THE RIGHT TO REMEDY
IN THE CONTEXT OF
MEGA SPORTING
EVENTS
Responsibilities of the Sports’ Governing Bodies

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# Table of content

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TABLE OF CONTENT</strong></td>
<td>2</td>
</tr>
<tr>
<td><strong>LIST OF ABBREVIATIONS</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>INTRODUCTION</strong></td>
<td>5</td>
</tr>
<tr>
<td><strong>CHAPTER 1 – RIGHT TO REMEDY</strong></td>
<td>10</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>10</td>
</tr>
<tr>
<td>1.1 Remedy under international human rights law: scope and meaning</td>
<td>11</td>
</tr>
<tr>
<td>1.2 Remedy and corporate actors</td>
<td>13</td>
</tr>
<tr>
<td>1.2.1 UNGPs</td>
<td>13</td>
</tr>
<tr>
<td>1.2.2 OECD Guidelines for multinational enterprises</td>
<td>16</td>
</tr>
<tr>
<td>1.3 Remedy of human rights violations in the context of MSEs</td>
<td>17</td>
</tr>
<tr>
<td>1.4 Conclusion</td>
<td>19</td>
</tr>
<tr>
<td><strong>CHAPTER 2 – DOCUMENTS ON FIFA, THE IOC AND THE CGF</strong></td>
<td>20</td>
</tr>
<tr>
<td>2.1 Structures and activities of the sport’s governing bodies</td>
<td>20</td>
</tr>
<tr>
<td>2.1.1 FIFA</td>
<td>20</td>
</tr>
<tr>
<td>2.1.2 The IOC</td>
<td>22</td>
</tr>
<tr>
<td>2.1.3 The CGF</td>
<td>24</td>
</tr>
<tr>
<td>2.2 Relevant documents</td>
<td>25</td>
</tr>
<tr>
<td>2.2.1 FIFA</td>
<td>25</td>
</tr>
<tr>
<td>2.2.2 The IOC</td>
<td>27</td>
</tr>
<tr>
<td>2.2.3 The CGF</td>
<td>30</td>
</tr>
<tr>
<td>2.2.4 Other sources</td>
<td>32</td>
</tr>
<tr>
<td>2.3 Conclusion</td>
<td>34</td>
</tr>
<tr>
<td><strong>CHAPTER 3 – MECHANISMS</strong></td>
<td>36</td>
</tr>
<tr>
<td>3.1 Court of Arbitration</td>
<td>36</td>
</tr>
<tr>
<td>3.2.1 The mechanism</td>
<td>36</td>
</tr>
<tr>
<td>3.2.2 Evaluation</td>
<td>37</td>
</tr>
<tr>
<td>3.2 Sports governing bodies’ own dispute mechanisms</td>
<td>38</td>
</tr>
<tr>
<td>3.2.1 FIFA</td>
<td>38</td>
</tr>
<tr>
<td>3.2.1 IOC</td>
<td>45</td>
</tr>
<tr>
<td>3.2.3 CGF</td>
<td>47</td>
</tr>
<tr>
<td>3.2.4 Evaluation</td>
<td>48</td>
</tr>
<tr>
<td>3.3 National contact points</td>
<td>50</td>
</tr>
<tr>
<td>3.3.1 Mechanism</td>
<td>50</td>
</tr>
<tr>
<td>3.3.2 Evaluation</td>
<td>51</td>
</tr>
<tr>
<td>3.4 Conclusion</td>
<td>51</td>
</tr>
<tr>
<td><strong>CHAPTER 4 – CONCLUSION</strong></td>
<td>53</td>
</tr>
<tr>
<td><strong>STATEMENT OF INTEGRITY</strong></td>
<td>64</td>
</tr>
</tbody>
</table>
List of abbreviations

BWI Building and Woodworkers’ International
CAS Court of Arbitration for Sport
CEO Chief Executive Officer
CESCR United Nations Committee on Economic, Social and Cultural Rights
CGF Commonwealth Games Federation
CGA Commonwealth Games Associates
DRC Dispute Resolution Chamber FIFA
FIFA Fédération Internationale de Football Association
GOLDOC Gold Coast 2018 Commonwealth Games
HCC Host city contract
ICCCPR United Nations International Covenant on Civil and Political Rights
ICESCR United Nations International Covenant on Economic, Social and Cultural Rights
IF International Sports Federation
ILO International Labour Organisation
IOC International Olympic Committee
IOC DC International Olympic Committee’s Disciplinary Committee
LOC Local Organising Committee
LOCOG London Organising Committee
MSE Mega Sporting Event
NCP National Contact Point
NGO Non-governmental Organisations
NOC National Olympic Committee
OECD Organisation for Economic Cooperation and Development
OECD MNEs OECD Guidelines for Multinational Enterprises
OHCHR United Nations Human Rights Office of the High Commissioner’s
RBWU Russian Trade Union of Construction Workers
UDHR Universal Declaration of Human Rights
UN United Nations
UNGPs United Nations Guiding Principles on Business and Human Rights
UNICEF United Nations International Children’s Emergency Fund
Introduction

“We have no friends here. My mother spends a lot of time just sitting on the sofa, weeping.”¹

This is a quote of Elizabeth, the daughter of 88-year old Arlette Rosa José, pointing out the situation she and her mother are forced to live in after the eviction of their home in Rio de Janeiro, where they had lived for over 75 years. City hall ordered their removal to make way for a high-speed bus lane linking the international airport with Barra da Tijuca, the neighbourhood that has hosted most of the 2016 Olympic Games venues.²

Brazil hosted the 2014 FIFA World Cup³ and 2016 Summer Olympics in Rio de Janeiro.⁴ National and international media, unions, activists, human rights organizations, and other non-governmental organizations (NGOs) have raised awareness on abuses caused by the impacts of massive infrastructure projects that were carried out in preparation for the World Cup and of the Olympics.

The government had promised transparency and the involvement of citizens in any municipal construction projects involving, for example, resettlement of communities and improvements in municipal mobility (e.g. Bus Rapid Transit projects). The government said that the projects would benefit the most marginalised groups. Nevertheless, the reality has been rather different. Various reports have been published and submitted to local and international authorities containing assertions of human rights abuses such as forced displacements and evictions, forced labour, discrimination, lack of consultation of affected communities, child labour, and violent repression of protesters.⁵

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A major difficulty when addressing these issues is preventing rights abuses arising from business operations and providing remedy when they do occur. Governments and companies have both different responsibilities when it comes to addressing human rights violations and providing remedy in these cases. For example, in the particular case of the 2014 World Cup the Brazilian government has showed interest in business and human rights issues. For instance, they highlighted actions it has taken to tackle abominable abuses such as slave labour, through the *Lista Suja* (Dirty List), and they have committed to do so by becoming signatory to various International Labour Organisation (ILO) conventions. Also, several Brazilian companies, such as Itaú Unibanco, Vale and Petrobras have indicated the existence of internal instruments to deal with complaints by and remedies to communities, individuals and workers. Examples of remedy mechanism that these companies have in place are the existence of an Ombudsman, or policies in which is embedded to “work together towards sustainable solutions”. It would be interesting to know whether and how these different initiatives have positively impacted communities in the territory. Unfortunately, neither company stated how it has been able to concretely offer access to remedy to the most vulnerable to their operations.

Although the Brazilian government and some companies have shown interest and effort to address human rights abuses and tried to provide for some kind of remedy, the other “big players” in these events, Fédération Internationale de Football Association (FIFA) and the International Olympic Committee (IOC), did little to nothing to address human rights violations, and in particular to provide for any kind of remedy.

Also in Russia, where the 2018 World Cup will be held, people are facing some serious human rights violations. According to the Building and Wood Workers’ International global union, allegedly 17 workers have died on World Cup stadium sites. Workers on several stadiums have organized strikes repeatedly to protest non-payment of wages and other labour

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International media have published reports about North Korean workers employed on the World Cup Stadium in St. Petersburg in 2016 working long hours with few days off and compelled to send wages to the North Korean government. FIFA states that the workers are no longer working at the St. Petersburg or other World Cup stadiums, but published no information about steps taken to protect or assist these workers.

As part of their sustainability strategy FIFA and the Local Organising Committee (LOC) have developed a Decent Work Monitoring System, which was launched in 2016. This program monitors labour conditions on World Cup stadium sites. The monitoring methodology was developed with the involvement of the ILO Office for Eastern Europe and Central Asia, Building and Woodworkers’ International (BWI) and the Russian Trade Union of Construction Workers (RBWU). Although this is a decent way to map out and notice human rights violations on stadium sites and prevent them as much as possible, not this Decent Work Monitoring System nor FIFA’s sustainability strategy, does elaborate on remedy for peoples who are already victims of the conditions on the stadium sites, or their relatives. In a letter to Human Rights Watch on 8 June 2018 Federico Addiechi, head of sustainability and strategy of FIFA, even said “up to eleven months after you obtained the respective information, it will...”

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12 Human Rights Watch (n 9) 14.

naturally be very difficult and in most cases impossible to address and even remedy potential adverse impacts".14

These examples show that human rights violations do happen in the organisation and holding of Mega Sporting Events (MSEs). What these examples also show, is that there is a lack of attention to provide for a right to remedy violations occur. Therefore, the focus of this thesis will be on the responsibilities that those who shape these events, the organisers, have to provide for remedy. Since it would be impossible to cover all sports governing bodies in this thesis, I choose to narrow the sports’ governing bodies down to three main characters: FIFA, the IOC, and the Commonwealth Games Federation (CGF). I choose to research FIFA and the IOC because they are great important players in sports. The FIFA World Cup and the Olympic Games, both made the list of the world’s top 10 sporting events.15 The CGF is seen as one of the pioneers on human rights development. The 2014 Glasgow Organising Committee was the first MSE organising committee to publish a human rights statement, to reference the UN Guiding Principles on Business and Human Rights (UNGPs), and to report on its human rights performance.16 By focusing solely on these three sports governing bodies, the quality and depth of my research can be better guaranteed.

The central research question of this thesis is: ‘What responsibilities do FIFA, the IOC, and the CGF have to provide for a right to remedy for victims of human rights violations caused by the organisation and holding of MSEs, and to what extend do existing remedy mechanisms live up to these responsibilities?’ This thesis aims to map out the responsibilities that the selected sports’ governing bodies have in the light of providing for a right to remedy, to ultimately investigate if the existing remedy mechanisms that apply to the selected sports’ governing bodies, live up to these responsibilities.

The first part of this thesis will be descriptive in order to set out what the right to remedy entails. Although the responsibility to provide for a right to remedy is originally a state duty,
more actors are involved. This will result in a framework which incorporates the criteria for the right to remedy, based on the used documents in chapter one. The second chapter will set out what documents, international and institutional, apply on FIFA, the IOC, and the CGF. There will be an elaboration in which way these documents entail a responsibility for FIFA, the IOC, and the CGF to provide for remedy. This chapter will also set out the structures of FIFA, the IOC, and the CGF, to see how it works and how it might be involved in adverse human rights violations. The third chapter will elaborate on the existing mechanisms, within FIFA, the IOC, and the CGF, as well as some mechanisms outside the selected sports’ governing bodies. Ultimately there will be an evaluation on if these mechanisms live up to the responsibilities identified in the previous two chapters. The fourth and last chapter will entail a conclusion, in which the research question will be answered when the findings on the sports’ governing bodies’ responsibilities and existing remedies will be recapitulated.

