

COLUMN

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The Olympic Games will begin in July in London, and the British capital is gearing up for the festivities celebrating the ultimate competition of sporting prowess between nations. With over 200 countries participating in the Games, organising an event on such a scale costs millions of dollars. Since the 1990s, Olympic Games organising committees have turned to corporate sponsors to help defray the costs. Businesses get publicity; organisers get resources; spectators presumably get access to the sporting events at a lower cost.

What are the responsibilities of the organisers in deciding who they should take sponsorship money from? Organisers of the London Olympics realised they had to confront the question when they found rising international activism and criticism when it was revealed that the American company, Dow Chemical, was one of the sponsors of the Games. Criticism was loud in India, where parliamentarians and former Olympians threatened to launch a stir to boycott India's participation in the Games, and some activist organisations echoed calls from India.

Objections to Dow's association with the Games arose because Dow finds itself at the centre of one of the world's longest-running, unresolved disputes concerning business and human rights – the Bhopal gas disaster of 1984 in India. In December that year, a lethal gas – methyl isocyanate – leaked from the fertiliser plant of Union Carbide India Ltd., the Indian subsidiary of the US-based Union Carbide Corporation. Between two and three thousand people died soon after inhaling the gas, and thousands more were affected; the lives of many shortened due to the damage caused to their internal organs. American lawyers brought a case before US courts, but the case was sent back to India on grounds of *forum non conveniens*, or inconvenient forum. The Indian Government took over the task of negotiating for compensation on behalf of all victims, and negotiated with the American company. A comprehensive settlement for \$470 million was reached, and the Indian Supreme Court approved the settlement.

In the years since, two types of problems have emerged. One involves the slow progress in distributing the compensation amounts to the victims. The other involves discovery of more problems involving the Bhopal plant, including contamination of the city's ground water because of allegedly improper storage of materials at the Bhopal plant. What complicates the victims' quest for justice, however, is the fact that Union Carbide sold its Indian unit to another Indian company in the early 1990s,

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and Dow Chemical bought the worldwide assets of Union Carbide Corp a year or so after that. Dow Chemical has consistently argued that it had nothing to do with what happened in 1984: it did not own Union Carbide when the incident occurred, and before it acquired the Indian assets, the Indian affiliate was already sold to another company. The liability of Dow with regard to the disaster in 1984 itself is not easy to establish. Activists and lawyers in India assert that Dow cannot escape responsibility for the ongoing contamination of ground water in Bhopal, and its health impacts.

The liability of a company with regard to contingent liabilities, or past liabilities and other legacy issues, is a contentious issue. But victims' groups have launched a successful public awareness campaign, intending to hold Dow Chemical accountable for what happened in Bhopal. One part of that campaign is to embarrass the company: getting the Olympics organisers to delink the Games from the company would be a coup for the campaigners. They have not succeeded entirely, but they have had some successes. Meredith Alexander, head of policy at Action Aid, a UK-based anti-poverty charity, resigned from the Commission for a Sustainable Olympics in protest over how the organisers determined who could sponsor the Games, a step which embarrassed the organisers. Separately, Amnesty International expressed "disappointment" after the International Olympic Committee (IOC) rejected the Indian Olympic Association's call to terminate Dow's sponsorship of the Games. (Dow announced in December that it was withdrawing its logo as an official sponsor of the Games but human rights groups want the IOC and others organising the Games to go further, including acknowledging a mistake in working with Dow.) Ms. Alexander's resignation reflects those lingering concerns.

The Bhopal case is complicated, and linking Dow specifically with the 1984 disaster more so. And yet, the Games organisers presumably were aware of the controversy surrounding the company. Olympic sponsorships have been controversial in the past. During the 2008 Beijing Games, the Save Darfur campaign targeted major sponsors like General Electric and Coca Cola, urging them to use their influence with the Chinese government so that it uses its leverage with the government of Sudan to stop the crimes against humanity that the Sudanese government was accused of committing in Darfur. Nobody was alleging that the companies were in any way involved with the abuses, but campaigners saw them as legitimate targets because of the perception that they carry some weight. They believed the companies could intervene with the Chinese, and the Chinese would in turn use their influence to stop the Sudanese government from continuing the atrocities in Darfur. The record of such actions is mixed. When such interventions become public, the effect may even be counter-productive: authoritarian governments are proud and don't like anyone to know that they have acted under pressure.

There is a crucial difference between the two cases: no one was accusing companies sponsoring the Beijing Games of being complicit in human rights abuses in Darfur. In Dow's case, many activist groups claim that the company to answer for the tragedy in Bhopal.

The conversation about Bhopal has rightly focused on corporate responsibility, but it is important to remember the role of the Indian government as well. Indian officials who did not inspect the plant properly in the 1980s failed in their regulatory oversight role. Equally troubling, the government prevented Bhopal victims from suing Union Carbide after the accident, restraining their right to seek justice, and taking over the role of being the sole negotiator with Union Carbide. Whether the settlement India agreed on was fair is also being challenged within India. The government has been sluggish in requiring proper chemical analysis of the plant to check groundwater for contamination.

The Bhopal case shows corporate failure to *respect* rights (as in the case of Union Carbide), state failure to *protect* rights (in the conduct of the Indian government), and the absence of an adequate *remedies* for victims – just the scenario for which the United Nations adopted in 2011 Guiding Principles on business and human rights. According to that framework, governments have the obligation to *protect* human rights; business has the responsibility to *respect* rights; and where protection gaps exist, an effective *remedy* is needed.

But wider questions for the IOC and the London Games organisers remain. What sort of screening should they have had in place when they were selecting sponsors? Large sporting events are not cheap, and taxpayers do not want to pay the escalating bills. Organisers have few options besides turning to corporations for financial support.

Who should get naming rights? Should only companies with a squeaky clean reputation be chosen? And if so, how is such reputation defined? Who decides that a particular company is guilty of a specific abuse? Should it be courts, or are allegations by civil society groups sufficient to blacklist a company? Thanks to the Guiding Principles, there is now some clarity regarding the due diligence steps companies should take to prevent human rights abuses. But what due diligence should organisers undertake?

A simple check of a company's "reputation" would not be adequate. Reputation surveys are notoriously subjective. Nor can one assume that a company with policies supporting sustainability or responsibility conducts its operations consistent with those policies. Human rights experts often point out, rightly, that a company cannot offset bad conduct in one area with good deeds in another area. Mitigation strategies are perfectly acceptable, depending on the context, in the environmental sphere; however, with human rights, when grave abuses are involved, there has to be a "zero-tolerance" policy.

The UN Guiding Principles on business and human rights – which provide the authoritative due diligence steps all companies need to take, including the requirement to track and monitor performance – offer a promising yardstick. Companies that can effectively demonstrate they are acting in line with this international framework should in theory pass such a screening. But would that satisfy civil society? Likely,

only if the process is transparent, accountable, and legitimate, and civil society organisations are part of the monitoring process from an early stage.

Developing and implementing more rigorous criteria won't be easy. But organisers cannot shirk that responsibility. The Olympics represent the noblest of human efforts to strive towards higher standards. *Citius, Altius, Fortius*, or "faster, higher, stronger" is the motto of the Games, since 1896, when modern Olympics began. By the same standard, organisers should aspire towards the highest standards when they undertake due diligence to select partners, if the Games are indeed a celebration, and the ultimate test of human endeavour.