

ALESSANDRA TEIXEIRA

Human Rights Based Approach to Grassroots Sports and Physical Activities

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Abbreviations

COE: Council of Europe

CAT: Convention Against Torture

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CRC: Convention on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

ECHR: European Charter of Human Rights

ECtHR: European Court of Human Rights

EU: European Union

FIFA: Fédération Internationale de Football Association

HRBA: Human Rights Based Approach

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant of Economic Social and Cultural Rights

ISCA: International Sport and Culture Association

NGO: Non-Governmental Organization

RBA: Rights Based Approach

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNGA: United Nations General Assembly

UNHRC: United Nations Human Rights Council

WHO: World Health Organization

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Introduction

This paper will establish a link between sports and human rights. Its aim is to demonstrate, in a pedagogical way, how human rights based approaches can be used for advancing grassroots sports and physical activities. Incidentally it will also deal with how sports can be used and are being used to implement and strengthen human rights.

The paper will be carried out in three parts. The first part will briefly define human rights based approach and give an overview of its main elements and principles. It will also enumerate some of the relevant aspects of the adoption of a human rights based approach to grassroots sports and physical activities.

The second part will deal with the compilation of the international human rights law that assure a right to sports and application of the international human rights law system to sports.

The third part will set some examples of rights that sports and physical activities should be and/or are already being used as a tool for realization.

I. Human Rights Based Approach

1. Definition

Human rights-based approach or simply rights based approach (RBA) is a concept created by experts of Development Sciences. It is a strategy to development and social change that is grounded on the principle that all people are entitled to minimum standards in terms of material and personal well-being. Such standards are stated in human rights legislation and documents. It is a framework that replaces the charity aspect of development interventions for a structure of rights and responsibilities. It recognizes that people are not beneficiaries, but active rights holders and identifies corresponding duty bearers, against whom claims can be held. RBA integrates the norms, principles, standards and goals of the international human rights law system into the plans and processes of development.¹

2. Brief History

The aim of international development organizations is to reduce poverty and relief suffering. Traditionally, this has meant direct actions and interventions e.g. assistance in cases of disaster, donation of food, health and education

¹ DIHR guide.

services. Despite numerous successful cases of such kind of intervention, it became obvious that global needs were not growing smaller.

In recent years many development and social change organizations have understood that what they call “basic needs” are, indeed, human rights. They have also realized that the failure in attending a need might have its origin in the violation of a human right. The lack of drinking water, for instance, is a violation of a social and economic right. The fear to openly express critics against a government prevails in situations where the right to freedom of speech is violated.

It came to conscience that all worthwhile processes of social change are simultaneously rights-based and economically grounded, and should be conceived of in such terms. To have a right to something—say, food—is not just about having enough of that: a slave can be well nourished too. It is about the way the interactions between citizens, states, corporations and other entities in a society are structured, and how they affect the most marginal and weakest. It is about enabling people to make decisions about their own lives rather than being the passive objects of choices made on their behalf.²

The rising of such conscience meant the evolution of a model of development strategy based on fulfilling the needs of poor people to a model of development where all people are entitled to demand their rights.³

Human rights based approach was “officially” recognized as a development strategy in 2000, when the Human Development Report 2000, entitled *‘Human Rights and Human Development’*, stated that human rights and human development share a common vision and a common purpose – to secure the freedom, well-being and dignity of all people everywhere.

The table below shows the evolution of the different approaches to development.⁴

Charity Approach	Needs Approach	Rights Based Approach
Focus on input not outcome	Focus on input and outcome	Focus on process and outcome
Emphasizes increasing charity	Emphasizes meeting needs	Emphasizes realizing rights
Recognizes moral responsibility of rich towards poor	Recognizes needs as valid claims	Recognizes individual and groups hold claims toward legal and moral duty-bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestation of problems	Focus on immediate causes of problems	Focuses on structural causes and their manifestation

² Artigo Lund

³ Guia em portugues

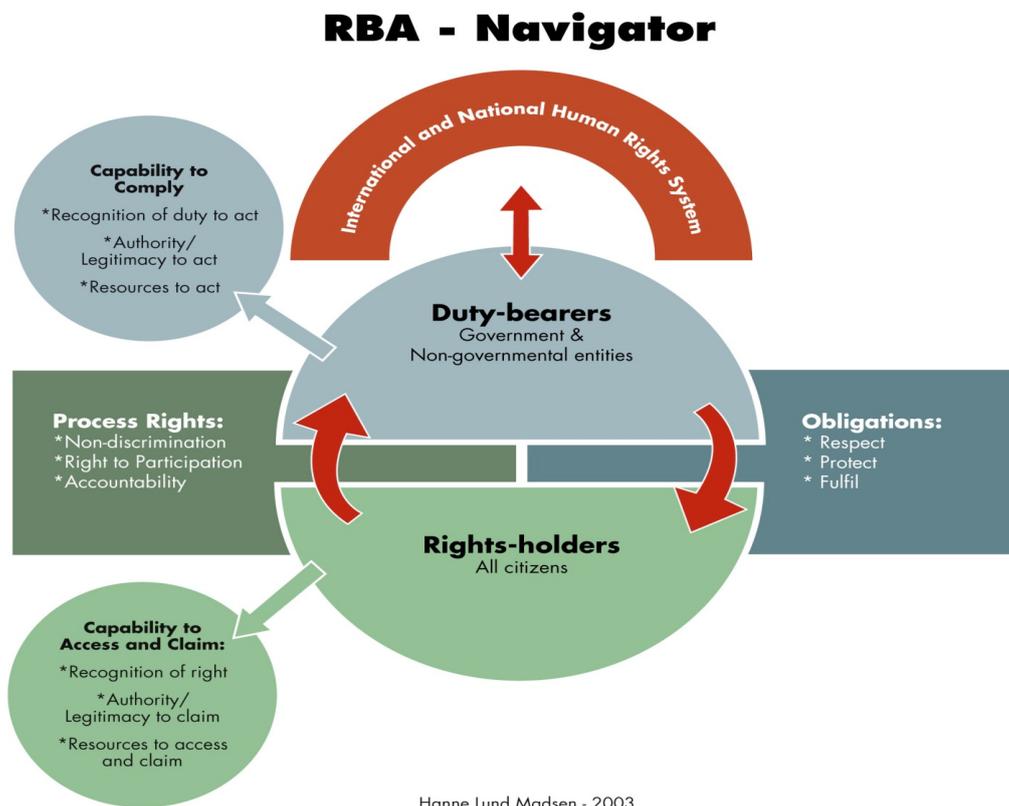
⁴ DIHR Guide, p. 10

3. How does RBA work?

As aforementioned, RBA is a model of development where all people are entitled to demand their rights.⁵ Thus, it abandons the charity perspective in order to give place to a legal obligations approach, to the reality of law.

