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Mega Sporting Events Procedures and Human Rights: Developing an Inclusive Framework

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COMMENTS

MEGA SPORTING EVENTS PROCEDURES AND HUMAN RIGHTS: DEVELOPING AN INCLUSIVE FRAMEWORK

Abby Meaders Henderson[*]

> *Hosting the Olympic Games of course guarantees the world's attention but there is more to it than simply bathing in the global spotlight. Most importantly, host cities can use the opportunity to create a positive and lasting legacy, resulting in both tangible and intangible returns to local communities.*[1]

Introduction

Mega-events, such as the Olympic Games and the Fédération Internationale de Football Association ("FIFA") World Cup, have a tremendous impact on the world. Every two to four years, countrymen rally together to watch their country's team compete on the world's stage. Many fans will even travel across the globe to cheer their team on in person. Because of the prestige that comes with being selected as a host country, many strive to host one or more of these events; some even seek the return of the games after having hosted them once. With the perceived benefits of hosting a mega-event, however, comes the great responsibility and pressure to hold bigger and better games each time.

The pressure to hold a more impressive mega-event than the last host country has caused the costs of hosting these sporting events to skyrocket in recent years. A report in the Journal of Economic Perspectives estimated that, on the higher end, the 2008 Beijing Summer Games cost China over $45 billion, and the 2014 Sochi Winter Games cost Russia over $51 billion.[2] On the lower end, however, the 2012 London and 2016 Rio de Janeiro Summer Games cost each country just over $11 billion.[3] Following the 2014 Men's World Cup in Rio de Janeiro, FIFA estimated that Brazil

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1. Eduardo Paes, *Challenges of Hosting a Big Sporting Event*, HUFFINGTON POST (Aug. 27 2013), http://www.huffingtonpost.com/eduardo-paes/rio-olympics-protests_b_3509506.html.

2. Robert A. Baade & Victor A. Matheson, *Going for the Gold: The Economics of the Olympics*, 30 J. ECON. PERSP. 201, 205 (2016).

3. *Id*.

spent a total of just over $15 billion to host the tournament.[4] Given the enormous costs cited in these reports, even the lower end of tens-of-billions of dollars is not easy for most countries to find within their annual budgets. And, according to the American Economic Association, "for most modern Olympics, the costs have far outstripped the benefits."[5] Considering the publicity associated with hosting a mega-event, such as these two worldwide sporting events, one would presume that countries would seek to host clean events, with all efforts conducted legally and without shortcuts. Throughout the history of mega sporting events, however, this presumption has been obliterated by stories of mounting pressure put upon host countries to cut corners to complete projects quickly and cheaply.

Under the burden of holding an impressive event, many cities fail to protect their citizens' human rights when the pressures of impending games are mounting.[6] These failures tend to disproportionately impact minority, impoverished, and indigenous populations and shed a negative light on the hosting of world-wide sporting events as a whole. The disproportionate effects on these vulnerable populations manifest themselves differently, and are often primarily a result of the host country's lack of consideration for these populations in general. FIFA and the Olympic Organization should not condone violations of the rights of indigenous and impoverished communities by remaining silent when violations occur. Organizations like FIFA and the Olympic Organization—who claim to promote unity and peace through sport around the world—should have procedures that protect human rights and uphold their core organizational values.

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4. *FAQ: Setting the Record Straight*, FIFA.COM, 1, http://www.fifa.com/mm/document/tournament/competition/02/36/32/63/faq_en_neutral.pdf (last visited Sept. 22, 2016), *see also* Stephen Wade, *FIFA Returns $100M to Brazil; World Cup Cost $15 Billion*, USA TODAY (Jan. 20, 2015), http://www.usatoday.com/story/sports/soccer/2015/01/20/fifa-returns-100m-to-brazil-world-cup-cost-15-billion/22050583/.

5. Tim Hyde, *Are the Olympics Ever Worth It for the Host City?*, AM. ECON. ASS'N (Aug. 8, 2016), https://www.aeaweb.org/research/are-the-olympics-ever-worth-it-host-city.

6. *See generally* Minky Worden, *Raising the Bar: Mega-Sporting Events and Human Rights*, HUM. RTS. WATCH, https://www.hrw.org/world-report/2015/country-chapters/global-1 (last visited Sept. 22, 2016) (noting that other common violations include forced evictions, exploitation of migrant labor, media and civil society silencing and suppression, and gender discrimination); *see also Sport and Rights Alliance: Human Rights in Sports*, SPORT & HUM. RTS., http://www.sportandhumanrights.org/wordpress/index.php/2015/07/06/sport-and-rights-alliance/ (last visited Sept. 22, 2016) (citing high-level corruption, in both the International Olympic Committee and FIFA, as an additional problem that contributes to the continuation of human rights abuses relating to mega-events).

This paper seeks to demonstrate the evolution of FIFA and Olympic Organization mega-events procedures as organizations, such as these two, begin to consider incorporating human rights considerations into their processes. This paper will also demonstrate the application of each stage of this procedural evolution by examining how a lack of human rights procedures may have affected some recent mega-events sponsored by FIFA and the Olympic Organization. Mega-events affiliated with these two organizations are well suited for analysis in this paper because they are universally known and involve nearly the entire world when they occur. Part I of this paper provides background information on FIFA and the International Olympic Committee ("IOC") and describes the current state of both entities' mega-event procedures. Recent developments in the integration of human rights policies into these two bodies' procedures are explained in Part II. Part III outlines areas in which recent developments in procedure could be improved upon by being more inclusive of minority groups, such as indigenous populations. Finally, Part IV offers Brazil as a case study to demonstrate how each incremental increase in human rights policy implementations in these mega-events' procedures could have affected the country's human rights impact and legacy as a host of several mega-events over the course of the last decade.[7]

I. FIFA and the IOC: Background and Mega-Events Procedures

Both FIFA and the Olympic Organization are focused on promoting and furthering sport around the globe. In addition, both entities have strict guidelines and lengthy processes that countries must undertake to be considered as a host country for mega-events affiliated with their organizations. Current IOC and FIFA procedures focus exclusively on facilitating their respective events, and do not contain provisions that address the protection of human rights. Although both IOC and FIFA procedures require some form of country assessment as a portion of their vetting processes for host countries, they do not explicitly require that host countries have reputable human rights records or respect human rights as they prepare for and facilitate a mega-event.

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7. *See generally No.25: Rio 2007 Parapan American Games*, INT'L PARALYMPIC COMM. (Aug. 30, 2014), https://www.paralympic.org/feature/no25-rio-2007-parapan-american-games (noting that in 2007 Brazil hosted the Pan American and Panpara Games); *FIFA Confederations Cup Brazil 2013*, FIFA.COM, http://www.fifa.com/confederationscup/archive/brazil2013/ (last visited July 2, 2017); *2014 FIFA World Cup Brazil*, FIFA.COM, http://www.fifa.com/worldcup/archive/brazil2014/ (last visited July 2, 2017); *Rio 2016*, INT'L OLYMPIC COMM., https://www.olympic.org/rio-2016 (last visited July 2, 2017).

A. FIFA

Founded in 1904, FIFA is an association established under and governed by Swiss Law.[8] FIFA currently has 211 member associations that all work together to further FIFA's main goal: "the constant improvement of football."[9] Aside from the Olympic Organization,[10] FIFA is the most widely watched and participated in international sporting association, with more member associations than there are member states of the United Nations ("UN"). With a global fan base of an estimated 3.6 billion people[11] and worldwide country participation, FIFA has a responsibility to ensure that its host countries respect human rights when hosting FIFA related mega-events. FIFA must take progressive steps toward incorporating the protection of human rights into their practices and agreements.

FIFA seeks to aid host countries in facilitating games that leave a lasting legacy in and create "sustainable benefits" for the host country.[12] However, FIFA's bidding process is much less methodical than the counterpart process governed by the IOC.[13] While FIFA's full bidding manual is not available to the general public, its process appears to be much less formal, and its interactions with host country hopefuls throughout the vetting process is much less extensive than that required by the IOC.[14] At the outset of its bidding process, FIFA distributes bidding documentation, and "workshops" interested bidders, a process that is not well-known, but during which FIFA administrators presumably assess the actual feasibility of each prospective country's ability to host an event as large as a World Cup.[15] FIFA then accepts World Cup bid proposals and makes its announcement of the selected host country and city.[16] Because the

8. *Who We Are*, FIFA.COM, http://www.fifa.com/about-fifa/who-we-are/index.html (last visited Oct 24, 2016).

9. *Id.*

10. *See* JOHN G. RUGGIE, HARVARD UNIV. CORPORATE RESPONSIBILITY INITIATIVE, "FOR THE GAME. FOR THE WORLD." FIFA AND HUMAN RIGHTS 6 (2016), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Ruggie_humanrightsFIFA_reportApril2016.pdf.

11. *Id.*

12. *Benefits of Bidding for and Hosting FIFA's Other World Cup Events*, FIFA.COM, http://www.fifa.com/governance/competition-organisation/benefits-of-bidding.html (last visited Sept. 22, 2016).

13. *See infra* Section I.B.

14. *Bidding Process*, FIFA.COM, http://www.fifa.com/governance/competition-organisation/bidding-process.html (last visited Sept. 22, 2016).

15. *Id.*

16. *See id.*

information that FIFA has made available does not discuss the precise nature of any of these stages, it is unclear specifically what their workshops entail or how the decision about the selection of a host country is finalized. One available report noted that a "successful bidder typically is selected between six to eight years prior to the tournament."[17]

Following selection of a host city, an incorporated organization known as the Local Organizing Committee acts as a liaison between FIFA, the host government, and other relevant actors.[18] These committees work with the local government to adjust laws to meet FIFA host city contract requirements, facilitate contracts throughout the supply chain, and undertake other measures relevant to staging the event.[19] The portions of host city activity that are overseen by the local committees are generally, and unfortunately, the parts in which decisions that compromise human rights are most often made. Changing local laws to meet FIFA demands and undertaking expensive, labor intensive projects that require complex supply chains have led to exploitation of local populations and other human rights violations.

B. The International Olympic Committee

The IOC is the arm of the Olympic Organization that oversees the summer and winter games and is governed by the Olympic Charter. The Olympic Charter is constitutional in nature: it provides the conditions for celebrating the Olympic Games and governs the Olympic Organization's actions and operations.[20] The Charter is six chapters in length and discusses each Olympic body (the IOC, International Federations, and National Olympic Committees), the Games, and the available disciplinary actions

17. RUGGIE, *supra* note 10, at 16.

18. *See id.* at 17.

