



Centre for Sport and Human Rights

Draft for consultation

Mapping Remedy Mechanisms for Sports-Related Human Rights Grievances

NOTE:

This draft paper, prepared in December 2018, has been shared for consultation only and is not for citation or dissemination.

Comments on this draft will be welcomed until **31 January 2019** to:

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SUMMARY

Launched in June 2018, the Centre for Sport and Human Rights is founded on the premise that through harnessing the power of sport and acting collectively there is potential to deliver concrete positive impacts for those affected by sport and beyond sport. The Centre works towards a world of sport that fully respects human rights by sharing knowledge, building capacity, and strengthening the accountability of all actors through collective action and promotion of the Sporting Chance Principles. Core to the Centre's mandate is increasing accountability throughout the world of sport. This includes supporting efforts, which ensure that victims of human rights abuses linked to sport have access to effective remedy.

On 15 October 2018, the Centre hosted a "Strategic Dialogue on Remedy in the Sport and Human Rights Context" in The Hague, bringing together key experts and practitioners focused on identifying practical, effective, and creative recommendations toward supporting all actors to ensure access to effective remedies for sports-related human rights abuses (see: "**Meeting Report: Remedy, Sport and Human Rights**"). An initial draft of this paper was provided as pre-reading for participants, providing an overview of the main discussion questions in relation to effective remedy mechanisms in the sport and human rights context.

This paper provides concrete examples and features of remedy mechanisms in the broader business and human rights world. It builds on previous work set out in the Mega-Sporting Events Platform for Human Rights publication "[Sporting Chance White Paper 2.4: Remedy Mechanisms for Human Rights in the Sports Context](#)" (White Paper 2.4) which identified strengths and challenges of various means of access to remedy across the world of sport. The paper also looks at additional remedy mechanisms that are relevant in that context. The focus is on state-based and operational-level remedy mechanisms, excluding courts of law, identifying key features of these mechanisms and essential points of consideration when assessing and creating remedy mechanisms for those adversely impacted by sport related activities and actors.

For the purpose of this paper, remedy is understood in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs), as a process for restoring those that have been harmed to the situation before the harm occurred or making good any harm by means of compensation should restoration not be possible.¹ Examples of remedies range from apologies,

1 See commentary to UNGP 25, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

restitution, rehabilitation, financial or non-financial compensation, to punitive sanctions and injunctions or guarantees of non-repetition.²

The main challenges of remedying sports-related human rights harms are:

- Ensuring that effective mechanisms are in place;
- Addressing gaps in access to existing mechanisms; and
- Strengthening human rights capacity and rights-compliance of existing mechanisms.

To address these challenges, the following critical considerations have been identified:

1. What efforts are needed for the creation, where appropriate, of new remedy mechanisms within the sport and human rights context based on lessons learned from other mechanisms?
2. What efforts are needed for the adaptation of existing mechanisms to improve their effectiveness based on lessons learned from other mechanisms, and how should any initiatives aimed at the creation of new mechanisms on the one hand and the adaptation of existing mechanisms on the other be appropriately considered?
3. What efforts are needed from sports bodies and other relevant institutions to:
 - Develop a regulatory environment that allows existing and newly created mechanisms to function effectively?
 - Develop policies so that all affected parties have access to rights-compliant and effective mechanisms?
4. How can the spectrum of existing mechanisms be most effectively utilised? What steps might potentially assist in encouraging complementarity between existing mechanisms, and what may be needed to supplement such mechanisms while ensuring that the operations of multiple mechanisms do not hamper the functioning of any specific mechanism?

² Ibid.

1. THE MEANING OF EFFECTIVE REMEDIES IN THE SPORT AND HUMAN RIGHTS CONTEXT

Sport-related human rights issues occur on the local, regional, and global level, both on and off the field, before, during, and after competitions and matches, as well as close to and far away from sport-event venues. Adverse human rights impacts associated with sport can range from discrimination and racism, to exploitation, displacement, and impacts linked to corruption. These can affect players and athletes including child athletes, as well as communities, families and individuals attending or living in and around countries that host sport events. Every affected party has the right to effective remedy, as enshrined in a number of regional and international human rights treaties.³ Furthermore, the responsibility to provide effective remedy is stipulated in the UNGPs, as well as the Sporting Chance Principles, to which several major international sports organisations (ISOs) have committed to work towards fulfilling.⁴ UNGP 30 states that:

*“Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available”.*⁵

Principle 6 of the Sporting Chance Principles stipulates that:

*“Access to remedy is available: Effective remedy should be available to those whose human rights are negatively impacted by the activities or business relationships of the actors involved in sport, including during any stage of a mega-sporting event lifecycle. Governments, trade unions, national human rights institutions, OECD National Contact Points, corporate partners, civil society groups, and sports bodies should coordinate and collaborate on this issue”.*⁶

The UNGPs make clear that collaborative initiatives should ensure the availability of effective grievance mechanisms through which affected parties or their legitimate representatives can raise concerns. The UNGPs also provide a set of criteria to assess the effectiveness of different types of non-judicial grievance mechanisms. Based on UNGP 31, such remedy mechanisms, both State-based and non-State based, should be:

- a) Legitimate,
- b) Accessible,

³ See International Covenant on Civil and Political Rights Art. 2(3), European Convention on Human Rights Art. 13, or American Convention on Human Rights Art. 25, or the UN Convention on the Rights of the Child Arts. 19, 32, & 239.

⁴ The UNGPs can be found [here](#); the Sporting Chance Principles can be found [here](#).

⁵ UNGP 30.

⁶ Sporting Chance Principles, Principle 6.

- c) Predictable,
- d) Equitable,
- e) Transparent,
- f) Rights-compatible,
- g) A source of continuous learning, and
- h) In the context of operational-level grievance mechanisms, based on dialogue and engagement.⁷

In practice, this means that mechanisms need to be fair and trust-worthy for all parties involved (legitimate). Furthermore, they need to be known among affected parties, which means that the availability of the mechanisms as well as the terms and conditions for making use of the mechanism, including its costs, needs to be clearly communicated in a way that can be understood by all potentially affected groups or individuals (accessible). For some affected groups, in particular children, additional steps might be needed to indeed guarantee the awareness of the existence of mechanisms and the accessibility of these mechanisms in a child-friendly way. It is also important that any issues and complaints are dealt with in a structured manner where possible, and as early as possible, in particular if they occur in the context of mega-sporting events due to their temporal nature (predictable). In addition, to be effective, a mechanism should be able to balance the inequality of powers between those affected and those responsible for the adverse effects, by giving equal access to information and providing a fair process and fair conditions for making use of the mechanism (equitable). Transparency of the mechanism should go beyond procedural considerations and apply before any procedures have been started, to ensure that affected parties have access to necessary information, and at the end of the procedure, to communicate the outcome. Effectiveness also means that the mechanism and its outcome are in line with internationally recognised human rights standards (rights-compatible). A regular analysis of remedies provided (continuous learning) and seeking engagement of affected parties for the design or adaptation of the mechanism, as well as the desired outcome (dialogue and engagement), can further enhance the effectiveness of a remedy mechanism.

However, the UNGPs, and their effectiveness criteria, still apply to the world of sport where is conducts commercial activities, and therefore it is against that criteria that the various mechanisms in sport should be evaluated. However, the world of sport presents a unique challenge due to its unique governance structure and commitment to maintaining autonomy. Therefore, the question arises on whether more criteria need to be added when assessing remedy mechanisms in the context of sport-related human rights

⁷ UNGP 31.

violations. Furthermore, the effectiveness assessment should not only apply to the mechanisms itself but also to the outcomes of any of those mechanisms, as this affects the trust of various stakeholders in the mechanism.

2. EXAMPLES OF ADVERSE HUMAN RIGHTS IMPACTS

The world of sport carries numerous risks from a human rights perspective. Concrete examples of human rights violations can be identified for all sports fields, from grassroots level sport to mega-sporting events and demonstrate the range of human rights violations that can occur in and around sport, as well as the scale and severity of many of these cases. The following six groups are viewed as being most affected:

- I. Athletes or players including child athletes;
- II. Workers (involved in construction, supply chains or supporting events);
- III. Volunteers and officials who make grassroots sport and sporting events possible;
- IV. Communities closest to the infrastructure for events; impacted by the supply chain; or affected by human rights risks associated with sport;
- V. Journalists reporting on events (sport, news or investigation);
- VI. Fans (at events or following via the media).

Within these groups, many are particularly vulnerable, such as children, women and girls, human rights defenders, LGBTI+, migrant workers and other minority groups, as well as physically or mentally less abled people. Examples of human rights violations can be identified for all those groups.

A range of relevant cases suggest the main challenges of remedying sports-related human rights abuses:

1. Ensuring that effective mechanisms are in place;
2. Addressing gaps in access to existing mechanisms; and
3. Strengthening human rights capacity and rights-compliance of existing mechanisms.

Example cases include:

- FIBA's Hijab ban, recently overturned;
- The ban on women attending sports matches in stadiums in Iran;
- Eligibility requirements for women with differing sex characteristics;

- Restrictions on journalists critical of host countries and cities;
- Forced evictions related to the constructions of sport event-related infrastructure;
- Child (sexual) abuse within a range of sports, notably gymnastics.

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3. THE STRENGTHS AND CHALLENGES OF EXISTING MECHANISMS IN THE WORLD OF SPORTS

Various remedy mechanisms exist in a sports-related context. White Paper 2.4 identified the strengths and challenges of those state-based judicial and non-judicial as well as operational-level mechanisms that become relevant in addressing mega-sporting event-related human rights abuses.⁸ The sports-based mechanisms analysed by the White Paper are the Court of Arbitration for Sports (CAS) and the IOC reporting tool. In addition, the White Paper looked at the strengths and challenges of national courts of law, National Human Rights Institutions (NHRIs), OECD National Contact Points, Ombudsman, the supervisory system of the ILO, and the general potential of operation- al-level grievance mechanisms.

The main challenges identified in relation to those mechanisms are:

- an absence of a binding and standing human rights policy and capacity across international sport within major ISOs and, as a consequence, no recourse to dispute resolution through such channels can be had for cases related to human rights;
- a lack of a sports-based grievance mechanism provided by ISOs to address alleged human rights violations;
- a lack of recognition and promotion by ISOs of external dispute resolution mechanisms. All mechanisms for remedy need to be promoted and accessible in the event that more consensual mechanisms fail. In addition to sports specific mechanisms, a range of other mechanisms exist, which, if functioning well, could provide access to remedy in a range of situations.

⁸ See Sporting Chance White Paper 2.4, 'Remedy Mechanisms for Human Rights in the Sports Context' (2017), available at <https://www.sporhumanrights.org/en/resources/remedy-mechanisms-for-human-rights-in-the-sports-context>

4. LESSONS TO BE LEARNED FROM ADDITIONAL (NON-SPORT) MECHANISMS

The following sections explore and compare a number of additional mechanisms of relevance to the sports-world. The purpose is not to provide general information on each mechanism (see Appendix for that information), but instead to highlight those features that could be considered as either enhancing or hampering the effectiveness of the respective mechanism. Furthermore, the focus is on those features that could close the gaps identified in White Paper 2.4. The analysis separates four different categories of mechanisms:

1. Mechanisms that primarily rely on arbitration as dispute resolution method;
2. Mechanisms that primarily rely on mediation as dispute resolution method;
3. Complaint mechanisms and;
4. Reporting tools.

The final section summarises the most striking features and draws conclusions in terms of lessons to be learned.

ARBITRATION-RELATED MECHANISMS

The key feature that distinguishes arbitration from other categories is that the decisions of arbitration proceedings are legally binding. Thereby, the outcome of arbitration proceedings is similar to those of court proceedings. However, arbitration is often perceived as more flexible than regular courts, in terms of the procedure, costs, and remedies that can be issued. Sports-related arbitration and other relevant mechanisms and institutions that make use of arbitration to settle disputes are the Court of Arbitration for Sport (CAS), the Permanent Court of Arbitration (PCA), and the Dispute Resolution Process under the 2013 and 2018 Accord on Fire and Building Safety in Bangladesh.

White Paper 2.4 provides an extensive discussion of the CAS.⁹ While its authoritative status in the sports world is obvious, not least because ISOs and those participating in sport competitions organised by ISOs almost automatically are required to have their disputes dealt with by CAS, its legal powers are not unlimited. CAS awards have repeatedly been challenged by national and regional courts. The White Paper also stressed that the CAS has a strict mandate to deal with sports-related disputes and that when it comes to human rights matters, the CAS is at this point ill-equipped to address such

⁹ Sporting Chance White Paper 2.4, p.9.

matters.¹⁰ CAS arbitrators generally lack expertise in human rights and its procedural rules have been criticised for not reflecting human rights standards sufficiently, such as fair trial guarantees.¹¹ Further concerns over the effectiveness of CAS arbitration for sport and human rights matters arise from a lack of transparency.¹² Not all of its awards are published and it is not clear which criteria are used for selecting which awards are published and which are not. This lack of transparency also affects the selection of arbitrators, which feeds into concerns over the independence and impartiality of CAS.

Nevertheless, a number of CAS' features demonstrate its effectiveness. For one, CAS has the ability to react in a timely manner, according to the urgency of the matter. In particular, the ad hoc divisions created for Olympic Games can address matters almost instantly. Additionally, the arbitral awards it produces are binding and enforceable outcomes. Furthermore, CAS does not only provide arbitration, but also offers mediation services. In addition to a list of arbitrators, including a special list of arbitrators for football-related matters, it also holds a list of mediators.¹³ Expanding those lists to include arbitrators and mediators with human rights expertise could be a first step in expanding capacity.

The PCA has addressed a lack of capacity by developing optional arbitration rules and even special panels of arbitrators and experts for specific matters, such as disputes relating to natural resources and the environment, or disputes relating to outer space.¹⁴ Currently, the PCA is looking into developing a set of business and human rights arbitration rules and a special panel for such cases. This development coincides with the efforts of the working group on business and human rights arbitration, which held its first drafting meetings in the beginning of 2018.¹⁵ Another noteworthy feature is that the PCA offers its facilities to guest tribunals. However, arbitration by the PCA is currently only accessible if an arbitration agreement exists and only for those parties that have signed that agreement. There has not yet been a case in which victims of business- or sport-related human rights abuse directly participated in the proceedings.

However, victims can be represented by a body that has signed the required arbitration agreement. This is how the dispute resolution under the Accord on Fire and Building Safety in Bangladesh makes use of PCA's arbitration

¹⁰ Sporting Chance White Paper 2.4, p. 11.

¹¹ See e.g. Cernic, "Emerging Fair Trial Guarantees before the Court of Arbitration for Sport", available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2546183

¹² Ibid.

¹³ See <http://www.tas-cas.org/en/arbitration/list-of-arbitrators-general-list.html>

¹⁴ See PCA Environmental Arbitration Rules and PCA Outer Space Rules at <https://pca-cpa.org/en/documents/pca-conventions-and-rules/>

¹⁵ More information on the Working Group can be found here: <https://www.cilc.nl/the-hague-rules-first-meeting-of-the-drafting-team-at-cilc/>

services. Victims are represented by trade unions that are party to the Accord. However, before any arbitration proceedings are started, a case is first assessed by the Accord's Steering Committee, which oversees the Accord's dispute resolution mechanisms as an independent body. Under the 2013 version of the Accord, if no decision can be reached, or one of the parties to the dispute is not satisfied with a decision, arbitration proceedings can be initiated. Thereby, the dispute resolution process is based on a two-tier system. Other valuable features about the mechanism are its clear and short deadlines for communications and decisions. This ensures a timely handling of the dispute. Furthermore, the Accord provides guidance to companies on how to finance remediation and corrective action. In addition, the new version of the Accord provides for the possibility that other related industries can use the work of the Accord, including its mechanism for dispute resolution.¹⁶

What seems to make arbitration most attractive in the context of remedying human rights abuses is its flexibility. Parties to the dispute can agree on the terms and condition of arbitration beforehand and together choose the arbitrator. This flexibility also allows for multiple-party arbitration, which is a useful feature for situations in which multiple actors can be held accountable. Furthermore, arbitration mechanisms can be particularly effective if used as a means to escalate a grievance if the remedy is deemed insufficient. In fact, arbitration mechanisms are often used as last resort dispute resolution, if other means, such as mediation did not lead to an outcome, or did not bring the desired outcome. Under the new Bangladesh Accord, the option for a three-tier system is currently being negotiated, in which formal mediation will be introduced as the second step, to make arbitration less necessary.

Arbitration also comes with a number of challenges when dealing with human rights cases.¹⁷ The biggest challenge is that consent of all involved parties is needed in the form of signing an arbitration agreement. At present, victims can only be part of the proceedings if they have signed the arbitration clause, i.e. if they are party to the arbitration agreement. However, this is rarely the case, especially when it comes to human rights matters. The arbitration agreement is usually in force between a state and investor, or between two corporations, or companies and trade unions. This means that where an agreement includes a human rights clause, and there is reason to challenge the performance of one of the parties under this clause, only the other contracting parties can enforce it and initiate arbitration proceedings. The only

¹⁶ Footnote 1 of the preamble of the 2018 Accord on Fire and Building Safety in Bangladesh, available at <http://bangladeshaccord.org/wp-content/uploads/2018-Accord-full-text.pdf>, states that "Upon agreement by the SC, the work of the Accord could possibly be expanded to other related industries beyond RMG on a voluntary basis."

¹⁷ See for example Katerina Yiannibas (2017), 'Case Study on the Potential of the Arbitration Mechanism: Permanent Court of Arbitration', in *Human Rights in Business: Removal of barriers to Access to Justice in the EU* (Routledge 2017) or Catherine Dunmore, [International Arbitration of Business and Human Rights Disputes: Part 2 - Advantages and challenges -](#), in the *Doing Business Right* blog (2017), available [here](#).

way non-disputing parties can currently participate in proceedings is through amicus curiae submissions, which are letters from third parties sent to the court or tribunal, containing information that the respective party finds to be of relevance to the dispute. This is a general principle and does not only count for the PCA or arbitration, but also exists for litigation and other forms of dispute settlement (e.g. the WTO mechanism). The possibility of and conditions under which amicus curiae submissions are allowed depends on the institution.

In addition, the lack of transparency is problematic from a human rights point of view. Parties can agree on keeping the entire proceedings or parts thereof confidential. In the arbitration on the Bangladesh Accord for example the identity of the respondents has been kept secret (see here). Human Rights issues are generally considered to be of public concern and therefore awards should be published and hearings not held public. Furthermore, arbitration institutions usually charge fees, although the greatest expense for parties is still the hiring of lawyers. Since businesses and other corporate actors usually have more funds available, there often is an inequality of arms between those affected and those allegedly responsible. There are lawyers and arbitrators willing to work pro bono or for reduced fees. In the arbitration proceedings under the Accord, the arbitrator worked for a lower fee and the PCA offered its services for a reduced price and with a cap. Furthermore, as part of the PCA's general arbitration rules, parties to a dispute can choose for the overall costs to be covered by the unsuccessful party. While this can be appealing on the one hand, it can also be dissuasive at the same time.

MEDIATION- OR CONCILIATION-RELATED MECHANISMS

Mediation and conciliation services are similar in the way that both involve an independent third party to help the disputing parties settle their dispute, even though there can be slight differences between mediation and conciliation processes and the role the mediator or conciliator plays. Both can be integrated in other mechanisms, such as arbitration or regular court procedures, as preliminary processes for example. For the present study, the following mediation- and conciliation-based mechanisms have been explored: the Specific Instance Mechanisms of OECD National Contact Points (NCPs), the Dispute Settlement in the Dutch Agreement on Sustainable Garment and Textile, and the Acas Services for the 2012 Olympic and Paralympic Games.