RBA requires analyses that go beyond the simple statement of existing problems. The consideration of the full range of human rights will form the basis for setting priorities. Programs describe a situation not simply in terms of needs. On the contrary, a program must identify which rights are not being respected considering society's legal obligations, established by international and national human rights norms.

In accordance, the objectives of development and social transformation organizations are converted into claims, duties and mechanisms that can promote respect and adjudicate the violation of rights. The illustration bellow



RBA is both a process and an outcome. This means that human rights do not only provide a vision of what development should strive to achieve (to secure the freedom, well-being and dignity of all people everywhere), but it also provides for a set of programming tools and essential references (human

⁵ Guia em portugues

rights standards and principles) that ensure pertinent analysis, focus on important human goals, ownership by the concerned people and sustainability of development efforts.⁶

Apart from being structured on the international human rights framework, RBAs also make use of direct interventions aiming at building capacity of rights holders to claim their rights and the ability of duty bearers to answer to their obligations. Many different methods are applied -- including political analysis, advocacy, and capacity building of both right holders and duty bearers – with the objective of facilitating the process and empowering marginalized people and communities by expanding their choices and their ability to exercise their rights and freedoms.⁷

In RBA strategies, people are not merely objects of an intervention. On the contrary, they play the leading roles. The application of the principle of participation (see page ?), implies on promoting people’s rights to participate in decision-making processes that affect their lives. Participation is regarded not only as an indispensable means to reach an end in any programming, but the empowerment of people and civil society as an end in itself.

By merging development strategies with the human rights framework and its focus on justice, RBA becomes much more sensitive to issues of power balances, discrimination, insecurity, and vulnerability. RBA recognizes that economic growth alone does not necessarily lead to social development or better conditions for the excluded. Thus RBAs frequently deal with uncomfortable issues, connected to the relations of power, which are difficult to discuss but critically important, and must be tackled in order to face problems with depth.

The move from needs to rights and from charity to duties implies also increased focus on accountability – probably the most obvious value added by a human rights-based approach. Increased focus on accountability holds the key to improved effectiveness and transparency of action.⁸ Where there are legal obligations, there are identifiable duty-bearers and also claim-holders. RBA focuses on participation and empowerment of the disadvantaged people and their right to hold governments and other responsible actors accountable for respecting, protecting and fulfilling their rights.⁹

RBA’s fundamental challenge is to find ways to create an enabling environment in which public policy can most effectively provide resources for advancing human rights. In most cases, the human rights situation can be strengthened through capacity development in institutions of the central and local government; by aligning national laws with treaty obligations; by strengthening/fostering a culture of human rights; by focusing on the most

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⁷ *supra*, note 3.

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⁹ Check box on page ?.

vulnerable; by taking into account the recommendations of UN Treaty Bodies; by influencing the national budget allocation; by improving mechanisms for implementation, etc.

Respect, Protect, Fulfill.¹

Human rights obligations are generally divided into three classes: to respect, to protect and to fulfill. This classification is particularly helpful when navigating the complex area of extraterritorial responsibility for human rights. While the obligation to respect is negative in nature, the obligations to protect and to fulfill are positive in nature.

The obligation to respect: requires the State and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging on their freedom to access resources to satisfy their needs. It also requires that legislative and administrative codes take account of guaranteed rights.

The obligation to protect: obliges the State and its agents to prevent the violation of rights by other individuals or non-state actors. Where violations do occur the State must guarantee access to legal remedies.

The obligation to fulfill: demands that the State pro-actively engages in activities that aim either to maintain, establish or improve standards. An obligation to fulfill is either absolute or programmatic. It involves issues of advocacy, public expenditure, governmental regulation of the economy, the provision of basic services and related infrastructure and redistributive measures. The duty of fulfillment comprises those active measures necessary for guaranteeing opportunities to access entitlements.

4. RBA's Principles:

RBA projects shall be guided by five very basic human rights principles: universality, indivisibility, equality and non-discrimination and the rule of law. Such principles are the essence of a rights based development intervention. When applying a rights-based approach, some actions may seem very similar to traditional approaches. Such similarity is not undesirable, as long as the human rights principles are on the core of every action. Here comes a brief explanation for each of them:

a) Universality and Inalienability

Every woman, man and child is entitled to enjoy her or his human rights simply by virtue of being human. The character of being universal is the very characteristic that distinguishes human rights from other types of rights – such as citizenship rights or contractual rights. The principle of universality requires that no particular group, such as geographically remote communities or prisoners, be left out of the reach of social change and development programs. Moreover, recognizing the fundamental principle of universality will mean that

measurement should not only focus on rights fulfilled, but also on rights that remain to be implemented.

Inalienability, in the other hand, means that human rights cannot be taken away, given away or given up. Human beings are entitled to human rights from the day they are born to the day they die. Human rights cannot, in any manner, be compromised or exchanged.

b) Indivisibility

Human rights are indivisible. Enjoyment of one right is indivisibly inter-related to the enjoyment of other rights. For instance, enjoyment of the highest attainable standard of health requires enjoyment of the rights to information and education as well as the right to an adequate standard of living. All human rights should be treated with the same priority.

Therefore, policies and programs should not be aimed at implementing one particular right alone, but in combination with all other rights. However, the principle of indivisibility of human rights does not forbid the settlement of priorities. The scarcity of resources and institutional constraints often require the establishment of priorities, for instance favoring food and/or health to other rights in a given situation.

c) Equality and non-discrimination

The principle of equality and non-discrimination is a primary principle of human rights. It provides a legal standard, which is intimately related to the very concept of human rights. If human rights are intrinsic to every human being, without any additional requirements, discrimination and exclusion cannot be tolerated.¹⁰

Discrimination in the enjoyment of human rights on any ground, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is expressly prohibited by many international legal documents. The term “or other status” is interpreted to include personal circumstances, occupation, life-style, sexual orientation and health conditions.

Equality requires that all persons within a society enjoy equal access to the available goods and services that are necessary to fulfill basic human needs. Equality before the law prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Thus, the principle of non-discrimination applies to all state policies and practices, including those concerning healthcare, education, access to services, travel regulations, entry requirements and immigration.

