



Remedy Mechanisms for Human Rights in the Sports Context

Sporting Chance White Paper 2.4
Version 1, January 2017



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Authorship note: The White Papers in this series represent the views of either co-authors, respective authors (where separate sections have been contributed), and in some cases, interviewees. For the avoidance of doubt, where individual authors are named, the views are their own and not those of their organisation. Where there are multiple contributors, the papers do not necessarily represent the views of each contributor and no consensus is implied.

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The Mega-Sporting Events Platform for Human Rights

The Mega-Sporting Events Platform for Human Rights (MSE Platform – www.megasportingevents.org) is an emerging multi-stakeholder coalition of international and intergovernmental organisations, governments, sports governing bodies, athletes, unions, sponsors, broadcasters, and civil society groups. Through dialogue and joint action our mission is to ensure all actors involved in staging an event fully embrace and operationalise their respective human rights duties and responsibilities throughout the MSE lifecycle. Chaired by Mary Robinson, the MSE Platform is facilitated by the Institute for Human Rights and Business (www.ihrb.org).

The Sporting Chance White Papers

This White Paper Series was originally developed to support the Sporting Chance Forum on Mega-Sporting Events and Human Rights, co-convened by the US Department of State, the Swiss Federal Department of Foreign Affairs, and IHRB in Washington D.C. on 13-14 October 2016. Comments were received at and following the Forum, and each White Paper has been updated to reflect those inputs.

A total of 11 White Papers have been produced, clustered into four themes referring to key stakeholder groups (see below). These White Papers aim to present the latest thinking, practice, and debate in relation to key human rights issues involved in the planning, construction, delivery, and legacy of MSEs. Each paper also considers the case for, and potential role of, an independent centre of expertise on MSEs and human rights.

Each White Paper has been published as “Version 1” and the MSE Platform would welcome comments, input, and expressions of support with regard to future iterations or research on each topic.

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Executive Summary

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Access to remedy is one of the three pillars of UN Guiding Principles on Business and Human Rights (UN Guiding Principles). It is also a key component of the mandate of National Contact Points (NCP) for the OECD Guidelines for Multinational Enterprises and National Human Rights Institutions (OECD Guidelines). In the context of international sport, specific dispute resolution mechanisms exist. In some cases, they address human rights issues such as the right to a fair trial. However, they have not been designed to address all the human rights-related issues that may arise from Mega Sporting Events (MSE), be it human rights issues within sports events themselves, or human rights impacts related to the organisation and holding of sports events. On the other hand, a range of other mechanisms exist which complement sports-related ones, including judicial mechanisms, such as national courts and tribunals, as well as a range of non-judicial mechanisms.

This paper maps out various means of access to remedy in a sport-related context, including mechanisms within selected sports bodies and institutions, and identifies current gaps in dealing with human rights-related issues, as well as judicial and non-judicial mechanisms that may be used to deal with human rights issues. For each mechanism, the strengths and challenges in dealing with human rights-related issues are briefly indicated. The paper then identifies the gaps in access to remedy, suggests how they might be filled and provides recommendations on the role that a mega sporting events centre or mechanism (MSE Centre) might play in providing guidance on existing mechanisms, in addressing gaps and in providing access to a remedy for the victims of human rights abuse in connection with a MSE.¹

Three major gaps have been identified:

- There is presently an absence of a binding and standing human rights policy and capacity across international sport within major international sports organisations (ISOs) and, as a consequence, no recourse to dispute resolution through such channels can be had for cases related to human rights
- Notwithstanding the capacity of ISOs to protect, promote and enforce human rights through a sports-based grievance mechanism, such a mechanism has not been created
- There is a lack of recognition and promotion by ISOs of external dispute resolution mechanisms. All mechanisms for remedy need to be promoted and accessible

¹ In the labour and employment context, the topic of collective bargaining is closely related to that of access to remedy. In this regard, reference is made to the separate contributions in Test Track 1.4 on collective bargaining and professional athletes in Test Track 4.3.

in the event that more consensual mechanisms fail. As this paper identifies, 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

All three gaps can be addressed through the work of the proposed MSE Centre. Accordingly, this paper makes ten major recommendations on the question of access to remedy. They address:

- the development of the requisite policy and legal framework to apply to MSEs, based on accepted international human rights standards and existing principles and criteria (e.g. the UN Guiding Principles)
- promoting awareness of, and access to, existing judicial and non-judicial mechanisms
- assisting with the development and tailoring of grievance mechanisms at the sporting and community levels
- building knowledge and expertise in relation to grievance mechanisms and remedy
- providing a forum for the promotion and exchange of best practise when it comes to the prevention and remedying of human rights abuse in relation to MSEs.

1 Human Rights and Access to Remedy in the Sports Context

ISOs have long and successfully advocated for autonomous governance and legal recognition of sport's special character. The modern legal and political recognition² of the notions of the autonomy and specificity of sport have enabled ISOs to establish a legally binding institutional framework that upholds rules that the sport regards as

² See, for example, article 165 of the Treaty of Lisbon, at www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-xii-education-vocational-training-youth-and-sport/453-article-165.html and International Olympic Committee, 'Historic milestone: United Nations recognises autonomy of sport', 3 November 2014, <http://www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276>

important even where they may be counter to recognised rights under international and domestic law. As a result, those same notions have contributed to a number of undesirable consequences for sport, including corruption, cheating and, most harmfully, abuse of human rights in connection with Mega Sporting Events.

Human rights issues relating to MSEs include:

- forced evictions without due process or compensation
- abuse and exploitation of migrant and other workers, including abuses in the construction of sports infrastructure and in supply chains of sports equipment, clothing, amongst others
- limiting and controlling the rights of athletes and other workers involved in the delivery of an event to organise and collectively bargain
- limiting freedoms of expression and association including the silencing of civil society and rights activists, threats to journalists and limiting news reporting ostensibly to protect commercial media rights for an event or the political interests of host cities and nations
- blatant discrimination against groups of people that would be unlawful under international human rights law, such as denying people access to a sporting event on the basis of their gender
- bribery and corruption in connection with the awarding of MSEs and a lack of transparency and accountability in the use of the proceeds of MSEs³

As Professor John G. Ruggie eloquently put it in his recent report, 'For the Game. For the World. FIFA and Human Rights' to football's international governing body, the Fédération Internationale de Football Association (FIFA):

*"FIFA acts vigorously to develop and enforce regulations related to its institutional and commercial interests. But when it comes to many other matters, even where the rules are robust, FIFA's capacity to ensure their implementation is often lacking, and FIFA relies heavily on self-regulation by the parties to which the rules are addressed."*⁴

This comment can also be applied to ISOs other than FIFA, especially when it comes to MSEs, where cases of manifest human rights abuses over the life cycle of an event have not been addressed and remedied.

The importance of participants in the organisation of sports events being able to quickly and effectively access a remedy is well understood in most sports, especially for matters of commercial regulation, sporting rules, on-field discipline etc. However, access to remedy for the abuse of the myriad of human rights and other freedoms that

³ As Professor Ruggie notes at page 21 in his report to FIFA (Ruggie, J. 2016), a lack of financial integrity is a "foundational source" of human rights risk by enabling the parties involved to avoid legal and contractual obligations, including in relation to human rights.

⁴ See Ruggie, J (2016), page 27.

may be linked to a MSE is less clear.

The ways in which grievances may be raised in relation to a MSE might include:

- Complaints to an organising committee about construction impacts on land and labour rights
- Complaints about supply chain labour standards in a sponsor or licensee's supplier factories
- Complaints to an organising committee about restrictions on freedom of expression
- Complaints about discrimination against athletes

2

Mapping of Existing Remedy Mechanisms

The first part of this section describes the mechanisms for access to remedy for human rights abuses. It describes the different mechanisms and provides an overview of their strengths and challenges in dealing with human rights issues in the sports-context. The focus is on sports-specific and other non-judicial mechanisms, since it goes beyond the scope of this paper to analyse in detail the domestic judicial institutions available in different countries to provide remedy in cases of human rights abuses. Therefore, this section only provides some examples of how human rights in the sports context have been handled in domestic courts.⁵ This paper looks at general mechanisms, available in a large number of countries in which MSE could be held, but does not analyse mechanisms which may exist in one single country or group of countries.

2.1 Mechanisms in the Sports Context

2.1(a) Sport and Human Rights

The Olympic Charter, as in force from 8 December 2014, governs the organisation,

⁵ In the context of business and human rights, the various documents issued under the OHCHR Accountability and Remedy Project: improving accountability and access to remedy in cases of business involvement in human rights abuses provide useful guidance www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx

action and operation of the Olympic Movement and sets forth the conditions for the celebration of the Olympic Games. The Charter serves three main purposes:

1. it sets forth and recalls the fundamental principles and essential values of Olympism
2. serves as statutes for the International Olympic Committee (IOC)
3. defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement, namely the IOC, the International Federations and the National Olympic Committees, as well as the Organising Committees for the Olympic Games, all of which are required to comply with the Olympic Charter.

The Olympic Charter champions the advancement of humanity and peace. For example, it provides that the “goal of Olympism is to place sport at the service of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity” and states that “the practice of sport is a human right”. It further states that the IOC’s role is, *inter alia*, “to cooperate with the competent public or private organisations and authorities in the endeavour to place sport at the service of humanity and thereby to promote peace”. The Olympic Movement is carried out under the “supreme authority” of the IOC. In this way, the Olympic Charter expressly connects sport, human rights and peace and builds on the philosophy that underpinned the adoption of the Universal Declaration of Human Rights in 1948.

2.1(b) Sports Arbitration and Grievance Mechanisms

Those participating in sport under the auspices of the IOC or another ISO are almost always required to ultimately have sports or labour related disputes determined by the Court of Arbitration for Sport (CAS), which is headquartered in Lausanne, Switzerland.

Chapter 6 of the Olympic Charter deals with “Measures and Sanctions, Disciplinary Procedures and Dispute Resolution”. It provides for a wide range of measures and sanctions where the Olympic Charter and regulations promulgated by the IOC and recognised bodies in advancement of the Charter have been breached. Measures and sanctions may be taken against members of the Olympic Movement including IOC members, international sporting federations, national Olympic committees, host cities, Olympic organising committees, candidate cities and other recognised associations and organisations. The sanctions include withdrawal from the Olympic Games (including from a sport, event or a discipline), suspensions, withdrawal of recognition and reprimands. The right to host the Olympic Games can be withdrawn (Rule 59.1.6).

