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ARTICLE

Lessons Learned in Qatar: The Role of the Netherlands and Its Businesses in Addressing Human Rights Abuses in Mega-Sporting Events

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Abstract
Mega-sporting events (MSEs) can have a negative impact on human rights throughout their lifecycle, from the bidding stage, over to the planning and preparation stage, the delivery of the event, and also as part of their legacy after the event has concluded. They can be linked to land grabbing, forced evictions, forced labour and many other human rights abuses. The problem is that only a very few of these cases are actually addressed in the sense that rights-holders receive an effective remedy and those responsible for the abuse are held to account. MSEs are jointly organized and staged by public, private, national, and international actors, which each contribute in different ways to the associated human rights impact. Rather than looking at the responsibility of those actors directly involved in organizing and staging the event, this article looks at the responsibility of the participating actors of states that are represented at the event, namely businesses and sports bodies, using the Netherlands and the 2022 FIFA World Cup in Qatar as the guiding example. The central questions it tries to explore based on lessons learned and opportunities missed in Qatar are how such actors are connected to adverse human rights impacts associated with MSEs, which responsibilities under the human rights framework flow from those connections, and how participating states should then ensure that businesses live up to their responsibilities.

Keywords Human rights · Mega-sporting events · UNGPs · Participating states · Participating businesses

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1 Introduction

The 2022 football World Cup in Qatar was one of the more controversial in the history of the event.[1] After Qatar was awarded with hosting the event back in 2010, the world closely followed Qatar's preparations. In that period, the tragic circumstances under which migrant workers in Qatar were building the infrastructure needed to host the event and other related infrastructure came to light,[2] as did other salient human rights problems such as the country's hostility towards LGBTQI+ people and corruption around the bidding process. The reality is that these and other types of human rights abuses are often linked to the delivery of a mega-sporting event (MSE). The most prestigious examples of MSEs are indeed the FIFA World Cup,[3] and the Olympic and Paralympic Games (OPGs), drawing tens of thousands of spectators to the event itself, while billions of viewers around the world follow it from home. Other MSEs may not achieve that viewership scale but can still have significant social, political and economic impacts, such as the Commonwealth Games, the UEFA Champions League, the Tour de France, or the world championships of individual sporting events, like the World Athletics Championship.

All these events can have a negative impact on human rights throughout their lifecycle, from the bidding stage, over to the planning and preparation stage, the delivery of the event, and also as part of their legacy after the event has concluded.[4] MSEs can be linked to land grabbing, forced evictions, forced labour and many other human rights abuses. The problem is that only a very few of these cases are actually addressed in the sense that rights-holders receive an effective remedy and those responsible for the abuse are held to account. MSEs are jointly organized and staged by public, private, national, and international actors,[5] which each contribute in different ways to the associated human rights impact. This makes it difficult to identify the actor responsible for a particular impact or abuse, and to find the adequate legal forum or other mechanism for remedies.[6] Even where it is possible to identify the specific actors involved and to point at those that caused or contributed to the abuse, numerous legal and practical obstacles prevent the establishment of responsibility before the law, which holds true for the private and public actors alike.

While this is the core problem when it comes to accessing a remedy for those affected, this article addresses another related challenge. Rather than looking at the

[1] Research for this article was initially concluded in February 2023, with revisions in April 2023. Any developments thereafter could not be incorporated in its findings. This includes progress regarding the draft legal instruments discussed in the article, as well as evaluations and fact-finding reports regarding the World Cup.

[2] Amnesty International (2019); Adhikari (2010); Conn (2017).

[3] The term 'Olympic and Paralympic Games' is used for both Winter and Summer Olympic Games. The term 'FIFA World Cup' usually refers to the international competition of national men's football teams, which is disproportionately larger than the women's World Cup in terms of the fans attending the event, its audience around the world, media coverage, and revenues. See https://www.fifa.com/tournaments/mens/worldcup/2018russia/news/the-2018-fifa-world-cuptm-in-numbers (accessed 11 August 2022).

[4] Mega-Sporting Events Platform for Human Rights (2018).

[5] Chappelet and Kübler-Mabbott (2008), p. 16; Morel (2012) pp. 239–240.

[6] Heerdt (2021b).

responsibility of those actors directly involved in organizing and staging the event, which has been done in detail elsewhere,[7] it looks at the responsibility of the participating actors of states that are represented at the event, namely businesses and sports bodies, using the Netherlands and the 2022 FIFA World Cup in Qatar as the guiding example. The central questions that this article tries to explore based on lessons learned and opportunities missed in Qatar are how such actors are connected to adverse human rights impacts associated with MSEs, what responsibilities under the human rights framework flow from those connections, and how participating states should then ensure that businesses live up to their responsibilities. The focus lies on those types of impacts that are directly associated with bidding for, preparing for, or delivering an MSE. This article thereby tries to contribute to the advancement of the business and human rights (BHR) framework as developed by the United Nations (UN), in particular the UN Guiding Principles for Business and Human Rights (UNGPs), as it applies this framework to more 'removed' parties, namely participating states, and analyses and evaluates the benefits of using that framework in that context.[8] In essence, it comes down to using the UNGP framework to take a proactive approach to assess and address human rights risks related to MSEs, where (foreign) businesses are involved. The focus on the private sector does not mean that state actors or sports-governing bodies are ignored, nor that we hold the view that business actors are solely or even primarily responsible for the human rights impact of MSEs. Instead, this article aims to defend the thesis that as a complementary approach to other implementation and enforcement mechanisms, participating states can and should address the adverse human rights impacts of MSEs by (better) regulating, guiding, and incentivizing business actors involved in, and sometimes indispensable to, organizing the MSE.

The article begins with a brief overview of the various human rights risks and impacts associated with hosting an MSE. After that, Sect. 3 introduces the multiplicity of private and public actors involved in delivering MSEs, and which can thereby be potentially connected to these risks and impacts. This section highlights the legal exceptionalism and multi-jurisdictional character that is inherent in MSEs, and discusses the difficulty of holding in particular private actors to account. Section 4 briefly focuses on participating states and their obligations and responsibilities under human rights law, examining the extent to which they have extraterritorial obligations, or obligations with extraterritorial effect vis-à-vis the MSE. It then discusses extraterritorial effect within the BHR paradigm, analysing state and business responsibilities under the UN Guiding Principles for Business and Human Rights. Section 5 applies that paradigm to three categories of business actors from participating states that can be involved with MSEs and associated human rights impacts.[9]

[7] Heerdt (2021b).

[8] UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, 2011, HR/PUB/11/04 (2011); OECD Guidelines for Multinational Enterprises, 2011, https://doi.org/10.1787/9789264115415-en.

[9] UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, 2011, HR/PUB/11/04 (2011); OECD Guidelines for Multinational Enterprises, https://doi.org/10.1787/9789264115415-en.

Section 6 discusses avenues for states to regulate the conduct of these actors for the Netherlands, after which Sect. 7 summarizes the recommendations and concludes.

2 Human Rights Abuses at MSEs

Different studies point out that an early linkage between human rights and MSEs goes back way before the 2022 World Cup, for example to the controversial 1936 Olympics Games in Nazi-run Berlin, the exclusion of South Africa from participation in international sports from 1964 to 1988 due to its apartheid regime, and the boycott of the 1980 Games in Moscow related to the Soviet repression of dissidents and minorities.[10] Historical accounts of the link between MSEs and human rights highlight that there are two perspectives on how this link came about.[11] First, MSEs were perceived as an opportunity to promote human rights and bring about human rights-friendly reforms in a host country.[12] Keys' account of the historical development of that link is based on a gradual evolution from MSEs being depicted as a driving force for peace in their early years to MSEs as a platform for human rights advocacy.[13] Athletes themselves used these international events to stage protests and raise awareness for human rights issues, one of the best-known example being Tommie Smith's Black Power salute at the 1968 Games, set in motion by the Olympic Project for Human Rights.[14] Most recently, the issue of athlete activism again made the headlines in relation to the 'Black Lives Matter' movement.[15]

Second, MSEs became known as a catalyst of human rights repression.[16] As Keys argues, 'the real watershed moment for human rights and sport mega-events' was Human Rights Watch's (HRW) campaign against Beijing's bid to host the 2000 Games.[17] While the Games were eventually awarded to Sydney, HRW's intervention broadened the debate 'to encompass a [host] country's treatment of all citizens' and spread the message 'that broad obligations ought to come with hosting the Games'.[18] HRW's anti-Beijing Olympics campaign focused on discrimination in the form of political repression, detention and the abuse of dissidents. Even though there was (and still is) no mention of human rights in the Olympic Charter, what helped their position was that by that time, the application of human rights to everyone had become an internationally accepted moral standard.[19] Furthermore, the campaign triggered unprecedented media coverage of human rights issues linked to the OPGs in many of the participating states. By the time the 2000 Games were about to start,

[10] Keys (2019), pp. 111–115; Zirin (2008), pp. 74 et seq.
[11] Keys (2019), Heerdt (2019), pp. 57–72; Liu (2007), pp. 213–235; Kidd (2010), pp. 903 et seq.
[12] Black and Bezanson (2004), pp. 1245–1261.
[13] Keys (2019).
[14] Edwards (1979), pp. 2–8.
[15] Berry (2020).
[16] Keys (2019), p. 111.
[17] Keys (2019), p. 116.
[18] Keys (2019), pp. 116, 118.
[19] Keys (2019), pp. 120–121.

investigating the human rights impacts of MSEs had become an integral part of the work of not only HRW but also other international human rights organizations, such as Amnesty International. Furthermore, the focus began to reach beyond the scope of the Olympic and Paralympic Games to include other major international and regional sporting events like the FIFA World Cup.[20]

By now, it is a well-known fact that mega-sporting events can have a negative impact on human rights. The number of reports and initiatives highlighting the whole range of human rights that can be adversely impacted by staging these events have been piling up continuously, most significantly since the Beijing Games in 2008.[21] The human rights issues highlighted in relation to the Beijing Games focused on forced evictions, exploitative and unsafe working conditions for those working on event-related infrastructure projects, and child labour.[22] For other events, similar and additional human rights issues were highlighted. A study conducted by the Centre on Housing Rights and Evictions (COHRE) on the housing impacts of Summer OPGs documented that for the Seoul, Barcelona, Atlanta, Sydney, Athens, Beijing, and London events a total of more than two million families and individuals had been displaced or forcefully evicted due to construction projects directly and indirectly linked to the events.[23] Concerns for abuses of workers' rights were raised in connection with the Sochi OPGs in 2014 and the 2018 FIFA World Cup in Russia, as well as the 2018 Winter Games in Pyeongchang and the preparations for the 2022 FIFA World Cup in Qatar. Child labour concerns linked to MSEs have been reported as a common issue in an event's supply chain, for instance in connection with the production of Olympic logo goods, mascot toys, or other official merchandise for the 2012 London OPGs.[24]

Additional adverse human rights impacts can be triggered by far-reaching security measures and police violence, the oppression of activists and opponents, and the adoption of certain event-related discriminatory laws. Regarding the latter, examples are harsh anti-ambush marketing laws that were adopted in relation to the 2012 Summer Games in London, which forced smaller businesses out of business, the anti-LGBTI legislation that was passed before the 2014 Winter Games in Sochi,[25] or the repressive measures against rainbow flags and other displays of solidarity with LGBT+ people in Qatar. The harassment and arrest of opponents and human rights activists was an issue before the 2018 FIFA World Cup in Russia and the Pyeongchang Winter Olympics.[26] Expansive security measures and surveillance practices have been documented for most of the past Summer and Winter Olympics.[27] This

[20] Keys (2019), p. 124.
[21] Worden (2013).
[22] Worden (2008), pp. 183–184.
[23] Centre on Housing Rights and Evictions (2007), p. 78.
[24] Brackenridge et al. (2013), p. 14.
[25] James and Osborn (2016), pp. 102–105; James and Osborn (2011), pp. 413–415, 427; Van Rheenen (2014), pp. 127–144.
[26] Building and Wood Workers' International and the Korean Federation of Construction Industry Trade Unions (2018), pp. 4–6.
[27] Bajc (2016).

often comes with police brutality and the militarization of public spaces, which have been reported on extensively in the context of the 2014 FIFA World Cup in Brazil and even more so for the Rio 2016 Games.[28]

Based on this concise overview of examples of adverse human rights impacts of past, recent and future MSEs, three conclusions can be drawn. First, experiences from past and recent MSEs demonstrate that MSEs can impact a whole range of human rights in a direct and indirect way. Most MSE-related human rights impacts can be seen as a direct consequence of the organization and staging of such an event. This includes the use of forced labour and modern slavery in the construction of infrastructure for the event, but also includes, for example, violations of the right to adequate housing that result from forced evictions without proper due process, related to event infrastructure.[29] Issues related to the increased surveillance of not only public spaces and event venues but also foreign journalists before or social media during the event can directly infringe upon the rights to privacy[30] or freedom of expression[31] of many individuals. Other human rights at risk of being directly infringed upon are human rights relating to workplace conditions,[32] or the right to freedom of movement.[33] In addition, indirect human rights abuses can occur as a result of direct MSE-related human rights abuses. For example, the right to work or the right to education can be impacted as a result of forced displacement.

