

In or Out: Gaps in Philippine Immigration Law in Relation to Foreign Athletes and Sports Leagues Regulations as Migration and Human Rights Issues

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I. INTRODUCTION

We have a duty to ensure that the freedom of sport is not built on the un-freedom of others.

— Guy Ryder¹

Imagine this: An Argentinian player suiting up for a Catalan team in La Liga, a Portuguese player making his mark in the Italian circuit, perhaps a Spanish midfielder joining the ranks of a Japanese football club, or a guard from China making it big in the National Basketball Association (NBA).

For many years, club or league sports have thrived on the global market of talent.² It is this multinational exchange of the best players of whatever race or creed, which birthed world-renowned leagues and top-notch athletes — some of whom are even revered as saints.³ The interplay outside the Olympics or the World Cup excites billions of followers all over the world.⁴ Oblique exceptions to this phenomenon in club or league sports, however,

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1. United Nations Office of the High Commissioner for Human Rights, Centre puts human rights and sports on same team, *available at* <https://www.ohchr.org/EN/NewsEvents/Pages/CentreForSportandHumanRights.aspx> (last accessed Feb. 1, 2019).
 2. Lucie Thibault, *Globalization of Sport: An Inconvenient Truth*, 23 J. SPORT MANAGEMENT 1, 3 (2009).
 3. *See, e.g.*, Alan Dawson, The 18 most famous athletes in the world in 2018, *available at* <https://www.businessinsider.com/most-famous-athletes-in-the-world-2018-5> (last accessed Feb. 1, 2019).
 4. Matt Slater, Olympics and World Cup are the biggest, but what comes next?, *available at* <https://www.bbc.com/sport/30326825> (last accessed Feb. 1, 2019).

are those found in the Philippines.⁵ Here, the bleak reality of exclusion based on ethnicity or nationality permeates league sports regulations, camouflaging as nationalist or native development policies.⁶

There are several sports clubs or leagues in the Philippines catering to a smorgasbord of various athletic endeavors. Perhaps the most known is the Philippine Basketball Association (PBA), on the one hand, which describes itself as

a men's professional basketball league in the Philippines composed of twelve company-branded franchised teams. It is the first professional basketball league in Asia and is the second oldest continuously existing in the world after the NBA. The league's regulations are a hybrid of rules from the NBA and [the International Basketball Federation (FIBA)].⁷

The Maharlika Philippine Basketball League (MPBL), on the other hand, is a regional men's semi-professional basketball league founded by Senator Emmanuel "Manny" D. Pacquiao.⁸ Collegiate hoops (and other college- or university-based sporting events) among universities and colleges in Metro Manila are administered either by the University Athletic Association of the Philippines (UAAP) or the National Collegiate Athletic Association (NCAA).⁹ Club football is played under the banners of the Philippine Football Federation (PFF) or the Philippine Football League (PFL).¹⁰ The above listing does not attempt to be an exhaustive survey of club or league sports in the Philippines, but merely illustrates the richness of sporting in the

5. Musong R. Castillo, *Excess imports*, PHIL. DAILY INQ., Oct. 30, 2016, available at <https://sports.inquirer.net/227715/ncaa-uaap-excess-imports> (last accessed Feb. 1, 2019).

6. *Id.*

7. Philippine Basketball Association, About the PBA, available at <https://www.pba.ph/about-us> (last accessed Feb. 1, 2019).

8. Graham C. Lim, *Maharlika Pilipinas Basketball League: Not your ordinary cage tournament*, MANILA STAND., Oct. 31, 2018, available at <http://manilastandard.net/sports/basketball/279359/maharlika-pilipinas-basketball-league-not-your-ordinary-cage-tournament.html> (last accessed Feb. 1, 2019).

9. Jonathan Perez, *The Philippine collegiate rivalry: NCAA vs UAAP*, available at <https://www.rappler.com/sports/university/features-blogs/8331-the-philippine-collegiate-rivalry-ncaa-vs-uaap> (last accessed Feb. 1, 2019).

10. Jaelle Nevin Reyes, *Araneta excited about new football league*, THE MANILA TIMES, Apr. 22, 2017, available at <https://www.manilatimes.net/araneta-excited-new-football-league/323518> (last accessed Feb. 1, 2019).

country. Sports leagues or clubs often present themselves as training pools in the run-up to international competitions, such as the Southeast Asian Games, the *Fédération Internationale de Football* (FIFA) World Cup, the *Fédération Internationale de Basketball* (FIBA) World Cup, the Asian Cup, and the Olympics.¹¹ For all the good that the diversity of club or league sports brings, one would be shocked to learn that the general policy thrust of many of these clubs or leagues is to make sporting in the Philippines exclusive and discriminatory.¹²

“We want to give chances to []Filipino [athletes]. *Sila dapat ang nag-be-benefit doon sa nakukuha ng [mga] foreigner [(They are the ones who are supposed to benefit from the slots taken by foreigners)]*”¹³ are words which sound like they belong to a by-gone era of closed-border nationalism, but were instead uttered in 2014 in defense of the UAAP Board’s recommendation to halt the recruitment of foreign players.¹⁴ More concrete and definitive is the move of the NCAA to ban foreign players altogether beginning in 2020.¹⁵ The MPBL has recently capped the number of Filipino-foreign players to one per team, and said player should not be more than six-feet-four-inches.¹⁶ A similar long-standing policy also exists in the

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11. See, e.g., Norman Lee Benjamin Riego, New Gilas already being formed for 2019 FIBA, 2020 Olympics, available at <https://sports.abs-cbn.com/basketball/news/2016/06/02/new-gilas-already-formed-2019-fiba-2020-olympics-11921> (last accessed Feb. 1, 2019).
 12. See, e.g., Beatrice Go, NCAA to ban foreign players starting Season 96 in 2020, available at <https://www.rappler.com/sports/university/ncaa/205265-ban-foreign-players-imports-2020> (last accessed Feb. 1, 2019).
 13. Reuben Terrado, UAAP board recommends halt to foreign player recruitment come Season 78, available at <https://www.gmanetwork.com/news/sports/content/360865/uaap-board-recommends-halt-to-foreign-player-recruitment-come-season-78/story> (last accessed Feb. 1, 2019).
 14. *Id.*
 15. Mark Giongco, *All foreign players banned from NCAA starting Season 96*, PHIL. DAILY INQ., June 19, 2018, available at <https://sports.inquirer.net/305659/foreign-players-banned-ncaa-starting-season-96> (last accessed Feb. 1, 2019).
 16. Rey Joble, MPBL’s new guidelines on Fil-Ams: 1 per team with 6-foot-4 height limit, available at <https://www.foxsports.ph/basketball/mpbl/854777/mpbls-new-guidelines-fil-ams-1-per-team-6-foot-4-height-limit> (last accessed Feb. 1, 2019).

PBA, albeit the cap is four more players per team than the MPBL.¹⁷ These policies of exclusion are justified under a nationalistic framework punctuated with fair-play rhetoric in favor of full-blood Filipino players.¹⁸ Confronting these policies are foreign and Filipino-foreign athletes who have chosen to come here to the Philippines.¹⁹ They have become polarizing figures in Philippine Sports — such as the likes of Bobby Ray Parks, Jr., Chris Newsome, Benoit Mbala, Chibueze Ikeh, Angelo Kouame, and Bright Osagie Akhuetie in collegiate basketball, to name a few.²⁰

This Article zeroes in on these targeted policies of sports clubs or leagues to resolve whether the regulation of foreign players' participation on the ground of nationality or ethnicity is permissible under current legal frameworks. It problematizes the manner of entry into the country of foreign athletes by reviewing the juridical relations entered into by said actors and denominate these relationships using the nomenclature of the law. The latter is done to surface the rights, duties, and obligations held and which bear upon foreign athletes. The same dissection is done for sports clubs or leagues, recalibrating their place in the socio-cultural and legal landscapes. These issues are then pieced together under Migration and

17. Karlo Sacamos, PBA limit of five Fil-foreigners per team comes under scrutiny amid MPBL controversy, *available at* <https://www.spin.ph/basketball/pba/pba-sticking-to-five-fil-foreigners-per-team-for-now-amid-outcry-over-mbpls-racist-one-p> (last accessed Feb. 1, 2019).

