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Using the Ability to Host World Events As Incentive to Procure Voluntary Anti-Discrimination Legal Reform

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Using the Ability to Host World Events As Incentive to Procure Voluntary Anti- Discrimination Legal Reform

BRETT M. CROWELL*

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I. INTRODUCTION

The International Olympic Committee (IOC) and Fédération Internationale de Football Association (FIFA) have the power to effect global change. Countries vie for the honor of hosting world events such as the Olympic Games and the World Cup because of the prestige and the economic and political gains those events provide. The IOC and FIFA can and should use the incentive of hosting one of these events to procure legal reform in myriad humanitarian equality issues such as sexual orientation, gender, and race. These organizations can prompt this change by requiring that host countries uphold a set of minimum legal standards for anti-discrimination.

Section II will discuss the success of incentive to procure voluntary reform. Section III will discuss the current state of the IOC and FIFA and their approaches to the host selection process. Section IV will explain why reform is needed as well as suggest minimum standards that could be adopted by the IOC and FIFA. Lastly, Section V will address the potential pitfalls of imposing minimum legal standards on prospective host nations.

II. THE SUCCESS OF INCENTIVE TO PROCURE VOLUNTARY REFORM

An offer of a reward in order to elicit desired behavior is nothing new—the proverbial “carrot on a stick.” It can be something as simple as offering a child money for a good report card to something more complex, such as offering loans to countries willing to undergo economic and policy reform.

The International Monetary Fund (IMF) promotes “global growth and economic stability” by “provid[ing] policy advice and financing to members

in economic difficulties.”¹ The IMF currently has agreements in place with over 80 countries for loans worth billions of dollars.² The IMF requires loan-seeking countries to adhere to certain standards as a condition to receive financial assistance.³ These conditions consist of economic and policy changes that help ensure debt repayment.⁴ These standards motivate countries to manage their money efficiently and not to waste any of the funds granted to them by the IMF.

The IMF performs evaluations called Fiscal Transparency Evaluations (FTEs) to investigate and assess countries’ fiscal practices and adherence to the conditions of their IMF loans.⁵ Recent evaluations show that countries such as Portugal,⁶ Russia,⁷ and Senegal,⁸ among others,⁹ have all been relatively successful in implementing and following the loan conditions.

The Financial Stability Forum (FSF) was created by IMF and the World Bank to coordinate and promote a system of international financial

1. *About the IMF Overview*, INT’L MONETARY FUND, <http://www.imf.org/external/about/overview.htm> (last visited Oct. 19, 2014).

2. *IMF Credit Outstanding*, INT’L MONETARY FUND, <http://www.imf.org/external/np/fin/tad/extcred2.aspx?date1key=2014-09-30&reportdate=2014-09-30> (last visited Oct. 19, 2014).

3. Diana E. Moller, *Intervention, Coercion, or Justifiable Need? A Legal Analysis of Structural Adjustment Lending in Costa Rica*, 2 SW. J.L. & TRADE AM. 483, 485 (1995).

4. *Id.*

5. *Fiscal Transparency*, INT’L MONETARY FUND, <http://www.imf.org/external/np/fad/trans/> (last visited Nov. 15, 2015); see also *Factsheet: How Does the IMF Encourage Greater Fiscal Transparency?*, INT’L MONETARY FUND, <https://www.imf.org/external/np/exr/facts/fiscal.htm>.

6. IMF, *Portugal: Fiscal Transparency Evaluation*, Country Report No. 14/306, 7 (Oct. 2014) (concluding that “Portugal’s practices meet most of the principles of the revised Fiscal Transparency Code at good or advanced levels”).

7. IMF, *Russian Federation: Fiscal Transparency Evaluation*, Country Report No. 14/134, 7 (May 2014) (concluding that “[m]ost aspects of Russia’s fiscal reporting and budgeting practices are in line with good or advanced practice” and “the disclosure and management of fiscal risks has significantly improved”).

8. IMF, *Senegal: Seventh Review Under the Policy Support Instrument and Request for Modification of Assessment Criteria—Staff Report; and Press Release*, Country Report No. 14/177, 1 (July 2014) (noting that “Senegal’s new growth strategy offers a good diagnostic and a vision for Senegal,” but its program is still at risk for “insufficient progress in reform implementation combined with strong expenditure pressures”).

9. See IMF Publication Search: Fiscal Transparency, INT’L MONETARY FUND, http://www.imf.org/external/pubs/cat/shortres.aspx?TITLE=&auth_ed=&subject=Fiscal+transparency&ser_note=All&datecrit=During&YEAR=&Lang_F=All (last visited Oct. 19, 2014).

standards that stimulate a stable global economy.¹⁰ The Financial Sector Assessment Program (FSAP) “is a comprehensive and in-depth analysis of a country’s financial sector” under the joint control of the IMF and the World Bank.¹¹ In 2006, the IMF Independent Evaluation Office (IEO) produced a report that evaluated FSAP.¹² This report recommended FSAP consider using “incentives for participation” in the program.¹³

Incentives have been successful in other areas as well. Developing countries establish export processing zones (EPZs)¹⁴ as a means of attracting foreign investors by offering financial incentives such as tax and tariff exemptions.¹⁵ The International Labour Office (ILO) defines EPZs as “industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again.”¹⁶ EPZs account for over 68 million jobs worldwide in 135 countries.¹⁷ In Nicaragua alone, a single investment park (La Mercedes Industrial Park) is an EPZ that employs around 24,000 workers;¹⁸ in Costa Rica, almost half of foreign investment is a direct result of EPZs.¹⁹ EPZs

10. Rolf H. Weber & Douglas W. Arner, *Toward a New Design for International Financial Regulation*, 29 U. PA. J. INT’L L. 391, 412 (2007).

11. *IMF Factsheet: The Financial Sector Assessment Program (FSAP)*, INT’L MONETARY FUND, <https://www.imf.org/external/np/exr/facts/fsap.htm> (last visited Oct. 19, 2014).

12. IMF, *Evaluation of the Financial Sector Assessment Program*, Independent Evaluation Office Report (Jan. 5, 2006).

13. *Id.* at 13.

14. Depending on the country, export processing zones can also be referred to as: industrial free zones, export free zones, foreign trade zones and investment promotion zones. Stephen Creskoff & Peter Walkenhorst, *Implications of WTO Disciplines for Special Economic Zones in Developing Countries* 7–8 (World Bank, Policy Research Working Paper No. 4892, 2009), <http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-4892>.

15. James J. Waters, *Achieving World Trade Organization Compliance for Export Processing Zones While Maintaining Economic Competitiveness for Developing Countries*, 63 DUKE L.J. 481, 482 (2013).

16. Jamie K. McCallum, *Export Processing Zones: Comparative Data from China, Honduras, Nicaragua and South Africa 1* (Geneva Int’l Labour Office, Working Paper Nov. 21, 2011), http://www.ilo.org/wcmsp5/groups/public/-ed_dialogue/-dialogue/documents/publication/wcms_158364.pdf (internal quotation marks omitted).

17. *Id.* at 2.

18. CONSULADO GENERAL DE NICAR. EN MIAMI, FLA., *Nicaragua’s Export Processing Zones 1*, <http://www.consuladonicamiami.com/pdf/exportprocessingzones.pdf>.

19. Ricardo Monge González, Julio Rosales Tijerino & Gilberto Arce Alpizar, Organización de los Estados Americanos, *Análisis Costo-Beneficio del Régimen de Zonas Francas: Impactos de la Inversión Extranjera Directa en Costa Rica [Cost-Benefit Analysis of the Free Zones: Impact of Foreign Direct Investment in Costa Rica]*, ESTUDIOS DE COMERCIO, CRECIMIENTO Y COMPETITIVIDAD DE LA OEA, 2 (Jan. 2005), <http://www.iadb.org/intal/intalcdi/PE/2011/09337.pdf>.

have been referred to as “vehicles of globalization”²⁰ and “essential tools’ of economic growth for developing countries.”²¹ The concept of using incentive to produce a desired result is widespread, and can relate to a multitude of different scenarios.

III. CURRENT STATE OF AFFAIRS FOR THE IOC AND FIFA

The IOC and FIFA are similar organizations. Both host large-scale, global events that draw the attention of the entire world. The 2012 London Olympics was broadcast by over 21,000 accredited media outlets to a potential audience of four billion people worldwide;²² the 2006 World Cup final in Germany had an estimated 715.1 million total viewers worldwide.²³ These huge audiences and the prestige associated with the Olympic Games or World Cup are what drive countries to vie for the opportunity to host one of these world events. “Sportsmanship and goodwill are no longer the centerpieces of international competition, at least as far as sovereign nations are concerned: national governments are now using these events to exert political pressure for diplomatic or political gains.”²⁴ International athletic events are used “to gain both national and political recognition, combat human rights problems, foster international cooperation, and spread political ideology.”²⁵ If these events are being used to advance the host countries’ agendas, they should also be used to create a positive, global change on the anti-discrimination front.

