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Duval, A.; Heerdt, D.

DOI
10.5334/TILR.189
Publication date
2020
Document Version
Final published version
Published in
Tilburg Law Review
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Link to publication

Citation for published version (APA):
Duval, A., & Heerdt, D. (2020). FIFA and human rights - A research agenda. *Tilburg Law Review*, *25*(1), 1-11. https://doi.org/10.5334/TILR.189

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Download date:16 Sept 2026

TILBURG LAW REVIEW
Journal of International and European Law

Antoine Duval and Daniela Heerdt, 'FIFA and Human Rights – a Research Agenda' (2020) 25(1) *Tilburg Law Review* pp. 1–11. DOI: https://doi.org/10.5334/tilr.189

EDITORIAL

FIFA and Human Rights – a Research Agenda

Antoine Duval* and Daniela Heerdt†

This special issue of the Tilburg Law Review aims to study the intersection between human rights and the way the *Fédération Internationale de Football Association* (FIFA) governs and shapes football. The objective of this editorial is threefold. First, it highlights three different areas of research into the link between FIFA and human rights, namely its human rights impacts (section 2), policies (section 3) and responsibilities (section 4). Secondly, it maps existing research on FIFA and human rights for each section, thereby introducing some of the issues dealt with in more detail by the articles in this journal. Finally, it strives to contribute to the definition of a research agenda at the intersection of transnational law, *lex sportiva*, and (business and) human rights, by highlighting the questions that arise from linking a transnational private actor like FIFA to human rights (section 5).

Keywords: FIFA; human rights; UNGPs; business and human rights; transnational sports law; mega-sporting events

1 Introduction

The meeting between human rights and sports is a fairly recent development traced back to the early nineties by historians like Barbara Keys.[1] From a legal perspective, the formally private nature of sports governing bodies (SGBs) acted for a long time as a powerful shield against the recourse to human rights to pose demands to them and challenge their policies and decisions.[2] Yet, in recent years the tide seems to have turned. The specific governance configuration that regulates international sports already triggered the horizontal application of the European Union's fundamental freedoms to the rules of the SGBs in the 1970s and is playing into the mounting recognition that the SGBs' wide administrative and legislative powers must be checked by stricter human rights responsibilities. Beyond the context of sport, the unanimous adoption of the United Nations Guiding Principles for Business and Human Rights (UNGPs) has reinforced the sentiment that private businesses ought to bear a responsibility to respect human rights. In short, sport, and football in particular, is a social domain in which the transnational authority of private governance is clearly visible and, therefore, also the primary target of legal challenges based on human rights.

This special issue of the Tilburg Law Review is an opportunity to showcase how this human rights turn has transformed, or should transform, the way FIFA governs and shapes football. To this end, on May 8th 2019, the Netherlands Network for Business and Human Rights together with the Asser Institute hosted a conference titled 'FIFA and human rights: Impacts, policies, responsibilities'.[3] The Conference brought together academics from various legal disciplines, as well as representatives of FIFA and the Centre for Sport and Human Rights. The present issue of the Tilburg Law Review publishes a selection of the papers presented.

* Senior Researcher at the Asser Institute, NL, a.duval@asser.nl.
† PhD Researcher at Tilburg University, Department of Public Law and Governance, NL.

1 Barbara Keys, 'Harnessing Human Rights to the Olympic Games: Human Rights Watch and the 1993 'Stop Beijing' Campaign' [2018] 53 Journal of Contemporary History 415.

2 It is still invoked nowadays, see for example 'IAAF publishes briefing notes and Q&A on Female Eligibility Regulations' (*World Athletics*, 7 May 2019) <www.worldathletics.org/news/press-release/questions-answers-iaaf-female-eligibility-reg> accessed 6 March 2020 ['The IAAF is not a public authority, exercising state powers, but rather a private body exercising private (contractual) powers. Therefore, it is not subject to human rights instruments such as the Universal Declaration of Human Rights or the European Convention on Human Rights'].

3 The Netherlands Network for Business and Human Rights is a Working Group within the Netherlands Network for Human Rights Research.

Before elaborating further on the intersection between human rights and FIFA, it is important to have a clear understanding of the formal legal status of FIFA. It is a Swiss association, incorporated and regulated under the Swiss Civil Code, more specifically Chapter Two, which covers associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose.[4] The association is registered in the Commercial Register of the Canton of Zürich and owns a number of foreign subsidiaries.[5] This legal structure grants FIFA a rather flexible status under Swiss law, resulting in benefits such as tax exemptions and a significant level of regulatory autonomy.[6] Yet, in practice, FIFA is clearly not equivalent to a local Swiss chess club. Instead, it is a global regulator with the power to bend states to its will and to exercise regulatory authority over football's "citizens" worldwide.[7] It should best be considered a transnational governance body, which creates and imposes its rules on football clubs and players, and organizes football tournaments that not only generate massive financial income contributing to the reinforcement of its administrative capacity but also affect the lives of people in the host countries.

The objective of this editorial is threefold. First, it aims to highlight three different areas of research into the link between FIFA and human rights, namely its human rights impacts (section 2), policies (section 3) and responsibilities (section 4). Secondly, it maps existing research on FIFA and human rights for each section, including some of the issues dealt with in more detail by the articles in this journal. Finally, it strives to contribute to the definition of a research agenda at the intersection of transnational law, *lex sportiva*, and (business and) human rights, by highlighting the questions that arise from linking a transnational private actor like FIFA to human rights (section 5).

2 FIFA's Human Rights Impacts

The first cluster of research questions that we would like to outline is related to FIFA's human rights footprint and is primarily tackling empirical matters: how does FIFA affect human rights? Which FIFA practices, decisions and policies are susceptible to negatively impact human rights? How to measure those impacts? These questions raise difficult empirical challenges, which in our eyes can be tackled only through the involvement and cooperation of multiple methodological approaches. Hence, many different research tools should be mobilized to better understand how FIFA affects a range of people and environments. In this first section, we aim to touch upon the existing scholarship in this regard and to identify the areas in which we see room for enhanced scrutiny of FIFA's impact. We point out that FIFA's activities can have a considerable effect on human rights, not only in the context of the organization of its international tournaments, for example in relation to labor rights of construction workers, but also with regard to its daily regulation of football, in the field of player's rights, or the rights of supporters for instance. The following two sub-sections discuss FIFA's adverse human rights impacts in those two categories in greater detail.