18. Giongco, *supra* note 15 & Joble, *supra* note 16.

19. *Id.*

20. See Beth Celis, *Bobby Parks: basketball's gentle warrior*, PHIL. DAILY INQ., Apr. 6, 2013, *available at* <https://sports.inquirer.net/94507/bobby-parks-basketballs-gentle-warrior> (last accessed Feb. 1, 2019); Naveen Ganglani, Chris Newsome is 2016 PBA Rookie of the Year, *available at* <https://www.rappler.com/sports/by-sport/basketball/pba/149208-newsome-rookie-of-year> (last accessed Feb. 1, 2019); Joaquin M. Henson, *Ben Mbala leaves with heavy heart*, PHIL. STAR, Dec. 22, 2017, *available at* <https://www.philstar.com/sports/2017/12/22/1771093/ben-mbala-leaves-heavy-heart> (last accessed Feb. 1, 2019); ABS-CBN Sports, Chibueze Ikeh punctuates breakout with nod as Player of the Week, *available at* <https://sports.abs-cbn.com/uaap/news/2017/10/02/ikeh-punctuates-breakout-nod-player-week-31696> (last accessed Feb. 1, 2019); Beatrice Go, How Angelo Kouame took his game from the streets to the Big Dome, *available at* <https://www.rappler.com/sports/university/uaap/admu/215626-ateneo-blue-eagles-angelo-kouame-game-from-streets-to-big-dome> (last accessed Feb. 1, 2019); & Cedelf P. Tupas, *Akhuetie brings height, skills to Maroons*, PHIL. DAILY INQ., Jan. 11, 2017, *available at* <https://sports.inquirer.net/234606/akhuetie-brings-height-height-skills-maroons> (last accessed Feb. 1, 2019).

Human Rights theories in order to develop a remedial framework that is rights-based, consistent with the domestic and international laws on migration, and aligned with Constitutional policy on sports development.

The Authors submit that, although sports clubs and leagues are private enterprises protected by the civil liberties of its members, they should not impose internal rules and regulations that discriminate against foreign athletes under the Universal Rights regime and by virtue of the protections afforded by domestic and international laws on migration. It is argued that diversity in club or league sports strengthens the Philippine sporting landscape. It is further theorized that fears of foreign domination are rooted in unfounded insecurities, and that the free market is an adequate balance mechanism against any possibility of domination. Ultimately, quotas on foreign athletes only serve to stunt the growth of sports in the Philippines.

II. FOREIGN ATHLETES IN THE PHILIPPINES

A. Definition of Foreign Athletes

Foreign athletes are known by many names: imports, import players, or international athletes.²¹ This work's difficulty begins in defining who a foreign athlete is. The term is mentioned only once in the Student-Athletes Protection Act, but it is not defined.²² Regulations seeking to impose quotas on foreign athletes vaguely, if at all, define who a foreign athlete is.

21. Camille B. Naredo, *Why Almazan is not a fan of NCAA's ban on 'imports'*, available at <https://news.abs-cbn.com/sports/06/25/18/why-almazan-is-not-a-fan-of-ncaas-ban-on-imports> (last accessed Feb. 1, 2019).

22. An Act Protecting the Amateur Nature of Student-Athletes in the Philippines by Regulating the Residency Requirement and Prohibiting the Commercialization of Student-Athletes [Student-Athletes Protection Act], Republic Act No. 10676, § 4 (2014). Section 4 of the said act provides,

Section 4. *Residency of Student-Athletes.*— Without prejudice to the respective rules of athletic associations on student-athletes who are foreign imports, the following rules on residency shall be applied:

- (a) Residency requirement shall not be imposed on a student-athlete who is a high school graduate enrolling in a college or university;
- (b) Residency requirement shall likewise not be imposed on a high school student-athlete transferring from one high school to another high school: *Provided*, That, to address the issue of piracy, a maximum of one (1) year residency may be imposed by an athletic association on a high school student-athlete who transfers from one member school to another;

Aid in construction may be wrought from other jurisdictions. The Premier League, the top-tier professional football league in England, for example, in imposing “Home-grown” quotas, define Home-grown as

[one] who, irrespective of his nationality or age, has been registered with any club affiliated to The Football Association or the Football Association of Wales for a period, continuous or not, of three entire seasons or 36 months before his 21st birthday (or the end of the season during which he turns 21).²³

National American football leagues in Europe, on the one hand, define “import players” as “athlete[s] without a passport from any country within the 28-nation European Union.”²⁴ The Rugby Football Union (RFU) in England, on the other hand, defines a Foreign Player as

a person who does not qualify as a Non-Foreign Player. A Non-Foreign Player is a person who, at the point that he is included in the Match Squad:

(c) In the case of a tertiary student-athlete transferring from one college or university to another, a maximum of one (1) year residency may be imposed by an athletic association before a student-athlete could participate and represent a school in any athletic competition; and

(d) The residency rules mentioned in paragraphs (a) and (b) of this section shall likewise apply to a Filipino student-athlete from other countries enrolling in a school in the Philippines.

No school, or its representative, shall be authorized to perform the following acts on a student-athlete on the sole reason of his/her transfer to another school:

(1) File an administrative charge for possible violation of school rules and regulations;

(2) Require the payment of tuition and other miscellaneous fees covered by the scholarship granted, including monies given and the cash equivalent of non-monetary benefits received;

(3) Refuse to issue or delay the release of grades and school records, clearance, or transfer eligibility;

(4) Give incomplete grades in subjects in which the student-athlete is exempted by virtue of being a student-athlete; and

(5) Impose other forms of punishment.

Id.

23. Premier League, 2018/19 Premier League squads confirmed, *available at* <https://www.premierleague.com/news/844127> (last accessed Feb. 1, 2019).

24. Travis Brody, Should There Be a Limit on Import Players?, *available at* <https://www.growthofagame.com/2014/12/should-there-be-a-limit-on-import-players> (last accessed Feb. 1, 2019).

- (a) can prove to the satisfaction of the RFU that he is entitled to the rights granted under Title IV, Article 45 of the Treaty on the Functioning of the European Union (TFEU) or under the European Economic Area or of a state with which the European Community has entered into an agreement that includes directly effective provisions conferring equivalent rights of non-discrimination against that state's nationals within the European Union[];
- ...
- (b) can prove to the satisfaction of the RFU that pursuant to World Rugby Regulation 8.1 he is eligible to play for the senior fifteen-a-side National Representative Team, the next senior fifteen-a-side National Representative Team or the senior National Representative Sevens Team (as defined in World Rugby regulations) of a Rugby Union in membership of the European Union/European Economic Area; or
- (c) has been selected for the England Senior XV, Next Senior XV or U20 XV or England's National VII.²⁵

Discussions on the subject have also failed to corner a coherent definition of a foreign athlete. However, it may be culled from the above disquisitions that a definition of a foreign athlete must necessarily begin with defining who a non-foreign athlete is. In its most basic form, the word conjures a citizen of the state where the sporting event is domiciled. Thus, a foreign athlete is one who is not a citizen of the state where he or she seeks to play in. For purposes of this work, these base definitions are acceptable.

