Tapping the potential of human rights provisions in mega-sporting events' bidding and hosting agreements

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Abstract

This article explores the implications of unprecedented commitments by leading international sports organizations to include human rights principles into their bidding requirements and hosting agreements. In May 2017, UEFA communicated their updated requirements for the 2024 tournament, which now explicitly refer to human rights protection. Four months later, the 2024 and 2028 Summer Olympic Games have been awarded to Paris and Los Angeles, for which the IOC drafted host city contracts that for the first time in the history of Olympic Games include human rights clauses. In November 2017, FIFA announced the adoption of new bidding requirements for the 2026 tournament, which expressly mention the protection of human rights. The aim of this article is to examine if and how such provisions and requirements could improve access to remedy for victims of human rights violations that occurred in the course of delivering mega-sporting events. In pursuing this aim, this article sheds light on the scope and enforceability of these measures and looks into the extent to which the Court of Arbitration for Sport is equipped to deal with human rights matters.

Keywords Mega-sporting events · Human rights · Access to remedy · Bidding regulations · Hosting agreements · Fédération Internationale de Football Association (FIFA) · International Olympic Committee (IOC) · Union of European Football Associations (UEFA) · Court of Arbitration for Sport (CAS)

1 Introduction

In March 2018, the Supreme Committee for Delivery and Legacy, the organizing committee of the 2022 FIFA World Cup in Qatar announced that workers building the stadiums for the 2022 FIFA World Cup will receive reimbursement for any recruitment and hardship fees they had to pay.¹ This form of compensation for adverse impacts of organizing a mega-sporting event (MSE) stands out as an exception among numerous cases of MSE-related human rights violations where no remedy is provided.² The story of exploited workers building stadiums and other infrastructure for the 2022 FIFA World CupTM in Qatar has been reported repeatedly in the news ever since the event was awarded to the Gulf State.³ Estimations by the International

Trade Union Confederation predicted that before the first ball will be kicked for the championship, 4000 workers will have died due to hazardous working conditions they are subject to.⁴ During the preparations for the World Cup and the Summer Olympic Games in Brazil, more than 77,000 people living in and around Rio de Janeiro have been

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¹ Supreme Committee for Delivery and Legacy, 2022 FIFA World CupTM Stadium Workers given \$5 m Repayment, 31 March 2018 <https://www.sc.qa/en/news/2022-fifa-world-cup-stadium-workers-given-5m-repayment> (Accessed 5 April 2018).

² Mega Sporting Events Platform for Human Rights, Remedy Mechanisms for Human Rights in the Sports Context, 2017, https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Remedies_Mechanisms_for_Human_Rights_in_the_Sports_Context%2C_Jan-2017.pdf (Accessed 12 September 2017).

³ International Trade Union Confederation, Qatar 2022 World Cup Risks 4000 Lives, Warns International Trade Union Confederation, 27 September 2013, <http://www.ituc-csi.org/qatar-2022-world-cup-risks-4000?lang=de>, (Accessed 3 February 2017).

⁴ International Trade Union Confederation (2015) Frontline Report 2015 - Qatar: Profit and Loss - Counting the Cost of Modern Day Slavery in Qatar: What Price Is Freedom?, https://www.ituc-csi.org/IMG/pdf/qatar_en_web.pdf, p. 22 (Accessed 24 May 2017).

displaced between 2009 and 2015.⁵ In some cases, demolition of the houses began even before the residents were removed.⁶

Reasons for the lack of remedies for those cases are manifold, but essentially boil down to the blurred lines of responsibility and accountability that surround the governance of MSEs. These blurred lines exist because MSEs are jointly staged and organized by multiple actors, ranging from international sports organizing bodies, to national sport organizing bodies and local organizing bodies, as well as local, regional and central authorities of the host country, national and international companies, broadcasters, recruitment or other agencies, and sponsors.⁷ Most actions related to the organization and execution of such events are not carried out by one actor individually, but rather jointly by a multitude of actors. Hence, victims of MSE-related human rights abuses face the challenging task of identifying the responsible actors. Even if victims manage to detect the actors responsible for their harm, the fact that the majority of cases are not being remedied reveals that existing international and national mechanisms are not sufficient for holding the responsible actors accountable. International human rights law does not take effect for the numerous non-state actors involved in delivering MSEs. National mechanisms often lack competence or are suspended due to the culture of legal exceptionalism that comes with hosting MSEs.⁸ Mechanisms specific to the sports context have not yet been used for human rights issues related to MSEs.

This calls for alternative approaches to close the accountability gap and improve access to remedy. In the past decades, a rise of private regulation could be witnessed within the broader business and human rights context.⁹ The recent commitments by three of the most well-known international sports organizing bodies, the International Olympic Committee (IOC), the Union of European Football Associations (UEFA), and the Fédération Internationale de Football Association (FIFA), to include human rights commitments in the bidding and hosting regulations for their mega-sporting events (MSEs), follow this trend. The 2024 and 2028 Olympic Summer Games

will be the first MSEs for which respect for and protection of human rights form an integral part of the host city contract.¹⁰ The 2026 Olympic Winter Games will be the first Games for which the host had to guarantee the respect for and protection of human rights.¹¹ UEFA implemented new Tournament Requirements for the EURO 2024, which now explicitly mention human rights protection and risk management.¹² FIFA similarly revised its bidding requirements for the 2026 World Cup, following the recommendations that Professor John Ruggie made in his report on FIFA's human rights responsibilities.¹³

This article explores the potential of the recent revisions of bidding and hosting regulations by leading international sports governing bodies for improving access to remedy for victims of MSE-related human rights violations. More specifically, this paper carves out the challenges of access to remedy in the MSE context and asks to what extent the inclusion of human rights guarantees and obligations in bidding and hosting regulations can address these challenges, thereby assuming that addressing these challenges can indeed improve access to remedy and close the accountability gap. The following section introduces the concept of access to remedy and identifies the challenges specific to the MSE business, which reveals that these challenges go beyond the regular complexities of other business and human rights cases. Section 3 takes a closer look at the content of the recent initiatives taken by UEFA, the IOC, and FIFA. Due to the recentness of these initiatives, secondary sources for interpreting or applying these provisions do not exist, yet. Therefore, the analysis provided is exclusively based on the information provided in the relevant bidding and hosting documents, with a focus on provisions of relevance to access to remedy. Based on

⁵ World Cup and Olympics Popular Committee (2015) Mega-Events and Human Rights Violations in Rio de Janeiro Dossier - Rio Olympics: The Exclusion Games, http://www.childrenwin.org/wp-content/uploads/2015/12/DossieComiteRio2015_ENG_web_ok_low.pdf, p. 20 (Accessed 2 April 2017).

⁶ Tom Philipps, 'Rio World Cup Demolitions Leave Favela Families Trapped in Ghost Town', 26 April 2011, <https://www.theguardian.com/world/2011/apr/26/favela-ghost-town-rio-world-cup> (Accessed 3 February 2017).

⁷ Chappelet and Kübler-Mabbott (2008), pp. 5–16.

⁸ Corrarino (2014), p. 180.

⁹ Nolan (2014), pp. 9–11.

¹⁰ International Olympic Committee (2017) HOST CITY CONTRACT PRINCIPLES GAMES OF THE XXXIV OLYMPIAD IN 2028, <https://stillmed.olympic.org/media/DocumentLibrary/OlympicOrg/Documents/Host-City-Elections/XXXIV-Olympiad-2028/Host-City-Contract-2028-Principles.pdf>, Art. 13 (Accessed 19 October 2017).

¹¹ International Olympic Committee (2017) Candidature Questionnaire - Olympic Winter Games 2026, https://stillmed.olympic.org/media/DocumentLibrary/OlympicOrg/Games/Winter-Games/Games-2026-Winter-Olympic-Games/Candidature-Questionnaire-2026.pdf#_ga=2.121534922.315209446.1522142680-579680229.1521669222 (Accessed 27 March 2018).

¹² UEFA (2017) UEFA EURO 2024 Tournament Requirements, http://www.uefa.org/MultimediaFiles/Download/OfficialDocument/uefaorg/Regulations/02/46/30/61/2463061_DOWNLOAD.pdf (Accessed 10 May 2017).

¹³ John G Ruggie (2016) "For the Game. For the World." - FIFA and Human Rights, http://ezproxy.lib.ucf.edu/login?url=http://search.proquest.com/docview/754063565?accountid=10003%5Cnhttp://sfx.fcla.edu/ucf?url_ver=Z39.88-2004&rft_val_fmt=info:ofi/fmt:kev:mtx:journal&genre=article&sid=ProQ:ProQ:wpsshell&atitle=%22For+the+Game.+For+the+ (Accessed 15 September 2017).

this analysis, Sect. 4 evaluates to what extent these revised regulations can improve access to remedy based on the challenges identified in Sect. 2. In addition to this general evaluation, Sect. 5 assesses the role that CAS arbitration as the default mechanism for enforcing the respective bidding and hosting regulations can play in terms of improving access to remedy for victims of MSE-related human rights abuses. Section 6 summarizes the main findings and more generally reflects on their implications from a victim's perspective.