19. *See id.*

20. INT'L OLYMPIC COMM., OLYMPIC CHARTER (Sept. 2015), https://stillmed.olympic.org/Documents/olympic_charter_en.pdf [hereinafter OLYMPIC CHARTER]; *see also Leading the Olympic Movement*, INT'L OLYMPIC COMM., https://www.olympic.org/the-ioc/leading-the-olympic-movement (last visited Sept. 22, 2016) (describing the Olympic Movement as "the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism"); *see also Teaching Legal Docs: Olympic Charter*, ABA: INSIGHTS ON L. & SOC'Y (Spring 2016), http://www.americanbar.org/publications/insights_on_law_andsociety/16/spring-2016/olympic-charter.html.

and sanctions.[21] The portion of the Charter that discusses the Games describes the candidature process for host cities in depth.[22]

The Olympic Charter in its current form[23] does not explicitly mention human rights and does not include any requirement that the Committee or host country create and follow any human rights standards. Although one of the Charter's fundamental principles does include a progressive antidiscrimination clause, it does not protect athletes' enjoyment of human rights generally.[24] The Charter focuses primarily on the furtherance of sport and on the procedural processes of the Olympic bodies.[25] In addition to the procedures set forth in the Charter, the IOC presented the *Olympic Agenda 2020* ("the Agenda") at its annual session in 2014. The Agenda includes plans to address several challenges that have plagued recent Olympic games, such as the use of banned substances by athletes, gender inequality in certain sports, and a lack of transparency in general.[26] The Agenda does not, however, address the need for an Olympic policy that includes respect for human rights in connection with the Olympic Games at a time when such a policy is so desperately needed.

Nearly ten years prior to the voting process, the National Olympic Committees take bids from prospective host cities around the world.[27] Generally, host cities are selected approximately seven years prior to the games.[28] The host city candidature process involves three stages,

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21. OLYMPIC CHARTER, *supra* note 20.

22. *See id.* at 72-75.

23. As of August, 2, 2015.

24. *See id.* at 14 (noting that the sixth Fundamental Principle of Olympism states, "The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, color, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.").

25. *See id.* at 33-68.

26. *See* INT'L OLYMPIC COMM., OLYMPIC AGENDA 2020: 20+20 RECOMMENDATIONS (n.d.), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Olympic-Agenda-2020/Olympic-Agenda-2020-20-20-Recommendations.pdf [hereinafter OLYMPIC AGENDA 2020].

27. Claire Warner, *How Are Olympic Host Cities Chosen? The Rio Games Have Been a Long Time in the Making,* BUSTLE (Aug. 11, 2016), http://www.bustle.com/articles/178115-how-are-olympic-host-cities-chosen-the-rio-games-have-been-a-long-time-in-the.

28. *See* Dan Fletcher, *How Is the Olympic Host City Chosen?*, TIME (Oct. 1, 2009), http://content.time.com/time/world/article/0,8599,1927402,00.html (noting that the Olympic host country bid for the 2016 Summer Olympic Games would be selected on this date in 2009); *see also* Suwendrani Jayaratne & Kithmina Hewage, *Economics of the Olympics*, INST. OF POL'Y STUD.: TALKING ECON. (Aug. 11, 2016), http://www.ips.lk/talkingeconomics/2016/08/11/economics-of-the-olympics/.

throughout which the national committees hold various workshops that interested—and eventually candidate—countries may attend to fine-tune events specific to their city's vision and to learn best practices from previous host cities.

The first stage of the candidature process is the "strategic analysis phase," during which cities hoping to bid create overall visions and plans for hosting the games.[29] Like FIFA, the IOC strongly emphasizes that candidates create plans that will gain national support, contain long-term development strategies, and emphasize sustainability for both the city and the region. These plans are what the Charter calls "legacy plans."[30] In the second stage of the candidature process, cities present information to show that they have the "necessary legal and financial mechanisms in place to host the Olympic Games."[31] The third and final stage includes a full analysis of the feasibility of the candidate country and city to deliver a successful and profitable games, while ensuring a sustainable legacy for the games.[32] During this final stage, the IOC will "review legacy planning and the Games experience for all stakeholders, with a focus on the athlete experience to determine the challenges and opportunities" of the host city's ability to produce a successful games.[33] The three stages culminate in the Host City Election, during which candidates make a final presentation at the annual Olympic Committee meeting and the committee members vote, by secret ballot, on the city they think should host the next games.[34] Following election by a majority vote, the chosen city signs the hosting contract with the Olympic Committee immediately.[35]

While the processes currently in place for hosting and facilitating mega-events like the Olympic Games or the World Cup are seemingly sufficient to bid for and carry out successful events, they fail to provide for the protection of human rights. There remain far too many reports of human rights violations directly relating to events of this nature. News and global rights promoting organizations, such as Amnesty International, Freedom House, and Human Rights Watch, are beginning to devote resources to the

29. *Olympic Games Candidature Process,* INT'L OLYMPIC COMM., https://www.olympic.org/all-about-the-candidature-process (last visited Sept. 19, 2016).

30. *See id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

topic of these mega-events and human rights.[36] With the increase in interest from such large organizations, change has begun to slowly creep into international sporting organizations.

II. Recent Advances in International Human Rights and Mega-Events Procedures

Stories of human rights violations relating to the most recent and upcoming mega sporting events have been frequent. Leading up to the 2016 Summer Olympic Games in Rio de Janeiro, Brazil, reports of the demolition of slum communities, housing thousands of impoverished Brazilians,[37] and of indigenous people's historical sites being demolished to create more room for Olympic stadiums filled newspapers and online news sites.[38] Additionally, reports of migrant workers being held captive by their employers as they work on infrastructure for the 2022 Men's World Cup in Qatar overshadowed the news of the Rio Olympics in the summer before the games.[39] A recent Freedom House report on the topic stated that "since the International Olympic Committee (IOC) and FIFA . . . have shown little concern for human rights violations in host countries . . . games are increasingly becoming synonymous with financial mismanagement, autocracy, and the systematic violation of human rights."[40]

This harsh critique reflects upon both a lack of human rights considerations in the processes of the IOC and FIFA and the poor human

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36. *See* Stine Alvad, *Mega-events Targeted in Human Rights Watch 2015 World Report*, PLAY THE GAME (Feb. 2, 2015), http://www.playthegame.org/news/news-articles/2015/0015_mega-events-targeted-in-human-rights-watch-2015-world-report/; *see also* Mark Lagon & Katherine Nasielski, *Tarnished Gold: Human Rights Violations and World Sports,* FREEDOM HOUSE (Aug. 10, 2016), https://freedomhouse.org/blog/tarnished-gold-human-rights-violations-and-world-sport; *see also Violations of Human Rights at Sporting Events: Who Is Responsible*, SPORT & HUM. RTS., http://www.sportandhumanrights.org/wordpress/index.php/2015/06/18/violations-of-human-rights-at-sporting-events-who-is-responsible/ (last visited Sept. 22, 2016).

37. *See* Jonathan Watts, *Forced Evictions in Rio favela for 2016 Olympics Trigger Violent Clashes*, GUARDIAN (June 15, 2015), https://www.theguardian.com/world/2015/jun/03/forced-evictions-vila-autodromo-rio-olympics-protests.

38. *See* Simon Romero & Taylor Barnes, *Police Storm Squatters at Rio Stadium Site*, N.Y. TIMES (Mar. 22, 2013), http://www.nytimes.com/2013/03/23/world/americas/brazilian-police-storm-indigenous-squatters-at-maracana.html?_r=0.

39. *See* Tom Finn, *Qatar Investigates Death at World Cup Site as Labor Rights Under Scrutiny*, REUTERS (May 1, 2016), http://www.reuters.com/article/us-qatar-worldcup-labor-idUSKCN0XS113.

40. Lagon & Nasielski, *supra* note 36.

rights records of the countries that these organizations select to host their mega-events. The IOC and FIFA should require that selected countries respect human rights and should not grant their games to nations and cities that have discriminatory laws or blatantly disregard human rights. Sporting organizations have begun to contemplate these issues when they arise, but have failed to take any concrete steps to implement human rights considerations into their bidding or oversight processes. In fact, the lack of recognition for human rights in the Olympic Organization and FIFA founding documentation and processes is in direct conflict with many of these organizations' founding principles.[41]

Until very recently, neither organization had any procedure that required the consideration of the human rights record of the host country, and the Olympic Organization still does not. Criticism at the national and international levels, however, has spurred sporting organizations to include human rights procedures in their provisional frameworks. In 2015, FIFA commissioned a leading human rights professor to help it incorporate human rights into its business practices and the procedures it uses to carry out its mega-events. Despite considerable criticism, similar to that faced by FIFA, the Olympic Organization has not yet taken steps to incorporate human rights into its procedures and does not seem to be moving quickly in that direction. Moving forward, the Olympic Organization should seek to quickly make similar changes in policies that mirror those being made by FIFA.

A. FIFA's New Human Rights Procedures

In 2015 FIFA commissioned John Ruggie, a Harvard Kennedy School professor and the author of the UN *Guiding Principles on Business and Human Rights*, to develop recommendations on "what it means for FIFA to embed respect for human rights across its global operations."[42] Ruggie created and released a report that explains the appropriate human rights framework for FIFA and presents twenty-five recommendations for the

41. *See* OLYMPIC CHARTER, *supra* note 20, at 13-14 (highlighting the seven fundamental principles, which include social responsibility and ethics and antidiscrimination clauses and noting 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."); *see also What We Stand For*, FIFA.COM, http://www.fifa.com/about-fifa/who-we-are/explore-fifa.html (last visited Sept. 22, 2016) ("We believe that we have a duty to society that goes beyond football: to improve the lives of young people and their surrounding communities, to reduce the negative impact of our activities and to make the most we can of the positives.").

42. RUGGIE, *supra* note 10, at 4.

organization to consider implementing into its internal policies and external relations.[43] Ruggie argues that human rights risks associated with mega-events are increasingly predictable, as the same abuses repeatedly occur in host countries regardless of location.[44]

Human Rights Watch Global Initiatives Director Minky Worden also released a report in 2015 highlighting "five signature types of serious human rights violations" frequently related to mega-events, such as the Olympic Games or FIFA World Cup.[45] In the report, Worden writes that typical violations include: (1) "forced evictions without due process or compensation"; (2) abuse and exploitation of migrant workers; (3) "[t]he silencing of civil society and rights activists"; (4) "threats, intimidation, and arrests of journalists"; and (5) discriminatory laws or actions by both host and participating countries.[46] As these reoccurring violations become more and more prevalent in the preparation for and facilitation of mega-events, experts like Worden and Ruggie continue to develop literature highlighting the need for sporting organizations to respect and protect human rights in their processes. Although allegations of corruption at the highest levels of FIFA and reports of human rights violations have been reported on for years, Ruggie's expertise was sought following especially troubling reports about the living and working conditions of migrant workers brought to Qatar to complete stadiums and other facilities ahead of the 2022 World Cup.[47]

Ruggie believes, as do several other experts working in the area of business or sports and human rights, that because FIFA was established as an association that conducts significant commercial activities on a global scale, the UN *Guiding Principles for Business and Human Rights* (also authored by Ruggie)[48] are appropriate standards around which newly

43. *See id.*

44. *See id.*

45. Worden, *supra* note 6.

46. *Id.*

47. *Qatar World Cup of Shame*, AMNESTY INT'L, https://www.amnesty.org/en/latest/campaigns/2016/03/qatar-world-cup-of-shame/ (last visited July 2, 2017); RUGGIE, *supra* note 10, at 4 (highlighting additional concerns, such as "risks to workers' rights in FIFA's own supply chains, alleged trafficking of young players, and endemic discrimination against women"); *see also* Lucy Westcott, *Qatar World Cup Migrant Workers Face 'Forced Labor': Amnesty*, NEWSWEEK (Mar. 30, 2016), http://www.newsweek.com/qatar-world-cup-workers-rights-construction-442373.

