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Big Sports Have Big Environmental and Social Consequences

*Gina S. Warren**

ABSTRACT

Big sporting events result in significant and long-lasting environmental and social consequences for host cities and their residents. This Article discusses the spectrum of harms including environmental degradation, excess energy consumption, sidestepping the rule of law, and social segregation through eviction. It outlines the current inefficient, or nonexistent, legal framework available to address these harms and analyzes how this lack of legal framework results in host cities relinquishing local control and oversight to event organizers. It then draws upon the social license literature and recommends host cities establish a solid legal framework prior to an event to reduce the emergency mindset as an event nears as well as to ensure public participation in the decision-making process. While it is difficult to promulgate a one-size-fits-all legal framework, certain factors such as transparency, meaningful participation, sustainability of decision-making, and concrete procedural mechanisms are critical to preventing and addressing environmental and social harms.

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“Never doubt that a small group of thoughtful committed citizens can change the world. Indeed it is the only thing that ever has.”¹

I. INTRODUCTION

Mega sporting events – like the FIFA World Cup, the Olympics, and the Super Bowl – promise fame and fortune to the host cities, with the lure of funding for new infrastructure and community projects and a boost in tourism for the event and beyond. Just as the athletes compete in their sport’s biggest showcase, cities dream of urban revitalization, an improved economy, and a better quality of life for residents. Past experience has shown, however, that host cities do not always reap the benefits of these events. Instead, these events can generate significant environmental and social consequences.

The environmental consequences involve everything from building new stadiums, hotels, parking lots, and other infrastructure to handling the sanitation from all those toilets. Carbon emissions that contribute to climate change are also a serious concern. While some organizers tout policies for offsetting carbon emissions generated by an event, those policies provide little comfort in a time when the world needs to reduce carbon emissions, not just offset extra carbon being generated by an event. Further, the offsets do not account for heaps of trash and food waste, energy consumption to power the stadium, water consumption for toilets, and irrigating fields and nearby areas.

The social consequences are equally significant, including everything from social segregation to a failure to follow the rule of law. The ambition of hosting a mega sporting event encourages cities to relax their rules for urban development and restructuring. This may be because of the short timeframe for hosting the event, or it may be that cities receive significant internal and external pressure to satisfy their obligations for the event. For example, in the run up to the 2014 World Cup and the 2016 Olympics in Brazil, “flash votes” were held without the usual mandatory public debate, resulting in the demolition of two national historical structures. This disregard for community involvement is especially egregious when much of the cost for these events is borne by public funding. Further adding insult to injury, most local residents cannot afford to attend these mega events, which are marketed toward the elite foreign traveler.

Little legal framework exists to regulate these transient pop-up cities created by mega sporting events. While there are a handful of United Nations treaties on sports, mostly recognizing the general right to participate in and have access to sporting and recreational events, no international treaty addresses the social, economic, and environmental externalities of these temporary events.² The closest is Agenda 21, adopted by United Nations

1. FRANK G. SOMMERS & TANA DINEEN, CURING NUCLEAR MADNESS 158 (1984) (quoting Margaret Mead).

2. United Nations Environment Programme, *Policies*, <https://www.unenvironment.org/civil-society-engagement/policies> [perma.cc/KT2H-DPX2] (last visited Feb. 25, 2020).

member nations in 1992 (and adopted by the International Olympic Committee in 1999), which provides a general framework for environmental sustainability through improved socioeconomic conditions, conservation, and management of resources and strengthened community participation.³ Agenda 21 does little, however, to address the unique temporary nature of mega sporting events.

It is time to more holistically address the negative consequences. So what might work? One possibility is using social licenses, a concept that originated with mining and energy industries operating in developing nations. After unbridled environmental damage – and the ensuing reputational hits – during the 1990s, the World Bank encouraged mining and energy industries to use social licenses. These social licenses, which are essentially ongoing agreements with local governments and other stakeholders to indicate local acceptance of a project, helped identify and address concerns about the environmental and human cost of the transitory mining and drilling activities.

Over the last few decades, societies around the globe have begun to shift to more informed and involved decision-making, with an eye toward sustainable practices. Social licenses are part of that shift, legitimizing stakeholder decisions and providing a framework for managing expectations. This Article will explore the benefits of social licenses, but ultimately argues for adoption of a more substantive legal framework that cities can rely upon to encourage a fair allocation of the benefits and costs associated with the event. Establishing a legal framework would help avoid event seizure and emergency-type behavior that create significant social and environmental harms to host cities.

Part II will discuss the allure of mega sporting events and how reality is far from the illusion of splendor. While most cities believe that a sporting event will bring them fortune and prosperity, in most instances it only brings hardship and harms – particularly to the lowest socio-economic groups.

Part III will review the current framework for sustainability, which includes corporate social responsibility measures implemented by some sporting associations and an optimistic international framework that was adopted by the International Olympics Commission, which has fallen short in its efforts.

Part IV will analyze the two main culprits that have aided in generating the greatest social and environmental harms to local communities. First, it will discuss the “emergency mindset” utilized by sporting associations and local politicians to sidestep protective legal mechanisms. Second, it will outline what has been termed “event seizure” and discuss how outside forces have reached in to take control to impair local community benefits and inclusiveness.

Part V posits the idea of adopting elements associated with social licenses to operate previously utilized by the mining and fossil fuel industries

3. United Nations Sustainable Development, *United Nations Conference on Environment & Development*, AGENDA 21 (June 3–14, 1992), <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> [perma.cc/KD6A-K6YN].

when extracting minerals in emerging countries. This Section sets forth recommendations for a preemptive legal framework to combat against the environmental and social harms outlined in this Article. Some of the key elements of the legal framework include full disclosure and transparency of process and information; full community involvement in the decision-making process; ongoing communication and commitment to sustainability; and longevity of community investments plus a procedural mechanism to ensure the current ruling regime adheres to all legal provisions.

Part VI concludes that mega sporting events have created serious environmental and social harms to citizens within the host cities and encourages potential host cities to consider implementing a framework that will provide some level of structure if and when their city becomes the next mega event host.

II. THE THRILL OF VICTORY AND THE AGONY OF DEFEAT⁴

“Since time immemorial, people have entertained themselves with sports. Sports are emblematic of health, with the best matches played by athletes in peak physical form.”⁵ Just as mega sporting events showcase athletes, host cities hope to show the world their own vitality and their top physical form. Past experience, however, has shown that host cities do not always benefit from hosting these events and can instead be burdened by significant negative social, economic, and environmental externalities.

Major cities around the globe covet the opportunity to host mega sporting events. Scholarship in the fields of psychology and sociology suggest that the cities are seeking two major forms of benefit: investments and urban (re)development.⁶ They dream of urban revitalization, an improved economy, and an improved quality of life for their citizens.⁷ In fact, mega sporting events do tend to channel investment into the city either through outside private investments from multi-national corporations or through

4. Jim McKay: “Spanning the globe to bring you the constant variety of sports . . . the thrill of victory . . . and the agony of defeat . . . the human drama of athletic competition . . . This is ‘ABC’s Wide World of Sports!’” Jim McKay, *Opening Sequence for “ABC’s Wide World of Sports,”* (starting 1961), <https://www.imdb.com/title/tt0190895/> [perma.cc/WT2U-XB6N].

5. Charles W. Schmidt, *Putting the Earth in Play: Environmental Awareness and Sports*, 114 ENVTL. HEALTH PERSP. A286, A287 (May 2006).

6. Thêmis Aragão & Wolfgang Maennig, *Mega Sporting Events, Real Estate, and Urban Social Economics – The Case of Brazil 2014/2016*, 47 HAMBURG CONTEMPORARY ECONOMIC DISCUSSIONS 1, 1 (2013) (“Many academic studies covering mega sporting events ask why such events gain so much importance in the agendas of many governments . . . [and] highlight two major interpretations. First, the Olympics are understood to be a transmission channel in which multinational corporations allied with the IOC can generate large amount of cash with little public accountability. Second, hosting mega events can be considered a tool for urban development and entrepreneurialism”) (citations omitted).

7. *Id.* at 2.

governmental spending of public funds.⁸ Either way, the event promises to act as a catalyst to build long overdue transportation systems, parks, schools, and hospitals,⁹ “provid[ing] a stream of future benefits to local populations.”¹⁰ Unfortunately, even as event organizers profess sustainable community initiatives, “[i]ntent and implementation aren’t one and the same” and all too often cities and organizers fall short in their obligations.¹¹

A. “*I Coulda Been a Contender*”¹²

1. The Energy/Environmental Footprint

Environmentally, large sporting events generate a huge footprint in terms of their use and abuse of natural resources.¹³ Carbon emissions generated by the event can be substantial, leading some organizers to purchase carbon offsets in an attempt to mediate the damage.¹⁴ Even though “[o]ffsetting carbon emissions from spectator events is a noble gesture,”¹⁵ in a time when the world needs to reduce carbon emissions, it is little comfort to announce that an event is offsetting the extra carbon being generated. The main event also results in large amounts of spectator-related trash and food waste, increased energy consumption,¹⁶ and water consumption for bathrooms and irrigating fields and nearby areas.¹⁷ This is in addition to the energy

8. *Id.* at 1.

