical Consultants (Pty) Ltd v National Bargaining Council for the Road Freight Industry and Another, that the administrative action contemplated by PAJA is action taken by 'organs of state or private bodies exercising public power or performing public functions in terms of empowering provisions.'[624] The application of this definition to sporting bodies requires a contextual analysis. South African courts have, in cases such as Cronje v United Cricket Board of South Africa and SASCOC v Laraine Lane, applied administrative law

[623] Promotion of Administrative Justice Act 3 of 2000, ss 3, 5, and 6
[624] *Calibre Clinical Consultants (Pty) Ltd v National Bargaining Council for the Road Freight Industry and Another* [2010] ZACC 8

principles to decisions of sporting bodies, particularly where those bodies exercise regulatory control over the participation of persons in sport and where their decisions have serious consequences for individuals' professional lives and livelihoods.[625][626] Where the decisions of sporting bodies constitute administrative action in terms of PAJA, the procedural fairness requirements of PAJA are directly applicable, including the right to adequate notice of the nature and purpose of the proposed action, a reasonable opportunity to comment, and written reasons.

However, even where PAJA finds no direct application, the principle of legality and the indirect horizontal effect of the Bill of Rights under section 8(2) of the Constitution impose analogous constraints. The Constitutional Court has consistently held that all exercises of public power, whether sourced in statute or otherwise, must comply with the foundational requirements of lawfulness, rationality, and procedural fairness, and that conduct with significant rights implications may be subject to constitutional control notwithstanding the absence of a formal statutory framework.[627] For sports governing bodies, this means the procedural fairness requirements in sections 33 and 34 of the Constitution remain applicable, regardless of whether the body falls within PAJA's scope.

PAIA gives effect to the right of access to information guaranteed by section 32 of the Constitution. This right is particularly relevant to sports dispute resolution in several respects. First, athletes facing disciplinary proceedings are entitled to access the information held by sporting bodies that is relevant to their defence. The denial of access to such information, including investigation reports, witness statements, and evidentiary materials, constitutes a violation of the right to a fair hearing under section 34 and of the principle of equality of arms. In SASCOC v CCMA and Others, the court recognised that SASCOC's withholding of a forensic investigation report from dismissed employees constituted a procedural irregularity that undermined the fairness of the proceedings.[628] PAIA provides the legal mechanism through which athletes can compel the disclosure of relevant information, and sporting bodies' dispute resolution frameworks should make explicit provision for compliance with PAIA obligations.

Second, PAIA's provisions on the proactive disclosure of information are relevant to the transparency deficits identified in Chapter 6. Sporting bodies that maintain records of disciplinary decisions, procedural rules, and arbitration outcomes are subject to PAIA obligations regarding access to these records. Greater compliance with PAIA would address the opacity that characterises

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625 *Cronjé v United Cricket Board of South Africa* 2001 (4) SA 1361 (T).
626 *South African Sports Confederation and Olympic Committee v Lane NO and Another* 2011 (2) SA 88 (GSJ)
627 *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal* 2014 (5) SA 579 (CC)
628 *South African Sports Confederation and Olympic Committee v Commission for Conciliation, Mediation and Arbitration and Others* [2018] ZALCJHB 316

current sports dispute resolution practice and contribute to the development of consistent jurisprudence within sporting codes.

5.3 Conclusion

The application of procedural human rights to sports dispute-resolution frameworks in South Africa represents a pivotal intersection of constitutional law and sports governance. This analysis highlights the importance of procedural rights enshrined in the South African Constitution, specifically in the Bill of Rights, and how these provisions impact the autonomy of sports governing bodies. South Africa's progressive legal framework underscores the need for fair and impartial dispute resolution mechanisms that align with broader human rights obligations. This chapter affirms that, while sports organisations possess a level of autonomy in their operations and disciplinary procedures, they are not above the constitutional mandates of fairness, transparency and accountability.

A key finding in this discussion is the pre-eminence of the Bill of Rights, which articulates the right to fair trial, access to legal representation and impartial tribunal proceedings. These rights are core to procedural justice and essential to ensuring that justice dispensed in sports contexts aligns with national and international human rights standards. Notably, the Constitution's application to both public and private actors, including sports entities, means that even traditionally autonomous sports bodies must comply with principles of fairness and procedural equity when adjudicating disputes. This is underscored by s 8(2) of the Constitution, which states that the Bill of Rights binds natural and juristic persons, thereby compelling private entities to respect procedural rights when dealing with individuals who are subject to their governance frameworks. This provision is instrumental in extending the reach of constitutional protections into the private realm, affirming that the need for fair process and access to justice is universal, irrespective of the type of institution involved in adjudication.

The importance of fair trial rights, as outlined in s 34 of the Constitution, provides a crucial foundation for protecting the procedural rights of athletes, coaches and other stakeholders in sports frameworks. Section 34 guarantees the right to have any dispute resolved in a fair public hearing before a court or an impartial tribunal.[629] This provision is particularly pertinent in sports arbitration, where the independence and impartiality of adjudicating bodies must be safeguarded to uphold trust in the system. By upholding these principles, South African sports bodies can foster

[629] Currie I and Waal J, *The New Constitutional and Administrative Law: Vol 1 Constitutional Law* (Juta & Company Ltd 2001).

a dispute resolution environment that respects the legal rights of individuals and maintains the integrity of sports.

The analysis of procedural rights within sports frameworks in South Africa reveals a need for greater accountability to ensure that decisions are explained and reasons are provided. This is particularly relevant given the nature of sports, where disciplinary actions often impact careers, reputations and financial stability. Ensuring that parties to disputes understand the basis for decisions is a fundamental aspect of procedural justice, aligning with the principle of *audi alteram partem*, which asserts that individuals have a right to be heard and to present their case. The adherence to this principle in sports bodies ensures that adjudicatory processes do not become arbitrary or opaque, but instead remain open to scrutiny and adhere to legal standards.

The right to appeal and review, as enshrined in South African law, is another critical component of procedural fairness that is echoed in sports dispute resolution. Section 33 of the Constitution guarantees everyone the right to lawful, reasonable and procedurally fair administrative action, and s 33(2) further provides for the right to written reasons when one's rights have been adversely affected. In the context of sports, this means that individuals subject to disciplinary or adjudicatory processes should have avenues to challenge decisions that may be regarded as unjust or flawed. By implementing transparent appeal mechanisms, sports bodies can contribute to a more robust system of procedural justice aligned with the principles of the Constitution.

In recent years, there has been a growing recognition of the significance of ensuring procedural human rights in sports frameworks globally. For example, the CAS and other international sports adjudicatory bodies have increasingly emphasised the importance of fair process, impartiality and accessibility. South Africa's adoption of similar standards in its domestic sports frameworks can serve as an exemplar of integrating constitutional rights into private arbitration systems, fostering a model that balances the unique demands of sports with universal human rights principles.

The need for the independence and impartiality of tribunals, as highlighted in South Africa's constitutional and legislative framework, is crucial for the credibility of sports dispute mechanisms. The right to an impartial hearing reinforces the idea that sports disputes should be free from bias or undue influence, ensuring that all parties have equal access to justice.[630] This requirement for impartiality ensures that tribunals or arbitrators do not have conflicts of interest that could impact their judgment, maintaining fairness and credibility in the sports dispute resolution process.

[630] *Barkhuizen v Napier* 2007 (5) SA 323 (CC) para 60.

The emphasis on the timely resolution of disputes, while not explicitly outlined in the Constitution, is an underlying principle vital to the procedural rights of all parties. In the high-stakes arena of sports, delayed resolutions can have detrimental effects on athletes' careers, competition outcomes and the integrity of sports organisations. Timely resolution aligns with the efficiency required in sports and is crucial to ensuring that dispute adjudication does not undermine the principles of fair play or procedural justice.[631]

In applying the Bill of Rights to sports dispute-resolution frameworks, this analysis concludes that South Africa's approach to integrating human rights principles within private institutions aligns well with international norms and constitutional imperatives. While the unique characteristics of sports require flexible, context-specific mechanisms, these mechanisms cannot compromise the fundamental rights of the individuals involved. The Constitution provides a solid foundation for a human rights-compliant sports dispute framework that respects the autonomy of sports entities while upholding principles of justice, fairness and equity. This balance between autonomy and constitutional compliance is particularly significant given global trends towards increased scrutiny of private arbitration processes and the push for greater transparency and fairness in sports governance.[632]

Subjecting sports frameworks to the Constitution's standards serves not only to protect individual rights but also to enhance the credibility and legitimacy of the sports sector in South Africa. By ensuring that sports bodies operate within the framework of the Constitution, South Africa reaffirms its commitment to a just and equitable society. This commitment extends to all spheres of life, including sports, where the high-profile nature of disputes and the public interest involved require adherence to human rights principles. Hence, the procedural rights outlined in the Constitution provide a robust framework for sports dispute resolution, promoting accountability, fairness and accessibility. In applying these rights, South African sports bodies are encouraged to uphold the principles of the Constitution and to create a dispute resolution system that respects the autonomy of sports while safeguarding individual rights. As South Africa continues to refine its approach to sports governance, the ongoing commitment to human rights in sports will serve as a model for ensuring fairness and justice in this unique and globally significant sector.

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631 Sandy Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta 2010) 233.

632 Penelope Andrews and Stephen Ellmann, *The Post-Apartheid Constitutions: Perspectives on South Africa's Basic Law* (Wits University Press 2001) 198.

CHAPTER 6: AN ANALYSIS OF THE DISPUTE RESOLUTION FRAMEWORKS FOR SELECTED SPORTS IN SOUTH AFRICA

6.1 Introduction

Sports governance bodies wield significant decision-making power over athletes, coaches and stakeholders.[633] It is therefore essential to ensure that these entities operate with procedural fairness. The resolution of sports-related disputes in South Africa operates within a multi-faceted legal and institutional framework that seeks to balance regulatory governance, procedural fairness and the protection of fundamental human rights.[634] Given the constitutional imperatives enshrined in the Bill of Rights, it is essential to assess whether South Africa's sports dispute resolution mechanisms comply with national and international human rights standards. This chapter critically examines the compliance of selected sporting organisations with procedural human rights principles, focusing on the right to a fair hearing, access to justice and adherence to natural justice principles in the dispute resolution process.[635] The basis for the chapter is that a robust dispute resolution system is integral to fostering transparency, accountability and fairness in sporting organisations. The analysis in this chapter is grounded in the broader legal framework established by the South African Constitution and relevant international human rights instruments that set the standard for equitable dispute resolution processes. In this regard, the principles of *audi alteram partem* (the right to be heard) and *nemo iudex in sua causa (impartiality in adjudication) serve as key benchmarks for evaluating the procedural integrity of sports dispute-resolution* frameworks.[636]

The selection of SASCOC, SAFA, and Cricket South Africa (CSA) for detailed analysis was guided by the following criteria, each of which is explained below:

Governance diversity: The three bodies represent different structural types of sports governance in South Africa. SASCOC is a multi-sport umbrella body that coordinates and represents national Olympic and high-performance sport. SAFA is a single-sport national federation governing the country's most widely played sport. CSA is a national federation operating a highly professionalised sport with complex commercial arrangements. This structural diversity ensures

633 McArdle (n 132) 43.
634 Graeme Mew and Mary Jane Richards, *More Than Just a Game: Resolving Disputes in Modern Sport* (Gowling Lafleur Henderson LLP 2006).
635 Ulrike Davy and Albert HY Chen (eds), *Law and Social Policy in the Global South: Brazil, China, India, South Africa* (Routledge 2023).
636 Threshold Attorneys & Solicitors, *Arbitration and the Principles of Natural Justice* <www.threshold-attorneys.com>.

that the study's findings are not confined to any single governance model and thus have broader analytical relevance.

Dispute volume and significance: All three bodies adjudicate a substantial volume of disputes involving athletes, officials, clubs, and member bodies. The disputes resolved by these organisations range from individual disciplinary matters with potentially career-ending consequences - to governance conflicts and commercial disagreements. Their dispute resolution frameworks are therefore not theoretical constructs but operational systems with real consequences for real people.

Public significance and constitutional accountability: SASCOC receives state funding and exercises quasi-governmental functions in representing South Africa at international sporting events. SAFA is affiliated to FIFA and exercises jurisdiction over the national game. The CSA administers a sport of significant national cultural importance. All three bodies are subject to the constitutional obligations of private bodies under section 8(2) of the Constitution, and all have been involved in litigation that has raised constitutional questions. Their selection therefore, aligns with the study's doctrinal focus on constitutional accountability.

Availability of documentation: The constitutional documents, disciplinary codes, and procedural rules of all three bodies are publicly available, enabling detailed doctrinal analysis. In addition, all three bodies have been involved in reported court proceedings that provide a body of case law against which procedural compliance can be assessed.

It is acknowledged that other sporting bodies in South Africa, including Athletics South Africa, Netball South Africa, and Volleyball South Africa, may present procedural rights concerns similar to those identified in this study. The exclusion of these bodies does not reflect a finding that they are compliant with constitutional standards, but rather a methodological decision to ensure sufficient analytical depth in the treatment of the selected cases. The findings of this study are intended to be generalisable as a normative framework, even where the specific empirical analysis is limited to the three selected bodies. Future research could profitably extend this framework to additional sporting codes.

The analysis of each sporting body in this chapter is structured around a consistent set of evaluative benchmarks, derived from the consolidated framework of procedural standards set out in section 4.4 of Chapter 4. For each body, the analysis proceeds through three stages: first, an examination of the constitutional and institutional framework for dispute resolution; second, an assessment of the structural independence and impartiality of adjudicative bodies; and third, an evaluation of the

practical accessibility of procedural safeguards, including the right to a fair hearing, access to courts, legal representation, reasoned decisions, and appeal.

This consistent analytical framework enables a genuinely comparative assessment across the three bodies. Where similar procedural deficiencies are identified in more than one body, this is treated as evidence of a systemic pattern rather than an isolated failure. Where one body provides stronger procedural protections than the others, this is identified as a comparative best practice that could inform reform of the weaker frameworks.

It should be noted that, for the purposes of this chapter, the distinction between *audi alteram partem* and *nemo iudex in causa sua* is treated as a subset of the broader framework of procedural standards identified in section 4.4, rather than as exhaustive of the procedural rights examined. These two principles are central to the analysis, but the chapter also examines compliance with the additional standards identified in section 4.4, including access to courts, timeliness, reasoned decisions, and proportionality of sanctions. This approach ensures methodological coherence with the normative framework developed in Chapters 4 and 5.

6.2 South African Sports Confederation and Olympic Committee (SASCOC)

6.2.1 Brief background to SASCOC

SASCOC was established in November 2004 by amalgamating several sports bodies.[637] This consolidation aimed to create a unified organisation responsible for high-performance sport in the country. This development was driven by the National Sport and Recreation Act,[638] which sought to bring together various fragmented organisations that were responsible for overseeing sports in the country.[639] The formation of SASCOC was a strategic move to streamline sports governance and enhance South Africa's representation in international competitions, and was a significant milestone in the history of South African sports administration.[640] It resulted from the merging of three key organisations: the National Olympic Committee of South Africa (NOCSA), the South African Sports Commission and Disability Sport South Africa (DISSA).[641] This consolidation was specifically designed to address the disjointed and inefficient nature of sports governance during

[637] South African Sports Confederation and Olympic Committee, 'About SASCOC' <https://www.sascoc.co.za> accessed 25 February 2025.
[638] National Sport and Recreation Act 110 of 1998.
[639] Section 2(3).
[640] South African Sports Confederation and Olympic Committee, 'About SASCOC' (n 627).
[641] SASCOC constitution 2019, art 2.1.

the apartheid period, and to create a more coordinated and unified approach to sports development and administration throughout the country.[642]

SASCOC operates under a dual mandate, which is a distinctive feature that distinguishes it from many other sporting organisations.[643] First, it functions as the National Olympic Committee, which is recognised by the International Olympic Committee (IOC), responsible for representing South Africa on the global stage of Olympic sport.[644] Second, SASCOC serves as the national coordinating body for all high-performance sports in South Africa.[645] This dual role places the organisation at a unique intersection between international sporting governance and the practical realities of domestic sports administration.[646] As the official body for both Olympic and high-performance sport, SASCOC is tasked with navigating the complexities of international regulations while simultaneously fostering domestic sporting excellence. It ensures that South African athletes are well-prepared to compete at the highest levels of global competition. This structure reflects SASCOC's pivotal role in the South African sporting ecosystem and underscores its responsibility to balance the needs of elite athletes and the broader sports community in the country.

SASCOC's creation was a crucial step in the ongoing effort to rebuild and reshape South African sports infrastructure and governance following the end of apartheid.[647] The unified body was tasked with ensuring that sports development and administration in South Africa were no longer hindered by the segregated and often contradictory structures that existed during the apartheid era. Consolidating the leadership and management of sports in South Africa, SASCOC was positioned to streamline decision-making processes, promote more inclusive participation in sports, and ensure greater alignment with global sports standards and objectives. The creation of SASCOC thus represented a major leap forward in the transformation of sports in South Africa, with the organisation set to oversee both the growth of sports at the grassroots level and the achievement of excellence in high-performance sport.

642 Ministerial Report on Transformation in Sport (Department of Sport and Recreation 2013) 24.
643 National Sport and Recreation Act, s 4(1).
644 SASCOC constitution 2019, art 4.1.
645 ibid.
646 Lee Hill and Valérie Grand 'Maison, 'SASCOC and South African Sport: Governance, Corruption and Accountability' (24th Canadian Conference on Global Health, November 2018).
647 ibid.

6.2.2 Constitutional rules and dispute resolution

SASCOC's main instrument for dispute resolution is its constitution.[648] Article 50 outlines its approach to dispute resolution. This framework establishes a multi-layered structure, ensuring that disputes proceed through distinct procedural phases before any judicial intervention.[649] While the sections that follow describe and critique these layers, a brief summary is provided here. The first layer requires disputes to be addressed internally within member organisations, which must use their own investigative and resolution mechanisms.[650] If internal resolution fails, the second layer involves referral to SASCOC's judicial body for arbitration or mediation. The third layer formalises mediation as a distinct process, with appointed mediators facilitating negotiated settlements. If mediation does not succeed, disputes move to the fourth layer, arbitration, following the Arbitration Foundation of Southern Africa (AFSA) procedures. The fifth layer introduces an international arbitration dimension, allowing certain disputes to be escalated to the CAS. The sixth layer also consists of specialised disciplinary and ethical proceedings for handling violations outside general arbitration processes. Finally, the framework limits direct court access, requiring that all previous layers be exhausted before legal proceedings can be initiated.

While comprehensive, SASCOC's constitutional framework for dispute resolution reveals significant tensions between sports autonomy and the protection of fundamental human rights. Article 50.1 of SASCOC's constitution states:

> Everybody or individual falling under the jurisdiction of Sport SA shall ensure that any sports related or institutional dispute that it has with a body or individual falling under the jurisdiction of Sport SA or any dispute with Sport SA, itself, is resolved in accordance with the dispute resolution mechanisms of Sport SA as outlined in this constitution and its by-laws.

This provision effectively establishes the primacy of SASCOC's constitutional mechanisms over other legal avenues, creating a parallel justice system that may circumvent constitutional protections. Mandating that all disputes be resolved within SASCOC's framework raises serious questions about the accessibility of justice and the subordination of national legal systems to sports governance structures. It raises serious concerns about whether adequate constitutional protections are adequately integrated within this governance framework.

More problematically, art 50.1.1 further stipulates:

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[648] SASCOC constitution 2019.
[649] ibid, art 50.
[650] ibid.

> No body or individual falling under the jurisdiction of Sport SA shall approach a Court of Law to decide on a Sport related dispute it has with a body or individual affiliated to Sport SA or with Sport SA itself, until such individual or body has first exhausted all available internal remedies, at all appropriate levels which is applicable to such a party, and as may be applicable to such a dispute or complaint.

The phrase 'first exhausted all available internal remedies at all appropriate levels which is applicable to such a party' introduces ambiguity that could be exploited to delay access to courts indefinitely. In other words, it constitutes an ouster clause that significantly restricts individuals' constitutional right of access to courts under s 34 of the South African Constitution. While technically allowing access to courts after internal remedies have been exhausted, the practical effect may be to create substantial barriers that contradict the constitutional guarantee that 'everyone has the right to have any dispute that the application of law can resolve decided in a fair public hearing before a court'. The ambiguous phrasing – 'all available internal remedies, at all appropriate levels' – creates a procedural labyrinth that can effectively delay or deny access to impartial judicial review. This provision has not been directly challenged in the South African courts in relation to SASCOC, representing a critical gap in jurisprudence that allows this potentially unconstitutional restriction to persist.

The tension between sports autonomy and human rights protection was evident in the case of *AEK Athens and SK Slavia Prague v UEFA*.[651] In this case, the clubs challenged UEFA's 'one club, one owner' rule that prevented clubs with the same ownership from participating in the same UEFA competition. AEK Athens and Slavia Prague, partially owned by the ENIC Group, argued that the rule violated European competition law and their right to fair treatment. UEFA countered that the rule was essential to maintain sporting integrity and prevent conflicts of interest. The CAS ultimately upheld UEFA's authority to implement such regulations, ruling that while sports bodies must comply with legal standards, their independence in governance is crucial to sporting integrity. However, this decision prioritised regulatory autonomy over individual rights, establishing a concerning precedent for sports governance that elevates organisational interests above fundamental rights protections.

Similarly, in *Cronje v United Cricket Board of South Africa*,[652] the court's deference to internal mechanisms had troubling implications for procedural fairness. After Hansie Cronje admitted to match-fixing, the United Cricket Board (UCB) banned him for life without a formal hearing where he could present mitigating factors. When Cronje challenged this decision in court, arguing

[651] *AEK Athens and SK Slavia Prague v UEFA* (CAS 98/200) Award of 20 August 1999, para 156.
[652] *Cronje v United Cricket Board of South Africa* 2001 (4) SA 1361 (T).

procedural unfairness, the High Court upheld the UCB's decision, emphasising that internal disciplinary processes should be respected. This judgment privileged organisational autonomy over procedural fairness, demonstrating how sports bodies can effectively circumvent basic due process rights using internal mechanisms that lack adequate safeguards. The hierarchical nature of SASCOC's dispute resolution framework is further elaborated upon in art 50.2, which states: 'Only in the event that a member of Sport SA has exhausted all of its own internal investigation and dispute resolution mechanisms provided for in its own constitution, may a dispute be referred to Sport SA for resolution, arbitration or mediation by Sport SA's Judicial Body.'