¹⁰ C. Tomuschat, *Human Rights: Between Idealism and Realism*. (Oxford, New York, 2003), p. 61.

However, "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under (human rights) law".¹¹ Therefore, the adoption of special measures is tolerated, if they aim at the advancement of special groups, e.g. affirmative action for the inclusion of girls at schools in communities where the majority of students are boys.

d) Participation

Under human rights law participation means that every person and all peoples are entitled to participate in, contribute to, and enjoy civil, economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. Thus, participation is not simply something desirable from the point of view of ownership and sustainability, but rather a right with profound consequences for the design and implementation of development activities. Human rights law uses the word 'meaningful participation' in this regard. It is not participation at any price, the more the better. It is a qualitative approach to participation where meaningful is the criterion of validity.

The principles of participation and inclusion mean that all people are entitled to participate in society to the maximum of their potential. This, in turn, necessitates provision of a supportive environment to enable people to develop and express their full potential and creativity.

e) The rule of law

States have the primary responsibility to create the enabling environment in which all people may enjoy all human rights, and have the obligation to ensure that respect for human rights norms and principles is integrated into all levels of governance and policy-making.

Rights themselves must be protected by law, meaning that any dispute about them is not to be resolved through the exercise of some arbitrary discretion, but through the adjudication by competent, impartial and independent processes. These procedures will ensure full equality and fairness to all parties, and determine the questions in accordance with clear, specific and pre-existing laws, known and openly proclaimed. All persons are equal before the law, and are entitled to equal protection. Without a sound legal framework, without an independent and honest judiciary, economic and social development risks collapse. The rule of law ensures that no one is above the law, and that there will be no impunity for human rights violations. It includes resolution of competing claims, access to justice and redress for abuse of human rights and the

¹¹ Human Rights Committee, 1989, Non-discrimination, General Comment 18, para.11.

just distribution of public resources and the benefits and burdens of particular policies.

The rule of law applied to development programs is translated as accountability.

5) The importance of adopting a Rights Based Approach to Sports

Human rights based approaches are structured on human rights international norms. Human rights norms have found their way into legally binding international and regional treaties, ratified voluntarily by a majority of States spread around the globe. To ratify a treaty means giving it the force of law. Having a legal force ensures the rise of entitlements. Therefore, individuals are enabled to legitimately claim their rights against the proper duty bearers. To base the advocacy for sports and physical activities in legal norms, will place it in solid ground and give it greater credibility.

Moreover, the rights-based approach is useful not so much because it posits rights as fixed properties or legal certainties, nor because leads to engagement in actions or supply services that we would never have thought of beforehand. Rather, its use lies in two things: one about prerogatives, and one about processes – in other words, one about ends and one about means.

When insert into the RBA structure, sports are a powerful mechanism both during the process and the outcome of development interventions. Legal norms can be used to achieve sports objectives (e.g. the right to have physical education at schools or the construction of a sports court). Likewise, sports can be used as a mean to advance and further human rights in general (right to health would be the obvious example, but a structured analyses will follow on part 3, showing other examples).

The RBA approach also adds to the sports agenda the values of accountability. Increased focus on respecting, protecting, promoting and fulfilling all human rights of all people holds the key to improved effectiveness and transparency of action. RBA emphasizes the interrelationship between the individual and the groups at the micro level and the state and the international community at the macro level.

When it comes to ensuring rights, governments are the primary duty-bearers. However, there also exist moral duty-bearers, i.e. individuals and institutions that have the power to affect other people's lives. Local leaders, companies and civil society organizations are moral duty-bearers – even though they can be regarded as rights-holders in other regards. In that sense, grass roots sports associations can play a key role and achieve much more than what can be seen from surface.

A human rights based approach will further generally lead to better assessed and more focused strategic interventions by providing the normative

foundation for tackling fundamental issues in the sports arena. Another important value provided by its application is the focus on the most marginalized and excluded in society as their human rights are most widely denied or left unfulfilled (whether in the social, economic, political, civil or cultural spheres, and often, a combination of these).

When translated to sports, this can mean that most of the funds destined to sports should be well invested in grassroots activities, with the inclusion of marginalized areas and the elderly, instead of solely benefiting high-performance athletes and

The evaluation of experienced development workers is that, by adopting the rights-based approaches, more than opportunities for people to meet their own needs are created. Structural changes in the society, visioning the promotion of equality, livelihood security and justice for all are also tackled, so that people can live with dignity and without fear. ¹²

II. Legal Framework

¹² Manual Oxfam-CARE.

Introduction

As already mentioned what differs RBA from other approaches is the fact that, when the human rights based approach is embraced, a legal framework shall be used to guide the pursuance of the realization of the objectives of a project. This part of the study will introduce such framework and the rules connected to sports will be identified.

Human rights refer to those rights that are inherent to the person and belong equally to all human beings regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. They deal with freedom from fear and want, and call for respect, protection, and fulfillment from duty-bearers.

At the international level, human rights are contained in numerous international treaties and declarations. There are some treaties, agreements and declarations that were signed and ratified by a great number of member countries of the UN, spread around the globe. The collection of such documents is called the Universal System of Human Rights Protection. Following, there will come a short introduction of each of these documents.

There also exist agreements between countries aiming at protecting human rights within an area or region such as the European System, the Inter-American System and the African System. In this study, we will focus on the Universal and the European System (see section 2, on page 2).

1. The Universal System for Human Rights Protection

The United Nations (UN) has created a global structure for protecting human rights, based largely on its Charter, non-binding declarations, legally binding treaties and on various activities aimed at advancing democracy and human rights throughout the world.

The UN often finds it necessary to define rights in a cautious manner, as it is host to an extremely diverse group of member states, with varying economic, social, cultural and political histories. Subsequently, the UN must accommodate these differences in its mechanisms for protecting the human rights as they are outlined in treaties and declarations. Thus, these methods may be less substantive or lack in strict enforcement as compared to those of regional systems, as the European. Broad agreements allow the UN to accommodate a spectrum of different viewpoints. The UN thus affects more nations and many more individuals than any regional institution could.¹³

Apart from the Universal Declaration of Human Rights, there are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its

¹³ <www.hrea.org/index.php?doc_id=437> accessed on 01 November 2011.