9. For example, for the 2016 Summer Olympics in Rio, the goal was to transform the city with “improved infrastructure, cleaner water, and more schools.” Lindsay Gibbs, *Six Months After the Olympics, Rio is Worse Off Than Ever*, THINK PROGRESS (Feb. 22, 2017), <https://thinkprogress.org/six-months-after-the-olympics-rio-is-worse-off-than-ever-99d2c815bca3/> [perma.cc/ZT2L-DRVVB].

10. Andrea Collins, et al., *Assessing the Environmental Impacts of Mega Sporting Events: Two Options?*, 30 TOURISM MGMT. 828, 829 (2009).

11. Schmidt, *supra* note 5, at A289 (“Despite successful bids, some host cities have found their Olympic sustainability obligations hard to meet.”).

12. ON THE WATERFRONT (Horizon Pictures 1954).

13. Schmidt, *supra* note 5, at A287.

14. Alex B. Porteshawver, *Green Sports Facilities: Why Adopting New Green-Building Policies Will Improve the Environment and the Community*, 20 MARQ. SPORTS L. REV. 241, 249 (2009); Collins, *supra* note 10, at 829.

15. Schmidt, *supra* note 5, at A291.

16. In addition, to the energy required to power the stadium, these events increase electricity use worldwide as spectators are tuning in via their mobile devices. “[T]he Carbon Trust has shown that people watching football via mobile-data phone connections multiply their footprint 10-fold in comparison with television or WiFi viewing.” Toby Miller, *Greenwashed Sports and Environmental Activism: Formula 1 and FIFA*, 10 ENVTL. COMM’N 719, 724 (2016) (citing CARBON TRUST, CARBON FOOTPRINT OF THE FA COMMUNITY SHIELD (2013), <http://www.carbontrust.com/media/360767/carbon-footprint-infographic.pdf> [perma.cc/G78A-RG4D]).

17. Porteshawver, *supra* note 14, at 249; Collins et al., *supra* note 10, at 829.

consumption, deforestation, pollution, and waste associated with constructing new buildings, parking lots, apartments, and other permanent structures.¹⁸

The United Nations Environment Programme (“UNEP”) lists some of the most common negative environmental externalities:

- Development of fragile ecosystems or scarce land for sport
- Noise and light pollution from sport
- Consumption of non-renewable resources (fuel, metals, etc.)
- Consumption of natural resources (water, wood, paper, etc.)
- Emission of greenhouse gases by consuming electricity and fuel
- Ozone layer depletion (from refrigerants)
- Soil and water pollution from pesticide use
- Soil erosion during construction and from spectators
- Waste generation from construction of facilities, and from spectators.¹⁹

UNEP’s mission is “[t]o provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.”²⁰ It has one of the first, and most active, programs in the world intended to promote environmental awareness through sporting activities.²¹ UNEP helped develop environmental sustainability guidelines “Agenda 21” that were ultimately adopted by the International Olympic Committee (“IOC”) in 1999.²² Given the history of negative implications,²³

18. “[M]aterials are often transported long distances on trucks that emit large amounts of greenhouse gas emissions,” which emphasizes the need to use local labor and products. Porteshawver, *supra* note 14, at 249.

19. DAVID CHERNUSHENKO, ET AL., UNITED NATIONS ENVIRONMENT PROGRAMME: SUSTAINABLE SPORT MANAGEMENT: RUNNING AN ENVIRONMENTALLY, SOCIALLY, AND ECONOMICALLY RESPONSIBLE ORGANIZATION 6 (2003).

20. United Nations Environment Programme, *About UN Environment Programme*, <https://www.unenvironment.org/about-un-environment> [perma.cc/ER3F-X3SV].

21. Schmidt, *supra* note 5, at A288.

22. *Id.*

23. The IOC is not a poster child for sustainability. It has a long history of social and environmental harms, some of which are outlined here: Arnout Geeraert & Ryan Gauthier *Out-of-control Olympics: Why the IOC is Unable to Ensure an*

including those at the Brazil 2016 Olympics, however, it appears that this agenda is insufficient to reach the goals it sets.

As noted previously, organizers and host cities generally agree that they will prevent additional environmental externalities and work to clean up existing water, air, or land contaminations. For example, Brazil is known to suffer from significant water quality issues.²⁴ A 2016 investigation found that Rio's waters "were 1.7 million times more hazardous than waters on a South Carolina beach,"²⁵ with a substantial percentage of Brazil's beaches "in bad or terrible condition."²⁶ With the promise of hosting the Olympics came the promise of cleaner water for Brazil's communities. Unfortunately, little was done before the Olympics to improve the water quality, and during the event, officials reportedly used screens and other makeshift measures "to keep floating sofas, logs and dead animals from crashing into boats during the sailing events."²⁷ In the year since the Olympics, Guanabara Bay remains highly contaminated, generating a stench recognizable along the interstate from the airport to the city.²⁸ This is the same Guanabara Bay that is one of the "seven natural wonders of the world."²⁹ It is the largest natural deep-water bay in the world, surrounded by mountains and sheltering 130 islands.³⁰ Most famously, Rio's Christ the Redeemer statute stands, arms outstretched, overlooking the Bay.³¹ Nonetheless, a recent report suggests it will take at least twenty-five years of adequate attention and investment to clean up the sewage in Guanabara Bay.³²

Further complicating matters is the pop-up nature of these events, and the determination of what infrastructure, if any, is intended to remain or be utilized after the event. For example, for the 2018 Winter Olympics in South

Environmentally Sustainable Olympic Games, 20 J. OF ENVTL. POL'Y & PLANNING 16 (2018).

24. Gibbs, *supra* note 9.

25. *Id.*

26. Stephen Wade & Renata Brito, *Rio's Olympics 1 Year Later: The Good, the Bad and the Ugly*, ASSOCIATED PRESS (July 28, 2017), <https://apnews.com/374e490327344fe1adb15c1d49f64724> [perma.cc/JBP5-G9BA].

27. *Id.*

28. *Id.*

29. Winfield Parks, *Harbor of Rio de Janeiro, Brazil*, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.org/photo/harbor-peninsula-990-61084/> [perma.cc/3DSR-544H].

30. *Guanabara Bay, Brazil*, ENCYCLOPEDIA BRITANNICA, <https://mail.lacgeographic.com/guanabara-bay-brazil> [perma.cc/T87C-LBY2].

31. *Christ the Redeemer*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Christ-the-Redeemer> [perma.cc/J9XJ-ZQ27].

32. Gibbs, *supra* note 9. Another example is the Athens Olympics, which many viewed as an environmental disgrace in their failure to use sustainable construction practices and to utilize renewable energy, even after both were promised. Schmidt, *supra* note 5, at A289.

Korea, organizers constructed a \$110 million, 35,000-person stadium,³³ which was torn down shortly afterward.³⁴ No doubt the sustainability concerns in organizing and hosting these types of mega events are not simple;³⁵ Decision-makers must consider existing conditions as well as the potential for new environmental externalities and analyze how they interplay with existing and potential social, cultural, and economic conditions.³⁶

One study conducted by professors at Cardiff University in the United Kingdom looked at different models to assess the ecological footprints of a major event – the Football Association Challenge Cup Final (English domestic football).³⁷ The impact elements included: travel, food and water, infrastructure, and waste.³⁸

The study found that when applying the Footprint Model,³⁹ the average attendee generates a footprint seven times greater than someone “going about normal every day activity.”⁴⁰ The main reason for this significant increase is

33. Joe Eaton, *It's Time for the Pop-Up Olympics*, CITYLAB (Feb. 9, 2018), <https://www.citylab.com/life/2018/02/its-time-for-the-pop-up-olympics/552896/> [perma.cc/U9BU-NLSQ] (“The 35,000-seat pentagonal Olympic Stadium is an extreme example of pop-up architecture, a mega-event venue with a planned lifespan shorter than the career of an aerial snowboarder. The stadium will be used four times in all – for the opening and closing ceremonies of the Winter Games and Paralympics. Then it’s slated to be torn down.”).

34. Jungah Choi, *One Year After the PyeongChang Olympics: What Happens to the Olympic Venues?*, SPORT HERITAGE REV., <https://sportheritagereview.com/2018/12/13/one-year-after-the-pyeongchang-olympics-what-happens-to-the-olympic-venues/> [perma.cc/A6DV-PWKE].

35. Collins et al., *supra* note 10, at 830.

36. *Id.* Decision makers must look at “the nature of the trade-offs between economic, environmental and social impacts of events; and how far losses in one ‘area’ can be made up in others.” *Id.*

37. *Id.* at 831. Andrea Collins and her team acknowledge that it is “unlikely that one set of quantitative tools can provide information to assist in every element of a sustainability assessment”; however, they choose a few types of impacts and using the Footprint model, assess the ecological footprints of a major event – the FA Cup Final. *Id.* at 830–31.

38. *Id.* at 831.