The **Specific Instance Procedure** offered by NCPs seeks to bring parties together to find a solution to issues raised in relation to the implementation of the OECD Guidelines. The NCP may conduct mediation either itself, or by using a professional mediator. If parties cannot reach an agreement through mediation, the NCP can examine the case and issue recommendations to the parties if appropriate. Generally, as White Paper 2.4 pointed out, the strengths

of this mechanism in the sport and human rights context are its broad scope, the fact that any party can access the mechanism and that it is free of charge, its governmental backing and its international visibility through monitoring and annual reports.¹⁸

Even though the mechanism has been used for sports-related cases in the past¹⁹, it lacks universal coverage, since not every country has an NCP.²⁰ However, NCPs can handle cases involving companies operating in or from their country, so the geographical coverage of NCPs is not limited to the 48 adherent countries. NCPs have so far handled issues taking place in more than 100 countries and territories. While it has a broad scope in terms of the merits, it can only be used if the OECD Guidelines for Multinational Enterprises apply and if the actor or act in question is of commercial nature, which has to be assessed on a case-by-base basis.

Dispute resolution under the **Dutch Agreement on Sustainable Garment and Textile** is only accessible if other relevant and applicable grievance mechanisms have been exhausted, that is if other mechanisms are not available or the case has been dismissed. It is worth mentioning that the agreement and the mechanism is in full alignment with the UNGPs and OECD Guidelines. A special committee is responsible for dealing with and deciding any dispute and complaint. Hearings in front of the committee are not open to the public. During the procedure, the disputing parties have to exchange all written documents and other information they find relevant to the complaint or dispute. All parties and the committee are bound to confidentiality regarding all information. However, the decision will be published on the website of the agreement. If there are privacy concerns, the committee can decide to publish an anonymised version of the decision. That committee can also decide to advise parties to make use of mediation. For those cases, the committee has a list of mediators ready. Furthermore, to ensure that the committee does not deal with irrelevant cases, a specific set of admissibility criteria applies. Parties can be assisted with submitting their dispute and represented during the entire procedure. Interestingly, while all parties initially bear their own costs, victims can be reimbursed if it has been decided that there indeed has been a violation. It is not clear whether this rule also applies to arbitration proceedings which can be initiated at the Netherlands Arbitration Institute, in case the outcome of the mediation process is not satisfactory.

While disputes under the Dutch Agreement on Sustainable Garment and Textile have to be submitted in writing, the **Acas Services** for solving disputes related to the 2012 Olympic and Paralympic Games could also be accessed

¹⁸ See Sporting Chance White Paper 2.4, p. 17 ff.

¹⁹ The Swiss NCP dealt with [two cases against FIFA](#) and the UK NCP dealt with a [complaint against Formula One](#).

²⁰ As of June 2018, there were 48 NCPs. See a list of NCPs [here](#).

via the Olympic helpline. The services offered consisted of a mix of informal mediation and conciliation. Issues were classified from minor to gross misconduct, and based on that classification the reaction and method of dispute resolution differed. For minor issues, information discussions with relevant parties were held. For more serious issues, more formal procedures were applied and the discussions involved the Functional Area Manager and the Workforce Operations Manager. The mechanism even provided for collective conciliation in those cases where a group of people was affected. Its main deficit was its limited accessibility. It was only accessible for employers and employees on LOCOG controlled venues and with disputes related to the 2012 Olympic and Paralympic Games.

The various mediation and conciliation practices included in the abovementioned mechanisms mainly amount to informal dialogue, or formal mediation according to pre-determined rules and with the support of an independent mediator. What makes mediation more attractive than arbitration is that the costs involved are slightly lower. On the downside, the outcomes of mediation or conciliation procedures are often not as enforceable as arbitral awards. They usually consist of agreements between the disputing parties, based on which one of the parties has to change its behaviour or compensate the affected party. The remedies available with NCPs for instance are usually an agreed settlement between the disputing parties and any recommendations to specific instances would be formulated by the NCP either to support implementation of the agreement, or to suggest a course of action in case no agreement could be reached.

For those kind of outcomes, a monitoring of their implementation is important to ensure that these mechanisms are indeed effective.

OMBUDSMAN INSTITUTIONS AND OTHER MECHANISMS WITH INVESTIGATORY FUNCTIONS

Lessons can also be learned from mechanisms with investigatory functions and powers, such as various ombudsman institutions or National Human Rights Institutes (NHRIs). Investigatory functions can range from monitoring roles to powers to access premises and search or seize materials. The results of these mechanisms depend on what investigatory functions are being carried out. Far-reaching investigatory mandates and powers can be rather costly.

NHRIs usually address complaints by facilitating an agreement or settlement between the parties. What makes their dispute settlement attractive is that they can solve dispute quicker than the judiciary. Therefore, they are often used for complex or systematic cases. White Paper 2.4 pointed out that NHRI mechanisms are most often used in the context of discrimination-related

issues.²¹ However, since their mandate and available procedure depends on the national government, their scope can also be broader. The outcomes of procedures before NHRIs usually amount to declarations or recommendations. Usually, compensation cannot be ordered by NHRIs. If the NHRI cannot address the complaint itself, it can refer the complaint to more formal mediation or even judicial proceedings. Some NHRIs have investigatory powers, including the entering and searching of premises and seizing documents. The information they retrieve can be of help in ensuing proceedings.

The exact procedures and powers differ from NHRI to NHRI. The [Dutch NHRI](#) distinguishes between reporting an incident and starting a procedure. Not every reported incident will lead to a procedure. However, once an incident is reported the Dutch NHRI for example refers it to the responsible anti-discrimination body in the respective country. If the facts are rather clearly pointing at a case of discrimination, the institute will start an investigation to check how the alleged discrimination came about. After a maximum of 6 months, the institute takes a decision on whether the complainant faced discrimination or not. The complaint mechanism of the [Danish NHRI](#) is labelled as “counselling”. Whereas it is possible to directly turn to the institute for cases of discrimination due to gender, race, or ethnic origin, for other areas the institute provides email addresses and hotlines to call. The [South African NHRI](#), the SAHRC, recently launched its new [complaints handling procedure](#). It is a very elaborate procedure, allowing the commission to make enquiries and lodge complaints. The Commission can start investigations and has powers to enter, search any premises and seize any material connected to any investigation. The Commission can mediate, conciliate or negotiate any complaint itself. For that purpose it can organise hearings, to which specific rules apply. It divides cases into simple and complex cases.

The strengths and challenges of an Ombudsman in relation to remedying human rights abuses in the sport context been discussed at length by White Paper 2.4.²² Two specific Ombudsman institutions, the Compliance Advisor Ombudsman (CAO) of the World Bank and the Athlete Ombudsman Office of the US Olympic Committee deserve more attention due to a number of valuable features. Interesting features of the **CAO** are that its dispute resolution efforts are based on joint fact-finding with and information-sharing between the disputing parties. Furthermore, the entire process of dispute resolution has to be agreed on by the disputing parties beforehand. The CAO’s role then is to facilitate the resolution and monitor any agreement

²¹ See Sporting Chance White Paper 2.4, p. 15 ff

²² See Sporting Chance White Paper 2.4, p. 15 ff

reached until it is implemented. In its advisory role, the CAO gives independent advice to the President and the senior management of the private sector lending arms of World Bank Group. This advice is based on insights gathered from CAO's dispute resolution and compliance interventions. The CAO tries to achieve maximum disclosure of all findings and reports but at the same time it has to respect party's request for confidentiality of certain information.

The **Athlete's Ombudsman** can also assist athletes in solving disputes, but only on an informal basis, for instance by facilitating communications between the athlete and a sport organisation. Athletes can reach out to the Office of the Ombudsman via email or calling the hotline. In case athlete's want to turn to more formal dispute resolution, the Ombudsman provides information and guidance on available mechanisms and the rights of athletes. In addition, it maintains a list of attorneys including short profiles for each attorney. All services offered are free of charge for athletes and it operates under the duty of confidentiality, which means that all communication with and information from athletes is treated confidentially.

To what extent the institution of an Ombudsman can be considered as remedy mechanisms depends on the power and mandate of the Ombudsman. In most cases, they have investigative powers, also in relation to governmental action and decisions, which can lead to valuable information and even evidence that might be necessary for any ensuing remedy mechanism.

COMPLAINTS MECHANISMS

Complaints mechanisms exist in various industries and sectors, and the scope of the complaint mechanism usually depends on the mandate of the body that regulates it. Therefore, complaint mechanisms can vary in terms of accessibility rules, timeframe, or investigative and enforcement powers. For designing or improving remedy mechanisms in the sport and human rights context, lessons can be learned from the Third Party Complaint Procedure of the Fair Labour Association, the individual complaint mechanisms before the World Bank's Inspection Panel (IP), and the London 2012 Complaint and Dispute Resolution.

The **Individual Complaint mechanism of the World Bank's IP** is based on two resolutions which mandate the IP to carry out independent investigations of Bank-financed projects to determine whether the Bank acts in compliance with its operational policies and procedures. Thereby, the IP is a non-judicial independent complaints mechanism for people who believe they have been, or are likely to be, harmed by a World Bank-funded project. This basically means that the panel only accepts complaints if they involve actions or

omissions on the part of the bank, such as failure of the bank to live up to its own policies and procedures. It will not accept complaints if they only concern the actions, decisions, or omissions of borrowers. The procedure is structured into an eligibility and investigation phase and based on specific deadlines for drawing up reports and communicating with the Bank's Board of Executive Directors. Remarkably, not only affected groups or individuals but even the Executive Director, who oversees the mechanism, can file a complaint in case of grave violations. All complaints have to be related to actions or omissions on the part of the bank, such as failure of the bank to live up to its own policies and procedures. Another feature worth pointing out is that the mechanism provides various options to file a complaint, such as email, fax, mail, or by phone.²³

To a certain extent, this mechanism stands out for its structured approach to dealing with complaints and for its clear but at the same time wide scope. A request for inspection can be filed by any group of two or more people in the country where the Bank financed project is located and who believe that, as a result of the Bank's violation of its policies and procedures, their rights or interests have been, or are likely to be adversely affected in a direct and material way. In addition, a duly appointed local representative and in exceptional cases also a foreign representative may act as the agent of the adversely affected people. In cases of serious alleged violations, an Executive Director of the Bank may file a request as well. Another interesting feature is that the rules of procedure are updated regularly. The last update was made in 2016.

In addition, the **Third Party Complaint Procedure of the Fair Labour Association** follows specific steps and deadlines. In the final step, the FLA works together with the participating company or university licensee to develop a remediation plan. The Third Party Complaint procedure is a tool of last resort, which can only be used when other channels, such as existing internal grievance mechanisms in factories or judicial mechanisms in the respective country have failed. One of its most valuable features is the possibility for immediate action. At any time in the procedure, if the FLA deems it necessary, it can send an observer or ask local authorities to intervene. Before the complaint has been admitted no names of companies and factories will be published. However, the FLA will publicly note the country where the factory is located and the date the complaint was received. After the complaint has been admitted, the third party has the option to ask for keeping its identity confidential. All reports of investigations into complaints are published on the FLA's website by default.²⁴ However, the scope of the

²³ In the end the complaint has to be filed in writing.

²⁴ See a table of complaints and reports [here](#).

mechanism is limited since it can only be used if the complaint concerns allegations of non-compliance with the FLA's Workplace Code of Conduct.

Also the **London 2012 Complaint and Dispute Resolution Mechanism** could only deal with issues that fell under the Sustainable Sourcing Code. What stands out about this mechanism is that individuals could indicate what they themselves would consider to be an adequate remedy. Furthermore, the existence of the mechanism has been communicated in multiple languages. Resolving of complaints and disputes was mainly based on information shared by the parties. If the issue could not be solved in this phase, investigations were started. Even though the investigation as such was outsourced, the final stage, the implementation and monitoring of agreements were done internally again. In case an issue could not be solved, a list of mediators was provided. As such, the procedures were rather transparent. All available information was provided to all parties to the complaint. For outsiders, only the parties and the status of the complaint would be published on LOCOG's website. The parties could also agree to publish more information about the outcome of the dispute once it has been decided, in form of a press release for instance.

The **Complaint Mechanism of the International Code of Conduct Association** only accepts complaints concerning an alleged harm that results out of a violation of the International Code of Conduct for Private Security Service Providers. The Secretariat that acts as the recipient of the complaint decides whether the matter should proceed to a remedy mechanism, or whether it is rather a matter of performance and compliance. In the first scenario, the Secretariat can refer the complaint to the respective company's mechanisms. However, if that is deemed inadequate, the Association has its own dispute settlement services, in form of good offices and mediation. If the latter is decided, then no formal remedy will be issued. Interestingly, the Code also offers the possibility to file a complaint when a violation and resulting harm is anticipated.

Depending on the mechanism and its scope, complaints can be addressed in various ways. What most complaint procedures have in common though is that the possibility of complaints is limited to particular codes or certain specified activities. They usually follow clear steps or phases with specific deadlines. Most of the mechanisms looked at include a step for monitoring the implementation of the outcome. However, no information was found on whether more vulnerable groups, such as children,

REPORTING TOOLS

Since the Rio Olympics in 2016, the **IOC** has a **reporting tool** in place for journalists and media representatives to lodge complaints on violations of

press freedom. In addition to its discussion in the White Paper 2.4, it should be highlighted that the mechanism is intended only for those working on Olympic Games-related coverage. After a complaint was filed, the IOC conducts a first assessment. If there are “strong grounds for accepting that a press violation may have occurred in the context of the Games”, the IOC will consult relevant stakeholders, such as internal IOC departments or the respective Local Organising Committee of the Olympic Games, will be consulted as the next step.

In 2018, **FIFA** launched a similar **mechanism for human rights defenders and media representatives**. The complainant has to categorise and describe the incident, including an explanation of how what happened relates to FIFA and its activities and evidence if applicable. It is remarkable that the online form allows for the complainant to indicate whether he or she is in immediate danger. If that is the case, he or she can suggest measures for addressing the situation. Once a complaint has reached FIFA, FIFA redirects it to ensure that appropriate follow-up processes can apply.²⁵ This can result in direct engagement with third parties involved, such as public authorities.

Both mechanisms are web-based tools through which affected individuals can file their complaint. They are accessible in multiple languages. While the IOC reporting tool is specifically intended for journalists and media representatives reporting on the organisation and staging of Olympic Games, the scope of FIFA’s tool is broader. It is also run by an external provider. In addition, FIFA commits to publicly support human rights defenders and media representatives if this is in the best interest of the person that submitted the complaint.²⁶

The extent to which reporting tools as such can be considered as remedy mechanisms within the definition provided by the UNGPs is ambiguous given that such tools usually do not result in an outcome which restores the situation to how it was before the harm occurred or compensates human rights defenders or journalists. The fact that FIFA issues a public statement of support could be considered as some form of satisfaction by the affected party, however, this satisfaction is not coming from the actor responsible for the harm. Nevertheless, reporting tools can help to flag issues in the first place and to provide and uncover valuable information, before adequate remedy mechanisms take up the matter.

STRIKING FEATURES AND LESSONS LEARNED

²⁵ See para 14 of FIFA’s statement of human rights defenders and media representatives, available at <https://resources.fifa.com/image/upload/ejf1ecdKu14lm2v9zc03.pdf>

²⁶ See para 14 of FIFA’s statement of human rights defenders and media representatives, available at <https://resources.fifa.com/image/upload/ejf1ecdKu14lm2v9zc03.pdf>

The table summarises the most striking features of the various mechanisms looked at and derives potential lessons that can be learned from these features for the adaptation of existing or creation of new mechanisms for ensuring access to effective remedy in the context of sport and human rights. In addition, it identifies which effectiveness criteria is likely to be positively affected by the highlighted feature.

Valuable Features	Potential Lessons Learned	Mechanisms with these features	Effectiveness Criteria
Based on a code or a specific agreement	<p>It is important to be aware of the advantages and disadvantages of linking remedy mechanisms to codes or agreements. On the one hand it can limit the scope of the mechanism severely. For serious or complex cases, it can be difficult to identify a mechanism with a sufficiently broad scope to address such cases.</p> <p>On the other hand, mechanisms that have a specific mandate might be able to provide more effective and tailored remedies. When there is no agreement or code in place, mechanisms are voluntary, while the provision of remedy should not be dependent on the willingness of the party who committed the abuse.</p>	<ul style="list-style-type: none"> ○ Dispute Settlement under the Accord on Fire and Building Safety in Bangladesh ○ Dispute Settlement under the Dutch Agreement on Sustainable Garment and Textile ○ Complaint and Dispute Resolution Mechanism for the 2012 London Games ○ Third Party Complaint Procedure of the Fair Labour Association ○ Individual Complaint mechanism of the World Bank's IP ○ Specific Instance Procedure of NCPs 	Predictable; Transparent
Expansion of remedy services to other (related) industries	<p>Mechanisms that are based on a specific code or mandate can still be designed in such a way that they can be lent to or copied by other industries or sectors.</p> <p>Analysing the experiences of the respective mechanism in other (related) context can support the improvement of its effectiveness.</p>	<ul style="list-style-type: none"> ○ Dispute Settlement under the Accord on Fire and Building Safety in Bangladesh ○ PCA 	Source of continuous learning

Explicit reference to human rights instruments and standards	Any mechanism aimed at addressing human rights issues should ensure that its process and outcome are in line with internationally recognised human rights standards.	<ul style="list-style-type: none"> ○ Specific Instance Procedure of NCPs ○ Dispute Settlement under the Dutch Agreement on Sustainable Garment and Textile ○ Dispute Settlement under the Accord on Fire and Building Safety in Bangladesh 	Rights-compatible
Investigative powers	The exact function and power of a mechanism has to be aligned with the aim of the mechanism and the remedy it is supposed to provide. The extent of investigative powers also depends on the location of the mechanism, if it is state-based or operational-level, and the mandate it has. Those mechanisms which are highly specialised seem to have the strongest investigative and enforcement powers.	<ul style="list-style-type: none"> ○ Ombudsman ○ NHRIs ○ Individual Complaint mechanism of the World Bank's IP 	Transparent; Equitable
Multiple entry points for those affected (e.g. by phone, email, online form, fax, and mail)	Not only the means of access but also the availability as such has to be communicated in a way that all potentially affected parties can be reached.	<ul style="list-style-type: none"> ○ Individual Complaint mechanism of the World Bank's IP ○ FIFA's mechanism for human rights defenders and media representatives ○ Specific Instance Procedure of NCPs 	Accessible; Predictable

<p>Offered free of charge</p>	<p>The mechanism should be affordable for all parties involved.</p>	<ul style="list-style-type: none"> ○ Ombudsman ○ NHRIs ○ FIFA’s mechanism for human rights defenders and media representatives ○ IOC reporting tool ○ Individual Complaint mechanism of the World Bank’s IP ○ Specific Instance Procedure of NCPs ○ Complaint and Dispute Resolution Mechanism for the 2012 London Games ○ Third Party Complaint Procedure of the Fair Labour Association 	<p>Accessible; Equitable</p>
<p>Optional confidentiality regimes</p>	<p>A balance needs to be struck between confidentiality and transparency. Sometimes there is a need to provide confidentiality, for instance to protect identities of the victims or sensitive information of the parties involved. However, the public nature of human rights issues and the added benefit of publishing outcomes of updates on the procedures calls for more transparency.</p>	<ul style="list-style-type: none"> ○ Dispute Settlement under the Accord on Fire and Building Safety in Bangladesh ○ Third Party Complaint Procedure of the Fair Labour Association ○ FIFA’s mechanism for human rights defenders and media representatives ○ IOC reporting tool ○ Specific Instance Procedure of NCPs 	<p>Transparent; Rights-compatible</p>