For the purpose of the research objective, this thesis engages in a qualitative, normative legal compliance research. In the first place, there will be an inventory of international documents on what the right to remedy entails. In particular the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Guidelines) and the UN Universal Declaration of Human Rights (UDHR) will provide for a detailed description of the right to remedy. Since the selected sport’s governing bodies engage in commercial activities through their structures and activities, also documents that are specifically targeted at commercial active actors will be used. For the purpose of this thesis that will be the OECD Guiding Principles on Multinational Enterprises (OECD MNEs) and the United Nations Guiding Principles on Business and Human Rights (UNGPs). Since the second and third chapter of this thesis will mainly focus on the responsibilities that the selected sports’ governing bodies have for providing the right to remedy, and the existing remedy mechanisms, this part will consist of an inventory of mainly institutional based documents of the sport’s governing bodies itself, like their statutes, charters and/or contracts. A part of the third chapter will exist of a compliance research, to identify if and in which way, the existing remedy mechanisms that apply to the selected sports’ governing bodies live up to their responsibilities that were set out in chapters one and two. This compliance research will mainly focus on soft law.\textsuperscript{17}

\textsuperscript{17} There is no unambiguously agreement between scholars about what ‘soft law’ is, or if it even exist. Generally, it is used to describe international instruments that are not recognized as treaties by their makers, but have as their purpose the promotion of norms. These norms are believed to be good and therefore should have general or
CHAPTER 1– Right to remedy

Introduction

Every victim of human rights violations has a right to an effective remedy. The United Nations (UN) Committee on the Rights of the Child even states that “for rights to have meaning, effective remedies must be available to redress violations”. The right to an effective remedy has been recognized under several international and regional human rights treaties and instruments and also as a rule of customary international law.

In the context of MSEs several human rights violations could occur, for example forced evictions and abuse and exploitations of migrant workers. These examples were already set out in the introduction. These account as gross violations of international human rights law.

According to the UN Human Rights Office of the High Commissioner’s (OHCHR) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the victims’ right to remedy

include the victim’s right to the following as provided for under international law:

(a) Equal and effective access to justice;
(b) Adequate, effective and prompt reparation for harm suffered;


See for example Article 8, Universal Declaration of Human Rights; Article 2 (3), International Covenant on Civil and Political Rights; Article 2, International Covenant on Economic, Social and Cultural Rights; and UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006 amongst others.


With regard to sub a, this means that a victim not only has a right to equal and effective access to justice under international law, also “other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law”. This right entails, amongst other things, the dissemination of information about all available remedies, the right to proper assistance, and these rights also applies to groups. With regard to the right to reparation for harm suffered, this means “reparation should be proportional to the gravity of the violations and the harm suffered” and “include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”. As can be seen from this article reparations can take many forms. The key of reparation is that it must seek to remove the consequences of the violation and, as far as possible, restore those who have been affected to the situation they would have been in had the violation not occurred. The third and last sub entails that States should develop means of informing the general public and, in particular, victims about “remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access”.

1.1 Remedy under international human rights law: scope and meaning

The right to remedy was first documented in article 8 of the UDHR, and stated the following: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. A more extended explanation of what particular gives effect to the general rights of individuals to an effective remedy can be found in Article 2(3) of the UN International Covenant on Civil and Political Rights (ICCPR):

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22 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006, principle 7

23 Ibid. principle 8(12)

24 Ibid. principles 12(a)(c) and 13

25 Ibid. principle 15

26 Ibid. principle 9(18)


28 UN Basic Principles (n 22) principle 10(24)
“Each State Party to the present Covenant undertakes:

a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

c) To ensure that the competent authorities shall enforce such remedies when granted.”

The right to remedy has also been established under several core international and regional human rights treaties. Not all these treaties explicitly include provisions on States parties’ obligations to provide for remedy. Nevertheless, several monitoring bodies have construed that it is mandatory for State parties to provide effective remedy for victims as part of their obligation to take all appropriate measures to implement the rights recognized in the treaty.

For example, the UN Committee on Economic, Social and Cultural Rights (CESCR), which is the expert body that monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR), has stressed out that ‘the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place’.

The right to an effective remedy exists of procedural and substantive elements. A remedy can be considered effective, if a victim has had practical and meaningful access to a procedure, and that procedure must be suitable to end and repair the effects of the violation. Also, where a violation has occurred, the individual must receive the relief needed to repair the harm, and the remedy should be affordable and timely.

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29 International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 2(3)
30 Ibid. (n20)
32 Committee on Economic, Social and Cultural Rights, General Comment 9 (n31), para 2
33 UN Basic Principles (n 22) principles 2(b), 3(c), 11(a), 12, 19,
34 UN Basic Principles (n 22) principles 2(c), 3(d), 11(b), 15-23, 19
35 Committee on Economic, Social and Cultural Rights, General Comment 9 (n31) para 9
According to several international human rights monitoring bodies, the right to an effective remedy also requires that all allegations of violations should measure up to the cornerstones of the right to an investigation, which are its promptness, thoroughness, independence, and impartiality. The UNHRC has also stated that when violations are revealed, States parties must make sure that those responsible are brought to justice. Failing to do so, could in itself be a breach of the ICCPR.

Effective remedies can be both judicial and administrative. An effective remedy does not necessarily need to be judicial, but treaty monitoring bodies have provided guidelines on situations in which judicial remedies are necessary:

*Administrative remedies will, in many cases, be adequate […]. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate.*

1.2 Remedy and corporate actors

As stated in the previous paragraph, the responsibility to provide for and ensure an effective remedy is embedded in the existing legal obligations of States to respect and protect human rights. This does not necessarily mean that there is no responsibility for corporate actors at all. This paragraph will therefore focus on the responsibilities that corporate actors might have in the light of the right to remedy.

1.2.1 UNGPs

Internationally there is a consensus that companies should at minimum respect all human rights. This includes respecting the right to remedy. The key implications of this

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37 Human Rights Committee, General Comment 31 (n36) para 18

38 Committee on Economic, Social and Cultural Rights, General Comment 9 (n31) para 9


responsibility include that companies respect the integrity and independence of the courts, by refraining from exerting political or economic pressure on judicial processes, and avert acting in a way that could block to exercise of the right to remedy by the right holders.\textsuperscript{41} Several UN bodies, for example the 2005 UN Basic principles and Guidelines on the Right to Remedy and Reparation expressly point out that non-State actors found to be responsible for human rights abuses should provide reparation to the victims:

‘in cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.’\textsuperscript{42}

The right to remedy under the UNGPs is formulated under the third pillar. The foundational principle points out States as the main actor as part of their duty to protect against business-related human rights abuses.\textsuperscript{43} According to the commentary to principle 25 the access to remedy has both procedural and substantive elements. The remedies through grievance mechanisms discussed in the UNGPs will be to

‘counteract or make good any human rights harms that have occurred […] and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, in junctions or guarantees of non-repetitio’.\textsuperscript{44}

According to the UNGPs there are three kinds of grievance mechanisms:\textsuperscript{45}

- State-based judicial mechanisms;\textsuperscript{46}
- State-based non-judicial grievance mechanisms;\textsuperscript{47} and
- Non-state-based grievance mechanisms.\textsuperscript{48}

\textsuperscript{41} Ibid. p 29
\textsuperscript{42} UN Basic Principles (n 22) principle 15
\textsuperscript{43} UNGP (n39) principle 25
\textsuperscript{44} UNGP: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (n39) p 27
\textsuperscript{45} “For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought”, see UNGPs Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, (n39) p 27
\textsuperscript{46} UNGP (n39) principle 26
\textsuperscript{47} Ibid. principle 27
\textsuperscript{48} Ibid. principles 28-30
Because this paragraph is focussed on corporate actors, the state-based mechanisms will not be discussed further. The main focus of this paragraph will be on the non-state-based grievance mechanisms. According to principle 29:

“to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted”.49

These operational-level grievance mechanisms have the advantage of being directly accessible to individuals and communities who may be adversely impacted by a business enterprise. It is not required that those who bring a complaint first access other means of recourse. Such mechanisms aim to identify any legitimate concerns of those who may be adversely impacted.50 Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice. These are listed in principle 31:

“In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

1. Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
2. Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
3. Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
4. Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
5. Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake;
6. Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
7. A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

49 Ibid. principle 29
50 UNGPs Implementing the United nations ‘Protect, Respect and Remedy’ Framework, (n39) p 32
Operational-level mechanisms should also be:

8. Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances. 51

The last criterion is one specially added for operational-level mechanisms. These mechanisms should be based on engagement and dialogue with affected stakeholder groups. In this way, their needs can be better met, chances are that they will actually use it in practice, and that there is a shared interest in affirming its success. Solutions should be reached through dialogue, because a business enterprise cannot both be the subject of complaints and unilaterally determine their outcome. 52

1.2.2 OECD Guidelines for Multinational Enterprises

In 2011, after the consultation of special representative of the UN Secretary-General for Business and Human Rights, Professor John G. Ruggie, the OECD MNEs was updated. Professor John G. Ruggie made some recommendations regarding the UN “Protect, Respect and Remedy” Framework and how the OECD MNEs could play a potential role in the operationalization of this framework. In his discussion paper on Updating the OECD Guidelines for Multinational Enterprises, he points out the importance of having operational-level grievance mechanisms. These mechanisms have two important functions in relation to the corporate responsibility to respect human rights. In the first place, they make it possible to deal with complaints directly and locally and where possible to remedy them so that damage can be prevented. In addition, they form an early warning for companies. Because not only current but also potential human rights impacts can be reported, trends and patterns can be analysed and companies can adjust their practices accordingly. 53 Also, for aggrieved individuals and communities, such mechanisms are essential to provide the possibility of early response and remedy for any harm they have suffered. Furthermore, for the OECD as a whole. Having effective and legitimate operational-level grievance mechanisms adds the likely benefit of

51 UNGP (n39) principle 31
52 UNGPs Implementing the United nations ‘Protect, Respect and Remedy’ Framework, (n39) p. 35
reducing the burden on National Contact Points.\footnote{John G. Ruggie, ‘Remarks at OECD Investment Opening Statement’, (2010) p. 4-5 <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-remarks-to-OECD-Investment-Committee-4-Oct-2010.pdf> accessed 16 March 2018} After this consultation, the OECD MNEs where added with a whole new chapter on human rights, which was not included in the existing version of 2000.\footnote{OECD, ‘Comparative table of changes made in the 2011 update’ (2011) <http://www.oecd.org/daf/inv/mne/49744860.pdf> accessed 16 March 2018} In recommendation 46 the OECD MNEs specifically address the issue of enabling remediation when enterprises identify thought their human rights due diligence or other means that they have caused or contributed to an adverse human rights impact. For those potentially impacted by enterprises’ activities operational-level grievance mechanisms can be an effective means of providing such processes. They have formulated some core criteria of: “legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions”.\footnote{Organisation for Economic Cooperation and Development (OECD, ‘OECD Guidelines for Multinational Enterprises’ (OECD MSEs) (27 jun 2000), recommendation 46}

1.3 Remedy of human rights violations in the context of MSEs

As has been made clear in the previous paragraphs, the obligation to provide for an effective remedy is primarily a state’s duty. Nevertheless, in the contexts of MSEs, states are not the only players in these events. As the organisers of the events and the world-wide face of specific MSEs, the sport organising bodies play a big role. In that light, the interesting question arises in which way they could be held responsible to provide for an effective remedy for victims of human rights violations.