A. *Current State of Affairs for the IOC*

The Olympic Charter (the “Charter”) serves as the statutes that govern the IOC.²⁶ The IOC has acknowledged that nationalism and political

20. McCallum, *supra* note 16, at 1 (quotation marks omitted).

21. Waters, *supra* note 15, at 483.

22. *London 2012 Summer Olympics*, OLYMPIC.ORG, <http://www.olympic.org/london-2012-summer-olympics> (see “All About the Games,” then follow “All Facts”) (last viewed Nov. 15, 2015).

23. FIFA World Cup, FIFA, <http://www.fifa.com/aboutfifa/worldcup/> (last viewed Oct. 19, 2014).

24. Sean Rassel, *The Necessity for National Federations to Stand Up for Themselves*, 20 MICH. ST. INT’L L. REV. 797, 800 (2012).

25. *Id.*; see also Barbara Ann O’Neill, *International Sports: Have States Succeeded Athletes as the Players?*, 6 PENN. ST. INT’L L. R. 403, 417 (1988).

26. Olympic Charter p.11 (Aug. 2, 2015).

movements were never characteristics that were intended to be a part of the Olympic Movement; however, those characteristics have been embraced by the IOC and contribute to what makes international competition special.²⁷ The Charter, in its “Fundamental Principles of Olympism,” (the “Fundamentals”) states that “[t]he goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.”²⁸ The Charter further provides that “the enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, or other status.”²⁹ Lastly, the Fundamentals dictate that “[b]elonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.”³⁰

The Charter applies to “organisations, athletes and other persons who agree to be guided by the Olympic Charter.”³¹ The organizations include the IOC, the International Sports Federations (IFs), the National Olympic Committees (NOCs), the Organising Committees of the Olympic Games (OCOGs), and the national associations, clubs and persons belonging to the IFs and the NOCs.³² The charter states that “[a]ny person or organisation belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC.”³³ Noticeably missing from these lists, however, is the host country of the Olympic Games itself. This means that the host country of the Olympic Games is not held accountable by the IOC.³⁴ It does not make sense that these countries can reap the benefits of hosting the Olympic Games,³⁵ but not be held accountable by the organization that provides them that opportunity. The Charter takes a broad stance against discrimination,³⁶ however, the lack of accountability seems to be the main obstacle.

27. See O’Neill, *supra* note 25, at 413.

28. Olympic Charter, *supra* note 26, at 13.

29. *Id.* at 14.

30. *Id.*

31. *Id.* at 17.

32. *Id.*

33. *Id.* at 17–18.

34. See generally *id.*

35. See Rassel, *supra* note 24, at 800.

36. Olympic Charter, *supra* note 26, at 14.

The Olympic Games host bid/selection process does not remedy any of the issues inherent in the Charter itself. The IOC feigns transparency through its two-year, two-phase host selection process. The IOC vaguely claims that in the first phase, the host applications are “studied by an IOC-appointed Working Group” and that the IOC executive board selects the applications who will move on to the second phase based on “detailed risk assessment” made by “representatives of various Olympic stakeholders.”³⁷ In phase two, the IOC again performs “important risk assessment” reports which are provided to the IOC voting members.³⁸ Ultimately, the IOC members vote and a host city is selected.³⁹

In order to make their decision, IOC members use reports that focus on the business and operational aspects of the games (venues, costs, media accommodations, transportation, infrastructure and etc.).⁴⁰ The minimal consideration paid to security and legal issues is unsatisfactory. IOC members discuss security issues more as logistical issues (*e.g.*, how many police/military the host has and its ability to respond to natural disasters) rather than as substantive aspects of the games that must be given specific attention.⁴¹ On the legal front, there is a cursory discussion regarding athletes’ ability to procure work permits and the like.⁴² There is no discussion of how the political regime or legal structure in the country might affect participants.

There is no rhyme or reason to the voting at each stage. The votes are cast at the whim of the IOC members. The IOC members are high-powered businessmen and royalty whose votes may be swayed by their own, private agendas.⁴³ Their demands from host nations are unnecessarily extravagant and include things such as: “their own airport entrance, traffic

37. IOC, *All About the Candidature Process*, OLYMPIC.ORG, <http://www.olympic.org/content/the-ioc/bidding-for-the-games/all-about-the-bid-process/> (last visited Oct. 19, 2014).

38. *Id.*

39. *Id.*

40. For example, see IOC, *Report of the 2020 Evaluation Commission* (Apr. 19, 2013), http://www.olympic.org/Documents/Host_city_elections/2020_Evaluation_Commission_report.pdf.

41. *See id.* at 29.

42. *See id.* at 61.

43. *See* Andrew Jennings, *Meet the IOC, Ideal Candidates for a Perp Walk*, THE NATION (Jan. 22, 2014), <http://www.thenation.com/article/178049/meet-ioc-ideal-candidates-perp-walk#>.

lane and prioritized stoplights.”⁴⁴ These are the basic demands to a host that has already been selected. How do IOC executives expect to be treated by countries that are merely bidding for the *opportunity* to be selected? These issues have become so significant that many countries are no longer willing to place bids to host the Olympic Games.⁴⁵

B. Current State of Affairs for FIFA

FIFA rules are set forth in the FIFA Statutes (the “Statutes”), FIFA Disciplinary Code (the “Disciplinary Code”), and FIFA Code of Ethics (the “Code of Ethics”). FIFA has anti-discrimination clauses in its Statutes,⁴⁶ Disciplinary Code,⁴⁷ as well as its Code of Ethics.⁴⁸ The Statutes apply to FIFA “Members,” which are defined as soccer associations recognized by FIFA that have “been admitted to FIFA membership by FIFA Congress.”⁴⁹ The Disciplinary Code applies to “associations; members of associations, in particular the clubs; officials; players; match officials; licensed match and players’ agents; anyone with an authorisation from FIFA, in particular with regard to a match, competition or other event organised by FIFA; spectators.”⁵⁰ The Ethics Code governs “all officials and players as well as match and players’ agents who are bound by this Code on the day the infringement is committed.”⁵¹ Generally, the Statutes are the main governing document for FIFA,⁵² the Disciplinary Code applies more to gameplay,⁵³ where the Ethics Code is concerned with immoral conduct “that has little or no connection with action on the field of play.”⁵⁴

44. Dan Wetzel, *Why No One Wants to Host the 2022 Olympics*, YAHOO SPORTS (Oct. 1, 2014, 6:54 PM), <http://sports.yahoo.com/news/why-no-one-wants-to-host-the-2022-olympics-225450509.html>.

45. For the 2022 Winter Games, only China and Kazakhstan were willing to host the event—two countries “where actual citizens aren’t allowed a real say in things—communist China and Kazakhstan, a presidential republic that coincidentally has only had one president since it split from the old USSR 1989.” *Id.*

46. FIFA Statutes § 3 (Apr. 2015 ed.), http://www.fifa.com/mm/document/AFederation/Generic/02/41/81/55/FIFASTatuten2014_E_Neutral.pdf.

47. FIFA Disciplinary Code § 58 (2011 ed.), <http://www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf>.

48. FIFA Code of Ethics § 23 (2012 ed.), <http://www.fifa.com/mm/document/affederation/administration/50/02/82/codeofethics2012e.pdf>.

49. See FIFA Statutes, *supra* note 46, at Definitions.

50. FIFA Disciplinary Code, *supra* note 47, at § 3.

51. FIFA Code of Ethics, *supra* note 48, § 2.

52. See generally FIFA Statutes, *supra* note 46 (providing general provisions and regulations governing the application of the Statutes to FIFA).

53. FIFA Disciplinary Code, *supra* note 47, § 2.

54. FIFA Code of Ethics, *supra* note 48, § 1.

The Statutes prohibit:

Discrimination of any kind against a Country, private person or group of people on account of race, skin colour, ethnic, national or social origin, gender, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason.⁵⁵

This section takes a broad stance against discrimination, however the fact that its application is limited to FIFA Members reduces its effectiveness.

