

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN FACILITATING ACCESS TO REMEDY

SUBMISSION TO THE UN WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

The Centre for Sport and Human Rights is grateful for the opportunity to provide input to the United Nations Working Group on Business and Human Rights regarding the global consultation on the role of National Human Rights Institutions (NHRIs) in facilitating access to remedy. The Centre brings together an unprecedented alliance of intergovernmental organisations, governments, sports bodies, athletes, hosts, sponsors, broadcasters, civil society representatives, trade unions, employers and their associations, and national human rights institutions, to fully align the world of sport with the fundamental principles of human dignity, human rights, and labour rights. With this submission, the Centre would like to draw attention to the role NHRIs can play in facilitating access to remedy for sport-related human rights abuses.

GENERAL REMARKS

Sport-related human rights abuses can affect a whole range of actors. Among the most affected groups are athletes or players including child athletes, workers involved in construction, supply chain, or other sporting event-related work, volunteers and officials who make grassroots sport and sporting events possible, communities close to sporting events or impacted by the event's supply chain, journalists reporting on events, and fans. Two broad categories of sport-related human rights abuses can be distinguished. The first one relates to mega-sporting events (MSEs) and examples include:

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

- on the basis of their gender, or
- bribery and corruption in connection with the awarding of MSEs and a lack of transparency and accountability in the use of the proceeds of MSEs.¹

Secondly, sport-related human rights abuses can occur in day-to-day elite sport and popular sport. The human rights risks are similar and can arise in relation to safeguarding, access to sport more generally, including the denial of access to specific vulnerable groups and minorities, freedom of expression, freedom of association, or the right to remedy.

Access to effective remedy for these types of abuses is lacking in many cases and for various reasons. The scope of available mechanisms can be rather limited. At the same time, a number of practical barriers can prevent victims from being able to access mechanisms. In some cases, there simply is no mechanism available.

The Centre and its predecessor, the Mega-Sporting Events Platform for Human Rights, looked at the role NHRIs can play in remedying sport-related human rights abuses in the following publications:

- Sporting Chance White Paper 2.4 on “[Remedy Mechanisms for Human Rights in the Sports Context](#)” (January 2017)
- Background paper “[Mapping Accountability and Remedy Mechanisms for Sport](#)” (April 2019)

Furthermore, the 2018 [Sporting Chance Principles](#) explicitly mention NHRIs as one of the actors that should collaborate to ensure effective remedy is available:²

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

NHRIs were also part of the discussions at the ‘Strategic Dialogue on Remedy’ held in The Hague in October 2018, where more than 50 experts and representatives from inter-governmental and non-governmental organisations, international legal institutions, players unions, academia, and international sports governing bodies came together to discuss existing gaps in remedy in the world of sport and human rights and to identify solutions on how to fill these gaps.³

1 Mega-Sporting Events Platform for Human Rights, “Remedy Mechanisms for Human Rights in the Sports Context” (Sporting Chance White Paper 2.4, Version 1, January 2017), p. 7, available at https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Remedi_Mechanisms_for_Human_Rights_in_the_Sports_Context%2C_Jan-2017.pdf

2 Centre for Sport and Human Rights, ‘The 2018 Sporting Chance Principles’ (2018) Principle 6, available at <https://www.sporhumanrights.org/en/about/principles>

3 The meeting report is available at https://www.sporhumanrights.org/uploads/resources/CSHR%2C_Meeting_Report_-_Remedy_Sport_and_Human_Rights%2C_Oct_18_.pdf

RECOMMENDATIONS

This section provides input and recommendations for Working Group questions 1, 2, 3, 5 & 6. For the purpose of this submission, any reference to ‘business-related human rights abuses’ in the questions has been interpreted broadly to also cover sports-related human rights abuses.

Question 1

In what ways could NHRIs facilitate – both directly and indirectly – access to effective remedy for business-related human rights abuses? Please provide concrete examples if possible.

1. NHRIs can directly facilitate access to effective remedy for sport-related human rights abuses by having their own complaint-handling procedures in place. Many NHRIs already have decades of experience in handling sport-related human rights complaints, mostly in the field of discrimination, or sport-related human right issues more generally, such as in the area of gender equality. Since sport is in many jurisdictions exempt from human rights or anti-discrimination laws, also with regard to sexual harassment or other forms of abuse, it is important that those affected are aware of the possibilities to file complaints with NHRIs.⁴
2. An indirect way for NHRIs to facilitate access to effective remedy is by raising awareness on existing accountability and remedy mechanisms and advising victims on which mechanism to use. One of the points stressed at the Centre’s ‘Strategic Dialogue on Remedy’ event was that affected groups and individuals need support in navigating through the landscape of existing mechanisms. This could entail an information section on NHRI websites in plain language, or the publication of guides on the various mechanisms available, to help those affected with making an informed decision on what mechanism is best suited for their claim.⁵
3. Concrete opportunities for NHRIs to facilitate access to remedy for sport-related human rights abuses arise in the context of mega-sporting events. The bidding procedures for these events increasingly require candidates to respect human rights and have grievance mechanisms in place. NHRIs could engage with relevant stakeholders and advise on the creation of grievance mechanisms. A collaboration between temporary event-related grievance mechanisms and NHRIs could be formalized by memoranda of understanding. Furthermore, where no temporary event-related mechanism has been created, NHRIs can make available their complaint procedures to respond to event-related human rights issues. Where grievance mechanisms are not effective, NHRIs can become active by reminding host states to take appropriate steps to ensure that those affected by sports- and sporting event-related human rights abuses have access to effective remedy as stipulated in UN Guiding Principle 25.