Commercial active entities (e.g. companies or corporations) in general can have positive impacts on human rights, including through the provision of decent jobs and by contributing to economic growth and development. Also, international sports associations like FIFA, the IOC and the CGF do conduct significant levels of commercial activity.\footnote{John G. Ruggie. ‘For the Game, For the World: FIFA and Human Rights’, (2016) Corporate Responsibility Initiative Report No. 68. Cambridge, MA: Harvard Kennedy School. p. 10 <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed 15 April 2018; For a more extensive elaboration on the structure and commercial activities of FIFA, the IOC, and the GCF see chapter 2} Some industries promote human rights in specific ways, such as supporting health by making new medicines accessible, bringing better infrastructure to poor communities in or around which they operate. In the case
of international sports enterprises, positive contributions may include raising awareness around issues of all kinds of discrimination, and contributing to healthier lives and social integration.

All such outcomes certainly deserve recognition. But they neither relieve in nor remunerate for not respecting human rights. According to John Ruggie

“to respect human rights means to avoid adverse impacts on the rights of others and to address such impacts if they occur. Respecting human rights is the foundation of treating people with dignity and contributing, thereby, to the goal of sustainable economic and social development”.58

As set out in the previous paragraphs, several international sources, like the OECD MNEs and the UNGPs emphasize the responsibility for companies to provide some kind of remedy or reparation. According to John Ruggies report For the game for the world, a report requested by FIFA “addressing the broad range of adverse human rights impacts that FIFA’s activities and relationships can have on individuals and communities”,59 the right to remedy in the context of MSEs entails:

- where individuals’ human rights are violated, they should have access to effective remedy. Companies and states both play a role in capacitating this;60
- that a company should have in place ‘a process for helping provide remedy to anyone who is harmed as a result of the organization’s actions or decisions’;61
- that companies should take steps to avoid causing harm, and should accommodate or cooperate in remedy if harms occur;62 and
- where companies may contribute to harm, enterprises should take steps to avoid doing so, use their influence to reduce the risk of other parties contributing to the harm, and help provide for or cooperate in remedy if harms occur.63

Although this presents a fine list of what companies’ responsibilities to provide for the right to remedy entails in the events of human rights violations that occur in the organisation or holding of MSEs, John Ruggie also strictly points out that ‘legal compliance may not be enough. Human rights abuses often occur because relevant laws are absent, weak or not effectively enforced. This may be the case on specific human rights issues in industrialized and developing countries

58 Ibid. p 11
59 Ibid. p 8
60 Ibid. p 12
61 Ibid. p 12
62 Ibid. p 13
63 Ibid. p 13
alike’. Thus, the legal sources not only provide a standard, but it may be seen mere as a process template for how to enclose respect for human rights throughout a companies’ activities and relationships and how to deal with their responsibilities to provide for a right to remedy.

1.4 Conclusion

The responsibility in the light to the right to remedy for victims of human rights violations is in the first instance one for the State. According to various international and regional human rights treaties and instruments the right to an effective remedy entails the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. This also includes that the types of remedy that are provided are affordable and timely. The equal and effective access entails that this right is not only embedded in international law, but also administrative bodies and domestic law. Also, this includes the right to proper assistance, that the right applies to groups, and the right to dissemination of available mechanisms. According to the UNGPs there are three kinds of mechanisms that can provide for an access to remedy. Because this thesis focuses on sports’ organising bodies and not the responsibility of the state, the operational-level mechanisms are the most interesting to look at. The UNGPs and the OECD MNEs have formulated criteria for operational-level grievance mechanisms. The criteria formulated in the UNGPs and the OECD MNEs are almost identical: legitimacy, accessibility, predictability, equitability, transparency, compatibility and based on engagement and dialogue. The only difference is that the UNPGs also include the criteria that the mechanisms are a source of learning. With regard to the second requirement, the reparation of harm suffered means that the reparation should be proportional to the harm suffered, and can exist of restitution, compensation, rehabilitation, satisfaction and the guarantees of non-repetition. The last requirement entails a right to access to relevant information, which means that there should be means developed to inform the general public and victims.

This results in the following framework on what the right to remedy entails:

1. Access to available remedy mechanisms
2. Suitable reparation form harm suffered
3. Access to relevant information

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64 Ibid, p 14
Chapter 2 – Documents on FIFA, the IOC and the CGF

This chapter will focus on the documents that apply to FIFA, the IOC and the CGF with regard to their responsibilities to provide for an effective remedy. To understand how FIFA, the IOC and the CGF might be involved in human rights impacts and how to address them, this chapter will first elaborate on what FIFA, the IOC and the CGF do and how they work. No brief description can capture the full complexities of the legal and organisational construct of the bodies. This section merely provides an overview of the main futures. The same applies to the documents that will be investigated in order to determine what responsibilities might result from these provisions in order to provide for an effective remedy. The focus of the documents that will be research are those documents that are most interesting in the light of the right to remedy, e.g. provide some kind of responsibility or obligation to ensure human rights and/or the right the remedy.

2.1 Structures and activities of the sport’s governing bodies

This paragraph will consist of an analysis on the structures of the selected sports’ governing bodies. This has to be done, to establish how they work and of what bodies they consist of. This will help determining where one might turn to in order to be able to make use of their right to remedy. Also, this helps to clear out if the sport’s governing bodies are involved in commercial activities. This is necessary for the applicability of some international documents, like the UNGPs and OECD MNEs, which are directed to commercial active entities. Furthermore, from establishing their structure and activities, possible human rights impacts can be derived.

2.1.1 FIFA

FIFA is an association established under Swiss law. Which means it falls under jurisdiction and have to comply with Swiss law. It is the global governing body of football in association. FIFA exists of 209 national football associations, which set up six continental confederations. It is required for FIFA membership to be a member in a confederation. Its most well-known tournament is the Men’s World Cup. The Congress is FIFA’s supreme and legislative body, and exists of representatives of the national member associations. The congress adopts and

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65 FIFA, ‘FIFA Statutes April 2016 Edition’ provision 1
66 John G. Ruggie (n57) p 15
67 FIFA Statutes (n65) provision 24(1)
amends the FIFA Statutes, \(^{68}\) which are, in effect, its constitution.\(^{69}\) Further, it elects FIFA’s President\(^ {70}\), and it decides in which country the World Cup will be held.\(^ {71}\) FIFA’s strategic and oversight body is the FIFA Council.\(^ {72}\) The members of the Council are elected by member associations at their confederation congresses. The Council is Chaired by FIFA’s President.\(^ {73}\) The Congress and the Council are known as FIFA’s “political bodies”.\(^ {74}\) Independent from these political bodies exist various committees, including FIFA’s “judicial bodies”: The Disciplinary Committee, the Ethics Committee, and the Appeal Committee. Appeals of decisions of the Disciplinary and Ethics Committees may be heard first by the FIFA Appeal Committee and then by the CAS.\(^ {75}\) A more detailed description on how these mechanisms work, will be addressed in chapter three. In addition to the before mentioned judicial bodies, FIFA has established a system for addressing employment-related disputes between players and clubs that have an international dimension. This includes the Dispute Resolution Chamber, an arbitration tribunal based on the equal representation of players and clubs.\(^ {76}\) The general secretariat is based in Zurich and is headed by the Secretary-General, who is now designated as FIFA’s chief executive officer (CEO). He is appointed by the Council, and his day-to-day business exists of management and implementation functions.\(^ {77}\)

Broadly speaking, FIFA encompasses two related but distinct sets of global networks. One connects the day-to-day world of association football, including the confederations, national associations and, through them, clubs and associated entities and actors. The second refers to FIFA’s international tournaments. Both involve brand licensing, procurement and other functions.\(^ {78}\) Also, FIFA has its own direct commercial relationships. For example, licensing merchandise and equipment that is branded with the FIFA name or marks, procurement of goods and services not branded by FIFA, sponsorships, broadcasting rights and

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\(^{68}\) ibid. provision 29(1)

\(^{69}\) John G. Ruggie (n57) p 15

\(^{70}\) FIFA Statutes (n65) provisions 27(1)(2) and 33(1)

\(^{71}\) ibid. provision 60

\(^{72}\) FIFA Statutes (n65) provision 24(2)

\(^{73}\) ibid. provision 33(1)

\(^{74}\) John G. Ruggie (n57) p 15

\(^{75}\) ibid. p 16

\(^{76}\) FIFA Statutes (n65) provision 54

\(^{77}\) ibid. provision 36 FIFA

\(^{78}\) John G. Ruggie (n57) p 16
various commercial subsidiaries. These activities and relationships pose human rights challenges for FIFA that are not much different from those faced every day by multinational corporations.79 In September 2017 the FIFA’s Human Rights Advisory Board published a report with its findings and recommendations related to human rights. This included a chapter on identifying and evaluating human rights risks. According to this report the highest human right risks are there in the field of discrimination and “specific risks arising in the context of preparations for the 2018 and 2022 FIFA World Cups in Russia and Qatar, focusing on risks to construction workers’ human rights”.80

2.1.2 the IOC

The IOC is “an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000”,81 and seated in Lausanne, Switzerland.82 Which means it falls under jurisdiction and has to comply with Swiss law. The IOC is the Olympic supreme authority of the so-called Olympic Movement. According to the Olympic Charter “the goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practiced in accordance with Olympism and its values”.83 The powers of the IOC are exercised by its organs. There are the Session, the IOC Executive Board, and the President.84 The Session is the general meeting of the IOC. An ordinary meeting takes place once a year. The President, or at least a third of the members, can also convene an extraordinary meeting. The Session is the IOC’s supreme organ and all its decisions are final.85 The IOC Executive Board consists of the President, four Vice-Presidents and ten other members. The IOC Executive Board is responsible for administration of the IOC and the management of its affairs. Amongst other things, it monitors the observance of the Olympic Charter, it approves all internal governance

79 Ibid. p 18
80 FIFA Human Rights Advisory Board, ‘First Report With the Advisory Board’s Recommendations and an Update By FIFA’, (September 2017) p 12 <https://img.fifa.com/image/upload/ab2ywfc8qle92nghiee.pdf> accessed 24 April 2018
82 Ibid. rule 15(2)
83 Ibid. rule 1(1)
84 Ibid. rule 17
85 Ibid. rule 18
regulations relating to its organisation, and it establishes the agenda for the Sessions. The IOC is chaired by the President, who represents the IOC and presides over all its activities. According to the Olympic Charter the Session and the IOC Executive Board are required to take measures. The IOC Executive Board can also decide to delegate its powers to an IOC Disciplinary Commission (IOC DC). All the decisions of the IOC are final. Any dispute arising on their application or interpretation may be resolved solely by the IOC Executive Board, or is specific cased before the CAS. Also, “any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration”. A more detailed description on how these mechanisms work, will be addressed in chapter three.

