

National Contact Point of Switzerland

Initial Assessment

Specific Instance regarding the Fédération Internationale de Football Association (FIFA) submitted by the Building and Wood Workers' International (BWI)

Berne, October 13, 2015

1 Submission

The National Contact Point of Switzerland (henceforth referred to as "Swiss NCP") received a written submission on 28 May 2015 to consider a specific instance under the OECD Guidelines for Multinational Enterprises (OECD Guidelines) regarding the Fédération Internationale de Football Association (henceforth referred to as "FIFA" or "responding party"), which is headquartered in Zurich, Switzerland. The specific instance has been raised by the Building and Wood Workers' International (BWI), henceforth referred to as "submitting party".

The submission concerns human rights violations of migrant workers related to the construction of facilities for the FIFA 2022 World Cup in Qatar. According to the submitting party, the existence of human rights violations of migrant workers in Qatar is uncontested and they result from the Kafala (sponsorship) system, the confiscation of passports, discrimination and unequal remuneration, non-payment of wages, charging of recruitment fees, occupational health and safety issues, restrictions on the freedom of association, alteration of employment contracts, detention of migrant workers, a lack of safe and decent accommodation and issues related to access to remedy.

The submitting party states that the responding party has violated the OECD Guidelines¹ by appointing Qatar as the host state for the FIFA 2022 World Cup in Qatar in 2010. According to the submitting party, at this time the human rights violations of migrant workers in Qatar were widely documented. Therefore, it was evident, that the level of construction required for the FIFA 2022 World Cup would increase significantly the number of migrant workers living and working in Qatar and thereby increase the human rights violations. While FIFA's Bidding Agreement for the FIFA 2022 World Cup required Qatar to provide information under twenty different chapters, including "Sustainable Social and Human Development", there was no requirement to address human or labour rights.

The submitting party further states that after appointing Qatar as the host state, the responding party failed to conduct adequate and ongoing human rights due diligence as called for in the updated OECD Guidelines which entered into force in 2011². In the view of the submitting party, the responding party should have taken adequate and ongoing steps to identify, prevent and mitigate actual and potential adverse human rights impacts. In particular, the responding party was expected to take adequate steps to cease or prevent its own contribution to the human rights violations of migrant workers and to use its leverage with the Government of Qatar to accelerate the necessary labour and other reforms that would help prevent and mitigate remaining human rights violations.

¹ OECD Guidelines, Chapter II, Paragraph 2. In 2010, the previous version of the OECD Guidelines (approved on 27 June 2000) were applicable. The updated OECD Guidelines came into effect only on 25 May 2011.

² OECD Guidelines, Chapter II and IV.

2 Alleged Violations of the OECD Guidelines

In the submission, the submitting party claims the violation of the following recommendations of the OECD Guidelines:

2.1 Failure to Respect Human Rights (2000 OECD Guidelines)

According to the submitting party, the responding party should have known, at the time of its decision that appointing Qatar as the host country for the FIFA 2022 World Cup would result in adverse human rights impacts of migrant workers. The fact that the responding party did not take account of these human rights impacts when taking its decision was a violation of the 2000 OECD Guidelines³:

Chapter II, General Policies, Paragraph 2:

Enterprises should [...]:

2. Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

2.2 Failure to Conduct Due Diligence (2011 OECD Guidelines)

The submitting party considers that the responding party has also violated the updated 2011 OECD Guidelines by failing to conduct ongoing due diligence with regard to the violations of rights of migrant workers in Qatar and by not having put in place a human rights policy:

Chapter II, General Policies, Paragraph 10:

A. Enterprises should:

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11⁴ and 12⁵, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

Chapter IV, Human Rights, Paragraphs 4 and 5:

[...] Enterprises should within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

4. Have a policy commitment to respect human rights.

5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

2.3 Failure to Avoid Contributing to Adverse Impacts and Failure to Address Adverse Impacts (2011 OECD Guidelines)

Furthermore, the submitting party contends that FIFA's decision in 2010 to appoint Qatar as the host city for the 2022 FIFA World Cup, which significantly increased the number of migrant construction workers whose human rights are violated, combined with its subsequent failure to conduct ongoing and adequate human rights due diligence, means that under the 2011

³ The OECD Guidelines were updated over the period 2010–2011 with the updated 2011 Guidelines coming into effect on the 25 May 2011.

⁴ See below.

⁵ 12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing and adverse impact of the enterprise with which it has a business relationship.

OECD Guidelines, the responding party has failed in its responsibility to avoid contributing to adverse human rights impacts and to address such impacts when they occur:

Chapter II, General Policies, Paragraph 11:

A. Enterprises should:

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

Chapter IV, Human Rights, Paragraph 2:

[...] Enterprises should within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3 Expectations of the submitting party regarding the Swiss NCP proceedings

The submitting party has previously engaged with FIFA on the rights and working conditions of migrant workers in Qatar. In particular, between November 2011 and March 2014 three meetings with senior officials of FIFA took place. However, in the view of the submitting party little or no progress was made.