48. *UN "Protect, Respect and Remedy" Framework and Guiding Principles*, BUS. & HUM. RTS. RESOURCE CTR., https://business-humanrights.org/en/un-secretary-generals-

formed policies may be determined.[49] In the Guiding Principles, Ruggie establishes three core concepts: (1) states' existing obligations to protect human rights; (2) the responsibility of corporations to respect human rights; and (3) their collective duty to ensure that access to remedy is available for those affected.[50] Ruggie also notes that the Guiding Principles' "provisions on the responsibility to respect human rights are applicable to *any* comparable sports organization that has not yet undertaken such a commitment."[51] The following are the chapter headings that explain Ruggie's six core recommended changes for FIFA to implement:

(1) "Adopt a Clear and Coherent Human Rights Policy"[52]

(2) "Embed Respect for Human Rights"[53]

(3) "Identify and Evaluate Human Rights Risks"[54]

(4) "Address Human Rights Risks"[55]

(5) "Track and Report on Implementation"[56]

(6) "Enable Access to Remedy"[57]

Ruggie opens his recommendations by considering the initial steps that should be taken and what rights should be covered. The first recommendation is included in Ruggie's report because the adoption of new

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special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles (last visited July 2, 2017).

49. RUGGIE, *supra* note 10, at 5; *see also* Sylvia Schenk, *Time for Human Rights To Be on Olympic Agenda from Start to Finish*, HERBERT SMITH FREEHILLS (Sept. 1, 2016), https://www.herbertsmithfreehills.com/latest-thinking/time-for-human-rights-to-be-on-olympic-agenda-from-start-to-finish; *see also* Natacha Bracq, *Brazil: Extra-Time for Human Rights?*, GLOBAL RTS. COMPLIANCE (Sept. 1, 2017), http://www.globalrightscompliance.com/en/news/brazil-extra-time-for-human-rights (explaining, prior to Ruggie's FIFA reports, how the UNGPs should be incorporated into FIFA's business practices).

50. OFFICE OF THE HIGH COMM'R, U.N. HUMAN RIGHTS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS 1 (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [hereinafter UN GUIDING PRINCIPLES].

51. RUGGIE, *supra* note 10, at 10; *see also id.* (noting in principle 14 that "[t]he responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.").

52. *Id.* at 29.

53. *Id.* at 30.

54. *Id.* at 31.

55. *Id.* at 32.

56. *Id.* at 34.

57. *Id.* at 35.

policies "communicates internally and externally what the organization expects regarding the conduct of its leadership," staff, and partnering organizations.[58] Changes in policy under this recommendation should be made in accordance with and with respect for all internationally recognized human rights, including those in the core human rights treaties and international instruments.[59] Embedding respect for human rights, the second recommendation, should include designating an official at the highest level of the organization to oversee human rights compliance and training a compliance team to support him or her.[60] Furthermore, FIFA should incorporate specific human rights requirements into its organizational policies and take full account of newly adopted requirements when making decisions.

The third and fourth recommendations explain how FIFA should consider human rights risks and risk management. As a part of Ruggie's third recommendation, FIFA should establish a risk evaluation and management system to mitigate reoccurring and predictable human rights risks.[61] For an organization like FIFA, it is imperative that this type of risk management system involve all parts of FIFA's supply chain, while considering risks to people as the top priority.[62] In this recommendation and the next, Ruggie highlights the need for FIFA to "include human rights within its criteria for evaluating bids to host tournaments."[63] He then calls for FIFA to address its human rights risks and "do something about" the areas in which it determines violations are most likely to occur.[64] Ruggie believes this recommendation would be best achieved if FIFA is able to create leverage within and among their network of partners, including host governments and procurement partners.[65] "Where FIFA is unable to reduce severe human rights impacts by using its leverage, it should consider suspending or terminating the relationship."[66]

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58. *Id.* at 29.

59. *Id.* at 13 (noting that internationally recognized human rights are "understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work").

60. *Id.* at 31.

61. *Id.*

62. *Id.*

63. *Id.* at 32.

64. *Id.*; *see also* Worden, *supra* note 6 (highlighting the violations that are frequently present in mega-event preparation and facilitation).

65. RUGGIE, *supra* note 10, at 32.

66. *Id.* at 33.

The final two recommendations highlight transparency and remedy. Ruggie notes that because "FIFA has a significant human rights footprint" it must track and communicate about human rights risks that arise throughout the course of the events that it sponsors.[67] This process should include increasing FIFA's internal capacity to monitor, track, and communicate violations.[68] Finally, Ruggie calls upon FIFA to cooperate with states when it contributes to human rights harms and to supplement available remedies through the state—such as judicial remedies—with its own relief, monetary or otherwise.[69] Ruggie asserts that foundational to fulfilling this recommendation is FIFA's incorporation of a requirement that grievance mechanisms be available to those at the local level who may be harmed.[70] Enabling access to remedy goes beyond creating frameworks and assuring that dispute resolutions are in place. Under this recommendation, FIFA must ensure that in practice, available mechanisms actually lead to effective remedies.[71]

In the conclusion of his public report, Ruggie praises FIFA for its progress, but notes that the hardest part of a transformation of this nature is putting into place internal mechanisms for the recommended processes to be achieved.[72] As a general goal of the principles, Ruggie asserts that the "results must be 'good governance,' not merely 'good-looking governance.'"[73] As is frequently seen in international relations, words on paper are a good first step, but host countries and sporting organizations must work together to ensure that new human rights policies are upheld.

Although these principles are the first of their kind, they are necessary and timely. The size and global nature of FIFA and the Olympic Organization make it even more imperative that these organizations take responsibility for a topic that they have ignored for far too long. Although Ruggie's recommendations create a great foundation upon which FIFA can build, he fails to offer any guidance relating to specific groups that are

67. *Id.* at 34.
68. *Id.*
69. *Id.* at 35.
70. *Id.*
71. *Id.*
72. *Id.* at 36.
73. *Id.* (quoting Matt Andrews & Peter Harrington, *Off Pitch: Football's Integrity Weaknesses, and How to Strengthen Them* 194 (Ctr. for Int'l Dev., Harvard Univ., Working Paper No. 311, Jan. 2016), https://sports.growthlab.cid.harvard.edu/files/icss/files/cid_wp_311.pdf).

repeatedly and particularly vulnerable when cities undertake the hosting of mega-events, such as impoverished, minority, or indigenous populations.

B. The IOC and Human Rights Procedures

As the largest and most influential sporting body in the world, the IOC should follow the example of FIFA and begin to incorporate respect for human rights into its policies and procedures. Despite promoting sustainability and legacy as the cornerstones of the candidature process, Olympic procedures do not currently include human rights requirements in the host city selection process.[74] In fact, in some of the most recent host countries (China, Russia, and Brazil), stories of severe human rights violations relating to preparation for hosting a mega-event have been reported. Rising costs and increasingly frequent stories of this nature have led to several countries taking themselves out of consideration to host mega-events, leaving as candidates only countries with notoriously poor human rights records.

Although news coverage of human rights abuses relating to hosting mega-events has increased, the IOC has yet to make substantial moves toward incorporating human rights into its policies and procedures. In 2014 at the annual meeting of the Olympic member states, IOC President Thomas Bach gave a rousing speech introducing "Agenda 2020" and highlighting the Olympic Games' need to change or be changed.[75] Bach went further to state that "sport today is too important in society to ignore the rest of society."[76] Despite his aspirational tone, the goals of the Agenda do not explicitly mention the incorporation of human rights policies internally, nor do they require inspection and consideration of potential host countries' human rights records.[77] Although the Agenda does address several important issues that have made headlines during recent Olympic Games, such as doping, gender equality in sport, and transparency, it lacks concrete policies that recognize the need to protect human rights in the context of mega-events.[78] Thomas Bach was right when he said, "If we

74. Chris Murphy, *2024 Olympics: Five Cities in the Running to Host Games*, CNN (Sept. 16, 2015), http://edition.cnn.com/2015/09/16/sport/olympics-2024-los-angeles-paris-rome-budapest-hamburg/.

75. OLYMPIC AGENDA 2020, *supra* note 26, at 2.

76. *Id.*

77. *Id.*

78. *See id.* (noting that recent challenges have included gender inequality, transparency, and performance enhancing drug use and that working to lower the costs of hosting games and increasing transparency may contribute to a more cost effective and sustainable Olympic legacy for host cities).

want our values of Olympism – the values of excellence, respect, friendship, dialogue, diversity, non-discrimination, tolerance, fair-play, solidarity, development and peace . . . to remain relevant in society, the time for change is now." Yet, he failed to push for the Olympic Organization to make real change to respect human rights.[79]

Following the 2014 release of the Agenda, human rights groups awaited a promised set of enhanced guidelines for host city contracts that they hoped would incorporate human rights requirements for host cities. Once released, the Sport and Right Alliance[80] characterized the omission of an explicit human rights requirement from the new host city contract as "astonishing."[81] The Alliance was pleased with the inclusion of stricter anti-discrimination requirements and enhanced protections for journalists; but, the items the Alliance felt were most important to include, such as "compliance with international human rights obligations, access to remedy, human rights due diligence and risk assessment[s]," were unaddressed.[82]

The requirements that rights groups continue to seek, including those called for by the Alliance with regard to the new host city contract and included in Ruggie's FIFA report, are frequently modeled after the UN *Guiding Principles for Business and Human Rights* ("Guiding Principles"). As the author of the Guiding Principles, Ruggie contends that they should apply to any international sporting organization that "conducts significant levels of commercial activities," whether or not they have undertaken steps to integrate human rights provisions into their internal procedures.[83] And with his in-depth application and adaptation of the Guiding Principles for FIFA, their applicability to the Olympic Organization is evident.

At a minimum, human rights organizations have called for requirements that mirror Guiding Principle Fifteen, which outlines a business's duty to respect human rights.[84] Under this pillar, organizations must incorporate into their business practices "[a] policy commitment to meet their responsibility to respect human rights; [a] human rights due diligence

79. *Id.* at 3.

80. The Sport and Right Alliance is a partnership of watchdog organizations, such as Amnesty International, Transparency International Germany, the International Trade Union Confederation, Football Supporters Europe, and Terre des Hommes.

81. *See* Press Release, Amnesty Int'l UK, 2024 Olympics: "Astonishing" Omission of Human Rights in Host City Contract (Sept. 24, 2015), https://www.amnesty.org.uk/press-releases/2024-olympics-astonishing-omission-human-rights-host-city-contract.

82. *Id.*

83. *See* RUGGIE, *supra* note 10, at 5.