Through this structure, the IOC is involved in various commercial activities. For example, one can think of broadcasting, sponsorship, licensing, ticket sales and marketing. Most of Olympic Games-related human rights abuses fall into the category of violations of labour-related rights, forced evictions, and repressions of civil rights, such as the right to freedom of expression. Furthermore, the performance of the Olympic Games can entail negative impacts on the environment.

86 Ibid. rule 19
87 Ibid. rule 20
88 Ibid. rule 59
89 Ibid. rule 61(1)
90 Ibid. rule 61(2)
2.1.3 the CGF

The Commonwealth Games is an international sport event involving athletes of the Commonwealth of Nations. The supreme authority of the Commonwealth Games is the CGF\(^93\) which its headquartered and incorporated in London, United Kingdom.\(^94\) Besides the CGF, the bodies of the Commonwealth Games exist of Affiliated Commonwealth Games Associates (Affiliated CGAs). Each Affiliated CGA “shall be the official body in its country for all matters concerning the Commonwealth Games and shall deal directly with the Federation on all matters concerning the Commonwealth Games, subject to the role of the OC in organising a Commonwealth Games”.\(^95\) According to the Commonwealth Games Constitution, the mission of the CGF is “to ensure the successful organisation and celebration of the Commonwealth Games and to promote the best interests of athletes participating in them and to assist in the development of sport throughout the Commonwealth”.\(^96\) The objects of the CGF consist of promoting the Commonwealth Games, establishing rules and regulations for the conduct of the Commonwealth Games, promoting Commonwealth sporting competitions and establishing rules for other sporting events, encouraging and assisting sport and sport development and physical recreation throughout the Commonwealth, and promote the shared values of integrity, fair play, competence, commitment to excellence, respect for gender equality and tolerance, including the fight against the use in sport of drugs and of unhealthy or performance enhancing substances.\(^97\) The organs of the CGF are the General Assembly, and the Executive Board.\(^98\) The General Assembly is responsible to ensure that the CGF and all Affiliated CGAs adhere to the CGF Documents and carry into effect the Vision, Mission and the Objects of the Federation. The General Assembly shall also select the Host CGA and Host City.\(^99\) The Executive Board ‘is the guardian and representative of Affiliated CGAs and shall be responsible to carry into effect the CGF Documents and the Vision, Mission and Objects of the Federation’.\(^100\) It shall, amongst

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\(^{93}\) Commonwealth Games Federation, ‘Commonwealth Games Constitution July 2014 Edition’ art 3


\(^{95}\) Ibid (n94) art 10


\(^{97}\) Ibid. (n 94) art 2

\(^{98}\) Ibid. art 11

\(^{99}\) Ibid. art 12

\(^{100}\) Ibid. art 14(1)
other things, be responsible for the financial affairs of the CGF, adopt, amend or repeal the Regulations from time to time, prepare Games Manuals, and adopt, amend or repeal the Host City Contract from time to time. According to the Commonwealth Games Constitutions ‘any dispute arising under or in connection with the interpretation of this Constitution or the Regulations shall be solely and exclusively resolved by mediation or arbitration by the Court of Arbitration for Sport according to the Code of Sports-Related Arbitration’. And the decision of the CAS will be final. Subsequent to this, ‘the Federation Court shall be authorised to determine such disputes as are determined to be within its jurisdiction by any one or more Games Manuals from time to time’.

Through this structure, the CGF is involved in various commercial activities. For example, one can think of broadcasting, sponsorship, licensing, ticket sales and marketing. Most of the Commonwealth Games-related human rights abuses fall into the category of violations of labour-related rights and repressions of civil rights, such as the right to freedom of expression.

2.2 Relevant Documents

2.2.1 FIFA

The first legal document for FIFA that will be closely looked at is FIFA’s Statute. The FIFA Statutes provide the basic laws for world football, on which countless rules are set for competitions, transfers, doping issues and a range of other concerns. The Statutes have undergone different profound revisions during FIFA’s history, giving FIFA a modern and extensive legal framework. These Statutes were adopted following their approval at the Extraordinary Congress in Zurich, on 26 February 2016. The Statutes came into effect on 27 April 2016.

101 Ibid. art 14 (2)
102 Ibid. art 29
103 Ibid. art 28
105 FIFA Statutes (n65)
In provision 3 is stated that “FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights”.\textsuperscript{106} Because it states to respect \textit{all} international recognised human rights, this would also include the right to an effective remedy. FIFA’s Advisory Board recognised the right to remedy in his report of 2017. It emphasized that at the time of this report, the human rights policy was still in progress. This human rights policy would include a provision on the right to remedy.\textsuperscript{107} The Advisory Board recommended adoption of this provision once again in its report.\textsuperscript{108} And called upon FIFA to strengthen its grievance mechanisms.\textsuperscript{109}

Elaborating on provision 3 of the FIFA Statute, FIFA has formulated a Human Rights Policy in May 2017. It further specifies and strengthens FIFA’s human rights commitment and will serve as guidance for FIFA’s human rights work. FIFA’s Human Rights Policy was developed by the FIFA administration in cooperation with FIFA’s Governance Committee. The document was surveyed by FIFA’s Human Rights Advisory Board and a varied selection of external stakeholders from international organisations, trade unions, civil society organisations, academia and FIFA sponsors. It is in accordance with the UNGPs, the authoritative international standards on the topic developed by professor John Ruggie.\textsuperscript{110} Further, in provision 2 it states that the FIFA is committed to embrace all human rights “including those contained in the International Bill of Human Rights (consisting of the UDHR, the ICCPR and the CESCR) and the ILO’s Declaration on Fundamental Principles and Rights at Work”.\textsuperscript{111} FIFA’s Human Rights policy also includes a special provision on the right to remedy. “FIFA helps \textit{protect} those who advocate respect for human rights associated with its activities and is committed to contributing to providing remedy where individuals have been adversely affected by activities associated with FIFA”.\textsuperscript{112} In the light of providing remedy, the actions of FIFA resulting from provision 3 of its Human Rights Policy is threefold:

\textsuperscript{106} \textit{Ibid.} provision 18  
\textsuperscript{107} \textit{First Report With the Advisory Board’s Recommendations and an Update By FIFA (n80) p 4}  
\textsuperscript{108} \textit{Ibid.} p 6  
\textsuperscript{109} \textit{Ibid.} p 32  
\textsuperscript{111} FIFA, ‘FIFA’s Human Rights Policy May 2017 Edition’ provision 2  
\textsuperscript{112} \textit{Ibid.} provision 11
- FIFA will execute its commitments regarding remedy in close collaboration with entities with whom it has relationships, including those established to prepare and host FIFA tournaments, and its commercial affiliates and suppliers;
- Guided by the effectiveness criteria of principle 31 of the UNGPs FIFA also considers, as appropriate, internal and external as well as local and international mechanisms; and
- In particular, FIFA will require from those organising FIFA tournaments that competent and independent bodies are put in place for reviewing human rights issues and complaints in the context of the organisation of such tournaments.

Thus, FIFA’s Human Rights Policy is a product that works out specific responsibilities and goals based on article 3 of the FIFA Statute. How and in which way the responsibilities that follow from these documents comply with the existing remedy mechanisms will be further established in chapter 3.

2.2.2 the IOC

The first legal document of the IOC that will be closely looked at is the Olympic Charter. According to its fundamental principles of Olympism “[…] Olympism seeks to create a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles. The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity”.113

Although the Olympic Charter does not literally say anything about their responsibilities to respect human rights and/or provide for any kind of remedy, Rule 2 of the Olympic Charter does set out its mission and the role of the IOC. What is clear from this article is that the IOC acts, amongst other things, with notion to place sport at the service of humanity and thereby to promote peace, to act against any form of discrimination, to implementing the principle of equality of men and women, to encourage and support a responsible concern for environmental issues, to promote sustainable development in sport and to promote a positive legacy from the Olympic Games to the host cities and host countries.114 Thus, although it does not refer to human rights specifically, it does refer to human dignity and lists principles that can also be found in various human rights treaties, like the non-discrimination provision and equal rights between men and women. Also, Rule 59 maps out measures and sanctions in case of any

113 Olympic Charter September 2017 Edition (n81), Fundamental Principles on Olympism
114 Ibid. (n81) rule 2
violation of “the Olympic Charter, the World Anti-Doping Code, the Olympic Movement Code on the Prevention of Manipulation of Competitions or any other regulation”. However, this only indicates that the IOC finds human dignity, and therefore probably human rights, important, but there is no real legal responsibility to provide for the right to remedy resulting from this.

Nevertheless, the IOC is committed to live up to human rights standards, and that becomes clear after the introduction of the renewed Host City Contracts (HCC). The IOC is moving into implementation of the Olympic Agenda 2020 after consultation with the Sports and Rights Alliance (SRA) and have made specific changes to the host city contract of 2024 and forward with regard to, for instance, human rights. According to their statement:

“Through their candidatures, candidate cities commit themselves to respect the Olympic Charter and the Host City Contract for all participants of the Games and all Games-related matters and are henceforth subject to the following obligations:

a) prohibit any form of discrimination with regard to a country or a person on grounds of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status;

b) 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.”

The Paris 2024 HCC includes a provision that the Host City, the Host National Olympic Committee (NOC) and/or the Organisation Committee for the Olympic Games (OCOG) shall,

“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”.

115 Ibid. rule 59
117 Ibid.
Thus, the responsibility to protect and respect human rights in the contexts of the organisation and holding of the Olympic Games is, according to this provision, the responsibility of the Host City, the NOC and/or the OCOG, and not a responsibility for the IOC itself. This is easy to explain given the fact that the IOC has a particular structure, in which the Host City, IOC, and the OCOG are the executors of the Olympic Movement during a particular Olympic Games, on the ground. That does not mean that the IOC has no responsibility whatsoever. According to the HCC the IOC is responsible to make sure that there is “a reporting mechanism to address the obligations referred to in §13.1 and §13.2 in connection with the activities of the Host City, the Host NOC and the OCOG related to the organisation of the Games”. Thus, it is the responsibility of the IOC to make sure that there is a remedy mechanism in place, that can deal with human rights violations. If the Host City, the NOC and/or the OCOG, does not comply with any of the obligations of the HCC, the IOC can take measures, like retaining any and all amounts held in the General Retention Fund. Thus, this principle points out the sanctions that IOC can pursue, and should take, in the case of non-compliance of the Host City, the NOC and/or the OCOG with the HCC. Again, this is a one-way principle. Only the Host City, the NOC and/or the OCOG can be sanctioned by the IOC, not the other way around. Another interesting principle in the light of providing for the right to remedy may be principle 51 of the HCC. This is because if any of the parties, thus also the IOC, does not comply with the obligations of the HCC, this is a breach of contract. According to principle 51

“Any dispute concerning the validity, interpretation or performance of the HCC shall be determined conclusively by arbitration, to the exclusion of the state 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 such Court. The arbitration shall take place in Lausanne, in the Canton of Vaud, Switzerland. If, for any reason, the Court of Arbitration for Sport denies its competence, the dispute shall then be determined conclusively by the state courts in Lausanne, Switzerland.”