The Disciplinary Code states that included parties may not “offend[] the dignity of a person or group of persons through contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin.”⁵⁶ This set of violations is highly limited and, notably, does not extend to discrimination against gender or sexual orientation. In fact, there is no mention of either in the entire code.⁵⁷ Since the Disciplinary Code is focused on gameplay,⁵⁸ it makes some sense that it does not mention gender discrimination since the games are already separated by gender; however, the fact that there is no mention of equality in sexual orientation is a glaring oversight.

The Ethics Code dictates that:

Persons bound by this Code may not offend the dignity or integrity of a country, private person or group of people through contemptuous, discriminatory or denigratory words or actions on account of race, skin colour, ethnic, national or social origin, gender, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason.⁵⁹

Unsurprisingly, the Ethics Code provides a comprehensive list of potential violations.

Interestingly, for a code that claims to concern itself more with soccer as a whole, instead of specific gameplay, the provisions only apply to players and officials.⁶⁰ The code should apply to all those associated with FIFA sponsored events (cities, vendors, media and etc.) if FIFA actually

55. FIFA Statutes, *supra* note 46, § 3.

56. FIFA Disciplinary Code, *supra* note 47, § 58(1)(a).

57. *See generally id.*

58. *Id.* art. 2.

59. FIFA Code of Ethics, *supra* note 48.

60. *Id.* §§ 1–2.

wants to “protect the image of [soccer] . . . from jeopardy or harm as a result of illegal, immoral or unethical methods and practices.”⁶¹

A noticeable pattern in the Statutes, Disciplinary Code, and Code of Ethics is that the broadest rules apply to the fewest people, and the narrowest rules apply to the most people.⁶² The Statutes prohibit discrimination on the basis of sexual orientation, gender, and race, among others, however only applies to FIFA members.⁶³ The Disciplinary Code applies to anyone involved with a FIFA sponsored game, including fans and stadium employees.⁶⁴ However, it only prohibits discrimination on the basis of race and religion.⁶⁵ The Ethics Code only applies to players and officials and prohibits discrimination on the basis of sexual orientation, gender and race, among myriad other things.⁶⁶

Like the Olympic Games host bid/selection process, the World Cup host bid/selection process does not remedy any of the issues present in the Disciplinary Code and the Ethics Code. The known extent of the process is set out in bullet points on FIFA’s website.⁶⁷ There do not appear to be any requirements or standards to be followed. Instead, the selection is made through a system of internal votes and processes that take place behind closed doors. The public has no knowledge of what goes into making the host selection.

In the 2014 World Cup, FIFA introduced its “Say No to Racism” campaign. This campaign was aimed at fighting racism and discrimination of all kinds.⁶⁸ The campaign makes references to Article 3 of the Statutes. The irony is that, while the statutes prohibit racism within soccer, it has nothing to do with racism or discrimination outside of the game. This was made clear in Brazil, where racism against the native Brazilians was rampant. They were relocated in order to accommodate the stadiums, and “spending millions of dollars on the hosting the World Cup” while the government “failed to recognize and protect their lands.”⁶⁹

61. *Id.* at Preamble.

62. *See generally* FIFA Statutes, *supra* note 46; *see generally* FIFA Disciplinary Code, *supra* note 47; *see generally id.*

63. FIFA Statutes, *supra* note 46, § 3.

64. FIFA Disciplinary Code, *supra* note 47, § 58.

65. *Id.*

66. FIFA Code of Ethics, *supra* note 48, § 23.

67. *FIFA Competitions Bid Process*, FIFA, <http://www.fifa.com/tournaments/bids/fifaevents/process.html> (last visited Oct. 20, 2014).

68. *FIFA Anti-discrimination*, F, <http://www.fifa.com/aboutfifa/socialresponsibility/antidiscrimination/index.html> (last viewed Oct. 20, 2014).

69. *The Dark Side of Brazil: Police Teargas Indians at Anti-World Cup Protest*, SURVIVAL INTERNATIONAL (May 30, 2014), <http://www.survivalinternational.org/news/10258>.

IV. REFORM IS IN ORDER

Discrimination is a major issue throughout the world as well as the Olympic Games and the World Cup. The IOC and FIFA have the framework in place to use the incentive of hosting the Olympic Games and the World Cup, respectively, as a means of procuring legal reform in prospective host countries. In order to do this, the IOC and FIFA are going to have to make anti-discrimination policies a real priority. It can do so by establishing a clear set of standards that must be followed by all those involved in the IOC and FIFA. It might also demonstrate its commitment to anti-discrimination by creating a third-party oversight board that would monitor all IOC and FIFA events as well as the organizations themselves.

Policy changes meant to attract a broader, more developed range of prospective host nations would go a long way toward building public trust in the IOC and FIFA. This would give their messages more credibility, as well as draw host nations that are more equipped to deal with the strains the events place on a host's infrastructure. The IOC and FIFA have lost credibility among developed nations to the point where they will not even submit bids. The lack of world support is a blow to the events because it limits the selection committee's choices, and increases the likelihood of corruption in the bid process.

A. Discrimination in the Olympic Games and the World Cup

A recent hot-button issue is the Russian anti-gay law that prohibits propaganda that supports "nontraditional sexual" attitudes or relations⁷⁰ and how it affected the 2014 Sochi Winter Olympics.

Since the LGBT propaganda bill was signed into law by Russian President Vladimir Putin, there has been a massive increase in the number of organized attacks against homosexuals.⁷¹ One group in particular (Occupy Pedophilia) has been particularly active. This group solicits gay men with promises of dates, then proceeds to kidnap, humiliate and abuse these

70. КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ ОБ АДМИНИСТРАТИВНЫХ ПРАВОНАРУШЕНИЯХ [KOAP RF] [Code of Administrative Violations] art. 6.21.

71. Stephen R. Brown, *Gay Attacks in Russia on the Rise*, N.Y. DAILY NEWS (Feb. 4, 2014, 2:52 PM), <http://www.nydailynews.com/news/world/gay-attacks-russia-rise-report-article-1.1601896>.

men, and post YouTube videos of the whole process.⁷² This group became active after the law was passed and has been able to act essentially without consequence because of the governmental bias against homosexuality.

During the 2014 Sochi Winter Olympics, arrests were made on Russian nationals and foreigners alike as a result of their demonstrations against Russian law and in support of the anti-discrimination clauses in the Olympic Charter.⁷³ Human Rights Watch (HRW) stated that “[f]oreigners—possibly including athletes—who violate the law, including possibly speaking about their sexual orientation in public, run the risk of being fined, arrested for up to 15 days, and deported from Russia.”⁷⁴

HRW also reiterated its “long-standing position [] that there cannot be a successful Olympics where there is discrimination or human rights abuses.”⁷⁵ This was evident in the claims that athletes might refuse to compete and the fact that many western leaders refused to attend the games, in protest of the law.⁷⁶ Notable absentees included Barack Obama of the United States, David Cameron of Britain, Joachim Gauck of Germany, Francois Hollande of France, and Dilma Rousseff of Brazil.⁷⁷ The entire 2014 Sochi Winter Olympics was surrounded with questions about gay rights.

Another recent issue is that of racism at the 2014 Brazil World Cup. FIFA took no action against the racist chants from Mexican fans during matches against Russia and Croatia.⁷⁸ FIFA also failed to take action against fans who showed up to matches featuring African teams in blackface.⁷⁹ In

72. “In one case members of Occupy Pedophilia lured a man into an arranged encounter where they punched him, breaking his jaw in two places. They then robbed him of \$1,450.” *Id.*

73. Lewis Smith, *Winter Olympics 2014: Sochi Protesters Arrested over Banner Citing Olympic Charter’s Words against Discrimination*, THE INDEP. (Feb. 7, 2014), <http://www.independent.co.uk/sport/olympics/winter-olympics-2014-sochi-protesters-arrested-over-banner-citing-olympic-charters-words-against-discrimination-9115916.html>.

74. Letter from Boris O. Dittrich, Advocacy Director, Human Rights Watch LGBT Rights Program, to Christophe De Kepper, Director General, International Olympic Committee, *Discrimination against LGBT people in Russia in relation to the 2014 Winter Games* (June 19, 2013), http://www.hrw.org/sites/default/files/related_material/SOCHI%20-%20HRW%20ltr%20to%20IOC%20LGBT%2019Jun2013.pdf.

75. *Id.*

76. Daniel Worku, *Sochi Olympics Snubbed by Prominent Western Leaders*, LIBERTY VOICE (Feb. 7, 2014), <http://guardianlv.com/2014/02/sochi-olympics-snubbed-by-prominent-western-leaders/>.