84. UN GUIDING PRINCIPLES, *supra* note 50, at 15-16.

process . . . [and p]rocesses to enable the remediation of any adverse human rights impacts they cause or to which they contribute."[85] "Naturally, the national Government has the ultimate responsibility for human rights violations in its country," but they are not the only culpable party.[86] In addition, according to Amnesty International, sponsoring companies such as Coca-Cola and others involved in the structural development and merchandise sales during mega-events should also be held to the standards laid out in the Guiding Principles.[87] Changes in policies that are developed based on the Guiding Principles can only succeed where each entity involved in the facilitation of a mega-event (the sporting organization, host government, and all actors within an event's supply chain) are committed to protecting and respecting human rights throughout all phases of the event, as well as providing an effective remedy when a harm occurs.

In addition to Ruggie, there are other professionals in the sports, business, and human rights fields who have also offered suggested solutions to stop the continuation of common human rights violations relating to mega-events. The Global Initiatives Director at Human Rights Watch, Minky Worden, recommended in a 2015 report on the state of mega sporting events and human rights that human rights monitoring should be built into the bidding and hosting processes for both FIFA and the IOC.[88] Worden also argues that decisions to select host countries should include "a complete and meaningful evaluation of governments' commitment to respect human rights in compliance with international human rights norms."[89] The greatest contribution that Worden suggests in her report includes a call for "human rights benchmarks," which she notes should include: "those related to media and Internet freedom; fair compensation and forced evictions; labor rights for workers building venues; protections for activists . . . and protection against discrimination."[90] Incorporating benchmarks of this nature would help to safeguard that processes are not simply being complied with during the bidding process, but that each of these categories is being assessed throughout the hosting of mega-events. Following reports of the human rights violations during the building of stadiums in Qatar in 2015, Amnesty International released their own recommendations on human rights and sports, which included similar

85. *Id.* at 16.
86. *Violations of Human Rights at Sporting Events: Who Is Responsible*, *supra* note 36.
87. *See id.*
88. *See* Worden, *supra* note 6.
89. *Id.*
90. *Id.*

recommendations to Ruggie's and Worden's, but added a call for companies and event organizers to be included in accountability mechanisms that may be included in future human rights procedures.[91]

Although increasing human rights requirements throughout their business practices will likely increase costs for FIFA and the IOC, both organizations and their host countries are poised to greatly benefit. Actions made by the two largest sporting organizations in the world to increase respect for human rights in their business practices will certainly not go unnoticed by those who follow the Olympics.

The IOC would benefit from being able to mitigate human rights risks from the outset of the planning of a mega-event by inquiring into the human rights record of the candidate countries and cities during the selection process. When selecting host countries, sporting organizations should investigate several years of the candidate country's record on human rights. Viewing the majority of a country's human rights record helps the organization to understand not only what human rights risks may be present in the country, but also what are generally the root causes of human rights violations. Once the organizations understand the causes of the reoccurring violations, they may continue to develop more effective mitigation plans in relation to those human rights risks.

An additional benefit will be a more favorable public perception of mega-events like the World Cup and the Olympic Games. Currently, the costs of hosting mega-events and stories of human rights violations have led to a negative public perception of such events. For instance, many cities that initially wish to be considered to host a mega-event end up withdrawing from the candidature process amidst public rejection of bringing to their cities the costs and issues that accompany the events.[92] Additionally, many host countries are marred for many years by the human rights abuses that occurred when their country hosted a mega-event. For example, South Korea (who will host the 2018 Winter Olympic Games) is still plagued by stories of homeless people and street children being

91. *Human Rights and Sports: Amnesty's Recommendations*, SPORT & HUM. RTS. (June 18, 2015), http://www.sportandhumanrights.org/wordpress/index.php/2015/06/18/human-rights-and-sports-amnestys-recommendations/.

92. *See* Zach Bergson, *From Boston to Rio de Janeiro, Public Opinion Is Turning Against Olympics*, FORBES (Aug. 7, 2015), http://www.forbes.com/sites/zachbergson/2015/08/07/from-boston-to-rio-de-janeiro-public-opinion-is-turning-against-olympics/#5b6293c37f4a (noting that Boston, Massachusetts, withdrew its host application from the running to host the 2024 Summer Games when "public opinion turned sour on how the city would fund the event").

"rounded up off the streets" and taken to labor camps prior to the 1988 Summer Games in Seoul.[93] In light of such horrific treatment of its civilians the last time South Korea hosted the Olympics, rights groups will surely keep a close eye on the country's actions as the 2018 Winter Olympic Games approach.[94] Where policies are put in place to mitigate human rights violations in host countries, both the sporting organizations and even host countries are looked upon more favorably and the true goals of such events—worldwide unity, friendly competition, and the furtherance of sport—can be achieved.

III. Indigenous Rights and Remaining Gaps in Mega-events Human Rights Procedures

States and international sporting organizations both have obligations to indigenous populations when they facilitate or host mega-events. State obligations to protect the human rights of indigenous peoples arise under international documentation and agreements, such as the UN Declaration on the Rights of Indigenous Peoples.[95] Sporting bodies have a responsibility to respect the human rights of indigenous individuals, just as they have a responsibility to respect all human rights, which is outlined in the UN *Guiding Principles on Business and Human Rights*.[96] The development of new human rights procedures for international sporting organizations should include respect for the rights of indigenous populations as outlined in the UN Declaration on the Rights of Indigenous People and guidance documentation that has been developed to help states and businesses respect the rights of indigenous populations, while carrying out their obligations under the Guiding Principles.

Future proposed changes to mega-event policies should include provisions that explicitly reference protection of the human rights of specialized communities, such as indigenous populations. As international sporting organizations incorporate respect for human rights into their

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93. Kim Tong-Hyung & Foster Klug, *AP: S. Korea Covered Up Mass Abuse, Killings of 'Vagrants'*, AP NEWS (Apr. 20, 2016), http://bigstory.ap.org/article/c22de3a565fe4e85a0508bbbd72c3c1b/ap-s-korea-covered-mass-abuse-killings-vagrants.

94. *See generally* Franklin Foer, *The Man Who Ruined the World Cup*, SLATE (June 28, 2002), http://www.slate.com/articles/sports/sports_nut/2002/06/the_man_who_ruined_the_world_cup.html (discussing a refereeing scandal at the 2002 Men's World Cup in South Korea).

95. *See* G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

96. *See* UN GUIDING PRINCIPLES, *supra* note 50.

procedures, the organizations should require that candidate countries demonstrate a record of recognizing, respecting, and protecting the internationally recognized human rights of these communities. FIFA and the IOC should also require host countries to follow internationally accepted consultation procedures, such as those enshrined in the UN Declaration on the Rights of Indigenous People, as they prepare to host mega-events. Although the changes in policy that FIFA is now trying to implement are encouraging, the discussion of creating new guidelines tends to omit explicit discussion of indigenous populations. This is discouraging because indigenous communities are among those most adversely affected by host country practices before and during the hosting of a mega-event. Both FIFA and the Olympic Organization should incorporate procedures that explicitly mention indigenous groups and ensure that selected host countries respect and protect internationally recognized human rights of indigenous peoples, both in general and throughout the duration of their hosted mega-event.

A. UN Declaration on the Rights of Indigenous Peoples ("UNDRIP")

The UNDRIP "establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples" and "addresses both individual and collective rights; cultural rights and identity; [and] rights to education, health, employment, [and] language."[97] The UNDRIP is a nonbinding declaration that was first adopted by the UN Human Rights Council in 2006 and more broadly adopted at the UN General Assembly in 2007.[98] A nonbinding declaration

97. G.A. Res. 61/295, *supra* note 95.

98. *See* U.N. PERMANENT FORUM ON INDIGENOUS ISSUES, FREQUENTLY ASKED QUESTIONS: DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES (n.d.), http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf [hereinafter FAQ: DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES]; *see also* G.A. Res. 61/295, *supra* note 95. *See generally United Nations Human Rights Council*, OFFICE OF THE HIGH COMM'R, U.N. HUM. RTS., http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx#ftn1 (last visited Jan. 10, 2017) (noting that the Council is an inter-governmental group within the larger UN system that focuses on issues dealing with the protection of the enjoyment of human rights around the world and is made up of forty-seven member states "responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them"); *Functions and Powers of the General Assembly*, GENERAL ASSEMBLY OF THE U.N., http://www.un.org/en/ga/about/background.shtml (last visited Jan. 10, 2017) (noting that the General Assembly is comprised of all 193 member states and is the "chief deliberative, policymaking and representative organ of the United Nations"). The General Assembly is also "empowered to make recommendations to States on international issues within its

is one that is not legally binding on the states that sign it. Consequently, signing states are not legally obligated to take action in their countries to fulfill the rights granted or recognized in the Declaration.[99] Declarations, unlike treaties or conventions, do not require states to ratify or implement into law the things laid out in them.[100] The United Nations intends that the UNDRIP have a "binding effect for the promotion, respect and fulfillment of the rights of indigenous peoples worldwide" and desires that it act as "a significant tool towards eliminating human rights violations against the over 370 million indigenous people worldwide . . . ."[101]

The Declaration was the culmination of over two decades of negotiations and centuries of oppression and disregard for the rights of indigenous populations.[102] At the 2007 adoption by the General Assembly, 143 member states voted in favor of the resolution, 4 voted against, and 11 abstained from the vote.[103] In the years that followed the 2007 adoption of the Declaration, all four of the countries who had voted against it had switched their votes in support of the Declaration.[104] The United States was the last country to change its vote in support of the Declaration, which

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competence. It has also initiated actions—political, economic, humanitarian, social and legal—which have affected the lives of millions of people throughout the world." *Id.*

99. *See* FAQ: DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES, *supra* note 98 ("UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.").

100. Brenda Gunn, *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook*, CANADIAN INDIGENOUS BAR ASSOCIATION (2011), http://www.indigenousbar.ca/pdf/undrip_handbook.pdf.

101. FAQ: DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES, *supra* note 98.

102. *See Declaration on the Rights of Indigenous Peoples*, OFFICE OF THE HIGH COMM'R, U.N. HUM. RTS. http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx (last visited Jan. 10, 2017).

103. *Id.*; *see also* Press Release, U.N. Gen. Assembly, GA/10612, General Assembly Adopts Declaration On Rights Of Indigenous Peoples; 'Major Step Forward' Towards Human Rights For All, Says President (Sept. 13, 2007) [hereinafter Press Release, General Assembly Adopts] (showing that the United States, Canada, New Zealand, and Australia voted against the resolution; and noting that those countries "could not support it because of concerns over provisions on self-determination, land and resources rights and, among others, language giving indigenous peoples a right of veto over national legislation and State management of resources").

104. Valerie Richardson, *Obama Adopts U.N. Manifesto on Rights of Indigenous Peoples*, WASH. TIMES (Dec. 16, 2010), http://www.washingtontimes.com/news/2010/dec/16/obama-adopts-un-manifesto-on-rights-of-indigenous-/.