Secondly, the timespan of events referenced in this overview implies that human rights risks associated with MSEs have not decreased. In fact, the increase in reports and information available on the adverse human rights impacts of MSEs can be hints at the opposite. Furthermore, with the geographical expansion of those events to developing countries and countries with a more negative human rights reputation, concerns and attention for human rights risks have increased. Both China and Russia have hosted multiple events in the past. In 2015, Azerbaijan hosted the European Games. Before 2022, Qatar had already hosted the Handball World Cup in 2015.

[28] Talbot and Carter (2018), p. 77; Boykoff (2017), p. 14.

[29] The right to adequate housing is protected by Arts. 12 and 25 Universal Declaration of Human Rights (1948), Art. 11 International Covenant on Civil and Political Rights (1966), or Art. 31 of the European Social Charter. The American Convention on Human Rights (1969) and the African Charter on Human and Peoples' Rights (1986) do not make explicit reference thereto, but comments and guidelines clarify that it is implicitly protected. The right to property is for instance protected by Art. 1 of the European Convention on Human Rights (1950), Art. 21 of the American Convention on Human Rights and Art. 11 of the African Charter on Human and Peoples' Rights. See also Morel (2012), p. 245.

[30] Micek (2018). The right to private and family life is for instance protected by Art. 17 International Covenant on Civil and Political Rights (1966), Art. 8 European Convention on Human Rights (1950), or Art. 11 American Convention on Human Rights (1969).

[31] Universal Declaration of Human Rights (1948), Art. 19; International Covenant on Civil and Political Rights (1966), Art. 19; European Convention on Human Rights (1950), Art. 10; American Convention on Human Rights (1969), Art. 13; African Charter on Human and Peoples' Rights (1986), Art. 9.

[32] Universal Declaration of Human Rights (1948), Arts. 23, 24; International Covenant on Economic, Social and Cultural Rights (1966), Arts. 6, 7; African Charter on Human and Peoples' Rights (1986), Art. 15; European Social Charter, Art. 1; American Convention on Human Rights: Additional Protocol, Art. 6.

[33] Universal Declaration of Human Rights (1948), Art. 13; International Covenant on Civil and Political Rights (1966), Art. 12; African Charter on Human and Peoples' Rights (1986), Art. 12.

The Qatari government practically made the hosting of international sporting events their new business model and, in the years to come, Qatar is going to host more international sporting events than any other country.[34] Saudi Arabia as well has been keen to host as many international sporting events as possible in recent years, which Worden interprets as 'an apparent attempt to "sportswash" its abusive rights reputation using large-scale events, with highly controlled environments, to show a progressive face of the kingdom'.[35]

Thirdly, while it is safe to say that every MSE, like most other mega-projects, comes with human rights risks, there are differences in the extent to which adverse MSE-related human rights impacts occur.[36] Corrarino warns that the human rights impacts of MSEs often depend on the host country in question and the social and economic factors present in a country.[37] This also means that, depending on the host country, MSEs can disproportionately impact specific groups of society, such as indigenous groups, children, women, or migrant workers. Certainly, MSEs in a way facilitate and sometimes exacerbate the occurrence and intensity of pre-existing human rights issues in a hosting country. Hom argues in the context of the Beijing Olympics that the Games were 'used as a justification for further violations', such as forced evictions, the closing of schools, stronger control of the media, and crackdowns on lawyers.[38] However, the fact that virtually all MSEs come with adverse human rights impacts reveals that MSE-related human rights abuses do not solely depend on a country's pre-existing human rights situation, but rather highlights a structural problem inherent to the organization and the delivery of MSEs. The London Olympics were mainly criticized for being overly intrusive and infringing upon the privacy rights of residents.[39] Hence, while the type of human rights issues and the scale of abuses differ for each event, virtually all MSEs struggle with human rights issues, which implies that adverse human rights impacts are intrinsic to these events.[40] As Boykoff argues in the context of the Rio Games, 'though it would be easy to simply wag a finger at the Cidade Maravilhosa—to blame it on Rio—the reality is much more complicated. What may seem like Rio problems are actually Olympic problems'.[41]

3 MSE Governance

To what extent one can indeed specifically speak of 'Olympic' or 'World Cup' problems when talking about MSE-related human rights abuses becomes clear when looking at how MSEs are organized and regulated. This section provides an

[34] Burrow (2015).
[35] Worden (2019).
[36] Gessen (2018).
[37] Corrarino (2014), p. 191.
[38] Hom (2008), p. 67.
[39] Zirin and Edwards (2012); Bongiovi (2016), pp. 359–380.
[40] Heerdt (2019).
[41] Boykoff (2017), p. 14.

overview of the actors and laws involved in delivering these events, with a focus on the role that private actors like contractors, sponsors and broadcasters are playing. It explains how these can be referred to as multi-jurisdictional events that are organized within a climate of 'legal exceptionalism'.[42]

3.1 The Actors Involved

While the exact number of involved actors is almost impossible to determine, this concise overview demonstrates that a vast number of diverse actors are involved in hosting an MSE. International sports governing bodies (ISGBs) like FIFA and the International Olympic Committee (IOC) are the event owners and they shape the rules and conditions under which MSEs have to be delivered. They are usually established as associations. The IOC 'is an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000'.[43] FIFA is 'an association registered in the Commercial Register of the Canton of Zurich in accordance with Article 60 ff. of the Swiss Civil Code'.[44] Article 60 covers associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose.[45] This way of establishment grants these organizations a rather flexible status under Swiss law, if not one of the most flexible statuses, including benefits such as partial or complete tax exemption.[46]

Each event comes with unique structures regarding the way the local organizing bodies are created and connected to the event owners. Generally speaking, these organizing bodies consist of representatives from the government, central or municipal level or both, and representatives from the national sports world, such as National Olympic and Paralympic Committees or National Football Federations, as well as people from sport-related private entities, such as relevant sponsors or broadcasters. The domestic legal systems of hosting nations can have an influence on the way these bodies are established.[47] The Organizing Committees of the Olympic Games (OCOGs), such as the Beijing Organising Committee for the 2022 Olympic and Paralympic Winter Games, are nowadays more often established as public organizations, such as a government agency or quasi-public foundation, but there have also been purely private OCOGs in the past.[48] In many cases though, OCOGs operate in a hybrid form, meaning that they have both a private and public component. For instance, the private part of the LOCOG, the Organizing Committee for

[42] Corrarino (2014), p. 191.
[43] Olympic Charter 2020, Rule 15(1).
[44] FIFA Statutes (2019), Art. 1.
[45] Swiss Civil Code (1907), Art. 60, https://www.admin.ch/opc/en/classified-compilation/19070042/201801010000/210.pdf.
[46] Pieth (2014), p. 8.
[47] Mestre (2009), p. 63.
[48] Chappelet and Kübler-Mabbott (2008), p. 91.

the London Games, was supported by a purely public organization, the 'Olympic Delivery Authority for London 2012'.[49] For the Olympic Games in 2016, the Rio OCOG was established primarily as a private organization, but supported by public entities.[50] The 'Olympic Public Authority' (in Portuguese: 'Autoridade Pública Olímpica'—APO) was established as a public entity, which brought together the different levels of government that were involved.[51]

The World Cup usually is organized by a Local Organizing Entity (LOE). For the 2018 World Cup, the Football Union of Russia had to create the LOE 'as a separate legal entity' and as an autonomous non-profit organization.[52] In addition to the central LOE, there can be organizing committees from each host city. The Russian football association established 'Russia 2018' as the LOE and, in addition, Regional Organizing Committees were created.[53] In Qatar, the Supreme Committee for Delivery and Legacy (SC) was established as a quasi-governmental body, responsible for delivering tournament venues and host country planning in terms of infrastructure and services. Another entity, namely the 'FIFA World Cup Qatar 2022 LLC', was the relevant LOE. It was created as a limited liability company in which FIFA held 51% of the shares and Qatar 2022 LLC 49%, and was responsible for the event delivery in relation to tournament operations like training sites and team services.[54]

The event owners and local organizers work closely together with the authorities of the respective host. Usually three levels of government are involved in delivering MSEs. City representatives and local politicians represent public authorities on the municipal level. Ministries and other departments or institutions are involved on the regional and central level. The central government is involved by providing financial and technical support, and so-called government guarantees[55] ensure that for instance all requirements regarding security measures, transport systems and customs regulations are met.[56]

Regarding the businesses involved, usually neither FIFA nor the IOC hire contractors for the delivery of the event themselves. This is the task of the local organizers. The contractors involved in the MSE business range from big multinational enterprises to smaller local corporations and come from a range of different business sectors, such as the hospitality sector, the construction sector, or other service-provision businesses, such as recruitment agencies or water infrastructure companies. Back in 1976, a total of 628 suppliers and sponsors were linked to staging the

[49] Chappelet and Kübler-Mabbott (2008), p. 91.

[50] Spalding (2016), p. 7.

[51] Spalding (2016), p. 9.

[52] FIFA, 'Regulations 2018 FIFA World Cup Russia™', 2016, Art. 1(3), https://resources.fifa.com/mm/document/tournament/competition/02/84/35/19/regulationsfwc2018en_neutral.pdf; Lelyukhin (2014), p. 75.

[53] Lelyukhin (2014), p. 76.

[54] FIFA, 'FIFA World Cup Qatar 2022™—Organisation', 2020, available at https://www.fifa.com/worldcup/organisation/ (accessed 15 August 2022).

[55] FIFA, 'Government Guarantee No. 8', available at https://open.overheid.nl/documenten/ronl-archief-ff2f84a3-3015-47ac-8df9-bd0e95481253/pdf (accessed 15 May 2023).

[56] Chappelet and Kübler-Mabbott (2008), p. 91.

Montreal Games and it is likely that this number increased in the course of accelerating globalization.[57] For the Tokyo 2020 Games, some 7,500 procurement contracts were concluded.[58] Big multinational companies often work in joint ventures with local companies.[59] For example, the construction of stadiums for the South Africa World Cup involved the German companies HBM Stadien-und Sportstättenbau GmbH, GMP Architekten and Hightex GmbH, the Italian company Cimolai, the French company Bouygues, and the Dutch company BAM International.[60] The 13 official Qatar World Cup construction sites were operated by 38 main contractors and 306 subcontractors,[61] mostly locally incorporated businesses.

Other corporate actors involved are sponsors and broadcasters, which provide financial support for the staging of these events. Broadcasting companies can be purely private, profit-making companies, or related to a public service. Usually, countries have a public broadcasting organization in addition to private broadcasting companies. Both types of entities can be involved in MSE broadcasting. Sponsors are usually limited, profit-making companies.[62] The MSE business includes permanent and ad hoc sponsors. The permanent ones are the big international sponsors, known as TOP—'The Olympic Partners'—and FIFA Partners.[63] They agree to be the sponsors of either the World Cup or the Olympic Games, or both, for several editions. There are 12 TOPs in total and six FIFA Partners. While these sponsors are directly linked to the sports bodies, the ad hoc sponsors are usually smaller transnational or national companies, which enter into an agreement with a sports body or government to sponsor a specific event.

This brief analysis does not purport to provide a detailed and complete picture of how MSEs are governed, but it nevertheless highlights that public, private, national and international entities jointly organize and stage the event, and that private actors, in the form of participating businesses, such as contractors, sponsors, or broadcasters, make up a significant part of this mix of actors.

3.2 A Multi-Jurisdictional Event

MSEs are organized based on a peculiar and pluralist legal framework. Overall, three different legal frameworks overlap: *lex sportiva*, domestic laws, and human rights law. *Lex sportiva* refers to the regulation of international sports, based on contracts and private regulations issued by sports-governing bodies like FIFA and the

[57] Giannoulakis and Stotlar (2006), p. 181.
[58] The Tokyo Organising Committee of the Olympic and Paralympic Games (2021), p. 97.
[59] Cottle (2014), p. 85.
[60] Cottle (2014), p. 85.
[61] Impactt (2019), p. 22.
[62] Chappelet and Kübler-Mabbott (2008), p. 9.
[63] IOC, 'Olympic Sponsors—The Olympic Partner (TOP) Programme', available at https://www.olympic.org/sponsors; FIFA, 'FIFA Partners', https://www.fifa.com/about-fifa/commercial/partners.

IOC, and the jurisprudence of the Court of Arbitration for Sport (CAS).[64] The most important frameworks are the founding documents of ISGBs, such as the FIFA Statutes and the Olympic Charter. They have been described as 'authoritative texts' and apply to the governance of MSEs through reference in bidding and hosting regulations.[65] The bidding and hosting regulations are constantly updated for the different tournaments that take place. They entail the rules and requirements under which an event has to be delivered. The application of domestic law around MSEs is a complex issue. While the 'autonomy of sports' argument is often used to justify that ISGBs have the right to organize their sporting activities independently from government interference, in theory there are rules and laws that ISGBs have to take into account when bringing an MSE to a certain host country.[66] More specifically, domestic labour laws, tort laws, immigration laws, intellectual property laws, competition or tax laws play a role for the various interactions and operations related to MSEs as, sports bodies usually ask for a number of guarantees and declarations on these issues, in order to ensure that domestic laws are not hampering the delivery of the event.[67] This can also mean adopting legislation specifically for the event, so-called Olympic or World Cup Acts, which may create legal carve-outs from otherwise applicable frameworks. As FIFA asserts, 'existing and generic laws and regulations in the Host Country/Host Countries generally do not provide a sufficient legal framework', due to the 'the unique scope of the FIFA World Cup operations and the exceptional nature of the FIFA World Cup as a sporting event'.[68] For example, Brazil adopted two legal acts in the run-up to the two events, the 'Olympic Act' (Law No. 12.035, 1 October 2009) and the General Law of the World Cup (Law No. 12.663, 5 June 2012).[69] These laws included provisions allowing for the (temporary) nullification of any laws, which according to FIFA or the IOC might endanger the hosting of the two events.[70] Russia's Law No. 108-FZ for the World Cup 2018 dealt with migration and labour issues, the safety of participants, construction issues, the protection and enforcement of FIFA commercial rights, foreign currency transactions, advertisements, and communication technologies.[71]

Another domestic legal framework that applies is Swiss law, as it is referenced in a number of agreements that form part of the governance of MSEs. In fact, the majority of contracts with FIFA or the IOC refer to Swiss law as the applicable law.[72] For example, the IOC's Candidature Process file defines Swiss law as the

[64] Duval (2019); Serby (2017), p. 5.