It would be a straightforward matter for these measures to be applied or even expanded upon and supplemented to deal with any human rights abuse within the Olympic Movement, including by providing victims with access to appropriate remedies.

Rule 61 deals with the resolution of any disputes arising from the Olympic Charter in clear terms:

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

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

FIFA similarly recognises CAS, including in relation to disputes between "between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents." The recently amended FIFA Statutes provide that: "CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law." Article 59 of the amended FIFA Statutes further provides that: confederations, member associations and leagues shall recognise CAS; recourse to ordinary courts is prohibited unless specifically provided for in FIFA regulations; and member associations must insert a clause in their statutes or regulations that it is prohibited for disputes including between clubs and players to be resolved in the ordinary courts of law.

On the issue of arbitration at the regional or national level, article 59.3 of the FIFA Statutes provides that, "Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal under the rules of the association or confederation or to CAS."

The legal power of sports arbitration cannot be understated. In a recent paper on the development of football's labour market regulations following the 1995 Bosman decision of the European Court of Justice,⁶ the involvement of the European Commission and the enforcement of FIFA regulations by the CAS, leading legal academic Antoine Duval wrote:

*"Thanks to the accommodating stance of Swiss arbitration law towards the use of transnational private rules in international arbitration, the CAS is in practice disregarding national law when adjudicating on disputes based on the FIFA Regulations for the Status and Transfer of Players (FIFA RSTP). Consequently, the FIFA RSTP is very much the only source of law applying to disputes linked with international transfers and contracts of football players (and coaches)."*⁷

6 [1995] ECR I-4921

7 Duval, Antoine, 'The FIFA Regulations on the Status and Transfer of Players: Trans-national Law making in the Shadow of Bosman', Asser Research Paper 2016-06, April 2016, p. 24.

Recent court decisions on the enforceability of CAS arbitral awards, including in relation to German speed skater Claudia Pechstein who has challenged the authority of the CAS on constitutional grounds as well as grounds of competition and international arbitration law, further entrench the power of ISOs. Accordingly, international sporting regulations can legally prevail over national law, even where they do not have regard to international human rights standards.

In response to criticism over human rights abuses in connection with the FIFA World Cup, the FIFA Statutes were recently amended with the inclusion of Article 3, which reads as follows: "FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights."

The IOC and FIFA have proven, through the relationship between international sporting regulation and global arbitration, that the legal apparatus can be established to not only promote, but also protect human rights by providing a grievance mechanism that ensures access to a remedy. However, this is not to recommend that the CAS be given that responsibility. This role could possibly be better performed by the proposed MSE Centre or another tailored grievance mechanism. The CAS was specifically established to deal with sport disputes, not matters of human rights. As Professor Ruggie noted in his report to FIFA:

*"If an arbitration system is going to deal effectively with human rights-related complaints, it needs certain procedural and substantive protections to be able to deliver on that promise. While the FIFA dispute resolution system and the CAS' 300-plus arbitrators who sit at the peak of the system may be well equipped to resolve a great variety of football-related disputes, they generally lack human rights expertise."*⁸

The international standard for the conduct and international recognition of arbitral awards is the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Among many procedural safeguards, it requires the composition of the arbitral panel to be "in accordance with the agreement of the parties". This is a challenge to sport's global governance framework which gives sporting interests (including those of the IOC and ISOs) substantial perceived control and influence over sports arbitration, including the CAS.

If human rights are defined based on indisputable international standards such as the Universal Declaration of Human Rights and the International Labour Organization's (ILO's) fundamental rights at work, then there is no reason why sporting rules cannot be made subject to human rights requirements. A written human rights policy is required that should be enshrined into the global regulatory and contractual framework of each sport.

Included as Appendix 2 is a brief overview of the grievance and complaints mechanisms developed for the London 2012 Olympics, and at Appendix 3 is a draft paper suggesting a framework of grievance mechanisms for the Tokyo 2020 Olympics.

2.1(c) IOC Reporting Tools

The IOC, in response to criticisms over freedom of the press and the media at earlier Olympic Games, launched a reporting tool on press freedoms at the 2016 Rio Olympics. The tool allowed journalists to lodge web-based complaints where they felt that their freedoms had been violated. The tool was developed in consultation with the Committee to Protect Journalists.

In announcing the tool on 3 August 2016, the IOC said in an official statement that the:

*"creation of the reporting tool follows the unanimous approval of Olympic Agenda 2020, the IOC's strategic roadmap for the future of the Olympic Movement, and consultation with the Committee to Protect Journalists, in order to help ensure that media can report freely on the organisation and staging of the Olympic Games."*⁹

The destiny of any complaint is a matter for the IOC. The online tool states to any prospective complainant:

"This tool is intended solely for journalists and media representatives reporting on the organisation and staging of the Olympic Games who – in this context – may have experienced a violation of their press freedom and wish to make a complaint to the IOC. Each incident report will be dealt with on a case-by-case basis.

If the IOC determines that there are strong grounds for accepting that a press violation may have occurred in the context of the Games, it will follow-up with the relevant stakeholders concerned such as internal IOC Departments and the Organising Committee of the Olympic Games.

*For all non-Games-related media complaints, the IOC recommends you redirect your concern to the relevant international organisations."*¹⁰

The IOC has also established reporting tools on integrity and abuse / harassment.

⁹ <https://www.olympic.org/news/ioc-launches-reporting-tool-for-press-freedom-violations-at-the-games>

¹⁰ <https://secure.registration.olympic.org/en/media-complaint/>

Mechanisms in the Sports Context

Strengths

Potentially timely and cost effective. International consistency. Enforceable within the sporting framework and in multiple jurisdictions.

Challenges

Substantive and procedural protections needed. Limited by the terms of prevailing contracts and regulations. Limited access to remedy where mechanism is based on self-regulation.

2.2 State-based Judicial Mechanisms

As stated in the UN Guiding Principles on Business and Human Rights, “effective (state-based) judicial mechanisms” are “at the core of ensuring access to remedy.”¹¹ The independence of sports has led to human-rights-related issues, in particular those pertaining to athletes’ rights, to be dealt with within dispute resolution mechanisms that are specific to sports organisations.

As early as 1891, English football adopted a player transfer system. 10 years later, it imposed a maximum player wage of £4 per week. It was not until 1963 that football’s governors were brought to account, by professional footballer George Eastham and future English Lord Justice Richard Wilberforce, who asserted that the law was competent to examine football’s transfer system despite claims that its abolition would result in the death of professional football itself. Wilberforce considered the system an unreasonable restraint of the trade of professional footballers, describing it as:

“an employers’ system, set up in an industry where the employers have succeeded in establishing a monolithic front all over the world, and where it is clear that for the purpose of negotiation the employers are vastly more strongly organized than the employees. No doubt the employers all over the world consider the system a good system, but this does not prevent the court from considering whether it goes further than is reasonably necessary to protect their legitimate interests.”¹²

Jean Marc Bosman won a similar legal victory 30 years later with the clear finding that professional footballers, like all workers within the European Union, have the right to move freely within the Union and that the special interests demanded by sport do not sit above, nor justify a departure from, the rule of law.

¹¹ See page 28 of the UN Guiding Principles.

¹² Eastham v Newcastle United [1964] Ch. 413

A number of important factors may limit recourse to judicial mechanisms such as courts of law in order to ensure human rights are respected and upheld in connection with MSEs. For example:

- the awarding, organising and conducting of MSEs in jurisdictions which have domestic laws that conflict with international human rights standards
- the time pressure under which sporting events are organised and held, which contrasts with the often slow and expensive nature of the judicial process
- the terms of contracts and regulations which:
- fail to adequately embed human rights standards
- do not impose obligations over the entire life cycle of an event
- fail to bring all relevant entities and potential human rights abusers and victims within the requisite contractual nexus
- provide for arbitration or expressly exclude recourse to the courts
- financial, reputational and other pressures which limit the capacity of the victims of human rights abuse to pursue legal action.

Professor Ruggie referred to these challenges when reporting to FIFA on a case involving alleged gender discrimination:

*"While FIFA's regulations contain formal exceptions to the prohibition of legal claims, in practice the system seems more like a closed loop. For example, players from several countries participating in the 2015 Women's World Cup in Canada filed a complaint with the Human Rights Tribunal of Ontario on grounds of gender discrimination. Clearly, they were not prevented from accessing a public tribunal. But when they did so, they were allegedly threatened with suspension from their teams and from participating in the Cup." In conclusion, he stated that: "...in cases that raise significant human rights issues, the ability for players to access effective remedy—including, where they so choose, through domestic courts or tribunals—must be a real and not merely a theoretical possibility."*¹³

State-based Judicial Mechanisms

Strengths

The strongest authority in nations with a highly regarded and effective judiciary and legal system backed by national law which gives domestic effect to international human rights standards.

Challenges

Barriers of culture, economics and time. Lack of international consistency. Potentially very time and resource intensive.

2.3 State-based Non-judicial Mechanisms

The second broad category of grievance mechanisms is non-judicial mechanisms. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, need to meet a number of criteria, as set out in principle 31 of the UN Guiding Principles. They should be legitimate; accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning. An example of how one of these grievance mechanisms is benchmarked in another context is provided. The remainder of this section describes widely available mechanisms to address human rights issues,¹⁴ including state and non-State mechanisms.

2.3(a) National Human Rights Institutions

National human rights institutions (NHRI) are established by law or constitution to promote and protect human rights in their respective countries. They are independent national bodies established to stand up for those in need of protection in their country and to hold the government of that country to account for their human rights obligations. They are a domestic part of the United Nations human rights system. In some countries the NHRI and Ombudsman roles are combined. National human rights institutions are State bodies with a constitutional and/or legislative mandate from the State to protect and promote human rights. They are part of the State apparatus and are funded by the State.