2.1 The FIFA World Cup and Human Rights

In the past decade, the number of academic and non-academic attention for human rights risks associated with mega-sporting events (MSEs) rose, focusing in particular on the FIFA World Cup and the Olympic Games as the two most prestigious and popular global sporting events. In the academic context, this led to multi-disciplinary engagements with this issue from a variety of perspectives, such as business and human rights, sports law, or related fields such as development studies.[8] For their part, non-governmental organizations like Human Rights Watch and Amnesty International conducted several studies on the impact of MSEs

[4] FIFA, 'FIFA Statutes' (August 2018 edn) art 1.1. 'The Fédération Internationale de Football Association (FIFA) is an association registered in the Commercial Register of the Canton of Zurich in accordance with art. 60 ff. of the Swiss Civil Code'.

[5] FIFA, 'FIFA Governance Regulations (FGR)' <www.fifa.com/mm/document/affederation/administration/02/11/20/75/forenweb_neutral.pdf> accessed 6 March 2020.

[6] On the extremely favorable legal framework provided in general to SGBs by Swiss law, see Margareta Baddeley, 'The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn' [2019] The International Sports Law Journal (forthcoming).

[7] Henk Erik Meier and Borja García, 'Protecting Private Transnational Authority against Public Intervention: FIFA's Power over National Governments' [2015] 93 Public Administration 890.

[8] See for example Lucy Amis and John Morrison, 'Mega-Sporting Events and Human Rights—A Time for More Teamwork?' [2017] 2 Business and Human Rights Journal 135; Florian Kirschner, 'Breakthrough or Much Ado about Nothing? FIFA's New Bidding Process in the Light of Best Practice Examples of Human Rights Assessments under UNGP Framework' [2019] 19 The International Sports Law Journal 133; Daniela Heerdt, 'Tapping the Potential of Human Rights Provisions in Mega-Sporting Events' Bidding and Hosting Agreements' [2018] 17 International Sports Law Journal 170; Megan Corrarino, '"Law Exclusion Zones": Mega-Events as Sites of Procedural and Substantive Human Rights Violations' [2014] 17 Yale Human Rights and Development Law Journal 180; John Horne, 'Understanding the Denial of Abuses of Human Rights Connected to Sports Mega-Events' [2018] 37 Leisure Studies 11; Paul Michael Brannagan and Richard Giulianotti, 'Soft Power and Soft Disempowerment: Qatar, Global Sport and Football's 2022 World Cup Finals' [2015] 34 Leisure Studies 703.

on human rights more generally, but also focused on specific tournaments, such as the 2018 World Cup in Russia or the upcoming World Cup in Qatar.[9] Global trade unions like Building and Woodworkers International or the International Trade Union Confederation have repeatedly criticized FIFA for the labor conditions on building sites connected to the World Cup.[10] Also the media reports more extensively on human rights abuses related to the FIFA World Cup, in particular with regard to the construction of the World Cup infrastructure in Qatar for the 2022 tournament.[11]

Arguably, it was the election of Qatar as World Cup host in 2010 and the subsequent rise in reporting on migrant workers being exploited on World Cup construction sites, which triggered the increase in FIFA's sensitivity to human rights. After allocating its most prestigious tournament to Qatar, a range of actors systemically linked FIFA to human rights abuses, more specifically the exploitation of thousands of migrant workers hired to work on the World Cup construction sites. The well-documented abusive working and living conditions are reinforced by the fact that migrant workers are prevented from leaving abusive employers or the country due to confiscation of passports and the requirements of exit permits to be issued by the employer. Workers on the building sites are exposed to heat up to 50 degrees Celsius, six days a week, with almost no breaks and only limited access to drinking water. In 2017, Human Rights Watch reported that there have been dozens of workers deaths related to heat and exhaustion.[12]

The exploitation of workers on sport-related construction sites is not a unique situation limited to Qatar. The 2018 World Cup in Russia for example was also overshadowed by reports of structural exploitation of workers, which Included the non-payment or severe delays in payment of wages, unsafe working conditions leading to injuries and the death of workers, and forced illegal work due to lack of employment contracts and other documentation.[13] Furthermore, journalists and human rights advocates who tried to investigate and report on these conditions were threatened and harassed. A number of journalists have been arrested during their investigations and put on trial.[14] In addition to worker's rights, there are more adverse human rights impacts related to the FIFA World Cup. FIFA itself identifies forced evictions and other violations of housing rights as 'salient human rights risks'.[15] To make room for the infrastructure needed for the 2014 World Cup (and the 2016 Summer Olympic Games), more than 77,000 people living in and around Rio de Janeiro were displaced between 2009 and 2015.[16] Not only residents but also local vendors were affected. In the run-up to the 2010 World Cup in South Africa, street sellers were barred from their usual vending sites due to the introduction of economic exclusion zones created around the stadiums, which for many of those people resulted in a loss of livelihood.[17]

Furthermore, safety and security measures can lead to negative human rights impacts in the context of FIFA's tournaments as well. This is particularly problematic for those host cities, in which security structures

[9] Human Rights Watch, 'Race to the Bottom – Exploitation of Migrant Workers Ahead of Russia's 2014 Winter Olympic Games in Sochi' (2013) <www.hrw.org/report/2013/02/06/race-bottom/exploitation-migrant-workers-ahead-russias-2014-winter-olympic-games> accessed 6 March 2020; Human Rights Watch, 'Red Card – Exploitation of Construction Workers on World Cup Sites in Russia' (2017) <www.hrw.org/sites/default/files/report_pdf/russiafifa0617_web_0.pdf> accessed 6 March 2020; 'Human Rights Concerns in South Africa during the World Cup' (*Amnesty International*, 4 June 2010) <www.amnesty.org/en/press-releases/2010/06/human-rights-concerns-south-africa-during-world-cup/> accessed 6 March 2020; Amnesty International, 'The Ugly Side of The Beautiful Game – Exploitation of Migrant Workers on a Qatar 2022 World Cup Site' (2016) <www.amnesty.org/download/Documents/MDE2237412016ENGLISH.PDF> accessed 6 March 2020.