Therefore, the submitting party requests that the Swiss NCP offers its good offices for mediation between the responding and the submitting party. The purpose of the mediation would be, first, to identify steps to be taken by the responding party itself. Secondly, the submitting party would also wish to address the responsibility of the responding party to use its alleged leverage with the Government of Qatar in order to accelerate labour law and other human rights-related reforms. Specifically, the submitting party would wish to address the following issues:

- Implementation of FIFA's human rights due diligence policy, which should be made public;
- Commit to the principles of the ILO Core Conventions, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines and include them in the criteria for bids by countries wishing to host the FIFA World Cup together with the requirement for a human rights impact assessment;
- Adoption of a mandatory FIFA policy of "*Decent Work Stadium and Infrastructure Standards*" in line with the adoption of other FIFA Standards in areas such as Stadium Quality;
- Inclusion of respect for workers' rights, decent work, binding provisions for safety and health and independent labour inspections in the "FIFA Law";
- Agreement to conduct joint labour inspections with the submitting party to ensure international labour rights and international standards are adhered to in Qatar;
- Requirement for FIFA business partners, including local organisers, sponsors and media partners, to adopt a human rights policy statement;
- Creation of an Ombudsman;
- Creation of a Human Rights Advisory Board that includes trade union representatives;
- Use of FIFA's considerable leverage to engage with the Qatari Government in order to accelerate labour and human-rights related reforms, including the abolishment of the Kafala System so as to prevent and mitigate adverse human rights impacts.

4 Statement of the responding party

On 27 July 2015, the responding party submitted a written statement to the Swiss NCP concerning the issues raised in this specific instance.

In its communication, the responding party emphasizes its commitment to good governance principles and global reference standards as well as to the principles and the importance of regular and open exchange and engagement with relevant public authorities and stakeholders, organizations and entities beyond the football community, namely from civil society, trade unions, etc.

For the sake of good order and accuracy, the responding party believes that it is important to discuss how the OECD Guidelines apply to FIFA, considering that they are an association registered in the Commercial Register in accordance with Articles 60ff. of the Swiss Civil Code.

Furthermore, the responding party states that it is imperative that all workers in Qatar enjoy fair and safe working conditions. To advance that end, it mentions its encouragement and facilitation of dialogue between stakeholders in Qatar and international organizations concerned about these issues. With regard to the situation of migrant workers in Qatar, the responding party has held a series of exchanges and discussions and the matter has been constantly addressed at the highest political level by the FIFA President on the occasion of every meeting FIFA President Blatter held with H.H. the Emir of the State of Qatar, Sheikh Tamim Bin Hamad Al-Thani. However according to the responding party, its direct counterparties throughout the entire life cycle of the event are not the government authorities of the State of Qatar. More specifically, with regard to the legal framework pertaining to the FIFA World Cup, the direct counterparties are the member association (i.e. the Qatar Football Association), the Bid Committee and/or the Local Organising Committee, which all are independent from the government of Qatar.

The statement of the responding party describes in detail which international standards and code of conducts have been implemented by the responding party in areas such as operations, control environment, financial reporting, compliance, ethics, anti-corruption and due diligence in contractual arrangements. To implement its sustainability strategy, the responding party is applying among others, ISO 26000 guidance for social responsibility and ISO 20121 standard for event sustainability management systems. Sustainability reporting is done according to the Global Reporting Initiative (GRI) guidelines and stakeholder engagement is based on the AA1000 Stakeholder Engagement Standard (AA1000SES). In addition, the responding party describes that the FIFA Quality Programme, including ethical business practices in terms of child labour, working hours, health and safety requirements, is based on the code of conduct of the World Federation of the Sporting Goods Industry (WFSKI).

The communication of the responding party gives also information about the future approach regarding human rights in the framework of the bidding process of the 2026 edition of the FIFA World Cup as announced in 2011. The guidance that the responding party will be following is the one provided by the United Nations Guiding Principles on Business and Human Rights (UNGPs). For the development of the respective parts related to human rights in the bid documents, the responding party sought technical assistance from the Office of the United Nations High Commissioner for Human Rights.

In its communication, the responding party reassures its commitment to a continuous multi-stakeholder approach, which has to be addressed consistently and comprehensively in the entire lifecycle of the process, i.e. from recruitment to repatriation, and confirms its commitment to dialogue and close monitoring of the progress and the announcements made. The responding party considers the protection of workers' rights as an urgent and complex issue which requires the coherent involvement and support of all relevant stakeholders such as, among others, enterprises having construction sites in Qatar and the migrants workers'

countries of origin. Therefore, the responding party believes that the most efficient and effective approach is a continuous multi-stakeholder approach and confirms its commitment to dialogue and close monitoring of the progress.