39. “The Ecological Footprint . . . is an aggregated indicator of the global ecological impact of resource consumption In most cases Footprint techniques are used to show the area of bio-productive land required to provide the resources for a reference population and assimilate their waste.” *Id.* The Footprint technique estimates the bio-capacity of land and sea resources of various capacity and reports the area footprint in terms of a standardized unit. *Id.* Once the area of land required to support a reference population or event is calculated, this number “can then be compared to a global average which has been estimated to be around 1.8 global hectares per capita.” *Id.*

40. *Id.* at 831–32. (“Although this study accounted for four Footprint components in its calculation (travel, food and drink, event infrastructure and waste), if the total Footprint for the average visitor at the event is compared with the average ‘earthshare’ per person per day (i.e. 0.0049 gha), the impact is almost nine times greater.”).

due to the change in consumption patterns of attendees and event visitors,⁴¹ with travel to and from the event being the biggest change, accounting for 54% of the overall footprint.⁴² The consumption of food and drink, and the “large amounts of energy and resources to produce it” makes up the next largest part of the footprint.⁴³ The study apportioned a very small footprint to the stadium itself (here the Millennium Stadium in Cardiff, Wales), in part because the footprint was amortized over a 100-year life span.⁴⁴ 100 years, however, is an optimistic view of the longevity of a sporting stadium. Instead, it is more likely that the stadium will become obsolete within a few decades as new technologies are introduced, new urban development occurs, and “as other cities continue to offer luxury facilities to teams searching for new or better homes.”⁴⁵ National Football League (“NFL”) stadiums in the United States, for example, only have a median age of thirty-one years before they are replaced with the next best thing.⁴⁶ In any event, another difficult issue is assessing the global impact of these events. For example, “[t]here is little in the way of a blueprint or accepted strategy by which the holistic global and local environmental consequences of major sporting events hosting can be assessed and minimised.”⁴⁷

The amount of energy consumed and pollution emitted due to any specific event is not always easy to ascertain or measure; however, one example is the 2012 Super Bowl at Lucas Stadium, in Indianapolis, Indiana.⁴⁸ To attend a game that lasted three hours and twenty-three minutes, spectators consumed some 15,000 megawatts (“MW”) of energy (enough to power 1,400 average homes for over a year).⁴⁹ This number does not include estimates for all other areas of energy consumption, including spectator transportation and lodging, which can account for another fifty percent of the total emissions.⁵⁰

41. *Id.* at 832.

42. *Id.*

43. *Id.* (“Food waste, and food and drink packaging accounted for 80% and 11% of this waste Footprint figure respectively.”).

44. *Id.*

45. Porteshawver, *supra* note 14, at 250.

46. Chris Isidore, *The Short Life of an NFL Stadium*, CNN MONEY (Sept. 8, 2014), <http://money.cnn.com/2014/09/08/news/companies/nfl-stadiums/index.html> [perma.cc/H3SS-ATXM].

47. Collins et al., *supra* note 10, at 830.

48. The final score of the game was 21-17, New York Giants over the New England Patriots. Julian Linden, *2012 Super Bowl Scoring Summary*, REUTERS (Feb. 5, 2012) <https://www.reuters.com/article/us-nfl-superbowl-score/2012-super-bowl-scoring-summary-idUSTRE81505520120206> [perma.cc/QF2C-Q67X].

49. Press Release, Green Mountain Energy, Super Bowl XLVI Goes Green (Jan 27, 2012) <https://www.greenmountainenergy.com/our-story/news-room/press-releases/1059-super-bowl-xlvi-goes-green/#> [perma.cc/79NB-4J7Z].

50. See Collins et al., *supra* note 10, at 832 (noting “the largest driver of the Ecological Footprint in this event case was consumption linked to visitor travel patterns. Event-related travel led to an estimated 54% of the total Footprint, and with car travel accounting for around two-thirds of this.”).

Other less obvious sporting events also create environmental and energy harms. For example, the Boston Marathon results in 10,000 bags of garbage, including 1.4 million water cups, clothing, and other rubbish discarded by participants and spectators.⁵¹

2. Social Externalities

In addition to environmental externalities, mega sporting events also cause, and exacerbate existing, social externalities. Rio de Janeiro provides a recent example of community initiatives falling far short of expectations and obligations. In preparation for the 2007 Pan-American Games, Rio spent approximately \$934,000 to revitalize existing structures and to build new infrastructure and real estate projects.⁵² The event “was considered a success and gave Brazil the advantage in the race to host other events,”⁵³ like the 2014 FIFA World Cup and the 2016 Summer Olympics. In preparation for the 2016 Summer Olympics, Rio invested another \$12–20 billion.⁵⁴ Some of the money was invested in a new subway line extension, a high-speed bus line, and a revitalized port area.⁵⁵ Much of the money, however, was spent on now unused and decaying stadiums and arenas⁵⁶ as well as 3,600 newly constructed apartments that are now boarded up and unused.⁵⁷ While Rio did end up with an improved transportation system and a revitalized port area, many see these improvements as solely for the benefit of foreigners and

51. Ryan Maia, *In Eco-Friendliness, Boston Marathon Finished Neither First Nor Last*, CLIMATE ACTION BUS. ASS’N. (Apr. 12, 2018), <https://cabaus.org/2018/04/12/eco-friendliness-boston-marathon-finishes-neither-first-last/> [perma.cc/YGP9-N43P].

52. Aragão & Maennig, *supra* note 6, at 4–5.

53. *Id.*

54. *Id.*; Wade & Brito, *supra* note 26.

55. Wade & Brito, *supra* note 26.

56. Much of the infrastructure constructed for these mega sporting events is abandoned following the games. Examples include Rio, where remnants of the Olympic practice pool can be seen deteriorating and a 3,600-unit apartment building where competitors stayed are now vacant. Emmett Knowlton, *Here Is What the Abandoned Venues of the Rio Olympics Look Like Just 6 Months After the Games*, BUS. INSIDER (Feb. 13, 2017), <https://www.businessinsider.com/rio-olympic-venues-are-abandoned-just-6-months-after-games-2017-2> [perma.cc/RAW3-CJCM]. Other examples include the Silverdome in Pontiac, Michigan and the Athens Olympics baseball stadium. Eric Levenson, *Turner Field is the Latest in a Long Line of Abandoned Olympic Stadiums*, THE ATLANTIC (Nov. 12, 2013), <https://www.theatlantic.com/international/archive/2013/11/turner-field-latest-long-line-abandoned-olympic-stadiums/355107/> [perma.cc/L4RM-HKKU]; Megan Willett & Cork Gaines, *Haunting Photos Show How Run-Down the Abandoned Silverdome has Become*, BUS. INSIDER (Jan. 1, 2017), <https://www.businessinsider.com/inside-pontiac-silverdome-detroit-lions-stadium-2017-1> [perma.cc/HF6C-G6DD].

57. Wade & Brito, *supra* note 26. In addition, “Deodoro, a major complex of venues in the impoverished north, is shuttered behind iron gates.” *Id.*

tourists, with local needs such as schools, hospitals, police, and clean water left behind.⁵⁸

One of the major arguments cities make for wanting to host these mega sporting events is that their citizens will receive immediate and future social benefits.⁵⁹ Unfortunately, the lowest socioeconomic groups within the city generally do not fare well. Instead, they are met with social inequities such as eviction that further segregate poorer families from the more economically robust parts of the city.⁶⁰ Indeed, “even families that are not located on the perimeter of sports venues are being removed under the justification that tourist areas cannot accommodate slums,” especially when in the media spotlight.⁶¹

Huge investments in targeted areas can cause rent to rise to a point where current residents can no longer afford to remain. In Rio, for example, 417 families in the Alemão Complex were forced to leave their homes because their rent had more than doubled since the improvements.⁶² When families are forced to relocate, parents end up living further from their work, resulting in increased transportation costs and job losses.⁶³ Social scientists label this “spatial mismatch,” which refers to a mismatch between where low income job seekers reside and where suitable job opportunities exist, leading to joblessness among the most disadvantaged.⁶⁴ In addition, relocation forces children to find new schools.⁶⁵ Schools with vacancies are hard to find, and families end up pulling their children out of school until they can find a school nearby,⁶⁶ potentially resulting in a generation deprived of education.

3. Sidestepping Community Participation and Debate and the “Emergency” Mindset

The ambition of hosting a mega sporting event, like the Olympics, the Super Bowl, or a Formula 1 race, tends to encourage cities to sidestep or

58. *Id.*

59. Aragão & Maennig, *supra* note 6, at 2.

60. *Id.* at 13 (“One of the major discourses used to justify hosting mega sporting events is the social legacy for the city. Considering the process of economic growth and the availability of credit to build social housing in the country, the expected result would be the reduction of social inequities. Nevertheless, urban mobility projects the renovation of surroundings of sporting venues, often including forced evictions of low-income populations and the consequent expansion of social segregation.”).

61. *Id.* at 14.

62. *Id.* at 6.

63. *Id.* at 13.

64. See generally John F. Kain, *The Spatial Mismatch Hypothesis: Three Decades Later*, 3 HOUSING POLICY DEBATE 2, 371 (1992), https://inequality.stanford.edu/sites/default/files/media/_media/pdf/Reference%20Media/Kain_1992_Transportation.pdf [perma.cc/ASP2-B3CA].