<p>Direct participation of victims in the procedure</p>	<p>Victims should be involved in the procedure directly. Some mechanisms provide for victims to propose adequate remedies for the harm they suffered. However, direct participation of victims is not self-evident for most mechanisms, in most cases because they are not party to underlying agreements. A representative body (e.g. trade union, NGO, ...), can ensure that victims are more directly involved.</p>	<ul style="list-style-type: none"> ○ NHRIs ○ Ombudsman ○ Complaint and Dispute Resolution Mechanism for the 2012 London Games ○ Individual Complaint mechanism of the World Bank’s IP ○ Specific Instance Procedure of NCPs ○ Third Party Complaint Procedure of the Fair Labour Association ○ FIFA’s mechanism for human rights defenders and media representatives ○ IOC reporting tool 	<p>Accessible; Equitable; Rights-compatible; Dialogue and engagement</p>
<p>Publication of outcomes and/ or updates on the status of the process</p>	<p>Outcomes and updates should not only be shared with the parties involved but also made public. Thereby, mechanisms gain trustworthiness and predictability. Furthermore, precedents are created which can provide valuable information for prospective disputing parties.</p>	<ul style="list-style-type: none"> ○ Third Party Complaint Procedure of the Fair Labour Association ○ Complaint and Dispute Resolution Mechanism for the 2012 London Games ○ Dispute Settlement under the Dutch Agreement on Sustainable Garment and Textile ○ Specific Instance Procedure of NCPs 	<p>Predictable; Transparent</p>

Two-tier (or three-tier) system of resolution	Different stages of resolution and possibilities for escalation of the grievance should be given.	<ul style="list-style-type: none"> ○ Dispute Settlement under the Accord on Fire and Building Safety in Bangladesh ○ Dispute Settlement under the Dutch Agreement on Sustainable Garment and Textile ○ Specific Instance Procedure of NCPs 	Legitimate; Predictable
Various types of remedies can be provided by a single mechanism	The type of remedies provided depend on the overall aim of the mechanism. Compensatory and punitive remedies can pursue a slightly different aim than restorative remedies. Multiple aims can be served by a mechanism, ranging from deterrence, to compensation, or future prevention of the harm. However, it is important to be aware of the intended aims.	<ul style="list-style-type: none"> ○ Dispute Settlement under the Accord on Fire and Building Safety in Bangladesh ○ Dispute Settlement under the Dutch Agreement on Sustainable Garment and Textile ○ Acas services ○ Complaint mechanism of the World Bank's IP ○ Specific Instance Procedure of NCPs 	Legitimate; Predictable
Ability to take immediate action	In situations in which serious human rights violations are continuing it is important that mechanisms can intervene and stop these violations immediately.	○ Third Party Complaint Procedure of the Fair Labour Association	Legitimate; Predictable; Rights-compatible
Ability to take preventive action	In case violations of human rights can be foreseen, mechanisms should be in place for reporting this threat and taking preventive measures.	Complaint Mechanism of the International Code of Conduct Association	

5. KEY QUESTIONS

Based on the assessment of relevant remedy mechanisms, a number of mechanism-specific questions and fundamental considerations for the

creation of new or improvement of existing remedy mechanisms that can address sports-related human rights issues, can be identified. With regard to the **mechanism-specific questions**, it needs to be considered what the best procedural model or mix of models would be, what particular functions a mechanism should have, how far its fact-finding powers should go, and what remedies the mechanisms should be able to provide.

A further question is whether affected parties should be able to turn to multiple mechanisms at the same time and pursue parallel proceedings. This would help to address those situations in which multiple actors have been involved in the adverse human rights impact.

Some fundamental questions arise from connecting the potential lessons that can be learned with the key challenges of (i) ensuring effective mechanisms are in place, (ii) addressing gaps in access to existing mechanisms, and (iii) strengthening human rights capacity and rights-compliance of existing mechanisms. The following **key considerations** can be identified:

1. What efforts are needed for the creation of new remedy mechanisms within the sport and human rights context based on lessons learned from other mechanisms?
2. What efforts are needed for the adaptation of existing mechanisms to improve their effectiveness based on lessons learned from other mechanisms, and how to balance efforts for the creation of new mechanisms on the one hand and the adaptation of existing mechanisms on the other?
3. What regulatory efforts are needed from sports bodies and other relevant institutions to:
 - Develop a regulatory environment that allows existing and newly created mechanisms to function effectively?
 - Develop policies so that affected parties have access to rights-compliant and effective mechanisms?
4. How to best make use of the spectrum of existing mechanisms? How can mechanisms be linked to complement, and if needed supplement, each other to ensure that the existence of multiple mechanisms does not hamper the functioning of one mechanism?

An additional question to be considered is **what role the Centre for Sport and Human Rights can play** in these considerations. In line with its core function to strengthen accountability, a range of options is conceivable, from purely advisory functions providing assistance to all stakeholders and a platform of information on available mechanisms, to a more participatory role by taking part in or operating a mechanism. Finding answers to these

questions should lead to practical, effective, and creative recommendations on how all actors involved in and affected by sports and human rights matters can contribute to shaping effective remedies for sport-related human rights abuses.

DRAFT

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INTRODUCTION

This note presents an overview of various remedy mechanisms that exist in the sports and human rights field or are of relevance in that context.

What is considered as remedy and remedy mechanisms follows the definition of the UNGPs and is understood as “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”.²⁷ The mechanisms selected present routinised processes through which sports and/or human rights related complaints can be raised and will be dealt with.

The note is comprised of a series of briefings divided into four parts. The first part presents arbitration-based mechanisms, the second part focuses on mediation- and conciliation-based mechanisms, and the third part is a selection of other complaint mechanisms and reporting tools. The fourth part comprises mechanisms from various sport bodies or sport events.

Each briefing starts by describing the general context in which the mechanism is placed and continues with explaining how it works, who has access to it, who oversees it, and what kind of complaints can be filed, what remedies can be issued, and which law is applied. A final section on additional information provides example cases or links for further reading.

²⁷ A/HRC/17/31, ‘Guiding Principles on Business and Human Rights’ (2011) Commentary to Principle 31.

PART I: ARBITRATION-BASED MECHANISMS

1. THE COURT OF ARBITRATION FOR SPORT (CAS)

GENERAL INFORMATION

The CAS is a private international arbitral institution that deals with sport-related disputes. Its arbitral awards have the same enforceability as judgments by ordinary courts. CAS was established in 1983 by the International Olympic Committee (IOC). In 1994, the Paris agreement approved major reforms of the CAS and the creation of the International Council of Arbitration for Sport (ICAS).

The CAS is located in Lausanne, Switzerland but also has regional offices in Sydney and New York.

HOW DOES THE MECHANISM WORK?

The procedural rules on CAS proceedings can be found in Articles R27-R70 of the [Code of Sports-related Arbitration](#).

There are three different procedures available at the CAS: mediation, arbitration, and the appeals procedure. For all three, there are specific procedural provisions in place. Appeals arbitration is dealt with by the Appeals Arbitration Division and applicable to all disputes concerning the decisions of federations, associations or other sports-related bodies only if the statutes or regulations of the respective sports-related bodies refer to this option.²⁸ Mediation is based on an agreement to mediate and usually deals with contractual disputes. It follows a specific set of rules, the [CAS mediation rules](#). In addition, there is an [ad hoc division for the Olympic Games](#) and an anti-doping Division for the 2018 Olympic Games (this division was set up for the 2016 Olympic Summer Games for the first time). For all other matters, the Ordinary Arbitration Division is responsible.

Based on a request from a party, the CAS Court Office initiates proceedings and assigns the dispute to the right division. After the request has been accepted, the respondent party is given a chance to respond to the request and the president of the division decides on the number of arbitrators if that is not specified in the arbitration agreement (1 or 3). The arbitrator(s) will be chosen from a [list of 150 arbitrators](#). The arbitrators on the list have been appointed by ICAS. There are also 50 mediators on the list.

The proceedings consist of written submissions and usually one oral hearing.

²⁸ Code of Sports-related Arbitration 2017 Art S20b.

Mediation proceedings result in a settlement and arbitration proceedings in an arbitral award, which is decided by majority or by the president of the arbitration panel in the absence of majority. In this award the panel decides which party bears the costs of the proceedings or the proportionate share by each of the parties. Not all the awards are published, but those that are can be found in a [database for CAS awards](#).

Additional information on the CAS ad hoc Division for Olympic Games:

The ad hoc Division exists for every Olympic Game. Only individuals with a direct connection to the Olympic Games have access to it. There is a CAS Court Office of the ad hoc Division on the site of the Olympic Games. The types of cases decided by this Division range from issues regarding the jurisdiction of CAS, to issues concerning affected third parties and national eligibility rules, validity of suspensions issued by IOC and International Federations (IFs), the principle of no-interference with decisions of sport officials, doping violations, commercial advertising issues, and manipulation of sporting rules.²⁹ Most of the cases are requests for overturning decisions taken by the IOC or IFs.

The facilities and services of the CAS ad hoc Division, including the provision of arbitrators to the parties to a dispute, are free of charge. However, the parties have to pay their own costs of legal representation, experts, witnesses and interpreters.

To be able to make use of the ad hoc Division, claimants must first exhaust international remedies. [Article 1 of the Rules](#) says the claimant must, before filing such request, have exhausted all the internal remedies available to her/him pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.³⁰

To initiate proceedings, notifications and communications to the respondent party and the other party may also be given by telephone or email (art 9). The organisation of proceedings under the ad hoc Division are very much under the discretion of the respective Panel, which may decide on the design and structure of the proceedings, by taking into account the ad hoc nature and potential constraints to speed and efficiency, and the requirement that decisions have to be given within 24 hours. For example, the Panel is allowed to consider any evidence at ‘first instance’ and has full power to establish the

²⁹ See study by [McLaren](#)

³⁰ See <http://www.tas-cas.org/en/arbitration/ad-hoc-division.html>

facts on which the application is based (art 15 & 16). Furthermore, it may decide on preliminary relief without any hearing in cases of extreme urgency (art 14). Furthermore, the Panel may also decide to not hold any hearing at all (art 15). Other procedural issues, such as questions of applicable law are already decided by the Olympic Charter. Appeals to decisions taken by the ad hoc Division are limited to the Swiss Federal Tribunal.

The reason CAS is able to react so quickly in those cases is simply owed to the urgency of the matters. If it would not be able to react quickly and resolve the disputes immediately, then some athletes would be prevented from competing even though they might be eligible after all.

WHO HAS ACCESS AND HOW?

In general, any individual or legal entity may request arbitration at the CAS. However, the CAS only has jurisdiction if the parties concerned have agreed to arbitrate (or mediate). Athlete contracts usually include an arbitration clause.

Athletes 'agree' to CAS arbitration either by accepting the terms and conditions of their respective Sporting Federation, or by signing the 'Olympic Athlete Entry Form-Eligibility Conditions'. If they do not accept the terms and conditions or sign the form, they cannot compete at the competitions held by the respective Sporting Federation or the Olympic Games.

In addition, a number of other documents issued by sports governing bodies include an arbitration clause, such as:³¹

- the host city contracts for the 2024 and 2028 Olympic Games³²
- the Olympic Charter³³, or
- FIFA's regulations for the selection of the host of the 2026 World Cup,³⁴
- UEFA's Statutes and Regulations³⁵
- CGF's Constitution.³⁶

³¹ This list just provides a few examples.

³² International Olympic Committee, 'HOST CITY CONTRACT PRINCIPLES GAMES OF THE XXXIII OLYMPIAD IN 2024' (2017) Article 51(2) <https://stillmed.olympic.org/Documents/Host_city_elections/Host_City_Contract_Principles.pdf>.

³³ Olympic Charter 2017 Rule 61(2).

³⁴ Fédération Internationale de Football Association, 'FIFA Regulations for the Selection of the Venue for the Final Competition of the 2026 FIFA World Cup' (2017) Clause 12.17

http://resources.fifa.com/mm/document/affederation/administration/02/91/60/99/biddingregulationsandregi stration_neutral.pdf accessed 3 January 2018

³⁵ UEFA Statutes 2018 Art 61, UEFA 2018/19 Region's Cup Regulations Art 65.

³⁶ CGF Constitution 2014 Art 29.

For ordinary arbitration, a party has to file a request for arbitration at the CAS Court Office, containing information on the respondent party, the facts and legal arguments, proof of the arbitration agreement and information on the number and choice of arbitrators.³⁷ For the appeals arbitration, the party has to lodge an appeal and first exhaust all internal remedies of the respective sports bodies. For mediation, the party files a request for mediation including the identity of parties, a copy of the mediation agreement and a brief description of the dispute.

Parties may be represented or assisted by any person of their choice.

The costs of CAS arbitration are regulated under Article R64 of the Code. Each party has to pay the Court Office Fee of a minimum of 1000 Swiss francs. The administrative costs depend on the disputed sum. For example, for a sum between 50,001 and 100,000 Swiss francs, the administrative costs amount to 2000 Swiss Francs plus 1.5% of the amount in excess of 50,000 Swiss francs. Also the hourly fees of the arbitrators depend on the disputed sum. Additional travel and accommodation costs have to be paid by the parties.

At the beginning of proceedings, the Court Office determines an amount to be paid in advance, which is an estimate of the overall costs of the arbitration proceeding. The amount is to be paid in equal shares by the involved parties. If one party cannot pay the amount, another may substitute for it. In addition, each party has to pay for the costs of its own witnesses, experts, and interpreters.

At the end of the proceedings, the Panel determines which party shall ultimately bear the costs of the proceedings or the proportion in which the parties have to share the costs.

More information on the court's fees and administrative costs, as well as the costs of the arbitrators can be found on the [CAS website](#).

WHO OVERSEES THE MECHANISM?

ICAS is the supreme organ of the CAS and tasked with safeguarding its independence and the rights of the parties. It also looks after the administration and financing of the CAS. ICAS administers all functions of the CAS, including the appointment of all CAS arbitrators. A list of functions can be found in [Art S6 of the ICAS and CAS Statutes](#). ICAS is composed of 20 members in total, 4 are appointed by International Federations, 4 by the

³⁷ Code of Sports-related Arbitration Art R 38.

Association of National Olympic Committees, 4 by IOC, 4 by the other 12 that have been appointed after consultation “with a view to safeguarding the interests of the athletes”.

All members are appointed for four years for one or several renewable periods and the Statutes entail no limit on this renewable period. Once appointed, they have to sign an independence and objectivity declaration.

The president is elected by the members, serving as the president of ICAS and CAS at the same time. The elections are by secret ballot. The president is elected for four years at the first meeting of the newly appointed ICAS members. No limitation for re-election is mentioned in the Statutes.

WHAT KINDS OF CASES ARE DEALT WITH?

The CAS is mandated to resolve disputes directly or indirectly linked to sport.³⁸ This can be disputes relating to athlete contracts, transfer rights, sponsorship contracts, or disputes of disciplinary nature. ‘Indirectly related’ matters refers to disputes that are not related to doing sport but nevertheless arise in connection with sport, such as disputes on transfer rights of players, commercial advertising, or sponsorship issues.

WHAT KIND OF REMEDIES CAN BE ISSUED?

CAS arbitration proceedings result in arbitral awards, which can issue financial sanctions or suspensions for example. The awards are analogous to judgements in ordinary courts of law.

WHAT LAW IS APPLIED?

A general rule of arbitration is that the parties to the dispute can choose the applicable law. This rule also applies to CAS proceedings.³⁹ In case the parties did not choose any law, Swiss law applies. In addition, the parties can authorise the Panel to decide *ex aequo et bono* (which means that it should decide based on what is just and fair and according to equity and good conscience).⁴⁰

HOW CAN GRIEVANCES BE ESCALATED?

On the basis of Article 190(2) of Switzerland’s Federal Code on Private International Law, arbitration decisions taken by the CAS can only be reviewed before the Swiss Federal Tribunal. Grounds for challenging these decisions are limited to lack of jurisdiction, violation of elementary rights such as the right to fair trial, or incompatibility with public policy. A number of cases that started at the CAS also ended up before the European Court of Human

³⁸ Ibid Art S12.

³⁹ Ibid Article R45.

⁴⁰ Ibid.

Rights, alleging a violation of the right to fair trial.⁴¹ These cases concerned athletes, such as Claudia Pechstein (figure skater) and Adrian Mutu (professional football player).

ADDITIONAL INFORMATION

Links for further reading:

- FAQs: <http://www.tas-cas.org/en/general-information/frequently-asked-questions.html> - c191
- Short piece on the evolution of CAS: <https://www.corrs.com.au/assets/thinking/downloads/IPBA-Sep2016.pdf>.
- Richard H. McLaren, Introducing the Court of Arbitration for Sport: The Ad Hoc Division at the Olympic Games, 12 Marq. Sports L. Rev. (2001), available at: <http://scholarship.law.marquette.edu/sportslaw/vol12/iss1/20>.

⁴¹ See ECtHR (2013), Pechstein v Switzerland (no 67474/10) or ECtHR (2013), Mutu v Switzerland (no 40575/10); ECtHR (2012), Bakker v Switzerland (no 7198/07).

2. THE PERMANENT COURT OF ARBITRATION (PCA)

GENERAL INFORMATION

The PCA is an intergovernmental organisation, established in 1899. In 2018, 121 states are party to at least one of the two founding conventions of the PCA, the [1899 Convention for the Pacific Settlement of International Disputes](#) and the [1907 Convention for the Pacific Settlement of International Disputes](#) (see a list of countries [here](#)).

The PCA is divided into the Administrative Council, which oversees policies and budget of the PCA, the International Bureau, which serves as registry and secretariat for proceedings, and the members of the court made of independent potential arbitrators.

It is located in The Hague, the Netherlands and has two additional offices in Singapore and Mauritius.

HOW DOES THE MECHANISM WORK?

The PCA is not an ordinary court but rather an institution that offers dispute settlement services in the form of arbitration, mediation or conciliation, and fact-finding commissions of inquiry. Depending on the type of dispute settlement, different rules apply (see a list of all rules [here](#)).

For general arbitration cases, [general PCA arbitration rules](#) apply. In addition, a number of optional arbitration rules for specific proceedings and cases, such as disputes relating to natural resources and the environment and disputes relating to outer space. For these kind of cases, there are also special panels of arbitrators and experts. For cases in which no state actor is involved, the PCA can still be involved through the function of the Secretary-General as appointing authority. In addition, the PCA makes its facilities available to other tribunals.

There are no generally applicable procedural rules, despite the rules that all parties have to be treated equally and given a reasonable opportunity to present their case. In addition, the general procedure is that at the beginning, the parties have to agree on one, three, or five arbitrators, who do not necessarily have to be PCA members.⁴² For the rest, it is up to the parties to design and agree on the procedure.

This is one of the often highlighted advantages of arbitration. Parties enjoy autonomy over how the proceedings should be organised in terms of location

⁴² PCA Arbitration Rules (2012), Arts 8-10

or confidentiality for example, which makes arbitration rather flexible. This means that the parties have to agree beforehand on the number of arbitrators, the venue of the arbitration proceedings, the law that governs the proceedings, the language used during the proceedings, to what extent the proceedings remain confidential, and further issues. Some of these issues can already be determined in the arbitration agreement, but those that are not will have to be discussed in bilateral communication between the parties through their lawyers usually. Any decisions on these matters are then communicated to the arbitration tribunal.