77. *Id.*

78. Owen Gibson, *FIFA Accused of not Taking Racism Seriously Enough at World Cup*, THE GUARDIAN (July 3, 2014, 12:33 PM), <http://www.theguardian.com/football/2014/jul/03/fifa-racism-world-cup>.

79. *Id.*

another instance, two fans were arrested for calling a black player a “little monkey.”⁸⁰ These events are not isolated incidents; racism is a major problem in soccer and sport as a whole.⁸¹

A further issue arose at the 2015 Women’s World Cup in Canada. Here, FIFA decided that it would use artificial turf for the stadiums because of the cost of maintaining grass fields.⁸² This was perceived as incongruent with the men’s World Cup, where all 20 fields were grass.⁸³ FIFA argued that the weather in Canada made it unreasonable to maintain grass fields.⁸⁴ However, Germany and Sweden have similar weather conditions and were able to supply grass fields for the World Cup in prior years.⁸⁵ FIFA’s unwillingness to spend extra money on the women’s World Cup directly contradicts its statutes.⁸⁶ There are legitimate arguments that FIFA is a business and that business decisions need to take into account that reduced revenue will result in a lower profit margin. This, however, is also true of the World Cup. The women’s World Cup does not *have* to use artificial turf to be profitable, thus, in its future, FIFA may need to accept reduced profits in exchange for gender equality.

80. Elaine Quijano, *Racism at World Cup Casts Shadow over Soccer’s Biggest Event*, CBS NEWS (June 20, 2014, 8:11 PM), <http://www.cbsnews.com/news/world-cup-2014-racism-casts-shadow-over-soccers-big-event/>.

81. See *Racism in Football: Rio Ferdinand Warns Against Complacency*, BBC (Feb. 22, 2015), <http://www.bbc.com/sport/0/football/31574503>; see also Chris Barrett, *Folau Part of Johns’ Black List in Racism Row*, SYDNEY MORNING HERALD (June 15, 2010), <http://www.smh.com.au/rugby-league/league-news/folau-part-of-johns-black-list-in-racism-row-20100614-yacb.html?autostart=1>; see also Jemele Hill, *No Excuse for Steve Williams’ Comment*, ESPN.COM (Nov. 9, 2011), http://espn.go.com/espn/commentary/story/_/page/hill-111108/steve-williams-remark-tiger-woods-stinks-racism.

82. *Harrison: Football Turf is Integral to Canada 2015*, FIFA (Oct. 23, 2014), <http://www.fifa.com/womensworldcup/news/y=2014/m=10/news=harrison-football-turf-is-integral-to-canada-2015-2461003.html>.

83. Staff, *Soccer Icon Mia Hamm Renews Call for FIFA to Use Grass Field at 2015 World Cup*, YAHOO! SPORTS (Nov. 3, 2014, 1:37 AM), <http://yahoo.thepostgame.com/blog/daily-take/201411/mia-hamm-artificial-turf-womens-world-cup-fifa-soccer-canada>.

84. *Harrison*, *supra* note 82.

85. Kevin Baxter, *Top Women’s Soccer Players Sue Over Artificial Turf Plans for World Cup*, L.A. TIMES (Oct. 25, 2014, 4:43 PM), <http://www.latimes.com/sports/soccer/la-sp-soccer-baxter-20141026-story.html>.

86. FIFA Statutes, *supra* note 46, at 7.

B. Requirements for the IOC and FIFA if an Incentive-Based Reform System is to Succeed

The IOC and FIFA need to think of the relationship between themselves and the host countries for the Olympic Games and World Cup, respectively, along the same lines as the corporate principal-agent relationship. In this analogy, the IOC and FIFA are the principals and the prospective host countries are the agents. Traditionally, the principal will want the agent “to use as much effort as possible to make the venture a success”⁸⁷ (in this example, the “venture” would be a strong stance against discrimination). In contrast, the agent will want to shirk responsibilities and “expend as little effort as necessary to make the venture a success.”⁸⁸ As such, we must shift the risk from the IOC and FIFA to the prospective host countries by providing incentive.⁸⁹ The incentive here is the ability to host a world event such as the Olympic Games or the World Cup.

C. Proposed Internal Reforms for IOC and FIFA

Some of the biggest issues with this paper’s proposal come from the internal affairs of both the IOC and FIFA. If these organizations are to operate a successful global reform system, they first need to ensure that they have a solid foundation of rules in place, can effectively enforce those rules, and they need to implement transparent processes that can be kept in check by the public.

1. IOC Reforms

As previously mentioned, the Olympic Charter has a broad provision that prohibits discrimination.⁹⁰ This provision enumerates the major forms of discrimination, and also leaves the door open for expansion with the final term “or otherwise.”⁹¹ On its face, the rule is good because it allows for recourse against those who violate the rule, so long as they are subject to the rules of the Charter.⁹²

87. ALAN R. PALMITER & FRANK PARTNOY, CORPORATIONS: A CONTEMPORARY APPROACH 15 (2d ed. 2014).

88. *Id.*

89. *See id.* at 20–21.

90. Olympic Charter, *supra* note 26, at 12.

91. *Id.*

92. *Id.* at 32–33.

The Olympic Charter currently has adequate provisions to effectively enforce its rules.⁹³ Rule 59-1.6 and 1.7 of the Charter state that the IOC may revoke a country's right to bid for or host the Olympic Games if the country is in "violation of the Olympic Charter, the World Anti-Doping Code, or any other regulation."⁹⁴ Rule 59 also delineates measures and sanctions that may be used against a plethora of potential Charter violators.⁹⁵ The measures to protect the rules contained in the Charter are present; however, it seems as though the actual enforcement of those rules is wanting. Where is the line at which point the IOC will revoke a host of its right to organize the Olympic Games? Clearly it was not when the host country passed an anti-gay law as Russia did in the 2014 Sochi Winter Olympics.

The enforceability issues can be attributed to a lack of transparency for IOC procedures. The IOC "is an international non-governmental not-for-profit organisation, of unlimited duration" seated in Lausanne, Switzerland, and "recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000."⁹⁶ The IOC "has billions of dollars laying around and billions more coming in"; it does not pay athletes, share revenue with host countries, assist athletes in travelling to the games, assist with construction or capital costs, and it does not pay taxes.⁹⁷ In addition, the IOC makes outrageous demands to host countries.

For the 2014 Sochi Winter Olympics, Russia spent over \$51 billion in preparation for the games.⁹⁸ Some of the largest projects included the ski complex, alpine centre, and mountain carousel, among others.⁹⁹ The majority of these projects, including much of the infrastructure for Sochi, were built from scratch, specifically in preparation for the games.¹⁰⁰ Russia bore this burden despite the fact that Salt Lake City, Utah, could have hosted the games with minimal costs.¹⁰¹

93. *Id.* at 101-04.

94. *Id.* at 101-02.

95. *Id.* at 101-04.

96. *Id.* at 31.

97. Wetzel, *supra* note 44.

98. Jerin Mathew, *Russia Blows \$51bn on Sochi Winter Olympics as Costs Spiral*, INT'L BUS. TIMES (Feb. 7, 2014, 10:46 AM), <http://www.ibtimes.co.uk/russia-blows-51bn-sochi-winter-olympics-costs-spiral-1435507>.

99. *Id.*

100. *Id.*

101. *See* Wetzel, *supra* note 44.

Despite these issues, the IOC went forth and held the games in Sochi while the world stood idly by, wondering why the games were held in Sochi, with nothing they could do about it. This should be ample evidence that the IOC needs to have published meeting reports, and the discussions as to the selection of a host nation need to be made available to the public.

2. FIFA Reforms

The FIFA Statutes,¹⁰² Disciplinary Code,¹⁰³ and Code of Ethics¹⁰⁴ provide for varying degrees of anti-discrimination rules. The Statutes and Code of Ethics provide for the widest anti-discrimination rules, however they only apply to those directly involved in the matches.¹⁰⁵ The Disciplinary Code applies to spectators as well; however, its stance against discrimination is less inclusive.¹⁰⁶ In general, the FIFA rules need to be aligned to provide broad prohibition against discrimination in all forms.

The Statutes and the Code of Ethics are only enforceable against FIFA associations, players, and players' agents.¹⁰⁷ The Disciplinary Code is enforceable against anyone associated with a FIFA event, including but not limited to players, officials, agents, and spectators.¹⁰⁸ Sanctions for violations of rules in all three documents include suspensions, bans, and fines.¹⁰⁹ None of the relevant documents mention sanctions against the host countries for violating FIFA rules. FIFA should include a provision similar to the IOC's that would allow FIFA to pull the right to host the World Cup from the host nation in order to right this wrong.¹¹⁰ Again, however, there will be issues of when to pull the plug on a host country, and if FIFA would use that power at all.