While their specific mandate may vary, the general role of NHRIs is to address discrimination in all its forms, as well as to promote the protection of civil, political, economic, social and cultural rights. Core functions of NHRIs include complaint handling, human rights education and making recommendations on law reform.

At the global level, the Global Alliance of National Human Rights Institutions (GANHRI) works to encourage the establishment and operation of independent NHRIs. There are four regional coordinating committees of NHRIs in Africa, the Americas, Asia Pacific and Europe. The Office of the United Nations High Commissioner for Human Rights (OHCHR) also supports GANHRI and NHRIs.

NHRIs operate and function independently from government. The 1991 Paris Principles, which were adopted by the United Nations General Assembly two years later, set out the minimum international standards required for NHRIs to effectively fulfil their role. They include the need for a broad-based mandate; guarantees of independence; autonomy from government; pluralism of members and staff; adequate powers of investigation; and adequate resources. If they meet the requirements of the Paris Principles, they gain "A" or "B" status from GANHRI. "A" status NHRIs have right to speak about human rights issues affected people in their State in many UN human rights fora including UN Human Rights Council; increasing international visibility and participation rights in UN for "A" status NHRIs could raise concerns about MSEs

¹⁴ Some of these mechanism such as the National Contact Points have a broader mandate, which covers also issues such as environment, corruption, etc.

relating to their State in UN fora. GAHNRI or regional NHRI bodies could raise global or regional concerns as well.

NHRIs around the world have worked with sport to promote human rights (e.g. Australia's NHRI has worked with all professional sporting codes on promoting human rights; Scotland's NHRI worked on human rights issues with the organising Committee of the Glasgow Commonwealth Games and Northern Ireland and Australia's NHRI are working on upcoming events). In some states the anti-discrimination law provides specific exemptions for sports organisations to discriminate on the basis of nationality or gender. In New Zealand, the NHRI is currently working with sports organisations on issues relating to sports judicial procedures and children's rights to a fair trial in relation to on field racism and on gender equality issues.

In recent years, NHRIs have developed networks to share information and promote their work. They have also worked together in multi-jurisdictional issues such as slave or forced labour and business and human rights issues.

Strong and effective NHRIs help bridge the "protection gap" between the rights of individuals and the responsibilities of the State by:

- monitoring the human rights situation in the country and the actions of the State
- providing advice to the State so that it can meet its international and domestic human rights commitments
- receiving, investigating and resolving complaints of human rights violations and intervening in human rights related litigation between others
- undertaking human rights education programs for all sections of the community
- engaging with the international human rights community to raise pressing issues and advocate for recommendations that can be made to the State

National Human Rights Institutions

Strengths

In many countries NHRIs have dispute resolution and mediation processes for the resolution of human rights disputes. Human rights issues arising in relation to sports events can be handled under these mechanisms and processes. These processes have operated in some NHRIs for over 40 years and have resolved human rights issues more swiftly than judicial alternatives. They do not compromise the ability of complainants to take a judicial route.

NHRIs are likely to be particularly useful in areas of unlawful discrimination. They are accessible to any interested party, including individuals, trade unions, NGOs, businesses etc. Coverage is wide – 117 States have an NHRI (75 are "A" status;

32 “B” status and 10 no status). NHRIs often use alternative dispute resolution and mediation to resolve matters swiftly and low cost. They can commence motion inquiries in regard to a wide range of human rights abuse.

Challenges

Coverage is not universal and status/independence are issues for a number of NHRIs; many NHRIs are not mandated to provide compensation to victims; abuses involving actors in many countries require the cooperation of a number of NHRIs (e.g. slave fishing may occur in one State’s territorial waters; be carried out by a ship flagged and business based in another State and have workers who are residents of other States). Sometimes mandate or demand for service focuses NHRIs on narrower parts of their mandate like anti-discrimination. NHRIs generally have very limited resources, and prioritising serious human rights issues surrounding MSEs against other human rights priorities of the NHRI may be a challenge, unless resourced to do so on top of existing work.

2.3(b) National Contact Points for the OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. The 2011 revision of the OECD Guidelines added a chapter on human rights aligned with the language of the UN Guiding Principles.

The OECD Guidelines are the only international instrument for responsible business conduct with a mechanism that provides access to remedy – the National Contact Points (NCPs). All governments adhering to the Investment Declaration are required to set up a NCP, to further the effectiveness of the OECD Guidelines, and make human and financial resources available to their NCP to fulfil their responsibilities. NCPs have the mandate to promote the OECD Guidelines, and to deal with issues related to non-observance of the OECD Guidelines by companies in specific instances.

To date, over 360 specific instances have been handled by NCPs, addressing impacts from business operations in over 100 countries and territories. Specific instances treated have covered all chapters of the OECD Guidelines with the majority focusing on the chapters on employment and industrial relations (55%), human rights (24%) and environment (21%). Two recent specific instances have targeted sport organisations. One was a complaint against Formula One (2014), submitted to the UK NCP, arguing that it had breached the general principles, and human rights provisions of the Guidelines in Bahrain in relation to the management of the Formula One motor racing

Grand Prix.¹⁵ The outcome was a mediated agreement between the parties¹⁶. The other specific instance was submitted to the Swiss NCP by the Building and Wood Workers' International (BWI) regarding alleged human rights violations of migrant workers of the Guidelines by the FIFA in Qatar. The resolution of this case is pending.¹⁷ In addition, a range of specific instances have dealt with issues that could be of interest in the sports context, including: child or forced labour in supply chains; lack of consultation with local communities, environmental damages in the context of business operations; amongst others.

Utilisation of the OECD Specific Instance Mechanism

Non-governmental organisations (NGOs) have historically been the main group using the specific instance mechanism, accounting for 80 (48%) specific instances since 2011, followed by trade unions which account for 41 (25%) specific instances since 2011. Individuals have filed 33 (19%) specific instances since 2011. Between 2011 and 2015, approximately half of all specific instances which were accepted for further examination by NCPs resulted in an agreement between the parties. Agreements reached through NCP processes were often paired with other types of outcomes such as follow-up plans, changes to company policies, remediation of adverse impacts, and strengthened relationships between parties. Of all specific instances accepted for further examination between 2011- 2015, approximately 36% resulted in an internal policy change by the company in question, contributing to potential prevention of adverse impacts in the future (OECD, 2016).

The OECD Guidelines for Multinational Enterprises and National Contact Points

Strengths

NCPs are accessible to any interested party, including individuals, trade unions, NGOs, etc. Performance of NCPs is monitored via peer reviews and annual reports to the OECD Council; thereby increasing international visibility. NCPs have government backing, they do not charge any fees, and are encouraged to handle cases within a specific time limit.

¹⁵ The exact name of the companies is Formula One World Championship Limited and Formula One Management Limited

¹⁶ <http://mneguidelines.oecd.org/database/instances/uk0042.htm>.

¹⁷ <http://mneguidelines.oecd.org/database/instances/ch0013.htm>. A second complaint brought against FIFA in 2016 was not accepted for further examination.

Challenges

Coverage is not universal. Currently 46 countries have adhered to the Guidelines and have established an NCP. However, NCPs are competent to deal with issues related to the implementation of the Guidelines also in non-adhering countries. Their mandate is primarily to facilitate mediation between the parties, it does not include imposing sanctions or ordering compensation to victims.

2.3(c) International Labour Organization

International Labour Standards

International labour standards (ILS) are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.

Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals. The ILO provides technical assistance if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a convention they have ratified (see applying and promoting ILS).

Fundamental Conventions

The ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998).

ILO Supervisory System

International labour standards are backed by a supervisory system that is unique at the international level and that helps to ensure that countries implement the conventions

they ratify. The ILO regularly examines the application of standards in member states and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance.

The ILO has developed various means of supervising the application of conventions and recommendations in law and practice following their adoption by the International Labour Conference and their ratification by States. There are two kinds of supervisory mechanism:

- the regular system of supervision: examination of periodic reports submitted by Member States on the measures they have taken to implement the provisions of the ratified conventions
- special procedures: a representations procedure and a complaints procedure of general application, together with a special procedure for freedom of association.

ILO Supervisory System

Strengths

The ILO supervisory system, with its combination of international expertise through the Committee of Experts, and the tripartite nature of its decision-making, provides an unparalleled degree of credibility within the international system in relation to labour standards. The work of the supervisory system also provides an extensive body of international jurisprudence around the conventions and recommendations it has adopted, enabling detailed consideration of the degree to which governments are ensuring that these standards are applied in practice. Any of the tripartite constituents can also request information and technical assistance from the International Labour Office, which could be used to support remedy.

Challenges

The ILO system focuses on the responsibilities of governments and is not primarily geared to the provision of remedy on specific cases. Nevertheless, the huge volume of supervisory system findings built up over the years, and the jurisprudence that derives from this, provides clear, and detailed in particular for the fundamental conventions, benchmarks on which remedy can be based.

2.3(d) Ombudsman

In most countries around the world parliamentary control bodies called Ombudsman are established, which monitor and implement the rule of law, the fight against corruption and good public administration.¹⁸

¹⁸ Where Ombudsman are also NHRIs their role in that regard is dealt with above in the section about NHRIs. Ombudsman and NHRIs are both sometimes known as horizontal accountability mechanisms.

The role of the Ombudsman is to protect the people against violation of rights, abuse of powers, unfair decisions and maladministration. Ombudsman institutions play an increasingly important role in improving public administration while making the government's actions more open and its administration more accountable to the public, and thus make an important contribution to the rule of law, transparency, good governance and democracy and human rights.

Ombudsman act as an independent authority that helps the community in its dealings with government agencies. They usually have wide ranging powers to investigate the decisions and actions of government agencies. This can include human rights issues particularly those relating to fairness in decision making. For example, if a Government is using its coercive power to acquire land for a MSE without fair or due process an Ombudsman, even if not an NHRI, may be able to investigate whether that power has been exercised properly. Therefore, Ombudsman may have a role in human rights abuses relating to fair compensation and due process for forced evictions and other government decisions and processes.

ILO Supervisory System

Strengths

Coverage is wide (170 independent Ombudsman institutions in more than 90 countries), accessible to any interested party, including individuals, trade unions, NGOs, etc. increasing international visibility; strong government support; often has significant influence.