[65] Duval (2019), p. 9.

[66] ILO (2019), para. 4.

[67] FIFA, 'Government Guarantee No. 8', available at https://open.overheid.nl/documenten/ronl-archief-ff2f84a3-3015-47ac-8df9-bd0e95481253/pdf (accessed 15 May 2023).

[68] FIFA, 'Overview of Government Guarantees and Government Declaration', 2017, https://digitalhub.fifa.com/m/502252882e0edd0e/original/ufybnq0f1kd2g1nhw5pc-pdf.pdf (accessed 15 May 2023).

[69] Godfrey (2014), pp. 463–472; Buchanan (2016).

[70] Grix, Brannagan and Houlihan (2015), p. 477.

[71] Lelyukhin (2014).

[72] FIFA, 'Host City Agreement Regarding Participation in Hosting and Staging of the 2018 FIFA World Cup and FIFA Confederations Cup 2017', n.d.; IOC, 'Host City Contract Principles Games of the XXX-

applicable law.[73] The law of Switzerland also applies to a certain extent because both FIFA and the IOC are Swiss legal entities, being registered and located in Switzerland.[74] Hence, both derive rights and obligations from Swiss law.[75] More specifically, Articles 60–79 of the Swiss Civil Code regarding the requirements for associations apply to FIFA and the IOC, which means that they enjoy the freedom to choose the regulatory framework under which they operate.[76]

Finally, and as indicated above, human rights standards and law have gradually become a more prominent part of the governance framework of MSEs, primarily through recent changes in the bidding and hosting regulations, and secondarily through statutory and policy commitments. In theory they have always been applicable to the extent that the host state has obligations under international human rights treaties that it is party to, and to the extent that they are incorporated into domestic law. But since the latest reform of the bidding and hosting regulations for the Olympic Games and the World Cup in 2017, internationally recognized human rights standards also form an integral part of these regulations and the *lex sportiva*. The Host City Contract Principles for the 2024, 2026 and 2028 Games address human rights in Principle 13.2b, which states:

> [T]he Host City, the Host NOC [National Olympic Committee] and the OCOG [Organizing Committee of the Olympic Games] shall, in their activities related to the organisation of the Games […] protect and respect human rights and ensure any violation of human rights is remedied in a manner consistent with international agreements, laws and regulations applicable in the Host Country and in a manner consistent with all internationally-recognised human rights standards and principles, including the United Nations Guiding Principles on Business and Human Rights, applicable in the Host Country.[77]

An almost identical wording is used for the human rights provision in the revised candidature process for the 2026 Winter Olympics. The fact that these provisions are part of the contractual framework of hosting and bidding for the Olympic Games makes these provisions binding on the parties that sign the contract. This is also true for the human rights concepts that form part of the candidature procedure, as the commitments made during the candidature process become binding once the event has been awarded.[78] The IOC itself signs the contract and, according to Principle

Footnote 72 (continued)
III Olympiad in 2024', Art. 51.1, available at https://stillmed.olympic.org/Documents/Host_city_elections/Host_City_Contract_Principles.pdf.

[73] IOC, 'Candidature Process Olympic Games 2024', available at https://stillmed.olympic.org/Documents/Host_city_elections/Candidature_Process_Olympic_Games_2024.pdf, p. 50.

[74] Chappelet and Kübler-Mabbott (2008), p. 107.

[75] Mestre (2009), p. 41.

[76] Pieth (2014), p. 24.

[77] IOC, 'Explanatory Notes to Host City Contract 2024—Principles', Principle 13.2b, available at https://stillmed.olympic.org/media/DocumentLibrary/OlympicOrg/Documents/Host-City-Elections/XXXIII-Olympiad-2024/HostCityContract2024_Principles.pdf.

[78] IOC, 'Host City Contract Principles Games of the XXXIV Oympiad in 2028', Principle 5, available at https://stillmed.olympic.org/media/DocumentLibrary/OlympicOrg/Documents/Host-City-Elections/XXXIV-Olympiad-2028/Host-City-Contract-2028-Principles.pdf.

13.3, is obliged to establish a reporting mechanism regarding the human rights obligations of the other contracting parties.[79]

Likewise, since the latest revision of FIFA's bidding regulations that are applicable to the 2026 FIFA World Cup, human rights are mentioned in the Government Declaration as such, in Government Guarantees, and in the host cities' declaration, which includes a commitment to respect, protect and fulfil human rights.[80] The revised regulations require Member Associations to 'respect Internationally Recognized Human Rights, including workers' rights, in all aspects of its/their activities relating to this Bidding Process in accordance with the UN Guiding Principles'.[81] This includes measures for avoiding to cause or contribute to 'any adverse human rights, including workers' rights, impacts', as well as measures for seeking to 'prevent or mitigate adverse human rights impacts that are directly linked to its/their operations, products or services by its/their business relationships'.[82]

A significant number of additional contracts are concluded between the various private parties involved in delivering an MSE, for instance between the event owners and sponsors and broadcasters, or between the LOE or OCOG and local, regional, or multi-national companies, working in the construction, services, catering, transport, sponsoring, or safety and security sectors. In the planning stage of the 2012 Games in London, around 2200 contracts were signed.[83] The IOC makes it very clear that it is not party to those contracts and its sole function with respect to the host cities' relations with third parties is to make sure that those interactions are performed in a responsible way.[84] Nevertheless, the IOC has to approve all major decisions taken by the OCOG, including those on choosing contractors.[85] FIFA also does not directly hire companies to build stadiums or necessary infrastructure. Instead, it is the bidder's responsibility to contract team base-camp hotels, venue-specific team hotels and training sites.[86] However, FIFA works with so-called stadium agreements and training site agreements, which in essence are unilateral statements from the Stadium Authorities that have to be submitted by the bidders.[87] Since FIFA's revision of its bidding documents, human rights standards are also part of these documents, and bidders are asked to include human rights in agreements with other parties, such as contractors for all sorts of work. Again, all contracts that the LOE or OCOG concludes with private parties for organizing and preparing the event,

[79] Ibid., Principle 13.3.

[80] FIFA, 'Host City Declaration [Joint Bid]', available at http://resources.fifa.com/mm/document/affederation/administration/02/91/61/50/templatehostcitydeclaration%5Bjointbid%5D_neutral.pdf.

[81] FIFA, 'FIFA Regulations for the Selection of the Venue for the Final Competition of the 2026 FIFA World Cup', Clause 8.2, available at http://resources.fifa.com/mm/document/affederation/administration/02/91/60/99/biddingregulationsandregistration_neutral.pdf.

[82] Ibid.

[83] IOC, 'Olympic Games Framework Produced for the 2024 Olympic Games', available at https://stillmed.olympic.org/Documents/Host_city_elections/IOC_Olympic_Games_Framework_English_Interactive.pdf, p. 79.

[84] IOC, *supra* n. 77, p. 4.

[85] Chappelet and Kübler-Mabbott (2008), p. 59.

[86] FIFA Evaluation Group for the 2018 and 2022 FIFA World Cup™ (2010), pp. 15–16.

[87] FIFA Evaluation Group for the 2018 and 2022 FIFA World Cup™ (2010), p. 33.

including sponsoring, merchandising, construction, or planning services, are subject to approval by the respective ISGB.[88]

3.3 Blurred Lines of Responsibility and Accountability

The above shows that MSEs are based on complex and partially exceptional governance structures, which result from the plural and diverse actors involved in hosting MSEs and the different types of links between those actors, as well as the mix of legal frameworks that apply. This not only diffuses responsibility between the various actors but also blurs the lines of responsibility, for instance in relation to public and private dimensions of governance. On the one hand, it can be argued that MSE governance remains essentially private, as the predominant rules are shaped by private actors, and applied in a majority of private relationships.[89] On the other hand, it is clear that there is a strong public dimension as well in the way that these events are governed, as significant responsibilities lie with public actors. Corrarino argues that the special legal regimes only become possible due to the involvement of and collaboration with public actors.[90] Indeed, public actors agree to the bidding and sign the contracts. Without government permits, most of the planned construction would not materialize. However, governments are contractually required to follow the rules shaped by private entities, even though it might conflict with public regulation or fundamental rights. This process can be described as the 'privatisation of governance' with the effect that the local community is excluded from, but often adversely affected by any event-related decision-making.[91] Often special World Cup or Olympic Laws are used to ensure that public actors cannot be held accountable for circumventing public policy in the context of hosting MSEs.

Lines of responsibility and accountability also become blurred due to the fact that the hosting of MSEs brings about what Corrarino has called a climate of legal exceptionalism.[92] This exceptionalism is caused by strict requirements and high expectations, as well as the tight time schedules, which lead to regular legal processes being sidelined and exceptional legal regimes temporarily taking over.[93] In practice, this for instance means that certain decisions are being fast-tracked, for example by lowering standards of due process, circumventing normal public procurement procedures and loosening the participatory rights of citizens or workers' safety standards.[94] For the preparations for the 2018 World Cup for instance, the Russian authorities adopted a simplified procedure for private property seizure. While this can certainly help to speed up the construction of necessary infrastructure facilities,

[88] Chappelet and Kübler-Mabbott (2008), p. 26.
[89] Casini (2014), p. 420; Michaels and Jansen (2006), p. 869.
[90] Corrarino (2014), p. 194.
[91] Girginov (2014), p. 162.
[92] Corrarino (2014), p. 202.
[93] Corrarino (2014), p. 182.
[94] Centre on Housing Rights and Evictions (2007), p. 78.

it also comes with significant risks in relation to 'unreasonable and improper land seizure decisions made by local authorities'.[95]

What further adds to this 'exceptionalist' culture around the hosting of an MSE is the worldwide enthusiasm for such an event and the global spotlight that it receives from the media and the public perception of such an event, as affinity for sports and support for national teams can eclipse the human rights impacts. This can mean that national and transnational elites see opportunities in those events to push forward their political agenda, unhampered by legal restrictions and/or the public spotlight.[96] Similarly, business actors, both local and those from participating countries, can affiliate themselves with such events to benefit from the positive reputation that may result from such an event, which can even outweigh the monetary benefits, and the reputation risks of being affiliated with human rights abuses. The consequence of this exceptionalism is not only an undermining of human rights, but these exceptional legal regimes also tend to undermine options to hold the relevant actors accountable.[97]

These options have been researched in a recent study on responsibility and accountability for human rights abuses linked to MSEs.[98] What it shows is that a number of legal obstacles and practical challenges stand in the way of holding the different actors involved to account.[99] Establishing the legal responsibility of organizing committees for human rights abuses very much depends on how the committee is established, as a public or as a private body, but with both types of establishment come limitations as to holding those committees responsible before the law. For host governments, the shortcomings of the international law of responsibility and international human rights law prevent the establishment of responsibility.[100] Swiss law, which is applicable to many ISGBs, currently does not lay down any human rights obligations for associations.[101] For corporations, with many of them being transnational enterprises, legally binding human rights obligations are often lacking, in particular when these events take place in countries where the protection of and respect for human rights is rather weak.[102]

However, the involvement of private actors in the MSE in the sense of doing business and earning profits does not happen in a legal vacuum. In fact, many of these corporate actors are bound by the laws of their home country, and many countries have committed themselves to international human rights standards and therefore have a duty to respect, protect, and fulfil human rights, including when those rights are at risk of being harmed by third parties. This responsibility of participating states, in other words those states that send their athletes and teams to MSEs, has not yet been researched in any depth in the context of human rights abuses related

[95] Lelyukhin (2014), p. 81.
[96] Corrarino (2014), p. 182.
[97] Corrarino (2014), p. 182.
[98] Heerdt (2021b).
[99] Heerdt (2021b), pp. 148 et seq.
[100] Heerdt (2021b), pp. 103–107, 131 et seq.
[101] Heerdt (2021b), pp. 107, 123.
[102] Heerdt (2021b), pp. 109, 125 et seq.

to MSEs. The links between states participating in MSEs and human rights abuses associated with these MSEs can take various forms and extend beyond just the governments' interest and investment in their country's sportswomen and sportsmen. For instance, they can be the home state of companies involved in building the infrastructure or providing the goods and services needed for staging the event. They can also be the home country of the sponsors and investors of the event. The following section looks at these different links in more detail.

