



0 RIGHTS – 0 VALUES

FIFA's Human Rights failures on the World Cup



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Foreword

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FIFA is an outlier in the story of globalization that has taken place in the last fifty years. Originally set up to coordinate matches between national football teams, it now seeks a greater role in profiting from a sport that is a cultural and commercial phenomenon, and to do so with minimal engagement of international values and standards.

World Cup 2018 will stand as a testament to how FIFA and the Kremlin, two entities mired in historic and ongoing corruption, diligently evaded the need, despite a variety of legal obligations, to conduct a human rights compliant sporting tournament.

According to our enquiries, FIFA has made little or no efforts on engagement on any human rights violations of the Russian state since it was awarded the tournament in 2010. FIFA is also unwilling to disclose whether they sought, secured or have attempted to leverage a meaningful commitment to human rights during the tournament from Russia in their main hosting contract. This is despite the fact that, if nothing else, this agreement is fundamental to the commercial imperatives and brand reputation of the tournament's sponsors.

These failures exist even though it is now the personal duty of the President, Gianni Infantino, under FIFA's own rules, to be a vanguard for promoting human rights and humanitarian values.

Infantino has not shown an interest in human rights¹ to date but has spoken greatly about extending the size of the World Cup to 48 teams, launching a biennial league tournament for nations and even creating a new world club cup competition. Infantino says he has an offer of USD \$25 billion over 12 years for the two new competitions from a group of investors, which the [Financial Times identified](#) as SoftBank and the governments of China and Saudi Arabia.

¹ If there is any further information about the steps taken by the President, the Governance Committee, and any other officials, to discharge their human rights obligations, this should be disclosed before the tournament so stakeholders can assess whether there has been any compliance or any adequate engagement with the issues.



In 89up's view, if there are any human rights failures at World Cup 2018, if a member of the LGBTI community is persecuted, if a journalist is censored, if black footballers are booed, if football fans are beaten up by Russian police - then Infantino's position must be untenable. This is because human rights problems in Russia have been identified and repeatedly raised by multiple actors and include:

1. potential [war crimes in Syria](#);
2. [occupying Crimea](#) and invading Ukraine;
3. [shooting down Malaysian Airlines Flight 17](#) containing many Dutch citizens, amongst others;
4. [illegally discriminating](#) against Lesbian, Gay, Bisexual and Transgender communities in Russia;
5. the Organisation for the Prohibition of Chemical Weapons confirming [the identity of the toxic chemical agent](#) used in the poisoning of Sergei and Yulia Skripal in the UK.

Even though these problems fall within Infantino's human rights purview, it seems they have been left largely ignored.

There is also a need, which may be greater than ever, to renew the degree of human rights compliance in global football governance. This need is heightened by FIFA's expansion plans which aim to control profit from a game that is a rapidly developing cash cow.

We have undertaken this brief analysis² because we believe now is the time for national governments, football associations, multinational institutions (such as the EU) and confederations, especially UEFA, to meaningfully deliver human rights in global football governance.

This would be a crucial step to mitigating the effects of an increasingly globalized industry so that players, coaches, supporters, media and corporate sponsors can have a game that everyone deserves, that is based on fairness, non-discrimination and meaningful compliance with international standards and humanitarian values.

² We are grateful to barristers at [Matrix Chambers](#) for providing Counsels' valuable assistance and support

Executive Summary

FIFA has taken some measures to tackle corruption and financial impropriety and has adopted a human rights policy, unlike many other sporting bodies, but it has yet to turn these words into action in the most crucial period it faces.

Refraining from human rights abuses should not be a high bar for awarding the hosting rights of prestigious international sporting tournaments. And yet FIFA's human rights investigations, since their relatively recent era of rights-awareness, have regrettably been limited to workers' rights in the construction of stadiums - and even those issues have not been properly handled according to Human Rights Watch³.