65. Aragão & Maennig, *supra* note 6, at 14.

66. *Id.*

ignore existing procedural rules for urban development and restructuring. This may be because of the emergency mentality that comes along with planning these events. Host cities must act quickly to meet internal and external pressures to satisfy their obligations for the event. As a result, many host cities will work around existing obstacles, such as procedural processes, to ensure obligations are met.⁶⁷ In the run up to the 2014 World Cup and the 2016 Olympics in Brazil, for example, politicians in Rio de Janeiro executed “flash-votes” that allowed the Legislative Assembly to push through emergency bills to (1) lift the ban of consumption of alcohol at stadiums; and (2) annul the laws that protected historical architecture and patrimony of certain existing stadiums.⁶⁸ These laws were changed without going through normally required procedures for notice and public hearing.⁶⁹ The result: demolition of two historically protected stadiums (Sambodromo and Maracana)⁷⁰ and the commencement of construction of a new stadium project to facilitate the World Cup and Olympics.⁷¹

This is not only disconcerting because of the disregard for community involvement and discussion it reflects, but also because the cost of hosting these events is considerable and born mostly by public funding.⁷² In the United States, for example, citizens have paid for sports stadiums through publicly subsidized financial mechanisms, including general sales taxes.⁷³ In Australia, much of the \$30 million (compounded by 15%) annual cost of hosting the Formula 1 Grand Prix is paid through public funds.⁷⁴ As one scholar noted, “Again and again, studies of the economic impact of relocating

67. Miller, *supra* note 16, at 723.

68. Aragão & Maennig, *supra* note 6, at 6.

69. *Id.*

70. This was most likely done in violation of the IOC’s Agenda 21, which requires: “Sports activities, facilities and events must be so arranged as to ensure the protection of conservation areas, the countryside, the cultural heritage and natural resources as a whole.” INT’L OLYMPIC COMM., OLYMPIC MOVEMENT’S AGENDA 21: SPORT FOR SUSTAINABLE DEV. (1999), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Olympism-in-Action/Environment/Olympic-Movement-s-Agenda-21.pdf> [perma.cc/R38M-YKQL].

71. Aragão & Maennig, *supra* note 6, at 6.

72. *Id.* at 21 (“For the realization of these events, large sums of public funds have been invested in urban infrastructure and logistics.”).

73. Porteshawver, *supra* note 14, at 249; *see also* Matthew J. Parlow, *Publicly Financed Sports Facilities: Are they Economically Justifiable? A Case Study of the Los Angeles Staples Center*, 10 U. MIAMI BUS. L. REV. 483, 487 (2002) (analyzing the economics of publicly funded stadiums in the United States and noting: “On the whole, publicly financed sports facilities are rarely justifiable for municipalities or other government entities.” The Staples Center in Los Angeles was an exception.).

74. Miller, *supra* note 16, at 721. Adding insult to injury, economists calculate that the state of Victoria lost \$60.6 million on the 2012 Grand Prix. *Id.* (citing Rod Campbell, *Blowout! A Cost Benefit Analysis of the Australian Grand Prix*, ECONOMISTS AT LARGE (Feb. 2013), <http://www.ecolarge.com/work/blowout-a-cost-benefit-analysis-of-the-australian-grand-prix/>) [perma.cc/YJ3E-D937].

sports teams, subsidizing stadia, attracting international events, and the like have shown the spuriousness of public subsidies for such enterprises.”⁷⁵ Further adding insult to injury, the majority of the local citizens cannot afford to attend these mega events, which are targeted toward the elite foreign traveler.⁷⁶ Whether the events bring material or long-term economic benefit to the host cities is the subject of some debate; few ex-post analyses of mega-sporting events are conducted, and those that are yield somewhat uncertain results.⁷⁷

III. CURRENT FRAMEWORK FOR SUSTAINABILITY

International and national⁷⁸ sports associations are responsible for organizing mega sporting events that result in social, economic, and environmental damage locally and globally. At this point, no holistic legal framework exists to address these harms. Some sports associations, like the NFL, have adopted non-binding social responsibility measures to encourage sustainable practices. Those measures, however, are voluntary, self-promoting, and not sufficient to protect host cities⁷⁹ Likewise, in 1999 the IOC adopted Agenda 21, which is a United Nations framework generally dedicated to improving socio-economic conditions and encouraging sustainable development.⁸⁰ Like corporate social responsibility measures, the framework is voluntary and has proven to be deficient.

75. *Id.*

76. *Id.* at 719 (“They serve as advertisements for heavy industry, are designed for elite as much as mass consumption, and provide sponsors with dubious social licenses to operate.”).

77. See, e.g., Robert A. Baade & Victor Matheson, *Going for the Gold: The Economics of the Olympics*, 30 J. ECON. PERSP. 208 (2016).

78. The NFL, for example, is not an international organization; however, its Super Bowl draws fans from all over the world. Darren Heitner, *International Audience Willing to Travel for Super Bowl 51*, FORBES (Feb. 3, 2017) <https://www.forbes.com/sites/darrenheitner/2017/02/03/international-audience-willing-to-travel-for-super-bowl-51/#619243ed3c88> [perma.cc/84HN-RKQ5]. The 2017 Super Bowl hosted in Houston, Texas, saw nearly 8% of its total ticket sales from international travelers from 20 different countries. *Id.*

79. While the NFL has made voluntary sustainability commitments in waste reduction, construction, and carbon offsetting, six stadiums still operate without any commitments to sustainability in place. See *Energy Efficiency in the NFL: Declaring a Champion*, CHESTER ENERGY & POL. (Oct. 24, 2017), <http://chesterenergyandpolicy.com/2017/10/24/energy-efficiency-in-the-nfl-declaring-a-champion/> [perma.cc/AM9S-PS543].

80. OLYMPIC MOVEMENT’S AGENDA 21: SPORT FOR SUSTAINABLE DEVELOPMENT, *supra* note 70.

A. Corporate Social Responsibility Measures in the Sports Industry

A sustainable sports movement is underfoot with many organizers now moving – at least as lip service⁸¹ – toward more environmentally-friendly planning and sustainability goals. Many sporting organizations now have stated strategies for green building construction, eco-friendly event hosting, renewable energy powered facilities, waste avoidance, and water conservation.⁸²

The two strategies that have received the most attention are use of green building construction and renewable energy to power the facilities. For example, the International Federation of Association Football's ("FIFA's") Green Goal program "aimed to make the [2006] World Cup the most environmentally friendly ever, working to reduce resource use in terms of water, refuse, energy and transport, and with plans to offset the 100,000 tonnes of carbon emissions which were expected to be generated by the event."⁸³

While FIFA is known for "routinely sidestep[ping] sovereignty over space and people," it has worked to implement environmental policies aimed at reducing global warming, environmental conservation, and sustainability practices.⁸⁴ Some examples include the installation of solar panels on stadiums to the purchase of offsets for its events.⁸⁵ South Africa used biogas and wind to power the 2010 World Cup Finals, and some of the team jerseys were made from recycled products.⁸⁶ Unfortunately, FIFA and other event organizers have ignored the consequences of travel when promoting green energy policies,⁸⁷ and as will be discussed infra, travel can make up some 54% of the event's overall footprint.⁸⁸ According to one report, the 2010 South Africa World Cup Finals "had the largest carbon footprint of any commercial

81. Schmidt, *supra* note 5, at A288. The choice of Beijing to host the Summer Olympics highlights the lip-service given to environmental concerns, but the lack of true commitment. "'Let's not kid ourselves,' Crawford says. 'The Olympic Movement is global, the Games can't always be held in the same continents. Beijing's air quality is bad, so the Chinese are using the Olympics for a public environmental education campaign. They are keenly aware they have a problem; the Olympics can be a positive catalyst for change.'" *Id.*

82. Collins et al., *supra* note 10, at 830. "Whilst the environmental impact of both 'day to day' sports activities and organizations' own processes has received attention, the most high profile contribution that such agencies have made has been the attempt to 'green' mega sporting events." *Id.* at 829.

83. *Id.* at 830; *see also* Miller, *supra* note 16, at 723 (noting that these offsets were through projects in India and South Africa).

84. Miller, *supra* note 16, at 723

85. *Id.*

86. *Id.* ("But South Africa has one of the worst records in the world in its neglect of alternative energy.")

87. *Id.* ("But the data excluded international travel – a crucial difference between environmental audits that focus on one country but do not consider wider ecological impacts. This has led to accusations of greenwashing.")

88. Collins et al., *supra* note 10, at 832.

event in world history, twice that of the 2008 Beijing Olympics” due in part to the high volume of European travelers and a lack of public transportation.⁸⁹ 850,000 metric tons of greenhouse gas were emitted during this event – 65% of which was through construction and aviation transportation.⁹⁰

The NFL has initiated an environmental program, planning “a series of initiatives to minimize the impact of Super Bowl activities on the local and global environment.”⁹¹ Its stated goal is to “leave a ‘green’ legacy” with the host city after the event.⁹² And over the last several years, energy use at the Super Bowls has been offset by purchase of renewable energy credits. For example, in 2012 the Environmental Protection Agency calculated that the Super Bowl emitted some 642 metric tons⁹³ of greenhouse gases (the equivalent of 1,538,653 miles driven by an average passenger vehicle) and consumed some 15,000 MW of energy (enough to power 1,400 average homes for a year),⁹⁴ which was offset by the purchase of renewable energy credits. Renewable energy credits were purchased (or donated) from 2013 to 2017.⁹⁵

89. Miller, *supra* note 16, at 723 (“In the absence of high-speed rail and adequate existing stadia, 850,000 tons of carbon were expended, 65% through construction and flying (there were some improvements to municipal mass transit).”).

