

FIFA and the RULE OF LAW

Fédération Internationale de Football Association (FIFA)



Rule of Law Institute of Australia

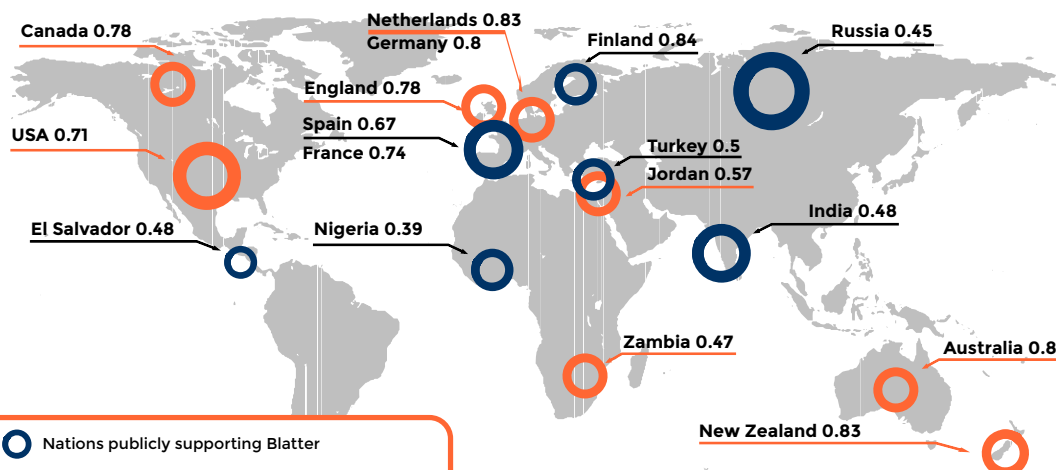
A central aspect of the Rule of Law is that citizens and governments are accountable to the law. FIFA is an organisation which operates across all continents and is an association of citizens from many different nations who represent the interests of football as a sport. Because FIFA is such an 'international' organisation - who is FIFA legally accountable to?

Controversy surrounding the governance of FIFA came to a head in June 2015 with a number of high-ranking FIFA officials and business partners arrested, and charged with bribery and corruption offences under Swiss law. These charges removed any doubt about whether FIFA is above the law.

FIFA is accountable to Swiss law as they are based in Switzerland. A benefit to FIFA being in Switzerland is that it remains tax-free, but it also makes the organisation subject to Swiss anti-corruption laws.

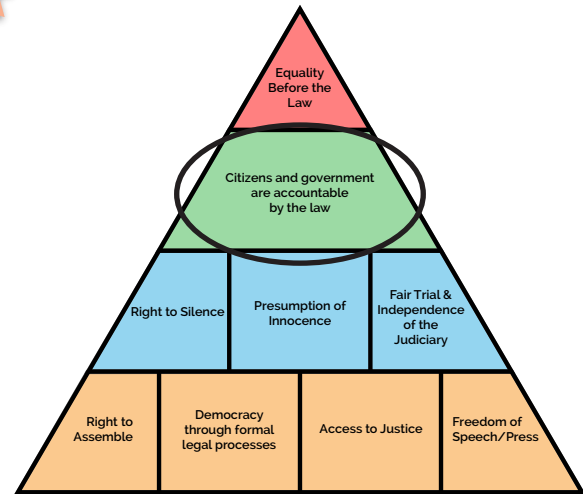
The United States (US) has also laid charges against FIFA officials. US law gives US Courts the jurisdiction to hear charges for any crime committed under US law which at some point intersected with US jurisdiction, even if the crime occurred outside the US. This allows US laws to have **extraterritorial effect**, and has been the subject of some debate and criticism internationally.

Extraterritorial effect: when the law of a country has effect outside that country's borders.



● Nations publicly supporting Blatter
● Nations who have withdrawn support for Blatter

Canada 0.78 — World Justice Project Rule of Law Index*
*A higher rule of law index = less corruption and more transparency



Accountable citizens and government is a central part of the rule of law.