However, in particular for cases where states or international organisations are involved, the PCA often applies the [UNCITRAL arbitration rules](#).

The costs for the arbitration proceedings are usually to be borne by the unsuccessful party. However, it depends on the rules applied in the proceedings. The panel may also decide to apportion the costs to both or all parties.

WHO HAS ACCESS AND HOW?

Proceedings can be initiated by any party to an arbitration agreement, by communicating a notice of arbitration to the other parties and the International Bureau of the PCA.

Arbitration agreements, with or without explicit reference to the services offered by the PCA, form part of various bilateral and multilateral (investment) treaties, as well as national legislation and other types of agreements, such as headquarter agreements between an international organisation and a state for example.

Multiple party arbitration is possible, as long as all parties are covered by the arbitration agreement. Third parties can only take part in the proceedings if they are covered by the arbitration agreement.⁴³

WHO OVERSEES THE MECHANISM?

There is no body that oversees each particular arbitration proceedings, except for the arbitrators and the chair. However, the Administrative Council, under the chairmanship of the Netherlands Minister for Foreign Affairs, designs the policy of the organisation and provides general guidance on the work of the PCA, by supervising its administration, budget and expenditure. The Council operates under the Rules of Procedure of the Administrative Council of the Permanent Court of Arbitration.

⁴³ PCA Arbitration Rules (2012), Art 17(5).

WHAT KINDS OF CASES ARE DEALT WITH?

The PCA deals with inter-state disputes, investor-state disputes, and disputes between a state and other public entities, such as international organisations. Cases involving public and private parties are referred to as ‘mixed arbitration’. The issues dealt with range from maritime rights to expropriation, or solar energy claims (see a list of cases [here](#)). Recently, the PCA started to also deal with business and human rights cases, such as cases arising from the Accord for Fire and Building Safety in Bangladesh (more information can be found [here](#)).

WHAT KIND OF REMEDIES CAN BE ISSUED?

PCA arbitration results in arbitral awards, which mainly issue financial compensation. These awards are analogous to judgements in ordinary courts of law.

WHAT LAW IS APPLIED?

In arbitration proceedings, the panel applies the law chosen and agreed upon by the parties.⁴⁴ If no law has been chosen, the panel decides based on sources of international law for disputes between states.⁴⁵ All other cases are decided based on the rules of the respective organisation or the rules applicable to the respective agreement.

HOW CAN GRIEVANCES BE ESCALATED?

One characteristic of arbitration in general is that the award is binding and final. However, national legislation sometimes provide for the opportunity to challenge awards in national courts. This is often explicitly excluded in arbitration agreements, or at the start of arbitration proceedings. The only option the unsuccessful party has is to make an application for setting aside or invalidating parts of or the entire award shortly after the award has been issued.

ADDITIONAL INFORMATION

Links for further reading:

- Katerina Yiannibas, ‘Case Study on the Potential of the Arbitration Mechanism: Permanent Court of Arbitration’ (2017) in *Human Rights in Business: Removal of barreirs to Access to Justice in the EU* (Routledge 2017)
- Judith Levine and Kasphee Wahid, “Business and Human Rights: A ‘New-Frontier’ for International Arbitration?” (2017) in *The ACICA Review*, available [here](#)
- Catherine Dunmore, “[International Arbitration of Business and Human](#)

⁴⁴ PCA Arbitration Rules (2012), Art 35

⁴⁵ ICJ Statute Art 38

[Rights Disputes: Part 2 - Advantages and challenges –](#), in the *Doing Business Right* blog (2017), available [here](#).

DRAFT

3. ARBITRATION UNDER THE ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH (BA)

GENERAL INFORMATION

The Accord on Fire and Building Safety in Bangladesh is based on an [agreement](#) between brands and trade unions to make the garment industry in Bangladesh safer. The Accord has been negotiated and adopted in the aftermath of the Rana Plaza incident in April 2013, when more than 1100 people died and more than 2000 people were injured after a building collapsed.

The BA has three different kinds of signatories: companies, unions, and NGOs. More than 200 companies from over 20 countries have signed the Accord, including some of the leading retailers. In addition, 10 international and national trade unions and 4 NGOs have signed it. A detailed list can be found [here](#).

HOW DOES THE MECHANISM WORK?

The BA created a Steering Committee that is made up of States, companies, and labour unions. The members of the Steering Committee are elected, but are expected to step down voluntarily after one year to rotate and to make place for other company signatory members. The same applies to Trade Union Members, but they can be reappointed by the Trade Union caucus.⁴⁶

The Steering Committee has the task to resolve a dispute. For that purpose, it is made up of seven members that have to decide within 21 days by majority vote. In their decision, the Steering Committee can for instance order corrective actions to be taken by factories. The implementation of these corrective actions has to be supported by the signatory companies that produce in the respective factories.

WHO HAS ACCESS AND HOW?

Any of the parties to the Accord can file a petition, which means representatives from signatory companies, unions, and NGOs. Access by third parties is excluded, which means that victims cannot directly file complaints but only through the participating unions or NGOs.

WHO OVERSEES THE MECHANISM?

⁴⁶ See Accord Governance Regulations at <http://bangladeshaccord.org/wp-content/uploads/Governance-Regulations.pdf>

The Steering Committee is in charge of resolving the disputes and there is no higher organ that oversees the mechanism.

WHAT KINDS OF CASES ARE DEALT WITH?

According to Article 5 of the Accord, this Committee has the mandate to resolve any disputes that arise under the Accord. That means the focus of the complaints issued lies on safety conditions and general conditions at the workplace.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The focus in remediation is about bringing the participating factories up to adequate safety standards, such as the instalment of fire alarms or fire protection systems, including fire exits. This is done through requesting and ordering corrective actions. So-called Corrective Action Plans are developed by the factories in consultation with companies. Companies have different means to ensure that factories have enough financial capacity to comply with the requirements in the Corrective Action Plans. Before finalising these plans, the company and factory together develop and agree on a financing plan.

If a decision is not followed up, the Steering Committee can change the status of a factory and even terminate their membership to the Accord. The list of [terminated suppliers](#) but also [remediated factories](#) are available on the Accord's website.

In addition, the BA provides guidance for signatory companies and factories on how to finance remediation and corrective action (see [here](#)). For example, it provides an estimation for costs at the outset and facilitates the discussion between the two parties along the way.

WHAT LAW IS APPLIED?

The Accord refers to Bangladesh law in connection with the procedure, as well as the respective national laws of the countries where the companies are located. The Accord itself is governed by Dutch law (new version of the Accord, art 24).

HOW CAN GRIEVANCES BE ESCALATED?

The decision of the Steering Committee can be appealed by any of the involved parties by initiating final and binding arbitration by the Permanent Court of Arbitration (PCA).⁴⁷ The Accord states that the arbitration proceedings are governed by the UNCITRAL Model Law on International Commercial Arbitration.

⁴⁷More information on arbitration by the PCA is provided in the PCA case note (revised version from 26 April).

ADDITIONAL INFORMATION

Example case:

In 2016, two global worker's unions filed a petition against 2 brands alleging failure to comply with Articles 12 and 22 of the Accord. The case was first handled by the Steering Committee, which started an investigation and discussion with the relevant parties. Since no outcome could be reached, the unions initiated [arbitration proceedings](#). The PCA served as registry to the proceedings and The Hague was the seat of arbitration. The applicable rules were the 2010 UNCITRAL rules.

The fact that this case indeed moved to arbitration is contested for the reason that the Accord only stipulates arbitration to appeal to a decision of the Steering Committee. In this case, however, no decision was reached because no vote had been cast. Nevertheless, arbitration has been initiated and the first meeting took place in London in March 2017. Preliminary issues were decided in September. Those concerned the admissibility of the claim, transparency and confidentiality, and governing law. The claims were found to meet pre-conditions to arbitration and the parties agreed on a confidentiality regime. The governing law was discussed to be either Dutch or Bangladeshi law, but no agreement could be reached and therefore the issue was deferred.

In October 2017 the case proceeded to the next phase, in which facts and expert reports were being conducted. In November 2017, one of the two cases was settled and shortly after, one month later, the second one.

Current developments:

The first Bangladesh Accord expired in May 2018. The new version of the Accord (see [here](#)) includes a more elaborate arbitration provision (Article 3) that

- chooses The Hague as seat of arbitration and the PCA administration as administration institution,
- incorporates the most recent version of the UNCITRAL Arbitration Rules,
- includes a choice of law provision for Dutch law (Article 24),
- adds a mediation procedure to make arbitration less necessary in case the Steering Committee could not come to a decision (Article 3).

Links for further reading:

- Annual report 2016: <http://bangladeshaccord.org/wp-content/uploads/Annual-Report-Bangladesh-Accord-Foundation-2016.pdf>
- Accord Governance Regulation:

<http://bangladeshaccord.org/wp-content/uploads/Governance-Regulations.pdf>

PART II: CONCILIATION- AND MEDIATION-BASED MECHANISMS

4. SPECIFIC INSTANCE MECHANISM AT NATIONAL CONTACT POINTS (NCPs)

GENERAL INFORMATION

The National Contact Points' specific instance mechanism has been part of the [OECD Guidelines for Multinational Enterprises](#) since 2000. This mechanism is discussed in detail in the [Sporting Chance White Paper 2.4 Remedy Mechanisms for Human Rights in the Sports Context](#), including its strengths and challenges.

HOW DOES THE MECHANISM WORK?

The rules of procedure of NCPs vary slightly, depending on their mandate and the context. Usually, the procedure is based on mediation and offering good offices. It follows five steps.

Step 1: The NCP confirms the receipt of the submission of a specific instance. The submitting party is expected to submit expectations to the proceedings. The NCP then informs the company concerned, which has the opportunity to respond. Based on this information, the NCP invites the parties to a first meeting to discuss how to proceed.

In some NCPs, like in the Swiss NCP, whenever a specific instance is raised with the Swiss NCP, an internal ad hoc working group is formed to support the NCP in addressing the issue. The members of the working group are selected according to the issue at hand, i.e. representatives from other relevant government agencies who can contribute the required expertise.

Step 2: The NCP makes an initial assessment and decides whether it can offer its services. The assessment follows particular criteria (identity of the submitting party and its interest in the case, responsibility of the NCP, scope of application of the OECD Guidelines and materiality of the specific instance, legal context and parallel procedures, contribution to the effectiveness of the OECD Guidelines).

Step 3: If the NCP decided that it will pursue the specific instance, it offers its assistance to the parties to find a solution, based on an informal mediation/conciliation procedure. The NCP can lead the discussion itself or engage an external mediator. The NCP procedures remain confidential during the mediation process.

Step 4: Once the parties reach agreement and find a solution the NCP publishes a final statement. The NCP may also publish a statement where no solution has been reached. The statement includes any follow-up activities the parties agreed on and some NCPs choose to include a determination as to whether the company has observed the Guidelines or not. In addition, the NCP can include recommendations for implementing the OECD Guidelines in its final statement.

Step 5: After the procedure finished, NCPs will generally follow up with the parties after a certain period of time to check on the implementation of the agreement or the recommendation, and publish a follow up statement. Some NCPs, like the Swiss NCP, ask the parties for feedback on the procedure, to assess the performance of the NCP and explore possible improvements.

WHO HAS ACCESS AND HOW?

Proceedings under the specific instance mechanism can be initiated by any interested party, including individuals, trade unions, and NGOs, who feels that there is an issue in relation with the implementation of the OECD Guidelines for MNEs.

WHO OVERSEES THE MECHANISM?

NCPs are established by the governments of the respective countries. In Switzerland, for example, the NCP is part of the International Investment and Multinational Enterprises Unit of the Foreign Economic Affairs Directorate, which is part of the Federal Department of Economic Affairs, Education and Research.

In addition, their performance is monitored via peer reviews and each NCP has to report annually to the OECD Investment Committee about its activities.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

Any kind of issue involving observance of the OECD Guidelines, which contain a human rights chapter, can be raised.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The NCP's task is to encourage discussion between the parties to resolve a dispute under the OECD Guidelines rather than establish whether or not a

breach of OECD Guidelines has taken place. The parties are also not obliged to follow the procedure. Therefore, a specific instance procedure does not lead to any sanctions or compensation for victims, but the NCP can recommend that the company provide remediation for any harm if appropriate. Not all NCPs establish whether there has been a breach of the OECD guidelines.

WHAT LAW IS APPLIED?

The procedure follows the rules of the respective country in which the NCP has been set up and applies the OECD Guidelines for Multinational Enterprises.

HOW CAN GRIEVANCES BE ESCALATED?

The procedure is based on non-judicial dispute settlement. Some NCPs have their own review mechanism. In addition, if the outcome is not satisfactory, parties can initiate judicial procedures.

ADDITIONAL INFORMATION

Example Case 1: Specific instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI).

In October 2015, BWI initiated a specific instance procedure against FIFA. BWI claimed that by awarding the 2022 World Cup to Qatar, FIFA violated the OECD Guidelines, because it was well known that migrant workers suffer from human rights violations in Qatar and that the level of construction required for the FIFA World Cup would increase the number of migrant workers in Qatar and thereby increase the occurrence of human rights violations.

In its [Initial assessment](#), the Swiss NCP examined whether the issue falls within the scope of the OECD Guidelines and if the Guidelines apply to the responding party. The latter discussion was particularly interesting as it raised the question of whether FIFA can be seen as commercial entity. The NCP concluded that in this case the Guidelines apply for two reasons: first, because FIFA engages in international operations and has a multinational scope due to its different entities active in more than one country, and secondly, because the contractual relationship of FIFA with its direct counterparties could be considered a commercial activity, to which the OECD Guidelines are applicable.⁴⁸

⁴⁸ Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI) - Initial Assessment.

In total, 6 mediation meetings took place in 2016 in Bern, led by an external mediator. This process identified five items of particular relevance for changing the situation of migrant workers in Qatar: 1) the identification and use of FIFA's leverage on relevant actors in Qatar; 2) the Human Rights Policy emanating from the new Art. 3 of the FIFA Statutes; 3) a robust process for monitoring labour conditions; 4) mechanisms for workers' complaints and grievances; and 5) the establishment of an oversight/advisory body.⁴⁹

The outcomes included some concrete measures to be taken by FIFA, as well as follow-up actions and intentions for continuous dialogue. For example, in the Memorandum of Understanding (MoU) for joint inspections of stadium construction sites.⁵⁰

The proceedings were concluded in in May 2017 and the [Final statement](#) was published.

Example Case 2: Specific instance regarding the Fédération Internationale de Football Association (FIFA) submitted by Americans for Democracy and Human Rights in Bahrain (ADHRB)

In August 2016, ABHRB submitted a request for a specific instance procedure, arguing that FIFA had violated the OECD Guidelines by allowing Sheikh Salman bin Ibrahim Al Khalifa to be a candidate for the FIFA presidential election in 2016 without first carrying out adequate human rights due diligence. According to ABRHB, there was evidence that suggested that Sheikh Salman was responsible for punitive measures of a political character against football clubs and players as a consequence of their support for pro-democracy protests in Bahrain in 2011.

In its [Initial assessment](#) the Swiss NCP again discussed whether the Guidelines apply to FIFA and came to the conclusion that in this particular case the OECD Guidelines do not apply to the responding party, because it does not concern commercial activities of FIFA. The NCP basically agreed with FIFA's initial reaction and acknowledged that also the subject matter of the submission does not fall within the scope of the OECD Guidelines, which primarily provide guidance for responsible business relationships, while the issues raised concern on political matters. In addition, the NCP argued that it

⁴⁹ *Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI) - Final Statement 3.*

⁵⁰ Fédération Internationale de Football Association, 'Supreme Committee for Delivery & Legacy and BWI Sign MoU for Joint Inspections on Qatar 2022 Stadiums' (FIFA.com) <http://www.fifa.com/worldcup/news/y=2016/m=11/news=supreme-committee-for-delivery-legacy-and-bwi-sign-mou-for-joint-inspe-2850955.html> accessed 1 June 2017.

would go beyond its role to exercise any investigative powers and conduct an investigation about alleged human rights violations in Bahrain.

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5. DISPUTE SETTLEMENT IN THE DUTCH AGREEMENT ON SUSTAINABLE GARMENT AND TEXTILE

GENERAL INFORMATION

[The Dutch Agreement on Sustainable Garment and Textile](#) is an agreement between Dutch companies and organisations that by signing up commit themselves to fight discrimination, child labour and forced labour, to support living wage, safe and healthy working conditions, to respect the right to form and join trade unions, and to reduce adverse social and environmental impacts of their activities. The Agreement is in full alignment with the UNGPs and the OECD Guidelines. Currently, almost 70 businesses are part of the agreement. The goal is that by 2021 at least 80% of the Dutch textile and garment sector supports the agreement. Since the summer 2017, there is a Complaints and Dispute mechanisms attached to the agreement.

HOW DOES THE MECHANISM WORK?

The working method of the mechanism is stipulated in the [Rules of Procedure of the Complaints and Dispute Mechanism of the Agreement Sustainable Garment and Textile](#).

The committee only has jurisdiction if another relevant grievance mechanism is not available or in case that mechanism dismissed the complaint or did not decide on the merits of the complaint.⁵¹

There is a distinction between the dispute mechanism and the complaint mechanism. The dispute mechanism deals with disputes between the parties that signed the agreement. Under the complaint mechanism, workers or other parties adversely affected by a business that has signed the agreement can file a complaint to the committee.

Once a dispute or complaint has been submitted, the Committee decides on its admissibility within one month. The criteria for admissibility differ slightly for the submission of a dispute and the submission of a complaint.⁵² A dispute is admissible when:

- It has been issued within 2 months after the Steering Group took the decision to submit a dispute, or within two months after the AGT Secretariat decide on an enterprise's action plan, modified action plan, or progress reports;
- It is not manifestly unfounded;

⁵¹ See [Rules of Procedure of the Complaints and Dispute Mechanism of the Agreement Sustainable Garment and Textile](#) Article 5.

⁵² Ibid. Article 7-10.

- It is submitted via email and contains a date, name of defendant, office address in case it is an enterprise, description of the dispute.

The Committee can allow a dispute to be submitted through other written means in exceptional cases. A complaint is admissible when:

- Parties tried to solve it amicably before;
- It is submitted within reasonable time after occurrence of the issue and the issue as such is of material significance to the stakeholder and can be substantiated in relation to the enterprise and the content of the agreement, including the OECD Guidelines and the UNGPs, and in a way the Committee understands the nature of the complaint;
- It is not manifestly unfounded;
- It has been submitted by email, containing the date of submission, name of the accused enterprise, name and details of stakeholder, proof on mandate granted by stakeholder in case the complaint is submitted by a mandated party, and country and place of residence of the stakeholder, a description and substantiation of the complaint and the name and site of alleged violations.

The Committee can allow a dispute to be submitted through other written means in exceptional cases and if the stakeholder cannot communicate in English or Dutch, the Committee can suggest using a mandated party. Also other organisations may submit a complaint if it represents a stakeholder and fulfils the admissibility criteria.

After a complaint or dispute has been submitted and declared admissible, the committee then notifies the opposing party of the dispute or complaint, which then has one month to react with a memorandum of defence. The committee will summon the parties to an oral hearing when it is a matter of complaint. For disputes, the committee has the option to summon parties to an oral hearing as well and can only refrain from it with the parties consent. The hearing takes place one month after receiving the memorandum of defence. The committee may summon additional hearings. The committee is also allowed to request additional written submissions, allow witnesses or experts for the oral hearings, or evidence if deemed necessary for deciding the complaint.

During the procedure, the committee may advise parties to engage in mediation or negotiation facilitated by a neutral party. The Secretariat has a list of mediators the party can choose from.