90. *Id.*

91. *Super Bowl XLVIII: Thirty-Five Events in NYC, New Jersey Area*, NFL: NEWS (Jan. 17, 2014), <http://www.nfl.com/news/story/0ap2000000314654/article/super-bowl-xlvi-30th-anniversary-30-days-in-nyc-new-jersey-area> [perma.cc/6BL3-D9TS].

92. *Houston Super Bowl LI: Leaving a Green Legacy*, JUST VIBE (Jan. 30, 2017), <https://justvibehouston.com/houston-super-bowl-li-leaving-green-legacy/> [perma.cc/CZK2-U22J].

93. *Green Sports Results*, EPA.GOV (Oct. 25, 2017), <https://www.epa.gov/green-sports/green-sports-results> [perma.cc/JK45-JQ5W].

94. Maria Gallucci, *The Super Bowl Is An Energy-Guzzling, Carbon-Emitting Machine; Here’s What the NFL is Doing About It*, INT’L BUS. TIMES (Jan. 30, 2015), <https://www.ibtimes.com/pulse/super-bowl-energy-guzzling-carbon-emitting-machine-heres-what-nfl-doing-about-it-1799874> [perma.cc/GA4E-Y4VT].

95. EPA, *supra* note 93; *see also* Gallucci, *supra* note 94. Super Bowl 2013 at Mercedes-Benz Superdome in Louisiana – Entergy donated carbon credits. Brad Scriber, *What Caused the Super Bowl Blackout at the Superdome?* NAT’L GEOGRAPHIC (Feb. 5, 2013), <https://www.nationalgeographic.com/news/energy/2013/02/130204-what-caused-the-super-bowl-blackout/>;

Super Bowl XLVIII: Thirty-Five Events in NYC, New Jersey Area, NAT’L FOOTBALL LEAGUE (Jan. 17, 2014), <http://www.nfl.com/news/story/0ap2000000314654/article/super-bowl-xlvi-30th-anniversary-30-days-in-nyc-new-jersey-area> [perma.cc/L6YU-FD47]; Mark Remillard, *Super Bowl XLIX Will Be A Green Event, According to SRP*, KTAR NEWS (Jan. 26, 2015), <http://ktar.com/story/96552/super-bowl-xlix-will-be-a-green-event-according-to-srp/> [perma.cc/B66B-RUWF]; Christopher M. McLeod & John T. Holden, *Ecological Economics and Sport Stadium Public Financing*, 41 WM. & MARY ENVTL. L. & POL’Y REV. 581, 599 (2017); *NRG Energy Innovations Help Make Levi’s Stadium the First Venue of Its Kind in the U.S. Eligible for LEED Gold Certification as New Construction*, NRG.COM (Jul. 17, 2014), <http://investors.nrg.com/phoenix.zht>

To date, the main focus of these social responsibility measures has been to facilitate and encourage sustainable infrastructure.⁹⁶ For example, many NFL stadiums are installing new green energy measures. Lincoln Financial Field – home of the Philadelphia Eagles – is capable of generating all of its own electricity through solar power. In fact, it is the largest solar powered facility in the NFL and in the city of Philadelphia.⁹⁷ Other examples include Levi Stadium in Santa Clara, California, which uses solar energy to power the stadium and is the first stadium in the United States to receive LEED⁹⁸ Gold Certification.⁹⁹ Levi Stadium utilizes a solar power system that can reach zero net power, LED lights, and 27,000 square feet of green roof space.¹⁰⁰ The Mercedes-Benz Stadium in Atlanta (host to the 2019 Super Bowl) was North America’s first stadium to receive LEED Platinum certification.¹⁰¹

Certainly, sustainable arenas are beneficial for repetitive events and corporate social practices are a good start for developing responsible

ml?c=121544&p=irol-newsArticle&ID=1948334 [perma.cc/TB55-FNU9]; *NRG Energy to Power Super Bowl with Renewable Energy*, POWERGRID INT’L (Feb. 3, 2017), <https://www.elp.com/articles/2017/02/nrg-energy-to-power-super-bowl-with-renewable-energy.html> [perma.cc/S9QU-3Q5C].

96. Porteshawver, *supra* note 14, at 242; *see also* Alex Porteshawver, *Under Review: Stadium Construction and State Environmental Policy Acts*, 21 MARQ. SPORTS L. REV. 339 (2010); Timothy B. Kellison, et al., *The Adoption and Diffusion of Pro-Environmental Stadium Design*, 15 EUR. SPORT MGMT. Q. 249 (2014). Alex Porteshawver argues that cities and states should adopt green building requirements for sports stadiums, stating that there is “no regulatory structure in place that forces team owners and cities to build green sports facilities. Some state environmental policy acts (SEPA) do require a state governing body to complete an environmental impact statement (EIS) before a state action is implemented.” Porteshawver, *supra* note 14, at 242. However, only “state action” requires review and states are only required to “make an informed-decision after weighing the environmental impacts of their action; it does not force the actor to actually implement any green decisions.” *Id.*

97. *Lincoln Financial Field Awarded LEED Gold Certification*, PHILADELPHIA EAGLES (Dec. 11, 2018), <https://www.philadelphiaeagles.com/news/lincoln-financial-field-awarded-leed-gold-certification> [perma.cc/L5D2-53DQ]; *Lincoln Financial Field*, U.S. GREEN BLDG. COUNCIL (Nov. 20, 2018), <https://www.usgbc.org/projects/lincoln-financial-field?view=certifications> [perma.cc/ZG7L-23CY].

98. LEED stands for Leadership in Energy and Environmental Design. It is a globally recognized green building rating system that includes four levels of certification: Certified, Silver, Gold, and Platinum, with Platinum being the highest level of green building certification. *See* U.S. Green Building Council, *Why LEED*, U.S. GREEN BLDG. COUNCIL, <https://www.usgbc.org/> [perma.cc/A8PE-Z4MK].

99. *About: Sustainability*, LEVI’S STADIUM, <http://www.levisstadium.com/sustainability/> [perma.cc/LR5L-KKX7]; *Levi Stadium*, U.S. GREEN BLDG. COUNCIL (July 13, 2016), <https://www.usgbc.org/projects/levi-stadium> [perma.cc/9CZX-AFNH].

100. LEVI’S STADIUM, *supra* note 99.

101. *Mercedes-Benz Stadium Becomes North America’s First LEED Platinum Professional Sports Stadium*, HOK (Nov. 15, 2017), <https://www.hok.com/news/2017-11/mercedes-benz-stadium-becomes-first-professional-sports-stadium-to-receive-leed-platinum-certification/> [perma.cc/J6FS-4T3M].

practices, but they are voluntary and only work to greenwash¹⁰² the harms associated with mega sporting events.

B. International Framework

There are a handful of UN Treaties on sports, mostly recognizing the general right to participate in and have access to sporting and recreational events.¹⁰³ No international treaty, however, exists with a legal framework to

102. Greenwash is defined as “an attempt to make people believe that your company is doing more to protect the environment than it really is.” *Greenwash*, CAMBRIDGE DICTIONARY (2020), <https://dictionary.cambridge.org/us/dictionary/english/greenwash> [perma.cc/X4ZH-JSTP]. Corporations use greenwashing techniques to mislead the public into thinking that their product is sustainable. See Bruce Watson, *The Troubling Evolution of Corporate Greenwashing*, THE GUARDIAN (Aug. 20, 2016) <https://www.theguardian.com/sustainable-business/2016/aug/20/greenwashing-environmentalism-lies-companies> [perma.cc/3ZDY-3J9L]. For example, a sporting association may advertise that the event is environmentally friendly because the stadium is LEED certified or because they purchased renewable energy credits; however, this simply greenwashes the truth that these events result in significant environmental harm and energy consumption. *Id.*