States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

a) Universal Declaration of Human Rights

Adopted unanimously in 1948 by the United Nations General Assembly, the Universal Declaration of Human Rights (UDHR) constitutes an important source of general principles of international human rights law, providing a useful legal framework for all sorts of RBA initiatives. Although it is not considered legally binding on States, the UDHR has time and again been recalled in resolutions of international conferences and in resolutions of the United Nations Security Council as well as the General Assembly. This demonstrates that it has entered the body of common legal principles, which are no longer challenged because of their origins.¹⁴

There exist other legal instruments that codify many of the provisions found in the UDHR that are relevant to sports and physical activities. As *treaties*, they are accorded more legal weight than the UDHR as they are legally binding on those States, which have ratified them.

The International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights together form the legally binding counterpart of the UDHR. The three instruments together make up what is commonly referred to as ‘the international bill of rights’. The rights therein are frequently referred to as “universal, indivisible, interdependent, and interrelated.” They will be studied in the following subsections.¹⁵

b) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was concluded 16 December 1966, entered into force 23 March 1976. Though intended to address traditional civil and political rights, it contains reference to economic, social and cultural rights.

c) International Covenant on Economic, Social and Cultural Rights

The ICESCR was as well concluded 16 December 1966, entered into force 3 January 1976. Though it is viewed as the most authoritative pronouncement on economic, social and cultural rights, it was inspired by the European Social Charter, which was adopted five years before. In contrast to civil and political rights, which are basic negative rights in nature, economic social and cultural rights are generally programmatic and subject to progressive realization.¹⁶

¹⁴ C. Tomuschat, *Human Rights: Between Idealism and Realism*. (Oxford, New York, 2003), pp. 63-64.

¹⁵ COHRE (2008), *supra* note 71, p. 78.

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d) The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of Discrimination against Women (CEDAW) came into force on 3 September 1981. Since then, it has been described as the international bill of rights for women. The Convention addresses the various aspects of discrimination faced by women and provides measures aimed at ensuring the *de facto* and *de jure* equality of women and men and the overall protection of women against discrimination.

e) Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities came into force on 3 May 2008. It is intended to protect the rights and dignity of persons with disabilities. Parties to the Convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law.

f) Convention on the Rights of the Child

The Convention on the Rights of the Child came into force on 2 September 1990. It sets out the civil, political, economic, social, health and cultural rights of children. The Convention generally defines a child as any human being under the age of eighteen, unless an earlier age of majority is recognized by a country's national law.

g) International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted in 1965 and entered into force in 1989. It recognizes in its preface the principle of gender discrimination and human dignity, according to what the entire convention shall be interpreted.

h) Convention Against Torture:

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted on 10 December 1984. It is an international human rights instrument, under the review of the United Nations, that aims to prevent torture around the world. The Convention requires states to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe they will be tortured.

i) International Convention on the Rights of All Migrant Workers and Member of Their Families:

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003. It emphasizes the connection between migration and human rights, which is increasingly becoming a crucial policy topic worldwide. It sets a moral standard, and serves as a guide and stimulus for the promotion of migrant rights in each country.

In addition to international treaties, [United Nations General Assembly Resolutions](#) carry moral persuasion and contain provisions on sport-related rights. Although not binding on States in the same manner as the conventions, they recognize a range of rights and goals that can guide the interpretation of binding norms. They carry moral persuasion and contain provisions on sport-related rights. UN General Assembly Resolutions 58/5 of 3 of November 2003, 59/10 of 27 October 2004; 60/1 of 16 September 2005; 61/10 of 3 November 2006; 62/271 of 23 November 2008 and 65/4 of 23 November 2010 are straightly related to the right to sports and physical activities and will be more detailed in Part 3 (see page ?).

2. The European System for Human Rights Protection

The European continent suffered great devastation from the effects of World War II. Decided to undermine the possibilities of a new war to happen, leaders throughout the region gathered to renew the efforts of peacekeeping and cooperation. As a result, in 1949, the Council of Europe (COE) was created. The Council, which was originally created by 10 members, currently gathers 45 member states with over 875 million people and is a forum for dialogue for over 400 NGOs with consultative status.¹⁷

The Council of Europe is based on principles of pluralist democracy, human rights, and the rule of law. Additionally, it is concerned with promoting European culture and diversity, consolidating and maintaining democratic stability, and promoting economic strength.¹⁸ The COE headquarters are located at the Palais de l'Europe in Strasbourg (France).

Aiming at advancing the rule of law, human rights, and democracy the COE signed, in 1950, the European Convention of Human Rights.¹⁹ Differently from the UDHR, the ECHR is a binding instrument. However, as an effort of furthering the protection on specific issues, other three documents were adopted. In the same fashion as the UN system, each of these instruments has established a committee of experts to monitor implementation of the treaty provisions by its

¹⁷ <www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en>, accessed on 11 November 2011.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

a) The European Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention for the Protection of Human Rights and Fundamental Freedoms, known simply as the European Convention on Human Rights (ECHR) was signed in Rome on November 4, 1950. It came into force in September 3, 1953 and was the COE first legal treaty to protect human rights, as well as the first international human rights treaty with enforceable mechanisms.²⁰ It was certainly inspired by Universal Declaration of Human Rights. Only member states of the COE can become a party to the ECHR.

The treaty deals mainly with civil and political rights, which are found in articles 1-18. Articles 19-51 list the working mechanisms of the European Court and Commission, while Protocol 1, 4, 6 and 12 include additional rights.²¹

b) The European Court of Human Rights

The European Court of Human Rights (ECtHR) is located in Strasbourg, France. It was established by the ECHR in 1950, and hold its first session on 1959.²²

The Council of Europe's Parliamentary Assembly elects the judges to the Court. The Court accepts applications of instances of human rights violations from individuals as well as states. However, it is rare for a state to submit allegations against another state, unless the violation is severe. In order for an application to be accepted by the Court, all domestic legal remedies available to the applicant must have been exhausted.

The ECtHR has never had a case directly related to the right to practice sport and/or physical activities. When the word *sport* – or *sports* -- is typed on the Court's searching database, one can find no more than 22 cases where the word appears²³. By analyzing each of the cases, one can see that very few of them have anything to do with the relation between sports and human rights, as the term is mostly used to describe facts e.g. "In 1987 the town council reclassified their land as a green area and a *sports* and leisure zone"²⁴ or "they fired about 40 bullets within 15 seconds at the car in which Przemysław was driving away from them outside of Spała *sports* centre".²⁵

The same happens with the words *physical activities* are searched. The system can find only 5 results. Here, though, the cases actually relate to the right

²⁰ <www.echr.coe.int/NR/rdonlyres/DF074FE4-96C2-4384-BFF6-404AAF5BC585/0/Brochure_en_bref_EN.pdf> accessed on November 12, 2011.