Challenges

In most cases can only advise; role limited to governmental decisions and processes.

2.4 Non-State Mechanisms (Operational-Level Mechanisms)

Operational-level grievance mechanisms (OGMs) are established at the site level to handle complaints from workers, community members, and other stakeholders. Generally, OGMs are designed to respond to complaints through dialogue and are conceived as serving two important functions: to assist companies in learning about negative impacts, and to prevent escalation by providing a way for companies to provide remedies early and directly. OGM may also serve a third purpose: providing an avenue for victims to find a remedy in contexts where the courts or other state-based remedial systems are unavailable or unable to respond (Kaufman, McDonnell, 2015).

OGMs are typically created and administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They may

also be provided through recourse to a mutually acceptable external expert or body.¹⁹ Other types include community grievance mechanisms (CGM), which are primarily driven by the rights holders.

The global oil and gas industry association for environmental and social issues (IPIECA) has produced a manual for implementing operational grievance mechanisms in the oil and gas industry, which includes a step by step guide for the development and implementation of community grievance mechanisms. IPIECA notes that “effective CGMs show willingness to address concerns promptly and effectively, and can help build local trust and goodwill. Most of the benefit is gained by the early introduction of a CGM into the project cycle.”

The table in Appendix 1 is IPIECA’s example of good practice in CGM design and the UN Guiding Principles’ effectiveness criteria.

Operational-Level Grievance Mechanisms
<p>Strengths</p> <p>Accessible to any interested party specified, including individuals, trade unions, NGOs, etc.; provides efficient, timely and low cost resolution.</p> <p>Challenges</p> <p>Effectiveness dependent on integrity of the party operating the mechanism; not suitable for most egregious abuses.</p>

3 Gaps and How They Can be Filled

Based on the above description of available mechanisms providing access to remedy, three major gaps have been identified.

First, there is presently an absence of a binding and standing human rights policy and capacity across international sport within major ISOs and, as a consequence, no

19 UN Guiding Principles, Commentary to principle 29

recourse to dispute resolution can be had for cases related to human rights.

Second, and notwithstanding the substantial legal capacity of ISOs to protect, promote and enforce human rights through a sports based grievance mechanism, such a mechanism has not been created.

Third, there is 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. As this paper identifies, 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. Where these mechanisms function correctly and efficiently in the country where the MSE is held, it is likely that all or the majority of human rights related grievances could be addressed. However, this does not necessarily mean that existing mechanisms will be able to meet all expectations, especially in terms of remediation and compensation to victims. For example, the NHRIs, and National Contact Points can facilitate mediation and dialogue, but cannot order compensation for victims. The victims of human rights abuse should be able to access an appropriate remedy, and any violators should be compelled to implement the necessary measures to ensure that any abuse is not repeated and inflicted on others.

All three gaps can be addressed through the work of the proposed MSE Centre.

Role for an Independent Centre

4

Key functions that the MSE Centre could be tasked with the in connection with access to remedy include:

1. Developing a policy framework based on accepted international human rights standards including a set of principles for effective remedy in the sports context. It would be the responsibility of each ISO to adopt that framework in conjunction with the MSE Centre and incorporate it within its contractual and regulatory documents through a collaborative process with its stakeholders. The framework would include a set of principles for effective remedy in the context of MSEs, drawing on existing principles and criteria (e.g. the UN Guiding Principles).

2. Drawing up a list of available judicial and non-judicial mechanisms in countries hosting MSEs as well as other connected and relevant jurisdictions, and cooperating with host governments, ISOs and other stakeholders to raise awareness about these mechanisms.
3. In the context of a MSE, acting as a clearing house to refer complainants to available grievance mechanisms.
4. Assisting other institutions in providing access to non-judicial mechanisms and in raising their capacity to deal with human rights issues in the sports context.
5. Assisting, where needed, in the tailoring of sports-specific dispute resolution mechanisms to ensure they adequately handle and remedy human rights issues in the sports context and, in particular, in connection with MSEs. Such a function could also sit independently within the MSE Centre.
6. Assisting in the creation of a community level grievance mechanism specific to a MSE.
7. Monitoring outcomes of cases submitted to grievance mechanisms where they have been invoked in connection with a MSE, and build a knowledge base of such cases
8. Creating a knowledge base and monitor outcomes of cases submitted to grievance mechanisms where they have been used in connection with a MSE.
9. Acting as a forum for the promotion and exchange of best practice for ISOs, businesses, human rights bodies and other sports and human rights stakeholders in the operation of MSEs and commercial partnerships related to them, including in relation to remedy in the context of MSEs.
10. Acting as a primary point of contact for expertise on remedy of human rights abuse relating to MSEs for NCPs NHRIS, Ombudsman, sports bodies, and other mechanisms.

Appendix 1: Good Practices Applying Effectiveness Criteria

Table 1 Examples of good practice options for applying the eight effectiveness criteria described in the UNGPs

Examples of company practices	Effectiveness criteria							
	Legitimate	Accessible	Predictable	Equitable	Transparent	Rights compatible	Continuous learning	Dialogue based
Impose as few restrictions as possible on the types of issues that can be raised under the grievance mechanism.	✓	✓						
Engage stakeholders in the design of the mechanism.	✓			✓				✓
Scale the grievance mechanism to include potential project risks and impacts on neighbouring communities.	✓	✓	✓	✓				✓
Take steps to prevent conflicts of interest within the grievance handling process.	✓			✓				
Respect the confidentiality of all parties to the grievance handling process.	✓			✓		✓		
Take active steps to make the grievance mechanism as accessible to neighbouring communities as possible.		✓	✓		✓			
Communicate how the process works, and detail grievance handling timelines and available resolution options.		✓	✓		✓	✓		
Take steps to protect parties to the grievance handling process from retaliation, for example by investigating accusations of retaliation through the ethics investigation mechanism (which is governed separately from the CGM).	✓	✓		✓		✓		
Accept anonymous complaints where permitted by law.	✓	✓		✓				
Acknowledge receipt of complaints and provide regular status updates, for example by letter, telephone or email.			✓		✓			✓
Take steps to build confidence in the fact-finding process.				✓				✓
Verify that outcomes are consistent with human rights.						✓		
Discuss rather than announce the investigation outcome and be open to suggestions from the complainant.				✓				✓
Provide appropriate training to staff and contractors on dealing with grievances.	✓	✓	✓	✓			✓	✓
Put tracking systems in place for logging grievances and monitoring actions.			✓					
Seek feedback on the functioning of the mechanism.	✓			✓			✓	
Report to neighbouring communities on the performance of the mechanism.					✓		✓	✓
Analyse data on grievances and lessons learned to inform changes in policy/practice that can help avoid recurrences.						✓	✓	
Have an assurance process to ensure the proper functioning of the mechanism.	✓		✓			✓	✓	
Acknowledge that complainants have the right to pursue other avenues of remedy if a solution cannot be agreed.	✓	✓		✓		✓		

Source: IPIECA, *Community Grievance Mechanisms in the Oil and Gas Industry: a manual for implementing operational-level grievance mechanisms and designing corporate frameworks*, 2015, Table 1.



Appendix 2: London 2012 Grievance and Complaints Mechanisms

Steve Gibbons, Director, Ergon Associates
London, 26 January 2017

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

The resulting agreed mechanism was structured around several distinct phases. These involved:

- **Assessment:** scoping the complaint to ensure it related to the LOCOG Sustainable Sourcing Code and to a good or service being provided to LOCOG.
- **Reporting/information gathering:** seeking full information from both the complainant and from the commercial partner to whom the complaint was directed. Mediated discussions between parties took place to agree on facts, where possible, and more importantly on actions to be taken.
- **Independent investigation:** where no agreement could be reached between parties, the mechanism allowed for the appointment of an independent investigator.
- **Remediation:** implementation of corrective or preventative actions, based on agreement, with monitoring and reporting back.

This structure had a number of innovative features. First, it followed the recommendations in the UN Guiding Principles and was based around the objective of seeking agreed solutions to complaints through dialogue rather than by investigation by auditors or the imposition of corrective action plans.

It was recognised that an investigation into the substance of complaints may be necessary, but a more sustainable outcome should result if the parties to a complaint

can agree on shared outcomes and actions.

Another feature of the mechanism was its semi-outsourced operational structure. This ensured that expertise and resources not necessarily available within LOCOG, particularly during the highly-pressurised pre Games and Games-time periods, could be applied to sometimes complex complaints. It had the added benefit of providing assurance to stakeholders that an independent process was followed, free from undue influence from LOCOG.

Importantly, however, LOCOG retained the final say in how complaints were dealt with and closed off, as these decisions and actions formed part of their commercial relationship with their partners and were an important part of their implementation of their own sustainability commitments. In these terms such a semi-outsourced approach could have benefits for any buying organisation. For the semi-outsourced structure to work effectively, the third-party manager should:

- Have expertise in labour standards issues in key sourcing countries
- Have expertise in mediation and facilitation
- Have credibility with the range of external stakeholders and commercial partners.
- Maintain a professional working relationship with the buying organisation while being able to maintain its operational independence
- Be flexible in applying the process according to circumstances, and have the resources to deal with sometimes complex, multiple and lengthy complaints

A final notable feature was the creation of a Stakeholder Oversight Group, to provide advice on how solutions to complaints could be best promoted and to ensure that complaints were being handled in a timely, fair and efficient manner.

A

Appendix 3. A Suggestion for the Tokyo 2020 Olympic Games on its Grievance Mechanism

Miho Okada, Director, Caux Round Table Japan
Tokyo, 5 October 2016

This draft paper focuses on grievance mechanisms and suggests a draft framework of grievance mechanisms for the Tokyo 2020 Olympic Games and the challenges that lay ahead. The draft framework explored in the paper is a personal proposal, and has not been authorised by any organisation including TOCOG. The author would welcome any comments on this draft paper to miho_okada@crt-japan.jp.