Thus, although the Olympic Charter does not specifically refer to human rights and/or responsibilities to provide for the right to remedy, it does refer to human dignity and lists principles that can also be found in various human rights treaties, like the non-discrimination provision and equal rights between men and women. It’s willingness to comply with international human rights standards becomes even more clear when looking at the renewed

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119 See for more information on the IOC’s structure paragraph 2.1.2
120 Paris 2024 Host City Contract – Principles (n117) principle 13.3
121 Ibid. principle 36.2
122 Ibid. principle 51.2
HCC. The Paris HCC and onwards include specific provision on human rights and the right to the remedy. The responsibilities for the IOC itself, stem primarily from principle 36.2, where it is stated that the IOC should provide for remedy mechanisms that can deal with human rights issues. If the existing remedy mechanisms within the IOC in fact comply with this responsibility, will be further established in chapter 3.

2.2.3 the CGF

As the GCF state it themselves, “the Commonwealth Games and Commonwealth Sport Movement have a well-established history and proud heritage of uniting diverse nations and cultures through the power of sport”.123 On the fifth of October 2017 the CGF approved a Human Rights Policy Statement, which represents the next step in the CGFs commitment to embed human rights within its governance, management systems, development, events, fundraising and marketing. It pledges that the CGF is committed to respecting all core human rights standards, including the UDHR and the UN’s nine core international human rights treaties.124 They are also committed to the Commonwealth Charter and, if locally applicable, to other regional human rights charters and instruments. They also state that, in their daily operations and relationships, the CGF is committed to implement the UNGPs. They even state that the CGF “goes beyond compliance and also champions human rights through programmes and activities that promote the protection and enjoyment of human rights, and which benefit the societies in which we operate and serve”.125 Which gives the impression that the CGF is willing to do something extra. A good example of this is its contribution to developing the mega-sporting events guide, titled the "Championing Human Rights - In Governance of Sports Bodies". The Guide has been developed by the MSE Platform Task Force on Sports Governing Bodies chaired by David Grevemberg, the Chief Executive of the CGF and David Rutherford the Chief Commissioner, New Zealand Human Rights Commission, and sets out various steps.

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124 Ibid.

125 Emphasis added. Commonwealth Games Federation Human Rights Policy Statement,
that sports governing bodies should take to align sporting values and human rights.\footnote{126} Another example is its Glasgow 2014 partnership with UNICEF.\footnote{127}

Specifically regarding the right to remedy, the Policy Statement states that the CGF commits to provide for, or will cooperate in supporting, access to remedy for victims where their activities cause or contribute to adverse human rights impacts. They even are dedicated to promoting, or cooperating in access to remedy where adverse human rights impacts are directly linked to the CGF through their business relations.\footnote{128} As was set out earlier, the CGF is committed to the Commonwealth Charter and is committed to implement the UNGPs. Principle 2 of the Commonwealth Charter sets out the importance and commitment to human rights. There is stated that the Commonwealth is committed to the UDHR and other relevant human rights covenants and international instruments.\footnote{129} Although it does not specifically say anything about the right to remedy, the UDHR in article 8 includes the right to remedy.

Thus, since the CGF states it commits to the Commonwealth Charter, the Commonwealth Charter states that it commits to the UDHR, amongst other international treaties, and the UDHR includes the right to remedy, there is a link to a responsibility to provide for a right to remedy. But for an organisation that claims to go beyond compliance when it comes to human rights, one would expect that the CGF would have a specific provision on the right to remedy. Nevertheless, to find any kind of responsibility, one has to look into and search through three different documents.

The very last sentence of the Human Rights Policy Statement, states that “the aim of this work is to publish a CGF Human Rights Policy and human rights Due Diligence Strategy ahead of the CGF General Assembly in March 2018 for ratification”.\footnote{130} This resulted in a human rights policy for the Gold Coast 2018 Commonwealth Games (GOLDOC), which has the purpose “to demonstrate GOLDOC’s commitment to human rights, transparency and accountability and to guide and direct actions and decisions taken by GOLDOC in relation to...
its human rights impacts in the planning and delivery of GC2018. Specifically regarding the right to remedy, the Human Rights Policy includes a statement that it is GOLDOC’s objective to provide access to grievance mechanisms. If, and how, they actually live up to this statement will be further established in chapter 3.

Summarising, the CGF firstly commits itself to responsibilities to provide for the right to remedy through its commitment to the Commonwealth Charter. Although this Charter does not specifically entail a provision on the right the remedy, this does include its commitment to the UDHR, which entails the right to remedy in Article 8. Secondly, the CGF published a Human Rights Policy Statement in 2017 in which it obliges itself to live up to human rights standards, and even go beyond compliance. This resulted, amongst other things, in a Human Rights Policy for the GOLDOC. This policy included a specific principle on providing access to grievance mechanisms.

2.2.4 Other sources

Apart from the sports’ governing bodies own documents, there are also international documents relate to the right to remedy. In this paragraph will be discussed if the sports’ governing bodies are subject to these documents. The documents that will be investigated are the UNGPs and the OECD MNEs because they provide a clear source for the right to remedy as is already set out in the first chapter. Besides these international documents, there will be a grasp at Swiss law, since FIFA and the IOC are associations established under Swiss law, as was already established in paragraph 2.1.

UNGPs

According to FIFA’s Human Rights Policy in provision 1 FIFA states that it is committed to respecting human rights in accordance with the UNGPs. It’s whole own human rights policy is even based on the UNGPs. Also, the CGF has made clear in its GOLDOC human rights policy that GOLDOC ‘will adopt the guiding principles set out in the UNGP as an appropriate reference standard to ensure a holistic approach to the management of human rights across

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132 Ibid. principle 2
133 FIFA Human Rights Policy May 2017 Edition (n.11) provision 1
134 Ibid. page 2
GC2018 planning and delivery’. In the Paris 2024 HCC the IOC included that it will ensure that any violation of human rights is remedied in a manner consistent with the UNGPs.

What the right to remedy specifically entails under the UNGPs is already set out in chapter one. What is clear from these statements of FIFA, the IOC and the CGF is that there is a slight difference between those statements. As FIFA states to implement a human rights policy in accordance with the UNGPS, the IOC will ensure that any violation of human rights is remedied in a manner consistent with the UNGPs, and the GGF states will adopt the UNGPs.

**OECD MNEs**

In a complaint before the Swiss NCP the BWI regarded human rights violations of migrant workers related to the construction operations for the 2022 FIFA World Cup. According to the BWI, FIFA has violated the OECD MNEs by awarding the World Cup to Qatar, despite that at that time human rights violations of Qatar were already acquainted. The Swiss NCP had to evaluate whether FIFA falls within the scope of the OECD MNEs, given the particular circumstances. According to the Swiss NCP, FIFA has international operations and a multinational scope. It consists of different entities and is active in multiple countries. Furthermore, the Swiss NCP rules that the bidding agreement between FIFA and Qatar includes topics of commercial nature. In the Swiss NCP’s opinion, it was because of these activities that FIFA’s behavior could be seen as commercial, to which the OECD MNEs are applicable.

Thus, it depends on the nature of the activities of the sports’ governing bodies if the OECD MNEs apply. If the activities are commercial of nature, the sports’ governing bodies are subject to the OECD MNEs. What the right to remedy entails in the light of the OECD MNEs is already set out in chapter 1.

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135 *Commonwealth Games Corporation Human Rights Policy* (n130) provision 3.2

136 *Paris 2024 Host City Contract – Principles* (n117) principle 13 (2)(b)

137 National Contact Point of Switzerland, Initial Assessment – Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers’ International (13 October 2015).

138 National Contact Point of Switzerland, Initial Assessment.
**Swiss Law**

According to the FIFA Statute and IOC’s Olympic Charters, both organisations are associations established under Swiss law.¹³⁹ This means that they fall under the jurisdiction of Swiss law, hence have to comply with Swiss law. Looking at Swiss law, there are no provision that entail an obligation or responsibility for corporate actors to provide for the right to remedy, this is an obligation for the State.¹⁴⁰

**2.3 Conclusion**

From its structure and activities, the sports’ governing bodies have a commercial character. It is from these activities that they might be involved in adverse human rights issues. Through statutory documents and several policies or even contracts, they sign themselves up to responsibilities in the light of the right to remedy. FIFA does this through its FIFA Statute and recently formulated human rights policy. The IOC has embedded it in its Olympic Charter and, more importantly in the renewed HCC. The CGF refers to the more general Commonwealth Charter. Besides that, is has made a Human Rights Policy statement in which they even say to want to go beyond compliance. This ambitious statement has resulted in collaboration in different documents. It also has formulated a GOLDOC Human Rights Policy, in which one of the GOLDOC’s objectives is to provide for grievance mechanisms. Besides their own documents, the sports’ governing bodies have also stated in one way or another to comply with the UNGPs. What is clear from these statements of FIFA, the IOC and the CGF is that there is a slight difference between those statements. As FIFA states to implement a human rights policy in accordance with the UNGPS, the IOC will ensure that any violation of human rights is remedied in a manner consistent with the UNGPs, and the GGF states will adopt the UNGPs. Also, from a decision from the Swiss NCP is has been made clear that under circumstances the OECD MNEs do apply on sport governing bodies, namely if the activities are commercial of

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¹³⁹ FIFA Statutes (n65) provision 24(1); and Olympic Charter September 2017 Edition (n81) rule 15(1)

¹⁴⁰ Danièle Gosteli-Hauser and Oliver Classen, ‘Switzerland’s Home State duty to protect against corporate abuse: Analysis of legislation and needed reforms in Switzerland to strengthen corporate accountability and environmental abuses’, (July 2010) p 33-35

<http://en.frankbold.org/sites/default/files/tema/ch_state_duty_0.pdf> accessed 29 April 2018
nature, the sports’ governing bodies are subject to the OECD MNEs. Lastly, it is clear from Swiss law that the responsibility to provide for the right to remedy for victims of human rights abuses is directed to the State and not to corporate actors.

To see if the existing remedy mechanisms within the sports’ governing bodies and some and through international documents are suitable to comply with the responsibilities that the sports’ governing bodies have, or sign themselves up to, will be further discussed in the next chapter.
Chapter 3 – Mechanisms

This chapter describes the different remedy mechanisms throughout international documents and the specific sport organising bodies. The focus is on sports-specific and other non-judicial mechanisms, since it goes beyond the scope of this thesis to analyse in detail the domestic judicial institutions available in different countries to provide remedy in cases of human rights abuses. Also, the United Nations Treaty-Based mechanisms will not be discussed, since they are unable to issue enforceable sanctions on either states or companies; they can only show up states in a shameful light. Every paragraph will firstly describe how the particular grievance mechanism(s) work(s), and will be followed by an elaboration on in which way these mechanisms comply with the responsibilities and framework set out in the previous two chapters.

3.1 Court of Arbitration

3.2.1 The mechanism

Those participating in sport under the oversight of an international sports organisation are almost always required to ultimately have sports or labour related disputes determined by the CAS, which is headquartered in Lausanne, Switzerland.141

All sports’ governing bodies discussed in this thesis have recognised the CAS as the proper authority to deal with disputes. Rule 61 of the Olympic Charter deals with the resolution of any disputes arising from the Olympic Charter in clear terms:

“1. The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS).