2 Challenges for access to remedy in the MSE context

The right to effective remedies is a human right recognized by most international human rights instruments.¹⁴ Remedies can take various forms. The UN Guiding Principles speak of grievance mechanisms and distinguishes between state-based judicial mechanisms, state-based non-judicial mechanisms, and non-state-based mechanisms, while stressing that 'effective judicial mechanisms are at the core of ensuring access to remedy'.¹⁵ Concrete examples for remedies are apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, and the prevention of future harm.¹⁶ The access to such mechanisms, in other words the access to remedy, is seen as a derivative of and dependent on the right to effective remedy.¹⁷

Since the UN Guiding Principles for Business and Human Rights (UNGPs) have been adopted in 2011, numerous studies were conducted on judicial and non-judicial remedy mechanisms to identify the challenges victims face in relation to access to remedy for corporate human rights abuses. Based on these studies, at least three general observations can be made. First, it is clear that obstacles to access to remedy have substantial and procedural dimensions. The difficulties with regard to substantive challenges evolve around the role of international human rights law in the various remedy mechanisms, such as private litigation, arbitration, criminal law cases, but also non-judicial mechanisms. Under international human rights law, states are the primary duty-bearers and it has no direct effect for private parties. The inadequacies of existing legal frameworks create a lack of legal liability for

private actors in particular.¹⁸ Nonetheless, private actors are subject to rising expectations to protect human rights, promoted as human rights responsibilities in form of various multi-stakeholder initiatives and soft law instruments. Among the most notable ones are the UNGPs and the 'Guidelines for Multi-National Enterprises' developed by the Organization for Economic Development and Co-operation (OECD Guidelines). In particular, the UNGPs have been criticized for not going far enough and creating only general and unspecific responsibilities for corporate actors.¹⁹ Challenges relating to procedural aspects concern questions on the competent forum and the applicable law, issues related to complex corporate constructs or possibility for collective redress.²⁰ In addition, victims face difficulties in gaining access to information and evidence, as well as access to sufficient funding for filing claims.²¹ Moreover, the problems for victims to access these mechanisms often already start at the lack of awareness of the existence, scope and operation of these mechanisms.

Second, the challenges for access to remedy seem to vary depending on not only the type of mechanisms but also the geographic region, industry, or context.²² With regard to judicial mechanisms, the most common challenges are the procedural challenges listed above. Non-judicial mechanisms, although they are an important tool for remedying corporate human rights violations,²³ are also far from flawless. For one, most of these mechanisms are based on instruments and principles that set a lower bar than what is required by local or international law, or lack independent auditing and transparency.²⁴ In addition, the challenges are connected to the fact that non-judicial mechanisms often do not follow any prescribed formal procedures. This jeopardizes legitimacy, accessibility, predictability and transparency.²⁵ Furthermore, there is often a power imbalance between the victims and the alleged perpetrator, which adversely affects the bargaining power of victims.²⁶ Victims can be pressured through fear of retaliation or even contractually required to sign a legal

¹⁸ Nolan (2014), p. 12.

¹⁹ Wettstein (2015), p. 170.

²⁰ Álvarez Rubio and Yiannibas (2017), p. 3.

²¹ Human Rights Council, A/HRC/32/19 (2016) Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse, para 4; Enneking (2017), pp. 65–67.

²² ACCESS Facility (2014) Expert Meeting Report ACCESS to Remedy in Context of Business and Human Rights: Improving the Effectiveness of Non-Judicial Grievance Mechanisms, http://accessfacility.org/sites/default/files/ReportExpertMeetingonGrievanceMechanisms_ACCESSFacility_TheHague_3-4April2014_0.pdf, p. 12 (Accessed 22 March 2018).

²³ Nolan (2014), p. 21.

²⁴ Ibid., p. 13.

²⁵ Häusler et al. (2017); ACCESS Facility (See n22) p. 10.

²⁶ Thompson (2017), pp. 61–62.

¹⁴ See for example International Covenant on Civil and Political Rights 1966 Art. 2, or Universal Declaration of Human Rights 1948 Art. 8.

¹⁵ Human Rights Council, A/HRC/17/31 (2011) Guiding Principles on Business and Human Rights, Principles 25–28, commentary to Principle 26.

¹⁶ Ibid., commentary to Principle 25.

¹⁷ United Nations General Assembly A/72/162, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (2017) paras 14–15.

waiver to ensure that legal action is taken in the future in case the outcome of the non-judicial mechanism is not satisfying.²⁷ The power imbalance can also get in the way of or decelerate the implementation of the outcome of the respective dispute settlement process.²⁸ Within the wide range of non-judicial mechanisms, differences regarding these challenges can be observed concerning their organization, outcomes, and depending on whether they are state based, industry- or sector specific, or company based.²⁹

A third observation is that even though there seem to be context- and mechanism-specific differences in the challenges for access to those mechanisms, one overarching challenge is enforceability.³⁰ The problem is not only the enforceability of mechanisms as such to guarantee the access to remedy but also the enforceability of the outcomes of remedy mechanisms. Remedy or accountability provisions are often not formulated in such a way that respective victims can take action and courts or other dispute settlement panels can enforce them. The result is that both, judicial and non-judicial mechanisms within the business and human rights field, suffer from a lack of enforcement.³¹ With regard to judicial mechanisms, the challenges are again connected to a number of procedural and substantial obstacles. Additional hurdles are the question of legal standing and the recognition and enforcement of decisions. The latter equally applies to decisions of non-judicial mechanisms. Moreover, non-judicial mechanisms based on soft law contain ‘aspirational goals’, with only limited constraints attached if these goals are not met.³² This further impedes the enforceability of certain mechanisms.

Applying these general observations to the MSE context shows that the challenges faced when attempting to remedy MSE-related human rights violations not only reflect these general challenges but also further intensify and specify them. In terms of reflections, the fact that the majority of cases are not being remedied exposes the inadequacies of existing legal frameworks. These inadequacies become apparent when using international law of responsibility and human rights law to establish responsibility for MSE-related human rights abuses. Two possible routes can be taken: firstly, by means of attributing the conduct in question to the host state because either the actor qualifies as state organ or the act itself amounts to exercising ele-

ments of governmental authority³³, and secondly, by holding the host state responsible for failing to fulfil its obligation to prevent third parties involved in staging and hosting MSEs from abusing the rights of individuals.³⁴ The problem is that in both situations, conduct is being attributed to an actor that de facto did not perform this conduct but still bears primary responsibility for it.³⁵ This detour is questionable because the actual wrongdoer will still not bear any consequences for its wrongdoings. Moreover, and even more undesirable is that in relation the second possibility, strictly speaking the state would not be held responsible for the human rights violation as such, but rather for failing its preventive duty.³⁶ The problem is that if this is the only route to establish responsibility, in the end no one might be held responsible for the actual harm the victims suffered, which can have a negative impact on potential compensation and reimbursement.

Furthermore, the lack of human rights obligations for private actors also surfaces in the MSE context. However, even though the UNGPs and the OECD Guidelines are neither binding nor universally applicable to all private actors, they certainly are of relevance in the context of remedies for MSE-related human rights violations, not only because of the significant number of corporate actors involved in the MSE business but also because sport organizations, such as UEFA, FIFA and the IOC, increasingly commit to these guidelines. By joining the MSE platform for human rights, all three sports governing bodies accept the ‘Sporting Chance Principles on Human Rights in Mega-Sporting Events’, which explicitly refers to the UNGPs as the standard to comply with.³⁷ In addition, FIFA expressly mentions the UNGPs in their human rights policy, which has been adopted after John Ruggie, author of the UNGPs, published a report on how FIFA can incorporate respect for human rights across its global activities. In this report, the UNGPs were used as authoritative standard. Furthermore, the Swiss National Contact Point (NCP) confirmed that ‘FIFA’s involvement in the organization of the FIFA 2022 World Cup and in particular the contractual relationship with its direct counterparties can be considered as activities of commercial nature, to which

²⁷ Kaufman and McDonnell (2016), p. 129.

²⁸ *ibid.*

²⁹ Häusler et al. (2017), p. 79.

³⁰ Human Rights Council (See n21) para 4.

³¹ *ibid.*

³² Nolan (2014), p. 13.

³³ International Law Commission (2001) ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 4 and 5.

³⁴ International Covenant on Civil and Political Rights (1966), Art. 2.

³⁵ Fry (2014), p. 104.

³⁶ Dannenbaum (2015), e.g. p. 205.