President Obama announced in 2010.[105] The Declaration helped to finally and emphatically show that the international community believes that "[i]ndigenous peoples are entitled to all human rights established under international law."[106] The UN Permanent Forum on Indigenous Issues notes that the Declaration did not create new rights for indigenous peoples but did "provide[] a detailing or interpretation of the human rights enshrined in other international human rights instruments of universal resonance–as these apply to indigenous peoples and indigenous individuals."[107] The Declaration, though, was meant to act as a threshold for Indigenous rights, not as the maximum amount of rights for indigenous peoples to enjoy; therefore, individual states' laws may apply higher standards than those in the Declaration.[108]

The Declaration contains provisions protecting both individual and collective rights. Distinction between these two types of rights was one of the provisions at the heart of contentious debate between countries during the negotiations because many countries believe it is central to international human rights law that individual rights be recognized over collective rights.[109] In the Declaration's preamble, the General Assembly makes clear that indigenous groups are a special and unique people that have historically been treated poorly and deserve equal protection of their rights on the international stage.[110] The General Assembly also highlights the urgent need to protect indigenous rights that have already been enshrined in other international treaties and welcomes this Declaration as the first to allow the right holders to participate in the documentation of the protection of their rights.[111]

The Declaration does not, however, include a definition of who qualifies as indigenous peoples or as an indigenous person. Because of the diversity of who may qualify as an indigenous person, taking into account, for instance, regional and cultural differences, UN members were unable to

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105. *Id.*; *see also Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, U.S. DEP'T OF STATE, http://www.achp.gov/docs/US%20Support%20for%20Declaration%2012-10.pdf (last visited Jan. 10, 2017).

106. U.N. GLOBAL COMPACT, UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A BUSINESS REFERENCE GUIDE 4 (Exposure Draft, Dec. 10, 2012), https://www.unglobalcompact.org/docs/issues_doc/human_rights/UNDRIP_Business_Reference_Guide.pdf.

107. FAQ: DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES, *supra* note 98.

108. *See* Gunn, *supra* note 100.

109. *See* Press Release, General Assembly Adopts, *supra* note 103.

110. *See* G.A. Res. 61/295, *supra* note 95, at 2.

111. *See id.* at 1-4.

reach a consensus on the definition of "indigenous peoples," and no definition appears in the UNDRIP.[112] The common definition of indigenous peoples includes "the descendants . . . of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived."[113] In the years following the adoption of the Declaration, however, the UN has tried to develop an unofficial definition by indicating a few key criteria that may be used to determine who is an indigenous person or what groups may be internationally recognized as indigenous peoples, including:

- Self-identification as indigenous peoples at the individual level and accepted by the community as their member.
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link[s] to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form[ation] [of] non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.[114]

By making these guiding indicators available, the UN has narrowed groups' ability to claim that they are indigenous if they do not meet at least some of these criteria. Available UN documentation does not designate how many of these criteria must be met or who is the final arbiter of what groups and individuals may be afforded the rights in the UNDRIP. At the time of the adoption of the Declaration at the General Assembly, a few countries

112. LUCKY SHERPA, RUTH BEECKMANS, SUSHIL RAJ, ANDY RICHARDSON & ARTURO REQUESENS, IMPLEMENTING THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: HANDBOOK FOR PARLIAMENTARIANS NO. 23, at 11 (2014), http://www.ipu.org/PDF/publications/indigenous-en.pdf.

113. U.N. PERMANENT FORUM ON INDIGENOUS ISSUES, FACTSHEET: WHO ARE INDIGENOUS PEOPLES? 1 (n.d.), http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf.

114. *Id.*; *see also* U.N. GLOBAL COMPACT, *supra* note 106, at 6-7 (highlighting other relevant indicators from various other U.N. bodies).

even noted that they supported the Declaration because, or regardless of the fact that, their government does not recognize any indigenous population in their country.[115]

The UNDRIP was created to strengthen the relationships and understanding between State parties and their indigenous communities. The preamble of the UNDRIP highlights "that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States."[116] The Declaration further notes that the UN is "convinced" that its creation and the international recognition of indigenous peoples' rights, "will enhance harmonious and cooperative relations between the State and indigenous peoples."[117] These goals, set forth in the Declaration, are the foundation of why the UNDRIP was adopted.[118] In the laws they implement and especially in projects they lead, states should seek to achieve relationships that align with these goals. Where states fail to include indigenous peoples in the development of their countries, relationships that may have been developing may not easily be repaired.

Despite its nonbinding nature, the Declaration still compels action on the part of states. For instance, Article 38 says that "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration."[119] In his inaugural report to the United Nations Human Rights Council, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, notes that "depending on the local context, specific policies, programmes and institutions may be required to promote the concerted action of government agencies regarding indigenous peoples."[120] Anaya also reports that existing legislation regarding indigenous rights must be amended to comport—at a minimum—

115. *See* Press Release, General Assembly Adopts, *supra* note 103 (showing that countries, such as Iran and Turkey, highlighted in their statements that none of its people were indigenous were recognized at indigenous in its country).

116. G.A. Res. 61/295, *supra* note 95, at 3.

117. *Id.*

118. *See* SHERPA, BEECKMANS, RAJ, RICHARDSON & REQUESENS, *supra* note 112, at 9.

119. G.A. Res. 61/295, *supra* note 95, at 13.

120. S. James Anaya (Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to* Development, U.N. Doc. A/HRC/9/9, at 14 (Aug. 11, 2008), http://unsr.jamesanaya.org/docs/annual/2008_hrc_annual_report_en.pdf.

with the rights outlined in the Declaration.[121] Furthermore, where laws are inadequate or do not exist, states must legislate to meet the minimum required standard set by the Declaration.[122] Anaya also points out that legislative changes may even be needed at the constitutional level for states to fully recognize and respect the rights of their indigenous peoples.[123] "Together with the call for specific State action, Articles 4 and 39 of the Declaration jointly call upon States to provide financial and technical support for the operation of indigenous self-governance institutions, without prejudice to the support provided through international cooperation."[124] Finally, Anaya highlights, even where states dispute that they are required to act, they are still bound by the portions of the Declaration that constitute Customary International Law.[125]

While there are challenges to leveraging state obligations under a nonbinding international declaration, international sporting organizations should require that selected host countries meet obligations to respect indigenous rights that exist under international law. These organizations have a role to play in ensuring that the foundational goals of the UNDRIP are furthered through their interactions with host countries. FIFA and the Olympic Organization have the greatest opportunity to do this at the host country vetting stage, and can continue to influence legal change once in countries that are selected to host their events. Both organizations demand that host countries make changes in their laws to accommodate the games, as host nations must recognize they are hosting "unique event[s] that require[] some domestic law adaptations to ensure [their] success."[126] However, under current international sporting organizations' procedures, "host countries may end up passing laws that contradict their own constitutions and facilitate human rights violations, including forced evictions, censorship, and labor law violations, against their own citizens."[127] Although these organizations' requested changes in laws generally relate to things like "security, visa procedures, labor regulations,

121. *Id.*

122. *Id.*

123. *Id.* at 16.

124. *Id.* at 15.

125. *Id.* at 13.

126. Kathleen Tang, *The World Cup: Changing Country's Laws, One Tournament at a Time*, BERKLEY J. INT'L LAW BLOG (Oct. 26, 2013), http://berkeleytravaux.com/world-cup-changing-countrys-laws-one-tournament-time/.

127. Megan Corrarino, *It's a Problem When FIFA Breaks the Law. It's Also a Problem When It Doesn't*, HUFFINGTON POST (Jun. 15, 2015), http://www.huffingtonpost.com/megan-corrarino/its-a-problem-when-fifa-breaks-the-law_b_7548252.html.

customs and tax law, and infrastructure . . . there is possibility in the future of using [mega-events'] legal clout for social change."[128] Because both organizations generally require changes in local laws to facilitate the games, they may be able to leverage their ability to support permanent changes in laws, or to help ensure that countries comply with their international obligations. This leverage point could be especially effective in furthering countries' respect for the human rights of their indigenous populations.

B. Principles of Business and Human Rights and the Rights of Indigenous Peoples

Beyond the UNDRIP, both states and sporting organizations may have duties that arise under generally accepted principles of business and human rights.[129] UN bodies, such as the UN Global Compact,[130] and organizations focusing on business and human rights have developed guidance documentation to help businesses "respect and support the rights of indigenous peoples" based on the UN Guiding Principles.[131] The Global Compact also believes that businesses should undertake "voluntary actions that seek to promote and advance indigenous peoples' rights, including through core business activities, strategic social investments, philanthropy, advocacy and public policy engagement, and partnership and collective action" in addition to their responsibilities arising from the Guiding Principles.[132] As John Ruggie explained in his report to FIFA, this line of documentation and commentary is applicable to, and should be used by, sporting organizations as they work to incorporate respect for the human rights of indigenous peoples into their mega-event hosting procedures.[133] The guidance document provided by the UN Global Compact takes the Guiding Principles and discusses ways in which states and businesses may

128. Tang, *supra* note 126.

129. *See supra* Part II.

130. *See* U.N. GLOBAL COMPACT, *supra* note 106 (noting that the UN Global Compact was launched in 2000 and "is a leadership platform for the development, implementation, and disclosure of responsible corporate policies and practices"); *see also Who We Are*, U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/what-is-gc (last visited Jan. 12, 2017) (calling the UN Global Compact "[t]he world's largest corporate sustainability Initiative," and highlighting that over 12,000 business and non-governmental organizations—representing developing and developed nations, and nearly every sector—have joined the Global Compact).

131. U.N. GLOBAL COMPACT, *supra* note 106, at 5.

132. *Id.* at 11.

133. *See supra* Section II.A.

connect their respective obligations arising under other international documentation, such as the UNDRIP and the International Labor Organization Convention 169, Indigenous and Tribal Peoples Convention.[134]

The UN Global Compact's guide notes that indigenous populations are unique because of the history of their suffering and highlights their cultural and spiritual ties to lands as an area in which businesses and states have frequently caused human rights abuses.[135] Furthermore, "many private sector activities continue to have, both directly and indirectly, damaging effects on indigenous peoples, and in some cases the damage is irreparable."[136] Indeed, the guide requires that organizations both "avoid causing or contributing" to human rights abuses and "seek to prevent" such abuses, which include "acts and omissions" by businesses, or in this case, sporting organizations.[137] The guide includes a call for applicable organizations to "develop an indigenous peoples' rights policy, or include a specific section on indigenous peoples' rights in their human rights policy or overall code of conduct."[138] In recent years, businesses have reported that, when they engage with indigenous peoples in their business practices, they reap several benefits, including: "stronger relationships with communities and other stakeholders resulting in fewer conflicts and disputes, stronger government relationships[,] . . . reputational benefits, employee engagement, and the ability to learn from indigenous peoples' unique knowledge (with consent and respect for their intellectual property)."[139] If sporting organizations begin to implement procedures that incorporate the protection of the rights of indigenous peoples, and require selected host countries to engage with indigenous peoples, they will likely see some of the same benefits.