The committee reaches a decision by majority. The decision is based on the agreement, the UNGPs, the OECD Guidelines and principles of reasonableness and fairness.

Parties carry their own costs, but the stakeholder or mandated party can be reimbursed by the enterprise if the committee decides that the violation in question is indeed a violation of the agreement. Parties may be represented by third parties during the procedure.

WHO HAS ACCESS AND HOW?

A submission of a dispute should contain the date of the submission, name of the defendant (including the office address if it is an enterprise), and a description and substantiation of the dispute.

A submission of a complaint should include the date of submission, the name of the accused enterprise, the name of the stakeholder and if it is a legal entity also a copy of its articles of association, a description and substantiation of the complaint, and the name of the site of the alleged violation.

A complaint can be submitted by a worker of a business that is party to the agreement, or another affected party. In addition, a mandated party with proof of the mandate may submit a complaint. Then the mandated party also has to submit the contact details of the stakeholder including the country and place of residence.

Complaints and disputes can be submitted via email to the committee. The address is provided on the [website](#).

WHO OVERSEES THE MECHANISM?

The mechanism is run by the Dispute and Complaints Committee, which is an independent body consisting of three members. One of them functions as chairperson of the committee.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

Any issue that falls within the goals of the agreement can be issues. Hence, complaints relate to discrimination, child labour and forced labour, living wage, safe and healthy working conditions, the right to form and join trade unions, and adverse social and environmental impacts.

WHAT KINDS OF REMEDIES ARE ISSUED?

The committee rules whether the complaint or dispute is unfounded, partially unfounded, partially well-founded, or well-founded. If it is unfounded, it can include non-binding recommendations. If it rules the dispute or complaint to be well-founded, it can include one or more of the following measures:

- a. Binding recommendations for improvement;
- b. A duty to remediate in accordance with the UNGPs and OECD Guidelines;
- c. Non-binding recommendations.

Financial compensation as duty to remediate can only be ordered when the enterprise has been found to cause or contribute to an adverse human rights impact and the stakeholder or mandated party has proven causality between the violation of the agreement by the enterprise and the damage (Article 34 of the [Rules of procedure](#)).

WHAT LAW IS APPLIED?

The agreement itself is governed by Dutch law.

HOW CAN GRIEVANCES BE ESCALATED?

In case of a dispute, the terms of the agreement hold that if one or more of the parties to the agreement fail to comply with the binding advice of the complaints and disputes committee, the dispute can be submitted to the Netherlands Arbitration Institute (NAI) by the enterprise concerned or one or more parties to the agreement within six months after the elapse of the time limit set by the committee. For that purpose, all enterprises party to the agreement have to sign an arbitration clause. The arbitration will follow the Arbitration Rules of the NAI.

In case an enterprise has failed to comply with a binding ruling of the committee concerning a complaint within the time limit specified, the secretariat of the agreement (AGT Secretariat) will inform the Steering Group of the agreement. If the matter concerns supplier(s) of one of the participating enterprises, the Steering Group can decide to place the supplier(s) on a list of enterprises from which participating enterprises are no longer allowed to purchase.

(See page 13 and 14 of [the agreement](#))

ADDITIONAL INFORMATION

Links for further reading:

- About the agreement: https://www.imvoconvenanten.nl/garments-textile/agreement?sc_lang=en
- About its method: https://www.imvoconvenanten.nl/garments-textile/agreement/method?sc_lang=en
- About the complaint and dispute mechanism: https://www.imvoconvenanten.nl/garmentstextile/agreement/method/complaints?sc_lang=en

6. COMPLAINT MECHANISM OF THE INTERNATIONAL CODE OF CONDUCT ASSOCIATION

GENERAL INFORMATION

The International Code of Conduct for Private Security Service Providers' Association (ICoCA) promotes the responsible provision of security services and respect for human rights based on the [International Code of Conduct](#). It has 129 members from governments, the private security industry, and civil society. The Association facilitates the access to grievance mechanisms of member companies and operates its own complaint mechanism.

HOW DOES THE MECHANISM WORK?

The Association offers two options for filing of complaints. The first one is a complaint over an alleged harm caused by a violation of the Code. The second situation in which a complaint can be filed is when there are reasons to believe a violation occurred or is about to occur, without any harm having been caused (yet). In the latter case, the Association conducts a performance and compliance assessment and will address the complaint with the member company. This can result in recommendations of corrective actions.

In case of an alleged harm, the Association works with the complainant and the respective member company to facilitate access to effective remedy mechanisms, which can either be the company's operational level grievance mechanism, or any of the services offered by the Association. If the Association itself deals with the complaint, the following steps apply:

1. Preliminary Review: the Secretariat of the Association reviews the complaint for its admissibility and whether the facts indicate a possible violation of the Code. In case the allegations are inadequate, fall within excluded categories, or amount to criminal activity, the Secretariat refers the complaint back to the complainant with an explanation why it cannot consider the case, or refers it to competent authorities in case of criminal activity.
2. Secretariat Review: if the complaint is admitted, the Secretariat can ask for additional information during their assessment and then has to decide whether the company's own grievance mechanisms are adequate to deal with the complaint. If that is the case, the complaint is transferred to the respective procedure.
3. Board Recommendations and Corrective Actions: If that is not the case, the Secretariat notifies the Association's Board which then issues recommendations for corrective action.
4. Options for Resolving Complaints: If the Board also comes to the

conclusion that the company's mechanism is not adequate, the association's services for dispute resolution are offered. For instance, the Association offers Good Offices. In that case, the ICoCA's Executive Director will work with the complainant and the member company to resolve the conflict, through offering a neutral place for discussion and facilitating the process. In addition, the Secretariat can also advise the parties to start a mediation process. Then the Association refers the case to an independent and external mediator that both parties agree on. The Secretariat facilitates this process as much as necessary for the complainant.

The Association only publishes limited information about a complaint on its website, however without naming the parties. When a case has been closed, the Association will publish the results in a report including the name of the respective member company.

WHO HAS ACCESS AND HOW?

Complaints can be filed by individuals or their representatives who claim to have been harmed by activities of an ICoCA member company, which could be an employee or a community. In addition, any other individuals who wish to remain anonymous may lodge a complaint, such as whistle-blowers, trade unions, NGO representatives, or clients of member companies.

A complaint should include the information listed under [Art 13 II a](#). No information was found on how to submit the complaint.

WHO OVERSEES THE MECHANIS?

No information on an oversight mechanism was found.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The Code aims at regulating behaviour of private security service providers. Therefore, the complaints that can be dealt with must be complaints of alleged violations of the Code and must be addressed against one of the Member Companies. This can be complaints alleging harm caused by a violation of the Code, or simply complaints on violations of the Code that have occurred or about to occur. Concrete examples would be complaints concerning the excessive use of force by a private security provider, or inhumane treatment emanating from a private security provider.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The Association's Good Offices and referral to mediation aims at generating recommendations for corrective action that should be taken by the company.

Further remedies issued depend on the respective company's mechanism or further mechanism chosen by the parties.

Should the company in question have failed to take the corrective action, the Board can suspend the company or terminate their membership with the Association.

WHAT LAW APPLIES?

The Code entails procedural and substantive provisions which govern the complaints procedure. In addition, the Code recognises selected external standards, such as ISO 28007 and ISO 18788.

HOW CAN GRIEVANCES BE ESCALATED?

No general information on escalation of grievances could be found, except for situations in which the company's mechanism is found to be inappropriate for dealing with the complaint. Then the Association asks the company to offer alternative mechanism within 60 days after receipt of the complaint.

ADDITIONAL INFORMATION

Links for further reading:

- More information on Article 12 procedures, see <https://icoca.ch/sites/default/files/uploads/ICoCA-Procedures-Article-12-Monitoring.pdf>
- For more information on article 13 procedures, see <https://icoca.ch/sites/default/files/uploads/ICoCA-Procedures-Article-13-Complaints.pdf>
- The ICoCA provides guidance for companies on developing operational-level grievance mechanisms, see <https://icoca.ch/en/guidance>

PART III: OTHER COMPLAINTS MECHANISMS AND REPORTING TOOLS

7. THE FAIR LABOUR ASSOCIATION'S THIRD PARTY COMPLAINT PROCEDURE

GENERAL INFORMATION

The Fair Labor Association (FLA) adopts a multi-stakeholder approach to establish collaborative effort of socially responsible companies, colleges and universities for improving the lives of workers around the world, in particular those that work in the factories that produce for the participating companies, colleges and universities. A list of all participating actors can be found [here](#).

The participating actors agree to comply with the [FLA's Workplace Code of Conduct](#) across their supply chains. In case of allegations of non-compliance with the Code, the FLA has several [Safeguards](#) tools in place. One of these Safeguards, its cornerstone according to the FLA, is the [Third Party Complaints](#).

HOW DOES THE MECHANISM WORK?

The [Charter Document of the FLA](#) explains in detail how the Third Party Complaint procedure works (from p. 29 onwards). It follows four steps:

1. The first step is receiving the complaint. After a complaint has been filed, the FLA first checks it for admissibility. It has to concern a factory that produces for a participating company and the allegations have to be specific and verifiable allegations of noncompliance with FLA's Code of Conduct. In addition, it checks whether existing mechanisms have been used. The Third Party Complaint procedure is a tool of last resort, which can only be used when other channels, such as existing internal grievance mechanisms in factories or judicial mechanisms in the respective country have failed. If all criteria are fulfilled, the complaint is accepted.
2. Step two consists of the internal assessment of the complaint by the participating company or licensee. FLA contacts the companies that produce in the affected factories. The respective companies have 45 days to conduct an assessment and develop a remediation plan. A report of the findings of this assessment including the plan with a

timeline has to be submitted to the FLA.

3. In step three, the FLA decides to proceed with further assessment and may engage a third party for investigating the allegations and recommending corrective actions.
4. In step four, the remediation phase, the participating company or university licensee works together with the FLA to develop a remediation plan, given that the assessor found a significant likelihood that the alleged non-compliance indeed occurred.

At any time during the procedure, the FLA can take immediate action if needed. This can happen in situations where the complainant faces retaliation or the worker and/or management are in danger of harm. Such immediate action can include sending an observer to the factory, or asking local authorities to intervene.

The FLA publishes summaries of all reports on the website.

WHO HAS ACCESS AND HOW?

According to the FLA's Charter, any third party, that is any person, group, or organisation can initiate the complaint procedure. The [tracking chart](#) shows that even NGOs and universities can file a complaint. The majority of complaints come from workers and unions.

A complaint can be filed online or via a complaint form that can be downloaded and then sent to the FLA's office in Washington.

WHO OVERSEES THE MECHANISM?

No higher institution oversees the procedure. FLA staff itself reviews and deals with complaints. The FLA Executive Director will initiate steps involving relevant actors in the factories.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The complaints filed mainly concern issues such as hours of work, illegal termination, harassment or abuse, but also the payment of worker benefits and general compensation. An overview of running complaints can be found in the FLA's [Tracking chart](#). In addition, a number of case studies of specific instances are available [here](#).

WHAT KIND OF REMEDIES CAN BE ISSUED?

The procedure does not lead to financial compensation of individual victims. The outcomes of this procedure are focused on improvements of working conditions and relations. For example, the procedures can lead to trade union recognition, re-hiring of unfairly dismissed workers with back pay,

improvements of labour-management relations in factories, or the instalment of training and education programs for management and workers.

WHAT LAW IS APPLIED?

The assessment of complaints and the procedure follows the FLA's Code of Conduct.

HOW CAN GRIEVANCES BE ESCALATED?

The procedure is based on non-judicial dispute resolution. That means that in case the outcome is not satisfactory, affected groups or individuals can still initiate judicial proceedings.

ADDITIONAL INFORMATION

Links for further reading:

- Third-Party Complaint Fact Sheet: http://www.fairlabor.org/sites/default/files/3pc_factsheet_english.pdf
- Third-Party Complaint Form: <http://www.fairlabor.org/third-party-complaint-form>

8. REMEDY MECHANISMS OF NATIONAL HUMAN RIGHTS INSTITUTIONS

GENERAL INFORMATION

National Human Rights Institutions (NHRIs) exist in many countries. They have the mandate to promote and protect human rights in their respective countries. They are established by law, but work as independent organisations.

More detailed information on the general function and mandate of NHRIs can be found in the [Sporting Chance White Paper 2.4](#).

HOW DOES THE MECHANISM WORK?

Not all mechanisms work the same way. The exact function and powers of an NHRI in relation to dealing with complaints depends on how they have been established in a respective country and what mandate they have been given. There seem to be two general ways in which NHRIs can react to complaints. Some NHRIs can start agreement-based dispute resolution through mediation or negotiation, others can only start investigations and issue recommendations. This latter function is often linked to the country's Ombudsperson. It appears that more NHRIs have investigatory powers than the ability to resolve disputes themselves. However, most NHRIs can refer cases to external mediation.

WHO HAS ACCESS AND HOW?

Usually any individual that feels discriminated against can file a complaint. In most NHRIs there is also the option for stakeholders and work councils can file a complaint. Sometimes complaints can be filed on behalf of an individual by an organisation.

Most NHRIs provide phone numbers and email addresses on their website. Some also have electronic forms to be filled in. In some cases incidents can also be reported via text message.

Some NHRIs, like the South African Human Rights Commission, operate an electronic complaint management system.

Usually there are no costs for the complaining party, neither when filing a complaint, nor during the procedure.

WHO OVERSEES THE MECHANISM?

Depending on how the NHRI is organised, in some cases the Ombudsman has a certain oversight role. However, usually it is the NHRIs themselves which deal with complaints.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The majority of complaint mechanisms of NHRIs are designed for cases of unequal treatment and discrimination in mainly the fields of work, healthcare, goods and services, leisure, and education. However, there are also complaint mechanisms of NHRIs that apply to the broad range of human and children's rights, such as the South African Human Rights Commission for example.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The decisions or recommendations of NHRIs are not binding. However, in some countries they can be used in a court case. In case of the Dutch NHRI, between 70 and 80 percent of its decisions are being followed up on by the respective parties.

WHAT LAW IS APPLIED?

All steps taken follow the laws of the respective country in which the NHRI has been established.

HOW CAN GRIEVANCES BE ESCALATED?

Victims that filed a complaint and are not satisfied with the outcome can still initiate judicial proceedings.

ADDITIONAL INFORMATION

Links for further reading:

- Comparative study on complaint mechanisms of African NHRIs: <http://www.nanhri.org/wp-content/uploads/2016/10/English-Mapping-Survey-Final.pdf>
- Mapping of complaint mechanisms of European NHRIs: https://www1.essex.ac.uk/hrc/documents/50647_NHRI_Mapping_Report_web.pdf
- Good overview of the different functions of the NHRIs from p. 43 onwards (including links to all NHRIs analysed).

9. REMEDY MECHANISMS OF THE WORLD BANK

GENERAL INFORMATION

The World Bank (WB) has two different mechanisms in place. One is the Compliance Advisor Ombudsman (CAO) and the other one an individual complaint mechanism attached to the WB's Inspection Panel (IP, the Panel). The difference between the two is that the IP complaint mechanism is limited to the International Bank for Reconstruction and Development (IBRD) and International Development Agency (IDA), whereas the CAO has been established by the International Finance Corporation (IFC) and [Multilateral Investment Guarantee Agency](#) (MIGA) to deal with those WB group institutions that deal exclusively with the private sector.

Both procedures are introduced in the following with a focus on how these mechanisms are governed and organised, who has access to them and how they can be accessed, what kind of remedies they can generate and some example cases.

9A. INDIVIDUAL COMPLAINTS BEFORE THE WB'S INSPECTION PANEL

GENERAL INFORMATION

The IP was established in 1993 by the Executive Board of the WB, based on [two resolutions](#) with identical content. These resolutions mandate the IP to carry out independent investigations of Bank-financed projects. The IP is composed of three members from different countries, who are selected based on their experience in development, independence, and integrity. Each member serves for a non-renewable five-year term. The Panel is supported by a Secretariat and is located at the World Bank's headquarters in Washington, D.C., USA.

HOW DOES THE MECHANISM WORK?

The operating procedures have last been updated in February 2016. A detailed explanation of the procedure can be found [here](#).

Every request for inspection has to go through an Eligibility Phase and an Investigation Phase. After being checked for admissibility, the Panel gives the Bank's Management 21 days to provide evidence on how the Bank complied with its policies. Following the submission of the response, the Panel has 21 days to conduct its eligibility assessment and send its recommendation on

whether an investigation should take place to the Bank's Executive Directors. The eligibility assessment includes a visit of the respective project area by the panel. Following that visit, the panel writes an Eligibility report. The Investigation Phase can only be reached if the Board authorised investigation. This decision is taken based on the panel's Eligibility report and the Management's response.

Once a request moved to the Investigation Phase, the Panel is responsible for conducting the investigation. After having concluded the investigation, the Panel submits a report to the Executive Directors and the President of the Bank including its finding on whether the Bank complied with its policies or not. The Bank's Management has 6 weeks to submit a report to the Executive Directors including recommendations regarding the findings of that report.

An infographic overview of the procedure can be found [here](#).

WHO HAS ACCESS AND HOW?

A request for inspection can be filed by any group of two or more people in the country where the Bank financed project is located and who believe that, as a result of the Bank's violation of its policies and procedures, their rights or interests have been, or are likely to be adversely affected in a direct and material way. In addition, a duly appointed local representative and in exceptional cases also a foreign representative may act as the agent of the adversely affected people. In cases of serious alleged violations, an Executive Director of the Bank may file a request as well.

The panel's [website](#) gives several options on how to file a request, by mail, email, phone, or fax. Guidelines for filing a request can also be downloaded.

According to paragraph 16 of the resolutions, "requests for inspection shall be in writing and shall state all relevant facts, including, in the case of a request by an affected party, the harm suffered by or threatened to such party or parties by the alleged action or omission of the Bank. All requests shall explain the steps already taken to deal with the issue, as well as the nature of the alleged actions or omissions and shall specify the actions taken to bring the issue to the attention of Management, and Management's response to such action". There are no format requirements for the request, but the guidelines provide a sample format.

WHO OVERSEES THE MECHANISM?

The Panel reports its findings to the Bank's Board of Executive Directors.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The panel basically makes findings of harm if the Bank does not comply with its policies. There is no binding decision against the bank and no compensation for the affected individual. However, the Management's report normally includes proposed actions, which are either remedial efforts that Management can take on its own to address Bank failure, or a plan of action agreed between the Borrower and the Bank, in consultation with the requesters.

9B. CAO OMBUDSMAN

GENERAL INFORMATION

The Compliance Advisor/Ombudsman⁵³ (CAO) is the independent recourse mechanism for the private sector lending arms of the World Bank Group (IFC and MIGA). Its main functions are to address concerns of individuals affected by projects funded by the World Bank, enhance social and environmental impact of these projects and strengthen public accountability of the private sector lending arms. For these purposes, the CAO has three roles: dispute resolution under the complaints process, conducting a compliance appraisal process, and issuing advice.

HOW DOES THE MECHANISM WORK?

The [Operational Guidelines](#) stipulate how the process works. These guidelines have last been updated in 2013.

After having received a complaint, the CAO first checks it for eligibility. Complaints may relate to any aspect of the planning, implementation, or impact of an IFC/MIGA project, which also includes impacts related to business and human rights in the context of the IFC Policy and Performance Standards on Environmental and Social Sustainability. If the complaint is not clear enough on the merits, the CAO may ask for additional information to be provided. An eligibility screening should take no longer than 15 working days.