²¹ <www.hrea.org/index.php?doc_id=365> accessed on November 12, 2011.

²² *Supra*, note 22.

²³ As a matter of comparison, when the word *privacy* is typed, HUDOC displays more than one hundred results.

²⁴ *Pechlivanidis and Others v. Greece* (no. 48380/07)

²⁵ *Wasilewska and Kałucka v. Poland* (nos. 28975/04 and 33406/04)

to practice physical activity and will be further exposed in the next part of the study (see page ?).

Do not confuse!!!	
Court of Justice of the European Union	Based in Luxembourg, this Court ensures compliance with EU law and rules on the interpretation and application of the treaties establishing the European Union.
International Court of Justice	Judicial organ of the United Nations, based in The Hague . ICJ’s role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies.
International Criminal Court	Also based in the Hague, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.

c) European Social Charter

The European Social Charter, adopted in 1961 and monitored by the European Committee of Social Rights, guarantees economic, social and cultural rights, such as the rights to housing, health, education, employment, social protection, movement of persons, and non-discrimination. It inspired the UN ICSCR. A new version of the Charter (revised in 1996) came into force in 1999.²⁶

d) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture was adopted in 1987 and entered into force in 1989 and was amended by Protocol 1 and 2. The Convention created the European Committee for the Prevention of Torture, to monitor the treaty. By 2003, 44 members of the COE had ratified the treaty. Protocol No. 1, which entered into force in 2002, allows any non-COE member state to become a party to the Convention.²⁷

e) Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities, the first binding international treaty to offer protection specifically for minorities, was

²⁶ *Supra*, note 22.
²⁷ *Ibid*.

adopted in 1995 and entered into force in February 1998. The groundwork for this treaty was laid in an earlier treaty, the European Charter for Regional or Minority Languages, which was adopted in 1992. The Framework Convention is monitored by the Committee of Ministers, which is assisted by an Advisory Committee of independent experts.²⁸

2. B) European Union Charter of Fundamental Rights

Although the European Union (EU) was initially created as an institution for promoting trade and economic stability for its members, it is also based on principles of democracy and human dignity. All EU members have ratified the Council of Europe's European Convention of Human Rights and accepted the jurisdiction of the European Court of Human Rights as a prerequisite for joining the EU. This means, for example, that all member states have abolished the death penalty before joining the European Union.

Maybe for realizing the straight connection between economic stability and human rights realization, the EU proclaimed its Charter of Fundamental Rights in December 2000. The Charter became binding in December 2009 when the Lisbon Treaty came into force. It is the first formal EU document to combine and declare all the values and fundamental rights.

The Charter is a comprehensive document. In its 54 articles, it deals with civil, political, economical and social rights. It mainly assembles existing rights that were previously scattered over a range of international sources. However, it also innovates with a special provision that deals specifically with the rights of the elderly.

Not all the human rights treaties listed above directly articulate everyone's right to practice sports and/or physical activities. However, all of them do articulate related rights (e.g. right of everyone to the enjoyment of the highest attainable standard of physical and mental health, right to take part in cultural life, etc).

Complementary, as aforementioned, there are other human rights instruments that are not binding but confer with treaties in order to give them updated interpretation. In opposition to treaties, that are considered *hard law* instruments, *soft law* are international norms, principles and procedures that located outside of the formal legal source systems or that lack the requisite normative content to create enforceable rights and obligations.

Nevertheless, soft laws are capable of producing certain legal effects. Although not legally binding, these instruments may reflect existing principles of customary international law and, in any case, they represent the trends

²⁸ *Ibid.*

prevailing in the international community.²⁹ Even where *soft law* resources do not provide legal basis *per se*, they can provide guidance in interpretation.

Outside the courts and the legal world, though, soft law instruments can be vital. They provide information on resources for successful advocacy, documentation of violations and information on trends and developments in analysis, particularly on crosscutting issues.³⁰ They provide guiding about political targets and political plans and will.

Thus, both treaties and soft law instruments can become vehicles for focusing consensus on rules and principles, and mobilizing a consistent, general response on the part of States. They may additionally constitute subsequent agreement between the parties on how to interpret a treaty and/or apply its provisions.³¹

Again, human rights are indivisible and should be interpreted wholly. Therefore, what will follow is a holistic and systematic analysis that points how treaties and other international human rights documents interact and combine to constitute a legal and political platform for the protection and enforcement of the right to sport.

3. Sport as a Human Right

When the UDHR or the European Charter were adopted, in 1948 and 1950, respectively, the right of access to and participation in sport and play did not receive as much attention as it does today, when scientific knowledge apprehended the importance of sports and physical activities for the individual and the society. However, international law also developed to suit the concern with sports and physical activities. If, in one hand, the main human rights instruments have failed in expressly protecting sports, physical activities and play, later instruments have incorporated them as a right, as it will be noticed from the analysis that follows.

The most straight-forward document when it comes to defining sports as a right is UNESCO's International Charter of Physical Education and Sport, adopted in 1978. UNESCO's International Charter, on its first article, summarizes the current legal understanding of the international community on sports and physical activities. It can be read as follows:

Sport is a Fundamental Right for All

Article 1: The practice of physical education and sport is a fundamental right for all

²⁹ F. Francioni, 'International Soft Law: a contemporary assessment' in V. LOUSE and M. FITZMAURICE (eds.), *Fifty years of the International Court of Justice: essays in honour of Sir Robert Jennings*, (Cambridge University Press, Cambridge, 2007), p. 168.

³⁰ COHRE (2008), *Sources 5 (Second Edition), Women and Housing Rights*, p. 36, <www.cohre.org/topics/women-housing-rights>, accessed on 10 December 2008

³¹ A. Boyle, 'Soft Law in International Law-Making', in Evans, p. 142

1.1. Every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality. The freedom to develop physical, intellectual and moral powers through physical education and sport must be guaranteed both within the educational system and in other aspects of social life.

1.2. Everyone must have full opportunities, in accordance with his national tradition of sport, for practicing physical education and sport, developing his physical fitness and attaining a level of achievement in sport which corresponds to his gifts.