[10] International Trade Union Confederation, 'Frontline Report 2015 – Qatar: Profit and Loss – Counting the Cost of Modern Day Slavery in Qatar: What Price Is Freedom?' (2015) <www.ituc-csi.org/IMG/pdf/qatar_en_web.pdf> accessed 6 March 2020; The Supreme Committee for Delivery & Legacy and Building and Wood Workers' International-Joint Working Group, '2018 Report' (2019) <www.business-humanrights.org/sites/default/files/documents/SC-BWI-JWG-Report-25Feb2019.pdf> accessed 6 March 2020.

[11] Tom Philipps, 'Rio World Cup Demolitions Leave Favela Families Trapped in Ghost Town' (*The Guardian*, 26 April 2011) <www.theguardian.com/world/2011/apr/26/favela-ghost-town-rio-world-cup> accessed 6 March 2020; David Conn, 'World Cup 2018: Fifa Admits Workers Have Suffered Human Rights Abuses' (*The Guardian*, 25 May 2017) <www.theguardian.com/football/2017/may/25/fifa-world-cup-2018-workers-human-rights-abuses?CMP=share_btn_tw> accessed 6 March 2020; Leana Hosea, 'Inside Qatar's Squalid Labour Camps' (*BBC News*, 7 March 2014) <www.bbc.com/news/world-middle-east-26482775> accessed 6 March 2020.

[12] Human Rights Watch, 'Qatar: Take Urgent Action to Protect Construction Workers' (2017).

[13] Human Rights Watch, 'Red Card – Exploitation of Construction Workers on World Cup Sites in Russia' (n 9) 2.

[14] Jane Buchanan, 'Russian Police Violently Arrest Critical Newspaper Editor' (*Human Rights Watch*, 7 November 2017) <www.hrw.org/news/2017/11/07/russian-police-violently-arrest-critical-newspaper-editor> accessed 6 March 2020.

[15] FIFA, 'FIFA's Human Rights Policy' (2017) <http://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/12/fifashumanrightspolicy_neutral.pdf> accessed 6 March 2020, para 5.

[16] World Cup and Olympics Popular Committee, 'Mega-Events and Human Rights Violations in Rio de Janeiro Dossier – Rio Olympics: The Exclusion Games' (2015) <www.childrenwin.org/wp-content/uploads/2015/12/DossieComiteRio2015_ENG_web_ok_low.pdf> accessed 6 March 2020, 20.

[17] Corrarino (n 8) 180, 187.

are already fragile. The Brazilian World Cup and Olympics Popular Committee reported that the staging of the two MSEs, the 2014 World Cup and the 2016 Summer Olympic Games, 'represent a new period of expansion, standardisation and aggravation of these structures, which function as an instrument of the black "genocide" policy and the repression in shantytowns and the suburbs, emphasising further the criminalisation of social movements'.[18] Amnesty International documented that in the months leading up to the Olympic Games, violence and police killings increased every month.[19] In South Africa, some regions showed an increase of almost 50% in fatal shootings by the police in the two years leading up to the World Cup.[20]

Lastly, discrimination against fans more generally was also an issue for the 2018 World Cup in Russia. Fans travelling to the tournament were warned against homophobia and racism they might encounter. Just months before the Sochi Olympics in 2014, the Russia government had passed laws that penalize 'gay propaganda'.[21]

2.2 FIFA's Daily Governance and Human Rights

The FIFA World Cup is a magnet for researchers and critics. Its status as one of the most, if not the most, globally shared social moments warrants its special treatment as a primary empirical context to investigate and criticize the human rights legacy of FIFA. Yet, the World Cup does not nearly exhaust FIFA's capacity to shape our lives worldwide and affect our rights. Indeed, while most of FIFA's revenue and much of its reputation are derived from the World Cup, it is also engaged in a variety of regulatory practices beyond the World Cup cycle, which are also a source of human rights impacts.

For example, FIFA endorses the rules of the game, which are adopted by the International Football Association Board, thus defining the way football is played. These rules are potentially affecting the right to health of football players, as the recent discussions regarding the damaging effects of concussions or repeated headers have shown.[22] FIFA is also issuing disciplinary rules, which have effects on the right to free speech of fans and players.[23] This is not to say that these restrictions cannot be justified, but they do impact the enjoyment of the rights of those who come under the jurisdiction of FIFA. Most prominently, FIFA's rules and decisions also have an effect on the economic rights of clubs, players and agents. For example, the FIFA Regulations on the Status and Transfer of Players (RSTP) regulate strictly the way in which the profession of football player is to be exercised and impose restrictions on the players' freedom to engage in various types of economic activity. There is a clear need for researchers to better understand the effects of these rules on the individuals and clubs concerned, as well as to criticize their legality and legitimacy. For example, researchers have recently argued that the RSTP is restricting children rights by imposing specific conditions for their transnational movement between clubs.[24]

Gender discrimination also counts to FIFA's salient human rights risks and does arise not only in the context of the treatment of individual players but also in the context of FIFA's tournaments more generally.

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[18] World Cup and Olympics Popular Committee (n 16) 101.

[19] Amnesty International, 'Brazil: Rio's Olympic Legacy Shattered with No Let-up in Killings by Police' (*Amnesty International*, 22 August 2016) <www.amnesty.org/en/latest/news/2016/08/brazil-rio-s-olympic-legacy-shattered-with-no-let-up-in-killings-by-police/> accessed 6 March 2020.

[20] Amnesty International (n 9).