³⁷ Mega Sporting Events Platform for Human Rights (2016) The 2016 Sporting Chance Principles | Institute for Human Rights and Business, <https://www.ihrb.org/megasportingevents/sporting-chance-principles>, (Accessed 8 December 2017).

the OECD Guidelines are applicable'.³⁸ While this statement paved the way for remedying human rights violation related to the 2022 World Cup at National Contact Points, the mediation panel also stressed that FIFA's status under the OECD guidelines must be examined 'in a case-by-case analysis based on the concrete circumstances'.³⁹

The general challenges for access to remedy are intensified by what has been referred to as the 'the problem of many hands'.⁴⁰ The delivery of MSEs is based on collaboration from various national, international, public and private actors. Hence, MSE projects are jointly staged by a mix of public, private and even hybrid actors. Consequently, MSEs are built on rather non-transparent and intricate organizational structures, which blur the lines of responsibility for the operations that take place. This causes problems for identifying the competent forum and the applicable law. In addition, another consequence is that if something goes wrong and human rights are being violated as a consequence of certain operations, a wide range of actors need to be considered for having potentially contributed to the harm. In fact, in most cases there will be more than one actor involved in actions that result in human rights violations. The identification is further complicated by the internal structural complexities of the business enterprises that are involved.⁴¹

The underlying problem of multiplicity and diversity is that most responsibility and accountability mechanisms in the human rights field are built on single actors and independent acts, while instead they should be able to accommodate a multiplicity of actors, in particular to avoid blame shifting.⁴² For example, the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) and the Draft Articles on the Responsibility of International Organizations (ARIO) are primarily focussed on attributing responsibility separately to one actor, even though they acknowledge the possibility of states aiding and assisting other states, or states jointly committing a wrong with an international organization.⁴³ In addition, accountability mechanisms in regional and international human rights law are also limited in scope because they are based on the state as a primary duty-bearer and because

they can only address other duty-bearers indirectly through state accountability.⁴⁴

MSE-specific challenges for instance originate from the life cycle of MSEs.⁴⁵ Preparations for these events sometimes start almost a decade in advance and with it the human rights risks. Certain violations can already occur in the bidding stage. For example, the visit of the respective evaluation committee in the bidding phase can cause cities to take rather drastic measures to 'clean up' and present the city in the best way possible. Reports by NGOs and media documented that in the weeks before the visit by the IOC Evaluation Committee to Beijing in February 2001 the Chinese police arbitrarily arrested numerous homeless people, beggars, informal vendors and even children that were living on the streets.⁴⁶ Therefore, access to remedy should be secured for the entire life cycle of an MSE, from the bidding stage until after the event as long as committed abuses have not been remedied. This, however, is a challenging task given that different actors and different actions are concerned in the various stages of an MSE's life cycle.

Any efforts for improving access to remedy in the MSE context should address this reflection, intensification and specification of general challenges for access to remedy. This means in more concrete terms that such efforts should provide for procedural and substantive rules that are enforceable, that include human rights obligations for non-state actors, that allow for sharing responsibility or accountability among multiple actors, and that offer for the possibility for remedy across the entire life cycle. These features provide the focus of analysis and evaluation in the following sections.

3 Human rights commitments in MSE bidding requirements and hosting agreements

In the past years, international sports governing bodies, like FIFA, UEFA or the IOC, visibly increased their awareness of and attention for adverse human rights impacts of MSEs. This triggered a number of concrete changes in the bidding and hosting criteria for future Olympic Games and international football competitions. The most recent and remarkable commitments are the new bidding requirements introduced by UEFA for the EURO 2024, the human rights

³⁸ *Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI) - Initial Assessment*, p. 6.

³⁹ *Ibid.*

⁴⁰ Thompson (1980), p. 905; Gauthier (2017) p. 66.

⁴¹ Human Rights Council (See 21), para 4.

⁴² Nolan (2014) p. 10.

⁴³ ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts - with commentaries (2001) arts 16–18; ILC Draft Articles on the Responsibility of International Organizations (2011), Arts. 14–16.

⁴⁴ Vandenbogaerde (2016) p. 172 and 304.

⁴⁵ Institute for Human Rights and Business (2013) *Striving for Excellence: Mega-Sporting Events and Human Rights*, https://www.ihrb.org/pdf/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf (Accessed 17 November 2016).

⁴⁶ Broudehoux (2004), p. 198; Erik Eckholm, *Beijing Is Given an Olympian Burnish*, 21 February 2001, <http://www.nytimes.com/2001/02/21/world/beijing-is-given-an-olympian-burnish.html> (Accessed 3 January 2018).

bidding criteria for the 2026 Olympic Winter Games and the new human rights clauses in the HCCs for the 2024 and 2028 Olympic Games, and finally the new bidding regulations for the 2026 FIFA World Cup™. The following three sections look at each of these three initiatives in more detail, by briefly introducing the content of the provisions and subsequently discussing their scope in terms of included actors and actions, before turning to their implications for access to remedy in the following section.

3.1 UEFA's revised bidding requirements for the EURO 2024

UEFA recently inserted human rights requirements in its 'Tournament Requirements' and 'Bid Dossier' for the EURO 2024.⁴⁷ The respective host city agreements (HCAs) make explicit that the documents and the commitments as communicated during the bidding stage become binding on the parties as soon as the HCA has been signed. The Bid Dossier asks the candidates to describe their

'global strategy of how you are going to integrate the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework for UEFA EURO 2024 in order to protect, respect and fulfil universal human rights, including child rights and the rights of workers'.⁴⁸

In addition to the explicit mentioning of the UNGPs, the remainder of the question lists several other human rights treaties and guidelines, such as the two human rights covenants of the UN, the ILO's fundamental Convention, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the OECD Guidelines for Multi-National Enterprises, based on which 'those acting in the government's/public Authorities' name' have to protect and respect the rights of individuals.⁴⁹ Interestingly, this list also refers to the Sporting Chance White Paper on 'Remedy Mechanisms for Human Rights in the Sports Context'.⁵⁰ The Tournament Requirements obliges the bidders 'to respect, protect and fulfil human rights and fundamental freedoms,

with a duty to respect human, labour and child rights during the Bidding Procedure and, if appointed, until the end of the dismantling of UEFA EURO 2024'.⁵¹ Furthermore, it stresses that 'the Bidders and then the Host Association' have to act in compliance with those human rights documents and treaties already listed in the Bid Dossier.⁵²

By imposing the obligation to 'respect, protect, and fulfil human rights' and referring to specific human rights treaties and documents to which this tripartite obligation applies, UEFA's revised bidding requirements do not only refer to negative obligations to refrain from violating human rights but also to positive obligations in terms of taking actions for protecting and fulfilling them. These positive obligations apply to the 'Bidders', which are defined as 'each UEFA member association bidding to host the Tournament, from the time such UEFA member association declares its interest to bid'.⁵³ UEFA member associations are the national football associations, which usually have the status of private associations registered under the laws of the respective host country. In addition, UEFA's human rights bidding requirements are also directed at other actors involved in delivering the event and account for the fact that due to the exceptional circumstances that arise in times of hosting MSEs they can be given a role in which they act under the government's or other public authorities' name. It is remarkable that all obligations ascribed to these actors apply 'during the Bidding Procedure', even though they only turn into legally binding obligations in form of contractual obligations once the event has been awarded and the hosting agreement has been signed.

While the revised bidding requirements do not include an explicit obligation to provide access to remedy, it is indirectly required by reference to the UN Guiding Principles and the Sporting Chance White Paper. Moreover, in the Tournament Requirements UEFA proposes having in place 'a complaint mechanism and effective remedies for human rights infringements (including labour standards and corruption due diligence) in direct relation with the organization of UEFA EURO 2024', or a 'secure reporting system (including mechanism to protect and secure the anonymity of whistle-blowers and complainants who do not want to be publicly identified)'.⁵⁴ However, while the Bidders can use this as guidelines to follow, they are options only and therefore not binding in the same way as other requirements and resulting commitments. In addition, the suggestions provide rather vague examples and do not offer any concrete reference points on how to create such mechanisms and systems.

⁴⁷ UEFA (See n12) Sector 03; UEFA (2017) UEFA EURO 2024 - Bid Dossier Template, http://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/Regulations/02/46/30/63/2463063_DOWNLOAD.pdf, Section 3 (Accessed 12 September 2017).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Mega-Sporting Events Platform for Human Rights, Remedy Mechanisms for Human Rights in the Sports Context, January 2017, https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Remedymechanisms_for_human_rights_in_the_sports_context%2C_Jan-2017.pdf (Accessed September 2017).

⁵¹ UEFA (See n47), Section 3.

⁵² UEFA (See n12) Sector 03.

⁵³ Ibid.

⁵⁴ Ibid.

3.2 Human rights bidding and hosting regulations for the 2024, 2026, and 2028 olympic games

There are two parallel developments at the IOC with relevance for improving access to remedy for Olympic Games-related human rights abuses. One is the IOC's new approach to the candidature process for the 2026 Olympic Winter Games. Human rights only appear in relation to the core guarantees that have to be submitted together with the Candidature File. According to the revised Candidature Questionnaire, national governments, regional authorities and all cities hosting the Games have to guarantee to the IOC to respect and protect those human rights and to remedy any violation of human rights

‘in a manner consistent with international agreements, laws and regulations applicable in the Host Country and in a manner consistent with all internationally-recognised human rights standards and principles, including the United Nations Guiding Principles on Business and Human Rights, applicable in the Host Country’.⁵⁵

These guarantees apply to all activities related to the organization of the Olympic Games 2026 and become binding once the event has been awarded. It is remarkable that they include explicit reference to remedy. However, they only bind public authorities involved in staging the event and fall short of expressing similar requirements for the private actors involved in bidding for and delivering the event. Furthermore, even though they refer to internationally recognized human rights standards and explicitly mention the UN Guiding Principles, they limit the guarantee to those standards ‘applicable in the Host Country’.