In addition to implementing procedures that include the rights of indigenous communities, FIFA and the Olympic Organization should "[c]onduct due diligence and impact assessments to identify actual or

134. *See* U.N. GLOBAL COMPACT, *supra* note 106, at 4 ("This guide seeks to provide guidance to businesses on positive and respectful engagement with indigenous peoples, which can have benefits for all."); *see also id.* at 5 ("The purpose of this publication is to illustrate how the rights of indigenous peoples are relevant in a business context, and to provide guidance to businesses on how to respect and support the rights of indigenous peoples in their activities and sphere of influence.").

135. *See id.* at 4.

136. *See id.*

137. *Id.* at 12.

138. *Id.* at 14.

139. *Id.* at 5.

potential impacts on indigenous peoples or their rights."[140] Due diligence practices help organizations "identify, prevent, mitigate and account for how they address [their] impacts on the rights of relevant indigenous peoples."[141] In incorporating due diligence practices into FIFA and Olympic procedures, the organizations should be required (where applicable) to assess mega-events "actual and potential impacts on indigenous peoples' rights" throughout the entire supply chain, including with suppliers, vendors, and infrastructure management. For example, where infrastructure demands may conceivably require a supplier to interfere with the rights of indigenous peoples to gain access to certain materials, FIFA and the Olympic Organization should have procedures in place to see that such an interference does not occur. Where an impact assessment reveals a potential violation of this nature, organizations must integrate and act upon the finding, track the efficacy of their response to the potential violation, and communicate both publicly and to the potentially affected communities how the organization addressed the potential impact.[142]

Sporting organizations should also be involved in consultation with indigenous populations and require selected host governments to ensure that indigenous rights are understood, respected, and protected throughout the planning and staging of mega-events.[143] In addition, "[a]s a result of the diversity of contexts giving rise to business engagement with indigenous peoples, businesses should engage in meaningful consultation and partnership with indigenous peoples to adapt the principles discussed and practices suggested . . . to their particular situations and contexts."[144] The guide suggests that engagement and consultation procedures should be sought "early in the businesses' consideration of the activity," and that "the relevant indigenous peoples must agree to the process for consultation."[145] The guide reiterates that "engagement does not end if and when indigenous peoples give their consent to a project . . . [it] must continue throughout the duration of the project."[146] In fact, continued engagement with indigenous populations is the very basis of the guide's final suggested procedural

140. *Id.* at 13.
141. *Id.* at 17.
142. *Id.* at 17-19.
143. *See id.* at 22.
144. *Id.* at 8.
145. *Id.* at 22.
146. *Id.* at 23.

change, "free, prior and informed consent," or "FPIC," which is also an integral part of the UNDRIP.[147]

The guide cites a definition from another report specific to the extractives industry that states, "FPIC 'is a process by which indigenous peoples, local communities, government, and companies may come to mutual agreements in a forum that gives affected communities enough leverage to negotiate conditions under which they may proceed and an outcome leaving the community clearly better off.'"[148] It then explains each element of FPIC, noting "free" means consent that is given "freely, without coercion, manipulation or undue influence or pressure"; "prior" means that the consent was given before the start of the project; "informed" requires that indigenous peoples have been given all relevant information, that they understand the project, and have had time to review all information prior to the consultation; and "consent" requires that those being consulted agree to the business activity.[149] FPIC must be obtained "whenever there is a risk of impact to any right that is essential to the relevant indigenous peoples' survival."[150] The guide highlights the articles in which the "UNDRIP expressly refers to FPIC," including

> removal and relocation of indigenous peoples (Article 10); taking of cultural, intellectual, religious or spiritual property (Article 11); adoption and implementation of legislative or administrative matters that may affect indigenous peoples (Article 19); confiscation, taking, occupation use or damage of indigenous people's lands or territories (Article 28); storage or disposal of hazardous materials on indigenous peoples' lands or territories (Article 29); and projects affecting indigenous peoples' lands, territories or other resources, particularly in connection with the development, use or exploitation of mineral, water or other resources (Article 32).[151]

If relevant indigenous peoples do not give FPIC, or if FPIC is not sought, projects—even those that are on a tight deadline, such as sporting venues—

147. *Id.* at 24-27 ("The concept of free, prior and informed consent ("FPIC") is fundamental to the UNDRIP as a measure to ensure that indigenous peoples' rights are protected."); *see also* G.A. Res. 61/295, *supra* note 95, 6-12.

148. U.N. GLOBAL COMPACT, *supra* note 106, at 25.

149. *Id.* at 25-26.

150. *Id.* at 24.

151. *Id.*

should not be conducted.[152] Because the requirement to obtain FPIC is so pervasive when dealing with indigenous rights, FIFA and the Olympic Organization should always ensure that its activities are not causing or contributing to the infringement of these rights, and that they seek to gain meaningful FPIC in all appropriate instances.

Finally, FIFA and the Olympic Organization should ensure that all available grievance mechanisms that they already have in place, or may implement following further incorporation of human rights into their procedures, are known to and accessible by indigenous peoples.[153] For grievance mechanisms to be effective, FIFA and the IOC must work with legitimate local judicial mechanisms and ensure that "efficient and effective responses to grievances filed" are available.[154] Grievance mechanisms should also be "predictable and transparent," so that members of indigenous communities may fully understand the processes and have general knowledge of the possible outcomes of their claim.[155]

With the development of this type of specific human rights procedure, FIFA and the IOC, along with the host countries they select, can ensure that their mega-events are not causing or contributing to the deprivation of indigenous peoples' human rights. Because indigenous communities are unique in their history, culture, beliefs, and governing structure, they should be treated differently in the procedures of sporting organizations, as they are in the broader international community. Additionally, because sporting organizations are obligated to respect all internationally recognized human rights, they must respect the rights enshrined in the UNDRIP and protect the rights of indigenous populations with this Declaration as a guide.

IV. Brazil: A Case Study on the Evolution of Mega-events Procedures and Human Rights

Over the course of the last ten years, Brazil has hosted four mega-events in collaboration with FIFA or the Olympic Organization: the Pan American Games (2007), the FIFA Confederations Cup (2013), the FIFA Men's World Cup (2014), and the Summer Olympic Games (2016).[156] When Brazil was selected to host the World Cup and the Olympics—2007 and

152. *Id.* at 25.
153. *Id.* at 29.
154. *Id.*
155. *Id.*
156. *See* Vanessa Barbara, *Brazil's Olympic Catastrophe*, N.Y. TIMES (July 1, 2016), http://www.nytimes.com/2016/07/03/opinion/sunday/brazils-olympic-catastrophe.html.

2009, respectively—the country was not yet marred by internal disorder and sought to bolster its reputation on the World's stage. In the time between the 2013 Confederations Cup and its selection as the host of the 2016 Olympics, Brazil faced problems with political upheaval, corruption, and—alongside development projects and preparation for sporting events—reports of human rights abuses. Widespread protests broke out in response to what Brazilians categorized as wasteful spending on preparations for the games at a time when Brazil's citizens sought better education, healthcare, transportation, and security.[157] In 2016, "Brazil hit a perfect storm of political crisis, historic recession, runaway unemployment and a huge corruption scandal in the flagship national company Petrobras."[158] Despite such grave domestic disorder, Brazil still managed to run relatively successful mega-events in 2014 and 2016. These events, however, were frequently overshadowed by reports of human rights abuses and the country's internal political issues.

Because Brazil has been widely reported upon, as a host country of mega-events for the majority of the last ten years, it can be used to evaluate the current state of host country procedures for mega sporting events. Brazil may also be used to examine what recent mega-events in the country might have looked like with procedures similar to those that John Ruggie, the author of the UN Guiding Principles, has proposed for FIFA to adopt.[159] Furthermore, Brazil is home to hundreds of indigenous groups, which makes the country a perfect case for study to understand how human rights procedures that include protecting and supporting the human rights of indigenous populations might have proved beneficial throughout Brazil's decade of hosting mega-events.

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157. *See* John Sinnott, *A Fair World Cup Deal for Brazil?*, CNN (July 24, 2013), http://edition.cnn.com/2013/06/24/sport/football/brazil-protests-fifa-tax/.

158. *The Olympics Are Over for Brazil – Was It Worth It?*, ECON. TIMES (Aug. 22, 2016), http://economictimes.indiatimes.com/articleshow/53807239.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst; *see also* Dom Phillips, *Rio Hoped for a Post-Olympics Boom. Instead It Is Still Mired in Crisis.*, WASH. POST (Dec. 9, 2016), https://www.washingtonpost.com/world/the_americas/rio-hoped-for-a-post-olympics-boom-instead-it-is-still-mired-in-crisis/2016/12/08/3022d4e0-b1f9-11e6-bc2d-19b3d759cfe7_story.html ("Two former governors have been arrested, one accused of vote-buying, the other of running a vast corruption ring. Prosecutors are investigating billions of dollars in state tax exemptions that benefited luxury jewelers, construction companies and even brothels. And violent crime continues to surge, along with allegations of execution-style mass killings by overtaxed police.").

159. *See infra* Section II.A.

A. The World Cup and Olympic Games with Current Procedures

Without any human rights safeguards incorporated into FIFA or IOC procedures, Brazil facilitated many human rights abuses and disregarded its own political and economic conflicts for the sake of hosting successful mega-events. Throughout its quest to emerge as an international heavyweight via its mega sporting event endeavors, stark contradictions between reality in Brazil and the image the country had hoped would emerge were revealed. Reports of rampant corruption in politics and construction, increased police brutality, gang violence, and continuing disregard for Brazil's impoverished communities in the building of infrastructure for the sporting events exposed the dark side of attempting to rise to the rank of a global leader through hosting sporting events.[160] The Washington Post quoted Ignacio Cano, a sociology professor at the State University of Rio de Janeiro, who stated "It's in the worst condition in 20 years. . . . You have an economic crisis, a political crisis, a moral crisis. There is a general perception of a very dark time."[161] Just weeks prior to the 2016 Olympics, Brazilian officials "declared a state of fiscal 'public calamity' [and] . . . Brazil's federal government stepped in with an $870 million bailout."[162] As a result of the development of the financial and political situation that led to this eventual bailout, many Brazilians rallied at demonstrations before and during both the 2014 World Cup and the 2016 Olympic Games.[163] Many protestors spoke to media outlets about their disdain for the cost of the games, suggesting that money could have been better spent on infrastructure, education, or welfare.[164] Additionally, polls

160. *See* Michael Powell, *Officials Spent Big on Olympics, but Rio Natives Are Paying the Price*, N.Y. TIMES (Aug. 14, 2016), http://www.nytimes.com/2016/08/15/sports/olympics/rio-favelas-brazil-poor-price-too-high.html (highlighting that infrastructure was not built based on where it was needed, but in the more glamorous parts of Rio de Janeiro, to make traveling to Olympic venues more convenient).

161. Phillips, *supra* note 158.

162. *Id.*

163. *See* Powell, *supra* note 160.