Acronyms

TOCOG: The Tokyo Organising Committee of the Olympic Games and Paralympic Games

LOCOG: The London Organising Committee of the Olympic Games and Paralympic Games

MHLW: Ministry of Health, Labour and Welfare

ADR: Alternative Dispute Resolution

OECD: The Organization for Economic Cooperation and Development

BHRRC: Business and Human Rights Resource Centre

IHRB: Institute for Human Rights and Business

DIHR: Danish Institute for Human Rights

BWI: Building and Wood Workers International

ANA: All Nippon Airways

ODA: Olympic Delivery Authority

ACAS: Advisory, Conciliation and Arbitration Service

TUC: Trades Union Congress

JSC: Japan Sport Council

JITCO: Japan International Training Cooperation Organisation

JFBA: Japan Federation of Bar Associations

MLIT: Ministry of Land, Infrastructure, Transport and Tourism

JICWELS: Japan International Corporation of Welfare Services

1. Introduction

As of end September 2016, the Tokyo Organising Committee of the Olympic and Paralympic Games (TOCOG) is in the process of developing a Sustainability Plan and Sustainable Sourcing Code. The necessity of having a complaint processing system (grievance mechanism) will be included in the code²⁰. However, despite the intention of incorporating a remedy mechanism, TOCOG still has no plan to develop a human rights policy or conduct a human rights impact assessment. As the Olympic and Paralympic Games have recently been handed over to Tokyo from Rio, now is the time for the city to give broader recognition to the importance of human rights.

2. Why Grievance Mechanisms are Needed

Amid growing awareness and concerns on the negative human rights impact which Mega-Sporting Events may be involved in, it is clear that TOCOG must plan and stage the Games in a manner that respects human rights through the event lifecycle and across the supply chains. In their report 'Striving for Excellence: Mega-Sporting Events and Human Rights'²¹, IHRB states that 'MSEs such as the Olympic Games, FIFA World Cup and Commonwealth Games – with their massive physical and commercial footprints – afford a rare opportunity to address a broad spectrum of business and human rights concerns within a microcosm, and to explore possible new approaches to integrating

²⁰ From TOCOG's presentation at the "2016 Business and Human Rights Conference in Tokyo" on 15th and 16th September 2016 in Tokyo. <http://crt-japan.jp/en/seminar-overview/global-conference/>

²¹ Institute for Human Rights and Business (IHRB). October 2013. Striving for Excellence: Mega-Sporting Events and Human Rights http://www.ihrb.org/pdf/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf

respect for human rights across a wide range of relationships and practices’.

At the 4th UN Annual Forum on Business and Human Rights in Geneva in November 2015, Hisahiro Sugiura, at the time Executive Director of Games Operations at TOCOG, stated that TOCOG ‘would like to draw on ... experience, and welcome any advice’ regarding respect for human rights at Tokyo 2020 Games. Two months later, in January 2016, TOCOG issued for public comment its draft Sustainability Plan and Sustainability Sourcing Code. During the public comment period, which lasted only two weeks, TOCOG received 115 comments.²² TOCOG expressed its willingness to respect human rights in chapters titled ‘Consideration of Human Rights, Labour and Fair Trade Practice’ in the Sustainability Plan, and in the statement ‘Tokyo 2020 places the utmost importance on respect for human rights ... [and] ... on compliance to the Sourcing Code throughout supply chains’ in the draft Sustainable Sourcing Code.

However, it remains a challenge for TOCOG, a temporary organisation between 2014 to 2021 (estimated), to exercise its huge role ensuring respect for human rights across the supply chain. The number of suppliers will grow to the thousands and millions if we include subcontractors (at London 2012 Games, the number of direct suppliers was about 600). TOCOG must utilise both a top down approach (development of policy/framework/sourcing code, and monitoring of compliance) and a bottom up approach (collecting complaints from people affected by the businesses associated with the Games): both are inseparable parts of respecting human rights at the Games.

3. Framework of Grievance Mechanisms at London 2012 Games

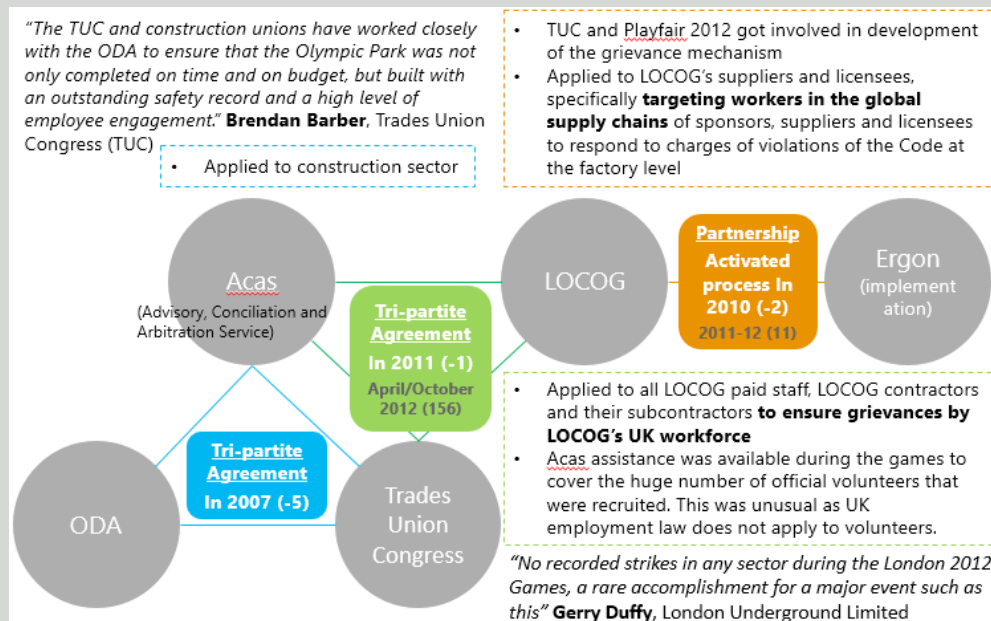
The London 2012 Games “was the first occasion in which on Olympic and Paralympic Games Organising Committee or any event organiser had operated a complaints or grievance system”²³. At the London 2012 games, the mechanisms for global supply chain grievances received international attention, but there were other two mechanisms, as shown in figure 1:

1. for workers at venue construction by tri-partite agreement between the Olympic Delivery Authority (ODA), the Advisory, Conciliation and Arbitration Service (ACAS) and Trades Union Congress (TUC)
2. for the London Organising Committee of the Olympic Games and Paralympic Games’ (LOCOG) paid staff, contractors, and their subcontractors and volunteers, by tri-partite agreement between LOCOG, Acas and TUC
3. for workers throughout the global supply chain, developed by LOCOG with

²² <https://tokyo2020.jp/jp/games/sustainability/opinion-sus-plan-1/data/20160801-result.pdf> (only in Japanese)
²³ LOCOG. Complaint and dispute resolution process to deal with breaches of the Sustainable Sourcing Code, p13

support from Trade Union Confederation and Playfair, and implemented by Ergon Associates Ltd. As of September 2016, there is no information available on grievance mechanisms at the Rio 2016 Games

Figure 1: Framework of Grievance Mechanisms at London 2012 Games*



Note: *The number of complaints filed at each mechanism is shown in the green and orange colour-coded box. (Prepared by Miho Okada)

The main conclusion from the ACAS experience of the grievance mechanism for LOCOG's UK workforce (green-colored) was the importance of "planning early, developing good relationships with people who make things happen in partner organisations, good risk analysis and management".²⁴

The recommendations by Verité regarding grievance mechanisms for workers in global supply chains (orange-colored) are:²⁵

- Make a hotline/dispute resolution system a standard for all Olympic and Paralympic Games, as well as FIFA, and other regional games
- The complaints mechanism should be in place before the start of production
- Develop and publish criteria for a robust complaints mechanism as a requirement prior to the start of the tendering process
- If commercial partners (sponsors, suppliers or licensees) use their own processes, it should provide a weekly report of any complaints, questions or allegations in a site that is used to produce items for the event organiser
- Provide training, or adequately resource, staff charged with managing complaints to work with commercial partners to resolve common supply chain labour issues

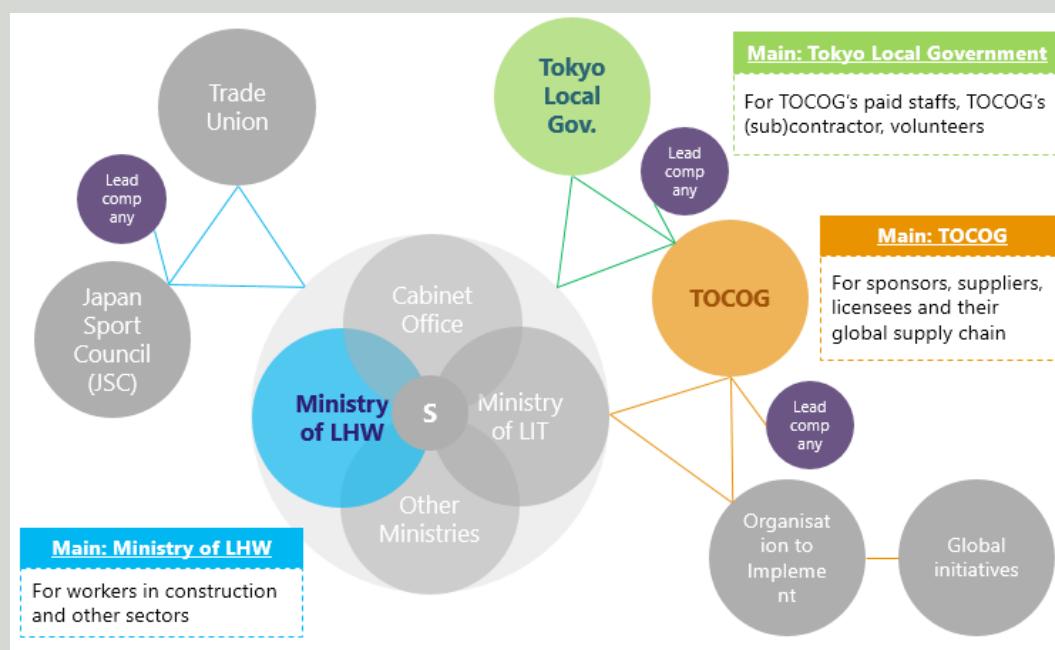
24 Acas, Research Paper 2012 Games, p19

25 Verité, Managing compliance with labour standards, P23-24

4. Draft Framework of Grievance Mechanisms at Tokyo 2020 Games

A draft framework of grievance mechanisms for Tokyo 2020 Games is shown in figure 2. The Tokyo 2020 Games could also have three mechanisms: a) for workers at venue construction and other sectors which will be jointly operated by the Ministry of Labour, Health and Welfare, JSC and trade unions; b) for workers at TOCOG and its contractors/subcontractors and volunteers²⁶, which would be jointly operated by the Tokyo Metropolitan Government (local government), TOCOG, and related central governmental functions; and c) for workers at sponsors, suppliers and licensees including throughout their respective supply chains, which would be prepared by TOCOG, implemented (semi-outsourced) by external organisation, and supported by related global initiatives. For the Tokyo 2020 Games, the challenge will be how to ensure that grievance mechanisms cover not only global supply chains, but also domestic ones.