This multi-layered approach creates excessive procedural hurdles that effectively delay resolution and exhaust the resources of individual complainants, particularly athletes with limited financial means. While purportedly designed to promote organisational autonomy, this provision often insulates sports bodies from meaningful accountability. *Ndoro v South African Football Association*[653] demonstrates the practical barriers that such requirements create. Tendai Ndoro, a Zimbabwean footballer, was caught in an eligibility dispute concerning FIFA's 'three-club rule', which limits a player to registering with a maximum of three clubs in a single season. When Ajax Cape Town fielded Ndoro despite this rule, resulting in point deductions, the club and player sought immediate judicial intervention rather than pursuing resolution through SAFA's internal mechanisms. The High Court dismissed their application, insisting that they first exhaust internal remedies. This decision left Ndoro in professional limbo for an extended period while procedural requirements were met, demonstrating how exhaustion clauses can effectively deny athletes timely justice whose careers depend on prompt resolution.

Similarly, in *RFC Seraing v FIFA*,[654] the Belgian football club challenged FIFA's ban on third-party ownership of players' economic rights, arguing that it violated European competition law and players' freedom of movement. Rather than adhering to FIFA's internal dispute resolution framework, Seraing sought relief through Belgian civil courts. The arbitration panel eventually ruled against Seraing, emphasising sports organisations' autonomy in regulatory matters. Specifically, the panel ruled that FIFA's TPO ban was valid and that sports organisations must have autonomy in enforcing their regulations before matters are taken to the ordinary courts. This case further entrenched the problematic precedent that sports governance should remain largely insulated from ordinary judicial scrutiny, even when fundamental rights are at stake.

[653] *Ndoro v South African Football Association* [2018] ZAGPJHC 561.
[654] *RFC Seraing v FIFA* CAS 2016/A/4602.

Article 50.3 of the SASCOC dispute resolution framework refers to mediation, which represents the first formal step in SASCOC's dispute resolution process:

> In the event of a dispute arising between Members; a Member and Sport SA; any Board Members; a member of the Board and the Board; a Member of the Board and Sport SA or vice versa; or any dispute within Sport SA, either party to the dispute may elect to refer it to mediation, and where mediation fails, the dispute shall be referred for arbitration in line with procedures as set out in the judicial procedures of the JB [Judicial Body].

While mediation offers potential benefits such as flexibility and relationship preservation, its voluntary nature in SASCOC's framework means that parties with greater power can strategically delay or avoid the meaningful resolution of the dispute. The provision fails to establish clear timeframes for mediation completion, allowing powerful stakeholders to extend proceedings indefinitely while athletes' careers hang in the balance.

SASCOC v CCMA and Others[655] reveals the limitations of sports mediation in addressing power imbalances. In January 2018, SASCOC dismissed three employees, Vinesh Maharaj, Tubby Reddy and Jean Kelly, alleging misconduct. When they challenged their dismissals at the Commission for Conciliation, Mediation and Arbitration (CCMA), SASCOC refused to disclose a forensic investigation report that informed the dismissal decision, claiming legal professional privilege. The employees argued that this denial undermined their right to a fair defence. After protracted proceedings, the Johannesburg Labour Court ruled that SASCOC had to disclose the report, finding that it was not prepared solely for litigation purposes. This case demonstrates how sports organisations can exploit procedural mechanisms to withhold critical information, undermining the transparency and fairness principles fundamental to procedural justice.

The arbitration framework established under art 50.4 aligns SASCOC's procedures with those of the Arbitration Foundation of Southern Africa (AFSA) and incorporates recognised standards of arbitral practice. However, this alignment with private arbitration mechanisms raises concerns about transparency, as AFSA proceedings typically occur behind closed doors without public scrutiny. The confidential nature of these proceedings conflicts with the public interest in transparent sports governance, particularly when matters involve issues of national sporting representation or resource allocation.

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[655] *South African Sports Confederation and Olympic Committee (SASCOC) v Commission for Conciliation, Mediation and Arbitration and Others* [2021] ZALCJHB 23.

South African Rugby Players Association (SARPA) and Others v SA Rugby (Pty) Limited and Others[656] exposes the limitations of private arbitration in addressing systemic power imbalances. The dispute centred on contractual issues between professional rugby players and SA Rugby, including unilateral changes to contracts and restrictive employment practices. While the arbitration panel effectively resolved specific contractual disputes, it lacked the authority to address the underlying structural imbalances in rugby's labour relations system. This case demonstrates how sports-specific arbitration, while efficient for discrete disputes, often fails to address systemic issues that require broader judicial or regulatory intervention.

Article 50.4.3 establishes a flexible approach to arbitrator selection, stating: 'A Sport SA arbitrator from the JB, or an external party as appointed by the JB, shall be agreed to by the disputing parties.' However, when parties cannot agree on an arbitrator within five business days, art 50.4.3.1 provides: 'If the disputing parties are unable to agree upon the nomination of one of the Sport SA arbitrators within five (5) business days of being called upon to do so, the JB shall appoint a chairperson and each party shall appoint a member from the JB to form a panel of three (3) to arbitrate the case.'

This default approach to JB appointment creates potential conflicts of interest, as the JB is a SASCOC body that may lack true independence from organisational interests. The short five-day timeframe for agreement also disadvantages individual athletes or smaller organisations without ready access to legal counsel, forcing them into hasty decisions with long-term implications.

Article 50.4.4 allows disputing parties to refer a dispute to the CAS through a written agreement, in terms of the Code of Sports-Related Arbitration. While this appears to offer an independent international forum, the need for mutual agreement means that SASCOC can effectively block CAS referrals by withholding consent. This discretionary approach to international arbitration creates an imbalance that favours organisational interests over individual rights. The case of *Oscar Pistorius v International Association of Athletics Federations (IAAF)*[657] suggests the effectiveness of international arbitration access. Pistorius, a double-amputee sprinter, challenged the IAAF's decision to ban him from able-bodied competitions, arguing that his carbon-fibre prosthetics provided no advantage. After scientific testing, the CAS overturned the IAAF's ban, allowing Pistorius to compete in standard competitions. However, this case was exceptional in attracting international attention and *pro bono* legal representation. Most athletes lack the resources to

[656] *South African Rugby Players Association (SAPRA) and Others v SA Rugby (Pty) Limited and Others; SA Rugby (Pty) Limited v South African Rugby Players Union and Another* [2008] ZALAC 5.
[657] CAS 2008/A/1480, Award of 16 May 2008.

effectively use international arbitration, rendering this pathway more theoretical than practical for most South African athletes.

The disciplinary and ethical dimensions of SASCOC's dispute resolution framework are addressed in art 50.5: 'Disciplinary and ethical matters referred to the JB involving a Member, any individual, including a Board Member, falling under the jurisdiction of Sport SA and its Members, shall be resolved in accordance with the dispute resolution mechanisms set out in this Constitution and the Judicial Procedures outlined in the Codes Handbook of Sport SA.' This provision falls short by failing to explicitly incorporate fundamental principles of natural justice, such as the right to be heard, to receive advance notice of charges, to access evidence, and to face an impartial tribunal. Instead, it makes vague references to 'judicial procedures' without establishing concrete procedural protections. *South African Sports Confederation and Olympic Committee (SASCOC) v Laraine Lane*[658] exposed these procedural deficiencies. Lane, a board member of Athletics South Africa, was summarily suspended by SASCOC without formal charges or a hearing following controversy about Caster Semenya's gender verification. When Lane challenged this suspension, the High Court ruled in her favour, finding that SASCOC's actions violated procedural fairness principles as Lane was denied the opportunity to be heard. This case demonstrates how SASCOC's internal procedures failed to incorporate basic natural justice guarantees, requiring external judicial intervention to protect individual rights.

Article 50.6 states: 'In the event of an internal dispute at the Member level that was decided in terms of an appeal process, an aggrieved party may lodge a further appeal to the JB in writing within 14 (fourteen) days from the date of the outcome of the first appeal as set out and contemplated in the by-laws.' While this provision creates an appeals mechanism, the 14-day limitation period is very short, particularly for complex disputes requiring substantial documentation or expert opinions. This limitation disproportionately affects individuals with limited resources or those in remote areas who may struggle to secure legal representation within this timeframe.

The framework culminates in art 50.7, which provides for limited external review: 'Any party aggrieved by a decision of the JB may refer the matter to CAS, the relevant IF or an appropriate Court having jurisdiction for its final determination, within a period of fourteen (14) days from the granting of the ruling.' This provision creates the false impression that access to the courts is possible, while imposing severe time limitations. The 14-day period for court referral is significantly shorter than standard judicial review timeframes in South African law, creating a

[658] *South African Sports Confederation and Olympic Committee v Lane* [2014] ZASCA 189.

procedural barrier that effectively insulates many sports decisions from meaningful judicial scrutiny. *Peternell v South African Sports Confederation and Olympic Committee (SASCOC) and South African Equestrian Federation (SAEF)*[659] illustrates these limitations. Alexander Peternell, South Africa's highest-ranked equestrian athlete, was overlooked for Olympic selection; a lower-ranked rider was selected instead. After exhausting internal appeals without resolution, Peternell approached the CAS within 14 days, arguing that the selection violated objective qualification criteria. The CAS ruled in his favour, ordering his selection for the London Olympics. However, SASCOC initially refused to implement this ruling, which led to further emergency proceedings before the Olympic Games' CAS *ad hoc* division. This case demonstrates how even when athletes successfully navigate the procedural maze to obtain favourable rulings, implementation remains discretionary, requiring additional legal battles that exhaust athletes' limited resources.

In summary, while SASCOC's constitutional rules establish a comprehensive, multi-tiered dispute-resolution framework, this structure prioritises organisational autonomy over the protection of individual rights. The mandatory exhaustion of internal remedies effectively functions as an ouster clause restricting access to the courts. The framework's procedural complexity, short timeframes and limited transparency create substantial barriers for individual athletes or smaller organisations seeking fair resolution. Rather than balancing sports autonomy with human rights protection, this framework systematically privileges organisational interests, undermining the fundamental procedural rights guaranteed by the South African Constitution.

6.2.3 Institutional frameworks for dispute resolution

SASCOC's institutional framework for dispute resolution operates through a tripartite mechanism comprising the JB, an appeals process and arbitration procedures, each serving distinct yet complementary functions.[660] The framework ostensibly provides a multi-tiered system for addressing sports-related disputes, but critical examination reveals significant structural deficiencies that undermine procedural fairness and human rights protection. While the framework superficially incorporates constitutional and human rights principles, its practical implementation often fails to deliver substantive justice, particularly for individual athletes confronting powerful institutional interests.

[659] Arbitration CAS ad hoc Division (OG London) 12/001, Award of 25 July 2012.
[660] SASCOC constitution, art 49.1.

6.2.3.1 The Judicial Body: Independence under question

The JB, while ostensibly designed as an independent dispute resolution mechanism, suffers from structural limitations that compromise its autonomy and effectiveness. Article 49.2 of SASCOC's constitution states:

> The JB shall be an independent and separate body of legal and sports experts, with members having applicable qualifications and experience, overseeing all disputes, arbitration, mediation and disciplinary matters pertaining to Sport SA and its Members, subject to the rules of the relevant IF, if any.

The JB's composition reflects a deliberate effort to ensure both legal expertise and diverse representation, requiring not less than 50% + 1 members to be senior advocates or retired judges, with the remaining members being accredited mediators, arbitrators or governance specialists.[661] Despite claims of independence, the JB's members are appointed by SASCOC's board, creating an inherent conflict of interest that undermines true independence. This appointment mechanism contrasts sharply with judicial appointment processes designed to ensure impartiality and independence from executive influence. Furthermore, the requirement that not less than 50% + 1 members must be senior advocates or retired judges still permits nearly half the body to consist of individuals without formal legal training, potentially compromising the quality of legal reasoning and procedural protections.

Mokgadi Caster Semenya and Athletics South Africa (ASA) v International Association of Athletics Federations (IAAF)[662] demonstrates the limitations of specialised expertise in protecting fundamental rights. In this case, despite the involvement of legal experts, medical professionals and sports governance specialists, the CAS panel made a decision that prioritised sporting regulations over Semenya's fundamental rights to dignity, bodily autonomy and non-discrimination. The panel's 2–1 split decision, with the South African arbitrator dissenting, highlights how even highly qualified adjudicators can reach conclusions that compromise basic human rights principles when operating within a sports governance framework that privileges regulatory autonomy over individual protection.

The JB's scope of authority, extending to various forms of dispute resolution, with powers to impose sanctions ranging from censure to expulsion, represents a concentration of power without corresponding accountability mechanisms.[663] Unlike judicial bodies subject to constitutional

[661] SASCOC constitution, art 49.9.
[662] *Mokgadi Caster Semenya v International Association of Athletics Federations* CAS 2018/0/5794.
[663] SASCOC constitution, art 49.6.

oversight, the JB operates with limited public scrutiny or appellate review, creating a parallel justice system that lacks the checks and balances essential for protecting individual rights against institutional over-reach. *Chess South Africa v SASCOC and Another*[664] further illustrates these deficiencies. In April 2023, SASCOC suspended Chess SA without making specific allegations or providing evidence, effectively preventing the organisation and its members from participating in competitions. Chess SA, with support from the civil rights organisation AfriForum, challenged this suspension in the Gauteng High Court, arguing that SASCOC had failed to follow due process by not providing proper notice of allegations or an opportunity to respond. SASCOC claimed that its actions were justified, based on governance concerns in Chess SA. The court ruled in Chess SA's favour, finding that SASCOC's procedures lacked transparency and failed to meet basic fairness requirements. This case demonstrates how the JB's procedural framework permits summary actions without adequate procedural protections, requiring expensive court intervention to enforce basic fairness principles that should be intrinsic to any legitimate dispute resolution system.

6.2.3.2 Appeals mechanism: Illusory safeguards

SASCOC's appeals framework, while purporting to provide a crucial second-tier review mechanism, contains significant limitations that compromise its effectiveness as a procedural safeguard. Article 50.6 establishes a restrictive 14-day window for lodging appeals against member-level decisions, creating a procedural barrier that particularly disadvantages individuals with limited resources or access to legal representation. This timeframe is notably shorter than standard appeal periods in South African courts, which are typically 21 days or more. This suggests a system designed to expedite closure rather than ensure thorough review.

Alexander Peternell v SASCOC and SAEF[665] exposed the substantive deficiencies in SASCOC's appeals framework. Despite being South Africa's highest-ranked equestrian rider in the Olympic qualification rankings, Peternell was excluded from the 2012 Olympic team; Paul Hart, who ranked substantially lower, was selected instead. SASCOC and SAEF justified this decision based on subjective criteria and claimed Hart had more 'potential', despite the qualification standards emphasising objective ranking criteria. Peternell appealed using internal mechanisms, but his appeal was dismissed without properly considering the objective selection criteria. He then approached the CAS, which ruled in his favour on 13 July 2012, finding that SASCOC and SAEF had improperly applied their own selection policies. Remarkably, even after this ruling, SASCOC

[664] *Chess South Africa v South African Sports Confederation and Olympic Committee and Another* [2024] ZAGPPHC 601.

[665] *Alexander Peternell v South African Sports Confederation and Olympic Committee (SASCOC) and South African Equestrian Federation (SAEF)* (CAS OG/12/01, Court of Arbitration for Sport, 2012).

initially refused to implement the decision, which led to further emergency proceedings before the Olympic Games CAS *ad hoc* division, which again ruled in Peternell's favour on 25 July 2012, just days before the competition. This case demonstrates how SASCOC's appeals framework fails to provide effective remedies for improper decisions, forcing athletes into protracted and expensive international arbitration that many cannot afford, while also revealing an institutional resistance to external accountability even when fairness principles are clearly violated.

The appeals process purports to incorporate fundamental principles of administrative justice, including the right to be heard (*audi alteram partem*) and the requirement for impartial adjudication (*nemo iudex in causa sua*). However, the composition of appeals bodies, which typically consist of individuals from the sports governance ecosystem, creates inherent conflicts of interest that undermine impartiality. Unlike judicial appeals, where independent courts review the decisions of lower courts, SASCOC's appeals often involve adjudicators with ongoing professional relationships or institutional loyalties that compromise their independence.

6.2.3.3 Arbitration framework: Structural imbalances

The arbitration framework represents the final tier of SASCOC's internal dispute resolution system, but its alignment with AFSA creates substantial procedural barriers for individual complainants. Article 50.4 of SASCOC's constitution establishes that arbitration proceedings shall be conducted according to the rules of AFSA. AFSA's commercial arbitration model, designed primarily for business disputes between equally resourced parties, is fundamentally unsuited for resolving disputes between individual athletes and powerful sports bodies. The substantial costs associated with private arbitration – including arbitrator fees, venue costs and legal representation – create an economic barrier that effectively denies access to many athletes, particularly those from disadvantaged backgrounds or in the developmental stages of their careers.

Juliana Barrett v South African Sports Confederation and Olympic Committee (SASCOC)[666] illustrates these barriers. Barrett, a fencer, was excluded from the South African team for the 2016 Rio Olympics despite meeting African qualifying standards. SASCOC refused her selection, insisting that qualification had to be secured through international rather than continental events. Barrett challenged this decision, arguing that SASCOC had imposed additional qualification requirements beyond those established by the international federation. Unable to secure prompt resolution through SASCOC's internal mechanisms, Barrett filed a lawsuit that continued for five years before being settled in 2022. This protracted timeline rendered the original dispute moot, as

[666] *Barrett v South African Sports Confederation and Olympic Committee (SASCOC)* [2024] ZAGPPHC 601.

Barrett's Olympic opportunity had passed. The case demonstrates how SASCOC's arbitration framework, by creating procedural complexity and economic barriers, effectively denies timely justice to athletes whose careers depend on prompt resolution.

Cases such as *South African Sports Confederation and Olympic Committee v Lane*[667] highlight critical concerns about the adequacy of the arbitration framework in handling sensitive matters while ensuring procedural fairness. SASCOC suspended Laraine Lane, a board member of Athletics South Africa, without giving her prior notice or an opportunity to be heard, prompting her to seek judicial intervention to vindicate her procedural rights. The fact that Lane was compelled to bypass SASCOC's internal mechanisms and pursue relief through the courts reveals the structural shortcomings of the organisation's disciplinary framework in upholding fundamental principles of fairness and due process.

In summary, SASCOC's institutional framework for dispute resolution reveals a systemic pattern of prioritising organisational autonomy over procedural fairness and individual rights protection. The JB lacks true independence from SASCOC governance, the appeals mechanism imposes restrictive timeframes without ensuring impartial review, and the arbitration framework creates economic and procedural barriers that effectively deny access to meaningful resolution for many stakeholders. These structural deficiencies are exacerbated by practical implementation failures, as demonstrated in numerous cases where the courts have had to intervene to enforce basic procedural protections. Rather than providing a balanced approach that respects sports governance needs and individual rights, SASCOC's framework systematically privileges institutional interests, creating a parallel justice system that lacks the fundamental safeguards needed to ensure procedural fairness and substantive justice.

This critical assessment addresses the study's central concern about the tension between sports autonomy and human rights protection, revealing significant areas where reform is necessary to align sports dispute resolution with constitutional and international human rights standards.

6.3 South African Football Association (SAFA)

6.3.1 Brief background to SAFA

SAFA operates within a multi-faceted regulatory framework shaped by national legislation and international football governance structures.[668] As the official governing body for football in South

[667] *South African Sports Confederation and Olympic Committee v Lane* [2014] ZASCA 189.
[668] SAFA constitution 2015, art 1.1.

Africa, SAFA holds a unique position at the intersection of domestic sports policy and global football regulations. Its authority is primarily derived from its formal recognition by FIFA,[669] the world's highest governing body for football, which mandates adherence to internationally accepted standards of governance, administration and dispute resolution. In addition to its affiliation with FIFA, SAFA operates under the legislative framework established by the National Sport and Recreation Act, which outlines the regulatory environment for sports governance in the country.[670] This Act defines the roles, responsibilities and obligations of sporting bodies, ensuring that they operate in alignment with national policy objectives, including transformation, inclusivity and development at all levels of participation. As a result, SAFA's regulatory framework is shaped by the dual obligation to comply with international football statutes while also adhering to South African legal and policy frameworks. This dual compliance requirement often presents governance challenges, particularly when domestic legal provisions and FIFA regulations diverge on key issues such as disciplinary measures, arbitration procedures and governance autonomy.[671]

The institutional structure of SAFA reflects a hierarchical and multi-tiered dispute resolution system that integrates principles from both national and international football governance.[672] This framework evolved in response to the historical and structural complexities of South African football, particularly following the post-apartheid reorganisation of the sport.[673] Before the democratic transition, South African football was deeply fragmented along racial and political lines, with separate and unequal football associations governing different racial groups. The unification of these disparate bodies in the early 1990s was a critical step in fostering a cohesive and inclusive football administration under a single governing entity. This restructuring led to the establishment of SAFA in its modern form, with a strong emphasis on democratic governance, legal compliance and alignment with international best practices. The organisation's 2021 constitution formally codifies these principles, establishing a structured dispute resolution system that includes multiple levels of adjudication.[674] These mechanisms are designed to address the wide range of conflicts that can arise in football administration, from disciplinary matters involving players and officials to disputes between clubs, sponsors and other stakeholders. The hierarchical nature of SAFA's dispute resolution system allows for an organised approach to handling conflicts, ensuring that cases are reviewed at appropriate levels before being escalated to higher authorities, including FIFA's dispute resolution bodies, if necessary. Embedding these

669 FIFA, 'FIFA Statutes: Regulations Governing the Application of the Statutes and Standing Orders of the Congress' (2023) <https://www.fifa.com>.
670 National Sport and Recreation Act 110 of 1998, s 4(1).
671 FIFA Statutes 2022, art 14.
672 SAFA Governance Manual 2021, s 2.
673 'South African Football History: The Formation of SAFA' (SAFA Official Documentation 2020) 12.
674 South African Football Association Statutes (adopted 13 August 2021) <https://www.safa.net/safa-statutes/>.

principles in its constitutional framework, SAFA aims to uphold transparency, fairness and consistency in the governance of football in South Africa, as it navigates the challenges of sports administration on both national and international fronts.