The second development is the inclusion of human rights clauses in the host city contracts for the Olympic Summer Games of 2024 and 2028. These contracts bind the IOC, the respective host city, and the respective National Olympic Committee (NOC). The host city together with the NOC agrees to establish the Organizing Committee of the Olympic Games (OCOG). According to Principle 13, those three actors are obliged to

‘protect and respect human rights and ensure any violation of human rights is remedied in a manner consistent with international agreements, laws and regulations applicable in the Host Country and in a manner consistent with all internationally-recognised human rights standards and principles, including the

United Nations Guiding Principles on Business and Human Rights, applicable in the Host Country’.⁵⁶

Due to the identical wording of this provision and the guarantee requirement, the same points of observation apply. This clause also limits the scope to obligations to those human rights standards ‘applicable in the host country’.⁵⁷ However, it is not clear from the wording, if this limitation applies to the obligation to respect and protect and the obligation to remedy, or if it only relates to the latter. In case it applies to all, it would essentially mean that the Host City, Host NOC and OCOG ‘only’ have to respect and protect those human rights standards by which the Host Country is bound under international human rights law. Consequently, while the HCC as such does not bind the host country, since it is not party to the contract, it obliges the contracting parties, namely the IOC, the respective municipal authorities and National Olympic Committee, to comply with those human rights obligations that the Host Country is bound by. The problem with this condition is that since international law including international human rights law is based on the consent to be bound, not all states that are hosting Olympic Games agreed to be bound by the same human rights obligations. This already becomes visible in the case of the upcoming hosts of the Olympic Games in 2024 and 2028. While France ratified all core international human rights instruments, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) and a few Optional Protocols, the USA has only signed the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Discrimination Against Women, Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, and has not taken any action in relation to most Optional Protocols and the ICRMW for example.⁵⁸ The applicable human rights obligations are not only more patchy in the case of the USA but particularly disturbing when considering the complete lack of obligations under the ICRMW. Considering the amount of migrant workers employed for the preparations of the 2018 and 2022 FIFA World Cups, there is no doubt that the staging of MSEs requires a huge influx of migrant workers especially for the numerous construction projects. Moreover, also the standards for access to remedy in case of human rights violations can differ tremendously depending on the country's human rights obligation. Therefore, making the obligation to respect and protect human rights and remedy

⁵⁶ International Olympic Committee (See n10), Principle 13(2).

⁵⁷ Ibid.

⁵⁸ Office of the High Commissioner of Human Rights (2017) Status of Ratification - Interactive Dashboard <http://indicators.ohchr.org/> (Accessed 9 October 2017).

⁵⁵ International Olympic Committee (See n11), section 6.1.

conditional on those obligations that apply to the Host Country can in principle limit the level of applicable human rights standards and access to remedy.

Even though there is substantial limit on applicable human rights obligations, the HCC provision itself is clear as to the actors that owe these obligations. It expressly binds the Host City, Host NOC and OCOG. In addition, the HCC is signed by a representative of the municipality that hosts the event. Formally speaking, this representative is part of the state apparatus and hence state actor and non-state actors (NSAs) share the obligations to protect and respect human rights, and to remedy violations. Furthermore, the provision also established obligations for the IOC itself in relation to the reporting mechanism it has to create for keeping track of the obligations stated in paragraphs 1 and 2.⁵⁹

With regard to the temporal scope of the guarantees and the HCC provisions, both apply to the activities related to the organization of the Games.⁶⁰ The guarantees and the HCC obligations do not expressly apply in the bidding phase. Furthermore, it is not clear what exactly forms part of these activities and if, for example, the time when the event itself takes place is included, or if ‘organization’ just refers to the planning or preparation stage. Principle 15 (§2b) of the HCC clarifies that organizational activities include measures related to planning and construction works, as well as measures for the protection of the environment, health and safety, labour and working conditions, and cultural heritage.⁶¹ However, despite the fact that this clarification only concerns the obligations outlined in Principle 15(1), which do not mention human rights, it only accounts for activities performed in the actual preparation stage and does not account for activities in the bidding phase or the execution phase.

3.3 FIFA’s revised bidding regulations for the 2026 world cup

The new guide to the bidding process for the 2026 FIFA World Cup includes an entire section on ‘Sustainability and Human Rights’ (Sect. 5), which asks for specific commitments and information on human rights and labour standards from the member association, including a public commitment to respect human rights, guarantees of compliance with international human rights and labour standards, and a strategy.⁶² Concerning the strategy, FIFA provides detailed information on what is expected. This

includes a risk assessment report, the identification of best practices, a mechanism for addressing those risks and a concept for remedy mechanisms.⁶³ In addition, Sect. 8 of the ‘FIFA REGULATIONS for the selection of the venue for the final competition of the 2026 FIFA World Cup™’, requires Member Associations to ‘respect Internationally Recognised Human Rights, including workers’ rights, in all aspects of its/their activities relating to this Bidding Process in accordance with the UN Guiding Principles’.⁶⁴ This includes measures for avoiding to cause or contribute to ‘any adverse human rights, including workers’ rights, impacts’, as well as measures for seeking to ‘prevent or mitigate adverse human rights impacts that are directly linked to its/their operations, products or services by its/their business relationships’.⁶⁵

Based on these provisions, the main responsibility for implementing human rights and labour standards and for providing remedy mechanisms lies on the member association as bidders. However, the involvement of other actors and their potential impact on human rights are accounted for by expanding the human rights requirements imposed on member associations to their relations with other actors ‘even if the Member Association(s) has/have not caused or contributed to such impacts, because a significant part of human rights risk may be associated with the activities of third parties’.⁶⁶ In addition, the ‘Bidding Registration’ document reveals that the bidder has to submit a number of other documents together with the bid book, which all become binding once the Hosting Agreement between FIFA and the Member Association enters into force. For example, the bidder is required to enter into and submit the agreements with respective stadium authorities, training site authorities, airport authorities and hotel authorities.⁶⁷ The respect for human rights and the support of and collaboration with grievance mechanisms form part of these agreements. Furthermore, the bidder has to ensure that all required Government Declarations and

⁶³ Fédération Internationale de Football Association (2017) Structure, Content, Presentation, Format, and Delivery of the Bid Book, http://resources.fifa.com/mm/document/affederation/administration/02/91/61/10/structure.content.and.format.of.bid_neutral.pdf, section 23 (Accessed 27 March 2018).

⁶⁴ Fédération Internationale de Football Association (2017) FIFA Regulations for the Selection of the Venue for the Final Competition of the 2026 FIFA World Cup, http://resources.fifa.com/mm/document/affederation/administration/02/91/60/99/biddingregulationsandregistration_neutral.pdf, clause 8.2 (Accessed 3 January 2018).

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Fédération Internationale de Football Association (2017) Bidding Registration Regarding the Submission of Bids for the Hosting and Staging of the 2026 FIFA World Cup™, http://resources.fifa.com/mm/document/affederation/administration/02/91/85/50/biddingregistration_neutral.pdf, clause 2.1.5 (Accessed 3 January 2018).

⁵⁹ International Olympic Committee (See n10), Principle 13(3).

⁶⁰ Ibid; International Olympic Committee (See n11), section 6.

⁶¹ International Olympic Committee (See n10), Principle 15(2)(b).

⁶² Fédération Internationale de Football Association (2017) GUIDE TO THE BIDDING PROCESS FOR THE 2026 FIFA WORLD CUP, http://resources.fifa.com/mm/document/affederation/administration/02/91/88/61/en_guidetothebiddingprocessforthe2026fifaworldcup_neutral.pdf, (Accessed 13 November 2017).

Guarantees are submitted, as well as all Host City Declarations.⁶⁸ These documents require the respective authorities to comply with their international obligations—linked to being an organ of the state—to respect, protect and fulfil human rights and to ensure that effective remedy mechanisms are in place.⁶⁹ In addition, the bidder already has to submit the Hosting Agreement, in which FIFA contractually binds the Member Association to support and cooperate with grievance mechanisms.

Overall, the content and structure of these requirements is similar to the approach of the UN Guiding Principles. For all NSAs, the focus is on the responsibility to respect human rights, whereas public authorities are obliged to live up to their tripartite human rights obligations. The fact that the Member Association has the responsibility to submit documents from a wide range of actors shows that FIFA is aware of different shares of responsibility by the various actors involved. By requiring these agreements to be submitted, FIFA creates a dense network in which all actors concerned by these agreements are obliged to live up to their own remedy responsibilities. However, for some actors this responsibility boils down to merely cooperating with grievance mechanisms. Nevertheless, all human rights commitments required by FIFA, including those on grievance mechanisms, apply to ‘all aspects of [the relevant actors] activities relating to the hosting and staging of the Competition, including legacy and post-event related activities’.⁷⁰

4 Implications for access to remedy in the MSE context

All three sports governing bodies clearly paid attention to remedies for MSE-related human rights abuses when revising their bidding or hosting regulations. Preliminary success becomes visible in the recently submitted bid books for the FIFA 2026 World Cup. Both bids, the Moroccan one and the joint bid from Mexico, Canada and the USA include a human rights strategy that refers

to remedies for event-related human rights issues.⁷¹ However, FIFA’s evaluation of these strategies is still pending. Interestingly, in the evaluation of the Paris and Los Angeles bids for the 2024 Olympic Games the IOC did not pay attention to remedy mechanisms.⁷²

The previous analysis demonstrates that there are significant differences in the way the issue of remedies plays out in these different initiatives. While UEFA’s new bidding regulations are most far-reaching from a general human rights perspective, they focus the least on remedies. The new human rights provisions require the member associations not only to respect human rights but also to protect and fulfil human rights, which is more far-reaching than the IOC’s and FIFA’s initiatives, while the obligation to remedy violations is only indirectly included. However, UEFA’s human rights requirements explicitly apply in the bidding phase already, whereas that is not a given in the case of the IOC’s provisions. FIFA’s human rights provisions even apply post event. With regard to specific provisions on remedy, FIFA’s new bidding approach appears as most elaborate and concrete in terms of included actors and attached obligations.