However, the definition must be nuanced. In the Philippine context, foreign athletes are further classified into foreign and Filipino-foreign athletes. The former are those conforming to the definition laid down in the preceding paragraph, while the latter are citizens of the Philippines by virtue of at least one of their parents being a Filipino, but who are not dual citizens, or has not yet been officially recognized as Filipino citizens by the relevant government agencies. The classification is further complicated by the nuances of migration laws. Foreign athletes are required to go through the visa requirements in order to sojourn and/or reside in the Philippines,

25. Non-UK Player Visa/Permit Eligibility Grid and Definition of Foreign and Non-Foreign Players (Policy on the Eligibility Requirements for Foreign Players in the Rugby Football Union) at 2, available at https://www.englandrugby.com/mm/Document/General/General/01/33/08/79/RFUForeignPlayerEligibilityGuide_Neutral.pdf (last accessed Feb. 1, 2019).

while Filipino-foreign athletes need to apply for and be recognized as a dual citizen, or a Filipino citizen.²⁶

In the final analysis, this exercise of searching for a definition of who is a foreign athlete hints to exclusion as the policy framework. It is ridden with an us-versus-them rhetoric which will be shown to be a reason for their unacceptability in later sections of this work.

B. Juridical Relations of Foreign Athletes

I. With the Receiving State

a. Bureau of Immigration and the Department of Foreign Affairs

As earlier discussed, there are two groups of foreign athletes in Philippine club or league sports: foreign athletes and Filipino-foreign athletes. The distinction is relevant, though lost to the policy-makers of clubs or leagues seeking to impose quotas.

Foremost, a foreign athlete must obtain a non-immigrant visa in order to be able to play in the Philippines.²⁷ Generally, the visa available to professional foreign athletes is a Section 9(g) visa, or Pre-arranged employment visa.²⁸ Aside from a Section 9(g) visa, an employee is also required to obtain an Alien Employment Permit from the Department of Labor and Employment (DOLE), proving to said body that his or her entry is not prejudicial to economic interests of the nation, that there is no Filipino available who is willing and able to do the work, or that he or she possesses special skills or holds a special position upon which his or her necessity as an

26. See An Act to Control and Regulate the Immigration of Aliens Into the Philippines [The Philippine Immigration Act of 1940], Commonwealth Act No. 613, § 9 (g) (1940) (as amended); Bureau of Immigration, Special Work Permit – Artists & Athletes, *available at* <http://immigration.gov.ph/services/special-permits/special-work-permit-artists-athletes#> (last accessed Feb. 1, 2019); & Bureau of Immigration, Applicants for Recognition as Filipino Citizen and Retention/Reacquisition of Philippine Citizenship Under R.A. 9225, Bureau of Immigration Operations Order No. SBM-2014-051 § 1 (Oct. 22, 2014).

27. Dezan Shira & Associates, The Guide to Employment Permits for Foreign Workers in the Philippines, *available at* <https://www.aseanbriefing.com/news/2017/08/18/guide-employment-permits-foreign-workers-philippines.html> (last accessed Feb. 1, 2019).

28. *Id.*

employee is hinged on.²⁹ The status of a professional athlete as an employee or an independent contractor is discussed in subsequent sections.

Foreign student athletes, on the other hand, may apply for a Section 9(f) visa or a Student visa, except if he or she is a dependent child below 21 years old of a foreign resident with valid pertinent visas, or a holder of a Section 9(d), Section 9(g), or Section 47(a)(2) visa.³⁰

The above discussion is relevant for two reasons: *first*, it structures the earlier definition of a foreign athlete; *second*, entry is a primordial point in determining the state's duties to respect, protect, and fulfill the rights of immigrants. Generally, upon the entry of a foreign athlete into our borders, he or she is clothed with the basic protections of the law and enjoy the same rights as citizens, except political rights, rights to engage in nationalized professions, right to engage in nationalized activities and industries, and rights to own land. It is important to note at this point that no professional league nor sport have been nationalized by the Constitution or the Congress.

Filipino-foreign athletes are citizens of the Philippines by virtue of their parentage. If they were born and have stayed in the Philippines, they do not need to undergo Recognition proceedings, otherwise, they must present themselves to the consular officers of the Philippines in order that their Filipino citizenship may be formalized.³¹

Filipino-foreign athletes enjoy all the rights of a Philippine citizen, being one himself or herself, and may only be deprived thereof by due process of law. These rights exist regardless of where they are.

29. Department of Labor and Employment, Revised Rules for the Issuance of Employment Permits to Foreign Nationals, Department Order No. 146-15 § 6 (Aug. 20, 2015); Frequently Asked Questions on the Revised Rules for the Issuance of Alien Employment Permits (Document by the Department of Labor and Employment, Bureau of Local Employment) at 1, *available at* http://www.ble.dole.gov.ph/downloads/AEP/AEP_Q&A.pdf (last accessed Feb. 1, 2019); & Buena Bernal, Stricter rule for foreigners seeking work permit in PH – DOLE, *available at* <https://www.rappler.com/nation/105844-application-alien-work-permit-dole> (last accessed Feb. 1, 2019).

30. Philippine Immigration Act of 1940, § 9 (f) & Bureau of Immigration, Prescribing the Comprehensive Rules and Guidelines on Student Visa Under Section 9 (f) of Commonwealth Act No. 613, As Amended, In Relation To Executive Order No. 285, Series Of 2000, BI Memorandum Circular No. SBM-2015-007 art. IV, § 1 (1) (a) & (b) (May 19, 2015).

31. Bureau of Immigration Operations Order No. SBM-2014-051, § 1.

The above laws are primarily administered by the Bureau of Immigration (BOI) as the agency charged with the implementation of all immigration laws.³² However, it is the Department of Foreign Affairs (DFA), through country-consulates and embassies, which determine qualifications for the granting of visas.³³ In simpler terms, at the point where the foreign athlete seeks entry into the Philippines manifested through his or her application for a visa, it is the DFA which has jurisdiction.³⁴ At the ports of entry, on the other hand, it is the BOI which has imprimatur and who determines whether said athlete may enter the country, the length of stay, and the conditions thereof.³⁵

b. The Games and Amusement Board

The Games and Amusement Board (GAB) was created to address the “urgent need for governmental supervision and regulation on the operation and conduct of professional basketball games and other professional games as well as the participants therein to insure integrity and provide ample protection to all concerned at all times[.]”³⁶ It has supervisory and regulatory powers over professional games in the Philippines.³⁷ The GAB has the power

[t]o approve or disapprove the rules and regulations issued by persons, entities or associations relative to the operation and conduct of professional basketball games or other professional games ... [and] [t]o consider, investigate, decide and settle all questions, matters, controversies or disputes arising out of or connected with professional games or other professional games under its supervision in accordance with the rules and procedures it may adopt[.]³⁸

Thus, all laws, rules, and regulations of sports leagues or clubs, including the allowance or disallowance of certain athletes to play in the Philippines,

32. Philippine Immigration Act of 1940, §§ 2-3.

33. Office of the President, Reorganizing the Department of Foreign Affairs and for Other Purposes, Executive Order No. 239 [Reorganization Act of the Department of Foreign Affairs], § 5 & § 22 (h) (July 24, 1987).

34. *Id.*

35. Philippine Immigration Act of 1940, § 6.

36. Placing Professional Basketball Games and Other Professional Games under the Supervision and Regulation of the Games and Amusement Board, Presidential Decree No. 871, whereas cl. para. 5 (1976).

37. *Id.* § 1.