Figure 2: A draft Framework of Grievance Mechanisms at Tokyo 2020 Games



Note: S: Secretariat of the Headquarters for the Tokyo 2020 Olympic and Paralympic.
(Prepared by Miho Okada)

²⁶ TOCOG's information on volunteers at Tokyo 2020 Games in Japanese at <https://tokyo2020.jp/jp/get-involved/volunteer/>, Tokyo Metropolitan Government's information on volunteers at Tokyo 2020 Games in English at <http://www.city-volunteer.metro.tokyo.jp/en/>

Foreign Labourers in Domestic Supply Chains - Unauthorised Workers

As with most other countries, there is a large number of foreign nationals in Japan who are engaged in irregular labour, and other in a precarious situation regarding rights protection. The situation is exacerbated by the fact that opportunities for regular labour migration to Japan are extremely limited in comparison with most other advanced economies.

Just as an indicative example, Reuters recently reported on the situation of foreign workers at Fuji Heavy Industries in July 2015²⁷, revealing that foreign workers accounted for 30% (580 workers) of total 1,830 workers at four suppliers.²⁸ Most of the 580 foreign workers were asylum seekers sent to the factory through a recruitment company. These workers were left with no legal status, mostly no government aid²⁹, and have no choice but to enter the black market and work illegally to live. The immigration authorities provide a toll free counselling telephone service,³⁰ but it is manifest that asylum seekers engaged in unauthorised work would be discouraged from using this service. Though recruiting agencies who send asylum seekers to factories as need to be licensed to start their business, there is no requirement for these companies to establish any sort of grievance mechanism.

5. Foreign Labourers in Domestic Supply Chains - Legal Workers

Extremely narrow categories for highly skilled and other forms of specialised labour aside, there are four programme paths for foreign nationals to engage legally in unskilled work in Japan:

27 Thomas Wilson, Antoni Slodkowski, Mari Saito, "Subaru's secret: Marginalized foreign workers power a Japanese export boom" Reuters <http://www.reuters.com/investigates/special-report/japan-subaru/>
The Reuter published a subsequent paper titled "Banned from working, asylum seekers are building Japan's roads and sewers" in 2016 (<http://www.reuters.com/investigates/special-report/japan-kurds/>). Some external factor for asylum worker getting involved in illegal work lie in the fact that Japanese immigration control system accept an extremely small number and percentage of refugees compared G7 countries; whilst 0.6% in Japan, 77% in USA, 68% in Canada, 59% in Germany, 34% in UK, 22% in France, 5% in Italy as of 2015 (<http://f.hatena.ne.jp/Chiki-rin/20160812225432>), it takes inappropriately long-time to apply for refugee status, inhumane treatment without any support from government during the status of asylum seekers (<http://www.labornetjp.org/news/2012/1009hokoku>, <http://praj-praj.blogspot.jp/>, <http://rafiq.jp/siryou/faq.html>), screening system for granting special residence permission for asylum seekers is vague (http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan25.html).

28 <http://www.fhi.co.jp/english/index.html>

29 The Japan Association for Refugees (<https://www.refugee.or.jp/en/>) says that about 300 asylum seekers have received financial aid from Ministry of Foreign Affairs annually, but the aid is limited only for one year. That means 300 out of 4,388 (account for only 6%) asylum seekers have received the aid as of end 2014, the rest (roughly 4,000 people) had left with no legal status and aids.

30 <http://www.moj.go.jp/NYUKAN/nyukan75.pdf>

5.1. The Technical Intern Training Program³¹

The programme is implemented by the Japan International Training Cooperation Organisation (JITCO), a quango under the Japanese Cabinet Office. This programme has started in 1993, and 192,655 trainees are in Japan as of end 2015³². Though Japanese labour law must be applied to trainees, abuses reportedly have been commonplace since its inception, and it has come under heavy criticism from human rights NGOs, UN human rights bodies, and even the US State Department.

JITCO provides a toll free hotline to workers in these programs in several languages³³ (Chinese, Vietnamese, Indonesian, English and Filipino). JITCO states it received 1327 cases via the hotline in 2013³⁴. Nevertheless, the fact that abuse continue to be reported gives rise to questions regarding the effectiveness of the hotline. A survey conducted in 2014 showed that only 3.6% of the respondents used the hotline.³⁵

The guideline for the programme, which were revised in 2013, does mention the need to take measures to receive concerns from workers. Nevertheless, this does not seem to be functioning. In 2014, MLHW found violations of labour standards at 2,196 out of 2,776 factories – 78%³⁶. A Working Group of the Ministry of Justice has proposed the establishment of grievance mechanisms to protect foreign workers under the programme in March 2014. The Japan Federation of Bar Associations (JFBA) has called for adequate consultation channels for foreign labourers, noting that a procedure run solely by JITCO cannot be truly independent and therefore cannot fully protect trainees' rights.³⁷ In March 2015, the Ministry of Justice and MLHW jointly submitted to Parliament a bill³⁸ including, inter alia, provisions for a consultation channel, and for the establishment of an organisation to monitor appropriate implementation at work sites. As of the finalisation of this paper, this bill had not yet been adopted.

5.2 The Foreign Nurse and Care Workers Acceptance Program

Under the rubric of Economic Partnership Agreements (EPAs) started with Indonesia in 2008, with the Philippines in 2009, and with Vietnam in 2014³⁹. The programme has been implemented by Japan International Corporation of Welfare Services (JICWELS), a quango under MHLW⁴⁰. The total number of candidates under the program exceeded

31 <http://www.jitco.or.jp/english/overview/itp/index.html>.

32 http://www.moj.go.jp/housei/toukei/toukei_ichiran_touroku.html, <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001150236>

33 http://www.jitco.or.jp/english/information_trainees_interns/index6-5.html

34 JITCO. (2014) 「技能実習制度に関する基礎資料」 P21 <http://www.moj.go.jp/content/001128653.pdf>

35 P13, only in Japanese, http://www.jil.go.jp/institute/research/2015/documents/0144_zenbun.pdf

36 <http://www.moj.go.jp/content/000122373.pdf>

37 日本弁護士連合会, (2015.2) 「技能実習制度の見直しに関する有識者懇談会報告書に対する意見書」 http://www.nichibenren.or.jp/library/ja/opinion/report/data/2015/opinion_150227.pdf

38 http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri05_00011.html, <http://www.mhlw.go.jp/top-ics/bukyoku/soumu/houritu/dl/189-16.pdf> (both only in Japanese)

39 http://jicwels.or.jp/?page_id=93

40 This program has started in 2008, and the total number of workers is 2,106 as of 2015. In 2014, the Ministry of HLW has started to review the fair operation of the program. See details at the website of Ministry of Health, Labour and Welfare, <http://www.mhlw.go.jp/stf/shingi/other-syakai.html?tid=225506> (only Japanese)

3,800 as of September 2016⁴¹ (a total of 355/2106 candidates have passed the required national examination as of January 2016; the pass rate is 16%⁴²). Japanese labour law must be applied to the candidates.

JICWEL receives concerns and complaints from foreign nurse / care workers / host Japanese nursing centres via hotline in Japanese, Indonesia, English and Vietnamese (not available in Filipino) by telephone, fax and email⁴³. Again, however, the number of cases JICWEL receives through the hotline is insignificant: less than 10 annually⁴⁴ - though, unlike the Technical Intern Training Programme, there have been almost no reports of human rights abuses connected with this programme.

5.3 The Foreign Construction Worker Acceptance Program⁴⁵

Under Ministry of Land, Infrastructure, Transport and Tourism (MLIT) started in 2015. The number of workers admitted to Japan as part of the programme is still very small: 573 as of June 2016. Japanese labour law must be applied to the workers.

Under this programme, construction companies are required to appoint supervising instructors and daily advisors for workers, to establish a system to interview with foreign construction workers, address their complaints regarding both workplace issues and general daily life concerns, and conduct audits as described in guidelines below⁴⁶. However, the number of complaints each company has received has not been made public, making it impossible to gauge the effectiveness of any procedure.

No 5. Accepting Construction Company and Appropriate Supervision Plan

Source: Ministry of Land, Infrastructure, Transport and Tourism (2014) Public Notification on Foreign Construction Worker Acceptance Program

1. Each prospective Accepting Construction Company shall create its appropriate supervision plan for accepting Foreign Construction Workers (herewith "appropriate Supervision Plan") in cooperation with a certified Designated Supervising Organisation as defined in No.4, and individually apply to Minister or Land, Infrastructure, Transport and Tourism to have its Plan certified. An Appropriate Supervision Plan shall contain the following provisions.