FIFA is notorious for a lack of transparency.¹¹¹ FIFA has kept under wraps a 2014 report by former United States Attorney Michael Garcia that

102. See FIFA Statutes, *supra* note 46.

103. See FIFA Disciplinary Code, *supra* note 47.

104. See FIFA Code of Ethics, *supra* note 48.

105. See FIFA Statutes, *supra* note 46.

106. See FIFA Disciplinary Code, *supra* note 47.

107. See FIFA Statutes, *supra* note 46, at 7; see FIFA Code of Ethics, *supra* note 48, at 8.

108. FIFA Disciplinary Code, *supra* note 47, at 11.

109. *Id.* at 14–25; FIFA Statutes, *supra* note 46, at 12–14; FIFA Code of Ethics, *supra* note 48, at 11.

110. See Olympic Charter, *supra* note 26, at 101–02.

111. See Wetzel, *supra* note 44 (explaining how the IOC conducts weak investigation charges into corruption and the bidding process, only to be outshined by the ineptitude of FIFA's investigations into the same).

spells out all of the corruption charges and immoral behavior that resulted in Qatar winning the host bid for the 2022 World Cup.¹¹² Garcia has publicly denounced FIFA's secretive nature, especially with regard to the corruption scandals that have followed them for years.¹¹³ Garcia has said that the FIFA investigation process is the "kind of system which might be appropriate for an intelligence agency but not for the ethics compliance process in an international sports institution that serves the public and is the subject of intense public scrutiny."¹¹⁴ Transparency International has echoed this attitude about FIFA claiming that "[i]t is unfortunate that an outstanding and entirely positive event such as the football championship is tarnished by mutual allegations of malpractice and unfair distortions of the decision-making process."¹¹⁵

In 2015, these allegations materialized into criminal charges against FIFA president Sepp Blatter and other high-ranking FIFA officials.¹¹⁶ The criminal investigations focus on "suspicion of criminal mismanagement as well as . . . misappropriation."¹¹⁷ Blatter insisted that he had done nothing wrong and refused to step down from his presidency.¹¹⁸ The FIFA Ethic Committee believe otherwise, and suspended Blatter from all soccer

112. Associated Press, *Brazil, Qatar Continue to Cause FIFA Problems*, ESPN.COM (Jun. 8, 2014), <http://www.espnfc.com/fifa-world-cup/story/1869381/brazilqatar-continue-to-cause-fifa-problems>.

113. Rob Harris, *FIFA Prosecutor Michael Garcia Denounces Secrecy*, WASHINGTON TIMES (Oct. 13, 2014), <http://www.washingtontimes.com/news/2014/oct/13/fifa-prosecutor-michael-garcia-denounces-secrecy/>.

114. Michael Garcia, Keynote Address at the ABA Criminal Justice Section's International White Collar Crime Institute (Oct. 13, 2014), *available at* http://www.abajournal.com/news/article/former_us_attorney_who_investigated_world_cup_bidding_process_calls_for_gre.

115. Transparency International Secretariat, *Anti-Corruption NGO Deplores Lack of Transparency in World Cup Decision*, TRANSPARENCY INT'L (July 6, 2000), http://www.transparency.org/news/pressrelease/anti_corruption_ngo_deplores_lack_of_transparency_in_world_cup_decision.

116. Leander Schaerlaeckens, *Swiss Open Criminal Proceedings on FIFA President Sepp Blatter*, YAHOO SPORTS (Sept. 25, 2015, 10:59 AM), <http://sports.yahoo.com/blogs/soccer-fc-yahoo/sepp-blatter-criminal-proceedings-opened-by-swiss-145807103.html>.

117. *Id.*

118. Rob Harris, *Sepp Blatter Tells FIFA Staff He Has Done Nothing Illegal*, Yahoo Sports (Sept. 28, 2015, 12:34 PM), <http://sports.yahoo.com/news/sepp-blatter-back-fifa-hq-due-address-staff-124839628-spt.html>.

activities based on the numerous corruption allegations against him.¹¹⁹ FIFA vice president Jack Warner and FIFA general secretary Jerome Valcke were subject to the same disciplinary action as Blatter.¹²⁰ These suspensions created a leadership void that provides an open opportunity for reform. Unfortunately, FIFA elections have generally been won on the basis of promises of reform.¹²¹ Instead, the elections generally favor candidates who seem “most likely to keep the deeply entrenched system of patronage in place.”¹²² Recent public demand for transparency for “actions that were for decades conducted in backrooms and condemned never to leave them” is vying for new policies and procedures within FIFA.¹²³ Time will tell whether the old or new ways will prevail.

These extensive changes in the FIFA leadership have provided an opportunity to change the way the organization is run. Hopefully, new leadership will bring honor to the tarnished organization. There is still general discomfort and lack of confidence in FIFA, and transparency and honesty has the potential to go a long way toward righting that wrong.

D. Minimum Legal Standards that Should be Upheld by Prospective Host Countries

In order to draft a set of legal standards, terms such as discrimination, race, and sexual orientation must be defined. Synthesized definitions from the United Nations, the United States, the European Union and Hong Kong will provide reference. These sources can provide a model for the structure and language of the proposed standards. This section will also examine how and when the rules are enforced.

119. Leander Schaerlaeckens, *Blatter, Platini Suspensions Bring Uncertainty to FIFA Presidential Election*, YAHOO SPORTS (Oct. 8, 2015, 10:27 AM), <http://sports.yahoo.com/blogs/soccer-fc-yahoo/sepp-blatter-suspended-for-90-days-by-fifa-142728328.html>.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

I. Anti-Discrimination Law in the United Nations

The United Nations (UN) prohibits discrimination against women,¹²⁴ as well as racial discrimination.¹²⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹²⁶

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits discrimination on the basis of “race, colour, descent, or national or ethnic origin.”¹²⁷ ICERD subsequently defines discrimination as “any distinction, exclusion, restriction or preference . . . which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹²⁸ While it has not officially defined sexual orientation, the UN, in a report addressing discrimination based on sexual orientation and gender identity, has determined that the rights of lesbians, gays, bisexuals and transgenders should be protected in a report addressing discrimination based on sexual orientation and gender identity.¹²⁹

124. Convention on the Elimination of All Forms of Discrimination against Women, Sept. 3, 1981, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> [hereinafter CEDAW].

125. International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf> [hereinafter ICERD].

126. CEDAW, *supra* note 124, art. 1.

127. ICERD, *supra* note 125, art. 1.

128. *Id.*

129. See U.N. High Comm’r for Human Rights, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity: Rep. of the High Commissioner for Human Rights*, ¶ 5, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011), *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.

2. *Anti-Discrimination Law in the United States*

The United States (US) draws its primary force against discrimination from the Fourteenth Amendment to the United States Constitution (14th Amendment).¹³⁰ The 14th Amendment guarantees “equal protection of the laws” for “[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof.”¹³¹ The US has also codified a series of civil rights acts that prohibit discrimination in various areas, including places of public accommodation, employment, and housing.¹³²

In the Employment Non-Discrimination Act of 2013 (ENDA), drafters defined sexual orientation as “homosexuality, heterosexuality, or bisexuality.”¹³³ ENDA prohibits employers from treating past, present, or future employees differently in any way because of their sexual orientation.¹³⁴

In order to define race, legislation often uses the term, but also includes additional terms to clarify or expand the definition. The Civil Rights Act of 1964 and many other US legislative documents prohibit discrimination on the basis of “race, color or national origin.”¹³⁵

3. *Anti-Discrimination Law in the European Union*

Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination on the basis of “sex, race, colour ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.”¹³⁶ Additionally, Article 14 of the European Convention on Human Rights prohibits discrimination on the basis of “sex, race, colour, language, religion, political or other opinion, national

130. See U.S. CONST. amend. XIV, § 1.

131. *Id.*

132. See generally Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964), available at http://library.clerk.house.gov/reference-files/PPL_CivilRightsAct_1964.pdf; see also Exec. Order No. 13672, 79 Fed. Reg. 42,971 (July 23, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-07-23/pdf/2014-17522.pdf>; see also Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968), available at <http://legcounsel.house.gov/Comps/civil68.pdf>.

133. S. 815, 113th Cong. § 3 (2013), available at <https://www.congress.gov/bill/113th-congress/senate-bill/815/text>.

134. *Id.* § 4.