38. *Id.* § 2 (c) & (j).

must pass under the scrutiny of the GAB, and these laws, rules, and regulations must not be contrary to laws, morals, public order, or public policy.³⁹ The matter of determining whether a law, rule, or regulation of professional sports leagues or clubs, as a matter of general proposition, falls under the jurisdiction of the GAB as the regulatory agency in charge.⁴⁰

c. The Department of Education and the Commission on Higher Education

The Student-Athletes Protection Act mandates the Department of Education (DepEd) and the Commission on Higher Education (CHED)

to supervise higher education institutions ... to regulate and oversee school athletic associations, and are tasked to ensure that the rights of student-athletes are respected and protected ... [and] to handle complaints against the school athletic associations, and schools. They may consult the Philippine Sports Commission (PSC) for technical expertise, as may be needed.⁴¹

The same law defines a Student-Athlete as “a student currently enrolled in any school who is a member of any of the school’s athletic teams or programs and who represents[,] or has intentions of representing[,] the school in an inter-school athletic program or competition.”⁴² Certainly, foreign athletes representing their universities and colleges in the Philippines fall under the above definition.⁴³ The law makes no distinction regarding the protections afforded to student-athletes in the Philippines, except on the matter of residency.⁴⁴ The law expresses the *colatilla* to the protection given to student-athletes against unreasonable residency requirements, thus, “[w]ithout prejudice to the respective rules of athletic associations on student-athletes who are foreign imports[.]”⁴⁵

The rules and regulations of educational-institution based leagues come under the scrutiny of the DepEd and CHED.⁴⁶ The games and matches of

39. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 21 (1949).

40. Presidential Decree No. 871, § 1.

41. Student-Athletes Protection Act, § 7.

42. *Id.* § 3 (c).

43. *Id.*

44. *Id.* § 4.

45. *Id.*

46. *Id.* § 7.

the NCAA and the UAAP are conducted under the watchful eye of CHED.⁴⁷

2. With their Teams

This Section applies strictly to team sports, as there can be no foreign-athlete-team relations in individual sporting events, the suggestion having been made that athletes playing individual sports, if paid by some team, league, or association, is merely considered an independent contractor who is only controlled as to the results of the work rendered and who have ably negotiated their contract under more or less equal terms with the team, league, or association contracting with him or her.⁴⁸ On the other hand, athletes playing team sports are necessarily employees of the team they are playing for, the team having control not only regarding the means and methods, but also the results of the athletes' play.⁴⁹

The DOLE, on the one hand, as the primary state entity regulating the relations between labor and capital, would then have jurisdiction over the treatment of athletes playing for their teams.⁵⁰ The rules of engagement and all other matters relating to the employment of foreign-athletes may properly come under the purview of the DOLE through the National Labor Relations Commission (NLRC). On the other hand, the regular courts have jurisdiction over independent contractors who are generally governed by general contract law.⁵¹

Foreign student-athletes are, foremost, students of the institution they are playing for, and this comes with all the duties and responsibilities attached to a student and the educational institution, subject to the academic

47. Student-Athletes Protection Act, § 7.

48. Ignatius Michael D. Ingles, *Playing for Wages: Defining the Legal Relationship Between Professional Athlete and Team, a Sports Law Perspective on Philippines Labor Law*, 59 ATENEO L.J. 783, 793-94 (2014).

49. *Id.* at 797 (citing *Negros Slashers, Inc. v. Teng*, 666 SCRA 629 (2012)).

50. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 5 (1974) (as amended and renumbered).

51. *Fuji Television Network, Inc. v. Espiritu*, 744 SCRA 31, 76 (2014) (citing Department of Labor and Employment, Rules Implementing Articles 106 to 109 of The Labor Code, As Amended, Department Order No. 18-A, Series of 2011 [DOLE D.O. No. 18-A, s. 2011], § 5 (b) (Nov. 14, 2011)).

freedom clauses present in our laws and jurisprudence. Such relations between institution and foreign student-athlete are first highlighted in acquiring a Section 9(f) or Student visa.

3. With their Sports Leagues

In understanding the relations between the sports leagues or clubs and the athletes, one must look into the nature of the association itself. In many cases, sports leagues or clubs are composed, not of individual members, but large conglomerates fielding different people.⁵² There is no direct relation between the athlete and the club as the regulatory power of the latter is exercised over the club or league members as their own juridical entities.

The first major obstacle in our enquiry is the fact that the regulatory body makes its imposition upon the teams and not upon the athletes.⁵³ The restrictions are imposed on the teams.⁵⁴ It is the teams that are barred from fielding foreign or Filipino-foreign athletes, not the athletes themselves who are prohibited from playing, although the net effect is the same. The juridical relation between the affected person, i.e., the foreign athlete, and the club or league is highly suspect.

The general tenor of our laws on association is freedom and non-interference.⁵⁵ Every association is free to choose those who it will accept.⁵⁶ A club or league stopping a foreign-athlete from competing in the league is effectively a stranger to the entity as no acceptance has been made, if any be forthcoming. More to this, the manner of acceptance is done at the entity-level, not at the athlete-level.

An argument tying a foreign-athlete and a sports club or league is the non-interference clause, the abuse of rights doctrine, or the violation of civil and political rights provision in the New Civil Code.⁵⁷ The relation created is that of victim and tortfeasor. However, the arms-length interaction may serve to nullify the invocation of the above concepts. The team intervenes and so the club or league becomes a remote part of the equation.

52. Brad Smith, *How Different Types of Ownership Structures Could Save Major League Baseball Teams from Contraction*, 2 J. INT'L BUS. L. 86, 92 (2003).

53. Student-Athletes Protection Act, § 7.

54. *Id.*

55. PHIL. CONST. art. 3, § 8.

56. PHIL. CONST. art. 3, § 8.

57. CIVIL CODE, arts. 19-21 & 32.

How does one connect the foreign-athlete with the sports club or league then? This is answered in the next section. Suffice it to say that the relation is punctuated by the state's responsibility to protect foreign-athletes and its duty to regulate sporting in the Philippines, in general.

III. NATURE OF SPORTS LEAGUES AND THEIR PERSONALITY UNDER THE LAW

Sports leagues straddle the concepts of competition, recreation and entertainment, association, and big business. It enters the social fabric of society and is properly a subject of law. In other jurisdictions, such as the United States of America (U.S.), sports law permeates the legal landscape.⁵⁸ In the Philippines, sports law is a burgeoning sub-field, but has yet to reach a level of sophistication capable of addressing specific challenges related thereto.

Due to the conflux of competition, recreation, and entertainment, sports leagues further an explicit state interest outlined in the Constitution.⁵⁹ Sports are developmental tools, especially for the youth.⁶⁰ They have been described in legislation as aiding “the development, promotion[,] and maintenance of desirable moral, social and cultural values”⁶¹ and “[fostering] self-discipline, teamwork[,] and excellence for the attainment of a healthy and alert citizenry.”⁶²

Sports leagues are also associations protected under the Constitution.⁶³ They incorporate under general legislation, almost always as non-stock, non-profit organizations.⁶⁴ As corporate entities under the law, the general rules

58. See, e.g., Jon Jordan, *The Growing Entertainment and Sports Industries Internationally: New Immigration Laws Provide for Foreign Athletes and Entertainers*, 12 U. MIAMI ENT. & SPORTS L. REV. 207 (1995).

59. PHIL. CONST. art. XIV, § 19.

60. See Daniel Gould & Dana K. Voelker, *Youth Sport Leadership Development: Leveraging the Sports Captaincy Experience*, 1 J. SPORT PSYCHOLOGY IN ACTION 1 (2010).

61. Presidential Decree No. 871, whereas cl., para. 1.

62. Student-Athletes Protection Act, § 2.

63. PHIL. CONST. art. 3, § 8.

64. See, e.g., Elyssa Christine Lopez, *Though a Non-Profit Firm, UAAP Made a Record Php 7.2M Last Year. Here's How*, available at <https://www.entrepreneur.com.ph/news-and-events/can-the-uaap-sustain-its-rapid-growth-after-making-a-record-php7-2m-last-year-a00178-20170908> (last accessed Feb. 1, 2019) & Joaquin M. Henson, *Death knell for PBL*, PHIL. STAR,

on corporations also apply to them, along with specific rights, duties, and obligations under special laws governing sports and/or sports leagues.⁶⁵ Of particular interest in this work is the rule of non-interference in internal association matters. This rule springs from the freedom of association clause under the Constitution and makes for a thorny challenge in bringing internal rules and regulations of sports leagues to court due to the policy of deference.⁶⁶

Finally, sports leagues also generate large profits from ticket sales, media coverage, and several corporate sponsorships.⁶⁷ These relations are covered mostly by the general law on contracts, except for professional sports leagues which must additionally be licensed by the GAB.⁶⁸ These factors, taken together, and with economic considerations at the helm, produce the structural foundations of sports clubs or leagues, *viz* —

For [league owners], the major sources of income are gate receipts, local broadcasting, national broadcasting, and concessions, of which broadcasting has been the most important. Early in the development of professional athletics, sport promoters realized that athletic competitors must become business partners to maximize profits. From a strong economic point of view, '[forming a sports] association... enhances efficiency because it increases the marketability of the generic product that previously existed and marketing a product becomes more successful than without the integration.'