FIFA and the Football Union of Russia ('FUR') have failed to comply with human rights policy commitments embodied in FIFA statutes, regulations and policies. These rules are soft as they are self-imposed with no court or independent body currently overseeing them, so there is little legal remedy for failures. However, this report outlines why, if anything goes wrong at the World Cup, the world footballing community must, at the very least, hold FIFA President Infantino accountable.

The Russian state's record on human rights are too vast to cover in detail in this report but some of the most pertinent issues to World Cup 2018, we asked FIFA about, include them seemingly failing to:

1. take any steps to investigate the LGBTI rights of Russian people or visitors;
2. consider how the safety and security of people attending the World Cup might be affected by Russia's recent human rights violations;
3. constructively engage with Russian authorities in respect of any of the alleged rights violations;
4. take Russia's human rights violations into account in continuing its preparations for the 2018 World Cup.

³ See the most up to date analysis here by Human Rights Watch *Russia: FIFA World Cup 2018 Human Rights Guide for Reporters*
https://www.hrw.org/sites/default/files/news_attachments/reporters_guide_world_cup0518_pdfweb_0.pdf



Regulation 1(5) of FIFA's Human Rights Policy also commits the FUR to observe the human rights commitments embedded in FIFA's Statutes and Regulations. Any failure to respect or promote human rights could be a breach of the terms of their agreement to host the World Cup. As FUR has committed to observing FIFA's regulations, which include commitments to respecting human rights, FIFA could challenge FUR for breaching those obligations during the tournament.

FIFA's Human Rights Advisory Board requested information from the body on "other human rights risks connected to the 2018 FIFA World Cup, focusing on FIFA's new commitment regarding the protection of human rights defenders in connection with FIFA events". However, when we wrote and asked FIFA about human rights and World Cup 2018, their response strangely conflated the test of responsibility for human rights abuses with the responsibility to take steps to consider, investigate or raise these alleged human rights violations with the Russian government.

In addition, we have been unable to establish whether FIFA inserted a human rights compliance clause in the tournament's legal hosting agreement⁴ - a key performance indicator of FIFA's human rights credentials and potentially far more effective than a soft internal policy.

This brief analysis explores:

1. how FIFA is failing to meet the tests on human rights it set for itself, only last year;
2. the use of undisclosed commercial agreements for international events;
3. the relationship between human rights abuses and hosting agreements; and
4. the potential knock on effects for corporate sponsors.

⁴ We wrote to FIFA's Head of Sustainability and Diversity requesting disclosure of the hosting agreement between the Football Union of Russia and FIFA, and were told it was not publicly available.



1. FIFA's policies

In this section, we summarise the legal obligations FIFA, and specific actors within the organisation, have towards human rights.

[FIFA's Human Rights Policy](#)⁵ outlines their commitments in accordance with the *UN Guiding Principles on Business and Human Rights*. The main relevant provisions, for the sake of this paper are:

- FIFA has a particular responsibility in respect of discrimination and the safety and security of people attending or involved in FIFA's events (at para 5).
- Where the national context risks undermining FIFA's ability to ensure respect for internationally recognised human rights, FIFA has committed to constructively engage with the relevant authorities and other stakeholders and make every effort to uphold its international human rights obligations (at para 7).
- FIFA has committed to reflecting its human rights commitment in the requirements for the bidding and hosting of FIFA competitions, notably by including in such requirements a clause committing to the principles of this policy, and takes human rights into account in the selection of host countries (at

⁵ The Fédération Internationale de Football Association ('FIFA') was founded in 1904 in Paris as a body with aspirations to govern the order of football matches between countries. After over one hundred years of growth and global expansion it is estimated that FIFA's revenue in 2017 was USD \$734m. The upsurge of the Federation, which has more members than the United Nations, correlates with the sporting and cultural dominance of football, a game with a fan base estimated to be around 3.5 billion people.