4 Participating States and MSE Human Rights Impacts

As outlined in the previous section, human rights are increasingly an integral part of the jurisdictional framework governing MSEs, as best exemplified by their integration into FIFA's bidding regulations. This framework does not just refer to 'core' human rights treaties and the obligations for states, but also to the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs are particularly relevant for MSEs, as they do not just outline the obligations and responsibilities of states, but also of businesses involved in the event. Consequently, this article will use the UNGPs as a framework to discuss businesses, their relation to adverse human rights impacts associated with MSEs, and the role of participating states. This section will first give an overview of the BHR framework, and summarize the responsibilities and obligations of states and businesses.

4.1 The UNGPs

The UNGPs[103] are the cornerstone of the BHR framework. They are a soft law instrument based on multi-stakeholder consultations, unanimously adopted by the UN Human Rights Council[104] and broadly endorsed by states, companies and civil society organizations. The Netherlands endorsed the UNGPs and continues to do so,[105] as did the European Union[106] and the Council of Europe.[107] Being a soft law instrument, the UNGPs are non-binding and nominally do not create new norms; they purport to translate existing human rights norms and obligations into

[103] United Nations (2011), Guiding principles on business and human rights: Implementing the United Nations 'Protect, Respect and Remedy' framework. They are sometimes referred to as the 'Ruggie Principles' after their drafter, the former Special Representative for the Secretary-General, Prof. John Ruggie, who passed away in 2021.

[104] UNHRC (2011), Resolution 17/4 of 6 July 2011, A/HRC/RES/17/4.

[105] Brief van de Minister van Buitenlandse Zaken, 'Respect en recht voor ieder mens' [Letter from the Minister for Foreign Affairs, 'Respect and Rights for Every Person'], *Kamerstukken II* [Parliamentary Papers II], 32 735, no. 78, 14 June 2013.

[106] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A renewed EU Strategy 2011–14 for Corporate Social Responsibility', COM(2011)681 final, 25 October 2011.

[107] Committee of Ministers of the Council of Europe, 'Declaration of the Committee of Ministers on the UN Guiding Principles on business and human rights', 16 April 2014, and Committee of Ministers of the Council of Europe, Recommendation CM/Rec. (2016)3 on human rights and business, 2 March 2016.

the specific context of business activities. They are authoritative in that respect due to their near-universal endorsement, and they have been used by domestic courts[108] and international monitoring bodies[109] to interpret general obligations under human rights law. As noted above, more recently they are referenced in sports bodies' bidding and hosting regulations, and FIFA's current human rights policy recognizes the relevance of the UNGPs, as the organization 'strives to uphold' human and labour rights in its commercial relations with contractors.[110] The UNGPs are categorized in three interrelated 'Pillars': (I) the state's duty to protect, (II) the corporate responsibility to respect, and (III) the victims' right of access to a remedy. For the purposes of this article, the first two pillars are the most relevant to discuss.

4.1.1 The Duty to Protect

The First Pillar identifies both enforceable obligations under human rights law and non-binding recommendations for states. States must protect against human rights abuses by businesses in their territory and/or jurisdiction,[111] consistent with the scope of existing positive obligations that states have under human rights law in general. But they should also 'set out expectations' that businesses operating from their territory respect human rights 'throughout their operations', which according to the commentary includes foreign operations in which the business in question is directly or indirectly involved.[112] As indicated by the use of 'should' rather than 'shall', this is a recommendation and not an obligation, yet one that has considerable normative weight. It encompasses formulating a standard of conduct, providing guidance for businesses to meet that standard and creating consequences for not meeting the standard. It is within this paradigm that most of the debate around participating states and MSEs takes place, and that forms the basis of further analysis in this article. The commentary identifies spaces where states should act to improve business practices beyond their territory and outlines potential lines of action that are further fleshed out in the Operational Principles.[113] The UNGPs highlight both the state's formal enforcement powers and the 'soft' leverage that the state has over business actors. Both can be leveraged to induce better human rights compliance: for example, a state can prosecute companies when they commit crimes abroad pursuant to the nationality principle, but it can also make its support for businesses through subsidies and export credit guarantees conditional upon their human rights record; or it

[108] Rechtbank Den Haag [District Court of The Hague], 26 May 2021 (*Milieudefensie/Shell*), ECLI:NL:RBDHA:2021:5339 (English version), paras. 4.4.11–4.4.21.

[109] Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24.

[110] FIFA Human Rights Policy 2017, para. 5.

[111] UNGPs, Principle 1.

[112] UNGPs, Principle 2. Their non-binding nature is clear from the Commentary: 'At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction.'

[113] Cassel (2020), p. 199.

can leverage its power as a market actor when it contracts with businesses privately or through public procurement.[114] The UNGPs also call for coherence between different areas of domestic law and policy,[115] and encourage international cooperation in multilateral institutions to ensure a level playing field and to combat fragmentation between regimes.[116]

There has been some debate in the literature on whether states do not just have a responsibility, but an obligation to regulate businesses operating abroad, with some authors arguing that the UNGPs are too conservative in their interpretation of human rights law and others arguing that international law has progressed beyond the UNGPs.[117] Authors taking the latter position often point to General Comment 24 of the Committee on Economic, Social and Cultural Rights (CESCR), which outlines certain extraterritorial obligations for states to protect ESC rights against business infractions[118]; others contend that this is not sufficient to establish a comprehensive obligation to regulate.[119] For the purposes of this article, it is not necessary to take a position on whether or not such an obligation has indeed crystallized in international human rights law. However, these arguments at least point to the increasing normative push towards extraterritorial action, in particular by home states; and moreover, there seems to be no *prohibition* in international law on states doing so.

4.1.2 The Responsibility to Respect

The standard to which corporations should be held is contained in the second pillar of the UNGPs, which outlines the corporate responsibility to respect human rights.[120] As corporations are generally not considered to be duty-bearers under most human rights instruments, this is not an obligation but a 'global standard of expected conduct'.[121] While states are supposed to ensure that businesses respect human rights, this standard applies regardless of state action. This responsibility is twofold: businesses should not infringe upon human, labour and environmental rights (negative), and should address human rights risks and adverse human rights impacts when they occur (positive). The positive responsibility means that businesses should adopt human rights policies applicable throughout their operations[122];

[114] UNGPs, Principle 4, 5 and 6. See for an example of the latter Lunner (2018), pp. 199–201.
[115] UNGPs, Principle 8.
[116] UNGPs, Principle 10.
[117] O'Brien (2018), pp. 47–48, citing Skogly (2004); McCorquodale and Simons (2007), p. 598; Augenstein and Kinley (2013), p. 271; Narula (2014), p. 114; De Schutter (2016), p. 41; Seck (2008), p. 177.
[118] CESCR, GC 24, para. 32.
[119] O'Brien (2018), pp. 50–51.
[120] Defined in Principle 12 to at least include rights contained 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.
[121] UNGPs, Principle 11. Note the language of 'expectations', in line with the state's responsibility under Foundational Principle 2 to 'set out expectations'.
[122] UNGPs, Principles 15 and 16.

conduct 'human rights due diligence',[123] meaning that they should identify, address and account for adverse human rights impacts[124]; and track responses and communicate the results of their responses.[125] If businesses cause or contribute to adverse human rights impacts, they should provide remedies for victims or collaborate with external remedial mechanisms.[126] Throughout the due diligence process, companies should consult with relevant stakeholders: their business relations, but also local communities, non-governmental organizations (NGOs) or labour unions, and take into account groups that are particularly at risk.[127]

The responsibility to respect applies to all businesses, not just larger companies or those operating transnationally, and exists independently from whether or not states abide by their own obligations. However, it is not a 'one size fits all': business responsibilities scale with the size of the business, the nature of the sector and the associated risks, the degree of control over a situation, and the severity of the impact.[128] How businesses should respond also depends on whether they cause or contribute to adverse human rights impacts—i.e., where they are either the sole perpetrator or a co-perpetrator of the abuse—and situations where they are 'directly linked to' the impact—i.e., where they have (business) relationships with the primary perpetrator.[129]

4.2 Beyond the UNGPs

The UNGPs do not exist in a vacuum. The UN Global Compact, the OECD Guidelines for Multinational Enterprises and the Principles for Responsible Investment existed prior to the UNGPs and they also encourage responsible business conduct and respect for human rights; others were developed later, such as the UN Sustainable Development Goals. The UNGPs do not displace these frameworks but are intended to complement them. The OECD Guidelines have in turn been revised to

[123] UNGPs, Principle 17. See Bonnitcha and McCorquodale (2017), p. 907; Fasterling and Demuijnck (2013), p. 809. Note that human rights due diligence (HRDD) is derived from the notion of 'due diligence' in corporate law, which a business has to carry out when it buys or invests in a company; but instead of mapping assets and the risks to the investor, HRDD requires the mapping of risks for third party rights-holders.

[124] UNGPs, Principles 18 and 19.

[125] UNGPs, Principles 20 and 21.

[126] UNGPs, Principle 22.

[127] UNGPs, Principle 12, Commentary, mentioning 'indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families'.

[128] UNGPs, Principle 14.

[129] UNGPs, Principle 19, Commentary: 'If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.' The precise boundaries between 'cause/contribute' and 'directly linked to' are somewhat ill-defined. See Van Ho (2021), pp. 634–635, citing Bonnitcha and McCorquodale (2017), p. 912, Davis (2012), p. 973, and generally Office of the High Commissioner for Human Rights (OHCHR) (2012) and OHCHR (2017).

integrate the human rights due diligence process formulated by the UNGPs,[130] and the OECD has developed detailed guidelines for companies to conduct human rights due diligence that extend beyond the UNGPs.[131] Conversely, the UNGPs are considered to be an important tool for helping to realize the SDGs.[132]

The UNGPs need to be implemented by states, and a number of states have adopted National Action Plans (NAPs) to outline how they intend to do so.[133] Pursuant to its 2014 NAP,[134] the Netherlands has also developed sectoral Responsible Business Conduct Agreements (*IMVO Convenanten*, RBCAs)[135] between the government, industry representatives and trade unions. The majority thereof lay down sectoral due diligence standards and procedures, facilitate the exchange of best practices and include some form of monitoring; some have also created independent complaint mechanisms.[136] Participation in these RBCAs is voluntary, and not every sector has an RBCA.[137] Although the KNVB (Koninklijke Nederlandse Voetbalbond; the Royal Dutch Football Association) has called for one, there is no RBCA on MSEs or sports in general.[138] More recently, European states have started to introduce legislation obliging companies domiciled on their territory to conduct human rights due diligence, generally referred to as mandatory human rights due diligence (mHRDD).[139]

[130] OECD Guidelines for Multinational Enterprises, *supra* n. 8. See for details on the 2011 amendments pursuant to the UNGPs, http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm.

[131] Available at https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf.

[132] As mentioned in para. 67 of the UN's 2030 Agenda for Sustainable Development, and emphasized by the OHCHR, 'The business and human rights dimension of sustainable development: Embedding "Protect, Respect and Remedy" in SDGs implementation', available at https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf.

[133] The European Commission specifically called on EU Member States to adopt NAPs, see European Commission, Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011–14 for Corporate Social Responsibility, Brussels, 25 October 2011, COM(2011)681 final, para. 4.8.2.

[134] Ministerie van Buitenlandse Zaken [Ministry of Foreign Affairs] (2014), *Nationaal Actieplan bedrijfsleven en mensenrechten* [National Action Plan on businesses and human rights], https://globalnaps.org/wp-content/uploads/2017/11/netherlands-nap-nederlands.pdf (accessed 11 August 2022); the NAP was revised in 2022, see Ministerie van Buitenlandse Zaken (2022), available at https://open.overheid.nl/documenten/ronl-920644a5e6ea6e951c65230ed2a9c21093bd513f/pdf.

[135] See for an overview https://www.imvoconvenanten.nl/nl. The RBCAs were evaluated in 2020, see Bitzer et al. (2020).

[136] See Sociaal-Economische Raad (SER) [Social and Economic Council], *Convenant Duurzame Kleding en Textiel* [Agreement on Sustainable Garments and Textiles], available at, https://www.ser.nl/-/media/ser/downloads/overige-publicaties/2016/convenant-duurzame-kleding-textiel.pdf, Art. 1.3.

[137] MVO Platform (2020), pp. 3–4.

[138] See https://www.knvb.nl/nieuws/organisatie/berichten/62407/knvb-wil-sportconvenant-voor-mensenrechten and https://nltimes.nl/2021/01/29/dutch-football-assoc-presents-new-guideline-events-controversial-countries.

[139] See for a general overview, Macchi and Bright (2020), pp. 218–247; Quijano and Lopez (2021), pp. 241–254.

5 Examining the Business Actors Involved with MSEs

There are many businesses that can (potentially) be linked to MSEs. This section discusses three main categories of business involvement, in descending order of their proximity to human rights impacts: (1) businesses contracted directly for the event, (2) corporate sponsors and financiers and (3) teams and sports-governing bodies; the latter are strictly speaking not businesses as such, but have business-like characteristics. It examines the role of businesses within each category related to MSEs, their corresponding human rights responsibilities under the UNGPs and the extent to which they have lived up to those responsibilities. It will do so by primarily using the case study of Dutch business actors involved in the 2022 World Cup in Qatar, an event in which the Netherlands also participated with its national football team. While the World Cup was awarded before the revision of FIFA's human rights policies and bidding documents—in fact, it was the main catalyst for their adoption—the Netherlands had already endorsed the UNGPs, as had several larger Dutch companies. The UNGPs can therefore still be applied as a relevant framework, together with the OECD Guidelines and the related OECD Guidance on Human Rights Due Diligence, and informed by subsequent national implementation instruments. For the purposes of this article, the standards applied by the UNGPs and OECD Guidelines are considered to be the same. The section does not discuss NGOs or labour unions,[140] nor specific individuals.[141]

5.1 Contractors

As outlined in Sect. 3.1, MSEs are highly reliant on private contractors,[142] and the 2022 World Cup was no exception; private contractors were involved in building stadiums or specific parts of stadiums, supplying pitches, providing security, housing, hospitality and many more services. How they operate and by whom they are contracted may depend on the domestic laws of the organizing state; in Qatar, foreign contractors had to work with local partner companies to be eligible for contracts related to the World Cup.