An important aspect of the economics of sports is that trends in the sources of revenue and cost play an important role in determining the organizational structure of a league. In fact, the organizational structure of a league is influenced by the relative importance of league management and centralized decision-making regarding certain significant sources of revenue.

Oct. 23, 2001, available at <https://www.philstar.com/sports/2001/10/23/137586/death-knell-pbl> (last accessed Feb. 1, 2019).

65. Presidential Decree No. 871; Student-Athletes Protection Act; & The Corporation Code of the Philippines [CORP. CODE], Batas Pambansa Blg. 68 (1980).

66. PHIL. CONST. art. 3, § 8.

67. See, e.g., John Lombardo, NBA begins new season flush with cash as revenue expected to hit \$8B, available at <https://www.sportsbusinessdaily.com/Journal/Issues/2016/10/24/In-Depth/Lead.aspx> (last accessed Feb. 1, 2019) & Lopez, *supra* note 65.

68. Presidential Decree No. 871, § 4.

It might be expected that these professional sports leagues are organized in a corporate governance structure as are the majority of business associations.⁶⁹

The organizational structure of leagues vary across sports and jurisdictions. In the U.S., leagues follow a corporate structure, i.e., the corporation is owned by the same entities which own the teams and they are the ones who elect a Commissioner in accordance with their charter or by-law provisions, and the Commissioner acts as the Chief Executive Officer, holding various powers conferred by the league's self-imposed laws, rules, and regulations.⁷⁰ The Philippines mirrors this structure.⁷¹

The relations between the actors — the state, the players, the teams, and the league — are summarized as follows:

- (1) Between the state and all actors, the nexus is the state's power and authority within its jurisdiction.
- (2) Between the team and the player, the relationship is that of employer-employee.
- (3) Between the team and the teams and the league, it is that of owner, member, or stockholder and corporation.

69. Gregor Lentze, *The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective*, 6 MARQ. SPORTS L. J. 65, 66 (1995) (citing Roger G. Noll, *The Economics of Sports Leagues*, in LAW OF PROFESSIONAL AND AMATEUR SPORTS 17-20 (Gary A. Uberstine ed., 1991); Comment, *Discipline in Professional Sports: The Need for Player Protection*, 60 GEO. L.J. 771, 772 (1972); Robert H. Heidt, *Don't Talk of Fairness: The Chicago School's Approach Toward Disciplining Professional Athletes*, 61 IND. L.J. 53, 55-56 (1985)).

70. Lentze, *supra* note 70, at 68-76. See also Roger G. Noll, *The Organization of Sports Leagues*, OXFORD REV. ECON. POL'Y, Vol. No. 19, Issue No. 4, at 530-551.

71. See, e.g., Jodesz Gavilan, PBA's 9th Commissioner: Who is Chito Narvasa?, available at <https://www.rappler.com/newsbreak/iq/187175-fast-facts-philippine-basketball-association-commissioner-chito-narvasa> (last accessed Feb. 1, 2019); Randolph B. Leongson, *Willie Marcial is new PBA commissioner*, PHIL. DAILY INQ., Jan. 25, 2018, available at <https://sports.inquirer.net/281063/willie-marcial-new-pba-commissioner> (last accessed Feb. 1, 2019); & Spin.ph Staff, PBA chief explains why he had to ban Arwind's 'Spidey' dunk, available at <https://www.spin.ph/basketball/pba/pba-chief-explains-why-he-had-to-ban-arwind-s-spidey-dunk-a1374-20190116> (last accessed Feb. 1, 2019).

The Authors revert to the earlier question posed in light of the dissection above: What is the nexus between sports leagues and the players? The case of a league imposing quotas on foreign or Filipino-foreign athletes will later be shown to violate several legal provisions and obligations relating to civil and political rights, as well as economic rights. In order, however, that the athlete so damaged might have standing to sue the policy-making body, he or she must first show, not only the violation of his right, but also the positive duty on the part of the league to respect that right. How can this be done under league sports' organizational structure, i.e., the employers (teams) owning the corporate body (league) imposing the policy?

The bridge is built in order that the duty to respect the athletes' rights fall squarely on the association of individuals or of individual corporate entities that impose them. The fact that it is the league imposing foreign or Filipino-foreign athlete quotas on teams is overcome by the ultimate reality that the policies of sports leagues are self-imposed regulations by its member teams acting through a corporate body. It is analogous to a situation where employers adopt industry-wide policies that discriminate against workers, in which case, workers are given an avenue to challenge the policy directly, the nexus being the acquiescence of his or her direct employer to said policy.⁷²

Subsequent discussions will focus on the substantive grounds upon which the elimination of import quotas in league or club sports stand.

IV. THE CASE FOR FOREIGN ATHLETE RESTRICTIONS IN PHILIPPINE LEAGUE SPORTS

The problem with articulating arguments for and against foreign player restrictions in league sports is the unavailability of raw data from the leagues themselves. The regulations are not readily available for public perusal. The task of understanding the rationale behind these regulations falls on conjecture and international models which underwent similar exercises.

72. Nantiya Ruan, *Bringing Sense to Incentives: An examination of Incentive Payments to Named Plaintiffs in Employment Discrimination Class Actions*, 10 EM. RTS. & EMP. POL'Y J. 395 (2006); Stephen W. Pruitt & Leonard L. Nethercutt, *The Texaco racial discrimination case and shareholder wealth*, 23 J. LABOUR RES. 685 (2002); Michael Selmi, *The Price of Discrimination: The Nature of Class Action Employment Discrimination Litigation and Its Effects*, 81 TEX. L. REV. 1249 (2002); & Center for Justice and Democracy at New York Law School, *Civil Rights Class Actions: A Singularly Effective Tool to Combat Discrimination*, available at <https://centerjd.org/content/fact-sheet-civil-rights-class-actions-singularly-effective-tool-combat-discrimination> (last accessed Feb. 1, 2019).

A large body of literature on foreign player restrictions comes from the European Union and the freedom of movement of labor that permeated European league sports after the *Bosman* ruling.⁷³

In 1990, Jean-Marc Bosman, of Belgian descent, sought to move from RFC Liege to Dunkirk after the expiration of his two-year contract with the club.⁷⁴ RFC Liege was charging him a large transfer fee, which he contested before the European Court (EC).⁷⁵ The EC ruled for Bosman saying that players wishing to leave their clubs at the end of their contracts are not to pay transfer fees as the juridical relations have already been severed by the fact of the contract's expiration.⁷⁶ In addition, the EC said that players, as laborers, are protected by the freedom of movement clause of European law.⁷⁷ The *Bosman* ruling paved the way for high-profile moves within European leagues and the most stressful transfer-windows in cub football.⁷⁸

The years preceding *Bosman* were witness to arguments on the necessity of foreign athlete quotas in league sports.⁷⁹ It was said that the quotas facilitated the development of home-grown players and built a sustainable national talent pool.⁸⁰ It was also argued that foreign athlete restrictions facilitated the fans' connection with the club, making it a more profitable investment.⁸¹ Further, foreign athlete quotas were said to level the playing field as not all clubs were financially capable of acquiring and supporting

73. John J. Binder & Murray Findlay, *The Effects of the Bosman Ruling on National and Club Teams in Europe*, 13 J. SPORTS ECONOMICS 107 (2008) & Amikam Omer Kranz, *The Bosman Case: The Relationship between European Union Law and the Transfer System in European Football*, 5 COLUM. J. EUR. L. 431 (1999).

