FIFA and Human Rights: Introduction to the Symposium

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04.07.2019 doi: 10.17176/20190704-112732-0

While the FIFA Women's World Cup is slowly coming to an end, we are delighted to kick off today a special Verfassungsblog symposium (many thanks to Maximilian Steinbeis and his team for hosting us) on 'FIFA and Human Rights'. The World Cup itself has raised the issue of the FIFA's discrimination against female players through the allocation of much lower prize money than for the men's competition. This debate demonstrates the relevance, and to some extend urgency, of thinking through FIFA's human rights impacts, policies and responsibilities. This heightened focus in the public sphere on FIFA and human rights dates back to 2014, when the former UN High Commissioner for Human Rights and president of Ireland, Mary Robinson, and former UN Special Representative on Business and Human Rights, John Ruggie, sent an open letter to the Fédération International de Football Association (FIFA), presenting a number of recommendations on how FIFA should deal with adverse human rights impacts that arise in the context of their events and activities. Arguably, this letter marked the starting point of FIFA's own human rights journey. Since then, FIFA underwent a reform process that led to the integration of a number of human rights provisions and policies into FIFA's regulatory framework. The blogs featured in the symposium stem from a conference on FIFA and human rights hosted by the Asser Institute in The Hague in May. In this blog we provide a brief introduction to the symposium by going through FIFA's human rights impacts, policies, and responsibilities.

FIFA's Human Rights Impacts

FIFA, supported by the powerful network of private organisations that compose the 'football family', is an extremely powerful transnational body. Formally it is only a Swiss association, incorporated (and regulated) as a local chess club would be, but in practice it affects, through its regulations and administrative/political decisions, the life of many around the globe. In doing so, it has an impact on human rights, be it the right to work of players across globe or the freedom of expression of fans in stadiums, be it the core labour rights of construction workers on building sites for the FIFA world cups or the due process rights of the executives sanctioned by its disciplinary bodies. In May 2017, FIFA published a human rights policy, in which it commits to respect human rights in accordance with the UN Guiding Principles on Business and Human Rights and acknowledges the potential adverse impacts it can have on human rights of people belonging to specific groups, such as indigenous peoples, women, national, ethnic, religious and linguistic minorities, children, disabled people, migrant workers and their families and human rights defenders (Article 1&2). Furthermore, it identifies as salient human rights risks labour rights, land acquisition and housing rights, discrimination, security, and player's rights (Article 5).

A distinction can be made between human rights impacts related to FIFA's events and human rights impacts related to FIFA's daily activities. With regard to the latter, a specific example discussed during the Conference was the issue of trafficking of child footballers and the lack of protection of children's rights in FIFA's transfer rules. With regard to the former, World Cup-related human rights risks range from labour and housing rights issues to restrictions of freedom of speech, freedom of movement, and public security concerns. The severe crackdown on human rights and human rights defenders ahead of the Russia World Cup in 2018 and the exploitation of migrant workers on World Cup construction sites in Qatar are also coming under intense public scrutiny. In short, FIFA through its decisions and actions is affecting many people around the globe, and some of these effects can easily be framed in terms of negative human rights impacts.

The next question is then: what is FIFA doing about them?

FIFA's Human Rights Policies

In the past few years, FIFA faced intense public scrutiny for these adverse impacts. NGOs like Human Rights Watch and Amnesty International have conducted relentless public shaming campaigns (see here and here for the latest iterations) targeting FIFA on the basis of its human rights record. Global labour unions, such as ITUC and BWI, have also criticised FIFA for the labour conditions imposed on building sites connected to the World Cup. Finally, certain media, such as the Guardian, decided to invest important resources in reporting on various types of labour rights violations affecting migrant workers involved in the infrastructure build-up to the Qatar 2022 World Cup. This collective public focus led to an internal reform process at FIFA and the adoption of various policies and measures to integrate human rights into FIFA's regulatory framework. While the addition of Article 3 to FIFA's Statutes in which FIFA commits to respect all internationally recognized human rights certainly laid the basis for these efforts, a number of measures can be traced back to a report written by John Ruggie at the request of FIFA. One of the recommendations was for instance to adopt a human rights policy (Recommendation 1). Following another recommendation of the report, FIFA adopted new bidding regulations in October 2017, which have been applied for the first time during the bidding procedure for the 2026 World Cup. Bidders were requested to develop a human rights strategy and an independent human rights risk assessment. In March 2017, FIFA also created a Human Rights Advisory Board, which on a regular basis publishes reports (see here and here) evaluating FIFA's human rights progress and making recommendations on how FIFA should address human rights issues linked to its activities. Another landmark was the introduction of the complaint mechanism for human rights defenders in May 2018, just before the start of the World Cup in Russia.

All these measures are supposed to equip FIFA with the means to address the various human rights risks it is facing. And indeed, what FIFA calls 'using its leverage' has to some extent already helped to bring about some positive changes to improve the exploitative and abusive conditions that migrant workers on World Cup construction sites in Qatar were experiencing. In a very concrete example, it also helped FIFA to find a fruitful way to engage with the case of Hakeem Al Araibi, a soccer player from Bahrain who lived as a refugee in Australia and was arrested upon arrival in Thailand following an international arrest warrant issued by Bahrain for his alleged involvement in anti-government protests. FIFA joined efforts with other stakeholders, including governments, sport bodies, and non-governmental organizations, to exert pressure on the Thai officials to drop the case against Hakeem. After spending three months in Thai prison, the Thai Prime Minister used his power to end the proceedings, and Hakeem could return to Australia in early February.