FIFA is established as a legal entity under Swiss law and is made up of 209 national football associations which in turn form six continental confederations. FIFA's supreme body is the FIFA Congress, an assembly made up of representatives from each affiliated member association.

The Congress elects the President, the General Secretary and the Council. The Governance Committee deals with, and advises and assists the Council on, all FIFA governance matters. The Review Committee is specifically assigned to conduct tasks such as eligibility checks and independence reviews.

The FIFA Council (formerly known as the FIFA Executive Committee) awarded the 2018 World Cup to Russia in December 2010. The Organising Association of the 2018 World Cup is the Football Union of Russia.



para 10).

- FIFA has committed to engage with external stakeholders in a structured manner and to communicate regularly and transparently with its stakeholders and the general public about its efforts to ensure respect for human rights (at para 12)⁶.

Certain officials and committees⁷ are specifically empowered to protect human rights.

- a. *The President* shall be a vanguard for promoting human rights and humanitarian values (Gov Reg 14(2)(b)).
- b. *The Governance Committee* is required to advise on "social responsibility, human rights, environmental protection and gender equality matters in connection with FIFA and its activities" (Gov Reg 27(4)(c)).
- c. *The Audit and Compliance Committee* may call upon specialists or set up additional sub-committees at any time to settle any special and/or urgent business (Gov Reg 27(2)(c)). One of the Committee's main duties is "to monitor compliance with FIFA policies regarding social responsibility, human rights, environmental protection and gender equality matters" (Gov Reg 27(10)(b)).
- d. *The Organising Committee for FIFA Competitions* oversees the organisation of the FIFA World Cup in compliance with the applicable regulations, the relevant hosting documents and the hosting requirements (which include commitments to human rights). The Committee can propose amendments

⁶ FIFA's Code of Conduct also sets out its commitment to transparency. FIFA "strives to maintain transparency in how [they] govern and grow the game of football, operate [their] business and interact with key stakeholders" (page 15). FIFA has publicly declared that it has shown "openness" and a willingness to engage on human rights issues (see [letter dated 8 June 2017](#), from FIFA's Head of Sustainability & Diversity).

⁷ Human rights commitments are binding on all FIFA bodies and officials, and the FIFA Governance and Review Committee's role is to provide strategic guidance to the FIFA Council on matters of human rights (at para 13). FIFA's Code of Conduct provides that "FIFA team members must comply with FIFA's Human Rights Policy when exercising their respective powers and competences, including when interpreting and enforcing FIFA rules." FIFA recognises that it has "a heightened responsibility to preserve the inherent dignity and equal rights of each individual affected by FIFA's activities" (on page 5).



to these documents and deal with any other matters related to the organisation of these competitions (Gov Reg 30(2)(a)).

Professor John Ruggie's seminal [report into FIFA and Human Rights](#) in 2016 recommended under the heading "What comes after this report?" that:

"Short-term priorities must include addressing human rights risks in tournaments that are already scheduled, and using every opportunity to press host countries to support FIFA's new statutory human rights commitment."

On 9 November 2017, the FIFA Human Rights Advisory Board ("**HRAB**") published its [first report](#) outlining its activities and providing recommendations to FIFA. The HRAB made a series of observations and recommendations about workers' rights in the construction of stadiums in Russia. They also requested further information on "other human rights risks connected to the 2018 FIFA World Cup, focusing on FIFA's new commitment regarding the protection of human rights defenders in connection with FIFA events", including "information on the situation of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals, as well as journalists and representatives of civil society organisations" (at page 19).

FIFA's response to this was that it was "engaging with the relevant experts and stakeholders to discuss a set of additional measures to implement its commitment regarding human rights defenders and media representatives" (at page 43). To date, the only steps FIFA appears to have taken, in this direction, have been [attempts to monitor](#) the rights of workers in the build up to the 2018 World Cup⁸.