74. Union Royale Belge des Sociétés de Football Association ASBL v. Bosman, Case C-415/93, EU:C:1995:463 1995, ¶¶ 28-30 (CJEU Dec. 15, 1995).

75. *Id.* ¶¶ 31 & 34.

76. *Id.* ¶ 75.

77. *Id.* ¶ 100.

78. Jonathan Liew, *How the Bosman revolution changed football for ever*, TELEGRAPH, Dec. 12, 2015, available at <https://www.telegraph.co.uk/sport/football/competitions/premier-league/12047806/How-the-Bosman-revolution-changed-football-for-ever.html> (last accessed Feb. 1, 2019).

79. See Blair Downey, *The Bosman Ruling: European Soccer – Above the Law?*, 1 ASPER REV. INT'L BUS. & TRADE L. 187, 189 (2001).

80. David W. Penn, *From Bosman to Simutenkov: The Application of Non-Discrimination Principles to Non-Nationals in European Sports*, 30 SUFFOLK TRANSNAT'L L. REV. 203, 227.

81. Downey, *supra* note 85, at 194.

foreign players, thus, a club having resources would pool the best foreign players and ease out less talented nationals in order to dominate the league.⁸² These are arguments familiar to Filipino sports fans who have followed league developments in recent years. Many league executives in the Philippines bank on these arguments to justify the foreign athlete quotas being imposed on teams.⁸³ In addition to the above arguments, it has also been said — especially in relation to basketball — that the existence of a foreign-player-dominated team is unfair because of the physical differences, i.e., height, between Filipinos and foreign players.⁸⁴

These arguments are for naught.

After *Bosman*, club football in Europe achieved a level of competitiveness that made it a global fascination.⁸⁵ It arguably birthed the best players and the best teams and the best coaches club football has seen in years.⁸⁶ The loosening of foreign player restrictions is what allowed the likes of Lionel Messi (Argentinian), Cristiano Ronaldo (Portuguese), Neymar (Brazilian), and Paulo Dybala (Argentinian) to shine.⁸⁷

By widening the talent pool, home-grown players were forced to develop beyond their national capabilities in order to compete with the influx from a global talent pool.⁸⁸ The development of the national talent pool for international competition was facilitated, not hindered, by the relaxation of foreign player restrictions.⁸⁹

82. Penn, *supra* note 86.

83. Terrado, *supra* note 14 & Joey Villar, *NCAA firm on 'no-foreign player' policy*, PHIL. STAR, July 3, 2018, available at <https://www.philstar.com/sports/2018/07/03/1830222/ncaa-firm-no-foreign-player-policy> (last accessed Feb. 1, 2019).

84. Joble, *supra* note 16.

85. Liew, *supra* note 84.

86. *Id.*

87. *Id.* See also Danielle Rossingh, *Cristiano Ronaldo Owes His Millions To A Penniless Belgian*, available at <https://www.forbes.com/sites/daniellrossingh/2015/12/15/cristiano-ronaldo-owes-his-millions-to-a-penniless-belgian/#799b8feb3563> (last accessed Feb. 1, 2019).

88. Pehr-Johan Norbäck, et al., *Talent Development and Labour Market Integration: The Case of EU Football (A Working Paper Published by the Research Institute of Industrial Economics)* at 5, available at <http://www.ifn.se/wfiles/wp/wp1126.pdf> (last accessed Feb. 1, 2019).

89. *Id.* at 17.

Post-*Bosman*, clubs were also forced to undertake capacity-building activities — improving their facilities, padding their training staff, and bringing in high-profile coaches — in order to attract foreign players.⁹⁰ The argument that less monetized clubs will suffer yielded to the reality that money is not all that players consider in picking their teams.⁹¹ Finally, the argument that fans will not connect with foreign players relies on the assumption that the fans are xenophobic and will refuse to identify with immigrants.⁹² This should not be the case as fans are educated by the sporting events they follow.⁹³ The relationship is dialectic and not one-sided.⁹⁴ The league molds the fans' perceptions, and the fans influence the league through ticket sales and following.⁹⁵ In other words, a xenophobic league breeds xenophobic fans by restricting their exposure to foreign players. The argument drives connection down to citizenship, when there is much more to “connecting with the fans” than a player's place of origin.⁹⁶

The argument that physical differences between players justify exclusion makes for a policy that insults the talent of home-grown players and makes for less competitive players in the long run. The bubble, once burst by participation in international sporting events, makes for a severely handicapped national team. Further to this, it is pointed out that not only foreign athletes are excluded, but Filipino-foreign athletes as well. The policy of restricting Filipino-foreign athletes' participation in league sports in the country discourages their participation in national and international tilts. The loosening of foreign player restrictions in league sports may serve to attract more Filipino-foreign citizens to play for the national team.

90. Jonathan Magee & John Sugden, *The World at their Feet*, 26 J. SPORT & SOC. ISSUES 421, 425 (2002) & Alessandro Baroncelli & Umberto Lago, *Italian Football*, 7 J. SPORTS ECON. 13, 21 (2006).

91. Magee & Sugden, *supra* note 96, at 431.

92. Penn, *supra* note 86, at 214 & Downey, *supra* note 85, at 194.

93. Roger Levelmore & Peter Millward, *Official Policies and Informal Transversal Networks: Creating 'Pan-European Identifications' Through Sport?*, 55 SOCIOLOGICAL REV. 144, 159 (2007).

94. William A. Sutton, et al., *Creating and Fostering Fan Identification in Professional Sports*, 6 SPORT MARKETING Q. 15, 15 (1997).

95. *Id.*

96. Marc Mazodier, et al., *The Long Reach of Sponsorship: How Fan Isolation and Identification Jointly Shape Sponsorship Performance*, J. MARKETING., Volume No. 82, Issue No. 6, at 29.

True, these observations are based on foreign factual milieus, however, they serve as a model for enriching sports in the country. There is want of data regarding the extent and depth of participation of foreign and Filipino-foreign athletes in league sports in the Philippines — that is a matter for another study. But, suffice it to say, that the policy is based on assumptions already disproven in other jurisdictions.

Under a development framework, allowing foreign players makes sense. However, there is something problematic under this paradigm: it treats athletes as commodities. The language used is commercial in nature — foreign import, import restrictions, and the like. In the above arguments, athletes are goods that may or may not enter the free market to be consumed by the fanbase. While it makes the matter more palatable to investors, team owners, and league operators, it also creates an environment where players are stripped of their dignities and agencies, making it easier for policies like “import” restrictions and Filipino-foreign player quotas to come into play.

The development narrative in sports and sporting events must take a sharp turn if it is to return to its roots of developing the human spirit. Thus, there is a need to discuss the issue not only as a legal issue of migration, but also a human rights issue.

V. CONTROVERSIES IN THE REGULATION OF FOREIGN ATHLETES’ PARTICIPATION IN SPORTS LEAGUES

A. Regulation of Foreign Athletes’ Participation as a Migration Issue

The above discussion exposes a festering gap in our immigration law. It is significant that the Philippine law on immigration was last revisited in the early days of the Republic. There have been various attempts to refurbish the dated Philippine Immigration Act of 1940 (PIA), but none of which looks at the issue from the perspective of sports, perhaps because sports development in the country is nascent, at best. Nonetheless, the lack of a specific measure for the ingress and egress of foreign athletes in our borders is the bedrock of restrictions they experience in league sports in the country. This point is developed by looking into the immigration law of the U.S.