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.” 142

FIFA also recognises CAS, including in relation to disputes “between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed

142 Olympic Charter September 2017 Edition (n81) rule 61
match agents”. The FIFA Statues provide that “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”. According to the Commonwealth Games Constitutions “any dispute arising under or in connection with the interpretation of this Constitution or the Regulations shall be solely and exclusively resolved by mediation or arbitration by the Court of Arbitration for Sport according to the Code of Sports-Related Arbitration”. And the decision of the CAS will be final. The goal of CAS is to solve disputes through arbitration, appeal arbitration or mediation. All members of the CAS are

“arbitrators with appropriate legal training, recognized competence with regard to sports law and/or international arbitration, a good knowledge of sport in general and a good command of at least one CAS working language, whose names and qualifications are brought to the attention of ICAS, including by the IOC, the IFs, the NOCs and by the athletes’ commissions of the IOC, IFs and NOCs.”

To safeguard the equality of parties the working languages of the CAS are English and French, but Parties may request a different language. Also, Parties may use representation of their choice. Further, both parties are subject to hearing and may call, if necessary, witnesses. To guarantee the CAS’ impartiality “every arbitrator shall be and remain impartial and independent of the parties and shall immediately disclose any circumstances which may affect her/his independence with respect to any of the parties”.

3.2.2 Evaluation

FIFA, the IOC and the CGF recognized the CAS as the legal apparatus that can be established to protect human rights by providing a grievance mechanism that ensures access to a remedy. However, this is not to recommend that the CAS be given that responsibility. The CAS was specifically designed to deal with sport disputes, not matters of human rights. As Professor Ruggie noted in his report to FIFA:

143 FIFA Statute April 2016 Edition (n65) principle 66 (1)
144 Ibid. principle 66 (2)
145 Commonwealth Games Constitution (n93) art 29
146 Court of Arbitration for Sports, ‘Code of Sports-related Arbitration (in force as from 1 January 2017) s 12
147 Ibid. s 14
148 Ibid. s 29
149 Ibid. s 30
150 Ibid. s 44.2
151 Ibid. s 33
‘If an arbitration system is going to deal effectively with human rights-related complaints, it needs certain procedural and substantive protections to be able to deliver on that promise. While […] the CAS’ 300- plus arbitrators who sit at the peak of the system may be well equipped to resolve a great variety of football-related disputes, they generally lack human rights expertise’.

Looking at the requirements that were formulated in the first chapter, access to remedy mechanisms, suitable reparation, and access to information, the CAS scores well on the second requirement. Because this mechanism is not sanction-based but dialogue-based, the likelihood that all involved Parties would consent to the outcome is big. The biggest challenge lays in its expertise. As Professor John Ruggie strongly pointed out in the quote above, although the arbitrators involved with the CAS are well equipped, the CAS requires no knowledge of human rights. This results in a big knowledge gap, when dealing with human rights issues.

3.2 Sports Governing Bodies’ own dispute mechanisms

3.2.1 FIFA

FIFA has several own judicial bodies, which all have their one speciality or special scope. In this paragraph the Disciplinary Committee, the Ethics Committee, the Appeal Committee and the Dispute Resolution Chamber will be closely looked at. Although these mechanisms may not be designed to deal with adverse human rights impacts, they will be explained in order to see if they might be suitable to deal with adverse human rights impacts.

FIFA Disciplinary Committee

The FIFA Disciplinary Committee is established under FIFA’s Statute. The function of the Disciplinary Committee is and shall be governed by the FIFA Disciplinary Code. The Disciplinary Committee consists of a Chairman, a vice-chairman and a specific number of members, currently seventeen. According to the FIFA documents, the Chairman and Vice-Chairman must practise law and the members must represent different varieties of specialties.

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152 Ruggie (2016) (n57), p 26
153 FIFA Statute April 2016 Edition (n65) provision 61
154 Ibid. provision 62
155 Ibid. provision 61 (2); and FIFA, Disciplinary Committee (2018) <http://www.fifa.com/about-fifa/committees/committee=1882042/index.html> accessed 12 April 2018
157 FIFA Statute April 2016 Edition (n65) provision 62(3)
The Disciplinary Code sets out the application of the code. Generally, the Disciplinary Code “applies to every match and competition organised by FIFA. Beyond this scope, it also applies if a match official is harmed and, more generally, if the statutory objectives of FIFA are breached [...]”. Thus, from this provision is clear that the Disciplinary Code applies if statutory objectives of FIFA are breached. In provision three of the FIFA Statutory is stated that “FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights”. Therefore, the Disciplinary Committee could arbitrate in situations of adverse human rights violations. Nevertheless, the Disciplinary Code also sets out the subjects of the of the code. Those are “[a]ssociations, members of associations, in particular the clubs, officials, players, match officials, licensed match and players’ agents, anyone with an authorisation from FIFA, in particular with regard to a match, competition or other event organised by FIFA, and spectators”. This means that FIFA itself it not subject to the Disciplinary Code.

With regard to the kind of sanctions that the Disciplinary Committee can impose there are three categories, the first being sanctions for natural and legal persons, the second on solely natural persons and the third and last one on solely legal persons. Both natural and legal persons are punishable with a fine, a waring, a reprimand, or a return of awards. For solely legal persons the sanctions are, amongst other things, forfeit, expulsion, a transfer ban, or playing a match without spectators. For solely natural persons the sanctions are, amongst other things, caution, expulsion, or match suspension.

According to the Disciplinary Code disciplinary infringement are prosecuted ex officio. Any person or body may report actions he or it considers incompatible with the regulations of FIFA, and match officials are even obliged to reveal infringements which have come to their notice.

The members and Chairman of the Disciplinary Committee are appointed by the Council. To safeguard its impartiality, the Disciplinary Committee passes their decision

158 FIFA Disciplinary Code 2017 Edition (n155) provision 2
159 FIFA Statute April 2016 Edition (n65) provision 3
160 FIFA Disciplinary Code 2017 Edition (n155) provision 3
161 Ibid. provision 10
162 Ibid. provision 12
163 Ibid. provision 11
164 Ibid. provision 108
165 Ibid. provision 81; for more information see chapter 2.1.1.
entirely independent and without any instructions from any other body. A member of another
FIFA body may not even be in the same room during elaboration, unless he is specifically
summoned.\textsuperscript{166} Member of the Disciplinary Committee cannot also be members of the Council
or a standing Committee of FIFA\textsuperscript{167} and must withdrawal in any meeting when their impartiality
could be seriously questioned. This is the case in the following situations (among others): “if
the member in question has a direct interest in the outcome of the matter, if he is associated
with any of the parties, if he has the same nationality as the party implicated (the association,
club, official, player etc.), if he has already dealt with the case under different
circumstances”.\textsuperscript{168} To guarantee its confidential nature only those decisions already notified to
the addressees may be made public, and everything disclosed to the Disciplinary Committee
will stay confidential.\textsuperscript{169}

To guarantee the equal position of both parties, both parties shall be heard before a
decision is made,\textsuperscript{170} unless exceptional circumstances do occur, for example in confidentiality
matters.\textsuperscript{171} Also, both parties may arrange legal representation and are free to choose so.\textsuperscript{172} The
general used languages in proceedings are the four official languages of the FIFA (German,
French, English, and Spanish) and can be chosen by the Disciplinary Committee. If it is
necessary, FIFA can use an interpreter and ‘if the language used in a decision is not the mother
tongue of the person concerned, the association to which the person belongs will be responsible
for translating it’.\textsuperscript{173}

Any decision of the Disciplinary Committee may be lodged with the Appeal Committee,
unless the imposed measure is a warning, a reprimand, a suspension for less than three matches
or of up to two months, or if it is a fine up to 15,000 Swiss Franc for an association or club or
of up to 7,500 Swiss Franc in other cases.\textsuperscript{174} Appeal must be filed within three days of the
notification of the decision.\textsuperscript{175}

\textsuperscript{166} Ibid. provision 85
\textsuperscript{167} Ibid. provision 86
\textsuperscript{168} Ibid. provision 87(2)
\textsuperscript{169} Ibid. provision 88
\textsuperscript{170} Ibid. provision 94
\textsuperscript{171} Ibid. provision 95
\textsuperscript{172} Ibid. provision 100
\textsuperscript{173} Ibid. provision 101
\textsuperscript{174} Ibid. provision 118
\textsuperscript{175} Ibid. provision 120
FIFA Ethics Committee

The FIFA Ethics Committee is established under FIFA’s Statute. The FIFA Code of Ethics, which has been ratified by the Executive Committee and the FIFA Congress, provides the basis for all of the Ethics Committee’s proceedings and decisions. The Ethics Committee can impose the sanctions stipulated in the Statutes, the Code of Ethics and the Disciplinary Code upon officials, players, intermediaries and licensed match agents if they violate the Code of Ethics. This means that FIFA itself is not subject to the Ethics Code. The FIFA Code of Ethics focuses on general conduct within football that has little or no connection with actions on the field of play. This is a very broad definition. Although it speaks not literally about human rights violations, these violations to fulfill the requirement of “actions with no connection to the field of play”. Therefore, this could entail adverse human rights violations.

The Ethics Committee consists of an independent investigatory chamber and an independent adjudicatory chamber. The chairpersons, deputy chairpersons and all other members are all elected by the Congress for a term of office of four years.

With regard to the kind of sanctions the Ethics Committee can impose “a warning, a reprimand, a fine, return of awards, match suspension, ban from dressing rooms and/or substitutes’ bench, ban on entering a stadium, ban on taking part in any football-related activity, or social work.”

According to the Code of Ethics “the investigatory chamber shall investigate potential breaches of provisions of this Code on its own initiative and ex officio at its full and independent discretion”. Once investigation has finished, the investigatory chamber shall prepare a final report. This report is send to the adjudicatory chamber, together with the investigation files. If suitable, the investigatory chamber can include a recommendation for sanctioning. The adjudicatory chamber shall review the investigation files provided by the investigatory chamber

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176 FIFA Statute April 2016 Edition (n65) provision 61
177 Ibid. provision 63
179 Ibid. art 2
180 Ibid. art 1
181 FIFA Statute April 2016 Edition (n65) provision 66; and FIFA Code of Ethics 2012 Edition (n177) art 26
182 FIFA Code of Ethics 2012 Edition (n177) art 6
183 Ibid. art 28
and decide whether to close proceedings or to adjudicate the case. It may also undertake further investigations.\textsuperscript{184}

To safeguard its independence, in accordance with the FIFA Statutes, the chairperson and deputy chairperson of each chamber must not have an organisational or financial relationship with FIFA, either directly or through their immediate family members. The other members, as well as their immediate family members, may not belong to any other judicial body, the Executive Committee or any other standing committee of FIFA. The members of the Ethics Committee are fully independent in how they investigate and conduct proceedings, as well as in their decision-making.\textsuperscript{185} A member of the Ethics Committee must withdrawal in any investigation when his impartiality could be seriously questioned. This is the case in the following situations (among others):

\begin{itemize}
  \item a) “if the member in question has a direct interest in the outcome of the matter;
  \item b) if he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; or has expressed an opinion concerning its outcome; or when the immediate family of the member is a party to the subject matter in controversy or is a party to the proceedings, or has any other interest that could be substantially affected by the outcome of the proceedings and his impartiality;
  \item c) if he has the same nationality as the party implicated or under investigation;
  \item d) if he has already dealt with the case in a different function.”\textsuperscript{186}
\end{itemize}

To guarantee its confidential nature all information enclosed to the members of the Ethics Committee shall remain confidential. Nevertheless,

\begin{quote}
“the investigatory chamber or the adjudicatory chamber may, if deemed necessary and in an appropriate form, inform the public about or confirm ongoing or closed proceedings, and also rectify wrong information or rumours” \textsuperscript{187}
\end{quote}

To guarantee the equal position of both parties, both parties shall be heard, the right to provide and inspect evidence, the right to access files and the right to a reasoned decision, unless exceptional circumstances do occur, for example in confidentiality matters.\textsuperscript{188} Also, both parties

\begin{footnotesize}
\begin{itemize}
  \item [184] Ibid. art 29
  \item [185] Ibid. art 34
  \item [186] Ibid. art 35
  \item [187] Ibid. art 36
  \item [188] Ibid. art 39
\end{itemize}
\end{footnotesize}
may arrange legal representation and are free to choose one. The general used languages in proceedings are the four official languages of the FIFA (German, French, English, and Spanish) and can be chosen by the Ethics Committee. If it is necessary, FIFA can use an interpreter and “if the language used in a decision is not the mother tongue of the person concerned, the association to which the person belongs will be responsible for translating it”.  

