

National Contact Point of Switzerland

Final Statement

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

Berne, 2 May 2017

1. Context

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 35 OECD member and 12 other adhering states to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland (henceforth referred to as “Swiss NCP”) for the OECD Guidelines has the mandate to raise awareness and promote observance of the OECD Guidelines. The Swiss NCP also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances by offering a forum for mediation, assisting parties concerned to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

On 28 May 2015, Building and Wood Workers' International (henceforth referred to as “BWI” or “submitting party”), submitted a written request to the Swiss NCP to consider a specific instance under the OECD Guidelines regarding the Fédération Internationale de Football Association (henceforth referred to as “FIFA” or “responding party”), which has its headquarters in Switzerland. The submission concerns human rights violations of migrant workers related to the construction of facilities for the 2022 FIFA World Cup Qatar™.

2. Proceedings of the Swiss NCP

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 NCP,¹ 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 was involved in all steps of the procedure of the specific instance.

¹www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html

- 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.
- On 13 October 2015, the Swiss NCP concluded its Initial Assessment and informed the Parties concerned that it found the issues raised to be relevant under Chapters II, IV of the OECD Guidelines, and to merit further examination. At the same time, the Swiss NCP recalled that accepting this specific instance 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.
- Pursuant to the process outlined in the “Information on Specific Instances Procedure” of the Swiss NCP, the Swiss NCP offered its good offices to facilitate a dialogue between both Parties with the aim of reaching a mutually acceptable outcome. The Initial Assessment was published on the Swiss NCP website.²
- Both Parties accepted the offer of the Swiss NCP for mediation. FIFA expressed its commitment to a dialogue irrespective of its position under the OECD Guidelines as a “multinational enterprise” which is to be established on a case-by-case basis.
- The Swiss NCP suggested to both Parties to have a mediation facilitated by a professional external mediator contracted by the Swiss NCP. The Parties agreed to the appointment of Professor Christine Kaufmann as the mediator of their dialogue.
- Both Parties agreed on 29 January 2016 on the Terms of References for the dialogue (TOR).
- Between January and December 2016, six mediation meetings took place at the premises of the Swiss NCP in Berne with the following persons:
 - BWI: Jin Sook Lee, Ambet Yuson, Nico Lutz (as of the second meeting; unable to attend fifth meeting)
 - FIFA: Fani Misailidi, Jörg Vollmüller, Federico Addiechi (unable to attend the fifth meeting)
 - Representative of the Swiss NCP: Alex Kunze
 - Representative of the International Labour Affairs Division of SECO: Jean-Jacques Elmiger
 - Mediator: Professor Christine Kaufmann, University of Zurich
- The confidential outcome was concluded on 21 March 2017. Parties agreed to include the entire confidential outcome in the Final Statement published by the NCP.

² www.seco.admin.ch/ncp

3. Joint Outcome of the mediation process

Introduction

This agreed outcome is founded on the Parties' shared interest in and the utmost importance placed on decent and safe work conditions for migrant construction workers building the stadiums and related facilities and infrastructure for the 2022 FIFA World Cup Qatar™.

Both Parties acknowledge that positive and promising steps have been undertaken by the various actors involved, including the government of Qatar. In order to support and further advance these developments with a view to improve the situation on the ground, the Parties' discussions focused on issues which can and should be improved rather than on listing the measures that are already in place.

According to the Terms of Reference the Parties identified five areas which they considered of particular relevance to support changes on the ground:

1. Identification and use of FIFA's leverage on relevant actors in Qatar;
2. The Human Rights Policy emanating from the new Art. 3 of the FIFA Statutes;
3. A robust process for monitoring labour conditions;
4. Mechanisms for workers' complaints and grievances;
5. Establishment of an oversight/advisory body.

Actors and their role regarding the organisation of the 2022 FIFA World Cup Qatar™

- (1) The Parties acknowledge that FIFA will seek ways to honour the principles and standards of, among other, the OECD Guidelines to the fullest extent which does not place it in violation of domestic law and to the extent that the Guidelines are relevant for FIFA.
- (2) FIFA accepts its responsibility to mitigate risks by aiming to build and exercise its leverage whenever possible with all relevant actors in Qatar to contribute to ensuring decent and safe working conditions for the 2022 FIFA World Cup Qatar™ stadiums construction workers and to facilitate any ongoing process and discussions taking place directly between BWI and the Supreme Committee of Delivery and Legacy (henceforth referred to as "Supreme Committee").³

In addition, the Parties acknowledge that in the context of the bidding requirements for future editions of the FIFA World Cup™ the approach should be one based on strengthening the due diligence processes.

- (3) The Parties recognize that while enforcement procedures for the revised Qatari labour regulations are in place on the construction sites in Qatar, there is room for improvement to address the situation of migrant workers.
- (4) BWI and FIFA agree to strengthen their collaboration and reach out to other relevant stakeholders and in collaboration with the competent local authorities in order to maximise synergies in developing concrete measures for contributing to ensuring that working and accommodation conditions are decent and safe for the for the 2022 FIFA World Cup Qatar™ stadiums construction workers.

³ The Supreme Committee is the entity responsible for delivering the infrastructure required for the 2022 FIFA World Cup Qatar™.

Role of FIFA regarding the organization of the FIFA World Cups™ with a focus on the 2022 FIFA World Cup Qatar™

Human rights policy statement

- (5) FIFA confirmed that stakeholders, including BWI, will be appropriately included in the development of FIFA's human rights policy for implementing the human rights commitment contained in Art. 3 of the FIFA Statutes.