In the U.S., an athlete may enter as either an O-category athlete or a P-category athlete.⁹⁷ The O-category “applies to those athletes ... that can demonstrate an ‘extraordinary ability’ in their field as demonstrated by

97. Jordan, *supra* note 59, at 214-15 & 223-25.

‘sustained national or international acclaim.’”⁹⁸ While the P category “applies to aliens who perform as athletes either individually or on a team that is recognized internationally.”⁹⁹

It has been recommended that these categories of aliens under the Immigration Act of 1990 be tweaked to accommodate not only professional athletes, but also amateur athletes, student-athletes, and rising-stars.¹⁰⁰ Prior to the 1990 amendments, athletes entered the U.S. as “aliens of distinguished merit and ability.”¹⁰¹ Pre- and post-Immigration Act of 1990, foreign athletes came to the U.S. for various purposes, negotiated between the athletes, a prospective team or trainer, and the state.

In the Philippines, there are three general ways for a foreign athlete to enter. As earlier discussed, they may enter as Alien Employees, as short-term visa holders for business, or as students. Foreign athletes seeking to be drafted usually enter under a Section 9(a) visa, declaring to the BOI a business purpose for their short-term stay. If drafted, they must acquire a Section 9 visa, along with an Alien Employment Permit (AEP).¹⁰² Their stay is dependent on their continued employment. If coming in as a student under a Section 9 visa, their stay is limited by their acceptance and continued education in a recognized institution.¹⁰³ An athlete wishing to train in the Philippines may hold a Section 9(a) visa, and have it continuously renewed, requiring him or her to exit the country first and re-enter again.

The lack of specificity makes life tedious for foreign athletes coming to the Philippines, whether to play or train. Their rights are heavily contingent upon factors which are outside their control. For example, a foreign athlete initially “employed” by a team playing in a league with foreign athlete quotas may find himself or herself in a tough spot to negotiate his or her contract because a Section 9(g) visa only allows the foreign national to work for the company which sponsored his or her visa and AEP. His or her mobility within the teams is also limited as his stay is contingent upon the Section 9(g) visa and AEP issued to him or her through his or her original

98. *Id.* at 214 (citing 8 U.S.C. § 1101 (a) (15) (O) (i) (Supp. II 1990) (U.S.)).

99. Jordan, *supra* note 59, at 224.

100. *Id.* at 237.

101. *Id.* at 209 (citing Mark W. Peters, *Much Ado About Anything?: The Effect of the Immigration Act of 1990 and Subsequent Amendments on Nonimmigrant Alien Artists and Entertainers*, 38 WAYNE L. REV. 1661, 1663 (1992)).

102. DOLE Department Order No. 146-15, § 1.

103. Philippine Immigration Act of 1940, § 9 (f).

team. His or her working visa would have to be downgraded first to a tourist visa, then a new work visa and AEP would have to be secured under the new team or company which drafted him or her.¹⁰⁴ The issuance of a new AEP usually takes three weeks,¹⁰⁵ and the subsequent work visa takes around two to three months.¹⁰⁶ During the pendency of applying for and processing of these documents, a Provisional Work Permit may be applied for and secured within five to 10 business days from the change in team or company.¹⁰⁷

These gaps in immigration law allow more powerful actors to make impositions on foreign athletes. As earlier intimated, these gaps are the foundation of foreign athlete quotas in league sports because of the startling lack of specific protections given to these athletes and the lack of definite legal relations between the leagues and the individual players. The umbrella of rights supposedly enjoyed by migrants — including foreign athletes — are locked in mostly private interests.

What is, perhaps, more alarming in the Philippine situation is the fact that even Filipino-foreign athletes are restricted. Freedom of association seemingly trumps non-discrimination principles in the name of “nationalizing” sports.

In inquiring into the problems faced by foreign and Filipino-foreign athletes seeking entry and employment in the Philippines as a migration issue, it would do well to understand the nature of immigration laws as

104. See Miguel Antonio H. Galvez & Anna Carmi Calsado-Amoroso, *The Bureau of Immigration Now Strictly Requires Work Visa Downgrading*, available at <https://www.bakermckenzie.com/en/insight/publications/2018/08/bureau-of-immigration-now-strictly-requires> (last accessed Feb. 1, 2019). See also Peter Michael Dizon, *When to downgrade a Philippine work visa*, available at <https://pmdizon.com/article/downgrade-philippine-work-visa> (last accessed Feb. 1, 2019).

105. Department of Labor and Employment Bureau of Local Employment, *Frequently Asked Questions on the Revised Rules for the Issuance of Employment Permits to Foreign Nationals (D.O. No. 97-09)*, available at <http://www.ble.dole.gov.ph/index.php/web-pages/118-alien-employment-permit> (last accessed Feb. 1, 2019).

106. Galvez & Calsado Amoroso, *supra* note 110.

107. See Department of Labor and Employment, *Foreign workers with pending AEP application must secure Provisional Working Permit-DOLE*, available at <https://www.dole.gov.ph/news/view/2373> (last accessed Feb. 1, 2019).

political, inherent to the state, and absolute,¹⁰⁸ which trickles down to even private enterprises, woven into corporate rules and policies under free association principles.

The power of the state to regulate movement into, sojourn within, and exit of foreigners from its territory is tagged as absolute.¹⁰⁹ Indeed, “the power [to exclude aliens is derived] from international law”¹¹⁰ as a direct consequence of a state’s jurisdiction over its territory.¹¹¹

However, recent developments in international law have been shown to limit said power. Much of the discussion on the topic has centered on family rights, citing in many instances the “proportionality principle” as it relates to the direct consequence of migration, which is family separation.¹¹² In a nutshell, the proportionality principle means “that courts must weigh the public interest asserted by the state to make sure it is proportional to the hardship entailed in an individual case[,]”¹¹³ anchoring it on the right to family integrity espoused in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and children’s right to a family life found in the Convention on the Rights of a Child.¹¹⁴

Within the labor migration paradigm, the international community is committed to respect, protect, and fulfill the right to work, “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this

108. RONALDO P. LEDESMA, AN OUTLINE OF PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS 16-7 (2018 ed.).

109. *Id.* at 5.

110. Shayana Kadidal, “Federalizing” Immigration Law: International Law as a Limitation on Congress’s Power to Legislate in the Field of Immigration, 77 FORDHAM L. REV. 501, 513 (2008) (citing Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power over Foreign Affairs*, 81 TEX. L. REV. 1, 132 (2002)).

111. Kadidal, *supra* note 110, at 513.

112. *Id.* at 515.

113. *Id.*

114. *Id.* at 516-18 & 522 (citing Universal Declaration of Human Rights, arts. 12 & 16(3), G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights, arts. 17 & 23(1), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171; & Convention on the Rights of the Child, G.A. Res. 44/25, art. 24(2)(e), U.N. Doc. A/44/49 (Nov. 20, 1989)).

right.”¹¹⁵ The proportionality principle earlier discussed is expressed in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in this wise —

Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.¹¹⁶

In the Philippine jurisdiction, a more compelling argument for international law limiting state power to regulate immigration is the Constitution. The Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations”¹¹⁷ and provides for a process by which treaties and international agreements are to be written in statute books.¹¹⁸ Congress, thus, cannot legislate against international law principles or treaty obligations without first derogating the legislative imprimatur previously given by the same body to international law instruments.¹¹⁹ It is also the State’s responsibility to purge its statute books of laws and policies which do not conform to international obligations.¹²⁰

As a labor migration issue, the foreign and Filipino-foreign athlete restrictions are matters which the state is properly concerned with, considering the commitments it has made to international bodies. The rights outlined above spring from one’s humanity, and not his or her citizenship. It does not matter where the athlete is situated at any given time; these rights are inherent to him or her. The question is which state bears the duty to respect, protect, and fulfill these rights. It is submitted that once a foreign or

115. International Covenant on Economic, Social and Cultural Rights, art. 6 (1), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

116. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 8 (1), *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 3.