[21] Tariq Panja, 'Ahead of World Cup, Fans Are Warned About Homophobia and Racism in Russia' (*The New York Times*, 28 November 2017) <www.nytimes.com/2017/11/28/sports/soccer/russia-world-cup-fans.html>.

[22] Jeremi Duru, 'No hands…and no heads: An argument to end heading in soccer at all levels' (*Law in Sport*, 11 March 2019) <www.lawinsport.com/topics/item/no-hands-and-no-heads-an-argument-to-end-heading-in-soccer-at-all-levels> accessed 6 March 2020. See Gorazd Bunc, Janez Ravnik and Tomaz Velnar, 'May Heading in Soccer Result in Traumatic Brain Injury? A Review of Literature' [2017] 71 Medical Archives 356.

[23] See for example Article 13 FIFA, 'FIFA Disciplinary Code 2019' (2019) <https://resources.fifa.com/image/upload/fifa-disciplinary-code-2019.pdf?cloudid=itlg9zbqmrow5rf2h7dy> accessed 6 March 2020 ['Any person who offends the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions (by any means whatsoever) on account of race, skin colour, ethnic, national or social origin, gender, disability, sexual orientation, language, religion, political opinion, wealth, birth or any other status or any other reason, shall be sanctioned with a suspension lasting at least ten matches or a specific period, or any other appropriate disciplinary measure.'] or Article 16(2) FIFA Disciplinary Code 2019 [All associations and clubs are liable for inappropriate behaviour on the part of one or more of their supporters as stated below and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match: e) the use of gestures, words, objects or any other means to transmit a message that is not appropriate for a sports event, particularly messages that are of a political, ideological, religious or offensive nature].

[24] See Christina Lembo, 'FIFA Transfer Regulations and UEFA Player Eligibility Rules: Major Changes in European Football and the Negative Effect on Minors' [2011] 25 Emory International Law Review 539; In general on FIFA and children's rights, see Drywood, Eleanor: 'We need to talk about the kids': FIFA's children's rights obligations' (*VerfBlog*, 4 July 2019) <https://verfassungsblog.de/we-need-to-talk-about-the-kids-fifas-childrens-rights-obligations/> accessed 6 March 2020.

For instance, the 2019 FIFA Women's World Cup brought more attention to the issue of FIFA's discrimination against female players in terms of promotion and rewards. The media concentrated mainly on the allocation of much lower prize money than for the men's competition. However, discrimination of female football teams is a structural problem linked to FIFA as the global regulator of sports, as well as to confederations, national football associations and even clubs. In addition to immense wage gaps, the level of funding and support in terms of equipment, training facilities or medical services is often considerably lower for female teams. Taking a feminist perspective on FIFA's regulations and actions, including the adoption of its Women's Football Strategy can reveal to what extent FIFA is committed to preventing gender discrimination in football and protect women's rights more generally. *Krech's* contribution to this issue discusses these issues in more detail and reveals the shortcomings of FIFA's Women's Football Strategy. In addition, the issue of gender discrimination also plays a role in the context of fans attending FIFA's tournament and matches. An ongoing issue is the stadium ban for women in Iran. Human Rights Organizations like Amnesty International and Human Rights Watch have repeatedly called on FIFA to use its leverage over the Iranian football federation and engage with Iran's government to lift the ban. In September 2019, the tragic news of the death of female football fan Sahar Khodayari raised international attention for the issue.[25] She died in the hospital from injuries of her self-immolation, following a court hearing in which she was charged with committing a sinful act by not wearing her hijab in public and insulting officials, when she entered a stadium in Iran dressed as a man in March 2019. Shortly after a FIFA delegation met with Iranian authorities, they were told that the ban will be lifted, not only for international matches but also for local matches, starting with a World Cup qualifying match in October 2019.[26] Whether or not this discrimination of Iranian female fans will indeed stop remains to be seen.

Finally, FIFA affects the right to access to justice of its members. Indeed, under Article 59(2) FIFA Statutes it prohibits recourse to national courts, while Article 58 FIFA Statutes provides that FIFA decision can be appealed only at the Court of Arbitration for Sport (CAS). It is at least debatable whether the CAS offers a fair access to justice as usually required by human rights treaties.[27] In any event, the effects of FIFA's laws on the access to justice of those affected by its decisions should certainly be a subject of inquiry.

As this first section has shown, FIFA's transnational governance and activities are in principle susceptible of impacting a wide range of human rights. In fact, civil society organizations, such as Human Rights Watch and Amnesty International, have started to take stock of this impact and intensify their scrutiny of FIFA, especially in the context of its World Cup. However, FIFA's human rights impacts go beyond these specific instances and reach also its less visible, but no less impactful, routine regulatory practices. Unfortunately, we were not able to gather papers primarily focused on this empirical dimension. Yet, future multidisciplinary work on these issues will be crucial in order to determine the full scope of the human rights risks that FIFA needs to integrate, prevent and mitigate through its policies.

3 FIFA's Human Rights Policies

The second area of focus for researchers and human rights activists relates to FIFA's own internal human rights policies. These raise a number of urgent research and policy questions: why did FIFA introduce such policies? What are the objectives of FIFA's human rights policies? How are they implemented in practice? What are their effects on the ground? How could these policies be improved? Again, these questions will have to be dealt with from a variety of methodological perspectives, but it is in our view essential that in light of FIFA's recent public embrace of human rights, the extent and effectiveness of this embrace be thoroughly scrutinized. In this issue, a comprehensive analysis of the process of self-constitutionalization of FIFA is at the heart of *Bützler and Schöddert's* article.

In 2014, 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 Joseph Blatter, then president of FIFA.[28] In this letter, Ruggie and Robinson highlighted the human rights challenges related to the upcoming World Cup in South Africa and formulated concrete recommendations

[25] Amnesty International UK, 'Iran: 'horrific' death of football fan Sahar Khodayari must mean end of women stadium ban' (10 September 2019) <https://www.amnesty.org.uk/press-releases/iran-horrific-death-football-fan-sahar-khodayari-must-mean-end-women-stadium-ban> Accessed 6 March 2020.