5 The proceedings of the Swiss NCP up to date

Since the receipt of the submission on 28 May 2015 the Swiss NCP took the following steps:

- Written confirmation to the submitting party to acknowledge receipt of the submission on 1 June 2015.
- Preliminary discussion by phone with the responding party in order to explain the Swiss NCP proceedings on 9 June 2015. The submission was forwarded to the responding party on 11 June 2015.
- On 15 June 2015, according to the Specific Instances Procedure of the Swiss NCP⁶ an ad hoc working group was constituted, including representatives from the State Secretariat for Economic Affairs (SECO) and the Federal Department of Foreign Affairs. This working group is involved in all steps of the procedure of the specific instance.
- Separate informal exchange with the submitting and the responding party on 17 June 2015, at the occasion of the OECD Global Forum on Responsible Business Conduct in Paris.
- Information of the Swiss Embassy in Doha/Qatar about the submission on 1 July 2015.
- On 27 July 2015, the Swiss NCP received a written statement by the responding party in response to the submission. The statement was forwarded to the submitting party on 5 August 2015.
- On 27 and 28 August 2015, the ad hoc working group of the Swiss NCP held meetings with the responding respectively the submitting party to inform them about the procedure of the specific instance.

6 Considerations and decision of the Swiss NCP

Based on the Procedural Guidance to the OECD Guidelines and the Specific Instances Procedures of the Swiss NCP, the Swiss NCP has considered the following points in its initial assessment:

a) Identity of the parties concerned and their interest in the matter

The Swiss NCP comes to the conclusion that the submitting party has provided sufficient information regarding their interest in the issues raised. The submitting party is a global trade union federation headquartered in Geneva, Switzerland. It represents over 300 construction trade unions and more than 12 million workers from 131 countries. Since the appointment of Qatar as the host state for the FIFA 2022 World Cup, the submitting party has been engaged with the responding party to discuss working conditions of migrant workers in Qatar.

b) Responsibility of the Swiss NCP

A specific instance must be raised in the country in which the alleged breach occurred. If this country is not a signatory state of the OECD Guidelines and therefore does not have its own NCP, the issue should be raised in the country where the multinational enterprise has its headquarters. The Swiss NCP is competent for this specific instance because Qatar is not a signatory state of the OECD Guidelines and the responding party has its headquarters in Zurich, Switzerland.

⁶ <http://www.seco.admin.ch/themen/00513/00527/02584/index.html?lang=en>.

c) Applicability of the OECD Guidelines to the responding party

The OECD Guidelines do not provide a precise definition of the term “multinational enterprises”. However, they state that these include enterprises in all sectors of the economy and that ownership may be private, State or mixed. In addition, they usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways⁷.

FIFA is an association registered in the Commercial Register of the Canton of Zurich⁸. Separate companies e.g. the “FIFA Development Zürich Ltd⁹” or the “FIFA Ticketing Ltd¹⁰” are registered as public limited companies as well in the Commercial Register of the Canton of Zurich. Furthermore, according to its Financial Report 2014, FIFA is also the owner of a number of foreign subsidiaries¹¹. The FIFA administration is headquartered in Zurich, Switzerland. Under the leadership of the Secretary General, FIFA employs some 340 specialists from 40 countries.

The OECD Guidelines expressly establish legally non-binding principles and standards for responsible business conduct, which is generally understood as the responsibility of entities involved in business or commercial activities. The key question should therefore be whether an entity is involved in commercial activities, independently of its legal form or its sector of activity. Whether an entity can be considered to have commercial activities, should be decided by the competent NCP through a case-by-case analysis based on the concrete circumstances.

In the case at question the Swiss NCP makes the following considerations based on the OECD Guidelines:

- FIFA consists of different entities active in more than one country and closely linked in order to coordinate their global activities. Therefore, it has international operations and a multinational scope.
- The bidding agreement between FIFA and its direct counterparties in Qatar such as the Bid Committee is very comprehensive. It covers also various topics of commercial nature (e.g. media marketing rights, finance and insurance, etc.). Therefore, FIFA’s involvement in the organization of the FIFA 2022 World Cup and in particular the contractual relationship with its direct counterparties can be considered as activities of commercial nature, to which the OECD Guidelines are applicable.

Based on these considerations, the Swiss NCP concludes that in the particular case of the present submission the OECD Guidelines apply to the responding party.

d) Scope of the OECD Guidelines and materiality of the specific instance

The submission is material in the sense that it refers to alleged breaches of specific provisions of Chapters II and IV of the OECD Guidelines. The submitting party has substantiated its submission by providing the necessary information for the NCP to consider the issues raised. Information submitted by the submitting party about the human rights situation in Qatar includes, among other information, reports of the UN

⁷ OECD Guidelines, Chapter I, Paragraph 4.