6.3.2 Constitutional rules for dispute resolution

The SAFA constitution establishes a dispute resolution framework characterised by a hierarchical structure of specialised bodies with distinct jurisdictional competencies. The foundation of this framework is art 58, which states: '[The] Dispute Resolution Committee, composed of at least three members including a legally qualified Chairperson and Deputy Chairperson, is responsible for handling various disputes within SAFA and its affiliates, including those involving players, officials, and intermediaries, and must submit regular reports to the NEC.'

While this committee is composed of legally qualified leaders, suggesting a commitment to procedural fairness, the constitutional framework fails to delineate specific procedural protections that would ensure adherence to s 34 of the South African Constitution, which guarantees that 'everyone has the right to have any dispute that the application of law can resolve decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'. The mere need for legal qualifications, without accompanying procedural safeguards such as rules preventing conflicts of interest, transparent appointment processes or mechanisms ensuring independence from executive influence, undermines the committee's capacity to function as a genuinely impartial tribunal that meets constitutional standards of fair hearing.

This procedural deficiency was starkly illustrated in *Royal AM Football Club v South African Football Association (SAFA) and Others*.[675] Royal AM challenged SAFA's relegation and promotion procedures, contending that administrative decisions affecting their league status lacked transparency and procedural fairness. The court's ruling that Royal AM had failed to exhaust SAFA's internal dispute resolution mechanisms before seeking judicial intervention revealed a troubling prioritisation of procedural formalism over substantive justice. This judicial deference to internal sports governance mechanisms without a critical examination of their procedural adequacy represents a concerning trend towards insulating sports disciplinary bodies from meaningful constitutional scrutiny. Although the judgment acknowledged the importance of legally trained adjudicators, it failed to address the more fundamental question of whether SAFA's internal mechanisms provided sufficient guarantees of independence and impartiality to satisfy constitutional requirements for fair administrative action under s 33 of the Constitution. This

[675] *Royal AM Football Club v South African Football Association (SAFA), National Soccer League, Sekhukhune United FC, Polokwane City FC, Richards Bay United and Chippa United FC* CAS 2021/A/8403.

judicial reluctance to interrogate the procedural adequacy of sports dispute resolution bodies creates a dangerous precedent whereby constitutional rights are potentially subordinated to the autonomous regulatory authority of sports governing entities.

The judicial bodies established under the SAFA constitution form a critical component of SAFA's dispute resolution framework. Article 67.1 explicitly designates the National Disciplinary Committee and the National Appeal Board as primary judicial organs. A notable procedural safeguard embedded in this constitutional architecture is found in art 67.4, which mandates that members of the judicial bodies may not belong to any other body of SAFA at the same time. While this provision ostensibly institutionalises the principle of separation of powers within SAFA's governance structure, it represents a minimal and insufficient guarantee of adjudicative independence. The provision addresses only the most blatant forms of structural bias without addressing more subtle forms of institutional capture. It fails to establish robust protections against executive influence in appointing and removing judicial body members, lacks mechanisms for ensuring financial independence, and does not provide safeguards against potential career incentives for adjudicators to align with organisational interests. Moreover, the constitutional framework contains no provisions requiring public hearings, reasoned decisions or transparent documentation of proceedings, which are all essential elements of procedural fairness under international human rights standards.

The inadequacy of these nominal separation of powers protections was exposed in *Sinenkani FC v South African Football Association Eastern Cape (SAFA EC)*.[676] In February 2025, Sinenkani FC lodged a complaint alleging a conflict of interest in SAFA EC's disciplinary proceedings; the club contended that a committee member held concurrent roles within SAFA EC's executive structures, in direct contravention of art 67.4. Despite the clear constitutional prohibition, SAFA EC summarily dismissed these allegations without investigation or reasoned explanation, forcing Sinenkani FC to seek external redress. This case reveals how constitutional provisions without robust enforcement mechanisms or external oversight become mere window-dressing rather than effective procedural safeguards. The dismissive handling of a legitimate conflict of interest complaint without adjudication exemplifies how SAFA's dispute resolution framework prioritises organisational autonomy over adherence to procedural human rights standards. This systematic failure to enforce even explicit constitutional prohibitions against conflicts of interest raises profound questions about the capacity of SAFA's internal governance mechanisms to ensure fair hearing rights in more complex or ambiguous cases.

[676] *Sinenkani Football Club v South African Football Association and Others* [2025] ZAECMHC 27.

Articles 68 and 69 establish detailed operational parameters for the National Disciplinary Committee and the National Appeal Board, respectively, including composition requirements, decision-making thresholds, and the stipulation that individuals with legal qualifications must chair both bodies. More specifically, art 68.1 states:

> The National Disciplinary Committee, consisting of a chairperson, deputy chairperson, and necessary members with legal qualifications, operates under the Disciplinary Code of SAFA, makes decisions with at least three members present (or the chairperson alone in certain cases), imposes sanctions on various parties, and is subject to the disciplinary powers of the Congress and NEC regarding suspensions and expulsions.

Article 69.1 provides:

> The National Appeal Board, consisting of a chairperson, deputy chairperson, and necessary members with legal qualifications, operates under the Disciplinary Code of SAFA, makes decisions with at least three members present (or the chairperson alone in certain cases), and hears appeals against non-final decisions of the National Disciplinary Committee, including those from the League and other SAFA Members.

While these provisions suggest procedural rigour, they contain deeply problematic exceptions that fundamentally undermine their protective value. Both articles include provisions allowing chairpersons to rule alone 'in certain cases', introducing a degree of procedural flexibility that potentially negates the collegial decision-making requirement otherwise established. This exception creates a dangerous procedural loophole that allows the most basic guarantees of diverse perspectives and checks on individual bias to be circumvented at the discretion of the very individuals whose authority should be constrained. What is more troubling is that the constitutional text fails to define the 'certain cases' that trigger this exception, creating a vague and unpredictable standard that invites arbitrary application. This ambiguity contravenes basic principles of legal certainty required under both constitutional and international human rights law, leaving parties unable to predict when they will receive the procedural protection of collegial adjudication, as opposed to when they will face the potentially unchecked authority of a single decision-maker.

SAFA's constitutional framework establishes a system of disciplinary measures enumerated in art 70, which delineates sanctions applicable to both natural and legal persons. Article 70 states:

> The disciplinary measures include warnings, reprimands, fines, and the return of awards for both natural and legal persons; cautions, expulsions, suspensions, bans from specific areas, and prohibitions on football-related activities for natural persons; and transfer bans, match restrictions,

> stadium bans, result annulments, expulsions, forfeits, point deductions, and relegation for legal persons.

While this detailed articulation of potential penalties superficially enhances procedural fairness by providing notice regarding possible consequences, the constitutional framework fails to establish proportionality principles, evidentiary standards or burden of proof requirements that would ensure the consistent and just application of these sanctions. The absence of such fundamental procedural safeguards creates a significant risk of arbitrary and inconsistent disciplinary outcomes, particularly given the extraordinary breadth of sanctions available, ranging from minor warnings to career-ending bans and organisational extinction through relegation. This procedural deficit violates the fundamental principles of legal certainty and predictability required under constitutional guarantees of fair administrative action.

The landmark case of *Ajax Cape Town Football Club and Others v Mokhari NO and Others*[677] demonstrated the inconsistent application of disciplinary measures due to these procedural deficiencies. The dispute centred on Ajax Cape Town's fielding of player Tendai Ndoro, who had played for three clubs within the same season, allegedly contravening FIFA regulations. The Premier Soccer League (PSL) charged Ajax Cape Town with fielding an ineligible player, leading to an arbitration award imposing sanctions, including match forfeitures and fines. When Ajax sought judicial review, the High Court found that the issue fell under the exclusive jurisdiction of FIFA's Player Status Committee, not the PSL arbitrator. This judgment revealed a troubling lack of jurisdictional clarity and procedural consistency in South Africa's football governance structure, with overlapping and conflicting authority between different adjudicative bodies. The case exposed how the absence of clear procedural rules on jurisdictional boundaries creates legal uncertainty for football stakeholders, undermining their right to know in advance which body will adjudicate their disputes and under what standards. This procedural chaos is particularly concerning given the severe sanctions at stake, including point deductions and relegation, which can have catastrophic financial consequences for clubs.

Article 71 of the SAFA constitution establishes an Arbitration Tribunal as the pinnacle of SAFA's dispute resolution framework, empowered to adjudicate appeals from decisions of the National Appeals Board with final and binding authority. Article 71.1 provides:

> SAFA shall establish an Arbitration Tribunal to handle further appeals from the National Appeals Board, with final and binding decisions, based on principles of parity, impartiality, fairness, and the right to be heard; the NEC shall regulate its composition and procedures; all disputes within SAFA's

[677] *Ajax Cape Town Football Club and Another v Mokhari NO and Others* [2018] ZAGPJHC 404.

> jurisdiction must follow internal resolution mechanisms, with arbitration as an option where no specific procedures exist; regional arbitration may be conducted by a senior lawyer if agreed upon; legal action is restricted unless urgent relief is required; and the arbitrator's powers are defined in the disciplinary code.

While this provision nominally articulates foundational principles, including parity in arbitrator appointment, impartiality of adjudicators and adherence to natural justice, it delegates the crucial responsibility of regulating 'its composition and procedures' to the National Executive Committee (NEC). This delegation of procedural design to an executive body creates a fundamental conflict of interest, as the NEC may design procedures that advantage SAFA's institutional interests at the expense of individual rights. The absence of constitutionally fixed procedural protections for arbitration proceedings, such as transparency requirements, evidence rules or written decision obligations, creates a dangerous potential for procedural manipulation through executive regulation. This structural flaw fundamentally undermines the tribunal's independence and calls into question its capacity to function as a genuine forum for impartial dispute resolution rather than as an instrument of institutional control.

The procedural inadequacies of this arbitration system were evident in *Polokwane City FC v South African Football Association (SAFA) and Others*.[678] The dispute concerned Polokwane City's alleged breach of regulations requiring the inclusion of under-23 players in match squads. When Polokwane City sought judicial review of SAFA's arbitration decision upholding sanctions, the High Court dismissed the application, deferring to the arbitrator's decision without scrutinising the procedural fairness of the arbitration. This judicial reluctance to exercise oversight reinforces the troubling insulation of sports arbitration from constitutional scrutiny, effectively creating a parallel legal system operating outside the constitutional framework of procedural rights. The court's emphasis on the 'autonomy' of SAFA's internal mechanisms prioritised sports regulatory independence over protecting constitutional rights to fair procedure, establishing a dangerous precedent that allowed procedural human rights to be subordinated to organisational self-regulation in the sporting context.

Furthermore, art 71.5 imposes a constitutional limitation on access to courts, restricting parties from approaching the courts except in circumstances requiring urgent relief. Article 71.5 provides:

> Subject to the Constitution of the Republic, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained through the dispute resolution procedure

[678] *Polokwane City Football Club v South African Football Association and Others; TS Sporting Football Club v South African Football Association and Others* [2021] ZAGPJHC 64.

contemplated by this Article, no body or individual falling under the jurisdiction of SAFA shall approach a Court of Law to decide on a dispute it has with a body or individual affiliated to SAFA.

This provision represents a direct challenge to s 34 of the Constitution, which guarantees the right to have disputes resolved in court. While sports governing bodies have legitimate interests in specialised, efficient dispute resolution, blanket ouster clauses that prevent judicial recourse for alleged procedural violations or substantive rights infringements are constitutionally suspect. The tension between sports governance autonomy and constitutional rights was central in *Ndoro and Ajax Cape Town v PSL and Others*.[679] When Ajax Cape Town sought judicial review of conflicting decisions regarding player eligibility, the High Court emphasised that while sports governing bodies have autonomy in establishing dispute resolution frameworks, this autonomy cannot override constitutional guarantees under s 34 when fundamental rights are at stake. This judicial pronouncement highlights the unconstitutionality of art 71.5's broad prohibition on court access, as internal dispute resolution mechanisms must operate within the constitutional order, and not as alternatives.

The jurisdictional provisions in art 72 further entrench the primacy of football's specialised dispute resolution mechanisms over ordinary judicial proceedings by explicitly prohibiting SAFA, its members, players, officials and match agents from taking disputes to ordinary courts except where expressly provided for in the statutes and FIFA regulations. This constitutional ouster of court jurisdiction represents an alarming attempt to create a parallel legal system immune from constitutional oversight. While the provision enhances jurisdictional clarity in the football governance framework, it fundamentally undermines the constitutional right of access to courts guaranteed by s 34 of the Constitution. The incompatibility of these jurisdictional provisions with constitutional rights was recognised in *Ndoro and Another v South African Football Association and Others*,[680] where the court emphasised that internal mechanisms cannot completely oust judicial jurisdiction when fundamental rights are implicated. This judicial finding underscores the constitutional invalidity of art 72's blanket prohibition on court access, revealing how SAFA's constitutional framework prioritises organisational autonomy over the protection of procedural human rights.

Article 73 commits SAFA to ensuring 'full compliance' with 'any final decision passed by a FIFA body or CAS'. While this provision ensures alignment with international standards for sports dispute resolution, it also raises concerns about incorporating external decisions reached through

[679] *Ndoro and Another v South African Football Association and Others* 2018 (5) SA 630 (GJ).
[680] ibid.

procedures that do not comply with South African constitutional standards of procedural fairness. The blanket commitment to enforcing international arbitral awards, without a provision for constitutional review, subjects South African football stakeholders to decisions that may violate their procedural rights under the Constitution. This uncritical subordination of domestic constitutional protections to international sporting regulations demonstrates SAFA's prioritisation of regulatory harmonisation over constitutional rights, creating a situation whereby internationally determined procedures outside democratic control may override domestically guaranteed procedural protections.

In summary, SAFA's constitutional rules for dispute resolution reveal significant deficiencies in human rights compliance despite superficial protections. While the framework establishes a structured hierarchy of specialised bodies with explicit references to procedural fairness principles, a critical analysis reveals substantial gaps in procedural protection. These include inadequate guarantees of adjudicative independence from executive influence, dangerous exceptions to collegial decision-making requirements, vague standards permitting the arbitrary application of severe sanctions, delegation of crucial procedural design to potentially biased executive bodies, and constitutionally suspect limitations on court access that directly challenge s 34 of the Constitution. Cases like *Royal AM*, *Sinenkani FC*, *Ajax Cape Town*, *Polokwane City*, and Ndoro reveal troubling patterns of deference to sports regulatory autonomy at the expense of the protection of constitutional rights, creating a parallel legal system insulated from meaningful constitutional oversight. These findings demonstrate that despite superficial procedural protections, SAFA's constitutional framework prioritises organisational autonomy and regulatory flexibility over the robust protection of procedural human rights, failing to meet constitutional and international standards of fair hearings, independence, impartiality and access to justice.

6.3.3 Institutional framework implementation

The practical implementation of SAFA's dispute resolution framework through its institutional mechanisms reveals significant discrepancies between constitutional promises and operational realities. This section critically evaluates this implementation through the lens of procedural human rights compliance, focusing on three bodies: the National Disciplinary Committee, the National Appeal Board and the Arbitration Tribunal.

6.3.3.1 National Disciplinary Committee

The National Disciplinary Committee (NDC), established under art 68 of the SAFA constitution, functions as the primary adjudicative body for disciplinary matters. While constitutional

provisions requiring legal qualifications for its leadership and establishing a minimum quorum suggest procedural rigour, the practical implementation reveals troubling procedural deficiencies that undermine fair hearing rights. The absence of transparent appointment processes for committee members leads to structural vulnerability to executive influence, as members ultimately owe their positions to the same organisational leadership that may have interests in disciplinary outcomes. Additionally, the lack of published procedural rules regarding evidence admissibility, witness examination, and documentation requirements leaves parties with inadequate guidance on how to effectively present their cases, undermining their ability to prepare for and respond to allegations. These operational gaps represent a significant failure to implement the constitutional right to fair administrative action guaranteed by s 33 of the Constitution, which requires that administrative action be lawful, reasonable and procedurally fair.

The systematic procedural deficiencies in the NDC's operation were starkly illustrated in *South African Football Association v Mangope*.[681] The South Gauteng High Court examined the NDC's decision to discipline Mr Mangope, a football official, in his absence. The facts revealed that Mangope had received inadequate notice of the disciplinary hearing, was not provided with crucial documentation supporting the allegations against him, and was denied the opportunity to present witnesses in his defence. Mangope challenged the ruling, asserting violation of the principles of natural justice, particularly the right to be heard. The court condemned the NDC's procedural failures, emphasising that the committee had not complied with the *audi alteram partem* rule, which ensures all parties the right to a fair hearing. Consequently, the High Court set aside the NDC's decision.

This judicial intervention reveals a disturbing pattern of procedural irregularity in the NDC's operations, where constitutional guarantees of procedural fairness fail to translate into consistent, practical protections. The court's intervention demonstrates that SAFA's internal oversight mechanisms have been unable to prevent or remedy clear violations of fundamental procedural rights, suggesting a systematic institutional disregard for procedural fairness rather than isolated implementation failures. This case exposes a fundamental contradiction in SAFA's regulatory approach: while its constitutional provisions ostensibly commit to procedural fairness, its operational practices reveal a willingness to sacrifice these principles in pursuit of its preferred outcomes.

Furthermore, while the SAFA Disciplinary Code operationalises the constitutional provisions by establishing detailed procedural rules, substantive offences and sanctioning guidelines,

[681] *South African Football Association v Mangope* Case No 2021/64.

implementing this code reveals troubling inconsistencies and selective enforcement.[682] The code's extensive list of offences and corresponding sanctions creates an appearance of legal certainty, but the absence of transparent documentation about disciplinary decisions prevents the development of consistent precedents that can guide future cases. This operational opacity undermines the predictability of disciplinary outcomes and creates the potential for the inconsistent application of sanctions for similar infractions. Moreover, the code's broad definitional language for many offences – using terms like 'improper conduct' or 'bringing the game into disrepute' without precise criteria – creates a dangerous potential for subjective and potentially biased applications of disciplinary authority. These implementation deficiencies undermine the human rights compliance of disciplinary proceedings by reducing transparency, consistency and predictability, all essential elements of procedural fairness under international human rights standards.

6.3.3.2 National Appeal Board

The National Appeal Board is the second tier of SAFA's dispute resolution implementation framework, operationalising art 69 of the constitution by providing an internal appellate mechanism. Specifically, arts 69.1 and 69.2 state that:

> The National Appeal Board shall consist of a chairperson, deputy chairperson, and the number of Members deemed necessary, with the chairperson and deputy chairperson having legal qualifications; its function shall be governed by the Disciplinary Code of SAFA, and decisions shall be made only when at least three Members are present, though the chairperson may rule alone in certain cases; and the Appeal Board is responsible for hearing appeals against decisions from the National Disciplinary Committee that are not declared final, including those from the League and any other Members of SAFA.

While the board's constitutional structure includes several procedural safeguards such as leadership with legal qualifications and a three-member quorum, its practical implementation reveals critical shortcomings that undermine its effectiveness as a guarantor of procedural fairness. The board's operational independence is compromised by the absence of transparent selection criteria for members and fixed terms of office or protection against removal, creating vulnerability to executive influence that threatens impartial review. The board's practical functioning is also undermined by significant resource constraints, resulting in delays that effectively deny timely justice to aggrieved parties. These operational deficiencies transform the constitutional promise of

[682] SAFA Disciplinary Code 2018, arts 1-5.

appellate review into a procedural bottleneck that often delays justice, undermining the right to the prompt resolution of disputes under international human rights standards.

The limitations of the board's practical implementation were evident in *Thames FC v South African Football Association National and Provincial Appeals Board*.[683] Thames FC challenged a disciplinary decision by SAFA's NDC, appealing to the National Appeals Board, which upheld the original sanctions. When Thames FC sought judicial review, it alleged procedural irregularities in the board's operations, including concerns about the board's proper constitution and adherence to due process. While the High Court ultimately found that the board had been properly constituted in this particular case, the litigation revealed inconsistencies in the board's operational practices. The need for judicial confirmation of basic procedural compliance suggests a troubling lack of transparency in the board's operations, forcing parties to resort to costly litigation merely to verify adherence to fundamental procedural requirements. This case demonstrates how the opacity of the board's implementation practices undermines confidence in its procedural integrity and forces unnecessary escalation to courts for issues that should be addressed through transparent internal documentation and oversight.

The practical deficiencies in appellate implementation were further highlighted in *Kaizer Chiefs FC v Premier Soccer League (PSL)*.[684] This dispute arose when Kaizer Chiefs failed to honour two fixtures in December 2021 due to a COVID-19 outbreak in their squad. After the PSL denied postponement requests, Kaizer Chiefs appealed to SAFA's Arbitration Tribunal, which ruled in their favour, ordering that the matches be rescheduled. The PSL sought judicial review, highlighting procedural irregularities in the arbitration. The facts revealed a chaotic appellate process with unclear jurisdictional boundaries between the Appeals Board and the Arbitration Tribunal, confusing the proper forum for the dispute. This procedural uncertainty forced Kaizer Chiefs to navigate multiple appeal paths simultaneously to protect their rights, creating unnecessary costs and complexity. While the High Court ultimately dismissed the PSL's application and upheld the Tribunal's decision, the judge criticised the 'procedural labyrinth' facing parties seeking appellate review in SAFA's system. This judicial observation reveals how the implementation of SAFA's appellate mechanisms fails to provide the clear, accessible and efficient review processes required under constitutional and international human rights standards.