Despite these general comparative observations, the central question remains to what extent these developments and commitments can enable the remediation of MSE-related HR abuses. There are two ways in which this can take place: either by facilitating access to existing remedy mechanisms, or by providing a new mechanism. With regard to the latter, none of the examined initiatives comes with the creation of additional remedy mechanisms. However, all initiatives though in different ways call for human rights reporting. As such, reporting mechanisms can hardly be considered as remedy mechanisms. Nevertheless, having reporting systems in place can provide a valuable source of information and evidence for victims of MSE-related human rights abuse, if they are designed in a way that the information collected is accessible for all affected groups. Thereby, reporting mechanisms could contribute to facilitating access to evidence and information for victims, which eventually can result in an improved access to remedy.

⁶⁸ Ibid.

⁶⁹ Fédération Internationale de Football Association (2017) Government Declaration [Joint Bid], http://resources.fifa.com/mm/document/affederation/administration/02/91/61/32/templategovernmentdeclaration%5Bjointbid%5D_neutral.pdf (Accessed 27 March 2018); Fédération Internationale de Football Association (2017) Host City Declaration [Joint Bid], http://resources.fifa.com/mm/document/affederation/administration/02/91/61/50/templatehostcitydeclaration%5Bjointbid%5D_neutral.pdf (Accessed 27 March 2018).

⁷⁰ Fédération Internationale de Football Association, (See n64), clause 8.2.

⁷¹ United 2026 (2018) PROPOSAL FOR A UNITED HUMAN RIGHTS STRATEGY, http://united2026.com/pdf/032818/Proposal_for_a_United_Human_Rights_Strategy_United_Bid.pdf, pp. 20–21, 30 (Accessed 6 April 2018); ‘Bidding Nation Morocco’ (2018) <http://resources.fifa.com/image/upload/morocco-2026-bid-book.pdf?cloudid=weegrtynecqg3hjw8hmmr>, pp. 360 and 369 (Accessed 6 April 2018).

⁷² Mega-Sporting Events Platform for Human Rights (2017) 2024 Olympic Bid Evaluation - A Human Rights Review, <https://www.ihrb.org/megasportingevents/mse-news/news-2024-olympic-bid-evaluation>, p. 4 (Accessed 6 April 2018).

Other features of these initiatives that address some of the challenges related to access to remedy in the MSE context are related to the binding nature of these legal agreements of private law nature and the fact that FIFA's approach could provide a basis for addressing remedies in relation to multiple actors. With regard to the former, the fact that the bidding and hosting regulations are binding on the bidders and candidates and other private actors involved and directly concerned by these documents, creates a binding obligation to respect human rights for NSAs in form of contractual obligations. Concerning FIFA's approach, the inclusion of a wide range of actors in the contractual framework on which the bidding and hosting of the World Cup is based reflects the idea that not one actor alone is responsible for human rights abuses that can occur in the context of organizing and staging the World Cup but rather a multiple of actors based on various levels of contribution. However, it calls on the individual responsibilities of each of the actors to have in place or cooperate with remedy mechanisms and lacks provisions on remedy mechanisms that address the shared nature of responsibility for the violations that arise. Hence, victims are still faced with the difficult task of finding their way through the intricate governance structures of MSE organization to first identify those actors that come into question for being responsible or accountable. There are no provisions in FIFA's revised regulations, or any of the other initiatives that could facilitate this process.

In addition, most of the remaining challenges of access to remedy for MSE-related human rights abuses seem to relate to the enforceability of these provisions. These challenges come to the fore when asking more detailed question on whether these provisions are formulated in a way that they can be enforced, which actors can take action based on these provisions, and finally what mechanisms are provided to actually enforce these provisions. Concerning the first question, the real question to be asked is if the provisions are specific and detailed enough so that it can be judged whether the parties lived up to their obligations or not. If that is not the case, courts or other judicial and quasi-judicial bodies might not be able to judge the performance objectively. Hence, general reference to respecting and protecting international human rights standards or the UNGPs is difficult to measure and not easily enforceable in court.⁷³ Such provisions do not give an indication as to the circumstances or conditions under which the contracting parties are in breach of their

obligations.⁷⁴ More specific obligations such as provisions on the submission of human rights strategies or public commitments, as well as explicit provisions on the establishment of remedy or reporting mechanisms are easier to enforce, since their performance can be measured.⁷⁵

The question on who would be entitled to challenge the performance and fulfilment of these requirements and clauses can be answered by resorting to the cornerstone of contract law, which holds that an agreement between two or more parties only has consequences for the contracting parties and therefore those who can enforce are the parties to the contract themselves.⁷⁶ However, reality shows that agreements between two or more parties frequently have impacts on others who are not party to the contract. Moreover, this is in particular true for agreements and contracts that include human rights provisions. The foundational idea behind international human rights law is that States enter into agreements with each other and commit to be bound by obligations that actually give rights to individuals, who are not direct party to these agreements. In fact, the inherent characteristic of human rights is that those affected have the possibility to claim their rights. However, neither the HCCs, nor FIFA's new bidding regulations nor UEFA's requirements directly provide for rights of third parties. For example, in case the Host City, the Host NOC and/or OCOG violate their contractual obligations under Principle 13 of the HCC, it is the IOC as the contractual partner that would have the right to start legal procedures based on this breach and eventually be compensated and not the actual victims whose rights have been violated as a consequence of preparatory works for the 2024 or 2028 Summer Olympic Games. The same counts for the parties to UEFA's and FIFA's HA.

It is quite paradox that these clauses deal with human rights, which inherently assume that the individual(s) concerned have the possibility to claim their rights, while in effect none of these three initiatives provide for third party beneficiaries. Even though certain national legal systems provide for rights of third parties in case of 'breach of contract in respect of a third party beneficiary', this is usually made conditional on the contract explicitly providing for this possibility.⁷⁷ Further specific conditions, such as acceptance of the clause by the third party, may

⁷³ Antony Crockett (2014) Human Rights Clauses in Commercial Contracts' (LSE - Laboratory for Advanced Research on the Global Economy - Investment and Human Rights Project), <http://blogs.lse.ac.uk/investment-and-human-rights/portfolio-items/6667/> (Accessed 18 April 2017).

⁷⁴ Tomáš Grell, The Olympic Games and Human Rights – Part II: Human Rights Obligations Added to the Host City Contract: Turning Point or Empty Promise?, 13 June 2017, <http://www.asser.nl/SportsLaw/Blog/post/the-olympic-games-and-human-rights-part-ii-human-rights-obligations-added-to-the-host-city-contract-turning-point-or-empty-promise-by-tomas-grell> (Accessed 23 October 2017).

⁷⁵ International Olympic Committee (See n10), Principle 13; Fédération Internationale de Football Association (See n64), Clause 8.2.

⁷⁶ Vytopil (2015), p. 62.

⁷⁷ Ibid.

apply.⁷⁸ Under Dutch law, for example, this acceptance can be done implicitly and the result is that both the third party and the contractual partner then can request performance with regard to the clause in question.⁷⁹ Swiss law, which could be the applicable to such cases due to the fact that most ISGBs are registered in Switzerland and some of the relevant documents refer to Swiss law as the applicable law, states that ‘The third party or his legal successors have the right to compel performance where that was the intention of the contracting parties or is the customary practice’.⁸⁰ This implies that the possibility for third parties to enforce a contract clause depends on what the parties to the contract had in mind with the respective clause. To a certain extent, the initiatives analysed above can be seen as a consequence of increasing pressure over the last years on international sports governing bodies to take stance and action concerning the adverse human rights impacts of MSEs. Thus, it could be argued that these provisions have indeed been designed and included for the purpose and benefit of protecting rights of those individuals who might be adversely affected. In fact, IOC’s Agenda 2020 recommends for the bidding procedure that third party legal interests should be respected, by ‘making contractual elements available on an ‘in-confidence basis’’.⁸¹ Nonetheless, it cannot yet be conclude that this recommendation has been implemented and the way all of the clauses are currently formulated creates a mismatch between intended and actual beneficiaries of these provisions.