164. *See id.*; *see also* Phil Bloomer & Julia Mello Neiva, *Brazil World Cup: Fifa and Business Miss an Open Goal for Human Rights*, GUARDIAN (June 13, 2014), https://www.theguardian.com/sustainable-business/brazil-world-cup-fifa-business-goal-human-rights (noting that nearly one million Brazilians protested the World Cup in 2013 and that a Pew Research Center's Global Attitudes Project poll showed that "61% of Brazilians th[ought] the World Cup [was] a bad thing for Brazil because it t[ook] money away from public services."); *see also* Sinnott, *supra* note 157 (highlighting that 2013 protests started as a response to a raise in the price of bus tickets, but morphed into protests "about corruption, poor public services,

prior to the World Cup and the Rio Olympics showed that a majority of Brazilians did not believe that the country should host either mega-event.[165] Despite Brazil's relative stability at the time it was selected to host the World Cup and the Summer Olympics, human rights violations that could have been mitigated occurred, and entire populations suffered through the long decade of Brazil hosting mega sporting events.

One of the most widely reported incidents during the 2016 Summer Olympics was the destruction of a large community of shantytowns, or *favelas*, to build more convenient paths for Olympic venues.[166] As evidenced by the celebration of the *favelas* in the Summer Olympic opening ceremonies, Rio de Janeiro's shantytowns are an iconic part of the city, which many see as "the birthplace of a lot of Brazil's culture."[167] Many of Brazil's impoverished people live in communities like those demolished to make room for sporting infrastructure and from which many families were forced to leave. Indeed, "[25%] of Rio's population lives in impoverished communities."[168] While most were offered the choice to be relocated to "federal and municipal housing projects," many wished to stay in their homes and generally protested the hosting of both of Brazil's most recent mega-events.[169] Though not all were reported to have been evicted from *favelas*, the New York Times reported that 77,000 people had been forced

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increasing inflation, lack of security and whether the money being spent on the World Cup might be better invested elsewhere").

165. *See* Kabir Sehgal, *What Rio Should Have Learned from Atlanta's 1996 Summer Olympics*, FORTUNE (Aug. 8, 2016), http://fortune.com/2016/08/08/rio-olympics-opening-ceremony/.

166. *See* Watts, *supra* note 37.

167. Lulu Garcia-Navarro, *In Rio's Favelas, Hoped-For Benefits from Olympics Have Yet to Materialize,* NPR (Aug. 11, 2016), http://www.npr.org/sections/thetorch/2016/08/11/487769536/in-rios-favelas-hoped-for-benefits-from-olympics-have-yet-to-materialize (noting that "Michael Jackson filmed the video for 'They Don't Care About Us' here" and the citizens had constructed a bronze statue that sits in the center of the *favela* in which Jackson filmed his music video).

168. *Id.*

169. Flora Charner, *Rio 2016: Neighborhood Demolished to Clear Path for the Olympics*, CNN (Mar. 10, 2016), http://edition.cnn.com/2016/03/10/sport/rio-olympics-2016-favela-demolition/; *see also* Owen Gibson, *Olympic Games 2016: How Rio Missed the Gold Medal for Human Rights*, GUARDIAN (Aug. 2, 2016), https://www.theguardian.com/sport/2016/aug/02/olympic-games-2016-rio-human-rights ("'They came in with all the police and relocated us. They came along and put all of our belongings in storage as if we were dogs,' said Naomy Oliveira, who is now 14 and relocated along with her family.").

from their homes ahead of the Olympic Games, a number that does not account for those displaced ahead of the 2014 World Cup.[170]

The second most commonly reported story of the 2016 Rio Olympics was an increase in police and security force violence, which especially affected the poorest parts of Brazil, including many *favelas*. Rights groups like Amnesty International warned prior to the 2016 Olympics that, in the lead up to the 2014 World Cup, Brazil's homicide rate during police intervention rose 40% and totaled approximately 580 people killed.[171] In many of the *favelas*, both before and during the 2016 Summer Olympics, gun battles between police and resident gangs broke out daily and were so dangerous that children living in these communities were unable to travel to school.[172] Amnesty International's report on the Rio Olympics noted that the Brazilian police's moto for outbreaks of violence in Brazil's *favelas* was "[s]hoot first, ask questions later."[173] Because the violence was frequently aimed at young, minority boys, news of its severity reached the attention of the UN Committee on the Rights of the Child, which reported that police often used the excuse that the adolescents who were killed had resisted the actions of the police.[174] Unfortunately, long after the closing ceremonies, Brazil's security battle continued. As recently as December 2016, protests continued in reaction to the corruption trials of Brazil's top officials; protesters were still being met by riot police with "tear gas, rubber bullets and percussion grenades."[175]

The exposure of these types of human rights violations demonstrates precisely why human rights procedures are needed. Risk assessments and human rights safeguards should be incorporated into the bidding process

170. Theresa Williamson, Opinion, *Holding the Olympics in Rio Was Always a Bad Idea*, N.Y. TIMES (May 16, 2016), http://www.nytimes.com/roomfordebate/2016/05/16/should-brazil-postpone-the-olympics/holding-the-olympics-in-rio-was-always-a-bad-idea.

171. Ananya Roy, *2016 Rio Olympics: Amnesty Warns Brazil Against Human Rights Violations*, INT'L BUS. TIMES (June 2, 2016), http://www.ibtimes.co.uk/2016-rio-olympics-amnesty-warns-brazil-against-human-rights-violations-1563239 (noting that the majority of those killed during police altercations "were young black men living in favelas or other marginalised areas"); *see also* Christopher Woody, *The Olympics Are 2 Months Away, and Rio Has a Huge Police-Brutality Problem*, BUS. INSIDER (May 26, 2016), http://www.businessinsider.com/police-distrust-in-rio-de-janeiro-brazil-before-olympics-2016-5.

172. Garcia-Navarro, *supra* note 167.

173. *The Deadly Side of the Rio 2016 Olympics*, AMNESTY INT'L, https://www.amnesty.org/en/latest/campaigns/2016/06/deadly-side-rio-olympics-2016/ (last visited July 2, 2017).

174. *See Committee of the Rights of the Child Examines Report of Brazil*, OFFICE OF THE COMM'R, U.N. HUM. RTS. (Sept. 22, 2015), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16488&LangID=E.

175. Phillips, *supra* note 158.

and monitored throughout the hosting of mega-events. With the country's political system in a mess and little support for events of this scale, human rights violations were bound to occur. Human rights risk assessments, along with the point at which the organizations review the feasibility of hosting an event, may have revealed that Brazil was not ready to host two mega-events, two years apart. The predictable type and nature of human rights violations that occurred in relation to the World Cup and the Olympics in Brazil highlight the need for FIFA and the Olympic Organization to incorporate and implement human rights procedures into their host country processes.

B. Better Human Rights Procedures Could Have Improved Brazil's Mega-events

With the proper human rights framework in place, FIFA and the IOC likely would have evaluated Brazil's human rights records as a whole, and conducted a human rights risk assessment on the country to evaluate the likelihood that human rights violations would occur. Annual human rights reports put out by watchdog organizations and the United States Department of State between 2007 and 2009—during which Brazil was chosen to host the World Cup and the Olympics—focus on the country's problems with excessive use of force, torture, and arbitrary killings by police and security forces with impunity, as a result of clashes between gangs and the police, particularly in Brazil's *favelas*.[176] In 2008 Phillip Alston, the Special Rapporteur on extrajudicial, summary, or arbitrary executions, devoted his entire report to the UN Human Rights Council to discussing problems with gangs and police violence in Brazil.[177] With persistent and rising tensions between gangs and police groups, displacement of those living in the *favelas* that were experiencing this violence should have also been foreseen. Between 2009 and 2016 there were "more than 2,600 police killings in Rio."[178] Additionally, the State

176. *Brazil*, U.S. DEP'T OF STATE (Mar. 11, 2008), https://www.state.gov/j/drl/rls/hrrpt/2007/100630.htm; *see also Brazil: Events of 2008*, HUM. RTS. WATCH (2008), https://www.hrw.org/world-report/2009/country-chapters/americas-brazil; *see also Amnesty International Report 2007 – Brazil*, UNHCR, THE UN REFUGEE AGENCY: REFWORLD (May 23, 2007), http://www.refworld.org/docid/46558ec12.html.

177. Philip Alston (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Promotion and Protection of All Human Rights, Civil, Political, Economical, Social and Cultural Rights Including the Right to Development*, U.N. Doc. A/HRC/11/2/Add.2 (Mar. 23, 2009).

178. Gibson, *supra* note 169.

Department reported problems with corruption.[179] For instance, in August of 2007 Brazil's Supreme Court ruled forty people—including "former senior government officials, former and current federal deputies, and leaders of political parties accused of illegal payments to legislators in exchange for support of government legislation"—must stand trial on corruption charges.[180] Given these reports, committees for FIFA and the Olympic Organization could have foreseen that the types of turmoil that Brazil was facing frequently result in human rights violations that are commonly associated with hosting mega-events. Indeed, at the time of Brazil's selection as a host country of both mega-events, the same problems that plagued the country during mega-events in 2014 and 2016, were being reported in 2007.

In addition to the risks cited in human rights reports, Brazil's massive need for infrastructure should have been a red flag to the sporting organizations as an issue that is frequently the root cause of the violation of labor rights. Smith College professor and economist Andrew Zimbalist told CNBC that Brazil "doesn't have sufficient transportation infrastructure, it doesn't have sufficient sanitation infrastructure, it doesn't have sufficient sporting infrastructure, it doesn't have sufficient telecommunications infrastructure. So there has been an enormous amount of investment that has been required of the city of Rio."[181] Because both organizations have seen years of exploitative behaviors of workers building infrastructure for their respective mega-events, FIFA and the IOC could have foreseen that such a great need for infrastructure in a country—especially one with a history of corruption in politics and business—would result in the violation of the workers' human rights.

Both Brazil and the international sporting organizations had obligations to prevent these wrongdoings. If FIFA and the IOC had incorporated procedures mirroring Ruggie's suggested human rights principles into their host country requirements at the time of Brazil's mega-events, they may have prevented several violations of human rights by both companies in the supply chain and the country itself. According to the foundational principles in the UN *Guiding Principles on Business and Human Rights*, Brazil had an "existing obligation to respect, protect and fulfil [sic] human rights and fundamental freedoms" while bidding for, preparing for, and

179. *Brazil*, *supra* note 176.

180. *Id.*

181. Craig Dale, *Rio 2016: Economists Question Wisdom of Hosting Olympics*, CNBC (Aug. 4, 2016), http://www.cnbc.com/2016/08/04/rio-olympics-2016-economists-question-wisdom-of-hosting-olympics.html.

facilitating mega-events.[182] The country also had a duty to protect against human rights abuses by FIFA and the IOC and the companies that worked in connection with the organizations.[183] Additionally, FIFA and the IOC had a responsibility to prevent and "[a]void causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur."[184]

First and foremost, the organizations and the country should have worked together to create a plan that mitigated the likelihood that Brazil would continue to follow its pattern of allowing police to arbitrarily kill civilians and to ensure—in a country where political and business corruption is widespread—that money and business dealings were being monitored closely. Second, because of the significant need for infrastructure, when considered in relation to the problem of corruption in the country, the organizations and Brazil should have formulated a plan to fulfill the need for infrastructure without resorting to inhumane labor practices.[185] Additionally, if the organizations and the country had been unable to create a plan that would mitigate and address all potential human rights abuses—as Ruggie notes in the Guiding Principles and the FIFA report—Brazil should have been dismissed as a host country for the mega-events.