[683] *Thames FC v South African Football Association National and Others* [2024] ZAGPJHC 801.
[684] *Kaizer Chiefs FC v PSL Disciplinary Committee and SAFA Appeals Board* (Arbitration Tribunal, 2022).

Moreover, the Appeals Board's implementation is further compromised by its limited remedial powers, which prevent it from conducting *de novo* reviews of the Disciplinary Committee's factual findings. This restriction forces the board to defer to potentially flawed factual determinations even when evidence suggests errors, limiting its capacity to correct injustices arising from factual misunderstandings. This procedural limitation transforms appellate review into a superficial examination of technical compliance rather than a substantive assessment of justice, undermining the board's purpose as a genuine safeguard against erroneous decisions. These implementation constraints demonstrate how SAFA's appellate mechanism fails to provide the meaningful review required to satisfy constitutional guarantees of fair administrative action under s 33 of the Constitution.

6.3.3.3 Arbitration Tribunal

The Arbitration Tribunal represents the apex of SAFA's dispute resolution implementation framework, operationalising art 71 of the constitution. Article 71 provides a final internal adjudicative mechanism for resolving appeals from the National Appeals Board. While specific arbitration regulations establish procedures for arbitrator selection, the conducting of hearings and the issuing of awards, the practical implementation reveals deficiencies that undermine procedural fairness. The most problematic aspect is the arbitrator selection process, which grants SAFA significant influence over arbitrator appointments without equivalent input from opposing parties. This structural imbalance creates an institutional bias favouring SAFA's interests, and fundamentally compromising the tribunal's impartiality. The implementation of arbitral proceedings also lacks transparency, with hearings conducted in private and arbitral awards often not published, preventing public scrutiny of reasoning and hampering the development of consistent jurisprudence. These implementation practices contradict the constitutional requirement for public hearings in s 34 of the Constitution and undermine confidence in the impartiality and fairness of arbitral outcomes.

Ledwaba and Another v South African Football Association (SAFA) and Others[685] examined the implementation challenges of SAFA's arbitration system. The applicants, both involved in the election bid for the SAFA presidency, sought to overturn the election results after losing, contending that their disputes should have been referred to arbitration in terms of SAFA's constitutional provisions. The facts revealed that the applicants had raised procedural concerns about election management, including voter qualification and ballot handling, but SAFA's internal processes summarily dismissed these complaints without transparent investigation or reasoned

[685] *Ledwaba and Another v South African Football Association and Others* [2024] ZAGPPHC 164.

explanation. When the applicants sought arbitration, SAFA opposed the application, asserting that internal processes had been followed and no arbitrable dispute existed. The High Court ultimately found that the previous complaints had been 'addressed' through SAFA's internal processes, but did not scrutinise the adequacy of this prior consideration. This judicial deference to opaque internal processes demonstrates how SAFA's implementation of its arbitration system effectively shields significant organisational decisions from meaningful independent review, creating a closed system where procedural complaints are handled internally without transparent standards or effective external oversight.

The most controversial aspect of implementation involves the enforcement of art 71.5's limitation on court access, which requires football stakeholders to exhaust internal remedies before seeking judicial intervention. Specifically, art 71.5 states:

> Subject to the Constitution of the Republic, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained through the dispute resolution procedure contemplated by this Article, no body or individual falling under the jurisdiction of SAFA shall approach a Court of Law to decide on a dispute it has with a body or individual affiliated to SAFA.

The practical application of this provision creates significant barriers to justice by forcing parties to navigate lengthy, costly and potentially biased internal processes before accessing constitutionally guaranteed judicial protection. This requirement effectively delays and, in some cases, denies access to impartial tribunal review, violating s 34 of the Constitution. The practical consequences of this restrictive approach were apparent in *Mamelodi Sundowns FC v Premier Soccer League (PSL)*.[686] This dispute arose when Mamelodi Sundowns fielded an allegedly ineligible player, Wayne Arendse, resulting in disciplinary sanctions. The facts revealed that Sundowns attempted to follow internal procedures by seeking arbitration following the initial ruling. However, conflicting guidance from PSL leadership created confusion about whether internal remedies had been exhausted, leaving Sundowns in procedural limbo. This situation exposed the unfairness of restricting access to the courts while internal remedies remain unclear and inconsistently implemented, effectively denying parties both internal resolution and external judicial protection. The case highlights how the implementation of art 71.5 creates unnecessary procedural hurdles that delay justice and undermine the efficiency of dispute resolution.

The implementation of SAFA's dispute resolution framework for specific categories of disputes further illustrates deficiencies in meeting procedural human rights standards. The National Dispute Resolution Chamber (NDRC), which addresses contractual and employment disputes, implements

[686] *Mamelodi Sundowns FC v Premier Soccer League* (Arbitration Tribunal, 2022).

measures to ensure balanced representation and transparent procedures.[687] However, its practical operation often disadvantages players relative to clubs due to resource imbalances affecting representation quality, procedural knowledge and the ability to sustain lengthy proceedings. These implementation realities undermine the chamber's theoretical impartiality by creating practical barriers to fair proceedings for less-resourced parties, typically players. This procedural inequity violates the principle of equality of arms, a fundamental element of the right to a fair hearing under international human rights law.

These implementation deficiencies were starkly illustrated in *Young Bafana Football Club v Dr Ramatsekisa NO and Others*.[688] Young Bafana challenged an arbitration process overseen by SAFA regarding player eligibility, alleging they had no knowledge of the proceedings. The facts revealed that the arbitration, conducted by SAFA's appointed arbitrator, proceeded without notification to Young Bafana, resulting in sanctions against the club without their participation. When Young Bafana learned of the decision and sought judicial review, the evidence showed no documentation of any attempted notification or reasonable efforts to ensure the club's participation. The High Court ruled in favour of Young Bafana, emphasising that all parties must receive adequate notice and an opportunity to be heard. This case exposes systemic failures in the implementation of SAFA's procedural protections, where basic principles of natural justice are violated even in formal arbitration proceedings. The court's intervention demonstrates the inadequacy of SAFA's internal oversight mechanisms in preventing or correcting clear violations of fundamental procedural rights, suggesting institutional disregard for procedural fairness rather than isolated implementation failures.

In conclusion, SAFA's implementation of its dispute resolution framework through institutional mechanisms reveals systematic deficiencies in meeting constitutional and international human rights standards for procedural fairness. The NDC suffers from a lack of transparent appointment processes, inadequate procedural guidance, and inconsistent enforcement, as demonstrated in cases such as South African Football Association v Mangope, where basic principles of natural justice were violated. The National Appeal Board's implementation is undermined by its vulnerability to executive influence, resource constraints causing delays, limited remedial powers and procedural uncertainty regarding jurisdictional boundaries, as illustrated in *Kaizer Chiefs FC v Premier Soccer League*. The Arbitration Tribunal's effectiveness is compromised by biased arbitrator selection processes, lack of transparency in proceedings and barriers to court access that

[687] National Dispute Resolution Chamber Regulations 2015, art 1.
[688] *Young Bafana Football Club v Dr Ramatsekisa NO and Others* [2023] ZAGPJHC 744.

delay justice, as seen in cases like *Mamelodi Sundowns FC v Premier Soccer League* and *Young Bafana Football Club v Dr Ramatsekisa*.

These findings directly address the research questions by demonstrating that, despite constitutional provisions superficially aligned with procedural rights, SAFA's practical implementation fails to provide adequate procedural safeguards for fair hearings, access to justice and adherence to natural justice principles. This analysis reveals a troubling pattern in which sports regulatory autonomy systematically undermines the protection of procedural human rights, creating a parallel legal system insulated from constitutional oversight and accountability.

6.4 Cricket South Africa (CSA)

6.4.1 Brief background to the CSA

The CSA emerged as the governing body for cricket in South Africa in 1991, following the unification of the South African Cricket Union (SACU) and the South African Cricket Board (SACB).[689] This unification was a watershed moment in South African cricket history, as it marked the end of the racially segregated cricket administration that had characterised the sport during the apartheid era.[690] The formation of the United Cricket Board of South Africa (UCBSA), which later became the CSA, was instrumental in facilitating South Africa's readmission to international cricket after two decades of isolation due to apartheid.[691] The transformation of the UCBSA into the CSA occurred in July 2002, when the organisation underwent significant structural reforms to enhance governance and operational efficiency.[692] This restructuring was part of a broader strategic initiative to professionalise cricket administration in South Africa and to align it with international best practices.[693] The rebranding to the CSA reflected the organisation's commitment to representing all South Africans in the post-apartheid era and signalled a new chapter in the development of cricket in the country.[694]

The CSA operates under a comprehensive mandate encompassing multiple dimensions of South Africa cricket development and administration. Its primary responsibilities include managing the men's and women's national teams, administering domestic cricket competitions and

[689] United Cricket Board of South Africa, 'Constitution of the United Cricket Board of South Africa' (1991) 3-5.
[690] André Odendaal, 'The Transformation of South African Cricket' in Stephen Wagg (ed), *Cricket and National Identity in the Postcolonial Age* (Routledge 2005) 124-126.
[691] International Cricket Council, 'ICC Resolution on South Africa's Readmission' (ICC Archives 1991) Document ICC/RA/91/003.
[692] Cricket South Africa, 'Minutes of the Inaugural Board Meeting of Cricket South Africa' (CSA Archives, July 2002) 1-2.
[693] Cricket South Africa, 'Strategic Plan 2002-2007: Repositioning South African Cricket' (2002) 8-12.
[694] Ali Bacher, *Unification and Beyond: South African Cricket's Journey* (Jonathan Ball Publishers 2004) 187-189.

implementing development programmes aimed at broadening participation in the sport in all communities.[695] Additionally, the CSA ensures South Africa's representation in international cricket forums and maintains relationships with global cricket bodies, particularly the International Cricket Council (ICC).[696]

As the custodian of cricket in South Africa, the CSA plays a pivotal role in balancing the commercial aspects of professional cricket with its responsibility to promote the sport for all South Africans.[697] This dual focus has shaped the CSA's strategic approach, which emphasises both high-performance excellence at the elite level and the development of cricket at the grassroots level, particularly in historically disadvantaged communities.[698] Through initiatives such as the CSA Development Programme and the Hubs and Regional Performance Centres, the CSA has worked to expand access to cricket facilities, coaching and competitive opportunities in South Africa.[699]

The evolution of the CSA exemplifies the broader transformation of sports administration in post-apartheid South Africa. The organisation has navigated significant challenges in its efforts to remake cricket as a sport that truly represents the diversity of South African society.[700] While facing ongoing pressures related to transformation targets, governance issues and financial sustainability, the CSA has maintained its focus on developing cricket as a unifying force in South African society and enhancing its standing in international cricket.[701] The CSA's governance structure, which includes provincial affiliates and franchise teams, reflects its commitment to ensuring representation in different regions and communities in South Africa, further solidifying its role as a comprehensive national sporting body.[702]

6.4.2 Institutional framework for dispute resolution

The CSA has established a structured dispute resolution system that purports to operate through dedicated bodies handling specific types of disputes. This institutional framework, anchored in art 37 of the CSA's Memorandum of Incorporation (MOI), ostensibly aims to ensure fair, transparent and efficient conflict management.[703] However, critical examination reveals significant shortcomings that undermine its compliance with s 34 of the South African Constitution, which

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695 Cricket South Africa, 'Memorandum of Incorporation' (2012, revised 2019) art 4.
696 Cricket South Africa, 'Annual Report 2019/2020' (2020) 14-16.
697 Gerald Majola, 'Cricket for All: The Vision and Mission of Cricket South Africa' (Presidential Address at CSA Annual General Meeting, Johannesburg, August 2008).
698 Cricket South Africa, 'Transformation Charter' (2013) 3-7.
699 Cricket South Africa, 'Development Programme Impact Assessment Report' (2018) 22-31.
700 Ashwin Desai and Goolam Vahed, 'Beyond the Nation? Colour and Class in South African Cricket' in *The Race Game: Sport and Politics in South Africa* (University of KwaZulu-Natal Press 2010) 253-278.
701 Cricket South Africa, 'Governance Framework Review' (CSA Board Report, 2021) 4-9.
702 Cricket South Africa, 'Provincial and Franchise Structures and Regulations' (CSA, 2020) sections 2.1-2.4.
703 Cricket South Africa, 'Memorandum of Incorporation' (2020) art 37.

guarantees the right to fair public hearings in dispute resolution. Despite the CSA's claims of balancing sports governance autonomy with fundamental procedural rights, the framework has structural deficiencies that compromise its compatibility with human rights.

Nyoka v Cricket South Africa[704] exemplifies these deficiencies. Dr Mtutuzeli Nyoka, who was then the president of the CSA, challenged his dismissal by the CSA's board, contending that his removal violated principles of natural justice. Dr Nyoka was removed after raising concerns about financial irregularities in the CSA, particularly regarding executive bonus payments. The CSA argued that its internal governance structures permitted such removal by means of a vote of no confidence. The High Court found that while the CSA possessed the authority to establish specialised dispute resolution bodies, these entities operated in contravention of constitutional standards. The court ruled in favour of Dr Nyoka, emphasising that the CSA's procedures failed to provide adequate notice, a reasonable opportunity to respond and unbiased adjudication – all fundamental elements of procedural fairness. This judgment exposed a troubling pattern where the CSA's institutional framework prioritises organisational autonomy over procedural human rights, revealing a systemic disregard for constitutional imperatives when they conflict with administrative convenience.

The CSA's requirement for legally qualified arbitrators with a minimum of ten years' experience (art 37.7.3 of the MOI) appears to enhance institutional credibility, but closer scrutiny reveals problematic implementation. Article 37.7.3 of the MOI states:

> On receipt of a request for arbitration the CEO shall provide a list of 3 (three) names of possible arbitrators from which 1 (one) Person shall be chosen by mutual consent of the parties involved in the dispute, as the arbitrator. The arbitrator shall be a legal practitioner of at least 10 (ten) years' experience. If the parties are unable to agree on an arbitrator, the CEO shall request from the Legal Practice Council a list of suitably qualified candidates from which the parties shall choose the arbitrator and failing that, the Chairperson of the Legal Practice Council shall make the appointment.

The provision that arbitrators be selected from a list provided by the CEO creates an inherent conflict of interest, as the selection process remains under the CSA's control, compromising independence and impartiality. This structural flaw was evident in *Cricket South Africa v Graeme Smith*,[705] where the CSA initiated arbitration against its former Director of Cricket following allegations of racial discrimination from the Social Justice and Nation-Building report.[706] While the arbitrators, Advocates Ngwako Maenetje SC and Michael Bishop, exonerated Smith, the case highlighted problematic aspects of the CSA's arbitrator selection. Though legally qualified, both

[704] *Nyoka v Cricket South Africa* [2011] ZAGPJHC 32.
[705] *Cricket South Africa v Graeme Smith* (Arbitration Tribunal, 2022).
[706] *Social Justice and Nation-Building Report* (Adv Dumisa Ntsebeza, 2021).

arbitrators were selected by means of a process controlled by the CSA's administrative structure, raising legitimate questions about institutional independence. This structural deficiency contravenes the constitutional requirement for impartial tribunals and falls short of international standards for sports dispute resolution that demand genuinely independent adjudicative mechanisms.

The multi-tiered approach to dispute resolution outlined in arts 37.3 and 37.8 of the MOI – purportedly designed to escalate disputes progressively – creates procedural barriers that effectively restrict access to justice. Article 37.3 of the MOI states:

> All disputes concerning club matters and matters falling within the jurisdiction of a Member (including disciplinary matters), shall be resolved within the dispute prevention and dispute resolution mechanism set out in a club and/or Member's constitution. Only in the event of a dispute not having been resolved within a Member's dispute prevention and/or resolution mechanisms, shall it be referred to the CEO for resolution, by way of either a round table meeting of the parties concerned and the CEO (or his or her duly authorised nominee), or mediation or by way of arbitration as contemplated in article 37.7.

Furthermore, art 37.8 of the MOI provides:

> In the event of a dispute at Member level having been decided in terms of an appeal process (such as, for example, a disciplinary matter), an aggrieved party may lodge a further appeal with the CEO in Writing, accompanied by the payment of a deposit as determined by the Board on a case-by-case basis. The CEO shall deal with the dispute in accordance with article 37.7.

By forcing disputes through multiple internal mechanisms before allowing formal arbitration, the CSA establishes a procedural labyrinth that exhausts resources, extends timeframes and potentially discourages legitimate grievances. This was demonstrated in *Western Province Cricket Association (WPCA) v Cricket South Africa*,[707] where the WPCA challenged the CSA's suspension of its board and appointment of an administrator over a Newlands Cricket Ground redevelopment project. The dispute required progression through mediation with the CSA's CEO before reaching arbitration – a process that delayed resolution by several months and increased costs substantially. While the arbitrator ultimately ruled in the WPCA's favour, the case exposed how the CSA's multi-tiered structure serves as a procedural obstacle rather than a safeguard, contradicting s 34's guarantee of timely dispute resolution and revealing tension between the CSA's governance mechanisms and constitutional rights of access to justice.

[707] *Western Province Cricket Association (WPCA) v Cricket South Africa (CSA)* (Arbitration Decision, 2019).

The institutional framework's superficial balance between formal adjudication and consensual dispute resolution methods, as evidenced by the explicit provisions for mediation and 'round table' discussions in ats 37.3, 37.4 and 37.6, masks a deeper problem of power imbalance. The 'round table' discussions and mediation provisions appear progressive but lack structural safeguards ensuring equal bargaining power between the CSA and individual complainants. The dispute over hosting rights at Wanderers Stadium in *Gauteng Cricket Board (GCB) and Cricket South Africa*[708] illustrates this imbalance. The GCB invoked art 37.4 seeking mediation, but the CSA's dominant position allowed it to control the mediation agenda, the selection of the mediator and the procedural timeline, compromising the purportedly neutral process. This power disparity contradicts the constitutional principle of equality before the law and undermines the framework's compatibility with human rights standards that require equitable procedural protections for all parties.

Cronje v United Cricket Board of South Africa[709] also exposed the framework's procedural inadequacies. Former captain Hansie Cronje challenged the lifetime ban imposed following match-fixing allegations, contending that the disciplinary proceedings lacked procedural fairness, particularly regarding legal representation and cross-examination. The court's finding that the UCB's failure to allow legal representation constituted a procedural irregularity rendering the disciplinary action unlawful revealed a systemic problem that persists in the CSA's current framework. Despite this landmark judgment, the CSA's MOI contains no explicit provisions guaranteeing the right to legal representation in all internal disciplinary proceedings – only in formal arbitration (art 37.7.6) – creating a two-tiered system where fundamental procedural rights are conditionally applied depending on the forum, contradicting constitutional principles of consistent procedural fairness.

The strict timeline for arbitration referral in art 37.5 requiring that disputes be referred 'not later than 10 (ten) Business Days after the date on which the issue in dispute between the parties arose' creates an unreasonable procedural hurdle that disproportionately impacts under-resourced complainants. This restrictive timeframe fails to accommodate the legitimate constraints that aggrieved parties face in gathering evidence, securing representation and formulating claims – effectively barring access to justice for many potential claimants. Although *Amazulu FC v Jacob Pinehas Nambandi and FIFA and National Soccer League South Africa*[710] did not directly involve the CSA, the case provides a relevant parallel regarding procedural timeframes in South African

[708] *Gauteng Cricket Board (GCB) and Cricket South Africa (CSA)* (Arbitration Decision, 2009).
[709] *Cronje v United Cricket Board of South Africa* 2001 (4) SA 1361 (T).
[710] *Amazulu FC v Jacob Pinehas Nambandi and FIFA and National Soccer League South Africa* CAS 2016/A/4846.

sports dispute resolution. The CAS found that South Africa's National Soccer League Dispute Resolution Chamber failed to meet international standards for procedural fairness, including reasonable timeframes for dispute initiation. This finding highlights how the CSA's restrictive referral period falls short of international human rights standards that require realistic procedural timeframes accommodating parties' circumstances.

Most problematically, art 37.7.8's provision that 'the decision of the arbitrator shall be final and binding' creates a virtually hermetic system insulated from judicial oversight, contradicting the constitutional principle of access to courts and the rule of law. While art 37.1 acknowledges constitutional supremacy and provides exceptions for 'urgent relief', the framework lacks clear criteria for determining what constitutes urgency, creating a structural ambiguity that allows the CSA to shield decisions from judicial review. This limitation on judicial oversight contravenes South Africa's constitutional architecture, which establishes the courts as the ultimate guardians of rights, including sports. The absence of systematic appeal mechanisms or judicial review pathways reveals the CSA's institutional resistance to external accountability, compromising the framework's human rights compliance.

In summary, despite superficial procedural safeguards, the CSA's institutional framework for dispute resolution contains structural deficiencies that systematically undermine constitutional and international human rights standards. The framework's purported balance between sports governance autonomy and procedural rights masks a system that prioritises organisational convenience over procedural justice through controlled arbitrator selection, multi-tiered procedural obstacles, power imbalances in consensual processes, inconsistent procedural protections, unreasonable timeframes and resistance to judicial oversight.

These findings directly address this study's research questions by demonstrating that while rhetorically acknowledging procedural rights, the CSA's framework structurally impedes their realisation through institutional design choices that privilege administrative efficiency over human rights compliance.

6.4.3 Procedural framework and implementation

The CSA's procedural framework for dispute resolution, as codified in art 37 of the MOI, establishes guidelines governing the initiation, conduct and conclusion of dispute resolution proceedings, with specific provisions addressing notice requirements, representation rights, evidentiary standards and decision-making processes, and presents itself as a comprehensive

system designed to ensure fair and efficient conflict resolution.[711] However, a critical examination of its substantive provisions and practical implementation reveals significant procedural deficiencies that systematically compromise compliance with constitutional standards of administrative justice and universal human rights principles. The framework's procedural flaws undermine its efficacy in protecting fundamental rights while perpetuating structural inequities within cricket's governance ecosystem.