With regard to the third question on the mechanisms to enforce the clauses and requirements, a common way to ensure that all parties implement and live up to their contractual obligations is by means of including specific consequences, in case there is a breach or non-fulfilment of these obligations. The provisions in the new bidding and hosting regulations seem to provide two different sets of consequences. The first option can result in the elimination of bidders and hosts. In case of non-fulfilment of UEFA’s or FIFA’s requirements, a logical consequence before the event has been awarded is that the Bidder is eliminated as potential candidate. However, once the event has been awarded and the requirements turn into binding obligations, the consequences are more significant. In the HCCs for the 2024 and 2028 Olympics, the IOC reserves the right to terminate the contract and withdraw the Games if ‘there is a violation of or failure to perform by the Host City, the

Host NOC and/or the OCOG any material obligation pursuant to the HCC or under any applicable law’.⁸² The Olympic Charter also provides for this right.⁸³ However, the likelihood of withdrawing the event decreases the further the preparations have proceeded. It is rather unlikely that the IOC or any other sports governing body resorts to this consequence due to ongoing human rights violations in the planning or staging of a certain event, as this would impose high costs on not only the hosts but also the international sports organizing body itself. Up until today, the IOC only withdrew the right to host the Games at the outbreaks of the two World Wars. Moreover and ironically, a termination of the contract and thereby of the whole project of organizing the event could also cause more harm. For individuals that have already become victims of human rights violations, for instance in form of labour rights violations, the complete loss of wages, employment or opportunities for compensation can be a deteriorating factor in their already precarious situation.⁸⁴

This drastic consequence in case of non-performance of bidding or hosting requirements cannot be regarded as enforcement mechanism, since terminating the hosting contract would not help to enforce the human rights clauses, but instead relieve the contracting parties from their obligations. However, the second option for consequences does indeed provide for the opportunity to challenge the non-performance of a contractual obligation or binding requirement without the consequence of losing the bid or even the event. FIFA’s revised regulations for the selection of the host of the 2026 World Cup state that

‘All disputes in connection with this Bidding Registration, including disputes as to its conclusion, binding effect, amendment and termination, are to be promptly settled between the parties by negotiation. If no solution can be reached, such disputes shall, to the exclusion of any court or other forum, be exclusively resolved by the Court of Arbitration for Sport (CAS) consisting of three (3) arbitrators’.⁸⁵

In practice, this means that in case a member association that lost its bid for hosting the World Cup wants to challenge the awarding based on claims that the winner of the bid did not fulfil the respective human rights requirements, it first has to enter into negotiations with FIFA. Only if that does not lead to an outcome, CAS arbitration will step in. The IOC did not include an option to negotiate

⁷⁸ Vytopil (2012), p. 161.

⁷⁹ Ibid., p. 162.

⁸⁰ Swiss Code of Obligations (2017), Art. 112(2).

⁸¹ International Olympic Committee (2014) OLYMPIC AGENDA 2020 20+20 RECOMMENDATIONS, https://stillmed.olympic.org/Documents/Olympic_Agenda_2020/Olympic_Agenda_2020-20-20_Recommendations-ENG.pdf, Recommendation 1(8) (Accessed 31 January 2017).

⁸² International Olympic Committee (See n10), Principle 38(2)(d) .

⁸³ Olympic Charter (2017), Rule 36.

⁸⁴ Antony Crockett (See n73).

⁸⁵ Fédération Internationale de Football Association (See n64), Clause 12.17.

in the HCC. Instead, Principle 51(2) of the 2024 and 2028 HCC makes clear that

‘Any dispute concerning the validity, interpretation or performance of this HCC shall be determined conclusively by arbitration, to the exclusion of the ordinary courts of Switzerland, of the Host Country or of any other country; it shall be decided by the Court of Arbitration for Sport in accordance with the Code of Sports-Related Arbitration of the said Court’.⁸⁶

While it is obvious that challenging the performance of certain contractual obligations related to the organization of MSEs helps to enforce these obligations, it is less clear how the CAS can achieve that in relation to the newly included human rights provisions. The reason is not only that these initiatives are the first of its kind and there are no precedents but also a general ambivalence towards the CAS handling human rights related cases. This ambivalence and further considerations on CAS arbitration as potential remedy mechanism for MSE-related human rights abuses are discussed in more detail in the following section.

5 Implications of CAS arbitration for access to remedy in the MSE context

Bringing the CAS in connection with the unprecedented developments of sports governing bodies committing themselves and the actors involved in delivering their respective MSEs to human rights protection is not far-fetched. In addition to finding a legal basis in the bidding and hosting documents adopted by FIFA and the IOC, CAS arbitration is included in the constitutional documents of all three sports governing bodies. Rule 61(2) of the Olympic Charter contains a general obligation to submit ‘Any dispute arising on the occasion of, or in connection with, the Olympic Games [...] exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration’.⁸⁷ Likewise, UEFA’s Statutes provide for the CAS to have general jurisdiction on all disputes between UEFA and its member associations, including disputes related to any UEFA regulations.⁸⁸ Finally, FIFA’s Statutes oblige all member association to accept the general jurisdiction of the CAS, for examples on matters related to the fulfilment of obligations under FIFA regulations.⁸⁹

These and the aforementioned provisions in the revised bidding and hosting documents imply that in case any of the parties involved in organizing a respective MSE and bound by these provisions fails to fulfil any of the human rights related requirements or obligations, the other contracting parties, mainly the sports governing bodies themselves, can start proceedings before the CAS. To what extent these proceedings could indeed present a remedy mechanism for MSE-related human rights abuses depends on a number of factors, most notably the issue of jurisdiction, the issue of legal standing, and the way CAS arbitration in general operates. First, for the CAS to have jurisdiction, an arbitration agreement is needed.⁹⁰ This is covered with the instruments listed above. However, the CAS was initially designed as a forum to deal with sports related disputes of private nature.⁹¹ The Code of Sports-related Arbitration (CAS Code) explicitly stipulates that the CAS deals with ‘matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport’.⁹² Even though ‘any activity or matter’ is a rather open formulation, it is not clear whether disputes over human rights abuses that result out of organizing and staging the Olympic Games, the UEFA EURO, or the FIFA World CupTM, would be included.

Moreover, even though according to these new requirements and agreements disputes over the performance of human rights obligations in relation to staging MSEs could end up before the CAS, it does not automatically mean that the Court is equipped to deal with such cases. In fact, it has been argued that many issues on human rights would not sit comfortably within the jurisdiction of the CAS.⁹³ Given the type of cases the CAS is usually dealing with, the expertise of most arbitrators concentrates in the field of doping or commercial matters related to employment and sponsorship, as well as general disciplinary matters, while human rights expertise is lacking.⁹⁴ Hitherto, the CAS dealt with human rights questions only in connection to human rights of athletes, but not in relation to human rights of those adversely affected by the organization and staging of such events.⁹⁵ Most of these cases concerned the right to fair trial, triggered by decisions on doping incidents for example. A number of these

⁸⁶ International Olympic Committee (See n10), Principle 51(2).

⁸⁷ Olympic Charter (2017), Rule 61(2).

⁸⁸ UEFA Statutes (2018) Arts. 7(b), 59(1), 61.

⁸⁹ Fédération Internationale de Football Association (2016) FIFA Statutes, Arts. 4(c), 14(1)(a), 57(1).

⁹⁰ McLaren (2001), p. 517.

⁹¹ Ibid., p. 517; Geeraert et al. (2015), p. 477.

⁹² Mega-Sporting Event Platform for Human Rights (See n50); Court of Arbitration for Sport, Code of Sports-related Arbitration (2004), Art. R27(2).

⁹³ Nafziger (2004), p. 3.

⁹⁴ Ruggie (See n13), p. 26.

⁹⁵ Casini (2012), p. 167.

cases have subsequently been challenged in Swiss Courts and some of those dismissed by the Swiss Courts even ended up before the European Court of Human Rights where the athletes claimed that their right to fair trial under Article 6 of the European Convention on Human Rights had been violated.⁹⁶ However, despite these few cases, which notably all started out as an exclusively sports-related matter, the CAS has not been faced with any other human rights matters. Hence, if such MSE-related human rights cases find their way to the Court, the expansion of expertise among CAS arbitrators to greater human rights expertise might be necessary.

Furthermore, human rights expertise also seems to be lacking in relation to procedural matters, more specifically concerning fair trial guarantees. CAS proceedings have often been described as unjust or unfair.⁹⁷ Critics even claim that CAS arbitration is forced on athletes in some proceedings, for example through the inclusion of a mandatory arbitration clause in the Olympic entry form.⁹⁸ Without signing the form and thereby agreeing to mandatory arbitration, the athlete cannot compete in the Olympics. A study by Černič on fair trial guarantees before the CAS concludes that the right to fair trial is not secured in current CAS proceedings.⁹⁹ It highlights as main problems the lack of procedural fairness, the non-transparent nature of proceedings, the issue of burden of proof, and the lack of a right to an independent and impartial arbitration panel.¹⁰⁰ These shortcomings also give ground to question whether the way CAS proceedings are presently organized could fulfil the criteria for effective remedy mechanism as defined by Principle 31 of the UN Guiding Principles.¹⁰¹

With regard to the issue of legal standing, the general rule with arbitration clauses is that only parties that signed the arbitration clause can bring a case. While the CAS Code does not give any clear guidance on this, the CAS website states that ‘Any individual or legal entity with capacity to act may have recourse to the services of the CAS. These include athletes, clubs, sport federations, organizers of sports events, sponsors or television companies’.¹⁰² Even though it refers to ‘any individual’, the specified list in the

second part implies that said individuals either should be an athlete, or otherwise connected to any of the groups or institutions listed.¹⁰³ This gives reason to doubt that individuals that have been evicted due to Olympic or World Cup constructions, or individuals who suffered from violations of their labour rights while working on one of these constructions would be included.