[26] BBC News, 'Fifa 'assured' Iranian women will be able to attend football matches' (22 September 2019) <https://www.bbc.com/news/world-middle-east-49787863>.

[27] See the scathing dissent under *Mutu and Pechstein v. Switzerland* App no 40575/10 & 67474/10 (ECtHR, 2 October 2018).

[28] Letter from Mary Robinson and John Ruggie to Joseph Sepp Blatter (11 June 2014) <www.ihrb.org/uploads/statements/2014-06-11-Open-Letter-FIFA.pdf> accessed 6 March 2020.

on how FIFA should address any adverse human rights impacts.[29] This letter arguably marked the beginning of FIFA's human rights journey and in the years that followed, FIFA underwent a reform process that included the introduction of human rights standards into their regulatory framework. As one of the first steps, FIFA hired John Ruggie in 2015, author of the UNGPs, to help FIFA understand what it means to embed human rights across its activities, using the UNGPs as 'authoritative standard', based on FIFA's newly adopted statutory commitment to respect all internationally recognized human rights.[30] The outcome was a report published in 2016, titled '"For the Game. For the World." FIFA and Human Rights', which includes 25 concrete recommendations for action to be taken by FIFA.[31]

A number of these recommendations have indeed been followed. Since March 2017, FIFA has an independent Human Rights Advisory Board, which provides advice to FIFA on all its human rights issues and regularly publishes reports that track and evaluate FIFA's human rights efforts.[32] This conforms to recommendation 5.4 of Ruggie's report, stating that 'FIFA should provide more in-depth reporting about how it understands and addresses its human rights risks and actual impacts'.[33] In May 2017, FIFA adopted a human rights policy, following Ruggie's number one recommendation.[34] In this policy, FIFA explicitly commits to respect human rights in accordance with the UNGPs. Furthermore, it acknowledges the potential adverse impacts FIFA's activities can have on human rights and identifies as salient human rights risks labor rights, land acquisition and housing rights, discrimination, security, and player's rights.[35] Following recommendations 3.2 and 4.1 of the Ruggie report, FIFA initiated new bidding regulations for the 2026 FIFA World Cup in October 2017.[36] According to the new regulations, bidders are required to develop a human rights strategy and conduct an independent human rights risk assessment. In the run-up to the 2018 FIFA World Cup, FIFA launched a complaint mechanism and accompanying detailed statement for human rights defenders and media representatives.[37] It is a web-based tool, in which individuals that consider their rights to have been violated can report the incident.[38] According to the statement, FIFA is committed to address these complaints

> by engaging with the relevant stakeholders and those affected, […] directly engaging with third parties that are involved in the actual or potential adverse impact, including with public authorities, and striving to use its leverage to prevent, mitigate or, where required, remedy the adverse impact in question […], seeking cooperation with other institutions and organisations […], speaking out publicly in support of human rights defenders and media representatives and their work.[39]

The mechanism has for instance been used by members of the political activist group Pussy Riot, following their detention by Moscow police for running ran onto the field during the final match of the World Cup.[40]

In the past few years, there have been a number of moments in which FIFA's newly developed human rights framework has been tested. In some of these instances, FIFA could indeed show that 'using its leverage' can lead to positive outcomes. The most recent example is the concession of the Iranian authorities to lift the stadium ban for women, if it proves true. The adoption of worker's welfare standards and legislative

[29] ibid.

[30] John G Ruggie, '"For the Game. For the World." – FIFA and Human Rights' (Harvard University 2016) <https://www.hks.harvard.edu/sites/default/files/Ruggie_humanrightsFIFA_reportApril2016.pdf> accessed 6 March 2020, 11; FIFA, 'FIFA Statutes' (2016 edn.) art 3.

[31] Ruggie (n 30).

[32] See for example FIFA's Human Rights Advisory Board, 'Second Report by the FIFA Human Rights Advisory Board' (2018) <https://resources.fifa.com/image/upload/fifa-second-human-rights-advisory-board-report.pdf?cloudid=hwl34aljrosubxevkwvh> accessed 6 March 2020; FIFA's Human Rights Advisory Board, 'Third Report by the FIFA Human Rights Advisory Board' (2019) <www.business-humanrights.org/sites/default/files/FIFA Human Rights Advisory Board Third-report_June 2019.pdf> accessed 6 March 2020.

[33] Ruggie (n 30) 34.

[34] Fédération Internationale de Football Association (n 15).

[35] ibid paras 1–2, 5.

[36] FIFA, 'FIFA Regulations for the Selection of the Venue for the Final Competition of the 2026 FIFA World Cup' (2017) <http://resources.fifa.com/mm/document/affederation/administration/02/91/60/99/biddingregulationsandregistration_neutral.pdf> accessed 6 March 2020; Ruggie (n 30) 32.

[37] FIFA, 'FIFA Statement on Human Rights Defenders and Media Representatives' (2018) <https://resources.fifa.com/image/upload/ejf1ecdku14lm2v9zc03.pdf> accessed 6 March 2020.

[38] See FIFA, 'BKMS System' <www.bkms-system.net/bkwebanon/report/clientInfo?cin=6fifa61&language=eng> accessed 6 March 2020.

[39] FIFA (n 37) para 15.

[40] FIFA's Human Rights Advisory Board (n 32) 13.

changes to Qatar's labor laws following FIFA's engagement with the Qatari government and the Supreme Committee for Delivery and Legacy, the 2022 World Cup organizing committee, which arguably led to slight improvements of the exploitative and abusive conditions that migrant workers on World Cup construction sites in Qatar were experiencing, could also be viewed as success.[41] Furthermore, FIFA's engagement in the case of Hakeem Al Araibi arguably had a positive impact on the case's outcome—a Bahraini soccer player who lived as a refugee in Australia and was arrested in Thailand based on an international warrant issued by Bahrain for his alleged involvement in anti-government protests when the Arab spring had reached Bahrain in 2012.[42] FIFA joined efforts with other stakeholders, including governments, sport bodies, and non-governmental organizations, to exert pressure on the Thai officials to release Hakeem. After three months in prison, the Thai Prime Minister stepped in and ended the proceedings and Hakeem was released. However, a more critical moment arose when FIFA announced plans to expand the number of teams participating in the 2022 World Cup from 32 to 48. From a human rights perspective, the problem was that countries like the United Arabic Emirates or Saudi Arabia were considered as potential hosts, without subjecting them to any human rights risk assessment in line with FIFA's new bidding requirements. Eventually, the expansion was called off.