1.3. Special opportunities must be made available for young people, including children of pre-school age, for the aged and for the handicapped to develop their personalities to the full through physical education and sport programs suited to their requirements

The express recognition of sports and physical education as fundamental rights can also be found in the CEDAW, on article 10 and 13.

Equality of opportunities for men and women to participate in sports and physical education

Article 10 - States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (g) The same opportunities to participate actively in sports and physical education;

Women's rights to participate in recreational activities, sports and all aspects of cultural-life

Article 13 - States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (c) The right to participate in recreational activities, sports and all aspects of cultural life.

When the CEDAW, in article 10, recognizes women's rights to participate actively in sports and physical education, it off course does not exclude men's right to participate in sports. On the contrary, it presumes men are entitled to such rights and assures women the same opportunities as men. This becomes even clearer when, in article 13, the CEDAW convention guarantees the same rights between men and women "to participate in recreational activities, sports and all aspects of cultural life".

The same logic shall be applied when interpreting the CRPD, which also expressly recognizes sport as a right, as follows:

Right of persons with disabilities to participate in cultural life, leisure and sport on an equal basis with others

Article 30

Participation in cultural life, recreation, leisure and sport

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

a. To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

- b. To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- c. To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- d. To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
- e. To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Again, when the CRPD assures persons with disabilities the right to participate in cultural life, leisure and sport in an equal basis with others, it announces that *others* have such right and that this very right shall not be denied to persons with disabilities.

Other treaties, although not expressly addressing sports and physical activities, enshrine rights that are so closely connected to sports that, even not mentioning sports directly, they bring the human rights to sports folded within their meanings. This is the example of the UDHR, CRC, CERD, ICSECR. Here follows article 31 of the CRC:

Right of all children to engage in play and recreational activities and to participate freely in cultural life and the arts.

Article 31: States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Rest and leisure is also included in article 24 of the UDHR and article 7(d) of the ICSECR. It is not only limited to children. *Rest* includes the basic necessities of physical or mental relaxation and sleep. *Leisure* is a wider term implying having the time and freedom to do what one pleases.³² *Play* is a term employed in ethology and psychology to describe a range of voluntary, intrinsically motivated activities normally associated with pleasure and enjoyment.³³ *Recreational activities* embrace the whole range of activities undertaken by choice for the purposes of pleasure.³⁴ All these actions: rest, leisure, play and recreational activities very often use sports and physical activities as a meaning of realization, amongst both high and low income groups. Thus they can and shall be protected under article 31.

The right to participate in cultural life is also enshrined in article 27(1) of the UDHR and in the ICSECR, as follows:

³² Implementation Handbook for the Convention on the Rights of the Child, accessed at < article31.ipaworld.org/wp-content/uploads/2009/10/Article31-2007edition.pdf>

³³ Garvey, C. (1990). *Play*. Cambridge, MA: Harvard University Press.

³⁴ UNICEF Implementation Handbook for the Convention on the Rights of the Child, accessed at < article31.ipaworld.org/wp-content/uploads/2009/10/Article31-2007edition.pdf>

Right to take part in cultural life

Article 15: 1. The States Parties to the present Covenant recognize the right of everyone:(a) To take part in cultural life.

Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.³⁵

Sports and games are part of intangible heritage and a symbol of the cultural diversity of our societies. The UN Committee on Economic Social and Cultural Rights -- the body of independent experts that monitors implementation of the ICESCR-- recognizes that sports and games are encompassed by article 15.³⁶ Sports and games are also an efficient means to convey values of solidarity, diversity, inclusiveness and cultural awareness.³⁷

Sports are, in many cases, very much connected with a people's identity. Basketball, for instance, is considered as one of the most visible components of African-American cultural expression in the twentieth century.³⁸ Moreover, many countries have a sport or a physical activity modality so rooted in their culture and habits, that they become internationally identified by and associated with it. An example of that is Brazil, which is frequently related to football, *capoeira*, *samba* and, more recently, Brazilian Jiu-Jitsu.

People participate in sports on a variety of levels -- as fans, consumers, community participants, organizers, professionals, amateurs, and casual critical observers. The right to take part in cultural life, when applied to sports, does not exclude any of these forms of participation. On the contrary, exactly for being so ample the right to take part in cultural life protects the right to participate in sports in any of its manifestations.

Right to the highest attainable standard of physical and mental health

Article 12: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The human right to health is recognized in numerous international instruments. Besides Article 12.1 of the International Covenant on Economic, Social and Cultural Rights, Article 25.1 of the Universal Declaration of Human Rights affirms: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services". The right to health is also recognized, *inter*

³⁵ General Comment 21

³⁶ *Ibid.*

³⁷ UNESCO, <www.unesco.org/new/en/social-and-human-sciences/themes/sport/physical-education-and-sport/traditional-sports-and-games/>accessed 18 January 2012

³⁸ John Bloom. *Muscular Culture: The Cultural Significance of Sports*. <journals.ku.edu/index.php/amerstud/article/viewFile/2785/2744>, p.155.

alia, in article 5 (e) (iv) of the CERD, in articles 11.1 (f) and 12 of CEDAW and in article 24 of the CRC. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11) and the EU Charter of Fundamental Rights (art. 35).

According to the preamble of the constitution of the World Health Organization (WHO), health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Health is a fundamental human right indispensable for the exercise of other human rights.³⁹ Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programs, or the adoption of specific legal instruments.

The reference in article 12.1 of the ICSECR to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2⁴⁰ acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health.⁴¹

Since the adoption of the two International Covenants, in 1966, the world health situation has changed dramatically and the notion of health has undergone substantial changes and has also widened in scope. More determinants of health are being taken into consideration, such as resource distribution and gender differences.⁴²

One of the biggest advancements in terms of health since the adoption of the two conventions and the UDHR was the scientific findings on the extreme impact of physical activities for health and general well-being. Lack of physical activity has been identified as the fourth leading risk factor for global mortality. In the WHO European Region, lack of activity is estimated to be related to one million deaths per year.⁴³

Regular physical activity has significant benefits for health. It reduces the risk of the most chronic non-communicable diseases such as cardiovascular

³⁹ Comment 14

⁴⁰ 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness

⁴¹ General Comment

⁴² *Supra*, note 38

⁴³ WHO, <www.euro.who.int/__data/assets/pdf_file/0008/98243/E89858.pdf> accessed on

disease, diabetes and some cancers. It helps control weight and contributes to mental health and promotes overall well-being. Taking part in physical activity also increases opportunities for social interaction and feeling part of the community.⁴⁴

Physical activity is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival, being a fundamental and basic requirement without which the existence of health itself would be in peril. Therefore, sports and physical activities are an integral part of the right to health and as such shall be legally safeguarded.