103. See, e.g., INT’L CHARTER OF PHYSICAL EDUCATION AND SPORT art. 1 (1978), https://unesdoc.unesco.org/ark:/48223/pf0000235409_eng [perma.cc/9QUJ-UB8C] (recognizing the fundamental right to physical education and sport); INT’L COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS art. 12 (Dec. 16, 1966), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en [perma.cc/ZS5Q-3FT5] (recognizing “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”); CONVENTION ON THE RIGHTS OF THE CHILD art. 31 (Nov. 20, 1989), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en [perma.cc/VZY7-T6CK] (recognizing the right of children to recreational sports and play); CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN arts. 10 & 13 (Dec. 18, 1979), <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm> [perma.cc/9V4N-K9U4] (recognizing the right of women to engage in recreational sports and activities); CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES art. 30 § 5 (Mar. 5, 2008), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-30-participation-in-cultural-life-recreation-leisure-and-sport.html> [perma.cc/AR6P-ZWEJ] (recognizing the right of disabled persons to participate in sports and sporting activities); INT’L CONVENTION AGAINST APARTHEID IN SPORTS preamble (Apr. 3, 1988), <https://treaties.un.org/doc/Publication/UNTS/Vol%201500/volume-1500-I-25822-English.pdf> [perma.cc/42GW-8SFS] (recognizing the right to persons of any race to freely participate in sporting events); INT’L OLYMPIC COMM., VI WORLD CONFERENCE ON “SPORT, PEACE, AND ENVIRONMENT” (Nov. 11, 2005), <https://www.olympic.org/news/vi-world-conference-on-sport-peace-and-environment> [perma.cc/62ET-G5FR] (recognizing the need to promote environmental sustainability, the efforts of the IOC and FIFA in this regard, and encouraging “organizers of all sporting events” to use the IOC as a model); see also Schmidt, *supra* note 5, at A288.

address the social, economic, and environmental externalities of mega sporting events. The closest is “Agenda 21” adopted by UN member nations in 1992.¹⁰⁴

At the 1992 Rio Earth Summit, many United Nations member states committed themselves to environmental sustainability in economic development generally and adopted “Agenda 21” as the framework for fulfilling this obligation.¹⁰⁵ Agenda 21 is non-binding and voluntary, but encourages all organizations – governmental and non-governmental, international, regional, and local – to prepare their own Agenda 21 based on the framework provided.¹⁰⁶ While it does not specifically address sporting events, the IOC, working with UNEP, adopted its own Agenda 21 in June 1999.¹⁰⁷ The IOC’s agenda follows the general framework of the Rio Agenda 21 and provides an action plan for three main focus areas:

- improving socio-economic conditions
- conservation and management of resources for sustainable development
- strengthening the role of major groups¹⁰⁸

C. Improving Socio-Economic Conditions

Section 3.1.2 encourages collaboration with international organizations to promote sustainable management of resources and development to minimize negative environmental and social impacts.¹⁰⁹ Section 3.1.3 discourages social exclusion based on “economic resources, sex, race or caste.”¹¹⁰ Ironically, it encourages sports organizations to prioritize

104. Member states subsequently reaffirmed their dedication to sustainable development in a document entitled “The Future We Want” drafted at the 2012 Rio +20 Conference. See UNITED NATIONS, THE FUTURE WE WANT: OUTCOME DOCUMENT OF THE UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT 1 (June 22, 2012), <https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf> [perma.cc/LNP6-7MQF].

105. UNITED NATIONS, SUSTAINABLE DEVELOPMENT AGENDA 21 (June 1992), <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> [perma.cc/ELT4-V88X]. At the Rio+20 conference in 2012, 180 of the member states reaffirmed a commitment to Agenda 21 and drafted a new nonbinding document entitled “The Future We Want.” THE FUTURE WE WANT, *supra* note 104. The Future We Want is a 49-page commitment that renews the interest in a sustainable future with international cooperation. *Id.* at 1.

106. SUSTAINABLE DEVELOPMENT AGENDA 21, *supra* note 105.

107. OLYMPIC MOVEMENT’S AGENDA 21: SPORT FOR SUSTAINABLE DEVELOPMENT, *supra* note 70.

108. *Id.* at § 3, 23.

109. *Id.* at § 3.1.2, 25.

110. *Id.* § 3.1.3, 26–27.

“development of sports infrastructure and equipment in the marginalized regions.”¹¹¹ While it appears the intent is to be inclusive by relying on local jobs and resources, this provision could be perceived as encouraging the development of sports stadiums in impoverished neighborhoods, which as noted above can have profound negative impacts on existing residents generally result in eviction and social segregation.¹¹² Section 3.1.4 encourages a change in consumption patterns “through regulation, education and example.”¹¹³ It mentions reduction of energy and good consumption as well as use of recycled materials for sports equipment.¹¹⁴ Section 3.1.5 promotes the protection of health among its athletes and the population.¹¹⁵ It discusses the need to prevent doping, to encourage health education and diet awareness, as well as to support campaigns for immunizations and vaccinations.¹¹⁶

Section 3.1.6 encourages environmental and social awareness in construction of sports facilities, including “ideally” a prior environmental impact assessment.¹¹⁷ According to this section, the Olympic Movement’s Sport for Sustainable Development aims “to increase involvement by the local population, improve the socio-economic and health benefits they derive from it, use less energy and fewer non-renewable resources, employ fewer dangerous products and release fewer polluting products into the air, water and soil.”¹¹⁸ It also encourages the newly built athletic living accommodations to help “local housing strategies, not forgetting the poorest members of society.”¹¹⁹ Finally, Section 3.1.7 encourages sports organizations to establish their own sustainable development policies.¹²⁰

D. Conservation and Management of Resources for Sustainable Development

Agenda 21’s section on conservation and management of resources for sustainable development is “geared to the preservation and management of natural resources and the natural environment necessary to improve socio-economic conditions,” as described above.¹²¹ The overarching theme is that any action taken by the IOC must be done with “due respect for the

111. *Id.*

112. *Id.*

113. *Id.* § 3.1.4, 27–28.

114. *Id.*

115. *Id.* § 3.1.5, 38–29.

116. *Id.*

117. *Id.* § 3.1.6, 30–31.

118. *Id.* at § 3.1.6, 31. It is unclear whether an environmental assessment has been done.

119. *Id.*

120. *Id.* § 3.1.7, 31–32.

121. *Id.* § 3.2, 33.

environment.”¹²² This section emphasizes the need for policies (i) to minimize environmental impacts by reducing consumption of land, energy, water, and other natural resources, (ii) to utilize sustainable practices for construction of facilities, and (iii) to manufacture and distribute sports equipment.¹²³ With regard to energy, Agenda 21 recognizes the impact of transportation due to air pollution and the use of non-renewable energy. It encourages using “non-polluting means of propulsion” and increasing reliance on public transportation.¹²⁴

E. Strengthening the Role of Major Groups

The United Nations identifies nine sectors of society (“major groups”) that should participate in sustainable development discussions.¹²⁵ These major groups include women, children and youth, indigenous peoples, non-governmental organizations, local authorities, workers and trade unions, businesses and industries, scientific and technological communities, and farmers.¹²⁶ Major groups are designated as such because they are the “main channels through which broad participation would be facilitated in UN activities related to sustainable development.”¹²⁷ The IOC’s Agenda 21 briefly addresses the need to strengthen the role of international stakeholders and to promote the involvement of major groups that have historically been excluded or limited – women, young people, and indigenous populations – in participation of the sporting events and decisions in sustainable development.¹²⁸ Participation requires “genuine involvement” in decision-making that will impact the communities in which these groups live, work, and play.¹²⁹ It does not, however, provide a mechanism to ensure the inclusion of major groups in event planning.

In sum, while Agenda 21 provides a potential framework for sustainable development generally, it does not address the temporary nature of mega sporting events, and other than the IOC, it does not appear to have been adopted by any other major sporting organization. The temporary nature of these events makes it complicated to implement an international standard through an existing treaty or guidance document. The events generally last days to weeks and do not repeat in the same location for years, if ever.

122. *Id.* § 3.2.1, 33.

123. *Id.* § 3.2.2-2.9, 34–41.

124. *Id.* § 3.2.5, 36–37.

125. *Major Groups and Other Stakeholders*, UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS KNOWLEDGE PLATFORM, <https://sustainabledevelopment.un.org/majorgroups/about> [perma.cc/B2PP-L63H] (last visited Feb. 26, 2020).

126. *Id.*

127. *Id.*

128. OLYMPIC MOVEMENT’S AGENDA 21, *supra* note 70, at § 3.3, 42.45.

129. *Id.*

IV. TWO NOTEWORTHY CULPRITS RESULTING IN A LACK OF LOCAL CONTROL

Admittedly, categorizing the harms and causes of those harms that flow from major sporting events is difficult. Events such as the Boston Marathon create different types of harms than those caused by the Olympics or FIFA World Cup. The spectrum of harms varies between events that require new infrastructure to those that simply require street closures. Likewise, multiple factors are at play in creating these harms. Two factors, however, stand out as the most detrimental to hosting any mega sporting event: (1) false emergencies, and (2) event seizure. False emergencies can negate the existing rule of law and event seizure by sponsors and organizers can push aside local power. Both result in a loss of local control, decision-making, and participation. When local communities fail to control or participate in the planning and management of the event, social and environmental harms are sure to follow. If cities consider implementing a legal framework for hosting mega events *before* the event occurs, they will be in a much better position to prevent false emergencies and event seizure and maintain local control.