All these institutional and regulatory changes constitute an undeniable rhetorical shift in FIFA's approach to human rights, from ignoring their relevance to fully acknowledging their importance and even integrating them in various FIFA processes. However, very little research has been conducted to determine the concrete empirical effects of these changes. It is at this stage extremely difficult to know whether the processes put in place have led to transformative changes in the way FIFA operates or remain of a cosmetic nature. It is therefore crucial that researchers engage actively in determining from a variety of methodological standpoints what their effects have been in order to critically (re-)assess their modalities and institutional forms. In this regard, the importance of qualitative methods, such as interviews or participant observation (unfortunately rarely available in the FIFA context) must be highlighted, as it is only through a more empirically fine-grained analysis that the extent of the transformative consequences of FIFA's human rights policies will be properly grasped.

4 FIFA's Human Rights Responsibility

The final section of our research agenda concerns the existence of fora where FIFA can be held accountable for its human rights impacts. On this aspect, legal researchers have a specific role to play due to their intimate acquaintance with courts as institutional sites of legal accountability. In general, we believe it is essential that scholars develop stronger descriptive and normative research on the judicial and non-judicial procedures through which FIFA can be held accountable for its negative effects on human rights. Currently, too little work has been devoted to identifying those accountability mechanisms and assessing their comparative viability. Yet, if human rights are to become a significant lens through which FIFA's transnational governance can be assessed and shaped, then the question of the justiciability (in a court of law or public opinion) of these rights will have to move towards the center of the discussion.

4.1 Bringing FIFA to Court Over Human Rights

In the past, FIFA has rarely been challenged in court. The cases that come closest to a human rights challenge affecting FIFA concern the horizontal application of the EU free movement rights to decisions and regulations of its affiliates, such as UEFA or the national federations. Indeed, FIFA itself escaped the scrutiny of the Court of Justice of the EU as the main cases, such as *Bosman*,[43] *Simutenkov*[44] or *Olympique Lyonnais*,[45] were directed against organizations (UEFA, national federations or clubs) affiliated to FIFA. It is only through the prism of EU competition law that EU institutions have captured FIFA regulations restricting economic

[41] ILO, 'ILO Governing Body Welcomes Qatar's Commitment to Bolster Migrant Worker Rights' (*International Labour Organization*, 8 November 2017) <www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_592473/lang--en/index.htm> accessed 6 March 2020; Business and Human Rights Research Centre, 'Qatar: Supreme Committee for Delivery & Legacy launches Workers' Welfare Standards, initiates internal and external monitoring for 2022 World Cup contracts' (2019) <www.business-humanrights.org/en/qatar-supreme-committee-for-delivery-and-legacy-launches-workers-welfare-standards-initiates-internal-and-external-monitor-for-2022-world-cup-contracts> accessed 6 March 2020.

[42] FIFA, 'FIFA Statement on Hakeem Al Araibi' (*FIFA*, 9 January 2019) <www.fifa.com/about-fifa/who-we-are/news/fifa-statement-on-hakeem-al-araibi> accessed 6 March 2020.

[43] Case C-415/93 Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman [1995] ECR I-04921.

[44] Case C-265/03 *Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol* [2005] ECR I-02579.

[45] Case C-325/08 *Olympique Lyonnais SASP v Olivier Bernard* [2010] ECR I-02177.

freedoms.[46] Nevertheless, at the CAS the possibility to test FIFA's regulatory practices on the basis of the EU's fundamental freedoms and rights has been tested in recent years.[47] Hence, the potential for FIFA to face challenges on the basis of EU law and, in particular EU fundamental rights, should not to be underestimated as illustrated by *Lewandowski's* article in this issue.[48] As he argues, the new accountability frontier might well result from the horizontal application of the EU's Charter of Fundamental Rights. Indeed, recent doctrinal and jurisprudential developments could facilitate the horizontal application of these fundamental rights to FIFA, thus strengthening the position of EU law and the EU institutions as normative references and institutional spaces to hold FIFA accountable on the basis of fundamental rights.

A second site where human rights could be relied upon to challenge FIFA is the CAS. The Lausanne-based arbitral body is exclusively competent to review FIFA's decisions, and the introduction of Article 3 into FIFA Statutes and human rights requirements in the bidding procedure for the World Cup will necessarily lead to increasing references to human rights before CAS panels.[49] This possibility raises many questions with regard to the suitability of the CAS as an accountability forum: will the CAS have the internal capacity to handle human rights disputes? Will the CAS arbitrators and counsels, mainly commercial and sports lawyers, be receptive to human rights? How will they interpret and apply human rights? Beyond the institutional and sociological weaknesses of the CAS, one could also legitimately wonder whether the CAS panels will be sufficiently independent from FIFA to deal impartially with human rights cases. In short, the CAS could, at least in theory, become a place where FIFA's commitment to human rights harden, or in the words of *Bützler and Schöddert* be constitutionalized further,[50] through external judicial scrutiny. Yet, this remains subject to many unknowns: which FIFA decisions can be challenged? Who has standing to challenge these decisions? Will right-holders who are not affiliated to FIFA be able to challenge its decisions at the CAS? Hence, the actual effect of the CAS as an accountability forum in human rights cases against FIFA remains a question mark and will deserve critical scrutiny in the years to come. Nevertheless, if FIFA's public commitment is to mean a serious engagement in favor of human rights, then it must necessarily allow for external independent judicial checks on its implementation. CAS, if its institutional weaknesses are finally addressed, might provide that external review, but its capacity to do so must be constantly scrutinized.