Concerning the actual proceedings, CAS arbitration works similarly to other arbitration. A number of studies within the broader business and human rights field have been focussing on the advantages of arbitration for cases of corporate human rights abuses. In fact, proposals for an international arbitration tribunal on business and human rights have been circulating.¹⁰⁴ Most studies highlight that flexibility and international enforceability as the greatest advantages of arbitration.¹⁰⁵ Due to the New York Convention on the Enforcement of Foreign Arbitral Awards, arbitration enjoys almost universal recognition.¹⁰⁶ The fact that arbitration is rather flexible means that certain complexities could better be accounted for than in litigation. For instance, when it comes to multi-party arbitration, the applicable rules can be agreed on and adapted to shared responsibility scenarios, to provide for means to distribute and apportion responsibility to all actors involved. These general advantages of arbitration have also been ascribed to CAS arbitration.¹⁰⁷ Interestingly, the CAS Code already allows for multi-party arbitration under Article R41. That same Article also allows third parties to join procedures.¹⁰⁸ However, it is up to the president and the panel to decide on the participation, status and rights of the third party and the greatest hurdle to overcome is that the third party needs to be bound by an arbitration agreement. This is currently not the case under the host city contracts or agreements, since individuals are not party to that agreement.¹⁰⁹

A further benefit is that in arbitration procedures, the third party is supposed to be neutral. However, there are quite a number of cases from the CAS where this has been challenged.¹¹⁰ What has also been pointed out as a positive feature of arbitration is its adaptability to the issue at hand. Arbitrators and experts can be chosen by the parties to the disputes based on their knowledge and expertise in the human rights field for example. In the case of CAS, this

⁹⁶ See ECtHR (2013), *Pechstein v Switzerland* (no 67474/10) or ECtHR (2013), *Mutu v Switzerland* (no 40575/10); ECtHR (2012), *Bakker v Switzerland* (no 7198/07).

⁹⁷ Letnar Černič (2014), p. 9.

⁹⁸ Ibid.; de Montmollin and Pentsov (2011), p. 207, Olympic Charter (2017), Rule 44, Bye-law 6.

⁹⁹ Černič (2014).

¹⁰⁰ Ibid., p. 22.

¹⁰¹ Human Rights Council (See n15), principle 31.

¹⁰² Court of Arbitration for Sport, ‘Frequently Asked Questions - Tribunal Arbitral Du Sport/Court of Arbitration for Sport’, <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html> (Accessed 19 October 2017).

¹⁰³ Ibid.

¹⁰⁴ Thompson and Cronstedt (2016).

¹⁰⁵ Nafziger (2004), p. 4.

¹⁰⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

¹⁰⁷ Nafziger (2004), p. 4.

¹⁰⁸ Court of Arbitration for Sport, Code of Sports-related Arbitration (2004), Art. R41(3).

¹⁰⁹ Ibid Art. R41(4).

¹¹⁰ ECtHR (2013), *Pechstein v. Switzerland* (no. 67474/10).

choice is limited to arbitrators from the CAS list.¹¹¹ At the moment, this list can be filtered for mediators and football arbitrators.¹¹² Given these recent developments, it might be worth considering adding a human rights filter that could lead affected parties to those CAS arbitrators that have expertise in the field. Furthermore, there have been arbitration institutions which in the past adapted their rules to be able to account for a changing nature of cases and legal questions posed. For example, since 2001 the Permanent Court of Arbitration has a special set of arbitration rules for environmental matters.¹¹³ Following this example, also the CAS could overcome the lack of rules and guidelines on how to deal with human rights matters by adopting a specific set of arbitration rules for MSE-related human rights disputes. This set of rules could for instance be based on the ‘Business and Human Rights Arbitration Rules’, which are currently being developed by the Working Group on International Arbitration for Business and Human Rights Disputes.¹¹⁴

Nevertheless, arbitration also has its disadvantages, especially in relation to human rights cases. Even though some studies point out confidentiality as a positive feature,¹¹⁵ the fact that proceedings take place behind closed doors can be a disadvantage. This non-transparent nature of arbitration stands in contrast to the fact that human rights issues are usually seen as matters of public concern and victims of human rights violations could benefit from the involvement of media and public pressure.¹¹⁶ Even though a trend towards more transparency in international arbitration mechanisms can be observed, the CAS still lacks transparency with regard to selecting arbitrators and publishing awards.¹¹⁷ The fact that CAS has been recognized since 1993 as independent

arbitration institution, which ensures that national or regional civil courts cannot interfere with it,¹¹⁸ poses further risks to the public nature of human rights disputes, as well as possibilities for appeal. Furthermore, in contrast to the arguments for arbitration being speedy and cost-efficient, others have stressed that the proceedings can be quite lengthy and costly. Since MSE-related human rights abuses often hit the most marginalized groups in society, there is reason to doubt that the victims could actually afford it.¹¹⁹

Counterbalancing the advantages and disadvantages of arbitration and considering the points of criticism on CAS from a human rights perspective, it is not self-evident to argue that CAS or other arbitration can improve access to justice for victims of MSE-related human rights abuses. The challenges that arise in connection with CAS arbitration correspond to those currently identified by the Working Group on International Arbitration of Business and Human Rights and amount to lack of human rights expertise, lack of transparency, and lack of adequate representation of victims.¹²⁰ In addition, Levine and Wahid summarized the following issues to consider for managing a dispute by means of arbitration and when drafting the respective arbitration agreement: the applicable law(s), the place of arbitration, the procedures for selecting adequate arbitrators, adequate levels of transparency and confidentiality, administrative support, and cost management.¹²¹ With these warnings in mind, one cannot ignore the fact that the option to resort to CAS arbitration would at least provide victims with a remedy possibility in situations where the resort to state courts and other mechanisms, ‘to the exclusion of the state courts in Switzerland’, is no possibility according to the hosting and bidding regulations.¹²² While this severely limited recourse to national courts can be difficult to justify for sports-related disputes such as doping cases, it seems even less justifiable in the case of human rights violations. The resort to Swiss courts for appealing a CAS award has no reassuring effect in that regard. The recent lawsuit against FIFA filed by FNV, BWI, the Bangladeshi Free Trade Union Congress and a migrant worker from Qatar, for violating international human and labour rights with awarding the 2022 World Cup™ to Qatar has been dismissed within less than

¹¹¹ Code of Sports-related Arbitration 2017 Article R40.2.

¹¹² Court of Arbitration for Sport, ‘List of Arbitrators (General List) - Tribunal Arbitral Du Sport/Court of Arbitration for Sport’, <http://www.tas-cas.org/en/arbitration/list-of-arbitrators-general-list.html> (Accessed 17 April 2018).

¹¹³ Permanent Court of Arbitration (2001) Optional Rules for Arbitration of Disputes Relating to Natural Resources And/or the Environment, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and-or-Natural-Resources.pdf> (Accessed 12 October 2017).

¹¹⁴ Thompson and Cronstedt (2016).

¹¹⁵ Nafziger (2004), p. 4.

¹¹⁶ Working Group on International Arbitration of Business and Human Rights and others, International Arbitration of Business and Human Rights: A Step Forward, 16 November 2017, <http://arbitrationblog.kluwerarbitration.com/2017/11/16/international-arbitration-business-human-rights-step-forward/>, (Accessed 25 November 2017).

¹¹⁷ Saverio Spera, Time for Transparency at the Court of Arbitration for Sport, 31 January 2017, <http://www.asser.nl/SportsLaw/Blog/post/transparency-at-the-court-of-arbitration-for-sport-by-saverio-spera> (Accessed 10 January 2018).

¹¹⁸ Geeraert et al. (2015), p. 473.

¹¹⁹ Corrarino (2014)

¹²⁰ Ibid.; Working Group on International Arbitration of Business and Human Rights and others (See n116).

¹²¹ Levine and Wahid (2017) p. 39.

¹²² International Olympic Committee (See n10), Principle 51.2; Working Group on International Arbitration of Business and Human Rights and others, (See n116).