According to research by Profundo and the newspaper *De Volkskrant*, 38 companies with their headquarters in the Netherlands were active in Qatar during the World Cup.[143] These range from large, transnational construction companies such as Boskalis and BAM, which have subsidiaries and operations worldwide, to a number of small and medium-sized enterprises (SMEs). Examples of companies that were

[140] In particular the Dutch Trade Union Federation (FNV), which filed a case against FIFA before the Swiss courts concerning its responsibility for labour rights abuses in Qatar. The case was dismissed in 2017, see Commercial Court of the Canton of Zurich, HG160261-O, 3 January 2017. For a commentary, see Grell (2017); see further Duval and Heerdt (2020), p. 1.

[141] Such as individual athletes, individual Dutch representatives at FIFA, or any of the 'ambassadors' of the World Cup, such as the former professional footballer Ronald de Boer.

[142] Heerdt (2021b), pp. 70–71.

[143] Modderkolk and Schoorl (2021b).

directly contracted for the World Cup are the water infrastructure company MTD, which worked together with a local partner to supply plumbing for the venues, and Frijns Industrial Group, supplying stairwork for stadiums.[144] The SMEs included, for example, the artificial grass and adhesive company Henko A&T.[145] Interestingly, one regular supplier to FIFA and UEFA tournaments, the grass seed company Hendriks Graszoden, refused to supply the World Cup citing the labour conditions in Qatar.[146]

Some contractors were not directly contracted for the World Cup itself, but did later work on projects that were utilized for the World Cup. These included most of the larger firms: the construction company BAM was involved in constructing port installations in Qatar, which were vital infrastructure for subsequently constructing the stadiums.[147] BAM did file a bid to construct stadiums, but was outcompeted and it later dropped its bid for other projects. Subsidiaries of the consultancy firm Arcadis and the dredging company Boskalis worked on general infrastructure projects in Qatar.[148] These projects are also discussed to some extent, as they demonstrate some best practices as well as deficiencies in applying the UNGP framework.

5.1.1 Contractors and Human Rights Risks

Because of the variety of jobs, there is also a wide variety of potential involvement with adverse human rights impacts. The most salient risks are arguably those that are directly related to the work that the contractor is performing, especially in the building sector; in Qatar some of the main risks were the presence of modern slavery and the exploitation of migrant workers, as well as dangerous or unhealthy working conditions at building sites. However, other risks can be mentioned where contractors can be involved, and that directly relate to the MSE: one can think of environmental issues resulting from constructing large infrastructure, such as groundwater depletion; other labour rights such as the right to strike or speak publicly about working conditions without fear of reprisals; or housing rights, as (former) workers were displaced to make room for athletes and fans.

The degree of involvement can also vary. As mentioned, contractors operating in Qatar are required to have a joint venture with a local partner or to contract business out locally. In such instances, contractors can either contribute to the aforementioned risks if they work directly with local partners; or they can be directly linked to risks or impacts, for example when they outsource employee recruitment to international agencies with abusive hiring and recouping practices.[149] And even

[144] Modderkolk and Schoorl (2021b), see also https://mtd.net/qatar/. See also Van Dam (2022).
[145] Weekers (2021b).
[146] Weekers (2021a).
[147] Van de Weert (2016).
[148] Riemersma and De Wilde (2014), p. 6. The other partner in the joint venture, Hyundai, is also an official partner of FIFA and the World Cup.
[149] See i.e. https://fivecorridorsproject.org/uploads/C2_3_Nepal_Kuwait_Qatar-report.pdf, https://www.hrw.org/report/2020/08/24/how-can-we-work-without-wages/salary-abuses-facing-migrant-workers-ahead-qatars#_ftn55.

incidental suppliers can contribute or be directly linked to abuses, when they supply goods to local businesses for projects that generate risks or adverse impacts.

5.1.2 Assessing the Due Diligence of Dutch Contractors in Qatar

As noted, the first step is to have a human rights policy 'at the most senior level'.[150] A survey of the websites of the companies mentioned shows that BAM, Boskalis, Arcadis and MTD have committed themselves to respecting human rights; as of 2022 all but MTD had public human rights policies that set standards for entities within their corporate groups,[151] and some outline what they expect from business relations.[152] These policies also refer to the UNGPs and OECD Guidelines as the relevant standard.[153] Only the Arcadis policy explicitly commits to carrying out human rights due diligence. These policies were adopted after 2015, so not all projects related to the World Cup were within their scope; however, all the work was done after the adoption of the UNGPs. None of the SMEs involved with the World Cup had human rights policies or commitments publicly available.

The second step consists of identifying and assessing the risks of adverse human rights impacts in the companies' operations.[154] As this also extends to risks emerging from business relations,[155] the activities of local business partners in Qatar should also be part of the assessment. However, none of the aforementioned companies has published human rights due diligence statements, impact assessments or other specific reports outlining the risks and impacts associated with operations in Qatar and/or connected to the World Cup. Some have even stated that they were unaware of any labour or human rights risks before being asked about their activities in Qatar.[156] Whether there were internal risk reports of assessments is unknown. That there was no awareness at all of potential human rights risks is not plausible:

[150] UNGPs, Principle 16(a), OECD Guidance, p. 22.

[151] See https://boskalis.com/fileadmin/user_upload/Royal_Boskalis_Westminster_NV/Downloads/Policies/Human_Rights_and_Labor_Policy.pdf, https://www.bam.com/sites/default/files/domain-606/en-bam_group_code_of_conduct-606-1572335010173521574.pdf, and https://media.arcadis.com/-/media/project/arcadiscom/com/about-arcadis/global/business-practices/20210831_human_rights_and_labor_policy_document.pdf?rev=-1&hash=94F37C01813BE93E400EF50D69B675A8. MTD mentions a general commitment to human rights at https://mtd.net/nl/en/about-mtd/csr/.

[152] BAM has a separate 'Vendor Code of Conduct', https://www.bam.com/sites/default/files/domain-606/documents/200490_bam_holding_code_of_conduct_brochure_a5_5-5_3_uk-606-160769305717059 19830.pdf.

[153] Apart from there not being a sports-specific RBCA, there is no RBCA for the construction sector either, despite it being identified as a sector with particular human rights risks. See KPMG Advisory NV (2014), pp. 48–57.

[154] UNGPs, Principle 17, OECD Guidance, pp. 25–31, discussed in Taylor (2020), pp. 90–92 and Taylor (2011), pp. 15–17. See for reflections on due diligence and the role of impact assessments, McCorquodale and Nolan (2021), pp. 457–464, and Bijlmakers (2019), pp. 102–104.

[155] UNGPs, Principe 17(a), 'should cover adverse human rights aspects […] which may be directly linked to its operations, products or services by its business relationships', and Taylor (2011), p. 18.

[156] See Van Dam (2022), citing the head of MTD. It should be noted that Boskalis had already terminated its operations in Qatar before amending its policies, whereas BAM and Arcadis do not report on human rights risks in Qatar separately.

a 2014 government-commissioned Corporate Social Responsibility (CSR) Sectoral Risk Analysis already mentioned labour rights abuses and modern slavery in the Middle East as a known human rights risk for the construction sector, including the exploitation of migrant workers in specific building projects that Dutch contractors were involved with.[157] More in general, the International Labour Organization (ILO),[158] Human Rights Watch[159] as well as trade unions and several NGOs[160] have found severe cases of forced labour in Qatar, and a general problem with upholding labour rights. This means that if internal risk assessments had been carried out, it is unlikely that the respective businesses would have found no risks or ongoing impacts whatsoever; however, there is no public documentation of any such assessment.

Steps 3 and 4 of the due diligence cycle concern formulating responses to the risks and impacts identified and the relation to that impact, and tracking the effectiveness of those responses.[161] Because of the lack of impact assessments and any specific risks identified, the potential responses of Dutch companies in Qatar need to be hypothetically discussed. Insofar as contractors cause or contribute to human rights abuses directly, such as when worker exploitation occurs in projects directly managed by construction companies, they should prevent or cease the impact themselves[162]—for example, by changing the regulations for building sites and ensuring monitoring and inspection. Companies that cause or contribute to an adverse impact should also create or collaborate with remedial mechanisms for victims, such as workers and families who have suffered previous abuses,[163] as part of their response. In this respect, more can be expected from multinational conglomerates with more significant means, but even SMEs can and should provide remedies where they directly cause or contribute to an abuse. If they cannot organize their own remedial mechanism, they should collaborate with externally organized grievance mechanisms.[164]

If companies are 'only' directly linked to (potential) abuses committed by business partners, such as when they supply Qatari companies, they still have a responsibility to use their leverage with their business partners to prevent or mitigate impacts.[165] Leverage is an often-discussed aspect of the UNGPs, defined by the

[157] KPMG Advisory NV (2014), p. 57.

[158] I.e. Report of the Director-General, Eighth Supplementary Report: Report to the committee set up to examine the representation alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), made under Art. 24 of the ILO Constitution by the International Trade Union Confederation and the Building and Woodworkers International, 320th Session, Geneva, 13–27 March 2014 (GB.320/INS/14/8), Complaint against the Government of Qatar presented by the International Trade Union Confederation, Case No. 2988 (GB.320/INS/12).

[159] Human Rights Watch (2012).

[160] Riemersma and De Wilde (2014), p. 6.

[161] UNGPs, Principle 20. See also Taylor (2011), p. 7.

[162] See Van Ho (2021), p. 634 for a reflection on the continuum between 'cause', 'contribute' and 'directly linked to', citing Davis' qualification of 'facilitate or enable' abuse as a contribution, Davis (2012), p. 973. The OECD notes that the contribution 'must be substantial', see OECD Guidance, p. 70.

[163] UNGPs, Principle 22 and Principle 29.

[164] UNGPs, Principle 29 and Principle 30. See also OECD Guidance, pp. 34–35.

[165] UNGPs, Principle 19, OECD Guidance, p. 30; Taylor (2020), pp. 94–95.

OHCHR as 'the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact'.[166] Whether companies have sufficient leverage will depend on their size and the nature of their operations: a large transnational company like BAM will have much more financial and organizational leverage over local sub-contractors than a small sports goods supplier would have over a Qatari building conglomerate; a highly specialized company with unique expertise like MTD may have more leverage than a general contractor.[167] Practically, what 'using leverage' can mean is negotiating contracts that integrate general or industry standards for human rights compliance, and ensuring some form of monitoring of those standards[168]; or offering knowledge or expertise to help improve the partner's practices.[169] If companies do not have and are not able to obtain sufficient leverage over their business partners, they should consider terminating the relationship entirely.[170]

Without specific reporting by the companies involved (discussed hereunder) it is difficult to assess whether any such interventions actually took place, let alone what the effect was in practice; neither are there external reports that discuss instances of such interventions. Indeed, while some companies decided not to contract for the World Cup in the first place, there are no known examples of Dutch companies terminating business relations with Qatari companies during operations. No company has communicated about or was shown to be providing or cooperating with remedies.

Step 5 is about communicating results.[171] Both the UNGPs and the OECD Guidelines strongly emphasize communicating publicly on due diligence in order to empower stakeholders, build trust and improve decision-making at the company level.[172] Unsurprisingly, public communication from the Dutch companies involved in Qatar has been very limited.[173] In general, public comments and press statements show one of three responses: some companies either ceased business in Qatar entirely, or specifically with the World Cup[174]; others made non-specified commitments to raising the issue with local partners without clarifying how, or discussing the outcomes; still others reject any responsibility for risks that they are not directly involved in.[175] No mention is made of vulnerable groups such as migrant workers,

[166] OHCHR Interpretive Guide (2012), p. 7.

[167] MTD explicitly stated this in a Dutch newspaper, Modderkolk and Schoorl (2021b). See generally Van Ho (2021), pp. 648–649.

[168] See for some examples of the use of voluntary industry standards to improve practices Partiti (2021), pp. 119–122.

[169] OECD Guidance, p. 30; Bijlmakers (2019), p. 107.

[170] OECD Guidance, p. 31, and generally Annex Q39 on responsible disengagement.

[171] UNGPs, Principle 20 and Principle 21.

[172] Ibid., and OECD Guidance, p. 33; Bijlmakers (2019), pp. 107–110.

[173] BAM International was also specifically asked about its construction operations in Qatar by the Business and Human Rights Resource Centre, but did not respond. See https://media.business-humanrights.org/media/documents/files/BHRRC-Shaky-Ground-Construction-Briefing-v1.1.pdf for an overview.

[174] I.e., Boskalis and Arcadis winding down operations post-2014, BAM after 2015, also citing human rights risks.