⁸ No mention was made of any of the human rights issues outlined in our letter and summarised in section 3

2. Rights and responsibilities

In this section we summarise how undisclosed commercial agreements are used to change laws and escape public accountability for an international tournament, often to the detriment of human rights.

FIFA has sole market access to global football and is a tax-exempt, not-for-profit, private institution. When it agrees a hosting contract with a nation state, it seeks to secure its interests around a number of specific commercial issues. In the 2014 World Cup in Brazil, these guarantees included:

- the protection and use of industrial property rights related to the tournament events;
- commercial exclusivity zones of up to 2km around stadiums;
- civil and criminal sanctions for violations of intellectual property and commercial exclusivity zones;
- unconditional entry into and exit from the country, priority treatment at immigration and customs and the issue of unconditional work permits for FIFA delegates and commercial partners;
- a general tax exemption for FIFA and its corporate sponsors.

The codification of these guarantees into law amount to a curious form of globalization, where a nation state consents to external limits on its sovereignty, albeit for the time-bound period that the tournament takes place. This can result in a country passing new laws, laws being scrapped or temporarily paused without citizens' express consent and often in spite of the concerns of local communities⁹.

⁹ See analysis by Sarah Longhofer, *Contracting away Sovereignty: The Case of Brazil, FIFA, and the Agreement for the Right to Host the 2014 World Cup*, 23 *Transnat'l L. & Contemp. Probs.* 147 (2014)

Whilst these hosting agreements contain robust contractual clauses requiring legal changes by the host nation, there is little security for the citizens of the contracting country that FIFA is accountable to them as well. At present, FIFA seems only concerned with international law when it relates to its own commercial rights and not those that concern the rights of people. This is in spite of the fact that FIFA, as a private transnational authority, has a unique position and leverage to seek and secure guarantees that host countries abide by international human rights.

For example in the run up to World Cup 2014 in Brazil, "FIFA continued to exert leverage over the host nation prior to the passage of the Lei Geral da Copa, through the inclusion of a clause in the agreement that would allow FIFA to rescind the hosting agreement and award the hosting rights to another country."¹⁰ There is no evidence to date, that FIFA has used its contractual power to ensure the FUR and Russian state comply by international human rights standards.

The only parties with any oversight or control over the agreement are FIFA and the host nation itself. In January 2017¹¹, the Dutch trade union FNV, the Bangladeshi Free Trade Union Congress, the Bangladesh Building and Wood Workers Federation and the Bangladeshi citizen Nadim Shariful Alam tested this issue of jurisdiction in the Swiss Courts. The claimants sought that FIFA were held responsible for alleged human rights violations of migrant workers in connection with the 2022 World Cup in Qatar.

The Swiss Court considered the claims to i) oblige FIFA to press the competent Qatari authorities and ii) declare the illegality of the respective human rights violation, as inadmissible on account of the ambiguity of the claims. The Court did indicate however, in obiter dicta comments, that if the claims had been unambiguous they were likely to fall within the ambit of public law.¹²

Unsurprisingly perhaps, the Swiss Court also drew a conveniently rigid line between FIFA's commercial activities and its policy influence on World Cup hosts. Although FIFA generally conducts significant commercial activities, the Court underlined that *"the*

¹⁰ Ibid at page 169

¹¹ <http://www.fifa.com/governance/news/y=2017/m=1/news=swiss-court-rejects-labour-unions-claim-against-fifa-concerning-qatar--2862363.html>

¹² <http://www.asser.nl/SportsLaw/Blog/post/fifa-s-responsibility-for-human-rights-abuses-in-qatar-part-ii-the-zurich-court-s-ruling-by-tomas-grell>



exercising of an alleged power to influence the political system and legal order of a foreign State and/or the neglect of such influence cannot – even interpreting the term broadly – be regarded as a commercial activity."

The litigation of this case epitomises wider problems with how the existence of a legal demarcation of human rights and public law from commercial law, is failing to reflect the realities of intertwined globalized politics and trade and how entities continue to profit but evade accountability to the interests of people around the world.