4 Mega-Sporting Events Platform for Human Rights, “Remedy Mechanisms for Human Rights in the Sports Context” (Sporting Chance White Paper 2.4, Version 1, January 2017), p. 16, available at https://www.ihrb.org/uploads/reports/MSE_Platform%2C_Remedies_Mechanisms_for_Human_Rights_in_the_Sports_Context%2C_Jan-2017.pdf

5 Centre for Sport and Human Rights (2019), meeting report from ‘Strategic Dialogue on Remedy’ held in The Hague in October 2018, p. 6, available at https://www.sporhumanrights.org/uploads/resources/CSHR%2C_Meeting_Report_-_Remedy_Sport_and_Human_Rights%2C_Oct_18_.pdf

4. Moreover, States that bid to host an event should commit to establish an A status NHRI and support the NHRI in creating a UNGP-compliant dispute resolution mechanism, which can be used to handle human rights complaints arising in the context of mega-sporting events. Where a B or lower status NHRI is already in place, host states should commit to promote the NHRI to an A Status and fund it accordingly so that it can fulfil its task and mandate and effectively provide access to remedy.

Question 2

What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?

5. NHRIs are appreciated for their accessibility to any interested party and for their relatively speedy way in dealing with cases, as well as for the low costs involved for the complainants. However, a number of NHRIs, which are usually B status, only have limited mandates, for example in relation to unlawful discrimination.⁶ A limited mandate can exclude a whole range of sports and human rights issues from the outset. Therefore, steps should be taken to broaden the mandates of NHRIs where needed to strengthen their role in facilitating remedy for sport and human rights abuses. The Paris Principles also encourage NHRIs to have as broad a mandate as possible.⁷

6. Expanded mandates might require capacity building in the form of adding expertise on human rights issues related to the world of sports. However, NHRIs are often very limited in their resources and additional funding and expertise are needed for enabling NHRIs to address sport-related human rights cases on top of existing work. States should be prepared to provide extra funding for NHRIs that address sport-related human rights complaints. Furthermore, NHRIs could be strengthened in their role to secure effective remedy for victims if they have the possibility to take follow-up action when their recommendations based on a certain complaint have not been implemented.⁸

7. At the moment, GANHRI and its regional networks do not have a separate stream of work on sport-related human rights issues in their business and human rights working groups. Given the power of sport to raise and also resolve more structural human rights issues, it would be a welcome step to develop dedicated work in this area. The capacity of NHRIs for dealing with sport-related human rights cases would be strengthened if sport were added to the agenda of global and regional NHRI networks.

Question 3

How could the current interplay between the role of NHRIs and other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) be improved to facilitate access to remedy?

6 Mega-Sporting Events Platform for Human Rights, "Remedy Mechanisms for Human Rights in the Sports Context" (Sporting Chance White Paper 2.4, Version 1, January 2017), p. 15, available at <https://www.sporhumanrights.org/en/resources/remedy-mechanisms-for-human-rights-in-the-sports-context>

7 UNGA Res 43/134, 'Principles relating to the Status of National Institutions (The Paris Principles)', Art. 2

8 NANHRI (2016), 'A Mapping Survey of the Complaint Handling Systems of African National Human Rights Institutions', p. 21, available at <http://www.nanhri.org/wp-content/uploads/2016/10/English-Mapping-Survey-Final.pdf>

8. A variety of accountability and remedy mechanisms relevant to sport exist and one of the biggest problems is that many of these exist in silos. In particular, private and public mechanisms are not connected well. NHRIs could strengthen these connections, for instance by playing a navigator role and assisting people with finding the right mechanism for their issues.

9. The interplay between NHRIs and state-based judicial mechanisms can be facilitated if NHRIs have the power to bring proceedings in a competent court, as is the case in some countries.⁹ However, a clear protocol for bringing cases on behalf of or together with victims should be in place.

10. NHRIs should collaborate with other non-judicial accountability and remedy mechanisms in a complementary way. This could include making use of services of other mechanisms, or lending services to other mechanisms. Collaboration could also take the form of referring cases to other mechanisms for external mediation where this is deemed necessary. As many NHRIs are not mandated to provide compensation to victims, especially those cases where compensation is the only effective remedy, referrals to institutions that have the mandate and means to provide compensation should be prioritised. OECD National Contact Points and NHRIs have acknowledged the need for National Contact Points and NHRIs to cooperate on relevant issues including sports. Furthermore, in the sport and human rights context, a number of athlete Ombudsman institutions have recently been created.¹⁰ Collaborating with sport-specific institutions will help to facilitate access to remedy in the sport and human rights context.