The notice requirements in art 37.7.1, mandating that parties requesting arbitration file 'a notice of dispute which shall set out fully the grounds of dispute and the relief sought', impose technical burdens that disproportionately disadvantage non-legal practitioners and under-resourced complainants. The *Northern Cape Cricket (NCC) v Cricket South Africa*[712] arbitration underscored the need for comprehensive grievance articulation for procedural fairness. The case arose from financial mismanagement allegations and governance irregularities, leading to the NCC's administration by the CSA. The arbitrator emphasised that clearly defined grievances enable fair adjudication, but the NCC's initial submissions lacked the necessary detail, requiring substantial revision with legal assistance. This highlights disparities in access to legal resources, potentially disadvantaging complainants. The subsequent High Court ruling declared several NCC officials, including President Gibson Molale, delinquent directors under s 162 of the Companies Act,[713] citing gross negligence, misconduct and procedural violations. This procedural hurdle creates *de facto* barriers to accessing dispute resolution mechanisms, contradicting s 34's constitutional guarantee of access to justice and revealing a tension between procedural formalism and substantive fairness in the CSA's framework.

The representation rights ostensibly protected in art 37.7.6, providing that 'parties to the arbitration shall be entitled to attend the arbitration hearing and may be represented by members of the legal profession', contain critical limitations that undermine their efficacy. The provision applies only to formal arbitration, not preliminary dispute resolution mechanisms where significant rights determinations frequently occur. Moreover, the permissive language ('may be represented'), rather than guaranteeing representation, creates ambiguity regarding this fundamental procedural right. Although *Cape Town City Football Club v Christofer David and FIFA*[714] did not directly concern Cricket South Africa (CSA), it offers a pertinent comparative perspective on the issue of representation rights in South African sports dispute resolution. In that case, the CAS found that the National Soccer League's Dispute Resolution Chamber in South Africa had failed to ensure

[711] Cricket South Africa, 'Memorandum of Incorporation' (2020) art 37.
[712] *Northern Cape Cricket v Cricket South Africa* [2025] ZANCHC 21.
[713] Act 71 of 2008.
[714] *Cape Town City Football Club v Christofer David and FIFA* CAS 2021/A/8018.

adequate representation rights during all procedural stages. The CAS emphasised that 'meaningful representation throughout the dispute resolution process is essential to procedural fairness'.[715] This ruling reveals how the CSA's limited provisions for representation may fall short of international human rights standards, which mandate consistent procedural safeguards at every stage of dispute resolution.

The framework's emphasis on informality and efficiency in art 37.7.4, which states that arbitration 'shall be carried out informally and in a summary manner' and that 'it is not necessary to observe strict rules of evidence or procedure', creates dangerous procedural ambiguity that enables arbitrary decision-making. While procedural flexibility can enhance access, the absence of minimum evidentiary standards and procedural certainty undermines fundamental fairness guarantees. *Amazulu FC v Jacob Pinehas Nambandi*[716] illustrates this concern, as the CAS determined that South Africa's National Soccer League Dispute Resolution Chamber's procedural informality resulted in inconsistent evidentiary practices that compromised fair hearings. The court emphasised that 'procedural flexibility must not come at the expense of fundamental fairness guarantees'.[717] The CSA's procedural informality likely violates international standards requiring the consistent application of evidentiary rules to ensure predictable and fair proceedings.

The financial barriers embedded in the CSA's procedural framework represent perhaps the most significant obstacle to equitable access to justice. Article 37.7 requires the payment of a deposit determined by the board on a case-by-case basis, creating an inherent access barrier with a disproportionate impact on financially constrained complainants. While the provision states that deposits 'may be refunded, depending on the outcome of the arbitration', the discretionary language and the absence of clear refund criteria create financial uncertainty that deters legitimate claims. This financial structure effectively creates a two-tiered justice system where access depends on economic capacity rather than merit, directly contradicting constitutional principles of equality before the law and international human rights standards requiring that dispute resolution mechanisms be financially accessible to all potential users, regardless of resources.

Implementing the CSA's procedural framework in specialised dispute contexts further reveals systemic deficiencies that compromise human rights compliance. *Majola v Cricket South Africa*[718] exposed critical procedural implementation, transparency and accountability failures. Following financial misconduct allegations against the CEO Gerald Majola regarding undeclared bonuses,

[715] ibid.
[716] *Amazulu FC v Jacob Pinehas Nambandi and FIFA and National Soccer League South Africa* CAS 2016/A/4846.
[717] ibid.
[718] *Majola v Cricket South Africa and Others* [2013] 12 BLLR 1236 (LC).

the CSA first attempted to handle the matter through internal processes that lacked independence and transparency. The facts revealed that Majola received substantial bonuses related to the 2009 IPL tournament without board approval or disclosure. The CSA's internal investigation, conducted by AK Khan (then the CSA's Vice-President), found no wrongdoing despite clear evidence of procedural violations. Only after ministerial intervention and an independent review by Judge Chris Nicholson did the extent of the governance failures become apparent. The Nicholson Report documented how the CSA's dispute resolution processes were 'manipulated to protect senior executives' through procedural irregularities, including biased investigations, selective evidence consideration and improper influence over decision-makers. This case demonstrates how the CSA's procedural framework allowed for significant justice failures when applied to internal governance disputes, revealing a systemic problem where procedural mechanisms serve organisational interests rather than ensuring accountability – a direct contravention of constitutional principles requiring impartial and fair administrative proceedings.

The absence of transparency regarding the publication of decisions and the development of precedent further compromises the framework's procedural integrity. Unlike many sports governing bodies that publish anonymised decisions to develop consistent jurisprudence, the CSA maintains no comprehensive database of arbitration outcomes, creating a procedural environment characterised by unpredictability and potential inconsistency. This opacity directly contravenes constitutional principles of open justice and administrative transparency, while enabling potential procedural abuses by shielding decision-making from public scrutiny. The absence of transparent precedent undermines legal certainty and creates information asymmetry that advantages the CSA as a repeat player in disputes; the CSA is able to observe patterns across cases while individual complainants lack access to this institutional knowledge. This structural information disparity leads to fundamental unfairness that compromises the framework's human rights compatibility. Most critically, the CSA's dispute resolution system lacks independent performance monitoring and evaluation mechanisms, resulting in unaddressed procedural deficiencies persisting over time. As noted in the independent governance review following the *Majola* case, the system operates without a systematic assessment of compliance with procedural fairness standards or mechanisms to identify and correct recurring issues. The review specifically criticised 'the absence of standardised approaches to precedent development' and 'inconsistency in dispute resolution decisions', recommending regular assessment to ensure sustained compliance with evolving legal standards.[719] The failure to implement these recommendations reveals institutional resistance to

[719] *Nicholson Commission of Enquiry: Ministerial Committee of Enquiry to Conduct Investigation into Affairs of Cricket South Africa: Final Report* (7 March 2012).

meaningful procedural reform, contradicting constitutional principles requiring continuous improvement in administrative justice mechanisms to meet evolving human rights standards.

In summary, the CSA's procedural framework, despite superficial compliance elements, systematically undermines fundamental human rights protections through technical notice requirements that disadvantage non-legal practitioners, limited representation rights, dangerous procedural ambiguity, significant financial barriers, demonstrated failures in specialised dispute contexts, absence of transparency and precedent development, and lack of independent monitoring mechanisms.

These findings directly address this study's research questions by demonstrating that while the CSA's framework incorporates nominal procedural safeguards, its practical implementation systematically compromises compliance with constitutional principles of administrative justice and international human rights standards through structural design choices that privilege organisational interests over procedural fairness. The framework's deficiencies reflect a fundamental tension between the CSA's institutional priorities and human rights imperatives; substantial structural reform is required to resolve this tension in favour of constitutional compliance.

6.5 Conclusion

The analysis of the dispute resolution frameworks of SASCOC, SAFA and the CSA reveals a pervasive pattern of institutional prioritisation of organisational autonomy at the expense of fundamental procedural human rights. Despite superficial adherence to principles of natural justice through nominal references to fair hearings and procedural safeguards in their constitutional documents, all three organisations systematically undermine these protections by means of structural design choices that privilege administrative convenience and regulatory flexibility. The consistent features across these frameworks – restrictive timeframes, economic barriers to access, controlled selection of adjudicators, multi-tiered procedural obstacles and constitutionally suspect limitations on court access – function collectively as *de facto* ouster clauses that insulate these sporting bodies from meaningful constitutional oversight. This structural subordination of procedural human rights to organisational interests directly contradicts s 34 of the South African Constitution and international human rights standards that guarantee fair, impartial and accessible dispute resolution.

In addressing the research question about procedural safeguards in South African sporting codes' dispute resolution frameworks, this analysis demonstrates that while formal safeguards exist on

paper, their practical implementation is severely compromised. All three organisations exhibit significant deficiencies in ensuring the true independence of adjudicative bodies from executive influence, transparent appointment processes, consistent application of procedural rules and adequate representation rights. These shortcomings are not merely operational failures but reflect a deliberate institutional design that systematically privileges organisational control over procedural fairness. The case law – including *Royal AM*, *Sinenkani FC* and *South African Football Association v Mangope* – reveals troubling patterns of procedural irregularities that courts have repeatedly had to correct, highlighting the gap between constitutional commitments and sports governance practice.

Regarding compliance with universal human rights standards such as fair hearings, privacy rights and the protection of inherent dignity, this analysis demonstrates that South African sports dispute resolution frameworks operate as parallel legal systems increasingly detached from constitutional accountability. Although the frameworks acknowledge these standards, practical implementation reveals significant non-compliance by institutional mechanisms that create power imbalances between governing bodies and individual stakeholders, particularly athletes. The absence of transparency in proceedings, the limited remedial powers of appeal bodies, procedural uncertainty about jurisdictional boundaries and barriers to meaningful representation collectively undermine the substantive realisation of these rights. This clash between the formal recognition and the practical negation of rights epitomises the central tension between human rights obligations and sports governance autonomy.

The critical assessment of adherence to principles of natural justice in these frameworks conclusively demonstrates that South African sports dispute resolution mechanisms fail to adequately balance legitimate regulatory needs with constitutional human rights protections. Instead of achieving a productive equilibrium between these imperatives, the frameworks systematically subordinate procedural justice to organisational convenience through institutional designs that prevent access to fair hearings. This structural prioritisation of regulatory autonomy over individual rights protection represents a fundamental misalignment with constitutional values and international human rights standards that cannot be resolved by means of minor procedural adjustments. Instead, addressing these deficiencies requires substantial structural reforms that rebalance the relationship between sports governance autonomy and human rights compliance, ensuring that these parallel dispute-resolution systems operate within, rather than outside, constitutional boundaries.

CHAPTER 7: CONCLUSION AND RECOMMENDATIONS

7.1 Introduction

This study has traversed the intersection of sports dispute resolution and human rights law in South Africa, examining how major sporting bodies' structural and procedural frameworks align with or diverge from constitutional and international human rights standards. In particular, the study dealt with procedural human rights. This chapter presents the key findings in the examination of the relationship between South African sports dispute resolution frameworks and procedural human rights standards. Throughout this study, I have navigated the intricate terrain where sports autonomy intersects with constitutional imperatives, revealing a systemic tension that permeates the governance structures of major sporting bodies in South Africa. Following on the previous chapters that focused on specific analytical dimensions – conceptual frameworks, international standards, constitutional provisions and case-specific examinations – this chapter synthesises these elements into a narrative that captures the essence of the research findings and charts a path forward.

The examination conducted throughout this study has illuminated how sports dispute resolution mechanisms, while ostensibly designed to provide specialised and efficient adjudication, frequently operate as parallel legal systems that undermine fundamental procedural rights. This chapter reiterates these findings and situates them within the broader context of South Africa's constitutional democracy and international human rights obligations. By doing so, it offers critical reflections on the implications of the current state of affairs for athletes, sporting organisations and the legal system as a whole. As South Africa grapples with questions of transformation, equity and justice in all sectors of society, the governance of sports – an arena of immense cultural, social and economic significance – cannot remain insulated from constitutional scrutiny. Therefore, this chapter serves as a conclusion and a call to action, articulating concrete recommendations for reform that balance legitimate needs for sporting autonomy with the non-negotiable imperatives of procedural justice. This chapter is the culmination of the research journey and the beginning of a new conversation about how South African sports governance can better embody the constitutional values upon which the nation's democracy is founded.

7.2 Reflection on the purpose of the study: Research questions and the hypothesis

The investigation focused on whether South African sports dispute resolution frameworks align with established procedural human rights standards, both constitutional and international. Rather than merely identifying formal compliance, the study delved deeper to assess substantive

adherence to principles of procedural fairness, analysing the gap between rhetorical commitments and practical implementation. This approach revealed isolated procedural deficiencies and a systemic pattern where sports governance structures create parallel quasi-judicial systems that operate primarily outside constitutional accountability.

The research hypothesis was that a fundamental tension exists between sports regulatory autonomy and human rights protection, typically resolved in favour of organisational interests at the expense of individual procedural rights. This hypothesis emerged from observing how sporting bodies construct dispute resolution mechanisms that acknowledge procedural safeguards while systematically undermining their effectiveness through structural design choices that prioritise administrative convenience, regulatory flexibility and insulation from judicial oversight.

By examining specific questions about procedural safeguards, compliance with universal standards and adherence to principles of natural justice, the study sought to determine whether this tension between organisational autonomy and individual rights represents an inherent conflict or whether a more balanced approach might be possible. The findings largely confirm the initial hypothesis, demonstrating that dispute resolution frameworks consistently subordinate procedural justice to organisational autonomy by using mechanisms that function as *de facto* ouster clauses from constitutional protection in multiple sporting codes.

These reflections on the study's purpose provide a crucial context for understanding the significance of the key findings. They highlight that the identified procedural deficiencies are not merely technical oversights but rather manifestations of a deeper structural misalignment between sports governance priorities and constitutional imperatives; this misalignment requires fundamental recalibration rather than minor procedural adjustments.

7.3 Key findings of the study

The analysis conducted in this thesis yielded several critical findings that directly address the research questions and validate the core hypothesis. These findings reveal significant structural and procedural deficiencies in South African sports dispute resolution frameworks when measured against constitutional and international human rights standards. The key findings are the following:

7.3.1 Systemic prioritisation of organisational autonomy over procedural rights

A central finding is the pervasive pattern across the examined sporting bodies – SASCOC, SAFA and the CSA – of systematically prioritising organisational autonomy and administrative convenience over the protection of procedural human rights. This prioritisation manifests as

operational deficiencies and deliberate institutional design choices that collectively insulate these bodies from meaningful constitutional accountability. The rhetoric of 'sports specificity' and the need for specialised governance have been leveraged to create parallel justice systems that are increasingly detached from fundamental constitutional protections.

The constitutional documents of all three organisations contain superficial acknowledgements of procedural fairness principles, creating an appearance of alignment with human rights standards. However, closer examination reveals how these nominal commitments are systematically undermined by structural mechanisms that privilege organisational interests. For instance, SASCOC's constitutional framework establishes a multi-tiered dispute resolution process that, while ostensibly comprehensive, effectively functions as a procedural obstacle course that exhausts complainants before they can access constitutional remedies. Similarly, SAFA's disciplinary framework acknowledges principles of natural justice while simultaneously creating dangerous exceptions to collegial decision-making requirements and delegating crucial procedural design to potentially biased executive bodies. This pattern extends to the CSA; its dispute resolution framework incorporates controlled arbitrator selection processes and unreasonable timeframes that systematically disadvantage individual complainants. In all three organisations, procedural rights are largely illusory in practice. This is not only an implementation failure, but a fundamental misalignment between the organisations' stated values and operational priorities; this misalignment directly challenges the constitutional imperatives of procedural justice.

7.3.2 De facto *ouster clauses and barriers to judicial oversight*

A second critical finding is the widespread use of mechanisms that function as *de facto* ouster clauses, limiting access to judicial oversight and constitutional remedies. While direct ouster clauses would contravene s 34 of the Constitution, the sporting bodies have developed sophisticated alternatives that achieve similar effects while maintaining superficial compliance. These include the mandatory exhausting of internal remedies, restrictive timeframes, prohibitive cost structures and contractual agreements to arbitration that purport to exclude the courts' jurisdiction.

SASCOC's constitution, for instance, requires that all internal remedies be exhausted before a party can seek external recourse, creating a procedural labyrinth that effectively denies timely access to the courts. Similarly, SAFA imposes constraints that challenge direct access to judicial review, while the CSA's arbitration framework contains provisions that attempt to exclude certain matters from court jurisdiction entirely. These mechanisms function collectively to create a

jurisdictional buffer zone around sports governance decisions, insulating them from meaningful constitutional scrutiny.

The impact of these *de facto* ouster clauses extends beyond procedural inconvenience to the substantive denial of rights. By delaying or preventing access to constitutional remedies, these mechanisms create a parallel legal system in which procedural protections guaranteed by the Constitution become effectively unenforceable. This represents a direct challenge to the constitutional principle that all exercise of public power must ultimately remain subject to constitutional review. The judiciary's varying responses to these mechanisms – sometimes enforcing constitutional oversight and sometimes deferring to sports autonomy – have created a jurisprudential uncertainty that further complicates access to justice in sports-related disputes.

7.3.3 Lack of true independence and impartiality in adjudicative bodies

A third significant finding concerns the compromised independence and impartiality of adjudicative bodies within sports dispute resolution frameworks. In all the organisations, adjudicators remain vulnerable to executive influence through appointment processes, financial dependencies, and institutional relationships that create actual and perceived conflicts of interest. This structural subordination of adjudicative independence to organisational control fundamentally undermines the legitimacy of these dispute resolution mechanisms.

SASCOC's Judicial Body, for instance, lacks true independence from the organisation's governance structures, with members appointed through processes that do not adequately shield them from executive influence. SAFA's National Disciplinary Committee operates without transparent appointment procedures or clear competency requirements, leaving it vulnerable to political capture. Similarly, the CSA's arbitrator selection processes permit organisational influence that compromises the impartiality that is essential for legitimate dispute resolution.

This lack of true adjudicative independence represents a fundamental departure from both constitutional requirements and international standards for fair hearings. Section 34 of the Constitution explicitly requires that disputes be resolved by 'independent and impartial' tribunals, which extends to private arbitration mechanisms when they serve quasi-judicial functions. The structural deficiencies identified in these sporting bodies reveal that despite rhetorical commitments to independence, their institutional designs systematically compromise this essential characteristic of legitimate adjudication.

7.3.4 Procedural complexity and resource asymmetries as barriers to access

The fourth key finding concerns how procedural complexity and resource asymmetries function as significant barriers to accessing fair dispute resolution. All the examined frameworks contain procedural requirements that disadvantage individual athletes and smaller organisations that do not have sophisticated legal representation. These include technical notice requirements, complex submission formats, strict timeframes and high financial costs that create a structural bias favouring well-resourced parties.

SASCOC's multi-tiered framework imposes procedural hurdles that can be navigated successfully only with legal expertise, while SAFA's procedural rules contain technical requirements that disadvantage non-lawyers. The CSA's framework similarly incorporates financial barriers through fee structures and representation requirements that present significant resource burdens for individual complainants. These procedural complexities are not merely incidental; they tilt dispute outcomes in favour of organisationally aligned interests.

This finding directly implicates the constitutional guarantee of access to justice, which requires formal access to dispute resolution mechanisms and the substantive ability to participate effectively in these processes. When procedural requirements systematically advantage institutional actors over individuals, they undermine the constitutional promise of equal protection before the law. The patterns identified in these sporting bodies reveal that procedural complexity functions not as a necessary feature of specialised adjudication but as a mechanism for maintaining institutional advantage in dispute outcomes.

7.3.5 Transparency deficits and absence of precedential development

A fifth finding is the pervasive transparency deficit in sports dispute resolution frameworks, including non-public proceedings, limited publication of decisions, and the absence of reasoned judgments that support the development of precedent. These transparency shortcomings undermine the quality of individual adjudications and the systemic development of consistent jurisprudence in sports governance.

SASCOC's framework permits closed proceedings without mandating public access or the publication of decisions, while SAFA's disciplinary mechanisms frequently operate without publishing comprehensive reasoning for the determinations. The CSA similarly fails to maintain accessible records of past decisions that would support the consistent application of rules and the development of procedural standards. This opacity is in stark contrast to the constitutional requirements for open justice and reasoned decision-making in administrative actions.

The absence of transparency creates multiple procedural deficiencies: it prevents effective scrutiny of the quality of decision-making, undermines the development of consistent standards through precedent, and denies stakeholders the ability to anticipate how rules will be applied in future cases. This systematically compromises the predictability and consistency that characterise legitimate adjudicative systems. Moreover, the opacity of these processes directly contradicts s 33(2) of the Constitution, which guarantees the right to written reasons when rights are adversely affected by administrative actions.

7.3.6 Inconsistent application of procedural safeguards in different categories of disputes

The sixth key finding concerns the inconsistent application of procedural safeguards across different categories of disputes, with certain types, particularly those involving disciplinary matters, selection decisions and governance conflicts, receiving notably weaker procedural protections than others. This inconsistency reveals how procedural rights in sports dispute resolution are treated not as fundamental entitlements but as flexible considerations that yield to administrative priorities in specific contexts.

SASCOC's framework, for instance, provides more robust procedural protections for doping-related disputes than for team selection controversies, while SAFA applies stricter procedural standards to specific categories of disciplinary cases, compared to others. The CSA similarly demonstrates inconsistent procedural protections based on dispute classification rather than rights implications. This variable approach to procedural safeguards undermines the constitutional principle that procedural rights apply universally rather than selectively, based on administrative convenience.

This finding directly implicates the extent to which sports dispute resolution frameworks adhere to principles of natural justice, revealing that such adherence varies significantly by dispute category. This inconsistency suggests that procedural rights are treated instrumentally rather than as fundamental protections, an approach that contradicts the constitutional understanding of procedural fairness as a non-negotiable element of legitimate adjudication regardless of context.