41 http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/gaikokujin/other22/index.html, http://www.mhlw.go.jp/file/06-Seisakujouhou-11650000-Shokugyouanteikyokuhakenyukiroudoutaisakubu/epa_base_28.pdf (both only in Japanese)

42 <http://www.mhlw.go.jp/stf/shingi2/0000134794.html>, <http://www.mhlw.go.jp/file/05-Shingikai-12201000-Shakaiengokyokushougaihokenfukushibu-Kikakuka/0000135078.pdf>

43 P34, http://jicwels.or.jp/?page_id=16

44 外国人介護施設受け入れの在り方に関する検討会. (2016.3). 「経済連携協定に基づく介護福祉士候補者等の更なる活躍を促進するための具体的方策について」 P4 <http://www.mhlw.go.jp/file/05-Shingikai-12201000-Shakaiengokyokushougaihokenfukushibu-Kikakuka/0000134783.pdf>

45 Ministry of Land, Infrastructure, Transport and Tourism, Public Notification on Foreign Construction Worker Acceptance Program, accessed on 20th September at <http://www.mlit.go.jp/common/001064741.pdf>

46 <http://www.mlit.go.jp/common/001059458.pdf> (in Japanese), <http://www.mlit.go.jp/common/001064743.pdf> (in English)

2. Matters related to interviews with Foreign Construction Workers, addressing Foreign Construction Workers' request (or complaints) on daily lives and jobs (including job changes), and execution of audits.

5.4 Accepting Foreigners Conducting Housekeeping Services in National Strategic Special Zones⁴⁷

Managed by the Cabinet Office, started in 2016. The guidelines require the '2-(6) securing of working conditions; (7) safety and health; (8) employment insurance, industrial accident compensation insurance, health insurance, and employees' pension insurance', however it does not explicitly confirm that Japanese law must be applicable to foreigners under the programme. Understandably, there is widespread concern amongst human rights NGOs that the programme will result in widespread human rights abuse.

Under this programme each organisation/company accepting foreign workers ('specified organisation') is required to establish an office to receive complaints and consultations from foreign workers, as described in the guidelines below⁴⁸. The guidelines also state that 'A specified organisation must prepare a report on the number and content of complaints or consultations from foreigners conducting housekeeping services and households using services during the reporting period', but the number and content of the complaints have not been made public, once again making it impossible to have an informed discussion on the issue.

No 8. Protection of Foreigners Conducting House Keeping Services

Source: Prime Minister of Japan and his Cabinet (2015) Guidelines on Specified Organizations for Project to Accept Foreigners Conducting Housekeeping Services in National Strategic Special Zones

A specified organization must establish an office to accept complaints and consultations from foreigners conducting housekeeping services and prepare a system to properly deal with such complaints and consultations, and at the same time must put in place a mechanism to protect foreigners conducting housekeeping services in cases such as where they are unfairly treated at households using services.

A specified organisation must not dismiss or otherwise treat disadvantageously any foreigner conducting housekeeping services on the grounds that the foreigner has made a complaint or a consultation pursuant to the provisions of the preceding paragraph.

⁴⁷ Its guideline covers some measures to respect human rights of the foreign workers, http://www.kantei.go.jp/jp/singi/tiiki/kokusentoc/pdf/shishin_English.pdf. For your reference, see at <http://migrants.jp/archives/news/checklist>.

⁴⁸ <http://www.kantei.go.jp/jp/singi/tiiki/kokusentoc/pdf/kujyou-madoguti.pdf>

The discussion on grievance mechanisms in four programmes has just started, and still seems undeveloped.

6. Labour Dispute Mechanisms established by Japanese Government and Private institutions

Other mechanisms for both foreign and Japanese workers include: A) Private ADR centre – the Sharoushi Federation; B) Labour Relation Committee; C) Labour Bureaux; and the D) Labour Tribunal⁴⁹. The flow of handling grievances in those labour dispute resolution system is described in figure 3. The effectiveness of these mechanisms has been examined in accordance with the effectiveness criteria set out in United Nations Guiding Principles on Business and Human Rights; Legitimate, Accessible, Predictable, Equitable, Transparent, Rights compatible, A source of continuous learning, Based on engagement and dialogue. In most part these mechanisms meet some of the criteria, but are far from accessible, especially for foreign workers.

6.1. Private ADR Centres

Sharoushi are certified social insurance labour consultants who are licensed to facilitate grievance resolutions. The Sharoushi Federation office is open on weekends and late at night on weekdays, but caters almost solely to persons with Japanese language skills. The Federation does not maintain a list of Sharoushi who can speak languages besides Japanese. In addition, the mechanism is not always available for free failing in the “Accessible” category.

6.2. The Tokyo Labour Relation Committee

The Committee handles collective grievances and accepts complaints from unions. The committee resolves grievances in accordance with tripartite principles, giving the mechanism “Legitimacy”. Nevertheless, though it has accepted cases from foreign nationals, here again the language barrier is large: translation support has only been offered by unions, not by the Committee. The mechanism often takes far more time more than the timelines set out in its guidelines (already one and half years), and fails in the category of “Predictable”.

6.3. Dispute Coordinating Committees

Labour Bureaux operate Dispute Coordinating Committees, consisting of representative

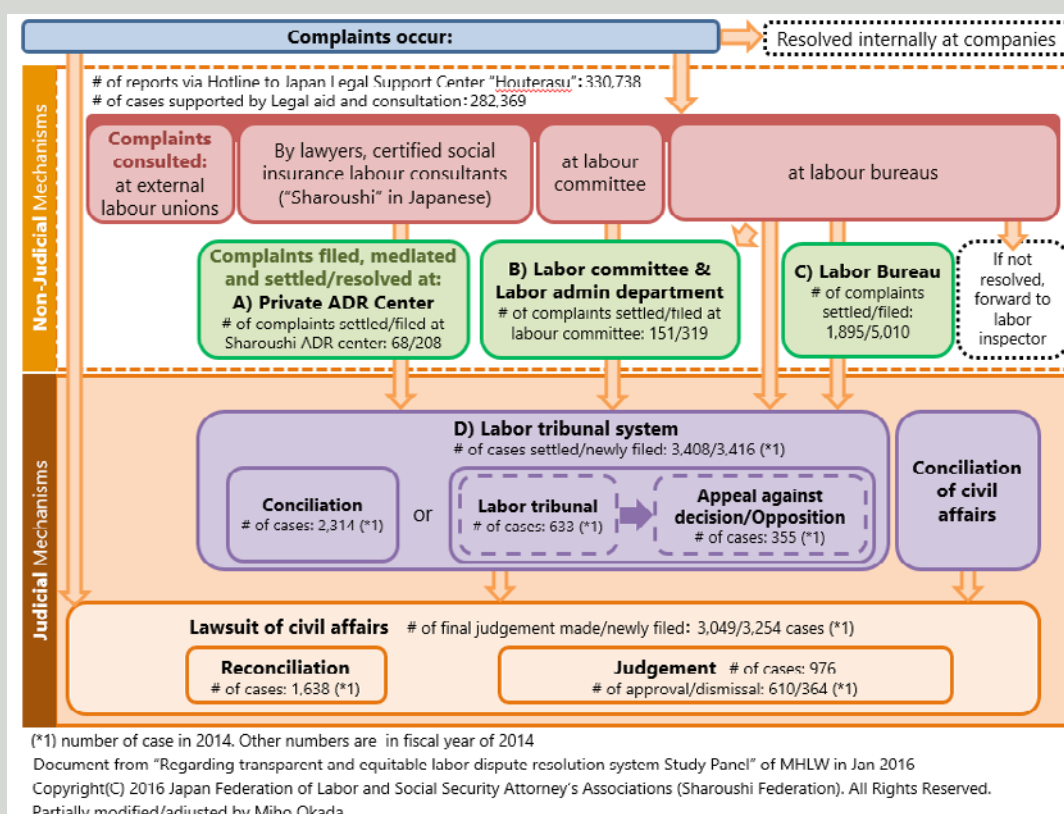
⁴⁹ The grievance mechanisms at Japan Bank for International Cooperation (JBIC) was scope-out this time, but can be referred at Objection Procedures based on Environmental Guidelines. See: <http://www.jbic.go.jp/en/efforts/environment/disagree/procedure>.

of stakeholders, adding “Legitimacy” to the mechanism. Labour Bureaux provides trainings to improve on resolving individual labour disputes, and is publishes information regarding cases and their outcomes. However, training is geared towards issues between Japanese employee and employer, and does not cover supply chain issues. Information published by the Labour Bureaux is also only in Japanese⁵⁰.

6.4 Labour Tribunals

Labour tribunals have the promptest and highest percentage of resolution amongst the four mechanisms. There is a fixed timeline, making the mechanism “Predictable”. However, using the system usually requires legal fees, and only limited number of local court provide this mechanism⁵¹.

Figure 3: Diagram of Existing Resolution Systems of Labour Dispute in Japan (for A, B, C and D)



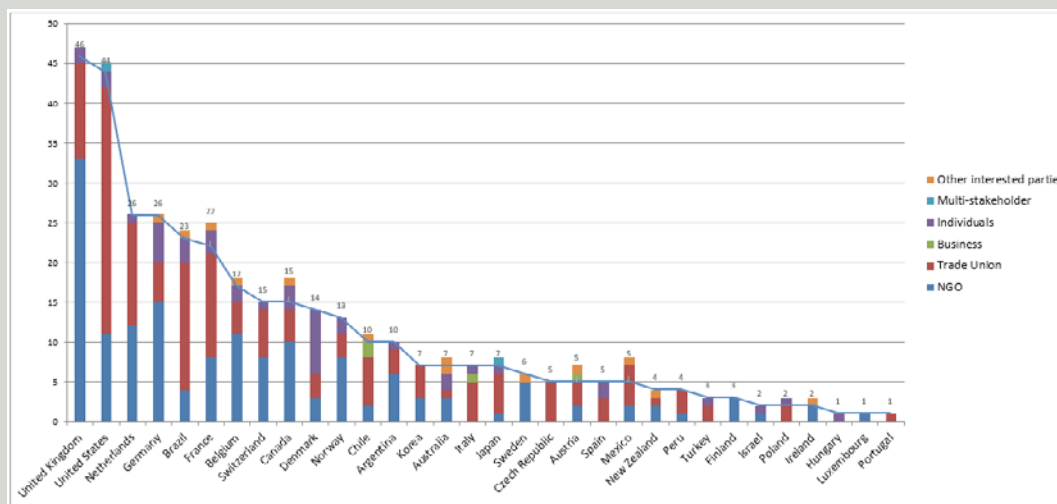
50 <http://www.mhlw.go.jp/stf/houdou/0000126365.html>

51 http://minjishihoukon.com/wp-content/uploads/0316_panel1.pdf (only in Japanese)

7. Workers in Global Supply Chains

Under the OECD Guidelines for Multinational Enterprises, countries have an implementation mechanism called National Contact Points (NCPs). NCPs accept and file complaints from ‘any organisation including any trade union – whether company, local, sectoral, national, regional or international⁵²’, and should ‘operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence. a visible, accessible, transparent, and accountable manner for the cases as set out in OECD’s procedural guidance’⁵³. Adhering countries have differing structures for the NCP – a single department government body in Germany, Italy and US; an inter-agency body in Japan, Brazil, Canada and South Korea; a dual department body in UK; an independent body in Netherlands and Norway. France is one of a small number of NCPs that has a tripartite structure with members representing government⁵⁴. About investigation/conciliation/mediation - UK and US NCP work with professional external investigators and/or mediators in dealing with issues, Internal staffs in Germany/Norway/Netherlands NCP have specialised skills in investigation and/or mediation.