135. Civil Rights Act of 1964, *supra* note 132.

136. Solemn Proclamation (EC) No. 364/01 of 18 Dec. 2000, art. 21, 2000 O.J. (2000/C), available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf [hereinafter Solemn Proclamation].

or social origin, association with a national minority, property, birth or other status.”¹³⁷ The EU does not directly define discrimination; instead, it generally promotes equality and equal treatment of all.¹³⁸

This may be a good route to take since the EU has a simple, all-encompassing rule that is easy to write into the bylaws. The danger with a short rule, however, is that it uses few words, which means they need to be broadly construed. This can lead to inequities when different people interpret the same rule potentially in a different manner, which could result in different conclusions resulting from the same rule being applied to similar scenarios.

4. *Anti-Discrimination Law in Hong Kong*

Hong Kong established the Equal Opportunities Commission (EOC) to implement the Sex Discrimination Ordinance (SDO) and the Race Discrimination Ordinance (RDO).¹³⁹ The SDO prohibits acts “[i]f (a) an act is done for 2 or more reasons; and (b) one of the reasons is the sex . . . of person (whether or not it is the dominant or substantial reason for doing the act).”¹⁴⁰ The RDO prohibits discrimination on the grounds of “race, colour, descent or national or ethnic origin.”¹⁴¹ The RDO defines discrimination as treating a person “less favourably than the discriminator treats or would treat other persons” or imposing a requirement or condition upon an individual or group of individuals that cannot comply because of race minority status.¹⁴²

137. Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14, Dec. 10, 1948, *as amended by* Protocol No. 14 on June 1, 2010, *available at* http://www.echr.coe.int/Documents/Convention_ENG.pdf.

138. Solemn Proclamation, *supra* note 136, art. 21.

139. *What is EOC*, EQUAL OPPORTUNITIES COMMISSION, <http://www.eoc.org.hk/eoc/graphics/folder/showcontent.aspx?content=our%20work-what%20is%20eoc> (last visited Dec. 28, 2014).

140. Sex Discrimination Ordinance, (2013) Cap. 480, § 4 (H.K.), *available at* [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/A15C32BE97DAFAA6482575EF000D6CA2/\\$FILE/CAP_480_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/A15C32BE97DAFAA6482575EF000D6CA2/$FILE/CAP_480_e_b5.pdf).

141. Race Discrimination Ordinance, (2013) Cap. 602, § 8 (H.K.), *available at* [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/7B5C41B095863F7C482575EF0020F30A/\\$FILE/CAP_602_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/7B5C41B095863F7C482575EF0020F30A/$FILE/CAP_602_e_b5.pdf) [hereinafter RDO].

142. *Id.* § 4.

5. Proposed Legal Standards

Looking at the different available avenues, the following set of standards can be used as a starting point to writing new anti-discrimination bylaws into the IOC and FIFA regulations. These rules attempt to balance the brevity and ease of introduction of the rule, with effectiveness and specific language not open to interpretation that can be applied even-handedly. Based on the foregoing examples, the IOC and FIFA should require host countries to uphold the following minimum standards.¹⁴³

a. Definitions

Sexual orientation: Sexual orientation means homosexuality, heterosexuality and bisexuality and refers to the sex of those to whom one is sexually and romantically attracted.

This definition was taken directly from ENDA¹⁴⁴ because it covers all forms of sexual interaction (same sex, different sex and both sexes). This definition also closely follows the framework and reasoning of the American Psychological Association (APA) definition.¹⁴⁵ Modern research by Kinsey suggests that sexual orientation may not fall neatly into one of these definable categories and that sexual orientation is better thought of as a continuum. Even if this is true, the points on the scale correspond to the aforementioned categories. As such, for the sake of clarity in the law and the ability to actually record laws, we must include this slightly inaccurate definition.

Gender: Gender means the attitudes, feelings and behaviors associated with being male, female or intersex. This definition follows the APA definition for gender.¹⁴⁶ It is important to note that the definition for gender does not include physical traits. This means that transgender and cross-dressing persons will also be included and protected.

Race: Race means race, color, descent and national or ethnic origin. This definition includes all terms referring to the ideas or notions of race

143. It is important to note that the suggested minimum standards are limited to the scope of this writing. They are not and do not claim to be all-inclusive.

144. S. 815, *supra* note 133, § 3.

145. AM. PSYCHOLOGY ASSOC., *Definition of Terms: Sex, Gender, Gender Identity, Sexual Orientation*, in THE GUIDELINES FOR PSYCHOLOGICAL PRACTICE WITH LESBIAN, GAY, AND BISEXUAL CLIENTS (2011), available at <http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf>.

146. *Id.*

contained within the UN, US, EU and Hong Kong anti-racism laws.¹⁴⁷ Ethnic origin should be read broadly to include the any group of people that have characteristics that can define them as a separate group.

Discrimination: Discrimination means disparate treatment of an individual or group of individuals based in whole or in part on a particular characteristic of that individual or group of individuals. This definition is a broadened version of the definition provided in ICERD and RDO.¹⁴⁸ The purpose of these standards is to ensure that everyone is treated equally. This means that any treatment of a group that is different from the treatment of another group should not be allowed. This includes preferential treatment of a particular group; preferential treatment is a disguise for discrimination against all other groups.

Place of public accommodation: A place of public accommodation includes any establishment that is open to the public and whose primary purpose is to provide services to the public.

This definition is taken from the Civil Rights Act of 1964¹⁴⁹—the definition ensures that amenities and services will be available to all who seek them without regard for state of being.

It is important to remember that in all of these definitions, there may be obscurities and differences in interpretation. This is especially true since different cultures and national identities will interpret things in different way because of their unique perspective. These definitions should not be thought of as rigid, but more fluid. They should be open to broad interpretation, especially when they may be interpreted in a way such that they would create equal treatment of disparately treated groups.

b. Rules

Host nations must have laws in place that actively prohibit discrimination on the basis of sexual orientation, gender, and race in places of public accommodation; furthermore, these laws must prohibit the privatization of amenities on the basis of sexual orientation, gender, or race. This provision is in place to ensure that visitors to the host nation are treated

147. See ICERD, *supra* note 127, art. 1; see Civil Rights Act of 1964, *supra* note 132; see Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 137, art. 14; see RDO, *supra* note 141, § 8.

148. See ICERD, *supra* note 127, art. 1; see RDO, *supra* note 141, § 8.

149. See Civil Rights Act of 1964, *supra* note 132, § 201.

fairly in the areas surrounding the venues and in their accommodations. The latter part of the provision is an attempt to ensure that businesses are not allowed to skirt the rules by claiming they are private organizations that are generally open to people who meet or do not exhibit certain criterion.

Host nations must have laws in place that prohibit discrimination by employers against potential, present, or previous employees on the basis of sexual orientation, gender and race. This provision exists to ensure there is not discrimination against potential employees that might work at the stadiums or surrounding the stadiums during events. This provision also ensures there is equality in the facilities' management and function.

Host nations must have laws that prohibit acts against individuals or groups of individuals on the basis of sexual orientation, gender, or race. This provision exists to protect the physical safety of all those involved in the world event, including athletes, officials, vendors, and spectators. Not only does this law protect the bodies of participants and spectators, but it also ensures they will feel comfortable and safe in the environment. This can go a long way toward popularizing these events and drawing increased revenues for the host nations. It is paramount that everyone feel secure in order for a wide variety of spectators to be able to watch the events. It is important for the athletes to feel secure for the same reasons, and also to ensure the integrity of the games. Top athletes in minority groups might be discouraged from participating in the events, which could have a chilling effect on potential champion contenders' desire to compete. This could mean that an athlete who is the best in his field, who might have been best in the world, might not ever compete.

Host nations must have reasonable methods or recourse for those who are discriminated against on the basis of sexual orientation, gender, or race. This provision ensures there is some method of enforcement of the requisite laws against discrimination. The laws will carry little weight without a system that enforces them. This provision is difficult to administer because of the "reasonability standard." This is a subjective standard that will be up to the discretion of the selection committee to hash out. This means the committee must objectively determine if the prospective host has the ability to enforce its laws and to maintain peace and prosperity during the events.

The goal of these rules is to provide the broadest possible protections for participants and spectators during world events. If any rule can be read more narrowly, such as to exclude a group from protection, it should not be read as such. Conversely, if a rule can be interpreted more broadly such that

it increases protections in equality for a defined group, it should be read as such.