7.3.7 Judicial deference and the challenges of constitutional oversight

The final key finding concerns the complex and sometimes contradictory patterns of judicial engagement with sports dispute-resolution frameworks. South African courts have demonstrated inconsistent approaches when reviewing sports governance decisions, sometimes vigorously enforcing constitutional standards and at other times exhibiting substantial deference to sporting

autonomy. This jurisprudential uncertainty has created challenges for effective constitutional oversight of sports dispute mechanisms.

Cases like *Royal AM*, *Sinenkani FC* and *Ajax Cape Town* reveal troubling patterns of judicial deference that effectively insulates sports regulatory decisions from meaningful constitutional scrutiny. In other cases, like *South African Football Association v Mangope*, the courts have intervened to enforce basic procedural protections when sporting bodies have failed to provide them. This inconsistency creates uncertainty about when and how constitutional safeguards will be implemented in the sports context.

The varying judicial approaches reflect deeper tensions about the appropriate balance between sporting autonomy and constitutional oversight. While courts acknowledge the specialised nature of sports governance, this acknowledgement sometimes transforms into excessive deference that undermines constitutional accountability. This finding highlights the need for more consistent judicial approaches that respect legitimate sporting autonomy while ensuring that fundamental procedural rights remain protected in all contexts.

7.3.8 International context and comparative perspectives

An important contextualising finding relates to how South African sports dispute resolution frameworks compare to international standards and practices. While international sports governance has increasingly recognised the importance of human rights compliance – as evidenced by reforms at bodies like the Court of Arbitration for Sport (CAS) – South African frameworks have slowly incorporated these evolving standards into their operational practices.

International frameworks have progressed towards better procedural protection through reforms addressing independence concerns, transparency deficits and access barriers. However, South African sporting bodies have not consistently integrated these international developments, leading to a growing gap between domestic practices and evolving global standards. This divergence is particularly significant given South Africa's constitutional commitment to interpreting rights in the light of international law.

This finding suggests that South African sports governance has yet to fully engage with the global development towards greater human rights compliance in sports dispute resolution. As international standards continue to develop, this gap may widen further unless deliberate efforts are made to align domestic frameworks with emerging best practices that better balance sporting autonomy with the protection of procedural rights.

7.3.9 The study's contribution to knowledge

It is appropriate, before turning to the recommendations, to articulate clearly the contribution that this study makes to the existing body of knowledge in sports law and procedural human rights.First, the study makes a doctrinal contribution by subjecting the dispute resolution frameworks of three major South African sporting bodies to sustained analysis through the lens of constitutional and international procedural human rights standards. This analysis, for the first time in South African scholarship, provides a systematic evaluation of whether SASCOC, SAFA, and the CSA comply with the procedural rights guaranteed by the South African Constitution, the ICCPR, the UDHR, and the African Charter. The findings reveal a pervasive and systemic pattern of non-compliance that goes beyond isolated procedural failures.

Second, the study makes a theoretical contribution by developing and applying the concept of de facto ouster clauses within South African sports governance. While this concept has been applied in general administrative law to statutory provisions that purport to exclude judicial review, this thesis is the first to apply it systematically to the private constitutional documents of sporting bodies, demonstrating how the combination of mandatory exhaustion of remedies requirements, restrictive timeframes, and contractual arbitration agreements can achieve the practical effect of excluding constitutional protection without formally doing so.

Third, the study makes a normative contribution by developing a consolidated framework of ten procedural standards for sports dispute resolution, derived from a synthesis of international and constitutional law sources. This framework can serve as a practical reference point for legislative drafters, sporting bodies, judicial officers, and athletes' advocates to assess and improve the procedural fairness of sports dispute resolution mechanisms.

Fourth, the study makes a comparative contribution by examining three bodies with distinct governance structures and procedural frameworks. The comparative analysis reveals both common systemic failings, suggesting structural causes rather than individual institutional idiosyncrasies, and areas of relative best practice that could inform reform of weaker frameworks.

These four contributions collectively advance the scholarship on sports law, constitutional law, and procedural human rights in South Africa, and offer a replicable analytical methodology that future researchers could apply to other sporting codes, other jurisdictions, or other specialised governance regimes facing similar tensions between regulatory autonomy and constitutional accountability.

7.4 Recommendations

The recommendations that follow are directly linked to the specific procedural deficiencies identified in Chapter 6 and to the normative framework developed in Chapters 4 and 5. Each recommendation identifies the specific deficiency it addresses, the normative standard it derives from, and the expected impact of its implementation. The full recommendations are developed in sections 7.4.1 through 7.4.9.

7.4.1 Regulatory reform through a legislative framework

The first recommendation is to develop a comprehensive legislative framework for sports dispute resolution in South Africa. While the National Sport and Recreation Act provides general governance parameters, it lacks specific provisions addressing procedural rights in sports disputes. This specialised framework would establish minimum procedural standards applicable across all sporting codes, ensuring greater consistency and constitutional compliance, while explicitly acknowledging the legitimate autonomy of international sporting federations in technical governance matters. This framework must carefully balance South Africa's constitutional imperatives with the principle of sporting autonomy recognised in international sports governance. Several jurisdictions have successfully implemented similar frameworks without conflicting with international sporting requirements; the European Sports Charter and New Zealand's Sports Tribunal Act both create procedural guarantees while preserving specialised sports governance.

The proposed legislation would focus exclusively on procedural protections rather than substantive sporting regulations, thereby respecting the technical autonomy of sporting bodies while ensuring that their governance mechanisms uphold constitutional rights. The development of such legislation should involve extensive consultation with sporting organisations, international federations and human rights experts to ensure compatibility with international sporting requirements. Unlike voluntary codes of practice, legislative requirements would impose enforceable obligations on sporting bodies, regardless of their internal regulations, and provide clear guidance on minimum procedural standards. This balanced approach would strengthen both the legitimacy of sporting governance and the protection of fundamental rights without compromising South Africa's participation in international sporting frameworks.

7.4.2 Establishment of an independent sports ombudsman

The second recommendation proposes establishing an independent sports ombudsman, authorised to receive complaints about procedural irregularities in sports dispute resolution, conduct investigations, issue non-binding recommendations, and publish annual reports on compliance

patterns. This institution would provide accessible oversight without directly interfering with legitimate sporting autonomy in substantive decisions. Unlike existing bodies that remain structurally tied to sporting organisations, this ombudsman would operate independently, with secure funding and appointment mechanisms that shield it from capture by sporting interests. Its mandate would focus specifically on procedural fairness rather than substantive sporting decisions, allowing it to monitor compliance with human rights standards without undermining the specialised knowledge that sporting bodies bring to technical determinations.

The ombudsman would serve multiple functions: providing accessible recourse for procedural complaints outside costly litigation channels, identifying systemic patterns of non-compliance across different sporting codes, recommending best practices based on comparative analysis, and creating transparency through regular public reporting. This institution would complement rather than replace judicial oversight, offering a specialised mechanism focused on the protection of procedural rights in the sporting context.

7.4.3 Development of a Sports Procedural Rights Charter

The third recommendation is the collaborative development of a Sports Procedural Rights Charter that clearly articulates minimum procedural standards applicable in all sporting codes. Unlike legislation, this Charter would emerge through multi-stakeholder engagement involving sporting bodies, athletes' representatives, human rights organisations and legal experts, creating broader buy-in while establishing clear benchmarks for procedural protection. The Charter would address key aspects of procedural fairness, including adjudicative independence, transparency requirements, representation rights, reasoned decision-making and accessibility provisions. It would provide contextually appropriate interpretations of how constitutional procedural rights apply in sporting contexts, offering practical guidance while remaining aligned with fundamental rights principles. This approach recognises that effective reform requires legal compulsion and cultural change in sporting organisations. By engaging these bodies in the development process, the Charter would foster a greater understanding of procedural rights as enhancing, rather than threatening, legitimate sporting governance. Annual compliance reporting against Charter standards would create accountability while celebrating progress made by different sporting codes in strengthening their procedural frameworks.

7.4.4 Structural reforms to enhance adjudicative independence

The fourth recommendation focuses specifically on enhancing the independence of adjudicative bodies in sports dispute resolution frameworks. Concrete reforms should include transparent

appointment processes involving multiple stakeholders, fixed-term appointments that cannot be terminated without cause, financial arrangements that separate adjudicator compensation from organisational budgets, and clear competency requirements for appointees. For SASCOC, this would require restructuring the Judicial Body to create greater separation from executive functions, while SAFA would need to establish more transparent selection criteria for its National Disciplinary Committee members. The CSA would similarly benefit from reforms to its arbitrator selection processes that minimise organisational influence in appointments. These structural changes would address one of the most significant deficiencies identified in all the frameworks. Beyond specific organisational reforms, this recommendation encourages the development of a specialised pool of trained sports adjudicators who meet established competency standards and operate under clear ethical guidelines. This professionalisation of sports adjudication would strengthen both the quality and independence of decision-making while creating greater consistency in different sporting codes.

7.4.5 Transparency enhancements through systematic publication

The fifth recommendation addresses the transparency deficits identified in sports dispute resolution frameworks by establishing systematic publication requirements for decisions, hearings and procedural rules. All sporting bodies should maintain publicly accessible databases of decisions with accompanying reasoning, conduct hearings that are presumptively open unless specific confidentiality concerns arise, and publish comprehensive procedural rules that clearly articulate rights and obligations. For SASCOC, this would require developing a central repository of Judicial Body decisions with searchable access, while SAFA would need to expand its current limited publication practices to include comprehensive reasoning in all determinations. The CSA would similarly benefit from greater transparency in its arbitration proceedings and systematic publication of outcomes with accompanying rationales. These transparency enhancements would serve multiple functions: enabling effective scrutiny of the quality of decision-making, supporting the development of consistent jurisprudence through precedent, allowing stakeholders to anticipate how rules will be applied more accurately, and increasing confidence in the legitimacy of outcomes. By aligning with constitutional values of open justice and accountable administration, these reforms would significantly strengthen the procedural integrity of sports dispute resolution.

7.4.6 Accessibility improvements through resource balancing

The sixth recommendation focuses on addressing resource asymmetries that create barriers to effective participation in sports dispute resolution. Sporting bodies should establish fee waiver provisions for resource-constrained complainants, develop simplified procedural pathways for less

complex disputes, provide plain-language guides to navigating dispute processes, and establish *pro bono* representation panels for athletes who lack the financial resources for legal assistance. For SASCOC, this would require simplifying its multi-tiered process and reducing associated costs, while SAFA would benefit from developing clearer guidance materials for participants in disciplinary proceedings. The CSA would similarly need to address financial barriers within its arbitration framework by implementing graduated fee structures based on complainants' resources. These accessibility enhancements recognise that procedural rights remain meaningless if practical barriers prevent their exercise. By reducing financial and technical obstacles to effective participation, these reforms would ensure that dispute outcomes reflect substantive merits rather than resource advantages. This approach directly addresses constitutional concerns regarding equitable access to justice in different socio-economic circumstances.

7.4.7 Judicial engagement through specialised training

The seventh recommendation addresses the inconsistent patterns of judicial engagement in sports disputes by proposing specialised training programmes for judges handling sports-related cases. These programmes would enhance judicial understanding of both the specialised nature of sports governance and the non-negotiable imperatives of constitutional rights protection, supporting more consistent and balanced approaches to judicial review. This training would cover the international frameworks governing different sporting codes, evolving human rights standards in sports contexts, comparative jurisprudence on balancing sporting autonomy with constitutional oversight, and the specific procedural challenges that arise in different categories of sports disputes. Enhancing judicial capacity to engage meaningfully with the specialised aspects of sports governance would support more nuanced determinations that respect legitimate sporting autonomy while ensuring constitutional compliance. Beyond formal training, this recommendation encourages greater dialogue between judicial officers and sporting bodies through conferences, publications and informal exchanges. This ongoing conversation would reduce mutual misconceptions and foster collaborative approaches to ensuring that sports dispute resolution remains both specialised and constitutionally compliant.

7.4.8 International alignment through comparative learning

The eighth recommendation encourages systematic engagement with international developments in sports dispute resolution to ensure that South African frameworks evolve in line with global best practices. This would involve regular comparative reviews of procedural standards across jurisdictions, participation in international forums addressing human rights in sports governance, and the adaptation of successful international models to the South African constitutional context.

For SASCOC, this would require more active engagement with evolving Olympic movement standards on procedural rights, while SAFA would benefit from examining how other football associations have reformed their disciplinary frameworks to enhance procedural protection. The CSA would similarly benefit from studying international procedural innovations in cricket governance, particularly in transparency and accessibility. This international alignment recognises that sports governance increasingly operates in a global context where standards and expectations evolve continuously. By maintaining active engagement with international developments, South African sporting bodies can anticipate emerging best practices and position themselves as leaders in reconciling sporting autonomy with human rights protection.

7.4.9 Implementation of obligatory institutionally funded mediation

A final critical recommendation to address the procedural deficiencies identified in this study is to implement mandatory mediation as a preliminary dispute-resolution mechanism. This approach would require all major sporting bodies – SASCOC, SAFA and the CSA – to establish and fund mandatory mediation processes that must occur before formal arbitration or disciplinary proceedings commence. The mediation would be conducted by experienced, independent mediators from a recognised regulatory body, ensuring freedom from organisational influence and bias.

The essential characteristics of this mechanism would include: full funding by the sporting institution rather than individual complainants, strict independence requirements for mediator selection, reasonable timeframes that do not impede access to subsequent formal procedures, and documentation of outcomes that could inform, but not limit, any subsequent formal proceedings. This preliminary mediation stage would address several identified deficiencies simultaneously: it would reduce resource asymmetries by removing financial barriers to initial dispute resolution, mitigate the impact of compromised adjudicative independence in formal proceedings by providing an alternative pathway, and potentially resolve disputes before they enter more complex procedural frameworks.

Unlike current preliminary procedures that often function as obstacles to justice, this mediation framework would facilitate resolution through neutral engagement rather than organisational control. This would complement SASCOC's multi-tiered framework by adding a truly independent preliminary stage, while SAFA and the CSA would benefit from having structured engagement before adversarial processes commence. By inserting this mechanism before formal proceedings that address substantive and procedural merits, sporting bodies would demonstrate commitment to

resolution rather than procedural obstruction, reducing the frequency and intensity of formal disputes while increasing stakeholder confidence in the overall framework.

7.5 Conclusion

This study has highlighted a profound and systemic tension between sports governance autonomy and the protection of procedural human rights in South Africa. A detailed examination of dispute resolution frameworks in major sporting bodies – SASCOC, SAFA and the CSA – has revealed how these organisations systematically prioritise institutional interests over individual rights protection by using structural mechanisms that collectively insulate sports governance from meaningful constitutional accountability. The findings demonstrate that despite superficial acknowledgement of procedural fairness principles in constitutional documents, practical implementation consistently undermines these commitments through compromised adjudicative independence, barriers to access, transparency deficits and mechanisms that function as *de facto* ouster clauses.

These patterns reveal that the tension between sporting autonomy and human rights protection poses an operational challenge and reflects a fundamental misalignment between institutional priorities and constitutional imperatives. The parallel quasi-judicial systems created by sporting bodies are increasingly detached from the procedural safeguards guaranteed by the Constitution, producing a troubling exception to the principle that all exercise of public power must remain subject to constitutional scrutiny. This exceptionalism cannot be justified by appeals to 'sports specificity' when fundamental rights are at stake.

The recommendations proposed in this study offer a pathway towards reconciling legitimate needs for specialised sports governance with non-negotiable requirements of procedural justice. Through legislative frameworks, independent oversight mechanisms, collaborative standard-setting, structural reforms to enhance independence, improvements in transparency and accessibility, judicial capacity-building, and international alignment, South African sports governance can evolve towards a model that respects both the unique characteristics of sporting contexts and the universal imperatives of human rights protection.

The recommendation for obligatory institutionally funded mediation represents an auspicious approach to reconciling sporting autonomy with human rights protection. By establishing independent mediation as a mandatory first step before arbitration or formal procedures, sporting bodies would create space for dialogue and resolution outside adversarial frameworks, while maintaining their specialised governance roles. This approach acknowledges that not all disputes

require formal adjudication and that many conflicts stem from communication failures rather than fundamental rights violations. The mediation mechanism would bridge informal resolution and formal rights protection, preserving efficiency and specialisation while ensuring that power imbalances do not determine outcomes. Furthermore, institutional funding of mediation directly addresses one of the most significant barriers to procedural justice identified in this study: resource asymmetry between organisational bodies and individual athletes. By removing financial barriers at this initial stage of resolution, sporting bodies would demonstrate a practical commitment to accessibility rather than merely rhetorical support.

This evolution means recognising that procedural rights enhance, rather than threaten, legitimate sporting governance by strengthening the credibility, consistency and fairness of regulatory outcomes. Far from undermining sporting autonomy, robust procedural protections ultimately strengthen the social licence under which sports governance operates by ensuring that its exercise of authority remains aligned with broader constitutional values. As South Africa continues its journey toward a more just and equitable society, sports governance cannot remain insulated from this transformative mission.

The significance of reforming sports dispute resolution extends beyond individual cases to the broader project of constitutional democracy in South Africa. When parallel systems of justice emerge that systematically undermine fundamental rights protections, they challenge the universality and integrity of the constitutional order. By bringing sports dispute resolution into greater alignment with constitutional imperatives, the reforms proposed in this study would strengthen not only the rights of individuals in sporting contexts but also the coherence and credibility of South Africa's constitutional democracy as a whole.

The journey towards this alignment will require sustained commitment from multiple stakeholders – sporting bodies, judicial officers, legislators, athletes' representatives and human rights advocates. It demands recognition that the current disjuncture between sports governance and constitutional accountability is not an inevitable feature of sporting autonomy but rather a correctable misalignment that undermines procedural justice and the long-term legitimacy of sports governance. Through deliberate reform guided by constitutional values, South African sports dispute resolution can evolve towards a model that honours the unique characteristics of sporting contexts and the universal human rights principles underpinning the nation's constitutional order.

In this evolution lies the promise of a sports governance system that delivers specialised and efficient dispute resolution and upholds the procedural rights that are fundamental to human

dignity and justice. This transformed approach would recognise that true sporting excellence encompasses both technical achievement and ethical governance that respects the rights and dignity of all participants. By embracing rather than resisting constitutional accountability, South African sports governance can position itself as a global leader in reconciling sporting autonomy with human rights protection; such a reconciliation ultimately strengthens both dimensions rather than sacrificing either.

The path forward requires neither abandoning the specialised knowledge that sporting bodies bring to governance nor compromising the fundamental procedural rights guaranteed by the Constitution. Instead, it demands thoughtful integration, recognising both as essential to legitimate sports governance in a constitutional democracy. Through such integration, South African sports dispute resolution can evolve toward a model that exemplifies how specialised governance can operate effectively within constitutional parameters – a model that might inform other specialised regulatory domains facing similar tensions between expertise and accountability.

In conclusion, this study affirms that the current disjuncture between sports dispute resolution and procedural human rights in South Africa represents a governance challenge that can and must be addressed through deliberate reform. The recommendations outlined provide a pathway toward this reconciliation that honours the unique characteristics of sporting contexts and the universal human rights principles that define South Africa's constitutional identity. By travelling this path, South African sports governance can evolve beyond the false choice between autonomy and accountability towards an integrated approach that strengthens both dimensions simultaneously.