Once the complaint is found to be eligible, the CAO starts an assessment of the complaint. If there is no agreement for dispute resolution, the CAO can decide to handle the case under their compliance appraisal process. The CAO first checks if the matter merits an investigation. If it does not, the case is closed already at this stage. If an investigation is necessary, the CAO

⁵³ The institution of an Ombudsman is usually a government institution provided for by the constitution or a separate legal act. The idea behind this institution is to give citizens a place to turn to for filing complaints against government agencies or officials. The Ombudsman steps in and investigates the incident, based on which it can recommend corrective actions and issue reports. The key characteristic is that an Ombudsman has to be independent, in particular from the executive. Next to state-based Ombudsmen, there are also sector-specific Ombudsmen, such as a human rights ombudsman.

conducts the investigation, based on which it subsequently monitors compliance until it is being implemented.

If the parties agreed to dispute resolution, the CAO facilitates the process based on a mutually agreed process until an agreement has been reached. The process is based on information sharing and joint fact-finding, and can resort to dialogue and negotiation, mediation and conciliation methods. The CAO continues with monitoring the case until the agreement has been implemented. During this process, the CAO tries to access directly those individuals and/or communities that are affected by the project.

The overall assessment is supposed to take no longer than 120 working days.

WHO HAS ACCESS AND HOW?

Any individual or group of individuals that believes it is affected, or potentially affected, by the environmental and/or social impacts of an IFC/MIGA project may lodge a complaint. In addition, a complaint may be filed by another organisation or individual on behalf of those affected, as long as the organisation or individual clearly identify the people on whose behalf the complaint is made, and provide proof of authority to file the complaint on their behalf.

Complaints should be submitted in writing and sent to the CAO Office in Washington, DC. There are no formal requirements to be followed, but the following information should be included: the complainant's name(s), address, and other contact information; if the party lodging the complaint is doing so on behalf of an affected person or community, it must identify on whose behalf the complaint is made and provide proof of authority; whether the complainant wishes that their identity or any information communicated should be kept confidential; which IFC/MIGA it concerns; a statement of the way in which the complainant believes it has been, or is likely to be, affected by environmental and/or social impacts of the project.

A model letter for filing a complaint can be found on p. 32 of the [Operational Guidelines](#).

WHO OVERSEES THE MECHANISM?

The Ombudsman reports directly to the President of the World Bank Group. It also informs the World Bank Group Board of its activities and gives an annual update to the Board's Committee on Development Effectiveness.

WHAT KIND OF REMEDIES CAN BE ISSUED?

In the ideal situation, the outcomes of dispute resolution and compliance appraisals lead to direct improvements of environmental and social outcomes of the projects in question.

ADDITIONAL INFORMATION

What kinds of complaints are dealt with?

The mechanisms deal with any issues that come up in relation to projects financed by the Bank. For the individual complaint mechanism, an overview of currently ongoing cases can be found [here](#). Most cases concern various forms of social and environmental harm, and lack of consultation and disclosure of information. For the CAO Ombudsman procedure, a list of ongoing and closed cases can be found [here](#). They all relate to social and environmental impacts of IFC and MIGA projects, such as forced evictions, access to natural resources, land and water pollution, but also issues relating to consultation and information disclosure.

How can grievances be escalated?

If claimants are not satisfied with the outcome, they can turn to judicial mechanisms available in the respective country.

PART IV: EVENT-RELATED OR SPORT BODIES-RELATED GRIEVANCE MECHANISMS

10. FIFA

GENERAL INFORMATION

FIFA has three judicial bodies that are independent from the other bodies of FIFA and could be considered as grievance mechanisms. These are the Disciplinary Committee, the Ethics Committee and the Appeal Committee.

The Disciplinary Committee is bound by the [FIFA Disciplinary Code](#), in addition to the [FIFA Statutes](#), while the Ethics Committee is bound by the [FIFA Code of Ethics](#), as well as the FIFA Statutes and Disciplinary Code.

HOW DOES THE MECHANISM WORK?

The Disciplinary Committee

According to the Disciplinary Code art. 108, disciplinary infringements are prosecuted ex officio. In addition, 'any person or body may report conduct that he or it considers incompatible with the regulations of FIFA' to the Disciplinary Committee in writing. The secretariat of the Disciplinary Committee then carries out necessary investigation under the chairman's guidance.

Parties are required to collaborate to establish the facts, and comply with requests for information from the judicial bodies. Oral statements are normally not taken, however they can be if requested by the parties. The chairman decides on the sequence of the oral statements and the accused will get a final opportunity to speak after the final hearing. The Committee subsequently deliberates behind closed doors. Decisions require simple majority by the members present and every member present has to vote. The chair has the casting vote in case of a tie.

The Ethics Committee

The Ethics Committee is divided into the Investigatory Chamber and the Adjudicatory Chamber. Complaints regarding potential breaches of the Code of Ethics are filed to the Secretariat of the Investigatory chamber.

WHO HAS ACCESS AND HOW?

Complaints on violations of the FIFA Statutes, the Disciplinary Code or the Code of Ethics can be filed to the relevant judicial body. The Code applies to 'all officials and players as well as match and players' agents who are bound by this Code on the day the infringement is committed.' In other words, the

codes do not extend to groups such as workers, volunteers, the press or spectators.

WHO OVERSEES THE MECHANISM?

The Disciplinary Committee

The Disciplinary Committee consists of one chamber. Any grievances filed are typically dealt with by the Committee as a whole. In addition, the chairman has certain tasks, such as overseeing investigation into the allegations (art. 109), governing the hearing of oral statements (art. 111 and 112), and leading the deliberations (art. 113).

The Ethics Committee

The Secretariat carries out an initial evaluation of the complaint and conducts preliminary investigation if there is any indication of a potential breach.⁵⁴ The Secretariat may then initiate preliminary investigations into a potential breach of the Code.⁵⁵

Any potential investigation is led by the Chairman of the Investigatory Chamber, or assigned to the Deputy Chairman or another member of the Investigatory Chamber. In complex cases third parties may be engaged by the Chairman to assist the investigation.⁵⁶ The chief also has the power to decide if the investigation is adequate. A final report will then be sent to the adjudicatory chamber.⁵⁷

Once received by the Adjudicatory Chamber, the Chairman of the Adjudicatory Chamber assesses the evidence and decides whether or not it is sufficient to proceed.⁵⁸ In cases where there is insufficient evidence, the case may be closed or returned to the Investigatory Chamber.⁵⁹ The chairman can set the time limits for parties to submit positions, reject motions for the admission of evidence submitted by the parties and order additional evidence.⁶⁰

After hearing the case, the Adjudicatory Chamber deliberates. A majority of members must be present and every member is obliged to vote. If the vote is tied, the Chairman has the casting vote.⁶¹

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

⁵⁴ FIFA Code of Ethics art. 62.1; art. 62.2.

⁵⁵ Ibid art. 62.3.

⁵⁶ Ibid art. 66.3.

⁵⁷ Ibid, art. 67.

⁵⁸ Ibid art. 69.1.

⁵⁹ Ibid art. 69.2; art. 69.3

⁶⁰ Ibid art. 70- 72.

⁶¹ Ibid. art. 76; art.77.

The Disciplinary Code applies to ‘every match and competition organised by FIFA’, as well as ‘if a match official is harmed and, more generally, if the statutory objectives of FIFA are breached, especially with regards to forgery, corruption and doping. It also applies to any breach of FIFA regulations that does not fall under the jurisdiction of any other body.’

The scope of application thus primarily relates to on-field issues. As art. 3 also extends the scope of application to situations where ‘statutory objectives of FIFA are breached’ as well as to where ‘any breach of FIFA regulations that does not fall under the jurisdiction of any other body’, it is not entirely clear whether or not social/human rights grievances could be filed to the Disciplinary Committee.

Art. 1 of the Code of Ethics on the other hand, applies to ‘conduct that damages the integrity and reputation of football and in particular to illegal, immoral and unethical behaviour’. It ‘focuses on general conduct within association football that has little or no connection with the field of play.’ The Code of Ethics provides a basis for sanctions for conduct such as bribery, corruption, discrimination and different forms of harassment. As opposed to the Disciplinary Code, the Code of Ethics primarily regulates off-field conduct.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The judicial bodies of FIFA issue measures or sanctions against natural or legal persons. According to the Code of Ethics’ article 6, the Ethics Committee can issue disciplinary measures from the following list: warning, reprimand, 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, and social work.

The Disciplinary Code in Articles 10-12 differentiate between sanctions for legal and natural persons. Natural and legal persons are punishable by means of a warning, reprimand, fine, or return of awards (art 10). Natural persons only can be punished by means of caution, expulsion, match suspension, ban from dressing rooms or substitutes’ bench, ban from entering a stadium, and a ban on taking part in any football-related activity (art 11). Legal persons can be sanctioned with transfer bans, playing a match without spectators, playing a match on neutral territory, bans on playing in a particular stadium, annulments of the result of a match, expulsion, forfeit, deduction of points, and relegation to a lower division (art 12).

WHAT LAW IS APPLIED?

FIFA Regulations and Codes apply, as well as Swiss law, according to the FIFA Statutes.

HOW CAN GRIEVANCES BE ESCALATED?

Cases from both the Disciplinary Committee and the Ethics Committee can be appealed to the Appeal Committee. The FIFA Appeal Committee must be informed of an intention to appeal a decision within three days of notification of the decision. An additional seven-day period will then follow for the party to give the reasons for the appeal in writing. Any decision by the Ethics Committee may be appealed, except where the sanctions pronounced are 'a warning, a reprimand, a suspension for less than three matches or of up to two months, a fine less than CHF 7,500'.

After exhausting FIFA's judicial bodies, a complaint may be appealed to the CAS within 21 days of notification of the decision. However, appeal is precluded in cases of 'violations of the Laws of the Game', 'suspensions of up to four matches or up to three months (with the exception of doping decisions)' or 'decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made.'

ADDITIONAL INFORMATION

Discrimination monitoring system

In May 2015, FIFA launched a [discrimination monitoring system](#). Its purpose was to monitor and report issues of discrimination at the 2018 FIFA World Cup Russia preliminary competition and the 2017 FIFA Confederations Cup Russia. It was coordinated by FIFA Sustainability Department and provided by Fare network.

11. FIFA'S COMPLAINT MECHANISM FOR HUMAN RIGHTS DEFENDERS AND MEDIA REPRESENTATIVES

GENERAL INFORMATION

In May 2018, FIFA launched a [complaint mechanism](#) for human rights defenders and media representatives. This reporting tool provides a way for affected human rights defenders and media representatives to seek remedy. According to the [detailed statement](#) on the mechanism, FIFA sees the provision of avenues for complaints as part of its responsibility to respect and help protect the rights of human rights defenders and media representatives in a specific situation.⁶²

HOW DOES THE MECHANISM WORK?

Those who consider their rights to have been violated while performing work related to FIFA's activities can file a complaint through various channels (listed and explained below). After receiving a complaint, FIFA ensures that it is being redirected so that appropriate follow-up processes can be applied.⁶³

In addressing these complaints, FIFA claims to act in a timely manner and address each complaint in its specific context. After receiving a complaint, FIFA directly engages with third parties that are involved, such as public authorities, and strives to prevent, mitigate, or remedy the adverse impact.⁶⁴

WHO HAS ACCESS AND HOW?

Complaints can be submitted through the online platform, or through generic FIFA email addresses, bilateral exchanges with FIFA, or via the media.⁶⁵

Via the online platform, complaints can be submitted in English, French, German and Spanish. The complainant first has to choose the category of the focus of his or her complaint. In addition to "Reporting for Human Rights Defenders and Media Representatives, other categories are Doping, Match Manipulation, and certain issues taken from FIFA's Code of Ethics. After choosing the adequate category, the claimant can first opt to state his or her name or not and then is asked to describe the incident as much as possible. The claimant also has to explain how what happened relates to FIFA and its activities. Furthermore, the claimant can indicate whether he or she is in immediate danger and suggest measures that FIFA can take to address the situation. The claimant is also asked for evidence and the organisation/company he or she is working for.

⁶² See para. 14 of the [detailed statement](#).

⁶³ See para. 14 of the [detailed statement](#).

⁶⁴ See para. 14 of the [detailed statement](#).

⁶⁵ See para. 14 of the [detailed statement](#).

According to FIFA, the reporting system follows the highest standards of data privacy and security.

It is possible to submit complaints anonymously and all information received will be treated in the interest of the complainant. No information on the transparency of the mechanism and measures taken could be found. However, the emphasis on direct engagement with third parties implies that all necessary information will be exchanged between involved parties, if this is in the interest of the affected individual. FIFA claims to ensure that complaints can be raised without any form of intimidation, retaliation, or reprisals.⁶⁶

WHO OVERSEES THE MECHANISM?

A specialised external provider hosts the mechanism.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The mechanism deals with complaints from human rights defenders and media representatives on policies, specific actions, or other incidents that infringe upon their rights.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The only direct remedy provided by the mechanism appears to be the public statement made by FIFA in support of human rights defenders and media representatives and their work, which can be a form of satisfaction for the victim.⁶⁷ However, other remedies depend on the follow-up processes that apply after FIFA redirects the complaint.

WHAT LAW IS APPLIED?

The applicable law and legal measures taken depends on the country in which the complaint has been raised and on the authorities to which the complaint has been forwarded eventually.

HOW CAN GRIEVANCES BE ESCALATED?

Since this is a reporting mechanism and not a grievance mechanism per se, an escalation in the strict sense is not applicable. However, the follow-up processes that apply after FIFA redirects the complaint can be seen as escalation of the initial complaint to FIFA.

ADDITIONAL INFORMATION

Links for further reading:

- Comment by Human Rights Watch:

⁶⁶ See para. 14 of the [detailed statement](#)

⁶⁷ See para. 15 of the [detailed statement](#)

<https://www.hrw.org/news/2018/06/12/human-rights-defenders-and-journalists-are-true-world-cup-heroes>

- OHCHR comment:
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?News- ID=23147&LangID=E>

DRAFT

12. IOC

GENERAL INFORMATION

The IOC is a non-profit international organisation which manages the Olympic Movement and is guided by the principles of the Olympic Charter. Aimed at promoting sport, sports ethics and fair play, the Olympic Movement takes into consideration issues such as gender equality and anti-discrimination.⁶⁸ To support this, the IOC has recently made human rights protection a key element of the host city contracts, beginning with Paris in 2024, and building on the UNGPs.

HOW DOES THE MECHANISM WORK?

The IOC has three bodies that may be considered grievance mechanisms: the Legal Affairs Commission, the Ethics Commission, and the Disciplinary Commission. Tipoffs or information can be submitted to the Ethics and Compliance Office to start a procedure. (No information could be found on how to file a grievance through the Legal Affairs Commission and the Disciplinary Commission).

After a report is made, it is reviewed by either the IOC Integrity Betting Intelligence System (IBIS) (for competition manipulation-related complaints) or the IOC Ethics and Compliance Office. The IOC will then dismiss the complaint, or launch an investigation with the cooperation of relevant IOC departments and national or international authorities. This grievance mechanism is confidential and anonymous. The mechanism also commits to protecting the identity of the whistleblower.⁶⁹

Other IOC commissions can make rulings which relate to human rights issues, such as the Medical Commission which recently addressed the eligibility of female athletes with hyperandrogenism. It is understood that these commissions all work together – the Medical Commission, for example, supervises doping control services during games – and so cases like the above could be used when lodging a grievance.

WHO HAS ACCESS AND HOW?

Anyone can provide tipoffs or information by contacting the Ethics and Compliance Office, including using the [Integrity and Compliance online hotline](#). There were two other hotlines created in the same spirit: one specifically for journalists with regards to press freedom violations⁷⁰ and

⁶⁸ 'The Organisation' (International Olympic Committee, 2018) www.olympic.org/about-ioc-institution

⁶⁹ International Olympic Committee, 'Measures Of Protection And The Process The IOC Will Undertake Following An Integrity Report' (International Olympic Committee 2018).

https://secure.registration.olympic.org/docs/measures_of_protection_en.pdf

⁷⁰ International Olympic Committee, 'IOC Launches Reporting Tool For Press Freedom Violations At The Games' (2016) <https://www.olympic.org/news/ioc-launches-reporting-tool-for-press-freedom-violations-at-the-games>

another meant for athletes to complain about harassment and abuse in sport.⁷¹

WHO OVERSEES THE MECHANISM?

The functionally independent Ethics Commission defines and updates the IOC's ethical framework, including the existing Code of Ethics, and is based upon the values in the Olympic Charter. It 'investigates complaints raised in relation to the non-respect of such ethical principles, including breaches of the Code of Ethics and, if necessary, proposes sanctions to the IOC Executive Board'.⁷² The Commission cannot refer a case to itself, but cases can be referred to it by the Chief Ethics and Compliance Officer when there is suspected non-compliance with the Code of Ethics.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The mechanisms through the Ethics and Compliance Office cover competition manipulation, IOC ethics infringement including financial manipulation or legal/regulatory breaches, and harassment or abuse witnessed during the games.

The Disciplinary Commission deals largely with doping, but also takes on cases involving the social conduct of athletes or coaches, and the Legal Affairs Commission looks at actions and defences (key in enacting changes/reform). It is supported by the Legal Affairs Department.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The IOC bodies do not issue remedies in the strict sense, but rather take measures against those violating IOC's regulations. The measures or sanctions taken by the IOC Session, the IOC Executive Board or the disciplinary commission range from warnings and reprimands, to withdrawals of recognition, suspensions, and exclusions from tournaments. The type of sanction depends on the actor and context.

WHAT LAW IS APPLIED?

IOC regulations, including the Olympic Charter, refer to Swiss law.

HOW CAN GRIEVANCES BE ESCALATED?

Complainants can decide to go to CAS.⁷³

ADDITIONAL INFORMATION

Does the host city contract include any commitments/information related to grievance mechanisms for social/human rights issues?

⁷¹ 'Integrity And Compliance Hotline' (2018) <https://secure.registration.olympic.org/en/issue-reporter>

⁷² 'Ethics Commission' (*International Olympic Committee*, 2018) www.olympic.org/ethics-commission

⁷³ See research note 1 on page 30 for more information on how CAS works.

[Tokyo 2020's HCC](#) pledges to carry out obligations in a manner which embraces sustainable development and environmental protection, but there is no information related to grievance mechanisms for social or human rights issues.

[Beijing 2022's HCC](#) contains no content on grievance mechanisms for social or human rights issues.

[Paris 2024's HCC](#) is in line with the new IOC contract requirements, and so this contract does have explicitly rights-related content. There are, for example, anti-discrimination clauses and it also dictates that the IOC must establish a reporting mechanism in relation to the activities of the Host City. It also states that arbitration shall be carried out by CAS. If this court denies its competence, the dispute shall be determined by state courts in Lausanne, Switzerland.

13. IPC

GENERAL INFORMATION

The International Paralympic Committee is a non-profit organisation, based in Bonn, Germany. Following the partnership agreement with the IOC, the IPC has been closely linked to its sister competition through the Host City Contract that includes unified provisions for both competitions.

HOW DOES THE MECHANISM WORK?

The Constitution of the IPC does not mention any particular body within the organisation that specifically deals with cases of human rights violations.⁷⁴ The Legal and Ethics Committee is the only body amongst standing committees that implicitly mentions the role of the IPC with respect to legal and ethical issues that may arise out of the Paralympic Games.

According to art. 14 of the IPC Code of Ethics,⁷⁵ suspected breaches of the Code of Ethics will be governed by Appendix A of the IPC handbook, which regulates the 'procedure for dealing with complaints regarding alleged breaches of the IPC Code of Ethics'. This includes receiving and evaluating a claim, notifying the complainant, forming a hearing panel, procedures around the hearing, and accelerating a procedure.