3. Hosting and abusing

This section summarises the human rights problems that have emerged in the years since the FIFA Executive Committee awarded the World Cup to Russia, in December 2010. These issues should have provided FIFA with ample cause for concern and include the Russian state's involvement in a series of alleged and proven breaches of international laws and human rights, including:

1. potential [war crimes in Syria](#);
2. [occupying Crimea](#) and invading Ukraine;
3. [shooting down Malaysian Airlines Flight 17](#) containing many Dutch citizens, amongst others;
4. [illegally discriminating](#) against Lesbian, Gay, Bisexual and Transgender communities in Russia;
5. the Organisation for the Prohibition of Chemical Weapons confirming [the identity of the toxic chemical agent](#) used in the poisoning of Sergei and Yulia Skripal in the UK.

89up set up a campaign group called, "World In Motion" to look into how these issues have affected FIFA's decisions on the World Cup and proposing that the tournament should be moved. We set out these concerns to FIFA's Head of Sustainability and Diversity, Federico Addiechi who stated in his response that:

*"According to the UNGPs, FIFA has a responsibility to put in place adequate systems and processes in view of addressing and, where necessary remedying, potential or actual human rights impacts it may be involved in. The scope of such possible involvement includes situations where FIFA may cause or contribute to adverse human rights impacts through its own activities, as well as situations that may be directly linked to FIFA through its business relationships. In that respect, many of the issues in relation to the Russian state that you mention in your letter are **outside the scope of FIFA's responsibility.**"*

This response makes no mention of FIFA's Human Rights Policy, the recommendations of the Human Rights Advisory Board, and is at best, ignores the policy of the organisation in the last couple of years. It conflates the test of responsibility for human rights abuses



with the responsibility to take steps to consider, investigate or raise these alleged human rights violations¹³ with the Russian government.

Therefore, it is clear that FIFA is in breach of the obligations outlined under its Human Rights Policy, as it appears to have not:

- Taken any steps to investigate the LGBTI rights of Russian people or visitors;
- Considered how the safety and security of people attending the World Cup might be affected by Russia's recent human rights violations;
- Constructively engaged with Russian authorities in respect of any of the alleged rights violations; nor has it
- Taken Russia's human rights violations into account in continuing its preparations for the 2018 World Cup.

FIFA has substantial leverage over the FUR and Russia's conduct whilst it hosts the World Cup. The *2018 FIFA World Cup Russia Regulations* govern the agreement between FUR and FIFA in respect of the 2018 competition. Regulation 1(5) provides that working relations between FUR and FIFA are regulated by the hosting agreement¹⁴, the FIFA directives, decisions, guidelines and circulars, as well as the FIFA Statutes and regulations, which the FUR has undertaken to observe.

Regulation 1(5) commits the FUR to observe the human rights commitments embedded in FIFA's Statutes and Regulations. Any failure to respect or promote human rights could be a breach of the terms of their agreement to host the World Cup. As FUR has committed to observing FIFA's regulations, which include commitments to respecting human rights, FIFA could challenge FUR for breaching those obligations.

¹³ [According to Human Rights Watch](#), *"The human rights situation in Russia is dire. Since 2012, the government has unleashed the worst human rights crackdown in Russia's contemporary history. The space for freedom of expression, association, and assembly has shrunk dramatically. Other key rights concerns include suppression of opposition campaign activities ahead of the 2018 presidential election; discrimination and violence against LGBT people; lack of protections against domestic violence; and brutal repression in Chechnya, including retaliation against even the mildest critics and vicious attacks on human rights defenders."*

¹⁴ A copy of the "hosting agreement" is not publicly available



Human rights violations could also amount to “special circumstances”, requiring both FIFA and FUR to issue instructions and take action. Regulation 53 provides that the FIFA Organising Committee shall, in conjunction with the FUR, issue any instructions necessitated by “special circumstances” that may arise in Russia related to the 2018 FIFA World Cup.