1 month by the Handelsgericht in Zürich.¹²³ The court argued that the allegations were not accurate enough to come to a final judgment that can be implemented and that it is not the competent forum to deal with the alleged infringements of rights suffered by the individual.¹²⁴

Admittedly, it seems more likely that before any case of MSE-related human rights abuses would actually end up at the CAS, it would probably be settled by the respective parties. That does not mean that the arbitration possibility has no effect in terms of enforcement and access to remedy. In fact, without the existence of this possibility, such cases would not even be settled most likely. Hence, simply the possibility of CAS arbitration can have a positive impact on access to remedy for victims of MSE-related human rights abuses. Settling these cases could for instance take place via mediation at NCPs, or via so-called operational-level grievance mechanisms, which are established to support the respective actor, mainly corporations, to be aware of their human rights impacts and give them a chance to remedy any negative impacts early on, before a matter escalates and judicial recourse is in order. In the specific case of MSEs, there has been a grievance mechanism in place for the London 2012 Olympics, which could be considered as operational-level grievance mechanism within the MSE business. The mechanism was based on mediation for settling complaints and disputes that arose under the application of the Sustainable Sourcing Code by commercial partners, such as cases on working conditions at factories of sponsors and suppliers.¹²⁵ Out of eleven complaints filed by individual workers or organizations, nine were admitted and 74 remedial actions have been identified. The majority of issues were settled, while some were still pending at the time the Olympics ended.¹²⁶ Based on these experiences, plans for a similar grievance mechanism for the 2020 Tokyo Olympic and Paralympic Games are currently being implemented.¹²⁷

¹²³ Prakken d'Oliveira - Human Rights Lawyers, Swiss Court Rejects Case against FIFA on Formal Grounds, 6 January 2017, <http://www.prakkendoliveira.nl/en/news/swiss-court-rejects-case-against-fifa-on-formal-grounds/> (Accessed 05 April 2017).

¹²⁴ Handelsgericht Kanton Zürich (2017), FNV, Bangladeshi Free Trade Union Congress, BWI and Nadim Shariful Alam v FIFA.

¹²⁵ Stuart Bell, Phil Cumming and Steve Gibbons (2012) Learning Legacy - Lessons Learned from Planning and Staging the London 2012 Games, <http://learninglegacy.independent.gov.uk/documents/pdfs/sustainability/cs-sustainable-sourcing-code-complaints-mechanism.pdf> (Accessed 19 October 2017).

¹²⁶ Ibid., pp. 1–5.

¹²⁷ Institute for Business and Human Rights, Sustainable Sourcing and Grievance Mechanisms for the Tokyo 2020 Olympics and Paralympics, 11 September 2017,

<https://www.ihrb.org/news-events/news-events/sustainable-sourcing-grievance-mechanisms-tokyo-2020> (Accessed 20 October 2017).

6 Conclusion

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises stressed in its latest report that rights-holders should be central to the remedy process.¹²⁸ From the perspective of a victim of human rights violations related to the delivery of a mega-sporting event, it is most essential to know where and how the harm suffered can be addressed. It is obvious that the adoption of new bidding and hosting regulations that require at the minimum the respect for human rights does not help victims of MSE-related human rights abuses in receiving access to the necessary information. In fact, the analysis reveals that these initiatives have no direct implications for victims in terms of creating or providing access to remedy mechanisms.

However, the evaluation of these provisions against the challenges inherent to remedying such cases highlights the potential for addressing some of these challenges or elements thereof. Their strongest point is certainly the creation of human rights obligations for non-state actors in form of contractual obligations, even if the revised regulations only bind a fraction of all non-state actors involved in staging MSEs. Furthermore, all provisions are clear on the actors that have to fulfil the respective obligations. The fact that some initiatives impose obligations on multiple actors involved in staging MSEs provides a basis for addressing remedies in relation to multiple actors based on their shared responsibility. However, there is no guidance on how to distribute and apportion responsibility. In addition, since the parties to the contract are by far not the only actors involved, the challenge remains to find a way through the intricate and complex interaction and (sub-)contracting network inherent to the MSEs business. Hence, the blurred lines of responsibility are only partially straightened out by these new provisions. What would help victims of MSE-related human rights abuses in identifying actors and their contributions, are more transparent and traceable governance structures. For that purpose sports governing bodies could request the local organizers to keep track of and make accessible an overview of which actor was involved in which operation to what extent.

Not all initiatives pay the same amount of attention to access to remedy. FIFA's initiative stands out as the most concrete and comprehensive elaboration of obligations on remedying human rights violations. However, all initiatives provide room for the CAS to resolve disputes over non-performance of any of the human rights- and remedy-related provisions. At the same time, FIFA's and IOC's bidding and hosting regulations respectively exclude the option of what John Ruggie considered to be the core of

¹²⁸ United Nations General Assembly (See n17), para 19.

ensuring access to remedy, namely the resort to state-based judicial mechanisms (with the exception of Swiss courts). If CAS arbitration would indeed improve access to or provide effective remedies for victims of MSE-related human rights abuses, this exclusion would be less problematic. However, the CAS lacks human rights expertise and transparency and therefore raises doubts over the adequacy of this forum for dealing with MSE-related human rights violations.

Ultimately, the fact that the HCCs for the 2024 and 2028 Summer Olympic Games and the bidding requirements for the 2026 Olympic Games, the EURO 2024 and the 2026 FIFA World CupTM now include explicit reference to human rights is certainly a step in the right direction. It shows that the leading sports organizing bodies are aware of their power and influence over the legal and specifically human rights culture within host countries, including access to remedy. The analysis reveals that these initiatives can present promising alternatives to the shortcomings that arise when applying international law and international human rights law to cases of MSE-related human rights abuses. However, the conclusions are preliminary since there is no experience or precedent yet with interpreting, applying or enforcing these regulations. It remains to be seen if these provisions really refine ‘the rules of the game’¹²⁹ for victims of MSE-related human rights abuses and whether the potential for CAS arbitration really adds to the bouquet of remedies called for by the UN Working Group.¹³⁰

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References

- Álvarez Rubio RJJ, Yiannibas K (2017) Human rights in business: removal of barriers to access to justice in the European Union. Routledge, London
- Broudehoux A-M (2004) The making and selling of post-Mao Beijing. Routledge, London
- Casini L (2012) The making of a Lex sportiva by the court of arbitration for sport. In: Siekmann RCR, Soed J (eds) Lex sportiva: what is sports law?. TMC Asser Press & Springer, The Hague, pp 147–171
- Chappelet J-L, Kübler-Mabbott B (2008) The international olympic committee and the olympic system: the governance of world sport. Routledge, London
- Corrarino M (2014) “Law exclusion zones”: mega-events as sites of procedural and substantive human rights violations. Yale Hum Rights Dev Law J 17(1):180–204
- Dannenbaum T (2015) Public power and preventive responsibility: attributing the wrongs of international joint ventures. In: Nollkaemper A et al (eds) Distribution of responsibilities in international law. Cambridge University Press, Cambridge, pp 192–226
- de Montmollin J, Pentsov DA (2011) Do athletes really have the right to a fair trial in “non-analytical positive” doping cases?. Am Rev Int Arbitr 22(2):189–240
- Enneking L (2017) Judicial remedies: the issue of applicable law. In: Álvarez Rubio JJA, Yiannibas K (eds) Human rights in business: removal of barriers to access to justice in the European Union. Routledge, London
- Fry D (2014) Attribution of responsibility. In: Nollkaemper A, Plakokefals I (eds) Principles of shared responsibility. Cambridge University Press, Cambridge, pp 98–133
- Gauthier R (2017) The international olympic committee, law, and accountability. Routledge, London
- Geeraert A, Mrkonjic M, Chappelet J-L (2015) A rationalist perspective on the autonomy of international sport governing bodies: towards a pragmatic autonomy in the steering of sports. Int J Sport Policy Polit 7(4):473–488
- Häusler K, Lukas K, Planitzer J (2017) Non-judicial remedies. In: Álvarezrubio J, Yiannibas K (eds) Human rights in business: removal of barriers to access to justice in the European Union. Routledge, London
- Kaufman J, McDonnell K (2016) Community-driven operational grievance mechanisms. Bus Hum Rights J 1(1):127–132
- Letnar Cernic J (2014) Emerging fair trial guarantees before the court of arbitration for sport. In: European society of international law. 10th Anniversary Conference Papers, Conference Paper No. 9/2014. Vienna
- Levine J, Wahid K (2017) Business and human rights: a “new frontier” for international arbitration?. ACICA Rev 5(2):35–39
- McLaren R (2001) Introducing the court of arbitration for sport: the ad hoc division at the olympic games. Marq Sports Law Rev 12(1):515–542
- Nafziger JAR (2004) Lex Sportiva. Int Sports Law J 1
- Nolan J (2014) Refining the rules of the game: the corporate responsibility to respect human rights. Utrecht J Int Eur Law 30(78):7–23
- Thompson B (2017) Determining criteria to evaluate outcomes of businesses’ provision of remedy: applying a human rights-based approach. Bus Hum Rights J 2(1):55–85
- Thompson RC, Cronstedt C (2016) A proposal for an international arbitration tribunal on business and human rights. Harv Int Law J (Online Symposium) 57:66–69
- Vandenbogaerde A (2016) Towards shared accountability in international human rights law: law, procedures and principles. Intersentia, Cambridge
- Vytopil L (2012) Contractual control and labour-related CSR norms in the supply chain: Dutch best practices. Utrecht Law Rev 8:155–169
- Vytopil L (2015) Contractual control in the supply chain: on corporate social responsibility, codes of conduct, contracts and (avoiding) liability. Eleven International Publishing, The Hague
- Wettstein F (2015) Normativity, ethics, and the UN guiding principles on business and human rights: a critical assessment. J Hum Rights 14(2):162–182

¹²⁹ Milton Friedman, The Social Responsibility of Business Is to Increase Its Profits, 13 September 1970, <http://umich.edu/~thecore/doc/Friedman.pdf> (Accessed 6 April 2018).

¹³⁰ United Nations General Assembly (See n17), para 38.