It is important for researchers to critically engage with these policies, as some of the contributors to this symposium do. Indeed, it remains very unclear what their long-term impact will be, whether they will amount more to whitewashing or really offer a productive tool for affected actors to hold FIFA accountable and challenge its actions in specific contexts. In any event, it is noticeable that this turn did not follow a particular mandate by a state (i.e. Switzerland) or a court to do so but was mainly the result of the pressure exercised by transnational mobilisation of social movements and increasing public scrutiny. The actual legal responsibility of FIFA (under national, European or international law) to account for its impacts on human rights remains in practice relatively limited.

FIFA's Human Rights Responsibilities

While FIFA made significant advancements in positioning itself in the human rights field and self-imposing human rights commitments, a number of external mechanisms also might have a role to play in shaping FIFA's human rights responsibilities and holding FIFA accountable in case it fails to live up to these responsibilities. FIFA could for instance be held accountable under Swiss law for failing to respect human rights

when operating abroad, but in practice, the Swiss civil courts have been very reluctant to intervene. However, a potentially relevant piece of Swiss legislation when it comes to holding FIFA accountable for being linked to adverse human rights impacts is the Responsible Business Initiative, which is still being debated and has not been adopted yet. Moreover, it is not clear to what extent the law would apply to FIFA once it is approved, since FIFA is established as a private non-profit association and not as a corporation. Furthermore, as became obvious in the Bosman judgement, the fundamental freedoms under EU law can be invoked against FIFA (but very few cases arose in practice). Moreover, as will be argued by one of the contributors, the recent Bauer case might trigger the horizontal application of rights enshrined in the EU Charter of Fundamental Rights to FIFA.

A more indirect way to hold FIFA accountable would be through the human rights responsibilities of Switzerland under regional and international human rights instruments. The European Court of Human Rights has a role to play in this and already dealt with a number of cases that are related to football and sport more generally, most of them dealing with a potential breach of the right to a fair trial at the Court of Arbitration for Sport (CAS). A wave of actions against Switzerland on the basis of it tolerating through non-intervention of alleged ECHR violations by FIFA is possible to imagine but would be quite difficult to operationalise in practice. On the international level, in particular the International Covenant on Economic, Social and Cultural Rights entails a number of provisions, which are relevant in the context of FIFA's human rights risks, in particular with regard to labour rights. Even though FIFA committed itself to respecting these standards, the accountability mechanisms attached to these standards are designed to hold states responsible and do not apply to private associations like FIFA. However, through the integration of human rights in Article 3 of the FIFA Statute, it is a distinct possibility that they will play a greater role in disputes at the CAS, which if invoked by the parties would have to assess the compliance of a particular FIFA decision or regulation with internationally recognised human rights. Yet, the availability of such a procedural route to challenge the human rights compatibility of FIFA's decisions will be dependent on whether many of the primarily affected actors will have standing at the CAS.

The Steps Ahead

When FIFA debated the expansion of the 2022 World Cup from 32 teams to 48 teams and countries like the United Arabic Emirates or Saudi Arabia were considered as potential hosts without any requirements on human rights risk assessment, FIFA was at the edge of losing credibility for all human rights efforts it has taken thus far. Fortunately, the expansion has been cancelled just in time to prevent serious dissonance between its human rights commitments and its political choices. Nevertheless, big challenges with regard to FIFA's human rights impacts continue to exist. The Qatar World Cup is still linked with horrendous labour rights violations, the regulations on child player transfers has loopholes, discrimination of female players and unequal treatment of female national teams is still widespread. To add more credibility to its human rights journey, FIFA will have to step up its efforts in addressing these issues.

In fact, there are a number of measures that FIFA can explore as possible next steps in its human rights journey. For one, FIFA could make more effective use of its disciplinary procedures and sanctioning system and align them with FIFA's human rights commitments. This could strengthen accountability of World Cup hosts and other actors that FIFA cooperates with where human rights are at risk. Furthermore, FIFA's Ethics Committee could be given a broader mandate to also address complaints that challenge FIFA's human rights commitments more generally. Finally, FIFA could allow affected third-parties to challenge its decisions on human rights grounds at the Court of Arbitration for Sport.

From a scholarly perspective, engaging with the interaction between FIFA and human rights raises extremely wide-ranging questions connected to the position of certain private actors in transnational regulation/law. It features strange loops in which a private body, FIFA, is called upon to enforce human

rights standards against states or to exercise its diplomatic 'leverage' to get someone out of jail. This *retournement* of a world in which a 'Swiss chess club' becomes a transnational authority affecting people worldwide and to which we pose demands in human rights terms is to us a fascinating research object well suited for a symposium on the Verfassungsblog.

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SUGGESTED CITATION

Duval, Antoine; Heerdt, Daniela: FIFA and Human Rights: Introduction to the Symposium, Verfassungsblog, 04.07.2019, doi: 10.17176/20190704-112732-0.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20190704-112732-0.