⁴⁴ Isca 2010 annual report, p.6.

3. Sports As a Tool to Social Change and the Advancement of Human Rights

Apart from being protected by international human rights law as a *right*, sports and physical activities have a *social function*. Such social function lies on the fact that they can and shall be used as a tool in the implementation, realization and advancement of *other* international human rights. For its strong ability to promote participation, sports naturally suit human rights based approach principles, offering innovative and pragmatic solutions.

Such potential has been well-recognized by the international community since the start of the new millennium. In 2001 a Special Adviser to the UN Secretary-General on Sport for Development and Peace was appointed. Also, the UN General Assembly proclaimed 2005 the International Year for Sport and Physical Education, to strengthen sport as a means to promote education, health, development and peace.

Furthermore, the UNGA adopted eight resolutions⁴⁵ related to sports. Six out of the eight of UNGA sports resolutions⁴⁶ are entitled “*Sport as a means to promote education, health, development and peace*”. All of them invite Governments, the United Nations, its funds and programs, the specialized agencies, and sport-related institutions to recognize the contribution of sport and physical education towards economic and social development and to encourage the building and restoration of sports infrastructures.

They also invite Governments and international sports bodies to assist developing countries, in particular the least developed countries and small island developing States, in their capacity-building efforts in sport and physical education. Moreover, it encourages Governments and the United Nations system to seek new and innovative ways to use sport for communication and social mobilization, particularly at the national, regional and local levels, engaging civil society through active participation and ensuring that target audiences are reached.

Resolution 63/135, of 3 March 2009 also encourages Member States to provide institutional structures, appropriate quality standards and competencies and promote academic research and expertise in the field to enable ongoing training, capacity-building and education of physical education teachers, coaches and community leaders in sport for development and peace programs.

Resolution 64/4, urged all Member States to observe the Olympic Truce individually and collectively. Finally, resolution 63/135, requested the Secretary-General to report on the progress made by Member States towards implementation of the Sport for Development and Peace International Working Group policy recommendations and on the functioning of the United Nations

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⁴⁶ UN General Assembly Resolutions 58/5 of 3 of November 2003, 59/10 of 27 October 2004; 60/1 of 16 September 2005; 61/10 of 3 November 2006; 62/271 of 23 November 2008 and 65/4 of 23 November 2010.

Office of Sport for Development and Peace and the Trust Fund for Sport for Development and Peace, and to present an action plan on sport for development and peace.

Following, there will come an analysis indicative of rights that can be -- and in some instances already have been -- implemented using sports and physical activities as a tool. This list, however, is **not exhaustive**.

Right to the highest attainable standard of physical and mental health

The right to health is the most obvious area in which sports and physical activities can be used as a tool for implementation and realization. It is so, because physical activities are an integral element of health. The right to the highest attainable standard of physical and mental health is protected in several human rights instruments (see page 20). The wording of article 35 of the EU Charter on Fundamental Rights, entitled health care, includes right of access to *preventive* health care,⁴⁷ Article 12.2 (c) of the ICESCR also assures the *prevention*, treatment and control of epidemic, endemic, occupational and other diseases.⁴⁸

After hundreds of scientific studies carried out on the relation between health and physical activities, it is already common knowledge that physical inactivity is a key risk factor for the major non-communicable diseases such as cardiovascular diseases, cancer, and diabetes.^{49, 50} According to the World Health Organization (WHO), physical inactivity is now identified as the fourth leading risk factor for global mortality. Physical inactivity levels are rising in many countries with major implications for the prevalence of non-communicable diseases (NCDs) and the general health of the population worldwide.⁵¹

Despite the fact that genetic factors, individual susceptibility to illness and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions

⁴⁷ Article 35 - Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

⁴⁸ 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness

⁴⁹ <www.who.int/dietphysicalactivity/workplace/en/index.html> accessed on February 20, 2012.

⁵⁰ <www.youtube.com/watch?v=aUaInS6HIGo&feature=youtu.be> accessed on February 20, 2012.

⁵¹ <www.who.int/dietphysicalactivity/leaflet-physical-activity-recommendations.pdf> accessed on February 20, 2012.

necessary for the realization of the highest attainable standard of health.⁵²

The impact that sports and physical activities have on every human being's health is so direct and so crucial that, in the case of right to health, sports and physical activities are not only a strategy or an element. They are a *condition sine qua non* on programs targeting the advancement of the right to health. Therefore, all the means for practicing grassroots sports and physical activities shall be made available for all the population, so one can enjoy according to his/her free will. Along with that, there shall be informational campaigns spreading scientific findings and knowledge about the impacts

Examples of Good Practice:

- Sport Action Network Europe Handbook (SANTE)⁵³
- Physical Activity Towards a Healthy Europe (PATHE)⁵⁴

Right to be free from degrading treatment or punishment

Art. 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The right to be free from degrading treatment or punishment is one of the most basic principles sustaining human dignity. It is protected in Art. 5 of the UDHR, Art. 7 of the ICCPR, Art. 4 of the EU Charter, and art. 3 of the ECHR art. 3. All these articles also prohibit inhuman or degrading treatment or punishment.

The Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 has an express provision on the right of prisoners of exercising, as follows:

Exercise and Sport

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Moreover, the analyses of the ECtHR jurisprudence show that, in many cases the Court has understood the extended confinement⁵⁵ without the possibility of undertaking any physical activity as breaching Art. 3 of the ECHR:⁵⁶

⁵² General Comment 14, 2002

⁵³ ???

⁵⁴ < www.isca-web.org/english/health/pathe/whatispathe> accessed on February 19, 2012.

⁵⁵ Cases vary between 1 to 5 months.

⁵⁶ SHCHEBET V. RUSSIA; ALEXOV V. BULGARIA MALECHKOV V. BULGARIA

The Court considered that the fact the applicant had been confined to his cell, situated in the basement, for practically 24 hours a day for a period of more than five months without exposure to natural light and without having been able to undertake any physical activity or other pastime must have caused him considerable suffering (...)