A. *The Emergency Mindset*

Much of the scholarship regarding emergencies situates in the presidential war powers. Though mega events do not rise to the level of war-like emergencies, the literature provides guidance as to the varying levels of “emergency.” Traditionally, emergencies have been defined as “unexpected and exceptional events, with consequences that existentially threaten the regular order.”¹³⁰ During emergency situations, the law will generally allow for a temporary deviation from normal legal procedure and enforcement until the emergency has passed and the threat has subsided.¹³¹ Emergency law denotes some level of unexpected urgency requiring legal exceptionalism.¹³²

When most of us think of emergencies we think of life and death situations that allow us to speed, for example getting someone to the hospital quickly. Or we think of a natural disaster such as a hurricane that relaxes rules for floating a boat down a roadway. Few would likely consider anything about a planned major sporting event to be an emergency. Regardless, the past has shown that as event organizers start to feel the urgency of finishing construction and finalizing preparations, they seek to short-cut the rule of law, and host cities are at a disadvantage to say no.¹³³ One example of this was the use of “flash-votes” in Brazil to push through emergency bills, which resulted in the destruction of two historically protected stadiums in Rio discussed

130. KARIN LOEVY, *EMERGENCIES IN PUBLIC LAW: THE LEGAL POLITICS OF CONTAINMENT 2* (Cambridge 2016).

131. *Id.*

132. *Id.*

133. Martin Müller, *How Mega Events Capture Their Hosts: Event Seizure and the World Cup 2018 in Russia*, 38 *URB. GEOGRAPHY* 1113, 1116 (2017).

above.¹³⁴ New stadium projects were commenced in their place that have since been abandoned and are falling in disrepair.¹³⁵

This self-inflicted emergency is hardly a justification for circumventing the rule of law and cutting off public debate and participation,¹³⁶ however, as noted by one author, these mega sporting events involve “enormous amounts of money” and host cities are under massive pressure from sporting associations as well as local politicians to “put on a smooth, orderly, and impressive event.”¹³⁷ This scenario can result in a perfect storm to sidestep public participation and standard procedures that would otherwise protect the local citizens and their points-of-view.

Even in times of true emergencies, the emergency mindset can lead to energy and “environmental exceptionalism,” which allows groups to generate excessive emissions and produce significant environmental waste that would normally be prohibited under local laws. For example, after Hurricane Harvey, the Texas Governor issued a waiver for air quality and monitoring rules and did not end the waiver until April 2018, some seven months after the event.¹³⁸ While it could be argued that the Hurricane was a sufficiently valid “emergency” to temporarily waive environmental rules, the citizens who bore the biggest brunt of the extended waiver were those in already vulnerable communities living near the industrial facilities.¹³⁹ It can hardly be said that the self-inflicted time restraints that come with hosting mega sporting events – which serve only the global and local elites – can rise to the level of emergencies requiring detours of the rule of law that harm the most vulnerable citizens.

B. Event Seizure

The second, and arguably biggest, culprit to generating local environmental and social harms is what one author aptly named “event seizure.”¹⁴⁰ Event seizure, as outlined by Martin Müller, is the idea that outsiders (the mega sporting organizations) as well as the local elites can take hold of the host cities to seize control of community infrastructure, finances, and the legal regime.¹⁴¹ Müller’s primary example of this is from the Russia

134. Aragão & Maennig, *supra* note 6, at 6.

135. *Id.*

136. *Id.* at 5.

137. Megan Corrarino, “Law Exclusion Zones:” *Mega-Events as Sites of Procedural and Substantive Human Rights Violations*, 17 YALE HUM. RTS. & DEV. L.J. 180 (2014).

138. Victor Flatt, *From Surviving to Thriving – Emergency Waiver of Health, Safety, and Environmental Rules*, CPR BLOG (Sept. 19, 2018), <http://www.progressivereform.org/CPRBlog.cfm?idBlog=094A5589-E103-A635-F3CA875658F0524F> [perma.cc/5NJ5-J2JU].

139. *Id.*

140. Müller, *supra* note 133, at 1113.

141. *Id.* at 1115.

2018 FIFA World Cup.¹⁴² According to Müller, the 2018 World Cup is a story of “how mega-events, and the elites associated with them, take possession of host cities and societies – of development plans, funds and legislation – and impose their priorities on cities and citizens.”¹⁴³

Infrastructural seizure can occur in various ways. In general, it is the idea that infrastructure needed for the event will take precedent over local needs.¹⁴⁴ This can be as simple as closing roadways for a marathon or as significant as condemning an apartment building to be used as housing for event participants. Stadia become “privileged infrastructure” because above all else, they must be completed prior to the event.¹⁴⁵ This was the case in the Russian World Cup and the Rio Olympics, where low income families were forced to leave their homes to facilitate new infrastructure.¹⁴⁶

Further, with the funding of this privileged infrastructure comes a lack of funding for public need infrastructure such as hospitals, roads, and schools.¹⁴⁷ In general, the main public infrastructure that is funded is infrastructure needed to make a good impression on influential travelers coming to the city for the event.¹⁴⁸ Ironically, too often infrastructure built for the event is abandoned soon after the spectators leave. For example, ski jumps and an alpine ski center that were created by deforesting sacred lands in South Korea have not been used since the 2018 Winter Olympics.¹⁴⁹

Financial seizure occurs where the public underwrites event costs through taxes and rainy day funds without receiving major benefits.¹⁵⁰ As previously noted, much of the local population in any given city cannot afford to attend the event, but the event is being funded with local monies that could be utilized for public need. For the Russia World Cup, Müller notes that private funding only covered construction costs of one stadium. All other stadium costs were paid through the federal budget.¹⁵¹

Adding insult to injury, the average cost to attend a men’s singles final at Wimbledon is some £2,667.¹⁵² The cheapest ticket to attend the FIFA World cup finals is \$455 with certain choice tickets reaching resale value of

142. *Id.*

143. *Id.* at 1113.

144. *Id.* at 1116.

145. *Id.* at 1121.

146. *Id.*; Aragão & Maennig, *supra* note 6, at 5.

147. Müller, *supra* note 133, at 1121.

148. Wade & Brito, *supra* note 26.

149. Choi, *supra* note 34 (noting that there are no current plans for use of “the Gangneung Hockey Centre, the Gangneung Oval and the Jeongseon Alpine Centre so far. Especially, Jeongseon Alpine Center, which took two years to build, destroyed a 500-year-old forest, and cost \$200 million become a massive white elephant.”).

150. Müller, *supra* note 133, at 1123.

151. *Id.*

152. £2,667, *the Cost of a Wimbledon Seat*, THE DAILY MAIL, <https://www.dailymail.co.uk/sport/article-55666/2-667-cost-Wimbledon-seat.html> [perma.cc/ULP3-XHWG].

\$105,000.¹⁵³ Even the average citizen would find it nearly impossible to afford a ticket, let alone the lower socio-economic citizens who are the ones bearing the largest brunt of the event.

Finally, legal exceptionalism caused by an emergency mindset, as noted above, plays a major role in harming public rights of participation and decision-making. Müller argues that even without implementing emergency measures, legal seizure is a problem for host cities because politicians “place the event at large above the law.”¹⁵⁴ Arguably, examples of legal seizure are encompassed in infrastructure and financial seizure as well, but the idea is that the event becomes legally more important and can override generally established rules of law. For example, Russia allowed federally protected forest lands to be cut in preparation of the World Cup without going through the standard procedures set forth in its Forest Code.¹⁵⁵ Citizens were not allowed to gather around the event for any activity unrelated to the event, i.e., to protest or to peaceably assemble.¹⁵⁶

Event seizure plays a devastating role in diminishing the power and influence of host cities over their own infrastructure, finances, and legal processes. Allowing outside forces to reach in and take control inhibits local participation and decision-making in the very local concerns of infrastructure, finances, and legal process.

V. CREATING A PREEMPTIVE LEGAL FRAMEWORK

Given the potential for lasting negative externalities, potential host cities should consider adopting a comprehensive and preemptive approach to hosting mega sporting events. Historically, host cities have relied on host agreements entered with the organizer, but as noted above, they lack many of the qualities needed to ensure a successful endeavor. These agreements are often confidentially made behind closed doors with host cities concerned that if they push too hard on specific terms, the organizers will simply go to the next city that does not push back. Establishing a legal framework to maintain control of the event and to ensure true local participation before, during, and after the event will allow a sense of ownership and a way to combat unintended social and environmental harms.

Further, a legal framework enacted long before an event would encourage sustainable environmental and social practices before the emergence of a mega event opportunity and allow communities to consider what is important to their culture and environment outside of a particular political situation. An objective rule-making framework established during a non-event time will help guide when it is game time and extend beyond

153. Abigail Hess, *Here's How Much a Ticket to the World Cup Final Costs*, CNBC (July 15, 2018), <https://www.cnbc.com/2018/07/13/heres-how-much-a-ticket-to-the-world-cup-final-costs.html> [perma.cc/AUR6-V9TR].

154. Müller, *supra* note 133, at 1127.

155. *Id.* at 1126.

156. *Id.* at 1126–27.

specific political campaigns and focus on the long-lasting needs of the local citizens.