6. Enforcement of the Standards

The IOC and FIFA must require these standards as part of the host country selection process. Additionally, if the host nation does not uphold these standards prior to and throughout the course of the event, the IOC and FIFA must disallow the hosting privilege until the standards are upheld. This includes stopping the event if it is already in progress.

If the IOC and FIFA do not uphold these standards, they should be held responsible by an outside party. This goes back to the issues of transparency that both organizations face. The present recourse is that the general global public will stop watching these events. Theoretically, the decrease in revenues should encourage the IOC and FIFA to maintain noble standards. The reality, however, is that the general public has no power over these organizations. People are so enthralled by the spectacle of the Olympic Games and the World Cup that they are willing to overlook the shortcomings of the organizations that hold them. The IOC and FIFA need to be held accountable by a third-party, global organization.

One possibility is that the UN can monitor the IOC and FIFA. It would be possible for the UN to create a division for the purpose of overseeing and maintaining the integrity of international events and organizations. The UN could also oversee other world organizations and act as a sort of global governance to ensure compliance with standards of operation. This would not only help the IOC and FIFA with their transparency and corruption issues, but would also ensure that other global organizations were acting in the best interests of the world as a whole.

V. POTENTIAL PITFALLS

In order for a proposal to the IOC and FIFA to use the right to host the Olympic Games and the World Cup to succeed, there must exist two conditions: first, the IOC and FIFA need to care enough about anti-discrimination to reform their host selection system; second, prospective host countries need to care enough about hosting the Olympic Games and the World Cup such that they are willing to reform their respective legal systems. Realistically, the draw of hosting a world event will not single-

handedly cause a country to reform its legal system, but it might expedite reform in a country where reform is imminent.

A. Do the IOC and FIFA Care Enough to Change?

The primary hurdle to overcome would be convincing the IOC and FIFA to make a change. This will be difficult since the IOC and FIFA members make billions of dollars each year.¹⁵⁰ Implementing a new system would be time-consuming and expensive. FIFA has shown that is not serious about a stance against discrimination because it is allowing Qatar, a country that overtly outlaws homosexuality, to host the World Cup.¹⁵¹

One reason the IOC and FIFA might be convinced to change is because Swiss law might require them to. Both the IOC and FIFA are incorporated in Switzerland¹⁵² and Switzerland is a part of the UN.¹⁵³ As such, Switzerland must enforce the provisions of the UN Charter.¹⁵⁴ This means that Switzerland must promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹⁵⁵ UN Charter Article 56 requires Switzerland take individual action to promote this equality.¹⁵⁶

Article 8 of the Constitution of the Swiss Confederation prohibits discrimination based on race, gender and “way of life.”¹⁵⁷ The IOC and FIFA are bound by Swiss law.¹⁵⁸ As such, Swiss law requires that the IOC and FIFA also not discriminate in such manner, even though this discrimination continues even today.¹⁵⁹

Potential recourse may come by way of lawsuits in Swiss courts. The issue here would be finding a way to bring a suit in these courts. A plaintiff

150. Gus Lubin and Lawrence Delevingne, *Olympics, Inc.: Inside the Secretive, \$6 Billion World of the International Olympic Committee*, BUS. INSIDER (Feb. 17, 2010, 11:51 AM), <http://www.businessinsider.com/olympics-inc-inside-the-business-of-the-ioc?op=1>.

151. Jonathan Crowl, *Qatar’s Latest Remedy for High Heat: Playing World Cup in Middle of the Night*, YAHOO! SPORTS (Oct. 21, 2014, 3:39 PM), <http://yahoo.thepostgame.com/blog/daily-take/201410/qatars-latest-idea-address-heat-concerns-playing-world-cup-middle-night>.

152. Olympic Charter, *supra* note 26, at 33; FIFA Statutes, *supra* note 46, at 6.

153. *Member States of the United Nations*, UN, <http://www.un.org/en/members/> (last visited Oct. 23, 2015).

154. U.N. Charter art. 4.

155. *Id.* art. 55, ¶ c.

156. *Id.* art. 56.

157. BUNDESVERFASSUNG [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 8 (Switz.), available at <http://www.admin.ch/ch/e/rs/1/101.en.pdf>.

158. Olympic Charter, *supra* note 26, at 15; FIFA Statutes, *supra* note 46, at 6.

159. Olympic Charter, *supra* note 26, at 12; FIFA Statutes, *supra* note 46, at 7.

would need to be able to prove some sort of damages caused by the IOC or FIFA to gain standing before the court. The amount of resources that would be required to bring suit would be immense and not worth the cost. There would also be concerns about whether discrimination during the world events would fall under the IOC's or FIFA's responsibility under some sort of principal-agent theory of liability. Another issue would be in finding someone willing to take on the suit. Who would a lawsuit benefit? The costs and uncertainty of success make a suit against IOC and FIFA improbable, especially considering that a party with those resources would have little to gain from the suit anyway.

Another reason the IOC and FIFA might be convinced that change is worth the time, effort, and money is that corporate social responsibility (CSR) campaigns have proven to make money in the long-run by improving a company's goodwill¹⁶⁰ and that "there is a clear positive relation" between CSR and performance.¹⁶¹ Further, it has been shown that CSR campaigns add market value to the firms because of the long-term benefits perceived by investors.¹⁶²

An example of a successful CSR campaign is the one started by Crate & Barrel in 2005, where the company sent gift certificates to its customers that could be redeemed for donations for an education initiative of their choice.¹⁶³ In a benchmark study, more customers said they would "very likely consider Crate & Barrel for their next home furnishings or accessories purchase" when they received the donation certificate than when they did not.¹⁶⁴ This is consistent with the fact that CSR campaigns "help[] attract customers who may be more loyal because of shared values and beliefs."¹⁶⁵

160. See Yeosun Yoon, *The Effect of Corporate Social Responsibility (CSR) Activities on Companies With Bad Reputations*, 16 J. OF CONSUMER PSYCHOL. 377, 388 (2006).

161. Sergio Vergalli and Laura Poddi, *Does Corporate Social Responsibility Affect the Performance of Firms?* 34 (FEEM, Working Paper No. 52, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1444333.

162. *Id.* at 35.

163. Geoff Livingston, *5 Winning Corporate Social Good Campaigns*, MASHABLE (Feb. 18, 2010), <http://mashable.com/2010/02/18/corporate-social-good-campaigns/>.

164. Emily Steel, *Novel Program Blends Charity and Marketing*, WALL ST. J. (Dec. 20, 2006, 12:01 AM), <http://www.wsj.com/articles/SB116658143438455320>.

165. Victoria Taylor, *The Most Imaginative CSR Ad Campaigns*, FORBES (July 9, 2010, 1:00 PM), <http://www.forbes.com/2010/07/09/pepsi-macys-twitter-tide-levis-advertising-responsibility-cmo-network-imaginative-csr.html>.

The IOC and FIFA could create a CSR campaign that would promote equality and create more transparency in the organizations. Getting the public more involved is a critical step in this endeavor because the public will discuss, disseminate, and accept the changes. Another important step is to ensure that there is at least an image of transparency and that the IOC and FIFA will be held accountable for their actions by the general public. It would be better if there were an actual means of control available. It might behoove the UN to create a regulatory board that could oversee the IOC, FIFA, and other similarly situation organizations that have a broad impact on the world, or provide international services. This could be a platform for the UN to reach a broader audience, especially one that might not always be in tune with global politics and events. Getting the UN involved in world sporting events could provide it a larger audience and platform to promote its humanitarian efforts.

Business for Social Responsibility (BSR) is a professional organization that focuses on improving social responsibility across all businesses. In a 2014 study, BSR found that “the most effective way to improve low public trust in business” is through increased transparency.¹⁶⁶ Of the over 700 business professionals, only 26% currently rate the business sector as being sufficiently transparent.¹⁶⁷ In light of this finding, increasing transparency in business emerged as the number one way to increase public trust.¹⁶⁸

B. Is Hosting the Olympic Games or the World Cup Sufficient Incentive for Reform?

Countries that adopt a legal standard that provides for equality are more likely to be financially stable and economically successful. If countries wish to host a world event, they will bring themselves to stability, will be more able to host the event, and will spend less money doing so because the requisite infrastructure should already be in place.

Studies show that the countries that host these world events often lose money—to the tune of tens of up to billions of dollars.¹⁶⁹ This is because the host nations often do not have a sufficient infrastructure in place to

166. *State of Sustainable Business Survey 2014*, BUS. FOR SOC. RESPONSIBILITY 7 (Oct. 2014), http://www.bsr.org/reports/BSR_GlobeScan_Survey_2014.pdf.