117. PHIL. CONST. art. II, § 2.

118. PHIL. CONST. art. VII, § 21.

119. Kadidal, *supra* note 116, at 525-27

120. See Heather Leary, *The Nature of Global Commitments and Obligations: Limits on State Sovereignty in the Area of Asylum*, 5 IND. J. GLOBAL LEGAL STUD. 297 (1997).

Filipino-foreign athlete has entered the Philippines, it is the Philippine government which is tasked to engage state mechanisms to ensure their protection. Thus, the state has a responsibility to address the gaps in its immigration laws, which gaps allow for the oppression and exploitation of foreign nationals sojourning in the Philippines as athletes. It is also responsible for ensuring that non-state actors, including and especially business conglomerates and enterprises, conform with state laws and policies.

B. Regulation of Foreign Athletes' Participation as a Human Rights Issue

Alison Biscoe of the Institute for Human Rights and Business said that

sport is a natural ally in the human rights debate. Many of the sports bodies themselves [recognize] values such as tolerance, respect, fair play[,] and non-discrimination in their own charters. While the autonomy of sport seeks to safeguard these values against political, legal[,] or commercial influences, it cannot be used as a mechanism to avoid accountability, especially accountability towards those most vulnerable.¹²¹

An emerging field in both law and development studies is the Sport for Development and Peace (SDP) framework, which “refers to the intentional use of sport, physical activity[,] and play to attain specific development and peace objectives[.]”¹²² International organizations, states, sport governing bodies, national and international federations, national and multinational corporations, non-government organizations, athletes, coaches, staff, and fans are all actors under the SDP framework, whose interplay creates the environment for achieving development and peace objectives.¹²³ In the SDP

121. Alison Biscoe, Project Coordinator of Mega-Sporting Events, Institute for Human Rights and Business, *European Parliament Sub-Committee on Human Rights: Exchange of views on sports and human rights in the context of large sporting events* at the European Parliament Sub-Committee on Human Rights: Exchange of views on sports and human rights (Nov. 19, 2018) (transcript available at https://www.sporhumanrights.org/uploads/files/2018.11_EP_Speech_on_CSHR_by_Alison_Biscoe_.pdf) (last accessed Feb. 1, 2019).

122. Harnessing the Power of Sport for Development and Peace: Recommendations to the Government (A summary created by Right to Play in its capacity as the Secretariat to the Sport for Development and Peace International Working Group) at 1, available at http://www.sportspromedia.com/images/uploads/directory/brochures/Sport_for_Development_and_Peace_Evaluation_Report.pdf (last accessed Feb. 1, 2019).

123. Institute for Human Rights and Business, *Rights Through Sport: Mapping for Development and Peace* (An April 2018 Report by the Institute for Human Rights and Business) at 9-10, available at

framework, the actors are rights-holders and/or duty-bearers whose actions are governed by the dictates of the universal rights regime.

Particular to the topic at hand are the right against discrimination, the right to equal protection, the right to free association, the right to work, and the right to free mobility. The interplay of these rights within the SDP paradigm recognizes sports both as a business enterprise and developmental tool.

The exclusion of foreign athletes from league sports becomes a legal concern because it creates a human rights crisis within that circle. More specifically, the ranking of these rights in relation to league sports must be undertaken in order to successfully build an effective SDP framework. Which rights yield to others is discussed in the subsequent section.

VI. A RIGHTS-BASED APPROACH TO BRIDGING THE GAP IN PHILIPPINE IMMIGRATION LAW TO PROTECT FOREIGN ATHLETES

The interest of sports leagues, as any association, is to limit state interference in internal matters. The state's interest, on the other hand, is to make sure that individual rights are upheld in any and all social interactions within its borders. The gap in the PIA was shown to create a human rights crisis within league sports in the Philippines by allowing sports leagues to come up with and impose discriminatory restrictions against foreign and Filipino-foreign athletes by interposing the freedom-of-association defense.

The freedom of association is among the most treasured civil liberties. However, other more primordial rights have been heavily articulated by the Constitution and the international community. The right against discrimination on the basis of race, nationality, or ethnicity is the foundation of the earliest international human rights instruments. The right recognizes the equality in dignity of all men and women. In the International Convention on the Elimination of Racial Discrimination, "racial discrimination" is defined as

any distinction, exclusion, restriction or preference based on race, [color,] descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal

footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹²⁴

The foreign athlete quota is one such exclusion. It bars a foreign athlete's full enjoyment of his right to movement and his right to work or study. The discrimination is even more apparent in relation to Filipino-foreign athletes who are restricted from playing in their home country. Additionally, while the duty to respect, protect, and fulfill these rights primarily fall upon the state, recent developments in international law have recognized the power of business in the development of a rights-based society, hence the global initiative to make human rights a business concern. Sports, both as development tool and business enterprise, is in a unique position to bear the burdens imposed by the universal rights regime.

How are these rights protected? As earlier discussed, a foreign athlete's rights while sojourning within the Philippines are largely contingent upon their teams and their leagues. The primary recommendation is to revisit the PIA and develop a legal framework which severs the contingency relationship between the foreign athlete, his or her league, and his or her team. The vouching mechanism currently in place is a noose which prevents the full articulation of a foreign athlete's rights.

In the interim, as the Article has established the entitlement of a foreign athlete to the rights under the Constitution and the universal rights regime, he or she may challenge exclusionary policies and regulations and forcing the courts to conduct a balancing act between free association rights and non-discrimination rights under a suit for violation of civil and political rights. He or she may also seek redress from government agencies charged with the power to regulate sports leagues. The GAB, DepEd, and CHED all have the power to review league regulations which are contrary to law, morals, public order, and public policy.

In the final analysis, it will be the State, as primary duty-bearer, that will referee between these contests of rights, taking into consideration its mandate to respect, protect, and fulfill them. Be that as it may, the Business and human rights model have given enterprises and associations reason to review their corporate policies in order to align with the universal rights regime. Specifically relating to sports is the SDP framework, which capitalizes on sports' capacity to promote human rights with a development perspective.

124. International Convention on the Elimination of All Forms of Racial Discrimination art. 1 (1), *opened for signature* Jan. 4, 1969, 660 U.N.T.S. 195.

VII. CONCLUSION

What makes sports an entertaining field is the diversity and richness of competition. Behind the magnificent plays and the show-stopping combinations are athletes who have dedicated their lives to sporting. These athletes are people — neither pawns in some corporate game of chess, nor goods to be traded, restricted, or kept. They are free individuals and our sports development framework must recognize them as such, along with their many rights and freedoms.

The main *problematique* this Article sought to uncover is the curious phenomenon of foreign athlete quotas in league sports in the Philippines. In dissecting the issue, the Authors have shown this matter to be an important issue in sports, in development, and in law through the lenses of development studies, immigration law, and human rights.

As a development concern, the foreign athlete quotas are shown to stunt the progress of sports in the country. It breeds less competitive players and makes for unideal conditions for the growth of sports in the country by forcing the whole body of sporting into complacency. As an immigration law issue, the restrictions so imposed are pictured as the result of dated legislation, which fails to capture the nuances and specific conditions athletes face. The gaps in the PIA have served to facilitate the oppressive situation foreign athletes face in the Philippines. Finally, the xenophobic, discriminatory undertones upon which these restrictions lie have no place under a universal rights regime. Today's society has yet to reel from the exclusionary "othering" that prompted the World Wars.¹²⁵ This "othering" did not begin with the gas chambers, it began with humble rhetoric about petty differences, much the same as the justifications made by league executives in discussing foreign and Filipino-foreign athlete regulations.

These conceptions must be launched to oblivion if true development in sports be achieved. It is about time to show foreign and Filipino-foreign athlete restrictions the red card.

125. See generally Lajos Brons, *Othering, an Analysis*, TRANSCIENCE, Volume No. 69, Issue No. 1.