WHO HAS ACCESS AND HOW?

As per Art 1.2 of Appendix A, any party within the scope of the Code of Ethics (see below) shall be entitled to bring a complaint to the Committee. The burden and standard of proof is on the complainant who must prove their case on the balance of probabilities (Art 4.1).

WHO OVERSEES THE MECHANISM?

According to the IPC Handbook on the Bylaws of Standing Committees,⁷⁶ the Committee derives its authority from the Governing Board, and reviews and addresses all legal and ethical issues arising during the Paralympic Games.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The formulation of Art 1.2.9⁷⁷ of Chapter 2.4 of the handbook leaves much ambiguity as to the temporal eligibility of matters arising out of the complete life cycle of the Paralympic Games.

⁷⁴ International Paralympic Committee Constitution, December 2011, art 13.1

https://www.paralympic.org/sites/default/files/document/141113141030725_2014_10_01+Sec+i+chapter+1_0_IPC+Constitution.pdf

⁷⁵ International Paralympic Committee Code of Ethics, June 2013, art 14

https://www.paralympic.org/sites/default/files/document/130625114507663_IPC+Code+of+Ethics.pdf

⁷⁶ International Paralympic Committee Bylaws Standing Committees, Chapter 2.4, November 2015

https://www.paralympic.org/sites/default/files/document/151202150049058_Sec+i+chapter+2_4_7_Legal+and+Ethics+Committee+Bylaws_.pdf

The Code of Ethics specifies the scope of applicability of the Code, expanding the scope to matters relating to the Paralympic Games, and any other IPC event or activity, overruling ‘any local or national practices, traditions or customs.’ The scope is all the more expanded by the groups it protects, ranging from ‘any person who accepts and assumes a function in the IPC, or in association with the IPC, regardless whether it is voluntary or paid position, elected or appointed, an athlete or team official’.⁷⁸

WHAT KIND OF REMEDIES CAN BE ISSUED?

Although mechanisms for filing complaints exist at the IPC, sanctions are less reparative and more retributive in nature. In fact, the sanctions put forward by the Committee are punitive in their nature (expulsion or suspension) and are therefore not directed at providing remedies to victims.

With regards to the scope of possible sanctions issued by the Legal and Ethics Committee, Appendix A mentions that sanctions shall be used as a method of last resort, and shall only be issued for ‘persistent and/or serious breaches’ of the Code.⁷⁹

According to art. 13.2, with regard to members of all IPC organs, sanctions can range from a public reprimand, a suspension for up to four years and termination of membership. With regards to the International Paralympic Sports Federation (IPSF) and the International Organisation for the Disabled (IOSD)’s withdrawal from the program, suspension of up to four years, withdrawal of recognition, and withdrawal of right to attend or to vote at IPC meetings including IPC general assemblies (as per art. 13.3 of Appendix A). With regards to National Paralympic Committees, sanctions range from withdrawal of the right to enter athletes in the Games, suspension of up to four years, withdrawal of recognition, withdrawal of the right to organise IPC meetings and/or events, and withdrawal of right to attend or to vote at IPC meetings (as per art. 13.4 of Appendix A). Any suspension or termination of membership to the IPC shall be put to a vote to the General Assembly. A two-thirds majority is necessary for the suspension or termination of membership.

WHAT LAW IS APPLIED?

⁷⁷ International Paralympic Committee Bylaws Standing Committees, Chapter 2.4, November 2015, art 1.2.9 https://www.paralympic.org/sites/default/files/document/151202150049058_Sec+ii+chapter+2_4_7_Legal+and+Ethics+Committee+Bylaws.pdf

⁷⁸ International Paralympic Committee Code of Ethics, June 2013 https://www.paralympic.org/sites/default/files/document/130625114507663_IPC+Code+of+Ethics.pdf

⁷⁹ Appendix A IPC regulations governing the procedures for dealing with complaints regarding alleged breaches of the IPC Code of Ethics, June 2009 https://m.paralympic.org/sites/default/files/document/141113161433605_2014_10_09+Sec+ii+chapter+1_1_IPC+Code+of+Ethics+ +Appendix+A +IPC+Regulations+on+Complaint.pdf

IPC regulations, including the [IPC Constitution](#). As art 13.1 of the IPC Constitution stipulates, 'the law of Germany shall govern the IPC and this Constitution'.

HOW CAN GRIEVANCES BE ESCALATED?

The 'Notice of Appeal' shall be filed within 21 days of the decision, to be sent to the IPC President who will nominate an Appeal Panel and its Chairperson. The procedural framework set out in art 9 and 10 of the Appendix will still govern the appeal procedure. A new decision could be issued in place of the decision made by the Hearing Panel; the Appeal Panel may also annul the decision and refer it back to the Hearing Panel with directions or advice. If need be, a greater sanction could be imposed by the Appeal Panel. The decision of the Appeal Panel is final.

ADDITIONAL INFORMATION

Does the host city contract include any commitments/information related to grievance mechanisms for social/human rights issues?

The HCC is typically written before the completion of the bidding process for the Olympic Games, it therefore reflects the formal position and policy of the IOC on a range of issues, including human rights.

In June 2016 the IOC and the IPC signed a memorandum of understanding outlining the terms for a new long-term agreement and cementing the relationship of cooperation between the two governing bodies.

After cooperation and partnerships agreement were signed in 2000, the practice has been 'one bid, one city' unifying the process for both sporting events, and ensuring the sustainability of the Paralympic Games that use the same facilities as the Olympic Games.⁸⁰ The practice has therefore been that the HCC with the successful candidate for the Olympic Games incorporates special provisions for the Paralympic Games through a coordination commission. Any commitment to human rights have therefore been made within the HCC, but not necessarily within the special provision for the Paralympic Games.

In February 2017, the IOC announced the incorporation of human rights principles within the Host City Contract by making specific reference to the UN

⁸⁰ 'IOC And IPC Agree Principles For New Agreement Through To 2032', 2017
<https://www.paralympic.org/news/ioc-and-ipc-agree-principles-new-agreement-through-2032>

Guiding Principles on Business and Human Rights.⁸¹ The clause was added to the HCC for the Paris Olympic Games of 2024.⁸²

⁸¹ Daniel Etchells, 'IOC Adds Human Rights Clause To Host City Contract' (Insidethegames.biz, 2017) <https://www.insidethegames.biz/articles/1047571/ioc-adds-human-rights-clause-to-host-city-contract>

⁸² See <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/Host-City-Contract-2024-Principles.pdf>

14. UEFA

GENERAL INFORMATION

UEFA 2020 is being hosted across twelve different cities in Europe.⁸³ This tournament does not have a specific commitment to safeguard human rights, or to provide for remedy; however, UEFA 2024 includes in its bidding requirements a commitment to the UNGPs and to international human rights standards.

HOW DOES THE MECHANISM WORK?

Though the UEFA 2024 bidding requirement requires countries to put in place complaint mechanisms for human rights violations, there is no specific mechanism within UEFA to lodge complaints relating to social or human rights violations at the headquarters/global level.

However, UEFA has two disciplinary bodies: [the Control, Ethics and Disciplinary Body](#), and the [Appeals Body](#). These bodies are scoped around disciplinary measures, which relates only to disputes arising on the field, doping, match fixing and corruption cases. The Ethics and Disciplinary Inspectors are responsible for representing UEFA before the disciplinary bodies. Members of the bodies are independent and are bound by UEFA's rules and regulations. The [UEFA Club Financial Control Body](#) is also an organ of justice of UEFA, which specifically looks into licensing and financial matters.

*The Control, Ethics and Disciplinary Body*⁸⁴

Proceedings before the Control, Ethics and Disciplinary Body are opened by the UEFA administration. They are admissible in cases where a protest has been lodged at the request of the UEFA Executive Committee, the UEFA President or the UEFA General Secretary, on the basis of official reports, at the request of an ethics and disciplinary inspector, on the basis of documents received from a public authority, or where a complaint has been filed, subject to prior approval of an [ethics and disciplinary inspector](#).⁸⁵

Such proceedings can only be initiated after evaluation of the complaint by the ethics and disciplinary inspectors,⁸⁶ who have the discretion to reject the complaint. The decision of the inspector can be challenged before the Control, Ethics and Disciplinary Body by way of appeal within five days upon the notification of the decision.⁸⁷ Proceedings before the Control, Ethics and

⁸³ UEFA, 'All You Need to Know about UEFA EURO 2020' <https://www.uefa.com/uefaeuro-2020/index.html#/>

⁸⁴ UEFA Statutes, 2014 Ed. art. 33.

⁸⁵ UEFA Disciplinary Regulations, 2017 Ed., art. 55(1).

⁸⁶ UEFA Disciplinary Regulations, 2017 Ed., art. 55(2).

⁸⁷ UEFA Disciplinary Regulations, 2017 Ed., art. 55(3).

Disciplinary Body are conducted in writing. However, in exceptional circumstances the Control, Ethics and Disciplinary Body may hold a hearing.⁸⁸

*The Club Financial Control Body*⁸⁹

The [UEFA Club Financial Control Body](#) (CFCB) has the important role of overseeing the application of the UEFA Club Licensing and Financial Fair Play Regulations. It may impose disciplinary measures in the event of non-fulfilment of the requirements set out in the UEFA Club Licensing and Financial Fair Play Regulations. Its final decisions may only be appealed before CAS in Lausanne. The CFCB is competent to determine whether licensors (national associations) and licence applicants (clubs) have fulfilled the licensing criteria or the financial fair play requirements and to decide on cases relating to club eligibility for the UEFA club competitions. The CFCB is underpinned by an Investigatory Chamber, led by the CFCB chief investigator for the monitoring and investigation stage of the proceedings, and an Adjudicatory Chamber for the judgement stage of the proceedings led by the CFCB chairman.

It is important to note that the mandate of these bodies is limited to member associations and their officials, clubs and their officials, all match officials, all players and all persons elected or ratified by UEFA.⁹⁰ Thus these bodies do not entertain complaints by anyone who does not fall into these categories.

WHO HAS ACCESS AND HOW?

UEFA provides for lodging of complaints and filing of reports relating to match fixing, doping, corruption and sports betting, which can be done through an online form.⁹¹ It requires the complainant to provide personal details, description of the issue involved and related documents.

A complaint can be lodged before an ethics and disciplinary inspector, who evaluates the complaint and approves opening of proceedings before the Control, Ethics and Disciplinary body. A decision by an ethics and disciplinary inspector not to approve the opening of proceedings can be appealed against the Control, Ethics and Disciplinary Body within five days upon notification of the decision.⁹²

A declaration of appeal against a decision by the Control, Ethics and Disciplinary Body must be lodged with the UEFA administration, in writing, for the attention of the Appeals Body, within three days⁹³ of the issuance of the

⁸⁸ UEFA Disciplinary Regulations, 2017 Ed., art.59.

⁸⁹ UEFA Statutes, 2014 Ed., art. 34ter.

⁹⁰ UEFA Disciplinary Regulations, 2017 Ed., art. 3.

⁹¹ UEFA, 'UEFA Integrity' <https://integrity.uefa.org/index.php?action=reportIncident&type=report>

⁹² UEFA Disciplinary Regulations, 2017 Ed., art. 55(3).

⁹³ UEFA Disciplinary Regulations, 2017 Ed., art. 60 (2).

relevant decision with grounds. Grounds for appeal must be filed in writing within five days⁹⁴ of the expiry if the time limit for the declaration of appeal.

Art. 39 of the UEFA regulations⁹⁵ provides for legal aid and pro bono counsel for member associations, clubs and other individuals or bodies with insufficient financial means for proceeding before the UEFA disciplinary bodies. However, there is no information available regarding the process to obtain legal aid and pro bono services.

WHO OVERSEES THE MECHANISM?

Grievance mechanisms under UEFA are governed by the Control, Ethics and Disciplinary Body and the Appeals Body. The Bodies are governed by their members which are comprised of the Chairman and other members elected by the executive committee. The Control, Ethics and Disciplinary Body consists of a chairman, two vice-chairmen and seven other members.⁹⁶ The Appeals Body shall consist of a chairman, two vice-chairmen and nine other members.⁹⁷

The UEFA administration has the competence to enforce the decisions of the disciplinary bodies. It may order the member association concerned to enforce a decision.⁹⁸

These bodies predominantly govern sport-related disputes. The process of filing a complaint is not clear, however the process of proceedings is explained in UEFA disciplinary regulations. This regulation under the Procedural Law section provides information regarding proceedings such as who can represent (art. 38), official language (art. 40), and forms of evidence (art. 44) and so on. However it provides no information regarding time limit for the disposal of the complaint.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The Control, Ethics and Disciplinary Body shall have 'jurisdiction to rule on disciplinary and ethical issues and all other matters which fall within its jurisdiction pursuant to these Statutes or regulations adopted by the Executive Committee'.⁹⁹ It is responsible for checking serious violations of UEFA's statutory objectives. According to the objectives laid down under art. 2, its scope is limited to leagues, clubs, players, and supporters. Art. 52 provides for disciplinary jurisdiction and so may be used for unsportsmanlike conduct,

⁹⁴ UEFA Disciplinary Regulations, 2017 Ed., art. 60 (3).

⁹⁵ UEFA Disciplinary Regulations, 2017 Ed., art. 39.

⁹⁶ UEFA, 'Disciplinary bodies' <https://www.uefa.com/insideuefa/disciplinary/disciplinary-cases/index.html>

⁹⁷ UEFA, 'Appeals body' <https://www.uefa.com/insideuefa/disciplinary/disciplinary-cases/index.html>

⁹⁸ UEFA Disciplinary Regulations, 2017 Ed., art. 66 (1).

⁹⁹ UEFA Disciplinary Regulations, 2017 Ed., art. 29 (4).

violations of the Laws of the Game, and contravention of UEFA's statutes, regulations, decisions and directives as shall be in force from time to time.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The measures issued by the Control, Ethics and Disciplinary Body, the Appeal Body or CAS are not directed at providing remedies to victims, but rather to sanction wrongful behaviour under UEFA's Statutes. Arts. 53 and 54, which provide for disciplinary measures like warnings, reprimands, and suspensions from match against Member Associations, clubs and individuals respectively, show that the body's mandate is limited to on field and related issues, and involves players and associations only.

WHAT LAW IS APPLIED?

UEFA regulations, including [UEFA's Statutes](#), which in article 64 refers to Swiss law as the governing law.

HOW CAN GRIEVANCES BE ESCALATED?

The decision of the Control, Ethics and Disciplinary Body can be challenged through an appeal before the Appeals Body. The Appeals Body shall have 'jurisdiction to hear appeals against decisions of the Control, Ethics and Disciplinary Body pursuant to the Disciplinary Regulations in force from time to time'.¹⁰⁰ It can also hear appeals in relation to doping cases by WADA. These regulations may provide that a case be referred directly to the Appeals Body in urgent circumstances, particularly regarding the admission to or exclusion from UEFA competitions.

Parties who are directly affected by a decision, the World Anti-Doping Agency, and the ethics and disciplinary inspector can appeal.¹⁰¹ A declaration of appeal against a decision of the Control, Ethics and Disciplinary Body must be filed within three days¹⁰² from the decision and grounds be filed within five days¹⁰³ of the expiry of the time limit for the declaration of appeal. The proceedings are conducted either orally or in writing.¹⁰⁴ Decision by the Appeals Body are final,¹⁰⁵ subject to art. 62 and 63 of the UEFA statute, which provides for an appeal to CAS.

In general, any decision taken by a UEFA organ may be disputed exclusively before CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration. Only parties directly affected by a decision may appeal to the CAS. However, where doping-

¹⁰⁰ Ibid.

¹⁰¹ UEFA Disciplinary Regulations, 2017 Ed., art. 60(1).

¹⁰² UEFA Disciplinary Regulations, 2017 Ed., art. 60(2).

¹⁰³ UEFA Disciplinary Regulations, 2017 Ed., art. 60(3).

¹⁰⁴ UEFA Disciplinary Regulations, 2017 Ed., art. 64.

¹⁰⁵ UEFA Disciplinary Regulations, 2017 Ed., art. 65(6).

related decisions are concerned, WADA may appeal to the CAS. The time limit for appeal to CAS shall be ten days from the receipt of the decision in question.

ADDITIONAL INFORMATION

Case Law

All the decisions passed by the Control, Ethics and Disciplinary Body and the Appeals Body as mandated under art. 45 of the UEFA Disciplinary Regulations are published on UEFA website. They are published every six months and a database of cases dating back to 2012 can be found its website.¹⁰⁶ These cases are typically categorised into cases related to racist behaviour, throwing of objects and fireworks, homophobic¹⁰⁷ chants, doping issues and improper conduct of players and teams.

Does the host city contract include any commitments/information related to grievance mechanisms for social/human rights issues?

As UEFA 2020 is being hosted by twelve different countries there is no single host city contract. Participating countries are bound by the UEFA 2020 bid requirement,¹⁰⁸ which does not provide any information related to grievance mechanisms for social or human rights issues.

However the UEFA bidding requirement for 2024¹⁰⁹ includes a separate section on human rights under Section 3 of the document. It states that 'UEFA Euro 2024 should integrate social responsibility according to the latest international standards by including sustainable considerations and human rights at all stages, from planning to implementation and the post-event legacy'. It also provides a separate budget allocation for human rights reporting. It puts an obligation upon the participating associations and countries to protect human rights and to comply with international covenants and guiding principles. It requires the host association to comply with the UNGP31 and implement the 'Protect, Respect and Remedy' framework.¹¹⁰

It requires bidders to implement means of reporting and accountability and lays down the indicators for assessment. Among other reporting indicators,

¹⁰⁶ UEFA, 'Disciplinary Cases' <http://www.uefa.com/insideuefa/disciplinary/disciplinary-cases/cases/index.html>

¹⁰⁷ FC Midtjylland [2015] CEDB & Appeals Body UEFA, [2015] p.56.
https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/UEFACompDisCases/02/35/33/01/2353301_DOWNLOAD.pdf

¹⁰⁸ UEFA, 'UEFA EURO 2020 Tournament Requirements'
https://www.uefa.com/MultimediaFiles/Download/EuroExperience/competitions/General/01/95/21/41/1952141_DOWNLOAD.pdf

¹⁰⁹ UEFA, 'UEFA EURO 2024 Tournament Requirements'
https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/Regulations/02/46/30/61/2463061_DOWNLOAD.pdf

¹¹⁰ Ibid.

there are provisions for complaint mechanisms and a secure reporting system, which aims at protecting the identity of complainants.

DRAFT

15. LONDON 2012 COMPLAINT AND DISPUTE RESOLUTION MECHANISM (CDRM)

(Most information taken from the [‘Learning Legacy’ report](#))

GENERAL INFORMATION

The Complaint and Dispute Resolution Mechanism was developed to resolve complaints and disputes related to breaches of the [Sustainable Sourcing Code](#) (SCC). The Code contains social and environmental standards related to the products and services procured and licensed by the LOCOG for the 2012 Olympic and Paralympic Games.

HOW DOES THE MECHANISM WORK?

The process was based on mediation or conciliation to arrive at a mutually agreed resolution of the complaint. The procedure followed several distinct phases:¹¹¹

1. Phase I was an assessment phase to ensure that the complaint falls within the Sustainable Sourcing Code.
2. Phase II consisted of reporting and information gathering from both the complainant and the commercial partner. A mediated discussion establishes the facts agreed to by both parties and the actions to be taken.
3. Phase III was reached where no agreement could be established. Then an investigation will start, led by an independent investigator, agreeable to the parties and LOCOG, with expertise in labour standards in key sourcing countries, mediation and facilitation, and with credibility within the range of stakeholders. LOCOG provided a list of possible organisations and individuals.
4. Phase IV was the implementation of the corrective or preventative actions agreed on by the parties, including monitoring and reporting.