Finally, Swiss courts may be relevant in holding FIFA accountable for its negative human rights impacts in two different ways. On the one hand, as FIFA is seated in Switzerland, it is in theory possible to bring FIFA before Swiss courts under civil liability procedures for its involvement in alleged human rights violations. This is for example, the path followed by the Dutch labor union FNV when it (in conjunction with two migrant workers) brought FIFA to court over the violations of labor rights of migrant workers in Qatar.[51] However, this case illustrates as well the extreme reluctance of the Swiss courts to hold FIFA accountable for harms that are not directly linked to its activities but rather the result of local labor practices.[52] Legal scholars, as for example *Regueiro Dubra* in this issue,[53] are devising arguments supporting a potential liability of FIFA in this context and Swiss courts will most likely remain a potential accountability forum in the years ahead. The current debates over the so-called Responsible Business Initiative (RBI) in Switzerland, which should lead to a referendum at the end of 2020, might change the situation by facilitating liability claims against corporations seated in Switzerland.[54] It remains uncertain at this stage whether FIFA would fall under the scope of the obligations envisaged by the RBI and, crucially, whether the Initiative will be endorsed by the Swiss people in the referendum. In the future, it cannot be excluded that Swiss civil courts

[46] See Case T-193/02 *Laurent Piau v Commission of the European Communities* [2005] ECR II-00209; European Commission, 'Outcome of discussions between the Commission and FIFA/UEFA on FIFA Regulations on international football transfers' (2001) <https://ec.europa.eu/commission/presscorner/detail/en/IP_01_314> accessed 6 March 2020.

[47] See TAS 2016/A/4490, *RFC Seraing c. Fédération Internationale de Football Association (FIFA)*, Award of 9 March 2017.

[48] See *The Implications of the Recent Jurisprudence of the Court of Justice of the European Union for the Protection of the Fundamental Rights of Athletes and the Regulatory Autonomy of Sporting Federations* in this issue.

[49] For the first published CAS award referring to FIFA's human rights commitment under the new Article 3, see CAS 2017/A/5166 & 5405, *Palestine Football Association v. Fédération Internationale de Football Association (FIFA)*, Award of 9 July 2018, paras 97–98.

[50] See *Constitutionalizing FIFA: Promises and Challenges* in this issue.

[51] Commercial Court of the Canton of Zurich, HG160261-O, 3 January 2017. For a commentary of the case, see Tomáš Grell, 'FIFA's Responsibility for Human Rights Abuses in Qatar – Part I: The Claims Against FIFA' (*Asser International Sports Law Blog*, 28 February 2017) <https://www.asser.nl/SportsLaw/Blog/post/fifa-s-responsibility-for-human-rights-abuses-in-qatar-part-i-by-by-tomas-grell> accessed 6 March 2020.

[52] ibid.

[53] See her article on *Shared Responsibility and Human Rights Abuse: The 2022 World Cup in Qatar.*

[54] See the website of the initiative at 'About the Initiative' (*Swiss Coalition for Corporate Justice SCCJ*) <https://corporatejustice.ch/about-the-initiative/> accessed 6 March 2020.

might constitute an interesting litigation avenue, yet for the time being this remains a rather distant possibility. Additionally, the Swiss Federal Tribunal (SFT) is also directly competent to review the CAS awards and could therefore exercise a human rights check upon them. However, this review is currently extremely limited and covers issues related to the substantial and procedural Swiss policy, which overlap in some respect with human rights.[55] In the words of one of the best participant observers of the CAS, 'in practice, arbitrators enjoy an almost absolute freedom as to how they decide a case on its merits—the Supreme Court's control in this respect being virtually non-existent'.[56] While Swiss courts might appear at first as suitable candidates to hold FIFA accountable for its human rights impacts and commitments, in reality they remain difficult to access for complainants and extremely lenient in their review of FIFA decisions and regulations. This does not mean, however, that they cannot and will not be activated as accountability mechanisms in the future, especially if the responsibility of the Swiss state is engaged due to their passivity.

4.2 Holding States Accountable for FIFA's Human Rights Impacts

When human rights are concerned, states are not only obliged to respect, protect and fulfill human rights but also to prevent third parties from abusing human rights on their territory. Therefore, a more indirect way to approach FIFA's accountability is through state responsibility. Where day-to-day business and general football-related issues are concerned, FIFA could be held responsible under human rights responsibilities of Switzerland under regional and international human rights instruments. In the context of the World Cup, one could also call upon the responsibility of the host government.

Considering the type of activities that FIFA engages with, in particular state obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) become relevant. Switzerland and host states that signed the Convention have for instance obligations regarding decent working conditions, housing rights, or the prohibition of discrimination.[57] However, despite the fact that FIFA committed itself to respect the ICESCR,[58] it cannot be held directly accountable for breaching this commitment, as the relevant accountable mechanism does not apply to private associations. The detour would thus be to hold the respective state accountable for failing to protect individuals from these abuses by third parties such as a private association. On the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the associated European Court of Human Rights could play a significant role. While the Convention applies to Switzerland, it does not apply to all potential hosts of the World Cup. Nevertheless, the Court has dealt with a number of cases related to football and sports more generally, mostly in the context of the responsibility of Switzerland for the practices of the CAS.[59]

As a final point on FIFA's accountability, it should be noted that solely calling upon the responsibility of FIFA might fall short of addressing the fact that adverse human rights impacts related to the World Cup and more generally FIFA's activities are often the result of collaboration between and contributions of multiple actors.[60] The interrelation of their actions blurs the lines of accountability, as it becomes difficult to identify a single actor responsible for a certain adverse human rights impact, or to trace back sufficiently which actor is responsible for what. Furthermore, even for those cases where this might be possible, holding FIFA accountable together with other contributing actors is far from reality, as most existing remedy and accountability mechanisms are not equipped to deal with cases involving multiple and diverse wrongdoers.[61] A way forward would be to take a shared responsibility approach to these cases, and the shared responsibility concept as recently developed under international law could provide a useful conceptual framework to develop such an approach. It rests on the idea that responsibility and accountability can be shared between a multiplicity of

[55] See Antonio Rigozzi, 'Challenging Awards of the Court of Arbitration for Sport' [2010] 1 Journal of International Dispute Settlement 217.