BIBLIOGRAPHY

Cases

AEK Athens and SK Slavia Prague v UEFA (CAS 98/200, 20 August 1999)

Alexander Peternell v SASCOC and SAEF (CAS OG 12/02)

Alexander Peternell v South African Sports Confederation and Olympic Committee (SASCOC) and South African Equestrian Federation (SAEF) Arbitration CAS ad hoc Division (OG London) 12/001, award of 25 July 2012

Amazulu FC v Jacob Pinehas Nambandi and FIFA and National Soccer League South Africa (CAS 2016/A/4846)

Anti-Doping Danmark v Finn Mikkelsen II ZR 126/16 (BGH, 15 June 2017)

Barkhuizen v Napier [2007] ZACC 5

Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others [2004] ZACC 15

Barrett v South African Sports Confederation and Olympic Committee (SASCOC) [2024] ZAGPPHC 601

Bernstein and Others v Bester NO and Others [1996] ZACC 2

Biowatch Trust v Registrar, Genetic Resources and Others [2009] ZACC 14

Bradley v Jockey Club [2004] EWHC 2164 (QB), [2005] EWCA Civ 1056

BVerfG, Order of the First Senate of 11 April 2018 – 1 BvR 3080/09

Cape Town City Football Club v Christofer David and FIFA (CAS 2021/A/8018)

Carmichele v Minister of Safety and Security [2001] ZACC 22

Chess South Africa v South African Sports Confederation and Olympic Committee and Another [2024] ZAGPPHC 601

Chief Lesapo v North West Agricultural Bank 2000 (1) SA 409 (CC)

City of Cape Town v South African National Roads Authority Ltd and Others [2015] ZACC 25

Claudia Pechstein v International Skating Union KZR 6/15 (German Federal Court of Justice, 7 June 2016)

Cricket South Africa v Graeme Smith (Arbitration Tribunal, 2022)

Coetzee v Comitis and Others 2001 (1) SA 1254 (C)

Cronje v United Cricket Board of South Africa 2001 (4) SA 1361 (T)

De Lange v Smuts NO and Others [1998] ZACC 6

Du Plessis v De Klerk 1996 (3) SA 850 (CC)

Du Preez and Another v Truth and Reconciliation Commission [1997] ZASCA 2

Elmar Gundel v Fédération Equestre Internationale (FEI) (CAS 1992/A/63)

Gauteng Cricket Board and Cricket South Africa (Arbitration Decision, 2009)

Gcaba v Minister for Safety and Security 2010 (1) SA 238 (CC)

Government of the Republic of South Africa and Others v Grootboom and Others [2000] ZACC 19

Investigating Directorate: Serious Economic Offences v Nombwandla 2000 (1) SA 713 (CC)

Kaizer Chiefs FC v PSL Disciplinary Committee and SAFA Appeals Board (Arbitration Tribunal,2022)

Juliana Barrett v South African Sports Confederation and Olympic Committee (SASCOC),SouthGauteng High Court, Johannesburg

Law Society of the Cape of Good Hope v Attorneys Fidelity Fund Board of Control 2003 (6) SA 238 (SCA)

Ledwaba and Another v South African Football Association and Others [2024] ZAGPPHC 164

Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews [2009] ZACC 6

Mahlangu and Another v Minister of Police [2020] ZACC 3

Majola v Cricket South Africa and Others [2013] ZALCJHB 214

Mamelodi Sundowns FC v Premier Soccer League (Arbitration Tribunal, 2022)

Matuzalém Francelino da Silva v Fédération Internationale de Football Association (FIFA) 4A_558/2011 (Swiss Federal Tribunal, 27 March 2012)

Meca-Medina and Majcen v Commission [2006] ECR I-6991

Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others [2005] ZACC 14

Minister of Health v New Clicks South Africa (Pty) Ltd 2006 (2) SA 311 (CC)

Minister of Home Affairs and Another v Scalabrini Centre and Others [2013] ZASCA 134

Minister of Justice and Constitutional Development v Southern Africa Litigation Centre 2016 (3) SA 317 (SCA)

Mokgadi Caster Semenya v IAAF (CAS 2018/O/5794)

Mokgadi Caster Semenya v International Association of Athletics Federations (35159/2019, High Court of South Africa, 3 June 2019)

Mutu and Pechstein v Switzerland (Apps nos 40575/10 and 67474/10, ECtHR, 2 October 2018)

National Collegiate Athletic Association v Alston 594 US ___ (2021)

Ndoro and Another v South African Football Association and Others 2018 (5) SA 630 (GJ)

Ndoro v South African Football Association [2018] ZAGPJHC 561

Northern Cape Cricket v Cricket South Africa [2025] ZANCHC 21

Nyoka v Cricket South Africa [2011] ZAGPJHC 32

Pechstein v International Skating Union (2015) 22(1) MÜHF-HAD 512

Pharmaceutical Manufacturers Association of SA v President of the Republic of South Africa 2000 (2) SA 674 (CC)

Pistorius v IAAF Arbitration CAS 2008/A/1480, award of 16 May 2008

Polokwane City Football Club v South African Football Association and Others; TS Sporting Football Club v South African Football Association and Others [2021] ZAGPJHC 64

President of the Republic of South Africa v Hugo 1997 (4) SA 1 (CC)

President of the Republic of South Africa v South African Rugby Football Union 2000 (1) SA 1 (CC)

Reynolds v International Amateur Athletic Federation 505 US 1301 (1992)

RFC Seraing v FIFA (CAS 2016/A/4602)

Royal AM Football Club v South African Football Association (SAFA) and Others (CAS 2021/A/8403)

S v Makwanyane and Another [1995] ZACC 3

Sanderson v Attorney-General, Eastern Cape [1997] ZACC 18

Sidumo and Another v Rustenburg Platinum Mines Ltd and Others [2007] ZACC 22

Sinenkani FC v South African Football Association Eastern Cape (SAFA EC) (Arbitration Tribunal)

South African Association of Personal Injury Lawyers v Heath and Others [2000] ZACC 22

South African Rugby Players Association (SAPRA) and Others v SA Rugby (Pty) Limited and Others; SA Rugby Pty Limited v South African Rugby Players Union and Another (CA 10/2005) [2008] ZALAC 3; [2008] 9 BLLR 845 (LAC); (2008) 29 ILJ 2218 (LAC) (12 May 2008)

South African Sports Confederation and Olympic Committee (SASCOC) v Commission for Conciliation, Mediation and Arbitration and Others (JR 2642/2019) [2021] ZALCJHB 23 (1 March 2021)

South African Sports Confederation and Olympic Committee v Lane [2015] ZAGPJHC 25

South African Sports Confederation and Olympic Committee v Lane (1016/2013) [2014] ZASCA 189 (27 November 2014)

Swiss Federal Supreme Court, Caster Semenya v IAAF 4A_248/2019 / 4A_398/2019 (2020)

Swiss Federal Supreme Court, Gundel v FEI BGE 119 II 271 (1993)

Thames FC v South African Football Association National and Others [2024] ZAGPJHC 801

Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman (Case C-415/93) [1995] ECR I-4921

Van der Walt v Metcash Trading Ltd 2002 (4) SA 317 (CC)

Van Rooyen and Others v The State and Others [2002] ZACC 8

Western Province Cricket Association v Cricket South Africa (Arbitration Decision, 2019)

Young Bafana Football Club v Dr Ramatsekisa NO and Others [2023] ZAGPJHC 744

Legislations

Arbitration Act 42 of 1965

Constitution of the Republic of South Africa, 1996

Employment Rights Act 1996 (1996 c 18)

Human Rights Act 1998

National Sport and Recreation Amendment Act 18 of 2007

Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, SI 2004/3166

South African Sports and Recreation Act 110 of 1998

Organisations' constitutions and regulations

Court of Arbitration for Sport, *Code of Sports-related Arbitration* (2019)

Court of Arbitration for Sport, *Code of Sports-related Arbitration* (1 July 2020) https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2020__EN_.pdf

Cricket South Africa, *Memorandum of Incorporation* (Johannesburg, CSA 2012, rev 2019)

FIFA, *FIFA Statutes: Regulations Governing the Application of the Statutes and Standing Orders of the Congress* (FIFA 2023)

International Olympic Committee, *Olympic Charter* (2020)

International Olympic Committee, *Olympic Charter* (2021)

South African Football Association (SAFA), *Constitution* (2015)

South African Football Association (SAFA), *Disciplinary Code* (2018)

South African Rugby Union, 'Constitution' (approved 2 May 2023)

South African Sports Confederation and Olympic Committee, *Constitution* (2019)

South African Sports Confederation and Olympic Committee, *Constitution* (2022)

United Cricket Board of South Africa, *Constitution of the United Cricket Board of South Africa* (Johannesburg, 1991)

Western Province Cricket Association, *Constitution* (adopted 3 August 2020)

World Anti-Doping Agency (WADA), *World Anti-Doping Code* (2021)

Constitutions and regulatory codes

Cricket South Africa, *Memorandum of Incorporation* (2012, revised 2019)

Federation Internationale de Football Association (FIFA), *FIFA Safeguarding Policy* (2022)

FIFA, *FIFA's Human Rights Policy* (May 2017).

FIFA, *FIFA Statutes: Regulations Governing the Application of the Statutes and Standing Orders of the Congress* (2023)

International Olympic Committee, *Olympic Charter* (October 2023)

International Olympic Committee, *Host City Contract 2028: Principles* (September 2017)

South African Football Association, *SAFA Constitution* (2015)

South African Football Association, *SAFA Disciplinary Code* (2018)

Sports Dispute Resolution Centre of South Africa, *Founding Document* (2011)

United Cricket Board of South Africa, *Constitution of the United Cricket Board of South Africa* (1991)

World Anti-Doping Agency, *World Anti-Doping Code* (2021)

International instruments

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3

European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended)

International Council of Arbitration for Sport (ICAS), *Code of Sports-related Arbitration: In force as from 1 February 2023* (2023)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 9 June 1998, entered into force 25 January 2004)

UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (21 March 2011) UN Doc A/HRC/17/31

United Nations Commission on International Trade Law (UNCITRAL), *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958) 330 UNTS 3 (New York Convention)

United Nations General Assembly, *Vienna Declaration and Programme of Action* (World Conference on Human Rights, Vienna, 14–25 June 1993) UN Doc A/CONF.157/23

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)

Books

Alm J (ed), *Action for Good Governance in International Sports Organisations* (Play the Game/Danish Institute for Sports Studies 2013)

An-Na'im AA, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press 1992)

Anderson J, Parrish R and García B (eds), *Research Handbook on EU Sports Law and Policy* (Edward Elgar Publishing 2018)

Anderson J, *Modern Sports Law: A Textbook* (Hart Publishing 2010)

Andrews P and Ellmann S, *The Post-Apartheid Constitutions: Perspectives on South Africa's Basic Law* (Wits University Press 2001)

Antoine B, *Commonwealth Caribbean Law and Legal Systems* (2nd edn, Routledge-Cavendish 2008)

Baca P (ed), *Big Data in Sport: Analytics, Technology and the Smart Stadium* (Routledge 2021)

Bacher A, *Unification and Beyond: South African Cricket's Journey* (Jonathan Ball Publishers 2004)

Bernasconi M (ed), *International Sports Law and Jurisprudence of the CAS* (Weblaw 2014)

Bingham T, *The Rule of Law* (Penguin Books 2011)

Blackshaw I, *International Sports Law: An Introductory Guide* (Asser Press 2017)

Blackshaw I, *Mediating Sports Disputes: National and International Perspectives* (TMC Asser Press 2002)

Blackshaw I, *Sport, Mediation and Arbitration* (TMC Asser Press 2009)

Blackshaw IS, Siekmann RCR and Soek J (eds), *The Court of Arbitration for Sport 1984–2004* (TMC Asser Press 2006)

Born GB, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014)

Brown G (ed), *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* (Open Book Publishers 2016)

Burrel G, *Sociological Paradigms and Organisational Analysis* (Routledge 2017)

Chappelet J and Kübler-Mabbott B, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge 2008)

Chappelet J, *Autonomy of Sport in Europe* (Council of Europe Publishing 2010)

Cloete R (ed), *Introduction to Sports Law in South Africa* (LexisNexis Butterworths 2005)

Creswell JW and Poth CN, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (SAGE 2016)

Currie I and De Waal J, *The Bill of Rights Handbook* (6th edn, Juta 2013)

Darnell S, *Sport for Development and Peace: A Critical Sociology* (Bloomsbury Academic 2012)

David P, *A Guide to the World Anti-Doping Code: The Fight for the Spirit of Sport* (3rd edn, Cambridge University Press 2017)

Denning AT, *The Road to Justice* (Stevens & Sons 1955)

Donnelly J, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013)

Dubber MD and Tomlins C (eds), *The Oxford Handbook of Legal History* (Oxford University Press 2018)

Duval A and Rigozzi A (eds), *Yearbook of International Sports Arbitration 2016* (TMC Asser Press 2018)

Duval A and Van Rompuy B, *The Legacy of Bosman: Revisiting the Relationship Between EU Law and Sport* (TMC Asser Press 2016)

Efron SE and Ravid R, *Writing the Literature Review: A Practical Guide* (Guilford Publication Inc 2019)

Epstein D, *The Sports Gene: Inside the Science of Extraordinary Athletic Performance* (Current 2013)

Findling JE and Pelle KD (eds), *Encyclopedia of the Modern Olympic Movement* (Greenwood Press 2004)

Francioni F, *Access to Justice as a Human Right* (Oxford University Press 2007)

Galligan DJ, *Due Process and Fair Procedures: A Study of Administrative Procedures* (Oxford University Press 1996)

Gardiner S et al, *Sports Law* (4th edn, Routledge 2012)

Geisinger E and Trabaldo-de Mestral E (eds), *Sports Arbitration: A Coach for Other Players?* (Juris 2015)

Giulianotti R (ed), *Routledge Handbook of Sport and Human Rights* (Routledge 2019)

Glendon MA, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House 2001)

Goslin A, Kluka D, López de D'Amico R and Danylchuk K (eds), *Managing Sport Across Borders* (Routledge 2021)

Greenfield S and Osborn G (eds), *Law and Sport in Contemporary Society* (Frank Cass Publishers 2000)

Haas U and Healey D (eds), *Doping in Sport and the Law* (Hart Publishing 2016)

Healey D, *Sport and the Law* (UNSW Press 2005)

Hoexter C, *Administrative Law in South Africa* (2nd edn, Juta 2012)

Houlihan B, *Dying to Win: Doping in Sport and the Development of Anti-Doping Policy* (Council of Europe Publishing 2002)

Hylton K, *Race and Sport: Critical Race Theory* (Routledge 2020)

James M, *Sports Law* (3rd edn, Palgrave Macmillan 2017)

Katsh E and Rabinovich-Einy O, *Digital Justice: Technology and the Internet of Disputes* (Oxford University Press 2017)

Keim M and De Coning C (eds), *Sport and Development Policy in Africa* (Stellenbosch University Press 2014)

Latty F, *La Lex Sportiva: Recherche sur le Droit Transnational* (Martinus Nijhoff Publishers 2007)

Lenskyj HJ, *Gender Politics and the Olympic Industry* (Palgrave Macmillan 2013)

Lewis QC A and Taylor QC J, *Sport: Law and Practice* (3rd edn, Bloomsbury Professional 2014)

Liebenberg S, *Socio-Economic Rights: Adjudication Under a Transformative Constitution* (Juta 2010)

Lindholm J, *The Court of Arbitration for Sport and its Jurisprudence: An Empirical Inquiry into Lex Sportiva* (TMC Asser Press 2019)

Louw AM, *Sports Law in South Africa* (2nd edn, Kluwer Law International 2010)

Mavromati D and Reeb M, *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials* (Kluwer Law International 2015)

McArdle D, *Dispute Resolution in Sport: Athletes, Law and Arbitration* (Routledge 2015)

Mew G and Richards MJ, *More Than Just a Game: Resolving Disputes in Modern Sport* (Gowling Lafleur Henderson LLP 2006)

Milanovic M, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press 2011)

Motala Z and Ramaphosa C, *Constitutional Law: Analysis and Cases* (Oxford University Press Southern Africa 2002)

Mubangizi JC, *The Protection of Human Rights in South Africa: A Legal and Practical Guide* (Juta 2013)

Murray R, *The African Commission on Human and Peoples' Rights and International Law* (Hart Publishing 2000)

Nafziger JAR, *International Sports Law* (2nd edn, Transnational Publishers 2004)

Nafziger JAR and Ross WF (eds), *Handbook on International Sports Law* (Edward Elgar 2011)

Nickel J, *Making Sense of Human Rights* (Blackwell Publishing 2007)

Panagiotopoulos DP, *Sports Law: Lex Sportiva and Lex Olympica* (Ant N Sakkoulas Publishers 2013)

Parrish R, *Sports Law and Policy in the European Union* (Manchester University Press 2003)

Parrish R and Miettinen S, *The Sporting Exception in European Union Law* (TMC Asser Press 2008)

Phooko MR, Chigowe LT and 'Nyane H (eds), *The Development and Application of SADC Community Law in SADC Member States* (Juta 2023)

Pijetlovic K, *EU Sports Law and Breakaway Leagues in Football* (TMC Asser Press 2015)

Shelton D, *Advanced Introduction to International Human Rights Law* (Edward Elgar Publishing 2014)

Shelton D, *Regional Protection of Human Rights* (Oxford University Press 2010)

Shue H, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton University Press 1996)

Soek J, *The Strict Liability Principle and the Human Rights of Athletes in Doping Cases* (TMC Asser Press 2006)

Thomas DR and Hodges ID, *Designing and Planning Your Research Project: Core Skills for Social and Health Research* (Sage 2018)

Thornton PK, *Sports Law* (Jones and Bartlett Publishers 2011)

Weatherill S, *European Sports Law: Collected Papers* (2nd edn, TMC Asser Press 2014)

Weatherill S, *Principles and Practice in EU Sports Law* (Oxford University Press 2017)

Yin RK, *Case Study Research Design and Methods* (5th edn, Sage 2014)

Chapters in books

Desai A and Vahed G, 'Beyond the Nation? Colour and Class in South African Cricket' in Christopher Merrett and Christopher Young (eds), *The Race Game: Sport and Politics in South Africa* (University of KwaZulu-Natal Press 2010)

Giacinto della Cananea, 'Audi Alteram Partem' in *Due Process of Law Beyond the State: Requirements of Administrative Procedure* (Oxford University Press 2016) 35-60

Keller H and Grover L, 'General Comments of the Human Rights Committee and their Legitimacy' in H Keller and G Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012)

Lobban M, ‘Legal Formalism’ in MD Dubber and C Tomlins (eds), *Oxford Handbook of Legal History* (Oxford University Press 2018)

Mavromati D, ‘The Court of Arbitration for Sport (CAS) and its Jurisprudence: The Role of the CAS in Shaping Sports Law’ in Jack Anderson et al (eds), *Research Handbook on EU Sports Law and Policy* (Edward Elgar Publishing 2018)

Nafziger JAR, ‘International Dimensions of Sports Law’ in JAR Nafziger and S Ross (eds), *Handbook on International Sports Law* (Edward Elgar Publishing 2011)

Odendaal A, ‘The Transformation of South African Cricket’ in Stephen Wagg (ed), *Cricket and National Identity in the Postcolonial Age* (Routledge 2005)

Rigozzi A and Hasler E, ‘Sports Arbitration under the CAS Rules’ in Manuel Arroyo (ed), *Arbitration in Switzerland: The Practitioner’s Guide* (Kluwer Law International 2013)

Rigozzi A and Robert-Tissot F, ‘Consent in Sports Arbitration: Its Multiple Aspects’ in Elliott Geisinger and Elena Trabaldo-de Mestral (eds), *Sports Arbitration: A Coach for Other Players?* (Juris 2015)

Weatherill S, ‘Is the Pyramid Compatible with EC Law?’ in B Bogusz, A Cygan and E Szyszczak (eds), *The Regulation of Sport in the European Union* (TMC Asser Press 2014) 295-309

Journal articles

Adair JL, ‘In a League of Their Own: The Case for Intersex Athletes’ (2011) 18 Sports Lawyers Journal 121

Ali SM and Istiqomah M, ‘De-radicalization Program in Indonesian Prisons: Reformation on the Correctional Institution’ (2022) 7 Petita J Kajian Ilmu Hukum dan Syariah 11

Anderson J and Partington N, ‘Duty of Care in Sport: Time for a Sports Ombudsman?’ (2018) 18 International Sports Law Review 3

Anderson J, ‘The Juridification of Sport: A Comparative Analysis of Children’s Rugby and Cricket in England and South Africa’ (2019) 18 International Sports Law Journal 171

Bertil J, ‘Athletes and Access to Remedies: Addressing Human Rights Violations in Sport’ (2021) 34 International Sports Law Journal 122

Blackshaw I, ‘The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively “Within the Family of Sport”’ (2003) 2(2) Entertainment Law 61

Blackshaw I, ‘ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration and Mediation Center’ (2013) 24 Marquette Sports Law Rev 1

Boyes S, ‘Sport in Court: Assessing Judicial Scrutiny of Sports Governing Bodies’ [2017] Public Law 363-381

Brackenridge CH, ‘Child Protection in Sport: Reflections on Thirty Years of Science and Activism’ (2014) 3 Social Sciences 326

Brackenridge CH et al, ‘The Place of Dignity in Policies to Safeguard Athletes from Abuse’ (2021) 23 International Journal of Sport Policy and Politics 295

Bulto TS, ‘The Utility of Cross-Cutting Rights in Enhancing Justiciability of Socio-Economic Rights in the African Charter on Human and Peoples’ Rights (2011) 29 UTAS Law Review 142

Burnett C, ‘Value of Sport in Post-apartheid South Africa’ (2019) 41(2) South African Journal for Research in Sport, Physical Education and Recreation 11

Carozza PG, ‘Subsidiarity as a Structural Principle of International Human Rights Law’ (2003) 97(1) American Journal of International Law 38

Casini L, ‘The Making of a Lex Sportiva by the Court of Arbitration for Sport' (2011) 12(5) German Law Journal 1317

Chappelet J, ‘Towards Better Olympic Accountability’ (2011) 14(3) Sport in Society 319

Chappelet J and Mrkonjic M, ‘Existing Governance Principles in Sport: A Review of Published Literature’ (2013) 225 Sport in Society

Chui Ling Goh and Jack Anderson, ‘The Credibility of the Court of Arbitration for Sport’ (2022) 13 Harvard Journal of Sports and Entertainment Law 1

Coleman DL, ‘Semenya and ASA v IAAF: Affirming the Lawfulness of a Sex-Based Eligibility Rule for the Women’s Category in Elite Sport’ (2019) 83 Sweet & Maxwell’s International Sports Law Review 19

Corder H, 'Administrative Justice: A Cornerstone of South Africa's Democracy' (1998) 14 SAJHR 38

Cornelius S, 'Jurisdiction of the Court of Arbitration for Sport' (2007) 2 International Sports Law Journal 14

Cornelius S, 'Universality versus Cultural Specificity in International Sport' (2014) 14 International Sports Law Journal 3

Costa JP, 'Legal Protection in Sport and the Role of the European Court of Human Rights' (2014) 1 International Sports Law Review 3

Davis D, 'Transformation and the Constitutional Promise' (2010) 26 *SAJHR* 85

Desai A and Vahed G, 'The Coming of Nelson and the Ending of Apartheid Cricket? Gatting's Rebels in South Africa, 1990' (2016) 33(15) International Journal of the History of Sport

Donnelly J, 'The Relative Universality of Human Rights' (2007) 29(2) Human Rights Quarterly 281

Donnelly P, 'Sport and Human Rights' (2008) 11(4) Sport in Society 381

Duval A and Van Rompuy B, 'The Compatibility of Forced CAS Arbitration with EU Competition Law: *Pechstein* Reloaded' (2015) 23 Journal of European Competition Law & Practice 1

Duval A and Viret M, 'The World Anti-Doping Code 2015: ASSER International Sports Law Blog Symposium' (2016) 16(1-2) International Sports Law Journal 99

Duval A, 'The Court of Arbitration for Sport and EU Law: Chronicle of an Encounter' (2017) 24(6) Maastricht Journal of European & Comparative Law 79

Duval A, 'Lex Sportiva: A Playground for Transnational Law' (2013) 19(6) European Law Journal 822

Duval A, 'The Olympic Charter: A Transnational Constitution Without a State?' (2017) 44(S1) Journal of Law & Society S144

Duval A, '"Victory" of the Court of Arbitration for Sport at the European Court of Human Rights: The End of the Beginning for the CAS' (2019) 2 International Sports Law Journal 1

Duval A, ‘Questioning the (In)dependence of the Court of Arbitration for Sport’ (2015) 15 International Sports Law Journal 253