[175] Modderkolk and Schoorl (2021b); Van Dam (2022).

or consultations with local stakeholders to see whether their responses are effective. However, that does not mean that nothing happened: the ILO notes that labour conditions improved in Qatar in the run-up to the World Cup, which may or may not be related to company pressure as well.[176]

Some of the contractors did report generally on human, labour and environmental rights matters in their annual reports. Absent specific reporting on Qatar and the World Cup, this can be used to illustrate opportunities as well as problems. BAM is by far the most detailed in its annual report on how it monitors human rights risks and corresponding actions, as it also integrates its statements pursuant to the UK Modern Slavery Act.[177] The reports from the last three years also repeatedly mention that BAM hires third parties to conduct human and labour rights risk assessments, and that it organizes external auditing of its contractors and their compliance with BAM policies for subsidiaries and contract partners. This gives the impression of a more integrated process with continued learning and outside checks. But even this report does not identify any specific instances of non-compliance, measures taken or lessons learned, to the extent that it can be qualified as 'communicating results' in terms of the UNGPs[178]; nor does it discuss the involvement of stakeholders and/or vulnerable groups.

5.1.3 Reflection

These observations are in line with recent government-commissioned reports on the human rights compliance of Dutch businesses in general: most large Dutch companies have not even fully integrated the UNGPs and OECD Guidelines into their policies; and those companies that have done so do not conduct the full human rights due diligence cycle.[179] This is a significant issue moving forward, also with regard to MSEs: if businesses contract for providing goods or services related to future World Cups they have to commit to the UNGPs, pursuant to FIFA's current human rights policies and bidding regulations. But whether those commitments actually change business practices is currently difficult to monitor: thus far, companies do not release specific information on their due diligence actions themselves, or they do so without going into much detail.[180]

At least for larger companies, it is unlikely that this lack of demonstrable engagement comes from an actual lack of knowledge of either the law or the facts; as

[176] ILO (2022).

[177] BAM has provided such statements since 2016, the latest is available at https://www.bam.co.uk/docs/default-source/policies/modern-slavery-statement.pdf. None of these statements refers specifically to Qatar; while BAM has not had any ongoing projects in Qatar since 2014 according to its website, it still maintains an office there for projects in the region.

[178] BAM (2022), pp. 36–37.

[179] College voor de Rechten van de Mens [Netherlands Institute for Human Rights] (2020), p. 19 and IOB (2019), pp. 29, 74. The Netherlands is not unique in that respect, see McCorquodale and Nolan (2021), p. 474.

[180] Boskalis withdrew from Qatar before adopting its current policies, so an assessment of pre-2014 activities would likely not be included in more recent reports.

argued above the risks of contracting for projects in Qatar have been well known for almost a decade, and especially larger companies are evidently aware of their responsibilities under the UNGPs. Moreover, several businesses discussed in this article are happy to highlight the specific business opportunities provided by Qatar, by the World Cup, and by other MSEs to their shareholders and investors.[181] It is more likely that companies are more concerned with having to reveal operational details, and to some extent disclosing competition-sensitive information, than they are afraid of reputational risks for not having proper HRDD policies. Meanwhile, SMEs may not have the knowledge or capacity to develop their own robust due diligence process, with proper auditing and an effective grievance mechanism; but somewhat worryingly, some of the contractors examined in this research do not appear to be aware of any responsibilities under the UNGPs at all. Instead, their considerations seemed to be limited to the binary choice of whether or not to enter into contracts in Qatar and for the World Cup, with some referring to it as an 'ethical' choice rather than a legal one.[182]

5.2 Sponsors and Financial Institutions

As discussed in Sect. 3.1, sponsors are essential for commercial sports events; in fact, it is arguable that most MSEs, and even entire categories of professional sports, could not exist without significant sponsor involvement. Companies can sponsor entire events, clubs, infrastructure and individual athletes on a structural or ad hoc basis. Sponsorship usually takes the form of a financial contribution, which in return gives the sponsor the right to display its brand in ways associated with the event: its logo can be on athletes' shirts or on billboards in stadiums; it can rename the entire stadium or parts thereof; or it can use the event's branding in its own advertisements[183]; its products can also be exclusively sold in and around the event. Technical sponsors can supply sporting goods or equipment to teams, in exchange for the team exclusively using that brand, and displaying it prominently; in some disciplines such as cycling and auto sports, commercial teams may even be named after and/or owned by the sponsor.[184] In UNGP terms, sponsors can have significant leverage over sports teams, MSEs and sports in general. This section now discusses to what extent that leverage was utilized for the World Cup.

[181] See the Arcadis Annual Reports for 2015 and 2016, available at https://www.arcadis.com/en/news/global/2016/3/arcadis-publishes-annual-report-2015 and https://www.arcadis.com/en/news/global/2017/2/arcadis-publishes-2016-annual-report.

[182] Modderkolk and Schoorl (2021b).

[183] For example, KPN having exclusive rights to broadcast commercials directly before and after UEFA Champions League Matches, and being allowed to label itself as the 'official partner Eredivisie'.

[184] To illustrate this, Formula One teams are commonly associated with an automotive brand—Mercedes, Ferrari, Alfa Romeo—and some professional cycling teams bear the name of a bike or the brand of bike parts—such as team Trek-Segafredo, or formerly team Giant-Shimano (now Team DSM). Different forms of sponsorship can also coincide around the same team or event; most cycling teams in the World Tour have name sponsors from outside the cycling industry (i.e. Jumbo-Visma, Soudal-Quickstep or BORA-Hansgrohe) but also ride exclusively on bikes supplied by the technical sponsor (Cervélo and Specialized, respectively).

5.2.1 Direct Sponsors of the World Cup and Their Responsibilities

Sponsoring the World Cup is strictly regulated by FIFA, and the rights of official sponsors are ironclad in the hosting agreements. As noted in Sect. 3.1 FIFA itself currently has seven official, long-term partners[185]; in addition, the World Cup is sponsored by Budweiser, Byju's, McDonald's, Vivo and Hisense on an ad hoc basis. None of these companies are registered or headquartered in the Netherlands, so their role is not discussed in detail here; but a brief look at their position can be informative for other companies that do regularly sponsor (other) MSEs. That discussion needs to be somewhat general: the nature of the relations between sponsors, FIFA and the World Cup varies per sponsor and contract, and may yet be different for other sports-governing bodies and events.

As was alluded to before, in UNGP terms the relation between sponsors and MSE human rights risks can be mostly qualified as being 'directly linked to' risks or impacts. Some companies, like Coca Cola and Budweiser, sell their products directly at the World Cup and therefore could cause or contribute to labour rights abuses in Qatar, insofar as those occur in their own operations. Their responsibilities would then be similar to those of contractors discussed above.[186] But most sponsors are less directly connected to risks or impacts—their material and/or financial contributions are rather used by business relations (i.e., the event organizer, or a local vendor). This is better qualified as being 'directly linked to' risks or impacts.[187]

The proper course of action for companies directly linked to adverse human rights impacts depends on the degree of leverage. It is arguable that the leverage of long-term FIFA partners like Coca Cola is larger than those of ad hoc sponsors, although given the size and nature of the companies mentioned that will also be significant compared to local sponsors. It can be argued that the official partners are in a prime position to demand that FIFA undertakes more action to prevent forced labour or the exploitation of migrant workers, or otherwise sever their ties to the event. Indeed, the former FIFA partners Sony and Emirates withdrew their sponsorship out of concerns with the World Cup; the current sponsor VISA has also made statements that it wanted FIFA to make improvements to labour conditions in Qatar, or it would 'reassess its sponsorship'.[188] Further inquiries by the Business and Human Rights Resource Centre into the nature of the current partners' relations with FIFA and the World Cup, however, yielded limited responses.[189] It is in that respect also

[185] Adidas, Coca Cola, Wanda Group, Hyundai Kia, Qatar Airways, QatarEnergy and Visa, https://www.fifa.com/about-fifa/commercial/partners.

[186] See generally Sects. 5.1.1–5.1.2.

[187] Van Ho (2021), p. 640. There is some discussion as to whether a financial contribution can itself be a contribution, a direct link or indeed neither, as discussed by Van Ho (2021), pp. 648–649. See below for how that discussion applies to purely financial institutions.

[188] NOS (2015).

[189] Compare https://www.business-humanrights.org/en/latest-news/companies-asked-to-respond-to-questions-on-their-sponsorship-of-fifa-and-human-rights/, https://www.business-humanrights.org/en/latest-news/coca-cola-response-3/ and https://www.business-humanrights.org/en/latest-news/adidas-response/. The most recent Coca Cola statement does refer to more specific measures taken by the ILO and the local organizing committee, available at https://www.business-humanrights.org/en/latest-news/qatar-2022-world-cup-coca-cola-issues-position-statement/. See also https://pers.bnnvara.nl/adidas-coca-cola-mcdon

interesting to follow current sponsor responses to FIFA's intention to attract Saudi Arabia's tourism promotion agency as a sponsor for the Women's World Cup.[190]

5.2.2 Financial Institutions

Within the spectrum of sponsors, financial actors and institutions have a particular place. They may be connected to MSEs similar to other commercial sponsors, providing financial contributions in exchange for advertisements. Several large Dutch banks have sponsored sports teams or sports competitions.[191] ING is currently also an 'official partner' of the KNVB.[192] Financial institutions can, however, also be involved with MSEs by providing credit and financial services for the event and the actors involved. A prime example is again ING, which is one of the primary underwriters of loans to the Qatari National Bank (QNB) that financed infrastructure projects around the World Cup.[193]

The responsibility of financial institutions has been subject to extensive lobbying, with some banks and interest groups arguing for limiting banks' responsibilities to use their leverage over clients, and the (former) Special Representative of the Secretary-General (SRSG) Ruggie maintaining that this would undermine the UNGPs.[194] What seems clear from that debate is that there can certainly be responsibilities if banks are closely linked to adverse impacts by providing financial means. In the case of ING one can also point to the Dutch RBCA for the financial sector that was in force between 2016 and 2019, also known as the Dutch Banking sector Agreement (DBA). ING was subject to the DBA as a member of the Dutch Banking Association.[195] The DBA contained responsibilities for financial actors such as banks and pension funds, which are also informative for the relation between ING and the

Footnote 189 (continued)
alds-en-budweiser-houden-zich-stil-over-hun-betrokkenheid-bij-wk-2022-in-qatar/. Earlier statements by sponsors mostly referred to possible corruption surrounding Qatar's bid, see https://www.marketingweek.com/fifa-sponsors-break-silence-over-qatar-world-cup-row/.

[190] Ingle (2023).

[191] I.e. the former Rabobank cycling team now known as Team Jumbo-Visma, ABN-AMRO's sponsoring of Ajax.

[192] https://www.knvb.nl/knvb_node/categorie/organisatie/partners, together with other companies such as Heineken, Albert Heijn and DHL Parcel. The nature of this partnership is comparable to the FIFA official partners.

[193] Modderkolk and Schoorl (2021a).

[194] Van Ho briefly surveys this debate, which erupted pursuant to the Thun Group's response to the OHCHR Interpretive Guide on due diligence cited above, and also involved interventions by the then former SRSG Ruggie and the chairman of the OHCHR Working Group on Business and Human Rights, Michael Addo. See Van Ho (2021), pp. 636–637, citing Thun Group of Banks (2017); Michael K. Addo, Chair of the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Letter to Members of the Thun Group of Banks, (23 February 2017), p. 3, available at https://www.business-humanrights.org/sites/default/files/documents/20170223%20WG%20BHR%20letter%20to%20Thun%20Group.pdf, and John Ruggie, Letter to Prof. Dr. Roel Nieuwenkamp (6 March 2017), available at https://www.business-humanrights.org/sites/default/files/documents/OECD%20Workshop%20Ruggie%20letter%20-%20Mar%202017%20v2.pdf.

[195] https://www.imvoconvenanten.nl/nl/bancaire-sector. See also Thompson (2018), pp. 95–96; Van Dijk, De Haas and Zandvliet (2018), pp. 106–107.

Qatar World Cup in that timeframe. It required participants to create and publish human rights policies and to integrate the UNGPs into their business operations and also to identify human rights risks—not just in their own operations, but also related to their loans to and investments in other businesses. ING indeed adapted its sustainability and human rights policies pursuant to the DBA,[196] and published a human rights report in 2018. That report outlined ING's process for identifying human rights risks, distinguishing between its human rights risks as an employer and as a service lender, and it also outlined ways for ING to engage with those risks and the stakeholders involved.[197] While the report did not mention Qatar or the World Cup specifically, it did identify 'infrastructure' as one of the sectors in ING's loan book with the highest number of risks; moreover, it highlighted forced labour and the abuse of migrant workers as a particular human rights risk.[198]

However, the report suffered from the same problem of generality as identified with regard to contractors, as it outlined all of ING's human rights risks and did not discuss responses or potential uses of the bank's leverage. For banks and financial institutions there is an additional issue: client confidentiality, which prevents banks from releasing details relating to their investments and client relations. It is therefore difficult to assess ING's relation with and leverage over QNB, which in turn makes it difficult to assess whether ING could and should have used that leverage regarding QNB-financed projects around the World Cup. What is clear is that ING did not engage with clients involved in construction in Qatar concerning human or labour rights matters in the period covered by the report.[199]

These impressions resonate with what the Monitoring Committee of the DBA found in its final report on the termination of the DBA[200]: the number of human rights policies has increased for banks adhering to the DBA, and the UNGPs have been incorporated into banks' business models much more than before the DBA.[201] But client confidentiality and a general reluctance to share information makes it difficult to monitor actual progress; and competition law may prevent banks from confidentially sharing information and entering into agreements on how to address particular risks.[202] The transformative potential of banks like ING regarding the human rights impacts of projects they invest in directly or indirectly is thus underutilized.