To date, it seems that FIFA's commitments on human rights are words on pages and are designed to exist outside of the commercial imperative of tournament-hosting. There is no sense from our engagement with FIFA that they understand the scale of human rights abuses that have been undertaken by the Kremlin, nor are they inclined to take action about them under their own rules, regulations and contractual agreements.

Notwithstanding that there are human rights problems off the pitch, there are also problems mounting on the pitch with recent racist chanting at black French football players in an international friendly match between Russia and France, which resulted in [a fine of £22,000](#). Such an incendiary hostile incident by a hosting nation's fans is without precedent in the run up to a World Cup tournament.



4. Corporate Sponsors

FIFA's rights failures pose a difficult question for [corporate sponsors of the World Cup](#). Having a clear approach to human rights was, no doubt, a key consideration when tournament sponsors were considering the reputational risk of being associated with the Russian state. The mounting spectre of FIFA and the FUR's failure to conform with rights commitments, may have a bearing on their contracts with their sponsors as well as the sponsors' own corporate social responsibility goals.





Anheuser-Busch InBev, the owners of Budweiser, recognise through their [Global Human Rights Policy](#) that “while protecting against human rights abuses is the responsibility of the State, companies bear responsibility under the Guiding Principles to respect human rights, to avoid contributing to adverse human rights impacts through their own activities and to seek to address adverse human rights impacts that are directly linked to their operations, products or business relationships. We recognise this responsibility both within our operations and our value chains.”

McDonald's [human rights credentials](#) set out, amongst other things, that they are committed to UN SDG 16, namely to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” In this light, there is no evidence that FIFA and the FUR have investigated, considered or generally addressed how the Council of Europe's [concerns around the independence of the judiciary](#) in Russia have been assuaged for the sake of the tournament.

As sponsors of the tournament, and multinational corporations, Budweiser and McDonald's would reasonably expect that their value chain for the World Cup stretching from FIFA, to the FUR and the Kremlin, would be served by the rules, regulations and contracts in place for the tournament.

Multinational corporations such as Budweiser and McDonald's would reasonably expect that their value chain for World Cup sponsorship, stretching from FIFA, to the FUR and the Kremlin, would be served by the rules, regulations and contracts in place for the tournament.

Given that there is increasing evidence that FIFA have failed to undertake even the most basic human rights considerations for the tournament, are there clauses in their sponsorship agreements that have been breached?

Have FIFA put them at reputational risk with their consumers?



5. Next steps

The path to [reforming global football governance](#) is long but is still achievable. We believe that the application of international law and human rights standards to how tournaments are conducted is a vital step in order to infuse established universal humanitarian values into the globalized game.

However, World Cup 2018 seems to be a lost cause and represents a continuation of the Sepp Blatter legacy where FIFA was [littered in illegality](#) and a failure of international oversight. In our view, the next steps needed are that:

1. Gianni Infantino's failure to speak out about the Russian state's human rights abuses should be held accountable if anything goes wrong at the tournament.
2. There needs to be a much bolder agenda on business and human rights championed by national governments, players, football clubs, football associations and continental federations, especially UEFA, which oversees the biggest club brands in world football.
3. The EU and/or the Council of Europe should act to ensure that UEFA and national associations adopt human rights policies and implement robust governance structures to commercial arrangements, which could in turn force FIFA to tackle human rights concerns with World Cup 2022 in Qatar.

If the status quo continues and we allow an unaccountable international institution such as FIFA to undermine human rights, we risk seeing a game with a growing soft cultural power and increasing levels of commercial interest, becoming the plaything of dictators.

In a wider sense, the World Cup illustrates how the globalised community is failing to deal with actors that elude accountability to [contemporary international mechanisms](#) and citizens. The only thing holding back humanitarian values from being a greater leveraged prerequisite in international commerce and trade, is political will and meaningful action.