Any decision of the Ethics Committee may be lodged with the Chairman of the Appeal Committee, within two days of the notification of the decision.

**FIFA Appeal Committee**

The FIFA Appeals Committee is established under FIFA’s Statute. It consists of a chairman, a deputy chairman and a specific number of other members, currently twelve. The function of the Appeal Committee shall be governed by the FIFA Disciplinary Code and the FIFA Code of Ethics, which is set out above.

**Dispute Resolution Chamber**

The Dispute Resolution Chamber (DRC) is an independent arbitration tribunal set up by FIFA to deal with employment-related dispute between clubs and players. The Players’ Status Committee is responsible to deal with the work of the DRC in accordance with the Regulations on the Status and Transfer of Players and the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber. Currently there are twenty-six members of the DRC, made up of an equal number of player and club representatives. They are appointed on the proposal of the players’ associations and the clubs or leagues.

The DRC shall examine its jurisdiction, in particular in the light of arts 22 to 24 of the Regulations on the Status and Transfer of Players. According to these regulations the DRC adjudicate in

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189 *Ibid.* art 40  
190 *Ibid.* art 43  
191 *Ibid.* art 86  
192 *FIFA Statute April 2016 Edition* (n65) provision 61  
193 *Ibid.* provision 64  
194 *Ibid.* provision 54  
a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement;

c) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

d) disputes relating to the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations' with the exception of disputes concerning the issue of an International Transfer Certificate.\(^\text{196}\)

Thus, its jurisdiction is not focused on human rights impacts. But this does not mean that the mechanism itself might not be suitable to deal with these kinds of disputes.

A proceeding can be opened on request of a party. Parties are member associations of FIFA, clubs, players, coaches or licensed match agents. Parties may choose a to be represented.\(^\text{197}\)

To guarantee its impartiality member of the DRC “may not exercise their office in any cases in which they have a personal and/or direct interest. The member in question shall disclose the reasons for withdrawing in sufficient time”. Parties can challenge the impartiality of a member of the DRC within five days of the grounds for challenging coming to light.\(^\text{198}\)

Petitions shall be submitted in one of the four languages of the FIFA (English, German, French, or Spanish), and relevant documents in any other languages, such as contracts, must be translated in one of the four languages of the FIFA.\(^\text{199}\)

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\(^{196}\) FIFA, ‘Regulations on the Status and Transfer of Players’ artt 22 and 24

\(^{197}\) Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (n194) rule 6

\(^{198}\) Ibid. rule 7

\(^{199}\) Ibid. rule 9
3.2.1 IOC

The IOC has several own judicial bodies, which all have their own speciality or special scope. In this paragraph, the Reporting Tool will be closely looked at. Although this mechanism may not be designed to deal with adverse human rights impacts, they will be explained in order to see if they might be suitable to deal with adverse human rights impacts. Furthermore, there will be an elaboration on mechanisms that were formed as a result of the 2012 London Olympic Games.

IOC Reporting tools

In relation to the freedoms of the press and the media the IOC had launched a reporting tool on press freedoms at the 2016 Rio Olympics, after criticisms. The tool allowed journalists to lodge web-based complaints where they felt that their freedoms had been violated. The tool was developed in consultation with the Committee to Protect Journalists. The Committee to Protect Journalists’ Executive Director Joel Simon said: “The mechanism is consistent with this obligation, and we urge journalists to use it to its fullest advantage”. 200

The IOC aims to use the reporting mechanism to transmit verified complaints to the relevant authorities and stakeholders for resolution. The complaint mechanism is accessible for journalists and media representatives reporting on the organisation and staging of the Olympic Games who, in this context, may have experienced a violation of their press freedom. It is accessible in English and French. The report mechanism is included with a confidentiality clause, which states that the identity of the complainant “will not be disclosed to persons beyond those responsible for dealing with your request, without your explicit consent”. 201

IOC London 2012 Olympics

In the aftermath of the announcement of London as the Host City for the 2012 Olympic Games, there was significant discussions between the London Organising Committee (LOCOG) and trade unions and civil society on the need for a broad operational grievance mechanism for the


supply chain of goods and services to the Olympic Games.\textsuperscript{203} London 2012’s commitment to deliver a sustainable Olympic Games and Paralympic games, LOCOG established policies commercial partners (sponsors, licensees and contractors) were expected to follow. These policies were primarily set out in the LOCOG Sustainable Sourcing Code.\textsuperscript{204} The LOCOG Sustainable Sourcing Code included a basic complaint process and in collaboration with UN Special Representative on Business and Human Rights, Professor John Ruggie the LOCOG request for proposals specified that any process should be underpinned by the emerging UN Principles.\textsuperscript{205} The result was a mechanism which essentially exists of four distinct phases. It starts with an assessment to make sure the scope of the complaint is related to the LOCOG Sustainable Sourcing Code and to a good or service being provided to LOGOC. This is followed by reporting and/or information gathering. In this phase, the aim is to seek full information from both the complainant and from the commercial partner to whom the complaint was directed. During this phase parties mediate to agree on facts, and more importantly, on actions to be taken. Ultimately to come to an agreement. Where no agreement could be reached between parties, the mechanism permits for the appointment of an independent investigator. This is the third phase. The fourth, and last, phase evolves around remediation, which entails implementation of correctional or preventive actions, based on agreement and with monitoring and reporting back.\textsuperscript{206}

This system had several innovative features. I was based on the recommendations of the UNGPs, with the objective to seek solutions to complaints through dialogue rather than by investigation or corrective actions plans. Secondly, it had a semi-outsourced operational structure. This ensured that expertise and resources that were not immediately available within LOGOC could still be applied in very complex complaints. This had the added advantage that all involved stakeholders could be ensured that an independent process was being followed free from interference of LOGOC. A final memorable feature was the creation of a Stakeholder Oversight Group. This oversight group provided advice on how solutions to complaints could

\textsuperscript{203} Remedy Mechanisms for Human Rights in the Sports Context (n140) p. 26
\textsuperscript{204} LOCOG, Sustainable Sourcing Code, 3rd Edition, July 2011
\textsuperscript{205} Stuart Bell, Phil Cumming, Steve Gibbons, Learning Legacy: lessons learned from planning and staging the London 2012 Games, Published December 2012 LOC2012/SUS/CS/0022, page 2
\textsuperscript{206} Ibid. p. 26
be best promoted and to ensure that complaints were being handled in a timely, fair and efficient manner.  

This mechanism ultimately resulted in eleven complaints, eight for organisations and three from individual workers. From this eleven complaints, two fell outside the scope of the complaint as they did not relate to work sides producing goods for LOCOG. The remaining nine complaints were all addressed and achieved through this system.  

3.2.3 CGF

For the GC 2018 GOLDOC developed two kinds of mechanisms: a whistle-blower procedure and a customer feedback procedure. This paragraph will focus on the fact in which way these mechanisms might be suitable to deal with human rights violations and provide for an effective remedy.

Whistle-blower procedure

The whistle-blower procedure is a reporting tool that can be used “to disclosures about alleged serious wrongdoing made in the public interest by GOLDOC’s workforce, a supplier or partner of GOLDOC and any member of the public”. According to the Whistleblower Policy, a serious wrongdoing means, amongst other things

“Conduct involving substantial and specific danger to the health or safety of a person with a disability, conduct involving substantial and specific danger to the environment, and/or conduct involving substantial and specific risk to public health or safety”.  

Although it does not specifically refer to human rights, the human rights that are generally at stake in the organising and holding of MSE (as are already set out in paragraph 2.1) might fall under the previous quote. Any party can file a disclosure, and all information stays confidential.  

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207 Ibid. p 3-4
208 Ibid. p 5
209 GOLDOC, ‘Whistleblower policy’ (June 2017) para 3
210 Ibid. para 9
211 Ibid. para 4
Customer Feedback Procedure

The Customary Feedback Procedure has as its goal to document all feedback from internal stakeholders, like employees, volunteers and suppliers, and external stakeholders, like local residents, to the management of the event. This means that this is not only a tool for complaints, but also for compliments. It’s main goal therefor is to react to this feedback and to learn from it. Hence, it is not a tool that has a specific goal to sanction or remedy any wrongdoings.212

3.2.4 Evaluation

FIFA has no existing remedy mechanisms that are designed to deal with human rights violations. FIFA’s Disciplinary Committee has several advantages. For example, the members of the Disciplinary are required to practise law in different specialities. This means that it would be possible to add human rights related issues as one of the specialties. Also, the scope of the Disciplinary Committee entails breaches of statutory objectives. One of the objectives of the FIFA Statute, as laid down in provision 3, is to respect internationally recognised human rights and shall strive to promote the protection of these rights. This implies that human rights violations might fall under the scope of the Disciplinary Committee. Furthermore, the impartiality of the Committee and the equality of parties is embedded in the Disciplinary Code. These positive sides of this mechanism contribute to accessibility of the right the remedy. Nevertheless, the downside of this mechanism is that it lists various sanctions, which none of them result to reparation for harm suffered. Therefore, the second requirement is not fulfilled of the right to remedy framework. The same applies with regard to FIFA’s Ethics Committee, the imposed sanctions don’t cause reparation for the harm suffered. The Ethics Committee has the additional downside that the Investigatory Chamber is the one that investigates ex officio, which means that there is no room for individual complaints. This is a big obstacle when it comes to the accessibility requirement of the right to remedy framework. Nevertheless, this mechanism also has several benefits, like its independent and confidential nature and the equality of parties. The last mechanism of the FIFA that has been set out was the DCR. This is an arbitration tribunal which has the great benefit that the outcome of any dispute is mostly in consensus of both parties. This adds value to the requirement that reparation must be suitable to the harm suffered. When it comes to the accessibility, any party can open a request. The DCR must be impartial, and any doubt about its impartiality can be challenged by the parties. The

downside of this mechanism, is that it is currently designed to deal solely with employment-related disputes, and therefore not with human rights issues.