The early phases of a complaint were dealt with within 1-2 months and more complex mediated discussion could extend over several months. The monitoring of implementation of the agreed corrective actions could take more than 6 months in some cases.

Even though the procedure was semi-outsourced, the final say in how the complaints were dealt with and closed off was with the LOCOG.

WHO HAS ACCESS AND HOW?

¹¹¹ See page 4 of the [‘Learning Legacy’ report](#) for an overview of these phases.

The CDRM was open to all complaints related to breaches of the SSC, in particular to complaints on labour conditions at factories supplying LOCOG sponsors, licensees and suppliers. Any individual or organisation under the condition that they are directly affected by the issue or are a representative organisation with the mandate to represent individuals or communities who are directly affected, with first-hand knowledge to the circumstances of the complaint, could file a complaint.

Affected individuals had to fill in the Complaint and Dispute Resolution Process Complaint Form¹¹², which could be downloaded from the LOCOG website.

Based on that form, individuals had to provide information on their worksite, their employer, and the LOCOG product/supplier. In addition, they had to explain the Sustainable Sourcing Code violation in as much detail as possible and indicate whether they already raised the issue in a different channel. Furthermore, individuals could indicate what kind of remedy they themselves considered as adequate for rectifying the problem.

Another way of filing a complaint was calling the LOCOG. A complaint was found to be admissible, if it is:

- related to a LOCOG contractor, supplier or licensee and involve the production or supply of
- products or services to LOCOG, or licensed products, for use during the 2012 Games;
- related to a product and tier of the supply chain that is traceable directly to LOCOG;
- related to a standard or clause referenced in the Sustainable Sourcing Code; and
- contained sufficient information to enable LOCOG to assess the substance of the complaint.

WHO OVERSEES THE MECHANISM?

A Stakeholder Oversight Group was created to make sure that complaints are dealt with in a timely, fair and efficient manner and to give advice on how solutions to complaints could best be promoted.

In addition, the investigation of complaints was outsourced to an independent specialist partner informed by the UNGPs.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

¹¹² See page 15 of the [‘Learning Legacy’ report](#).

In total there were 11 separate complaints. All complaints related to labour issues and were filed in either China, the Philippines, or Indonesia. Most of them involved multiple issues, such as freedom of association, wage-related issues, and hours of work.¹¹³

WHAT KIND OF REMEDIES CAN BE ISSUED?

In total, 74 remedial actions could be identified. Such action could have meant a change in working conditions, or a change in human resource policy or process, or a change in the process of manufacture or type of good being supplied. In addition, the parties would agree on a public statement that explained the outcome of the complaint procedure.

Not all complaints could be settled but measures were agreed on to continue dialogue and remedial action in the future.

WHAT LAW IS APPLIED?

Generally speaking UK law applied to the mechanism. However, the complaints procedure was established complementary to codes of conduct mechanisms under national law in the UK. In some cases, certain complaints led to the request for measures to be taken to follow labour laws and standards of the respective country.

HOW CAN GRIEVANCES BE ESCALATED?

No information in the escalation of grievances could be found. However, since this mechanism is based on non-judicial dispute resolution, judicial mechanisms can still be used in case the outcome is not satisfactory.

ADDITIONAL INFORMATION

Links for further reading:

- case study on CDRM from p. 16 onwards:
https://www.ethicaltrade.org/sites/default/files/shared_resources/ergon_-_issues_paper_on_access_to_remedy_and_operational_grievance_mechanisms_-_revised_draft.pdf

¹¹³ See page 5-7 and page 14 of the [‘Learning Legacy’ report](#) for more specific information on the content of the complaints.

16. ACAS SERVICES FOR THE 2012 OLYMPIC AND PARALYMPIC GAMES¹¹⁴

GENERAL INFORMATION

The Advisory, Conciliation and Arbitration Service (Acas) is an independently directed but UK government sponsored organisation, recognised as impartial authority on workplace relationships and effectiveness. It offers advice and guidance to employers and employees on workplace disputes, as well as training, individual and collective conciliation, and mediation (more information can be found [here](#)).

The Acas Olympic program ran parallel to the Complaint and Dispute Resolution Mechanism established by the London Organising Committee of the Olympic and Paralympic Games (LOCOG).

The first steps for the Acas' Olympics project were taken in 2006. In 2007 there was an MoU between the Olympic Delivery Authority (ODA), Acas and major trade unions on the terms how potential disputes could be solved. In 2011, a games-time grievance resolution protocol was signed by the Trade Union Congress (TUC), LOCOG, and Acas to make sure that disputes concerning LOCOG's workforce, including contractors, were dealt with efficiently and as quickly as possible. The Acas Olympic project began its work effectively in August 2011 and its Olympic-specific services operated from June until the end of the Games in September 2012.

HOW DOES THE MECHANISM WORK?

Within its Olympic program, Acas offered a range of products and services,¹¹⁵ of which 4 would qualify as remedy mechanisms as defined by the UN Guiding Principles.¹¹⁶

1) *The Games-time Grievance Resolution Protocol*

The protocol was applicable to LOCOG controlled venues and allowed parties to reach out to Acas for resolving disputes if all involved parties agreed to it. More specifically, the Protocol was applicable to:

- anyone employed by LOCOG,
- secondees, sponsors, agency workers,

¹¹⁴ The information provided is based on the [Research Paper on the Acas experience of the 2012 Olympic and Paralympic Games](#), including its appendices. No further information on the mechanisms was found.

¹¹⁵ For a list of all services, see the report on pages 11-12.

¹¹⁶ See commentary to Principle 25 of the UNGPs: "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 routinised, 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".

- contractors, and
- volunteers.

The disputes covered under the Protocol amount to minor and serious issues and gross misconduct. Examples for gross misconduct are:

- Breaking the law;
- Theft or deliberate damage to LOCOG, third party or venue property;
- Abuse of a spectator or another member of workforce – if involved children or vulnerable adult, refer to the Safeguarding policy;
- Threatened or actual physical violence against a spectator or another member of workforce or another third party;
- Unlawful harassment or discrimination;
- Bullying or victimisation;
- Corruptive or severe anti-social behaviour;
- Bringing LOCOG into disrepute.

More examples can be found on p. 22 of the [report](#).

The Protocol entailed slightly different procedures for the different groups to which the Protocol applied. However, all procedures were structured in a way that any disciplinary action was dealt with in the Functional Area (FA). Escalations should involve Workforce Operations (WFO).

All minor issues were dealt with by informal discussions with the FA Line Manager. Serious issues and gross misconduct was dealt with by the WFO Manager and the FA Line Manager.

The procedure for an LOCOG employee, for example, started with an initial investigation by an WFO manager (in case of serious issues or gross misconduct) within one calendar day, to gather facts, take statements from victims and collect documents. If based on this information a disciplinary action seemed reasonable, a formal disciplinary procedure would start. The employee would then be invited to a disciplinary hearing managed by a new WFO manager. Following the hearing, a decision would be taken within one calendar day following the hearing, by yet again a new WFO manager.

The employee had the right to appeal the decision within 3 calendar days following the decision. For the all other groups, the disciplinary hearings had to be conducted by the employing organisation and not LOCOG.

2) *Helpline Service*

Acas set up a bespoke Helpline, which could be reached through a dedicated Olympic telephone number that was connected to Acas' main helpline. The service was accessible for 6000 LOCOG staff and workers, 70,000 volunteers and 1,000,000 people connected to the Olympics through contractors. The Advisers gave advice on the specific Olympic Employee Terms and Conditions of Service. They also identified issues to be referred to faster dispute resolution channels.

Of the 156 Olympic-related calls, only 4 were made through the dedicated Olympic telephone number, due to a lack of awareness. Most calls were made by contractors or direct employees, and less calls came in from LOCOG employees and volunteers. The main subject areas of the calls were:

- Wages and national minimum wage,
- Discipline, dismissal and grievance,
- Contracts.¹¹⁷

The Olympic-hotline operated from mid-April 2012 to mid-September 2012, from 8am to 8pm Mondays to Fridays and from 9 am to 1 pm on Saturdays. The last Olympic-related referral was made in October. In fact, once the Games finished there was an increase in calls (to Acas' main Helpline).¹¹⁸

3) *Individual dispute resolution*

Acas established the Olympic PCC (OPCC), which included pre-employment tribunal and post-employment tribunal claim conciliation and mediation requests from those that called the Helpline. It dealt with cases immediately within a response time of 2 working hours. In case it came to conciliation or mediation, a face-to-face meeting would be organised on Acas premises in the first instance. If necessary, an OPCC conciliator could also visit parties on site.

There were 90 OPCC cases relating to issues such as varying pay rates and non-payment of contract staff, as well as some discrimination cases.

32 cases have been referred to Acas' pre-claim conciliation service on disputes over wages.

4) *Collective dispute resolution*

Acas also offered collective conciliation¹¹⁹, in which one conciliator worked with all parties involved to reach a mutually agreed outcome. This service was

¹¹⁷ A more detailed description of the calls can be found on p. 27-28 of the Acas report.

¹¹⁸ See p. 16 of the report.

¹¹⁹ It is perceived as flexible dispute resolution method, which does not follow prescribed rules. The conciliator's role is to de-escalate the situation by finding common ground. Unlike arbitration, parties can walk away at any time because they did not agree to have a third party take a decision on the outcome of their dispute that is

installed to minimise the risk of collective industrial action on disciplinary matters or payment issues during the event. To some extent it also worked as preventive mechanism, since Acas encouraged employers and trade unions associated with the Games to anticipate what issues could arise and think ahead how those could be addressed. In addition, contact lists were drawn up and distributed for urgent use in the event of disputes.

Acas made sure there were enough conciliators available to react quickly in case disputes would still arise. During the period of the Olympics, there were 20 collective conciliations, mostly related to general pay claims and some others to working practices. Most of them were settled and there was only one day of strikes and no other industrial action during the 2012 Olympic/Paralympic Games.¹²⁰

The Acas report states that confidentiality was being respected 'where possible'.

WHO HAS ACCESS AND HOW?

All employers and employees on LOCOG controlled venues and with disputes related to the 2012 Olympic and Paralympic Games could make use of these mechanisms and services.

WHO OVERSEES THE MECHANISM?

Acas itself oversees the Olympic program and the related mechanisms.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

The focus of the mechanisms and services put in place was on workplace disputes, such as payment related disputes, working conditions, working practices, workplace discrimination, etc.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The outcome of the dispute resolutions were mainly direct improvements of working conditions, such as higher wages or reduced or improved working hours.

WHAT LAW IS APPLIED?

In general, Acas' Code of Practice for dealing with disciplinary issues applied. In addition, the procedural rules stipulated in the Protocol applied. For volunteers also the volunteer code of conduct applied.

HOW CAN GRIEVANCES BE ESCALATED?

automatically binding. The conciliator decides the format of conciliation and can follow its own style of mediation depending on the dispute and actors involved.

¹²⁰ The report is not very clear on how many cases were settled or unsuccessful. See p. 17.

The mechanism is based on dialogue and conciliation. If the outcome is not satisfactory, judicial procedures could be started.

ADDITIONAL INFORMATION

Example Case: Collective conciliation between the National Union of Rail, Maritime and Transport Workers (RMT) and London Underground Limited (LUL).

The dispute arose prior to the games, due to changes in working patterns and practices in preparation for the period of the Games. More specifically, the timetable for the Games extended the normal working day to ensure the Underground was able to deal with predicted extra passenger demand. For these changes the agreement of the respective trade unions was needed and when the negotiations stalled, Acas was asked as independent, non-judgmental but proactive third party to help the parties agree on a deal.

In total, four unions were involved in the talks. After Acas got involved, agreement could be reached with one union early on, but negotiations continued with the other three. The most pressing issue was the question of the appropriate Games reward package for the different groups of staff (in addition to more specific questions). Through conciliation, the deadlock could be resolved and an acceptable outcome for both sides was found. Thereby, potentially damaging impacts on the Games could be prevented.

17. ATHLETE OMBUDSMAN OFFICE OF THE USOC

GENERAL INFORMATION

The [Athlete Ombudsman Office of the U.S. Olympic Committee](#) is created by federal statute to offer athletes cost-free and independent advice on their rights to participate in competitions and on the policies and procedures for participation in the Olympic and Paralympic sport in the U.S.. In addition, it supports athletes in the mediation of disputes with sports governing bodies and the U.S. Olympic Committee.

HOW DOES THE MECHANISM WORK?

The Ombudsman Office does not have its own remedy mechanism in place. Instead, it offers advice and information about rights, resources and options at any stage of a dispute or grievance within the Olympic and Paralympic Sport. It helps athletes navigate the rights and protections they enjoy and how to access various formal and informal mechanisms and remedies. With informal resolution, the Athlete Ombudsman can assist with giving confidential advice, facilitating communication between parties or even act as mediator in the resolution of the dispute. When informal resolution of a dispute is not satisfactory, it explains the process of how to file a formal grievance and seek appropriate legal counsel if necessary.

The Athlete Ombudsman serves as an adviser to victims and/or accused athletes of sexual, emotional and physical misconduct with the [U.S. Center for SafeSport](#), an independent agency created by the U.S. Olympic Committee with the authority to respond to reports of sexual misconduct with the U.S. Olympic and Paralympic Movements. The Athlete Ombudsman also serves as a confidential adviser to athletes who are questioned, interviewed, or have been accused of anti-doping rule violations.

WHO HAS ACCESS AND HOW?

The Ombudsman prioritises athletes who are competing at international competitions on behalf of the U.S. but is available to any athlete member of the 50 Olympic and Paralympic sport organisations of the U.S. Olympic Committee. The Ombudsman Office website provides an email address as well as a hotline through which athletes can get in touch with the Office.

WHO OVERSEES THE MECHANISM?

The Ombudsman Office was established by the U.S. Olympic Committee and within the federal statute that governs Olympic and Paralympic sport in the U.S. It is positioned within the leadership of the USOC and Athletes' Advisory Council, but is authorised to offer cost-free independent advice to any athlete.

WHAT KINDS OF COMPLAINTS ARE DEALT WITH?

Typical issues that the Athlete Ombudsman Office can assist with are:

- Athlete rights;
- Team selection and the opportunity to participate in international competition;
- Anti-doping;
- Access to elite athlete services (e.g. health insurance, stipends, mental and medical health care);
- Athlete agreements, codes of conduct, direct athlete support agreements
- Commercial rights;
- Citizenship and other eligibility concerns;
- SafeSport;
- Athletes' voice in the governance of sport.

HOW CAN GRIEVANCES BE ESCALATED?

Since the service of the Office of the Ombudsman do not present formal remedy mechanisms on their own, athletes can turn to grievance mechanisms within the sport national or international governing bodies or other adjudicating bodies (i.e., private arbitration providers designated to handle sport disputes in the U.S., or the CAS) if the conflict was unable to be resolved satisfactorily through efforts with the Ombudsman.

ADDITIONAL INFORMATION

The website also provides a list of attorneys in case the athletes need legal counsel or representation, including a short description of the expertise of each attorney. These attorneys engage with athletes at varying rates, with some offering pro bono services.

The Ombudsman services are offered cost-free. It also operates under the duty of confidentiality and impartiality. This means that means that all communication with and information from athletes can be treated confidentially to the extent permitted by law, and that the Ombudsman owes a duty to athlete rights generally and will not advocate for individual athlete positions when it could impact the rights of other athletes.

18. U.S. CENTER FOR SAFESPORT

GENERAL INFORMATION

The U.S. Center for SafeSport has been launched in March 2017 as a national non-profit organisation that aims to end all forms of abuse in sport through providing education, resources and training for the promotion of respect and prevention of abuse in sport. To fulfil that aim, it has several offices, of which the Response and Resolution Office is the most important one in terms of available remedy mechanisms.

HOW DOES THE MECHANISM WORK?

The Response and Resolution Office has the power to investigate and resolve alleged violations of the [Safe Sport Code](#) for the U.S. Olympic and Paralympic Movement's 47 member National Governing Bodies. Once a suspected violation has been reported, the Center has three options to act. First, it can initiate an informal resolution. Secondly, it can conduct a full investigation. Thirdly, it can conclude that the alleged violation is out of the Center's scope and refer the case to the relevant body, such as the U.S. Olympic Committee. Under the first option, the Center conducts an informal inquiry to get an overview of the facts in order to take a decision whether the matter should be solved informally, investigated further, or not investigated at this time. In case it opts for a full investigation, the Center informs both parties, which will be given the opportunity to provide evidence and contact details of witnesses. An investigator of the Center will review the evidence and interview the witnesses, and prepare a report based on the information received. This report entails details on the facts of the case and the investigator's conclusion on whether or not a violation of the SafeSport Code occurred. If applicable, the report will also include a recommendation for sanctions. The Center's director of investigations takes a final decision on whether the individual(s) in question violated the SafeSport Code, based on the evidence and the report.

Throughout the procedure, the Center will protect the privacy of all individuals involved to the greatest extent possible.

WHO HAS ACCESS AND HOW?

The mechanism is accessible for all individuals, adults and children, covered by the SafeSport Code and under the governance or disciplinary jurisdiction of USOC and USA Diving. USOC and USA Diving can authorise the Center to have jurisdiction over certain individuals who would otherwise not fall within the scope.

Those who are over the age of 18 are required to report violations of the Code related to sexual misconduct. Those who fail to report such cases may be facing disciplinary proceedings.

The [Center's website](#) offers two different ways to access the mechanism: through the website itself, or by phone. Reports can be submitted

anonymously.

WHO OVERSEES THE MECHANISM?

No information regarding overseeing the Center's mechanism is provided. The Center itself is governed by a nine-member board of directors, which have expertise in the areas of abuse prevention and investigation, ethics compliance and sport administration.

WHAT KIND OF COMPLAINTS ARE DEALT WITH?

The Center can only deal with allegations of violations of the [SafeSport Code](#) involving sexual misconduct. In some cases, the Center can be authorised to look into cases that are non-sexual in nature, such as physical misconduct, emotional misconduct, bullying, hazing and harassment. However, that is to be decided by USOC or USA Diving for a particular case.

WHAT KIND OF REMEDIES CAN BE ISSUED?

The mechanism is a disciplinary process for the protection of individuals from (sexual) misconduct in the context of sport. Hence, the sanctions issued are proportionate to the violation committed and oriented towards education, considering factors such as the seriousness of the violation, the age of the individuals involved, and whether or not the alleged violator presents a safety risks for other individuals. Examples of sanctions are warnings, loss of privileges, education, probation, or eligibility and even participation restrictions.

These sanctions are recommended by the Center, but it is up to the respective sport governing bodies to implement them.

WHAT LAW IS APPLIED IN PROCEEDINGS?

The [SafeSport Code](#) functions as benchmark for the determination of whether or not a violation has occurred.

HOW CAN GRIEVANCES BE ESCALATED?

In case the Center's director of investigation decided that a violation of the SafeSport Code occurred, the respective individual can resort to arbitration.

ADDITIONAL INFORMATION

The data aggregated by the Center through its investigations is used for strengthening the prevention of cases of abuse in sport, by identifying trends and patterns.

Links for further reading:

- [Response and Resolution Office – General information:](#)

<https://safesport.org/response-resolution-overview>

- Response and Resolution Office – What you need to know: <https://www.usawaterski.org/graphics/downloads/SafeSportCommunication2.pdf>
- Policies and Procedures: <https://safesport.org/policies-procedures>

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