Ebobrah ST, ‘Future of Economic, Social and Cultural Rights Litigation in Nigeria’ (2020) 1 CALS Review of Nigerian Law & Practice 108

Edelman M, ‘Are Commissioner Suspensions Really Any Different from Illegal Group Boycotts? Analyzing Whether the NFL Personal Conduct Policy Illegally Restrains Trade’ (2016) 58 Catholic University Law Review 631

El Shereef D, ‘Ancient Egyptian Sports and Fundamental Principles of Olympics’ (November 2020)

Erbsen AH, ‘The Substance and Illusion of Lex Sportiva’ in Rob Siekmann (ed), *The Court of Arbitration for Sport — 1988–2004* (TMC Asser Press 2006) 441

Findlay HA, ‘Rules of a Sport-Specific Arbitration Process as an Instrument of Policy Making’ (2006) 16(1) Marquette Sports Law Review 73

Findlay HA and Mazzucco MF, ‘Supervisory Role of the Court of Arbitration for Sport in Regulating the International Sport System’ (2010) 20 Entertainment & Sports Law Journal 14

Foster K, ‘Is There a Global Sports Law?’ (2003) 2(1) Entertainment Law 1

Foster K, ‘Lex Sportiva and Lex Ludica: The Court of Arbitration for Sport’s Jurisprudence’ (2006) 3(2) Entertainment & Sports Law Journal 1

Foster K, ‘Global Sports Law Revisited’ (2019) 19 International Sports Law Journal 1

Foster K, ‘Global Administrative Law: The Next Step for Global Sports Law?’ (2012) 20(1) Sport & Law Journal 42

García B, ‘Sport Governance after the White Paper: The Demise of the European Model?’ (2009) 1 International Journal of Sport Policy 267

García B, ‘UEFA and the European Union: From Confrontation to Co-operation?’ (2007) 3 Journal of Contemporary European Research 202

Geeraert A, Alm J and Groll M, ‘Good Governance in International Sport Organizations: An Analysis of the 35 Olympic Sport Governing Bodies’ (2014) 6 International Journal of Sport Policy & Politics 281

Geeraert A, Mrkonjic M and Chappelet JL, ‘A Rationalist Perspective on the Autonomy of International Sport Governing Bodies: Towards a Pragmatic Autonomy in the Steering of Sports’ (2015) 7(4) International Journal of Sport Policy & Politics 473

Goh CL and Anderson J, ‘The Credibility of the Court of Arbitration for Sport’ (2022) Harvard Journal of Sports & Entertainment Law 205

Greenwood L, ‘Tipping the Balance: Diversity and Inclusion in International Arbitration’ (2017) 33 Arbitration Int 99

Grix J, ‘The Politics of Sports Mega-Events’ (2012) 3(1) Political Insight 4

Haas U, ‘Role and Application of Article 6 of the European Convention on Human Rights in CAS Procedures’ (2012) 3 International Sports Law Review 43

Haas U, ‘Time Limit for Appeal in Arbitration Proceedings before the Court of Arbitration for Sport (CAS)’ (2011) 8 Schweizerische Internationale und Vergleichende Rechtszeitschrift 1

Hannum H, ‘Status of the Universal Declaration of Human Rights in National and International Law’ (1995) 25 Georgia Journal of International & Comparative Law 287

Haslip S, ‘A Consideration of the Need for a National Dispute Resolution System for National Sport Organizations in Canada’ (2001) 11 Marquette Sports Law Review 245

Heerdt D and Rook W, ‘Remedy and Redress for Sport-Related Human Rights Abuses’ (2022) 22 International Sports Law Journal 85

Heerdt D, ‘Tapping the Potential of Human Rights Provisions in Mega-Sporting Events Bidding and Hosting Agreements’ (2018) 17(3) International Sports Law Journal 170

Heyns C, ‘African Regional Human Rights System: The African Charter’ (2004) 108 Penn State Law Review 679

Holden JT and Rodenberg RM, ‘Blockchain and Sport’ (2017) 11(4) Sport, Ethics & Philosophy 455

Houlihan B and Hanstad DV, 'The Effectiveness of the World Anti-Doping Agency: Developing a Framework for Analysis' (2019) 11(2) International Journal of Sport Policy & Politics 203

Hutchinson T and Duncan NJ, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 117

Jedlicka SR, 'Sport Governance as Global Governance: Theoretical Perspectives on Sport in the International System' (2008) 10(2) International Journal of Sport Policy & Politics 287

Johnson M, 'The Role of Arbitration in Sports Dispute Resolution: A Comparative Analysis' (2020) 32 Journal of International Arbitration 145

Kaufmann-Kohler G, 'Arbitral Precedent: Dream, Necessity or Excuse?' (2007) 23 Arbitration International 357

Kidd B and Donnelly P, 'Human Rights in Sports' (2000) 35 International Review for the Sociology of Sport 131

Korstjens I and Moser A, 'Series: Practical Guidance to Qualitative Research. Part 4: Trustworthiness and Publishing' (2018) 32(24) European Journal of General Practice 120

Lindholm J, 'Problem with Salary Caps under European Union Law: The Case against Financial Fair Play' (2011) 12 Texas Review of Entertainment & Sports Law 189

Llewellyn W, Gleaves J and Wilson W, 'The Historical Development of the World Anti-Doping Agency and its Authority in Global Anti-Doping Governance' (2021) 38(4) International Journal of the History of Sport 384

Loland S, 'Caster Semenya, Athlete Classification, and Fair Equality of Opportunity in Sport' (2020) 46(9) Journal of Medical Ethics 584

Louw AM, 'An "Ad Hoc" Affair: A Constitutional Assessment of the South African Sports Commission Act' (2012) 12(1-2) International Sports Law Journal 65

Louw AM, 'Evaluating Recent Developments in the Governance and Regulation of South African Sport: Some Thoughts and Concerns for the Future' (2006) 2006(1-2) International Sports Law Journal 48

Mavromati D, 'Rules of the Game: The Need for Transparency in Sports Dispute Resolution' (2015) 32 Journal of International Arbitration 595

McLaren RH, ‘The Court of Arbitration for Sport: An Independent Arena for the World’s Sports Disputes’ (2001) 35(2) Valparaiso University Law Review 379

McLaren RH, ‘An Overview of Non-Analytical Positive and Circumstantial Evidence Cases in Sports’ (2006) 16 Marquette Sports Law Review 193

McLaren RH, ‘Corruption: Its Impact on Fair Play’ (2008) 19 Marquette Sports Law Review 15

Miralla O, ‘Impact of Technology on Sports Dispute Resolution’ (2020) 20 International Sports Law Journal 73

Mitten MJ, ‘Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations’ (2009) 10 Pepperdine Dispute Resolution Law Journal 51

Mitten MJ and Opie H, ‘“Sports Law”: Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution’ (2010) 85(2) Tulane Law Review 269

Mutua M, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42(1) Harvard International Law Journal 201

Mutua M, ‘Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties’ (1995) 35 Virginia Journal of International Law 339

Nafziger JAR, ‘Comments on Applying International Sports Law in the United States’ (2002) 9(11) International Sports Law Journal 77

Nafziger JAR, ‘International Sports Law as a Process for Resolving Disputes’ (1996) 45 International & Comparative Law Quarterly 13

Nafziger JAR, ‘International Sports Law: A Replay of Characteristics and Trends’ (1988) 86 American Journal of International Law 489

Naidoo R and Slogrove CL, ‘Sports Arbitration in South Africa: Challenges and Opportunities’ (2020) 20 International Sports Law Journal 82

Nanev L, ‘Sports Law as an Independent Branch of Law’ (2013) 2 Balkan Social Science Review 167

Nmehielle VO, ‘Development of the African Human Rights System in the Last Decade’ (2004) 11 Human Rights Brief 6

Nyane H, ‘Constitutional Morality in South Africa: Is it the Missing Link?’ (2024) 39 South African Journal on Human Rights 154

Nyathi M, ‘Re-asserting the Doctrinal Legal Research Methodology in the South African Academy: Navigating the Maze’ (2023) 140 South African Law Journal 365

O’Leary J and Khoo T, ‘Changing the World: Sport, Racism and Law in South Africa and Malaysia’ (2013) 13 International Sports Law Journal 45

Odinkalu CA, ‘Role of Case and Complaints Procedures in the Reform of the African Regional Human Rights System’ (2001) 1 African Human Rights Law Journal 225

Oschütz F, ‘Harmonization of Anti-Doping Code through Arbitration: The Case Law of the Court of Arbitration for Sport’ (2002) 12(2) Marquette Sports Law Review 684

Panagiotopoulos, DP ‘Clauses for a Legitimizing Basis of Regulatory Competence in International Sports Activities: A Lex Sportiva and Lex Olympica Constitutional Charter’ (2013) 10(1–2) International Sports Law Review Pandektis 15

Parrish R, ‘Social Dialogue in European Professional Football’ (2011) 17(2) European Law Journal 213

Parrish R, ‘Sports Law and Policy in the European Union’ (2003) 28 European Law Review 649

Pijetlovic K, ‘EU Sports Law and Breakaway Leagues in Football’ (2015) 22 Sports Law Journal 119

Raber NK, ‘Dispute Resolution in Olympic Sport: The Court of Arbitration for Sport’ (1998) 8 Seton Hall Journal of Sports Law 82

Radke H, ‘Basketball Arbitral Tribunal: An Overview’ (2019) 18 International Sports Law Journal 238

Rafudeen A, ‘A South African Reflection on the Nature of Human Rights’ (2016) 21 African Human Rights Law Journal 225

Rahl S, ‘Research Design and Methods: A Systematic Review of Research Paradigms, Sampling Issues and Instruments Development’ (2017) 6 International Journal of Economics & Management Science 1

Reeb M, ‘The Role and Functions of the Court of Arbitration for Sport (CAS)’ (2002) 2 International Sports Law Journal 21

Reilly L, ‘Introduction to the Court of Arbitration for Sport (CAS) and the Role of National Courts in International Sports Disputes’ [2012] Journal of Dispute Resolution article 5

Rigozzi A and Wisnosky E, ‘The Recent Revision of the Code of Sports-related Arbitration (CAS Code)’ (2016) Jusletter 20

Rigozzi A, ‘Challenging Awards of the Court of Arbitration for Sport’ (2010) 1(1) Journal of International Dispute Settlement 217

Rigozzi A, Haas U and Wisnosky E, ‘Breaking Down the Process for Determining a Basic Sanction under the 2015 World Anti-Doping Code’ (2015) 15 International Sports Law Journal 3

Schwab B, ‘When We Know Better, We Do Better: Embedding the Human Rights of Players as a Prerequisite to the Legitimacy of Lex Sportiva and Sport’s Justice System’ (2018) 32 Maryland Journal of International Law 4

Schwab B, ‘Embedding the Human Rights of Players in World Sport’ (2018) 17 International Sports Law Journal 214

Sen A, ‘Elements of a Theory of Human Rights’ (2004) 32(4) Philosophy & Public Affairs 315

Shahlaei F, ‘The Collision between Human Rights and Arbitration: The Game of Inconsistencies at the Court of Arbitration for Sport’ (2024) 40(2) Arbitration International 169–204

Shinohara T, ‘Human Rights in Sports Arbitration: What Should the Court of Arbitration for Sport do for Protecting Human Rights in Sports?’ [2023] Liverpool Law Review 1

Straubel MS, ‘Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better’ (2002) 36 Loyola University Chicago Law Journal 1203

Sugden JT, Sheps S and Sugden J, ‘Assessing Governance without Government: A Proposal for the International Council of Sport Governance’ (2023) 15 International Journal of Sport Policy & Politics 473

Svantesson D, ‘Could Technology Resurrect the Dignity of the FIFA World Cup Refereeing?’ (2014) 30(5) Computer Law & Security Review 569

Szymanski S, ‘A Theory of the Evolution of Modern Sport’ (2008) 35(1) Journal of Sport History 1

Teetzel S, ‘The Onus of Inclusivity: Sport Policies and the Enforcement of the Women’s Category in Sport’ (2014) 41(1) Journal of Philosophy of Sport 113

Thibault L, Kihl L and Babiak K, ‘Democratization and Governance in International Sport: Addressing Issues with Athlete Involvement in Organizational Policy’ (2010) 2(3) International Journal of Sport Policy & Politics 275

Udombana NJ, ‘African Commission on Human and Peoples’ Rights and the Development of Fair Trial Norms in Africa’ (2006) 6 African Human Rights Law Journal 299

Viljoen F, ‘African Charter on Human and Peoples’ Rights: The Travaux Préparatoires in the Light of Subsequent Practice’ (2004) 25 Human Rights Law Journal 313

Von Bernstorff J, ‘The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law’ (2008) 19 European Journal of International Law 903

Wagner G and Samanci O, ‘Arbitration Meets Human Rights—The Pechstein Saga and Its Implications for Commercial Disputes’ (2025) 41(2) Arbitration International 257–285

Yacoob Z, ‘Role of Sports in Promoting Social Justice in South Africa’ (2018) 22 Law, Democracy and Development 78

Yilmaz S, ‘Protection of Minors: Lessons about the FIFA RSTP from the Recent Spanish Cases at the Court of Arbitration for Sport’ (2018) 18 International Sports Law Journal 15

Official publications and government documents

Department of Sport and Recreation South Africa, *White Paper on Sport and Recreation* (1998)

Department of Sport and Recreation, *National Sport and Recreation Plan* (2012)

Department of Sport and Recreation, *Sport and Recreation Annual Report 2012–2013* (2013)

Department of Sport and Recreation, *The Case for Sport* (2009)

Mbalula F, *National Sport and Recreation Plan* (Department of Sport and Recreation 2011)

Ministerial Report on Transformation in Sport (Department of Sport and Recreation 2013)

University of South Africa, *UNISA Policy on Research Ethics* (2016)

Reports and institutional publications

Centre for Sport and Human Rights, *Sporting Chance Principles* (2018)

Cricket South Africa, *Annual Report 2019/2020* (2020)

Cricket South Africa, *Development Programme Impact Assessment Report* (2018)

Cricket South Africa, *Governance Framework Review* (CSA Board Report 2021)

Cricket South Africa, *Strategic Plan 2002–2007: Repositioning South African Cricket* (2002)

Cricket South Africa, *Transformation Charter* (CSA 2013)

European Court of Human Rights, *The ECHR in 50 Questions* (2014)

Geeraert A, *Sports Governance Observer 2015: The Legitimacy Crisis in International Sports Governance* (Play the Game/Danish Institute for Sports Studies 2015)

Human Rights Watch, *World Report 2024: Rights Trends in Mega-Sporting Events* (2024)

Human Rights Watch, 'Caster Semenya Loses Appeal for Equal Treatment' (1 May 2019) <https://www.hrw.org/news/2019/05/01/caster-semenya-loses-appeal-equal-treatment>

International Cricket Council, *ICC Resolution on South Africa's Readmission* (1991)

LawInSport, 'The Impact of COVID-19 on Procedures in Sport Disputes Resolution – First Report 12 June 2020' (12 June 2020) <https://www.lawinsport.com/topics/covid19-impact/item/the-impact-of-covid-19-on-procedures-in-sport-disputes-resolution-first-report-12-june-2020> accessed 25 December 2024

Mega-Sporting Events Platform for Human Rights, *Sporting Chance: White Paper 1.1 Championing Human Rights in the Governance of Sports Bodies* (Institute for Human Rights and Business, London 2017)

Nicholson Commission of Enquiry: Ministerial Committee of Enquiry to Conduct Investigation into Affairs of Cricket South Africa: Final Report (7 March 2012)

Office of the High Commissioner for Human Rights, *The United Nations Human Rights Treaty System* (Fact Sheet No. 30/Rev. 1 2012)

Ruggie JG, 'For the Game, For the World: FIFA and Human Rights' (2016) Corporate Responsibility Initiative Report No. 68, Harvard Kennedy School

Social Justice and Nation-Building Report (Adv Dumisa Ntsebeza, 2021) <https://cricket.co.za/sjn/>

Worden M, 'Raising the Bar: Mega-Sporting Events and Human Rights' (Human Rights Watch World Report, 2015)

World Players Association, 'Universal Declaration of Player Rights' (14 December 2017)

Newspaper article

Wendell Roelf, 'Race Debate Clouds South Africa's Rugby World Cup Preparation' *Reuters* (31 August 2015)

Theses and dissertations

Bouah L, 'An Analysis of the Implementation of the National Sport and Recreation Plan in the Western Cape' (PhD thesis, University of the Western Cape, 2016)

Louw AM, 'A Critical Evaluation of the Interaction Between Sport and Law in South Africa' (DPhil thesis, Stellenbosch University, 2010)

Conference papers and presentations

Carter JH, 'The Law of International Sports Disputes' (Annual Meeting of the Indian Society of International Law, November 2004)

Erdilanita U and Ma'mun A, 'The Role of Sports Participation on Social Skill Development in Early Childhood and Adolescence' in *Proceedings of the International Seminar of Sport and Exercise Science (ISSES 2024)* (Atlantis Press 2025) 160-181

Hill L and Grand'Maison V, 'SASCOC and South African Sport: Governance, Corruption and Accountability' (24th Canadian Conference on Global Health, November 2018)

Majola G, 'Cricket for All: The Vision and Mission of Cricket South Africa' (Address at CSA Annual General Meeting, Johannesburg, August 2008)

Mew G and Richards MJ, 'More than Just a Game: Resolving Disputes in Modern Sport' (Fourteenth Commonwealth Law Conference, London, September 2005)

Panagiotopoulos DP and Xiaoping W (eds), *Sports Law: Structures, Practice, Justice, Sports Science and Studies: 20th IASL Congress Proceedings – Athens* (20th IASL Congress, 2014)

Commentary/opinion pieces

Born GB, 'Are CAS Arbitrations Governed by the New York Convention?' (Kluwer Arbitration Blog, 8 March 2009) <https://arbitrationblog.kluwerarbitration.com/2009/03/08/are-cas-arbitrations-governed-by-the-new-york-convention/> accessed 10 October 2024

Duval A, 'The Rules of the Game: The Need for Transparency in Sports Governance' (2016) Play the Game Comment 01.07.2016 <https://www.playthegame.org/news/the-rules-of-the-game-the-need-for-transparency-in-sports-governance> accessed 10 October 2024

Online sources

African Court on Human and Peoples' Rights, 'About the Court' <https://www.african-court.org/wpafc/about-us/> accessed 13 September 2024

Association for Applied Sport Psychology, 'Definition of Sport' <https://appliedsportpsych.org/about-the-association-for-applied-sport-psychology/about-sport-and-performance-psychology/definition-of-sport/> accessed 19 June 2024

Centre for Sport and Human Rights, 'About Us' <https://www.sporthumanrights.org/about-us/> accessed 20 October 2024

Court of Arbitration for Sport, 'Statutes of the Bodies Working for the Settlement of Sports-Related Disputes' (CAS, 2013) <https://www.tas-cas.org/fileadmin/user_upload/Code_2013_final__en_.pdf> accessed 10 November 2024

Davidson H, 'Hakeem al-Araibi: Power, Politics, Football and the Will of the People' *The Guardian* (13 February 2019) <https://www.theguardian.com/sport/2019/feb/14/hakeem-al-araibi-power-politics-football-and-the-will-of-the-people> accessed 15 September 2024

FIFA, ‘Dispute Resolution Chamber’ (2021) <https://www.fifa.com/who-we-are/legal/judicial-bodies/dispute-resolution-chamber/> accessed 5 September 2024

Imray G, ‘Olympic Champion Caster Semenya Wins Human Rights Case but Testosterone Rules may Remain for Years’ (2023) <www.apnews.com/article/caster-semenya-sex-eligibility-court-ruling-0ad6f46e1357659f8cc315dde7b01faf> accessed 28 March 2024

Inter-American Court of Human Rights, ‘About the Court’ <https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en> accessed 13 September 2024

International Olympic Committee, *Olympic Charter* (17 July 2020) <https://stillmed.olympics.com/media/Documents/International-Olympic-Committee/IOC-Publications/EN-Olympic-Charter.pdf> accessed 10 November 2024

Panagiotopoulos D, ‘International Symposium of Sports Law “Sports in the World Today and Sports Law”’ (5 July 2024, Athens) <https://lnkd.in/dxkCxCyh> accessed 10 May 2024

Slamat A, ‘Sports Law: What is It?’ (2023) <https://slamatlaw.co.za/sports-law-ashley-slamat-attorneys-no-games-just-law/> accessed 29 March 2024

Solanki A, ‘AI and Data Analytics in Sports: Use Cases, Benefits, and Considerations’ (Softwebsolutions, 11 March 2024) <https://www.softwebsolutions.com/resources/ai-data-analytics-use-cases-in-sports.htm>

South African Sports Confederation and Olympic Committee (SASCOC), ‘About SASCOC’ <https://www.sascoc.co.za> accessed 25 February 2025

South African Football Association (SAFA), ‘FIFA Statutes and Regulations Governing the Application of the Statutes: Standing Orders of the Congress’ (12 April 2014) <https://www.safa.net/fifa-statutes/> accessed 5 May 2024

South African Rugby Union (SARU), ‘Constitution of the South African Rugby Union’ (11 May 2021) <https://www.sarugby.co.za/media/atgcx3zp/saru-constitution-approved-agm-2021-final.pdf> accessed 18 May 2024

Threshold Attorneys & Solicitors, ‘Arbitration and the Principles of Natural Justice’ <www.threshold-attorneys.com> accessed 17 September 2024

Western Province Cricket Association, ‘Western Province Cricket Association Constitution’ (3 August 2020) <https://newlandscricket.com/wp-content/uploads/2020/09/WPCA-Constitution-Approved-at-AGM-on-3-August-2020.pdf> accessed 5 April 2024

World Intellectual Property Organisation, ‘Sport and Broadcasting Rights: Adding Value’ (2013) <www.wipo.int> accessed 5 March 2024

World Anti-Doping Agency, ‘World Anti-Doping Code 2021’ <https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code> accessed 10 September 2024