[196] ING (2018).

[197] ING (2018), pp. 29–30.

[198] ING (2018), pp. 46–47, and 59–62; the report mentioned the withholding of passports, the reclaiming of recruitment fees, and not being entitled to leave the workplace.

[199] ING (2018), pp. 73–74. The list mentioned only one client from 'the Middle East', which was engaged in mining, not construction.

[200] Dutch Banking Sector Agreement on international responsible business conduct regarding human rights, Monitoring Committee Final Monitoring and Progress Report, 13 July 2020, available at https://www.imvoconvenanten.nl/-/media/imvo/files/banking/banking-final-report-2020.pdf?la=nl&hash=7EEE21C59C5307AB4E2F41C8B6A3E29B.

[201] Ibid., paras. 362–369.

[202] Ibid., paras. 140, 209–211; although the Committee also noted the Government's response that this does not prevent banks from discharging their individual responsibilities.

5.3 SGBs and Individual Teams

A last group of relevant actors consists of organizations that have the most direct responsibility for participating in sporting events: sports associations, and individual teams or clubs.[203] National sports associations, such as the KNVB, KNSB (Koninklijke Nederlandsche Schaatsenrijders Bond; Royal Dutch Skating Federation) and KNWU (Koninklijke Nederlandsche Wielren Unie; Royal Dutch Cycling Union), are strictly speaking not 'businesses' as such—in the Netherlands, they are organized as non-profit associations. Nevertheless, UNGPs do not expressly exclude non-profit organizations, and many non-profits do engage in commercial activities or relate to businesses where the UNGPs may be a relevant benchmark.[204] Furthermore, many sports bodies have separate commercial entities attached to them, or exercise some degree of commercial activities. It is thus argued here that sports associations like business entities have responsibilities to assess the human rights impact of their actions and to act accordingly, as part of the (corporate) responsibility to respect human rights. Moreover, pursuant to their membership of international organizations like FIFA and their association with the state, national sports associations like the KNVB have a role in implementing human rights provisions, even when that role is not always clear. Individual teams, conversely, may or may not be businesses depending on the sport and the competition in question. Most professional football teams are incorporated as business entities, some famous clubs are publicly traded; and some clubs have specific commercial entities attached to them. In other sports or lower divisions, clubs can be established as non-profit entities, often associations. Insofar as they are business entities, clubs clearly have human rights responsibilities under the UNGPs; but even those that are non-profits can engage in commercial activities and have human rights responsibilities.

It is clear that the relationship between national sports associations, individual teams or clubs and human rights impacts associated with MSEs is less direct than the relation between contractors or sponsors and those impacts. While MSEs of course cannot take place without the participation of athletes, national sport associations and individual teams have no direct influence on how these events are organized, or on the construction of infrastructure for the event. So in UNGP terms, they cannot be said to cause or contribute directly to the type of adverse human rights impacts associated with MSEs.[205] In the case of the World Cup, neither the KNVB

[203] Depending on the event, the decision to participate is up to the national sports-governing body, the individual teams or both. The decision to send the Dutch national team to the 2022 Qatar World Cup was made by the KNVB, and clubs or individual athletes could only refuse to participate under very limited circumstances. In tournaments between commercial clubs, such as the UEFA Champions League or the Tour de France, the clubs decide themselves but can be subject to fines from the international governing body if they refuse to participate.

[204] See Carolei and Bernaz (2021), pp. 507–528.

[205] See Sect. 4.1.2, referring to Davis' definition of contribution; Davis (2012), p. 973, and the OECD Guidelines, p. 71. Although, of course, they can have a more direct influence on other human rights risks, such as the production of shirts and other merchandise under exploitative conditions, or the treatment of athletes at the tournament. The latter is relevant to the 2022 World Cup with regard to the participation of LGBT+ athletes and the presence of LGBT+ sports fans, but this is a matter which is outside the scope of this article. See NOS (2021).

nor individual football teams have control over the construction of stadiums; but the KNVB did vote on awarding the World Cup to Qatar. It also publicly stated that it was in 'constant contact' with FIFA, the ILO, and the Dutch embassy in Qatar regarding the event, and to have addressed human rights issues associated with the World Cup.[206] Football clubs such as Ajax could be argued to be directly linked to labour rights abuses around stadium construction, as they benefit from the World Cup by using already finished stadiums as training facilities.[207] PSV is part of the Partners for International Business Programme for Qatar, a public–private partnership linking Dutch SMEs with business opportunities related to the World Cup.[208]

The relation of sports associations and clubs to adverse human rights impacts at MSEs cannot be categorized as clearly in UNGP terms as those of contractors and sponsors—perhaps with the exception of stadium usage. It can nevertheless be argued that these actors can still act in the spirit of the UNGPs and the broader BHR framework by scrutinizing how they are associated with risks and impacts, and where they may have leverage to reduce impacts or stimulate improvements. While the KNVB has called for a sports RBCA, its current KNVB statements and policies on the matter are vague and non-committal, and it could better account for how it has used its leverage vis-à-vis its international bodies; i.e., by voting or fielding resolutions. Individual sports teams largely refrained from commenting on Qatar and the organization of the World Cup[209] and they mostly refer to the KNVB and its regulations.[210] Neither the KNVB nor individual clubs responded to calls for remedies or compensation for exploited workers or their families[211]; it is perhaps telling that the only direct interaction between athletes and rights-holders was a highly scripted visit to migrant workers during the tournament itself.[212]

6 The Duties and Responsibilities of the Dutch State

As companies do not live up to their responsibilities under the UNGPs, the focus moves to their state of domicile—which in this case study is the Netherlands. According to Principle 2 of the UNGPs, the state has a responsibility to set out expectations that businesses respect human rights in their operations. Indeed, the Dutch government has repeatedly stated that it expects Dutch companies to comply with the UNGPs and OECD Guidelines in their operations, including when they do business in Qatar and around the World Cup. This then gives rise to questions as to

[206] KNVB, 'Statement over het WK in Qatar' ['Statement on the World Cup in Qatar'], available at https://www.knvb.nl/info/64421/statement-over-het-wk-qatar.
[207] Soetenhorst (2020).
[208] Orange Sports Forum, 'Meerjarige samenwerking op Qatar: PIB programma Sports, Innovation & Vitality' ['Multiannual collaboration on Qatar: PIB programme Sports, Innovation & Vitality'], available at https://www.orangesportsforum.com/project/pib-programma-sports-innovation-vitality-qatar/.
[209] See AD (2019).
[210] Haverkamp (2022).
[211] Heerdt (2021a).
[212] RTL (2022).

whether and how the Netherlands upheld or could have upheld these expectations—and whether the Netherlands has a particular position as a participating state in the World Cup.

In principle, whether or not a state participates in an MSE is immaterial for its obligations and responsibilities under the BHR paradigm: even when national or commercial sports teams do not participate in an event connected to human rights risks and impacts, the state should still regulate companies doing business with or at the event. This needs to be emphasized, because around the World Cup much of the political discussion concerned possible boycotts of the event and/or not sending government representatives. The presumption here seemed to be that non-participation would be sufficient to discharge the Netherlands' human rights responsibilities, and that is in fact incorrect. On the other hand, participation in an MSE is relevant as it raises awareness of human rights risks and impacts associated with the MSE, and spotlights the involvement of business actors. This arguably creates an enhanced responsibility to set expectations, issue guidance and, where possible, to take measures to ensure that the businesses involved abide by their human rights responsibilities. Indeed, the Dutch government was extensively questioned in Parliament and in the press regarding its position and actions concerning labour conditions and forced labour around the World Cup and the role of Dutch companies.[213]

6.1 BHR-Specific Legislation and mHRDD

The most direct way to set expectations that companies conduct human rights due diligence is to adopt specific human rights-related legislation, which can range from transparency and disclosure to full due diligence obligations.[214] Transparency requirements rely on external pressure by shareholders, consumers and other stakeholders to induce companies to address problematic business practices. The impact of mandatory disclosure on business conduct around MSEs is likely to be limited[215]: the larger companies in the case study all fall under the EU Non-Financial Reporting Directive,[216] but as discussed above this has hardly resulted in detailed reporting on specific human rights risks and responses, nor is there any clear evidence of shareholder or consumer pressure to change business practices. It could be argued that transparency and disclosure are most relevant in cases of corporate sponsorship of MSEs, as sponsorship is usually done to aid a company's reputation and have marketing benefits. Disclosing links to human rights abuses may offset the reputation boost from the MSE, but the net impact is likely to be low.

Some European states have recently taken the step to adopt legislation that would oblige businesses domiciled there to carry out human rights due diligence for their operations, collectively referred to as mHRDD. These laws can differ in scope from

[213] Ministerie van Buitenlandse Zaken (2021).

[214] FIFA's updated bidding regulations could also be regarded as a transparency instrument. Kirschner (2019), pp. 139–140.

[215] See for critical perspectives, Hess (2019), pp. 38–42; Buhmann (2018), pp. 32–34.

[216] Directive 2014/95/EU, Official Journal 2014 L 330/1.

being relatively narrow, focusing on one particular human rights risk such as modern slavery,[217] to general regimes covering all business activities and rights.[218] Apart from their substantive scope, they can also differ as to which companies are covered, and the extent of the obligations involved.[219] The Netherlands currently does not have general, mandatory human rights due diligence legislation in force, beyond the non-binding RBCAs.[220] A bill to create a general mandatory due diligence regime was introduced in Parliament in the spring of 2021.[221] Debate on the bill has however been suspended pending the ongoing development of an EU instrument, after the publication of the European Commission's proposal for a Corporate Sustainability Due Diligence Directive (CSDDD).[222]

It is hard to predict whether and when such legislation will come into force, and given the state of negotiations its specific impact is uncertain. Nevertheless, there are some points to highlight on the utility of such an instrument in the light of MSEs. A Directive along the lines of the European Commission's proposal would oblige companies to adopt due diligence policies, to conduct human rights risk assessments in their operations and outline responses, to submit these assessments to regulators and to make them publicly available. A failure to do so could lead to administrative fines being imposed, and potential civil liability. At the very least, this would provide a firm legal basis for the expectation that companies conduct human rights due diligence, including when they contract with MSEs.

Much however depends on the details of the final instrument, and there are some points where the European Commission's proposal may result in regulatory gaps regarding business involvement in MSEs. The level of specificity that the eventual Directive would require for due diligence plans, risk assessments and communications about responses is of course crucial, as is the related issue of whether these obligations can be effectively enforced. The Commission proposal obliges Member States to assign an administrative body for registering and monitoring human rights due diligence statements, but such bodies would need to have proper capacity and extensive expertise in very different sectors to properly verify and evaluate the

[217] I.e. the Modern Slavery Act 2015, 2015 c. 30 in the UK, with some critical reflections in Mantouvalou (2018), p. 1017.

[218] I.e. *Loi No 2017–399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* in France, *Lieferkettensorgfaltspflichtengesetz*, BGBl I 2021, 2959 in Germany, and *Åpenhetsloven* LOV-2021–06-18–99 in Norway.

[219] See generally Macchi and Bright (2020); Quijano and Lopez (2021); Krajewski, Tonstad and Wohltmann (2021).

[220] The Child Labour Law (*Wet Zorgplicht Kinderarbeid*), *Staatsblad* 2019, 401 is not yet in force, and currently there is no set date as to when it will enter into effect.

[221] Wetsvoorstel verantwoord en duurzaam internationaal ondernemen [Proposed Corporate Social and Sustainable Responsibility Act], available at https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2021Z04465&dossier=35761.

[222] European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022)71 final, 23 February 2022, in response to European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).

statements, the risks they identify and the proposed company responses.[223] Moreover, if the substantive obligations are formulated broadly, enforcement bodies would have to elaborate what particular standards should apply to particular sectors or even specific companies on a case-by-case basis, further increasing the workload and necessity for specific capacity and expertise. There is also significant uncertainty concerning the interplay between public and private enforcement, such as whether information disclosed to administrative agencies can be used in civil litigation. Without proper monitoring and enforcement, mHRDD is liable to end up as another 'box-ticking' exercise with little impact in practice.

Moreover, there are particular issues that directly relate to MSE-related risks. The Directive as proposed would initially only cover larger companies and SMEs in limited sectors.[224] Thus, some of the contractors identified in Sect. 5.1.2 would not incur any obligations under the Directive at all. It would also limit company obligations to 'established business relationships' in their supply chain,[225] which may or may not include incidental partners such as in the context of an MSE. This is especially problematic regarding specifically created organizing bodies for MSEs, which by definition do not have any 'established' relations prior to their founding. The proposal further limits the requirement for stakeholder consultations in the due diligence process to almost nothing,[226] so construction companies would not have to consult migrant workers when drafting risk assessments and formulating responses.[227] Lastly, the European Council has proposed to make the already limited obligations for the financial sector optional,[228] which would create a clear loophole for banks like ING regarding its operations in Qatar.