[56] ibid 254.

[57] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, arts 2, 6, 7, 11.

[58] FIFA, 'FIFA Statutes' (2018 edn) <https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa> accessed 6 March 2020, art 3.

[59] European Court of Human Rights, 'Sport and the European Convention on Human Rights' (2019) <www.echr.coe.int/Documents/FS_Sport_ENG.pdf> accessed 6 March 2020. See also Daniel Rietiker, 'The European Court of Human Rights and FIFA: Current Issues and Potential Challenges' (*VerfBlog*, 6 July 2019) <https://verfassungsblog.de/the-european-court-of-human-rights-and-fifa-current-issues-and-potential-challenges/> accessed 6 March 2020.

[60] Daniela Heerdt, 'Winning at the World Cup' [2018] 36 Netherlands Quarterly of Human Rights 86, 88–91. For a similar argument, see *Regueiro Dubra* in this issue.

[61] André Nollkaemper and Dov Jacobs, 'Shared Responsibility in International Law: A Conceptual Framework' [2013] 34 Michigan Journal of International Law 432.

actors that all contributed to a single harmful outcome, and that legal responsibility is established separately and distributed among more than one of the contributing actors.[62] Arguably, this definition is reflective of many of the adverse human rights impacts linked to FIFA and the World Cup.

5 Conclusion: A Research Agenda to Challenge FIFA

Attributing human rights responsibilities to a formally private actor like FIFA raises numerous challenging questions. FIFA is "only" a Swiss association. It does not formally dispose of any political authority or territorial sovereignty. And yet, we feel the increasing urge to criticize its activities on the basis of human rights, a set of moral and legal rights devised originally as a check on sovereign states. This points at profound changes to the political-legal structure of our times and highlights the growing normative and material power exercised by transnational private organizations.[63] FIFA is certainly amongst them.

This symposium starts from the premise that FIFA must be confronted to the moral and legal demands posed by human rights. It should not be able to hide behind the veil of its private structure to deflect these demands, nor should it be able to unload attention and responsibility simply onto its state of incorporation: Switzerland. In fact, after tremendous social mobilization and intense advocacy, FIFA itself recognized in 2016 its responsibility to respect internationally recognized human rights. This recognition, now enshrined in its constitution, the FIFA Statutes, will serve as a foundational—one could even say constitutional[64] reference point for those aiming at challenging FIFA on the basis of human rights. It does raise many new questions for researchers and practitioners: what are FIFA's actions that have a human rights impact? What is FIFA doing to mitigate these impacts? What are the legal and social implications for FIFA when its actions have a human rights impact? Can FIFA's actions be challenged by someone who alleged that her human rights are negatively affected? Who decides whether that is the case and on what legal basis?

Human rights are not an uncontroversial language to achieve change and social justice.[65] Yet, in current times, in which political institutions are often at pains to resist the economic and social pressure exercised by massive transnational private organizations, such as FIFA, they often become the principle language to resist those organizations and their agendas. It is therefore essential to provide an empirically rich (and critical) account of the way in which an organization like FIFA affects, and can be affected by, human rights. This starts as we have seen by reframing FIFA's actions in terms of their human rights impacts and commitments. Indeed, many, if not all of FIFA's decisions can have distributional or exclusionary effects that can be captured in human rights terms. Seeing and understanding these effects, be it at the level of a favela in Rio, a locker room in Munich or a training school in Kinshasa, is essential to formulate them effectively in human rights language. This translation from empirical to normative is key to leveraging human rights as a mode of resistance and politicization against FIFA's governance. Moreover, FIFA itself has recently started to change its policies and institutional practices to align with its embrace of human rights. This opens up a whole new sphere of scrutiny, as the core question will no longer be whether FIFA has to respect human rights, but whether its policies are actually respecting them. There is, therefore, a pressing need for empirical and critical engagement with the policy changes adopted by FIFA. How do they operate in practice? Do they achieve their objectives? Who benefits from them? Basically, is FIFA doing enough? And if not, what could it do more to prevent and mitigate its adverse human rights impacts?

Finally, FIFA's embrace of human rights raises the question of *who* is in position to authoritatively hold it accountable when it is claimed that it fails to live up to its own commitments. Currently, it seems that very few external judicial avenues are available for those that would like to challenge FIFA's human rights policies and request compensation for the harm they may have suffered. Thus, it is essential that beyond FIFA's impact and policies, scholarly attention be dedicated to investigating and inventing legal mechanisms to ensure that FIFA accounts before independent judges or arbitrators for the negative human rights effects of its decisions or practices. Indeed, it is high time that powerful private actors who affect our lives through their decisions be forced to justify and explain the rationale and proportionality of these decisions. A human rights review would be ideally placed to guarantee such a right to justification, which for some is at the heart of the ideal of justice.[66]

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[62] André Nollkaemper and others, *The Practice of Shared Responsibility in International Law* (Cambridge University Press 2017) 3.

[63] On these changes, see Ulrich Beck, *Power in the Global Age* (Polity Press 2005) and Gunther Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization* (Oxford University Press 2012).

[64] See *Bützler and Schöddert's* article.

[65] For a (controversial) skeptical take on transformative effects of human rights, see Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press 2018).

[66] See Rainer Forst, *The Right to Justification* (Columbia University Press 2014).

Competing Interests

The authors have no competing interests to declare.

How to cite this article: Antoine Duval and Daniela Heerdt, 'FIFA and Human Rights – a Research Agenda' (2020) 25(1) *Tilburg Law Review* pp. 1–11. DOI: https://doi.org/10.5334/tilr.189

Published: 22 June 2020

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