167. *Id.*

168. *Id.* at 17.

169. Josh Sanburn, *London's Loss? Why Hosting the Olympics is Bad Business*, TIME (July 26, 2012), <http://olympics.time.com/2012/07/26/londons-loss-why-hosting-the-olympics-is-bad-business/>.

handle the spike in visitors.¹⁷⁰ The IOC and FIFA need to select host nations that are equipped to deal with the large demands on infrastructure and general resources these world events place on a host nation. This will ensure that the host will not need to spend exorbitant amounts of money in preparation for the event and that the event will run more smoothly because large amounts of infrastructure will not need to be created in a short amount of time.

These issues are ones that are supposed to be addressed in the prospective host evaluations. The selection committee is supposed to look at the viability of the host and how much money and resources they will need to expend to host a successful event. The IOC and FIFA have not done this effectively, and are not forced to because there is no way for the general public to learn the organizations' selection processes. Again, this speaks to the lack of transparency of the IOC and FIFA and the need to hold them accountable for their actions.

It seems as though the Olympics Games and World Cup could be sufficient incentives because of potential profits. However, the majority of nations who have a chance at making a profit from the events are those who already have anti-discrimination laws in place. Thus, it is possible that these policies could create more inequality.

If countries refuse to change their ways, then the standards will fail and create more inequity because they will polarize nations. If the Olympic Games and the World Cup are alone insufficient catalysts for change, perhaps the World Health Organization (WHO) or other global aid groups offering aid contingent on minimum standards could effect change.

*C. What Happens When the Proposed Minimum Standards are
Incongruent with a Country's National Beliefs?*

The UN dictates that basic human rights and freedoms should be maintained. There are UN nations from various religions and cultures that are all able to uphold the UN standards. Often this is an issue of the separation of church and state. Islam is the official religion of Qatar and it has Islamic laws on the state books. Church and state need to be separated in order to ensure visitors are safe because of their different religious

170. Wetzal, *supra* note 44.

beliefs. It is unreasonable to require outsiders to adhere to a different belief system because of geographic location of a world sporting event.

In some instances, there might be nations who are characteristically opposed to the types of equality proposed. For instance, both Russia and Qatar have publicly denounced homosexuality. Qatar has a law that expressly prohibits homosexuality. Another example is that in the Islamic religion, women and men are not treated identically. Thus, in Muslim states and countries, women are not treated in the same way as men because the laws are based on the religious beliefs. In these instances, it is important to point out that the IOC and FIFA would not be asking people to change their beliefs. Instead, the states/countries would be asked to create a safe environment for foreigners who may not share that nation's same belief system.

The issue with this approach is that it is a case of forcing nations to conform to the western ideal of a separation of church and state. The Olympic Games and the World Cup were both created to facilitate global interaction, regardless of opinions or station in life. These provisions would westernize the organizations and may alienate nations who do not follow those western ideals. This may seem unreasonable, but the IOC and FIFA will have to weigh their options. Also, this proposal seeks to provide a basic human right. Regardless of beliefs or opinions, these proposals seek to provide protection and ensure the safety of visitors. It is a basic human right that no person should have to live in fear or be threatened for being themselves.

A possible solution would be to pass laws that would ensure the safety of visitors, which does not apply to citizens. Bifurcating the legal system in this way allows a country to impose upon its citizens any laws it sees fit, while still accommodating and protecting the interests of foreigners. The problem with this is that it would create higher transaction costs. It would be difficult to enforce two sets of laws. Also, citizens might lie about their citizenship in order to get around existing law. Doing this would also raise some line-drawing issues and would be difficult to determine which laws should apply to outsiders and which should not.

In order to reduce transaction costs for the hosts, the IOC and FIFA could draft a set of laws that would apply during the events. This way each would be governed by the same rules, and all participants would be protected equally. This would not eliminate the enforcement issues, but it would reduce the burden on host nations of having to draft a new set of laws. The enforcement issues might be remedied by having the IOC and FIFA create a committee that would oversee, train and educate local law enforcement in applying event rules.

An unintended result of these reforms would be the possibility of an increase in tourism. If nations reformed their legal systems to be more accommodating for a variety of people, they would likely attract more visitors. This could lead to a much-needed increase in revenue in many countries that are struggling financially.

VI. CONCLUSION

The proposed reforms will not change the world by themselves, however, the reform can serve as a model that other international organizations might institute in order to procure change. If international organizations flexed their muscle together, nations would have no choice but to find a way to reform their legal system in favor of equality.

Imagine if the organizations that helped countries in the case of natural disaster would do so only if the country upheld similar standards to the ones proposed here. If nations knew that they would isolate themselves by not upholding humanitarian principles, they might be more inclined to change their ways. It is true that many nations are already isolated because of their beliefs, but humanitarian organizations often refuse to discriminate against nations because of their governments or beliefs.

A broad policy of refusing to assist nations that do not uphold humanitarian standards would be seen as “tough-love” mentality because you may be refusing aid to people who do not share the national beliefs. However, a move toward requiring particular humanitarian equalities could be a large step toward giving the minority factions a voice and some power against their governments.

This proposal will likely be ineffective against these aid groups as they tout the desire to help those in need, regardless of beliefs. While this seems like the most humanitarian approach, we have to remember that in helping nations that perpetuate human inequalities, we are effectively condoning the behavior. Lending aid to a country that does not support equality is lending support to inequality. It may be true that those in need are not the ones perpetuating the inequality, however they are also not doing anything to stop it. These required standards and refusal to help unless they are met, might give some power to those who wish to oppose inequality.

Many oppressive nations rely on the aid provided by global aid organizations and would have a hard time functioning without it. We need to force these nations to conform to generally accepted practices of equality.

Though denying aid may hurt them now, it will be better for them and the world in the long-run.

In the same vein, it is important to note that these reforms in and of themselves will likely not change those nations who are on the extreme end of the spectrum as far as refusing to grant these equalities. It is likely that even a combination of many organizations would not change them. These policies and standards would be aimed at effecting change in nations that are more toward the borderline. The incentive to change might just give them the push they need to implement or enforce humanitarian policies.

There may be some who claim these new procedures would introduce bias against developed countries. Two questions stem from this: 1) Is there not already bias? 2) Is it a bad thing to have this bias?

To answer the first question, bias is already a large part of the selection processes for both the IOC and FIFA. They will only allow nations to host their respective events if those countries cater to the needs and the demands of the selection committees. This already disadvantages countries who have traditionally refused to comply with the committees' outrageous accommodation demands. First world, and some second world, countries are the only ones who have a legitimate chance at hosting these events because they are the only ones who have sufficient infrastructure to meet the demands of the host selection committees.

In response to the second question, it does not seem like it would be so bad to only host these world events in more developed countries. First, the host nations would not need to spend as much money to host the events because they already have most if not all of the infrastructure in place. For example, Russia spent millions of dollars building the stadiums and event centers for the Sochi Olympics. The US and Switzerland already have the facilities in place to host the event and would only have needed to update the venues. Russia spent millions of dollars, the US or Switzerland would only have needed to spend hundreds of thousands. While money would need to be spent regardless, it is not difficult to see that more developed countries could host the events more efficiently and economically.

Not only would the cost be lower, but more developed nations would also make the games safer for both participants and spectators. In some instances, the event facilities are being built in a rush by likely unqualified laborers in order to meet event deadlines. In more developed countries, the facilities may already be in place; or at the very least, they will be constructed by qualified laborers and meet governmentally mandated safety standards.

Physical infrastructure is significant in the process, but so is the civil infrastructure. More developed nations are more likely to have emergency

personnel in place that are more equipped and prepared to deal with the influx in people. Also, developed nations will likely have more hotels and accommodations available to participants and spectators. Look at the issues that arose in Sochi when there was insufficient housing. People could not find places to stay, and when they could it was often shoddily constructed (toilets facing each other, bathroom doors did not open because they hit the sinks/toilets).

These proposals should not be viewed as a fast, short-term solution. These proposals will take years to implement, and will effect change slowly. Nations on the cusp of change or reform will benefit first. The proposals will then trickle down into nations who are further away from equality because of the increasing pressure from neighboring states, allies or etc.

The global change has to start somewhere, and events such as the Olympic Games and the World Cup bring the world together. These events gain the globe's attention long enough to elicit change. Sports are a powerful tool that allow all different kinds people to connect through a non-threatening medium. The IOC and FIFA know this, nations who host the world events know this—it is time we as a human race use this tool for the greater good of our world.