So what might work? One possibility is applying the concepts of a social license to an established legal framework. A social license to operate (“SLO”) exists when a community provides its approval and social acceptance of a project. It is a non-binding agreement that originated with mining and energy industries operating in developing nations in the late 1990s. Negative perception of industry activities abounded throughout the 1990s as environmental and social consequences became highly publicized. Media reported on everything from “tailings dam failures, chemical spills and conflicts with communities.”¹⁵⁷ As a result, the mining and extraction industries suffered significant reputational hits and exposed their deficient environmental and social policies, particularly when operating in developing nations.¹⁵⁸ Pointing the finger at specific projects that created these negative externalities provided a platform for impacted local communities to take action to interrupt or thwart their progress. Protests and violence toward the projects and industry employees ensued, and extraction companies suffered delays and high financial risks as a result. Local communities demanded more than just legal licenses and permits to operate, they demanded that the industry first establish credibility and trust before they could obtain permission to operate their projects. This social license has become a “strategic part of managing risk and opportunity,” and many industries have adopted the use of SLOs as standard business practice.¹⁵⁹ It is not a surprise that this expansion of SLOs coincides with a global move towards heightened community awareness and empowerment to demand sustainable practices.¹⁶⁰

The World Bank sees SLOs as a means to address concerns about the environmental and human cost of the transitory mining and drilling activities

157. Kieren Moffat, Justine Lacey, Airong Zhang & Sina Leopold, *The Social Licence to Operate: A Critical Review*, 89 FORESTRY: AN INT’L J. OF FOREST RES. 477, 477 (2015).

158. Don C. Smith, *Social License to Operate in the Unconventional Oil and Gas Development Section: The Colorado Experience*, in SHARING THE COSTS AND BENEFITS OF ENERGY AND RESOURCE ACTIVITY 123 (Oxford 2016). Social licenses to operate are also helpful for reducing the risk of community outrage. While risk is not among the factors to be addressed in this article, it is worth noting that it can be a consideration for mega sporting events. Rio has demanded another \$35-40 million dollars from the IOC to help paying down debt incurred as a result of hosting the Olympics. Stephen Wade, *IOC Balks at Helping Rio With \$35 Million-\$40 Million Olympic Debt*, CHI. TRIB. (July 9, 2017), <http://www.chicagotribune.com/sports/international/ct-olympics-rio-debt-20170709-story.html> [perma.cc/QN5Y-ARSE]. Officials have been criminally indicted and civil lawsuits have been threatened. *Id.*

159. Moffat, et al., *supra* note 157, at 477 (citing adoption of SLOs by various energy industries, farming and agriculture, forestry, and paper manufacturing).

160. Smith, *supra* note 158, at 124; Jason Prno & D. Scott Slocombe, *Exploring the Origins of ‘Social License to Operate’ in the Mining Sector: Perspectives from Governance and Sustainability Theories*, 37 RESOURCES POL’Y 346, 348 (2012).

while keeping unstable governments from shutting down the projects.¹⁶¹ Some local concerns such as environmental protection, collusion, a lack of local benefits, and social inequities can be addressed through SLOs, which “take a heavy toll on the environment and on the lives of the people in the vicinity, hence the importance of securing the acceptance of local communities.”¹⁶²

While SLOs have been utilized over the last few decades to promote transparency and community involvement before, during, and after a project,¹⁶³ they are highly criticized for their intangible and amorphous nature.¹⁶⁴ Unlike legal contracts or permits, they are generally not in writing and therefore are more difficult to enforce than a legal license to operate.¹⁶⁵ Likewise, the terms of a SLO can be obscure and provide little to no veto power by the local communities.¹⁶⁶

Establishing a legal framework based on some of the key elements of the SLO, however, could provide host cities with the best possible outcome and help avoid some of the event seizure and emergency-type behavior that can create social and environmental harms to host cities. The legal framework would legitimize¹⁶⁷ stakeholder decisions and provide a mechanism for managing expectations and enforceability.¹⁶⁸

It is admittedly difficult to determine what that legal framework should include, but it must be fluid to address the needs, culture, and environment of each locality. Some of the key elements should include full disclosure and transparency of process and information; full community involvement in the decision-making process; ongoing communication and commitment to sustainability; and longevity of community investments.¹⁶⁹ Incorporating these substantive elements would ensure true local participation before, during, and after the event, allow a sense of “ownership” over the event, encourage sustainable environmental and energy practices, and prevent event

161. Smith, *supra* note 158, at 123.

162. Geert Demuijnck & Björn FASTERLING, *The Social License to Operate*, 136 J. BUS. ETHICS 675, 675 (2016), <https://link.springer.com/content/pdf/10.1007%2Fs10551-015-2976-7.pdf> [perma.cc/ME6K-VVUN].

163. Lucas Satterlee, *Clearing the Fog: A Historical Analysis of Environmental and Energy Law in Colorado*, 28 VILL. ENVTL. L.J. 1, 48 (2017).

164. Prno & Slocombe, *supra* note 160, at 348.

165. *Id.*

166. Demuijnck & FASTERLING, *supra* note 162, at 681 (identifying two key concerns: “First we point out that a strategic approach tends to ignore vulnerable people, who have little power to resist corporate activity, in particular when protective laws are absent or ineffective or communication and engagement break down. Second, . . . the notion could be abused by businesses to fend off constraining legislation that would diminish the need for purely normative motivations for achieving an SLO.”).

167. *Id.* at 678 (“[L]egitimacy refers to ‘the congruence between the social values associated with or implied by [organizational] activities and the norms of acceptable behavior in the larger social system.’”).

168. *Id.* at 676–77.

169. Satterlee, *supra* note 163, at 48.

seizure. A procedural framework would also need to be put into place to adequately facilitate these substantive elements.

A. Full Disclosure and Transparency of Process and Information

Prior to approval to host any event, potential host cities should require a thorough environmental and social impact assessment.¹⁷⁰ The information from the assessment should be posted on websites and hard copies should be made available at the city hall in the local language. Impact assessments force local politicians to look at the potential negative environmental and social consequences of an event prior to initiating the process. Even if politicians are not required to do anything to mitigate the externalities, requiring it to be posted well in advance of the bidding process will allow citizens to debate and discuss their concerns.

B. True Community Involvement in the Decision-Making Process

Local legal frameworks should demand inclusion of, notice to, and consultation with all stakeholders including women, youth, and other underrepresented groups that could be impacted.¹⁷¹ Local communities are in the best position to be able to identify potential pitfalls and concerns with hosting an event. They have special knowledge of the local geography and incentive to maintain or enhance their surroundings. Further, true community involvement of all stakeholders will work to combat event seizure where global elites and local elites have potentially differing ideals.

C. Ongoing Communication

One problem with social licenses is that most of the disclosure and participation is conducted early in the process, so that as the event moves forward it is less likely that the local community will be informed of diversions or unexpected negative consequences. Mandatory ongoing communication throughout the process will ensure that as problems or perceived emergencies arise, the local community is informed and can help address those concerns.

D. Commitment to Sustainability

The legal framework should indicate a strong commitment to sustainability through utilizing renewable and low carbon energy. Cities around the globe understand that they can make a difference in the struggle against global warming and climate change. As a result, many cities have put

170. In light of the recent COVID-19 pandemic, the social impact analysis should consider the public health impacts of the expected volume of international travelers to the host city.

171. OLYMPIC MOVEMENT'S AGENDA 21, *supra* note 70, at 11.

into place comprehensive plans to reduce energy consumption and eliminate reliance on fossil fuels. Mega sporting associations should be required to do the same and to offset all fossil fuel energy use and environmental damage caused by the event.

E. Longevity of Community Investments

Host cities should require social investments in buildings and infrastructure that will benefit the community, such as schools, police departments, hospital, infrastructure investments. As included in Agenda 21 and already required by the IOC, host cities and surrounding local communities should also include a commitment to buy local and use local services and supplies.¹⁷²

F. Procedural Mechanisms

Finally, host cities should include procedural requirements for public disclosure, debate, participation, and possibly even veto power. Substantive requirements have little teeth without a procedural mechanism that will allow citizens an opportunity to be heard and to participate. In addition to participation requirements, the legal framework should include language to the effect that procedures will not be overridden or circumvented due to business risks taken by the sports association. In other words, planned events should never be considered “emergencies” such that they will sidestep the established rule of law; nor should planned sporting events take precedent over the local needs of the citizens.

While these requirements may initially be a put off for sporting associations looking to score a cheap location for their event, as more cities implement these policies, the playing field (so to speak) will be leveled. It will require broad, global adoption of these principles to insulate host cities from the emergency mindset and event seizure. It will no doubt take time for cities to recognize the need for these principles and to implement them. Without a preexisting legal framework, however, host cities will continue to be exposed to potentially extensive negative environmental and social externalities associated with hosting these events.

VI. CONCLUSION

This Article analyzed a spectrum of events from those not requiring permanent infrastructure (such as the Boston Marathon) to repetitive events held at one designated stadium (the Super Bowl and Wimbledon), to annual or bi-annual events that require construction of designated event infrastructure (FIFA and the Olympics). And, it analyzed a spectrum of harms from social to environmental. Given the breadth of harms and events, it is difficult to promulgate a one-size-fits-all solution. Instead, the goal was to identify

¹⁷² *Id.* § 3.2.4, at 36.

problem areas and to offer ideas for a legal framework that would preempt the emergency mindset and outside event seizure. By relying on (and expanding upon) the elements present in social licenses to operate, potential host cities would at least be in a better position to regain and maintain local control and interest in the events.