One final aspect of the proposal merits extra attention because of its interaction with the other roles of the state. In situations where businesses might be directly linked to adverse human rights impacts resulting from the activities of established business relations, the Commission would allow businesses to limit accountability by obtaining contractual assurances from those relations.[229] As the business needs to verify those assurances, this can indeed lead to the required improvements; a lack of local monitoring and reliance on commitments by local partners has been a fundamental problem in combating forced labour in Qatar. The Directive is silent on how businesses should assess whether the assurances are realistic, whether they need to

[223] See Martin-Ortega and O'Brien (2020). For some general comments on monitoring, see Quijano and Lopez (2021), p. 249; Landau (2019), p. 238.

[224] EC Proposal, Art. 2(2).

[225] EC Proposal, Art. 6(1).

[226] EC Proposal, Art. 6(4): 'Companies shall, *where relevant*, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts.' (Emphasis added).

[227] The effects on workers in supply chains have been explicitly highlighted by Vogt, Subasinghe and Danquah (2022).

[228] European Council, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937—General Approach, 30 November 2022, 15,024/1/22 REV 1. See also Kilimcioğlu (2023).

[229] EC Proposal, Art. 22(2).

consider external input to assess the assurances and their veracity, or whether these assurances can be scrutinized by victims or other stakeholders.

This issue, the lack of stakeholder consultation as well as the exclusion of the financial sector in the Commission's proposal have been subject to much criticism, and the European Parliament's Committee on Legal Affairs has proposed several amendments aimed at remedying these problems.[230] It will however be up to the plenary vote, and subsequently the trilateral negotiations between Parliament, the Commission and the European Council, to see whether these amendments will be accepted. It is noteworthy that the EP and the Council have taken opposing views on the financial sector in particular, with the Council arguing for even fewer obligations compared to the EP's position on the full inclusion of the financial sector in the eventual Directive.

Another solution to these problems may lie in the Member States' implementation and their role in developing complementary (soft law) instruments, which is indeed contemplated by the proposal. In the Netherlands there would be an opportunity to integrate the existing RBCAs into the binding framework,[231] to conclude agreements for (risk) sectors that do not yet have one, and to revisit agreements that have since expired. For MSEs specifically this would mean that the Netherlands could conclude a sports-specific RBCA involving national sports-governing bodies: the KNVB and other sports associations, but certainly also the Dutch Olympic Committee (NOC-NSF). It also means concluding an RBCA for the construction sector given its likely association with MSEs, and perhaps reviving the DBA—even if, or perhaps especially if, obligations for financial institutions would not be part of the eventual Directive. These additional instruments could provide business actors with more specific criteria for drafting risk assessments concerning MSEs, formulating appropriate responses and providing guidance on how to engage with local partners.

Lastly, it should be noted that while mHRDD legislation can be useful to address specific BHR issues, states should also examine the effectiveness of existing policy and legislation.[232] This means amending legislation that prevents any meaningful implementation of human rights requirements, but also utilizing existing enforcement tools. An 'obvious' option is criminal law and justice: the Netherlands has jurisdiction to prosecute both individuals and corporate entities for (complicity in) human trafficking, including the trafficking of migrant workers,[233] or profiteering from labour exploitation by business partners[234]; and companies can also be

[230] European Parliament, 'Corporate sustainability: firms to tackle impact on human rights and environment', Press Release, 25 April 2023, available at https://www.europarl.europa.eu/news/en/press-room/20230424IPR82008/corporate-sustainability-firms-to-tackle-impact-on-human-rights-and-environment.

[231] The current proposals indeed anticipates this, see EC Proposal, Art. 13.

[232] UNGPs, Principle 2, Commentary.

[233] Art. 273f *Wetboek van Strafrecht* [Penal Code].

[234] Art. 273f (6) Penal Code. In 2018 a North Korean national filed charges against a Dutch shipbuilding company, alleging that it knew or should have known that it had commissioned ship renovation assignments to Polish wharfs where forced labour was used, https://www.prakkendoliveira.nl/nl/nieuws/2018/noord-koreaan-doet-aangifte-tegen-nederlandse-scheepsbouwer-wegens-voordeel-trekken-uit-arbeidsuitbuiting. The complaint resulted from a research project conducted by Leiden University and led by Prof. Remco Breuker, see https://www.universiteitleiden.nl/en/research/research-projects/humanities/slaves-to-the-system-researching-north-korean-forced-labor-in-the-eu.

prosecuted for foreign corrupt practices, such as paying bribes to win building contracts.[235] While there is no indication that Dutch companies committed such crimes in Qatar, it is certainly feasible that this could occur in future MSEs both in the Netherlands or elsewhere, and the option should not be discounted.

6.2 'Soft' Power and the State-Business Nexus

Beyond the use of 'hard' law, one could also look more broadly at the state-business nexus and the use of 'soft' power.[236] That nexus certainly exists regarding businesses operating in Qatar: as repeatedly indicated by the Minister for Foreign Affairs in answers to parliamentary questions, the Dutch state directly and indirectly supported and engaged with businesses operating in Qatar and around the World Cup.[237] The state's role therein is yet to be evaluated, but it is clear that the Dutch government promoted economic opportunities for Dutch businesses around the World Cup and championed Dutch companies in trade missions to Qatar. It has also engaged in several public–private partnerships that guide business activities in Qatar, including the aforementioned Partners for International Business Programme with the Orange Sports Forum,[238] which several of the companies discussed in this article were supported by, and the 'Taskforce Qatar' of the Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland, RVO).[239] This would have provided it with a significant opportunity to raise human rights issues for Dutch businesses, and to guide or potentially penalize businesses regarding their level of human rights compliance in their contacts in Qatar.

Even when companies are not directly supported when they do business with MSEs, the state still has policy instruments that it can leverage. Dutch businesses are often part of trade missions, they can obtain export credit insurance with Atradius Dutch State Business,[240] and they can receive investment advice, subsidies and loans for sustainable business through the RVO. These are all instances where the state should take steps to protect against human rights abuses, such as requiring recipients of this support to conduct human rights due diligence.[241] In terms of

[235] Art. 178a Penal Code.

[236] UNGPs, Principle 4 and Principle 5. See also College voor de Rechten van de Mens (2000), pp. 30–32, and the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 2 May 2018, A/HRC/38/48, pp. 18–19.

[237] Ministerie van Buitenlandse Zaken (2022).

[238] A collaboration between businesses and sports organizations aimed at supporting Dutch businesses contracting with MSEs, Orange Sports Forum, *supra* n. 208.

[239] A government agency tasked with carrying out policies for the Ministry of Economic Affairs and Climate, see https://english.rvo.nl/about-netherlands-enterprise-agency. The taskforce was set up in collaboration with the FME, the Dutch industry association for the technology sector.

[240] The official Export Credit Agency for the Netherlands, Atradius DSB, 'Helping Dutch companies by insuring their export contracts since 1932', available at https://atradiusdutchstatebusiness.nl/en/. ADSB's parent company has specifically highlighted Qatar as a growing market in part due to the 2022 World Cup, Atradius, 'Promising markets for 2022', available at https://atradius.nl/rapport/economic-research-promising-markets-2022.html.

[241] UNGPs, Principle 4. This principle specifically mentions export credit agencies.

businesses contracted by the state, ING is the official state bank of the Netherlands, which means that pursuant to the UNGPs, the Netherlands should also raise human rights questions in its interactions with ING.

These contacts between the state and businesses operating in Qatar are already leveraged for promoting respect for human rights to some extent, or at least purport to do so. The Orange Sports Forum mentions that all companies involved have committed themselves to the OECD Guidelines, and its press releases on recent trade missions to Qatar mention improvements that have been made to labour conditions.[242] The RVO positions itself as a hub for stimulating responsible business conduct, requesting companies to carry out risk assessments and to submit action plans within certain instruments,[243] and businesses applying for export credit insurance are required to provide CSR statements[244]; government support can be withdrawn and repayment can be demanded if either the statements or responses are found to be inadequate.

As noted, there has not yet been a full and formal evaluation of the state's interventions and use of 'soft' policy tools, but there are indications that here, too, there is room for improvement. For example, in answering parliamentary questions on specific risks to migrant workers in Qatar and the involvement of Dutch businesses, the Minister for Foreign Affairs deferred to the RVO and its guidance,[245] but there is no indication of any measures taken where companies have not responded to those risks. No instances were found where a lack of human rights policies or due diligence were reasons to refuse subsidies or other forms of state support. A contraindication is that a 2016 report by the Dutch OECD National Contact Point on Atradius found that it had not sufficiently monitored the human rights impact of projects that it had insured.[246] The government has further rejected calls to terminate its contract with ING or to further engage with it on BHR and CSR policies.[247]

All this expertise and leverage can be employed more effectively. Where businesses are informed of and guided towards business opportunities, they can also be made aware of human rights issues and supported in finding local partners. Both the state and sports associations can lend expertise to navigating the multijurisdictional web woven by the overlap between the domestic law of host states, human rights law and the *lex sportiva,* a web that some businesses might be intimately familiar with, but in which newcomers can become entangled. Similarly, there may be a role for the Netherlands, in conjunction with the KNVB, in providing remedies for victims of human and labour rights abuses. Companies should develop remedial mechanisms, and can be supported by the state—as was already proposed by the first

[242] Orange Sports Forum (2020).
[243] IOB (2019), p. 67.
[244] See i.e. Atradius DSB, 'Jaaroverzicht 2020' ['Annual Report 2020'], available at https://atradiusdutchstatebusiness.nl/en/documents/atradius_jaaroverzicht_2020_en.pdf.
[245] Ministerie van Buitenlandse Zaken (2022).
[246] https://www.bothends.org/uploaded_files/inlineitem/DEF_LR_96999_Final_Statement.pdf
[247] Ministerie van Buitenlandse Zaken (2022).

Dutch National Action Plan.[248] They can also cooperate with external mechanisms and/or contribute to victims' compensation funds, financially or organizationally. A fund for compensating the families of migrant workers in Qatar has been proposed by the VVCS, a Dutch trade union for professional footballers, and endorsed by the FIFPRO (Fédération Internationale des Associations de Footballeurs Professionnels), the umbrella organization for national football associations.[249] The fund is purported to require at least 440 million euros. Amnesty International and other NGOs have called on the KNVB to argue for the proposal with FIFA,[250] but the Dutch government could equally play a role here—either by requiring business actors to contribute to such a fund, or by guiding victims to the fund via complaint mechanisms.

7 Synthesis and Conclusions

MSEs are unique in some respects, but not in others. There are few comparable instances where overlapping legal and governance frameworks, public and private actors, and financial and non-financial interests come together before the world's eyes, in a singular event. This creates an unparalleled jurisdictional space, an opaque temporal and geographical bubble around the MSE. The responsibility for governing that space is divided amongst public and semi-public actors, whose mutual leverage is not always easily understood, and taken up by transnational private actors. It is then not surprising that it becomes exponentially difficult to hold any particular actor accountable for human rights violations that may occur in relation to MSEs: even if the layers of responsibility can be peeled back, ordinary avenues for accountability may not be accessible. The World Cup in Qatar is no exception. In fact, it is a prime example, as there is no clear chain of accountability for human rights violations associated with the tournament to the actors that contributed to those violations.

At the same time, MSEs are like any public–private cooperation, in that every actor stepping into the sphere has its own obligations and responsibilities to a certain extent, which even the exceptionalist nature of MSEs and MSE governance does not (fully) erase. In other words, there are still human rights on the pitch. As has been discussed in this article, MSEs cannot exist without the involvement of private businesses, from sponsors to contractors to commercial sports teams. And where businesses operate, they have human rights responsibilities: to prevent or cease adverse human rights impacts in their own operations, to provide remedies for victims, and to use their leverage over business partners to prevent or mitigate human rights impacts.

[248] Ministerie van Buitenlandse Zaken, *Nationaal Actieplan bedrijfsleven en mensenrechten* (2014), *supra* n. 134.
[249] Houthuijs (2021).
[250] NOS Radio 1 Journaal (2022).

This article has discussed several degrees of involvement by private businesses with MSEs such as the World Cup, the corresponding amount of control or leverage, and how that control and/or leverage can be used. It has demonstrated that there is an increasing awareness on the part of companies that they have human rights responsibilities, and increasingly an expectation that they act according to such responsibilities—from sports bodies like FIFA and their home states alike. That awareness does not yet translate into conducting full human rights due diligence; little action to address human rights risks was identified, and insofar as companies have formulated responses, they do not publicly account for this. Proper consultation with affected groups and the provision of remedies are woefully absent. That means that there is still a great deal of space for companies involved with MSEs to improve their human rights compliance, especially when there is no effective intervention by FIFA or the host country. In this space, participating states and national sports-governing bodies have roles to play, helping companies to navigate the rules and regulations around MSEs, and laying down consequences if companies do not embrace their responsibilities.

It is crucial to break the stalemate that currently dominates the debate around MSEs and associated human rights impacts and to move beyond the simple question of 'should we stay or should we go'. This now prevents meaningful progress in two ways: it obfuscates what companies can do in practice to improve human rights situations and centralizes the company and its reputation rather than rights-holders. Instead, the focus should be on understanding how to participate in ways that minimize risk and harm and harnesses the potential of MSEs to be a force for the good. In other words, the focus should shift to how companies benefiting from sports events should work so that they benefit everyone: from the athletes that perform there, to the workers that have made it possible.

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