“It’s that lack of overall structure and accountability that’s really been an issue. And in this recent case, FIFA and CONCACAF [FIFA’s governing body for North and Central America] members got sloppy. **They violated US laws on US soil** and brought the US government into it. If they’d stayed out of the US, they might have been okay.”¹ Roger Pielke Jr. Researcher at the University of Colorado and Sports Governance Expert

“This is clearly another case of illegal extraterritorial use of U.S. law”²

Spokesman for Russian Foreign Ministry.

Sepp Blatter

Sepp Blatter has served as President of FIFA for 17 years. His presidency has been marked by allegations of corruption and secrecy. He won the 2015 FIFA election 133 votes to 73, but resigned after the election due to ongoing questions about his leadership.

This graphic demonstrates support for outgoing FIFA President Sepp Blatter. Decisions relating to FIFA’s leadership and activities can often be highly political. The World Justice Project’s rule of law index provides a general score about that country’s adherence to the rule of law.

HOW IS FIFA ACCOUNTABLE TO US LAW?

1977 Foreign Corrupt Practices Act (FCPA)

The FCPA is the US law that allows the US to prosecute anyone whose illegal acts have intersected with US jurisdiction, regardless of their nationality or country of residence.

The United States Department of Justice details the FCPA:

“Since 1977, the anti-bribery provisions of the FCPA have applied to all U.S. persons and certain foreign issuers of securities. With the enactment of certain amendments in 1998, the anti-bribery provisions of the FCPA now also apply to foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States.”³

FIFA officials accused of corruption have had contact with the United States even though the crimes were not committed in the United States.

Ronald Fischetti, Professor of Law at Fordham University explains how it works:

“[The accused] are not in the United States but they have contact with the United States in a number of ways ... Bank accounts have been used, television rights, that’s millions of dollars and that’s sufficient in our country for a crime being committed by a foreign national ... to be extradited and tried here.”⁴

1970 Racketeer Influenced Corrupt Organizations Act (RICO)

FIFA officials are being charged under the 1970 Racketeer Influenced and Corrupt Organizations Act (RICO).

Racketeering refers to criminal activity performed to benefit an organisation. It includes extortion, money laundering, loan sharking, obstruction of justice, and bribery.

RICO was designed to help US authorities convict the

mafia, but is now being used to target FIFA. Fischetti explains:

“All you have to have is an enterprise - the enterprise is FIFA - and individuals who are associated with that enterprise - those are the defendants - who commit a pattern of criminal acts - which are mail fraud, money laundering, etc. - which are related to the enterprise and to each other.”⁵

What will happen to FIFA Officials accused of corruption?

FIFA officials who are alleged to have acted corruptly in Switzerland and other countries whose actions have at some point intersected any area of US jurisdiction may be extradited to stand trial in the US.

FIFA officials will be held accountable to the law of the US if extraditions are successful. Switzerland may also hold FIFA officials to account under Swiss anti-corruption laws pending the result of an investigation by their police.

What is extradition?

Extradition is a legal process where a country requests that another country detain and send them a person to stand trial for a criminal offence. Most nations will only agree to extradite a person accused of a crime if there is dual criminality. This means that the offence must be illegal in both countries. Also, many nations

will only consider extraditing a person if there is an extradition treaty between the two countries. The US and Switzerland have an extradition treaty.

Officials convicted of corruption offences can face up to 20 years jail under US racketeering laws.

Roger Pielke Jnr, a researcher at the University of Colorado and Sports Governance Expert discusses an extradition loop hole that is also available to FIFA

“On the other hand, after these arrests, FIFA could even say, ‘We’re sick of this, and we’re pulling up stakes and moving to Qatar.’ It’s worth noting that Switzerland had an extradition treaty with the US, but Qatar doesn’t. So you could not have happen what happened today if they were based in Qatar.”⁶

*Data from <http://data.worldjusticeproject.org/>
Accurate as of 03/06/2015

1,6 <http://www.vox.com/2015/5/27/8671925/how-to-fix-fifa>

2 <http://www.thedailybeast.com/articles/2015/05/27/feds-will-break-fifa-like-the-mafia.html>

3 <http://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>

4,5 <http://www.pri.org/stories/2015-05-29/what-do-fifa-and-mafia-have-common-rico>



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