The outcomes of the suitability of existing mechanisms within the FIFA to deal with human rights issues is a bit disappointing, since none of the existing mechanism is ready to be used to deal with human rights violations. Mainly because the FIFA has made some great progress in addressing human rights issues through their own documents and their willingness to comply with international documents like the UNGPs and OECD MNEs, one might expect more. Nevertheless, the Human Rights Policy was developed in 2017. It might be too soon, to already have perfect remedy mechanisms in place, if that is possible at all.

The mechanisms of the IOC that were set out were the IOC Reporting Tools and the mechanisms used in the London 2012 Olympics. Although these mechanisms were designed to deal with specific disputes, media disputes at the reporting tools and issues regarding the supply chain of goods and services at the London 2012 Olympics, these mechanisms show some promising features to address human rights violations. The IOC Reporting Tools are a free online platform, which makes it accessible. Also, confidentiality of the person who reports is guaranteed. Stakeholders are consulted and informed, and the outcome is dialogue based, which contributes to the likelihood that all parties will be satisfied with the outcome. The greatest benefit of the mechanism that was established after the London 2012 Olympics, was that it was developed between LOCOG, civil society and trade unions, which secures the contentment of involved stakeholders. Furthermore, it was based on mediation and had a semi-outsourced nature. Which means that when expertise was not available, it could be sought outside the existing mechanism. This tackles the biggest challenge that most mechanism face; lack of expertise.

As was set out in chapter 2, the IOC requires itself in the renewed HCC responsible to provide for remedy mechanisms that can deal with human rights issues. This obligation is formulated for the upcoming Paris Olympic Games in 2024, so they have a good 5 to 6 years to further develop suitable mechanisms. The existing remedies, although promising, are subject-specific. Hence, it is a step in the right direction and the IOC should continue on this path to develop mechanisms suitable for the 2024 Olympic Games.

For the GC2018 the GOLDOC has established several report and complaint mechanisms. Although, none of them are specifically designed to deal with human rights, they have some promising features. The whistle-blower procedure has as it great benefits its accessibility and the fact that is dialogue-based. Which contributes to the requirement that reparation must be suitable for the harm suffered. The Customer Feedback Procedure has as its
great benefit the fact that is suitable to external stakeholders, like local residents, and is targeted against the management of the games. Nevertheless, they only provide for a feedback tool. This feedback can exist of both complaints and compliments. Is has as its goal to learn from this feedback, and does not provide for a remedy for victim of human rights impacts.

The CGF points out in its Human Rights Policy Statement to go beyond compliance. The GOLDOC Human Rights Policy includes a provision on the right to remedy and its responsibility to comply with the UNGPs. Nevertheless, those existing remedy mechanisms do not comply with this statement. For an organisation, who says that wants to take it to the next level, when it comes to compliance with human rights, the existing remedy mechanisms are certainly not suitable.

3.3 National Contact Points

3.3.1 Mechanism

The OECD Guidelines are the only international instrument for responsible business behaviour with a mechanism that provides access to remedy: the NCPs. The role of NCPs “is to further the effectiveness of the Guidelines. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence”\textsuperscript{213}

The most notable strengths of NCPs are that they are accessible to any entranced party, including individuals, trade unions and NGOs. Because the NCPs functioning is monitored via peer reviews and annual reports to the OECD Council, it is increasing international visibility. Further, NCPs have government backing, they do not charge any fees, and are encouraged to handle cases within a specific time limit. Also, their mandate is primarily to mediate, which has the benefit that when parties come to an agreement, that is a mutual one.

Nevertheless, there are also come challenges. Because there are currently 46 countries that have adhered to the Guidelines and have established an NCP, its coverage is not universal. However, NCPs are competent to deal with issues related to the implementation of the Guidelines also in non-adhering countries. As mentioned before, their mandate is primarily to facilitate mediation between the parties. This has the possible downside that it does not include imposing sanctions or ordering compensation to victims.\textsuperscript{214}

\textsuperscript{213} OECD MSEs (n56)
\textsuperscript{214} Ibid. p 18
3.3.2 Evaluation

As was set out in chapter 2, the OECD MNEs only apply to situation where sports’ governing bodies engage in commercial activities. This means that a victim of human rights cannot always turn to a NCP. It has to be establishes on a case-by-case basis, whether the OECD MNEs apply, and therefore whether it falls under the scope of a NCP. The greatest benefits of a NCP is accessible to any entranced party and their mandate is primarily to mediate, which has the benefit that when parties come to an agreement, that is a mutual one. This complies with the requirements of accessibility and suitable reparation. Nevertheless, the mandate to primarily mediate has the possible downside that it does not include imposing sanctions or ordering compensation to victims.

3.4 Conclusion

The CAS is recognised by all sport’s governing bodies that are covered in this thesis as the competent authority to deal with sports or labour related disputes. The CAS is not designed to deal with human rights issues. Nevertheless, because it is an arbitration mechanism, it is dialogue-based and consent to the outcome for both parties is likely. The downside of this mechanisms, as was also pointed out by Professor John Ruggie, is that it lacks human rights expertise.

The different sports’ governing bodies have also some own dispute mechanisms. FIFA has it Disciplinary Committee, the Ethics Committee, the Appeal Committee and a Dispute Resolution Chamber. Again, these mechanisms are not designed to deal with human rights issues. As resulted from the research an evaluation in this chapter, the existing mechanisms are currently not suitable to deal with human rights issues. This outcome is a little disappointing, given the fact that FIFA has shown willingness to comply with human rights. Nevertheless, FIFA’s willingness and concrete steps with regard to human rights and the right to remedy is relatively new. It might be too ambitious to expect an already perfect remedy mechanism, if that is ever possible.

The IOC has developed Reporting Tools for the media and an operational grievance mechanism for the supply chain of goods and services to the London 2012 Olympic Games. Although, the mechanisms were designed to deal with specific disputes, they show some promising features. They are both accessible and the London 2012 Olympic Games mechanism has the additional benefit of being semi-outsourced. The current existing mechanisms do no fully live up to the responsibilities that the IOC signs itself up to. Nevertheless, especially with
regard to the responsibilities in the renewed HCC, the Paris Olympic games are not until 2024. The IOC has thus some time to follow these positive steps onwards compliance to their responsibilities in the light of providing for the right to remedy.

For the GC2018 the GOLDOC has designed some report mechanisms, the Whistleblower Procedure and the Customer Feedback Procedure. For an organisation, who says that wants to take it to the next level, when it comes to compliance with human rights, the existing remedy mechanisms are certainly not suitable.

Besides that, the OECD MNEs are the only legal source, investigated in this thesis, whit its own dispute mechanism: the NCPs. The NCPs provide a source for victims to seek remedy in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence. It biggest advantage is that accessible to any entranced party and their mandate is primarily to mediate, which has the benefit that when parties come to an agreement, that is a mutual one. Nevertheless, the mandate to primarily mediate has the possible downside that it does not include imposing sanctions or ordering compensation to victims.
Chapter 4 – Conclusion

As has been made clear in the first chapter, there is no hard law that obligates sports’ governing bodies to provide for a right to remedy. Protecting human rights, and therefore providing a right to remedy, is in the first place a state’s duty. Nevertheless, all the sports’ governing bodies in one way or another dedicated themselves to comply with human rights and the right to remedy through their own documents or by their willingness to comply with the UNGPs. As was set out in chapter 1 the right to an effective remedy entails the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. This also includes that the types of remedy that are provided are affordable and timely.

FIFA commits itself to provide for an effective remedy by recognising the UNGPs through its human rights policy. These are soft law norms, but that does not mean that they have less or little meaning. Because FIFA is pointing out its willingness to take human rights in account and publishing its human rights policy, it is sending a strong message. It would affect FIFA’s credibility when they leave this just as empty words and do not live up to their promises. The IOC’s most important document in regard to its responsibility to provide for excess to remedy is its HCC. The Paris 2024 HCC includes a specific provision where the IOC is made responsible to provide for a remedy mechanism that can deal with human rights violations. Since this is a contract, not living up to the provisions would entail a breach of contract. This is a form of hard law, by which the IOC makes itself responsible to provide for the right to remedy. The CGF commits itself to provide for an effective remedy by recognising the UNGPs in the GOLDOC Human Rights Policy. They first pointed out their willingness in its Human Rights Policy statement. By saying that they even want to go beyond compliance, they send out a strong message. They tried to live up to that promises by taking place in several working groups and/or panels that work and develop on the importance of human rights and seeking remedy. Also, for the GC2018 they established a Human Rights Policy, which includes a provision on its responsibility to provide for the right to remedy.

With regard to the existing remedy mechanisms, all the sports’ governing bodies have recognised the CAS as the authoritative body to deal with sport related issues. It has the great benefit of being an arbitration mechanism, which implies the likelihood that all involved parties would follow and be satisfied with the outcome. Nevertheless, this court lacks specific human rights expertise, which would make it very difficult to ensure the right to remedy through this mechanism. The already existing remedy mechanisms that FIFA has in place, are not enough
to ensure the right to remedy. This outcome is a little disappointing, given the fact that FIFA has shown willingness to comply with human rights. Nevertheless, FIFA’s willingness and concrete steps with regard to human rights and the right to remedy is relatively new. It might be too ambitious to expect an already perfect remedy mechanism, if that is ever possible. Regarding the existing mechanisms of the IOC, the investigated ones are designed to deal with specific disputes, and therefore not ready to deal with human rights issues. Nevertheless, they have some promising features. They are accessible and the London 2012 Olympic Games mechanism has the additional benefit of being semi-outsourced, which means that in the case there is no expertise currently available, it can be sought outside the mechanism. This tackles the biggest issue that most mechanisms face: lack of human rights expertise. The existing mechanisms of the CGF are not suitable to deal with human rights issues and especially from the CGF this is really disappointing. They are the ones who are seen as the pioneers when it comes to human rights, and account themselves to even go beyond compliance when it comes to human rights. The last researched remedy mechanism was the NCP. Although this mechanism is certainly suitable to deal with human rights violations and the fact that their mandate is primarily to mediate, results in the benefit that when parties come to an agreement, that is a mutual one, the NCP is not always capable of dealing with a dispute. Only in cases were the sports’ governing bodies engage in commercial activity, the NCP as jurisdiction. Therefore, seeking remedy under a NCP, one fist needs to overcome the hurdle if the NCP is actually capable of dealing with a particular dispute.

Thus, although the responsibility to provide for remedy is originally one for the state, sports’ governing bodies are more and more willing to take these rights into account. This is strongly shown by the recent development of human rights policies through the researched sports’ governing bodies, or in the case of the IOC, even the renewal of their HCC. Except from the IOC’s HCC, all these responsibilities are a form of soft law. This does not mean that they have no strength. As the face of sports, the sports’ governing bodies have a great moral and public responsibility to live up to their promises. It would really degrease their credibility, if they publically call upon awareness of human rights and their willingness to comply with it, and then not live up to that promises or responsibilities. In the case of the IOC, they do have a contractual obligation to provide for a right to remedy, as they captured in their HCC. Looking at the existing remedy mechanisms, none of them are fully suitable to deal with human rights violation in the light of the right-to-remedy framework, designed in this thesis. Nevertheless, the developments around the importance of human rights and the right to remedy is relatively new. Rome wasn’t built in a day, and so aren’t remedy mechanisms that can deal with human
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