⁸ <http://zh.powernet.ch/webservices/net/HRG/HRG.aspx/getHRGPDF?chnr=CH-020.6.000.262-1&amt=020&toBeModified=0&validOnly=0&lang=1&sort=>

⁹ <http://zh.powernet.ch/webservices/net/HRG/HRG.aspx/getHRGPDF?chnr=CH-020.3.041.676-6&amt=020&toBeModified=0&validOnly=0&lang=1&sort=>

¹⁰ <http://zh.powernet.ch/webservices/net/HRG/HRG.aspx/getHRGPDF?chnr=CH-020.3.024.745-0&amt=020&toBeModified=0&validOnly=0&lang=1&sort=>

¹¹ http://resources.fifa.com/mm/document/affederation/administration/02/56/80/39/fr2014weben_neutral.pdf (p. 137).

Special Rapporteur on the human rights of migrants¹², the International Labour Organization (ILO), and international civil society organisations.

The OECD Guidelines distinguish between impacts on matters covered by the OECD Guidelines including human rights through own activities¹³ of the concerned enterprise and adverse impacts directly linked¹⁴ to the operations of the enterprise. The Swiss NCP considers that while the submitting party has referenced various violations of migrant workers' rights in Qatar, the role of individual actors according to the different provisions of the OECD Guidelines will have to be further explored.

e) Legal context and parallel proceedings

The Swiss NCP will take into consideration ongoing parallel proceedings, including court rulings. According to the Specific Instances Procedures of the Swiss NCP, already concluded or ongoing parallel proceedings will not necessarily prevent the Swiss NCP from pursuing a specific instance, if parallel proceedings have already been concluded or are ongoing. However, in each individual case the Swiss NCP assesses whether or not an offer to mediate would make a positive contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings. At this time, the Swiss NCP is not aware of any parallel legal proceedings between the responding and the submitting party covering the topics of the submission.

f) Contribution to the purpose and effectiveness of the OECD Guidelines

The role of the Swiss NCP is to offer a forum for discussion and to assist the parties concerned to deal with the issues raised. The submitting party has engaged in an ongoing exchange with the responding party prior to this submission during several years. The Swiss NCP considers that by accepting this specific instance and offering a confidential setting for discussions, it could foster the continuation of this previous exchange between the responding and the submitting party and contribute to a better understanding among parties and help them reach a mutually acceptable outcome concerning the issues raised.

The initial assessment of the Swiss NCP results in the conclusion that the issues raised in this submission merit further consideration, and the Swiss NCP therefore accepts the specific instance. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in the submission.

7 Further proceedings

The Swiss NCP will contact the parties in order to offer its good offices and ask for confirmation whether they are willing to accept this offer with the aim of reaching a mutually acceptable outcome.

The Swiss NCP will publish its report on the initial assessment on the Swiss NCP website.

If the parties reach an agreement and find a solution for the dispute or a further means of resolving the dispute, the Swiss NCP will make publicly available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be recorded with the express consent of the parties involved.

¹² Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Mission to Qatar, 23 April 2014.

¹³ OECD Guidelines, Chapter II, Paragraph 11 and Chapter IV, Paragraph 2.

¹⁴ OECD Guidelines, Chapter II, Paragraph 12 and Chapter IV, Paragraph 3.

If no agreement is reached or one of the parties is not willing to take part in the proceedings, the Swiss NCP will also make this information publicly available in a final statement. The latter will include a summary of the reasons why an agreement was not reached.

The Swiss NCP may draw up recommendations for implementation of the OECD Guidelines, which will also be included in the statement. In addition, in consultation with the parties, the NCP can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure.

Final statements are published on the Swiss NCP website and in the annual report by the Chair of the OECD Working Party on Responsible Business Conduct. Unless there is good reason not to do so (e.g. protection of individuals), the Swiss NCP publishes the names of the parties involved in its written statement. Before the statement is issued, the Swiss NCP gives the parties the opportunity to comment on a draft statement. If there is no agreement between the Swiss NCP and the parties about the wording of the statement, the Swiss NCP makes the final decision.

The Swiss NCP requests parties concerned to agree to maintain confidentiality during the further proceedings. In order to establish an atmosphere of trust, the OECD Guidelines foresee that no information regarding the content of the proceedings may be shared with third parties or supporters of the complaint. If sensitive business information is provided or discussed during the meetings of the Swiss NCP, special requirements concerning the treatment of confidential information can be agreed upon by the parties involved in this specific instance. The NCP informs the parties that it reserves the right to stop the proceedings if one or other of the parties does not respect this confidentiality. Even after the proceedings have finished, parties concerned remain committed to treat information received during the proceedings in a confidential way unless the other party agrees to their disclosure.