Question 5

What could be done to strengthen the role of NHRIs in dealing with alleged business-related human rights abuses with a transnational or cross-border dimension?

11. NHRIs already have regional networks in place to promote dialogue and their work. This dialogue should be strengthened and extended to dispute resolution, as cases of sports-related human rights abuses can easily involve actors from many different countries, in particular within the context of mega-sporting events. For example, migrant workers on event-construction sites often work for multinational enterprises; private security firms hired by Organizing Committees can come from abroad and bring in foreign employees; multinational broadcasters and sponsors as well engage with individuals and communities that may be adversely impacted.¹¹ Addressing these cases would require the cooperation of a number of NHRIs.¹² This dialogue could identify good practices in handling sport-related human rights abuses with a cross-border dimension, but also support collaboration for individual cases. Nevertheless, it is important to respect and understand that the ‘National’ in “NHRI” suggests any cooperation to strengthen the role of NHRIs in dealing with transnational cases should be built on the national

9 NANHRI (2016), ‘A Mapping Survey of the Complaint Handling Systems of African National Human Rights Institutions’, p. 23, available at <http://www.nanhri.org/wp-content/uploads/2016/10/English-Mapping-Survey-Final.pdf>

10 For example the US Olympic Committee’s Athlete Ombudsman or the Slovenian Athletes’ Ombudsman.

11 An elaborate overview of mega-sporting event-related human rights risks and the various actors involved can be found in the guide by Mega-Sporting Events Platform for Human Rights, ‘The Mega-Sporting Event Lifecycle: Embedding Human Rights from Vision to Legacy’ (April 2018), available at <https://www.sporhumanrights.org/en/resources/mega-sporting-event-lifecycle-embedding-human-rights-from-vision-to-legacy>

12 Mega-Sporting Events Platform for Human Rights, ‘Remedy Mechanisms for Human Rights in the Sports Context’ (Sporting Chance White Paper 2.4, Version 1, January 2017), p. 17, available at <https://www.sporhumanrights.org/en/resources/remedy-mechanisms-for-human-rights-in-the-sports-context>

mandate of NHRIs and respect their national jurisdiction.

12. The role of NHRIs in handling transnational cases could also be strengthened if procedures and relevant information would be accessible in multiple languages. This would for example enable migrant workers to access NHRI procedures in hosting countries, as well as other affected groups and individuals to turn to NHRIs in countries where the respective wrongdoers are located.

Question 6

Can you share any good practice examples in which your organization or institution was able to work collaboratively with NHRIs to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?”

13. The Sporting Chance White Paper mentions a number of recent examples of NHRIs that have worked with sport to promote human rights: Australia’s NHRI has cooperated with all professional sporting codes on promoting human rights; Scotland’s NHRI worked on human rights issues with the Organising Committee of the Glasgow Commonwealth Games; Northern Ireland and Australia’s NHRI addressed sport events in their countries; the New Zealand NHRI worked with sports organisations on issues relating to sports judicial procedures and children’s rights to a fair trial in the context of on field racism and on gender equality issues. Most recently, in April 2018, the Commonwealth Forum of NHRIs adopted the London Declaration on Sport and Human Rights, in which Commonwealth NHRIs have committed to strengthening their relationships with other national accountability mechanisms with a human rights mandate.¹³

14. Finally, the Sporting Chance White Paper highlighted the following general strengths of NHRIs in the context of access to remedy for sport-related human rights issues:¹⁴

“ In many countries NHRIs have dispute resolution and mediation processes for the resolution of human rights disputes. Human rights issues arising in relation to sports events can be handled under these mechanisms and processes. These processes have operated in some NHRIs for over 40 years and have resolved human rights issues more swiftly than judicial alternatives. They do not compromise the ability of complainants to take a judicial route. NHRIs are likely to be particularly useful in areas of unlawful discrimination. They are accessible to any interested party, including individuals, trade unions, NGOs, businesses etc. Coverage is wide – 117 States have an NHRI (75 are A status; 32 B status and 10 no status). NHRIs often use alternative dispute resolution and mediation to resolve matters swiftly and low cost. They can commence motion inquires in regard to a wide range of human rights abuse.

13 Commonwealth Forum of NHRIs, “The London Declaration on Sport and Human Rights” (April 2018), p. 5, available at http://cfnhri.org/uploads/files/The_London_Declaration.pdf

14 Mega-Sporting Events Platform for Human Rights, “Remedy Mechanisms for Human Rights in the Sports Context” (Sporting Chance White Paper 2.4, Version 1, January 2017), p. 16-17, available at <https://www.sporhumanrights.org/en/resources/remedy-mechanisms-for-human-rights-in-the-sports-context>