Figure 4: Number of cases filed at NCPs between 2000 and 2016 (as of October 4th 2016, brake downed by source name)



This at least contributes to a wide disparity in usage of the NCPs (see the number of cases filed at NCPs with source name break down is shown as figure 4). As of October 2016, only seven cases had been filed with the Japanese NCP, a paltry number: for example, 46 have been filed with the UK NCP.

To operate the Japanese NCP more effectively, some points can be noted: 1) awareness regarding the NCP needs to be raised amongst Japanese companies and related

52 TUAC. (2012) The OECD Guidelines for Multinational Enterprises – Recommendations for Responsible Business Conduct in a Global Context – Trade Union Guide, p8

53 OECD, OECD Guidelines for Multinational Enterprises 2011 Edition, p71

54 TUAC. (2012) The OECD Guidelines for Multinational Enterprises – Recommendations for Responsible Business Conduct in a Global Context – Trade Union Guide, p6

stakeholders; 2) the role of the NCP Committee, comprised of Japanese NCP, Keidanren (the Japanese Business Federation) and Rengo (trade unions) as an advisory board needs to be clarified. The board should oversee the effectiveness of the Japanese NCP⁵⁵, publish the minutes of quarterly meeting, and review its membership; 3) skills of staff in investigation, conciliation and mediation must be heightened, conversely the NCP should use external professional investigators, conciliators and mediators; 4) advice and active support of NGOs should be sought, 5) Japanese companies should utilise the network of NCPs to address issues across supply chains; and 6) financial and human resources need to be increased.

8. Operational Grievance Mechanisms at a Company Level

Grievance mechanisms for employees across global supply chains should be established at a company level. Publicly available information shows only four (Coca-Cola, DOW, GE and Samsung) out of 12 TOP (The Olympic Partner) companies have grievance mechanisms which are open to suppliers (and/or communities). None of the 40 local sponsor companies in Japan have grievance mechanisms. Most of them have supplier codes of conduct, however, implementation is generally left to suppliers, as shown in the comment from Subaru in the aforementioned Reuters report.⁵⁶ Fuji Heavy said:

“We ask that the suppliers do not discriminate and that they respect human rights and follow the laws and regulations as stated in our guidelines”, and “it was not in a position to directly monitor labor brokers working for its suppliers. At the same time, the company said it could “indirectly” force labor brokers to comply with its standards by using its power to change the terms of contracts with any supplier that proved problematic - an action it said it had never taken. The automaker said its suppliers and labor dispatch firms were “extremely careful in respecting labor regulations” and Subaru’s corporate responsibility guidelines.”

9. Conclusion

There were three grievance mechanisms at London 2012 Games. Tokyo can also do this, but it needs to have strong domestic grievance mechanisms, especially in a situation of growing concern over human rights violation for foreign workers in Japan. There are several grievance mechanisms (most of them are just providing a hotline) in Japan which is open to foreign labourers in both regular and irregular situations. However, all mechanisms are immature at this moment. The awareness on

⁵⁵ Reference: “OECD Guidelines for Multinational Enterprises – The UK National Contact Point (NCP) OECD Guidelines & UK NCP, Mediation & UK NCP”

⁵⁶ <http://www.reuters.com/investigates/special-report/japan-subaru/>

the necessity of grievance mechanisms has been raised, but much more work needs to be done in providing remedy to affected people.

In the run up to Tokyo 2020 Games, Japan is expecting to admit many foreign labourers, and accordingly, more and more companies will have foreign labourers across the supply chain in Japan (which should be analysed by human rights impact assessment for Tokyo 2020 Games). However, TOCOG and other organisations need to understand that human rights across the supply chains of Japanese companies are already under a higher degree of scrutiny. This should not be taken negatively, but positively. Tokyo 2020 Games can bring a great opportunity to set up a model of grievance mechanisms in the world, partnering with other related organisations to refine existing mechanisms, having a close collaboration with NGO/NPOs and global initiatives to effectively remediate the situation of affected people, showing companies how operational grievance mechanisms mitigate their human rights risks. If the Tokyo 2020 Games successfully achieve this, it would be a great legacy for the future.

10. Additional Note

On 13 September 2016, while Rio Olympic and Paralympic were gathering momentum, Caux Round Table Japan hosted a closed dialogue with about 30 participants of domestic experts (TOCOG, the Cabinet Secretariat, MHLW, Private ADR Centre – Sharoushi Federation, Field-R Law Offices, Japan ILO), global experts (OECD, BHRRC, IHRB, DIHR, BWI, Sedex and ELEVATE), and four sponsor companies (McDonald, ASICS, ANA and Tokio Marine & Nichido Fire Insurance). The purpose of having the dialogue was to create a consensus amongst participants on the importance of respecting human rights at Tokyo 2020 Games, and understanding critical components to the respect of human rights, such as the developing of a human rights policy, conducting a human rights impact assessment, and establishing grievance mechanisms. Caux Round Table Japan continues to facilitate a dialogue on grievance mechanisms for Tokyo 2020 Games.



Appendix 3: References

- OECD (2016) Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015
- UNHCHR (2016) Improving accountability and access to remedy for victims of business-related human rights abuse <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/093/78/PDF/G1609378.pdf?OpenElement> and <http://www.ohchr.org/Documents/Countries/NHRI/ChartStatusNHRIs.pdf>
- Kaufman J. and McDonnell K. (2015) Community-Driven Operational Grievance Mechanisms; Business and Human Rights Journal, 1 (2015), pp. 127–132
- International Finance Corporation (IFC) Performance Standards http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps
- United Nations Guiding Principles on Business and Human Rights <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>
- International labour Organization Core Labour Standards <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/lang--en/index.htm> check these covered - The eight fundamental Conventions are:
- International Institute of Ombudsman <http://www.theioi.org/ioi-members>
- GANHRI and the Paris Principles <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx>
- IPIECA Community Grievance Mechanisms <http://www.ipieca.org/publication/community-grievance-mechanisms-toolbox>

Note: Other references are referenced in the footnotes in the body of the text.

Annex: Overview of the UN Guiding Principles on Business & Human Rights

The UN Guiding Principles on Business & Human Rights state that business should “respect” human rights, “avoid infringing on the human rights of others” and “address adverse human rights impacts with which they are involved. This responsibility “exists over and above compliance with national laws and regulations protecting human rights”.¹

Level of involvement and appropriate action

UN Guiding Principles 13 identifies three ways in which a company may be associated with a human rights issue: (1) by causing an adverse human rights impact; (2) by contributing to an adverse impact; or (2) being directly linked² to it. The actions that a company is expected to take will vary depending on which level of involvement applies (UN Guiding Principle 19).

Involvement	Appropriate Action
Causing an adverse human rights impact	<p>A company may “cause” an adverse human rights impact “through their own activities” (UNGP 13). Such companies are expected to try to “avoid” causing that impact and “address such impacts when they occur” (UNGP 13). This requires:</p> <ul style="list-style-type: none"> • “Taking the necessary steps to cease or prevent the impact” (UNGP 19) • “Provide for or cooperate in their remediation through legitimate processes” (UNGP 22)
Contributing to an adverse human rights impact	<p>A company may “contribute to” an adverse human rights impact “through their own activities” (UNGP 13). Such companies are expected to try to “avoid” that contribution and “address such impacts when they occur” (UNGP 13). This requires:</p>

¹ UN Guiding Principle 11, p13.

² The definition of “direct linkage” has proven difficult to apply in practice across a number of industries. The issue is discussed further in the context of the Broadcasting White Paper 3.2.

	<ul style="list-style-type: none"> • “Taking the necessary steps to cease or prevent its contribution” (UNGP 19) • “Using its leverage to mitigate any remaining impact to the greatest extent possible” (UNGP 19) • “Provide for or cooperate in their remediation through legitimate processes” (UNGP 22)
Impacts directly linked to a company’s operations, products, or services by a business relationship	<p>A company’s operations, products, or services may be directly linked to an impact by a business relationship (UNGP 13). Such companies are expected to seek to “prevent or mitigate” the impact, “even if they have not contributed to those impacts” (UNGP 13). This requires:</p> <ul style="list-style-type: none"> • Using or increasing its leverage over the entity at cause to seek to prevent or mitigate the impact (UNGP 19). • Where directly linked, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, “though it may take a role in doing so” (UNGP 22). <p>UNGP 19 commentary explains that this situation “is more complex”. In order to determine the “appropriate action”, companies should consider:</p> <ul style="list-style-type: none"> • “[Its] leverage over the entity concerned”. • “How crucial the relationship is”. • “The severity of the abuse”. • “Whether terminating the relationship ... would have adverse human rights consequences”.

Meeting the Responsibility: Policies and Procedures

UN Guiding Principle 15 states that a company’s responsibility to respect human rights – whether involved through causing, contributing to, or being directly linked to an impact – should be met by having in place policies and processes, including:

- A **policy commitment** to meet their responsibility to respect human rights (elaborated on further in UN Guiding Principle 16);
- A **human rights due diligence** process to identify, prevent, mitigate and account for how they address their impacts on human rights (elaborated on further in UN Guiding Principles 17-21);
- Processes to enable the **remediation** of any adverse human rights impacts they cause or to which they contribute (elaborated on further in UN Guiding Principles 22 and 29-31).