FIFA and the IOC are uniquely situated to require changes in selected host countries because they have the leverage to pressure countries to alter their laws to comply with host country procedures.[186] This leverage point should be used to improve the human rights situations in host countries whenever possible. FIFA and the IOC missed a significant opportunity to help Brazil improve its human rights record when they failed to use their power to influence laws and practices in the country. Furthermore, the sporting organizations had "the ability to apply considerable pressure to those businesses it works with or otherwise endorses to respect human rights,"[187] but missed the opportunity to do so. Prior to hosting the 2014

182. UN GUIDING PRINCIPLES, *supra* note 50, at 1.

183. *See id.* at 3.

184. *Id.* at 14.

185. *See* Bracq, *supra* note 49 (noting that Brazil's Labor Attorneys General Office described the labor conditions of workers making upgrades to Sao Paulo's airport ahead of the World Cup as analogous to slave conditions).

186. *See id.* ("FIFA is in a unique position of authority to improve the human rights situation surrounding this global event by promoting the UNGPs within Brazil, as well as to associate companies and its own sponsors.").

187. *Id.*

World Cup, Brazil adopted the "General Law of the World Cup," which changed laws to give FIFA huge tax breaks, to protect FIFA vendors, and "restricted rights guaranteed by the Constitution and other legislation."[188] Sporting organizations have not used this power frequently to change host countries' internal laws or policies, unless they harm the country's ability to host successful games. For instance, ahead of the World Cup, FIFA required Brazil to change a local law that prohibited the consumption of alcohol in stadiums, which was enacted to cut down on violence at these events.[189] Additionally, just prior to the 2014 Winter Olympics in Sochi, Russia, a law was passed that "made gay athletes and spectators fearful of discrimination, and even arrest, at the Olympics."[190] In the wake of international outcry and the threat of withdrawal of athletes from the Games as a result of the law, the IOC simply asked the Russian government to clarify the law, but not to repeal it.[191] FIFA and the IOC have the ability to help their host countries improve their human rights situations, but the organizations must want to leave this type of legacy in the countries they select.

One of the greatest missed opportunities in Brazil was FIFA and the IOC's ability to use the hosting of the games to leverage the country to make advancements with regard to the human rights of Brazil's indigenous peoples. The sporting organizations could have used their ability to pressure the country to make legal changes to ensure that Brazil was adhering to its UNDRIP obligations. Additionally, FIFA and the IOC could have ensured that, in a country so rich with indigenous peoples, that indigenous leaders were included in the preparation for Brazil's mega-events.

C. Inclusive Mega-event Human Rights Procedures Could Improve Host Countries' Human Rights Records

While Brazil was on the World's stage as a host city, it allowed for extreme abuses to its indigenous populations to occur. Similar to the country's problems with police brutality and corruption, Brazil's mistreatment of and disregard for its indigenous peoples should have been flagged by the sporting organizations as conduct that was likely to continue

188. *Id.*

189. *See* Tang, *supra* note 126.

190. Kathy Lally, *Russia Anti-gay Law Casts a Shadow over Sochi's 2014 Olympics*, WASH. POST (Sept. 29, 2013), https://www.washingtonpost.com/world/russia-anti-gay-law-casts-a-shadow-over-sochis-2014-olympics/2013/09/29/3646344c-27a6-11e3-9372-92606241ae9c_story.html?utm_term=.2359b25d5799.

191. *See* Tang, *supra* note 126.

during the mega-events. Brazil's record on indigenous rights is plagued with reports of mining, timber, and oil companies targeting uncontacted tribes in the Amazon, and of a proposed constitutional amendment that would strip indigenous leaders of a voice in the context of land allocation. In her 2016 report to the UN Human Rights Council, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, noted that "in the eight years since the visit of the previous mandate holder, there has been a disturbing absence of progress in the implementation of his recommendations and the resolution of long-standing issues of key concern to indigenous peoples."[192]

"There are approximately 305 groups in Brazil who self-identify as indigenous peoples, speaking over 274 different languages."[193] Although indigenous peoples only represent "[.43%] of the population," they "are present in [80%] of Brazil's municipalities."[194] European arrival resulted in "genocidal colonial processes" that led to many years of sharp decline in Brazil's indigenous population; in 2010, though, the census indicated that Brazil's indigenous population has begun to grow again.[195] Following a visit to Brazil, the Special Representative noted in her report, "[t]he challenges facing many of Brazil's indigenous peoples are enormous[,] . . . rang[ing] from historically based and deeply entrenched discrimination of a structural nature, manifested in the contemporary neglect and denial of indigenous peoples' rights, to more recent developments associated with changes in the political landscape."[196]

Brazil's Constitution, adopted in 1988, contains two articles explicitly related to indigenous peoples. First, "Article 231 provides that Indians shall have 'their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy.'"[197] This provision provides constitutional protection for indigenous communities' rights, "especially in relation to the exploitation of natural resources on indigenous lands" and "protects indigenous peoples

192. Victoria Tauli-Corpuz (Special Rapporteur on the Rights of Indigenous Peoples), *Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Mission to Brazil*, U.N. Doc. A/HRC/33/42/Add.1, at 1 (Aug. 8, 2016), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/174/05/PDF/G1617405.pdf?OpenElement.

193. *Id.* at 4.

194. *Id.*

195. *See id*.

196. *Id.* at 13.

197. *Id.* at 4.

against dispossession of or forced removal from their lands."[198] This article requires Brazil to "demarcate the lands traditionally occupied by indigenous peoples and 'to protect and ensure respect for all their property.'"[199] Article 232 also protects indigenous rights and "provides indigenous peoples and their organizations with standing to sue to defend their rights and authorizes the Public Prosecutor to intervene on behalf of indigenous peoples in all pertinent cases."[200] Additionally, the country of Brazil was in the majority of countries that voted in favor of the UNDRIP.[201]

Despite such wide protection of indigenous peoples' rights in its constitution, and its obligations under the UNDRIP and international law, Brazil has long disregarded the rights of its indigenous peoples. The Special Rapporteur reported that the latest numbers showed that 138 indigenous people were killed in 2014.[202] In addition to this total, Tauli-Corpuz highlighted one particularly heinous case from December of 2015, in which an indigenous baby was beheaded.[203] Tauli-Corpuz noted that "[t]he failure of the mainstream media to report this case was regarded by many as symptomatic of the general public's growing prejudice against, and hatred towards, indigenous peoples."[204]

Tauli-Corpuz's concerns about the lack of improvement in indigenous rights seems to overshadow some of the recent positive initiatives she reported being implemented to the advantage of indigenous groups in Brazil. Advancements highlighted in her report include "[t]he Government's opposition to the proposed constitutional amendment, PEC 215, which would undermine the land demarcation and rights protection framework[,]" the prevention of indigenous evictions from certain vulnerable areas, and the development and maintenance of a few special groups that work to further the rights of Brazil's indigenous communities.[205]

Despite these small improvements, nearly a decade has passed with no real progress made to protect the rights of indigenous peoples in Brazil. Tauli-Corpuz emphasized in the conclusion of her report that "information received points to an extremely worrying regression in the protection of

198. *Id.* at 4-5.
199. *Id.* at 5.
200. *Id.*
201. G.A. Res. 61/295, *supra* note 95.
202. Tauli-Corpuz, *supra* note 192, at 6.
203. *Id.* at 7.
204. *Id.*
205. *Id.* at 5-6.

indigenous peoples' rights" in Brazil.[206] Tauli-Corpuz further noted that "[i]n the current political context, the threats facing indigenous peoples may be exacerbated and the longstanding protections of their human rights may be at risk."[207] Having an indigenous-specific human rights protection plan in place could have ensured that changes were made. If FIFA and the IOC required that countries adhere to their obligations under internationally recognized human rights documents, Brazil could have been pressured into making advancements to protect indigenous peoples. Instead, Brazil's indigenous communities were left unassisted, in the same position they have been in for nearly a decade and along with Brazil's impoverished communities, while Brazil spent money on hosting sporting events. FIFA and the IOC had the opportunity to fulfill their organizational goals of leaving a sustainable legacy in Brazil, but both missed the opportunity to create real change.

Conclusions and Recommendations

For far too long, FIFA and the Olympic Organization have allowed human rights to be disregarded and violated for the sake of presenting successful mega-events that bear their names. As the two most influential international sporting organizations, FIFA and the Olympic Organization have significant abilities to influence change in the countries that host their mega-events. As has been seen in host nations of previous games, FIFA and the IOC even have the power to pressure host countries to change laws to accommodate the sporting organizations. These two organizations should use the leverage points that they have as powerful, international bodies, to protect human rights throughout their business practices. As the organizations begin to make positive changes in their own policies, they must take seriously their newly understood obligations, which mirror the UN *Guiding Principles of Business and Human Rights*. Unfortunately, like many human rights policy advancements, change to sporting organizations' mega-event policies have been devastatingly slow.

Both organizations should make improvements to their current host country procedures to incorporate respect for human rights. And international sporting organizations should require candidate host countries go through human rights risk assessments. Furthermore, organizations should consider candidate host countries' human rights records as a whole and understand whether or not candidate nations fulfill their international

206. *Id.* at 19.
207. *Id.*

human rights obligations arising under treaties and other international agreements. In addition, sporting organizations should require host countries to have in place a human rights risk mitigation plan for them to follow throughout preparation and facilitation of their hosted events. Organizations should also monitor the practices of host countries throughout preparation and facilitation of mega-events, to ensure that all partner companies within the supply chain are also respecting human rights and following respectable business practices.

In addition to incorporating general human rights protection into their policies, FIFA and the Olympic Organization should adopt inclusive human rights procedures that explicitly address the rights of indigenous peoples. Policies that include indigenous rights are just one way that FIFA and the IOC can help ensure that host countries are respecting their obligations under international law. Because Brazil is a signatory of the UNDRIP, it is required to uphold and protect indigenous peoples' rights. Instead, Brazil has not taken actions to protect its indigenous communities. FIFA and the IOC should adopt procedures that apply exclusively to indigenous peoples, so that when mega-events result in violations of their rights, both organizations have processes to mitigate the violation of the rights of indigenous peoples.

The greatest challenge for international sporting organizations is yet to come. Once these organizations begin to incorporate human rights requirements into their host country procedures, sporting organizations must ensure that new policies are actually upheld. Because FIFA and the Olympic Organization have notoriously been plagued by corruption and human rights scandals, forging a new path that prioritizes respect for human rights and sets an example for other sporting organizations will likely not be easy. All parties involved in the preparation for and facilitation of mega-events must be committed to protecting human rights. Those committed to the cause of furthering human rights in sport must also work to hold these global organizations accountable. Only then can FIFA and the Olympic Organization *really* leave a legacy that promotes international peace and unity.