Prisoners are generally locked into extremely small spaces apart from loved ones, friends and family. The inmate has to learn different ways of dealing with this new environment and the other inmates that share it, new ways of coping and surviving. Added to this is the trauma and stress of the trial, sentencing and subsequent imprisonment.⁵⁷

Such factors affect deeply the inmates both psychologically and physically, resulting in high levels of anxiety, stress, anger, fear, depression, frustration and insomnia, digestive disorders, high blood pressure, bowel disorders, ulcers, migraines, allergies, back problems etc. which are all common in prisoners.⁵⁸

It becomes clear that, apart from the right to health that is entitled by all human beings, including those in jail, in order to respect the minimum legal criteria of human dignity, sports and physical activities must be available not only to prisoners, but to all people who, for any reason, have their freedom of movement restricted, as patient of psychiatric hospitals.

Examples of Good Practice:

- Prison Yoga Project⁵⁹
- Vivicitta In Prisons, For The Quality Of Prisoners' Life, For The Respect Of Rules⁶⁰
- McNeil Island prison basketball⁶¹

Prevention of Gender-Based Violence

The CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) does not explicitly reference violence, however it does address the mandate for the state to ensure women's equity across sectors.

In 1992, eleven years after the CEDAW came into force, the Committee on the Elimination of All Forms of Violence Against Women, established to monitor the Convention, passed General Recommendation 19. This recommendation broke the silence on violence against women clarifying that, article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and

⁵⁷ www.yogamag.net/archives/1999/fnov99/bnygpris.shtml accessed on February 20, 2012

⁵⁸ Ibid.

⁵⁹ <prisonyoga.com>, accessed on February 22, 2012.

⁶⁰ <vivicitta.uisp.it> accessed on February 21, 2012.

⁶¹ <espn.go.com/otl/bars/part1.html> accessed on February 21, 2012

other deprivations of liberty. Gender-based violence may breach specific provisions of a number of international treaties, as the UDHR, ICCPR, ICESCR, regardless of whether those provisions expressly mention violence.⁶²

Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.⁶³ Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. Gender-based violence helps to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.⁶⁴

By participating in sport, women defy the bulk of gender-based violence – inequity, patriarchy, and rigid gender roles. More than social, the use of sport in combating gender-based violence is practical. When women play they become physically stronger and healthier. They develop a greater ownership and understanding of their bodies. Psychologically, sport can enhance a girl's self esteem and self-efficacy. According to a study made on outcomes of self-defense training for women:

The main goal of women's self-defense training is to strengthen women's capacity to defend themselves against potential attacks. Yet, the effects of women's self-defense training extend considerably beyond this objective, including physical, psychological, and behavioral impacts.⁶⁵

The strength a woman gain practicing sports is both physical and psychological. If translated into other aspect of her life, it can reduce her risk of experiencing gender-based violence.⁶⁶

Examples of Good Practice:

- Women win⁶⁷
- The Association for Development and Enhancement of Women⁶⁸

⁶² CEDAW Committee, General Comment 19, Para. 1 1992

⁶³ CEDAW Committee, General Comment 19, Para. 6 1992

⁶⁴ CEDAW Committee, General Comment 19, Para. 11 1992

⁶⁵ Brecklin, L. R. (2008). Evaluation outcomes of self-defense training for women: A review. *Aggression and Violent Behaviour*, 13, 16 & Pedersen, S. & Seidman E. (2004). *Team sports achievement and self-esteem development among urban adolescent girls*. *Psychology of Women Quarterly*, 28, 412–422

⁶⁶ <gbvguide.org/sport+-gbv/considering-sport-as-a-tool> accessed February 22, 2012.

⁶⁷ <www.womenwin.org> accessed February 22, 2012.

⁶⁸ <www.adew.org/en/> accessed February 22, 2012.

- Sadili Oval⁶⁹
- International Working Group on Women and Sports

Freedom of Assembly and Association

Article 12: 1. Everyone has the right to freedom of peaceful assembly and association.

The right to freedom of assembly and association is recognized by art. 12.1 of the UDHR, art. 22.1 of the ICCPR, art. 11 of the ECHR and art. 12 of the European Charter.

Freedom of association is the individual right to come together and collectively express, promote, pursue and defend common interests.⁷⁰ The right to freedom of association is recognized as a human right, a political freedom and a civil liberty. Depending on the source (constitution, human rights instrument, etc.) the right to freedom of association may be understood to include the right to freedom of assembly.

However, freedom of assembly and freedom of association may be used to distinguish between the freedom to assemble in public places and the freedom of joining an association. Freedom of assembly is often used in the context of political rights meaning the right to protest, while freedom of association is often used in the context of labor rights in the sense of workers' right to organize and form a trade union. Freedom of association in the labor context is not important for the purposes of this study.

Sport and physical activities enjoy great universal acceptance, and can be an “entry point” in countries or regions where limitations on the right to freedom of association is limited -- e.g. regular and widespread obstacles to registration of civil society organizations and their independent operation, forced closure of civil society organizations, and physical threats to their members. Sports have the potential to strengthen the right to association, providing tangible support and means of action to local civil society in the promotion of human rights and fundamental freedoms in some of the world's most difficult, dangerous and unpredictable political situations and/or where they are the most vulnerable and threatened.

Examples of Good Practice:

The rights of the elderly

Article 25: The Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

⁶⁹ <www.sadili.com> accessed February 22, 2012

⁷⁰ Jeremy McBride, Freedom of Association, in *The Essentials of... Human Rights*, Hodder Arnold, London, 2005, pg.18-20

Although both the Universal and the European System protect human beings of all ages, the European Charter is the first international document to expressly recognize the right of the elderly.

For the first time modern society has been confronted with a demographic phenomenon characterized by a strong increase of an ageing population. Older people will become increasingly important in society facing us with a whole new set of challenges, also in the field of sports.

It is known that physical exercises and sport activities have particularly positive influence on improving the quality of life, on health, on life expectancy, on mental stability and on self-confidence. The knowledge regarding the value of physical exercise and sport in later life is quite impressive.⁷¹

However, apart from the right to health, literature clearly lacks a review of theoretical debates on the role of sports in older people's lives. Other significant functions and meanings of sport, such as social integrative meaning, are less addressed in literature.

Notwithstanding, it is undeniable that, sports and physical activities, in contributing to health promotion and preventive health care, are measures that maximize healthy life years and prevent dependency, assuring at the same time dignity, independence and possibility to participate in social and cultural life.

Example of Good Practice:

- European Network for Action on Ageing and Physical Activity⁷²

⁷¹ hrcak.srce.hr/file/6928

⁷² <www.eunaapa.org>