Human rights due diligence process

- (6) FIFA follows guidance from the OECD Guidelines and the UN Guiding Principles on Business and Human Rights and accepts responsibility in terms of contributing to ensure, including through the use of its leverage, a due diligence process in the FIFA World Cup™-related construction sites and in collaboration with the relevant and competent actors, such as the Supreme Committee in Qatar.
- (7) FIFA confirmed its commitment to integrate human rights in existing mechanisms and relationships with other actors, such as the working group of FIFA and the Supreme Committee, the second edition of the Supreme Committee's Workers' Welfare Standards⁴ or the Health and Safety Manual⁵ for strengthening the human rights perspective with regard to the 2022 FIFA World Cup Qatar™.
- (8) The Parties agreed that securing human rights compliance of subcontractors throughout the supply chain is essential. The complexity increases for tiers 3 and 4 of the supply chain.
- (9) The Parties share concerns about the payment of migrant workers. FIFA informed about measures taken to improve the situation (electronic payments) as such information has been transmitted to FIFA.
- (10) FIFA informed that a section on workers' welfare is already included in the Local Organising Committee's⁶ regular updates.

Joint labour inspections

- (11) The Parties agree on the importance of a robust process for monitoring labour conditions including workers' participation and representation on the ground and act in accordance with applicable law in the host country. FIFA will use its leverage to the fullest extent which does not place it in violation of domestic law to facilitate the ongoing discussions between BWI and the Supreme Committee seeking for ways in terms of monitoring working conditions at FIFA World Cup™-related project sites. On this point and independently from the present specific instance, both Parties recognize the conclusion of a memorandum of understanding (MoU) between the Supreme Committee and BWI on labour inspections at FIFA World Cup™-related project sites, resulting from direct engagement between the Supreme Committee and BWI and see this as a positive initiative.

Grievance mechanism and oversight/advisory bodies

- (12) Both Parties acknowledge the key role of the new Human Rights Advisory Board established by FIFA to advise the FIFA administration on all issues it may consider

⁴ www.sc.qa/en/opportunities/workers-welfare/workers-welfare-standards

⁵ shared with BWI on 2 March 2016

⁶ The Local Organising Committee is the entity responsible for the hosting and staging of the 2022 FIFA World Cup Qatar™.

relevant for the implementation of FIFA's human rights commitment, including with regards to the 2022 FIFA World Cup Qatar™. BWI acknowledged FIFA's information, that BWI will be invited by FIFA to appoint one BWI representative as member of this oversight body. The Human Rights Advisory Board takes up its work in 2017 and will issue recommendations to FIFA twice a year.

- (13) Both Parties discussed the effectiveness of grievance mechanisms for workers on the ground in relation to the preparation and hosting of the 2022 FIFA World Cup Qatar™. They agreed that some existing procedures on different levels within the country do not suffice and can and should be reviewed and improved. A meeting between FIFA, the Supreme Committee and BWI is envisaged to take place in Doha regarding this topic. FIFA intends to address this matter at the next available opportunity.
- (14) In relation to the preparation and hosting of the 2022 FIFA World Cup Qatar™, the Parties agree to enhance their cooperation for contributing to resolve workers' complaints on serious violations of the standards of the OECD Guidelines in case they are not adequately addressed by existing mechanisms.

Capacity building

- (15) The Parties will discuss options for increasing capacity building on decent and safe work for all actors involved (e.g. contractors, subcontractors, workers) in cooperation with the competent local authorities.

Follow-up

The Parties concluded that there is a need for a continuing regular dialogue between them. They agreed on a series of follow-up activities:

- (16) The Parties agree to meet regularly, at least twice a year to update each other about the human rights situation on the ground and to identify areas of cooperation to contribute to ensuring decent work and safety in the workplace for migrant construction workers until the completion of the 2022 FIFA World Cup Qatar™.
- (17) The Parties agree to continue their discussion on capacity building measures for contractors, sub-contractors and workers in Qatar and to cooperate in their implementation whenever possible.
- (18) The Parties agree to meet within nine months after the publication of the Final Statement under the auspices of the Swiss NCP. They will send a report about the progress made regarding the Joint Outcome to the Swiss NCP six months after the publication of the Final Statement. After reception of the reports, the Swiss NCP will organise a meeting with both Parties. Based on the reports and the discussion with the Parties, the Swiss NCP will decide about additional follow-up periods and/or meetings if needed.

4. Conclusions and follow-up

Both Parties engaged throughout the entire mediation process in a very constructive manner. They demonstrated a firm willingness throughout the process to find a mutually satisfying resolution of the issues raised in the submission.

The Swiss NCP welcomes:

- the resolution of the issues raised by the submitting party;
- the institutionalization of the dialogue regarding human rights between FIFA and stakeholders including BWI through the Human Rights Advisory Board established by FIFA;
- the commitment by both Parties to meet regularly, at least twice a year, to update each other about the human rights situation on the ground and to identify areas of cooperation to contribute to decent work and safety in the workplace for migrant construction workers until the completion of the 2022 FIFA World Cup Qatar™;
- the Parties' agreement to continue their discussion on capacity building measures for contractors, sub-contractors and workers in Qatar and to cooperate in their implementation whenever possible.

The Swiss NCP will follow-up on this specific instance as agreed by the Parties (see para. 3 (18)) :

- The Parties agree to meet within nine months after the publication of the Final Statement under the auspices of the Swiss NCP. They will send a report about the progress made regarding the Joint Outcome to the Swiss NCP six months after the publication of the Final Statement. After reception of the reports, the Swiss NCP will organise a meeting with both Parties.
- Based on the reports and the discussion with the Parties, the Swiss NCP will decide about additional follow-up periods and/or meetings if needed.

With this Final Statement, the Swiss NCP closes the specific instance.